

# Fraserburgh Harbour

## General Conditions and Terms of Use of the Port

March 2022

### Fraserburgh Harbour

Shore Street  
Fraserburgh  
Aberdeenshire  
AB43 9BR

Tel: 01346 515858  
[enquiries@fraserburgh-harbour.co.uk](mailto:enquiries@fraserburgh-harbour.co.uk)  
[www.fraserburgh-harbour.co.uk](http://www.fraserburgh-harbour.co.uk)

All vessel owners, in addition to separately prescribed regulations, law or enactment should be aware of the General Terms & Conditions.

## 1. Definitions and Interpretation

<b>“Charges”</b>	means vessel, cargo and any other dues and charges levied by FHC as Harbour Authority for Fraserburgh Harbour, in accordance with the published Rates & Dues and any other charges imposed by FHC from time to time;
<b>“Conditions”</b>	means these General Conditions & Terms;
<b>“Equipment”</b>	means any plant, machinery, container, package, case, pallet, vehicle, trailer or other piece of equipment of any nature;
<b>“FHC”</b>	means Fraserburgh Harbour Commissioners, constituted by The Fraserburgh Harbour Acts and Orders 1985 to 2012 and having its principal place of business at Harbour Office, Shore Street, Fraserburgh, AB43 9BR;
<b>“Goods”</b>	means cargo and goods of whatever nature (including for the avoidance of doubt,) fish, fish products and shellfish;
<b>“Harbour Area”</b>	means any area of land or water owned, leased or operated by FHC, including for the avoidance of doubt that area of water within the Harbour Limits;
<b>“Harbour Limits”</b>	means Fraserburgh Harbour as defined in article 8 of The Fraserburgh Harbour Order 1985 as “the Harbour Limits map”;
<b>“Harbour Master”</b>	means the Harbour Master employed by Fraserburgh Harbour Commissioners, his assistant or any nominee of theirs;
<b>“Harbour Office”</b>	means the Harbour Office, Shore Street, Fraserburgh, AB43 9BR;
<b>“L.O.A.”</b>	means a Vessel’s length overall which shall be rounded to the nearest full metre;
<b>“Services”</b>	means any services that FHC provides to the User;

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<b>“Quay”</b>	means any quay, pier, jetty or any other place at which Vessels can load or discharge goods or embark or disembark passengers, and the waters surrounding the same, all within Harbour Limits;
<b>“User”</b>	means any person (a) who enters the Harbour Area; or (b) seeking to use any of the Services;
<b>“Vessel”</b>	means any boat, ship, barge or other vessel of any description or any part thereof.

## 2. Interpretation

- 2.1 Words importing the neuter gender only include the masculine and feminine genders, words importing the masculine gender only include the feminine gender and vice versa.
- 2.2 Words importing the singular number only shall include the plural number and vice versa. Where there are two or more persons included in the expression “User” then obligations undertaken by the User shall be obligations undertaken by such persons jointly and severally and their respective executors and representatives whomsoever.
- 2.3 Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 2.4 Condition headings are for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 2.5 Any phrase introduced by the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms.
- 2.6 Any reference to “person” includes any natural person, company, body corporate or un-incorporate or other judicial person, partnership, firm, joint venture or trust.

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### **3. Contract**

- 3.1 These Conditions shall apply:
- (a) to all Services (directly or indirectly) provided by FHC either within the Harbour Area or elsewhere; and
  - (b) to all physical access by any Vessel, person or vehicle to or from the Harbour Area.
- 3.2 In the absence of express acceptance by the User of these Conditions, acceptance shall be implied in the event of the entry or delivery of any Vessel, person, Goods or Equipment into or onto the Harbour Area or by oral application to FHC for entry to the Harbour Area or for any Services or the use of any facility by or on behalf of any User.
- 3.3 Subject to Condition 3.4, no terms or conditions whether express or implied which are at variance with these Conditions shall apply unless they have been agreed in writing by FHC and the User or have been separately prescribed by regulations, law or enactment.
- 3.4 FHC may issue separate terms and conditions governing the provision of specialist services (including without prejudice to the foregoing generality, in respect of the use of the six berth shiplift, dry dock, fish market and pontoon facility). Such additional terms and conditions shall apply in respect of the specialist services and these Conditions shall continue to apply to the extent they are not at odds with the specialist terms and conditions.

