



These Terms and Conditions shall be valid and binding for all Work Orders, offers, quotations, or prices relating to fleetings services provided by Kirby Inland Marine, LP (or any of its subsidiaries, affiliates, or interrelated companies that provides fleetings services to Customer, herein referred to as the "Company") on or after April 1, 2021. These Terms and Conditions may also be incorporated by reference to the Company's website at <https://kirbycorp.com/wp-content/uploads/2021/03/Fleetings-Terms-and-Conditions-FINAL.pdf> where they are available, without it being necessary to be duplicated in a standard form writing.

## TERMS AND CONDITIONS

1. **SERVICES:** All fleetings services furnished to Customer by the Company shall be governed by these Terms and Conditions unless the Company agrees otherwise, in a writing signed by all parties thereto prior to commencement of such fleetings services to be rendered. The tendering of one or more barges or other vessels to the Company, its agents, servants, or employees, for fleetings services shall constitute an acceptance of all of these Terms and Conditions by Customer. The provision of fleetings services by the Company to Customer are subject always to available space at the requested Fleet, as determined in the Company's sole discretion.
2. **DEFINITIONS:**
  - a. "Company" means Kirby Inland Marine, LP or any of its subsidiaries, affiliates, or interrelated companies that provides fleetings services to Customer, as the case may be.
  - b. "Customer" means the owner and/or operator and/or charterer and/or master and/or representative requesting that the Company provide fleetings services to one or more barges or other vessels.
  - c. "Contract" means the agreement between the Company and the Customer for fleetings services to be furnished by the Company to one or more barges or other vessels.
  - d. "Fleet" means one or more fleetings facilities or locations along the inland and coastal waterways of the United States operated by the Company.
  - e. "Work Order" means work order, purchase order, quotation, invoice, and/or any other communication between the parties, including, but not limited to, written, e-mail, and/or oral, which identifies requests for fleetings services to one or more barges or other vessels.
3. **APPLICABILITY:** These Terms and Conditions are paramount and supersede any provisions to the contrary contained in any invitation to bid, instructions, purchase orders, or other documentation for fleetings services. Except as may be mutually agreed in writing by the Company and the Customer, these Terms and Conditions apply to all Contracts between the Company and the Customer for fleetings services and shall be deemed acknowledged and accepted by the Customer or on its behalf. Agreements varying these Terms and Conditions must be in writing and signed by both parties.
4. **RATES:** Customer shall pay to the Company fees for fleetings services hereunder at the Company's applicable rates in effect at the time the barge or other vessel is tendered for fleetings or as the parties may otherwise expressly agree in writing. The Company shall invoice Customer once per month for all fleetings services performed during the preceding month, and such invoice shall be due within thirty (30) days of receipt.
5. **PAYMENT/LIEN:** Except as otherwise specified in writing by the Company, all payment terms are net, due in full immediately upon completion of work and receipt of invoice. Past due charges are subject to a finance charge equal to the lesser of two percent (2.0%) per month or the then current maximum rate of interest allowed in the State of Texas from date of completion of work until paid. Invoices are payable, in United States funds only, to the Company to the account information specified on the invoice. The Customer shall be responsible for applicable sales taxes. The Customer agrees that the services and any supplies/equipment provided hereunder are "necessaries" of the barge or other vessel, and that the

Company shall have a lien on any barge or other vessel for all charges which may accrue for work done under these Terms and Conditions and/or any Contract. The Customer represents and warrants to the Company that it is either the owner of the barge or other vessel or is authorized to accept and/or approve Work Orders for and on behalf of the owner of the barge or other vessel, incur charges therefor, and to authorize a lien on the barge or other vessel on behalf of the owner of the barge or other vessel. In the event the charges hereunder shall not be paid in accordance with agreed upon terms, the Customer and/or owner of the barge or other vessel shall pay all expenses of collection, including reasonable attorney's fees and interest. Nothing herein shall be deemed to constitute waiver of any maritime lien of the Company against a barge or other vessel.

