
**U.S. UNITED BARGE LINE, LLC
STANDARD TERMS AND CONDITIONS FOR
SPOT HIRE AND TON-MILE TOWING**

The following terms and conditions are applicable to towing or related services provided by U.S. United Barge Line, LLC ("UBL") pursuant to either a verbal agreement, e-mail or facsimile confirmation, booking note, or a detailed charter or towing agreement lacking comparable terms and lacking an agreement not to amend said terms without a further written agreement. In the absence of any such specific agreement, the following conditions shall apply.

1. **Term:** These standard terms and conditions become effective October 1st, 2010, and shall remain in effect until supplemented or replaced by a future revision issued by UBL. UBL may publish these terms and conditions either by attachment to a rate sheet, reference in a booking note or other form of written confirmation for work or by publication at a designated website.

2. **Rates:** UBL will from time to time issue a schedule of standard rates for various services, and this schedule may be supplemented, expire under its own terms, be revised or rescinded at UBL's discretion. UBL reserves the right to quote specific rates to an individual customer for a particular service, with all such rate quotations being provided subject to these terms and conditions. In no event shall UBL's publication of standard rates extend to towage of individual barges which exceed 200 feet in length or 35 feet in width. Rate variances may also be required for tows presenting restrictions to visibility, or any tows where cargo or other materials are loaded/stowed at or above eight feet from the main deck of the barge or vessel being transported, or for cargo that is stowed with overhangs extending beyond the outside perimeter of the vessel to be transported. In the event a customer fails to designate in advance such variances in the length or width of their vessel, and/or such variances in the stowage height or width of any deck cargo, then UBL reserves the right to either decline the towage, provide a revised rate quote, or charge additional fees and expenses related to its accommodation of the variance.

3. **Billing:** UBL may invoice for the total amount of all towage requested once the designated barge/vessel has been delivered to its point of destination, and all invoices shall be due on net 30 day terms with interest accruing at 1.5% per month on any balances past due more than 30 days. UBL shall be entitled to recover attorney's fees, litigation costs and reasonable expenses incurred for collection of past due invoices. In the event that additional towage from that which was invoiced is performed, or if the designated vessel is outside of the length, width, or loading characteristics applicable for the rates quoted, then UBL shall have the right to issue a supplemental invoice for the additional charges incurred. Any dispute over the amount or computation of an UBL invoice must be provided in writing within 30 days of receipt of the invoice, or

the dispute will be deemed waived. Any undisputed portion of an invoice must be tendered at the time of said notice, and if a customer fails to pay a portion of an invoice which is later determined to have been undisputed, then UBL shall be entitled to interest, attorney's fees and collection costs on the undisputed portion.

4. **Special Charges:** Unless set out specifically to the contrary in a separate written agreement, UBL's published or quoted rates shall include only the cost of transportation between the agreed point of origin and point of delivery, and for the services of a single towboat and its crew. UBL's rates do not include, and separate charges shall be incurred for any required assist tugs (unless resulting from mechanical breakdown or failure of UBL's vessel), port charges, or pilotage fees, ballasting, pumping, salvage or repair charges related to a customer's vessel, demurrage charges for holding up beyond allowed limits at the point of origin, or point of destination, or for diverting or holding up en route due to amended instructions from a customer or problems experienced with a vessel designated for towage.

5. **Tracking, Reporting and Contact Personnel:** If a customer desires to receive tracking information or other similar reports, it must designate same at the time the order for the towing services is placed, and provide in writing to UBL, the designated facsimile number or e-mail address for receipt of same. Customer must also designate a contact person and 24-hour telephone access information for an individual with authority to provide handling instructions should a problem develop with the vessel tendered for transport. Unless a customer is provided written instruction from UBL to the contrary, or an acknowledged emergency exists, customers are not to attempt to contact or communicate with UBL's vessel captains or pilots during the course of a voyage, and are not to attempt to provide any direct instructions to the vessel's crews. When tracking is requested, pickup, drop off and daily positions will be provided to the customer once daily, at or before 0700 via facsimile, e-mail or by telephone to the designated contact individual.

6. **Special Cargoes:** Absent an express written agreement to the contrary, and subject to separate rate quotations, UBL, will not accept for transport any vessel containing the following cargoes: radioactive materials, liquid or gas chlorine, liquefied petroleum gas, biological or hazardous waste materials, ammunitions or explosive devices, and/or other similar or the like cargoes.

7. **Taxes:** UBL shall only be responsible for taxes which are directly related to the operation of its towing vessels. All other taxes, fees and charges shall be the sole responsibility of the customer, including any sales and use tax due of the barge or its cargo, customs charges, tariffs or import fees applicable to the barge or its cargo, or any other expenses, charges or fees which are not directly related to the operation of UBL's towing vessels.

