

T H O M A S
C O P E R

UNDERSTANDING WRECK-REMOVAL CONTRACTS

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BIMCO Wreck Removal Forms in Use

WRECKFIXED 2010

WRECKSTAGE 2010

WRECKHIRE 2010

Explanatory Notes for WRECKFIXED 2010 are available from BIMCO at www.bimco.org

Explanatory Notes for WRECKSTAGE 2010 are available from BIMCO at www.bimco.org

Explanatory Notes for WRECKHIRE 2010 are available from BIMCO at www.bimco.org

WRECKFIXED 2010
INTERNATIONAL WRECK REMOVAL
AND MARINE SERVICES AGREEMENT
(FIXED PRICE – "NO CURE, NO PAY")
PART I

1. Place and Date of Agreement

2. Contractor/Place of Business (C1, 1) 3. Company/Place of Business (C1, 1)

4. Vessel Specifications (C1, 1, 2, 3)

(i) Name (ii) Flag
(iii) IMO Number (iv) Place of Registry
(v) Length/Beam/Depth (vi) Maximum Draft
(vii) GT/NT/DWT (viii) Details and Nature of Cargo
(ix) P&I Club/Insurer (C1, 10)(3) (x) Any other vessel details relevant to this Agreement

5. Condition of Vessel (C1, 2, 3) 6. Position of Vessel and Condition of Wreck (C1, 1, 2, 3)

7. Nature of Services (C1, 1, 2, 4, 10)(3) 8. Place of Delivery and/or Disposal of Vessel (C1, 10)(1, 3)(3), 10)(2)

(i) Nature of services;
(ii) Compliance with orders of competent authorities (State party to obtain confirmation);
9. Payments (C1, 4, 10)(3)

Fixed Price (in figures and words)

10. Payment Details (C1, 10)(3)

(i) Currency
(ii) Rate
(iii) Address
(iv) Account Number
(v) Account Name

11. Time of Payment and Interest (date period within which sums must be received by the Contractor and rate of interest per month) (C1, 10)(3)

12. Arbitration and Mediation (State (C1, 17)(A, 17)(2) or 17)(2) of (C1, 17, 17) as agreed; if 17)(2) agreed, also state place of arbitration (C1, 17, 17) (if not appropriate/insert in, Clause 17)(3) shall apply)

14. Number of Additional Clauses covering special provisions, if agreed

WRECKSTAGE 2010
INTERNATIONAL WRECK REMOVAL
AND MARINE SERVICES AGREEMENT
(LUMP SUM – STAGE PAYMENTS)
PART I

1. Place and Date of Agreement

2. Contractor/Place of Business (C1, 1) 3. Company/Place of Business (C1, 1)

4. Vessel Specifications (C1, 1, 2, 3)

(i) Name (ii) Flag
(iii) IMO Number (iv) Place of Registry
(v) Length/Beam/Depth (vi) Maximum Draft
(vii) GT/NT/DWT (viii) Details and Nature of Cargo
(ix) P&I Club/Insurer (C1, 10)(3) (x) Any other vessel details relevant to this Agreement

5. Condition of Vessel (C1, 2, 3) 6. Position of Vessel and Condition of Wreck (C1, 1, 2, 3)

7. Nature of Services (C1, 1, 4, 3) 8. Place of Delivery and/or Disposal of Vessel (C1, 10)(1, 3)(3), 10)(2)

(i) Nature of services;
(ii) Compliance with orders of competent authorities (State party to obtain confirmation);
9. Payments (C1, 4, 10)(3), 10)(3)

(i) Lump Sum (in figures and words) (ii) Amount due and payable on signing this Agreement
(iii) Amount due and payable on (iv) Amount due and payable on
(v) Amount due and payable on (vi) Amount due and payable on
(vii) Amount due and payable on (viii) Amount due and payable on

10. Payment Details (C1, 10)(3)

(i) Currency (ii) Address
(iii) Bank (iv) Account Name
(v) Account Number (vi) Account Name

WRECKHIRE 2010
INTERNATIONAL WRECK REMOVAL AND
MARINE SERVICES AGREEMENT (DAILY HIRE)
PART I

1. Place and Date of Agreement

2. Contractor/Place of Business (C1, 1) 3. Company/Place of Business (C1, 1)

4. Vessel Specifications (C1, 1, 2, 3)

(i) Name (ii) Flag
(iii) IMO Number (iv) Place of Registry
(v) Length/Beam/Depth (vi) Maximum Draft
(vii) GT/NT/DWT (viii) Details and Nature of Cargo
(ix) P&I Club/Insurer (C1, 10)(3) (x) Any other vessel details relevant to this Agreement