6. **SEAWORTHINESS:** Customer represents and warrants that, when tendered to the Company for fleetings, each barge or other vessel shall be tight, staunch, and seaworthy, fully equipped and supplied. Customer further represents and warrants that Customer shall have exclusive control of, and be solely responsible for, the navigation of any towing vessel tendering each barge or other vessel for fleetings hereunder, that Customer shall ensure that such barge or other vessel is properly and securely moored at the Fleet, and that Customer shall be solely responsible for stowing and securing the cargo, if any, (including protecting the cargo from the elements such as in the case of a hopper barge or deck cargo) and securing the barge's or other vessel's equipment .
7. **INSPECTION:** Any Contract incorporating these Terms and Conditions are entered into without inspection by the Company of Customer's barge or other vessel. If, in the judgment of the Company, the barge or other vessel or any part thereof is unseaworthy or for any reason would constitute a risk or hazard, or any misstatement has been made in giving a description of the barge or other vessel or its condition, the Company shall be under no obligation to accept a barge or other vessel for fleetings and any Contract incorporating these Terms and Conditions may be deemed null and void at the Company's sole discretion and election and,; provided that nothing in these Terms and Conditions shall impose any duty upon the Company, its agents, servants, or employees, to inspect the barge or other vessel, or make any one of them liable for damage resulting from failure to make an inspection or resulting from any error of judgment in making an inspection. The Company shall, however, have the right, but not the duty, at any time while a barge or other vessel is being tendered for fleetings hereunder or is moored in the Fleet, to make such inspections of the barge or other vessel as the Company may deem necessary to ensure the safe fleetings of the barge or other vessel. Customer shall promptly provide the Company with all requested information and documentation and shall afford the Company all necessary cooperation for the completion of such inspections. If the Company, in its sole discretion, shall determine that the condition of a barge or other vessel renders it unsuitable for mooring at the Fleet, then the Company shall so notify Customer in writing, and Customer shall immediately take action to safely remove the barge or other vessel from the Fleet.
8. **COMPLIANCE WITH LAW AND REGULATIONS:** Customer represents and warrants that each barge or other vessel complies with all applicable federal, state and local laws and regulations including, as applicable, those with respect to pollution prevention and response, and shall remain compliant at all times while at the Fleet. Further, Customer represents and warrants that, if the barge or other vessel is subject to the vessel response plan requirements of the Oil Pollution Act of 1990, (OPA 90) and/or the financial responsibility requirements of OPA 90 or the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), (i) Customer has a vessel response plan, approved by the United States Coast Guard, covering the barge or other vessel; and (ii) clear and complete copies of the following documents are contained in the documentation container aboard the barge or other vessel: current United States Coast Guard Certificate of Inspection; current United States Coast Guard and, where applicable, State Certificates of Financial Responsibility, vessel response plan Onboard Notification Checklists and Emergency Procedures, vessel response plan approval letters, and oil transfer procedures.
9. **INDEMNITY AND LIMITATION OF LIABILITY:** Customer expressly acknowledges and agrees that the fees incurred by Customer pursuant to Section 4 are solely in exchange for the use of space in the Fleet and that the fleetings of the barge or other vessel at the Fleet does not create a bailment. Charges for work to be performed by the Company are based the allocation of risk set forth in these Terms and Conditions being applicable in lieu of any other liability or implied and/or express warranties, including warranties of workmanlike services or performance, merchantability and fitness for intended services. The Customer

agrees that it will not make a claim against the Company for damages to a barge or other vessel, its equipment, or other property, or any other property arising from a single incident unless the damage to such barge or other vessel, its equipment, or other property, or any other property exceeds \$10,000.00 (not including any claim for loss of use). Further, the Company's aggregate liability, directly or indirectly, to the Customer, Customer's employees, invitees, contractors, subcontractors, or the employees of such subcontractors or invitees and/or any and all third parties, for any claims for personal injury, or death of an individual, or loss or damage to a barge or other vessel, its equipment, or other property, or any other property, or timeliness of completion of the work, howsoever caused, shall in no event exceed \$50,000.00, with respect to any one barge or other vessel. THE CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD THE COMPANY HARMLESS WITH RESPECT TO ALL LIABILITIES OF EVERY KIND AND CHARACTER EXCEEDING \$50,000.00, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PERSON OR ENTITY (INCLUDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR FAULT OF THE COMPANY, COMPANY'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH CONTRACTORS OR INVITEES ON ANY THEORY), ANY THEORY OF STRICT LIABILITY, ANY DEFECT OF PREMISES, OR THE UNSEAWORTHINESS OF ANY BARGE OR OTHER VESSEL (WHETHER OR NOT PREEXISTING THE DATE OF THESE TERMS AND CONDITIONS), BROUGHT BY THE CUSTOMER, CUSTOMER'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH SUBCONTRACTORS OR INVITEES AND/OR ANY AND ALL THIRD PARTIES.

