

# TOWCON -v- TOWCON 2008

The following table highlights the differences between TOWCON and the new edition of the form, codenamed TOWCON 2008 and provides a set of explanatory notes to each clause.

**KEY: Black text = original wording Red text = new wording Green text = original wording moved to a new clause**

TOWCON 2008 Part II	
1. Definitions	Comments
<p> <span style="color: red;">“Tugowner” means the party stated in Box 2.</span>  <span style="color: red;">“Hirer” means the party stated in Box 3.</span>  <span style="color: red;">“Tug” means the vessel or vessels stated in Box 13.</span>  <span style="color: red;">“Tow” means one or more vessels or objects of whatsoever nature including anything carried thereon as described in Boxes 4 to 12.</span>  <span style="color: red;">“Voyage” means the voyage described in Boxes 24 and 25.</span>  <span style="color: red;">“Restricted Waters” for the purpose of this Contract means the waterways described in Box 23.</span> </p>	<p>The previous edition of TOWCON contained only a definition of the “Tow”, which formed part of Clause 1 (The Tow).</p> <p>To bring greater clarity and readability to the form and to be consistent with other BIMCO documents, the new edition contains a list of six definitions covering terms that are used throughout the agreement.</p> <p>It should be noted that the word “craft” has been removed from the definition of “Tow”. This has been done because anything that is not a vessel will be encompassed by the word “objects” in the definition.</p>
2. Basis of the Agreement	Comments
<p><span style="color: red;">The Tugowner agrees to render the service(s) to the Tow as set out in Box 22.</span></p>	<p>This new Clause is based on the previous Clause 1 (The Tow) of TOWCON and establishes the basis of the agreement for the tugowner to provide to the hirers the agreed services set out in Part I of the form.</p>
3. Price and Conditions of Payment	Comments
<p>(a) The Hirer shall pay the Tugowner the sum set out in Box 33 (hereinafter called “the Lump Sum”).</p> <p>(b) The Lump Sum shall be payable as set out in Boxes 33 and 34.</p> <p>(c) The Lump Sum and all other sums payable to the Tugowner under this Agreement shall be payable without any discount, deduction, set-off, lien, claim or counter-claim, each instalment of the Lump Sum shall be fully and irrevocably earned at the moment it is due as set out in Box 33, Tug and/or Tow <span style="color: red;">or part of Tow</span> lost or not lost, and all other sums shall be fully and</p>	<p>This Clause has been revised from the previous version so that it now deals exclusively with price and payments. The provisions relating to bunker price adjustment, delay payments and free time now form new free-standing clauses. This has been done to make the agreement easier to read.</p> <p>Sub-clauses (a) and (b) provide for the amount of the agreed lump sum and the method by which it is to be paid by the hirer to the tugowner.</p>

<p>irrevocably earned on a daily basis as per Box 30.</p> <p>(d) All payments by the Hirer shall be made in the currency and to the bank account specified in Box 34.</p>	<p>Sub-clause (c) establishes when the lump sum is deemed earned. New to this edition are the words “or part of Tow”. These words have been added to cover multiple tows where a partial loss of one or more of the tows occurs but at least one part of the tow remains. To avoid disputes as to whether the entire lump sum is payable in the event of a loss of part of the tow the additional wording makes it clear that in such circumstances the full lump sum is payable.</p> <p>At the end of Sub-clause (c) a reference to Box 30 (Delay Payments) has been added. This has been done to clarify that if the tow is lost between instalments then the rate earned up until the loss of the tow will be pro rata the lump sum instalment and the rate earned after the loss (for repositioning) will be at the delay payment rate.</p> <p>Sub-clause (d) provides for the currency in which payments are to be made and to which bank the hirer should make payments.</p>
<p><b>4. Bunker Price Adjustment</b></p>	<p>Comments</p>
<p>(a) This Agreement is concluded on the basis of the price per metric tonne of bunker oil stated in Box 37.</p> <p>(b) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be higher, the difference shall be paid by the Hirer to the Tugowners.</p> <p>(c) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be lower, the difference shall be paid by the Tugowner to the Hirer.</p> <p>(d) The log book of the Tug and copies of the bunker supplier invoices shall be conclusive evidence of the quantity of bunkers consumed and the prices actually paid.</p>	<p>To help improve the structure and readability of the contract the bunker price adjustment provision has been re-written and spilt away from the previous Sub-clause (e) of Clause 2 (Price and Conditions of Payment) to form a new clause.</p> <p>The purpose of Clause 4 is to protect both parties from fluctuations in the price of bunkers during the course of the voyage.</p> <p>Sub-clause (a) establishes the bunker price for the purposes of price adjustment. This figure will normally be the price of the tug’s bunkers at the time of fixing the contract. It should be noted that the revised Clause deals with <u>actual</u> prices paid and not average prices as in the previous edition.</p> <p>Sub-clauses (b) and (c) provide the adjustment mechanism to pay compensation to the hirer if the actual price paid for bunkers during the voyage is higher or to the tugowner, if the price paid is lower, than the price stated in Sub-clause (a).</p> <p>Sub-clause (d) requires that both the log book and bunker supplier invoices are required as conclusive evidence of the quantity of bunkers</p>

	<p>consumed and the actual prices paid.</p> <p>Finally, it should be noted that in the previous edition reference was made to “voyage” for the purposes of this clause, yet the term was undefined in the contract. In the new edition “voyage” has been defined in Clause 1 to clarify where the voyage begins and ends.</p>
<p><b>5. Extension to Cancelling Date</b></p>	<p>Comments</p>
<p>(a) Should the Tug not be ready to commence the towage at the latest at midnight on the date indicated in Box 38, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner.</p> <p>(b) Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within forty-eight (48) hours after the receipt of the Tugowners notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.</p>	<p>This Clause is taken from Sub-clause 16(e) (Cancellation and Withdrawal) of TOWCON. In revising the contract it was felt that to follow the chronological order of events it was better to have the cancellation and so-called “interpellation” provision as a free-standing clause earlier in the contract. This approach is consistent with other BIMCO forms.</p> <p>The purpose of Sub-clause (a) is to establish that the hirer can cancel the contract if the tug does not arrive by midnight on the agreed cancelling date. Unlike the previous edition, TOWCON 2008 requires the parties to agree a cancelling date – without which the contract is left open-ended leading to potential dispute should a tug be seriously delayed. It is only where the tug has been delayed due to the wilful default of the tugowner that the hirer can claim damages – otherwise no breach of contract has occurred.</p> <p>Sub-clause (b) is the so-called “interpellation” provision. This is a mechanism that benefits both parties by requiring early notification of any possible delays to the tug's arrival at the place of departure beyond the cancellation date. For the tugowner the mechanism avoids having to send the tug on a lengthy passage to the place of departure not knowing if the hirer will cancel the contract on arrival. For the hirer, early notification of a delay to the tug until after the cancellation date may provide sufficient time for a replacement tug to be found or for a new cancellation date to be agreed.</p> <p>It should be noted that the previous reference requiring the hirer to be notified by “telex, cable or otherwise in writing” has been removed as a new “Notices” clause has been added to the contract detailing how notices should be sent (see Clause 35).</p>

