

STANDARD TERMS AND CONDITIONS – TOWING
Shaver Transportation Company

SHAVER TRANSPORTATION COMPANY
STANDARD TERMS AND CONDITIONS
FOR
GENERAL TOWING, SHIP ASSIST & ESCORT TOWING
COLUMBIA, WILLAMETTE & SNAKE RIVERS

STANDARD TERMS AND CONDITIONS - TOWING

AS OF: September 1, 2009

STANDARD TERMS AND CONDITIONS – TOWING
Shaver Transportation Company

1. APPLICABILITY: These STANDARD TERMS AND CONDITIONS apply to all ship assist towing, escort towing and general towing on the Columbia, Willamette & Snake Rivers for which no other express written contract signed by Shaver Transportation Company (“Shaver”) exists. When service is ordered or is accepted, it is understood that the vessel, its owners and operators agree to all the terms and conditions contained herein. Shaver’s objective is to have tugs and personnel available at all times to cover customer requirements. However, experience has shown that on occasion, demands outstrip supply. As a result, although Shaver will do its best, Shaver cannot guarantee that it can meet all customer requirements 100% of the time. Shaver reserves the right to substitute tugs of higher horsepower at no additional charge when tugs of lesser horsepower are ordered and not available. Updates to these STANDARD TERMS AND CONDITIONS may be made from time to time, in Shaver’s sole discretion, by posting updates to www.shavertransportation.com. Acceptance of any of the services provided by Shaver constitutes acceptance of the STANDARD TERMS AND CONDITIONS posted on Shaver’s website at the time such services are ordered or performed.
2. RATE SCHEDULE: Rates, prices and expenses for any services performed by Shaver are contained in its standard RATE SCHEDULE as acknowledged by customer as of the time services are ordered.
3. PAYMENT TERMS: Payment is due within thirty (30) calendar days from the date of invoice. Any invoice over thirty (30) days past due is delinquent and shall be subject to a one and one half percent (1½ %) per month finance charge on the total unpaid balance from invoice date. The thirty day terms do not apply if in Shaver’s opinion the collection of a billing may be jeopardized, and upon notice to customer the billing will become immediately due and payable. If a delinquent account is placed in the hands of any attorney for collection, the amount of the legal fees and related expenses (i.e., U.S. Marshal’s fees, sheriff’s fees, filing fees, etc.) shall be included in and become part of the delinquent account balance, and become payable in full to Shaver regardless of whether litigation is commenced. If suit or action is filed by Shaver collect a delinquent account the amount of such attorney’s fees and court costs shall be assessed by the trial and/or appellate court.
4. CALL OUT SERVICE: These STANDARD TERMS AND CONDITIONS shall apply to all services requested on a call out basis through Shaver’s dispatch offices. Call out services rates may be specifically agreed at time of request, subject to written confirmation (which may be Shaver’s invoice). Absent such agreement, service rates shall be subject to Shaver’s standard RATE SCHEDULE as posted on Shaver’s website. These STANDARD TERMS AND CONDITIONS are deemed incorporated into any agreement of the parties for call out service. No terms or conditions contained herein may be modified as to a particular call out service unless agreed to in writing by both parties.
5. SUBCONTRACT: All or part of any service requested herein may be subcontracted to others without notice to customer, and customer agrees that any such subcontractor shall have the benefit of all defenses, exemptions, and limitations of liability provided herein for the benefit of this

STANDARD TERMS AND CONDITIONS – TOWING
Shaver Transportation Company

company. In performance of any such subcontract, the subcontractor shall be considered an independent contractor and not the agent, servant or employee of this company.