8. **Cargo Clearance and Homeland Security Compliance:** Customer will be responsible for preparing all manifest, cargo documentation, import documents or

any other materials required by the Department of Homeland Security, the United States Coast Guard, or any other state or federal agency in order to transport customer's vessel or its cargo, or for entrance into any point of origin designated by the customer. Customer will likewise be solely responsible for accurate descriptions, documentation and advanced compliance with any such requirements, and any delays, penalties, fines or costs incurred by UBL, as a result of an alleged or actual deficiency shall be solely for the account of the customer. Customer shall likewise ensure that any representatives, port captains, surveyors, super cargoes, or vendors which are acting at the customer's request or which are acting by or on behalf of the customer shall have proper identification and, where required, TWIC identification.

9. **Standby and Demurrage:** Barges or other vessels designated for towage shall be available for delivery to UBL's vessel at the time and location specified in the customer's order confirmation, and customer shall have arranged in advance the necessary fleet and shift boat services to place the barge/vessel in UBL's tow upon its arrival at the point of origin. If the barge/vessel is not available within two hours for delivery to UBL's vessel in respect of the time and location specified in the customer's order confirmation, Customer may request that UBL standby at the rate of \$250.00 per hour. After 6 hours of standby, UBL, at its election, may depart from the point of origin and cancel towage services with accrued demurrage still due and owing to UBL.

At the point of destination, Customer shall make advance arrangements for fleet/shift tugs if required for placement of the barge/vessel. Customer shall be afforded two hours of free standby time to accept delivery of its barge/vessel with time in excess of two hours charged at the demurrage rate of \$250.00 per hour. After 6 hours of standby at the point of destination, UBL reserves the right in its sole discretion to make constructive delivery at whatever berth is convenient, either at or in the vicinity of the point of destination, or any other fleet, terminal, dock or location available to UBL on its return route, at or along the way of any subsequent voyage, or at the point of origin. All charges incurred in connection with the said deviation, towage or delivery shall be for the sole account of the customer. In the event of constructive delivery under this provision, customer shall protect, defend, indemnify, insure and waive subrogation for UBL and against any loss, liability or expense incurred by customer, or its vessel or its cargo as a result of said actions, regardless of the sole, partial or concurrent negligence of UBL, its vessel or its crews.

After the barge/vessel is delivered to UBL's vessel at the point of origin and before the barge/vessel is dropped at the point of destination, all lock delays experienced by UBL's vessel shall be charged at the rate of \$20.00 per hour per barge/vessel with the first six hours for any such delay exempt from this charge.

10. **Condition of Tendered Vessels:** Customer warrants that any vessel tendered for towage shall be tight, staunch, strong, and seaworthy, and in all respects reasonably fit for the intended voyage and ordinary physical stress incurred in the process of fleeting, shifting, making up to tow, maneuvering through locks, steerage,

and reasonably anticipated inclement weather. Customer shall ensure that the vessels are properly documented, and licensed for their trade, cargo carriage, and use. The foregoing notwithstanding, UBL acceptance of any vessel for towage shall not be deemed a bailment, and any claim of damage which is permitted under these terms shall be solely based on the proof of fault or neglect on behalf of UBL, its vessels or crew. No single skin barges (sides or bottoms) will be tendered or accepted for towage, and UBL reserves the right to reject any barge which is deemed to be unseaworthy based on a customary visual inspection of same by UBL's crew.

11. **Cargo:** Customer acknowledges that UBL is providing only the transport of vessels between the designated point of origin and point of destination. Neither customer, its underwriters, assigns or consignee of any cargo transported in said vessels, shall have any claim against UBL, its vessels or crew, for cargo shortfall, variance in quality, composition, type or condition of cargo, contamination, improper loading, improper designation or description of cargo, or any other type or form of claimed damage excepting only damage claims which are directly and solely related to physical damage of the barge or vessel being towed and with said physical damage relating to an incident for which UBL is liable under these terms and conditions. The foregoing waiver notwithstanding, UBL shall always have the benefit of any package limitations designated in a contract of carriage, slot, time or subcharter agreement, or via terms of a bill of lading and/or available at law.

12. **Liquid Cargoes:** Unless a specific written agreement is reached to the contrary, UBL will not provide licensed tankermen as part of the crew complement on any towing vessel provided. Accordingly, customer is solely responsible for valve and manifold settings, hatch closures, and overall preparation of the vessel tendered for towage, such that the cargo will be safely contained while en route. Customer will remain solely responsible for coordinating cleanup or product containment, removal or remediation in the event of cargo loss occurring during the voyage, regardless of cause, reserving the right of the customer to recover expenditures which are related solely to physical damage to the vessel being transported by UBL and which results from UBL's negligence or the negligence or fault of UBL's vessels or crew and as permitted under these terms and conditions. Provided always, however, that the customer shall be primarily responsible for coordinating with public officials, and designating emergency response efforts for the protection of the general public in the event of a liquid or gas release of cargo during the course of a voyage.

