

## Carver Marine Towing – Standard Terms of Service

**Effective Date:** Version 2 – January 1, 2025

**Scope:** These Standard Terms of Service (the "**Terms**") apply to all services provided by Coeymans Marine Towing, LLC, a division of Carver Companies, either directly, through its affiliates and/or any subcontractors (collectively, "**CMT**"), to any commercial customer (the "**Customer**"). By ordering or using any CMT services, or by referencing these Terms in any contract or document, the Customer agrees to be bound by these Terms. These Terms are intended to be for the benefit of CMT (including its affiliates, shareholders, officers, employees, crew, contractors, and agents, collectively the "**CMT Parties**"). **No agent or employee of CMT is authorized to modify these Terms except in a written amendment signed by an authorized officer of CMT.** Any additional or different terms proposed by Customer (whether in a purchase order, email, or otherwise) are expressly rejected and shall have no effect. These Terms and any CMT order confirmation or service contract referencing them constitute the entire agreement governing CMT's services, superseding all prior or collateral representations or agreements.

### 1. Definitions

- **CMT** – Coeyman Marine Towing, a division of Carver Companies, including its parent, affiliates, and all of their respective shareholders, directors, officers, employees, captains and crew, agents, subcontractors, insurers, and underwriters (collectively, the "**CMT Parties**"). These Terms are for the benefit of all CMT Parties, who shall be entitled to invoke all defenses, limitations, and protections herein to the fullest extent permitted by law.
- **Customer** – The person or entity (other than CMT) that requests or receives services from CMT. "Customer" includes any agents, owners, charterers, or other parties on whose behalf services are requested. If Customer is not the actual owner of any vessel or cargo involved, Customer warrants that it is authorized to bind the owner to these Terms, and both Customer and such

owner shall be jointly and severally bound hereby.

- **Services** – Any and all services provided by CMT to Customer, including without limitation: tugboat services (near coastal and ocean-going), ship assist and harbor tug services, barge services (inland hopper barges, deck barges, and ocean-going barges), marine equipment rentals or charters (including tug and barge charters), heavy lift or crane services (e.g. CMT's "E-Cranes"), marine towing and transportation of cargo, marine construction support, and any related marine or logistical services. The term "Services" shall be interpreted broadly to cover any operation performed by CMT for or on behalf of Customer, whether or not specifically listed.
- **CMT Vessel** – Any tugboat, barge, crane, watercraft or other vessel owned, operated or provided by CMT in the performance of Services. This includes CMT's tugboats and barges (whether manned or unmanned), floating cranes, and any other equipment mobilized by CMT.
- **Customer's Vessel** – Any vessel, barge, ship, or floating object owned, leased, managed, or provided by Customer that is assisted, towed, pushed, escorted, or otherwise serviced by CMT. For example, a ship receiving docking assistance or a barge towed by CMT's tug is a Customer's Vessel (sometimes referred to as a "Tow").
- **Agreement** – The contractual arrangement between CMT and Customer for provision of Services, consisting of these Terms together with any specific service order, charter party, quotation, rate sheet, booking confirmation, or other document agreed by CMT describing the particular Services or rates. Any reference to the Agreement includes these Terms.

*(Additional terms may be defined in the body of these Terms. Section headings are for convenience and do not affect interpretation.)*

### 2. Applicability and Acceptance

**2.1** These Terms apply to all Services provided by CMT to Customer, regardless of any other terms or form contracts. By requesting or accepting Services, Customer accepts these

Terms in full. If Customer has issued any purchase order or other document purporting to impose different terms, the parties agree that these Terms shall prevail and any additional or inconsistent terms in Customer's documents are void, unless a duly authorized officer of CMT has explicitly agreed in writing to specific deviations.

**2.2** If CMT at any time signs or acknowledges a Customer's purchase order or contract form, such signature or acknowledgment is only to confirm receipt or to facilitate invoicing, and any terms on such form shall not apply except to the extent they are consistent with these Terms or expressly agreed by CMT. Provision of Services without objection to any Customer-proposed terms shall not constitute acceptance of those terms. Customer's sole rights and remedies in relation to the Services are governed by these Terms.

**2.3** These Terms are published on CMT's website and may be incorporated by reference into service agreements, work orders, quotes, charter parties, bills of lading, or other documents. The current version as of the date of the Agreement shall govern the Services. CMT reserves the right to update or modify these Terms on its website; however, no change will apply retroactively to Services already performed or underway without Customer's consent.

### **3. Scope of Services and Performance**

**3.1 General Obligations of CMT:** CMT agrees to provide the Services requested by Customer and accepted by CMT, using reasonable care and generally accepted maritime practices. However, CMT does not guarantee any particular result or a specific time for completion. Any schedules or timing provided by CMT (such as arrival or transit times) are estimates only and not guaranteed, and CMT shall not be liable for any delay.

**3.2 Master's Discretion and Safety:** While performing Services, the master and crew of any CMT Vessel shall have sole discretion over the operation of that vessel and may refuse or adjust service if they deem conditions unsafe or beyond the scope of what was agreed. When a CMT Vessel is assisting or towing a Customer's Vessel, the master and crew of the CMT Vessel shall be deemed the servants or agents of the Customer and/or of the Customer's Vessel for

all purposes of liability and indemnification. This means that (to the fullest extent permitted by law) the Customer and the Customer's Vessel assume responsibility for any acts or omissions of CMT's master or crew during the period of assisted operations, and CMT shall not be liable for losses arising from following the orders of Customer's personnel or the pilots/masters of Customer's Vessel. All services, including towing or docking, shall be conducted under the overall direction of Customer (or the pilot/captain of Customer's Vessel), and CMT's personnel may rely on the Customer's instructions without liability. If, in the judgment of CMT's vessel master, prevailing circumstances (weather, traffic, condition of Customer's Vessel, etc.) render it unsafe or imprudent to continue operations, the master may suspend or terminate the Service at any time without breach of contract, and CMT shall promptly notify Customer with the reasons.

