



The Manchester Ship Canal Company Limited
STANDARD TERMS AND CONDITIONS FOR
THE SUPPLY OF TOWAGE AND RELATED
SERVICES



HARBOUR AND PORT OF MANCHESTER

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF TOWAGE AND RELATED SERVICES

1. INTERPRETATION

- (a) The agreement between the Company and the Hirer is and shall at all times be subject to and include each and all of the conditions herein-after set out. The agreement is also subject to the Towage Guidelines which are drawn to the Hirer's attention.
- (b) For the purposes of these conditions:
- (i) **"Company"** means The Manchester Ship Canal Company Limited as the provider of the tug/towing services described hereunder;
 - (ii) **"Data Protection Legislation"** means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the Data Protection Act 1998, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in this document shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation;
 - (iii) **"Hirer"** means, jointly and severally, the party ordering the towage services, the owner and/or operator of the Hirer's vessel, and each of their respective agents;
 - (iv) **"Riding Crew"** means the Company's employees, servants or agents working on board the Hirer's vessel in connection with the towage services;
 - (v) **"Towage Guidelines"** means such guidelines as the Company publishes from time to time in relation to the towage services, which are available on request;
 - (vi) **"towing"** or **"towage services"** is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by the Hirer's vessel, and the expressions "to tow", "being towed" and "towage" shall be likewise understood;
 - (vii) **"tug"** means a tugboat typically provided by the Company to perform the towage services;
 - (viii) **"vessel"** shall include any vessel, craft or object of whatsoever nature ("whether or not coming within the usual meaning of the word "vessel") which the Company agrees to tow or to which the Company agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing;
 - (ix) **"tender"** shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Company for the performance of any towage or other service;
 - (x) the expression **"whilst towing"** shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer's vessel to commence holding, pushing, pulling, moving, escorting, guiding or standing by the vessel or to pick up ropes, wires or lines or when the towing line has been passed to or by the tug or tender, whichever is the sooner, and ending when the final orders from the Hirer's vessel to cease holding, pushing, pulling, moving, escorting, guiding or standing by the vessel or to cast off ropes wires or lines has been carried out or the towing line has been finally slipped, whichever is the later and the tug or tender is safely clear of the vessel;

- (xi) any service of whatsoever nature to be performed by the Company other than towing shall be deemed to cover the period commencing when the tug or tender is placed physically at the disposal of the Hirer at the place designated by the Hirer, or, if such be a vessel, when the tug or tender is in a position to receive and forthwith carry out orders to come alongside and shall continue until the employment for which the tug or tender has been engaged is ended. If the service is to be ended at or off a vessel the period of service shall end when the tug or tender is safely clear of the vessel or, if it is to be ended elsewhere, then when any persons or property or whatsoever description have been landed or discharged from the tug or tender and/or the service for which the tug or tender has been required is ended;
- (xii) the word **“tug”** shall include “tugs”, the word **“tender”** shall include “tenders”, the word **“vessel”** shall include “vessels”, the word **“tugowner”** shall include “tugowners”, and the word **“Hirer”** shall include “Hirers”; and
- (xiii) the expression **“tugowner”** shall, where not referring to the Company, include any person or body (other than the Hirer or the owner of the vessel on whose behalf the Hirer contracts as provided in Clause 2 hereof) who is a party to this agreement whether or not he in fact owns any tug or tender, and the expression **“other tugowner”** contained in Clause 6 hereof shall be construed likewise.

2. WARRANTY OF AUTHORITY

If at the time of making this agreement or of performing the towage or of rendering any service other than towing at the request, express or implied, of the Hirer the Hirer is not the Owner of the vessel referred to herein as “the Hirer’s vessel”, the Hirer expressly represents that it is authorised to make and does make this agreement for and on behalf of the owner of the said vessel subject to each and all of these conditions and agrees that both the Hirer and the Owner are bound jointly and severally by these conditions.

3. HIRER’S RESPONSIBILITY FOR MASTER, CREW ETC.

Whilst towing or whilst at the request, express or implied, of the Hirer, rendering any service other than towing, the master and crew of the tug or tender shall be deemed to be the servants of the Hirer and under the control of the Hirer and/or his servants and/or his agents, and anyone on board the Hirer’s vessel including but not limited to the Riding Crew, who may be employed and/or paid by the Company shall likewise be deemed to be the servant of the Hirer and the Hirer shall accordingly be vicariously liable for any act or omission by any such person so deemed to be the servant of the Hirer.

