



1701 East Market Street, Jeffersonville IN 47130-4717

## STANDARD TERMS AND CONDITIONS – MARINE SERVICES

These terms and conditions are applicable to all vendors (each, a “Contractor”) performing marine services on or about boats, barges and other vessels owned or operated by American Commercial Barge Line LLC, ACBL Transportation Services LLC or their affiliates (“ACBL”), which are not under separate contract with ACBL. Marine services include, without limitation, fleetings, shifting, tow-build, cover handling, vessel inspections, surveys, vessel maintenance and repair, barge cleaning, pumping, stevedore and tankerman services, commercial diving, cargo inspections and related services (“Services”).

1. General. These terms and conditions shall be applicable to the provision by Contractor of all Services ordered by ACBL from time to time pursuant to either a verbal request, E-mail, PO or otherwise. THE ACCEPTANCE OF ANY OFFER MADE BY ACBL IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. Any terms and conditions contained in Contractor’s proposal, acknowledgment or any other document, which are different from, in addition to, or vary from these terms and conditions, shall not be binding upon ACBL and are hereby rejected.

2. Prices and Payment Terms.

(a) Unless otherwise agreed, Contractor shall invoice ACBL at the then-current published rates for the location, or if there are no published rates, at rates equal to or less than the best rate offered by Contractor in the same area. Contractor shall submit invoices to ACBL within thirty (30) days of the performance of Services, otherwise such invoice(s) will be time-barred.

(b) Unless otherwise agreed, all invoices shall be due within forty-five (45) days of date of invoice.

(c) For work billed on an hourly basis, Contractor shall maintain and submit along with the invoice a detailed time report of the time spent on Services and the specific activities performed, in accordance with policies adopted by ACBL from time to time. Failure to properly substantiate time in accordance with policies adopted by ACBL from time to time shall result in a waiver by Contractor of the fee for such time entry.

(d) ACBL will not pay for any excess cleaning charges that have not been previously agreed upon in writing by ACBL. Excess cleaning charges include any charge in excess of published rates, such as charges for removal of excess cargo or cover handling charges. ACBL will not agree to pay for excess cleaning charges unless Contractor, prior to performing Services, notifies ACBL of the need for excess cleaning and provides pictures of the barge condition along with an estimated cost and estimated time for completion of such Services. Contractor shall not commence any such work without ACBL’s prior written authorization.

(e) All overhead costs, including faxing, online research, postage, clerical services, cell phone or other telephone charges, data storage, filing, billing, word processing, computer time, and similar operating costs shall be included in the fees without additional charges. All overnight or out-of-town travel shall be pre-approved. Airfare is reimbursable only at coach rates and all reasonable efforts should be made to book airfare as far in advance as possible and on the most economical carrier. Hotel and meal expenses must be reasonable. There is no reimbursement for non-travel related meals or for alcoholic beverages. Contractor will not be reimbursed or compensated at an hourly rate for travel within Contractor’s Service areas. All reimbursable expenses must be charged at actual cost with no additional mark-up. Copies of receipts for reimbursable expenses shall be provided with the applicable invoice.

3. Performance/Warranties.

(a) Contractor agrees to perform the Services diligently and to the best of its abilities, and to use its best efforts, skill and ability to promote the interests, goodwill and reputation of ACBL and its customers. All Services shall be performed in accordance with ACBL’s work order or other instructions, in a good and workmanlike manner, and in accordance with industry standards. For port services (fleetings, shifting and pre-built tow), Contractor agrees to perform such Services in accordance with, and in all respects comply with, the performance standards as specified on Appendix A, attached hereto and incorporated herein by reference. In the event of defective Services, Contractor shall, at ACBL’s option, either (i) immediately re-perform the Services at no cost to ACBL, or (ii) refund the purchase price for the defective Services.