In the event of personal injury or death, or any loss or damage to a barge or other vessel, its equipment, or other property, or any other property, the Customer agrees that the Company shall be liable only for damages affirmatively and finally proven by a court of competent jurisdiction to have been caused by sole negligence of the Company or its employees, limited in amount as set forth above.

The Customer and its barge or other vessel shall indemnify and hold the Company harmless from any liability for environmental pollution attributable to such barge or other vessel, and any costs, disbursements and attorney fees attendant thereto incurred by the Company. For any barge or other vessel required by size to have a valid FMC Certificate of Responsibility (Water Pollution), the Customer and other parties in interest warrant that the Certificate will be kept in force at all times while the barge or other vessel is located in the Fleet or the Company is provided fleeting services to the barge or other vessel pursuant to these Terms and Conditions.

The Company does not agree to the accident, indemnity and insurance provisions, if any, contained in any invitation to bid or specifications, relating to the Company's liability for death or personal injury, and in such cases the Company accepts only liability as is imposed upon on it by law. Different or more extensive liabilities will be accepted by the Company only if an agreement in writing between the Company and the Customer stating the nature and extent thereof is entered into before the barge or other vessel enters the Fleet or work is commenced, whichever first occurs, and if the price of the work is adjusted accordingly.

The Company shall have no liability of any kind to the Customer, Customer's employees, invitees, contractors, subcontractors, or the employees of such subcontractors or invitees for consequential, economic, compensatory or punitive damages of any nature whatsoever, whether past, present or future.

10. **INSURANCE:** Customer shall obtain at its expense and maintain in full force at all times when a barge or other vessel is moored at the Fleet hereunder, with good and solvent insurers reasonably acceptable to the Company, insurance coverages of the kinds and in the amounts set forth in **Attachment A**. Customer shall cause the Company Indemnitees to be named as additional assureds, except with respect to worker's compensation, with full waiver of subrogation in favor of the Company Indemnitees in each of the aforesaid policies. The Contractual Liability Insurance of Customer shall insure its liability pursuant to Customer's indemnity obligations hereunder. It is specifically understood and agreed that Customer shall name the Company Indemnitees as additional assureds on all insurance required hereunder for the purpose of complying with Customer's indemnity obligations hereunder. Customer shall cause all references/provisions/limitations to "other than owner," as respects the naming of the Company Indemnitees as additional assureds, to be deleted from its hull and protection and indemnity insurance policies. Customer shall cause the watercraft exclusion to be deleted from its comprehensive general

liability insurance policy. In the event that an indemnity obligation undertaken by Customer in favor of the Company Indemnitees is invalidated by statute, public policy or otherwise, it is the specific intent of the parties that the granting of the additional assured status to the Company Indemnitees is intended to cover those liabilities, losses, damages, costs, expenses, claims, demands, liens, causes of action, and judgments against which Customer has agreed to indemnify the Company Indemnitees. In the event that Customer shall fail to procure and maintain insurance as provided herein, Customer shall be liable to and hold the Company Indemnitees harmless from any liabilities, losses, damages, costs, expenses, claims, demands, liens, causes of action, and judgments, to the same extent that the required insurance would have protected the Company Indemnitees, and in any claim or suit for injury, death, loss, damage or pollution, it will be presumed that such insurance, if it had been procured and maintained, would have covered the occurrence in question. Customer shall provide to the Company certificates evidencing the insurance required herein upon request

