



## Standard Towage Agreement

**Date** 1<sup>st</sup> January 2010

### Parties

Name PB Towage (Australia) Pty Ltd A.C.N. 099 760 380 (**PBT**)

Address Unit 5/ 11-13 Friendship Road, PORT BOTANY NSW 2036

Fax Number +61 2 9666 6411

Email Address [info@pbtowage.com](mailto:info@pbtowage.com)

Contact David Dillon [ddillon@pbtowage.com](mailto:ddillon@pbtowage.com)

Name The party more fully described in Item 1 Schedule 1 of this Agreement or where no person is so described then the person requesting the supply of the Services as described in an Order (**The Customer**).

### Background

PBT agrees to supply the Services to the Customer and the Customer accepts the Services on the terms and conditions contained in this Agreement.

### Operative part

#### 1 Definitions

In this agreement:

**Address** means a party's address set out in the Parties section of this agreement.

**Additional Period** means any period of time in which a Service is provided beyond the Minimum Period.

**Agreement** includes the Schedule, Tariffs and UK Conditions.

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

**Business Day** means a day on which banks are open for general banking business in a city in which the Services are rendered, excluding Saturdays and Sundays.

**Damages** means all liabilities, losses, damages (including consequential, indirect, special and incidental loss, loss of profits, loss of opportunity and physical and economic loss), costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

**Fax Number** means a party's facsimile number set out in the Parties section of this agreement.

**GST** has the same meaning as defined in A New Tax System (Goods & Services Tax) Act 1999 (Cth)

**Insolvency Event** includes official management, receivership, liquidation, provisional liquidation, compromise, arrangement, amalgamation, administration (voluntary or otherwise), reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

**Minimum Period** means the period of two (2) hours from the commencement of the Services.

**Order** means any order or request of any type from the Customer, whether written or oral, for the supply of Services which is accepted by PBT.

**Port** means those ports listed in Item 3 of Schedule 1.

**Services** means the provision by PBT of a Tug or Tugs to facilitate harbour towage services for the berthing and unberthing of Vessels and such other services as may be agreed to by PBT from time to time in writing.

**Tariffs** mean the applicable fees charged by PBT for supplying the Services as shown in Annexure A.

**Term** means, as the case may be:

- (a) the period described in Item 2 of Schedule 1; or
- (b) if no period is described in Item 2 of Schedule 1, then for the duration of any Services provided pursuant to an Order.

**Towage, Tow, Towed and Towing** have the same meaning as in the UK Conditions.

**Tug** has the same meaning as in the UK Conditions.

**UK Conditions** means the United Kingdom Standard Conditions for Towage and Other Services (Revised 1986, Amended 2008) attached to this Agreement as Annexure B.

**Vessel** has the same meaning as in the UK Conditions.

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## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

**(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document.

**(references)** a reference to the background, a party, clause, paragraph, schedule or annexure is a reference to the background, a party, clause, paragraph, schedule or annexure to or of this agreement.

**(headings)** clause headings and the table of contents are inserted for convenience only and must not be used when interpreting this agreement.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity, a natural person includes their personal representatives, successors and permitted assigns and a corporation includes its successors and permitted assigns.

**(rights and obligations)** a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement.

**(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.

**(including) including and includes** are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(gender)** words importing one gender include all other genders.

**(parts)** a reference to one or more things includes each part and all parts of that thing or group of things.

**(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Australia, even if the obligation is to be performed elsewhere.

**(joint and several)** an agreement on the part of two or more persons binds them jointly and severally.

**(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

**(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

**(Australian currency) dollars** or \$ is a reference to Australian currency.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Inconsistency

3.1 In the event of any inconsistency between the terms set out in Clauses 1 – 25 of this Agreement (**Core Terms**), the Schedule, Tariffs and UK Conditions (which are listed in their order of precedence), then the provisions set out in a document, schedule or annexure ranking higher in precedence will prevail over those provisions set out in any lower ranking document, schedule or annexure to the extent of any inconsistency.

3.2 Subject to Clause 3.1, the provisions contained in the UK Conditions form part of this Agreement and are to be read in conjunction with the provisions contained in the Core Terms.

### 4 Obligations on PBT

4.1 PBT agrees to supply the Services to the Customer at the Port described in and otherwise in accordance with each Order.

4.2 PBT may refuse an Order, without liability to the Customer (including but not limited to any Damages suffered or incurred by the Customer), at anytime from receipt of an Order prior to the time PBT is required to supply the Services.