6. SCHEDULING: Shaver shall use reasonable diligence to provide tug service at the time scheduled with the customer. However, the company reserves the right to perform tug service for other persons prior to the time scheduled with the customer. If tug service provided for such other persons delays commencement of tug services to the customer, Shaver shall have no liability for such delay. Scheduled times for tugs are approximate and not guaranteed. In the event the customer's vessel arrives prior or subsequent to the time scheduled, Shaver shall use reasonable diligence to provide tug service at the time of arrival, but Shaver shall have no liability for delay in rendering tug service.
7. RESPONSIBILITY - APPLICABLE TO ASSIST AND ESCORT SERVICE: Rates for assist and escort towage require that vessels be in charge of the master thereof or a regular licensed pilot be employed by the vessel, its owners or operators, which master or pilot shall give all orders to the tugs supplied. The masters and crews of assist and escort tugs shall, in the performance of such service be and become the servants of the vessel or craft being assisted or escorted. Neither the tugs used in the service, nor the owner, charterer, or hirer thereof, shall be liable for any loss or damage of any nature whatsoever arising out of or occurring while such service is being rendered, or incident thereto, so long as said tugs follow and carry out properly and in a timely fashion the orders and directions of the master or pilot of the vessel or craft to which service is being rendered. The vessel or craft to which service is being rendered, its owners, charterers, or operators, shall indemnify the tug or tugs, their owners, charterer or hirer, with respect to any damage sustained by the tug or tugs while following and carrying out the orders and directions of the master or pilot of the vessel, and shall hold harmless the tug or tugs, their owner, charterer or hirer, from any and all claims, demands, actions, suits or sums paid on account of any damages sustained by third parties (including but not limited to personal injury or loss of life of any person) as well as personal injury or loss of life of any member or crew of said tug or tugs.
8. HAWSERS - APPLICABLE TO ASSIST AND ESCORT SERVICE: For assist and escort towage, the assisted vessel assumes all risk of any and all loss or damage sustained by it or by any other vessels, property or persons resulting from the parting of any hawsers or other line, by whomsoever furnished, and whether the parting was due to insufficiency, negligence, wear or other cause.
9. WARRANTY: With respect to vessels that are not owned by the person or company ordering or by the person or company who has contracted with the towing company for the tug service, it is understood and agreed that each such person or company warrants that it has authority to bind the vessel, and her owner, to all the provisions of this rate schedule and agrees to indemnify and hold harmless those furnishing the tugs or any pilot, the tugs, their owners, agents, charterers, operators and managers, from all damage and expenses that may be sustained or incurred in the event and in the consequence of such person or company not having such authority.
10. DISCLAIMER OF WARRANTY OF WORKMANLIKE SERVICE: Neither the tug, its owners, agents, charterers, operators nor managers, expressly or warrant by implication that workmanlike service will be performed and such warranty is expressly excluded. The liability of the tug, its

STANDARD TERMS AND CONDITIONS – TOWING
Shaver Transportation Company

owners, agents, charterers, operators and managers is limited to such consequences and damages as said parties would be legally liable for in the absence of any warranty of workmanlike service.

11. NOTICE OF DAMAGE: Notice of any alleged damage or injury suffered or caused by a vessel to which tug services are rendered hereunder must be given to this company within a reasonable time (not to exceed 24 hours) after the alleged occurrence, and if it is intended that claim be made upon this company based upon such alleged damage or injury, written notice of such intention must be given within thirty days of such occurrence. In the absence of either one or both notices provided for above, no claim arising out of such occurrence shall be valid, and no suit may be maintained in respect to such claim on account of damage or injury suffered or caused by such vessel. In addition to the foregoing requirements, no such claim shall be valid and no suit may be maintained on account of any such damage or injury unless this company is given a reasonable opportunity to inspect and survey the damage for which claim is made prior to the commencement of any repairs.