(b) Contractor warrants that all parts, paint, lining and equipment installed on ACBL vessels (“Goods”) will be new and will not be used or refurbished unless explicitly authorized by ACBL in writing. Contractor warrants that unless more stringent specifications are required by ACBL, all Goods will comply with American standards (including but not limited to, ANSI, ASME, ASTM and NEMA, as applicable). Contractor expressly warrants that all Goods shall conform to the samples, drawings, models, specifications or other descriptions; shall be fit and sufficient for the purpose intended; shall be merchantable, of good material and workmanship and free from defects. This warranty shall run to ACBL, its successors, affiliates, and assigns. All warranties shall extend for a period of twelve (12) months from date of installation. Contractor shall, at ACBL’s option, repair or replace any defective Goods or parts at no cost to ACBL or refund the purchase price in full. Replacement parts are included in the definition of Goods for purposes of the warranty and other provisions hereunder. The foregoing warranties shall survive ACBL’s inspection, acceptance and use of the Goods. In addition to the foregoing, Contractor hereby extends to ACBL any and all warranties received from Contractor’s subcontractors or suppliers and agrees to enforce such warranties on ACBL’s behalf.

(c) The warranties contained herein shall be in addition to, and shall not be construed as restricting or limiting, any warranties or remedies of ACBL, express or implied, which are provided by contract or law.

4. Compliance.

(a) Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor possesses all licenses, permits and other authorizations from any governmental entity necessary for the performance of Services, and all such permits are, and shall at all applicable times be, in full force and effect.

(b) For Services being performed at Contractor’s facility, Contractor will provide safe berth. Contractor shall ensure that the vessels are adequately moored with warning lights properly displayed as required by U. S. Coast Guard regulation. Upon delivery of ACBL’s vessel to Contractor’s facility, Contractor shall be deemed to be in sole possession of the vessel and to be responsible for its safety until the vessel is released to and removed by ACBL. Contractor acknowledges and agrees that it will have sole and exclusive control of the entire vessel while in its possession, including, without limitation, areas that neither Contractor nor its employees anticipate work to take place. Vessels in Contractor’s possession under this provision shall be held without charge to ACBL.

(c) Access to ACBL’s vessel shall be at Contractor’s own risk. Contractor shall be solely and continuously responsible for the health and safety of all of its employees, subcontractors and invitees on or about ACBL’s vessel. In no event shall ACBL or any of its affiliates be responsible for or have any liability for personal injury, illness, disease or death of any of Contractor’s employees, subcontractors or invitees. Contractor hereby agrees to waive and release ACBL from any liability to Contractor for claims based on bodily injury or death suffered or incurred by Contractor or its employees, and Contractor specifically agrees not to pursue any legal action relating thereto, whether based upon Fed. Marine Terminals, Inc. v. Burnside Shipping Co., 394 U.S. 404 (1969), 33 U.S.C. § 905(b) via assignment, or otherwise.

(d) Contractor agrees to keep in effect and maintain a written drug and alcohol-testing policy for its employees in compliance with all applicable laws and regulations. The policy shall also comply with any additional requirements or procedures that ACBL may furnish to Contractor from time to time.

(e) Each individual employee performing Services shall at all times be suitably trained and experienced, taking into consideration the nature of the Services.

(f) For Contractors performing fleeting and shifting Services, Contractor hereby assumes all responsibility for compliance with the requirements of the Vessel General Permit (“VGP”) with respect to vessels while in Contractor’s care, custody or control. Contractor agrees to comply with the American Waterway Operators (AWO) Recommended Practice Guide requirements with regard to the VGP located at AWO’s website (<http://www.americanwaterways.com>), as may be revised from time to time, which are incorporated herein by reference. Without limiting the generality of the foregoing, Contractor agrees that it will conduct a visual inspection of all vessels when dropped off and picked up, and at least once per week or once per voyage, whichever is more frequent. Vessels in a fleet shall be inspected at least once per week. Such inspections shall be documented and made available to ACBL upon request. Any noncompliance with the VGP or the AWO Best Management Practices shall be immediately reported to ACBL.

(g) For dry barge cleaning Services, Contractor shall maintain a record of all barges cleaned, including barge number, commodity, source of the water used for cleaning (e.g., riverwater, recycled washwater or city water), amount of wastewater generated, and whether such wastewater will be recycled or disposed of. Contractor shall maintain shipping and disposal records for all wastewater. Any discharge of wastewater from ACBL’s vessels in connection with cleaning operations requires prior ACBL approval and proof of an appropriate NPDES permit.

