



1701 East Market Street, Jeffersonville IN 47130-4717

STANDARD TERMS AND CONDITIONS – SPOT (TRAMP) TOWING

The following terms and conditions (“Terms”) are applicable to towing or related services provided by American Commercial Barge Line LLC (“ACBL”) pursuant to either a verbal agreement, E-mail or other written confirmation, or a towing agreement lacking comparable terms and lacking an agreement not to amend said terms without a further written agreement:

1. **Term.** These Terms become effective August 6, 2018 and shall remain in effect until supplemented or replaced by a future revision issued by ACBL.
2. **Base Rate And Other Charges.** Towing rates include towage from origin to destination only. All other charges, including without limitation, fleeting at origin and destination, shifting on/off towboat at origin and destination, shifting between fleet and dock at origin and destination, port charges and pilotage cost are for Customer’s account and will be billed directly to the Customer by the applicable vendor. All taxes, fees and charges shall be the sole responsibility of Customer, including any sales and use tax due on any vessel tendered for towage or its cargo, customs charges, tariffs or import fees, or any other expenses, charges or fees associated with the provision of towing services. Customer is also responsible for any required assist charges (unless resulting from mechanical breakdown or failure of ACBL’s towing vessel), and ballasting, pumping, salvage or repair charges related to Customer’s vessel. Customer shall be responsible for all ACBL costs and expenses for diverting, stopping or delaying a tow due to amended instructions from Customer or problems experienced with Customer’s vessel.
3. **Payment Terms.** The towing charge shall be considered earned on the initiation of the voyage. No deduction shall be made to the towing charge if the vessel or its cargo is lost or damaged, or if the voyage or movement is interrupted or abandoned. ACBL may invoice Customer for the towing charge at any time following commencement of the voyage. All other charges shall be invoiced from time to time. Invoices shall be payable in immediately available funds within thirty (30) days of date of invoice. Interest shall be assessed on the undisputed portion of any invoice, beginning on the date the invoice is due until paid in full, at the rate of one and one half percent (1.5%) per month, or the maximum amount allowable by applicable law, whichever is less, until paid in full. In the event an invoice is not paid when due, ACBL may, at its option, suspend all services and retain possession of the vessel and any cargo onboard. Customer shall pay ACBL all costs incurred in collecting any past due amount from Customer, including court costs and attorney fees.
4. **Seaworthiness and Inspections.** Customer represents and warrants that any vessel tendered for towage will at all times be tight, staunch and in all respects seaworthy and capable of being towed. Customer shall inspect or have inspected each vessel prior to tender for compliance with the requirements of the Vessel General Permit and other applicable laws. ACBL shall be under no obligation to perform services if, in the sole judgment of the Master of the towboat, any vessel, or any part thereof is unseaworthy or unfit for the intended use or for any reason would constitute a risk or hazard to the towboat or its tow or to the environment; provided, however, that nothing herein shall impose any duty upon ACBL to inspect the vessel or make ACBL liable for damages resulting from failure to make such inspection or resulting from any error in judgment in making the inspection. Any charges and expenses due to the rejection of any vessel under this section shall be for the account of Customer.
5. **Movement.** Any vessel tendered for towage will be moved at ACBL’s convenience, either singly or with one or more other vessels, and not by any specific towboat, and ACBL reserves the right to change the tendered vessel from one to another of its tows as frequently as it may find convenient to do so. ACBL may procure towage from a vessel not owned or operated by ACBL, and may tie off a tow at any point and for any reasonable purpose

or deviate from its route and visit any port, and in any order, whether or not on said route. The equipment of ACBL shall be free of wharfage and dockage charges and shall have safe berth at origin and destination ports.

