

WARRENPOINT HARBOUR AUTHORITY TERMS AND CONDITIONS
GOVERNING THE SERVICES UNDERTAKEN AND FACILITIES PROVIDED BY
WARRENPOINT HARBOUR AUTHORITY

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1. NOTICE OF INDEMNITIES AND EXCLUSIONS AND LIMITATION OF LIABILITY

NB. These Conditions contain provisions by way of indemnity and also exclusions and limitations of Warrenpoint Harbour Authority's liability at clauses 7, 11, 14, 15, 16, 18, 19 and 20.

2. EFFECTIVE DATE

These Terms and Conditions shall come into force with effect from [•] 2019.

3. DEFINITIONS USED IN THESE TERMS AND CONDITIONS

3.1 Byelaws means the Warrenpoint Harbour Authority Byelaws 1998.

3.2 Charges means charges, rates, rents, tolls and dues of any description due to WHA at any time as published on the WHA website at www.warrenpointharbour.co.uk or otherwise notified to the Customer.

3.3 Contract means the agreement between WHA and the Customer, the terms of which are set out in the Terms and Conditions.

3.4 Customer includes any person, corporation, firm or body of persons, whether incorporated or unincorporated, and any of their servants, agents or independent contractors, who:

3.4.1 visit, access and/or utilize the services of the Harbour; and/or

3.4.2 is the owner of Goods and/or Customer Plant which are on or in the Facilities for any reason; and/or

3.4.3 is the owner, master, crew or passenger of a Vessel or is the agent of a Vessel, which enters the Harbour; and/or

3.4.4 uses or intends to use the Facilities or Services.

3.5 Customer Plant means, without limitation, any plant, machinery, lifting equipment, container, flat or similar ISO unit, vehicle, locomotive, trailer or wagon, belonging to the Customer or in the Customer's custody or control, or supplied by the Customer or on the Customer's behalf for the handling and/or transportation of Goods.

3.6 Equipment includes any machinery, plant, container, package, case, pallet, private or commercial vehicle, truck, trailer, wagon or other piece of equipment of any description.

3.7 Facilities / Facility means any pier, quay, wharf, berth, road, shed, building, land, terminal, compound, WHA Plant, or other property of any description, which is owned or occupied by WHA or is under WHA's control.

3.8 Force Majeure event means act of God, storm, high winds, tempest, flood, fire, landslides, lightning, earthquakes, high or low water, washouts, river icing, perils of the sea, adverse weather conditions, channel blockage, explosion, nuclear and/or radioactive contamination, impact by aircraft or objects dropped or falling from them, civil disturbances, blockades, insurrections, riots, epidemics, strikes, injunctions, lockouts, labour disturbances or other industrial action or trade dispute, lack of adequate power, war, revolution, riot or civil commotion, acts of terrorism or threatened acts of terrorism, restrictions imposed by any government or other body acting under

statutory powers, or, without prejudicing the general nature of what is mentioned earlier in this definition, any other circumstance beyond the reasonable control of WHA.

3.9 Goods means all articles and merchandise of every description and includes fish, livestock and animals.

3.10 Harbour means the limits of the Harbour as defined by Article 6 of the Warrenpoint Harbour Authority Order 1971.

3.11 Hazardous Material means, without limitation, any materials associated with Goods or Goods themselves which are (i) genetically modified, biological agents, radioactive, contaminated with radiation, explosive, oxidising, flammable, toxic, harmful, corrosive or irritant or have any other properties which might be or become hazardous if Services are provided in respect of that material or (ii) identified as dangerous or hazardous goods under the International Maritime Dangerous Goods Code.

3.12 The Legislation means the Harbours Act (Northern Ireland) 1970, the Warrenpoint Harbour Authority Order 1971 (as amended by the Warrenpoint Harbour Authority (Amendment) Order (Northern Ireland) 1994), the Warrenpoint Harbour Authority Order (Northern Ireland) 2002, and the Harbours (Northern Ireland) Order 2002 and any Codes of Practice issued thereunder as may be amended and currently in force.

3.13 Loss means any losses, damages, costs, expenses, claims, proceedings, demands, fines or liabilities.

3.14 Principal means the company or partnership for which an agent acts.

3.15 The Port means all land owned or occupied by WHA, including the Facilities.

3.16 Safety Information means a thorough Written assessment of the properties of the Goods including product safety information and any other information necessary to enable WHA to fully meet its obligations under the Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991 and The Health and Safety at Work (Northern Ireland) Order 1978, under any legislation which applies to health and safety or to the protection of the environment, and also under any regulations made under any of the preceding legislation, including (but not limited to) the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 as amended from time to time.

3.17 Services / Service means any operation, service or Facility which WHA performs for and/or provides to the Customer.

3.18 Terms and Conditions means these terms and conditions as updated from time to time.

3.19 Vessel means any vessel to which the Byelaws or any standing or general directions may apply and includes all tenders, machinery, equipment, fittings, nets, sails, fuel, stores and provisions and everything connected with the Vessel.

