

**BIMCO****TOWHIRE 2008**International Ocean Towage Agreement
(Daily Hire)
PART I

Recommended by: International Salvage Union

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1. Date and place of Agreement		
2. Tugowner/place of business (Cl. 1)		3. Hirer/place of business (Cl. 1)
4. Tow (name and type) (Cl. 1)		5. Gross tonnage/displacement tonnage
6. Maximum length/maximum breadth & towing draught (fore and aft)		7. Flag and place of registry
8. Registered owners		9. Classification society
10. P. & I. liability insurers		11. General condition of tow
12. Particulars of cargo and/or ballast and/or other property on board the tow		
13. Tug (name and type) (Cl. 1)		14. Flag and place of registry
15. Gross tonnage		16. Classification Society
17. P. & I. liability insurers		
18. Certificated bollard pull (if any)		19. Indicated BHP
20. Estimated daily average bunker oil consumption in good weather and smooth water		
(a) at full towing power with tow		
(b) at full sea speed without tow		
21. Winches and main towing gear		
22. Nature of service(s) (Cl. 2)		
23. Place of departure (Cl. 11)	24. Date of departure	25. Place of destination (Cl. 12)
26. Contemplated route (Cl. 22)		
27. Notices (state number of hours/days notice of arrival of tug at place of departure and to whom to be given)		28. Notices (state number of hours/days notice of arrival of tug and tow at place of destination and to whom to be given)

(continued)

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(continued)

TOWHIRE
INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE)

PART I

29. Riding crew to be provided by (also state number to be provided) (Cl. 13)	30. If riding crew provided by Tugowner state amount per man per day payable by Hirer (Cl. 13)
31. Mobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 3(d))	32. Demobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 3(e))
33. Daily rate of hire and advance payment period(s) (Cl. 3(b)(i))	34. Payment of hire and for riding crew (if any) (state currency, mode of payment, place of payment and bank account) (Cl. 3(g))
35. Minimum period of hire, if any agreed	36. Commencement of period of hire Cl. 3(a)
37. Termination of period of hire (Cl. 3(a))	38. Cancelling date, if any agreed (Cl. 5(a))
39. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 4)	40. Security (state sum, by whom to be provided and when) (optional, only to be filled in if expressly agreed) (Cl. 10) and 21(ii))
41. Cost of bunker oil and lubricating oils (state whether included or excluded from daily rate of hire; if included state type of bunkers and cost per metric tonne (per litre for lubricating oils) (Cl. 4)	
42. Termination fee (Cl. 20)	43. Dispute resolution (Cl. 31) (state whether alternative (a), (b) or (c) of Clause 31 agreed)
44. Numbers of additional clauses, covering special provisions, if agreed	

It is mutually agreed between the party stated in Box 2 (hereinafter called "the Tugowner") and the party stated in Box 3 (hereinafter called "the Hirer") that the Tugowner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 44, PART II and Annex A use its best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any additional clauses, if agreed, shall prevail over those of PART II and Annex A to the extent of such conflict but no further.

Signature (Tugowner)	Signature (Hirer)
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PART II
TOWHIRE 2008 (Daily Rate)