11. **FORCE MAJEURE:** If, because of force majeure, either party hereto is unable to carry out any of the obligations under a Contract, other than the obligations to pay money due thereunder, and if such party promptly gives to the other party hereto written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided that the party giving such notice shall use its best efforts to remedy such force majeure insofar as possible with all reasonable dispatch. The term "force majeure" as used herein shall mean acts of God, acts of public enemy, insurrections, riots, strikes, lockouts, labor disputes, accidents, fires, explosions, floods, breakdowns or damage to plants, equipment or facilities, pandemic, embargoes, orders, or acts of civil or military authority, or other causes of a similar nature which are beyond the reasonable control of the party affected thereby. Upon the cessation of the force majeure event, the party that had given original notice shall again promptly give notice to the other party of such cessation.

12. **LAW AND DISPUTE RESOLUTION:**

- (a) These Terms and Conditions and/or any Contract shall be governed and construed in accordance with the General Maritime Law of the United States to the extent applicable and otherwise by the law of the State of Texas, except the law of conflicts of such state. In the event that either party shall institute an action in connection with any claim against the other party arising under these Terms and Conditions and/or any Contract or to enforce any provision thereof, the parties hereby agree that the venue for such action shall be in a court of competent jurisdiction in Harris County, Texas, or in the United States District Court for the Southern District of Texas, Houston Division, and that each party waives any objections as to jurisdiction or venue of these courts. In any action to enforce any provision of these Terms and Conditions and/or any Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses from the non-prevailing party.

- (b) Notwithstanding anything to the contrary herein, and without prejudice to any rights or remedies otherwise available to the Company, by receiving goods or services supplied to the barge or other vessel, or by its accepting these Terms and Conditions, the Customer expressly authorizes the Company to arrest the barge or other vessel, or attach any other barge or other vessel owned and operated and/or managed by the Customer, in any competent jurisdiction, as security for the obligations of Customer. Any costs or expenses of whatsoever kind incurred by the Company in respect of such arrest, including but not limited to attorney fees, legal representative fees, and all legal costs whatsoever will be added to the claim for which arrest is made and will be recoverable to the Company.

13. **WAIVERS/SEVERABILITY:**

- (a) Failure by the Company at any time, or from time to time, to enforce any of the terms, provisions or conditions of these Terms and Conditions and/or any Contract shall not constitute a waiver by the Company of a breach of any such terms or provisions and shall not affect or impair such terms or provisions in any way or the right of the Company at any time to avail itself of rights or remedies as it may have at any time. No waiver by the Company of any of these Terms and Conditions and/or of any Contract shall be enforceable against the Company unless said waiver shall be in writing and signed by an authorized officer of the Company.

(b) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is inconsistent with or contrary to any applicable law, statute, code, rule, or regulation, said provision shall be deemed to be modified to the extent required to comply with such law, statute, code, rule, or regulation, and these Terms and Conditions and/or any such Contract, shall remain in full force and effect.

(c) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is unenforceable or void as contrary to law or public policy, then such provision shall be deemed severed therefrom without affecting any remaining provisions thereof.

14. **NOTICES:** All notices required under these Terms and Conditions and/or any Contract shall be in writing and shall be effective upon receipt if delivered to the party entitled to receive same by hand, facsimile, or the U.S. Mail addressed to each party at the address set forth below:

To Company:  
Kirby Inland Marine, LP  
55 Waugh Drive, Suite 1000  
Houston, Texas 77007  
Facsimile: 713-435-1010

To Customer: At the address provided by the  
Customer in the Work Order or otherwise.

With a copy to:  
Kirby Inland Marine, LP  
55 Waugh St, Ste 1000  
Houston, Texas 77007  
Attention: Vice President, General Counsel and Secretary

15. **ASSIGNMENT:** The Customer may not assign a Contract without the written consent of the Company.
16. **PARAGRAPH HEADINGS:** All paragraph headings used are for the convenience of the parties only and shall not be considered a part of these Terms and Conditions nor used to interpret or construe the intent of the parties hereunder.