### **4. Provision of Services**

- 4.1 Subject to any other provisions of these Conditions, FHC shall exercise reasonable skill and speed in carrying out the Services. No wider obligation, express or implied, is accepted.
- 4.2 Goods and Equipment which for any reason cannot be collected and removed from the Harbour Area by the User will (subject to the availability of space) be placed on the Quays or elsewhere wherever FHC (acting reasonably) deems appropriate at the sole risk and expense (if applicable) of the User. Charges for Quay rental and any other storage will be made where appropriate.

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- 4.3 FHC reserve the right to:
- (a) appoint sub-contractors to perform all or any part of the Services. Any sub-contractor shall have the benefit of these Conditions and FHC shall have no greater obligation or liability in respect of any sub-contracted services than it would have had if the services had been provided directly;
  - (b) at any time before it commences the performance of any Services, serve written notice on the User declining to undertake the performance of such Services; and
  - (c) suspend the provision of any Services in the event of any breach of these Conditions by the User.
- 4.4 Subject to Condition 10 (Liability), in the event that FHC decline to perform the Services or suspends performance of the Services in accordance with Conditions 4.3(b) or 4.3(c), FHC shall not have any liability. In the case of FHC:
- (a) declining to perform any Services by written notice in accordance with Condition 4.3(b), for any reason other than its own inability to perform the Services; or
  - (b) suspending provision of the Services in accordance with Condition 4.3(c) and declining to recommence the provision of the Services,
- the User shall, at its own expense, remove any Goods or Equipment from the Harbour Area within 30 days of the date of said notice failing which FHC may so remove them at the expense and risk of the User, sell on the Goods or Equipment and reimburse the User the sale proceeds less sums due to FHC and the reasonable sale costs and expenses incurred by them.
- 4.5 FHC shall have absolute discretion in all aspects of port operations, including but not restricted to the allocation of berths, piers, quay plant, machinery, labour and storage space.

## 5. **Payments**

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- 5.1 The User shall be liable for all Charges in connection with any Vessel, Equipment or Goods and for any payments, fines, expenses, loss and damage suffered or incurred by FHC in connection therewith.
- 5.2 Prior to a Vessel entering the Harbour Area, the User shall provide FHC with:-
- (a) details of the L.O.A. and draft of the Vessel;
  - (b) details of the gross tonnage of the Vessel;
  - (c) details of the purpose of the port call and type (including the gross tonnage) of any cargo to be loaded or discharged;
  - (d) a breakdown of the species of any fish and shellfish to be discharged (including the volume of each species) and whether they are to be sold by private sale or auction; and
  - (e) any other information requested by FHC or required to be disclosed to them in terms of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 prior to arrival.
- 5.3 Where a fishing Vessel discharges fish or shellfish, details including the type, weight and value must be provided to FHC within 7 days of the Vessel's arrival within the Harbour Area. For all other commodities, a manifest/bill of lading providing a description and weight of all items loaded or discharged must be provided to FHC within 72 hours of the Vessel's departure. In the absence of such details, FHC reserve the right to invoice Vessels/agents/owners, as it shall deem appropriate, on an estimated basis.
- 5.4 Save as otherwise stated in the Conditions, all sums payable are exclusive of value added tax and any other duty or tax, which shall (if and to the extent applicable) be payable by the User at the rate and in the manner from time to time prescribed by law.
- 5.5 Unless otherwise stated herein or previously agreed in writing by FHC, payment of all sums due by the User to FHC in respect of (a) dues for fresh or frozen fish and shellfish shall be made within 7 calendar days of landing; and (b) all other sums

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due shall be made within 30 calendar days of receipt of the sales invoice Services or request for payment, whichever shall occur earlier. Payment shall be made without deduction, withholding, abatement, set-off, or any counterclaim for any reason whatsoever, save as may be required by law. All payments shall be made in GB pounds sterling.