1. Definitions	1
"Tugowner" means the party stated in <u>Box 2</u> .	2
"Hirer" means the party stated in <u>Box 3</u> .	3
"Tug" means the vessel or vessels as described in <u>Boxes 13 to 16</u> .	4
"Tow" means one or more vessels or objects of whatsoever nature including anything carried thereon as described in <u>Boxes 4 to 12</u> .	5
"Voyage" means the voyage described in <u>Boxes 23 and 25</u> .	6
2. Basis of the Agreement	8
The Tugowner agrees to render the service(s) to the Tow as set out in <u>Box 22</u> .	9
3. Price and Conditions of Payment	10
(a) The Hirer shall pay the Tugowner the amount of hire set out in <u>Box 33</u> per day or pro rata for part of a day (hereinafter called the "Tug's Daily Rate of Hire") from the time stated in <u>Box 36</u> until the time stated in <u>Box 37</u> .	11
(b)	12
(i) The Tug's Daily Rate of Hire shall be payable in advance as set out in <u>Box 33</u> all hire due hereunder shall be fully and irrevocably earned and non-returnable on a daily basis.	13
(ii) In the event of the Tug being lost, hire shall cease as of the date of the loss. If the date of the loss cannot be ascertained, then, in addition to any other sums which may be due, half the rate of hire shall be paid, calculated from the date the Tug was last reported until the calculated arrival of the Tug at her destination provided such period does not exceed 14 days.	14
(iii) In the event of part of the Tow being lost, hire shall continue until the Tug arrives at its destination. In the event of the Tow being lost, hire shall continue until the Tug arrives at its destination or such nearer place, at the Tugowner's discretion, provided such period does not exceed 14 days.	15
(c) Within 14 days of the termination of the services hereunder by the Tugowner, the Tugowner will if necessary adjust in conformance with the terms of this Agreement hire paid in advance. Any hire paid by the Hirer but not earned under this Agreement and which is refundable thereunder shall be refunded to the Hirer within 14 days of receipt of the Tugowner's adjustment of hire.	16
(d) *If agreed, the Hirer shall pay the sum set out in <u>Box 31</u> by way of a mobilisation charge. This sum shall be paid on or before the commencement of the Tug's voyage to the place of departure, and shall be non-returnable, Tug and/or Tow lost or not lost.	17
(e) *If agreed, the Hirer shall pay the sum set out in <u>Box 32</u> by way of a demobilisation charge. This amount shall be paid Tow lost or not lost, on or before the termination by the Tugowner of his services under this Agreement.	18
(f) The Hire and any other sums due and payable to the Tugowner under this Agreement (or any part thereof) shall be paid without any discount, deduction, set-off, lien, claim or counterclaim.	19
(g) All payments by the Hirer shall be made in the currency and to the bank account specified in <u>Box 34</u> .	20
<i>*Sub-clauses (d) and (e) are optional and shall only apply if agreed and stated in <u>Box 31</u> and <u>32</u>.</i>	21
4. *Bunkers	22
(a) Daily Rate of Hire including Bunkers - Bunker Price Adjustment	23
(i) In the event that the Daily Rate of Hire includes the cost of bunkers then this Agreement is concluded on the basis of the price per metric tonne of bunker oil stated in <u>Box 41</u> .	24
(ii) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be higher, the difference shall be paid by the Hirer to the Tugowners.	25
(iii) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be lower, the difference shall be paid by the Tugowner to the Hirer.	26
(iv) The log book of the Tug and copies of the bunker supplier's invoices shall be conclusive evidence of the quantity of bunkers consumed and the prices actually paid.	27
b) *Daily Rate of Hire excluding Bunkers	28

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(i) In the event that the Daily Rate of Hire excludes the cost of bunkers then the Hirer shall pay to the Tugowner the cost of the bunkers and lubricants consumed by the Tug in fulfilling the terms of this Agreement.	49 50 51
(ii) The Tug shall be delivered with sufficient bunkers and lubricants on board for the tow to the first bunkering port (if any) or destination and be re-delivered with not less than sufficient bunkers to reach the nearest bunkering port en route to the Tug's next port of call.	52 53 54
(iii) The Hirer upon delivery and the Tugowner upon re-delivery shall pay for the bunkers and lubricants on board at the current contract price at the time at the port of delivery and re-delivery or at the nearest bunkering port.	55 56 57
c) Bunker Quality	58
(i) If the Hirer supplies fuel it shall be of the specifications and grades stated in <u>Box 41</u> . The fuels shall be of a stable and homogeneous nature and unless otherwise agreed in writing, shall comply with ISO standard 8217:1996 or any subsequent amendments thereof as well as with the relevant provisions of MARPOL.	59 60 61 62
(ii) The Chief Engineer shall co-operate with the Hirer's bunkering agents and fuel suppliers and comply with their requirements during bunkering, including but not limited to checking, verifying and acknowledging sampling, reading or soundings, meters etc. before, during and/or after delivery of fuels. During delivery four representative samples of all fuels shall be taken at a point as close as possible to the Tug's bunker manifold. The samples shall be labelled and sealed and signed by suppliers, Chief Engineer and the Hirer or their agents. Two samples shall be retained by the suppliers and one each by the Tug and the Hirer. If any claim should arise in respect of the quality or specification or grades of the fuels supplied, the samples of the fuels retained as aforesaid shall be analysed at an independent laboratory by a qualified analyst.	63 64 65 66 67 68 69 70 71
<i>*sub-clauses (a) and (b) are options. State agreed option in <u>Box 41</u>. If no option stated then sub-clause (b) apply.</i>	72 73
5. Extension to Cancelling Date	74
(a) Should the Tug not be ready to commence the towage at the latest at midnight on the date indicated in <u>Box 38</u> , the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner.	75 76 77
(b) Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within forty-eight (48) hours after the receipt of the Tugowner's notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.	78 79 80 81 82
6. Ice Clause for Tug and Tow	83
(a) The Tug shall not be obliged to force ice, but subject to the Tugowner's prior approval having regard to its size, construction and class, it may follow ice-breakers.	84 85
(b) The Tug shall not be required to enter or remain in any ice bound port or area, nor any port or area where lights, lightships, markers or buoys have been, or are about to be withdrawn by reason of ice, nor where on account of ice there is, in the Tugmaster's sole discretion, a risk that, in the ordinary course of events, the Tug will not be able to safely enter the place of departure to connect to the Tow, or depart from the place of departure with the Tow. In addition, if, on account of ice, the Tugmaster in his sole discretion considers it unsafe to proceed to, or to enter, the place of destination for fear of the Tug and/or Tow being frozen in and/or damaged, he shall be at liberty to proceed to the nearest ice free port or safe place and there await the Hirer's instructions.	86 87 88 89 90 91 92 93
(c) Any delay, deviation or additional expenses arising out of or in connection with the performance of this Agreement caused by or resulting from ice shall be for the Hirer's account and the Tug shall remain on Hire.	94 95 96
(d) Any additional insurance premiums and/or calls required by the Tug's insurers due to the Tug entering or remaining in any ice bound port or area shall be for the Hirer's account.	97 98
7. Additional Charges and Extra Costs	99
(a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or	100