6. FreeTime/Delay Payments	Comments
<p>(a) The Free Time specified in Boxes 26 and 27 shall be allowed for the connecting and disconnecting of the Tow, transiting Canals and Restricted Waters and all other purposes relating thereto. Free Time shall commence when the Tug arrives at the pilot station at the place of departure or the Tug and Tow arrives at the pilot station at the place of destination or anchors or arrives at the usual waiting area off such places or, in the case of Canals and Restricted Waters, as from arrival at the pilot station or customary waiting place or anchorage, whichever is the earlier, and until dropping last outbound pilot when leaving for the open sea. Free Time for transiting Canals and Restricted Waters shall be as stated in Box 28. Should the Free Time be exceeded, Delay Payments at the rate specified in Box 30 shall be payable until the Tug and Tow sail from the place of departure or the Tug is free to leave the place of destination.</p> <p>(b) Any Delay Payment due under this Agreement shall be paid to the Tugowner as and when earned on presentation of the invoice.</p>	<p>Clause 6 has been created from Sub-clauses (f) and (g) of the previous Clause 2 (Price and Conditions of Payment) of TOWCON.</p> <p>A new feature to this Clause is the addition of a provision relating to transiting canals and restricted waterways (for definition of “restricted waters” see Clause 1). It is intended that the parties should agree from the outset what constitutes “restricted waterways” for the purposes of the contract. Such waterways may include transit through areas such as the Dardanelles and the Bosphorus.</p> <p>A new Box in Part I has been added so that the parties can state the free time allowed for canal and restricted waterways transit.</p> <p>Transit time through canals and restricted waterways begins when the tug and tow arrives at the customary anchorage or waiting place and ends when the last outbound pilot is dropped.</p> <p>The rest of the provision is otherwise unchanged from the original TOWCON.</p>
7. Canal and Restricted Waters Transit	Comments
<p>(a) If the contemplated route of the Tow, according to Box 23 will involve a transit of a Canal or Restricted Waters, the Hirer is granted free time for any such transit, and such free time shall count against the number of hours stipulated in Box 28. If the Tow is delayed beyond the free time stipulated therein, unless the Tugowner is responsible for such delay, the Hirer shall pay for such extra transit time at the Delay Payments rate stipulated in Box 30 and shall, in addition, pay for all other documented extra expenses thereby incurred. Canal or Restricted Waters transit time is defined as from arrival at pilot station or customary waiting place or anchorage, whichever is the earlier, and until dropping last outbound pilot when leaving for the open sea.</p> <p>(b) Should the transit of a Canal or Restricted Waters be made impossible for reasons beyond the Tugowner's control, the Hirer shall pay for all extra time by which the voyage is thereby prolonged at the Delay Payments rate stated in Box 30.</p>	<p>This is a new Clause that is based on the Canal Transit Clause found in the PROJECTCON form (a BIMCO standard contract designed for tug and barge combinations).</p> <p>Sub-clause (a) echoes the provision of Clause 6 (Free Time/Delay Payments) in respect of free time counting for canal and restricted waterways transit counting being as per whatever the parties agree and state in Box 28. If such free time is exceeded due to delay then the extra time incurred is payable by the hirer at the delay payment rate. If the tugowner is responsible for the delay to the tow then the delay payment is not payable for that part of the delay.</p> <p>Sub-clause (b) contemplates the situation where the intended canal or waterway route is closed to the tow through no fault of the tugowner. In such circumstances the tow will have to re-route to reach the destination and the hirer is obliged to pay for the extra time incurred at the delay payment rate.</p>

8. Ice Clause for Tug and Tow	Comments
<p>(a) The Tug shall not be obliged to force ice, but subject to the Tugowner's prior approval having regard to its size, construction and class, it may follow ice-breakers.</p> <p>(b) The Tug shall not be required to enter or remain in any ice bound port or area, nor any port or area where lights, lightships, markers or buoys have been, or are about to be withdrawn by reason of ice. Nor where on account of ice there is, in the Tugmaster's sole discretion, a risk that, in the ordinary course of events, the Tug will not be able to safely enter the place of departure to connect to the Tow, or depart from the place of departure with the Tow. In addition, if, on account of ice, the Tugmaster in his sole discretion considers it unsafe to proceed to, or to enter, the place of destination for fear of the Tug and/or Tow being frozen in and/or damaged, he shall be at liberty to proceed to the nearest ice free port or safe place and there await the Hirer's instructions.</p> <p>(c) Any delay, deviation or additional expenses arising out of or in connection with the performance of this Agreement caused by or resulting from ice shall be for the Hirer's account and any delay payments shall be paid at the rate stated in Box 30.</p> <p>(d) Any additional insurance premiums and/or calls required by the Tug's insurers due to the Tug entering or remaining in any ice bound port or area shall be for the Hirer's account.</p>	<p>The Ice Clause has been newly introduced into the 2008 edition of TOWCON. It is based on BIMCO's standard Ice Clause for Voyage Charter Parties but has been amended for use with tug operations.</p> <p>Sub-clause (a) makes it clear that the tug will not under any circumstances be obliged to force ice. However, the tug may reasonably be expected to follow ice breakers where other vessels of a similar size, class and construction are doing so - always subject to the tugowner's approval.</p> <p>Sub-clause (b) provides that the tug is not required to enter any icebound port or place and is not obliged to remain in any port or place which is icebound or where navigational markers have been or are about to be removed.</p> <p>The Sub-clause emphasises that the tugmaster may decide in his sole discretion whether or not to proceed to or enter the place of departure or destination if risk of ice exists. Should the tugmaster decide that it is unsafe to proceed to the place of departure or destination then he may proceed to the nearest ice free port or safe place (which may often be much closer to the original destination than the "nearest ice free port") and await the hirer's instructions.</p> <p>Sub-clauses (c) and (d) deal with delays, deviation and expenses due to ice – which are for the hirer's account – as well as additional insurance premiums if required by the tug's insurers.</p>
9. Additional Charges and Extra Costs	Comments
<p>(a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.</p> <p>(b) The Hirer shall bear and pay as and when they fall due:</p> <p>(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature, including those incurred under the provisions of Clause 24(b), levied upon or payable in respect of the Tug and the Tow.</p> <p>(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal</p>	<p>Other than points of clarification this Clause is unamended from the wording in TOWCON. The Clause deals with additional costs and charges payable by the hirer to the tugowner over and about the lump sum remuneration.</p> <p>Sub-clause (a) provides that the hirers are to appoint agents and ensure they are adequately funded to avoid potential delays to or claims against the tug.</p> <p>Sub-clause (b) details a number of charges and costs which the hirer must bear. It should be noted that in Sub-clause (b)(i) a specific reference to Clause 24(b) (Necessary Deviation</p>

<p>place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or the payments of the Lump Sum or other sums payable under this Agreement or the services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.</p> <p>(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.</p> <p>(iv) All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).</p> <p>(v) The cost of insurance of the Tow <del>shall be the sole responsibility of the Hirer to provide.</del></p> <p>(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.</p>	<p>or Slow Steaming) has been added.</p> <p>The purpose of this cross-reference is to clarify that the hirer is obliged to pay for extraordinary costs relating to bunker calls, repair calls, supply calls, or landing of disabled seaman as set out in Clause 24(b).</p> <p>Sub-clause (c) deals with payments of taxes, charges, costs and expenses incurred. It places a strict obligation on the hirer to make all such payments.</p> <p>If for any reason the tugowner makes such a payment on behalf of the hirer then the hirer is obliged to reimburse the tugowner against the presentation of the relevant invoice.</p>
<p><b>10. War Risk Escalation Clause</b></p>	<p><b>Comments</b></p>
<p>The Lump Sum is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement. In the event of any subsequent increase or decrease in the actual costs <del>due to the Tugowner fulfilling his obligations under this Agreement,</del> the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in <del>the</del> <b>such</b> war risk, <del>confiscation, deprivation or trapping</del> insurance costs.</p>	<p>This Clause has been amended so that it deals solely with changes in additional insurance costs related to basic war risks insurance. It provides a similar function to Clause 4 (Bunker Price Adjustment) by creating a procedure whereby the hirer will be compensated by the tugowner if the actual cost of war risk cover decreases. Similarly, the hirer is obliged to reimburse the tugowner if the actual cost of the cover increases during the voyage.</p> <p>The intention behind the Clause is that it contemplates a change of circumstances that occur after the contract is concluded. This may be that a new war zone is declared that affects the voyage or an existing conflict is resolved prior to passage.</p>