3.20 WHA means Warrenpoint Harbour Authority, provided that in the context of consent or agreement being required WHA means Warrenpoint Harbour Authority acting through a member of its management team, including its servants, agents and sub-contractors.

3.21 WHA Plant means any plant, machinery, equipment, crane, lifting equipment, vehicle, locomotive, trailer or wagon, tug, seabed levelling vessel, dredger, pilot boat and/or working boat of any description in the possession and/ or control of WHA and/or provided by WHA.

3.22 Written/ in writing shall include facsimile transmission and electronic mail if delivery to the intended recipient can be proved by an appropriate transmission note or in the case of electronic mail a read receipt from the intended recipient. If the communication is by post it shall be addressed to the registered office or principal place of business of the recipient or such other address as either party have notified to the other.

4. SCOPE OF TERMS AND CONDITIONS

4.1 Save as otherwise expressly provided herein, these Terms and Conditions apply:

4.1.1 to all Services and Facilities provided by WHA whether as principal, agent, bailee, sub-bailee or otherwise; and

4.1.2 to any physical access by the Customer to or from the Harbour or any part thereof;

4.1.3 to any physical access by any Vessel or Customer Plant to or from the Harbour or any part thereof; and

4.1.4 to all other relationships between WHA and the Customer, howsoever arising and whether or not included above at 4.1.1 – 4.1.3 and whether created with or without WHA's agreement or licence.

4.2 These Terms and Conditions are in addition to and not in substitution of WHA's and the Customer's rights, obligations and powers conferred by The Legislation, Byelaws and any other legislation concerned with the shipment of Goods through the Harbour including, without prejudice to the generality of the foregoing, legislation governing the health, safety and welfare of persons in the Harbour.

4.3 No other conditions shall apply to the Services performed or Facilities provided by WHA to the Customer, unless agreed in writing by one of WHA's directors or duly authorised officers.

4.4 Any variation to these Terms and Conditions may only be made if agreed in writing by one of WHA's directors or duly authorised officers.

4.5 WHA acts on its own behalf and for the benefit of its employees, agents, consultants, contractors and sub-contractors all of whom shall have the benefit of the Terms and Conditions. The Customer agrees not to pursue any claim against any employee, agent, consultant, contractor or sub-contractor of WHA.

5. ACCEPTANCE OF THESE TERMS AND CONDITIONS

5.1 Application for or use of the Services, or entry of any Vessel, person, Goods or Equipment into or onto the Port, will constitute acceptance of the Terms and Conditions by the relevant person, customer, agent and Principal.

6. WHA'S PROVISION OF SERVICES

6.1 WHA shall exercise reasonable skill, care and judgement in carrying out the Services. No greater obligation whether express or implied is accepted.

6.2 WHA may appoint contractors or sub-contractors to perform all or any part of the Services, in which case WHA shall have no greater obligation or liability than it would have had if the Services had been provided by it directly.

6.3 Unless specifically otherwise agreed in writing with the Customer, where WHA provides Services in respect of Goods being loaded onto or unloaded from or passengers and their Goods and Equipment embarking or disembarking any Vessel it does so purely as agent of the actual and/or contractual carrier.

6.4 WHA provides no services or facilities for live animals or any passenger's pets or domestic animals, which remain at the Customer's risk and responsibility at all times.

6.5 WHA gives no warranty as to the accuracy of any nautical or other information about the facilities within the Port or as provided through Vessel traffic service. The owner and its representatives shall at all times remain responsible for navigation of any Vessel.

6.6 WHA shall be entitled at the expense and sole risk of the Customer to remove and place wherever WHA deems appropriate Goods or Equipment which for any reason cannot be collected and removed from the Port by the Customer at the time of landing.

6.7 WHA shall have no obligation to check the accuracy of any documentation handled by it.

6.8 All instructions to WHA by any Customer in relation to Equipment or Goods must be given in writing. WHA shall nevertheless retain absolute discretion as to the handling, storage and transportation of any Vessel, Equipment or Goods, including the allocation of berths, plant, machinery, labour and storage space.

7. RESERVED RIGHTS

7.1 Notwithstanding any other provision of these Terms and Conditions, WHA reserves the right to:-

7.1.1 sub-contract all or any part of the performance of the Services or the provision of the Facilities;

7.1.2 serve notice in writing upon the Customer, at any time before the commencement of the performance of any Services or provision of any Facilities, declining to undertake such performance or provision; and

7.1.3 suspend the provision of the Services and/or Facilities if the Customer breaches, or WHA have reasonable grounds to believe the Customer may breach, any provision of these Terms and Conditions and/or any of the Byelaws provided that WHA shall not be liable for any Loss the Customer may suffer as a result of the actions WHA takes under 7.1.2 and 7.1.3 above.

