

TERMS AND CONDITIONS OF TOWAGE

1. DEFINITIONS

- (1) Assistance: Services performed by a Tug in the proximity of a manned Tow Object that is under the command of a guide or pilot.
- (2) Customer: The party that has concluded a contract regarding the performance of such Services with the Tug Operator.
- (3) Services: The services that the customer requests with respect to the Tow Object or in another respect, but not limited to Assistance.
- (4) Proximity: The area in which the Tug and Tow Object affect or are able to affect each other or, as it may be, are or may be subject to the influences of the respective other.
- (5) Tow Object: Each floating object, in particular an ocean-going ship, whether capable of maneuver or not, for which Services are performed.
- (6) Tug(s): The tug or tugs including captain and crew as well as their equipment which perform the Services independent of whether or not they are owned by the Tug Operator or third parties (see below clause 2.3).
- (7) Tug Operator: The party that is obligated to perform the Services.

2. PERFORMANCE OF SERVICES

- (1) All Services of the Tug Operator are performed exclusively on the basis of these terms and conditions of towage insofar as no other agreements have been made.
- (2) With respect to Services which refer to manned Tow Objects under the command of a guide or pilot, the Tug Operator only is obliged to act subsequent to instructions of the guide or, as it may be, the pilot.
- (3) The Tug Operator has the right to deploy one or, as it may be, more Tugs that are owned by third parties.
- (4) If the performance of Services is impossible or substantially impacted by circumstances outside of the sphere of influence of the Tug Operator, in particular on account of weather, e.g., due to a storm, ice or poor visibility, the Tug Operator is not obligated to perform the service.
- (5) The Tug Operator executes contracts in the order in which they are received. Likewise, other ships such as incoming vehicles may need to be given priority service, as in accordance with the custom of the harbor or the instructions of the harbor authorities. At any time, the Tug Operator has the right to assist persons or other vehicles that are in distress. The Tug Operator is not liable for delays in performing the Services that occur on this count.
- (6) In the cases stated in clauses 2.4 and 2.5 sentences 1 and 2, the Tug Operator has the right to interrupt service that it has already begun to perform. The requirements vis-a-vis the security of the Tow Object are to be given reasonable consideration. After the removal of the hindrance, the Tug Operator is obligated to perform the Services without undue delay.

3. OBLIGATIONS OF THE CUSTOMER

- (1) The Customer is obligated to ensure that the Tow Object is, in all respects, in a condition such that the desired towage Services can be securely performed, that the relevant security regulations for the Tow Object are complied with and that all of the necessary permits for the Tow Object and the desired Services have been obtained and that the stipulations set forth therein are obeyed.

- (2) Moreover, the Customer is obligated to ensure that the guide or, as it may be, the pilot of the Tow Object always provides instructions to the Tug in a manner such that any risk to the Tow Object, the Tug or the interests of third parties are excluded.

4. COMPENSATION

- (1) Insofar as nothing else has been agreed, the Customer owes compensation pursuant to the tariff of the Tug Operator.
- (2) The agreed-upon compensation does not include extraordinary performance or salvage.
- (3) The compensation is payable subsequent to invoicing at the place of business of the Tug Operator (Cuxhaven).
- (4) Off-setting rights may only be exercised by the Customer if its claims have been validly determined by a court, are undisputed or have been granted by the Tug Operator.

5. CUSTOMER LIABILITY

- (1) The Customer is liable for all damages to the Tug that occur during Assistance on account of the activities of the Tug for the benefit of the Tow Object, insofar as the damages are not caused by negligent or intentional conduct on the part of the Tug Operator or its agents or assistants, including the captain and the crew of the Tug.
- (2) The Customer shall be liable for all damages to the Tug that occur during Assistance as a consequence of the circumstance that the Tug is following instructions or the guide or, as it may be, of the pilot of the Tow Object, insofar as the damages are not caused by grossly negligent or intentional behavior on the part of the Tug Operator or its agents or assistants, including the captain and the crew of the Tug.
- (3) Furthermore, the Customer is liable for all damages to third parties that occur on account of assistance due to maneuvers that the Tug engages in because of instructions by the guide or, as it may be, by the pilot of the Tow Object, insofar as the damages are not caused by grossly negligent or intentional behavior on the part of the Tug Operator or its agents or assistants, including the captain and the crew of the Tug.
- (4) With reference to clauses 5.1 through 5.3, the burden of proof for each negligent, grossly negligent or intentional action on the part of the Tug Operator or its agents or assistants, including the captain and the crew of the Tug, as well as the failure by one of them to take a substantive contractual obligation (cardinal obligation) into account shall be borne by the Customer.
- (5) If the Tug is not deployable on account of damages or due to other reasons for which the Customer is responsible, the Tug Operator shall have the right to claim demurrage equal to € 4,000.00 per calendar day. The right of the Tug Operator to demand reimbursement for greater damages as well as his obligation to mitigate damages (§ 254 German Civil Code) remain unaffected. If Services are to be performed by a Tug that is owned by a third party (see clause 2.3), this third party shall likewise have the right to take recourse to these terms and conditions.
- (6) If Services are to be performed by a Tug that is owned by a third party, then the damages to which the third party is subject shall be regarded as damages of the Tug Operator. Hence, it shall have the right to liquidate the damages of the third party (third party damage liquidation).