11. Interest	Comments
<p>If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of Box 35, on all such amounts until payment is received by the <del>Tugowner</del> party to whom it is due.</p>	<p>This Clause has been slightly modified from the version that appears in TOWCON. The previous wording was in favour only of the tugowner in terms of interest on amounts not paid when due. The wording has now been amended to make the clause mutual. Under Clause 4 (Bunker Price Adjustment) the hirer may also be due sums if the bunker price falls and therefore interest may become payable on such sums by the tugowner. Similarly, payments may be due to either party by the other party under the provisions of Clause 10 (War Risk Escalation Clause).</p>
12. *Financial Security	Comments
<p>The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in Box 36 as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full.</p> <p><i>(*Optional, only applicable if Box 36 filled in).</i></p>	<p>The text of this Clause is unchanged. It is designed to provide the tugowner with the option to include in the contract an obligation by the hirer to put up security in a form and amount specified in Part I to guarantee of performance of financial obligations.</p> <p>This option will most likely be exercised by the tugowner in circumstances where the tow may be a vessel destined for recycling or where the tow is not owned by the hirer.</p> <p>The title of the Clause has been pre-fixed by "Financial" simply to distinguish it from ISPS related security matters.</p>
13. Place of Departure/Notices	Comments
<p>(a) The Tow shall be tendered to the Tugowner at the Place of Departure stated in Box 24.</p> <p>(b) The <del>precise</del> place of <b>connection and</b> departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.</p> <p>(c)</p> <p>(i) The Tow shall be ready to sail from the Place of Departure between the dates indicated in Box 29 (a), hereinafter called the Initial Departure Period.</p> <p>(ii) The Hirer shall give the Tugowner such notice as is</p>	<p>This Clause provides for the place where the tow should be tendered to the tugowner and for the notice procedure in respect of the delivery period.</p> <p>To avoid any confusion with Clause 35 (BIMCO Notices Clause) the word "Notices" in the heading has been deleted.</p> <p>The distinction between "place of departure" and "precise place of departure" has been removed, but the reference to the definition of the place of departure in Part I maintained. To reflect the fact that in some ports the tug cannot connect the tow within the port but has to connect outside the port, e.g. on a river, it has been decided to use the connection and disconnection places as the triggering points in relation to the duration of</p>

stipulated in Box 29 in respect of ~~Initial Departure Notice (Box 28(b)), Final Departure Period Notice (Box 28(c)) and Final Departure Time and Date Notice (Box 28(d))~~:

- (1) Initial Departure Notice (Box 29 (b)) which shall be the number of days notice of the number of days period falling within the Initial Departure Period as to when the Tow will be ready to sail from the Place of Departure;
- (2) Final Departure Period and Notice (Box 29 (c)) which shall be the number of days notice of the number of days period falling within the Initial Departure Period as to when the Tow will be ready to sail from the Place of Departure; and
- (3) Final Departure Time and Date Notice (Box 29 (d)) which shall be the number of days notice of the time and date of sailing of the Tow which shall fall within the Final Departure Period.

(iii) The Tow shall be offered to the Tugowner, duly certificated in accordance with Box 9, Sub-clause (b) above and Clauses 17 (Permits and Certification) and 18 (c) (Tow-worthiness of the Tow) and otherwise in accordance with the terms and conditions of this Agreement.

(d) If the Hirer fails to comply strictly with the provisions of Sub-clause (c) above the date of departure shall be deemed to be either the last day of the Initial Departure Period or the last day of the Final Departure Period, whichever is earlier, and this date shall be binding for all consequences arising in respect of Delay Payments and any other payments due or charges incurred in the performance of this Agreement.

towage service. The moment the tug has connected to the tow the departure starts; and similarly, the moment the tug has disconnected from the tow the voyage ends. The place of connection and departure lies within the place of departure and as such, the requirements as to safety and accessibility apply equally to both places.

A notable change that has been made to this Clause is the incorporation of the notice requirements into the main body of the form. This information, describing when the notice must be given and what period must be stated, used to be printed on the reverse of Part I of TOWCON – as a sort of explanatory note. The drafters felt that it was more appropriate to build this information into the main terms – especially as with the greater use of BIMCO forms in electronic format the note might go overlooked.

In Sub-clause 13(c)(ii) the hirer is obliged to give the tugowner three sets of notices:

In (1) the hirer must notify the tugowner of the initial narrowed period within the agreed Initial Departure Period specified in Part I when the tow will be ready to sail.

**Example:** if the Initial Departure Period is 1/30 July the hirer may give 30 days' notice narrowing the period of departure to a 15 days spread of 5/20 July.

In (2) the hirer must provide the final narrowing of tow-readiness dates within the agreed Departure Period.

**Example:** the hirer may give 15 days' notice narrowing the period of departure to a 5 day spread of dates of 10/15 July.

Finally, in (3) the hirer must give the tugowner notice of the time and date, within the Departure Period, of sailing from the departure place.

**Example:** the hirer may give 5 days' notice of the time and date of sailing from the departure port as 18.00 on 12 July.

The meaning of the phrase "duly certificated" in Sub-clause (c) (iii) has been clarified by making reference to the necessary certificates.

Finally, Sub-clause (d) contains a default position in respect of the date of departure



	<p>should the parties fail to comply with the notices procedure in Sub-clause (c). In such cases the date of departure will be deemed to be the last day of the Initial Departure Period or the last day of the Final Departure Period, whichever is earlier.</p>
<p><b>14. Place of Destination</b></p>	<p>Comments</p>
<p>(a) The Tow shall be accepted <del>forthwith</del> and taken over by the Hirer <del>or his duly appointed representative</del> <b>immediately upon arrival</b> at the Place of Destination stated in Box 25.</p> <p>(b) The <del>precise</del> place of <del>destination</del> disconnection shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which shall not be unreasonably withheld.</p>	<p>This Clause provides for the redelivery of the tow to the hirer and the end of the towage service.</p> <p>As it is the obligation of the hirer to take over the tow at the place of destination and it is the hirer and not the representative that has a contractual relationship with the tugowner, the words “or his duly authorised representative” have been deleted. Emphasis is given to the hirer’s obligation to accept and take over the tow immediately upon arrival.</p> <p>For the same reasons as set out in the previous clause, the trigger point for the end of the towage service is where disconnection of the tow occurs at the place of destination. This event marks the end of the towage.</p>
<p><b>15. Riding Crew</b></p>	<p>Comments</p>
<p>(a) <b>Riding crew for the Tow, if so requested by the Hirer, shall be provided by the party stated in Box 31. The number of riding crew shall be as stated in Box 31. All costs and expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Master of the Tug. If the riding crew are provided by the Tugowner the Hirer shall pay to the Tugowner the amount per man per day stated in Box 32. If the riding crew are provided by the Hirer they shall not be deemed to be the servants or agents of the Tugowner. Permission for the Hirer to provide a riding crew on the Tow as well as the composition and suitability of the riding crew shall always be in the discretion of the Tugowner.</b></p> <p>(b) <b>It shall be the Hirer’s responsibility to provide the riding crew with suitable accommodation, food, fresh water, life saving appliances and all other requirements as necessary to comply with the laws and regulations of the laws of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that the members of the riding crew shall be able to speak and understand a language which is mutual to the Tug and Tow.</b></p>	<p>The original Riding Crew Clause from TOWCON has been re-written because it was felt to not be sufficiently clearly worded. The purpose of the Clause is to allocate the cost and responsibility for riding crew placed on board the tow – either by the hirer or the tugowner for the hirer’s purposes, or by the tugowner for his own purposes.</p> <p>The new Riding Crew Clause has been split into three sub-clauses. Sub-clause (a) deals with the provision of riding crew for the hirer’s purposes and which party will provide them at the hirer’s request. A new box has been added to Part I so that the parties can agree from the outset how many riding crew are to be provided to man the tow. If the hirer elects to provide his own riding crew then permission for this, subject to various conditions, is entirely in the tugowner’s discretion.</p> <p>The riding crew, whether provided by the tug or the hirer, is always at the hirer’s expense. Of paramount importance is that the riding crew is</p>