### 5 Cancellation of Orders by the Customer

5.1 If the Customer, their Agent, Pilot or Harbour Control cancels any Order less than two (2) hours prior to the booked time of the Order, then the applicable Cancellation Fee will apply.

### 6 Tariffs and other Fees

6.1 Unless stated in this Agreement or otherwise agreed by PBT in writing the applicable Tariffs will be charged in relation to Services supplied by PBT.

6.2 The minimum charge to and payable by the Customer for Services will be the Tariff for the Minimum Period for that Service provided by PBT, even if the Services are completed in a shorter time.

6.3 If PBT supplies any Service for any Additional Period and that Additional Period is not the result of any default or delay by PBT, the Customer will be charged for each hour or part thereof, at the full hourly rate applicable to that Service until the Service is completed.

6.4 Where this Agreement is for a period exceeding twelve (12) months then on each anniversary of this Agreement the Tariffs will be increased by:

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- (a) an amount equivalent to a combination, weighted on a 60/40 percent basis, of the increase in PBT's labour costs and the consumer price index (**Default Increase**); or
  - (b) the mutual agreement of the parties, provided:
    - (1) subject to clause 6.4(b)(2), the Default Increase will apply from the anniversary date until such time as the parties agree to an alternative increase at which time the parties will make any necessary adjustments and pay the other party within fourteen (14) days in respect of any under or overpayments; or
    - (2) if the parties are unable to agree within three (3) months from anniversary date the Default Increase will apply.

## 7 Payment

- 7.1 Unless otherwise agreed by PBT in writing, payments of all invoices issued by PBT to the Customer are payable fourteen (14) days from the date of invoice.
- 7.2 If any cheque, credit card or other form of payment issued by the Customer or by any third party in connection with the Tariffs is dishonoured PBT may refuse to supply any further Services (whether or not PBT is to supply any further Services), until satisfactory payment is received in full.
- 7.3 If PBT is not paid for any Tariffs or any other moneys payable under this Agreement (**Outstanding Moneys**) on the due date for payment, without prejudice to any other right or remedy PBT has under this Agreement or otherwise:
  - (a) all Outstanding Moneys carry interest on daily balances until paid at a rate of interest per annum equal to 3% in excess of the interest rate charged by PBT's principal bankers on overdraft accounts for sums up to \$100,000 Australian dollars; and
  - (b) PBT may recover the Outstanding Moneys together with all interest forthwith from the Customer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Customer may have against PBT for any thing or matter related to the Services supplied.

## 8 Term

- 8.1 This Agreement commences on and from the earlier of:
  - (a) the parties executing this Agreement; or
  - (b) the date on which PBT accepts an Order

and will continue for the Term unless terminated sooner in accordance with this Agreement.

## 9 Termination

- 9.1 A party to this Agreement may at any time terminate this Agreement immediately if the other party (**Defaulting Party**):
  - (a) suffers an Insolvency Event; or

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- (b) is in default in performance or observance of any provision of this Agreement and where such default is:
- (1) incapable of remedy; or
  - (2) capable of remedy and such default is not remedied within twenty eight (28) days after notice specifying such default is given to the Defaulting Party.

## 10 Effect of Termination

- 10.1 In the event of this Agreement being terminated in accordance with Clause 9 PBT will cease to provide the Services to the Customer, however, may in its sole discretion, and subject to any additional conditions imposed by PBT, complete any Order.
- 10.2 The Company will provide tax invoices in relation to any Tariffs for Services rendered but not yet billed and the Customer will pay all amounts outstanding to PBT within fourteen (14) days of the termination of this Agreement.

## 11 Customer obligations, warranties and indemnities

- 11.1 The Customer must provide PBT in a timely manner with all information, certificates and authorisations reasonably requested by PBT in connection with the Services and the Vessel.
- 11.2 The Customer warrants:
- (a) if it is not the owner of the Vessel (**Owner**) for which the Services are supplied, whether directly or indirectly, then it is unconditionally authorized to enter into this Agreement for and on behalf of the Owner and to bind the Owner to this Agreement;
  - (b) the Vessel and/or any cargo loaded on the Vessel complies with all applicable Laws,
  - (c) the Vessel is Seaworthy: and
  - (d) it has conducted its own investigations, which may include but are not limited to those relating to any statutory requirements or recommendations, directions or procedures provided by the respective harbour master, port authority and/or pilot, and has made its own assessment based on such investigations as to the number of Tugs it requires and has not relied on any representations made by PBT, its employees, contractors or agents in relation to the number of Tugs so required.
- 11.3 The Customer indemnifies PBT, its employees, agents and contractors (**Indemnified Parties**) from any Damages suffered by the Indemnified Parties arising in relation to:
- (a) the Customer breaching the terms of this Agreement including any of its obligations, representations or warranties described in this Agreement;
  - (b) PBT obeying the instructions of the Vessel's captain, officers, employees, contractors or other personnel, including but not limited to the pilot, given in connection with the Services (for the avoidance of any doubt there is no

obligation on PBT to investigate the reasonableness or otherwise of such instructions);

- (c) the Customer breaching the warranties provided in clause 11.2; and
- (d) when acting as an agent and entering into this Agreement in its personal capacity and on behalf of a third party, any unpaid payments or amounts owing to PBT.

