

## **Rates provided upon request.**

### 11. LIMITATIONS OF LIABILITY:

a. The furnishing of any service or anything done in connection therewith shall not be construed to be or give rise to a personal contract, and it is understood that Reinauer Transportation Companies, LLC ("Reinauer") and its Boston Towing & Transportation Company division (collectively with its affiliates, any vessels it or its affiliates may furnish, and its and its affiliates' respective owners, charterers, operators, managers, employees and agents, the "Tug Persons"), shall have the benefit of all exemptions from, and limitations of, liability to which an owner of a vessel is entitled, under the Limitation of Liability Statutes of the United States. REINAUER WARRANTS THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIMS ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF WORKMANLIKE SERVICE.

b. Unless entitled to immunity or to defenses to, exemptions from and limitations of liability provided under the Contract or under any applicable law, rule or regulation that would reduce its liability to an amount less than that hereinafter set forth, the Tug Persons shall be liable only to the extent of their negligence, which negligence shall not be assumed but shall be affirmatively proven, for claims, demands, causes of action, liabilities and costs (including third party claims) arising out of or in connection with any occurrence or series of occurrences related to the provision of tug services pursuant to the Contract up to a maximum aggregate amount of two hundred thousand dollars (U. S. \$200,000). Owners understand and agree that tug services provided under the Contract are rendered at all times under the supervision and command of Owners' servants, (including the Master of the vessel being assisted and docking pilots), or of State pilots, none of whose actions or inactions may be imputed to any of the Tug Persons. Owners further understand and agree that the rates charged by or on behalf of Boston Tow for tug services are predicated upon the limitations of liability and the indemnities set forth in the Contract. Should Owners desire that the Tug Persons retain liability in excess of \$200,000 they must notify Boston Tow in writing, whereupon Boston Tow will quote rates for tug services hereunder predicated on higher liability limits. Any such quote must be accepted by Owners in writing at least twenty-four (24) hours prior to commencement of tug services to the vessel being assisted, failing which the rates and liability limitations otherwise provided herein shall prevail. Nothing herein shall be construed to waive or limit the right of any of the Tug Persons to assert any defenses to liability available to them or to avail themselves of any rights of limitation or exemption from liability under any applicable law, rule, or regulation.

c. Owners and any vessel assisted hereunder assume all risk of, and shall indemnify the Tug Persons from and against, any and all loss or damage sustained by them 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.

d. Notwithstanding anything to the contrary in the Contract or elsewhere, Owners understand and agree that the rates charged hereunder are also on agreement that the Tug Persons shall have no liability for any consequential, punitive, exemplary or special damages of any kind (including lost profits), howsoever arising.

e. Owners agree to indemnify, defend and hold harmless the Tug Persons from and against any and all claims, demands, causes of action, liabilities and costs (including attorneys' 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 Persons, 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 pursuant to this Contract to the extent that they exceed, in the aggregate, the applicable amounts set forth in subsection 11(b) above. The parties intend for this indemnity to apply in all instances including, without limitation, allision, collision, personal injury, fire, explosion, grounding, oil spills and third party claims. Owners warrant that they possess sufficient and adequate insurance on the vessels assisted pursuant to the Contract, including hull and machinery, P&I, cargo and pollution coverage to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the tug services provided hereunder, with all rights of subrogation for losses under said insurances waived as to the Tug Persons and with the Tug Persons entitled to all benefits under said insurances of a named assured or joint member, as applicable.

f. Nothing herein shall preclude any of the Tug Persons from recovering from any responsible party for any damages sustained by any tugs providing service hereunder.

12. **FORCE MAJEURE:** Boston Tow agrees to supply tug power promptly, consistent with other commitments, upon receipt of orders, but the Tug Persons will not be responsible for delays, extra expenses or damages caused by an Act of God, restraint of Princes and Rulers, the direct or indirect acts of the public enemies of the United States, strikes, accidents, fire, riots, weather, war or war-like operations, whether declared or undeclared, involving the United States, or the existence of a national emergency proclaimed by the President of the United States, or the requisitioning of any tugs, or any other causes of a similar or dissimilar nature beyond its control.

13. **PILOTAGE:** When the captain or other officer of any tug provided for, or engaged in, the service of furnishing tug power for, or assistance to, a vessel which makes use of or has available her own propelling power goes on board said vessel, it is understood and agreed that said tugboat captain or other officer or licensed pilot becomes the servant of the owners of said vessel in respect to the giving of orders to any of the tugs provided for, or engaged in, said service and in respect to the handling of said vessel, and neither those providing the tug or tugs nor the tug or tugs, their owners, agents or charterers shall be under any liability for damages resulting there from, and, further, that said tug or tugs and/or their owners, agents and/or charterers shall be under no liability for executing the orders of said tug captain or other officer or licensed pilot.

14. **GENERAL:** With respect to vessels that are not owned by the person or company ordering the tugboat service, it is understood and agreed that such person or company warrants that it has authority to bind the vessel owner to all the provisions of the preceding paragraphs, and agrees to indemnify and hold the Tug Persons harmless, and also those furnishing the tugs and/or pilot, the tugs, their owners, charterers, operators, managers, employees and agents, from all damages and expenses that may be sustained or incurred in the event and in consequence of such person or company not having such authority. If any provision of the Contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect. The Contract shall be construed, interpreted and enforced in accordance with the maritime law of the United States of America and by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of law. The sole and exclusive jurisdiction and venue for any litigation arising from or relating to the Contract shall be an appropriate federal or state court located in Suffolk County, Massachusetts.