7.2 If WHA invokes the rights reserved under 7.1.2 or 7.1.3 of the Terms and Conditions, the Customer must, at its own expense and risk, remove its Goods and/or Customer Plant from WHA's premises within 30 days of being requested to do so. If the Customer does not remove them within this period, WHA shall be entitled to move, sell or otherwise dispose of such Goods and/or Customer Plant on expiry of 21 days' notice in writing to the Customer and all charges and/or Loss arising in

connection with the transportation, handling, storage, sale and/or disposal of the Goods and/or Customer Plant shall be payable by the Customer and in the event of a sale of the Goods and/or Customer Plant, shall be deductible from the proceeds of the sale, and WHA shall have no liability to the Customer save for payment of any proceeds of sale remaining after deduction of the charges and/or Loss referred to above.

8 DOCUMENTATION

8.1 WHA shall where practicable give the Customer a Written quotation for any Services or Facilities required, and the Customer shall confirm acceptance of the quotation in writing.

8.2 The parties agree that it is intended that the Terms and Conditions shall apply to and shall be deemed incorporated into all contracts which the Customer enters into with WHA as a result of WHA's quotations.

8.3 If it is not practicable for WHA to give the Customer a Written quotation, or if the Customer fails to give WHA Written acceptance before WHA undertake the Services or provide the Facilities, the Customer agrees that it is intended that and that the Terms and Conditions will nonetheless apply.

9 TIME OF PERFORMANCE OF THE SERVICES/ PROVISION OF FACILITIES

9.1 WHA does not guarantee the availability of the Services at any time.

9.2 Time for performance of the Services is not of the essence in these Terms and Conditions.

9.3 WHA may in its absolute discretion (i) refuse to permit any person (whether or not a Customer) to enter the Port or require them to leave it; (ii) refuse to accept any Vessel, Equipment or Goods on or into the Port or require the same to be removed; and (iii) withhold, cancel or change any or all of the Services at any time. In particular, WHA shall be entitled to exercise its discretion where (i) the Customer is in breach of the Terms and Conditions, including where payment has not been made; (ii) in WHA's reasonable opinion there is a risk of public disorder.

9.4 Following any exercise of WHA's rights under Clause 9.3, the Vessel, Equipment or Goods in the Port shall be removed at the Customer's risk and expense within 14 days, failing which WHA may do so, take possession of and sell them, and reimburse to the Customer the net sale proceeds if any. WHA shall refund any charges paid in advance in respect of Services not performed but may deduct any sums due to it as well as any loss, damage, liability, cost or expense incurred by or caused to WHA by or in respect of such Vessel, Equipment or Goods.

10. COMPLIANCE

10.1 WHA operate in accordance with the provisions of the International Ships and Ports Security Code and reserve the right (without limitation) to search any Vessels, Customer Plant, Goods, persons or vehicles entering or leaving the Harbour and to take any steps they consider necessary to remove any Vessel, Customer Plant, Goods, vehicle or person which they consider may compromise

security, and to take any other steps which they consider necessary in the interests of security generally.

10.2 WHA reserve the right to deny access to any person or persons seeking admission to or while on Harbour premises.

10.3 The Customer must comply with the directions of WHA at all times and co-operate with WHA to ensure that all laws, regulations, statutory obligations and similar are complied with and to ensure that licensing arrangements satisfactory to WHA are maintained at all times.

11. GOODS

11.1 Release of Goods

Unless WHA have agreed a different procedure with the Customer in advance, WHA may, at its discretion, refrain from acting on orders for outward shipment or inward delivery of Goods until after WHA have received the Customer's Written authority.

11.2 WHA must be provided with satisfactory evidence that all applicable VAT and taxes have been paid on any Goods before they can be removed from the Port.

11.3 Description of Goods

11.3.1 Prior to the loading or discharge of a Vessel at the Harbour the Customer shall provide WHA with, at its own expense, Written details of the contents of a Vessel which is to be discharged including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under clause 17.2.9 hereof) in sufficient detail to identify the Goods (including without limitation the number of pieces, weight, marks and numbers).

11.3.2 Any special handling or storage requirements relating to the Goods shall be advised and agreed with WHA prior to the arrival of the Vessel at the Harbour.

11.3.3 On completion of discharge of the Vessel a declaration of Goods discharged from the Vessel shall be provided to WHA by the Customer or its agent.

11.3.4 Prior to loading a Vessel at the Harbour the Customer shall provide WHA with, at its own expense, Written details of the Goods to be loaded including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under clause 17.2.9 hereof) in sufficient detail to identify the Goods (including without limitation the number of pieces, weight, marks and numbers) before they are loaded including any special handling or storage requirements relating to the Goods.