4. LIABILITY EXEMPTIONS AND INDEMNITY

Whilst towing, or whilst at the request, either expressed or implied, of the Hirer rendering any service of whatsoever nature other than towing:

- (a) The Company shall not (except as provided in Clauses 4(c) (i) and (ii) hereof) be responsible for or be liable for:
 - (i) damage or any description done by or to the tug or tender; or done by or to the Hirer’s vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer’s vessel or the tug or tender or to or by any other object or property; or
 - (ii) loss of the tug or tender or the Hirer’s vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer’s vessel or the tug or tender or any other object or property; or
 - (iii) any claim by any person not a party to this agreement for loss or damage of any description whatsoever; arising from any cause whatsoever, including (without prejudice to the generality of the foregoing) negligence at any time of the Company its servants or agents,

unseaworthiness, unfitness or breakdown of the tug or tender, its machinery, boilers, towing gear, equipment, lines, ropes or wires, lack of fuel, stores, speed or otherwise; and

the Hirer shall (except as provided in Clauses 4(c) (i) and (ii)) be responsible for, pay for and indemnify the Company against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused, whether covered by the provisions of Clause 4(a) hereof or not, suffered by or made against the Company and which shall include, without prejudice to the generality of the foregoing, any loss of or damage to the tug or tender their machinery, equipment, appliances and gear or any property of the Company even though caused by any defect in such tug or tender, their machinery, equipment, appliances and gear, or, by the neglect, or default, of the master, or crew, of the tug, or the servant, or agents, of the Company in the course of the towage services.

- (b) The Hirer shall further indemnify the Company:
- (i) in relation to any injury or death of the tug's master and crew, or the Riding Crew, or any other servant or agent of the Company on board a tug, vessel or tender connected with the towage services, even arising out of the Company's own negligence, save as arising in the circumstances envisaged in Clause 4 (c) (i) and (ii); and
 - (ii) in relation to any liability adjudged due or claim reasonably compromised arising out of injury to or death occurring during the towage services or other services hereunder, of the master and/or crew of the Hirer's vessel or the Hirer's other servants or agents, even arising out of the Company's own negligence, except in relation to the circumstances described in Clause 4 (c) (i) and (ii).
- (c) The provisions of Clauses 4(a) and 4(b) hereof shall not be applicable in respect of any claims which arise in any of the following circumstances:
- (i) All claims which the Hirer shall prove to have resulted directly and solely from the personal failure of the Company to exercise reasonable care to make the tug or tender seaworthy for navigation at the commencement of the towing or other service. For the purpose of this Clause the Company's personal responsibility for exercising reasonable care shall be construed as relating only to the person or persons having the ultimate control and chief management of the Company's business and to any servant (excluding the officers and crew of any tug or tender) to whom the Company has specifically delegated the particular duty of exercising reasonable care and shall not include any other servant of the Company or any agent of independent contractor employed by the Company.
 - (ii) All claims which arise when the tug or tender, although towing or rendering some service other than towing, is not in a position of proximity or risk to or from the Hirer's vessel or any other craft attending the Hirer's vessel and is detached from and safely clear of any ropes, lines, wire cables or moorings associated with the Hirer's vessel. Provided always that, notwithstanding the foregoing, the provisions of Clauses 4(a) and 4(b) shall be fully applicable in respect of all claims which arise at any time when the tug or tender is at the request, whether express or implied, of the Hirer his servants or his agents, carrying persons or property of whatsoever description (in addition to the officers and crew and usual equipment of the tug or tender) and which are wholly or partly caused by or arise out of the presence on board of such persons or property or which arise at any time when the tug or tender is proceeding to or from the Hirer's vessel in hazardous conditions or circumstances.
- (d) Notwithstanding anything hereinbefore contained, the Company shall under no circumstances whatsoever be responsible for or be liable for any loss or damage caused by or contributed to or arising out of any delay or detention of the Hirer's vessel or of any other vessel or object or property or of any person, or any consequence thereof, whether or not the same shall be caused or arise whilst towing or whilst at the request, either express or implied, of the Hirer rendering any service of whatsoever nature other than towing or at any other time whether before during or after the making of this agreement.

- (e) The Company shall have no liability whatsoever for financial loss including but not limited to loss of profits, business interruption, loss of contracts or production, detention or demurrage (whether or not the preceding heads of loss are direct losses), nor for any consequential or indirect loss in any circumstances.
- (f) The Company's total liability hereunder shall be limited to the value of Company's invoice covering the applicable towage services in respect of which any claim may arise.
- (g) Any claim of whatsoever nature including but not limited to claims for breach of duty, negligence, breach of contract, claim for indemnity or contribution or restitution, or other basis of claim against the Company must be notified to the Company in writing and proceedings issued and served within six (6) months of the event giving rise to such claim, failing which such claim shall be absolutely barred.