**3.3 NO WARRANTIES:** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, CMT MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE SERVICES OR ANY CMT VESSEL OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF WORKMANLIKE SERVICE, SEAWORTHINESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACCEPTS THAT MARITIME SERVICES INHERENTLY CARRY UNCERTAINTIES AND RISKS; CUSTOMER RELIES ON CMT'S SERVICES AT CUSTOMER'S OWN RISK, EXCEPT AS OTHERWISE PROVIDED HEREIN. CMT'S SOLE WARRANTY (IF ANY) IS THAT IT WILL USE REASONABLE DILIGENCE AND CARE IN PERFORMING AGREED SERVICES. IF A CMT VESSEL OR EQUIPMENT IS CHARTERED OR LEASED TO CUSTOMER (WITH OR WITHOUT CMT'S CREW), SUCH VESSEL OR EQUIPMENT IS PROVIDED "AS IS" IN GOOD WORKING ORDER TO THE BEST OF CMT'S KNOWLEDGE AT COMMENCEMENT, WITHOUT ANY WARRANTY OF CONDITION OR PERFORMANCE DURING CHARTER.

**3.4 Subcontractors and Third Parties:** CMT shall have the right to subcontract or delegate performance of any part of the Services to third parties (including other vessel operators, stevedores, sub-charterers, etc.) at CMT's discretion. Any such subcontractor shall be considered an agent of CMT in providing the Services, and all defenses, exemptions, limitations of liability, and indemnities afforded to CMT under these Terms shall also extend to

and protect such subcontractors (as well as the subcontractor's employees and agents) to the fullest extent permitted by law. No such subcontract shall relieve CMT of its entire obligation to Customer for the portion of Services that was subcontracted (except that the liability of CMT and its subcontractors is limited by these Terms). Customer agrees not to bring any claim or suit against any CMT subcontractor for matters covered by the Agreement; in the event Customer nonetheless brings a claim against a subcontractor or any CMT Party, the limitations and defenses in these Terms shall apply to them as third-party beneficiaries hereof.

**3.5 Changes and Additional Services:** If Customer requests any change to the scope of Services or any additional services (including extra tugs, additional moves, standby time, changes in destination, etc.), those changes must be agreed by CMT and may result in additional charges. CMT is not obligated to perform any services outside the originally agreed scope unless a change is mutually confirmed. If during performance CMT reasonably determines that additional services (or changes) are necessary to safely or efficiently achieve the Customer's instructions (for example, dispatching an extra tug due to weather or requiring more barge trips due to cargo volume), CMT will notify Customer and attempt to obtain approval. If Customer cannot be reached in an emergency, CMT may perform such additional work as reasonably necessary for safety or to prevent damage, and Customer shall pay the reasonable cost of such work. No such protective actions by CMT shall be deemed a breach of contract.

#### **4. Rates, Invoicing, and Payment**

**4.1 Rates and Estimates:** The rates for Services shall be as agreed in writing (in a rate quote, tariff, charter party, or other schedule agreed by CMT) or, if not explicitly agreed, as per CMT's standard rates in effect at the time of service. Any estimate of total charges is provided for convenience; actual billing will be based on the Services actually provided (including any additional services or standby time). Unless otherwise stated, rates are exclusive of any applicable taxes, duties, port charges, or other governmental fees, which (if incurred) shall be charged to and payable by Customer in addition to the base rates. Customer is also responsible for any unusual or additional costs arising from the service due to

incomplete or inaccurate information provided by Customer.

**4.2 Invoicing:** CMT will invoice Customer upon completion of the Services, or on a periodic milestone basis for longer projects or charters. Payment in full (without setoff or deduction) is due within the time period stated on the invoice or, if no period is stated, within 30 days from the invoice date. All payments shall be in U.S. Dollars, unless otherwise agreed. Late payments are subject to interest at the rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less, from the due date until paid. Customer shall also be responsible for all costs of collection on overdue amounts, including reasonable attorneys' fees, court or arbitration costs, and related expenses. (For example, Customer must pay any attorneys' fees, litigation costs, and expenses incurred by CMT in collecting past due invoices)

**4.3 Maritime Lien:** CMT shall have a maritime lien on any vessel, barge, cargo, or other property involved in the Services for all unpaid charges, plus interest and costs of recovery. This lien extends to the vessel assisted or towed (and its cargo and appurtenances) and to any cargo or equipment on board a CMT barge or other equipment, and it shall survive delivery of the cargo or completion of services. CMT may assert its lien by arresting the vessel or cargo in any jurisdiction, or by any other lawful means. No property delivered to Customer shall be deemed to have been sold or title transferred until all amounts due to CMT have been paid in full. Customer warrants that it has authority to permit liens on the relevant property, or if it is not the owner, that the owner acknowledges and agrees that such property may be subject to CMT's lien. Customer shall not take any action to interfere with or inhibit CMT's lien rights.

**4.4 No Withholding; Taxes:** Customer shall not withhold any portion of payment as retention or pending resolution of any disputes, and no unilateral withholding by Customer is permitted. If Customer is required by law to deduct or withhold taxes from any payment, Customer shall gross-up the payment such that CMT receives the full invoiced amount net of any such withholding. Customer is responsible for any sales, use, VAT, GST, port dues, customs duties, or similar taxes or fees imposed in connection with the Services, excluding only taxes on CMT's net income. Any such amounts

paid by CMT on Customer's behalf shall be invoiced to and reimbursed by Customer.

**4.5 Suspension and Termination for Non-Payment:** If any invoice remains unpaid beyond its due date, CMT may, at its option and without prejudice to any other rights, suspend further Services (including suspending any ongoing voyages or charters) until all outstanding sums are paid. If Customer fails to pay an invoice within 15 days after written notice of late payment, CMT may terminate the Agreement or any unfulfilled portion thereof due to Customer's material breach. Suspension or termination of services for non-payment shall not expose CMT to liability, and Customer shall indemnify CMT for any consequences of such suspension on Customer's side (for example, delays or penalties incurred by Customer).

## **5. Customer's Responsibilities and Warranties**

**5.1 Safety and Preparations:** Customer shall ensure that all necessary arrangements are made and conditions are suitable for CMT to perform the Services. Customer is responsible for providing safe access, safe berths or docks, and safe locations for commencement and completion of Services. Any berth, dock, or other location designated or provided by Customer must be safe and appropriate for the CMT Vessel and the contemplated operation (including sufficient water depth, suitable mooring, and absence of hidden hazards). Customer must exercise due diligence to ensure its own vessel or cargo is in a condition suitable to be handled or transported, and to furnish any special equipment or precautions required (which must be communicated to CMT in advance).