5. Casualties, Notice and Duties. Contractor shall report to ACBL any casualties involving the Services including, but not limited to, damage to the vessel(s), damage to property of third persons, pollution incidents, and personal injuries or deaths, as soon as such report is practical, but in no event later than twenty-four (24) hours after of the casualty, provided that this notification in no way relieves Contractor of the responsibility to make all notifications as required by law and/or regulation. Such report may be given orally or in writing to ACBL, but Contractor shall submit a written report following any such oral report not later than three (3) days following the casualty

6. Indemnification. Contractor does hereby assume liability for, and does hereby agree to defend, indemnify, and hold harmless ACBL and its parent and affiliated companies, and its and their respective officers, directors, members, employees, agents and vessels (“ACBL Group”) from and against any and all liabilities, obligations, losses, injuries (including death), damages, penalties, environmental response costs, claims, actions, suits, costs, property damage, natural resource damage, fines, assessments, demurrage, lost days, down-time and expenses (including attorney’s fees as and when incurred), of any kind and nature, imposed on, incurred by or asserted against ACBL Group, whether or not involving a third-party claim, arising out of or in connection with: (i) the performance of Services, (ii) any injury, illness or disease suffered by or death of any employee of Contractor or Contractor’s subcontractors (including without limitation, longshore workers, inspectors, or other invites aboard ACBL’s vessel at Contractor’s request) regardless of whether caused in whole or in part, by the fault, strict liability, sole or concurrent negligence or fault of ACBL or its affiliates, or the unseaworthiness, defect or negligence of any vessel, and (iii) as a result of damage to a vessel in Contractor’s care, custody or control. **TO THE EXTENT THAT ANY PORTION OF THE ABOVE INDEMNITY IS HELD TO BE INVALID OR UNENFORCEABLE, SUCH HOLDING SHALL NOT AFFECT THE REMAINING OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS ACBL GROUP HEREUNDER.**

7. Limitation on Liability. **IN NO EVENT SHALL ACBL BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY OF LAW, EVEN IF ACBL SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGES.**

8. Insurance. Contractor shall procure and keep in effect during the following minimum insurance: (a) Comprehensive General Liability Insurance (including but not limited to Broad Form Contractual Liability, Products and Completed Operations, Sudden & Accidental Pollution, Care Custody and Control, Action Over Indemnity Buy Back and In Rem Endorsements) in an amount not less than \$1,000,000 per occurrence, with a deletion of all watercraft exclusions; (b) Workers’ Compensation Insurance (including Longshore and Harbor Workers’ Compensation) as required by an applicable state and/or federal law, and Employers’ Liability Insurance (including Maritime Employer’s Liability) in the amount of \$1,000,000, which policies shall contain the Alternate Employer/Borrowed Servant and In Rem Endorsements; (c) Automobile Liability Insurance covering all owned autos, all non-owned autos, and all hired autos, with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence; (d) Excess Liability Insurance with a limit of not less than \$9,000,000 per any one accident or occurrence in excess of primary limits, and not less than \$29,000,000 for any Services on or about barge(s) carrying liquid cargo per any one accident or occurrence in excess of primary limits, for all the coverages set forth in subsections (a), (b) with regard to Employer’s Liability, and (c) above. Contractor shall be solely responsible for any deductible. The insurance policies listed above shall name ACBL and its affiliated companies as additional insureds. The insurance policies required above shall be independent of the indemnity obligations herein and the scope of the indemnity assumed by Contractor herein shall apply to the required insurance regardless of whether the indemnity provisions contained herein are enforceable. Contractor represents, warrants and agrees that Contractor’s liability insurance coverages shall provide coverage to ACBL Group for claims asserted by employees of Contractor notwithstanding ACBL Group’s negligence, sole negligence or other legal fault, or the unseaworthiness, defect or negligence of any vessel. All policies of insurance procured hereunder shall contain a full waiver of subrogation by Contractor and its insurers in favor of ACBL and its affiliated companies. The insurance policies required above shall each constitute primary insurance coverage to any insurance already in place by ACBL and shall be extended to ACBL on a noncontributory basis. Contractor shall provide ACBL with certificates of insurance confirming that the foregoing insurance policies are in full force and effect upon request. Contractor will immediately notify ACBL upon receiving notice of any cancellation or upon any material change in its insurance. Contractor shall ensure that any approved subcontractor will maintain in full force and effect, the liability insurance with limits at least equal to that set forth in this Section 8, inclusive of requiring additional assured and waiver of subrogation.