5. INSURANCE REQUIREMENT

As a precondition to the provision of the towage services, it is a requirement that the Hirer's vessel is insured with reputable underwriters on standard market terms for hull and machinery and third-party liability/P&I risks, and the Hirer so warrants.

6. SUBSTITUTION

The Company shall at any time be entitled to substitute one or more tugs or tenders for any other tug or tender of tugs or tenders. The Company shall at any time (whether before or after the making of this agreement between him and the Hirer) be entitled to contract with any other tugowner (hereinafter referred to as "the other tugowner") to hire the other tugowner's tug or tender and in any such event it is hereby agreed that the Company is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Company may in addition, if authorised whether expressly or impliedly by or on behalf of the other tugowner, act as agent for the other tugowner at any time and for any purpose including the making of any agreement with the Hirer. In any event should the tugowner as agent for the Hirer contract with the other tugowner for any purpose as aforesaid, it is hereby agreed that such contact is and shall at all times be subject to the provisions of these conditions so that the other tugowner is bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied herein.

7. SALVAGE AND SPECIAL COMPENSATION

Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Company may have against the Hirer including, but not limited to, any rights which the Company or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Company may have to limit its liability whether under the terms of this Agreement or otherwise as a matter of law.

8. FORCE MAJEURE

The Company will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes stoppages or labour disturbances (whether it be a party thereto or not) or anything done in contemplation or furtherance thereof or delays of any description, howsoever caused or arising, including by the negligence of the Company or his servants or agents.

9. HIMALAYA

- (a) The Hirer of the tug or tender engaged subject to these conditions undertakes not to take or cause to be taken any proceedings against any servant or agent of the Company or other

tugowner, whether or not the tug or tender substituted or hired or the contract or any part thereof has been sublet to the owner of the tug or tender, in respect of any negligence or breach of duty or other wrongful act on the part of such servant or agent which, but for this present provision, it would be competent for the Hirer so to do and the owners of such tug or tender shall hold this undertaking for the benefit of their servants and agents.

- (b) These conditions (including without limitation all exemptions and limitations hereunder) shall also be available to and shall extend to protect the Company's servants and agents and the Company is or shall be deemed to be, acting as principal and also as agents for all its servants, or agents, from time to time, who shall to this extent be, or be deemed to be, parties to this agreement.

10. PROVISIONS RELATING TO THE SUPPLY OF TOW ROPES

- (a) The Company shall endeavour to supply tow ropes at the time required, but do not guarantee to do so and shall not be responsible for delay that may arise from any cause. The Company, its servants and agents, are not to be responsible for delay that may arise from any cause, whatsoever.
- (b) The Company, its servants and agents, are not to be responsible or liable for delay, damage to any vessel or craft or goods on board thereof, in respect of which the Company may supply tow ropes, or for any loss sustained or liability, whatsoever, incurred by reason of such delay, damage, or for any loss or liability whatsoever incurred in consequence of any such vessel or craft colliding with or otherwise damaging any other vessel or thing, or for any damage, loss or liability, under whatever circumstances such delay, damage, loss or liability may have happened or accrued, even though arising from, or occasioned by the act, omission, incompetence, negligence or default of the Company, its servants or agents, or any other persons, or any defect or unsuitability of, or imperfection in the tow ropes, whether patent or latent, even though such defect, unsuitability or imperfection be in existence before, or during, the period the tow ropes are used.
- (c) The provisions (inter alia governing liability, exclusions and limitations, including allocation of liability for personal injury or death of the Hirer's and the Company's employees, servants and agents) in Clauses 4 to 9 (inclusive) regarding the towage services shall (without limiting the generality of Clauses 10(b) and 10(c)) apply *mutatis mutandis* to the Company's supply of tow ropes.

11. LAW AND JURISDICTION

- (a) The agreement between the Company and the Hirer is and shall be governed by English Law and the Company and the Hirer hereby accept, subject to the proviso contained in sub-clause (b) hereof, the exclusive jurisdiction of the English Courts.
- (b) No suit shall be brought in any jurisdiction other than that provided in sub-clause (a) hereof save that either the Company or the Hirer shall have the option to bring proceedings in rem to obtain the arrest of or other similar remedy against any vessel or property owned by the other party hereto in any jurisdiction where such vessel or property may be found.

12. DATA PROTECTION

The Company may collect and process information relating to the Hirer in accordance with the privacy notice which is available on the Peel Ports Group website. Each party agrees to comply with their respective obligations under the Data Protection Legislation.



13. VARIATION

These Terms and Conditions may be altered or varied at any time and from time to time in such respects and in such manner as the Company may consider desirable.

