

Coastal Oil Logistics Limited Terms and Conditions

Effective 16 December 2016

BACKGROUND

- A COLL provides services to customers (either directly or through its subcontractor, North Tugz in respect of services provided at the Marsden Point Refinery), including marine services by agreement between COLL and a customer.
- B These are the Terms and Conditions that are referred to in any agreement entered into between COLL and the Customer and set out the terms and conditions under which COLL provides those services to the Customer.
- C In these Terms and Conditions:
- 'Business Day'** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington.
- 'COLL'** means Coastal Oil Logistics Limited or its successors or permitted assigns.
- 'Customer'** is the entity or person to whom services are, or will be, supplied by COLL.
- 'North Tugz'** means North Tugz Limited.

TERMS

1 STRUCTURE OF TERMS

- 1.1 **Agreement:** The provision of services by COLL to the Customer will be on the basis of these Terms and Conditions and the Customer is deemed to have agreed to and be bound by these Terms and Conditions. If and when COLL and the Customer enter into an agreement by agreeing that COLL will provide certain services to the Customer (whether by written agreement (including exchange of correspondence by letter or email), by verbal agreement or by common practice arrangements between the parties) (**'Agreement'**), these Terms and Conditions will apply to that Agreement.
- 1.2 **Relationship with other agreements:** These Terms and Conditions will apply to the provision of services by COLL to the Customer except as otherwise expressly agreed with the Customer. To the extent any term contained in these Terms and Conditions is contrary to any express terms of any other agreement between the Customer and COLL, the terms of the other agreement will prevail to the extent necessary.

2 SPECIFIC SERVICES

- 2.1 **Towage:** Where COLL provides tug, towage, line boat or similar services to Customers, such services will be subject to the UK Standard Conditions for Towage and Other Services (Revised 1986) Amended 2008 (as may be amended from time to time) (**'UK Conditions'**). The Customer agrees that the UK Conditions for Towage and Other Services (Revised 1986) Amended 2008 apply under these Terms and Conditions as if the conditions were recorded in full in these Terms and Conditions.
- 2.2 **Pilotage:** Amongst other services, COLL may provide pilotage services to Customers, including while on board a vessel to be piloted, from on board the pilot launch, from on board any other vessel involved in the pilotage, or from ashore. Where COLL provides pilotage services, those services are provided under these Terms and Conditions and specifically under the following:
- pilotage services are provided by COLL under the Maritime Transport Act 1994 (and its amendments), in particular, section 60B of that Act, so that where COLL has engaged a pilot to undertake pilotage services, COLL is not liable for any neglect or want of skill of that pilot but rather the owner or master of a vessel navigating under circumstances in which pilotage is required is answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner and to the same extent as that person would be if pilotage were not required;
 - pilots provided by COLL for pilotage services are agents of the owners of the vessel receiving the services and shall be under the control of the master of that vessel; and
 - pilots provided by COLL retain discretion to decline to undertake pilotage services or terminate any pilotage services as a result of adverse weather conditions, mechanical defects, unreasonable trim or insufficient stability, non-availability or incapacity of crew or any other reason which in the opinion of the pilot compromises or may compromise safety of persons.

3 PAYMENT FOR SERVICES

- 3.1 **Payment of charges:** The charges payable for the services is as set out in the Agreement, or if the Agreement does not specify the applicable charges

for the services, the charges notified to you by COLL will apply.

3.2 **Invoices:** COLL will render invoices for amounts payable for services under the Agreement from time to time. The Customer must pay each invoice rendered by COLL for the charges set out on the invoice by the 20th of the month after the invoice was dated.

3.3 **Application of amounts:** COLL may apply amounts it receives from the Customer under the Agreement towards the satisfaction of any amounts that are then due and payable by the Customer to COLL.

3.4 **Taxes:** Charges do not include goods and services tax or any other taxes, duties, Government fees, duties, levies, imposts or charges that may apply from time to time (together, '**taxes**'). All such taxes may be charged by COLL to the Customer, and are payable by the Customer to COLL, in addition to the charges applicable at the time of supply.

3.5 **Unconditional obligations:** The Customer's payment obligations under the Agreement are absolute and unconditional and, except as required by law, all payments will be made without withholding or deduction for any reason (whether by set-off, counterclaim or otherwise).