11.4 The Customer acknowledges it is entering into this Agreement in both its personal capacity and in its capacity as authorised agent of the Owner.

## 12 Confidential Information

The terms and conditions contained in this Agreement, including the Tariffs, are deemed to be confidential (**Confidential Information**) and the Customer must not, without PBT's written consent, disclose the Confidential Information to any third party. The Customer must take all reasonable steps to ensure, during the Term and after the termination of this Agreement, its employees, agents and contractors do not disclose any of the Confidential Information to any third party.

## 13 Dispute resolution

13.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.

13.2 A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute (**Notification**).

13.3 On receipt of a Notification each party agrees to nominate a suitable representative who shall have the authority to settle the dispute. The parties agree to negotiate in good faith with a view to expeditiously resolving the dispute.

13.4 If the Dispute is not resolved under Clause 13.3 within 30 days (or longer period agreed between the parties), the parties must refer the Dispute for arbitration by the Australian Commercial Dispute Centre Limited (**ACDC**), in Sydney for resolution in accordance with its rules and the arbitrator's decision will be binding on the parties.

## 14 Limitation of Liability and claims

14.1 Notwithstanding anything else in this Agreement PBT, to the extent permissible by law, excludes all implied warranties and conditions relating to the Services and is not liable for any Damages, however arising, incurred or suffered by the Customer or any third party as a result of the Customer's use of or the supply of the Services, including but not limited to those damages arising out of any delay or failure to supply the Services or the negligence of PBT, its employees, officers, agents and contractors, and any liability attributable to it shall be limited to the remedies contained in section 68A of the Trade Practices Act 1974 (Cth).

14.2 The Customer must notify PBT in writing of any claim which it may have against PBT arising in connection with this Agreement within six (6) months of PBT completing or failing to complete (as the case may be) the Services in respect of an Order to which the claim relates and must commence legal proceedings against PBT within one (1) year of the time when the cause of action first arose. If either of these

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conditions is not complied with the Customer waives and releases PBT from any and all claims and all rights whatsoever and howsoever which it may have against PBT arising in connection with this Agreement.

- 14.3 Subject to this Agreement, the Customer acknowledges PBT is only required to supply the number of Tugs stated in the Order and PBT will not be:
- (a) responsible for supplying or sourcing from any third party any Tugs in addition to those stated in the Order (**Additional Tugs**); and
  - (b) liable for any Damages suffered by the Customer or any third party arising from the Customer or any third party requiring any Additional Tugs.

## 15 Force Majeure

15.1 Except as otherwise provided in this Agreement each party (**Affected Party**) will be excused from complying with the terms of this Agreement for the period that it is so unable to perform and is not liable to the other party in respect of such inability (except for those requiring the payment of any moneys) if and for so long as such compliance is hindered or prevented by inclement weather, riots, strikes, industrial action, wars (declared or undeclared), insurrections, rebellions, strikes, attacks, civil disturbances, dispositions, or orders of an Authority, acts of God or by act or cause which is reasonably beyond the control of such party.

15.2 A party, other than the Affected Party, will be entitled to terminate this Agreement, without liability to the Affected Party, if the Affected Party continues to be unable to perform its obligations under this Agreement, due to an event described in Clause 15.1, for a period of twenty (20) consecutive Business Days, provided the event was not caused or contributed to by such party.

## 16 Goods and Services Tax

16.1 All Tariffs described in this Agreement are exclusive of GST.

16.2 If either party (**GST Supplier**) is or becomes liable to pay GST for the purposes of the A New Tax System (Goods & Services Tax) Act 1999 (Cth) (**GST Act**) in respect of any taxable supply or supplies made by it to the other party (**GST Recipient**) pursuant to this Agreement, the GST Recipient will pay to the GST Supplier, at the same time as it pays to the GST Supplier the consideration in respect of such taxable supply or supplies, the full amount of the GST calculated without regard to any entitlement that the GST Supplier may have to any input tax credits.