6. **River Closures & Restricted Movements.** During river closures or periods of restricted movements, including without limitation, high or low water, ice, lock delays and closures, and lock or tow restrictions, ACBL shall provide services as it deems appropriate under the circumstances. ACBL reserves the right to charge additional expenses, fees and fleeting to (i) allow a vessel to transit the affected area to reach the intended destination and/or (ii) hold the vessel in ACBL's choice of fleets until alternative destinations are found and/or traffic restrictions are lifted on affected river(s). After the vessel is delivered to ACBL at the point of origin and before the vessel is dropped at the point of destination, all lock delays experienced by ACBL's vessel shall be charged to Customer at ACBL's then-prevailing demurrage rate.
7. **Identification of Cargo and SDS.** Customer shall place aboard each vessel all necessary shipping papers and post the necessary cargo identifying signs and information cards required by U. S. Coast Guard regulations and other applicable laws. Customer warrants that each vessel tendered for towage has a current U. S. Coast Guard Certificate of Inspection for the cargo it contains and that such vessel has a valid Certificates of Financial Responsibility on file with the United States Coast Guard, if applicable. Customer agrees that cargo aboard the vessel will be properly manifested, classified, and placarded, if required by law; and that the cargo shall have been properly loaded and stowed considering its nature and the towing service to be performed. Customer shall provide to ACBL prior to tender of a vessel a current and valid Safety Data Sheet for the cargo on board, if applicable. ACBL and Customer will insure that their respective vessels comply with all applicable federal, state and local pollution laws, including without limitation, the Oil Pollution Act of 1990 ("OPA"). Absent an express written agreement to the contrary, ACBL will not accept for transport any vessel containing the following cargoes: radioactive materials, liquid or gas chlorine, liquefied petroleum gas, biological or hazardous waste material, ammunitions or explosive devices, and/or other similar cargoes.
8. **Liquid Cargoes.** Customer is solely responsible for valve and manifold settings, hatch closures, and overall preparation of the vessel tendered for towage, such that the cargo will be safely contained while en-route. If a discharge of oil or hazardous substance from the tendered vessel, or threat thereof, occurs and causes or threatens to cause pollution damage, Customer shall promptly take, or cause to be taken, whatever measures are necessary to prevent or mitigate such damage. Customer will remain solely responsible for coordinating cleanup or product containment, removal or remediation in the event of cargo loss occurring during the voyage, regardless of cause. Unless Customer notifies ACBL in writing otherwise, Customer hereby authorizes ACBL, at ACBL's option, to undertake such measures as are reasonably necessary to prevent or mitigate the pollution damage at the time of the incident. Any of the aforementioned measures actually taken by ACBL shall be deemed taken on Customer's authority and shall be at Customer's expense.
9. **Cargo Risk.** Customer hereby acknowledges that ACBL does not provide cargo insurance and that Customer is required to carry all risk cargo insurance with a waiver of subrogation. As a result, ACBL shall only be liable for loss or damage to cargo to the extent caused by the gross negligence or willful misconduct of ACBL in the performance of towing services hereunder. Additionally, in no case shall ACBL be liable for cargo loss or damage beyond the lesser of (a) \$600.00 per net ton (for dry cargoes); or the amount of Customer's deductible under its cargo insurance policy or \$250,000, whichever is less (for liquid cargoes); (b) the actual value of the cargo lost or damaged, or (c) the reasonable cost of repair or reconditioning of the cargo. Customer agrees to file and pursue a claim with its insurer prior to asserting a claim against ACBL. Any deductible or self-retention shall be for Customer's account. ACBL does not undertake to provide ventilation, turning of cargo, fumigation or other special handling of cargo. In no event shall ACBL be liable for loss or damage to cargo caused, in whole or in part, by: shrinkage, expansion, deterioration or other change in condition due to temperature changes, atmospheric humidity, or other natural causes or navigational delays; or any vice or defect in the cargo.
10. **Limitation on Liability.** Due to the fact that Customer has sufficient insurance to cover risks to the vessel from the towage and has agreed to extend the benefit of such insurance to ACBL, ACBL shall only be liable for loss

or damage to the tendered vessel to the extent caused by the gross negligence or willful misconduct of ACBL in the performance of towing services hereunder. Customer agrees that ACBL shall not have any liability or obligation to Customer for damage to a vessel unless the amount of any claim against ACBL with respect to such vessel exceeds Ten Thousand Dollars (\$10,000) and then only up to a maximum liability of One Million Dollars (\$1,000,000). Unless notice of loss or damage and the general nature thereof is given in writing to ACBL promptly after delivery of the vessel to the applicable destination, but in any event prior to the initiation of a subsequent voyage, such delivery shall be deemed to be *prima facie* evidence of the delivery of the vessel in good order and condition and any claim for damages to such vessel shall be waived.

11. **Indemnification.** Customer shall defend, indemnify and hold harmless ACBL and its affiliates, and the vessels employed by it, from any and all liability, claims, injuries, penalties, environmental response costs, actions, suits, costs, damages, expenses (including attorney's fees and court costs as and when incurred), and/or losses, of any kind and nature, whether or not involving a third-party claim, arising out of, or in connection with (i) the unseaworthiness or defect of any vessel tendered for towage, (ii) breach of any representation, warranty or covenant contained herein, (iii) the negligence of Customer or its vessels, (iv) loss of or damage to the cargo in excess of the liability limitation in Section 9; and (v) damage to Customer's vessel in excess of the liability limitations in Section 10.

