

TERMS AND CONDITIONS

CONTRACTS SUBJECT TO THE FOLLOWING CONDITIONS – THESE PROVISIONS CONTAIN TERMS THAT EXCLUDE AND LIMIT THE LIABILITY OF HARKEN TOWING CO. LTD. (“Harken”)

The customer warrants that it is the owner of the Tow and Cargo or if not, the owner, the Customer warrants that it has full authority of the respective owners of the Tow and Cargo accept these standard terms and conditions on their behalf and that it has authority to contract on the credit of the Tow. If the customer is not the owner of the Tow or Cargo or **the ship being handled, then the customer agrees to indemnify and save Harken harmless from any and all claims for loss or damage to the Tow or Cargo or the ship being handled**, which may arise with respect to the towage, shiphandling, moorage and storage of the Tow and Cargo.

CONTRACTS FOR TOWING OR SHIPHANDLING (UNLESS COVERED BY A SEPARATE AGREEMENT)

1. **Harken will not be liable for failure to commence or complete performance of any contract for services**, including shiphandling, Towing Services and related services where such failure is due to, or results directly or indirectly from a Force Majeure event. Under no circumstances shall Harken be liable for any consequential economic loss occasioned directly or indirectly from the failure to commence or complete performance of any contract.
2. With respect to shiphandling, Towing Services and the provision of any related services, **Harken, including its servants, agents and subcontractors, shall not be liable for any loss or damages sustained or liability incurred by the customer, howsoever caused, even though the same arises from or is occasioned by any act, omission, incapacity, negligence, gross negligence or default of Harken, its servants, agents, subcontractors or any vessel, including any unseaworthiness of the Towing Vessel or Tow.**
3. In the event that a claim is made against Harken by a third party for loss or damage arising out of or relating to the services provided under these terms and conditions and regardless of whether or not the loss or damage claimed was caused by the breach of contract or negligence of Harken or the unseaworthiness of the Towing Vessel, the customer shall indemnify (on a solicitor and own client basis), defend and hold harmless Harken and the Towing Vessel in respect of such claim.
4. The customer represents and warrants that the Tow shall be seaworthy and ready in all respects for the intended voyage. Any inspection or acceptance of the Tow and/or Cargo by Harken shall not be deemed an approval of the condition or seaworthiness of the Tow and/or Cargo or constitute a waiver of the customer’s obligations hereunder.
5. The customer shall pay Harken all charges for services provided hereunder plus applicable taxes and all such charges shall be considered due at the commencement of the voyage whether the Tow and/or Cargo is lost or not lost.
6. For the purposes of these conditions, Harken shall be deemed to be acting as agent or trustee on behalf of and for the benefit of its servants, agents, and subcontractors and to this extent they shall be deemed to be parties to all towage, ship handling and related services contracts.
7. **Any legal proceeding against Harken or the Towing Vessel arising out of these terms and conditions, or in respect of the services provided by Harken must be commenced and served within one year after time the Tow was delivered or the services provided or such claim will be extinguished.**

CONTRACTS OF CARRIAGE

8. All contracts involving the carriage of Cargo shall be governed by the terms and conditions of Harken’s standard form Bill of Lading as amended from time to time and shall apply whether or not such Bill of Lading is actually issued in respect of any particular cargo. Where a Bill of Lading is not issued the customer agrees that the issue of a Bill of Lading is contemplated by the contract of carriage. Copy of the full standard Bill of Lading are attached as Appendix 1 to these standard terms and conditions. **The Bill of Lading contains additional provisions which limit or exclude the liability of Harken.**
9. **All Cargo carried on deck is carried at the sole risk of the Shipper (as defined in the Bill of Lading) in accordance with Clause 9 of the Bill of Lading.**

