Standard Towage Agreement 2012

Tugowner:	PB Towage (Australia) Pty Ltd (ACN 099 760 380)		
Address:	11-13 Friendship Road, PORT BOTANY NSW 2036, Australia		
Phone Number:	+61 2 9695 0700	Fax Number:	+61 2 9666 6411
Email Address	info@pbtowage.com		
Contact:	Tony Cousins	tcousins@pbtowage.com	
Hirer:	.....		
ABN / ACN:	.....		
Address:	.....		
Phone Number:	.....	Fax Number:	.....
Email Address:	.....		
Contact:	.....		
Ports:	Brisbane, Port Botany, Port Jackson, Melbourne, Fremantle		
Commencement Date	01 February 2012		
Ending Date	31 December 2012		

1. **Services**

1.1 The Tugowner agrees to provide harbour towage services for the berthing and unberthing of vessels owned or chartered by the Hirer (**Vessels**), and such other services as may be agreed by the Tugowner in writing from time to time, at the Ports (**Services**), and the Hirer accepts the Services, on the terms and conditions contained in this Agreement.

1.2 The Tugowner reserves the right to refuse an order or request of any type from the Hirer, whether written or oral, for the supply of the Services (**Order**), without liability to the Hirer, at anytime from receipt of the Order prior to the time on which the Tugowner is required to supply the Services.

2. **UK Conditions**

2.1 The provisions contained in the United Kingdom Standard Conditions for Towage and Other Services ((revised 1986)) (**UK Conditions**) shall form part of this Agreement and are to be read in conjunction with the provisions contained in this Agreement. References to "these conditions" in the UK Conditions shall include references to the terms and conditions of this Agreement as well as the conditions contained in the UK Conditions. A copy of the UK Conditions is available at www.pbtowage.com.

2.2 The terms defined in the UK Conditions shall have the same meanings in this Agreement, unless otherwise provided herein.

2.3 In the event of any inconsistency between the provisions of this Agreement and the provisions of the UK Conditions, the provisions of this Agreement shall prevail.

3. **Tariffs**

3.1 The fees charged by the Tugowner for the supply of the Services (**Tariffs**) are set out in Annexure A.

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

(a) an amount equivalent to a combination, weighted on a 60/40 percent basis, of the increase in the Tugowner's labour costs and the consumer price index (**Default Increase**); or

(b) the mutual agreement of the Parties, provided that:

(i) if the Parties are able to agree within three (3) months from the anniversary date, 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

(ii) if the Parties are unable to agree within three (3) months from the anniversary date, the Default Increase will apply.

4. **Payment**

4.1 Unless otherwise agreed by the Tugowner in writing, payments of all invoices issued by the Tugowner to the Hirer are payable within fourteen (14) days from the date of the relevant invoice.

4.2 If any cheque, credit card or other form of payment issued by the Hirer or by any third party in connection with the Tariffs is dishonoured, the Tugowner may refuse to

supply any further Services (whether or not the Tugowner is to supply any further Services), until satisfactory payment is received in full.

4.3 If the Tugowner 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 the Tugowner has under this Agreement or otherwise, 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 the Tugowner's principal bankers on overdraft accounts for sums up to $100,000 Australian dollars.

5. **Hirer obligations and warranties**

5.1 The Hirer must provide the Tugowner in a timely manner with all information, certificates and authorisations reasonably requested by the Tugowner in connection with the Services.

5.2 The Hirer warrants that the Vessels and/or any cargo loaded on the Vessels complies with all applicable laws and that the Vessels are seaworthy.

6. **Additional tugs**

6.1 The Hirer warrants that it has conducted its own investigations, which 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 the Tugowner, its employees, contractors or agents in relation to the number of tugs so required.

6.2 The Hirer further acknowledges that the Tugowner is only required to supply the number of tugs stated in the Order and will not be responsible for supplying or sourcing from any third party any tugs in addition to those stated in the Order.

7. **Limitation of liability and claims**

7.1 The Tugowner shall not be responsible for or be liable for any personal injury or loss of life howsoever and wheresoever caused, including personal injury or loss of life of the master and/or crew of and/or any person on board the tug, tender and/or the Vessels, arising out of or in relation to the provision of the Services, regardless of any negligence on the part of the Tugowner or unseaworthiness, unfitness or breakdown of all or part of the tug or tender. Clause 4(e) of the UK Conditions and all references to clause 4(e) of the UK Conditions are hereby deemed to be deleted.

7.2 Subject to clause 7.3, the Tugowner, to the extent permissible by law, excludes all implied guarantees, warranties and conditions relating to the Services.

7.3 Notwithstanding anything else contained in this Agreement, the Tugowner shall be subject to any guarantee provided by the *Competition and Consumer Act 2010* (Cth) (including the Australian Consumer Act) as amended (the **Act**) if and to the extent that the Act applies, in which circumstances the Tugowner limits its liability for breach of such guarantee to supplying the Services again or the payment of the cost of having the Services supplied again, as determined by the Tugowner.

