

General Towing and Charter Terms and Conditions of Offshoreservice Klement GmbH & Co. KG
(03/2024)

1. Definitions

- (1) *Assistance*: Services provided by the Tug Operator with a Tug in Close Range of a manned Towed Object that is under the command of a master or pilot.
- (2) *Bareboat Charter*: Provision of a vessel or other floating device including pontoons without crew for use.
- (3) *Contract of Carriage*: Contract within the meaning of § 407 HGB.
- (4) *Customer*: The party that has concluded a contract with the Tug Operator for the provision of Services.
- (5) *Cardinal Obligation*: an essential contractual obligation which arises from the nature of the contract and on the fulfilment of which the contractual partner may regularly rely because its fulfilment is essential for the proper performance of the contract, such as the main performance obligations and basic duties of care.
- (6) *Services*: The activities performed by the Tug Operator with regard to the Towed Object or in any other way to fulfil the Customer's order, including but not limited to Assistance, Towing and Chartering.
- (7) *Close Range*: The range in which the Tug and Towed Object interact or can interact or are or can be exposed to the influences of the other.
- (8) *Voyage Charter*: Contract within the meaning of § 527 HGB.
- (9) *Towed Object*: Any floating object, in particular a seagoing vessel, whether manoeuvrable or not, for which Services are provided.
- (10) *Tug(s)*: The Tug(s) including its/their equipment and including (in the case of Bareboat Charter: excluding) the master and crew with which the Tug Operator provides the Services, regardless of whether they are owned by the Tug Operator or third parties (see clause 2 (3) below).
- (11) *Tug Operator*: The party that undertakes to provide the Services.
- (12) *Contract of Carriage by Sea*: Contract for the Carriage of General Cargo or Voyage Charter.
- (13) *Contract for the Carriage of General Cargo*: Contract within the meaning of § 481 HGB.
- (14) *Chartering*: Bareboat Charterer or Time Charter.
- (15) *Variable Operating Expenses*: Expenses incurred for the operation of the vessel during a Time Charter and which are not expenses for the crew, equipment, maintenance and insurance of the vessel. Variable Operating Expenses include, but are not limited to, harbour and canal dues, pilotage fees, costs for required permits and towing certificates, costs for additional assistance tugs if required in the opinion of the Tug's master or by order of the authorities, import and export taxes and duties, and all other public charges incurred for the provision of the service during the charter period.
- (16) *Towing*: Transport of a buoyant, unmanned object without its own or without operational propulsion over or through water.
- (17) *Time Charter*: Provision of a ship with captain and crew for a limited period.

2. Provision of Services

- (1) All Services of the Tug Operator - including future Services - shall be provided exclusively on the basis of these General Towing and Charter Terms and Conditions, unless expressly agreed otherwise.
- (2) In the case of Assistance, the Tug Operator only owes the Tug's actions in accordance with the instructions of the master or pilot of the Towed Object.
- (3) The Tug Operator is authorised to use one or more Tugs owned by third parties.

- (4) If the provision of the Services is impossible or significantly impeded due to circumstances beyond the control of the Tug Operator, in particular due to weather conditions such as storms, ice or poor visibility, the Tug Operator shall not be obliged to provide the Services.
- (5) Other vessels, such as incoming vessels, may be given priority in accordance with the practices of the harbour or other navigable waters, in particular taking into account the nautical conditions or on the basis of instructions from the harbour or traffic authorities. The Tug Operator is authorised at all times to provide assistance to persons, other vessels or other property in danger. The Tug Operator shall not be liable for any delays in the provision of the Services caused by this.
- (6) In the cases specified in clauses 2 (4) and 2 (5) sentences 1 and 2, the Tug Operator shall be entitled to interrupt the provision of Services that have already commenced. The safety requirements of the Towed Object shall be given due consideration. Once the obstacle has been removed, the Tug Operator shall be obliged to resume the provision of services without delay.

3. Further obligations of the parties for the safe provision of services

- (1) The Customer is obliged to ensure that the Towed Object and the towing gear provided by the Customer are prepared in every respect in such a way that the required Towing Services can be provided safely, that all safety regulations relevant to the Towed Object are complied with and that all licences required for the Towed Object and the required Services are available and that the conditions imposed therein are complied with.
- (2) The Customer shall provide the Tug Operator with all authorisations required for the provision of the Services at its own expense and, in the event of Towing, a certificate from a marine expert certifying the towability of the Towed Object.
- (3) If the Tug Operator has applied for the necessary authorisation at its own expense, the Customer must indemnify him accordingly.
- (4) Without the necessary authorisations and the towing capability certificate, the Tug Operator is not obliged to take over and tow the Towed Object. Any corresponding loss of time shall be borne by the Customer.
- (5) The same shall apply if the Tug Operator or the master of the Tug are not satisfied, at their reasonable discretion, that the Towing can be performed safely despite the submission of a towability certificate. An inspection of the Towed Object by the Tug Operator or the crew of the Tug and the acceptance of the Towed Object for Towing shall not constitute approval of the condition of the Towed Object and shall not be deemed a waiver of the Customer's obligation to ensure the towability of the Towed Object.
- (6) Furthermore, the Customer undertakes to ensure that the operator or pilot of a Towed Object always issues instructions to the Tug and the crew of the Towed Object in such a way that any danger to the Towed Object or the Tug and the interests of third parties is excluded.
- (7) The place where the Towed Object is taken over and returned must always be safe and accessible for the Tug or Tug and Towed Objekt and they must be able to leave it. The Customer has no claim to the Tug being grounded or falling completely dry.
- (8) The Customer and the Tug Operator must each ensure that the takeover and return of towing gear is carried out in a controlled manner. The Customer is responsible for the uninterrupted control and monitoring on board the Towed Object and the Tug Operator is responsible for the uninterrupted control and monitoring on board the Tug.