**5.2 Timely Arrival and Readiness:** Customer shall have its vessel(s), cargo, or other items ready at the agreed place and time for CMT to perform the Services. If a Customer's Vessel is to be towed or assisted, Customer must ensure the vessel is prepared in all respects (hatches/vents secured, proper tackle or bridle provided for towing, crew ready to assist, etc.). Any delay or standby time caused by Customer's failure to be ready, or by conditions under Customer's control, will be charged at CMT's applicable standby rates (e.g. hourly tug hire rates) for the duration of the delay. CMT may, in its sole discretion, depart the pickup location if the delay is excessive (for example, more than 2 hours beyond the

scheduled time) and reschedule or cancel the Service, in which case Customer shall pay for any standby time and any additional costs incurred by CMT due to the delay or rescheduling. At the destination, Customer shall likewise ensure it is ready to receive its vessel or cargo; excessive unloading or release delays will incur demurrage or standby charges. Free waiting or grace periods, if any, shall be as specified in the rate schedule or agreed, and otherwise reasonable waiting time shall be permitted before charges accrue.

**5.3 Information and Instructions:** Customer is responsible to provide accurate and complete information regarding the Services and the objects involved. This includes (without limitation) providing to CMT in advance: a detailed description of the vessel or cargo to be moved, dimensions, weights, and any unusual characteristics; any hazardous materials or pollutants involved; required routes or destinations; and any specific handling instructions or regulatory requirements. Customer warrants that it has obtained all necessary permits, licenses, and governmental approvals for the planned services (except any that are explicitly CMT's responsibility by law or written agreement). For example, if a towed vessel must enter a port or cross international boundaries, Customer must handle all customs, import/export or Coast Guard documentation as applicable. CMT may assist with certain formalities as agreed, but ultimate compliance responsibility lies with Customer. Customer shall indemnify CMT for any fines, penalties, or liabilities resulting from incomplete or inaccurate documentation or failure to obtain required clearances by Customer.

**5.4 Compliance with Laws:** Customer shall comply with all applicable laws, regulations, and rules pertaining to the Services, including environmental, safety, and security laws. No hazardous or illegal cargo or material shall be tendered to CMT without CMT's express written consent and full disclosure. CMT reserves the right to refuse or reject any cargo or tow that, in its sole judgment, poses unreasonable risk or is not permitted by law or CMT's policies (for example, certain explosives, radioactive materials, or other dangerous goods may be excluded). If CMT does agree to handle hazardous materials, Customer must provide complete and accurate Material Safety Data and certify compliance with all legal handling and transport requirements. Customer shall be

solely responsible for any environmental or hazardous condition caused or introduced by Customer's vessel, cargo, or agents, and shall indemnify CMT for any pollution, contamination, or other environmental damage or liability arising therefrom (except to the extent caused solely by CMT's gross negligence or willful misconduct).

#### **5.5 Operations Under Customer's Control:**

In any on-site operation (such as loading/unloading by a CMT E-Crane or similar heavy equipment, or when CMT personnel are on Customer's premises or vessel), Customer is responsible for maintaining a safe working environment. Customer shall provide any site-specific safety information and ensure that the area is free from hazards and that any of Customer's equipment involved is properly inspected and operated. If the operation involves integrating with Customer's shore equipment (e.g. loading cargo from a dock to CMT's barge or vice versa), Customer must ensure the dock or facility is structurally sufficient for the loads and certified if required. CMT may halt operations if safety is in doubt, without liability. Customer will also supply, at its expense, any special gear, rigs, or helpers (e.g. line handlers, pilots, etc.) that are not part of CMT's standard crew but are required for the operation, unless otherwise agreed.

#### **5.6 Insurance by Customer:**

Customer shall procure and maintain at its own expense all insurance necessary to cover the risks and liabilities assumed under these Terms. At a minimum, Customer shall carry (a) Comprehensive General Liability or Marine Liability insurance with a limit of at least USD \$10 million per occurrence (covering bodily injury, death, and property damage to third parties, including contractual liability assumed herein and liability for cargo or equipment under Customer's care) and (b) if the Service involves charter or use of any CMT Vessel by Customer (with or without crew), Customer shall also maintain Hull & Machinery insurance on the vessel (for its full commercial value) and Protection & Indemnity (P&I) insurance (including wreck removal and pollution liability) with limits at least equivalent to those carried by vessel owners in similar trades (and not less than USD \$10 million). All such insurance policies shall be carried with reputable insurers and shall name the CMT Parties as additional insureds to the extent of their interests. All policies shall include a full waiver of subrogation in favor of the CMT

Parties (so that underwriters have no right of recovery against CMT or its affiliates even in the event of an insured loss). Customer's insurance shall be primary over any insurance carried by CMT. Upon request, Customer will furnish certificates of insurance evidencing the above coverages before commencement of Services. Customer's liability to CMT is not limited to the amount of its insurance; Customer is responsible for any deficiency. (However, Customer's insurance is intended to satisfy its indemnity obligations and potential liabilities under these Terms to the extent possible.)

**5.7 No Encumbrances:** Customer warrants that no liens or encumbrances (other than CMT's lien for charges) shall be permitted or placed upon any CMT Vessel, equipment, or other property of CMT as a result of the Services or any dealings with Customer. Customer shall not procure or allow to be procured any arrest or attachment of any CMT Vessel in connection with any dispute under this Agreement, except that this does not waive Customer's right to obtain security per applicable law after an arbitration award or judgment in Customer's favor. If any lien is placed on a CMT Vessel or asset by a subcontractor or other party engaged by Customer (for example, for non-payment by Customer to a vendor), Customer shall promptly clear such lien. Customer further warrants that any vessel or property provided by Customer to be handled by CMT is owned by Customer or used with permission of the owner, and is free of any dangerous conditions or latent defects not disclosed to CMT.

**5.8 Indemnity for Breach:** Any breach of Customer's responsibilities or warranties in this Section (or elsewhere in these Terms) shall be at Customer's sole cost and expense. Customer shall defend, indemnify and hold harmless the CMT Parties from any Losses (defined in Section 6) arising out of or relating to any such breach or failure by Customer.

