



## **COLERAINE HARBOUR COMMISSIONERS - TERMS & CONDITIONS**

### **1 Definitions**

<b>"C.H.C."</b>	means Coleraine Harbour Commissioners as statutory and/or competent and/or designated harbour authority;
<b>"Acts"</b>	refers to all acts of parliament relative to the structure and operation of the Commissioners;
<b>"Byelaws"</b>	means the Coleraine Harbour Commissioners byelaws of 2010 and any other byelaws as made by C.H.C. from time to time;
<b>"Charges"</b>	means vessel and any other rates, dues, tolls, levy rents, fees and charges levied by C.H.C. in accordance with the current Schedule of Charges, Dues & Fees and any other sum payable to C.H.C.;
<b>"Directions"</b>	means special, general or pilotage directions made by C.H.C. and any port user handbook issued by C.H.C.;
<b>"Enclosed Harbour"</b>	means: at Coleraine the area of water enclosed by an imaginary line drawn from a point 500m from the most northerly point of the Barmouth Moles to the Millenium Bridge in Coleraine;
<b>"Equipment"</b>	means any plant, machinery, container, package, case, pallet, vehicle, trailer, truck, wagon or other piece of equipment or property of any nature whatsoever;
<b>"Facility"</b>	means any mooring, berth, boat-park space, tender rack, locker, store etc.;
<b>"Facility holder"</b>	means the person or persons allocated the use of a Facility by C.H.C. on completion of a Facility application agreement;
<b>"Goods"</b>	means cargo, livestock and all other goods of whatever nature (including any package or container whatsoever in which goods are packed or conveyed) and which may not be in the ownership of the User;
<b>"Harbour Area"</b>	means any area of land, premises or water owned, leased or operated by C.H.C., including for the avoidance of doubt that area of water within the Harbour Limits, and includes the Harbour Estate;
<b>"Harbour Estate"</b>	means the piers, wharves, quays, jetties, stages, berths, pontoons, slipways, roads, sheds, and other works and conveniences and the lands, buildings and property of every description and of whatever nature which are for the time being vested in or occupied by C.H.C. and used for the purpose of the harbour undertaking;
<b>"Harbour Limits"</b>	means Coleraine Harbour limits as defined in in the Harbour Revision Order of 2002;
<b>"Harbour Master"</b>	means the Harbour Master appointed by C.H.C., his deputy or any nominee of theirs and any other person authorised to act in that capacity;
<b>"Harbour Office"</b>	means any harbour office in Coleraine;



<b>“Owner”</b>	means any persons other than C.H.C. with or claiming to have any proprietary or possessory interest in any Goods, Vessel or Equipment or other property and and their assignees or successors in title - and in relation to Goods, includes any consignor, consignee, shipper, receiver or agent for the sale, receipt, custody, loading or unloading and clearance of those goods, and any other person in charge of the goods and his agent in relation thereto; in relation to a vessel, includes any part-owner, broker, charterer, sub-charterer agent or mortgagee in possession of the vessel or other person or persons entitled for the time being to possession of the vessel (and when used in relation to a vehicle or Equipment, includes any part-owner or agent or person having charge of the vehicle or Equipment for the time being); and in relation to other property includes lessors;
<b>“Quay”</b>	means any quay, wharf, pier, jetty, dolphin, landing stage or structure, pontoon, berth, mooring or other place at which Vessels can load or discharge or embark or disembark passengers or vehicles, and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto as well as the waters surrounding the same, all within the Harbour Limits;
<b>“Representative”</b>	means any employee, agent, driver, contractor, sub-contractor, master or any other person having command or crew of any Vessel;
<b>“Services”</b>	means any private leisure or commercial service or facility that C.H.C. provides to the User including the Facilities;
<b>“Terms”</b>	means these General Terms & Conditions;
<b>“User”</b>	means (a) any person who enters the Harbour Area; (b) any Facility Holder or any person who or by any Representative using any Facility or requests or receives the benefit of any Services; (c) any Owner or carrier of any Vessel, Goods or Equipment which may be on or come into the Harbour Area and (d) any representative or successor in title of the User;
<b>“Vessel”</b>	means any vessel, ship, craft, boat, multihull, yacht, dinghy, jet ski, marine structure and includes watercraft of every description however propelled or moved including non-displacement craft and everything constructed or used to carry persons or goods by water.

## **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 expressions “User” or “Owner” then obligations undertaken by the User or Owner shall be obligations undertaken by such persons jointly and severally.



- 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 Terms.
- 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 following those terms.
- 2.6. Any reference to “person” includes any natural person, company, body corporate or unincorporate or other judicial person, partnership, firm, joint venture or trust.
7. The rights of C.H.C. under these Terms are in addition to the rights and powers conferred by statute, statutory instrument, the Acts, the Byelaws and the Directions. In the event of any conflict between these Terms and any statute, statutory instrument, the Byelaws or the Directions (“legislation”) the legislation shall prevail. Nothing in these Terms shall prejudice the right of C.H.C., in any circumstance, to rely on any statutory provision including the Merchant Shipping Acts, Harbours Act and any other statute.

### **3 Application of Conditions**

- 3.1 These Terms shall apply:
  - (a) to all Services provided by C.H.C. whether directly or indirectly and whether within the Harbour Area or elsewhere, including the licence or use of a Facility;
  - (b) to all physical access by any Vessel, person, Goods or Equipment to or from the Harbour Area.
- 3.2 In the absence of express acceptance of these Terms by the User, acceptance shall be constituted in the event of the entry of any Vessel, person, Goods or Equipment into or onto the Harbour Area or by application (oral or otherwise) to C.H.C. for entry to the Harbour Area, 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 Terms shall apply unless and to the extent that they have been agreed in writing by C.H.C.
- 3.4 C.H.C. may issue special terms and conditions governing the provision of certain services. Such special terms and conditions shall apply in respect of those certain services. These Terms shall continue to apply to those certain services as well to the extent that they are not at odds with the special terms and conditions.