16.3 At or before the time of payment of the consideration in respect of the taxable supply or supplies, the GST Supplier must provide to the GST Recipient either personally or by its agent a valid tax invoice for the purposes of the GST Act.

## 17 Notices

17.1 Any notice, demand, consent or other communication given or made under this agreement must be:

- (a) clearly readable;
- (b) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and

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- (c) left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Address or to the Fax Number of the recipient.
- 17.2 A party may change its Address or Fax Number for the purpose of service by giving notice of that change to the other party in accordance with clause 17.1.
- 17.3 Any communication will be taken to be received by the recipient:
- (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the Fax Number of the recipient; and
  - (c) if the time of dispatch of a facsimile is not on a day, or is after 5.00 pm (local time) on a day, in which business generally is carried on in the place to which the facsimile communication is sent it will be taken to have been received at the commencement of business on the next day in which business is generally carried on in that place.
- 18 Relationship between parties
- 18.1 Nothing in this agreement constitutes a partnership between the parties or except as expressly provided, makes a party an agent of another party for any purpose.
- 18.2 A party cannot in any way or for any purpose bind another party or contract in the name of another party.
- 18.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.
- 19 Variation
- A provision of this agreement can only be varied by a later written document executed by or on behalf of PBT
- 20 No assignment
- The Customer cannot assign or otherwise transfer its rights under this agreement without the prior written consent of PBT, which consent may be withheld by PBT without giving any reasons.
- 21 Counterparts
- This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

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22 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

23 Invalidity

23.1 A word or provision must be read down if this agreement is void, voidable, or unenforceable if it is not read down, this agreement will not be void, voidable or unenforceable if it is read down and the provision is capable of being read down.

23.2 A word or provision must be severed if despite the operation of clause 23.1, the provision is void, voidable or unenforceable if it is not severed and this agreement will be void, voidable or unenforceable if it is not severed.

23.3 The remainder of this agreement has full effect even if clause 23.1 or 23.2 applies.

24 Waiver

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

25 Governing law and jurisdiction

25.1 The laws applicable in the State in which the Services are rendered govern this agreement and clauses 9(a) and 9(b) of the UK Conditions are deleted.

25.2 The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Services are rendered and any courts competent to hear appeals from those courts.

## Schedule 1

1 Item 1 – details of Customer

**Name:**

**ABN / ACN:**

**Address:**

**Fax Number:**

**Email Address:**

**Contact:**

2 Item 2 – Term

3 Item 3 – Ports

4. Signing page

**Executed as an agreement**

**Signed** by ..... )  
as authorised representative for **PB** )  
**Towage (Australia) Pty Ltd** ACN 009 )  
760 380 who warrants that they are duly )  
authorised to execute this document on )  
behalf of **PB Towage (Australia) Pty Ltd**  
in the presence of:

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Print name of Witness

**Signed** by .....as )  
authorised representative for the )  
..... )  
who warrants that they are duly authorised )  
to execute this document on behalf of the )  
..... )  
in the presence of:

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Print name of Witness

## Annexure A Tariffs

Standard	Rates	'10	Melb	Bris	Botany
Vessel	GRT				
up to	5,000		\$2,475.00	\$2,362.50	\$2,250.00
5,001	15,000		\$3,262.50	\$3,093.75	\$3,037.50
15,001	25,000		\$3,937.50	\$3,993.75	\$3,600.00
25,001	35,000		\$4,443.75	\$4,443.75	\$4,443.75
35,001	45,000		\$4,612.50	\$4,725.00	\$4,500.00
45,001	55,000		\$4,725.00	\$4,893.75	\$4,612.50
55,001	65,000		\$4,893.75	\$5,006.25	\$4,837.50
65,001	and over		\$5,062.50	\$5,062.50	\$5,062.50

### Notes:

Service offered 24 hours x 7 days per week  
 Harbour Towing based on standard Minimum Period of 2 hours service  
 Additional Period - hourly standby/retention beyond 2 hrs, 0.5 times applicable rate  
 Cancellation within 2 hours of booking, 0.5 times applicable rate  
 Cancellation within 1 hour of booking, full rate to apply  
 Shift ship (same facility) 1.5 times applicable rate  
 Shift ship (different facility) 1.8 times applicable rate  
 Deadship movement 2.0 times applicable rate  
 All rates in \$AUD, exclusive of GST  
 No Bunker / fuel surcharge to apply

Melbourne channel levy to be considered separately

### **Fremantle C-Class Tug Hire** *Inner Harbour & Outer Harbour – excluding GST*

Monday to Friday Dayshift (07:30 - 15:30) \$475.00 per hour

Weekend/Public Holiday/Evening/Night Shift \$600.00 per hour

Additional Deckhand: \$75 per hour Dayshift/ \$150 per hour, all other shifts

Minimum Hire Period: 3 hours

### **Cancellation Charges**

Cancellation within 2 hours of booking, 0.5 times applicable rate above.