- 5.6 If the User fails to pay any sum due by it to FHC, the User shall be liable to pay interest to FHC on such sum from the due date, for the period from that due date to the date of payment (i) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable); or (ii) where the said Act is not applicable, at 8 per cent per annum above the base lending rate of The Royal Bank of Scotland plc.
- 5.7 Notwithstanding anything in these Conditions, if the User fails to pay any amount payable by it to FHC by the due date, FHC shall have the right to suspend provision of any and all Services until such time as payment is made in full.
- 5.8 FHC reserve the right to pass any unpaid invoices to a debt collection service.
- 5.9 (a) Subject to all applicable laws and regulations, FHC shall have a general lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to FHC of the User or the owner of such Vessel, Equipment or Goods. FHC shall be entitled to refuse to deliver up the Vessel, Equipment or Goods until all such sums have been paid. Storage and other charges accruing shall continue to accrue during such period. If any sums remain unpaid for a period of 60 days FHC shall be entitled to take possession of any such Vessel, Equipment or Goods and to sell them and reimburse the User the sale proceeds less sums due to FHC and the reasonable sale costs and expenses incurred by FHC. FHC shall have no liability in this regard.
- (b) FHC reserves to itself absolute discretion as to the means and procedure to be followed in the handling, storage and transportation of any Vessel, Equipment or Goods notwithstanding any express instructions given by the User in relation thereto.
- 5.10 If the User ceases to trade (either in whole, or as to any part or division involved in the performance of these Conditions), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its

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creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or (being an individual) the User shall become bankrupt or make any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then FHC shall be entitled to immediately recover from the User or any other person liable for FHC's Charges (notwithstanding that the periods stated above or any period of credit extended to the User may not have expired) all sums then due to FHC (including any accrued interest and other Charges properly levied in accordance with these Conditions) and all losses arising to FHC as a result of such circumstances arising.

- 5.11 Any bona fide query to be raised by the User on any invoice issued by FHC must be made in writing within 30 days of the date of the invoice or the User shall be deemed to have accepted the invoice.

## 6. Compliance

- 6.1 All Vessels must either berth in the Harbour Area, or anchor at the dedicated anchorage areas according to the directions of the Harbour Master. No Vessel is to be stored on the Harbour Area without prior permission of the Harbour Master, whose decision will be final as to the storage area to be used. No Vessel is to be launched, lifted into or out of the water at any Quay without prior permission of the Harbour Master.
- 6.2 The User, their employees and agents shall comply in all respects with all applicable laws and regulations, including FHC byelaws, acts and orders for the use of the Harbour Area and with all directions and requirements of FHC staff.
- 6.3 Other than as provided for in s.33 of the Harbours, Docks, and Piers Clauses Act 1847, "Harbour, dock, and pier free to the public on payment of rate. Upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers". FHC shall be entitled to refuse to permit any User to enter onto the Harbour Area and to refuse to accept any Vessel, Equipment or Goods on the Harbour Area. Where any User, Vessel, Equipment or Goods has been permitted to enter the Harbour Area, FHC may nevertheless require them to leave or be removed at any time at its entire discretion and in such event shall not be liable to pay any compensation in respect thereof but shall refund any Charges paid in

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advance in respect of Services not received less the value of any loss or damage caused by such User, Vessel, Equipment or Goods.

## **7. Hazardous Goods and Waste**

- 7.1 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by FHC except by prior agreement with the Harbour Master and then only in accordance with the conditions prescribed by him and all applicable laws, regulations, regulatory requirements and codes of practice.
- 7.2 The User warrants that any waste material or goods of a dangerous, hazardous or poisonous nature are properly marked with a warning as to the hazardous nature of any contents and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to ensure the safety and health of all persons likely to handle or come into contact with the same.
- 7.3 FHC shall be entitled to remove or organise the removal and disposal of any waste material or goods of a dangerous, hazardous or poisonous nature found within the Harbour Area that are not in compliance with Condition 5.2 and recover their reasonable costs in respect thereof from the User. FHC shall have no liability in respect thereof.

## **8. Import and Export Goods**

- 8.1 Authorisation for the removal of imported Goods and Equipment shall not be granted by FHC unless such Goods and Equipment are correctly released and cleared with no statutory authority or local holds.
- 8.2 Without prejudice to Conditions 5.2 and 5.3 all Goods and/or Equipment brought to the Harbour Area must be accompanied by a Vessel manifest or bill of lading, as agreed with FHC, which manifest/bill of lading shall be delivered to FHC by the earlier of (i) (on specific request from FHC) the arrival of trucks/lorries conveying such Goods and/or Equipment at the Harbour Area; and (ii) within 72 hours of the Vessel's departure from the Harbour Area. Subject to alternative arrangements being agreed in writing with FHC, the Vessel manifest/bill of lading must specify marks and number of packages, description of goods, gross weight, any weight imbalances, cubic measurement, name of the Vessel, port to which the Goods or Equipment are to be shipped, port from which the Goods or Equipment have

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arrived, any special carriage or storage requirements of the Goods or Equipment and the name and address of the User or User's agent to whom Charges are to be rendered.

