

OPERATING TERMS AND SCHEDULE OF RATES FOR SERVICES AT FREMANTLE AND KWINANA

SCHEDULE OF RATES

- This schedule outlines services provided, charges and terms and conditions for the safe and efficient arrival and departure of ships at Fremantle and Kwinana effective from 01 April 2014.
- Towage rates are charged on the basis of gross tonnage (GT) of a vessel as listed in the current edition of Lloyd's Register of Shipping.
- All Rates are in Australian dollars.

TOWAGE RATES – A & B CLASS TUGS

The towage rates shown in this schedule are for each tug employed to assist a ship arriving at or departing from a berth within the limits of the port at any time.

Vessel GT	Price <i>excl GST</i>	10% GST	Price <i>incl GST</i>
Up to 5,000 tons	1,045.00	104.50	1,149.50
5,001 to 10,000 tons	2,030.00	203.00	2,233.00
10,001 to 15,000 tons	2,650.00	265.00	2,915.00
15,001 to 20,000 tons	2,925.00	292.50	3,217.50
20,001 to 25,000 tons	3,705.00	370.50	4,075.50
25,001 to 30,000 tons	4,025.00	402.50	4,427.50
30,001 to 40,000 tons	4,340.00	434.00	4,774.00
40,001 to 50,000 tons	4,680.00	468.00	5,148.00
50,001 tons and over	4,950.00	495.00	5,445.00

SUNDRY SERVICES AND SUPPLEMENTARY CHARGES

MINIMUM ORDERING PERIOD

A minimum of two (2) hours notice is required for ordering tugs in Fremantle and three (3) hours for Kwinana. A cancellation Fee equal to 50% of the applicable rate will be charged when a booking is cancelled or varied within two (2) hours of the booked time in Fremantle and three (3) hours of the booked time in Kwinana; 100% of the charge will be applied if services are cancelled within one (1) hour of the booked time for both ports.

MINIMUM (UN)BERTHING PERIOD AND ADDITIONAL PERIOD

The above tariffs cover the first two (2) hours attendance from the time a ship is booked after which an hourly stand-by or retention rate is applicable at 50% of the applicable rate per hour.

FUEL SURCHARGE

The fuel surcharge used by SVITZER is applicable for all services and has a variable monthly rate. The applicable Fuel Surcharge will be pre-advised and updated in accordance with the latest fuel price.

SHIFT SHIP MOVEMENTS

Shift Ship movements at the same berth will be charged at 50% of the applicable rate per move. Shift Ship movements between different berths are regarded as separate movements and are therefore charged as two (2) separate moves at the applicable rate.

SVITZER AUSTRALIA

Level 25, 66 Goulburn Street
Sydney NSW 2000 Australia
PO Box 644
Bondi Junction NSW 1355 Australia

Phone: +61 2 9369 9200
Fax: +61 2 9369 9288

ausydinfo@svitzer.com
www.svitzer.com

SVITZER Australia Pty Limited
ABN 86 000 045 009

OTHER SERVICES

Sundry Services are charged at \$1,890.00 per hour (excl. GST), minimum of four (4) hours charge. Services not addressed in this schedule will be by negotiation.

SMALL TUGS & ANCILLARY SERVICES

Charges	Normal Time Monday – Friday 0730 – 1530		All Other Hours inc Public Holidays & weekends	
	<i>excl GST</i>	<i>incl GST</i>	<i>excl GST</i>	<i>incl GST</i>
SMALL TUGS				
Hourly Hire	514.00	565.40	765.00	841.50
WORK BOATS				
Lines Handling	228.00	250.80	428.00	470.80
Draft Surveys	198.00	217.80	428.00	470.80
Other Work	301.00	331.10	548.00	602.80
LAUNCH				
Fast Crew Launch	331.00	364.10	565.00	621.50
OTHER				
Additional Deckhand	63.00	69.30	120.00	132.00

MINIMUM HIRE**C Tug Hire**

- Fremantle 3 hours
- Kwinana 3 hours

All Other Services

- Ordinary Hours 1 hours
- All Other Hours 3 hours
- Additional Deckhand(s) 4 hours

MINIMUM ORDERING PERIOD

A minimum of three (3) hours notice is required for ordering Small Tug and Ancillary Services. A cancellation Fee equal to 100% of the applicable rate will be charged when booking is cancelled or varied within three (3) hours of the booked time.

DRAFT SURVEYS

If carried out in conjunction with lines handling shall be at the lines handling rate, and may be included in a minimum three (3) hours hire.