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

- 4.1 Subject to any other provisions of these Terms, C.H.C. shall exercise reasonable skill and care in carrying out the Services. No greater obligation, express or implied, is accepted.
- 4.2 C.H.C. reserves the right to appoint sub-contractors to perform all or any part of the Services. Any sub-contractor shall have the benefit of these Terms. C.H.C. 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 by them directly.
- 4.3 Unless specifically otherwise agreed in writing with the User, where C.H.C. provides Services in respect of Goods or Equipment being loaded onto or unloaded from or passengers and their Goods or Equipment embarking or disembarking from any Vessel, it does so purely as agent of the actual and/or contractual carrier.
- 4.4 C.H.C. shall have absolute discretion in the handling, storage and transportation of any Vessel, Goods or Equipment and in the allocation of Facilities, Quays, plant, machinery, labour and storage space.
- 4.5 Other than as provided for in section 33 of the Harbours, Docks, and Piers Clauses Act 1847, C.H.C. may in its absolute discretion:
- (a) refuse to permit any User to enter the Harbour Area and refuse to accept any Vessel, Goods or Equipment on or into the Harbour Area;
  - (b) require any User, Vessel, Goods or Equipment who/which has entered the Harbour Area to leave it or require the same to be removed at any time;
  - (c) move any vessel, goods or equipment within the Harbour Area in accordance with these Terms and Conditions.
  - (d) decline to undertake or suspend the performance of all or any part of the Services.

In such event, C.H.C. shall not have any liability and shall not be liable to pay any compensation in respect thereof.

- 4.6 Following any exercise of C.H.C.'s rights under Condition 4.5, the User shall remove the Vessel, Goods or Equipment from the Harbour Area within 48 hours, or sooner if required by the Harbourmaster. C.H.C. 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 C.H.C. by or in respect of such Vessel, Goods or Equipment.
- 4.7 In the event that:



- (a) the User fails to remove the Vessel, Goods or Equipment from the Harbour Area within 48 hours following the exercise of any of C.H.C.'s rights under Condition 4.5;
- (b) any Goods or Equipment are not collected and removed from the Harbour Area by the User at the time of landing; or,
- (c) the User fails to remove any Goods or Equipment which are deemed to be an imminent threat to the safe operation of the harbour as contained within the Harbour Area.

C.H.C.. shall be entitled at the expense and sole risk of the User to remove and place wherever C.H.C. (acting reasonably) deems appropriate such Vessel and/or Goods or Equipment. Charges for transit shed, Quay rental and any other storage will be made where appropriate.

4.8 In the event of any Vessels, Goods or Equipment within the Harbour Area being or reasonably appearing to be in disrepair, sinking, neglected, abandoned or to pose a risk to safety or the environment or to be injurious to any amenity of the Harbour Area, C.H.C. shall be entitled at the risk and expense of the User and Owner:

- (a) immediately to remove to any place C.H.C. shall in its discretion consider fit and where necessary dispose of such Vessels, Goods or Equipment in the case of hazard or other emergency without prior notice; and
- (b) generally to remove to any place C.H.C. shall in its discretion consider fit and dispose of or sell such Vessels Goods or Equipment on reasonable notice to the User (the length of such notice to be determined by C.H.C. in its sole discretion acting reasonably on a case by case basis).

If the User's contact details are not known to C.H.C.. then C.H.C. shall be entitled to remove and dispose of or sell such Vessel, Goods or Equipment after leaving written notice on the Vessel, Goods or Equipment and in each case to charge for the reasonable costs incurred in respect of the removal, storage and disposal/sale of such Vessel, Goods or Equipment.

4.9 The User shall notify the Harbour Master as soon as practicable after becoming aware of:

- (a) any vessel that has sunk or grounded in the harbour or the occurrence of any accident within the Harbour Limits;
- (b) any defect in the harbour infrastructure including breakwaters, Quays, mooring chains, ropes, buoys, pontoon berthing or water/electrical/safety appliances.

10. If a Vessel sinks or partially sinks within the Harbour Limits, C.H.C. shall be entitled to raise and salvage the Vessel and to recover from the User reasonable charges, fees and expenses



incurred in respect thereof. Where reasonably practicable the User will be given prior warning that C.H.C. is about to exercise its rights under this clause.

11. Any Vessels or other Goods or Equipment left at C.H.C.'s premises or moorings are subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on C.H.C. as bailee a right of sale exercisable in certain circumstances. Such sale will not take place until C.H.C. has given notice to the owner or has taken reasonable steps to trace the Owner in accordance with the Act. A similar right of sale shall also arise when any Vessel or other Goods and Equipment of which C.H.C. is not a bailee are left at C.H.C. premises or moorings.