### **6. Indemnification by Customer**

**6.1 General Indemnity:** To the fullest extent permitted by law, Customer shall defend, indemnify and hold harmless the CMT Parties from and against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) (collectively, "Losses") of any kind arising out of or related to the Services or this Agreement, regardless of cause or of the negligence or fault of any party, except as

expressly limited herein. This indemnity obligation applies whether such claims are brought by third parties or by Customer's own employees or agents, and includes, but is not limited to, the following categories of claims and losses:

1. **Customer's Breach or Fault:** Any Losses arising from Customer's breach of this Agreement or from the negligence, gross negligence, intentional misconduct, or other fault of Customer or its agents. (For example, if Customer provides defective gear or unsafe instructions that result in an accident, Customer is responsible for all resulting Losses.)
2. **Injury or Death of Customer's Personnel:** Any injury, illness, or death of any employee or contractor of Customer (or of any of Customer's affiliates or subcontractors) occurring during or in connection with the Services while such person is on or about a CMT Vessel or property, regardless of cause, including if caused in whole or in part by the negligence (whether sole, joint, or concurrent), strict liability, or other fault of any CMT Party. However, Losses caused by the CMT Party's own gross negligence or willful misconduct are excluded from Customer's indemnity obligation under this subsection. Customer agrees that injuries or incidents to its personnel in the foregoing circumstances shall be deemed outside the scope of CMT's services for purposes of indemnification, such that Customer (or its insurers) will bear full responsibility for worker injury claims, except as prohibited by law.
3. **Third-Party Claims (Including Cargo and Collision):** Any claims of third parties (including but not limited to claims for loss or damage to cargo, to Customer's Vessel or other property, or to any other vessel or property, and claims for personal injury or death of third parties) to the extent arising out of Customer's Vessel, Customer's cargo, or any acts or omissions of Customer or its agents. For example, if during towing or alongside services, a third party's vessel or property is damaged due to any condition or action attributable to Customer's Vessel or

cargo, Customer shall indemnify CMT for any resulting liability. Additionally, if a CMT Vessel collides with another vessel due to a combination of faults of CMT and another party (including Customer or Customer's Vessel), Customer shall indemnify CMT for any third-party claims beyond the proportion of fault actually attributable to CMT. Customer shall not sue or permit any third party to sue any CMT Party for more than CMT's proportionate share of fault. (This is intended, among other things, to contractually allocate the risk of "both-to-blame" collisions in accordance with the so-called Both-to-Blame Collision clause historically used in maritime trade.)

4. **Pollution or Environmental Damage:** Any claims, fines or penalties, or remediation costs arising from any pollution, contamination, spill, or environmental damage that is caused by (a) the cargo or materials on or released from Customer's Vessel, (b) any pre-existing condition at a site provided or controlled by Customer, or (c) any discharge or emission caused by Customer or its agents. If any CMT Party incurs clean-up costs or liabilities under environmental law due to Customer-related pollution, Customer shall fully indemnify and reimburse such costs, except to the limited extent that the incident is proven to have been caused solely by CMT's gross negligence or willful misconduct.
5. **Other Acts of Customer or Related Parties:** Any Losses arising from any other acts or omissions of Customer, its affiliates, agents, subcontractors, or invitees, including any breach of legal duty or violation of law by such parties in connection with the Services. This includes, for example, claims arising from improper loading or securement of cargo by Customer, or from failure to obtain a required permission which leads to a governmental penalty.

**6.2 Indemnity Procedures:** If any claim or lawsuit is brought against any of the CMT Parties which is covered by Customer's indemnity above, CMT shall give prompt notice to Customer. Customer shall, at its own expense, defend such claim or suit with counsel reasonably acceptable to CMT. CMT and the other indemnified parties shall have the right to

participate in the defense at their own expense, and Customer shall not settle any claim involving a CMT Party's liability without written consent (not to be unreasonably withheld). If Customer fails to assume defense of a claim subject to indemnity, CMT may do so and recover all costs (including attorneys' fees) from Customer.

**6.3 Exceptions; Sole Negligence of CMT:** Customer's obligations under this Section 6 are intended to be as broad and encompassing as permitted by law. However, Customer shall not be required to indemnify any CMT Party for Losses to the extent finally determined to be caused by the sole gross negligence or willful misconduct of that CMT Party. In other words, if a court or arbitrator finds that a CMT Party acted with gross negligence or intentional wrongful conduct, and that no act or omission of Customer or any other person contributed to the Loss, then Customer's indemnification shall not apply to that particular Loss. If required by law, the indemnity obligations herein shall be limited to the extent of Customer's fault. Apart from such limitations, Customer's indemnity is intended to apply even if a Loss is caused in part by the negligence or strict liability of a CMT Party (for example, where both Customer and CMT are partially at fault).

**6.4 Continuing Obligation:** Customer's defense and indemnity obligations shall survive the completion of Services or any termination of the Agreement. Any indemnity for obligations arising during the term of the Agreement shall extend beyond the termination or expiration of this Agreement.

## **7. Liability of CMT; Disclaimers and Limitations**

**7.1 No Consequential Damages:** To the maximum extent permitted by law, and except as otherwise expressly provided herein, CMT (on behalf of itself and all CMT Parties) shall not be liable to Customer or any other person for any indirect, special, incidental, punitive, or consequential damages of any kind. This exclusion includes, but is not limited to, lost profits, loss of use, loss of revenue, delay damages, business interruption costs, or any punitive or exemplary damages, whether or not foreseeable. For example, CMT will not be liable for Customer's loss of profit due to a delivery delay, or for any punitive damages sought by a third party - such categories of loss are contractually excluded.

**7.2 EXCLUSIVE REMEDY; LIMITATION OF AGGREGATE LIABILITY:** CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT (INCLUDING ANY CLAIM OF BREACH OR NEGLIGENCE BY CMT PARTIES) SHALL BE, AT CMT'S OPTION, EITHER: (A) REPERFORMANCE OF THE DEFICIENT SERVICE, OR (B) A REFUND OF THE PRICE PAID FOR THE DEFICIENT SERVICE (OR A PRORATED PORTION THEREOF). IN ANY EVENT, THE AGGREGATE TOTAL LIABILITY OF THE CMT PARTIES FOR ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES OR THE AGREEMENT SHALL BE IRREVOCABLY LIMITED AND CAPPED AT USD \$250,000.00. THIS CAP APPLIES NO MATTER THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE. MULTIPLE CLAIMS OR INCIDENTS WILL NOT ENLARGE THE CAP.

