

McALLISTER TOWING OF BALTIMORE, INC.

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Schedule of Rates, Terms and Conditions PINEY POINT, MARYLAND

Effective: June 15, 2005

1. **RATE**

The rate for tug assistance to vessels while docking or undocking at Piney Point, MD in clear water is \$6,706.00 per tug.

2. **TRACTOR TUG**

If a tractor tug is specifically requested or required, the rate applicable to that tug shall be 150% of the above schedule of rates.

3. **BUNKER FUEL SURCHARGE**

The rate in paragraph (1) above is subject to a bunker fuel surcharge at the rate of \$17.00 for each 1¢ per gallon of cost increase in excess of \$0.385 per gallon base price.

4. **ORDERING TUG SERVICE**

All orders must be received not less than 16 hours in advance of the time specified for the service.

5. **DEMURRAGE**

Three hours of free time will be allowed at Piney Point, free time to commence from the time specified for the tug or tugs to report. Following expiration of free time, demurrage at the rate of \$312.00 per hour per tug will be charged until the tug or tugs are dismissed.

6. **CANCELLATIONS**

If orders for tug services are cancelled within 10 hours of the time specified for the service, a cancellation charge of 67% of the applicable rate will apply.

7. **ICE CONDITIONS**

For tug services running through or assisting through ice, in addition to the above rates, there shall be a charge of \$312.00 net per hour per tug, including running time to and from vessel or other floating equipment.

8. **SERVICES NOT OTHERWISE COVERED**

Rates for any service not specifically covered by this schedule will be furnished upon request.

9. **VESSELS AGROUND OR IN DISTRESS**

The terms and conditions of this contract do not apply to services rendered in connection with salvage, nor to vessels aground or in distress. These services shall be governed solely by the terms and conditions of a BIMCO form contract utilized by McAllister.

10. **FORCE MAJEURE**

McAllister, the tugs, their respective owners, affiliates, operators, charterers, managers, underwriters, masters, and crews (collectively, the "Tug Interests"), shall not be responsible or liable for any expense, loss, damage or claim whatsoever caused by or resulting from delays, failures, acts or omissions hereunder in the performance of services due to strikes, lockouts, labor disturbances, riots, fire, earthquakes, storm, lightning, epidemics, war, disorders, acts of God, acts of the public enemy, port congestion, mechanical breakdowns, shortage of tugs, priorities in service, or any other cause whatever beyond their control.

11. **USE OF OTHER TUGS**

If at any time McAllister tugs are not conveniently available for the required services, McAllister will endeavor to designate or engage other tugs to provide service, but McAllister shall not be liable for damages in case it is not able, at any time, for any reason, to furnish such service. Any tug designated or engaged by McAllister to perform services under this contract, and its owners, master and crews shall, while performing such service, have the benefit of all contract provisions herein. However, if for any reason, at any time McAllister is unable to have tugs owned or specified by us on hand to serve Owner's vessels, Owner is at liberty to engage any other tugs to serve it at such time but without the right to charge McAllister any difference in price. In agreeing to endeavor to provide this service, it is understood and agreed that McAllister does not either expressly or impliedly warrant the seaworthiness, power, equipment, or competency of the crew of the tug or tugs supplied or furnished by McAllister in the performance of this contract.

READJUSTMENT OF RATES: Owners agree that during the term of this contract, McAllister Towing of Baltimore, Inc. may, thirty (30) days after date of notice to owners, adjust rates, terms and conditions to reflect changed costs of operations, working hours, conditions or in consequence of any law, regulation or decision.

PILOTAGE: McAllister does not furnish pilots or pilotage to vessels making use of or having available their own propelling power, so that whenever any licensed pilot, or a captain of any tug which is furnished to or is engaged in the service of assisting a vessel making use of or having available her own propelling power, participates in directing the navigation of such vessel, or in directing the assisting tugs, from on board such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes and in every respect, his services while so engaged being the work of the vessel assisted, her owner and operator, and being subject to the exclusive supervision and control of the vessel's personnel. Any such service performed by any such person is beyond the scope of his employment, if any, for McAllister and Tug Interests shall not be liable for any act or omission of any such person. For the purposes of this paragraph, vessels making use of their own propelling power shall be deemed to include tug barge units and vessels of any description having, at the time the service is rendered, another tug in assistance. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of this company.

LIMITATION OF LIABILITY:

a) The furnishing of any service or anything done in connection therewith, shall not be construed to be or to give rise to a personal contract, and it is understood that Tug Interests, 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. **MCALLISTER WARRANTS THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIMS ALL OTHER WARRANTIES EXPRESSED OR IMPLIED.**

b) Unless entitled to immunity or to defenses to, exemptions from and limitations of liability provided under this contract or under any applicable law, rule or regulation that would reduce their liability to an amount less than that hereinafter set forth, Tug Interests 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 this contract up to a maximum aggregate amount of two hundred thousand dollars (U.S. \$200,000.00). Owner understands and agrees that tug services provided hereunder 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 the Tug Interests.

Owner further understands and agrees that the rates charged by or on behalf of McAllister for tug services are predicated upon the limitations of liability and the indemnities set forth in this Contract. Should Owner desire that Tug Interests retain liability in excess of \$200,000.00 it should notify McAllister in writing, whereupon McAllister will quote rates for tug services hereunder predicated on higher liability limits. Any such quote must be accepted by Owner 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 limitation otherwise provided herein shall prevail. Nothing herein shall be construed to waive or limit the right of Tug Interests 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) Notwithstanding anything to the contrary in this contract or elsewhere, Owner understands and agrees that the rates charged hereunder are also predicated on Owner's agreement that the Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.

d) Owner agrees to indemnify, defend and hold harmless the Tug Interests from and against any and all claims, demands, causes of action, liabilities and costs (including attorneys' fees and third party claims of whatever nature) in excess of the applicable amounts set forth in (b) above 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 pursuant to this contract. The parties intend for this indemnity to apply in all instances including, without limitation, allision, collision and third party claims. Owner warrants that it possesses sufficient and adequate insurance on the vessels assisted pursuant to this 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 Tug Interests and with Tug Interests entitled to all benefits under said insurances of an additional assured or co-assured, as applicable.

e) Nothing herein shall preclude McAllister from recovering from any responsible party for any damages sustained by any tugs providing service hereunder.

SEVERABILITY: If any provision of this contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect.

MISCELLANEOUS: With respect to vessels that are not owned by the person or company ordering the tug 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 this contract, and agrees to indemnify and hold Tug Interests harmless 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.

EFFECTIVE DATE: This schedule of rates, terms and conditions supersede all previously published schedules and are effective from June 15, 2005.