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**STANDARD TOWAGE AGREEMENT**

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<b>Tugowner</b>	<b>Name</b>	<b>Smit Lamnalco Towage (Australia) Pty Ltd</b>
	ACN	099 760 380
	Address	Unit 5, 11-13 Friendship Road, Port Botany NSW 2036
	Fax Number:	+61 2 9666 6411
	Email Address	sltowageinfo@smitlamnalco.com
	Contact:	Aaron Wood

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<b>Hirer</b>	<b>Name</b>
	Company Number
	Address
	Fax Number:
	Email Address
	Contact:

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<b>Ports</b>	Melbourne, Brisbane, Port Botany and Newcastle.
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**Commencement Date**

**End Date**

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## 1. DEFINITIONS

In this Standard Towage Agreement, unless the context clearly indicates otherwise:

**GST** has the meaning given to that term in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Insolvent Event** means 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;

**Liability** means any cost, expense, loss, damages, debt, charges, Tax, liability, obligation, claim, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however arising, and whether direct or indirect, consequential, incidental or economic, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise;

**Purchase Order** means any individual service order as may be placed by the Hirer with the Tugowner in respect of the provision of Services which shall be subject to the terms of the Transaction Documents.

**Services** means the provision of harbour towage services for the berthing and unberthing of vessels calling at the Ports, and such other services as may be agreed by the Tugowner and Hirer in writing from time to time;

**Tax** includes any tax, GST, rate, levy, impost, duty or other charge or withholding of a similar nature (other than a tax on the net overall income of a Party) and any interest, penalty, fine or expense relating to any of them;

**Term** means the period from the Commencement Date to the End Date;

**Tug** means any self-propelled vessel employed for towage by or on behalf of Tugowner to perform the Services;

**UK Standard Towage Conditions** means the United Kingdom Standard Conditions for Towage and Other Services United Kingdom Standard Conditions for Towage and Other Services (Revised 1986); and

**Vessel** means the vessel chartered or owned by the Hirer to which the Tugowner agrees to provide the Services.

## 2. SERVICES

2.1 The Tugowner agrees to provide the Services to the Hirer at the Ports during the Term and on the terms and conditions contained in the Transaction Documents.

2.2 The Services will be booked by the Hirer or an agent of the Hirer by placing a Purchase Order with the Tugowner.

- 2.3 Nothing in the Transaction Documents obliges the Tugowner to provide the Services to the Hirer. The Hirer acknowledges that the Tugowner has the right to refuse to provide the Services, without any Liability to the Hirer at any time.

## **TRANSACTION DOCUMENTS**

- 2.4 The Transaction Documents consist of:
- (a) this Standard Towage Agreement;
  - (b) Annexure A: the Tariffs; and
  - (c) Annexure B: the UK Standard Towage Conditions.
- 2.5 In the event of any conflict or inconsistency between the documents constituting the Transaction Documents, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.4.
- 2.6 In the event of any conflict or inconsistency between a Purchase Order and the Transaction Documents, the Transaction Documents will prevail to the extent of that conflict or inconsistency.

## **3. TARIFFS**

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

## **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 the Tugowner is not paid for any Tariffs or any other moneys payable under the Transaction Documents (*Outstanding Moneys*) on the due date for payment, 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. Without prejudice to any other right or remedy the Tugowner has under the Transaction Documents or at law, all Outstanding Moneys carry interest on daily balances until paid at the prevailing RBA Cash Rate plus 5%.

## **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 any cargo loaded on the Vessels comply with all applicable laws and that the Vessels are seaworthy.

- 5.3 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.
- 5.4 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.
- 5.5 The Hirer indemnifies Tugowner, its employees, agents and contractors (***Indemnified Parties***) from any Liability sustained or incurred by the Indemnified Parties arising out of or in relation to:
- (a) the Hirer breaching the terms of the Transaction Documents, including any of its obligations, representations and warranties described in the Transaction Documents; and
  - (b) the Tugowner obeying the instructions of the Vessel's Capitan, officers, employees, contractors or other personnel, including but not limited to the pilot, given in connection with the Services (for the avoidance of doubt there is no obligation on the Tugowner to investigate the reasonableness or otherwise of such instructions).