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refuge and shall provide such agents with adequate funds as required.	101
(b) The Hirer shall bear and pay as and when they fall due:	102
(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature, including those incurred under the provisions of <u>Clause 22(b)</u> (Necessary Deviation), levied upon or payable in respect of the Tug and the Tow.	103 104 105
(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or payments of hire or other sums payable under this Agreement or services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.	106 107 108 109 110
(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.	111 112
(iv) All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).	113 114
(v) The cost of insurance of the Tow.	115
(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.	116 117 118 119 120
8. War Risk Escalation Clause	121
The rate of hire is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement. In the event of any subsequent increase or decrease in the actual costs, the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in such war risk insurance costs.	122 123 124 125
9. Interest	126
If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of <u>Box 39</u> , on all such amounts until payment is received by the party to whom it is due.	127 128 129
10. *Financial Security	130
The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in <u>Box 40</u> as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full.	131 132 133 134
(*Optional, only applicable if <u>Box 40</u> filled in).	135
11. Place of Departure	136
(a) The Tow shall be tendered to the Tugowner at the Place of Departure stated in <u>Box 23</u> .	137
(b) The place of connection and departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.	138 139 140 141
12. Place of Destination	142
(a) The Tow shall be accepted and taken over by the Hirer immediately upon arrival at the Place of Destination stated in <u>Box 25</u> .	143 144
(b) The place of disconnection shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance	145 146

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with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which shall not be unreasonably withheld.	147 148
13. Riding crew	149
(a) Riding crew for the Tow, if so requested by the Hirer, shall be provided by the party stated in <u>Box 29</u> . The number of riding crew shall be as stated in <u>Box 29</u> . All costs and expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Tugmaster. If the riding crew are provided by the Tugowner the Hirer shall pay to the Tugowner the amount per man per day stated in <u>Box 30</u> . If the riding crew are provided by the Hirer they shall not be deemed to be the servants or agents of the Tugowner. Permission for the Hirer to provide a riding crew on the Tow as well as the composition and suitability of the riding crew shall always be in the discretion of the Tugowner.	150 151 152 153 154 155 156
(b) It shall be the Hirer's responsibility to provide the riding crew with suitable accommodation, food, fresh water, life saving appliances and all other requirements as necessary to comply with the laws and regulations of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that the members of the riding crew shall be able to speak and understand a language which is mutual to the Tug and Tow.	157 158 159 160 161
(c) In the event that the Tugowner provides a riding crew for the Tow for its own purposes, all costs and expenses for such personnel shall be for the account of the Tugowner.	162 163
14. Towing Gear and Use of Tow's Gear	164
(a) The Tugowner agrees to provide free of cost to the Hirer the use of all tow wires, bridles and other towing gear carried on board the Tug for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the Tugmaster.	165 166 167
(b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.	168 169 170
(c) The Hirer shall pay for the replacement of any towing gear and accessories should such equipment become lost, damaged or unserviceable during the service(s), other than as a result of the Tugowners' negligence.	171 172 173
15. Permits and Certification	174
(a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licences, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.	175 176 177 178
(b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tug shall remain on hire.	179 180 181
16. Tow-worthiness of the Tow	182
(a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.	183 184
(b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.	185 186 187
(c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure a certificate of tow-worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner shall not unreasonably withhold his approval.	188 189 190 191 192
(d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer.	193 194
17. Seaworthiness of the Tug	195
The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition	196

