

INTERNATIONAL SALVAGE UNION

SUB-CONTRACT DAILY HIRE AGREEMENT

"SALVHIRE 2005"

GUIDANCE NOTES

This Agreement is intended to be used by a Salvor working under Lloyd's Form, or similar contract, who wishes to engage additional assistance, but on a non-award sharing basis, as distinct from the widely used ISU Award Sharing Sub-Contractors Agreement.

Equally a Tugowner who wishes to hire out his tug to a Salvor, may offer its services on the basis of SALVHIRE.

The format of the document is very similar to the BIMCO/ISU TOWHIRE Towage Agreement, there being two Parts to the Agreement.

Part I consists of the Boxes, in which will be entered Operational and Financial Matters. Part II contains the 26 Clauses which make up the Standard Terms and Conditions.

It will be seen that the content of the Agreement closely follows TOWHIRE, which until now has frequently been utilised by salvors when engaging additional assistance on a daily hire basis.

Set out below are some notes intended to assist those using SALVHIRE.

Part I

Boxes 1, 2 and 3 require no comment.

Box 4 requires details and specifications of the hired vessel(s). These could be annexed to the Agreement if, for example, a brochure exists in respect of the vessel, or such details could be set out in a separate annex.

Box 5 is for the name of the Owner's P&I Association.

Boxes 6, 7 and 8 are concerned with the Details, Condition and Location of the Casualty. The Hirer should ensure that he properly completes these details, as the owner of the vessel to be provided is entitled to rely upon this information as representing the actual state of affairs in respect of the casualty to which services are to be provided.

Box 9 will set out the services to be provided by the Owner. It is recommended that the Hirer should be careful not to be too restrictive in describing the services that he requires to be performed by the hired in vessel. If the description of the services to be provided is too restricted, the Owner would be entitled to refuse to render services which go beyond those described. Wording such as "To generally assist in the salvage operations on m.v. in accordance with the requirements of (Hirer)", or "to tow m.v. from to, and otherwise to generally assist, etc.", are better than "to tow m.v. from to", or "to refloat m.v.".

Box 10 deals with Daily Rates of Hire. It will be seen that there is provision for a Working Rate (not towing), a Towing Rate, and a Standby Rate either at anchor, at sea or in port. The reason for these different rates being that all rates are intended to be on a fuel inclusive basis.

Box 11 is for a Mobilisation/Demobilisation Fee, if this is applicable.

Boxes 12 and 13 are concerned with the Date/Place of commencement and termination of hire.

Box 14 allows for a minimum period of hire, if such is agreed.

Box 15 allows the Owner to stipulate the maximum period for his vessel to be on hire. This is to allow an owner to ensure that his period of hire does not become "open-ended" in view of other commercial commitments of the vessel. It should be noted that Clause 3, Part II allows for an extension of the hire period by mutual agreement.

Box 16 is concerned with the Currency of Payment, and Owner's Bank details.

Box 17 allows for a credit period following which interest may apply to monies unpaid.

Box 18 relates to extra costs, and the handling charge to be applied to same if paid by Owners on behalf of the Hirer.

Box 19 deals with Security Requirements. It should be noted Clause 16.2 of Part II allows the Owner to call for security at anytime, even if this box is left blank. However if words such as "Not to Apply" are inserted in the box, then this will be treated as evidence that the intention of the parties is that no security is to be provided at any time before or during the services.

Box 20 is in respect of Law and Arbitration. It should be noted that if it is left blank, English law with Arbitration in London will apply. Whilst, in the majority of cases it is likely that the Hirer will be rendering services to the casualty under Lloyd's Form, there is every possibility that the Hirer may be engaged under some other contract, so there is provision for the parties to Arbitrate any dispute in another place, subject to the laws of that place.

Box 21 allows for additional clauses to the Agreement.

Part II

This section begins with a standard preamble, setting out the reason for the Agreement between Hirer and Owner.

Clause 1: DEFINITIONS; sets out a definition of "Casualty" which includes anything on the casualty, including the cargo, bunkers, etc. "Vessel" being the Owner's tug or other equipment is also defined, as is the "Owner".

Clause 2: PERIOD OF HIRE; deals with the period that the Owner is hiring his "vessel" to the "Hirer".

Clause 3: REDELIVERY; deals with the requirement for the Hirer to redeliver the vessel within an agreed period of time, unless there is a written agreement to extend the hire period.

Clause 4: EMPLOYMENT AND AREA OF OPERATIONS: this clause requires that the salvage activities must be lawful and restricts the "area of operations" to within Institute Warranty Limits. If the services are to take place outside these limits then permission must be obtained, in writing, and there may be additional insurance costs. The clause also confirms that no warranties are given by the Hirer regarding the safety of the place of operations.

Clause 5: MASTER AND CREW: confirms that the Master and Crew of the Vessel are to carry out their duties promptly and that the navigation and management of the Vessel remains under the control of Owners, Master and Crew.

Clause 6: OWNER'S OBLIGATIONS: this clause records that the reasonable instructions of the Hirer must be complied with; that Master and Crew will exercise due care to protect the environment; that the services to be rendered are in the nature of salvage services; **that no claims for salvage are to be made against the salvaged property; nor any claims for Special Compensation under Article 14 of the 1989 Salvage Convention; nor may any claims be brought against the shipowner under the Scopic Clause; and that the Owner agrees to indemnify the Hirer against the consequences of any such salvage claims.**

Clause 7; HIRER'S REPRESENTATIVE: requires the Hirer to have a representative in operational control of the salvage services.

