

# San Diego

## SCHEDULE OF TUGBOAT RATES AND TERMS

Effective Date: 01 March 2021

Services furnished by Crowley are at the following rates and subject to the terms and conditions set forth below and on the reverse:

### Rates per Assist Tug for Vessels Under Power

TIME	RATE
Rate per Hour - Two Hour Minimum	\$2,416

### LOCAL TERMS AND SURCHARGES

- Assist rate** applies to tug services for docking and undocking and/or shifting within a specific area (e.g. between two terminals). The rate is calculated per tug, per hour. Charges begin when the crew is on board, and end when the tug is again secured at its dock. The hourly rate is calculated in thirty (30) minute increments, rounded up to the next half hour, with a minimum charge of two hours.
- Notice Required for Ordering Tugs:** Eight (8) hours on weekdays, twelve (12) hours on weekends.
- Cancellation:** If any request for service is cancelled within four (4) hours of the time designated for the tug or tugs to arrive at the vessel, Customer shall pay a minimum charge of one hour per tug.
- Fuel Surcharge:** Fuel surcharge for San Diego ports is assessed based on \$1.00/gallon. A minimum fuel surcharge of 20% will apply.
- Security Surcharge:** A security surcharge of \$50 per tug per job may be assessed for assist and escort work.
- Tug's Line Surcharge:** A surcharge of \$15 per tug per job will be assessed for use of tug's line.
- Non-Marking Fender Covering:** A surcharge of \$500 shall be assessed for installation and removal of non-marking fender covering, if required.
- Holiday rates:** All rates set forth herein will be increased by 50% per tug used if the job starts or ends on the following holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving, Friday after Thanksgiving, Christmas Eve and Christmas.
- Weekend Surcharge:** All rates set forth herein will be increased by 50% per tug used if the job starts or ends on a Saturday or Sunday.
- Peak Hours Surcharge** may be assessed at 25% per tug on vessels scheduled to arrive/depart San Diego terminals between 0300-0800 and 1500-2000.
- 70 Metric Ton Bollard Pull:** If a 70 Metric ton bollard pull (or higher) assist tug is required and/or ordered by the pilot, a 50% surcharge will apply.
- Tanker escorts, dead ship moves, flat tows, barge shifts and other services, including those requested for ports not listed above,** shall be quoted upon request.

### Scope of Service

- The term "Customer" as used in this Schedule means and includes individually and collectively any person or entity ordering services pursuant to this Schedule, the vessel for which service is requested and such vessel's owners, operators, agents, charterers and managers. Unless the context otherwise requires, the term "vessel" as used in this Schedule means and includes the tank vessel or other vessel for which services are requested.
- Rates and terms and conditions for pushing or towing vessels not under their own power, for rescue towing, for assisting vessels aground, for salvage and for other services not specified in this Schedule shall be provided upon request.
- In the event a vessel or its propelling tug breaks down during the course of service under this Schedule, the Crowley escort or assist tug shall stand by and render additional service to the vessel or its propelling tug within the reasonable capabilities of the Crowley tug. Customer shall pay Crowley for any such additional service as required. Nothing in this Schedule waives the salvage rights which any tug crew member has at law.
- The services to be provided by Crowley to tank vessels assume that both Customer's tank vessel and Crowley's tug shall use due diligence to comply with all applicable laws, including the Tank Vessel Escort Regulations for San Diego Harbor, if applicable.
- This Schedule applies to the Port of San Diego and contiguous waters.
- Payment is due within 10 days of receipt of invoice. A service charge shall be assessed on amounts outstanding over 30 days at the maximum lawful rate.

