

**ISLAND TUG AND BARGE LTD**  
**STANDARD TERMS AND CONDITIONS FOR TOWAGE AND RELATED SERVICES**  
**(NOTE: THESE PROVISIONS CONTAIN TERMS THAT EXCLUDE AND LIMIT THE LIABILITY OF ITB)**

## **1. DEFINITIONS**

“**Cargo**” means any goods or property of any description whatsoever that is on board or in a Tow.

“**Customer**” means the party requesting ITB to provide Towing Services and the owner of the Tow and Cargo (see cl.3 below).

“**Dangerous Cargo**” means any goods, article, substance or liquid specified in any applicable statute or regulation as a “dangerous good” or that is otherwise of a dangerous, inflammable, hazardous or noxious nature.

“**Loss or Damage**” means any physical, monetary or economic loss of any nature whatsoever, including without limiting the generality of foregoing: damages, awards and judgments for loss of or damage to Cargo or other property, personal or fatal injury, loss of use and lost profits; costs and expenses; and fines and penalties.

“**ITB**” means Island Tug and Barge Ltd.

“**Tow**” means vessels, barges, logs and rafts and any floating object or structure of any description whatsoever, owned, chartered, leased or operated by the Customer, in respect of which the Towing Services of ITB are being retained.

“**Towing Vessel**” or “**Tug**” means the vessel owned, chartered, leased or operated by ITB or its subcontractors, used to provide the Towing Services and if more than one vessel is used means all such vessels.

“**Towage Conditions**” means these Standard Terms and Conditions for Towage and Related Services.

“**Towing Services**” means the services ITB is requested to provide using a Towing Vessel and includes moving a Tow, assisting other vessels in the movement of a Tow, providing assistance to a Tow and all related services. Notwithstanding the foregoing, “Towage Services” does not include carriage of goods from one place to another in a ITB supplied vessel and does not include ship docking and ship undocking services.

## **2. TOWING SERVICES PROVIDED SUBJECT TO CONDITIONS**

All Towing Services provided by ITB are subject to these Towage Conditions, the terms of which may not be varied or amended except by written agreement signed by an authorized representative of ITB.

## **3. CUSTOMER AUTHORITY**

The Customer warrants that it is the owner of the Tow and Cargo or, if not the owner of the Tow and Cargo, the Customer warrants that it has the full authority of the respective owners of the Tow and Cargo to accept these Towage Conditions on their behalf and agrees that the Customer and owners of the Tow and Cargo are bound jointly and severally by these Towage Conditions. The Customer further warrants that it has authority to contract on the credit of the Tow.

## **4. SEAWORTHY TOW**

The Customer warrants and represents that the Tow shall be seaworthy and in all respects ready for and capable of making the specified voyage including that: all Cargo has been carefully and properly loaded and stowed; the Tow is properly equipped in all respects; and the Tow is outfitted with proper navigation lights, towing bits and bridles. An inspection of, or a request for modification of, the Tow or Cargo by ITB shall not be deemed an approval of the condition or seaworthiness of the Tow or constitute a waiver of the Customer’s obligations herein.

## **5. ADDITIONAL TUGS REQUIRED**

When conditions beyond the commercial control of ITB, such as weather, tidal conditions, difficult berths, navigation congestion, or other factors, require that additional Tugs be dispatched to complete Towing Services, the Customer will be charged for services performed by these Tugs in accord with rates as set forth in the rate schedule for the Towage Services. When additional Tugs are to be dispatched and/or conditions are such that there will be probable delay, ITB agrees to attempt to contact the Customer. ITB is not liable for any losses or penalties caused by the delay due to the conditions contained herein.

## **6. PILOTAGE**

No pilotage services are offered or supplied by ITB. Compliance with all pilotage requirements and any special manning requirements on the Towing Vessel arising from the nature of the Tow or Cargo is the responsibility and cost of the Customer.

## **7. ASSIGNMENT AND CANCELATION OF TUGS:**

ITB will dispatch Tug power promptly consistent with other commitments upon receipt of orders for Towing Services. While reasonable effort will be made to honor requests for specific Tugs, ITB will dispatch Tugs without commitment of a specific Tug for a particular job. A minimum of six (6) hours of advanced notice is required to book Towing Services. If the order for Towing Services is canceled after the Tugs have been dispatched, the charge will be 50% of the normal charge, plus delay and running time of the Tugs at the applicable rate.

## **8. DANGEROUS GOODS OR TOW**

The Tow and Cargo shall not contain any Dangerous Cargo unless the Customer has advised ITB in advance, in writing, of the presence of the Dangerous Cargo and ITB agrees to accept the Dangerous Cargo. In any event, the Customer shall indemnify (including for costs on a solicitor and client basis), defend and hold harmless ITB and the Towing Vessel in respect of any Loss or Damage incurred or arising in respect of Dangerous Cargo, howsoever caused, including if caused by the unseaworthiness of the Towing Vessel or the negligence of ITB.

## **9. PORTS AND BERTHS**

The Customer warrants that the Towing Vessel and Tow can get to and lie safely afloat at all stages of the tide at any port, berth, moorage, anchorage or place to which they are directed to proceed by the Customer.

## **10. DEVIATION/MULTIPLE TOWS/SUBSTITUTIONS**

ITB may perform the Towing Services in any manner it deems proper and shall have the absolute right to deviate for any reason whatsoever and shall further have the right to tow other vessels or barges belonging to third parties together with the Tow. ITB shall further be at liberty to substitute a Towing Vessel with another.

