

INTERNATIONAL SALVAGE UNION

**SUB-CONTRACT LUMP SUM AGREEMENT**

**"S A L V C O N 2 0 0 5"**

GUIDANCE NOTES

**This Agreement, "SALVCON", is intended to be used by a Salvor working under Lloyd's Form, or similar contract, who wishes to engage additional assistance, but on a Lumpsum, non-award sharing basis, as distinct from the widely used ISU Award Sharing Sub-Contractors Agreement, or the alternative Daily Hire Sub-Contract Agreement "SALVHIRE 2005"**

**Equally a Tugowner who wishes to hire out his tug to a Salvor on a Lumpsum basis, may offer its services on the basis of "SALVCON 2005".**

The format of the document is very similar to the BIMCO/ISU Towage Agreements, "TOWCON"/"TOWHIRE" and the BIMCO/ISU Wreck Removal Agreements, "WRECKCON"/"WRECKHIRE". There being two Parts to the Agreement.

Part I consists of the Boxes, in which will be entered Operational and Financial Matters. Part II contains the 27 Clauses which make up the Standard Terms and Conditions.

It will be seen that the content of the Agreement closely follows "TOWCON", which until now has often been utilised by salvors when engaging additional assistance on a Lumpsum basis, and set out below are some notes intended to assist those using "SALVCON".

Part I

Boxes 1, 2 and 3 are self explanatory and require no comment.

Box 4 requires details and specifications of the hired vessel(s). These could be annexed to the Agreement if, for example, a brochure exists in respect of the vessel, or such details could be set out in a separate annex.

Box 5 is for the name of the Owner's P&I Association.

Boxes 6, 7 and 8 are concerned with the Details, Condition and Location of the Casualty.

**The Hirer should ensure that he properly completes these details, as the owner of the vessel to be provided is entitled to rely upon this information as representing the actual state of affairs in respect of the casualty to which services are to be provided.**

Box 9 will set out the services to be provided by the Owner.

**As this is a Lumpsum Agreement it is most important that the Nature of the Services is set out as precisely as possible, as in the alternative there will be scope for disputes between the parties as to whether what had to be done was within, or outside, the lumpsum price.**

Box 10 deals with the Lumpsum Price, and any stage payments.

Box 11 is for the Free Time, pursuant to Clause 4 of Part II. Again it is important that the parties agree on the use of Free Time, and whether it is fully reversible, i.e. can be used either at the commencement or completion of the services.

Box 12 deals with Delay Payment rates, and it will be seen that there is provision for a Sea Rate, an In Port Rate and an At Anchor Rate.

Box 13 sets out the Payment Details.

Box 14 deals with the Time for Payment, and any Interest to be paid in the event of late payment.

Box 15 is in respect of Extra Costs, and the handling charge the Owner may levy if he pays these costs on behalf of the Hirer.

Box 16 is concerned with the Security Requirements.

Box 17 is in respect of Law and Arbitration. **It should be noted that if the Box is left blank, English law with Arbitration in London will apply.** Whilst, in the majority of cases it is likely that the Hirer will be rendering services to the casualty under Lloyd's Form, there is always the possibility that the Hirer may be engaged under some other contract, so there is provision for the parties to Arbitrate any dispute in another place, subject to the laws of that place.

Box 18 is for the numbers of any additional Clauses to Part II of the Agreement.

## **PART II**

This section begins with a standard preamble, setting out the reason for the Agreement between Hirer and Owner.

Clause 1: DEFINITIONS; sets out a definition of "Casualty" which includes anything on the casualty, including the cargo, bunkers, etc. "Vessel" being the Owner's tug or other equipment is also defined, as is the "Owner".

Clause 2: NATURE OF THE SERVICES TO BE PROVIDED BY THE OWNER; this Clause confirms that the services are as set out in Box 9 of Part I, and any Annexe to the Agreement.

Clause 3: PRICE AND CONDITIONS OF PAYMENT; deals with the financial aspects of the Agreement.

It should be noted that under Clause 3.1 the Owner will base his Lumpsum price upon the details set out in Boxes 7, 8 and 9 of Part I, and any accompanying Annexe(s) to the Agreement. **It is therefore of the utmost importance that the information provided accurately reflects the situation of the casualty, and the work to be carried out.**

If any information is dealt with in separate communications between Hirer and Owner by fax, telex, etc. these should be annexed to the Agreement.

Under Clause 3.3 the Hirer may not make any deductions from the lumpsum price, and under Clause 3.7 the Owner may terminate the Agreement under certain identified situations.

Clause 4: FREE TIME: this clause requires the Owner to set out the amount of Free Time included within the Lumpsum Price, and the specific purposes for which the Free Time may be utilised.

Clause 5: DELAY PAYMENTS; refers back to Box 12 of Part I.

Clause 6: EMPLOYMENT AND AREA OF OPERATIONS; requires that the salvage activities must be lawful and restricts the "area of operations" to within Institute Warranty Limits. If the services are to take place outside these limits then permission must be obtained, in writing, and there may be additional insurance costs. The clause also confirms that no warranties are given by the Hirer regarding the safety of the place of operations.

Clause 7; MASTER AND CREW: confirms that the Master and Crew of the Vessel are to carry out their duties promptly and that the navigation and management of the Vessel remains under the control of Owners, Master and Crew.