### Unusual Conditions

When circumstances beyond the control of Crowley, such as weather, tidal conditions, difficult berths, obstructions, congestion, vessel size or configuration, requests by ship's master, pilot or port agent, or other factors require that additional tugs be dispatched to a job, charges for services performed by such additional tugs shall be at the Hourly Rates set forth in this Schedule. When additional tugs are dispatched and/or conditions are such that the vessel assisted or escorted is delayed, Crowley shall attempt to contact the ship's agent, but shall not be held liable for failure or inability to do so or for any loss, damage or expense resulting from such delay. If any vessel assist or escort involves special or unusual risks, Crowley may require agreement on modified rates and terms and conditions. Crowley reserves the right, in its sole discretion, to decline to offer service to any potential customer.

### Delegation

All or part of any service furnished pursuant to this Schedule may be delegated to another service provider without notice to Customer. Customer agrees that any service provider performing delegated services shall have the benefit of all defenses, exemptions and limitations of liability provided pursuant to this Schedule for the benefit of the parties listed below in the Limitation of Liability Clause. In performance of any such delegated services, the service provider shall be considered an independent contractor and not the agent, contractor or employee of Crowley. Crowley reserves the right to recover all costs incurred by hiring other service providers to perform work on behalf of Crowley, without discount.

## Warranties

Crowley warrants that it shall exercise due diligence to furnish seaworthy tugs which are adequately manned and equipped for the work to be performed pursuant to this Schedule. Except as provided in this Warranties Clause, Crowley makes no warranties of any kind, express or implied, and expressly disclaims any warranty of workmanlike service or performance.

## Exceptions

Crowley agrees to supply services promptly as requested, taking into consideration prior commitments, upon receipt of orders. Notwithstanding any other provision of this Schedule to the contrary, Crowley shall not be responsible for delays, extra expenses or damages of any nature whatsoever caused by strikes, accidents, fire, weather, failure of personnel or equipment, acts of God or any other similar or dissimilar cause beyond the control and without the fault of Crowley.

## Limitation of Liability

The furnishing of any service or any action taken by Crowley pursuant to this Schedule shall not be construed to be or give rise to a personal contract. It is understood and agreed that Crowley, the tugs, their owners, charterers, operators, managers and agents shall have the benefit of all exceptions from and limitations of liability to which such party is entitled under the limitation of liability statutes of the United States. Neither Customer, nor Crowley, the tugs, their owners, charterers, operators, managers or agents shall be liable for any indirect or consequential damages, including without limitation, extra expense, loss of profits, loss of use of vessel or property, delay or damages resulting from loss of use of vessel or property, whether resulting from negligence, breach of the terms and conditions of this Schedule, or otherwise by Customer or Crowley, and even if the possibility of such damage is foreseeable by Customer or Crowley. Any vessel assisted, towed or escorted pursuant to this Schedule assumes all risk of any and all loss or damage sustained by it or by any other vessel, property or person resulting from the parting of any hawser or other line, by whomsoever furnished, and whether the parting was due to insufficiency, negligence, wear or other cause. Unless entitled to immunity as a responder or otherwise under OPA-90 or applicable state laws and subject to defenses to, exemptions from and limitations of liability provided in this Schedule, Crowley, the tugs, their owners, charterers, operators, managers and agents shall be liable, to the extent but only to the extent based upon their degree of legal fault, up to and including the first \$250,000 collectively for all claims, demands, causes of action, liabilities and costs (including attorneys' fees) arising out of or related to a single occurrence or connected series of occurrences in connection with any service rendered by Crowley pursuant to this Schedule. Customer understands and agrees that the Hourly Rates assume the limitation of liability afforded by this Limitation of Liability Clause and that this Clause shall not be limited, restricted or in any way affected by the amount of insurance carried by Customer.

