

Are you up to speed with BIMCO's new TOWCON and TOWHIRE contracts?

By Claire Strodder, Maritime Lawyer

The start of 2021 has seen BIMCO update its standard TOWCON and TOWHIRE contracts. These contracts have not been updated for more than a decade with the previous versions dated 2008. The updated contracts incorporate the most common changes that were being made to these contracts by its users, clarify some ambiguities and make the contracts easier to use.

You can find the new editions of the contracts on the BIMCO website and also via your SmartCon feature on word ([BIMCO Home](#)).

So, what are the changes? See below for a detailed explanation of what is new.

TOWCON 2021

TOWCON is the industry standard contract for ocean towage on a lumpsum basis. In short, the main features in the revised TOWCON 2021 are:

- the name of the TOWCON has changed from the “*International Ocean Towage Agreement (Lump Sum)*” to the “*Ocean Towage Agreement (Lump Sum)*”;
- definitions of “*Hirer’s Groups*” and “*Tugowner’s Groups*” have been added (like in the SUPPLYTIME). This ensures that all involved in the towage operation are covered by the knock-for-knock provisions - ([Clause 1](#));
- the provisions relating to free time and delay payments have been re-written so they are clearer for parties to understand - [Clause 7](#);
- amendments have also been made to make provisions for bunkering the tug mid-voyage at any interim ports or places, for example, at an offshore location. This is especially helpful for very long towages or where a tug with limited bunker capacity is used - [Clause 7\(c\)](#);
- the definition for “*place of connection*” has been updated to include circumstances where a tow is located inside a port area (and several hours may be needed to reach it) - [Clause 1](#);
- the insurance clause is new. Now the parties are required to warrant that proper insurance is in place for both the tug and tow - [Clause 11](#) – especially (a) and (b);
- to make it consistent with the knock for knock regime, responsibility for any salvage costs has been allocated to the party who has property to be salvaged - [Clause 19](#);
- updates have been made to the hirer’s obligation to pay for any repairs or replacement of damaged or lost towing gear to make the provision more balanced. Now, “*due consideration*” should be given to the fair wear and tear of the towing gear when calculating any replacement costs – so, it is no longer new for old like in the TOWCON 2008 - [Clause 15\(c\)](#); and

- a box has been added in Part I, Box 21(iii) which enables the tug owner to specify the “*estimated average towage speed*” against which claims for compensation for extra time can be based. So, if extra time needs to be calculated it will be more transparent – a major source of dispute under TOWCON 2008.

TOWHIRE 2021

The TOWHIRE is the industry standard contract for ocean towage on a daily hire basis. As the TOWCON and TOWHIRE contracts are so closely related many of the changes to the TOWHIRE are aligned to those in the TOWCON. So, the main changes to the TOWHIRE 2021 in comparison to its earlier 2008 version are:

- as with the TOWCON, the name of the TOWHIRE has also changed from “*International Ocean Towage Agreement (Daily Hire)*” to “*Ocean Towage Agreement (Daily Hire)*”;
- the definitions of “*Hirer’s Groups*” and “*Tugowner’s Groups*” (like in the SUPPLYTIME) have been added to make sure all parties involved are covered by the knock-for-knock liability regime - Clause 1;
- updates have been made to the hirer’s obligation to pay for any repairs or replacement of damaged or lost towing gear to make the provision more balanced. Now, “*due consideration*” should be given to the fair wear and tear of the towing gear when calculating any replacement costs – so, it is no longer new for old like in the TOWHIRE 2008 - Clause 15(c);
- again, like with TOWCON, to make it consistent with the knock for knock regime, responsibility for any salvage costs has been allocated to the party who has property to be salvaged - Clause 19; and
- the insurance clause is new. Now the parties are required to warrant that proper insurance is in place for both the tug and tow - Clause 11 – especially (a) and (b).

Lastly, even though the new TOWHIRE has been aligned as much as possible with the new TOWCON there are some crucial differences between the two contracts, including:

- under the TOWHIRE the tug is delivered and then redelivered – so it is like a single voyage trip time charter where, whereas in the TOWCON there is no concept of delivery and redelivery of the tug as this is a lumpsum contract. Also, it is the tow that is being delivered and delivered under the TOWCON; and
- under the TOWCON, any additional time is compensated at the delay payment rate, in comparison to under TOWHIRE where hire continues to be payable for delays.

So, now you are up to speed with the main changes to the revised TOWCON and TOWHIRE contracts go and check these out for yourself on BIMCO’s website ([BIMCO Home](#)). If you have any questions about the changes, please do not hesitate to contact us on 1300 797 627 and we would be very happy to assist further.