5. Condition of Vessel (C1, 2, 3) 6. Position of Vessel and Condition of Wreck (C1, 1, 2, 3)

7. Nature of Services (C1, 1, 2, 4, 10)(3) 8. Place of Delivery and/or Disposal of Vessel (C1, 10)(1, 3)(3), 10)(2)

(i) Nature of services;
(ii) Compliance with orders of competent authorities (State party to obtain confirmation);
9. Extra costs of disposal of Vessel (C1, 10)
(i) Rate which party is responsible for extra costs of disposal, subject to the parties;
(ii) handling charge, if applicable, (State percentage);
10. Bonus payment/Reduction rate (C1, 11, 11)
(i) Amount of Bonus (state either total amount or percentage of the fixed payable under Agreement);
(ii) Full bonus (state applicable date or commencement date and subsequent period in days for pro rata hour after which reduced rate to apply)

11. Payment and Rates of Hire (C1, 7, 10)(1, 3)(3), 10)(1, 10)(1, 10)(1, 10)(1)

(i) Daily Working Rate for Craft and Equipment (C1, 10)(1)
(ii) Daily Standby Rate for Personnel (C1, 10)(1)

(i) Reduced Daily Rates of Hire (C1, 10)(1, 11)
(ii) Payment of the appropriate Working Rate of Hire to be made in advance every State national day;
12. Daily Working Rate for Craft and Equipment;
(i) Conveyancing from;
(ii) and conveying to;
(iii) with a minimum payment of hire in any event (state number of days hire)

Other Contract Forms are available (e.g. Supplytime, LOF)

Payment


WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Lump Sum (Cl. 9)	Lump Sum (Cl. 10)	Daily hire of Personnel, Craft and Equipment at agreed rates (Cl. 10 and Box 11)



Payment Method

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Payable on completion (Cl. 9)	Payable in agreed instalments (Cl. 10 and Box 9) throughout the job	Box 11(vi): Payment of hire in advance at agreed intervals with an agreed minimum payment
<ul style="list-style-type: none">▪ What is completion?▪ How are instalments triggered under WRECKSTAGE (Box 9)?		

Risk of Non-Completion

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Borne by Contractor	Shared: Sums paid are not refundable but future instalments are not payable until the next payment stage is reached	Borne by the “Company” (i.e. the shipowner) 
<ul style="list-style-type: none">▪ Contrast with LOF “No Cure-No Pay” (but with SCOPIC, if invoked)▪ Note that the Company is not entitled to a performance bond		

Incentive Bonus

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
None	None	Yes – Cl. 11, Box 10 100% bonus if wreck removed by a specified event or date; if wreck is removed before a 2 nd date the bonus is reduced pro rata
<ul style="list-style-type: none"> <li data-bbox="131 821 600 863">▪ Matter for negotiation 		



The Services

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 2 and Annex I (Personnel, Craft and Equipment) and Annex II (Method of Work and Time Schedule)	Cl. 2 and Annex I (Personnel, Craft and Equipment) and Annex II (Method of Work and Time Schedule)	Cl. 2 and Annexes I and II
<ul style="list-style-type: none"><li data-bbox="131 625 1754 739">▪ Important to carefully define the services and timetable to ensure clarity of obligations (especially in relation to changes of method of work and/or Personnel, Craft and Equipment) and timings (especially in relation to delays)<li data-bbox="131 788 757 822">▪ “Vessel” includes cargo and bunkers<li data-bbox="131 913 1661 948">▪ Contractor only obliged to exercise “due care” in rendering the services (not “best endeavours”)		

Change in the Method of Work, Personnel, Craft and Equipment

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 4 – Mechanism for price, variation, ultimately expert evaluation / arbitration	As for WRECKFIXED, Cl. 4	As for WRECKFIXED, Cl. 4
<ul style="list-style-type: none">▪ Expert Evaluation to resolve disputes		



Extra Costs

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 10 – Contractor pays extra costs	Cl. 11 – Extra costs, paid as agreed (see Box 12)	Cl. 13 – The Company (Shipowner) pays extra costs
<ul style="list-style-type: none">Extra costs relate to the port expenses, tugs, agency etc, customs duties, taxes and other government levies, loss/damage to the Contractors' equipment etc and materials, stores consumed during the job		



Security

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
<p>Cl. 11 – Company provides security on signing Agreement in agreed amount. Further security should be given after signing as reasonably required by Contractor</p>	<p>Cl. 12 – As for WRECKFIXED</p>	<p>Cl. 15 – As for WRECKFIXED</p>
<ul style="list-style-type: none">▪ Club LOUs are accepted as security by all International Group Contractors▪ Important to recover LOUs at the completion of the services		