## 6. **AUTHORITIES OF AGENTS**

- 6.1 The Hirer warrants that:
- (a) if it is not the owner or charterer of the Vessel (as the case maybe) (***Principal***), then it is unconditionally authorised to enter into the Transaction Documents for and on behalf of the Principal and to bind the Principal to the Transaction Documents; and
  - (b) when acting as an agent, it is entering into the Transaction Documents in both its personal capacity and its capability as authorised agent of the Principal, and its liabilities under the Transaction Documents shall be joint and several to the Principal and shall not be conditional upon the Tugowner proceeding first against the Principal.
- 6.2 Any notices, instructions, requests or other communications from and to the Principal shall be made by or to the Hirer for and on behalf of the Principal, and the Tugowner need not separately communicate or otherwise deal with the Principal in respect of the Transaction Documents.
- 6.3 Any payment made by the Tugowner to the Hirer pursuant to the Transaction Documents shall be made to the Hirer held on trust for the Principal and the receipt by the Agent of such payment shall be a full and sufficient discharge of the Tugowner in respect of such payment.

- 6.4 Despite anything to the contrary contained elsewhere in this Agreement, in circumstances where a Vessel is in imminent peril as determined by the Harbour Master acting reasonably, or where a Tug or its crew are in imminent peril as determined by the Tugowner in its sole discretion, the Hirer acknowledges that nothing in this Agreement shall preclude the Tugowner from making a claim for salvage under maritime law subsequent to rendering assistance to a Vessel in peril.

## 7. **LIMITATION OF LIABILITY AND CLAIMS**

- 7.1 Subject to clause 7.2, the Tugowner, to the extent permissible by law, excludes all implied guarantees, warranties and conditions relating to the Services. The Tugowner shall not be liable for any Liabilities sustained or incurred by the Hirer or any third party as a result of the Hirer's use of or the supply of the Services, including but not limited to those Liabilities arising out of any delay or failure to supply the Services or the negligence of the Tugowner, its employees, officers, agents and contractors.

- 7.2 Despite any other provisions of the Transaction Documents, 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 is applicable to the Transaction Documents. The Liability of the Tugowner, if any, for a breach of guarantee or warranty implied by any law in relation to the supply of the Services under the Transaction Documents is limited to, at the Tugowner's option, supplying the Services again or the payment of the cost of having the Services supplied again.

- 7.3 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 the Transaction Documents 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 the Transaction Documents.

## 8. **TERMINATION**

- 8.1 The Tugowner may at any time terminate the Transaction Documents immediately if:
- (a) the Hirer suffers an Insolvency Event; or
  - (b) the Hirer is in default in performance or observance of any provision of the Transaction Documents 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 the Transaction Documents due to an Event of Force Majeure described in Clause 10 for a period of twenty (20) consecutive days; or

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(d) the Tugowner ceases to be able to offer the Services in any of the Ports.

8.2 In the event of the Transaction Documents being terminated in accordance with this Clause 8, 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.

## 9. **EXCLUSIVITY**

9.1 During the Term, the Hirer will not directly or indirectly engage or otherwise work with a third party in relation to the Services at the Ports.

9.2 Notwithstanding Clause 10.1, the Hirer may directly or indirectly engage or otherwise work with a third party in relation to the Services at the Ports.

## 10. **FORCE MAJEURE**

10.1 An *Event of Force Majeure* is defined as any of the following events:

- (a) civil or military insurrections, blockades, sabotage, lockouts, stoppages or other violent acts;
- (b) fire, explosion or other catastrophic events;
- (c) war (formerly declared or undeclared), act of terrorism;
- (d) epidemic;
- (e) act of God (including earthquake, storm, flood and other inclement weather);
- (f) act or order (including laws, regulations, disapprovals or failure to approve) of a lawful government authority; and
- (g) strikes, industrial actions,

which occurs after the Commencement Date that is unforeseeable on the Commencement Date, the occurrence and effects of which cannot be avoided, overcome or controlled, and which hinders or prevents the performance of an obligation under the Transaction Documents.

10.2 The affected Party (*Affected Party*) will be excused from complying with the terms of the Transaction Documents for the period that it is hindered or prevented from performing and is not liable to the other Party in respect of such inability (except for an obligation requiring the payment of any moneys).

10.3 The Affected Party shall notify the other Party in writing immediately after the occurrence of an Event of Force Majeure and shall keep the other Party informed of the nature of the event, the date of its occurrence, the estimated duration and the degree to which the event prevents the Affected Party from performing its obligations under the

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Transaction Documents. When an Event of Force Majeure occurs, the Affected Party shall make reasonable efforts to overcome such event and mitigate its influence.