11.3.5 On completion of loading of the Vessel the Customer will provide copies of the Vessel's manifest to WHA.

11.3.6 Prior to unloading of any Customer Plant at the Harbour the Customer shall provide WHA with, at its own expense, Written details of the Customer Plant and any items contained or carried therein or thereon which are to be discharged including a detailed Written description of Goods contained therein (including hazards and any Hazardous Material agreed under clause 17.2.9 hereof) in sufficient detail to identify the Goods (including without limitation the number of pieces, weight, marks and numbers). Any special handling or storage requirements relating to the Customer Plant and/or Goods shall be advised and agreed with WHA prior to the arrival of the Customer Plant.

11.3.7 Prior to loading any Customer Plant the Customer shall provide WHA with, at its own expense, Written details of the Customer Plant and any items contained or carried therein or thereon which are to be loaded including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under clause 17.2.9 hereof) in sufficient detail to identify the Goods (including without limitation the number of pieces, weight, marks and numbers) before they are loaded including any special handling or storage requirements relating to the Customer Plant and/or Goods.

11.3.8 The Customer warrants that all such descriptions, values and other particulars supplied to WHA under this clause 10 are accurate. The Customer shall indemnify WHA and keep WHA fully indemnified in respect of any Loss which arises from inaccuracy of or omission from the descriptions, values and other particulars, however that inaccuracy or omission has arisen.

11.4 Handling of Goods

11.4.1 The owner of any goods shall comply with such directions as WHA may from time to time give for regulating the time, place and manner of discharging, loading or otherwise bringing into or removing those goods from the Harbour premises.

11.4.2 For the purposes of clause 11.4.1 "owner" when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, receipt, custody, loading or unloading and clearance of those goods and includes any other person in charge of the goods. 11.4 All Goods must be safe to discharge and handled in compliance with all health and safety laws and regulations.

11.5 All Goods must arrive and be stored at the Port in a satisfactory manner.

12 REMOVAL OF GOODS AND CUSTOMER PLANT AND DISPOSAL OF ABANDONED OR UNDELIVERABLE GOODS OR CUSTOMER PLANT

12.1 Unless otherwise agreed in writing with WHA, the Customer must remove or ship all Goods and/or Customer Plant from the Facilities as soon as reasonably practicable but in any event within 7 days of the final discharge of the Vessel for imports and as soon as reasonably practicable but in any event within 7 days from arrival at the Facilities for exports. If the Customer fails to do this, WHA reserves the right, at its sole discretion, (i) to refuse to receive further Goods and/or Customer Plant; (ii) to remove, at the Customer's expense, the Goods and/or Customer Plant the Customer has failed to remove; and/or (iii) to charge the Customer for their storage.

12.2 In the event that Goods and/or Customer Plant:

12.2.1. remain on the Facilities beyond any period permitted under 11.1 above; or

12.2.2. are insufficiently addressed or marked to determine upon reasonable enquiry their owner and their destination;

WHA shall be entitled to move, sell or otherwise dispose of such Goods and/or Customer Plant upon the expiry of 21 days' notice in writing to the Customer and all charges and/or Loss arising in connection with the transportation, storage, sale or disposal of the Goods and/or Customer Plant shall be payable by the Customer or in the event of a sale of the Goods and/or Customer Plant, shall be deducted from the proceeds of the sale and WHA shall have no liability to the Customer save for payment of any proceeds of sale remaining after deduction of the charges and/or Loss referred to above.

13. PASSAGE OF RISK

Upon acceptance of the Goods or Customer Plant onto any Vessel, wagon or other vehicle by the Customer or on the Customer's behalf, risk in the Goods or Customer Plant shall pass to the Customer. WHA shall not be liable for any Loss or damage occurring to the Goods or Customer Plant after acceptance by the Customer or on the Customer's behalf.

14. LOADING AND DISCHARGE OF VESSELS AND CUSTOMER PLANT

WHA shall have no responsibility for the consequences of or any liability to the Customer arising out of or in connection with:-

14.1 WHA loading or unloading any Vessel and/or Customer Plant in accordance with the Customer's instructions;

14.2 the Customer's failure to provide WHA with adequate instructions for the loading or unloading of any Vessel and/or Customer Plant;

14.3 improperly allocated stowage; or

14.4 any delays in the loading and/or discharge of any Vessel and/or Customer Plant or in the provision of any Facilities.

15. WORK ON VESSELS AND CUSTOMER PLANT

No repairs or other works may be carried out to any Vessel or Customer Plant within the Harbour without WHA's prior permission in writing. The Customer shall indemnify WHA and hold WHA harmless against any Loss and/or damage which arises as a result of any repairs and/or other works, including (without prejudice to the generality of this indemnity) any damage to the Harbour.

16. USE BY THE CUSTOMER OF WHA'S PLANT OR FACILITIES

16.1 The Customer may from time to time request that WHA hire out WHA Plant to the Customer. WHA may, at its entire discretion and at a charge to be agreed between the Customer and WHA, agree to such hire.

