

# GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF TOWAGE AND OTHER SERVICES

Effective from 01st of January 2013

These General Terms and Conditions for the provision of towage services apply to every port towage made by "Megalohari – Hellenic Tug Boats" of 113 Filonos Str, 185 35 Piraeus, Greece (in Greek «ΚΟΙΝΟΠΡΑΞΙΑ ΜΕΓΑΛΟΧΑΡΗ ΕΛΛΗΝΙΚΑ ΠΥΜΟΥΛΑΚΑ» and hereinafter "the Tugowner") including its affiliates, associated entities, subsidiaries, employees, sub-contractors, servants, authorised agents or delegates and overrides, to the exclusion of, any other terms and/or conditions presented or invoked by any other party whatsoever, including the Hirer (as hereinafter defined).

## 1. Definitions

For the purposes of these General Terms and Conditions:

1.1 "Hirer" means, jointly and severally, in any event the owner of the Vessel and (as the case may be) the manager of the Vessel, her demise charterer and any other party which has contracted with the Tugowner for the particular port towage services and is stated as a customer in the Tugowner's "Order Confirmation" and/or invoice. The manager and/or operator of a Vessel shall, unless otherwise advised to the Tugowner in writing before the latter dispatches its "Order Confirmation", be deemed as acting for the owner of the Vessel.

1.2 "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 Tugowner agrees to tow or to which the Tugowner agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing.

1.3 "towing" means any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by the Vessel, and the expressions "to tow", "being towed" and "towage" shall be defined likewise.

1.4 "tender" shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Tugowner for the performance of any towage or other service.

1.5 The expression "whilst towing" shall cover the period commencing when the tug or tender is in a position to receive orders direct from the 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 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.

1.6 Any service of whatsoever nature to be performed by the Tugowner 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 at 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 of 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.

1.7 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".

1.8 The expression "Tugowner" shall 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 5 hereof shall be construed likewise.

## 2. Owner's representation by the Hirer

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, the Hirer expressly represents that he is authorised to make and does make this agreement for and on behalf of the owner of the 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. Orders

3.1 The Tugowner's written "Order Confirmation" dispatched by the Tugowner prior to provision of the services and which has not been contested in writing by the Hirer before the rendering of the services, shall be conclusive evidence of the order for the services by the Hirer, the identity of the latter and the price and other details of the provision thereof.

3.2 The party(ies) stated in the relevant "Order Confirmation" of the Tugowner as hirer(s)/contracting party(ies) shall be deemed to be the party which has ordered the services and which is obliged to pay for them on a joint and several basis, always together with the owners of the Vessel.

## 4. Area of Operation

4.1 The Tugowner undertakes to provide harbour towage services within the limits of Piraeus and/or Elefsis and/or Thessaloniki and/or Lavrion and/or Mykonos and/or any other port area, as such limits are set in the relevant legislation, and may offer such services either by its own means, or by any other means managed and/or operated and/or chartered or otherwise hired by the Tugowner.

4.2 The limits of the port of Piraeus covers the sea area from Piraeus Pilot Buoy and inwards up to Nisos Megali Kira and the limits of the port of Elefsis cover the sea area north of Nisos Megali Kira, Elefsis Gulf, and up to the anchorage of Pachi.

4.3 The Tugowner does not undertake to provide harbour towage services in berths, places and/or installations (e.g. Scaramanga and/or Eleusis Shipyards, etc.), where the employment of the private tugs of such berths, places and/or installations is mandatory, and the Tugowner's tugs are not permitted to operate.

## 5. Tugowner's substitution rights

The Tugowner shall at any time be entitled to substitute one or more tugs or tenders for any other tug or tender or tugs or tenders. The Tugowner 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 Tugowner is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Tugowner 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 contract 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.

## 6. Remuneration of the Tugowner/Rates of Payment

6.1 The Hirer shall pay for the services to be rendered to the Vessel under, or in connection with, this agreement by Tugowner's tug/s in accordance with the payment rates, as per the Tugowner's official Tariff Schedule which is available to the Hirer upon request (hereinafter referred to as "Tariff Schedule").

6.2 Any discounts shall be explicitly agreed beforehand in writing, otherwise they are invalid. Such discounts and generally and special financial arrangements to be made between the Tugowner and the Hirer, shall be confidential and not be disclosed by the Hirer to any third party without the prior explicit written consent of the Tugowner.

## 7. The Tonnage (G.T.) of the Vessel

The Vessel's tonnage referred to in the Tariff Schedule or, in any case, where a tonnage is required for charging purposes under, or in connection with, this agreement shall be the Gross Tonnage (G.T.) of the Vessel as this is recorded in the current edition of Lloyd's Register of Shipping. In case the Vessel has more than one Gross Tonnages, the Tugowner's charge shall be based on the highest figure.

