

# S O M A R A

## **GENERAL TERMS AND CONDITIONS OF HARBOUR TOWAGE OPERATIONS PERFORMED BY SOMARA, Société Maritime de Remorquage et d'Assistances Sas**

*Amended on 01st January 2011*

Société Maritime de Remorquage et d'Assistances Sas (SOMARA), undertakes its operations on the following general terms and conditions, in which the words "the Company" (A) and "the Contracting Party" (B) refer respectively to the towage company (A) and to the operator of the ship or unit towed (B).

The word "tugs" refers to the tugs supplied by SOMARA in order to perform the operations, whether or not there are actually one or several tugs in operation on the concerned job at the time, all supplied or not by SOMARA.

1. It is expressly agreed that towage operations undertaken by the Company inside or on entering or leaving a harbour, and in roads and other warfs, shall be subject to the following general terms and conditions which will be contractual conditions between the parties, whether or not any document is signed prior to the operation.
2. The towage contract is a "hire of services" type of contract, the performance of which the Company puts traction at the disposal of the Contracting Party, i.e the moving power of its tugs in seaworthy condition as well as the services of its crew, whether or not the towed vessel has a crew of its own.
3. The contractual period begins as of the moment when the tugs, approaching the contracting vessel to catch or receive the towline, to push the vessel or to undertake any operation in connection with towage, are liable to receive orders from it, whether or not these are given, or are sufficiently close to the vessel to be subjected to its action or liable to collide with it.  
This period ends, once the operation is completed, as soon as the tugs have moved sufficiently away from the vessel so as to be no longer subjected to its action or liable to collide with it.
4. Throughout the course of the contractual period as defined above, it is expressly agreed that the captain and crew of the tugs are at the disposal of the Contracting Party and are thereby the latter's agents, exclusively under his control and direction, employed to perform a task defined by him. The tugs are thus in the care of the Contracting Party. This being so, any average, damage or other such costs of any nature whatsoever, incurred either by the vessel towed or by the tugs in the course of the towage operations, shall be borne exclusively by the Contracting Party. The latter shall also be liable for any claims brought by any third parties against the vessel towed or against the tugs arising from any incident during these operations. The Company shall remain liable, however, for gross personal negligence in the performance of its commitment to supply means, tugs and crew.  
For this purpose the Company carries an insurance policy covering its liability against third parties, copy of which is available to SOMARA upon written request.
5. Appropriate towlines for the towage operations shall be supplied by the tugboat without this in any way affecting the principle of responsibility laid down in above clause 4. Unless otherwise stipulated in the tariff, no additional charge will be made for this use of the tugboat's towline. The vessel towed may, at its own request, use its own towline, but this preference shall in no way entitle it to any corresponding reduction in the towage price.
6. The company reserves its right to replace, even in the course of manoeuvres, one or more tugs with others belonging to it or to other owners.
7. Under no circumstances may any claim be made against the Company for delay or for the consequences thereof.
8. The technical specifications of the Company's tugs are available upon request made to the Company or to the Harbour Master; The Company's liability will be thus rejected in case of any accident arising due to a lack of power of the tugs which, once ordered are accepted by the Contracting Party for the operation to be carried out.
9. Port charges, pilotage dues and boatage charges concerning the tugs or the vessel towed shall be for the account of the Contracting Party, whether during the towage or for the tugs outward or inward passage before and afterwards the said tow.
10. Any operation started is considered owed in full, even in the event of loss of the vessel towed for any reason other than the Company's gross negligence. The Company is entitled to payment of the price of any operation ordered, even in the case that the tugs have not been actually used by decision of the master of the vessel towed and/or its pilots.
11. The tariffs related to harbour towage only concern the assistance given to vessels in a manoeuvring condition and who have made a preliminary request of assistance.  
The minimum delay for ordering the services has been established at 6 business hours.  
Furthermore, the Company will be entitled to supplementary charges in the case that exceptional circumstances would alter the nature of the services above described (such as strong winds, etc...).  
Also, in the case of an engine breakdown and/or a grounding of the vessel towed not resulting from the negligence of the tugs during the harbour assistance, the Company will be entitled to a salvage reward which will have to be mutually agreed between the parties or if not agreed, determined by a London arbitrator.
12. Towage and Salvage operations are payable immediately, in the agreed currency, at the port of towage according to the scale of charges applicable on the date of the operation. Penalties for overdue payment, calculated according to the legal rate of interest increased by 50%, will be applied to sums due not settled by the date of payment stipulated on the invoice for these operations.
13. In the case of a dispute arising between the parties, exclusive competence will be given to London Arbitration.
14. The present General Terms and Conditions from SOMARA apply to harbor work operations performed in the Port of Fort de France (Martinique) for which special provisions have been made and are deposited before the Chambre de Commerce et d'Industries de la Martinique.
15. In case of dispute arising because of interpretations, the French version of the General Terms and Conditions will prevail.