3.6 **Unpaid amounts:** If any amount due from the Customer to COLL for any services under the Agreement is not received by COLL by the due date for payment then COLL may:

- a suspend the performance of any or all services until all amounts have been paid in full;
- b charge default interest on overdue amounts calculated on a daily basis at an interest rate that is 2.5% per month; and
- c recover from the Customer, upon demand, the costs, expenses or fees COLL incurs in collection of overdue amounts, including all legal costs incurred by COLL on a solicitor-client basis.

3.7 **Reinstatement:** If a payment made by the Customer to COLL is avoided by law or required to be repaid or paid to any other persons:

- a that payment will be deemed not to have discharged or affected the obligation of the Customer in respect of which that payment was made or received; and
- b COLL and the Customer will be deemed to be restored to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been made.

4 DELAYS

4.1 COLL is not responsible for any delays in the delivery of services, including without limitation any costs, losses, or liabilities incurred by the Customer arising as a result of any delays.

5 INFORMATION

5.1 **Non-disclosure:** The Customer will keep absolutely secret and confidential at all times all Confidential Information of which it, its employees, its agents, or its representatives, may become aware and will not use, communicate, cause to be communicated, copy, make available or otherwise re-supply any Confidential Information to any person other than those of its employees, agents or representatives to whom disclosure is necessary for the purposes of the Agreement. The Customer shall on demand return to COLL any documents containing Confidential Information supplied by COLL.

5.2 **Definition of Confidential Information:** For the purposes of clause 5.1 '**Confidential Information**' includes all information of a confidential nature relating to the business or activities of COLL including any information concerning COLL's pricing, operations, systems, processes, plans, projects, contacts, personnel, and any information that is designated as confidential or that a reasonable person would have known or ought to have known to be confidential in nature.

5.3 **Feedback:** If the Customer gives COLL feedback about any of COLL's services provided under the Agreement, COLL may use that feedback for the purpose of improving the services (and for any other purpose COLL deems necessary or desirable) without any obligation to pay the Customer any compensation. If the Customer provides COLL with ideas as part of the Customer's feedback they will be deemed to be non-confidential and COLL will not be required to provide any acknowledgement of their source.

5.4 **Personal Information:** Where COLL collects personal information, that personal information may be used or disclosed by COLL to COLL's employees, principals, agents, contractors, or service providers for:

- a the purpose of providing the Customer with services;
- b the purposes of COLL's ordinary business activities; and
- c additional purposes where the Customer agrees that the Customer's personal information may be used for those additional purposes,

but will not otherwise be used or disclosed by COLL, except as required or permitted by the Privacy Act 1993 or by other applicable laws.

5.5 **Necessary consents:** The Customer will obtain all necessary authorisations and consents from the Customer's employees, agents, principals,

contractors, or service providers for the purpose of this clause 5.

6 WARRANTIES

The Customer acknowledges that the Customer is not relying upon any statement or representation of COLL that is not expressly set out in these Terms and Conditions. To the maximum extent permitted by law, COLL provides services and related information without any warranties, representations, or guarantees of any kind (whether, express, implied, statutory or otherwise) including, without limitation, warranties of availability, accuracy, non-infringement, completeness, timeliness, currency, or fitness for a particular purpose.

7 LIABILITY

7.1 **Exclusion of liability:** COLL (and its subsidiaries, related companies, associated entities, employees, subcontractors and agents) shall not be liable to the Customer for any loss (including loss of profits, loss of savings, loss of or corruption to data or for any indirect, consequential, incidental, special, punitive loss), claim, liability, damage, cost, or expense howsoever caused (including through negligence or breach of statutory duty) arising out of or in connection with:

- a the provision or non-provision of the services;
- b the acts or omissions of COLL, its employees, agents or subcontractors; or
- c any act of God, or other event or occurrence beyond the control of COLL.

For the avoidance of doubt, if any of the terms of the UK Conditions conflict with this clause 7.1, this clause 7.1 will prevail.

7.2 **Consumer legislation:** If the Customer uses services, or any related information, for the purposes of a business, the Customer agrees that the guarantees and remedies provided under the Consumer Guarantees Act 1993 and sections 9,12A, 13 and 14(1) of the Fair Trading Act 1986 shall not apply and are excluded to the maximum extent permitted by law.