OTHER SERVICES

Charges for tugs to provide special services or sundry services will be by negotiation

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TERMS AND CONDITIONS

PAYMENT TERMS

- Are specified on the invoice issued at the time of service.
- Where extended payment terms of 30 days have been provided to approved customers, the agent is requested to provide details of the ship's Principal at the time of ordering services. If the Agent refuses to provide the principal's details, then the Agent will be deemed to have accepted full responsibility for all charges incurred.
- Invoices outstanding after 30 days may be subject to a late payment charge of 1.5% per month. The customer shall also pay all expenses incurred by SVITZER Australia in recovering the payment of outstanding amounts.
- Ongoing non-compliance of payment terms may result in the 30 day extended payment facility being withdrawn and requirement of payment in part or in full at the time of service.

GENERAL TERMS & CONDITIONS

- All towage and lines orders received will be carried out to the best of SVITZER Australia's ability. SVITZER Australia does not accept any responsibility for any delay to a ship caused by the detention of a tug or tugs by another ship or from any other cause.
- All towage is undertaken in accordance with United Kingdom Standard Conditions for Towage and Other Services (Revised 1974) Amended 2011 by SVITZER, as attached.
- Assistance will be rendered promptly if at any time an incident occurs or situation develops (outside the scope of normal harbour towage operations) that threatens the safety of a ship or its crew, port infrastructure, the environment and/or the community. SVITZER Australia reserves the right to negotiate the terms under which such assistance is rendered.
- A minimum of 30 days notice will be given for any amendments to this schedule, which may be effected by SVITZER Australia from time to time.
- Other surcharges may be imposed by SVITZER Australia with 30 days notice to the customer.
- By ordering tugs or other services, the agent is deemed to acknowledge that the owners, master and agents have been informed of, and have accepted these term and conditions.

CONTACTS

SVITZER Australia

3 Wallace Way, Fremantle WA 6162
PO Box 745, Fremantle WA 6959
Phone: +61 8 9432 3300
Fax: +61 8 9335 3522
Email: info.wa@svitzer.com

Luke Bettesworth

General Manager, WA/NT
Phone: +61 8 9432 3302
Email: luke.bettesworth@svitzer.com

WA Customer Service Centre

24 Hours Tug Control, Operations, Bookings
Phone: 1800 424 617
Email: wa.controllers@svitzer.com

Troy Smith

Customer Service Manager
Phone: +61 8 9432 3316
Email: troy.smith@svitzer.com

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**United Kingdom Standard Conditions for Towage and Other Services (Revised 1974)
Amended 2011 by SVITZER**

1. (a) The agreement between the Tugowner and the Hirer is and shall at all times be subject to and include each and all of the conditions hereinafter set out. These conditions apply to all towage services and any other services supplied by the Tugowner, whether or not such other services are provided in conjunction with towage services
- (b) For the purpose of these conditions:
 - (i) "towing" is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of the Hirer's vessel, and the expressions "to tow", "being towed" and "towage" shall be defined likewise.
 - (ii) "vessel" shall include any vessel, craft or object of whatsoever nature (whether or not coming within the usual meaning of the word "vessel") which the Tugowner agrees to tow or to which the Tugowner agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing.
 - (iii) "tender" shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Tugowner for the performance of any towage or other service.
 - (iv) The expression "whilst towing" shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer's vessel to commence pushing, holding, moving, escorting, or guiding the vessel or to pick up ropes or lines, or when the tow rope has been passed to or by the tug or tender, whichever is the sooner, and ending when the final orders from the Hirer's vessel to cease pushing, holding, moving, escorting or guiding the vessel or to cast off ropes or lines has been carried out, or the tow rope has been finally slipped, whichever is the later, and the tug or tender is safely clear of the vessel.
 - (v) Any service of whatsoever nature to be performed by the Tugowner other than towing shall be deemed to cover the period commencing when the tug or tender is placed physically at the disposal of the Hirer at the place designated by the Hirer, or, if such be at a vessel, when the tug or tender is in a position to receive and forthwith carry out orders to come alongside and shall continue until the employment for which the tug or tender has been engaged is ended. If the service is to be ended at or off a vessel the period of service shall end when the tug or tender is safely clear of the vessel or, if it is to be ended elsewhere, then when any persons, baggage, goods, mails, specie, ship or engine parts or gear or articles of whatsoever description have been landed or discharged from the tug or tender and/or the service for which the tug or tender has been required is ended.
 - (vi) The word "tug" shall include "tugs", the word "tender" shall include "tenders", the word "vessel" shall include "vessels" the word "Tugowner" shall include "Tugowners", and the word "Hirer" shall include "Hirers".
 - (vii) The expression "Tugowner" shall include any person or body (other than the Hirer or the owner of the vessel on whose behalf the Hirer contracts as provided in Clause 2 hereof) who is a party to this agreement whether or not he in fact owns any tug or tender, and the expression "other Tugowner" contained in Clause 5 hereof shall be construed likewise.
2. If at the time of making this agreement or of performing the towage or of rendering any service other than towing at the request, express or implied, of the Hirer, the Hirer is not the owner of the vessel referred to herein as "the Hirer's vessel", 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 vessel subject to each and all of these conditions and agrees that both the Hirer and the Owner are bound jointly and severally by these conditions.
3. Whilst towing or whilst at the request, express or implied, of the Hirer, rendering any service other than towing, the master and crew of the tug or tender shall be deemed to be the servants of the Hirer and under the control of the Hirer and/or his servants and/or his agents, and anyone on board the Hirer's vessel who may be employed and/or paid by the Tugowner shall likewise be deemed to be the servant of the Hirer and the Hirer shall accordingly be vicariously liable for any act or omission by any such person so deemed to be the servant of the Hirer.
4. Whilst towing, or whilst at the request, either express or implied of the Hirer, rendering any service of whatsoever nature other than towing:
 - (a) The Tugowner shall not be responsible for or be liable
 - (i) for damage of any description done by or to the tug or tender, or done by or to the Hirer's vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or by or to any other object or property; or