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and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.	197 198
18. Substitution of Tugs	199
The Tugowner shall at all times have the right to substitute any tug or tugs for any other tug or tugs of adequate power (including two or more tugs for one, or one tug for two or more) at any time whether before or after the commencement of the towage or other services and shall be at liberty to employ a tug or tugs belonging to other tugowners for the whole or part of the towage or other service contemplated under this Agreement. Provided however, that the main particulars of the substituted tug or tugs shall be subject to the Hirer's prior approval, but such approval shall not be unreasonably withheld.	200 201 202 203 204 205
19. Salvage	206
(a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to re-connect the towline and fulfil this Agreement without making any claim for salvage.	207 208 209
(b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to engage salvage services from any vessel or person on behalf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants that the Tugowner or his duly authorised servant or agent including the Tugmaster have the full actual authority of the Hirer to accept such services on behalf of the Tow on any reasonable terms. Where circumstances permit the Tugowner shall consult with the Hirer on the need for salvage services for the Tow.	210 211 212 213 214
20. Termination by the Hirer	215
(a) At any time prior to the departure of the Tow from the place of departure the Hirer may terminate this Agreement upon payment of the termination fee set out in Box 42 . If termination takes place whilst the Tug is en route to the place of departure or after the Tug has arrived at or off the place of departure then in addition to the said termination fee the Hirer shall pay any additional amounts due under this Agreement.	216 217 218 219
(b) In the event that the towage operation is terminated after departure from the place of departure, but before the Tow arrives at the place of destination without fault on the part of the Tugowner, his servants or agents, the Tugowner shall be entitled to be paid, and if already paid to retain, all sums payable according to Box 33 and any other amounts due under this Agreement. The above amounts are in addition to any damages the Tugowner may be entitled to claim for breach of this Agreement.	220 221 222 223 224
21. Termination by the Tugowner	225
(a) The Tugowner may without prejudice to any other remedies he may have, withdraw from and terminate this Agreement and leave the Tow in a place where the Hirer may take repossession of it and be entitled to payment of cancellation fee or hire, whichever is the greater, and all other payments due under this Agreement, upon any one or more of the following grounds:	226 227 228 229
(i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate fourteen (14) days.	230 231
(ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate fourteen (14) days.	232 233
(iii) If the financial security as may be required according to Box 40 is not given within seven (7) running days of the Tugowner's request to provide security.	234 235
(iv) If the Hirer has not accepted the Tow within seven (7) running days of arrival at the place of destination.	236
(v) If any amount payable under this Agreement has not been paid within seven (7) running days of the date such sums are due.	237 238
(b) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall give the Hirer 48 hours' notice of his intention so to withdraw.	239 240
22. Necessary Deviation	241
(a) If the Tug during the course of the towage or other service under this Agreement puts into a port or place or seeks shelter or is detained or deviates from the original route as set out in Box 26 because either the Tugowner or Tugmaster reasonably consider	242 243 244
(i) that the Tow is not fit to be towed; or	245