## Indemnity

All claims, demands, causes of action, liabilities and costs (including attorneys' fees) exceeding the first \$250,000 collectively that are attributable or alleged to be attributable to the acts or omissions of Crowley, the tugs, their owners, charterers, operators, managers or agents, or to a tug's unseaworthiness, and which arise out of or relate to a single occurrence or connected series of occurrences in connection with any service rendered by Crowley pursuant to this Schedule shall be subject to the following indemnity: Customer agrees to indemnify and hold harmless Crowley, its directors, officers, agents, employees, insurers, shareholders, representatives, affiliated companies, subcontractors, vessels and their owners, operators, agents, charterers and managers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all in personam and in rem claims, demands, causes of action, liabilities and costs of every type and character, including but not limited to attorneys' fees, expenses, penalties, fines (including penalties or other charges or costs imposed by any federal, state or local authority), and damages which an Indemnified Party suffers, sustains or becomes liable for by reason of any accidents, damages, injuries and/or being deemed a responsible or third party for purposes of pollution laws such as OPA-90 and state laws either to the person (including any employee or agent thereof) or property of Crowley or Customer, to the person and/or property (including any natural resources) of any third party, including but not limited to, federal and state governments and agencies thereof, landowners, shipowners and cargo arising out of or related to performance of any services pursuant to this Schedule. The parties intend for this indemnity to apply in all instances, including but not limited to allision, collision, personal injury, fire, explosion, grounding and oil spill of any nature whatsoever (including without limitation crude oil, refined products and bunkers). Customer further agrees that the Indemnified Parties shall have the right, but not the obligation, to tender the defense to Customer of any and all lawsuits or other legal proceedings arising out of or in any way connected with matters which are the subject of this Indemnity Clause, but that failure to tender any such lawsuit or legal proceeding for defense shall in no way release or relieve Customer of its obligations under this Indemnity Clause.

## Notice of Damage and Claim

Notice of any alleged damage or injury suffered or caused by a vessel to which services are rendered pursuant to this Schedule must be given to Crowley within a reasonable time (not to exceed 48 hours) after the alleged occurrence. If it is intended that a claim be made upon Crowley based upon such alleged damage or injury, written notice of such intention must be given within thirty (30) days of such occurrence. In the absence of either one or both notices provided for above, no claim arising out of such occurrence shall be valid, and no suit may be maintained in respect of such claim on account of damage or injury suffered or caused by such vessel. In any event, Crowley shall be discharged from any liability of any nature whatsoever unless suit is brought within one year after the occurrence for which claim is made. In addition to the foregoing requirements, no such claim shall be valid and no suit may be maintained on account of any such damage or injury unless Crowley is given a reasonable opportunity to inspect and survey the damage for which claim is made prior to the commencement of any repairs.

## Taxes

Crowley shall not be responsible for any transportation, use, sales or any similar federal, state or local taxes due from the operation and use of any tug pursuant to this Schedule, and any such taxes shall be for Customer's account; provided, however, Crowley shall pay all taxes applicable to its ownership of any tug performing services pursuant to this Schedule.

## Pilotage

No pilotage services are offered or supplied by Crowley. Compliance with all pilotage and vessel manning requirements is the responsibility of Customer. In the event a pilot, whether mandatory or voluntary, is aboard the vessel to assist in the movement or docking/undocking of the vessel, the pilot is deemed to be acting on behalf of the vessel and Customer. Customer assumes all risk of loss for personal injury or death of any person or damage to or destruction of any property to the extent arising out of or in connection with the acts or omissions of the pilot. Customer also agrees to indemnify, defend and hold the Indemnified Parties harmless from any such loss (including costs and attorneys' fees).

## Customer Authority

If any vessel for which service is requested pursuant to this Schedule is not owned by the person or entity ordering such service, it is understood and agreed that such person or entity warrants its authority to bind the vessel and its owners, operators, agents, charterers and managers to all the provisions of this Schedule. Such person or entity agrees to indemnify and hold harmless the Indemnified Parties with respect to all losses, damages and/or expenses (including costs and attorneys' fees) that may be suffered or incurred by any Indemnified Party in consequence of the failure of such person or entity to have such authority.

## Severability

If any part of this Schedule is held to be invalid by an arbitrator or mediator, court of competent jurisdiction or agency having authority over the subject matter of this Schedule, the remaining provisions of this Schedule shall be unaffected and continue in full force and effect.