**ATTACHMENT A  
INSURANCE REQUIREMENTS**

**Vessel Insurance** – With respect to any Customer barge or other vessel in a Fleet pursuant to these Terms and Conditions, the Customer shall maintain:

**1. Hull & Machinery:**

Limit: Fair market value of the hull and machinery

Conditions: American Institute Tug Form (towing vessels), American Institute Hull Clauses (non-towing vessels), or equivalent, and shall include full collision and tower's liability, if not provided under the Protection and Indemnity coverage. Limit to be sufficient to cover for all costs for salvage. Policy shall contain a waiver of subrogation with respect to the Company.

**2. Protection & Indemnity:**

Limit: \$1,000,000 any one accident or occurrence

Conditions: Including Protection and Indemnity per SP-23 Form or equivalent and shall include full collision and tower's liability, if not provided in the Hull & Machinery coverage, marine contractual liability, wreck removal, and crew liability (if not in the Maritime Employer's Liability coverage) and excess collision and tower's liability (excess of any collision and tower's liability provided in the Hull and Machinery coverage). Policy shall contain a waiver of subrogation and Additional Insured wording with respect to the Company. This policy will include cross liability wording similar to the following: "In the event of one of the Assured's incurring liability to any other of the Assureds, this policy shall cover the Assured against whom claims is or may be made in the same manner as if as if separate policies had been issued to each Assured." This policy will be primary to that of the Company.

**3. Pollution:**

Limit: \$1,000,000 any one accident or occurrence

Conditions: WQIS or equivalent for clean-up and third party liabilities. Policy shall contain a waiver of subrogation and Additional Insured wording with respect to the Company. The Customer must also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and if applicable, the State where the Fleet in which Customer's barge or other vessel is located. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to the Company.

**Other Insurance** – With respect to Customer, its parent, subsidiaries and affiliates, their respective officers, directors and employees and their respective contractors and their employees:

**4. Commercial General Liability:**

Limit: \$1,000,000 any one accident or occurrence

Conditions: This policy should be written subject to standard forms, including premises, operations, completed operations coverage (minimum 180-day discovery period), product liability coverage, pollution (Sudden and Accidental) and contractual liability coverage including tort liability of another assumed under a Work Order or any other business contract, and

all indemnity obligations, including for bodily injury (including death), property damage, independent contractors, and advertising injury, along with associated defense costs. This insurance will be primary to that of the Company. This policy will include cross liability wording similar to the following: "In the event of one of the Assured's incurring liability to any other of the Assureds, this policy shall cover the Assured against whom claims is or may be made in the same manner as if as if separate policies had been issued to each Assured."

Care, custody and control and watercraft exclusions must be deleted if Customer's, or its subcontractor's, employees will board a Company barge or other vessel unless shiprepairer's legal liability, wharfinger's liability and/or tankerman's liability coverage, as applicable, with same limits is also maintained.

**5. Workers' Compensation Insurance/Employer's Liability Insurance:**

Limit: \$1,000,000 Employer's Liability each accident/each person or equivalent

Conditions: Fully complying with the laws of the state or states in which work is performed.

Including Longshore and Harbor Workers' Compensation Act Endorsement and Maritime Employer's Liability Endorsement and endorsement naming the Company, its parent, subsidiaries and affiliates as alternate employer. Policy shall contain a waiver of subrogation and Additional Insured wording with respect to the Company

**6. Automobile Liability/Property Damage Insurance**

Limit: \$1,000,000 any one accident or occurrence

Conditions: Applicable to each and every unit of automotive equipment operated or used by Customer, including hired and non-owned. This policy will include the Company as additional insured, provide a waiver of subrogation with respect to the Company, and respond on a primary basis to insurances of the Company.

**7. Excess Liability Insurance**

Limit (with Respect to 3.

Commercial General Liability): \$500,000,000 any one accident or occurrence

Limit (with Respect to 2. and 4.

Commercial General Liability): \$250,000,000 any one accident or occurrence

Limit (with Respect to 5. WC/EL

And 6. Auto Liability/PD): \$10,000,000 any one accident or occurrence

Conditions: Excess Liability Insurance over that required by Section 2. to 6., of above Insurance Requirements. This policy will include the Company as an additional named insured, grant a waiver of subrogation against the Company and will respond on a primary basis to insurances of the Company.