## **11. SUBCONTRACT**

All or part of any Towing Services may be subcontracted out to others without notice. Any such subcontractor shall have the benefit of all defenses, exemptions and limitation of liability provided by ITB and shall be considered an independent contractor and not an agent, servant or employee of ITB.

## 12. CUSTOMER'S INSURANCE

The Customer shall, at its expense, obtain and maintain during the entire period of performance of the Towing Services the following insurance coverages, any deductibles of which shall be for the sole account of the Customer:

- (a) Hull and machinery insurance on the Tow in an amount equal to its full market value and on terms equivalent to Canadian Hulls Pacific Clauses (2005) with a waiver of subrogation against ITB;
- (b) All risks marine cargo insurance on any Cargo in an amount equal to the full market value of the Cargo with a waiver of subrogation against ITB; and
- (c) Protection and indemnity insurance coverage of at least \$10 million on the Tow for, without limitation, wreck removal expenses, third party liability, cargo legal liability and full pollution liability with a waiver of subrogation against ITB.

## 13. WORKERS COMPENSATION AND PRIME CONTRACTOR

- (a) The Customer represents, warrants and agrees that all of its employees, servants, agents and subcontractors, who attend on board or nearby a Tow or Towing Vessel or are otherwise involved in the preparation of the Tow or the loading, unloading, stowing or securing of any Cargo, are "workers" within the meaning of the *Workers Compensation Act*, RSBC 1996 c.492 as amended, and that all such persons are covered by workers compensation, or contingent employee liability coverage in the event of personal injury or death without recourse as against ITB
- (b) Before the Tow has been taken under tow by the Towing Vessel and after the Tow has been released from the Towing Vessel, the Customer is the Prime Contractor within the meaning of the *Workers Compensation Act*, RSBC 1996 c.492 as amended.

## 14. RISK/EXCLUSION OF LIABILITY/INDEMNITY

- (a) The Towing Services are to be performed entirely at the risk of the Customer and without any liability on the part of ITB or the Towing Vessel.
- (b) ITB and the Towing Vessel shall not be liable to the Customer, or to any other party, for any Loss or Damage, howsoever caused, including if caused by the negligence of ITB or the unseaworthiness of a Towing Vessel.

## 15. LIMITATION OF LIABILITY

Should the Customer suffer Loss or Damage not covered by the insurance policies referenced in clause 12 or if the provisions of clause 14 are held to be inapplicable, inoperative or ineffective, or if ITB is otherwise liable to the Customer for breach of contract, negligence, failure to provide a seaworthy Towing Vessel or on any other legal basis, the collective liability of ITB and the Towing Vessel, shall be and is limited to \$1,000 Canadian Dollars.

## 16. HIMALAYA CLAUSE

Every exclusion from liability, limitation of liability, indemnity and defence applicable to ITB herein shall be available to and extend to its officers, directors, masters, crew, employees, servants, agents and sub-contractors and, for this purpose, ITB acts as agent and trustee for and on behalf of those persons.

## 17. TOWING CHARGES

The Customer shall pay towing charges to ITB as agreed plus applicable taxes, and shall pay all customs, port charges, pilotage fees, dockage, wharfage and similar fees, including agent's fees. The towing charges shall be considered completely earned at the commencement of the Towing Service whether the Tow and/or Cargo is lost or not lost. If the Tow is not ready to be towed when the Towing Vessel arrives to commence towing, or if there is a delay in performing the Towing Services that is not due solely to the fault of ITB, the Customer shall pay to ITB an additional delay charge equal to the Towing Vessel's hourly demurrage rate for each hour of delay or fraction thereof.

## 18. PAYMENT TERMS

Payment is due with 15 days of receipt of invoice. A service charge will be assessed on an amount over 15 days at a rate of 15% per annum.

## 19. LIEN

ITB shall have a particular and general lien on the Tow for all sums due to ITB either in respect of such Tow or for any general balance or other monies due from the Customer to ITB. The lien shall include interest on overdue amounts and the costs of exercising the lien, including the costs of moving and mooring the Tow. The lien shall continue to exist notwithstanding that ITB has parted with possession of the Tow. For the purpose of enforcing the lien, ITB may without notice sell, or retake possession and sell, the Tow by public auction or private sale at its sole option. Should the sale of the Tow be insufficient to recover the full amount owing, the Customer remains liable for the deficiency.

## 20. FORCE MAJURE

ITB and the Towing Vessels, their owners, operators, managers, servants, agents and charterers shall not be responsible or liable for any expenses, losses, damages or claims whatsoever caused by or resulting from the failure or delay in the performance of Towing Services due to strikes, labour difficulties, riots, breakdowns, shortage of Tugs, priorities in service, weather, war, earthquakes, Tsunamis or any act of God, or any other causes of like or different character beyond their control or created by the operation of law.

## 21. FORUM SELECTION

Any legal proceedings arising out of or relating to the Towing Services or these Towage Conditions shall be brought before either the Supreme Court of British Columbia or the Federal Court of Canada situated in Vancouver, B.C., and no other court shall have any jurisdiction whatsoever.

## 22. CHOICE OF LAW

The law of British Columbia and Canadian Maritime Law shall apply to the interpretation and construction of these Towage Conditions and to any and all disputes, actions, causes of action, claims or demands arising out of or relating to the Towing Services.

## 23. NOTICE OF CLAIM AND TIME FOR SUIT

The Customer shall provide ITB with notice in writing of any claim or possible claim within 72 hours of the events giving rise to the claim. Any Legal proceedings against ITB or a Towing Vessel arising out of or relating to these Towage Conditions or to the Towing Services must be commenced within One (1) year from the date that the Tow was delivered or ought to have been delivered, or the claim is extinguished.