- 8.3 The User shall be responsible for all import duties, export duties, fines, charges and imposts relating to the Goods. The User shall indemnify FHC against any claims made against FHC by H.M. Revenue & Customs and any other costs, charges and expenses in respect of any Goods.

## 9. User's Warranties

- 9.1 Each User warrants to FHC that it has the authority of all persons having any title to or interest in any Goods, Equipment or Vessel to accept these Conditions on their behalf as well as on its own behalf as principal and has specifically notified these Conditions to such persons. Finance companies, lessors and others having or claiming to have title to or an interest in such Goods, Equipment or Vessel are advised that unless FHC is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of any relationship between FHC and the User, these Conditions shall be deemed to have been accepted with the authority of such persons. Such persons' rights over and in respect of the Goods, Equipment or Vessel shall be subordinated to the rights of FHC hereunder.
- 9.2 The User warrants that its employees (and those of any agents or contractors it may engage including without limitation, hauliers and stevedores) are properly trained and competent to carry out the tasks at any time assigned to them including in relation to the giving of any instructions to FHC or the inputting of any information into any electronic service or system operated or managed by or on behalf of FHC. The User further and separately warrants that such persons have the full authority to give such instructions or input such information.
- 9.3 The User warrants that it shall obtain and maintain, at its own expense, all necessary licences and authorisations and comply with all applicable laws, regulations, regulatory requirements and codes of practice relating to the carriage, handling, storage and movement of the Goods and/or Equipment.

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- 9.4 The User warrants (unless otherwise specified in writing to FHC) that any Goods, Equipment or Vessel, which it delivers, directs to or causes to be upon the Harbour Area:
- (a) are not dangerous, hazardous, poisonous or flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the Harbour Area;
  - (b) are not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
  - (c) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Harbour Area;
  - (d) are not over-heated or under-heated or liable to become so while on the Harbour Area;
  - (e) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods, Equipment or Vessel or the Harbour Area or the water or air adjacent thereto;
  - (f) do not require for their safekeeping any special protection (other than as may be agreed in writing between FHC and the User) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Harbour Area or in covered accommodation (if applicable and agreed with FHC);
  - (g) contains no unauthorised controlled drugs, contraband, pornographic or other illegal matter;
  - (h) are properly and sufficiently packed and marked in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accurately documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes;

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- (i) are fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by FHC, its equipment and its employees, agents and contractors.

9.5 The User warrants that it shall immediately inform the Harbour Master of any occurrence or incident which might affect the safe and efficient operation of the Harbour Area or other persons at the Harbour Area or result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience, as may be required by FHC. Without prejudice to the foregoing, the User shall indemnify FHC in respect of any and all claims including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) whether directly or indirectly incurred by FHC as a result of the failure of the User to comply with the foregoing. If any Vessel sinks or grounds or otherwise becomes, in the opinion of FHC an obstruction or danger in any part of the pier or the approach thereto within the Harbour Area and the owner of the Vessel fails to remove the obstruction or danger within a period to be stipulated by FHC, FHC shall be entitled to take any steps they may deem to be necessary to remove the obstruction or danger, and the expense of such removal shall be recoverable from the owner of the Vessel at the time of the event causing the obstruction or danger.

9.6 The User warrants that it shall not:

- (a) use any devices which transmit radio signals or attempt to block radio signals (including without limitation G.P.S.) whilst on the Harbour Area;
- (b) interfere with any systems, communication links and equipment or computer hardware and software whilst on the Harbour Area;
- (c) use or attempt to use any devices or software to gain access to unauthorised data and information;

without the prior written consent of FHC except that the User may use marine band and radar radio frequencies and wi-fi.

9.7 The User shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars relating to Goods and Equipment furnished to FHC for customs and any other purposes. FHC shall not be responsible

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for checking the accuracy of any documentation handled by it. The User shall indemnify FHC against all loss, damages, expenses, claims and fines arising from any inaccuracy or omission in such particulars or from any such declaration made by FHC.