7.4 The Hirer must notify the Tugowner in writing of any claim which it may have against the Tugowner arising out of or in connection with this Agreement within six (6) months of the Tugowner completing or failing to complete (as the case may be) the Services to which the claim relates and must commence legal proceedings against the Tugowner within one (1) year of the time when the cause of action first arose. If either of these conditions is not complied with, the Hirer waives and releases the Tugowner from any and all claims and all rights whatsoever and howsoever which it may have against the Tugowner arising out of or in connection with this Agreement.

8. **Term**

8.1 This Agreement shall apply to the Services provided for a fixed term and/or spot engagement for a single vessel.

8.2 If the Services are provided for a fixed term, this Agreement shall:

(a) commence on the Commencement Date specified on the first page of this Agreement; and

(b) end on the Ending Date specified on the first page of this Agreement (unless otherwise terminated early pursuant to Clause 9).

8.3 If no Commencement Date or Ending Date is specified on the first page of this Agreement or if the Services are provided under a spot engagement, this Agreement shall:

(a) commence on the date on which the Tugowner has accepted an Order (regardless of whether the Hirer has signed and returned to the Tugowner a written copy of this Agreement); and

(b) end on the day of completion of the Services provided pursuant to the Order.

9. **Termination**

9.1 The Tugowner may at any time terminate this Agreement immediately if:

(a) the Hirer suffers an Insolvency Event. An Insolvent 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; or

(b) the Hirer is in default in performance or observance of any provision of this Agreement and where such default is incapable of remedy, or is capable of remedy but is not remedied within twenty eight (28) days after notice specifying such default is given to the Hirer; or

(c) the Tugowner is unable to perform its obligations under this Agreement due to an event described in Clause 7 of the UK Conditions for a period of twenty (20) consecutive days.

9.2 In the event of this Agreement being terminated in accordance with this Clause 9, the Tugowner will cease to provide the Services to the Hirer. However, the Tugowner may in its sole discretion, and subject to any additional conditions imposed by the Tugowner, complete any part of the Services which has been partially performed.

10. **Confidential Information**

10.1 The terms and conditions contained in this Agreement, including the Tariffs, are deemed to be confidential (**Confidential Information**) and the Hirer must not, and shall procure that its employees, agents and contractors must not, without the Tugowner's prior written consent, disclose the Confidential Information to any third party.

11. **Goods and Services Tax**

11.1 All Tariffs described in this Agreement are exclusive of GST (as defined in the A New Tax System (Goods & Services Tax) Act 1999 (Cth) (**GST Act**)).

11.2 If either party (**GST Supplier**) is or becomes liable to pay GST for the purposes of the GST Act in respect of any taxable supply 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, the full amount of the GST calculated without regard to any entitlement that the GST Supplier may have to any input tax credits.

12. **Notices**

12.1 Any notice or other communication given or made under this Agreement may be sent by personal delivery or pre-paid security post or facsimile to the address or fax number of the recipient as stated at the beginning of this Agreement.

12.2 A party may change its address or fax number by giving notice of that change to the other party.

12.3 Any notice or other communication will be taken to be received by the recipient:

(a) in the case of personal delivery, on the actual day of delivery;

(b) in the case of a post, on the third (seventh, if sent outside the country in which the letter is posted) day after the date of posting; or

(c) 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.

13. **Governing law**

13.1 This Agreement is governed by the laws applicable in the State or Territory in which the Services are rendered and clauses 9(a) and 9(b) of the UK Conditions are hereby deemed to be deleted.

14. **Dispute resolution**

14.1 If a dispute (**Dispute**) arises out of, or in any way in connection with, or otherwise relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, the Party claiming that a Dispute has arisen must notify the other Party giving details of the Dispute (**Notification**).

14.2 On receipt of the Notification, the Parties agree to each nominate a suitable representative who shall have the authority to settle the Dispute. The Parties further agree to negotiate in good faith with a view to expeditiously resolving the Dispute.

14.3 If the Dispute is not resolved under Clause 14.2 within 30 days (or such longer period as agreed between the Parties), any Party may refer the Dispute to arbitration administered by the Australian Commercial Dispute Centre (**ACDC**).

14.4 The arbitration shall be conducted in Sydney in accordance with the ACDC Rules for Arbitration which are operating at the time the Dispute is referred to ACDC and which terms are hereby deemed incorporated into this Agreement. The arbitrator(s) decisions shall be binding on the Parties.

14.5 This Clause 14 shall survive the termination of this Agreement.

15. **Miscellaneous**

15.1 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.

15.2 A Party cannot in any way or for any purpose bind another Party or contract in the name of another Party.

15.3 A provision of this Agreement can only be varied by a later written document executed by or on behalf of the Tugowner.

15.4 The Hirer cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the Tugowner, which consent may be withheld by the Tugowner without giving any reasons.