Delivery/Disposal of the Wreck

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
<p>Cl. 8 - The Company is obliged to accept the wreck (including cargo) at the agreed Place of Delivery or Disposal failing which the Contractor has extensive rights to dispose of it and apply the proceeds of sale in reduction of sums owed by the Company</p>	<p>Cl. 9 – As for WRECKFIXED</p>	<p>Cl. 8 – Substantially the same as WRECKFIXED</p>
<ul style="list-style-type: none"> ▪ Problems of exporting waste: Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal and OECD Decision C(92) 39/FINAL are both given effect in Europe by EC Council Regulation 259/93 and in UK by The Transfrontier Shipment of Waste Regs 2007; ▪ 9 EC Directives govern waste management facilities and the operation of scrapping vessels in the EU; ▪ Hong Kong Convention on Recycling Ships 2009 has not entered into force but Regulation (EU) No. 1257/2013 of the European Parliament and of the E. Council dd 20.11.13 (amending Reg No. 1013/2006 and Directive 2009/16/EC) aim to bring its provisions into force in Europe ▪ European Directive on the Prevention and Reduction of Environmental Pollution by Asbestos 87/217/EEC ▪ Dumping Conventions and OSPAR prevent the dumping of waste offshore; ▪ Customs Duties may be payable if the ship, cargo or bunkers are “imported”. Also duty may be payable on Contractors’ equipment imported to carry out the operation; ▪ Maritime Coastguard Agency have to check any ship leaving UK waters is seaworthy 		

Liabilities


WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. - 12 Knock for knock	Cl. 13 - Knock for knock	Cl. 16 - Knock for knock
<ul style="list-style-type: none">▪ Smit v Mobius [2001] – English Courts enforce knock for knock provisions▪ ‘A Turtle’ [2008] – tug almost ran out of fuel while towing a rig from Brazil to Singapore so released its tow which was lost but the resulting US\$20m claim was defeated by the knock for knock clause▪ P and I Clubs approve knock-for-knock contracts for poolable cover provided they are balanced and that the member does not waive his right to limit▪ Limitation: Limitation of liability for Maritime Claims 1976, Art 2 Has wreck removal been carved out of the limitation regime in force where the wreck is located?		

Insurance

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
<p>Cl. 19 – (a) Contractor warrants it will maintain full P&I cover for salvor’s liabilities; (b) The Company warrants that it will maintain full cover against P&I risks for the vessel (including cargo) throughout the period of this Agreement</p>	<p>Cl. 20 – As for WRECKFIXED</p>	<p>Cl. 23 – As for WRECKFIXED</p>
<ul style="list-style-type: none"> ▪ The cesser clause in Club Rules terminates cover once Notice of Abandonment has been accepted by H and M insurers but the Rules also provide an Indemnity for wreck removal expenses ▪ Problem of insuring after refloating (e.g. during a tow to a scrap port or repair yard) ▪ Port authorities often insist on a casualty being covered for P&I risks (especially pollution and wreck removal) as a condition of entry ▪ Insurance can create a “catch 22” situation frustrating the operation 		

Pollution

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
<p>Cl. 20 – The Contractor warrants he will “exercise due care... to prevent and minimise damage to the environment.”</p> <p>Knock for knock on liability (i.e. Company pays for pollution from the vessel or cargo, (unless caused by the Contractor’s negligence) and the Contractor pays for pollution from the Contractor’s craft</p>	<p>Cl. 21 – As for WRECKFIXED</p>	<p>Cl. 24 – As for WRECKFIXED</p>



Expert Evaluation

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 16 – Provision is made for an expert to resolve differences concerning alterations to costs or rates under the Change in Method of Work and/or Personnel, Craft and Equipment clause	Cl. 17 – As for WRECKFIXED save that the role of Expert Evaluation is extended to Delay Working Rate too	Cl. 20 – As for WRECKSTAGE

Arbitration/Mediation

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 17 – London Arbitration before a sole arbitrator from the LOF Panel with a right of appeal to the LOF Appeal Arbitrator (An option is available for New York arbitration). Mediation provisions are included	Cl. 18 – As for WRECKFIXED	Cl. 21 – As for WRECKFIXED



Law

WRECKFIXED 2010	WRECKSTAGE 2010	WRECKHIRE 2010
Cl. 17 – English law (with option for US law or any other law agreed by the parties)	Cl. 18 – As for WRECKFIXED	Cl. 21 – As for WRECKFIXED





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