## 10. Liability

- 10.1 Nothing in these Conditions shall exclude or in any way limit FHC's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 10.2 Any Vessel, Equipment, Goods or other property which is located in the Harbour Area, is located entirely at the owners own risk.
- 10.3 In all circumstance, the Master of any Vessel shall remain solely responsible on behalf of his owners for the safety and proper navigation of his Vessel while the Vessel is within the Harbour Area.
- 10.4 FHC shall, in no circumstances have any liability (including by way of indemnity) in respect of any of the following losses or damage howsoever caused (whether such losses or damage were foreseen, foreseeable, known or otherwise): (a) any, indirect, incidental, special or consequential loss or damage; (b) loss of actual or anticipated income or profits; (c) loss of goodwill; (d) loss of business; (e) loss of revenue or of the use of money; (f) loss of contracts; (g) loss of anticipated savings; and (h) loss which could have been avoided by the User through reasonable conduct or by the User taking reasonable precautions.
- 10.5 Save as otherwise contracted with FHC, FHC will not be responsible for the safe custody of any Goods or Equipment landed or deposited upon any Quay, nor will they accept any liability for any loss (whether partial or total) or for any damage however arising which may happen to such Goods or Equipment.
- 10.6 FHC shall have no liability for any loss, damage, cost, expense or delay caused or arising as a consequence of: (a) acts, events or omissions beyond its reasonable control; (b) force majeure (including adverse weather, storm, tempest, lightning, earthquake, tidal waves and flood); (c) strikes, lock-out or other industrial disputes (whether involving the workforce of FHC or any other party); (d) failure of a utility service or transport network; (e) war, riot or civil commotion; (f) malicious damage;

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(g) wear and tear, leakage or latent defect of Goods or Equipment; (h) compliance with any law or governmental order, rule, regulation or direction; (i) accident; (j) breakdown of plant or machinery (including computer hardware, computer software, telephone, radio satellite or other communication system, alarm or C.C.T.V.); (k) loss/deletion of data; (l) fire (including steps to extinguish fire) or smoke; (m) temperature variation, vermin, mould, insects or corrosion; (n) any Vessel being in an unsuitable condition for the Service; (o) acts or default of third parties including suppliers or sub-contractors; (p) the failure of the User to comply with these Conditions;

- 10.7 FHC shall be exempt from all liability whatsoever for deficiency, loss, damage, delay or mis delivery of or to Goods and/or Equipment and/or to a Vessel however or whenever caused except upon proof by the User (otherwise than by evidence only of such deficiency, loss, damage, delay, or mis delivery) that the deficiency, loss, damage, delay or mis delivery was caused by the wilful neglect or unlawful act or omission of FHC.
- 10.8 Subject to Condition 10.1, the total liability of FHC for any loss, damage, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than £10,000,000 and shall be the lowest of the following as applicable:

**Vessel:**

- (a) the value of that part or parts of the Vessel to which the claim relates at the time of the damage or loss;
- (b) the reasonable cost of repairs (as agreed between surveyors appointed by FHC and the owner).

**Equipment:**

- (a) the reasonable cost of repairs;
- (b) the value of the Equipment to which the claim relates at the time of the damage or loss;
- (c) the sum of: £3,000 per any unit of Equipment.

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**Goods:**

- (a) the value of the Goods affected to which the claim relates; and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole consignment (to be calculated by weight in the absence of specific values for the damaged part);
  - (a) the reasonable cost of repairs;
  - (b) in any other case the sum of £1,300 per tonne (pro rata for any part of a tonne) (or any higher general limit of liability figure per tonne in the Road Haulage Association's standard Conditions of Carriage as amended from time to time) unless the nature and value of the Goods had been declared to FHC and FHC has agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving at the Harbour Area.
- 10.9 Notwithstanding this Condition 8, FHC shall have the right, in any circumstance, to elect to rely on (in the alternative) any relevant statutory provision providing for limitation and/or exclusion of liability including, but not restricted to, the provisions of the Merchant Shipping Acts.
- 10.10 It is a condition precedent to the liability of FHC that FHC is notified in writing in respect of:
- (a) any damage alleged to have been caused to a Vessel and to permit inspection thereof prior to sailing or the commencement of repairs;
  - (b) within 30 days of their arrival at the Harbour Area (in the case of import Goods) or 60 days of their removal from the Harbour Area, of any alleged mis delivery or loss of or damage to Goods or any deficiency therein together with particulars of the nature and the amount of any claim to be made;
  - (c) any damage alleged to have been caused to Equipment prior to such Equipment leaving the Harbour Area.