8 INDEMNITY

The Customer indemnifies COLL against all and any liability, loss or damage, costs and expenses (including legal costs and defence or settlement costs on a solicitor/own-client basis) incurred or suffered by COLL arising out of or in connection with:

- a any wilful, unlawful, or negligent act or omission of the Customer or its agents, personnel, subcontractors, or suppliers;
- b any claim, action or proceeding by a third party against COLL to the extent caused or contributed to by the Customer or its agents, personnel, subcontractors, or suppliers; or

- c any loss of or damage to property, real or personal, to the extent caused or contributed to by the Customer or its agents, personnel, subcontractors, or suppliers,

and each of the indemnities provided for in this clause 8 is a continuing obligation, separate and independent from the other obligations of the Customer and shall survive termination.

9 INSURANCE

9.1 **Insurance:** The Customer must maintain adequate insurance in respect of potential liability, loss or damage arising at common law or under any statute in respect of claims for property damages, personal injury, public liability and professional indemnity relevant to the risks under the Agreement.

9.2 **Evidence:** The Customer shall produce evidence on demand, to the satisfaction of the COLL, of the insurance effected and maintained in accordance with clause 9.1.

10 TERMINATION

10.1 **General:** COLL may in its sole discretion, by written notice to the Customer, terminate the Agreement, or any part of the Agreement, immediately if an Event of Default occurs.

10.2 **Event of Default:** The occurrence of each of the following is an 'Event of Default':

- a The Customer breaching the Agreement, including these Terms and Conditions or any part thereof.
- b The Customer breaching any other agreement that the Customer has with COLL.
- c Any payment due from the Customer to COLL remaining unpaid after the due date for payment.
- d The Customer being subject to an Insolvency Event (as that term is identified in clause 10.5 below).
- e The Customer ceasing or threatening to cease to carry on all or substantially all of the Customer's business or operations.

10.3 **Consequences of termination:** If the Agreement is terminated for any reason:

- a the Customer must immediately pay any outstanding amounts owing to COLL without set off;
- b the Customer's right to use or purchase services is immediately revoked and the Customer must cease use of the services unless otherwise directed by COLL; and
- c COLL shall have no obligation to provide services to the Customer.

- 10.4 **Survival:** Termination shall not affect:
- a the rights of a party which accrued prior to and upon termination;
 - b the provisions of the Agreement which by their nature survive termination, including clause 5 (Information), clause 6 (Warranties), clause 7 (Liability), clause 8 (Indemnity), clause 10 (Termination), clause 14 (General) of these Terms and Conditions; or
 - c any other obligations the Customer may have to COLL other than under the Agreement.

10.5 **Definition of Insolvency Event:** For the purposes of this clause 10, 'Insolvency Event' means where the Customer is unable to pay its debts when they fall due or is in receivership, liquidation, provisional liquidation, under statutory management or voluntary administration, wound up or subject to any insolvent arrangement, assignment or compromise with creditors, or any steps are taken in relation to any such event, or any such event is threatened, or anything analogous or having a substantially similar effect to any such events occurs.

11 CUSTOMER WARRANTIES

11.1 **Customer warranties:** The Customer represents and warrants as at the date that the Agreement is entered into, and on an ongoing basis, that:

- a the Customer is validly created and existing under relevant laws and has the power and authority to own its property and carry on its business as now conducted or contemplated;
- b the Customer's execution, delivery and performance of its obligations and the Agreement has been properly authorised and the Customer's obligations under the Agreement are valid and binding and are enforceable against the Customer in accordance with their terms;
- c the Customer is solvent and able to pay its indebtedness as it falls due;
- d all information provided by or on behalf of the Customer to COLL in or in connection with the Agreement is true in all material respects and is not, by the omission of information or otherwise, misleading;
- e the Customer's obligations under the Agreement rank at least equally with all of the Customer's unsecured and unsubordinated indebtedness, except liabilities mandatorily preferred by law;
- f the Customer has obtained all necessary licences to use, or own, any items in which third party rights subsist which are or may be used in connection with the services.

11.2 **Reliance:** COLL relies on these representations and warranties when it enters into the Agreement with

the Customer and whenever it provides services to the Customer as part of the Agreement.

12 TRADE MARKS

All COLL's trade marks (including registered and unregistered trade marks), service marks, graphics, and logos used on or in connection with the services provided by COLL or the COLL website are trade marks or registered trade marks of COLL. The Customer must not use or reproduce, or allow anyone to use or reproduce, any of the foregoing marks for any reason without COLL's prior written permission in each case.