(7) These terms and conditions do not affect other rights, claims or legal remedies of Tug Operator against the Customer independent of whether these have a contractual or extracontractual basis.

6. TUG OPERATOR LIABILITY

(1) The liability of the Tug Operator for breaches of contract as well as for torts are limited to intent and gross negligence. This does not apply to injury to life, limb or health of the Customer, claims due to violations of cardinal obligations, i.e. of obligations that result from the nature of the contract and whose violation endangers the realization of the purpose of the contract, as well as damages due to delay (§ 286 German Civil Code). Insofar as these are concerned, the Tug Operator is liable for all degrees of fault. Insofar as it relates to damages that are not based upon injury to life, limb or health of the Customer, the Tug Operator shall only be liable for the damages that would typically occur.

(2) For damages on the basis of delayed Services, clause 6.1 and clause 2.5 shall apply. The liability of the Tug Operator is limited to triple the compensation that was paid or would have been paid by the Customer unless the delay was intentionally or grossly negligently caused or is based upon damages that resulted from injury to life, limb or health of the Customer.

(3) Insofar as the Tug Operator is regarded as a freight carrier, its liability for the loss or damage of the cargo including the Tow Object is limited to 2 Special Drawing Rights of the International Monetary Fund per kilogram of the lost or damaged cargo. Insofar as the law applicable to this clause should not be German law and a higher liability than 2 Special Drawing Rights of the International Monetary Fund per kilogram of the lost or damaged cargo is foreseen, then the maximum liability of the Tug Operator as a freight carrier shall be 2 Special Drawing Rights of the International Monetary Fund per kilogram of the lost or damaged cargo.

(4) In addition to clause 6.3, the liability of the Tug Operator for fire or errors in navigation and operation of the ship (nautical fault) shall be excluded.

(5) In each case the Tug Operator shall have the right to limit his liability in accordance with the regulations regarding liability limitation which are applicable to the Tug that caused the damage, as pursuant to the Convention dated 19 November 1976 on the Limitation of Liability for Maritime Claims in the respectively most recent version, the Strasbourg Convention dated 27 September 2012 on the Limitation of Liability in Inland Navigation (CLNI) or, as it may be, national statute. This shall also apply if the Tug that the Tug Operator has provided for the performance of Services is not owned by it or was not chartered, leased or operated by it.

(6) The exclusions and limitations in the clauses 6.1 through 6.5 apply to all contractual or extra-contractual claims against the Tug Operator. Likewise, they apply to the employees and other assistants of the Tug Operator, including the third party who is the owner of the Tug and to the captain and the crew of the Tug.

7. INDEMNIFICATION

The Customer is obligated to indemnify the Tug Operator against claims exercised by third parties due to damages for which the Customer, in relation to the Tug Operator, is responsible.

8. CHOICE OF LAWS AND FORUM

The contract regarding the performance of tow Services is subject to the law of the Federal Republic of Germany. CISG shall not apply.

All disputes that arise out of this contract or in connection with the Services performed shall exclusively be decided by the courts of the Free and Hanseatic City of Hamburg (forum: Hamburg).

9. FORM REQUIREMENTS

(1) Oral assurances by the agents or other assistants of the Tug Operator require confirmation in writing by the Tug Operator.

(2) Legally relevant declarations and notices that the Customer is required to provide to the Tug Operator or to a third party must be made in writing.

10. STATUTE OF LIMITATION

(1) Insofar as liability for damages not due to injury to life, limb and health of the Customer is concerned, and light negligence is not excluded, such claims shall expire within one year as of the claim arising.

(2) The claims of the Tug Operator, under abrogation of § 195 German Civil Code, expire in five years. Section 199 German Civil Code applies with respect to the beginning of the statute of limitations.

11. GERMAN VERSION

The German version of these terms and conditions shall apply; the English version is offered merely as a reading aid and has no legal effect whatsoever.

(Ver.: 09/2014)

Otto Wulf GmbH & Co. KG