## **5 Payments**

- 5.1 The User shall be liable for all Charges, payments, fines and expenses due in connection with any Vessel, Goods or Equipment and for any loss and/or damage (including indirect or consequential loss or damage) suffered or incurred by C.H.C.. in connection therewith.
- 5.2 On the earlier of (i) request by the Harbour Master or C.H.C. and (ii) 24 hours of a Vessel entering the Harbour Area, the master/skipper, or Owner, or agent of such Vessel shall furnish, as appropriate:
  - (a) the description of Goods or Equipment loaded and unloaded (or to be loaded and unloaded) including number of packages, gross weight and port to which the Goods or Equipment are to be shipped/port from which the Goods or Equipment have arrived together with confirmation that all necessary customs or import/export declaration have been completed and notified to the relevant authorities,
  - (b) any passengers embarked and disembarked (or to be embarked or disembarked),
  - (c) the name of the Vessel,
  - (d) the name and address together with an email address and mobile telephone number of the User or the User's Representative to whom Charges are to be rendered;
  - (i) details of the length (measured to the next highest full metre) and draft of the Vessel. This includes all overhangs such as bowsprits, davits dingies, transom hung rudders, outboard motors, boarding ladder etc.
  - (e) any other information requested by C.H.C. or required to be disclosed to C.H.C. under the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, prior to arrival.
- 5.3 All sums payable are unless otherwise stated exclusive of value added tax and any other duty or tax, which shall (to the extent applicable) be payable by the User at the rate and in the manner from time to time prescribed by law.
- 5.4 All sums due to C.H.C. shall be made within 30 calendar days of receipt of the Services or request for payment, whichever shall occur earlier. Payment shall be made without



deduction, withholding, abatement, set-off, or any counterclaim whatsoever, save as may be required by law. All payments shall be made in cleared funds in GB pounds sterling. If C.H.C. agrees to accept payment in any other currency other than GB pounds sterling, the User shall be liable for an additional handling charge, which shall be calculated at the sole discretion of C.H.C.

- 5.5 Interest shall accrue to C.H.C. on any sums outstanding for the period from the 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 4 per cent per annum above the base lending rate of the Ulster Bank. Notwithstanding any other provision within these Terms, if the User fails to pay any Charges due to C.H.C., C.H.C. shall have the right to suspend provision of any and all Services without penalty, until such time as payment is made in full. C.H.C. reserves the right to remove the Vessel, Goods, Equipment or vehicles and all other property of the User from the Harbour Area should payment not be forthcoming in the required time period, to alternative premises or moorings without incurring any liability for any loss or damage caused during or after its removal and C.H.C. shall have no responsibility for its safe custody. The licensee shall be responsible for all costs incurred by C.H.C. in berthing or storing the vessel, vehicle or property elsewhere.
- 5.6 (a) Subject to all applicable laws and regulations, C.H.C. shall have a general and specific lien over any Vessel, Goods or Equipment and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to C.H.C. of the User or the owner of such Vessel, Goods or Equipment. C.H.C. shall be entitled to refuse to deliver up any Vessel, Goods or Equipment until all such sums have been paid in full. Storage and other charges accruing shall continue to accrue during such period. If any sums remain unpaid for a period of 60 days from the invoice date, C.H.C. shall be entitled to take possession of any such Vessel, Goods or Equipment and to sell or otherwise dispose of them, reimbursing the User the sale proceeds less sums due to C.H.C. and the reasonable sale costs and expenses incurred by C.H.C., who shall have no liability in this regard.
- (b) In the exercise of its lien under Condition 5.6(a) C.H.C. reserves to itself absolute discretion as to the means and procedure to be followed in the handling, storage and transportation of any Vessel, Goods or Equipment notwithstanding any express instructions given by the User in relation thereto.
- 5.7 If the User ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms) 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 agreement with its creditors or if 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 C.H.C. shall be entitled immediately to recover from the User or any other person liable for the 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 C.H.C. (including





any accrued interest and other Charges properly levied in accordance with these Terms) and all loss and expense incurred by C.H.C. as a result of such circumstances arising.

- 5.8 Any query to be raised by the User on any invoice issued by C.H.C. must be made in writing within 30 days of the invoice date failing which, the User shall be deemed to have accepted the invoice.
- 5.9 Any Vessel loading and/or discharging personnel, Goods or Equipment and/ or using on-board or off-board lifting equipment onto/off any pier will be deemed as having berthed alongside.  
This includes Vessels alongside but held in position by DP (dynamic positioning).

## **6 Hazardous Goods And Waste**

- 6.1 The User shall remove from the Harbour Area and properly and safely dispose of all trade and other waste at the end of every day or as often as necessary or as reasonably directed by C.H.C., whichever the sooner. Failure so to act will give C.H.C. the power to remove such trade or other waste at the User's expense.
- 6.2 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by C.H.C. except with prior approval of the Harbour Master and then only in accordance with conditions (including any additional cost) prescribed by them and all applicable laws, regulations, regulatory requirements and codes of practice.
- 6.3 The User warrants that any approved waste material or goods of a dangerous, hazardous or poisonous nature are stored in suitable containers and 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.
- 6.4 C.H.C. shall be entitled to remove and dispose of any trade or other waste material or goods of a dangerous, hazardous or poisonous nature found within the Harbour Area in contravention of Conditions 6.1, 6.2 and/or 6.3 and recover their reasonable costs in respect thereof from the User. C.H.C. shall have no liability in respect thereof.

## **7 Import And Export Goods**

- 7.1 Authorisation for the removal of imported Goods or Equipment shall not be granted by C.H.C. unless such Goods or Equipment are correctly released and cleared and confirmation has been provided to C.H.C. that all current customs and import/export legislation has been complied with and that there are no statutory or other holds in respect of same.
- 7.2 The User shall be responsible for all import duties, levies, fines and charges relating to the Vessel, Goods or Equipment.





- 7.3 The User shall indemnify C.H.C. against any and all claims made against C.H.C. by H.M. Revenue & Customs and any other duties, levies, fines, charges and expenses in respect of such Vessel, Goods or Equipment.