12. **Insurance.** In connection with all towage undertaken pursuant to these Terms, and for any towing vessel provided by ACBL, ACBL will maintain (i) Protection and Indemnity Insurance (including Jones Act coverage and Collision Liability) in an amount not less than \$10,000,000; (ii) Hull & Machinery Insurance (including Collision Liability unless covered in P&I) in amounts equal to the agreed value of the towing vessel; (iii) Vessel Pollution Insurance subject to not less than the conditions available through the Water Quality Insurance Syndicate, or similar coverage, in an amount not less than \$5,000,000; and (iv) Excess Liability Insurance in an amount not less than Twenty Nine Million Dollars (\$29,000,000) per occurrence in excess of primary limits for the coverages set forth above in subsections (i), (ii) with regard to Collision Liability if not covered under P&I, and (iii). Such policies shall name Customer as additional insured and shall contain a full waiver of subrogation in favor of Customer.

In connection with all towage undertaken pursuant to these Terms, and for any vessel tendered by Customer, Customer shall maintain: (i) All Risk Cargo Insurance on the full value of all cargo (if any) transported in the tendered vessel, with coverage to include loss or damage while in transit; (ii) Protection and Indemnity Insurance (including Jones Act coverage and Collision Liability) in an amount not less than \$1,000,000; (iii) Hull & Machinery Insurance (including Collision Liability unless covered in P&I) in amounts that are reasonable based on industry standards and the value of the vessel; (iv) Vessel Pollution Insurance (if applicable) subject to not less than the conditions available through the Water Quality Insurance Syndicate, or similar coverage, in an amount not less than \$5,000,000; and (v) Excess Liability Insurance in an amount not less \$14,000,000 (for dry cargo vessels) and \$29,000,000 (for liquid or tank vessels) per occurrence in excess of primary limits for the coverages set forth above in subsections (ii), (iii) with regard to Collision Liability if not covered under P&I and (iv). Such policies shall name ACBL and its affiliated companies as additional insureds and shall contain a full waiver of subrogation in favor of ACBL and its affiliated companies.

13. **Force Majeure.** Performance of services by ACBL shall be excused and there shall be no liability to the extent such performance is interrupted, delayed or prevented by a Force Majeure. The term "Force Majeure" shall include: restraint or other acts of governmental or civil, military, or naval authorities (whether acting legally or otherwise), Acts of God or the elements, hurricanes, ice, floods, high water or low water, river or lock outages, perils or accidents of the sea or other water; defects, failures or breakage in engines, machinery, or equipment; acts of war, hostilities, interferences of public enemies or belligerents; rebellion, civil strife, or commotions; sabotage, vandalism or malicious mischief, riots, strikes, labor disputes, or disturbances; fire or explosion; epidemics, pestilence or quarantine; or any other cause whatsoever beyond the control of ACBL, whether the kind enumerated or otherwise. When it becomes known to ACBL that a Force Majeure condition exists, ACBL

will endeavor to notify Customer within a reasonable period of time. Such excuse from performance shall continue until the Force Majeure ceases to prevent performance by ACBL in its reasonable discretion. Customer shall be responsible for all fleeting and other charges that may arise during a Force Majeure event.

14. **Disclaimer.** IN NO EVENT SHALL ACBL BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT OR ANY OTHER THEORY OF LIABILITY, EVEN IF ACBL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. **Miscellaneous.** If any provision of these Terms shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent herein set forth. These Terms and the performance of services by ACBL shall be construed in accordance with the general maritime law of the United States, and, to the extent not governed by such law, the laws of the state of Indiana, without giving effect to the conflict of laws principles thereof. Customer consents and voluntarily submits to personal jurisdiction in the State of Indiana and in the courts in such state located in Clark County and in the United States District Court for the Southern District of Indiana, New Albany Division, and agrees that all claims raised in such proceedings shall be heard and determined exclusively in such Courts. Customer agrees to waive the right to trial by jury. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring either ACBL or Customer by virtue of the authorship of any of the provisions of these Terms. ACBL may subcontract the Services provided hereunder. ACBL is an independent contractor. Nothing contained in these Terms shall preclude ACBL from availing itself of the limitation of liability provisions of maritime law.