<p>(c) In the event that the Tugowner provides a riding crew for the Tow for its own purposes, all costs and expenses for such personnel shall be for the account of the Tugowner.</p>	<p>under the orders of the tugmaster at all times as the tug is responsible for the control of the tow.</p> <p>Sub-clause (b) relates to the provision by the hirer of accommodation and victualling for the riding crew as well as ensuring compliance with applicable legal or regulatory requirements. The final sentence of Sub-clause (b) deals with the common working language that the riding crew need to be able to speak and understand for their communications with the tug crew. The previous edition of TOWCON called for the riding to crew to be able to understand English or another mutual language. However, this was felt to be unclear as to whom the “other language” should be mutual to – such as other members of the riding crew or between the tug and tow. The language issue has been dealt with in TOWCON 2008 by expressly stating that the riding crew must be able to speak and understand a language that is also readily spoken and understood by the crew of the tug.</p> <p>Sub-clause (c) relates to the tug providing riding crew for its own purposes – for example to check the towing connection or adjust the tow’s trim. In such cases the riding crew will be at the tugowner’s expense.</p>
<p><b>16. Towing Gear and Use of Tow's Gear</b></p>	<p>Comments</p>
<p>(a) The Tugowner agrees to provide free of cost to the Hirer the use of all <del>towing hawsers</del> tow wires, bridles and other towing gear normally carried on board the Tug for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the <del>Tugowner</del> Tugmaster.</p> <p>(b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.</p> <p>(c) The Hirer shall pay for the replacement of any towing gear and accessories should such equipment become lost, damaged or unserviceable during the service(s), other than as a result of the Tugowners’ negligence.</p>	<p>This Clause deals with the use of towing-related gear and equipment on board the tug and tow. The use of such gear and equipment falls within the scope of the lump sum payment agreed by the parties.</p> <p>Sub-clause (a) has been slightly amended. Firstly the phrase “towing hawsers” has been removed as the more commonly used term is “tow wires”. The reference to “normally carried on board the Tug” has also been changed. It was felt that “other services to be provided under this Agreement” might require gear and equipment that is not “normal” to the tug’s usual complement. Any special additional gear or equipment required for the contracted towage should be separately negotiated.</p> <p>Sub-clause (b) is the reciprocal of (a) providing the tug with the use of the tow’s on-board facilities such as communications equipment and machinery necessary to assist in the handling and navigation of the tow during the towage service.</p>

	<p>Sub-clause (c) is new to TOWCON. It obliges the hirer to pay for the replacement of lost or damaged towing gear and accessories on board the tug used during the services. The provision is based on Clause 9(e) of SUPPLYTIME 2005.</p> <p>NOTE: In order to assist the tugowner in providing a standardised specification of the tug to the hirer, a new Annex A has been added to TOWCON. The Annex supplements the details normally to be found in Box 21 (Winches and main towing gear) of Part I.</p>
<b>17. Permits and Certification</b>	<b>Comments</b>
<p>(a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licenses, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.</p> <p>(b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tugowner shall receive additional compensation from the Hirer at the Tug's Delay Payment rate specified in Box 30.</p>	<p>This Clause has not been amended. It places the obligation of obtaining and paying for the required official permits and certificates on the hirer.</p> <p>In this respect it links to the obligation on the hirer in Sub-clause 13(c)(iii) to present the tow to the tugowner duly certified but also covers any other certificates and documents required to complete the voyage including places or ports of call and any ports of refuge used.</p>
<b>18. Tow-worthiness of the Tow</b>	<b>Comments</b>
<p>(a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.</p> <p>(b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.</p> <p>(c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure <del>an unconditional</del> a certificate of tow worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner</p>	<p>This Clause is largely unchanged from the version that appears in TOWCON.</p> <p>Sub-clause (a) places an obligation on the hirer to exercise due diligence to make sure that the tow is in a tow-worthy condition when presented to the tugowner at the commencement of the towage operation. Similar to the approach in Clause 19 (Seaworthiness of the Tug) in respect of seaworthiness, the obligation of tow-worthiness does not continue throughout the towage service.</p> <p>Sub-clause (b) elaborates on several key issues that the hirer needs to address in order to ensure the tow-worthiness of the tow.</p> <p>Sub-clause (c) deals with the provision of a certificate to provide the tugowner with evidence of the tow-worthiness of the tow at the place of</p>

<p>shall not unreasonably withhold his approval.</p> <p>(d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer.</p>	<p>departure. The previous reference to “an unconditional certificate” has been replaced with “a certificate” because in practice hirers do not supply tugowners with unconditional certificates. Regardless of the issue of a tow-worthiness certificate the tugowner retains the right not to perform the towage unless and until he is fully satisfied that the tow is in all respect fit and ready for the towing operation.</p> <p>Sub-clause (d) is a non-waiver provision that expressly states that an inspection by the tugowner of the tow is not in any way an approval of the tow's condition and does not relieve the hirer of his obligations under Sub-clauses (a), (b) and (c).</p>
<p><b>19. Seaworthiness of the Tug</b></p>	<p>Comments</p>
<p>The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.</p>	<p>This Clause has not been amended. It is the counterpart to Clause 18 (Tow-worthiness of the Tow). The Clause simply provides that the tugowner is to exercise due diligence to provide the tug in a seaworthy condition, ready for the intended towage operation. It is important to note that the tugowner gives no other warranties in respect of the seaworthiness of the tug.</p>
<p><b>20. Substitution of Tugs</b></p>	<p>Comment</p>
<p>The Tugowner shall at all times have the right to substitute any tug or tugs for any other tug or tugs of adequate power (including two or more tugs for one, or one tug for two or more) at any time whether before or after the commencement of the towage or other services and shall be at liberty to employ a tug or tugs belonging to other tugowners for the whole or part of the towage or other service contemplated under this Agreement. Provided however, that the main particulars of the substituted tug or tugs shall be subject to the Hirer's prior approval, but such approval shall not be unreasonably withheld.</p>	<p>This Clause has not been amended. It establishes a right for the tugowner to use substitute tugs under the contract provided such substitutes meet the necessary minimum specifications. The tugowner may also use substitute tugs from another owner under the provisions of the existing contract.</p> <p>In all cases the main particulars of the proposed substitute tug or tugs are subject to the hirer's approval.</p>
<p><b>21. Salvage</b></p>	<p>Comment</p>
<p>(a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to re-connect the towline and fulfil this Agreement without making any claim for salvage.</p> <p>(b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to <del>seek or accept</del> engage salvage services from any vessel or person on behalf of the Tug or Tow, or both, the Hirer hereby undertakes</p>	<p>This Clause has been amended to reflect the reality of today that given modern means of communication it is not reasonable to bind the hirer to a salvage contract in which they have had no say. While the tugowner and tugmaster have the full, actual authority to “engage” salvage services (“seek or accept” was deleted because the true extent of the authority was to “engage” salvage services), the tugowner or</p>