## **8 User Warranties**

- 8.1 The User warrants to C.H.C. that they are either the owner of the Vessel, Goods or Equipment or it has the authority and consent for itself and for and on behalf of all persons having any title to or interest in any Goods, Equipment or Vessel to accept these Terms and has specifically notified these Terms to such persons and that neither the User nor the beneficial owner of the said Goods, Equipment or Vessel is on the UK Sanctions List.
- 8.2 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 C.H.C. is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of/ or during any relationship between C.H.C. and the User, these Terms 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 C.H.C. hereunder.
- 8.3 The User warrants that its employees (and those of any agents or contractors it may engage including hauliers and stevedores) are properly trained and competent to carry out the tasks assigned to them at the time those tasks are assigned and undertaken including in relation to the giving of any instructions to C.H.C. or the inputting of any information into any electronic device or system operated or managed on behalf of C.H.C. The User warrants that such persons have the full authority to give such instructions or input such information.
- 8.4 The User warrants that it and its Representatives shall at all times comply in all respects with all applicable laws, regulations, codes of practice and international conventions relating to the Harbour Area (including the Acts, Byelaws, Directions and requirements of C.H.C.) and to the Vessel, Goods or Equipment (including navigation, manning, carriage, packing, handling, storage and movement) and with all other statutory duties, requirements and obligations incumbent on the User. The User warrants that it shall at all times keep any Vessel, Goods or Equipment within the Harbour Area in a full and sufficient state of maintenance and repair and (in the case of any Vessel) in sound, watertight and seaworthy condition.
- 8.5 The User warrants that it has obtained or shall obtain and maintain at its own expense, all necessary permits, licences and authorisations relating to the carriage, handling, storage and movement of the Vessel, Goods or Equipment.
- 8.6 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 arising



as a result of the Vessel, Goods or Equipment, as may be required by C.H.C.

- 8.7 Save as otherwise agreed with C.H.C. and (if applicable) in accordance with Condition 6.3, the User warrants that while within the Harbour Area any Goods or Equipment or Vessel:
- (a) are not dangerous, hazardous, poisonous, toxic, radioactive, flammable or injurious or liable to become so (other than distress signals/flares which are to be safely stowed);
  - (b) will not contaminate or cause danger, injury, pollution or damage to any person, the Harbour Area, any other Goods, Equipment or Vessel or the environment;
  - (c) are not rotten, infested, verminous or subject to fungal attack or liable to become so;
  - (d) do not require for their safekeeping, any special protection 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 agreed with C.H.C.);
  - (e) contain no unauthorised or controlled substances, contraband, pornographic material, sanctioned or other illegal matter;
  - (f) are properly and sufficiently packed, documented and labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice for all shipping, handling, storage, dispatch, customs and like purposes; and
  - (g) are in a safe, fit and proper condition to be handled or otherwise dealt with by C.H.C., its equipment and its employees, agents and subcontractors.
- 8.8 The User warrants that it shall not:
- (a) use any devices which 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;
  - (d) use any devices which transmit radio signals without the prior written consent of C.H.C. except that the User may use marine band and radar radio frequencies and wi-fi.
- 8.9 The User warrants the accuracy of all descriptions, weights, values and other particulars relating to Goods and Equipment furnished to C.H.C. for handling, customs and other



purposes. C.H.C. shall not be responsible for checking the accuracy of any documentation handled by it.

## **9. Use of Facilities**

- 9.1 C.H.C. shall be under no obligation to provide any Facility but in the event that it does so and in consideration for the payment of Charges, C.H.C. shall grant to the User a temporary licence to occupy whichever Facility may be allocated by C.H.C. for the Vessel on conditions to be agreed in writing. C.H.C. shall have the right to alter the location of the Facility from time to time.
- 9.2 Use of any Facility is strictly for the purpose set out in any booking form or Facility agreement application form completed by the User and in the Schedule of Charges, Dues & Fees.
- 9.3 Visitor moorings are strictly for short-term leisure use by visitors only. Use of a Facility by a visitor leisure User shall be on the terms of the Yacht Harbour Association Berthing, Mooring and/or Storage Ashore Licence 2013 (or any later version in existence at the time of use), which terms are deemed to be incorporated herein, but these Terms shall prevail in the event of any inconsistency.
- 9.4 C.H.C. shall allocate a Facility at a location to be determined at the sole discretion of the Harbour Master. A User shall not be entitled to exclusive use of any Facility. The Harbour Master may at any time require the User to move to an alternative Facility, whereupon the User shall forthwith move the Vessel and/or any associated gear or other possessions to the appointed new location.
- 9.5 Users are not permitted to sleep on board their craft, whilst berthed in the harbour, unless that vessel has a suitable manufacturers holding tank for grey water and sewage. Facilities will be withdrawn from Users who breach this expectation, unless with express permission. Privately owned vessels paying harbour charges as private craft must not operate their craft on a commercial basis. Any owner who changes the use of their craft from a private vessel to a commercial vessel (either by conversion or replacement) will have their Facility licence terminated.
- 9.6 Any Users wishing to remain aboard after hours must inform the Harbour Master and will be subject to the additional live aboard terms and conditions in the attached schedule.
- 9.7 There will be no overnight stays on boats stored in undercover storage. For overnight stays including live aboards on boats or boats using any facility, permission must be granted by C.H.C., this includes live aboards and will be subject to the additional live aboard terms and conditions in the attached schedule.
- 9.8 C.H.C. will take delivery of post for live aboard licensees, but, it shall be the responsibility of the licensee to collect this no less frequently than twice weekly from the Harbour office during office hours and C.H.C. and their staff shall have no responsibility whatsoever whether in contract, tort or otherwise for any loss, theft or other damage of whatsoever caused arising from the handling or storage of post on behalf of licensees (including without limitation any economic loss or other loss of turnover, profits, business or goodwill) except to the extent that such loss, theft or damage may be caused by the tort or breach of contract of C.H.C. or its employees.