13. **Safe Berth Designation:** Customer shall always designate safe berths at points of origin and delivery. UBL shall not have any liability for, and customer shall protect, defend, insure, waive subrogation, and indemnify UBL against any liability, loss or claim of subrogation which is related to events occurring prior to the commencement of towage, while barge/vessel is still secured at the point of origin, or for any loss or damage which occurs after actual or constructive delivery at the point of destination, regardless of whether there is a claim alleging the full, joint or contributory fault of UBL, its vessel or crew. UBL and the customer specifically agree that the indemnity and

insurance obligations undertaken pursuant to this paragraph will be deemed to arise from events that occur outside of the contract of towage, and further that the insuring obligation stated herein is separate and distinct from the indemnity obligation.

14. **Crew Size:** All UBL line vessels will have a minimum crew consisting of two licensed wheelmen, one of which will be qualified to act as master of the vessel, and two deckhands, at all times that the vessel is underway.

15. **Insurance and Indemnity:** In connection with all towage undertaken pursuant to these terms and conditions, and for any vessels provided by UBL, UBL will maintain Protection and Indemnity insurance covering tower's liability on SP-23 or equivalent terms, and pollution coverage on terms equivalent to that provided by WQIS, with minimum limits of \$100,000,000.00 in any combination of primary and excess coverage, together with hull insurance for the agreed value of its vessels, all for the purpose of insuring UBL's liabilities which arise from its operations. Customer shall maintain hull insurance at agreed values on all barges/vessels tendered for transport under these terms and conditions, and shall cause said underwriters to waive subrogation against UBL for any hull damage claims up to \$50,000.00, or for the first \$50,000.00 of any hull damage claim which exceeds this figure. Customer shall maintain cargo loss insurance at the fair market value of the cargo, and with full waiver of subrogation in favor of UBL, together with pollution coverage under equivalent terms as provided by WQIS, with minimum limits of \$5,000,000.00 on liquid cargoes and minimum limits of \$1,000,000.00 on any dry cargo. UBL, its vessels and crew, shall be named as additional insureds with a full waiver of subrogation on customer's pollution policies.

Customer shall protect, defend, indemnify, insure, hold harmless and waive subrogation against UBL, its vessels and crew, for any claim submitted against UBL and for which written notice of said claim is not provided within 48 hours of either actual or constructive delivery at the point of destination, and/or for any claim in which an opportunity for joint survey was not provided in advance of repair, disposal or remediation of the damaged property. Customer and UBL specifically agree that this indemnity obligation will be deemed to have arisen from events which occur after the completion of any towing services, and that the obligation to insure and waive subrogation shall be separate from the indemnity obligation.

In the event that Customer designates any representatives, surveyor, inspector, super cargo, or other third party to travel with the vessel being towed, or to board any UBL vessel or tow during the course of services provided by UBL, then customer further agrees to protect, defend, and indemnify UBL, its vessel and crew against any claim of injury, death or other liabilities arising from the presence of said individual aboard UBL's vessels or tow. As a separate obligation, customer agrees to name UBL as alternate employer and/or waive subrogation against UBL under the employer's liability policy pertaining to said employee, or to cause UBL to be protected as an additional insured under the customer's CGL policy with waiver of subrogation and waiver of the non-

owned water craft exclusion, and with coverage for contractually assumed liabilities, or the equivalent of coverage under a P&I policy in place for the vessel tendered by customer for towage.

16. **Both to Blame Collision:** If any UBL vessel working under the Standard Terms and Conditions of this agreement comes into collision with another vessel as a result of negligence of the other vessel and any act, neglect or default of UBL or the master or crew of UBL's vessel, customer agrees that UBL shall only be responsible for its own pro rata proportion of fault and that any other recovery due to customer shall be made from the offending vessel based upon its proportion of fault, and UBL shall not be held jointly and severally liable with the offending vessel. UBL shall be entitled to the same remedies for damages resulting from joint fault in connection with other contractors, platforms and/or terminal operations.

17. **Force Majeure:** The parties shall be excused for any accepted occurrence of force majeure, including regional or national shortage of supplies which are beyond the anticipation of the parties, fog, ice, low water, the threat of landfall of any tropical wave, tropical depression, tropical storm, hurricane, or as a result of government closure of a navigable waterway due to mechanical failure of locks, or other government ordered closure of a navigable waterway for reasons which are not related to UBL's actions or inactions. In the event of government closure of a navigable waterway that exceeds or is reasonably expected to exceed six (6) hours, the customer shall have the option of either paying demurrage at the rate of \$250.00 per hour or accepting constructive delivery of its barge or vessel at a reasonable alternative location available under the circumstances.

18. **Venue and Applicable Law:** In the event of any dispute between UBL and customer, then both parties agree to submit to the jurisdiction and venue of the United States District Court for the Western District of Kentucky, and for submission of the claim for bench trial without jury, and the application of the General Maritime Law. To the extent any state law may be applicable, the parties agree to the application of the laws of Kentucky.

The foregoing terms and conditions shall remain in full force and effect until rescinded or modified with the subsequent qualification by UBL.