<p>and warrants that the Tugowner or his duly authorised servant or agent including the Tugmaster have the full actual authority of the Hirer to accept such services on behalf of the Tow on any reasonable terms. <b>Where circumstances permit the Tugowner shall consult with the Hirer on the need for salvage services for the Tow.</b></p>	<p>tugmaster should where possible consult with the Hirers on the need for salvage services (not the terms of the salvage agreement) for the tow. The provision does not require the binding agreement of the hirer to the salvage services and implies that if the hirer prevaricates the tugmaster can simply revert to its express authority to engage salvage services as the circumstances dictate.</p>
<p><b>22. Termination by the Hirer</b></p>	<p>Comments</p>
<p>(a) At any time prior to the departure of the Tow from the place of departure the Hirer may <del>cancel</del> <b>terminate</b> this Agreement upon payment of the <del>cancellation</del> <b>termination</b> fee set out in Box 39. If <del>cancellation-termination</del> takes place whilst the Tug is en route to the place of departure or after the Tug has arrived at or off the place of departure then in addition to the said <del>cancellation</del> <b>termination</b> fee the Hirer shall pay any additional amounts due under this Agreement.</p> <p>(b) In the event that the towage operation is terminated after departure from the place of departure, but before the Tow arrives at the place of destination without fault on the part of the Tugowner, his servants or agents, the Tugowner shall be entitled to be paid, and if already paid to retain all sums payable according to Box 33, accrued Delay Payments and any other amounts due under this Agreement. The above amounts are in addition to any damages the Tugowner may be entitled to claim for breach of this Agreement.</p>	<p>For the sake of clarification and to achieve a more logical structure, the original Clause 16 (Cancellation and Withdrawal) has been split into two separate clauses, and the interpellation provision moved to the new Clause 5 (Extension to Cancelling Date).</p> <p>Moreover, the terminology has been slightly amended. Originally the clause referred to both cancellation and termination, but it has been decided to use the word “termination” instead of “cancellation” to be consistent throughout the clause. The word “termination” in this context also reflects that it is an action that occurs after the commencement of the contract, whereas “cancellation” occurs prior to the commencement of the contract. Consequently, this clause now provides for, as its heading indicates, termination by the Hirer against a termination fee.</p>
<p><b>23. Termination by the Tugowner</b></p>	<p>Comments</p>
<p>(a) The Tugowner may, without prejudice to any other remedies he may have, <b>withdraw from and terminate this Agreement</b> and leave the Tow in a place where the Hirer may take repossession of it and be entitled to payment of the Lump Sum less expenses saved by the Tugowner and all other payments due under this Agreement, upon any one or more of the following grounds:</p> <p>(i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate <del>21-running</del> <b>fourteen (14)</b> days.</p> <p>(ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate <del>21-running</del> <b>fourteen (14)</b> days.</p>	<p>For the reasons explained above, this clause now deals with withdrawal and termination by the tugowner.</p> <p>The word “running” has been deleted from sub-clauses (a) (i-ii) because it was inconsistent with the word “aggregate”. “Aggregate days” means the accumulated total of days, while “running days” means consecutive days. It was decided to take out “running” because otherwise there could be a significant amount of delays on many occasions, but if they never exceeded the amount of running days stated, the tugowner would never be entitled to withdraw. The number of days has been changed to 14 as seven was considered to be too short a time for the hirer.</p> <p>The practical result of sub-clause (b) is that the</p>

<p>(iii) If the <b>financial</b> security as may be required according to Box 36 is not given within <b>seven</b> (7) running days of the Tugowner's request to provide security.</p> <p>(iv) If the Hirer has not accepted the Tow within <b>seven</b> (7) running days of arrival at the place of destination.</p> <p>(v) If any amount payable under this Agreement has not been paid within <b>seven</b> (7) running days of the date such sums are due.</p> <p>(b) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall <del>if practicable</del> give the Hirer 48 hours notice <del>(Saturdays, Sundays and public Holidays excluded)</del> of his intention so to withdraw.</p> <p><del>(c) Should the Tug not be ready to commence the towage at the latest at midnight on the date, if any, indicated in Box 37, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner. Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof by telex, cable or otherwise in writing without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within 48 hours after the receipt of the Tugowner's notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.</del></p>	<p>right to withdraw only arises after 14 aggregate or 7 running days has lapsed plus the 48 hours grace period given to the hirer to rectify the situation.</p>
<p><b>24. Necessary Deviation or Slow Steaming</b></p>	<p>Comments</p>
<p>(a) If the Tug during the course of the towage or other service under this Agreement puts into a port or place or seeks shelter or is detained or deviates from the original route as set out in Box 23, or slow steams because either the Tugowner or Tugmaster reasonably consider</p> <p>(i) that the Tow is not fit to be towed or</p> <p><del>(ii) the Tow is incapable of being towed at the original speed contemplated by the Tugowner or</del></p> <p>(ii) the towing connection requires rearrangement, or</p> <p>(iii) repairs or alterations to or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination, or</p> <p>(iv) it would not be prudent to do otherwise on account</p>	<p>This Clause deals with deviation and grants the tugowner liberties to deviate but it also provides that an unauthorized deviation will not bring the contract to an end. Thereby, the parties are left with a claim for damages and the protection of relevant protection and exemption clauses still apply. The hirer should compensate the tugowner for all extra time at the Delay Payment rate as agreed in Part I of the contract.</p> <p>The original Sub-clause (a) (ii) has been deleted as there is no requirement for the tugowner to ever indicate the "contemplated speed". Furthermore, in Sub-clause (b) a cross-reference to Clause 9 (b) (i) has been made in order to clarify that it is for the hirer's account to pay for bunker-, repair- and supply calls and the landing of disabled seamen.</p>