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(ii) the towing connection requires rearrangement; or	246
(iii) repairs or alterations to or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination; or	247 248
(iv) it would not be prudent to do otherwise on account of weather conditions actual or forecast; or because of any other good and valid reason outside the control of the Tugowner or Tugmaster, or because of any delay caused by or at the request of the Hirer, this Agreement shall remain in full force and effect.	249 250 251
(b) The Tug shall at all times be at liberty to go to the assistance of any vessel in distress for the purpose of saving life or property or to call at any port or place for bunkers, repairs, supplies, or any other necessities or to land disabled seamen, but if towing the Tug shall leave the Tow in a safe place and during such period this Agreement shall remain in full force and effect, including the provisions of <u>Clause 7(b)(i)</u> , but any period so spent by the Tug in fulfilling or attempting to fulfil the purposes permitted by this sub-paragraph other than for normal replenishment of bunkers or fresh water or supplies shall not entitle the Tugowner to recover from the Hirer the Daily Rate of Hire for the said period.	252 253 254 255 256 257 258
(c) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation, save that no hire shall be paid for the period of such deviation, and shall be without prejudice to any other remedies which the Hirer may have against the Tugowner.	259 260 261 262 263
23. Liability and Indemnity	264
(a)	265
(i) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death of any of the following persons, occurring during the towage or other service hereunder, from arrival of the Tug at the pilot station or customary waiting place or anchorage at the Place of Departure (whichever is sooner), until disconnection at the Place of Destination, however such geographic and/or time limits shall not apply to sub-clause <u>25(a)(i)2.</u> below:	266 267 268 269 270
(1) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;	271
(2) The members of the riding crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;	272 273
(3) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.	274 275
(ii) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the towage or other service hereunder of any of the following persons:	276 277 278
(1) The Master and members of the crew of the Tow and any other servant or agent of the Hirer;	279
(2) Any other person on board the Tow for whatever purpose except the members of the riding crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.	280 281 282
(b)	283
(i) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to any breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:	284 285 286
(1) Save for the provisions of <u>Clause 14(c)</u> , loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.	287 288
(2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.	289 290
(3) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (1) and (2) above.	291 292

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(4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.	293 294
The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.	295 296 297 298 299
(ii) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to any breach of contract (including as to the seaworthiness of the Tug), negligence or any other fault on the part of the Tugowner, his servants or agents:	300 301 302
(1) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.	303
(2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.	304 305
(3) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (1) and (2) above.	306 307
(4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.	308 309
The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage howsoever caused to or sustained by the Tow.	310 311 312 313
(c) Save for the provisions of <u>Clauses 15</u> , (Permits & Certification); <u>16</u> , (Tow-worthiness of the Tow); <u>17</u> , (Seaworthiness of the Tug); <u>20</u> (Termination by the Hirer) and <u>21</u> (Termination by the Tugowner), neither the Tugowner nor the Hirer shall be liable to the other party for	314 315 316
(i) any loss of profit, loss of use or, loss of production whatsoever and whether arising directly or indirectly from the performance or non performance of this Agreement, and whether or not the same is due to negligence or any other fault on the part of either party, their servants or agents, or	317 318 319
(ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants or agents.	320 321
(d) Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owners or chartered owners of vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.	322 323 324 325
24. Himalaya Clause	326
All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of:	327 328 329
(a) demise charterers, sub-contractors, operators, Master, officers and crew of the Tug or Tow and,	330
(b) all bodies corporate, parent of, subsidiary to, affiliated with or under the same management as either the Tugowner or Hirer, as well as all directors, officers, servants and agents of the same and	331 332
(c) all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties.	333 334
The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.	335 336 337
25. War and Other risks	338