**7.3 Further Liability Limitations:** Without limiting the generality of Section 7.2 above, CMT and the CMT Parties shall have no liability for: (i) loss or damage to any Customer's Vessel, cargo, or other property handled, towed, carried, or stored by CMT, unless such loss or damage is proven to result directly from the gross negligence or willful misconduct of CMT (and in no event beyond the liability cap herein); (ii) loss or damage arising from any delay, failure to perform, or interruption of Services due to causes beyond CMT's reasonable control (see Force Majeure, Section 11.3); (iii) any claim that was not reported by Customer as required (see Section 7.5 on notice of claims); or (iv) any loss covered by Customer's insurance (it being the intention that Customer's insurance will be primary for its own property and personnel). Customer agrees that the exclusions and limitations in these Terms are a material part of the pricing of Services, and that if Customer seeks greater liability protection, it must propose a separate written agreement with CMT (likely at higher cost) or obtain its own additional insurance.

**7.4 No Warranties; No Liability for Wear and Tear:** CMT makes no warranty that its vessels or equipment are suitable for Customer's specific purpose beyond normal marine operations. Any warranties implied by law (including any warranty of workmanlike service or seaworthiness) are expressly disclaimed to the fullest extent permitted.

Customer acknowledges that minor damage, wear and tear, or deterioration can occur in the ordinary course of maritime services (e.g. chafing of lines, minor scrapes to paint, etc.), and CMT shall not be liable for such reasonable wear and tear or for cosmetic damage that does not materially affect the function of any vessel or cargo.

**7.5 Notice of Claims; Time Bar:** Customer must give prompt written notice to CMT of any claim or potential claim against CMT arising out of the Services. In the case of apparent damage to cargo or property, Customer (or its representative at the scene) must notify CMT's on-site supervisor or master immediately, and in no event later than 48 hours after completion of the Service or delivery of the cargo/vessel, of the nature of the damage. Failure to give prompt notice shall, to the fullest extent permitted by law, constitute an absolute waiver and bar of any such claim. Furthermore, any lawsuit or arbitration demand by Customer asserting a claim against any CMT Party must be filed within one (1) year from the date of the event or occurrence giving rise to the claim, or if the Services are continuous, within one year from the date of completion of the specific service from which the claim arises. This contractual limitations period replaces any longer statutes of limitation, to the extent allowed by law. Claims not asserted within this period shall be deemed time-barred and waived. (This provision does not extend any shorter period provided by law for certain claims, and does not apply to CMT's own claims for payment, which are subject to applicable law.)

**7.6 Limitation of Liability Act and Other Defenses:** Nothing in these Terms is intended to deprive CMT (or any CMT Party) of the benefit of any law that provides for limitation or exoneration of liability. CMT specifically reserves all rights to limitation and immunity afforded under applicable statutes or maritime law, including 46 U.S.C. §§ 30501-30511 (the U.S. Shipowner's Limitation of Liability Act) which permits shipowners to limit liability to the post-casualty value of the vessel, and any laws or precedents affording protection to owners of U.S.-flagged vessels or to providers of maritime services. All such protections, defenses, immunities, and limitations of liability are cumulative and shall apply in addition to the contractual limitations set forth herein. No provision of these Terms shall be construed as a waiver of any statutory or legal defense of CMT or its insurers. In the event any CMT Party

invokes the Limitation of Liability Act or analogous state or international laws, Customer agrees not to oppose such action (except to the extent of asserting claims allowed within the limited fund). If an arbitrator or court of competent jurisdiction finds that any limitation of liability in these Terms is unenforceable in a particular instance, the remaining limitations and exclusions shall still apply to the fullest extent possible, and in no event shall the liability exceed the smallest cap or limit permitted by law for such scenario.

**7.7 Exclusive Liability Regime:** The disclaimers, exclusions, and limitations of liability set forth in this Section 7 are **exclusive** and shall apply even if any limited remedy herein fails of its essential purpose. Customer explicitly acknowledges that it has negotiated (or had the opportunity to negotiate) these liability terms and finds them reasonable in light of the fees charged and alternative allocation of risk through insurance. By accepting these Terms, Customer knowingly waives any remedies or liabilities not expressly provided, to the maximum extent permitted by law.

## **8. Charter or Rental of Vessels (Additional Terms)**

If any Service provided by CMT involves the charter, lease, or rental of a CMT Vessel or other equipment to Customer (whether on a "bareboat" basis or with CMT's crew), the following additional terms shall apply in addition to all other provisions of these Terms:

**8.1 Charter Party and Type:** The nature of the charter (e.g. bareboat/demise charter, time charter, or voyage charter) shall be as agreed in the specific order or contract. By default, if CMT merely rents a vessel to Customer without crew, it is a bareboat charter; if CMT provides a vessel with crew for a period of time or for a specific project, it is a time charter or voyage charter (as specified by CMT). These Terms serve as the general charter party terms unless a separate charter party agreement is signed. In any charter scenario, Customer as Charterer shall have the duties and liabilities of an "Owner pro hac vice" for the vessel during the charter term, subject to the specifics below.

**8.2 Delivery and Redelivery:** CMT (as Owner) will deliver the chartered vessel at the agreed location in a seaworthy condition,

properly crewed (if crew is provided) and with certificates required for legal operation in the intended service. Customer (Charterer) has the right to inspect the vessel upon delivery and must promptly notify CMT of any alleged deficiencies. By accepting the vessel and commencing use, Customer is deemed to have inspected and found the vessel suitable and seaworthy for the intended service, and any later claim of pre-existing defects is waived unless it could not reasonably have been discovered earlier. Upon expiration or termination of the charter, Customer shall redeliver the vessel (with all of CMT's equipment and furnishings) to CMT at the designated location, in the same good order and condition as upon delivery, ordinary wear and tear excepted. If the vessel is not redelivered on time and in proper condition, additional hire and costs may accrue.