ENVIRONMENTAL CLAIMS AND HAZARDOUS OR DANGEROUS OR HIGH RISK GOODS AND INDEMNITY

10. The customer shall hold harmless and indemnify Harken and its directors, officers and shareholders for any breaches by the customer or the owner of the Tow and/or Cargo or goods which are the subject matter of the contract (the “subject matter”) or the Applicable Laws and also from and against all actions, claims, demands, loss, damage, expense causes of action, fines, penalties, forfeitures, assessments and proceedings of every nature and kind, (called “claims” in this section) made, brought or prosecuted by any person, including the Crown, arising out of the loading, transportation, unloading, storage, care, custody, control, ownership, discharge or escape of any goods which are a dangerous goods or pollutants where such claims are caused by a Force Majeure event, an inherent quality or defect of the subject matter, defective or insufficient packaging, insufficient or improper labelling, default, neglect or wilful act or omission of the customer or the owner of the subject matter, or any of their respective servants or agents. Harken may dispose of any pollutant or dangerous good that may, in the opinion of Harken result in claims, without compensation to and at the expense of the customer or the owner of the subject matter.
11. A pollutant includes substances designated in the *International Maritime Dangerous Goods Code* (“IMDGC”) and any substance that, if added to waters, would degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal fish or plant and, without limiting the generality of the foregoing, includes oil and any substances that are prescribed by any legislation to be pollutants.
12. The customer warrants that:
 - (a) All applicable governmental requirements including of the IMDGC and the Transportation of Dangerous Goods Regulations have been complied with and that is has advised Harken of the presence of any dangerous goods contained in or on the Tow and/or the Cargo;
 - (b) All dangerous goods designated as marine pollutants, in the IMDGC or otherwise, are identified by the words “MARINE POLLUTANT” together with the proper shipping name on all external packaging;
 - (c) Where applicable the customer has filed an emergency response plan summary with Chief, Enforcement and Response Operations, Transport Canada, Transportation of Dangerous Goods; and
 - (d) Where applicable, the customer has packed such dangerous goods into fit, clean and dry containers or vehicles that are structurally serviceable as defined in the IMDGC that they are not packed with incompatible substances; that all packages were externally examined and found sound and that they were properly stowed and secured in the containers or vehicles.

CONTRACTS FOR MOORAGE AND STORAGE

14. In cases of emergency, including where in the opinion of Harken a vessel or Cargo being moored or stored is in danger of sinking, or is an immediate hazard to other vessels, Harken's facilities, or the marine environment, Harken is authorized to take any action considered necessary by Harken in respect of the vessel or Cargo. The foregoing does not create an obligation on Harken to take any such action. The customer shall indemnify and hold harmless Harken for any expenses or losses incurred in relation to any such action and any damage to the vessel or Cargo occasioned by such action.

15. The vessel while moored at the berth or otherwise present in Harken's facilities shall be solely at the customer's risk. **Harken, its servants, agents, subcontractors** shall not be liable, either jointly or severally or solely: (a) for the security of the vessel or Cargo from theft, damage or other loss; (b) for any bodily injury to or death of, or loss or damage, howsoever caused, to the vessel, the Cargo or the customer or any person for whom it is legally responsible, including the owner of the vessel or Cargo; and (c) for loss of time or income, or any indirect or consequential loss however caused, even though the same arises from or is occasioned by any act, omission, incapacity, negligence or default of Harken, its servants, agents, subcontractors or vessel. Harken makes no warranties, express or implied, as to the condition of its facilities or the suitability of the berth and the facilities for their intended purpose.

17. The customer acknowledges and agrees that Harken shall not, at any time, be considered a bailee of the vessel or Cargo.

MISCELLANEOUS

18. Where used herein, the following words will have the following meaning:

- (a) "Applicable Laws" means the laws of Canada and Canadian maritime law and all regulations promulgated thereunder and thereto.
- (b) "Cargo" means any goods or property of any description whatsoever that is on board a Tow.
- (c) "Force Majeure" means any event or cause beyond the control of Harken or a customer, whether foreseeable or unforeseeable, that is unavoidable or beyond its reasonable control, including without limitation, accidents to or breakdown of vessels, machinery or equipment, war, Act of God, action taken on the order of any State or local government, explosion, fire, incapacity of personnel, strikes, lockouts, labor disputes, perils of the sea and other waters, dangers of navigation, storms or other adverse weather conditions, or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from performing its obligations under this Agreement.
- (d) "Towing Services" means moving a Tow, assisting other vessels in the movement of a Tow, and providing assistance to a Tow and all related services.
- (e) "Towing Vessel" means the vessel owned, chartered, leased or operated by Harken or its subcontractors, used to provide the services and if more than one vessel is used it means all such vessels.
- (f) "Tow" means vessels, barges, logs and rafts, and any floating object or structure of any description whatsoever, owned, chartered, leased or operated by the Customer in which the services of Harken are being retained.

19. The law of British Columbia and Canadian Maritime Law shall apply to the interpretation and construction of these standard terms and condition and to any disputes arising out of relating to these standard terms and condition or the services provided hereunder. Any claim or dispute of whatsoever nature arising out of or in any way relating to these terms and conditions or the services provided shall be determined by the Supreme Court of British Columbia or the Federal Court of Canada, Vancouver Registry, to the exclusion of any other Court.

The terms and conditions set out herein may not be altered or amended, unless agreed to in writing and no other terms and conditions shall apply or adhere, unless expressly agreed to in writing by the parties, including without limiting the foregoing, any of customer or other contracting party's standard terms and conditions.