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- (ii) for loss of the tug or tender or the Hirer's vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or any other object or property; or
 - (iii) for any personal injury or loss of life howsoever and wheresoever caused including personal injury or loss of life of the master and/or crew of and/or any person on board the tug or tender; or
 - (iv) for any claim by a person not a party to this agreement for loss or damage of any description whatsoever, arising from any cause, including (without prejudice to the generality of the foregoing) negligence at any time of the Tugowner's servants or agents, unseaworthiness, unfitness or breakdown of the tug or tender, its machinery, boilers, towing gear, equipment, lines, ropes or hawsers, lack of fuel, stores, speed or otherwise; and
- (b) The Hirer shall be responsible for, pay for and indemnify the Tugowner against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused whether covered by the provisions of clause 4(a) hereof or not (including any arising from or caused by the negligence of the Tugowner or his servants or agents) including the loss of or damage to the tug or tender, provided that the Hirer shall not be liable to the Tugowner for or in respect of loss, damage or claims which the Hirer proves (the burden of proof being on the Hirer) to have been solely caused by the failure of the Tugowner, and due to the actual fault or privity of the Tugowner, to make his tug or tender seaworthy for the towage or service other than towage.
- (c) Notwithstanding anything contained in these conditions, the Tugowner shall continue to be subject to any guarantees provided by the Competition and Consumer Act 2010 and the Australian Consumer Law (the Act) as amended if and to the extent that the Act is applicable to this agreement and prevents the exclusion, restriction and modification of such guarantees.

Subject to this agreement, the Tugowner excludes all liability including liability under implied conditions, warranties and guarantees except any guarantees, the exclusion of which would cause this Clause to be void, such guarantees being referred to in this agreement as a "non-excludable guarantees".

The Tugowner limits its liability to the Hirer for breach of any non-excludable guarantees to the supplying of the service again or the payment of the cost of having the service supplied again, as determined by the Tugowner.

Provided however, notwithstanding anything, hereinbefore contained, the Tugowner shall under no circumstances be responsible for or be liable for any loss or damage caused or contributed to, by or arising out of any delay or detention of the Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's vessel or of any other object or property or of any person, or any consequences thereof, whether or not the same shall be caused or arise whilst towing or whilst at the request, either express or implied of the Hirer, rendering any service of whatsoever nature other than towing or at any other time whether before during or after the making of this agreement.

5. The Tugowner shall at any time be entitled to substitute one or more tugs or tenders for any other tug or tender or tugs or tenders. The Tugowner shall at any time (whether before or after the making of this agreement between him and the Hirer) be entitled to contract with any other Tugowner (hereinafter referred to as "the other Tugowner") to hire the other Tugowner's tug or tender and in any such event it is hereby agreed that the Tugowner is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Tugowner may in addition, if authorised whether expressly or impliedly by or on behalf of the other Tugowner, act as agent for the other Tugowner at any time and for any purpose including the making of any agreement with the Hirer. In any event should the Tugowner as agent for the Hirer contract with the other Tugowner for any purpose as aforesaid it is hereby agreed that such contract is and shall at all times be subject to the provisions of these conditions so that the other Tugowner is bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied therein.
6. Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard the vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Tugowner may have to limit his liability.
7. The Tugowner will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes, stoppages or labour disturbances (whether he be a party thereto or not) or anything done in contemplation or furtherance thereof or delays of any description, however caused or arising, including by the negligence of the Tugowner or his servants or agents.
8. The Hirer of the tug or tender engaged subject to these conditions undertakes not to take or cause to be taken any proceedings against any servant or agent of the Tugowner or other Tugowner whether or not the tug or tender be substituted or hired or the contract or any part thereof has been sublet to the owner of the tug or tender, in respect of any negligence or breach of duty or other wrongful act on the part of such servant or agent which, but for this present provision, it would be competent for the Hirer so to do and the owners of such tug or tender shall hold this undertaking for the benefit of their servants and agents.

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