

S O M A R A

Update of July 20, 2020.

Terms and Conditions of Port Towing of SOMARA SAS Société Maritime de Remorquage et d'Assistance applicable at the Port of Fort-de-France

The Société Maritime de Remorquage et d'Assistance SAS (SOMARA), carries out its operations under the following terms and conditions, the term “The Company” meaning the towing company, on the one hand, and the term “The Contracting Party” meaning the operator of the towed ship or vessel, on the other hand.

1. Towing operations carried out by the Company at the entrance, inside or at the exit of the port of Fort de France, as well as in the bays, wharves and other bodies of water are, by express agreement, subject to the following contractual conditions, whether or not a written agreement has been signed before the operation.
Towing operations shall comply with the obligations laid down in the specifications appended to the approval decision of June 24, 2020, and applicable as of July 1st, 2020.
2. The towing agreement is a contract for the hire of services, in performance of which the Company makes available to the Contracting Party the traction, that is to say the motive power of its tugboats in seaworthy condition, and the services of its crews, whether or not the towed vessel has its own crew.
3. The contractual period shall begin from the moment when the tugboat(s), approaching the towed vessel to throw or take the tow line to push or pull it or to carry out any operation connected with the towing, are likely to receive orders, whether or not they are given such orders, or are sufficiently close to the towed vessel to be subjected to its action or to be likely to strike it or be struck by it. The said period shall end as soon as the operation is completed, the tugboat(s) have moved sufficiently far away from the towed vessel so that they are no longer subject to its action and are no longer likely to strike it or be struck by it.

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4. During the course of the contractual period as defined above, and in accordance with Article L5342-1 of the French Code of Transport, the Captain and the Tugboats' Crews shall, by express agreement, be put at the disposal of the Contracting Party and shall become its only representatives. The tugboats are placed under its custody. Consequently, the Contracting Party shall be the sole party liable for any average, loss or other loss of any nature whatsoever incurred by both the towed vessel and the tug or tugs during the towing operations. The Contracting Party shall also be liable for any claims which may be made by third parties against the towed vessel and against the tugboat(s) in connection with events occurring in the course of such operations. However, the Company shall be liable for its gross and personal fault in the performance of its obligation to supply means, tugs and crews.

To this end, the Company has taken out an insurance policy covering its liability towards third parties, a copy of which has been filed with the Grand Port Maritime de la Martinique and can be consulted on written request.

5. Appropriate tow lines necessary for towing shall, without in any way modifying the principle of liability set forth in Article 4, be provided by the tugboat(s). Unless otherwise stipulated in the tariff, no extra charge shall be due for the use of the tow line of the tugboat.
The towed vessel may, at its request, use its own tow line. Such use shall not give rise to a reduction in the towing rate.
6. The Company reserves the right to replace one or more tugboats, even during maneuvering, with other tugboats belonging to the Company or other owners.
7. Under no circumstances may any claim be made to the Company, either for delay or for the consequences of such delay.
8. The technical characteristics of the Company's tugboats are filed at the Harbourmaster's Offices of the Port of Fort de France and are available on simple request to the Company or to the port authority; the liability of the Company shall therefore be exempt in the event of an accident resulting from a possible lack of power of the tugboats which, once ordered, are accepted by the requestor for the operation to be carried out.
9. Any port, pilotage and boatage costs and fees, relative to the tugboat(s) or the towed vessel shall be borne by the latter, either during the towing operation or before or after the operations involved.
10. Any operation started is due in its entirety, even in case of loss of the towed vessel occurring for any other cause than the gross and personal fault of the Company, even if the tug or tugboats may not actually be used by decision of the Captain of the towed vessel or its pilots.
The Company shall be entitled to payment of the price of any operation ordered.

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11. The published tariffs of port towing operations filed with the Grand Port Maritime de la Martinique are applicable only to operations involving maneuvering vessels and subject to a prior order.
The Company may be entitled to additional compensation in the event where exceptional circumstances change the nature of the services provided for in the agreement.
For any last-minute request from a captain of a towed vessel already in the process of maneuvering or intervening on the decision of the Harbourmaster's Offices, on vessels in difficulty (damaged, non-maneuvering, immobile or stranded vessels), the contract for the hire of services shall automatically be turned, unless otherwise decided at the discretion of the Company, into a maritime assistance agreement, whether or not a written document has been signed before the operation, and the tariff for towing operations shall not be applicable.
In the absence of an agreement between the parties as to the remuneration of the maritime assistance provided, the provisions of maritime law prevailing in the field of maritime assistance shall apply.
12. The amount for towing and assistance operations is payable in cash according to the rate in effect on the day of the operation.
Late payment penalties calculated on the basis of three times the legal interest rate shall be applied should the sums due not be paid by the payment date mentioned on the invoice for such operations (Article L 441-10-II of the French Code of Trade).
The minimum fixed compensation for collection costs is 40 (forty) euros (Articles L 441-10-II and D 441-5 of the French Code of Trade).
13. Jurisdiction is expressly granted to the Trade Court of Fort de France (Martinique), to the exclusion of any other jurisdiction, and any litigation whatsoever shall be submitted to it, even in case of a guarantee claim, multiple defendants or related matters, this clause being understood as expressly derogating from any contrary provision, in particular those of the Code of Civil Procedure.
14. The French version of these terms and conditions shall prevail in the event of a dispute that may arise as to its interpretation.

Clauses filed with the Grand Port Maritime de la Martinique

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