## 8. Booking Procedures for the Harbour Towage Services/Notice to be Given

The engagement of tug/s pursuant to this agreement is to be arranged with the Operation Department of the Tugowner, by the Hirer giving written notice to it at least twenty four (24) hours prior to the anticipated commencement of the physical performance of the service, failing which the Tugowner shall not be obliged to attend the Vessel and shall bear no responsibility whatsoever under, or in connection with this agreement. Notices tendered after 18:00 hours shall be deemed tendered at 09:00 a.m. on the next working day.

## 9. Terms of Payment

9.1 Payment of all sums due by the Hirer shall be made by way of a bank remittance within thirty (30) calendar days from the date of the issuance and presentation to it or its agent (local or otherwise) for payment of the relevant Invoice or Debit Note.

9.2 If at any time before the provision of the towage services the financial standing of the Hirer appears to the Tugowner (in its absolute discretion) to have become impaired or unsatisfactory, the Tugowner may require cash payment or security to be provided by the Hirer prior to the provision of services, failing which the Tugowner may cancel the contract without any liability on the part of the latter.

9.3 If at any time after provision of the towage services but before the due date the financial standing of the Hirer appears to the Tugowner (in its absolute discretion) to have become impaired or unsatisfactory, the Tugowner may require from the Hirer immediate full payment of all invoices due and/or not yet due or such security as it shall deem to be satisfactory.

## 10. Overdue Accounts

10.1 All Invoices or Debit Notes issued pursuant to and in accordance with the terms of this agreement, which remain outstanding after a period of thirty (30) consecutive calendar days from the date of their issuance and presentation to the Hirer or its agent shall be subject to a charge of default interest to incur at the rate of 2% per month.

10.2 Non-payment of Invoice/s or Debit Note/s exceeding a period of sixty (60) consecutive calendar days from the date of their respective issuance and presentation to the Hirer or its agent shall automatically cause the cancellation of any agreed discount or rebate vis-a-vis the Tariff Rates.

10.3 In the event that the Hirer shall default in making any payment due, the Tugowner may suspend its towage services until such payment has been made, or the Tugowner may, in its discretion, elect to treat such default as a serious breach of the contract and thereupon terminate the contract in whole or in part without prejudice to any claim it may have against the Hirer for damages. Such suspension or termination shall not relieve the Hirer of any obligation undertaken by virtue of a contract so terminated.

10.4 Where the Tugowner has extended any kind of credit to a group of companies, default by any one relevant Hirer in respect to any one invoice of the Tugowner shall give the right to the Tugowner to cancel all credit arrangements of the entire group, whereupon sub-clauses 10.5 and 10.6 shall apply mutatis-mutandis.

10.5 Where the Hirer fails to pay timely, the Tugowner has the right to (without prejudice to its right to receive default interest) take all appropriate steps to secure and enforce its claim; the Tugowner may also unilaterally cancel any credit arrangements agreed with/extended to the Hirer.

10.6 All judicial and extrajudicial costs and expenses, including (but without limitation) all the costs, expenses and disbursements of Tugowner's lawyers, incurred in connection with the non payment or delayed payment or by any other breach by the Hirer of these conditions shall be for the Hirer's account, immediately payable by the latter to the Tugowner. In case of litigation, the Hirer shall also pay all the relevant expenses of the Tugowner, including but without limitation all his legal/lawyers' costs.

10.7 The Hirer or any other party is not entitled to place any markings or clausings on the Towage Receipts as to non-liability on its part to pay for the Tugowner's services, unless such marking or clausings has been agreed in writing between the Tugowner and the Hirer in advance of the towage services. Any such marking or clausings placed without agreement shall have no validity or effect whatsoever; where such marking or

clausings is placed before the completion of the towage services the Tugowner has the right to withhold or interrupt the towage, with all relevant delay being for the account of the Hirer.

10.8 The acceptance by the Tugowner of any late payments from the Hirer shall not be deemed as a waiver of the Tugowners' respective rights against the Hirer under this clause and generally under these Terms and Conditions.

#### **11. Servants of the Hirer**

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 Vessel who may be employed and/or paid by the Tugowner 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.