**8.3 Use of Vessel:** Customer shall employ the vessel only in lawful trades and services within the agreed trading limits, and in accordance with the vessel's capabilities and certifications. The vessel shall not be used to carry any cargo or perform any services other than those agreed, nor any hazardous or pollutant cargo except with CMT's prior written consent (and subject to any special terms and insurance). Customer shall not sub-charter, assign, or part with control of the vessel without CMT's consent. If bareboat chartered, Customer shall ensure the vessel is manned by a competent and properly licensed crew at all times (meeting all regulatory requirements for U.S.-flag vessels) and operated consistent with good seamanship and CMT's provided guidelines. If a time charter (with CMT crew), the crew shall remain under CMT's employ and shall perform all navigation and operational duties, but they will follow the legitimate orders of Customer as regards the vessel's employment (e.g. destinations, cargo operations) as is typical in a time charter. Even in a time charter, ultimate authority over safe navigation and vessel management remains with the vessel's Master; any direction by Customer that may compromise safety or compliance can be refused by the Master without liability.

**8.4 Charter Hire and Expenses:** Customer shall pay charter hire at the rates and intervals specified. If it is a time charter, hire shall accrue from delivery and throughout the charter period (with any off-hire periods as defined). For bareboat charters, hire may be a lump sum or

periodic as agreed. In addition to hire, Customer is responsible for all voyage expenses and running costs during the charter, unless otherwise agreed. This typically includes fuel, lube oils, fresh water, port charges, pilotage, towage of Customer's Vessel (if applicable), dockage, canal fees, and any cargo handling costs. In a bareboat charter, Customer also assumes all vessel operating costs (crew wages, victualling, insurance, maintenance, etc.) as if it were the owner. In a time charter with CMT crew, CMT might cover crew wages and routine maintenance, but Customer may still bear voyage-specific costs like fuel and port fees – the division of responsibilities will be as per the agreed hire terms. Any damage to the vessel or loss of equipment during the charter due to Customer's use (beyond ordinary wear) shall be repaired at Customer's cost or reimbursed to CMT at cost of repair.

**8.5 Maintenance and Repairs:** For a bareboat charter, Customer at its own expense shall maintain the vessel in good running condition, handle all required repairs, and keep the vessel fit for service. For a time charter, CMT will maintain the vessel's machinery and hull, but Customer shall cooperate in scheduling any necessary maintenance and allow reasonable time for it (with hire abatement as agreed if applicable). Any damage or incident must be promptly reported to CMT. If the vessel is damaged and out of service due to an accident or deficiency, the responsibility for the costs and off-hire depends on fault: if due to Customer's or its agents' negligence or misuse, Customer bears repair costs and hire continues to accrue (or if halted, Customer will pay equivalent of hire as liquidated damages for loss of use); if due solely to CMT's crew negligence or inherent vessel defect, CMT will bear repair costs and hire will not count during the downtime (off-hire period), or a pro-rata refund given.

**8.6 Risk of Loss; Indemnity:** From the time of delivery until redelivery, Customer assumes all risks of loss, damage, liability, and expense with respect to the chartered vessel and its operation, except to the extent such loss is caused by CMT's own willful misconduct or, if crewed by CMT, by the CMT crew's gross negligence. Customer's indemnity obligations in Section 6 extend to any claims arising out of the operation of the chartered vessel during the charter period, including injury or death of crew or third parties, pollution, wreck removal, collision and property damage, even if due in part to the negligence of CMT or the vessel's

crew (excepting only CMT's willful or gross fault, consistent with Section 6.3). If the vessel or any CMT-owned equipment aboard is lost or rendered a constructive total loss during the charter due to any cause not attributable to CMT's sole gross fault, Customer shall either (a) replace or repair the vessel/equipment to CMT's satisfaction, or (b) pay CMT the agreed value or replacement cost (as applicable). Charter hire shall continue to accrue until settlement is reached on a total loss if caused by Customer.

**8.7 Insurance (Charter):** In addition to the insurance requirements in Section 5.6, if not provided by CMT per the charter agreement, Customer (charterer) must insure the vessel and its operation as follows: Hull & Machinery insurance for at least the vessel's full value (agreed value as per charter or market value) covering perils of the sea and typical marine risks; Protection & Indemnity insurance (including collision liability and pollution) with limits customary for the vessel type but not less than USD \$10 million; Crew coverage (Jones Act) if applicable, to cover injuries to crew employed by Customer; and War Risk insurance if required (with breach of warranty coverage for owner's benefit). All such policies shall name CMT and/or vessel owner as additional insureds or loss payees as their interests appear, and include waivers of subrogation in favor of CMT Parties as per Section 5.6. If CMT maintains any of these insurances and the cost is included in hire, CMT will advise Customer and any claim proceeds for insurable incidents during the charter will be applied to repair or compensate as appropriate (with Customer responsible for any deductible if the incident was under Customer's responsibility).

**8.8 Return Condition Survey:** At redelivery, the parties shall conduct a joint survey of the vessel to note any damage or abnormal wear and tear. Any discrepancies from the condition at delivery (beyond ordinary wear) shall be repaired at Customer's expense. If Customer fails to participate in a redelivery survey, CMT's reasonable assessment of the condition shall be binding. Customer remains responsible for any latent damage not discoverable at the moment of redelivery (e.g. hidden damages that become evident later), provided such damage is documented as being linked to the charter period.

**8.9 Liens and Encumbrances:** Customer shall not permit any liens or maritime claims to

be incurred against the vessel during the charter (except those arising from CMT's own acts in a time charter scenario). This includes liens for unpaid bunkers, crew wages (if Customer's crew), salvage, or other necessities furnished to the vessel on Customer's order. If any lien or claim is made against the vessel due to Customer's acts or agreements, Customer must immediately satisfy or secure such lien to CMT's satisfaction. Customer hereby indemnifies CMT against all consequences of liens incurred due to Customer's actions.

*(The above Section 8 is intended to supplement specific charter agreements. In case of any direct conflict between this Section 8 and a signed charter party document between Customer and CMT for a given vessel, these terms shall control for that charter.)*

## **9. Dispute Resolution: Mediation and Arbitration**

**9.1 Good Faith Negotiation:** The parties shall endeavor in good faith to resolve any dispute, claim or controversy arising out of or relating to the Services or this Agreement through direct negotiation between management representatives with authority to settle the dispute. If direct negotiations fail to resolve the matter within a reasonable time, the parties shall proceed to mediation as provided below.

