

DUTCH HARBOUR TOWAGE CONDITIONS 2007

1. Definitions

In these 2007 Dutch Harbour Towage Conditions the following terms are defined as stated below:

- a) *The Commissioning Party*: the party which has contracted the Assistance of the Towage Provider, and if the Commissioning Party is not the owner or hull charterer of the Ship, this party is deemed to represent the owner or hull charterer of the Ship legally;
- b) *The Towage Provider*: the party which has been commissioned by the Commissioning Party to provide the Assistance with the aid of one or more Tugs;
- c) *The Ship*: any floating object or vessel (whether or not provided with own drive or propulsion), such as (sea-going) ships, offshore modules, barges, pontoons for which the Assistance is provided;
- d) *The Tug*: any vessel owned by or rented or employed by the Towage Provider, which is used by the Towage Provider to provide the Assistance;
- e) *The Assistance*: the service relating to the moving, slowing down, pushing, pulling, accompanying, escorting, or standing by to offer these services to the Ship, and any other services agreed between parties relating to the Ship with the aid of one or more Tugs;
- f) *The provision of the Assistance*: the period commencing at the moment that (i) the Tug manoeuvres into position in the vicinity of the Ship or has reported for duty and is awaiting direct orders to proceed with the Assistance, or (ii) the Tug is able to take the messenger lines or towing line from the Ship, or (iii) the towing line has been transferred to or from the Tug, whichever is the earliest, and ending at the moment that (i) the final orders of the Ship have been received to end the Assistance or (ii) the towing line has been detached from the Ship or the Tug and the Tug is at a safe distance from the Ship, whichever is the latest.

2. Assistance

- a) These Harbour Towage Conditions apply to both written and oral offers from and contracts with the Towage Provider to provide the Assistance. The applicability of any other general terms and conditions used by the Commissioning Party will thus be excluded. Stipulations deviating from these Harbour Towage Conditions will only be valid if agreed upon in writing.
- b) Insofar as the Ship is under the captaincy of a captain or pilot, the obligation of the Towage Provider is restricted to providing the Assistance within the Tug's technical capabilities, to be exclusively judged by the captain of the Tug, in accordance with the directions of the captain or pilot of the Ship.
- c) The Assistance is provided as much as possible in the order of the commissions received. The Towage Provider is, however, at all times entitled to grant priority to emergency aid and to instructions by the competent authorities.

3. Obligations of the Commissioning Party

The Commissioning Party guarantees that the Ship is suitable and ready in every respect for the Assistance to be provided safely and that the captain and/or the pilot of the Ship will give orders to the Tug in accordance with the applicable safety guidelines and with due observance of the interests of the Ship, the Tug and third parties.

4. Payment

- a) The Commissioning Party shall pay a fee for the Assistance in accordance with the rates and terms of payment of the Towage Provider.
- b) The rates of the Towage Provider do not apply to services which, within reason, fall outside the scope of the Assistance, including such services as assistance in the event of damage owing to leakage, problems with the rudder or the propulsion system, assistance in cases in which the Ship is in danger and other assistance and salvage services.

5. Force majeure / Non-attributable breach

The Towage Provider is entitled to invoke force majeure if the provision of the Assistance is either fully or partly, either temporarily or permanently, impeded, delayed or complicated due to circumstances that cannot be attributed to the Towage Provider. These Harbour Towage Conditions include among such circumstances the following: storm, ice drift, heavy fog, blockades, strike action, government measures, the (temporary) delay in the delivery of goods or services, and fire, damage or loss of vessels of the Towage Provider.

6. Liability and indemnity

- a) Damage to the Tug The Commissioning Party is liable for all damages to the Tug resulting during the provision of the Assistance, unless the Commissioning Party can prove that this damage is the result of: (i) inherent defects of the Tug, or (ii) the intent or wilful recklessness of the Towage Provider, its employees, contractors or subcontractors or the crew of the Tug.

- b) Damage to the Ship The Towage Provider is not liable for damage to the Ship resulting during the provision of the Assistance, unless the Commissioning Party can prove that this damage is the result of the intent or wilful recklessness on the part of the Towage Provider, its employees, contractors or subcontractors or the crew of the Tug. The Commissioning Party indemnifies the Towage Provider, its employees and any (auxiliary) persons deployed by the Towage Provider for the provision of the Assistance against any claims made by third parties relating to damage caused to the Ship during the provision of the Assistance.

- c) Damage sustained by third parties The Commissioning Party is liable for damage sustained by third parties caused during the provision of the Assistance and the Commissioning Party will indemnify the Towage Provider, its employees, contractors, subcontractors and the crew of the Tug against claims made by third parties relating to the aforementioned damage, unless the Commissioning Party can prove that (i) this damage is the result of the intent or wilful recklessness on the part of the Towage Provider, its employees, contractors or subcontractors or the crew of the Tug, or (ii) the Ship did not contribute to this damage nor give cause for it.

- d) Bodily injury to personnel and crew The Commissioning Party is not liable for damage as a result of bodily injury or death of the crew members of the Tug or employees and (sub) contractors of the Towage Provider caused during the provision of the Assistance, regardless of whether the damage is partially or entirely due to negligence (not being intent or wilful recklessness) on the part of the Commissioning Party, its employees, (sub) contractors or the crew of the Ship, and the Towage Provider hereby indemnifies the Commissioning Party, its employees, (sub) contractors and the crew of the Ship against any claims that relate to the aforementioned damage. The Towage Provider is not liable for damage as a result of bodily injury or death of the crew members of the Ship or employees and (sub) contractors of the Commissioning Party caused during the provision of the Assistance, regardless of whether the damage is partially or entirely due to negligence (not being intent or wilful recklessness) on the part of the Towage Provider, its employees, (sub) contractors or the crew of the Tug, and the Commissioning Party hereby indemnifies the Towage Provider, its employees, (sub) contractors and the crew of the Tug against any claims that relate to the aforementioned damage.

- e) Except for intent or wilful recklessness on the part of the Towage Provider itself or the persons in charge of the Towage Provider, the Towage Provider is not liable for damages resulting from the non-fulfilment or late fulfilment of its obligations towards the Commissioning Party.

- f) Consequential damage Except for intent on one party's part, neither of the parties is liable towards the other for consequential damage sustained by the other party with regard to the Assistance, including (but not limited to) loss of use or production or loss of income and profit.

7. Limitation of liability

- a) The Towage Provider will at all times be entitled to limit its liability for damage in accordance with the applicable legal rules and international treaties.
- b) In all instances in which the Towage Provider, notwithstanding the provisions in article 6 of these Harbour Towage Conditions, is liable to pay compensation to the Commissioning Party for damages, the amount of this compensation will never be more than three times the fee agreed for the Assistance.
- c) The employees of the Towage Provider, (sub) contractors and the crew of the Tug may invoke all restrictions and means of defence available to the Towage Provider itself in relation to the Commissioning Party.

8. Lapse

Without prejudice to the provisions in article 6:89 of the Dutch Civil Code, all legal claims against the Towage Provider will lapse in the passage of one year after the inception of such claim.

9. Applicable law and dispute settlement

- a) These Harbour Towage Conditions will be governed by Dutch law.
- b) Unless otherwise agreed by parties, all disputes between the Towage Provider and the Commissioning Party arising from or related to this agreement will be submitted to the competent court at Rotterdam.
- c) These Harbour Towage conditions have been drawn up in the Dutch language and translated into English. In the event of disputes the Dutch text will take precedence.