- 9.9 Any parcel deliveries expected by the Licensee shall be notified in advance to C.H.C.. C.H.C. will notify the licensee of receipt of such deliveries. These must be collected promptly (and in any event within 24hours) from the Harbour office (subject to opening hours). If appropriate the C.H.C. will use reasonable endeavours at the sole risk of the licensee, to direct delivery of large, bulky or heavy items to a convenient access point for collection by the licensee.
- 9.10 C.H.C. will not under any circumstances take delivery of any medicines or medical / pharmaceutical supplies and it will be the sole responsibility of the licensee to make arrangements for delivery of such items.
- 9.11 Any on-board solid/fuel/wood stoves must comply with all appropriate marine safety, health and safety and fire regulations and the requirements of the Vessel's insurers, and only fuels approved by the manufacturer of the stove/flue may be used. All Vessels must have adequate ventilation and be equipped with appropriate fire fighting equipment (which must be maintained and tested on an annual basis with maintenance records available for inspection by C.H.C. or its staff or insurers). All Vessels must be fitted with a smoke alarm and carbon monoxide detector alarm. The licensee must take all necessary steps to ensure that the use of such stoves does not present any risk to the property of C.H.C. or any other vehicle, Vessel, plant or equipment which may be nearby. No ash or other refuse shall be deposited overboard, but shall be retained in a suitable container until cold and then properly disposed of in the receptacles provided by the Local Authority.
- 9.12 All live aboard licensees must comply with C.H.C.'s environmental policies and no sewage, oil, grease or other deleterious, objectionable or poisonous substance or refuse of any kind shall be discharged into the River Bann or onto any part of the Harbour Area or any pipes or conduits thereon. The licensee shall produce to C.H.C. on request satisfactory evidence of the pumping out of any holding tanks on the vessel.
- 9.13 Users shall not obstruct in any way the pontoons or accessways or any other property of C.H.C.
- 9.14 Users shall not expose or hang out washing of any description on the outside of a Vessel or in the open air.
- 9.15 Users shall not allow any excessive noise to emanate from the vessel nor to permit any activity thereon which is or may become a nuisance or annoyance to C.H.C. or to the owner or occupier of any neighbouring property.
- 9.16 The licencees must supply documentation to C.H.C. that effluent waste is being collected by a supplier from their Vessel. There will be no dumping of effluent waste into the River Bann.
- 9.17 A licence to use a Facility is for a specific Vessel only and is personal to a particular Facility Holder. The licence may not be shared, assigned, transferred, sub-licensed or sublet, or succeeded or otherwise used or made available to anyone else other than the Facility Holder



without the prior written consent of C.H.C. which C.H.C. shall, in its absolute discretion, be entitled to withhold. In the event that it is discovered that a Facility Holder is breaching this condition the licence will be withdrawn with immediate effect (this includes the renting of beds/berths on board vessels whilst using harbour facilities. e.g. via websites such as [www.bedsonboard.com](http://www.bedsonboard.com) and [www.airbnb.co.uk](http://www.airbnb.co.uk)).

- 9.18 The licence to use a Facility shall be for the periods and at the rates published from time to time by C.H.C. in the current Schedule of Charges, Dues and Fees. If payment for a Facility is not received by the due date, C.H.C. reserves the right to cancel the licence to use that Facility.
- 9.19 The User and all persons having control or having charge of or being aboard his/her Vessel shall observe and perform all statutory and other obligations relating to the harbour including all Byelaws and regulations made by C.H.C. and Directions given by the Harbour Master. In the event of the User their staff or crew failing to comply, C.H.C. may give notice terminating the Facility licence and to remove the Vessel with immediate effect.
- 9.20 C.H.C. reserves the right to cancel an offer of a Facility if on inspection of the Vessel it is considered unsuitable for berthing in the Harbour Area because of its dimensions, weight, method of construction, state of repair, type of fendering or other reason. The Harbour Master's decision in this regard will be final. In such circumstances a proportionate refund of any future berth rental charges already paid will be made, but any costs or expenses of removal or storage will be chargeable to the User.
- 9.21 C.H.C. or the Harbour Master may terminate a Facility Holder's licence at any time by giving 1 months' notice in writing to the Facility Holder's last known address, or may decline to invite a Facility Holder to renew their Facility, for any reason including if the Facility Holder has failed to comply with these Terms and Conditions or any other regulations imposed by C.H.C., has been abusive towards C.H.C. or its staff, has required repeated chasing for payment or owes C.H.C. outstanding debts, or if the Vessel is in a poor state of repair or dangerous, or if insurance documents are not provided upon request, or where a discretionary facility is being discontinued.
- 9.22 If the Facility Holder does not have his / her own Vessel on the authorised Facility for a period of one year from the date on which his or her Facility commences, then the licence to use that Facility will be forfeit. If a commercial or passenger boat owner does not put a Vessel on the allocated mooring facility for two consecutive years from the date on which his or her Facility commences, or in the view of the Harbour Master the commercial Vessel is only infrequently and irregularly operated, C.H.C. shall be entitled to terminate the licence for the Facility. In this context, a commercial Vessel operated for fewer than 10 days in a year would be considered to be infrequently or irregularly operated.
- 9.23 C.H.C. shall have the power to move, enter or board any Vessel, if in its opinion this is necessary for the safety of the Vessel and / or safety or convenience of other Harbour users and / or safety of C.H.C.'s premises, plant or equipment and/or any other reason determined by the Harbour Master acting reasonably. If required by C.H.C. the User shall leave a duplicate set of their Vessel keys with the Harbour Master at all times. Keys will not be released to third parties without the User's prior consent.