Clause 8: OWNER'S OBLIGATIONS: this clause records that the reasonable instructions of the Hirer must be complied with; that the Owner, Master and Crew will exercise due care to protect the environment; that the services to be rendered are in the nature of salvage services; **that no claims for salvage are to be made against the salvaged property; nor any claims for Special Compensation under Article 14 of the 1989 Salvage Convention; nor may any claims be brought under the Scopoc Clause; and that the Owner agrees to indemnify the Hirer against the consequences of any such salvage claims.**

Clause 9; HIRER'S REPRESENTATIVE: requires the Hirer to have a representative in operational control of the salvage services.

Clause 10; PERMITS: provides that the Hirer is responsible for obtaining any Licences, Approvals, Authorizations or Permits, but is entitled to reasonable assistance from the Owner.

Clause 11; TOWING GEAR AND EQUIPMENT: provides that the Owner will allow the Hirer to use all the towing and salvage equipment on the tug at no extra charge, unless there is loss or damage which is not due to the negligence of the Owner, his servants or agents.

Clause 12; SEAWORTHINESS OF VESSEL: is a warranty by the Owner that his vessel will be tendered in a seaworthy condition, fit for the services to be rendered, but no other warranties, express or implied, are given by the Owner.

Clause 13; SUBSTITUTION OF THE VESSEL: allows the Owner to provide a substitute vessel of his own, or belonging to others, provided it is of adequate power and capability. The Hirer's approval of such substitution must be obtained but that approval shall not be unreasonably withheld.

Clause 14; TERMINATION: provides for the termination of the services by the Hirer, and the obligation of the Hirer with regard to payment to the Owner, as well as the obligations on the Owner in such a situation.

Clause 15; TIME FOR PAYMENT AND INTEREST: relates to time for payment by the Hirer, and the rate of interest to be charged in the event of late payment.

Clause 16; EXTRA COSTS: deals with extra costs which are payable by the Hirer, and as such is similar to the same clause in the Towing and Wreck Removal Agreements.

**It should however be noted that 16.1 (v) deals with the Owner's towing gear, salvage equipment, portable equipment, materials or stores, lost damaged or sacrificed during the services, which costs are recoverable from the Hirer, provided such loss or damage was not as a consequence of negligence on the part of the Owner, his servants or agents.**

Clause 17; SECURITY: is concerned with the provision of security for the monies due to the Owner under the Agreement. It is similar to such clause in "TOWCON", etc.

It should be noted that in the event of any salvage claims against the salvaged property being made by owners, master, crew, etc. of the Vessel, then the Owners are obliged to provide the Hirer with security in respect of such claims.

Clause 18; INSURANCE: is a new clause under which the Owner warrants that he is carrying adequate and sufficient insurances on his vessel(s) appropriate to the services he is being engaged to perform. The clause identifies the types of insurance cover to be in place on the Vessel.

**It should be noted that the Pollution Liability Cover referred to under 18.2 (iii), is not available to all tug owners/operators. Owners should be careful to advise the Hirer if this cover does not exist. Equally the Hirer should be careful to ascertain if this cover is in place for the tug/vessel in question.**

Clause 19; LIABILITIES: deals with Liabilities and the clause is taken from "TOWCON"/"TOWHIRE" with necessary amendments. It follows the standard "knock for knock" liability principles which are widely accepted today.

Clause 20; HIMALAYA CLAUSE: this is a standard Clause as is to be found in "TOWCON", etc. It gives an extension of the defences, etc. within the agreement granted to the Hirer and Owner, to their respective servants, agents, sub-contractors, etc.

Clause 21; EVIDENCE: this Clause is specific to "SALVCON" and "SALVHIRE". It requires the Owner to assist the Hirer with regard to the retention and provision of evidence to support the Hirer's salvage claim.

Clause 22; CONFIDENTIALITY: this clause requires the parties to honour the confidentiality of the Agreement, but does allow for the details to be disclosed in Court or Arbitration proceedings relating to the casualty.

Clause 23; GENERAL: this is a standard clause to be found in many similar agreements.

Clause 24; TIME FOR SUIT: **It should be noted that any claim by one party to the contract, against the other, must be notified within 6 months and any suit must be brought within one year. Failing this the claim is barred absolutely.** This time limit is the same as in "TOWCON" and "TOWHIRE".

This is considered reasonable as within 6 months of completion of the services the Hirer/Contractor will usually be close to finalising his claim against the salvaged property.

The indemnity provisions within Clauses 8.5, 19 and 20 are excluded from this time limit.

Clause 25; LAW AND ARBITRATION PROCEDURE: this clause makes the Agreement subject to English law.

It is anticipated that the majority of users of this Agreement will be involved in rendering services to a casualty under Lloyd's Standard Form of Salvage Agreement. For this reason, any dispute between the parties is to be referred to a member of the panel of Lloyd's Salvage Arbitrators.

There is provision for an appeal to the Lloyd's Appeal Arbitrator.

There is provision for the parties to commence proceedings in another jurisdiction for the purpose of obtaining security.

In addition, the Owner may apply to the Arbitrator or Appeal Arbitrator for a payment on account pending determination of any disputes.

Clause 26; ALTERNATIVE LAW AND ARBITRATION PROCEDURE: this clause recognises the fact that a number of salvage services are performed under contracts other than Lloyd's Form. Under this clause the parties have the right to nominate another place for the hearing of any Arbitration. In such event the Arbitration will be subject to the procedures and laws of that place.

Clause 27; WARRANTY OF AUTHORITY: is the standard warranty of authority clause in relation to the person signing the Agreement in respect of the Vessel being hired.

**These Notes are intended to be used as a general guide. In the event of any conflict between the Notes and the contents of "SALVCON", the latter will prevail over the Notes.**

MJL  
November 2005