

BRUSCO TUG & BARGE, INC.

GENERAL PROVISIONS FOR TUG SERVICE

The following terms and conditions (the “**General Provisions**”) apply to tug services furnished by BRUSCO TUG & BARGE, INC. (“**Brusco**”) under a separate Rate Schedule for Tug Assists and General Towing (the “**Rate Schedule**”) applicable to Tugs dispatched from any of the following ship assist ports:

Port Hueneme CA
Sacramento/Stockton CA
Eureka CA
Grays Harbor WA
Everett WA
Olympia WA

1. Application of Rates. The rates and charges contained in the separate Rate Schedule for the applicable ship assist dispatch port have been calculated on a per tug basis, assuming routine services and normal weather conditions. In the event of requests for non-routine services, abnormal weather conditions, or other factors beyond the control of Brusco, Brusco will assess reasonable additional charges. The stated rates apply only to the specific services listed. Rates for all work including extra work shall be subject to these General Provisions, which will also apply on work of a salvage nature and any general towing or Tug service to which the Rate Schedule is applied, absent separate written agreement signed by an officer of Brusco. “Assisted vessel” for purposes of these General Provisions includes both the towing tug and the barge of any tug/barge combination assisted. “Customer” as used in these General Provisions means, collectively, the Vessel and the owner, charterer, operator, agent and manager of the Vessel receiving Brusco Tug services, including the entity ordering or arranging the Tug services.
2. Exceptions. Upon receipt of an order for tug service, Brusco will furnish tug power consistent with and subject to availability of personnel and equipment, other service and scheduling commitments, priorities in service, and the notice requirements specified in the Rate Schedule. Brusco will not be responsible for delays, extra expenses, or damage caused by labor disputes, accidents, fire, weather, failure or shortage of personnel or equipment, acts of God, or any other causes of a similar or dissimilar nature without the fault and beyond the control of Brusco. Brusco will exercise reasonable best efforts to execute orders with dispatch but does not guarantee arrival times or availability of Tugs.
3. Warranties. **Brusco warrants that it will exercise due diligence to furnish seaworthy Tugs which are adequately manned and equipped for the work to be performed. Except as provided in this paragraph, Brusco makes no warranty of any kind, express or implied, and expressly disclaims any warranty of workmanlike service or performance.**

4. Limitation of Liability. The furnishing of tug service for any purpose may not be construed to be a personal contract. Brusco, and the Tug owners and operators, if other than Brusco, will have the benefit of all limitations of and exemptions from liability contained in the limitation of liability statutes of the United States.
5. Notice of Damage and Claim. Customer must give notice of any alleged damage or injury suffered or caused by or to Vessel to which Tug services are rendered must be given to Brusco not more than forty-eight (48) hours after the alleged occurrence. If Customer intends to make claim against Brusco based on any alleged damage or injury, Customer must give Brusco written notice of such intention within (30) days after the occurrence. In addition, Brusco must be given a reasonable opportunity to inspect and survey the damage for which claim is made prior to the commencement of any repairs. Each such notice and opportunity to inspect and survey damage is a condition precedent to suit. The effect of failure to provide either notice to Brusco within the time specified or to provide the opportunity to inspect and survey operates as an absolute bar to suit on account of alleged damage or injury.
6. Pilotage. Brusco does not offer or supply pilotage services. The Vessel assisted is solely responsible for compliance with all pilotage and vessel manning requirements. During such time as the captain or other officer of any Tug furnished to or engaged in the service of assisting or towing a self-propelled Vessel, whether under its own power or not, boards and remains on the assisted Vessel, Customer agrees that such Tug captain or other officer (a) becomes the servant of the Vessel assisted, and her owners and operators, for all purposes and in every respect, (b) is subject to the exclusive supervision and control of personnel of the assisted Vessel, and (c) neither Brusco nor the Tugs furnishing services, and their owners and operators, if other than Brusco, will be liable for any act or omission, whether negligent or not, of such captain or other officer.
7. Hawsers. The assisted or towed Vessel assumes all risk of loss, damage, injury or death sustained by it or by any other party due to failure or defect of any hawser or other line, by whomsoever furnished, unless the hawser or other line has been furnished by Brusco and loss, damage, injury, or death was due to the sole fault or negligence of Brusco.
8. Limitation of Liability. **Unless entitled to immunity as a responder or otherwise under OPA-90 or other applicable federal or state laws, and subject to defenses to, exemptions from and limitations of liability provided in these General Provisions and applicable law, Brusco shall be liable for its acts of negligence, to the extent established under law, up to and including the first \$250,000 for all claims, demands, causes of action, liabilities and costs (including attorneys' fees) arising out of or related to a single occurrence or connected series of occurrences and in connection with any service rendered by Brusco pursuant to the Rate Schedule.** Customer understands and agrees that the hourly rates assume the limitation of liability afforded by this clause and that this clause may not be limited, restricted or in any way affected by the amount of insurance carried by Customer or Brusco.