- 9.24 Vessels are permitted to berth in the Harbour Area or anchor within the Harbour Limits only in accordance with the directions of the Harbour Master or other C.H.C. employees. Any mooring position and type shall be subject to the Harbour Master's prior approval. Failure to obtain such approval will result in the Vessel being moved, at the User's sole risk and expense, to a suitable location and the latter shall be at the sole discretion of the Harbour Master. The User shall not place a Vessel on a mooring prescribed in the mooring scheme as prepared by C.H.C. which is of a different size than that for which the application was made, unless with the prior written consent of the Harbour Master.
- 9.25 The User must ensure that the name of the Vessel or a mooring number is clearly displayed on any mooring buoy not provided by C.H.C. Vessels berthed in the Harbour Area must have their name clearly displayed. The User must ensure that any display sticker provided by C.H.C. as evidence of the relevant dues having been paid, is displayed in a conspicuous position on the Vessel.
- 9.26 The User shall berth and leave the Vessel safely and securely moored and appropriately fendered and in such a manner, position and location as C.H.C. may require. Privately owned fenders must not be fixed to harbour authority property (other than by rope) without the prior consent of the harbour authority. Installation of owner's 'dock fenders' may be permitted, subject to prior approval by C.H.C. Any fixing that requires drilling into steel, stone or concrete must be undertaken by C.H.C. staff. Privately owned 'dock boxes' must not be fixed to C.H.C. property or the Harbour Estate without the prior consent of C.H.C. and a charge may be applicable.
- 9.27 Any swivel, riser chain, mooring rope or buoy, not provided by the C.H.C. shall comply with C.H.C.'s specification in that behalf and shall only be fitted by a person licensed by C.H.C. to do such work or by the Facility Holder personally in respect of his/her allocated mooring. The Facility Holder shall as soon as any swivel, riser chain, mooring rope or buoy has become fitted, immediately notify the Harbour Master of the fact. The applicant shall also arrange for regular inspection and maintenance of such equipment not provided by C.H.C. No attachment whatsoever is to be affixed to any mooring chain provided by C.H.C. without the prior approval of the Harbour Master.
- 9.28 All vessels must be monitored by the User or its Representative on a regular basis, particularly during periods of bad weather.
- 9.29 No Vessel is to be launched, lifted into or out of the water at any Quay without prior permission of the Harbour Master.
- 9.30 Users are not permitted to leave on the pontoon decks, walkways, access bridge or boat compound any equipment, fishing gear, ropes or personal belongings or any other thing whatsoever (save for brief but reasonable periods in the course of transporting the items to or from the Vessel. C.H.C. shall have the right to remove and dispose of any such items left on the Harbour Area without the prior consent of the User.
- 9.31 Users are not permitted to load, land or store any creels or other fishing related equipment, with the exception of sea angling tackle.
- 9.32 The User shall ensure that no damage, obstruction, nuisance or annoyance is caused to the Harbour Area and other harbour users.





- 9.33 Electricity is available at most berths although the supply is not guaranteed. The User will be charged for the number of units consumed and shall pay at the current rate of charges in force at the Harbour Area from time to time. Before plugging into an electricity meter, a meter reading should be taken and agreed with a member of staff. The provided security coded cable tie should be used to secure the plug to the meter. The use of power cables on pontoons is permitted provided the cable is within a protective cover to prevent a trip hazard and is not seen by C.H.C. as a permanent connection. Any cables presenting a hazard of any nature will be removed by C.H.C. and the credit on the meter will be cleared. Cable covers are available from the Harbour Office. Connectors and cables not supplied by C.H.C. shall only be used if they are of proper manufacture and comply with U.K. standards. The User will be liable for any damage to the electrical equipment incurred as a result of the acts or neglects of the User.
- 9.34 All necessary warps and fenders shall be supplied by the User. In the event that the Vessel has sails, these are required to be removed and stored safely when not in use and all rigging safely secured.
- 9.35 The User shall ensure that when not in use outboard motors are removed from the water and safely stored on the Vessel.
- 9.36 The User shall ensure that the engines of any Vessel moored in the Harbour Area shall not be operated in such a manner so as to cause damage to the bed or banks of the harbour or to any other vessel or property.
- 9.37 The User shall keep any Vessel in a sound watertight and seaworthy condition to the satisfaction of the Harbour Master at all times. C.H.C. shall have the right to carry out emergency work on the Vessel and the User shall be liable for all reasonable charges for such work.
- 9.38 Other than minor running repairs or minor routine maintenance works, no work shall be carried out on the Vessel within the Harbour Area unless with the express written consent of the Harbourmaster. Spraying is not permitted in the sheds. Such repairs shall be carried out in a safe manner so as not to cause or be likely to cause any damage or any danger, nuisance, disruption or annoyance to other marina or harbour users and local residents. C.H.C. reserves the right to terminate works in progress if it considers that these are being carried out or about to be carried out in breach of this regulation. No welding or hot works are permitted without prior written approval of the Harbour Master. If carrying out permitted work on a vessel on the hard standing or in undercover storage the User is responsible for ensuring that if such work causes dust etc, then a vacuum type machine must be used and that any litter is cleared up each day.
- 9.39 Vessels entering, leaving or manoeuvring within an Enclosed Harbour shall do so with care and caution and at such speed and in such a manner so as not to damage, endanger or inconvenience other vessels, individuals, equipment or any part of the Harbour property. A speed limit 4 knots is permitted within the breakwaters; during the months of October through to April there is a shoreline speed restriction in place throughout the Harbours, where by no vessels are to exceed 4 knots within 250 metres of the shoreline, other than in respect of use by the Harbour Master in the case of an emergency.