4. Special regulations for Bareboat Charter

In the case of a Bareboat Charter, the rules in these General Towing and Charter Terms and Conditions apply with the exception of Clause 5 and in particular the following:

- (1) The Customer is obliged to properly operate and insure the chartered vessel or floating device in accordance with the applicable national and international regulations (at least hull, P&I and war risk insurance) and to carry out any necessary repairs promptly.

- (2) The place of delivery and return must always be safe and accessible for the chartered vessel or floating device and it must be possible for it to leave safely.
- (3) Prior to delivery and prior to redelivery of the vessel or floating device, an on-hire survey or off-hire survey shall be carried out by a qualified marine surveyor accepted by both parties, who shall provide a written report on the condition of the vessel or floating device including equipment and spare parts as well as consumables, fuel and lubricants on board at the time of delivery and redelivery in accordance with the contract. The costs and time for the on-hire survey shall be borne by the Tug Operator, the costs and time for the off-hire survey shall be borne by the Customer. The surveyor's report shall serve as proof of the condition of the vessel or floating device, including equipment and spare parts, as well as the quantity of consumables, fuel and lubricants present at the time of delivery or redelivery.
- (4) The Tug Operator shall have the right at any time upon reasonable notice to inspect the chartered vessel or floating device or to engage a marine surveyor to carry out such inspection on its behalf and at its expense to ascertain the condition of the vessel or the floating device and to satisfy itself that the vessel or the floating device are being properly repaired and maintained or for any other commercial reason it deems necessary (provided that this does not unreasonably interfere with the commercial operation of the vessel). Such inspection shall not authorise off-hire.
- (5) The Customer is also obliged to allow the Tug Operator to inspect the records of the classification society, logbooks, certificates, maintenance and other documents relating to the chartered vessel or floating device upon request and to provide complete information about any accidents or other damage to the vessel at the request of the Tug Operator.
- (6) The Customer may not assign his rights under the Bareboat Charter to third parties and may not sub-charter the chartered vessel or floating device without the express written consent of the Tug Operator.

5. Special regulations for Time Charter

In the case of a Time Charter, the regulations in these General Towing and Charter Terms and Conditions apply with the exception of Clause 4 and in particular the following:

- (1) The agreed daily rate does not include the costs for fuel and lubricants consumed by the chartered ship during the charter period for the provision of the agreed Services and which are paid separately by the Customer. If no separate prices have been agreed for these costs, the Customer shall be invoiced according to consumption and purchase price.
- (2) The agreed daily instalment also does not include the Variable Operating Expenses. These are to be paid by the Customer directly to the invoice issuer upon receipt of the corresponding invoice and due date. If Variable Operating Expenses have already been paid by the Tug Operator, the Customer must reimburse him for the corresponding amount.
- (3) Insofar as this is necessary for the provision of the Services, the Customer shall instruct and pay the agents in the harbours and other places that the Tug calls at during the charter period, including ports of refuge.

6. Remuneration

- (1) If the amount of the remuneration is not determined, it shall be determined by the Tug Operator at its reasonable discretion.
- (2) The agreed remuneration does not apply to Services the need for which only arises after conclusion of the contract or to salvage.
- (3) The remuneration shall be payable upon invoicing at the place of business of the Tug Operator.
- (4) The Customer shall only be entitled to set-off if he has obtained a legally binding judgement against the Tug Operator or if the Customer's claims are undisputed.