16.2 WHA may supply an operator in connection with the hire of the WHA Plant referred to at 16.1 above. Alternatively, WHA may, at its absolute discretion, allow an operator appointed by the Customer to operate the hired WHA Plant, provided that such operator is trained and competent in its operation and that the Customer warrants in writing that this is the case.

16.3 In the circumstances described in 16.1 and 16.2 above, the WHA Plant and its operator (if any) shall be under the Customer's management, supervision and control, and the Customer shall hold WHA harmless and shall indemnify WHA and keep WHA fully indemnified in respect of all and any Loss and/or damage arising out of or in any way connected to the hire of the WHA Plant.

16.4 The Customer may from time to time request permission to use WHA's Facilities for its own operations or in circumstances where the Customer is not procuring any other Service from WHA.

WHA may (at its entire discretion and at a charge to be agreed between the Customer and WHA) agree to allow such use and WHA may allow the mobilisation and use of the Customer's own or a third party's Plant in connection with such use and the berthing of a Vessel in connection with such use. In consideration of WHA permitting such use the Customer will supply any information WHA reasonably requires in connection with such use and will comply with any conditions WHA impose.

16.5 In the circumstances described in 16.4, the operations undertaken at the Facilities shall be under the Customer's management, supervision and control, and the Customer shall hold WHA harmless and shall indemnify WHA and keep WHA fully indemnified in respect of all and any Loss and/or damage arising out of or in any way connected to said operations.

17. WARRANTIES

17.1 General Warranties

The Customer warrants that:

17.1.1 it has the necessary authority to accept these Conditions on its own behalf and, as duly authorised agent and/or representative, on behalf of any party who has any title to or interest in any Goods, Customer Plant and/or Vessel;

17.1.2 the rights, defences and limits available to it, either by statute or by contractual terms, are extended to WHA; and

17.1.3 its servants, agents and independent contractors are trained and competent to carry out any task assigned to them, and to give WHA any instruction, advice and/or information given whether this is in writing, orally or by other means. The Customer further warrants that such persons have the authority to give WHA such instructions, advice and/or information.

17.2 Warranties in respect of Goods and Customer Plant

The Customer warrants that any Goods or Customer Plant it delivers to, or otherwise causes to be at the Harbour and/ or Facilities:

17.2.1. are not Hazardous Material, or liable to become so, either in the form in which they are delivered, or in any form which they may subsequently take whilst at the Harbour. This warranty does not apply where the Customer has complied in all respects with 16.2.9 below;

17.2.2. are not and will not, whilst at the Harbour, emit any injurious gas, fumes, or liquid and will not contaminate in any way any other Goods, Customer Plant, any third party goods, third party plant, WHA Plant, Vessel or the Harbour or Facilities;

17.2.3. are not infested in contravention of applicable legislation with insects or animals of any description, and are not verminous, rotten or subject to fungal attack or liable to become so whilst at the Harbour or Facilities;

17.2.4. will not contaminate nor cause danger, injury, pollution or damage to any person, property or other Goods or Equipment at the Harbour or Facilities or on neighbouring land nor cause danger, injury, pollution or damage to water, ground or air at the Harbour or Facilities or on neighbouring land;

17.2.5. do not require, for their safekeeping, any protection (other than that which the Customer has previously agreed in writing with WHA) due to vulnerability to heat, cold, moisture, salt, pilferage or proximity to other Goods or Equipment or flammability, and that they will remain safe, if left standing in the open on the Facilities, or in covered accommodation where such covered standing has been agreed with WHA;

17.2.6. to the best of the Customer's knowledge contain no unauthorised controlled drugs, contraband, pornographic or illegal matter;

17.2.7. are processed in compliance with any rules and requirements of H M Revenue and Customs or any successor thereof;

17.2.8. are properly and sufficiently packed and marked, are accurately documented and labelled for all shipping, cargo handling, despatch, customs and similar purposes, and comply with all regulations and rules prevailing from time to time;

17.2.9. which are or contain any Hazardous Material, have had the presence of Hazardous Material at the Harbour and/or Facilities agreed in writing in advance by WHA and that they provided WHA with all Safety Information before or at the time when WHA's agreement was given. The Customer further warrants that the Hazardous Material is properly, clearly and sufficiently marked and labelled with any warning or other information, as may be required, as to the hazardous nature of any contents and as to the precautions to be taken in handling the same. The Customer further warrants that it has provided all necessary information to ensure the health and safety of all persons who may handle or come into contact with such Goods or Customer Plant in the event of an escape or spill and to ensure the protection of the environment;

17.2.10. comply with all relevant local, national and international legislation and regulations relating to their documentation, carriage, handling and movement;

17.2.11. are in a fit and proper condition to be handled or otherwise dealt with by WHA in the provision of the Services and in the normal course of business and conform with all legislation governing the import and export of Goods at the time of their import or export;

17.2.12. are properly insured by the Customer, and that the Customer's insurance is sufficient to cover all liabilities the Customer may incur;

17.2.13. do not contain any persons seeking unlawfully to enter the United Kingdom, and the Customer further warrants that it has thoroughly searched the Goods and Customer Plant for such persons.

