

SAUSE BROS., INC.

General Provisions for Assist and General Tug Service

The following terms and conditions apply to tug services furnished by **Sause Bros., Inc.** (the “**Company**”):

1. Application of Rates and General Provisions.

1.1 The rates and charges contained in the Rate Schedule for Tug Assists (the “Rate Schedule”) 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 Company, the Company may assess reasonable extra charges. The stated rates apply only to the specific services listed. Rates for all work including extra work are subject to these General Provisions.

1.2 These General Provisions apply to

(a) all Company provided towing service, both general towing and assist towing, unless the parties have entered into a separate written agreement signed by an officer of Company for the specific service;

(b) any general towing or tug service to which the Rate Schedule is applied or under a separately quoted rate;

(c) all growth or changed work whether or not described in a dispatch order or service request, and

(d) work of a salvage nature to vessels grounded or in distress, though Company reserves the right to provide tug services under different terms and conditions to be agreed, dependent upon the particulars of the specific event.

1.3 For purposes of these General Provisions:

(a) “Vessel” means ships, vessels and floating structures of all types receiving assist or towing service, whether or not operating under their own power, and when assisting any tug/barge combination, both the towing tug and the barge.

(b) “Customer” means collectively, the person or entity ordering tug services and the owner, charterer, operator and manager of the assisted or towed Vessel.

(c) “Company” means Sause Bros., Inc. and its affiliated companies, together with their officers, directors, and employees.

(d) “Tug Interests” means Company, the tugboats provided or arranged by Company to perform requested services, and their respective owners, operators, charterers, managers, underwriters, masters and crewmembers.

1.4 These General Provisions prevail over all other conflicting terms and conditions, including such terms and conditions as may be referenced in any document issued by the Customer. The terms of these General Provisions may only be modified, changed or waived by a separate written agreement signed by an officer of Company.

2. **Authority of Customer.** If any Vessel for which tug services are ordered is not owned by the person or entity ordering the tug service, it is understood and agreed that such person or Customer:

2.1 warrants its authority to bind the Vessel, and her owners and operators, to the rates, terms, and conditions contained in these General Provisions and the Rate Schedule; and

2.2 will indemnify, defend and hold Tug Interests harmless against all costs, expense, and liability of any nature whatsoever, including attorney fees incurred by Company in defending against any liability or in enforcing this provision, suffered or incurred by Tug Interests due to such person or entity not having such authority.

3. **Scheduling.** Company will use reasonable diligence to provide tug service at the time scheduled with Customer, but scheduled times for tugs are approximate and not guaranteed. Company reserves the right to perform tug service for others prior to the time scheduled with Customer. If tug service provided for others delays commencement of tug services to Customer, Company has no liability for such delay. In the event Customer’s vessel arrives prior or subsequent to the time scheduled, Company will use reasonable due diligence to provide tug service at the time of arrival, but Company will have no liability for delay in rendering tug service.

3.1 Company may subcontract all or part of a requested service without notice to Customer. Any such subcontractor will be considered an independent contractor and not an agent, servant or employee of Company. Any tug and subcontractor designated or engaged by Company to perform services will have the benefit of all terms of these General Provisions. If Company is unable to have owned or designated tugs on hand to serve Customer’s Vessel, Customer is at liberty to engage other tug providers to furnish the service, but without right to claim against Company for any difference in price.

4. **Exceptions.** Upon receipt of an order for tug service, Company will endeavor to furnish necessary 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. Company 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 Company.

5. **Warranties.** Company 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, Company makes no warranty of any kind, express or implied, and expressly disclaims any warranty of workmanlike service or performance.**

6. **Notice of Damage and Claim.** Notice of any alleged damage or injury suffered or caused by a vessel to which tug services are rendered must be given to Company not more than forty-eight (48) hours after the alleged occurrence, and if it is intended that claim be made against Company based on such alleged damage or injury, written notice of such intention must be given within (30) days after such occurrence. In addition, Company must be given a reasonable opportunity to inspect and survey damage for which claim is made prior to the commencement of any repairs. Each such notice and opportunity to inspect and survey claimed damage is a condition precedent to suit. The effect of failure to provide either notice to Company 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. Any action to recover damages from Tug Interests, or any of them, must be commenced within one year after the occurrence giving rise to the claim, failing which the claim is deemed waived. Tug Interests and Customer irrevocably waive their right to trial by jury on any claim or dispute arising in whole or part out of these General Provisions or the provision of tug services to a Vessel.

7. **Pilotage.** Company does not offer or supply pilotage services. Compliance with all pilotage and vessel manning requirements is the responsibility of the vessel assisted. If while assisting or towing a self-propelled vessel (whether or not the vessel is under power), the tug captain or other officer of the assisting tug boards, it is agreed that such tug captain or other officer becomes the servant of the vessel assisted and of her owners and operators, for all purposes and in every respect. Such captain or other officer is subject to the exclusive supervision and control of personnel of the assisted vessel. Neither Company nor the tugs furnishing services, and their owners and operators (if other than Company), will be liable for any act or omission, whether negligent or not, of such captain or other officer while on board the assisted or towed vessel.