7. Liability of the Customer

- (1) The Customer shall be liable for all damage to the Tug that occurs during the Assistance due to the Tug's activities for the Towed Object, unless the damage was caused by negligent or intentional behaviour on the part of the Tug Operator, its vicarious agents or assistants, including the captain and the crew of the Tug.
- (2) The Customer is responsible for all instructions given by the master or the pilot of the Towed Object. § 278 BGB applies accordingly.
- (3) Furthermore, the Customer shall be liable for all damage suffered by third parties as a result of Assistance due to manoeuvres performed by the Tug in accordance with the instructions of the master or the pilot of the Towed Object. This shall not apply if such damage was caused by culpable behaviour on the part of the Tug Operator, its vicarious agents or assistants, including the master and the crew of the Tug.
- (4) With regard to clauses 7 (1) to 7 (3), the burden of proof for any culpable behaviour on the part of the Tug Operator, its vicarious agents or assistants, including the master and crew of the Tug, lies with the Customer.
- (5) If the Tug is not operational due to damage or for other reasons for which the Customer is responsible, the Tug Operator shall be entitled to compensation for loss of use. The amount of the loss of use shall be determined at the reasonable discretion of the Tug Operator. His obligation to minimise damages (§ 254 BGB) remains unaffected. If Services are provided by a Tug owned by a third party (see clause 2 (3)), this third party shall also be entitled to invoke the above conditions.
- (6) If the Services are provided by a Tug owned by a third party, the damage incurred by the Tug shall be deemed to be the Tug Operator's damage, so that the Tug Operator shall be entitled to liquidate the third party's damage (third-party damage liquidation).
- (7) The above conditions shall not affect any other rights, claims or remedies that the Tug Operator may have against the Customer, irrespective of whether these are based on a contractual or non-contractual basis.

8. Liability of the Tug Operator

- (1) The Tug Operator shall only be liable for damages suffered by the Customer to the extent that they were caused by grossly negligent or wilful behaviour on the part of the Tug Operator, its vicarious agents or assistants, including the captain and the crew of the Tug. This shall not apply if the damage is attributable to the failure of the Tug Operator to fulfil a Cardinal Obligation.
- (2) In the event of damages caused by negligence, the Tug Operator shall only be liable in the event of a breach of a Cardinal Obligation and only for foreseeable damage typical of the contract.
- (3) Clauses 8 (1) and 8 (2) as well as clause 2 (5) shall apply to damages due to delayed performance of Services. In the event of delay, the Tug Operator's liability shall be limited to three times the remuneration paid or to be paid by the Customer, unless the delay was caused intentionally or by gross negligence. In the case of Chartering, the liability of the Tug Operator in the event of late provision of the vessel or floating device shall be limited to three times the agreed daily rate for each day of delay, unless the delay was caused wilfully or by gross negligence. The same applies to days on which the vessel is not available to the Customer during a Time Charter.
- (4) Within the framework of a Contract of Carriage by Sea, the Tug Operator shall not be liable for damage caused by behaviour in the management or other operation of the towing vessel, but not in the execution of measures taken primarily in the interest of the cargo, or by fire or explosion on board the towing vessel.
- (5) Clauses 8 (1) to 8 (3) shall not apply in the case of a Contract of Carriage. Clauses 8 (1) and 8 (2) shall also not apply in the case of a Contract for the Carriage of General Cargo. In this respect, the statutory provisions shall apply.
- (6) Clauses 8 (1) to 8 (4) do not apply to claims for personal injury. In this respect, the statutory provisions shall apply.

- (7) If the Tug Operator is to be regarded as the carrier, its liability for loss of or damage to the goods, including the Towed Object, is limited to 2 Special Drawing Rights of the International Monetary Fund per kilogramme of the lost or damaged goods, in deviation from § 431 HGB.
- (8) In any case, the Tug Operator shall be entitled to limit its liability in accordance with the provisions on the limitation of liability applicable to the Tug that caused the damage, for example in accordance with the Convention of 19 November 1976 on the Limitation of Liability for Maritime Claims, as amended by the Protocol of 2 May 1996, in the version applicable to the Federal Republic of Germany, the Strasbourg Convention of 4 November 1998 on the Limitation of Liability in Inland Navigation (CLNI) or national legislation. This also applies if the Tug provided by the Tug Operator for the provision of the Services is not owned, chartered, leased, managed or operated by him.
- (9) The exclusions and limitations of clauses 8 (1) to 8 (9) shall apply to all contractual or non-contractual claims against the Tug Operator. They also apply to the Tug Operator's employees and other auxiliary persons, including the third party who is the owner of the Tug, as well as to the master and the crew of the Tug.

9. Indemnity

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

10. Choice of law, place of fulfilment and arbitration agreement

- (1) The contract for the provision of Services is subject to German law. The place of fulfilment for all Services is Rendsburg (Schleswig-Holstein). All disputes arising from the contract or in connection with the Services rendered shall be settled exclusively by arbitration in Hamburg in accordance with the Arbitration Rules of the German Maritime Arbitration Association (GMAA).
- (2) If a Bareboat Charter or a Time Charter has been agreed on the basis of a BIMCO contract, the law of England and Wales shall apply in all cases. Disputes arising out of or in connection with the Time Charter agreement shall be settled by arbitration in London in accordance with the terms of the London Maritime Arbitrators' Association (LMAA). In all other respects, the provisions of the agreed BIMCO contract shall take precedence over all clauses of these General Towing and Charter Terms and Conditions.

11. Severability clause

Should provisions of these General Towing and Charter Terms and Conditions be or become invalid in whole or in part, the remaining provisions shall remain valid. The parties are obliged to replace the invalid provision with a legally valid provision that comes closest to the economic sense and purpose of the invalid provision.

12. German version

The German version of these General Towing and Charter Terms and Conditions shall take precedence.