15.5 This Agreement constitutes the entire agreement between the Parties and supersedes any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

15.6 If a term or provision of this Agreement would, but for this clause, be invalid, void, illegal or unenforceable, that term or provision will be read down to the extent necessary to avoid the result. If that term or provision cannot be read down to that extent, it will be severed without affecting or impairing the validity, legality and enforceability of the remainder of this Agreement.

15.7 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.

Executed by the Hirer

_____	_____
Signature of authorised representative	Signature of witness
_____	_____
Name of authorised representative	Name of witness
	_____
	Address of witness

Annexure A

Tariffs

MINIMUM CHARGES 2012

Inclusive of Fuel Surcharge GRT	*Melbourne* Rate per Tug	*Brisbane* Rate per Tug	*Botany* Rate per Tug	*Sydney Harbour* Rate per Tug
Up to 5,000 tons	$ 3,300.00	$ 2,520.00	$ 2,625.00	$ 2,530.00
5,001 tons up to 10,000 tons	$ 3,740.00	$ 3,360.00	$ 3,360.00	$ 3,135.00
10,001 tons up to 15,000 tons	$ 4,290.00	$ 3,570.00	$ 3,465.00	$ 4,070.00
15,001 tons up to 20,000 tons	$ 4,620.00	$ 4,410.00	$ 3,885.00	$ 4,070.00
20,001 tons up to 25,000 tons	$ 4,840.00	$ 4,620.00	$ 3,990.00	$ 4,620.00
25,001 tons up to 30,000 tons	$ 4,950.00	$ 4,830.00	$ 4,620.00	$ 4,620.00
30,001 tons up to 35,000 tons	$ 5,060.00	$ 4,935.00	$ 4,725.00	$ 5,060.00
35,001 tons up to 40,000 tons	$ 5,170.00	$ 5,040.00	$ 4,830.00	$ 5,060.00
40,001 tons up to 45,000 tons	$ 5,280.00	$ 5,145.00	$ 4,935.00	$ 5,500.00
45,001 tons up to 50,000 tons	$ 5,390.00	$ 5,145.00	$ 5,040.00	$ 5,720.00
50,001 tons up to 55,000 tons	$ 5,500.00	$ 5,250.00	$ 5,145.00	$ 5,940.00
55,001 tons up to 60,000 tons	$ 5,500.00	$ 5,355.00	$ 5,250.00	$ 6,050.00
60,001 tons up to 65,000 tons	$ 5,610.00	$ 5,460.00	$ 5,355.00	$ 6,160.00
65,001 tons up to 70,000 tons	$ 5,610.00	$ 5,565.00	$ 5,460.00	$ 6,270.00
70,001 tons up to 80,000 tons	$ 5,720.00	$ 5,670.00	$ 5,565.00	$ 6,380.00
80,001 tons up to 90,000 tons	$ 5,720.00	$ 5,775.00	$ 5,670.00	$ 6,600.00
90,001 tons and over	$ 5,830.00	$ 5,775.00	$ 5,775.00	$ 6,600.00
100,001 tons and over	$ 5,830.00	$ 5,775.00	$ 5,775.00	$ 6,600.00

All rates are in Australian dollars and are exclusive of GST.
The rates shown are for each tug employed and for vessels using their own power.
Services offered 24 hours x 7 days per week, year round with no overtime premium.
No towline, bunker or fuel surcharge applies.

MINIMUM PERIOD

The minimum charges (**Minimum Charges**) cover the first two (2) hours (**Minimum Peri0od**) of the Services provided by the Tugowner and are payable by the Hirer even if the Services are completed in a shorter time. Without prejudice to the definition of "whilst towing" in the UK Conditions, the time period starts from the time on which the tug departs the tug berth until the tug is released by the Pilot on completion of the shipping movement, except for extended escort duties where the time shall count from tug berth to tug berth.

ADDITIONAL PERIOD

If the Tugowner provides any Services for any period beyond the Minimum Period and which are not due to any default or delay by the Tugowner, the Hirer will be charged for each hour or part thereof, at an hourly rate of 50% of the Minimum Charges applicable to that Services until the Services are completed.

CANCELLATION

If the Hirer or their Agent cancels or varies a booking within 2 hours of the booked time, the Tugowner reserves the right to charge:
- 100% of the Minimum Charges if cancellation or variation is made within 1 hour of the booked time; or
- 50% of the Minimum Charges if cancellation or variation is made within 2 hours of the booked time.

DEADSHIP

A Dead Ship movement will be charged at 200% of the Minimum Charges.

FREMANTLE C-CLASS TUG HIRE *Inner Harbour & Outer Harbour – excluding GST*

Monday to Friday Dayshift (07:30 – 15:30) $500.00 per hour
Weekend/Public Holiday/Evening/Night Shift $630.00 per hour
Additional Deckhand: $75 per hour Dayshift / $150 per hour, all other shifts
Minimum Hire Period: 3 hours