<p>of weather conditions actual or forecast, or</p> <p>because of any other good and valid reason outside the control of the Tugowner or Tugmaster, or because of any delay caused by or at the request of the Hirer, this Agreement shall remain in full force and effect, and the Tugowner shall be entitled to receive from the Hirer additional compensation at the appropriate Delay Payment rate as set out in Box 30 for all time spent in such port or place and for all time spent by the Tug at sea in excess of the time which would have been spent had such slow steaming or deviation not taken place.</p> <p>(b) The Tug shall at all times be at liberty to go to the assistance of any vessel in distress for the purpose of saving life or property or to call at any port or place for bunkers, repairs, supplies, or any other necessaries or to land disabled seamen, but if towing the Tug shall leave the Tow in a safe place and during such period this Agreement shall remain in full force and effect, including the provisions of Clause 9(b)(i).</p> <p><del>(c) The Tug shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery, requisition or otherwise howsoever given by, including the Government of the Nation under whose flag the Tug or Tow sails or any department thereof, or any person acting or purporting to act with the authority for such Government or any department thereof by the committee or person having under the terms of the War Risks Insurance on the Tug the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done the same shall not be deemed a deviation and delivery in accordance with such orders or directions shall be a fulfilment of this Agreement and the Lump Sum and/or all other sums shall be paid to the Tugowner accordingly.</del></p> <p>(c) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation.</p>	<p>The new Clause 27 (War and Other Risks) makes the original sub-clause (c) superfluous, therefore it has been deleted.</p> <p>Sub-clause (c) (formerly Sub-clause (d)) serves to avoid the doctrine of fundamental breach, i.e. that the tugowner in cases of unjustifiable deviation loses the protection of all exclusion and limitation clauses contained in the contract.</p>
<p><b>25. Liability and Indemnity</b></p>	<p>Comments</p>
<p>(a)</p> <p>(i) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death of any of the following persons, occurring during the towage or other service hereunder, from arrival of the Tug at the pilot station or customary waiting place or</p>	<p>This important Clause has always been based upon 'knock-for-knock' principles, and it is a cornerstone of both the TOWCON and TOWHIRE agreements. It has been amended to bring greater clarity to its provisions. It has also been renamed "Liability and Indemnity" to</p>

anchorage at the Place of Departure (whichever is sooner), until disconnection at the Place of Destination, however such geographic and/or time limits shall not apply to ~~any of the following persons~~ sub-clause 25(a)(i)2. below:

- (1) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;
- (2) The members of the riding crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;
- (3) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.

(ii) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising ~~from~~ out of injury or death occurring during the towage or other service hereunder ~~to~~ of any of the following persons:

- (1) The Master and members of the crew of the Tow and any other servant or agents of the Hirer;
- (2) Any other person on board the Tow for whatever purpose except the members of the riding crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.

(b)

(i) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to ~~any~~ breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:

- (1) ~~Loss~~ Save for the provisions of Clause 16 (c), loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.
- (2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.
- (3) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.
- (4) Any liability in respect of wreck removal or in

be more descriptive of its content.

The purpose of the Liability and Indemnity Clause is to strike a balance between the tugowner and the hirer so that each party bears responsibility for the injury or death of its own employees, servants or agents, and, with one exception, for the damage to or loss of its own equipment. This reflects standard practice in the offshore industry where liabilities between the parties are agreed on a so-called "knock-for-knock" basis.

Clause (a)(i) provides the Hirer with an indemnity from the tugowner in respect of death and/or personal injury to the tug's crew, the tugowner's riding crew and any other personnel placed on board the tug or tow by the tugowner, or anyone who is on the tug but who is not there on behalf of or at the request of the Hirer.

Sub-clause (a)(i) has been amended to more clearly specify the period to which it applies. Previously it stated that it covered injury or death "occurring during the towage or other service hereunder". It was felt that this phrase might not necessarily encompass injuries to or death of personnel that occur at the very beginning or the very end of a towage operation.

To resolve this concern new wording has been added to clarify that the intention is that the period of liability begins from the arrival of the tug at the pilot station or customary waiting place and ends when disconnection occurs at the place of destination. In respect of riding crew or other personnel provided by the tugowner and placed on board the tow, the period of responsibility is extended, if appropriate, to whatever point such personnel are placed on board the tow until they finally disembark or, for example, if an accident occurs during a deviation to the voyage.

Sub-clause (a)(ii) is the reciprocal indemnity to Sub-clause (a)(i) indemnifying the tugowner for any injury or death to the hirer's personnel or personnel other than those of the tugowner on board the tow.

Sub-clause (b) deals with liability for certain types of loss or damage. In Sub-clause (b)(i) the tugowner agrees to bear the responsibility for the listed losses. It should be noted that in (b)(i)(1) towing gear and accessories used by the hirer that are lost, damaged or become

respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.

The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.

(ii) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to **any breach of contract (including as to the seaworthiness of the Tug)**, negligence or any other fault on the part of the Tugowner, his servants or agents:

- (1) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.
- (2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.
- (3) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in 1. and 2. above.
- (4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.

The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage, howsoever caused to or sustained by the Tow.

(c) Save for the provisions of Clauses **17, (Permits & Certification); 18, (Tow-worthiness of the Tow); 19, (Seaworthiness of the Tug); 22 (Termination by the Hirer) and 23 (Termination by the Tugowner)**, neither the

unserviceable are excluded from the tugowner's liability.

In Sub-clause (b)(ii), which deals with losses to be borne by the hirer, new wording has been added relating to the seaworthiness of the tug. This has been done with regard to Smit v. Mobius where it was opined that issues of seaworthiness should not interfere with the division of liabilities under TOWCON.

Sub-clause (c) deals with liability for other types of financial loss. This provision has been substantially re-written from the old 18.3 that appears in TOWCON. The purpose of Sub-clause (c) is to exclude both parties from liability for consequential loss or damage whether direct or indirect. The wording specifies particular types of financial loss to be excluded – loss of profit, loss of use and loss of production. However, the provision includes liability for such losses if they are a result of a breach of the Agreement by one of the parties of Clauses 17, 18, 19, 22 and 23. These Clauses include the hirer's obligation to provide certificates and permits for the tow; the hirer's obligation to tender a tow-worthy tow; the tugowner's obligation to tender a seaworthy tug; and the wrongful termination of the contact by either party.

Sub-clause (d) gives the tugowner the right to avail himself of all applicable statutory rights and limitations irrespective of any provisions to the contrary contained in the contract.

<p>Tugowner nor the Hirer shall be liable to the other party for <del>loss of profit, loss of use, loss of production or any other indirect or consequential damage for any reason whatsoever.</del></p> <p>(i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non performance of this Agreement, and whether or not the same is due to negligence or any other fault on the part of either party, their servants or agents, or</p> <p>(ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants or agents.</p> <p>(d) Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owners or Chartered Owners of Vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.</p>	
<p><b>26. Himalaya Clause</b></p>	<p>Comment</p>
<p>All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of:</p> <p>(a) demise charterers, sub-contractors, operators, master, officers and crew of the Tug or Tow and, <del>to and be for the benefit of</del></p> <p>(b) all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either <del>of them</del> <b>the Tugowner or Hirer</b>, as well as all directors, officers, servants and agents of the same and <del>to and be for the benefit of</del></p> <p>(c) all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties.</p> <p>The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.</p>	<p>The Himalaya Clause is a commonly used standard provision designed to afford the various parties enumerated in the three Sub-clauses the same protection afforded to the tugowner and the hirer under this agreement.</p> <p>The mechanism for achieving this is to deem the tugowner or hirer as the agents for the relevant party.</p> <p>The clause has been divided into three sub-clauses for the sake of clarity and ease of reading.</p>