17.3 Additional Warranty in respect of Goods

The Customer warrants that any declaration of the weight of any Goods made under clause 11.2 above is accurate in all respects.

17.4 Warranties in respect of Vessels

The Customer warrants that any Vessel visiting the Harbour and/or making use of the Facilities:

17.4.1 is seaworthy in all respects;

17.4.2 is suitable in all respects to berth safely at the Facilities allocated to it;

17.4.3 is not the subject of any order, litigation or other impediment, which may result in the arrest or other form of detainment of the Vessel whilst at the Facilities;

17.4.4 is in all respects properly insured by the Customer and that the Customer's insurance is sufficient to cover all liabilities including but not limited to the Customer's liability for any obstruction a Vessel may cause in the Harbour and any damage a Vessel may cause to the Facilities; and

17.4.5 does not contain any persons seeking unlawfully to enter the United Kingdom, and the Customer further warrants that it has thoroughly searched the Vessel for such persons.

18. INDEMNITY

18.1 The Customer or Principal shall indemnify WHA and keep WHA fully indemnified against all actions, claims, proceedings, costs and damages (including, but not limited to, any reasonable damages or compensation WHA pay to compromise or settle any claim) and all legal costs and/or other expenses arising out of:

18.1.1 the Customer breaching any warranty or warranties given to WHA;

18.1.2 the Customer breaching any term of these Terms and Conditions;

18.1.3 any damage to property caused by the Customer when using the Port;

18.1.4 any claim by any person, other than the Customer or WHA, which is based on facts which, if shown to be true, would amount to the Customer breaching any warranty or warranties;

18.1.5 extra time, labour and cost incurred by WHA upon discharge of the Goods as a result of such Goods not being stored appropriately; and

18.1.6 a breach of statutory duty incurred by WHA due to the Customer not holding an appropriate licence.

18.2 In the event that a Customer is acting on behalf of a Principal, the Principal also agrees to indemnify WHA and keep WHA fully indemnified against all actions, claims, proceedings, costs and damages (including, but not limited to, any reasonable damages or compensation WHA pay to compromise or settle any claim) and all legal costs and/or other expenses arising out of:

18.2.1 the Customer breaching any warranty or warranties given to WHA;

18.2.2 the Customer breaching any term of these Terms and Conditions;

18.2.3 any damage to property caused by the Customer when using the Port;

18.2.4 any claim by any person, other than the Customer or WHA, which is based on facts which, if shown to be true, would amount to the Customer breaching any warranty or warranties;

18.2.5 extra time, labour and cost incurred by WHA upon discharge of the Goods as a result of such Goods not being stored appropriately; and

18.2.6 a breach of statutory duty incurred by WHA due to the Customer not holding an appropriate licence.

19. EXCLUSIONS AND LIMITATION OF LIABILITY

19. 1 In relation to loss or misdelivery of or damage to Goods or Customer Plant:

19.1.1 WHA will not insure any Vessels, Goods or Equipment or items otherwise placed in the custody or care of WHA and the Customer shall self-insure or make arrangements to cover the Goods and or Customer Plant against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in 19.1.4 below is insurance against WHA's potential liability for breach of its obligations and does not cover the Goods or Customer Plant themselves against loss or damage.

19.1.2. Unless any Loss or damage to the Goods and/or Customer Plant is directly caused by negligence, wilful act or default of or breach of duty by WHA, WHA shall have no liability for such Loss or damage howsoever arising.

19.1.3 In no case shall WHA be liable for any lost profit, income or savings, wasted expenditure, liquidated damages payable by or on behalf of the Customer, or indirect or consequential loss including, without limitation, any Loss arising from delays caused to a Vessel or to Customer Plant or delays to any of the Customer's operations or business whether or not caused by or resulting from the negligence of WHA or a breach of WHA's statutory duties or a breach of WHA's obligations howsoever caused.

19.1.4 In no case shall any liability of WHA its servants and agents (including inter alia any liability in respect of duties and taxes) exceed £150,000 for any one event or series of connected events irrespective of the number of items which are placed in their custody or care. It is a condition of this contract that the Customer pays within 7 days of receipt of WHA's invoices for its costs in insuring against its potential liability up to £150,000, and/or to the extent that WHA elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

19.2. In relation to claims for loss of or damage to a Vessel:

19.2.1 Unless any loss of or damage to the Vessel is directly caused by negligence, or wilful act or default of or breach of duty by WHA, WHA shall have no liability for any Loss or damage however arising.

19.2.2 In no case shall WHA be liable for any lost profit, income or savings, wasted expenditure, liquidated damages payable by or on behalf of the Customer, or indirect or consequential loss including, without limitation, any Loss arising from delays caused to a Vessel or to Customer Plant or delays to any of the Customer's operations or business whether or not caused by or resulting from the negligence of WHA or a breach of WHA's statutory duties or a breach of WHA's obligations howsoever caused.