9. Cancellation. ACBL reserves the right to cancel Services at any time for its convenience. In the event of any such cancellation, ACBL shall pay Contractor for any work performed through the date of such cancellation.

10. Confidentiality. Contractor acknowledges that in connection with its performance of Services, it may receive or have access to certain confidential or proprietary technical and business information and material of ACBL, including, without limitation, customer lists, customer information, score auditor forms, vessel designs, operational and logistical information, and policies and procedures of ACBL (“Confidential Information”). Contractor shall hold and maintain all Confidential Information in strict confidence, and shall not disclose Confidential Information to any third party. Contractor shall not use Confidential

Information except as may be necessary to perform Contractor's obligations hereunder; except as required by any court or governmental authority. "Confidential Information" does not include any information that is in the public domain or becomes publicly known through no fault of Contractor, or is otherwise properly received from a third party that does not have an obligation of confidentiality to ACBL.

11. Independent Contractor. Contractor is an independent contractor. These terms do not create a partnership or joint venture. Contractor shall follow the directives of ACBL regarding the scope of Services and the results to be achieved by Contractor, but Contractor shall maintain control and shall be permitted to employ any reasonable means and methods which Contractor deems necessary and appropriate to achieve such results. Contractor shall supply all necessary equipment, materials and supplies for the performance of Services.

12. Liens. Contractor shall not have the right to directly or indirectly create, incur, assume or suffer to exist any lien, encumbrance, security interest or claim of any nature whatsoever, whether created by operation of law or otherwise, on any ACBL vessel. Contractor will promptly, at its own cost, risk and expense, take such action as may be necessary to discharge or eliminate any such lien, encumbrance, security interest or claim, if the same shall arise at any time.

13. No Waiver. The failure of ACBL at any time to require performance by Contractor of any provision of these terms shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of a breach of any provision of this terms constitute a waiver of any succeeding breach of the same or any other provision.

14. Assignment. Contractor may not assign its obligations hereunder, whether by operation of law or otherwise, without first obtaining the prior written consent of ACBL, which consent will be in ACBL's sole discretion. Contractor may not subcontract any of its obligations hereunder without the prior written consent of ACBL, which consent shall be in ACBL's sole discretion.

15. Governing Law, Venue and Jurisdiction. These terms shall be governed and construed pursuant to the general maritime law of the United States, and, to the extent not governed by such law, the substantive laws of the State of Indiana, without regard to its conflict of law principles. Contractor consents and voluntarily submits to personal jurisdiction in the State of Indiana and in the courts in such state located in Clark County and the United States District Court for the Southern District of Indiana, New Albany Division, in any proceeding arising out of or related to these terms, and agrees that all claims raised in such proceedings may be heard and determined in such courts. Any action to interpret or enforce any provision of these terms (but excluding cross-claims and third-party claims in third-party actions) shall be instituted exclusively in the United States District Court for the Southern District of Indiana, New Albany Division or, if such Court does not have subject matter jurisdiction to adjudicate such action, in the courts of the State of Indiana located in Clark County. Contractor irrevocably and unconditionally waive and shall not plead, to the fullest extent permitted by law, any objection that they may now or hereafter have to the jurisdiction of such courts, laying of venue or the convenience of the forum.

16. Interpretation. All headings of the provisions of these terms are inserted for convenience only and shall not affect any construction or interpretation. These terms have been prepared by ACBL as a matter of convenience and Contractor agrees that (a) such preparation shall not be construed for or against either party, (b) it has had the opportunity to seek independent legal advice from attorneys of its own selection, and (c) these terms shall be deemed to have been drafted and prepared by counsel for both parties for purposes of future construction and interpretation; therefore, no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions hereof.

17. Severability. To the extent any provision of these terms is held by a court of competent jurisdiction to be void or unenforceable, in whole or in part, such provision will be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of these terms.