27. War and Other Risks	Comments
<p>(a) For the purpose of this Clause, the words:</p> <p>(i) "War Risks" shall include any actual, threatened or reported:</p> <p>war; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Tugowners, may be dangerous or are likely to be or to become dangerous to the Tug, her Tow, crew or other persons on board the Tug or Tow.</p> <p>(ii) "Other Risks" shall include any actual, threatened or reported:</p> <p>arrest or restraint of princes, rulers or people; insurrections; riots or civil commotions; disturbances; acts of God; epidemics; quarantine; labour troubles; labour obstructions; strikes; lock-outs; embargoes; seizure of the Tow under legal process or for any other cause outside the control of the Tugowner as a result of which it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to enter or attempt to enter or leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfilment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer.</p> <p>(b) The Tug, unless prior written consent of the Tugowners has first been obtained, shall not be required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Tug, her Tow, the crew or other persons on board the Tug or Tow, in the reasonable judgement of the Master and/or the</p>	<p>A new, comprehensive clause for war and other risks based on VOYWAR 2004 and the original clause of TOWCON/TOWHIRE (War and Other Difficulties) has been developed for the revised forms.</p> <p>The title has been amended to "War and Other Risks" in order to give a more true reflection of the contents of the clause.</p> <p>Sub-clause 27(a)(i) and (ii) defines the "war risks" and "other risks" for the purpose of the clause.</p> <p>Sub-clause (b) provides that without the express consent from the tugowner, the vessel should not be ordered to an area where, in the reasonable judgement of the tugmaster or tugowner, it may be exposed to war or other risks as defined in the clause. Should the vessel already be in such an area which becomes or is likely to become exposed to such risks it has the liberty to leave it.</p> <p>Sub-clause (c) allows the tugowner to take out war risks insurance on his own account. Any additional premiums, war risk related bonus or additional wages will be for the Hirers account (Sub-clause (c) and (d)). This makes sense since it is the hirers who order the vessel to the additional premium areas.</p> <p>Paragraph (e) gives the tugowner the liberty to comply with directions etc given by the Tug's flag state, other governmental bodies, war risks underwriters, security council of the UN and other supranational bodies.</p> <p>Sub-clause (f) deals with the rights and obligations of the parties in blocking and trapping situations.</p> <p>If the tugowner should exercise their rights under this clause and refuse to proceed from the place of departure or to the place of destination they have to immediately notify this to the Hirers and ask them to nominate a place for redelivery of the tow. The hirer's failure to nominate such a place before 48 hours from the notice, the tugowner may redeliver the tow at any place where it is possible for the hirer to take repossession of the tow (Sub-clause (g)).</p>

Tugowners, may be, or are likely to be, exposed to War or Other Risks. Should the Tug be within any such place as aforesaid, which only becomes subject to War or Other Risks, or is likely to be or to become subject to War or Other Risks, after her entry into it, she shall be at liberty to leave such place or area.

(c)

(i) The Tugowners may effect war risks insurance in respect of the Hull and Machinery of the Tug and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.

(ii) If the Underwriters of such insurance should require payment of additional premiums and/or calls because, pursuant to the Hirers' orders, the Tug is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual additional premiums and/or calls paid shall be reimbursed by the Hirers to the Tugowners at the same time as the next payment of hire is due, or upon delivery of the tow, whichever occurs first.

(d) If the Tugowners become liable under the terms of employment to pay to the crew of the Tug, or any riding crew of the Tow, any War Risk related bonus or additional wages in respect of sailing into an War Risk area, then the actual War Risk related bonus or additional wages paid shall be reimbursed to the Tugowners by the Hirers at the same time as the next payment of hire is due, or upon delivery of the Tow, whichever occurs first.

(e) The Tug shall have liberty:-

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Tug sails, or other Government to whose laws the Tugowners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

Finally, the tugowner has the liberty to deviate for certain enumerated reasons and it should not be considered a deviation when the tug complies with the provisions of the Clause (Sub-clause (h)).



(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Tugowners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv) to call at any other port to change the crew or any part thereof or other persons on board the Tug or Tow when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.

(f) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by the War or Other Risks then:

(i) The Tug shall not be required to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to search and/or confiscation.

(ii) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein, the Hirer shall pay a Delay Payment at the rate specified in Box 30 for every day of the resulting delay. Provided that if the delays under this Clause amount to more than 14 days in aggregate either party hereto shall be entitled to terminate this Agreement by giving notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.

(iii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall pay Delay Payment at the rate indicated in Box 30 for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.

(iv) If the Tug and Tow whilst en route to the place of

<p>destination have become trapped in such area during the course of the towage or other service, the Hirer shall pay a Delay Payment at the rate specified in Box 30 for every day of the resulting delay.</p> <p>(g) If in accordance with their rights under the foregoing provisions of this Clause, the Tugowners refuse to proceed from the place of departure or to the place of destination, or any one or more of them, they shall immediately notify the Hirers requesting them to nominate a place for redelivery of the Tow. Failing such nomination by the Hirers within 48 hours of the receipt of such notice and request, the Tugowners may redeliver the Tow at any place where the Hirer can take repossession of the Tow.</p> <p>(h) If in compliance with any of the provisions of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Agreement.</p>	
<p><b>28. Lien</b></p>	<p>Comments</p>
<p>Without prejudice to any other rights which he may have, whether in rem or in personam, the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner <b>by himself or his servants or agents or otherwise</b> all reasonable costs and expenses <b>and all costs of recovering same, including legal fees</b>, howsoever or whatsoever incurred by or on behalf of the Tugowner <b>by himself or his servants or agents or otherwise</b> in exercising or attempting or preparing to exercise such lien and the Tugowner <b>by himself or his servants or agents or otherwise</b> shall be entitled to receive from the Hirer the Tug's Delay Payment at the rate specified in Box 30 for any reasonable delay to the Tug resulting therefrom.</p>	<p>This clause allows the tugowner to exercise a possessory lien on the tow for any sums due under the agreement. As with all possessory liens, the lien disappears if possession is lost by the lien holder. Therefore, the clause states that the tugowner may take and keep the tow in its possession. All costs and expenses in connection with the exercise of the lien will be for the Hirers account.</p> <p>The clause has been amended to take into account the fact that it is sometimes not the tugowner and hirers themselves that make and receive payment for the various costs and expenses incurred in connection with the exercise of the lien.</p> <p>Moreover, in line with other recent lien clauses an addition has been made to make sure that the costs and expenses covers the same in both Europe and USA. In USA legal fees are not included in the definition of costs, thereby this addition to the clause.</p>
<p><b>29. Warranty of Authority</b></p>	<p>Comments</p>
<p>If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer, the Hirer is not</p>	<p>Under this clause the hirer named in Part I of the forms promises that it has actual authority to bind the owner of the tow to TOWCON in cases</p>

<p>the Owner of the Tow referred to in Box 4, the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the Owner of the said Tow <del>subject to each and all of these conditions</del> and agrees that both the Hirer and the Owner of the Tow are bound jointly and severally by <del>these conditions</del> <b>the provisions of this Agreement.</b></p>	<p>where the parties are not the same entity. Both the hirer and the owner of the tow will be bound jointly and severally to the agreement.</p> <p>The words “these conditions” have been replaced by “the provisions of this agreement” so as to include all the terms of the contract and not just its conditions.</p>
<p><b>30. General</b></p>	<p>Comments</p>
<p>(a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.</p> <p>(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.</p> <p><del>(c) Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.</del></p>	<p>Sub-clause (a) states that in case a provision under TOWCON is held invalid, that should not affect the other provisions of the agreements.</p> <p>Sub-clause (b) clarifies that any words in singular under TOWCON include the plural and any plurals include the singular.</p> <p>Sub-clause (c) has been moved to the Clause 30 (Time for Suit) as that is considered to be a more appropriate place for it.</p>
<p><b>31. Time for Suit</b></p>	<p>Comments</p>
<p>(a) Save for the indemnity provisions under Clause 25 (Liability and Indemnity) of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified <del>by telex, cable or otherwise in writing</del> within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.</p> <p>(b) <b>Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.</b></p>	<p>In order to avoid a claim under TOWCON being time barred, except for claims under Clause 25 (Liability and Indemnity), it has to be notified within six months of delivery of the tow or of termination of the services rendered and any suit must be brought within one year from when the cause of action arose.</p> <p>The words “by telex, cable or otherwise in writing” has been deleted since Clause 33 (BIMCO Notices Clause) provides for how notices should be given under this contract.</p> <p>The original Sub-clause (c) of Clause 23 (General) has been moved as it fits more logically under this Clause. This part is a “without prejudice”-provision stating that the tugowner does not waive his rights to rely on the time bars of the forms even if the tugowner has granted the hirer extra time.</p>