- 9.40 No refuse is to be thrown overboard or left at any place within the Harbour Area except in the appropriate receptacles provided by C.H.C. No effluent, detergent, fuel or other pollutants shall be spilled or dumped within the Harbour Limits. Oily rags, waste oil, used filters, etc. must be placed in the appropriate bin and must not be left lying around.
- 9.41 Any flammable materials, fuel oil, gasses and warning flares stored on board a Vessel shall be securely stored and contained in a safe and proper manner. No gas containers are premitted on Vessels stored undercover. The storage of petroleum spirit and/or flammable substances and / or toxic chemicals and / or corrosive substances and / or noxious substances in storage lockers, is strictly prohibited. Due to the legislation regarding the resale and pollution from the use of any commercial or agricultural diesel type, C.H.C. prohibits the movement of diesel on harbour property and especially the pontoons. As a consequence no User is permitted to fuel their vessel from containers or cans save in accordance with paragraphs 9.42 and 9.43 of these Terms and Conditions. Customers handling petrol for outboards are asked to do so with extreme care.
- 9.42 Other than for small outboard engines, no petrol refuelling from cans or containers are permitted on the harbour side, pontoons, steps, slipways, or moorings. Petrol refuelling is permitted at a licensed marine fuel station or when using an approved siphoning / pumping device agreed specifically with C.H.C. from cans onto moored vessels when the harbour has dried. Any fuel spillage must be reported to the Harbour Master. Smoking is strictly prohibited in any fuelling areas.
- 9.43 The User shall take all necessary precautions for the prevention of fire including providing at least one fire extinguisher on the Vessel suitable for the type of engines, fuel and equipment on the Vessel and shall comply with any requirements of the Harbour Master in this regard.
- 9.44 C.H.C. may terminate any Facility licence by sending written notice to the last known address of the User by recorded delivery post or e-mail. If the identity of the User or User's contact details are not known to C.H.C., C.H.C. shall serve such written notice by leaving a copy on the Vessel. Should this notice not be complied with or the conditions of the licence agreement not met within 14 days of the sending of the notice, C.H.C. may at the User's sole risk and expense remove the Vessel to any place where so ever and / or store it or berth it. The User shall pay the cost of such removal, storage, mooring or berthing and subsequent replacement to C.H.C. Such charges shall be a debt due to C.H.C.
- 9.45 C.H.C. will not be responsible for any loss and/or damage occasioned to any Vessel and / or property in the course of berthing, mooring, launching, moving or hauling out, unless as a direct consequence of C.H.C.'s negligence.
- 9.46 All Users using the Facilities including but not limited to slipways, steps, jetties, pontoons and staging, for whatever purpose and whether or not by the C.H.C.'s or any other party's invitation, are expected to have due regard for their own safety at all times and utilise these facilities entirely at their own risk, unless negligence can be proven against C.H.C.
- 9.47 C.H.C. has the right to exercise a general lien upon any Vessel, and / or gear and / or equipment and / or property, whilst in or upon the harbour premises, or afloat, until such time as the monies due to C.H.C. in respect of such Vessel and / or gear and / or equipment and / or property, whether on account of storage, mooring, berthing, slipping charges or



otherwise, shall have been paid. Should these charges remain unpaid, C.H.C. reserves the right to dispose of the Vessel and / or gear and / or equipment and or property and pay to the applicant the funds net of any charges as due.

- 9.48 The User shall at all times be responsible for the safety of his / her vessel and shall be strictly liable for any damage occasioned to C.H.C.'s property, during the navigation of any Vessel by the User or his / her servant or agents, or whilst the Vessel is berthed, moored, or launched, or by the Vessel slipping her berth, mooring or being cast adrift and will pay to C.H.C. on demand any claim for reasonable compensation in respect of such damage.
- 9.49 The Harbour Master and other authorised officers and servants of C.H.C., whilst acting in the course of their duty, shall not be responsible for any loss or damage which may occur as a result of compliance, or attempted compliance, with any lawful order or directions given by the Harbour Master, or such other officers or servants, nor shall C.H.C. be liable for any loss or damage arising out of compliance, or attempted compliance, with the officers' lawful orders. C.H.C., its servants, agents or employees shall not be liable for injury to any person, except where such injury arises through the negligence of C.H.C.. This clause applies equally to visitors and temporary users of the harbour and Harbour Estate, whether using a vessel, vehicle or trailer.

