



617 NW 40th Street, Seattle WA 98107-5094
 Phone: 206-789-9000 Fax: 206-789-9755
www.westerntowboat.com

Schedule of Rates, Terms and Conditions

Harbor Tug Services at the Port of Seattle, Puget Sound and Pacific Northwest

This Schedule of Rates, Terms and Conditions shall be applicable to all tug services requested of **Western Towboat Company** ("WTC") by any Customer ("Customer") at the Port of Seattle, Puget Sound or other internal waters of the Pacific Northwest, except to the extent a separate written contract has been executed by WTC for some particular service engagement. Services requested of WTC may include without limitation escort/assist services for manned/powering Vessels, in-harbor towing, shifting and related services for unmanned/unpowered Vessels (including Barges), pilotage, and such other tug-related services which are able to be performed by WTC in the harbors, sounds, ports, rivers and internal waters of the Pacific Northwest.

Pilotage services are provided only upon advance request with full particulars, and with WTC entitled to decline at its discretion. WTC does not otherwise provide pilots or services in the nature of pilotage. Services in the nature of open-ocean towage including emergency towage require a separate contract to be executed by WTC and the applicable Customer; rates and terms for open-ocean towage are separate and available from WTC upon request.

Seattle	North Sound
Please contact WTC for Tug availability and rates	<p>Tug MARINER – 4,000 HP ASD Tractor Tug Certified at 91 Kips bollard pull \$725.00 / hr</p> <p>Tug WESTRAC II – 2,500 hp ASD Tractor Tug Certified at 57.6 Kips Bollard Pull \$680.00 / hr</p>
<p>* Seattle Harbor: rates are based on a minimum call-out time of two (2) hours per request, and apply from the departure of the Tug from its home berth in Seattle and continue until return following completion of services.</p> <p>* North Sound: rates are based on a minimum call-out time of four (4) hours per request, and apply from the departure of the Tug from its home berth in Anacortes and continue until return following completion of services.</p> <p>* Cancellation within two (2) hours of call-out will be billed at two (2) hour charge.</p> <p>* Hourly Rates: calculated in thirty (30) minute increments, rounded up to the next half hour.</p> <p>* Fuel Surcharge: All Tug fuel costs above \$1.50/gallon are for the account of Customer.</p> <p>* Standby: Standby charges shall start ½ hour after arrival and billed at applicable hourly rate, rounded to the next ½ hour.</p> <p>* Holidays: At Seattle min. 4-hour call-out is charged and North Sound min. 6-hour call-out charged on the following holidays: New Year's, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve and Christmas Day. Time after call-out minimum will be billed at time and a half for the Tugs.</p>	

1. **Requests for Service; Agreement:** A Customer may request services by telephone, email, facsimile or otherwise, with these terms and conditions to be applicable in each instance except to the extent a separate written contract has been executed by WTC for some particular service. For each such request, WTC may but is not obligated to provide Customer with a Service Request Confirmation, confirming the request and engagement. In any event, by requesting services Customer agrees that these terms and conditions shall be applicable and enforceable against Customer, regardless of whether a Service Request Confirmation was issued. All requests shall be subject to acceptance by WTC, which acceptance may be withheld at WTC's discretion including due to tug unavailability. If accepted, WTC shall perform the services as requested by Customer. The term "Tug" shall refer to WTC's Tug providing services and the term "Vessel" shall refer to the Vessel as to which services are requested, including any vessel being towed in tandem and all cargo, equipment and other property aboard the Vessel.

2. **Acknowledgement and Warranty:** WTC is an independent contractor only and not a partner or joint-venturer of Customer, nor a charterer, insurer or bailee of the Vessel. It is specifically acknowledged and agreed that WTC is not familiar with the Vessel, including as to its structure, hull strength, equipment, machinery, handling characteristics, maneuverability, stability, or ability to be escorted, pushed or towed, etc. WTC and the Tug shall be entitled to rely upon information provided by or through Customer and its representatives as to the Vessel and services to be performed. If Customer is not the owner of the Vessel, by requesting services Customer expressly warrants that it has full authority from the owner(s) of the Vessel to engage WTC and the Tug, enter into this agreement, and bind the Vessel and its owner(s) to these terms and conditions.

3. Rates/Charges: WTC's rates and charges for the services shall be as set out above and/or in a Service Request Confirmation sent by WTC to Customer, following and confirming Customer's request. WTC may invoice Customer upon completion of services, or daily, weekly or upon another interim basis, at its option. Customer shall pay all such invoices and amounts due for services in U.S. currency without any deduction or setoff within thirty (30) days. Amounts due WTC but which have not been paid shall accrue interest at the rate of one and one-half percent (1.5%) per month.

4. Costs and Expenses: Customer is responsible for all costs, charges and expenses applicable to the Vessel, cargo or services including without limitation all canal, port, lock, dockage, wharfage, pilotage or assist tug costs, charges or expenses, all agency, entry or customs fees, dues, duties, charges or expenses, all taxes, levies or similar amounts, and all other costs, charges and expenses. Any Tug fittings, gear or equipment damaged during performance of the services shall be repaired/replaced at the expense of Customer. WTC may upon notice provide additional Tug(s) if reasons beyond its reasonable ability to control, such as weather, tidal or berthing conditions, congestion or inaccessibility of berth, etc., require such be utilized. To the extent WTC arranges or advances payment for any of the foregoing items, it does so as Customer's authorized agent and Customer shall promptly reimburse WTC in full for the same. Notwithstanding the foregoing, any charges applicable to the Tug only, and not Vessel, its cargo or otherwise to the services, shall be for the account of WTC.

5. Liberties and Substitution: In performing services WTC and the Tug (including the Tug's Master) shall be at liberty to: go to the assistance of other vessels in distress in attempt to save life or property; call at any port/place for fuel, repairs, supplies or necessities for safe completion of a voyage; and load, discharge, engage or disengage persons or property/cargo if deemed necessary in an emergency circumstance. In the event of deviation in attempt to save life or property, WTC and the Tug will make reasonable efforts to leave the Vessel in a position of safety. WTC shall have the right to substitute a reasonably comparable Tug(s) for performance of the services at any time, upon notice to Customer. Customer shall not change or add to the services or requested ports/places of call or identify a different Vessel for the services without advance notice to WTC and WTC's advance consent with respect to the same.

6. Condition and Delivery of Tug: WTC shall use due diligence to tender the Tug at the starting port/place and date/time in a seaworthy condition, equipped, documented and with all licenses and permits for its routine operation; the Tug shall prosecute services as requested with due dispatch but without warranty as to any particular speeds or arrival or departure dates/times. WTC shall not be required to inspect the Vessel (or any cargo or equipment aboard) and no such inspection by or comments, advice or recommendations from WTC, including the Tug's Master or crew, with respect thereto shall create or increase any responsibility or liability for WTC. No personnel or cargo of Customer shall be aboard the Tug without WTC's consent. WTC makes no representations or warranties of any type or nature whatsoever regarding the Tug or services other than the foregoing, express or implied, including without limitation any absolute warranty of seaworthiness, any warranty of workmanlike service, or any warranty of fitness/suitability for any particular purpose or use.

7. Condition and Tender of Vessel: Customer warrants: it shall use due diligence to tender the Vessel at the starting port/place and date/time in a seaworthy condition, equipped, documented and with all licenses and permits required (including for any cargo); the Vessel shall be equipped with navigational lights, towing bits, chain bridle, towing shape, navigation equipment and emergency wire or other retrieval system, shall be properly trimmed with all cargo loaded, stowed and secured sufficiently to safely complete the voyage, and if being towed shall be capable of being towed at such speeds and such a manner as would be considered normal for comparable services; all cargo aboard is lawful; each port/place and berth to/from which the Tug is expected to perform shall be safe for the Tug and Vessel at all times and stages of tide; and it has informed WTC of any special conditions applicable to the Vessel which may affect the performance of services.

8. Vessel Insurances: For each engagement, Customer shall procure and maintain, or cause to be procured and maintained, at its expense including premiums, deductibles and all other policy related charges the following insurances on the Vessel: hull and machinery insurance to full value, protection & indemnity insurance typical for similar vessels in the same or similar trade(s) and pollution insurance as required by law. Each policy shall provide waiver of subrogation to WTC and the Tug. Customer shall provide certificates of insurance to WTC upon request. Customer, on its own behalf and on behalf of the owners of the Vessel if other than Customer, agrees to look solely to the Vessel's insurances for coverage with respect to any loss or damage to the Vessel which may arise during or out of the services, rather than assert a claim against WTC or the Tug based upon negligence or fault. Customer acknowledges and agrees that the rates being charged by WTC are based in part upon the foregoing.

9. Customer Personnel: If any people are aboard the Vessel and/or involved with the un-securing/removal of the Vessel from its location at commencement of services and/or its docking/mooring/securing at destination, such person(s) shall be deemed the "personnel" of Customer and the following shall be applicable: Customer shall be responsible for, and agrees to indemnify and hold WTC harmless of and from (including legal fees and litigation costs), the injury, illness and/or death of any such personnel of Customer, including any related loss, damage, liability, claim, demand, suit, cost and/or expense.

10. Pilotage: Pilotage services are provided only upon advance request from Customer with full particulars, and with WTC entitled to decline any such request for pilotage services at its discretion. By making a request for pilotage services, Customer warrants to WTC that the services are not required by law or compulsory but are instead being requested and would be provided voluntarily. WTC does not provide pilotage as may be required under Washington State or federal law. In addition, should pilotage services be requested, it is agreed that the WTC employee coming aboard the Vessel to act as pilot shall be deemed the borrowed servant of the Vessel, its Master and owner, with respect to his/her/their performance, for all purposes and in every respect, with his/her/their services while so engaged being the work of the Vessel and provided under the supervision, direction and control of the Vessel, its Master and owner, and without WTC responsible for any acts or omissions of such person.

11. Escort/Assist Services: The following provisions shall be applicable to all services in the nature of escort/assist, and whether being provided to a manned/powering Vessel, maneuvering under its own power, or to an unmanned/unpowered Vessel, being towed primarily by another (non-WTC) towboat. With respect to all such escort/assist services, it is acknowledged and agreed that WTC is not being requested to provide towage services, but rather escort/assist services only, with the Vessel to maneuver itself, proceeding under its own power, or be maneuvered by such other (non-WTC), primary, towboat.

- A. For all such escort/assist services, it is agreed that Customer (including the Vessel or its pilot, or such other, primary, towboat, shall be deemed the dominant mind with respect to the maneuvering of the Vessel, the services being requested, and the overall escort/assist operation. All such services shall be provided under the exclusive direction and control of Customer at all times, and in accordance with its instructions, which instructions may be provided by Customer through the Vessel (or its pilot) or the other, primary, towboat, as applicable. Any comments, advice or recommendations from WTC (including from the Tug's Master or crew) shall be separately evaluated by Customer (including the Vessel, or its pilot, or the other, primary, towboat, as applicable) in each instance; no comments, advice or recommendations from WTC, the Tug Master or crew with respect to any such matters shall be deemed to create or increase any responsibility or liability whatsoever for WTC.
- B. Customer shall be responsible for providing clear instructions to WTC and the Tug as to the Vessel and services to be provided, sufficiently in advance of contemplated performance, including: precisely when and where the Tug is to meet the Vessel, such location to be sufficiently distanced to avoid danger of collision or allision; who will be providing further instructions to the Tug, and how and when such will be sent; any special conditions or circumstances applicable to the Vessel or services which may affect the performance of services; names and means to communicate with the Vessel, pilot and other vessels involved; when, at what speed and how, etc. the Tug should approach and touch/connect with the Vessel, if at all, including what gear should be utilized; and when, how and in what manner will the Tug be released from services.
- C. Customer may change and/or add to these instructions at any time (including through the Vessel, or its pilot, or the other, primary, towboat, as applicable), provided that the change or addition is given to WTC and the Tug in a timely manner, sufficiently in advance of expected performance, with particularity, and such that WTC and the Tug may safely and efficiently proceed, and provided always that such instructions given are clear, precise and unequivocal. Any additional time, services, cost or expense arising from any such changes or requests are for Customer's account.

12. Harbor Tows; Shifting: The following shall be applicable to all harbor towage, shifting and related services, and other miscellaneous services hereunder which are not in the nature of escort/assist services, as described above, and whether provided to a manned/powering Vessel, not presently under its own power, or an unmanned/unpowered Vessel, such as a Barge.

- A. In each such instance, Customer shall provide clear instructions to WTC and the Tug sufficiently in advance so that WTC and the Tug may safely proceed and perform the requested services, including: the starting port/place, and when, where and how the Tug is to meet and remove the Vessel from its present location, berth and securing arrangements, as applicable, including what gear aboard the Vessel is to be utilized for such, and when and how; appropriate connection points on the Vessel for the towage or other services being requested; what people and/or cargoes are aboard the Vessel, if any; the destination port, place and berth; and if applicable when, where and how the Tug is to release and secure the Vessel at the destination, including what precise berth and position the Vessel should be in, what lines should be utilized, and how, and what gear aboard the Vessel (or destination place/berth) is to be utilized for such, and when and how. Customer shall be responsible for advising WTC and the Tug of any special conditions or circumstances applicable to the Vessel, the starting port/place, the destination, any mooring/securing arrangements, or otherwise which may affect the performance of services. In each instance, Customer shall provide a contact person (name, telephone and email) with whom WTC and the Tug may communicate with respect to the Vessel and services, to answer any questions and/or provide clarifications on such matters. Any comments, advice or recommendations from WTC, the Tug's Master or crew as to such matters shall be separately evaluated by Customer in each instance; no comments, advice or recommendations from WTC, the Tug's Master or crew with respect to such matters shall be deemed to create or increase any responsibility or liability whatsoever for WTC.
- B. WTC and the Tug shall proceed with the services as requested and directed by Customer and shall, except to the extent otherwise specifically instructed by Customer in writing, use the most obvious and conventional means and manner for the performance thereof, as deemed reasonable by WTC, the Tug's Master and crew under the circumstances, including with respect to any services relating to meeting and removing the Vessel from the starting port/place, its towage and/or shifting, etc., and its being released and secured at the destination, as applicable. Unless otherwise specifically instructed by Customer to WTC and the Tug in advance and in writing, any mooring/securing of the Vessel at destination by the Tug, if applicable, shall be accomplished by its crew using typical bow, stern and spring line arrangements aboard the Vessel and at the berth.
- C. Customer may change and/or add to such directions or instructions being given to WTC and the Tug at any time, provided that the change or addition, etc. is given to WTC and the Tug in a timely manner, sufficiently in advance of expected performance, with particularity, and otherwise such that WTC and the Tug may safely and efficiently proceed, and provided always that such instructions given are clear, precise and unequivocal. Any additional time, services, cost or expense arising from any such changes or requests are for Customer's account.

13. Cancellation/Termination: Should a Vessel become disabled, breakaway or otherwise unfit to continue the voyage/services, WTC shall render such assistance as the WTC and its Tug's Master deems reasonable under the circumstances including without limitation right to deviate to affect repairs, obtain supplies, restow cargoes, etc., with hire and charges to continue without interruption. Should the Tug be unable to retrieve a Vessel being towed and place it in such a condition that the voyage can safely continue, Customer shall be notified and the Tug shall either take the Vessel to the nearest safe port/place or standby until other assistance is rendered, with hire and charges to continue so long as Customer requests the Tug standby and the Vessel is in a safe position, and the Tug has returned to its home berth. Should the Vessel become totally lost, the Tug shall be released from performance, with hire and charges to continue until the Tug has returned to its home berth.

14. Force Majeure: In no event shall WTC or the Tug be responsible for any delay or failure to perform if caused by: act of God; act, neglect or default of master, mariner, pilot, crew or servant in the Tug's navigation or management; fire, unless caused by the actual fault or privity of WTC; perils, dangers or accidents of the sea or navigable waters; act of war, public enemies or terrorism; arrest or restraint of princes, rulers or people; seizure under legal process; restrictions or otherwise for quarantine, epidemic or pandemic; act or omission of Customer or its agents or representatives; strikes, lockouts, stoppage or restraint of labor from whatever cause, partial or general; riots or civil commotion; breakdown or latent defect involving the Tug's hull, machinery, equipment, lines, etc. not discoverable through due diligence at commencement of the voyage; and any other cause or circumstance which is beyond its reasonable ability to control.