13 NOTICES

13.1 **Service of notices:** Any notice given pursuant to the Agreement will be deemed to be validly given if personally delivered, posted, or forwarded by email or facsimile transmission to the address of the party to be notified.

13.2 **Service on COLL:** Unless otherwise provided in the Agreement, COLL's postal address, email address and facsimile number shall be as set out on the COLL website, www.coll.co.nz, from time to time.

13.3 **Service on the Customer:** The Customer must provide postal address, email and facsimile contact details for the purpose of receiving notices. If any of these contact details change, the Customer must notify COLL of its updated contact details.

13.4 **Time of service:** Any notice given pursuant to the Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of facsimile transmission, when sent;
- c in the case of posting, on the second day following the date of posting;
- d in the case of email transmissions, when such transmission is deemed to have been received in accordance with the Electronic Transactions Act 2002,

provided that any notice personally delivered or sent by email or facsimile either after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

14 GENERAL

14.1 **Assignment and subcontracting:** COLL may subcontract, assign, or novate any or all of its rights, duties or obligations under the Agreement. The Customer cannot transfer, assign, novate, or sublicense any or all of its rights, duties or obligations in the Agreement to, or share them with, any third party, without the prior written approval of COLL.

14.2 **Use of agents and subcontractors:** The Customer acknowledges and accepts that COLL may use

agents and subcontractors to provide services to the Customer and that COLL relies on those agents to provide certain services to Customers. In particular, COLL engages North Tugz as its subcontractor at the Marsden Point Refinery for marine services. For the purposes of section 4 of the Contracts (Privity) Act 1982, all provisions in these terms providing for limitation or exemption of liability (including without limitation the UK Terms of Towage referred to in clause 2.1) for and indemnities in favour of COLL are intended to be for the benefit of and enforceable by the employees, agents and subcontractors of COLL.

- 14.3 **Electronic communications:** The Customer consents to receiving communications from COLL electronically and the Customer agrees that all agreements, notices, disclosures and other communications that COLL provides to the Customer electronically satisfy any legal requirement that such communications be in writing. The Customer agrees to be bound by any agreement reached through electronic communications in terms of the Electronic Transactions Act 2002. The Customer consents to receiving electronic messages and information sent by COLL (or on COLL's behalf) for any purposes described at clause 5.4. The Customer agrees, pursuant to section 11(2) of the Unsolicited Electronic Messages Act 2007, that the person sending any such message need not include a functional unsubscribe facility in that message.
- 14.4 **Force majeure:** COLL shall not be liable to the Customer for any delay or non-performance of COLL's contractual obligations to the extent that such delay or non-performance is caused by an event or circumstance which is outside COLL's reasonable control.
- 14.5 **Waiver:** No delay in enforcement or extension of time or failure to exercise any right under the Agreement will be deemed to be a waiver of any right by COLL. No waiver of an earlier breach of the Agreement will be construed as a waiver of a later breach.
- 14.6 **Severability:** If any provision of the Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Agreement.
- 14.7 **Costs:** The Customer will be liable to COLL for all fees, costs, charges and disbursements incurred by COLL (including costs on a solicitor/client basis) in enforcing or attempting to enforce COLL's rights under the Agreement.
- 14.8 **Changes to terms:** COLL reserves the right to, at any time, change any provisions of these Terms and Conditions and the charges for the services. Changes to the terms and/or charges will take effect immediately once they are published at www.coll.co.nz in relation to Agreements after the publication of the changes. The Customer is

responsible for regularly checking these terms and the charges for changes.

- 14.9 **Governing law:** The laws of New Zealand govern the Agreement and the courts of New Zealand shall have non-exclusive jurisdiction to hear and determine any dispute arising in relation to the Agreement.
- 14.10 **Entire agreement:** Unless COLL and the Customer have an express agreement of which the terms of that agreement are contrary to the terms of these Terms and Conditions, COLL and the Customer acknowledge that the Agreement, including these Terms and Conditions contain the whole of the contract and understanding between them. There are no conditions, warranties or other understandings affecting the arrangements between the parties other than those set out herein. The terms of the Agreement, including these Terms and Conditions replace all prior agreements and understandings with respect to the subject matter of the Agreement.