18. Entire Agreement. These terms contain the entire agreement between the parties pertaining to the Services ordered by ACBL and supersede all prior and contemporaneous agreements and understandings in connection therewith. These terms may only be amended by a written agreement executed by authorized representatives of the parties.

## Appendix A – Performance Requirements

1. Shifting Services. “Shifting” is defined as the movement of barge(s) between areas, including tendering and delivering barges to a dock, facility or mooring area as requested by ACBL from time to time. All Shifting Services shall be performed in accordance with the following minimum requirements:

- Contractor shall ensure that the delivery of each barge to the applicable dock, facility, mooring area or other specified location, is on-time and in accordance with ACBL’s or its customer’s specified time frame.
- Contractor shall ensure that each barge is properly secured to the dock, facility or other specified location, in accordance with industry standards and the applicable facility’s mooring requirements.
- All barges returning from an unloading facility shall be directly shifted to a barge cleaning or barge repair facility, subject to space availability or ACBL Dispatcher and/or Planning Center orders to the contrary.

2. Fleeting Services. “Fleeting” is defined as securing barges within an established and/or customary mooring area as requested by ACBL from time to time. All Fleeting Services shall be performed in accordance with the following minimum requirements:

- Contractor shall ensure that all barges are secured in a safe and proper manner, in accordance with industry standards.
- Contractor shall maintain proper security and restrict unauthorized access to the fleeting area.
- If another vessel is scheduled to pick up a barge from the mooring area, Contractor shall ensure that the barge is ready for pick up at the time requested by ACBL.
- If a barge is inaccessible by land, Contractor shall provide means of transportation for ACBL personnel to inspect barge(s) in a safe and reasonably expeditious manner. If Contractor cannot provide said transportation, Contractor shall allow ACBL free access to the barges and shall also allow ACBL to arrange for alternate personnel transportation.

3. Pre-Built Tow Services. “Pre-Built Tow” is defined as making specified barges into a tow. All Pre-Built Tow Services shall be performed in accordance with the following minimum requirements:

- Contractor shall coordinate orders with ACBL Dispatcher and/or Planning Center as to the barges that are to be pre-built for either direct ACBL boat pick up or for tow turning service. Any discrepancy between orders from ACBL Dispatcher and/or Planning Center and vessel shall be immediately reported to ACBL Dispatcher and/or Planning Center.
- ACBL will advise Contractor of maximum barge draft and if a barge draft exceeds such maximum Contractor shall immediately notify ACBL Dispatcher and/or Planning Center and take such further actions as requested by ACBL.
- Contractor shall ensure that all barges are in place and wired in accordance with ACBL’s requirements.
- Contractor shall ensure that the tow is square across the stern.
- Contractor shall use all available stationary rigging when building a tow.
- Contractor shall be responsible for all tow rework costs associated with Contractor’s failure to meet these performance requirements.

4. Other Performance Requirements. Services shall be performed in accordance with the following minimum requirements:

- Contractor will use its best efforts to service ACBL vessels within two (2) hours of arrival into the services area, provided, ACBL provides Contractor with reasonable advance notification of arrival and activity (drop and picks).

- Contractor shall inspect each barge at time of performance of Services to ensure the barge is in a fit condition, meaning the barge is in a tight, staunch and strong condition, including but not limited to, ensuring that voids are free from excess water (i.e. no water over 2” in any void tank). Contractor shall also ensure that covers, if any, are properly closed, stacked or removed (as applicable), the deck is free from residual cargo, and all deck fittings are in place and in good condition. All deficiencies shall be immediately reported to ACBL Dispatcher and/or Planning Center, and Contractor shall remedy any deficiencies as requested by ACBL. The cost for any such remedy shall be for ACBL’s account unless caused in whole or in part by Contractor in which case it shall be for Contractor’s account.

- Contractor shall provide adequate boat power in order to perform the Services.
- Contractor will use its best efforts to prioritize ACBL service over other customers.
- Contractor shall use commercially reasonable efforts to ensure that any barge rigging and/or leaving lines specific to a barge shall remain with such barge.
- Traffic shall be reported for Services performed the prior day via email or fax by 10:30 Eastern Time, including weekends and holidays in a format prescribed by ACBL.
- Barge inspection reports shall be sent to ACBL Barge Maintenance upon completion in a format prescribed by ACBL.