**9.2 Mandatory Mediation:** If a dispute arises out of or relates to this contract, or the breach thereof, and it cannot be settled through direct discussions, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures before resorting to arbitration. Either party may initiate mediation by providing a written request for mediation to the other party and to the AAA. The mediation shall be conducted in a location mutually agreed (and absent agreement, in New York City, New York, or such location as the mediator shall select as appropriate). The parties agree to participate in the mediation in good faith for at least a full day session (unless the dispute is resolved earlier). Costs of mediation (mediator's fees and administrative fees) shall be shared equally between the parties, but each party shall bear its own attorney fees and travel costs for the mediation. All communications and writings in the mediation shall be confidential and exempt from

discovery or admissibility to the maximum extent allowed by law.

**9.3 Binding Arbitration:** Any controversy or claim arising out of or relating to this contract, or the breach thereof, that is not resolved by mediation shall be settled by binding arbitration. The arbitration shall be administered by the AAA in accordance with its Commercial Arbitration Rules (including the Expedited Procedures where applicable for smaller claims), except as modified by these Terms. A single arbitrator shall be appointed by mutual agreement of the parties, or failing agreement within 30 days of the arbitration demand, by the AAA. However, if the amount in dispute exceeds \$1,000,000 (one million U.S. dollars) or if the dispute presents complex issues (in either party's reasonable opinion), either party may elect by written notice to have the case heard by a panel of three arbitrators (with each party appointing one arbitrator and the two arbitrators selecting the third, in accordance with the AAA rules). The arbitrator(s) must be attorneys experienced in maritime commerce or the marine industry. The place of arbitration shall be New York City, New York, U.S.A., unless the parties agree on a different locale. The arbitration proceedings shall be conducted in English.

**9.4 Arbitration Procedure:** The arbitrator(s) shall permit reasonable discovery, taking into account the needs of the parties and the importance of the issues. The aim is to streamline the dispute for a prompt resolution, so discovery may be limited in time and scope as deemed appropriate by the arbitrator(s). The parties may submit dispositive motions (such as motions to dismiss or for summary judgment) at the arbitrator's discretion. The arbitrator(s) shall issue a reasoned written award within a target of 30 days after the hearing and final submissions. The arbitrator(s) are empowered to award any relief that a court of competent jurisdiction could award, except that the arbitrator(s) shall not have authority to award any damages or remedies expressly waived or prohibited by this Agreement (such as punitive damages or damages beyond the liability cap). The award shall be final and binding on the parties, and judgment on the award may be entered and enforced in any court having jurisdiction.

**9.5 Confidentiality of Proceedings:** The parties shall maintain the confidentiality of the arbitration (and mediation) proceedings and

shall not disclose to any third party (other than to accountants, auditors, insurers, or as required by law) any information about the process or outcome, except as necessary to recognize or enforce the award or as required by lawful subpoena.

**9.6 Interim Relief and Self-Help:** Notwithstanding the obligation to arbitrate, either party may at any time seek interim or provisional relief in a court of competent jurisdiction (such as an injunction, order of attachment, or arrest of a vessel) if necessary to protect its interests pending the outcome of arbitration. Specifically, CMT retains the right to invoke the jurisdiction of a U.S. District Court (admiralty) to arrest a vessel or attach assets under maritime law to obtain security for a claim, or to otherwise enforce its maritime lien rights. Filing an action for such interim relief or to obtain security shall not be deemed a waiver of the right to arbitrate the underlying dispute, and any such action may be consolidated with or stayed pending the arbitration on the merits.

**9.7 Fees and Costs:** Each party shall initially bear its own attorneys' fees, costs and expenses of arbitration. However, if CMT is the prevailing party in any claim or dispute, whether in court or arbitration, CMT shall be entitled to recover its reasonable attorneys' fees and costs from Customer (including the costs of arbitration and any enforcement of the award). The arbitrator(s) may award such fees and costs as part of the award. Customer specifically agrees that if CMT prevails on a claim to collect unpaid invoices or to enforce its rights, Customer will reimburse all attorneys' fees, court or arbitration costs, and collection expenses incurred by CMT, in addition to any other relief. If Customer prevails on a claim, Customer may seek (and the arbitrator may award) attorneys' fees and costs to the extent a statute or applicable law provides for such an award, but not otherwise (as the fee-shifting in this clause is intended to favor only CMT).

**9.8 Waiver of Jury Trial and Class Actions:** To the extent court litigation occurs (for example, to enforce an arbitration award or pursue an in rem action), the parties irrevocably waive any right to trial by jury in any such proceeding. Furthermore, any disputes shall be resolved on an individual basis – Customer may not consolidate claims or arbitrate on behalf of a class, and class action, collective action, or other representative procedures are waived by

the parties, to the fullest extent such waiver is permitted by law.

## **10. Governing Law**

**10.1 General Maritime Law; Federal Law:** This Agreement and any dispute arising out of the Services shall be governed by the general maritime law of the United States, including applicable U.S. federal statutes (for example, the Limitation of Liability Act, mentioned in Section 7.6) to the extent they apply. In the event that any issue is not governed by federal maritime law or applicable statute, the laws of the State of New York (excluding its conflict of laws principles) shall apply as the surrogate law.

**10.2 Federal Jurisdiction (Admiralty):** The parties acknowledge that CMT's Services, including towing, barging, and marine transportation, are maritime in nature. The United States federal courts shall have original jurisdiction over disputes hereunder pursuant to 28 U.S.C. § 1333 (admiralty and maritime jurisdiction). The arbitration provisions herein shall be interpreted consistently with the Federal Arbitration Act (9 U.S.C. §§ 1-16) and federal arbitration law. To the extent necessary for any court proceedings (such as to compel arbitration, confirm an award, or seek interim relief), each party consents to the exclusive jurisdiction of the state or federal courts located in New York (specifically, the state courts of New York located in Albany County, and the United States District Court for the Northern District of New York, if in federal court). Each party waives any objection based on inconvenient forum or lack of personal jurisdiction for such purposes. Service of any court process may be effected by any means allowed by law, including certified mail or overnight courier to the address of the party set forth in the Agreement or reasonably believed to be current.

**10.3 Application of Carriage of Goods by Sea Act (if applicable):** If and to the extent CMT is deemed a carrier of goods by water and the Services involve the carriage of goods in foreign trade, the United States Carriage of Goods by Sea Act (COGSA), 46 U.S.C. § 30701 (Note) (providing for certain responsibilities, liabilities, and immunities for ocean carriers, including a \$500 per package limitation), shall be deemed incorporated herein as applicable from loading of cargo to discharge. The terms of COGSA (if applicable) will supplement the

defenses and limitations provided in these Terms, but in no event extend CMT's liability beyond that provided elsewhere in this Agreement. If COGSA or any other law is found compulsorily applicable to any part of the Services, it shall apply only to that extent and not to defeat the contractual liability limitations herein, which shall be modified only insofar as required to comply with such law.