#### **12. Tugowner's Liability**

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

12.1 The Tugowner shall not (except as provided in Clauses 12.3 and 12.5 hereof) be responsible for or be liable for:

12.1.1 damage of any description done by or to the tug or tender; or done by or to the 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 Vessel or the tug or tender or to or by any other object or property

or

12.1.2 loss of the tug or tender or the Vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Vessel or the tug or tender or any other object or property;

or

12.1.3 any claim by a 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 Tugowner his 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

12.2 The Hirer shall (except as provided in Clauses 12.3 and 12.5) be responsible for, pay for and indemnify the Tugowner 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 12.1 hereof or not suffered by or made against the Tugowner and which shall include, without prejudice to the generality of the foregoing any loss of or damage to the tug or tender or any property of the Tugowner even if the same arises from or is caused by the negligence of the Tugowner his servants or agents.

12.3 The provisions of Clauses 12.1 and 12.2 hereof shall not be applicable in respect of any claims which arise in any of the following circumstances:-

12.3.1 All claims which the Hirer shall prove to have resulted directly and solely from the personal failure of the Tugowner 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 Tugowner'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 Tugowner's business and to any servant (excluding the officers and crew of any tug or tender) to whom the Tugowner has specifically delegated the particular duty of exercising reasonable care and shall not include any other servant of the Tugowner or any agent or independent contractor employed by the Tugowner.

12.3.2 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 Vessel or any other craft attending the Vessel and is detached from and safely clear of any ropes lines, wire cables or moorings associated with the Vessel. Provided always that, notwithstanding the foregoing, the provisions of Clauses 13.1 and 13.2 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 anytime when the tug or tender is proceeding to or from the Vessel in hazardous conditions or circumstances.

12.4 Notwithstanding anything hereinbefore contained, the Tugowner 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 Vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Vessel or of any other 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.

12.5 Notwithstanding anything contained in Clauses 13.1 and 13.2 hereof the liability of the Tugowner for death or personal injury resulting from negligence is not excluded or restricted thereby.

#### **13. Force Majeure**

The Tugowner 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, fires, floods, acts of God, perils of the sea, accidents of navigation, any regulation or other government restriction or by compliance, any order or request of any government or other competent authority or party acting for such authority, any disorders, labour disturbances (whether he 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 Tugowner or his servants or agents.

#### **14. Hirer's Liability**

In addition to Hirer's obligation to pay for the towage services, and without prejudice to any other provisions in these terms and conditions, the Hirer shall be liable towards the Tugowner and shall keep it fully indemnified in respect of all damages and/or losses and/or expenses incurred by the Tugowner as a result of any breach of contract, fault of the Hirer or its employees, officers, servants and/or agents and/or the Vessel's crew and master; such liability/indemnity shall include –but without limitation– any claims by third parties which may be brought against the Tugowner or and/or or its employees, officers, servants and/or agents and/or the Vessel's crew and master in respect thereof.

#### **15. Assignment**

Neither the Hirer nor the Tugowner shall without the consent in writing of the other make or purport to make any assignment of the benefit of the towage contract and/or of this agreement.

#### **16. Salvage Services**

Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner and/or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to the Vessel and/or anything aboard her by any tug, tender or diver. Notwithstanding the previous existence of a Towage Contract or Agreement between the Tugowner and the Hirer, in case the danger encountered by the Vessel and/or anything aboard her at the commencement of the services and/or at any time during the provision of same, is of a higher degree to that usually involved in a straight forward towage, the services offered by the Tugowner to the Vessel and/or any other such property shall consist of salvage services and the respective reward/remuneration shall be determined by the competent Court/Tribunal, as provided by clause 16 of these Terms and Conditions. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Tugowner may have to limit his liability.

#### **17. Maritime Lien**

The provision of towage services to the Hirer and/or their acceptance by the Vessel affords to the Tugowner a maritime lien on the Vessel. In any event the law governing these provisions and/or any other applicable law shall not prejudice the right of the maritime lien of the Tugowner afforded either hereunder or by any other applicable law, be it of the place of performance of the towage services, of the flag of the Vessel, of the place of jurisdiction, and/or of an arrest of the Vessel, or otherwise howsoever.

#### **18. Hirer's rights against the servants or agents of the Tugowner**

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 Tugowner 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.

#### **19. Governing Law & Jurisdiction**

19.1 This Agreement shall be construed in accordance with and governed by English Law. Any dispute or difference which may arise out of or in connection with this Agreement or the services to be performed hereunder shall be referred to London Lloyds' Arbitration. Claims for principal amounts below EUR 80,000, will be heard in accordance with the Fixed Cost Arbitration Procedure (FCAP).

19.2 No suit shall be brought in any other state or jurisdiction except that the Tugowner shall have the rights (a) to file a lawsuit before the Courts of Piraeus in order to demand from the Hirer remuneration for unpaid towage services (b) to commence security measures proceedings or any other similar remedy against the Vessel and/or any vessel, property or asset, directly or indirectly owned by the Hirer and/or related to the latter, in any state or jurisdiction where such asset may be found.