32. BIMCO ISPS/MTSA Clause 2005	Comments
<p>(a)</p> <ul style="list-style-type: none"> <li>(i) The Tugowner shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and “the Company” (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Tugowner shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the “Owner” (as defined by the MTSA).</li> <li>(ii) Upon request the Tugowner shall provide the Hirer with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).</li> <li>(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Tugowner or “the Company”/“Owner” to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Tugowner’ account, except as otherwise provided in this Agreement.</li> </ul> <p>(b)</p> <ul style="list-style-type: none"> <li>(i) The Hirer shall provide the Tugowner and the Tugmaster with their full style contact details and, upon request, any other information the Tugowner requires to comply with the ISPS Code/MTSA.</li> <li>(ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Hirer to comply with this Clause shall be for the Hirer’s account, except as otherwise provided in this Agreement, and any delay caused by such failure shall be paid at the delay payment rate stated in Box 30.</li> </ul> <p>(c) Provided that the delay is not caused by the Tugowner’s failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:</p> <ul style="list-style-type: none"> <li>(i) Notwithstanding anything to the contrary provided in this Agreement, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.</li> <li>(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the</li> </ul>	<p>This is BIMCO’s standard and widely used ISPS/MTSA Clause which provides for compliance with the ISPS Code and the U.S. MTSA Act.</p> <p>The ISPS Code aims to detect security threats to ships and port facilities, and to take preventive measures against such threats.</p> <p>The U.S. MTSA Act is an additional layer of security measures to the ISPS Code and is developed specifically to protect U.S. ports and waterways from terrorist attacks.</p> <p>Sub-clause (a)(i) establishes the tugowner’s requirement to comply with the requirements of the ISPS Code and, if operating within U.S. waters, with the MTSA Act.</p> <p>Sub-clause (a)(ii) provides for the hirer to be able to obtain from the tugowner evidence of compliance with the Code.</p> <p>Furthermore, sub-clause (a) (iii) states that except as otherwise provided in the contract, any losses, apart from consequential losses, caused by the tugowner’s failure to comply with the Code or the Act will be for the tugowner’s account.</p> <p>Amongst the measures imposed by the Code and the Act are requirements which the tugowner can only meet with the cooperation of the Hirer - such as providing the hirer’s full style contact information. The hirer will be accountable for failure to comply with this clause, and as under sub-clause (a)(iii) consequential losses are excluded.</p> <p>Sub-clause (c) purports to allocate the risks of delay due to compliance with the Code or Act in a fair and balanced way which reflects current commercial practice.</p> <p>Sub-clause (d) provides that costs and expenses arising from compliance with the Code or Act should be for the hirer’s account unless they result from the negligence of the tugowners, tugmaster or crew or the previous trading of the tug, the nationality of the crew or the identity of managers employed by the tugowner. For example, the tugowner’s expenses for compulsory security guards at the</p>

<p>ISPS Code/MTSA shall be paid at the delay payment rate stated in Box 30, unless such measures result solely from the negligence of the Tugowner, Tugmaster or crew or the previous trading of the Tug, the nationality of the crew or the identity of the Tugowner's managers.</p> <p>(d) Notwithstanding anything to the contrary provided in this Agreement, any costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Hirer's account, unless such costs or expenses result solely from the negligence of the Tugowner's, Tugmaster or crew or the previous trading of the Tug, the nationality of the crew or the identity of the Tugowner's managers. All measures required by the Tugowner to comply with the Ship Security Plan shall be for the Tugowner's account.</p> <p>(e) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.</p>	<p>gangway in U.S. ports will be for the hirer's account.</p> <p>Sub-clause (e) contains an indemnity provision that secures that payments made in respect of the Clause will be covered by the responsible party under the Clause.</p>
<p><b>33. BIMCO Dispute Resolution Clause</b></p>	<p>Comments</p>
<p>(a) *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.</p>	<p>The original Clause 25 (Law and Jurisdiction) has been replaced by the latest version of BIMCO's standard Dispute Resolution Clause.</p> <p>It provides the parties with three options: London arbitration and English law, New York arbitration and U.S. law, or the laws of another jurisdiction as chosen by the parties.</p> <p>Sub-clause (d) provides for all or part of the dispute to be referred to mediation and will always apply no matter what choice of law and jurisdiction the parties have made.</p> <p>The mediation provision is designed to function in conjunction with the chosen arbitration option, whether that is English law, London arbitration; US law, New York arbitration; or law and arbitration as agreed.</p> <p>Mediation is a technique that is recognised as offering savings in costs and time over traditional methods of dispute resolution for certain types of disputes. BIMCO's mediation provision is only triggered once arbitration proceedings have commenced and then runs in parallel with those proceedings, if the parties so</p>

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b) \*This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- (c) \*This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

- (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

- (ii) The other party shall thereupon within 14 calendar

choose. This has been done to ensure that one party cannot invoke mediation as a delaying tactic. It also provides for the parties to be able to mediate on all or just some of the issues being arbitrated.

For a fuller description of the BIMCO Standard Dispute Resolution Clause, please see BIMCO Bulletin No 1/2002 or Special Circular No. 1, 16 January 2002, which can be found on BIMCO's website.



<p>days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.</p> <p>(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.</p> <p>(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.</p> <p>(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.</p> <p>(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator’s costs and expenses.</p> <p>(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.</p> <p><i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i></p> <p>(e) If <b>Box 40</b> is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.</p> <p><i>*Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in <b>Box 40</b>.</i></p>	
<p><b>34. Security for Claims</b></p>	<p>Comments</p>
<p>Either party shall have the option to bring proceedings <i>in rem</i>, but only to obtain security or other similar remedy for claims arising under this Agreement against any</p>	<p>This is an amended version of the second part of the original Clause 25 (Law and Jurisdiction) of TOWCON. The former first part has been</p>

<p>vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.</p>	<p>deleted since it is covered by BIMCO's Dispute Resolution Clause added above.</p> <p>The purpose of this Clause is to allow the tugowner or hirer to arrest the other party's vessel in order to obtain security for claims in whatever country the tug or tow may be located at the time of arrest. The ship will then be arrested according to the laws of that country; however, the substantive claim should be adjudged in accordance with the laws and jurisdiction of the country chosen by the parties to the contract.</p>
<p><b>35. BIMCO Notices Clause</b></p>	<p>Comments</p>
<p>(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing.</p> <p>(b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.</p>	<p>In line with other recent BIMCO forms, the standard Notices Clause has been included in the revised TOWCON in order to avoid having to repeat in other clauses that notices have to be in writing and also what actually constitutes "in writing".</p> <p>The Clause provides that all notices given by either party must be in writing in a readable and understandable way capable of being a record.</p> <p>It should be noted that e-mail is listed as one of the acceptable methods and if one of parties publishes its e-mail address as part of its contact details then the other party may if it so wishes use that medium for notices.</p> <p>However, given the importance and gravity of some of the notices that may be sent under the contract the parties may choose to rely on methods which provide a confirmation of delivery to the recipient to avoid disputes at a later stage.</p>