Cancellation within 1 hour of booking, full rate to apply.

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## Annexure B - UK Standard Conditions for Towage and other Services (revised 1986) Amended 2008

1. (a) The agreement between the Tugowner and the Hirer is and shall at all times be subject to and include each and all of the conditions herein-after set out.
  - (b) for the purposes of these conditions
    - (i) “towing” is an operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by the Hirer’s vessel, and the expressions “to tow”, “being towed” and “towage” shall be defined likewise.
    - (ii) “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.
    - (iii) “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.
    - (iv) The expression “whilst towing” shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer’s vessel to commence holding, pushing, pulling, moving, escorting, guiding or standing by the vessel or to pick up ropes, wires or lines, or when the towing line has been passed to or by the tug or tender, whichever is the sooner, and ending when the final orders from the Hirer’s vessel to cease holding, pushing, pulling, moving, escorting, guiding or standing by the vessel or to cast off ropes, wires or lines has been carried out, or the towing line has been finally slipped, whichever is the later, and the tug or tender is safely clear of the vessel.
    - (v) 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.
    - (vi) 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”.
    - (vii) 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/she in fact owns any tug or tender, and the expression “other Tugowner” contained in Clause 5 hereof shall be construed likewise.

2. If at the time of making this agreement or of performing the towage or of rendering any service other than towing at the request, express or implied, of the Hirer, the Hirer is not the Owner of the vessel referred to herein as "the Hirer's vessel", the Hirer expressly represents that he/she is authorised to make and does make this agreement for and on behalf of the owner of the said vessel subject to each and all of these conditions and agrees that both the Hirer and the Owner and bound jointly and severally by these conditions.
3. 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 their servants and/or their agents, and anyone on board the Hirer's 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.
4. Whilst towing, or whilst at the request, either expressed or implied, of the Hirer rendering any service of whatsoever nature other than towing:-
  - (a) The Tugowner shall not (except as provided in Clauses 4 (c) and (e) hereof) be responsible for or be liable for
    - (i) damage of any description done by or to the tug or tender; or done by or to the Hirer's vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or to or by any other object or property;  
or
    - (ii) loss of the tug or tender or the Hirer's vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or any other object or property;  
or
    - (iii) any claim by 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 their 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
  - (b) The Hirer shall (except as provided in Clauses 4(c) and (e)) 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 4(a) 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 their servants or agents.
  - (c) The provisions of Clauses 4(a) and 4(b) hereof shall not be applicable in respect of any claims which arise in any of the following circumstances:-
    - (i) All claims which the Hirer shall prove to have resulted directly and solely from the personal failure of the 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

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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.

- (ii) All claims which arise when the tug or tender, although towing or rendering some service other than towing, is not in a position of proximity or risk to or from the Hirer's vessel or any other craft attending the Hirer's vessel and is detached from and safely clear of any ropes, lines, wire cables or moorings associated with the Hirer's vessel. Provided always that, notwithstanding the foregoing, the provisions of Clauses 4(a) and 4(b) shall be fully applicable in respect of all claims which arise at any time when the tug or tender is at the request, whether express or implied, of the Hirer, their servants or their 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 Hirer's vessel in hazardous conditions or circumstances.
  - (d) 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 Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's 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.
  - (e) Notwithstanding anything contained in Clauses 4 (a) and (b) hereof the liability of the Tugowner for death or personal injury resulting from negligence is not excluded or restricted thereby.
  - (f) The Tugowner shall be subject to any implied condition or warranty provided by the Trade Practices Act 1974(Cth) ( the Act) if and to the extent that the Act applies, in which circumstances the Tugowner limits its liability for breach of such implied condition or warranty to supplying the service again or the payment of the cost of having the service supplied again, as determined by the Tugowner.
5. 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

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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. Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or their servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice, or preclude in any way any right which the Tugowner may have to limit their liability.
7. 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 or labour disturbances (whether he/she 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 their servants or agents.
8. 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 subject 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 owner of such tug or tender shall hold this undertaking for the benefit of their servants and agents.
9. The agreement between the Tugowner and the Hirer is and shall be governed by the laws applicable in the State or Territory in which the service is provided and the Tugowner and the Hirer agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory.