

# 国际拖航合同格式选编

中国拖轮公司

# 前 言

远洋拖航是近十余年来逐步发展起来的一项新兴运输业务。随着各国海上石油开发事业的发展,钻井平台以及各种超长超大的钻探和生产设备等的远距离运输日益增多,国际上的救助打捞行业多数增加了大马力拖轮及各种类型的驳船兼营远洋拖航业务。我公司自建造大马力拖轮以来,在保证救助工作的同时,也开展了这项业务。

目前,各国海商法中,大多没有涉及拖航的专门条款,有的国家虽制定了一些标准拖航条件,但多数还是依靠拖方与被拖方的合同来规定双方的权利和义务以及其他必要事项。

我国的海商法现在正在起草,有关国际拖航的规定将予纳入。同时,我们1982年修订过的合同格式,在使用过程中,也发现有不少地方需要加以补充和修改。

为此,我们收集和翻译了国际上有代表性的拖轮公司以及石油钻探公司所用的拖航合同格式,作为今后修改我公司的合同格式和起草海商法的资料依据,同时也可供从事拖航工作的人员以及海运院校等教学、研究单位参考之用。

本书由顾传路、周颂、吕彦华、陈修欣等同志翻译,顾传路同志负责编校。书中收集的合同格式,均将原文和译文对照刊入。因编译者水平有限,时间仓促,又未能广泛征求意见,希望读者对错误之处提出批评意见,以便订正。

一九八四年四月一日

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# 一、日本海运集会所拖航合同(承包)

1972年11月16日制定

1980年12月18日修订

1.地点及日期 (见前言)	
2.拖轮船东 (见前言)	3.乙方 (见前言)
4.拖轮名称 (见前言)	9.被拖物件 (见第一条)
5.发动机 (内燃或蒸汽机)	10.总吨位
6.总吨位	11.排水量
7.马力	12.长、宽、深
8.其他细节	13.吃水
14.起拖港 (见第一条)	15.目的港 (见第一条)
16.拖航费及货币 (见第二条)	
17.拖航费支付的方法及地点 (每次分期付款的数额或百分数须简要说明) (见第二条) 银行名称: 本合同签订时支付: 从起拖港启航时支付: 从____启航或经过时支付: 余额在目的港付清	18.何时及向何人通知拖轮预计到达日期 (见第三条) 起拖港:
	目的港:
19.被拖物准备启航日期 (见第四条)	20.撤销合同日期 (见第七条)
21.向何人发出准备启航的通知 (起拖港) (见第八条)	22.向何人发出准备交付的通知 (目的港) (见第十条)
23.拖轮日租费率 (见第八、九、十、十一、十六条)	24.拖轮出发至起拖港的地点 (见第九条)
25.拖轮驻在站点 (见第九条)	26.经纪人佣金 (见第二十一条)
27.经纪人佣金应交付 (见第二十一条)	28.附加条款数 (如有) (见前言)

## 前 言

这是第4栏中所述的远洋拖轮(细节填写在第5—8栏内)的船东(法律上有处置权的船东),其名称见第2栏(以下简称拖轮船东)与第二方,其名称见第3栏(以下简称乙方)的拖航合同,于第1栏所填写的日期签订。受此处所列条件和情况约束的本合同,应包括第1页\*上第1栏至27栏的全部打字的规定和载在第1页第28栏的附加条款及第2页和第3页上的第一条至二十二条(包括仲裁条款在内)的印刷条款,但如打字规定的任何部分与第2页和第3页上的印刷条款有抵触时,则应以前者为准。

拖轮船东	乙 方

### 第一条 被拖物,起拖港和目的港

根据乙方的指定,拖轮应将第9栏所述的并在第10栏至第13栏中规定细节的须拖带的物件(以下简称被拖物),自第14栏中所述的起拖港拖至第15栏中所述的目的港的锚地或地点。在起拖港,拖轮和被拖物应在潮汐的所有阶段均可安全漂浮地停泊,在目的港的锚地或地点,拖轮和被拖物应在潮汐的所有阶段均可到达并安全漂浮地停泊。

### 第二条 拖航费及支付条件

第16栏中规定的拖航费应按第17栏的规定分期支付。拖航费每次的分期付款,都应电汇到第17栏所规定的银行拖轮船东的帐户。拖轮和被拖物从起拖港出发后的任何应付但尚未到支付期的分期付款均应基于“无效果,无报酬”的原则。

### 第三条 预期抵达的通知

根据第18栏中的规定,拖轮船长应分别发出预期抵达起拖港和目的港的通知。

### 第四条 适航性

乙方应将被拖物装备完好,以便其在起拖时符合法定机构、保险人验船师和拖轮船长所要求的适航条件,包括(但不限于)负责保证被拖物的照明、灯号设备、龙须缆、拖架和闭

\* 此页数是合同原文的页数,不是本书页数。以下同。

式导缆钳、运河带缆桩、系索、紧固和平衡装置等处于正常状态。在第19栏规定的日期之前,乙方应向拖轮船东或拖轮船长提交由保险人验船师签发的被拖物适于拖带的证书。

根据保险人验船师的要求,拖轮船东应在起拖时努力保证拖轮适航及人员、设备、供应等配备齐全,并须备有拖缆和其他拖带装置供拖航使用。

### **第五条 随船船员**

如因政府的要求(规定),或因拖轮船东或保险人验船师(按前条规定)的要求而在被拖物上配备随船船员或传缆手时,则其任何及一切有关的费用、义务、责任均应由乙方承担。

### **第六条 被拖物的接拖和解拖**

在起拖港和目的港对被拖物进行接拖和解拖,须由拖轮船长决定。

### **第七条 撤销合同**

如拖轮在第20栏中所规定的日期前未作好拖航准备,乙方有权撤销合同。

### **第八条 延误启航**

如果乙方在接到向第21栏中规定的一方发出拖带准备启航的通知后24小时内,不能为被拖物作好拖航准备,则乙方应在上述24小时届满时起至拖轮和被拖物实际启航时止,依照第23栏中规定的拖轮日租费率,按每连续24小时或不及24小时者按比例,支付额外赔偿给拖轮船东。

### **第九条 不能执行拖航服务**

如果被拖物因未取得保险人验船师的许可(按第四条规定),或因被拖物未能符合拖轮船长的要求,或因非拖轮船东所应负责的任何其他理由而不能启航,则乙方应按自第24栏中规定的拖轮出航地点起,至返回第25栏中规定的拖轮站点止拖轮所用的全部时间,以前条订立的拖轮日租费率赔偿给拖轮船东。如果拖轮不直接返回第25栏中所规定的站点,则返航的时间应根据一般经由习惯航线返回站点的通常航行时间来计算。

### **第十条 在目的港延误解拖**

除天气情况外,由于拖轮船东或拖轮船长所不能控制的任何原因,在向第22栏中规定的有关方面发出准备交付被拖物的通知后24小时内,如果乙方不能接受被拖物时,则乙方应自24小时届满时起至拖轮实际解脱时止按第八条中订立的拖轮日租费率支付额外赔偿给拖轮船东。如果拖轮和被拖物因任何原因需在目的港外等候,则可在等候地点发出准备交付的通知。

### **第十一条 拖轮在航行中损失的时间**

如果在拖航过程中,由于拖轮船长认为为了将被拖物拖至目的港有必要对被拖物进行修理或改动,或增加设备;或者由于乙方应负责的任何其他原因,拖轮挂靠一个或几个港口

时，乙方应对超过如不发生此项停留原需的时间之外拖轮所损失的全部时间按第八条订立的拖轮日租费率支付额外赔偿给拖轮船东。但是给拖轮船东的这种额外赔偿，应从拖轮为挂靠一个或几个港口而实际偏离其航线时开始计算，而拖轮在此项实际偏离航线前可能为被拖物提供的援助，则不应索取额外赔偿。

在拖航过程中，如因台风、飓风、旋风或因有关的报告而使拖轮偏离其航线或滞留时，乙方应按第八条中订立的拖轮日租费率，支付额外赔偿给拖轮船东。

## **第十二条 港口费用**

被拖物的一切港口费用、引航费、代理费、税费、运河通行税，被拖物保险费、第三方责任保险费和与被拖物有关的其他费用，包括辅助拖轮服务费（如有必要），以及非日本的税费，或按拖航费课征或收取的印花税或因合同发生的其他费用，均应由乙方负责。

拖轮的一切港口费、引航费、代理费、税费、运河通行税、保险费和第三方责任险费以及与拖轮有关的其他费用，均应由拖轮船东负责。

## **第十三条 救助不索取报酬**

在拖航过程中，如果被拖物与拖轮相脱离，拖轮应守护和给予一切合理的服务，以援救被拖物并重新连接拖缆，除非拖轮提供了不应被视作为完成合同而提供的额外服务外，不提出索取救助报酬的任何要求。

## **第十四条 偏离航线**

拖轮有权在任何情况下援救他船，为了援救生命或财产而偏航，为了加油、修理、补充供应品或其他必需品或送丧失能力的海员上岸而挂靠任何港口。

## **第十五条 免除**

在本次拖航过程中所造成或发生的任何性质的损害，包括第三方遭受的损害，即使此项损害是由于拖轮船东或拖轮上的人员（包括领航员、拖轮船东的工作人员或拖轮船东所需要船上的任何工作人员）的错误或疏忽或由于拖轮船东所提供的有缺陷的设备所造成，或者可能由于任何其他原因，拖轮船东应对其负责的损害，也都由乙方承担责任。

虽有前段规定，但对以下损害，则应由拖轮船东负责：

1. 由于拖轮的缺陷或拖轮船长及船员的错误或疏忽而对拖轮造成的损害；
2. 因与拖轮碰撞而产生的对第三方船舶或财产的损害，但乙方须能证明此项损害并非因被拖物而产生或者被拖物并非造成损害的因素时，才能适用本条款。

当按照本条规定，损害应由乙方负责时，则拖轮船东和按拖轮船东的命令及指挥提供全

部或部分服务的拖轮船东的分包人都不对之负责；乙方应赔偿并保护船东和(或)分包人不受第三方因此项损害而向拖轮船东和(或)分包人提出的一切索赔的损害(不论其是否应由拖轮船东和(或)分包人与乙方共同对其负责)。乙方还应赔偿并保护拖轮船东和分包人不因其船艇的灭失或损坏而受到损害。

#### **第十六条 罚款**

拖轮船东对由于乙方在被拖物的出入申报单或任何其他手续上的行动或过失而产生的任何后果不负责任。如果因为乙方的此项做法或过失给拖轮船东或拖轮招致任何罚款，则应由乙方偿还船东。如果由于乙方的此项做法或过失致使拖轮延误，则乙方应按第八条中订立的拖轮日租费率支付额外赔偿给拖轮船东。

#### **第十七条 留置权**

拖轮船东因为全部拖航费、任何和所有额外赔偿和任何其他根据本合同应付给他们的费用，包括为取得该款所花的费用而对被拖物有留置权。

#### **第十八条 替换**

如果无拖轮承担本合同所述的拖航任务，或如果拖轮船东因任何原因，要求以另外一艘拖轮替换时，应予允许。但替换拖轮的主要规格和位置应得到乙方的事先认可，乙方不应无理地拒绝给予此项认可。

#### **第十九条 一般规定**

本合同是拖航服务合同，不应解释为拖轮的出租或成为个人的合同。

如果本合同中的某一条款或若干条款由于任何原因被裁定无用、无效或失效时，此项裁定不影响合同其余条款的有效性，其余条款继续完全有效。

#### **第二十条 索赔**

除被拖物在抵达目的港或拖航服务终止之日起14天内以书面作出灭失、损害或延误的索赔外，拖轮船东(拖轮)不承担任何原因所产生的责任。

#### **第二十一条 经纪人佣金**

第26栏中所述的对拖轮船东拖航费最终收入的佣金百分数，应由拖轮船东按第27栏的规定支付。

#### **第二十二条 仲裁**

对本合同所发生的任何争议，都应提交日本海运集会所根据日本海运集会所的海事仲裁规则的规定在东京予以仲裁。仲裁人所作的裁决是最终裁决，对双方均有约束力。



1. Place and date(Pre.)	THE DOCUMENTARY COMMITTEE OF THE JAPAN SHIPPING EXCHANGE, INC <b>TOWAGE CONTRACT</b> (Lump Sum Basis) CODE NAME, "NIPPONTOW"	
2. Tugowners(Pre.)	3. Second Party (Pre.)	
4. Name(s) of tug(s) (Pre.)	9. Object to be towed (Cl.1)	
5. Engine (motor or steam)	10. Gross tons	
6. Gross tons	11. Displacement	
7. Horse powers	12. L. B. D.	
8. Other particulars	13. Draft	
14. Port of sailing(Cl.1)	15. Destination (Cl. 1)	
16. Towage price and currency (Cl.2)		
17. Mode and place of towage payment (amount or percentage of each installment to be indicated) (Cl.2) name of bank:  on signing this contract.  on sailing from port of sailing.  on sailing from or passing  The balance on arrival at destination.		18. When and to whom notice of Tug's expected date of arrival to be given (Cl.3) at port of sailing.  <hr/> at destination.
19. Tow's readiness date (Cl.4)	20. Cancelling date (Cl. 7)	
21. To whom N/R to be given (port of sailing) (Cl.8)	22. To whom N/R to be given (destina- tion) (Cl.10)	
23. Tug's daily rate of hire(Cl.8,9, 10,11,16)	24. place from which Tug starts for port of sailing (Cl.9)	
25. Tug's station or place (Cl.9)	26. Brokerage commission (Cl.21)	
27. Brokerage commission to be paid to (Cl.21)	28. Numbers of additional clauses at- tached, if any (Pre.)	

PREAMBLE. Entered into on the date set forth in Box 1, this is a towage

contract between the owners (disponent owners) whose name(s) appears in Box 2 (hereinafter referred to as the Tugowners), of the seagoing tug(s) described in Box 4 with particulars as set forth in Boxes 5-8 (hereinafter referred to as the Tug), and the party, or parties of the second part, whose name(s) appears in Box 3 (hereinafter referred to as the Second Party). This contract, governed by the terms and conditions set forth herein, shall include all the typewritten provisions in Boxes 1 through 27 on Page 1, any additional provisions that may be set forth in Box 28 on Page 1, and the printed clauses 1 to 22 (including arbitration clause) on Pages 2 and 3, provided, however, that in case of any conflict between any part of the typewritten provisions and the printed provisions on pages 2 and 3, then the former shall prevail over the latter.

Tugowners	Second Party
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**Object to be Towed, Port of Sailing and Destination.** 1. The Tug shall tow the object to be towed as described in Box 9 with particulars as set forth in Boxes 10—13 (hereinafter referred to as the Tow) from the port of sailing as set forth in Box 14 at which the Tug and Tow can lie safely afloat at all stages of the tide to such anchorage or place at the destination as set forth in Box 15 at which the Tug and Tow can get and lie safely afloat at all stages of the tide as may be designated by the Second party.

**Towage Price and Conditions of Payment.** 2. The towage price set forth in Box 16 shall be paid by installments as described in Box 17.

Payment of each installment of the towage price shall be made to the Tugowners' account at the bank as described in Box 17 by way of telegraphic transfer remittance.

Any installment or installments payable after the Tug and

Tow sail from the port of sailing, but not yet due for payment, shall be on a "no cure, no pay" basis.

**Notice of  
Expected  
Arrival.**

3. Pursuant to the provision contained in Box 18, the Master of the Tug shall give notice of the expected date of arrival at the port of sailing and at the destination respectively.

**Seaworthiness.**

4. The Second party shall fit out the Tow so that, at the commencement of the towage, it is in such seaworthy condition as will meet the requirements of the regulatory bodies, the underwriter's surveyor and the master of the Tug, including, but not limited to, responsibility to insure that lights, signal equipment, bridles, towing brackets and closed chocks, canal bitts, lashings, securing and trimming of the Tow are in proper order. A certificate of fitness for the towage of the Tow issued by the underwriter's surveyor shall be delivered by the Second party to the Tugowners or the Master of the Tug by the date specified in Box 19.

In accordance with the requirements of the underwriter's surveyor, the Tugowners shall, at the commencement of the towage, exercise due diligence in insuring that the Tug is seaworthy and properly manned, equipped and supplied, and also furnish the use of towing ropes and other towing gears.

**Riding Crew.**

5. Should any riding crew or runners be placed on board the Tow because of government requirements (regulations), or because of the requirements by the Master of the Tug or the underwriter's surveyor (as required under the preceding clause), then any and all expenses, liability and responsibility related thereto shall be borne by the Second party.

**Connecting  
and Releas-**

6. Connecting the Tow at the port of sailing and releasing it at the point of destination shall be executed at the discretion

ing Tow. of the Master of the Tug.

Cancellation. 7. Should the Tug not be ready for the towage service by the date specified in Box 20, the Second party shall have the option of cancelling this contract.

Delay In Commence-  
ment of  
Voyage. 8. Should the Second party fail to have the Tow ready for the towage service within 24 hours after notice of readiness to undertake the towage service is given to the party specified in Box 21, then the Second party shall pay the additional compensation to the Tugowners at the Tug's daily rate of hire as specified in Box 23 per day of 24 running hours or pro rata for any part thereof from the time of expiry of 24 hours as above mentioned until such time as the Tug and Tow actually sail.

Impossibility  
of Perfor-  
mance of  
Towage  
Service. 9. Should the Tow be unable to commence the voyage because of failure to obtain approval of the underwriter's surveyor (as required under clause 4), or because the Tow cannot meet the requirements of the Master of the Tug, or for any other reason for which the Tugowners are not responsible, then the Second party shall compensate the Tugowners at the Tug's daily rate of hire as provided in the preceding clause for all time spent by the Tug, commencing from the time the Tug sails from the place specified in Box 24 until she returns to her station or the place specified in Box 25. If the Tug does not return directly to her station or the place specified in Box 25, time for the return voyage shall be computed on the basis of the Tug's normal running time to the station or the place by the customary route.

Delay in  
Releasing  
Tug at 10. If for any reason whatsoever beyond the control of the Tugowners or the Master of the Tug excepting weather conditions, the Second party does not take delivery of the Tow within 24

**Destination.** hours after notice of readiness to deliver the Tow is given to the party specified in Box 22, then the Second party shall pay additional compensation to the Tugowners at the Tug's daily rate of hire as provided in clause 8 from the time of expiry of 24 hours as above mentioned until such time as the Tug is actually released. Should the Tug and Tow be compelled to wait off the destination by any reason herein, notice of readiness may be given at the place of waiting.

**Time Lost by Tug during Voyage.** 11. If the Tug, during the course of the towage service, puts into a port or ports because the Master of the Tug considers that repairs or alterations to, or additional equipment for, the Tow, are necessary for the Tow to be towed to the destination, or for any other reason for which the Second party is responsible, the Second party shall pay additional compensation at the Tug's daily rate of hire as provided in clause 8 for all time lost by the Tug in excess of the time which would have been spent had such putting into not taken place. But such additional compensation to the Tugowners shall not begin to run until the Tug has actually deviated from her course for the purpose of putting into such a port or ports and any assistance that the Tug may render to the Tow prior to such actual deviation from her course, shall not give rise to a claim for the additional compensation.

The Second party shall pay additional compensation to the Tugowners at the Tug's daily rate of hire as provided in clause 8 for any and all deviations by, or detention of, the Tug caused by typhoons, hurricanes, cyclones, or reports thereof, during the course of the towage service.

**Port Charges and Expenses.** 12. All port charges, pilotages, agencies, taxes, dues, duties, canal tolls, insurance on the Tow, third party liability insurance

and other expenses related to the Tow, including the cost of services of assisting tugs where necessary, and non-Japanese taxes, dues or stamp fees assessed or levied upon the towage price or otherwise arising out of this contract shall be borne by the Second Party.

All port charges, pilotages, agencies, taxes, dues, duties, canal tolls, insurance on the Tug, third party liability insurance and other expenses related to the Tug shall be borne by the Tugowners.

**No Claim  
for Salvage.**

13. Should the Tow break away from the Tug during the course of the towage service, the Tug shall stand by and render all reasonable services for saving the Tow and reconnecting the towline, without making any claim for salvage save where the Tug has rendered exceptional services which cannot be considered as rendered in fulfilment of this contract.

**Deviation.**

14. The Tug shall have liberty to assist vessels in all situations, to deviate for the purpose of saving life or property, to call at any port for fuel, repairs, supplies, or other necessities, or landing disabled seamen.

**Immunities.**

15. The Second Party shall bear the responsibility for damage of any description caused by or arising during the course of this towage service, including the damage suffered by third parties, even though such damage is caused by the fault or negligence on the part of the Tugowners or persons on board the Tug (including pilots, Tugowners' servants or anyone else who is on board at the request of the Tugowners) or by any defective equipment supplied by the Tugowners, or for damage for which the Tugowners might be held liable on any other ground.

Notwithstanding the provisions of the preceding paragraph, the Tugowners shall bear the responsibility for the following damage;

1) damage suffered by the Tug and which is caused either by defects in the Tug or by the fault or negligence on the part of the Master and crew of the Tug;

2) damage to vessels or property of third parties as a consequence of collision with the Tug, provided, however, that this provision shall apply if the Second Party can prove that such damage was not caused by the Tow or the Tow was not a contributing factor in causing the damage.

When, pursuant to the provisions of this clause, the damage is to be borne by the Second Party, neither the Tugowners nor their sub-contractors, who render service either in whole or in part under the order and direction of the Tugowners, shall be responsible for such damage; The Second party shall indemnify and save the Tugowners and the sub-contractors harmless against all the claims that third parties may have on account of such damage against the Tugowners and/or the sub-contractors (regardless of whether or not the Tugowners and/or the sub-contractors are to be held liable jointly with the Second Party) and the Second Party shall also indemnify and save the Tugowners and the sub-contractors harmless against any loss of or damage to their boats.

**Penalties.**

16. The Tugowners shall not be responsible for any consequences arising through the act or error of the Second Party in connection with export or entry declarations or any other formalities with respect to the Tow. Should the Tugowners or the Tug incur any penalties by reason of such act or error of the

Second Party, then the Second Party shall reimburse the Tug-owners and should the Tug be delayed by reason of such act or error of the Second Party, the Second Party shall pay additional compensation to the Tugowners at the Tug's daily rate of hire as provided in clause 8.

**Lien.** 17. The Tugowners shall have a lien on the Tow for the full towage price, for any and all additional compensations, and for any other charges and expenses due them under this contract, including the cost of recovery of the same.

**Substitution.** 18. Should the Tug not be available to undertake the towage service described herein, or should the Tugowners, for any reason, desire to substitute another tug, the Tugowners shall be permitted to do so, provided, however, that the main particulars and position of the substituted tug shall be subject to the Second party's prior approval, but such approval shall not be unreasonably withheld.

**General.** 19. This contract is a contract for towage services and shall not be construed to be a charter of the Tug or to give rise to a personal contract.

If any one provision or group of provisions in this contract shall be held invalid, void, or of no effect for any reason whatsoever, such holding shall not be deemed to affect the validity of the remaining contract provisions, which shall continue to be of full force and effect.

**Claim.** 20. The Tugowners (the Tug) shall be discharged from all liabilities for any reason whatsoever, unless claim for loss, damage or delay is made in writing within fourteen (14) days from the date of arrival of the Tow at its destination or termination of the towage service.



**Brokerage.** 21. A commission of the number of percentage as stated in Box 26 on the Tugowners' final earnings of the towage price shall be payable by the Tugowners as per Box 27.

**Arbitration.** 22. Any dispute arising from this contract shall be submitted to arbitration held in Tokyo by the Japan Shipping Exchange, Inc., in accordance with the provisions of the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc., and the award given by the arbitrators shall be final and binding on both parties.