Failure to meet with these requirements shall absolve FHC of any liability whatsoever. In any event FHC shall be entitled (and the User and owner hereby

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All vessel owners, in addition to separately prescribed regulations, law or enactment should be aware of the General Terms & Conditions.

grant permission) to inspect any such Goods or Equipment prior to their disposal or destruction by the owner.

10.11 Notwithstanding the provisions of Condition 10.9, FHC shall in any event be discharged of all liability whatsoever howsoever arising unless proceedings are brought within 12 months from the date of the event or occurrence alleged to have given rise to a cause of action against FHC.

10.12 FHC shall have the following powers in respect of Goods and Equipment abandoned on the Harbour Area:

- (a) the power immediately to remove Goods and Equipment in the case of a hazard or other emergency (and to dispose of such Goods and Equipment where necessary) without prior notice;
- (b) the power generally to remove, store, dispose of or sell Goods and Equipment on reasonable notice to the User (the length of such notice to be determined by FHC on a case-by-case basis). If the identity of the User or the User's contact details are not known to FHC then FHC can remove, store, dispose of or sell the Goods and Equipment after leaving written notice on the Goods and Equipment for a reasonable period of time (the length of such period to be determined by FHC on a case-by-case basis);

and in each case to charge for the reasonable costs incurred in respect of the removal, storage and disposal of the Goods or Equipment.

10.13

- (a) If FHC handles any Goods or Equipment whose gross weight is incorrectly stated such handling by FHC shall be at the sole risk of the User tendering the Equipment or Goods.
- (b) In particular, subject to Condition 10.1, FHC shall be exempt from all liability whatsoever for deficiency, loss, damage or mis delivery of or to the Goods or to the Equipment or for delay arising out of, caused or contributed to by the handling by FHC of the Goods or the Equipment and the person tendering the Goods or the Equipment shall be responsible for and shall indemnify FHC against all injury (including fatal injury), loss or damage however or whenever caused and against all claims made against FHC for which it may be or become liable in

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respect of injury to persons (including fatal injury) or loss or damage to property and against any failure of a load bearing part of any lifting appliance arising out of or caused or contributed to by the handling by FHC of the Equipment and/or Goods.

- 10.14 The User is under a duty to mitigate its losses, including for example, in obtaining salvage.

## **11. Indemnity**

- 11.1 The User will indemnify FHC in respect of any claim for loss, damage or injury of any person or property occasioned by the wrongful act, neglect or default of the User.
- 11.2 The User shall be liable for and shall indemnify FHC against any and all damage, fines, claims, including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by FHC, its employees, servants, agents or sub-contractors howsoever caused, which arise out of or in connection directly or indirectly with:
- (a) the failure of the User to comply with any of these Conditions or taking any step which FHC shall consider to have been reasonably required to remedy the same or to comply with the requirements of any authority;
  - (b) any act, omission or instruction, misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the User, the owner or any other person interested in the Goods, Equipment or Vessel.
- 11.3 Any sums payable hereunder shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

## **12. Insurance**

The User shall be fully insured against all risks (including, without prejudice to the generality of the foregoing, fire, damage, salvage, public liability and theft, whether due to the negligence of others or not), for a sum of not less than £10,000,000 at all times that they shall remain on the Harbour Area. The User shall be responsible for insuring the Goods and/or Equipment for any loss or damage, which they may sustain within the

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Harbour Area. The User shall provide evidence of such insurance to a Harbour Official on request.

**13. Miscellaneous Provisions**

- 13.1 If and in so far as any part or provision of the Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Conditions and the remaining provisions of the Conditions shall continue in full force and effect.
- 13.2 The failure of either party to exercise or enforce any right conferred on that party by the Conditions shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.
- 13.3 These Conditions and in particular the limitations on liability are intended to inure for the benefit of both FHC and its employees, agents and contractors to which end FHC contracts on these Conditions on its own behalf and as agent for and trustee for the benefit of its employees, agents and contractors.
- 13.4 All legal relationships and agreements between FHC and its User shall be governed in all respects by Scots law and the User hereby submits to the exclusive jurisdiction of the Scottish courts in connection therewith.

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