15. Limitation of Liability: Notwithstanding anything to the contrary, nothing herein nor the furnishing of any services hereunder or anything done in connection therewith shall be construed to be or to give rise to a personal contract of WTC. It is understood and expressly agreed that with respect to the services WTC shall have available to it all exceptions to and exemptions from and limitations upon liability granted to vessel owners pursuant to the statutes and/or general maritime law of the United States. In no event shall WTC or the Tug be responsible for any special or consequential damages of any type or nature whatsoever, including without limitation any claim for extra expense, loss of earnings, loss of profits, loss of use or business interruption, whether resulting from negligence, unseaworthiness, breach or otherwise, and even if the possibility of such was foreseeable.

Except to the extent entitled to immunity as a responder or otherwise under OPA-90 or other applicable federal, state or local laws, and subject to the defenses to, exemptions from and limitations upon liability provided herein, with respect to the services provided WTC shall be liable, to the extent required by applicable law, for any loss, damage, liability, claim, demand, suit, cost, fine, penalty and/or expense arising out of and/or in connection with the services up to and including the first \$300,000, arising out of or related to a single occurrence or connected series of occurrences.

16. Customer Indemnity: Customer agrees to indemnify and hold harmless WTC, its owners, shareholders, directors, officers and employees, the Tug and its Master and crewmembers, of and from (including legal fees and litigation costs) all losses, damages, liabilities, claims, demands, suits, costs, fines, penalties and expenses in any way arising out of and/or in connection with the services exceeding \$300,000, arising out of or related to a single occurrence or connected series of occurrences, that are attributable to any act or omission (whether negligent or otherwise) of WTC, the Tug, its Master and/or crew and/or to the unseaworthiness of the Tug. Customer specifically understands and agrees that the rates and charges hereunder are based in part on the defenses to and limitations upon liability and the indemnity obligations herein, none of which shall be limited to or restricted in any way by the amount of insurance available to Customer. The parties intend the foregoing indemnity to apply to all incidents, damages and claims of any kind or nature whatsoever, including without limitation any injury, illness or death, any loss of and/or damage to property and/or any spill, discharge or release of petroleum or any other hazardous substance and/or any pollution and/or environmental liability arising out of or with respect to any such incident, damage and/or claim.

17. General Average Preclusion: The Tug and the Vessel, and WTC and Customer, shall be deemed separate interests and shall not be deemed engaged in a common maritime adventure. General average shall not be applicable to any services hereunder.

18. Extension of Benefits: All exceptions to, exemptions from, defenses to, immunities from and limitations upon liability granted WTC hereunder and/or at law shall be deemed automatically extended to and for the benefit of WTC's owners, shareholders, directors, officers, employees and agents, and to the Tug(s) and its/their Master(s), officers and crew.

19. Law and Disputes: This agreement shall be construed under and governed by the general maritime law of the United States, or by the laws of the State of Washington in the event there is no applicable general maritime rule of law. Any dispute arising out of and/or relating to the Tug, Vessel, services and/or performance of services or otherwise to this agreement shall be resolved through litigation in the state or federal courts located in Seattle, Washington, with the parties consenting to the court's personal jurisdiction and the substantially prevailing party to recover its reasonable legal fees and costs of litigation.

20. Integration, Construction and Modification: This agreement including any Service Request Confirmation from WTC for the services constitutes the entire agreement of the parties with respect thereto and other matters addressed herein, superseding and replacing all prior and contemporaneous communications, understandings or agreements, written or oral, including any rate quote from WTC or purchase order or other such document from Customer. This agreement shall be construed neutrally, and as the commemoration of the mutual assent of both parties, rather than for or against a party. If any provision hereof is found invalid by a court of law, it shall be deemed severed from this agreement but with the remaining provisions to remain applicable and in full force and effect. The headings used herein are for convenience of reference only and are not substantive. This agreement may be modified only through a written instrument executed by both parties.