8. **Hawsers.** Customer and the Vessel assume all risk of, and must indemnify Tug Interests from and against, any and all loss, damage or injury sustained by Customer, Tug Interests or by any other vessel, property or person that results from the parting, heaving or sudden movement of any hawser or other line, by whomsoever furnished or howsoever caused, unless the hawser or other line was furnished by Company and the loss, damage, or injury was due to the sole fault or negligence of Company.

9. **General Disclaimer.** When assist tug services are furnished to assist any Vessel in any operation, tug services are rendered at all times under the supervision and command of Customer's servants, including the master of the Vessel being assisted, docking pilots or State pilots, none of whose actions or inactions may be imputed to the Tug Interests. Assist services are provided upon the express agreement and condition that such services are performed at the risk of the Vessel and Customer; the captain and crew of any assisting tug becoming the servants of the assisted Vessel.

10. Limitation of Liability.

10.1 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 any applicable law that would reduce Company's liability to an amount less than that stated below, Tug Interests will be liable only to the extent of their negligence, which negligence may not be assumed but must be affirmatively proven, up to a maximum aggregate amount of \$250,000 for all claims, demands, causes of action, liabilities (including third party claims) and costs (including attorney fees) arising out of or in connection with a single occurrence or series of occurrences, which arise from or are related to in any tug or line handling service rendered by Tug Interests.

10.2 Customer understands and agrees that Company's rates for tug services are predicated upon the limitation of liability and indemnities afforded by these General Provisions and that this limitation of liability may not be limited, restricted or in any way affected by the amount of insurance Customer or Company carry.

10.3 Should Customer desire that Tug Interests retain liability in excess of \$250,000 they must notify Company in writing, whereupon Company may, in its discretion, quote rates for tug services predicated on a higher liability limits. Any such quote must be signed by an officer of Company and accepted by Customer in writing at least 24 hours prior to commencement of tug services to the Vessel, failing which the rates, liability limitations and indemnities otherwise provided in these General Provisions and the Rate Schedule will apply.

10.4 The furnishing of tug service for any purpose may not be construed to be a personal contract. Company, and the tug owners and operators, if other than Company, will have the benefit of all limitations of an exemptions from liability contained in the limitation of liability statutes of the United States.

11. Indemnity.

11.1 All claims, demands, causes of action, liabilities and costs (including attorney fees) exceeding in the aggregate \$250,000 that are attributable to the acts or omissions of Tug Interests or to a tug's unseaworthiness, are subject to the following indemnity:

(a) Customer agrees to indemnify, defend and hold harmless the Tug Interests from and against any and all claims, demands, causes of action (*in personam* and *in rem*), liabilities and costs (including attorney fees, penalties, fines and third-party claims of whatever nature) that are attributable to the acts or omissions, whether or not negligent, of the Tug Interests, or any of them, or to the unseaworthiness of any tug and which arise out of or in connection with any occurrence or series of occurrences related to the provision of tug services or line handling pursuant to these General Provisions to the extent that they exceed, in the aggregate, the limitation of liability amount of \$250,000 as set forth above.

(b) Without limiting the generality of the foregoing paragraph, the parties intend for this indemnity to also apply to (1) all damages, fines or third party claims which Tug Interests suffer, sustain or becomes liable for by reason of being deemed a responsible party for purposes of pollution laws such as OPA-90 and state laws from any such occurrence or series of occurrences, (2) loss, damage or liability to Customer, to the person or property (including any natural resources) of any third party, including but not limited to, federal and state governments and agencies thereof, and to landowners, shipowners and cargo arising out of or related to performance of any services pursuant to these General Provisions.

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

11.2 Customer further agrees that Company has 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 in no way releases or relieves Customer of its obligation under this indemnity clause.

11.3 The parties intend for the limitation of liability stated in Subsection 10.1, above, and the indemnity stated in Subsection 11.1, above, to also apply to claims based on allegations of gross negligence to the extent permitted by applicable law; but claims based on willful or intentional misconduct are excluded from the Subsection 10.1 limitation of liability and Subsection 11.1 indemnity.

12. No Consequential Damages. Notwithstanding anything to the contrary in these General Provisions or elsewhere, Customer understands and agrees that Company will not in any event have liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising, whether resulting from negligence or breach of contract, the rates Company charges for the tug services being predicated on Customer's agreement to same.

13. **Payment of Terms.** Invoices will be mailed promptly after rendering tug services to the person or Company, which requested the services. Payment must be made to:

Sause Bros., Inc.
3710 N. W. Front Avenue
Portland, OR 97210

Payment is due within thirty (30) days of invoice post-marked date. The Company will provide wire transfer instructions on request. Company will charge interest at 1% per month from invoice date for accounts over thirty (30) days past due. Customer must reimburse Company for its attorney fees and expenses incurred in collecting unpaid invoices.

14. **General.**

14.1 **Severability.** If a provision of these General Provisions is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

14.2 **Entire Agreement.** These General Provisions contain the entire understanding of the parties regarding the subject matter these General Provisions and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of these General Provisions.