

# Schedule of Rates and Terms

LOS ANGELES AND LONG BEACH HARBORS

EFFECTIVE: 01 JANUARY 2019



FOSS

PIER D, BERTH 35  
LONG BEACH, CA 90802  
MAIL: PO BOX 1940  
LONG BEACH, CA 90801

DISPATCH: (562) 435-0171  
FAX: (562) 435-1190

pswdisp@foss.com  
www.foss.com

## TUG SERVICES

### ASSIST RATE PER TUG PER HOUR

HOURLY RATE (1 HOUR MINIMUM)

\$ 2,515

### REGIONAL SPECIFIC TERMS AND CONDITIONS: (SUPERSEDES GENERAL PROVISIONS)

**PARTIAL HOURS:** After the one hour minimum charge, time will be charged to the nearest half hour.

**FUEL SURCHARGE (LA/LB):** Fuel surcharge for the ports of Los Angeles and Long Beach is assessed based on \$0.55/gallon. A minimum fuel surcharge of 20% will apply.

**80 TON BOLLARD PULL:** If an 80 ton bollard pull assist tug is required and/or ordered by the pilot, a 50% surcharge will apply.

**RATES FOR SHIFTING SHIPS:** Shifting between berths and end-for-ending in one continuous movement, will be charged two (1) hour minimums for shift.

**CANCELATION OF TUGS:** Foss will dispatch tug power promptly consistent with other commitments upon receipt of orders. While every effort will be made to honor requests for specific tugs, Foss will dispatch tugs without commitment of a specific tug for a particular job. If the order is canceled within four (4) hours of the scheduled service or within two (2) hours of the time the tug must crew to provide the scheduled service, the charge will be 50% of the normal charge, plus standby and running time of the tug at the applicable rate.

**HOLIDAY AND WEEKEND RATES:** The Holiday and Weekend Rate of an additional fifty percent (50%) beyond the normal charge for all services performed will be applied for Saturdays, Sundays and on the following holidays: New Year's Day (January 1), Martin Luther King Day (Third Monday in January), President's Day (Third Monday of February), Memorial Day (Last Monday of May), Independence Day (July 4), Labor Day (First Monday of September), Columbus Day (Second Monday of October), Veterans' Day (November 11), Thanksgiving Day (Fourth Thursday of November), Christmas Eve Day (December 24), and Christmas Day (December 25). If a job starts or ends within the 24 hour period of the holiday date, then the Holiday Surcharge will apply.

**PEAK HOURS SURCHARGE:** Foss may assess a 25% surcharge per tug on vessels scheduled to arrive/depart the Los Angeles/Long Beach Terminals between 0300-0800 and 1500-2000.

### GENERAL PROVISIONS

**SECURITY AND COMPLIANCE SURCHARGE:** Foss may assess a security and compliance fee of \$100 per tug per job for escort and assist services.

**DELAY TIME:** Delay time will be charged at the tug's applicable hourly rate, prorated to the next 1/2 hour.

**ADDITIONAL TUGS REQUIRED:** When conditions beyond the control of Foss, such as weather, tidal conditions, difficult berths, navigation congestion, 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 these tugs will be in accord with rates as set forth in the most recent Schedule of Rates. When additional tugs are to be dispatched and/or conditions are such that there will be probable delay to ship's schedule, Foss agrees to attempt to contact the ship's agent. If unable to contact the ship's agent, Foss will not be held liable for any penalties caused by ship delay due to the conditions contained herein.

**ASSIGNMENT OF TUGS:** Foss will dispatch tug power promptly consistent with other commitments upon receipt of orders. While every effort will be made to honor requests for specific tugs, Foss will dispatch tugs without commitment of a specific tug for a particular job.

**CONGESTION SURCHARGE:** Foss may assess a \$250 per tug Congestion Surcharge should terminal or labor operations contribute to the inefficient deployment of our tugs and service to our customers.