Clause 8; PERMITS: provides that the Hirer is responsible for obtaining any Licences, Approvals, Authorizations or Permits, but is entitled to reasonable assistance from the Owner.

Clause 9; TOWING GEAR AND EQUIPMENT: provides that the Owner will allow the Hirer to use all the towing and salvage equipment on the tug at no extra charge, unless there is loss or damage which is not due to the negligence of the Owner, his servants or agents.

Clause 10; SEAWORTHINESS OF VESSEL: is a warranty by the Owner that his vessel will be tendered in a seaworthy condition, fit for the services to be rendered, but no other warranties, express or implied, are given by the Owner.

Clause 11; SUBSTITUTION OF THE VESSEL: allows the Owner to provide a substitute vessel of his own, or belonging to others, provided it is of adequate power and capability. The Hirer's approval of such substitution must be obtained but that approval shall not be unreasonably withheld.

Clause 12; DISCONTINUANCE OR TERMINATION: provides for the discontinuation or termination of the services by the Hirer.

Clause 13; PRICE AND CONDITIONS OF PAYMENT: deals with the financial aspects of the Agreement. Under Clause 13.6 the Owner has the right to withdraw his vessel, subject to giving notice, if the Hirer fails to meet his financial obligations to the Owner.

Clause 14; TIME FOR PAYMENT AND INTEREST: relates to time for payment by the Hirer, and the rate of interest to be charged in the event of late payment.

Clause 15; EXTRA COSTS: deals with extra costs which are payable by the Hirer, and as such is similar to the clause in the Towing and Wreck Removal Agreements.

It should however be noted that 15.1 (vi) deals with the Owner's towing gear, salvage equipment, portable equipment, materials or stores, lost damaged or sacrificed during the services, which costs are recoverable from the Hirer, provided such loss or damage was not as a consequence of negligence on the part of the Owner, his servants or agents.

Clause 16; SECURITY: is concerned with the provision of security for the monies due to the Owner under the Agreement. It is similar to such clause in TOWCON, etc.

It should be noted that in the event of any salvage claims against the salvaged property being made by owners, master, crew, etc. of the Vessel, then the Owners are obliged to provide the Hirer with security in respect of such claims.

Clause 17; INSURANCE: is a new clause under which the Owner warrants that he is carrying adequate and sufficient insurances on his vessel(s) appropriate to the services he is being engaged to perform. The clause identifies the types of insurance cover to be in place on the Vessel.

It should be noted that the Pollution Liability Cover referred to under 17.2 (iii), is not available to all tug owners/operators. Owners should be careful to advise the Hirer if this cover does not exist. Equally the Hirer should be careful to ascertain if this cover is in place for the tug/vessel in question.

Clause 18; LIABILITIES: deals with Liabilities and the clause is taken from TOWCON/TOWHIRE with necessary amendments. It follows the standard "knock for knock" liability principles which are widely accepted today.

Clause 19; HIMALAYA CLAUSE: this is a standard Clause as is to be found in TOWCON, etc. It gives an extension of the defences, etc. within the agreement granted to the Hirer and Owner, to their respective servants, agents, sub-contractors, etc.

Clause 20; EVIDENCE: this Clause is specific to SALVHIRE. It requires the Owner to assist the Hirer with regard to the retention and provision of evidence to support the Hirer's salvage claim.

Clause 21; CONFIDENTIALITY: this clause requires the parties to honour the confidentiality of the Agreement, but does allow for the details to be disclosed in Court or Arbitration proceedings relating to the casualty.

Clause 22; GENERAL: this is a standard clause to be found in many similar agreements.

Clause 23; TIME FOR SUIT: It should be noted that any claim by one party to the contract, against the other, must be notified within 6 months and any suit must be brought within one year. Failing this the claim is barred absolutely. This time limit is the same as in TOWCON and TOWHIRE.

This is considered reasonable as within 6 months of completion of the services the Hirer/Contractor will usually be close to finalising his claim against the salvaged property.

The indemnity provisions within Clauses 6.5, 15 and 18 are excluded from this time limit.

Clause 24; LAW AND ARBITRATION PROCEDURE: this clause makes the Agreement subject to English law.

It is anticipated that the majority of users of this Agreement will be involved in rendering services to a casualty under Lloyd's Standard Form of Salvage Agreement. For this reason, any dispute between the parties is to be referred to a member of the panel of Lloyd's Salvage Arbitrators.

There is provision for an appeal to the Lloyd's Appeal Arbitrator.

There is provision for the parties to commence proceedings in another jurisdiction for the purpose of obtaining security.

In addition, the Owner may apply to the Arbitrator or Appeal Arbitrator for a payment on account pending determination of any disputes.

Clause 25; ALTERNATIVE LAW AND ARBITRATION PROCEDURE: this clause recognises the fact that a number of salvage services are performed under contracts other than Lloyd's Form. Under this clause the parties have the right to nominate another place for the hearing of any Arbitration. In such event the Arbitration will be subject to the procedures and laws of that place.

Clause 26; WARRANTY OF AUTHORITY: is the standard warranty of authority clause in relation to the person signing the Agreement in respect of the Vessel being hired.

It should be noted that these Notes are intended to be used as a general guide. In the event of any conflict between the Notes and the contents of SALVHIRE, the latter will prevail over the Notes.

MJL
November 2005