19.2.3 In no case shall any liability of WHA its servants and agents (including inter alia any liability in respect of duties and taxes) exceed the lesser of:

19.2.3.1 the value of that part or parts of the Vessel to which the claim relates at the time of the event giving rise to the Loss;

19.2.3.2 the cost of repairs as agreed with the surveyors appointed by the Customer and WHA;

19.2.3.3 £150,000 for any one event or series of connected events.

19.2.4 It is a condition of this contract that the Customer pays within 7 days of receipt of WHA's invoices for its costs in insuring against its potential liability up to £150,000, and/or to the extent that WHA elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

19.3 WHA shall not in any event be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by any party or person for whom, or plant or Equipment for which WHA is not responsible or by Force Majeure event.

19.4 In addition WHA shall not in any event be liable for: (a) actions it is required to carry out arising from any laws, regulations, the Bye-Laws, statutory obligations or similar; (b) actions which any government authority or agency requires it to carry out; or (c) any loss incurred by the Customer arising out of the unavailability of the Services at any time.

19.5 Without prejudice to the foregoing exclusions and limitations of WHA's liability, in no case shall WHA's liability exceed the limit established by Section 191 Merchant Shipping Act 1995 as may from time to time be amended.

19.6 Unless expressly provided in these Terms and Conditions, all warranties, conditions or other terms implied by statute, common law, custom of the trade or otherwise are excluded to the fullest extent permitted by law.

19.7 For the avoidance of doubt nothing in these Terms and Conditions shall exclude or limit WHA's liability for death or personal injury resulting from WHA's proven negligence, nor for fraudulent misrepresentation.

19.8 It is agreed that the benefit of the exclusions and limitations of WHA's liability contained in these Terms and Conditions is also conferred on WHA's independent contractors.

19.9 WHA shall not be liable for any damage done by cargoes moved in the event of a flood on the Port. This includes environmental damage.

19.10 For the avoidance of doubt WHA shall have no liability whatsoever in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising, including by way of contribution, restitution or indemnity, for or in respect of any of the following whether or not the same was reasonably foreseen or foreseeable, known or unknown, actual or anticipated: (a) any increased costs or expenses or both; (b) any loss of profit, income, business, contracts, revenues, goodwill, hire or freight or both; (c) any special, indirect, incidental, consequential or pure economic loss, costs, damages, charges or expenses or both; (d) delay, or demurrage or detention of any Vessel, Goods or Equipment; (e) any wasted investment, capital expenditure, costs or expenses or both; (f) loss which might reasonably have been avoided or minimised by the Customer or the claimant; (g) betterment.

19.11 Nothing in the Terms and Conditions limits or excludes WHA's liability for fraud, or for death or personal injury caused by its negligence or any other liability to the extent it cannot be excluded or limited by law.

19.12 WHA will not be liable for actions it is required to carry out arising from statutory obligation.

19.13 WHA will not be liable for actions which any government agency requires it to carry out. WHA shall be reimbursed for any loss arising out of such directions.

20 NOTIFICATION OF CLAIMS AND TIME LIMITS

20.1 WHA shall not be liable for any claim unless it has received Written notice of it within 10 days of the event giving rise to the claim and unless WHA receives from the Customer sufficient detail in writing to enable investigation within 21 days of the event giving rise to the claim.

20.2 No legal proceedings (including any counterclaim) may be brought against WHA unless they are issued and served within 9 months of the event giving rise to the claim.

21 CHARGES

21.1 WHA reserves the right to require payment in full of the Charges together with any applicable VAT in advance of the relevant Vessel's, Goods' or Customer Plant's arrival.

21.2 Subject to 21.1 above the Customer shall in any event pay the Charges in full, together with any applicable Value Added Tax, and without any set-off or other deduction within 30 days of the month end of the date of the relevant invoice.

21.3 All Charges are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

21.4 Time is of the essence for payment of the Charges whether under 21.1 or 21.2 above.

21.5 WHA reserves the right to increase the Charges by any additional sums which, in its sole discretion, are required as a result of:

21.5.1 a change in the Customer's requirements;

21.5.2 the Customer's instructions or lack of instructions;

21.5.3 any other cause attributable to the Customer; or

21.5.4 any changes in legislation that increase the cost to WHA of providing the Services.

21.6 WHA reserves the right to charge interest on any overdue amounts from the due date for payment until payment is made in full plus associated costs in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 and 2013.

22. GENERAL LIEN WITH POWER OF SALE

22.1 WHA shall have both a general and a particular lien on all Goods, Customer Plant and related documents in its possession in respect of all sums the Customer owes to WHA at any given time. Provided WHA give the Customer 21 days' notice in writing, WHA may sell or dispose of all or part of such Goods, Customer Plant or documents, as the Customer's agent and at the Customer's risk and expense, by public auction or private treaty (at WHA's sole discretion). WHA will at its discretion apply the proceeds towards the cost and expense of the sale and the exercise of its lien, and towards the payment of the sums the Customer owes WHA.