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(a) For the purpose of this Clause, the words:	339
(i) "War Risks" shall include any actual, threatened or reported:	340
war; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of	341
mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed	342
against all vessels or imposed selectively against vessels of certain flags or ownership, or against	343
certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or	344
the Government of any State whatsoever, which, in the reasonable judgement of the Master and/or the	345
Tugowners, may be dangerous or are likely to be or to become dangerous to the Tug, her Tow, crew or	346
other persons on board the Tug or Tow.	347
(ii) "Other Risks" shall include any actual, threatened or reported:	348
arrest or restraint of princes, rulers or people; insurrections; riots or civil commotions; disturbances;	349
acts of God; epidemics; quarantine; labour troubles; labour obstructions; strikes; lock-outs; embargoes;	350
seizure of the Tow under legal process or for any other cause outside the control of the Tugowner as	351
a result of which it would be impossible or unsafe or commercially impracticable for the Tug or Tow or	352
both to enter or attempt to enter or leave or attempt to leave the place of departure or any port or place	353
of call or refuge or to reach or attempt to reach or enter the port or place of destination of the Tow and	354
there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may	355
leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer	356
may take repossession and this shall be deemed a due fulfilment by the Tugowner of this Agreement	357
and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred	358
by the Tugowner shall thereupon become due and payable by the Hirer.	359
(b) The Tug, unless prior written consent of the Tugowners has first been obtained, shall not be required	360
to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal,	361
where it appears that the Tug, her Tow, the crew or other persons on board the Tug or Tow, in the reasonable	362
judgement of the Master and/or the Tugowners, may be, or are likely to be, exposed to War or Other Risks.	363
Should the Tug be within any such place as aforesaid, which only becomes subject to War or Other Risks,	364
or is likely to be or to become subject to War or Other Risks, after her entry into it, she shall be at liberty to	365
leave such place or area.	366
(c)	367
(i) The Tugowners may effect war risks insurance in respect of the Hull and Machinery of the Tug and their	368
other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection	369
and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.	370
(ii) If the Underwriters of such insurance should require payment of additional premiums and/or calls because,	371
pursuant to the Hirers' orders, the Tug is within, or is due to enter and remain within, or pass through	372
any area or areas which are specified by such Underwriters as being subject to additional premiums	373
because of War Risks, then the actual additional premiums and/or calls paid shall be reimbursed by the	374
Hirers to the Tugowners at the same time as the next payment of hire is due, or upon delivery of the	375
Tow, whichever occurs first.	376
(d) If the Tugowners become liable under the terms of employment to pay to the crew of the Tug, or any	377
riding crew of the Tow, any War Risk related bonus or additional wages in respect of sailing into a War Risk	378
area, then the actual War Risk related bonus or additional wages paid shall be reimbursed to the Tugowners	379
by the Hirers at the same time as the next payment of hire is due, or upon delivery of the Tow, whichever	380
occurs first.	381
(e) The Tug shall have liberty:-	382
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in	383
convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever,	384
which are given by the Government of the Nation under whose flag the Tug sails, or other Government	385
to whose laws the Tugowners are subject, or any other Government, body or group whatsoever acting	386
with the power to compel compliance with their orders or directions;	387
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the	388
authority to give the same under the terms of the war risks insurance;	389
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective	390

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orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Tugowners are subject, and to obey the orders and directions of those who are charged with their enforcement;	391 392 393
(iv) to call at any other port to change the crew or any part thereof or other persons on board the Tug or Tow when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.	394 395
(f) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by the War or Other Risks then:	396 397 398 399
(i) The Tug shall not be required to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to search and/or confiscation.	400 401 402 403
(ii) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein for a period of more than fourteen (14) days, either party hereto shall be entitled to terminate this Agreement by giving notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.	404 405 406 407 408
(iii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall continue to pay the Daily Rate of Hire for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.	409 410 411 412
(iv) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service either party shall, after a period of fourteen (14) days from the commencement of such trapping, be entitled to terminate this Agreement by telex, cable or other written notice, in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payment already made and all amounts due shall remain payable.	413 414 415 416 417 418
(g) If in accordance with their rights under the foregoing provisions of this Clause, the Tugowners refuse to proceed from the place of departure or to the place of destination, or any one or more of them, they shall immediately notify the Hirers requesting them to nominate a place for redelivery of the Tow. Failing such nomination by the Hirers within 48 hours of the receipt of such notice and request, the Tugowners may redeliver the Tow at any place where the Hirer can take repossession of the Tow.	419 420 421 422 423
(h) If in compliance with any of the provisions of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Agreement.	424 425
26. Lien	426
Without prejudice to any other rights which he may have, whether in rem or in personam, the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner by himself or his servants or agents or otherwise all reasonable costs and expenses and all costs of recovering same, including legal fees, howsoever or whatsoever incurred by or on behalf of the Tugowner by himself or his servants or agents or otherwise in exercising or attempting or preparing to exercise such lien and the Tugowner by himself or his servants or agents or otherwise shall be entitled to receive from the Hirer the Tug's Daily Rate of Hire throughout any reasonable delay to the Tug resulting therefrom.	427 428 429 430 431 432 433 434 435 436
27. Warranty of Authority	437
If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer, the Hirer is not the Owner of the Tow referred to in <u>Box 4</u> , the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the Owner of the said Tow and agrees that both the Hirer and the Owner of the Tow are bound jointly and severally by the provisions of this Agreement.	438 439 440 441 442