- 10.4 Clause 7 of the UK Conditions and all references to clause 7 of the UK Conditions are hereby deemed to be deleted.

## 11. CONFIDENTIAL INFORMATION

- 11.1 The terms and conditions contained in the Transaction Documents, 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. This Clause 11 shall survive the termination of the Transaction Documents.

## 12. GOODS AND SERVICES TAX

- 12.1 All Tariffs described in the Transaction Documents are exclusive of GST.
- 12.2 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 the Transaction Documents, 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.

## 13. NOTICES

### 13.1 Method

All notices given by a Party under or in connection with the Transaction Documents must be:

- (a) in writing;
- (b) signed by the Party giving notice or a person duly authorised by that Party;
- (c) directed to the recipient's address (as specified at the beginning of this Standard Towage Agreement or as varied by any subsequent notice); and
- (d) hand delivered, or sent by prepaid post or electronic mail to that address.

### 13.2 Receipt

A notice given in accordance with this clause 13 is taken as having been given and received:

- (a) if hand delivered, on the date it is delivered to the recipient's address; or
- (b) if sent by prepaid post:
  - (i) within Australia, on the second Business Day after the date of posting;

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- (ii) to or from a place outside Australia, on the tenth Business Day after the date of posting; or
  - (c) if transmitted by electronic mail, at the time shown in the delivery confirmation report generated by the sender's email system; or if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar.

A notice received after 5pm (recipient's time) is taken to be received on the next Business Day in the place of receipt.

#### 14. **GOVERNING LAW**

- 14.1 The Transaction Documents are governed by the laws applicable in New South Wales.
- 14.2 The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

#### 15. **MISCELLANEOUS**

- 15.1 Nothing in the Transaction Documents 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 Transaction Documents 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 Transaction Documents without the prior written consent of the Tugowner, which consent may be withheld by the Tugowner without giving any reasons.
- 15.5 The Transaction Documents constitute the entire agreement between the Parties and supersedes any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of the Transaction Documents, whether orally or in writing.
- 15.6 If a term or provision of the Transaction Documents 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 the Transaction Documents.
- 15.7 A right or remedy created by the Transaction Documents 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.



**SIGNING PAGE**

**SIGNED** for and on behalf of )  
**SMIT LAMNALCO TOWAGE (AUSTRALIA)** )  
**PTY. LTD.** by its authorised representative in the ) .....  
presence of: ) **Signature**  
) )  
) .....  
) **Name (please print)**  
) )  
) .....  
) **Title (please print)**  
..... )  
Witness Signature )  
) )  
..... )  
Witness Name (please print) )  
) )  
..... )  
Witness Address (please print) )

**SIGNED** for and on behalf of )  
..... by its authorised )  
representative in the presence of: ) .....  
) **Signature**  
) )  
) .....  
) **Name (please print)**  
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Witness Address (please print) )

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**ANNEXURE B****UNITED KINGDOM STANDARD CONDITIONS FOR TOWAGE AND  
OTHER SERVICES (REVISED 1986)**

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 hereinafter set out.
  - (b) For the purposes of these conditions
    - (i) 'towing' is any 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 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 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 are 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 servants of the Hirer and under the control of the Hirer and/or his servants and/or his 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 express 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's 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 his 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 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, 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 any time 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

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for death or personal injury resulting from negligence is not excluded or restricted thereby.

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 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 his 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 his 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 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.~~
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 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.
9. (a) ~~—The agreement between the Tugowner and the Hirer is and shall be governed by English Law and the Tugowner and the Hirer hereby accept, subject to the proviso contained in sub clause (b) hereof, the exclusive jurisdiction of the English Courts (save where the registered office of the Tugowner is situated in Scotland when the agreement is and shall be governed by Scottish Law and the Tugowner and the Hirer hereby shall accept the exclusive jurisdiction of the Scottish Courts).~~

(b) ~~No suit shall be brought in any jurisdiction other than that provided in sub clause (a) hereof save that either the Tugowner or the Hirer shall have the option to bring proceedings in rem to obtain the arrest of or other similar remedy against any vessel or property owned by the other party hereto in any jurisdiction where such vessel or property may be found.~~