9. **Indemnity.** All claims, demands, causes of action, liabilities and costs (including attorneys' fees) **exceeding \$250,000** that are attributable to the acts or omissions (whether negligent or otherwise) of Brusco, the Tugs, their owners, charterers, operators, managers or agents, or to a Tug's unseaworthiness, and which arise out of or relate to a single occurrence or connected series of occurrences in connection with any service rendered by Brusco pursuant to the Rate Schedule or these General Provisions are subject to the following indemnity:

(a) Customer agrees to indemnify and hold harmless Brusco and the Tugs from and against all *in personam* and *in rem* claims, demands, causes of action, liabilities and costs of every type and character, including but not limited to attorney fees, expert fees, expenses, penalties, fines or other charges or costs imposed by any federal, state or local authority, and damages which Brusco suffers, sustains or becomes liable for by reason of any accidents, damages, injuries or being deemed a responsible or third party for purposes of pollution laws such as OPA-90 and state laws, either to the person (including any Customer or Brusco employee or agent thereof) or property of Brusco or Customer, to the person or property (including any natural resources) of any third party, including federal and state governments and agencies thereof, landowners, shipowners and cargo arising out of or related to performance of any services pursuant to the Rate Schedule and these General Provisions.

(b) The parties intend for this indemnity to apply in all instances, including but not limited to allision, collision, personal injury, fire, explosion, grounding, and oil or hazardous material spill of any nature whatsoever (including without limitation crude oil, refined products and bunkers).

(c) Customer further agrees that Brusco will have the right, but not the obligation, to tender the defense to Customer of any lawsuits or other legal proceedings arising out of or in any way connected with matters which are the subject of this indemnity clause, but that failure to tender any such lawsuit or legal proceeding for defenses shall in no way release or relieve Customer of its obligation under this indemnity clause.

(d) The indemnity in this Section 9 does **not** apply to liabilities created or incurred by Brusco's Tugs to third parties (other than Customer or the assisted/towed vessel) while Brusco's Tugs are mobilizing to or demobilizing from the location of an assisted or towed Vessel.

10. **No Consequential Damages.** Brusco shall not in any event be liable for consequential, indirect or special damages, including without limitation extra expense, loss of profits, loss of use of property, delay or damages consequential upon loss of use, whether resulting from negligence or breach of these General Provisions by Brusco or the Tugs or otherwise and even if the possibility of such damage is or was foreseeable by Customer and Brusco.

11. **Affiliates and Subcontractors.** All or part of any service requested under the Rate Schedule or these General Provisions may be subcontracted to others without notice to Customer. Customer agrees that any such subcontractor will have the benefit of all defenses, exemptions, and limitations of liability provided in these General Provisions for the benefit of Brusco. In performance of any such subcontract, the subcontractor will be considered an

independent contractor and not the agent, servant or employee of Brusco. All limitations of and exemptions from liability and entitlement or indemnity provided by law or the terms of these General Provisions will apply to Brusco, its affiliated companies, their officers, director, employees and agents, and to any vessel owned or chartered by any of the above, and such vessel's owners, operators, master and crew.

12. Payment Terms. Invoices will be mailed promptly after rendering tug services to Customer. Customer must make payment to:

Brusco Tug & Barge, Inc.
P.O. Box 1576
Longview, WA 98632

Brusco may also provide wire transfer instructions, in which case wire transfer prevails as the required method of payment, free of wire transfer fees. Payment is due within thirty (30) days of invoice date. Interest will accrue at a rate of 1% per month for accounts past thirty (30) days. Thirty-day terms do not apply if in Brusco's opinion, the collection of a billing may be jeopardized, and upon notice to Customer the billing will become immediately due and payable.

Customer must reimburse Brusco for its attorney's fees and expenses, including expert fees, incurred in effecting collection of unpaid invoices.

13. Scheduling. Brusco will use reasonable diligence to provide tug service at the time scheduled with the Customer. However, Brusco reserves the right to perform tug service for other persons prior to the time scheduled with the Customer. If tug service provided for such other persons delays commencement of Tug services to the Customer, Brusco will have no liability for such delay. Scheduled times for Tugs are approximate and not guaranteed. In the event the Customer's vessel arrives prior or subsequent to the time scheduled, Brusco shall use reasonable diligence to provide Tug service at the time of arrival, but Brusco will have no liability for delay in rendering Tug service.
14. Customer Authority. The person or company ordering Tug warrants that it has the authority to bind the Vessel being assisted or towed, and its owners (and charterers, if any) to all the provisions of the Rate Schedule and these General Provisions and shall indemnify and hold harmless Brusco and each Tug utilized with respect to losses, damages or expenses that may be suffered or incurred in consequence of any lack of such authority