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28. General	443
(a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.	444 445 446
(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.	447 448
29. Time for Suit	449
(a) Save for the indemnity provisions under <u>Clause 23</u> (Liability and Indemnity) of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.	450 451 452 453 454 455
(b) Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.	456 457 458
30. BIMCO ISPS/MTSA Clause 2005	459
(a)	460
(i) The Tugowner shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Tug and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Tugowner shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).	461 462 463 464 465 466
(ii) Upon request the Tugowner shall provide the Hirer with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).	467 468 469
(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Tugowner or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Tugowner's account, except as otherwise provided in this Agreement.	470 471 472 473
(b)	474
(i) The Hirer shall provide the Tugowner and the Tugmaster with their full style contact details and, upon request, any other information the Tugowner requires to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Agreement, the Hirer shall ensure that the contact details of all sub-hirers are likewise provided to the Tugowner and the Tugmaster. Furthermore, the Hirer shall ensure that all sub-lets they enter into during the period of this Agreement contain the following provision:	475 476 477 478 479
"The Hirer shall provide the Tugowner with their full style contact details and, where sub-letting is permitted under the terms of the agreement, shall ensure that the contact details of all sub-hirers are likewise provided to the Tugowners".	480 481 482
(ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Hirer to comply with this Clause shall be for the Hirer's account, except as otherwise provided in this Agreement.	483 484 485
(c) Notwithstanding anything else contained in this Agreement, all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Hirer's account, unless such delay, costs or expenses result solely from the negligence of the Tugowner, Tugmaster or crew. All measures required by the Tugowner to comply with the Ship Security Plan shall be for the Tugowner's account.	486 487 488 489 490 491
(d) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	492 493
31. BIMCO Dispute Resolution Clause	494

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(a) *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.	495 496 497 498 499 500 501 502 503 504 505 506 507 508
Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.	509 510
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	511 512 513
(b) *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	514 515 516 517 518 519
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	520 521 522 523
(c) *This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	524 525 526
(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.	527 528
In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:	529 530
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	531 532 533
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	534 535 536 537 538 539
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	540 541 542
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	543 544
(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall	545

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continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	546 547
(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	548 549
(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	550 551 552
<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	553
(e) If <u>Box 43</u> is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.	554 555
<i>*Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in <u>Box 43</u>.</i>	556
32. Security for Claims	557
Either party shall have the option to bring proceedings in rem, but only to obtain security or other similar remedy for claims arising under this Agreement against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.	558 559 560
33. BIMCO Notices Clause	561
(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing.	562 563
	564
(b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.	565 566 567

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34. **BIMCO Dispute Resolution Clause**

This Agreement shall be governed by and construed in accordance with the Maritime Law of the United States and, to the extent not in conflict therewith, by the laws of the state of New York, excluding its conflict of laws rules. The parties agree that any proceeding involving this Agreement or the performance thereof shall be brought in the United States District Court for the Southern District of New York or, if said court shall not have jurisdiction thereof, then in a state court of competent jurisdiction sitting in New York County, New York.

35. **BIMCO ISPS/MTSA Clause**

(a) The Tugowner shall comply with the terms of a security regime applicable to the size, flag and area of operation of the Tug. Upon request, the Tugowner shall provide the Hirer with satisfactory evidence of its security plan. Loss, damage or expense (excluding consequential loss, damage or expense) caused by Tugowner's failure to have in effect an appropriate security plan shall be for the Tugowner's account, except as otherwise provided in this Agreement.

(b) The Hirer shall provide Tugowner and Tugmaster with all information necessary for Tugowner to comply with the applicable security regime. Loss, damage or expense (excluding consequential loss, damage or expense) caused by any failure by Hirer to comply with this Clause shall be for Hirer's account, except as otherwise provided in this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, any costs or expenses of whatsoever nature arising out of or related to security regulations or measures required by any entity or authority having jurisdiction including but not limited to security guards, launch services, vessel escorts, security fees or taxes and inspections shall be for Hirer's account, unless such expenses result solely from the negligence of the Tugowner, Tugmaster or crew, the previous trading of the Tug, the nationality of the Tug crew or the identity of the Tugowner's managers. The costs incurred by the Tugowner in complying with its own security plan shall be for Tugowner's account.

(e) If either party makes any payment which, pursuant to this Clause, is for the other party's account, the other party shall indemnify the paying party.

36. Hirer and Tugowner agree that tug services provided hereunder are rendered at all times under the supervision and command of Hirer's servants (including, without limitation, the master of the Tow, pilots or other persons acting on behalf of Hirer) or of government officials none of whose actions or inactions may be imputed to Tugowner