## **11. Miscellaneous Provisions**

**11.1 Force Majeure:** CMT shall not be responsible for any failure or delay in performance of any obligation under this Agreement if and to the extent such failure or delay is caused by or results from acts of God, war, civil disturbances, strikes or labor disputes, fire, flood, extreme weather, epidemic, port closures, government orders or restrictions, or any other cause beyond the reasonable control of CMT (each a "Force Majeure"). Upon the occurrence of a Force Majeure event, CMT will be relieved from its affected obligations and not be in breach for the duration of the event and such time thereafter as may be reasonably necessary to resume performance. CMT will, where feasible, notify Customer of the Force Majeure and its expected impact. If a Force Majeure substantially prevents performance for an extended period (e.g. more than 30 days), either party may terminate the affected Services without liability (other than Customer's obligation to pay for Services already rendered or costs incurred). This clause does not excuse Customer's payment obligations for Services actually provided.

**11.2 No Third-Party Beneficiaries (Except CMT Parties):** These Terms are intended for the benefit of the parties hereto and their permitted successors and assigns. Except for the CMT Parties (who shall be third-party beneficiaries as set forth herein), no person or entity who is not a formal party to the Agreement shall have any right to enforce any term of this Agreement or claim any benefit hereunder. For the avoidance of doubt, any subcontractor, agent or insurer of CMT is entitled to the protections and limitations afforded to CMT by virtue of being included in the defined CMT Parties or by operation of law, but no Customer subcontractor or other third party dealing with Customer has any rights against CMT under this Agreement.

**11.3 Assignment:** Customer may not assign, novate, or transfer any of its rights or

obligations under this Agreement, in whole or in part, without the prior written consent of CMT. Any attempted assignment by Customer without such consent shall be void. CMT may assign or subcontract its rights and obligations (in whole or part) to any affiliate or to any entity acquiring all or part of CMT's marine operations, or may subcontract performance as provided in Section 3.4, provided that CMT shall remain responsible for ensuring the proper performance of any subcontracted obligations (subject to the limitations herein). This Agreement shall bind and benefit any permitted successors and assigns.

**11.4 Severability:** If any provision of these Terms is held to be invalid, illegal, or unenforceable by a court or tribunal of competent jurisdiction, such provision shall be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect. The parties shall endeavor in good faith to replace any invalid or unenforceable provision with a valid provision that most closely approximates the original intent and economic effect. It is expressly understood that each liability limitation and indemnity in this Agreement is separable and independent, such that the unenforceability of any one provision shall not affect the enforceability of any other provision (e.g., if a certain remedy is held unavailable, the stated cap on damages shall still apply).

**11.5 Waiver:** No failure or delay by CMT in enforcing any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise of the same or any other right. Any waiver by CMT of any breach or default by Customer must be in writing and shall not be deemed a waiver of any other or subsequent breach. CMT's rights and remedies hereunder are cumulative and in addition to any other rights and remedies available at law or in equity (except as expressly limited by this Agreement).

**11.6 Notices:** Any formal notices required by this Agreement shall be given in writing and delivered by hand, by reputable overnight courier, or by certified mail (return receipt requested) to the addresses of the parties as specified in the Agreement or as later designated in writing. Notices may also be sent by electronic mail to the designated corporate/legal representative of a party, provided that a confirmation copy is sent

by one of the foregoing methods. Notices shall be effective when received (or when delivery is refused, if that is the case). Routine communications related to operations may be conducted by email without the need for formal notice.

**11.7 Relationship of Parties:** CMT is performing all Services as an independent contractor to Customer. Nothing in this Agreement shall be deemed to create a partnership, joint venture, or employment relationship between CMT and Customer. Customer does not have any authority to direct CMT's employees (except as to giving operational instructions within the scope of Services, in line with Section 3.2) and nothing shall create any responsibility on CMT for the employees of Customer or vice versa. Each party remains solely responsible for the wages, benefits, and work conditions of its own employees.

**11.8 Headings and Captions:** The headings and section captions in these Terms are for convenience only and shall not affect the interpretation of any provision. Any capitalized terms used in these Terms have the meanings defined herein. If not defined, they carry their ordinary meaning in the context of maritime services.

**11.9 Language:** These Terms are drafted in the English language. If these Terms or any related document are translated into another language, the English version shall prevail in case of any conflict in interpretation.

**11.10 Execution / Acceptance:** These Terms do not require signature to be binding. Customer's acceptance of a quote or commencement of any Service with knowledge of these Terms shall constitute acceptance of these Terms. For clarity, submission of an order or request for Services to CMT, or the signing of any agreement or work order that incorporates these Terms by reference (including via hyperlink), shall bind the Customer to these Terms as if fully signed by Customer.

**11.11 Entire Agreement and Amendments:** These Terms, together with any specific service agreement or rate schedule provided by CMT, constitute the entire understanding between CMT and Customer with respect to the subject matter and supersede all prior discussions, negotiations, or agreements

on that subject. Customer acknowledges that in entering this Agreement it has not relied on any statements or representations not expressly set forth herein. Any amendment to or waiver of these Terms must be in a written instrument explicitly identified as such and signed by authorized representatives of both parties (except that CMT may update the online version of these Terms as noted in Section 2.3 for future transactions). In the event of a conflict between these standard Terms and any specially negotiated contract signed by CMT and Customer, the terms of the signed contract shall prevail to the extent of the conflict, but all non-conflicting provisions of these Terms shall still apply.

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**Acknowledgment:** Customer acknowledges that it has read and understood these Terms, and had the opportunity to consult with counsel. By engaging CMT for Services, Customer confirms that these Terms are incorporated into the parties' agreement and are binding upon Customer. These Terms are deliberately drafted to be stringent and favorable to CMT; Customer agrees to the allocation of risk and responsibility herein. If Customer does not agree, it must notify CMT in writing before any Services commence, and in the absence of such notification, Customer's only option is not to request or accept the Services. Otherwise, these Terms will govern all aspects of the Services and the relationship between CMT and Customer.