22.2 If WHA exercises any lien (whether under these Conditions or otherwise) against any perishable Goods and, in WHA's sole discretion, it is impracticable to give the notice required by clause 22.1

above, because the condition and/or value of the Goods will or may deteriorate by reason of delay, WHA may (but is not obliged to) sell the Goods without giving that notice.

22.3 WHA shall pay the Customer the balance (if any) which remains following payment of the cost and expense incurred in the sale and exercise of such lien and the application of any proceeds towards payment of any sums the Customer owes to WHA.

23 TERMINATION

23.1 WHA may, without prejudice to any other right or remedy available to it, either terminate the whole or part of any or every contract between WHA and the Customer, which exists under these Terms and Conditions, or suspend its performance of the Services or provision of the Facilities under the relevant contract, if any one of the following events occurs:

23.1.1 any material change in the Customer's management, ownership or control;

23.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than for the purposes of amalgamation or reconstruction), or if an encumbrancer takes possession, or a receiver is appointed, of any of the Customer's property or assets;

23.1.3 the Customer ceases, or threatens to cease, to carry on business;

23.1.4 the Customer breaches any provision of these Terms and Conditions and/or any of the Byelaws; or

23.1.5 WHA reasonably believes that any of the events mentioned under 23.1.1 – 23.1.4 is about to occur and WHA makes reasonable attempts to notify the Customer accordingly;

23.2 The rights and obligations of both parties shall cease to have effect immediately upon termination of the relevant contract, except that termination shall not affect:

23.2.1 Clauses 18 to 22 herein inclusive;

23.2.2 the accrued rights and obligations of both parties as at the date of termination;

23.2.3 the continued existence and validity of rights and obligations under any provisions of these Terms and Conditions which are necessary for the interpretation or enforcement of these Terms and Conditions.

24. DATA PROTECTION

24.1 The Customer agrees that WHA may use and disclose all information the Customer supplies to WHA about any individual, for the purpose of WHA exercising its rights and performing its obligations under these Terms and Conditions.

24.2 Where the Customer provides WHA with information about any individual, the Customer warrants and undertakes that the individuals concerned have explicitly agreed to the use and disclosure of any personal data about them, for the purposes specified in 24.1 above

24.3 The Customer warrants and represents that it has complied in all respects with the provisions of the Data Protection Act 1998 and all regulations made under that Act and that it has established procedures to ensure that it continues to comply with all such legislation.

25 GENERAL

25.1 These Terms and Conditions contain the whole agreement between the Customer and WHA in respect of their subject matter, and supersede any prior Written or oral agreement between the parties relating to their subject matter. The parties confirm that they have not entered into this agreement on the basis of any representations that are not expressly incorporated into these Terms and Conditions. However, nothing in these Terms and Conditions purports to exclude liability for any fraudulent statement or act.

25.2 Except as specifically stated in Clause 19.7, a person who is not a party to these Terms and Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions, but this does not affect any right or remedy of that person which exists or is available apart from that Act.

25.3 Words in the singular shall include the plural and vice versa, and reference to any gender shall include a reference to all genders.

25.4 Headings are used in these Terms and Conditions for convenience only and they shall not be incorporated into these Terms and Conditions and shall not be deemed to be any indication of the meaning of the individual Terms and Conditions to which they relate.

25.5 Reference to any statute or statutory provision shall include any amendment, extension, consolidation or replacement of that statute or statutory provision.

25.6 If any one or more of the provisions contained in these Terms and Conditions is found to be illegal, invalid or unenforceable under any applicable law, such provision shall, insofar as it is severable from the remaining provisions, be deemed omitted from these Terms and Conditions and shall in no way affect the legality, validity or enforceability of the remaining Terms and Conditions. If any provision is so found to be invalid, illegal or unenforceable but would be valid, legal or enforceable if some part of the provision were deleted, the provision in question shall apply with such modifications as may be necessary to make it valid, legal or enforceable.

25.7 No failure or delay on WHA's part to exercise any right, power or remedy under these Terms and Conditions shall operate as a waiver of that right, power or remedy, nor shall any partial exercise preclude WHA's further exercise of the same, or of some other right, power or remedy.

25.8 The remedies provided in these Terms and Conditions are cumulative and are in addition to, and not exclusive of, any remedies provided by law.

25.9 The parties agree that these Terms and Conditions are fair and reasonable, having regard to the commercial nature of the transaction to which they apply.

25.10 Any legal relationship between WHA and the Customer shall in all respects be governed by the laws of Northern Ireland.

25.11 All claims or disputes arising out of or in connection with the Services shall be exclusively governed by, and construed solely in accordance with, the laws of Northern Ireland, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.