12. LIMITATION OF LIABILITY: THE FURNISHING OF ANY SERVICE, OR ANYTHING DONE IN CONNECTION THEREWITH, SHALL NOT BE CONSTRUED TO BE, OR GIVE RISE TO, A PERSONAL CONTRACT. IT IS UNDERSTOOD AND AGREED THAT SHAVER, THE TUGS, THEIR OWNERS, CHARTERERS, OPERATORS MANAGERS AND AGENTS SHALL HAVE THE BENEFIT OF ALL EXCEPTIONS FROM, AND LIMITATIONS OF, LIABILITY TO WHICH AN OWNER OF A VESSEL IS ENTITLED UNDER ANY LIMITATION OF LIABILITY STATUTES OF THE UNITED STATES, INCLUDING , BUT NOT LIMITED TO LIMITATIONS OF IMMUNITY FROM LIABILITY UNDER THE OIL POLLUTION ACT OF 1990 (“OPA” 90”) AND ANY APPLICABLE STATE LAW. UNLESS ENTITLED TO IMMUNITY AS A RESPONDER OR OTHERWISE UNDER OPA 90 OR APPLICABLE STATE LAWS AND SUBECT TO DEFENSES TO, EXEMPTIONS FROM AND LIMITATIONS OF LIABILITY PROVIDED HEREIN, SHAVER, THE TUGS, THEIR OWNERS, CHARTERERS, OPERATORS, MANAGERS AND AGENTS SHALL BE LIABLE TO THE EXTENT REQUIRED BY LAW, UP TO AND INCLUDING THE FIRST \$250,000 FOR ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES AND COSTS (INCLUDING ATTORNEYS’ FEES) ARISING OUT OF OR RELATED TO A SINGLE OCCURRENCE, OR CONNECTED SERIES OF OCCURENCES, IN CONNECTION WITH ANY SERVICE RENDERED BY SHAVER PURSUANT TO THIS SCHEDULE. CUSTOMERS UNDERSTANDS AND AGREES THAT THE RATES ASSUME THE LIMITATION OF LIABILITY AFFORED BY THIS LIMITATION OF LIABILITY CLAUSE AND THAT THIS CLAUSE SHALL NOT BE LIMITED, RESTRICTED OR, IN ANY WAY, AFFECTED BY THE AMOUNT OF INSURANCE CARRIED BY SHAVER.

13. INDEMNITY: ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES AND COSTS (INCLUDING ATTORNEY’S FEES) EXCEEDING \$250,000 THAT ARE ATTRIBUTABLE TO THE ACTS OR OMISSIONS (WHETHER NEGLIGENT OR OTHERWISE) OF SHAVER, THE TUGS, THEIR OWNERS, CHARTERERS, OPERATORS, MANAGERS AND AGENTS, OR TO A TUG’S UNSEAWORTHINESS, AND WHICH ARISE OUT OF, OR RELATE TO A SINGLE OCCURRENCE, OR CONNECTED SERIES OF OCCURENCES, IN CONNECTION WITH ANY SERVICE RENDERED BY SHAVER PURSUANT TO THIS SCHEDULE SHALL BE SUBJECT TO THE FOLLOWING INDEMNITY: CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS

STANDARD TERMS AND CONDITIONS – TOWING
Shaver Transportation Company

SHAVER, THE TUGS, THEIR OWNERS, CHARTERERS, OPERATORS, MANAGERS, AFFILIATED COMPANIES, EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS FROM ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES AND COSTS (INCLUDING ATTORNEYS' FEES) OF EVERY TYPE AND CHARACTER, WHETHER IN REM OR IN PERSONAM, WHICH ARE ASSERTED AGAINST THEM BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, CUSTOMER'S EMPLOYEES) FOR PERSONAL INJURY, ILLNESS OR DEATH, OR FOR LOSS OR DAMAGE TO PROPERTY OF ANY KIND OR TYPE AS WELL AS OIL POLLUTION OR THE SPILL OF ANY HAZARDOUS SUBSTANCE. THE PARTIES INTEND FOR THIS INDEMNITY TO APPLY TO ALL INCIDENTS OF WHATSOEVER NATURE.

14. NO CONSEQUENTIAL DAMAGES: SHAVER SHALL NOT IN ANY EVENT BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION EXTRA EXPENSE, LOSS OF PROFITS, LOSS OF USE OF PROPERTY, DELAY OR DAMAGES CONSEQUENTIAL UPON LOSS OF USE, WHETHER RESULTING FROM NEGLIGENCE OR BREACH OF THIS CONTRACT BY SHAVER OR ANY SUCH PERSON, ENTITY OR TUGS OR OTHERWISE AND EVEN IF THE POSSIBILITY OF SUCH DAMAGE IS OR WAS FORESEEABLE BY SHAVER OR ANY SUCH PERSON OR ENTITY.