**TAXES:** Foss is not responsible for any transportation, use, sales or any similar federal, state or local taxes due from the operation and use of any tug, and such taxes shall be for the customer's account, provided, however, Foss will pay all taxes applicable to an owner of a tug.

**PILOTAGE:** No pilotage services are offered or supplied by Foss. Compliance with all pilotage and vessel manning requirements is the responsibility of the vessel.

**WARRANTIES:** Foss warrants that it will exercise due diligence to furnish seaworthy tugs which are adequately equipped and manned for the work to be performed. Except as otherwise expressly set forth in this paragraph, Foss makes no express warranty of any kind and, to the extent permitted by law, disclaims all implied and statutory warranties of any nature whatsoever, including, but without limitation any warranty of workmanlike service.

**NOTICE OF DAMAGE CLAIM:** Should any damage or injury be suffered by or caused to a vessel to which tug services by or caused to a vessel to which tug services are rendered hereunder, notice must be given to this company within 72 hours, as well as a reasonable opportunity to inspect and survey any such damages before repairs are begun. Written notice of intent to make a claim as a result of such injury or damage must be made within 30 days of such occurrence. Any action brought as a result of such injury or damages must be brought within one year of the date of the occurrence. Failure to give any notice and opportunity to inspect, if applicable, under this clause constitutes waiver of the right to bring an action as a result of any such occurrence.

**LIMITATION OF LIABILITY:** The furnishing of any service, or anything done in connection therewith, shall not be construed to be, or give rise to, a personal contract and it is understood and agreed that Foss, the tugs, their owners, charterers, operators, managers and agents shall have the benefit of all exceptions from, and limitations of, liability to which an owner of a vessel is entitled under any limitation of liability statutes of the United States, including, but not limited to, limitation or immunity from liability under the Oil Pollution Act of 1990 ("OPA 90") and any applicable state law. In no event shall Foss, Customer, the tugs, or their owners, charterers, operators, managers and agents, be liable for any incidental or consequential damages of any nature whatsoever. 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 herein, Foss, the tugs, their owners, charterers, operators, managers and agents shall be liable, to the extent required by law, up to and including the first \$100,000 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 Foss pursuant to this schedule. Customer understands and agrees that the 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 \$100,000 that are attributable to the acts or omissions (whether negligent or otherwise) of Foss, the tugs, their owners, charterers, operators, managers and 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 Foss pursuant to this schedule shall be subject to the following indemnity: Customer agrees to indemnify, defend and hold harmless Foss, the tugs, their owners, charterers, operators, managers and agents from all claims, demands, causes of action, liabilities and costs (including attorneys' fees) of every type and character, whether in rem or in personam, which are asserted against them by any person (including,

without limitation, Customer's employees) for personal injury, illness or death, or for loss or damage to property of any kind or type as well as oil pollution or the spill of any hazardous substance. The parties intend for this indemnity to apply to all incidents of whatsoever nature.

**STRIKES, BREAKDOWNS, ETC.:** The tugs, their owners, operators, managers, agents and charterers shall not be responsible or liable for any expenses, losses, damages or claims whatsoever caused by or resulting from the failure or delay in the performance of services due to strikes, labor difficulties, breakdowns, shortage of tugs, priorities in service or any other causes of like or different character beyond their control or created by the operation of law.

**SUBCONTRACT:** All or part of any service requested may be subcontracted to others without notice. Any such subcontractor shall have the benefit of all defenses, exemptions and limitation of liability provided Foss and shall be considered an independent contractor and not an agent, servant or employee of Foss.

**PAYMENT TERMS:** Payment is due within 15 days of receipt of invoice. A service charge will be assessed on amount outstanding over 15 days at the rate of 18% per annum.

**CUSTOMER AUTHORITY:** The person or company ordering tug and/or piloting services warrants that it has the authority to bind the tow and its owners (and charterers, in any) to all the provisions of the preceding paragraphs and shall indemnify and hold harmless this company and its agents and servants and each tug and/or pilot utilized with respect to losses, damages or expenses that may be suffered or incurred in consequence of any lack of such authority.