50. With relation to Vessel movements and storage the following will apply:

- (a) When storing vessels ashore, C.H.C. will allocate the storage / hard standing space to be allocated the Vessel owner. It is the responsibility of the licensee to advise C.H.C. in advance of moving the Vessel of any specific storage requirements, or lifting requirements specific to the Vessel.
- (b) The User hereby agrees to refrain from using any Equipment, vehicles, Vessels belonging to C.H.C. or any third party, without the written permission from the Harbour Master. If the User wishes to use their own Equipment or vehicles in the Harbour Area, they must first receive authorisation from the Harbour Master to proceed. If the User is found to be in violation of this, C.H.C. reserve the right to remove the User and their Vessel and or their Equipment or vehicles from the Harbour Area.
- (c) Whilst Harbour employees will place the strops on a vessel prior to lifting, the actual positioning of the strops is the responsibility of the User.
- (d) If a Vessel requires shoring / propping up it is the Users responsibility to ensure that this has been done to their satisfaction.
- (e) Prior to requesting a Vessel to be lifted or stored by C.H.C., the User shall be responsible for familiarising themselves with the lifting, transporting and storage equipment, and procedures employed by C.H.C. for such tasks;



- (f) In requesting that a Vessel be lifted, transported or stored, the User warrants to C.H.C. that the Vessel is structurally sound to undergo lifting, transporting or storage using the equipment and procedures employed by C.H.C.;
- (g) The User hereby acknowledges that there is an inherent risk of causing structural damage to the Vessel, its hull, or rigging, due to the significant stress placed on the Vessel whilst lifting or manouvering said Vessel, by crane, trailer or any other mechanical means. The User hereby accepts that even though a Vessel may appear sound in the water, or during transportation on a trailer, the User hereby accepts all responsibility for any damage caused to the Vessel during any lifting or manouvering of the Vessel within the Harbour Area.
- (h) The User must be present throughout the lifting, transporting and storage of his Vessel and confirm to C.H.C. and its employees that these operations have been carried out to their satisfaction;
- (i) C.H.C. in their absolute discretion may waive the requirement for the User to be present where the Vessel has been lifted, transported or stored previously by C.H.C. on behalf of the User and there have been no material alterations to the vessel since it was last lifted, transported or stored;
- (j) It shall be the responsibility of the User to ensure that all masts and other fittings are properly secured and will not impede any such lifting, transporting or storage operations.

- 9.51 Fob holders must ensure that doors are locked when leaving the storage shed.
- 9.52 Those under 16 years of age must be accompanied at all times by a responsible adult who undertakes responsibility for their safety and control.
- 9.53 There will be a deposit of £20 for a fob for the electric gate and shed access, only Vessel owners who have signed and completed the acceptance form will be issued a fob, anyone else wishing to receive access must gain permission from the Harbour Master.
- 9.54 Entry into the Harbour will be through fob access only. If you do not have your fob you will not be granted access during working hours.
- 9.55 Any visitors must report the Harbour Office and sign in to receive access.
- 9.56 Any contractors working on Vessels or who require access to the Harbour Area will have to report to the Harbour Office, provide a copy of satisfactory public liability insurance and method statement. There will be a daily rate of £10.00 per day, or if access is required more frequently a fee of £200.00 can be paid per annum. (In any case, no work shall commence until satisfactory proof that such works are either covered by the User's insurance or are covered by third party insurance (including employers' liability and public liability (including insurance against pollution or environmental damage)) is produced to C.H.C.



- 9.57 The User hereby agrees to notify C.H.C. within 7 days of any sale, transfer or mortgage of any Vessel which is the subject of a licence and shall provide C.H.C. with the name and contact details of the purchaser, transferee or mortgagee, as the case may be. C.H.C. shall be under no obligation to accept any such purchaser, transferee or mortgagee in place of the licensee. Any monies owed to C.H.C. will remain the responsibility of the licensee and must be cleared before any Vessels or equipment are released by C.H.C.
- 9.58 C.H.C. reserve the right to make a charge of 10% of the invoice value when an independent contractor works on a Vessel on C.H.C.'s property and it is the responsibility of the User to provide a copy of the relevant invoice to the Harbour Office. Any such independent contractor must register the date and time of arrival and departure at the Harbour Office.

## **10 Liability**

- 10.1 Nothing in these Terms shall exclude or in any way limit C.H.C.'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 by law.
- 10.2 Any Vessel, Goods or Equipment, when located within the Harbour Area, are entirely at the User's and Owner's own risk. C.H.C. will not be responsible for the safe custody of any Vessel, Goods or Equipment entering the Harbour Area or for any damage to such Vessel, Goods or Equipment. C.H.C. has no custody of any Vessel, Goods or Equipment within the Harbour Area and the User must arrange to have them watched appropriately while they remain within the Harbour Area.
- 10.3 C.H.C. shall have no liability whatsoever in respect of any of the following howsoever caused or arising and whether or not the same was foreseeable, known or otherwise: (a) any indirect, incidental, special or consequential loss or damage; (b) loss of actual or anticipated income, profits, contracts, licence, catch, goodwill, or business; (c) loss of anticipated savings; (d) loss which might reasonably have been avoided or minimised by the User; (e) betterment; and (f) any increased costs or expenses or both.
- 10.4 C.H.C. shall have no liability for any loss, damage, cost, expense or delay caused by or arising directly or indirectly as a consequence of any of the following: (a) acts, events or omissions beyond its reasonable control; (b) force majeure (including adverse weather, storm, high winds, lightning, earthquake, tidal wave, storm surge, flood or disease); (c) strikes, lock-out or other industrial disputes (whether involving the workforce of C.H.C. or any other party); (d) interruption, disruption or failure of any utility service or transport network; (e) war, riot or civil commotion; (f) malicious damage, theft (unless proved to have been committed by an employee of C.H.C.) or piracy; (g) wear and tear, leakage, insufficient or unsuitable packaging or addressing or latent defect of Goods or Equipment; (h) compliance with any law or governmental or official order, rule, regulation, direction or guidance; (i) accident; (j) damage to or breakdown of plant or failure of Equipment including computer hardware, computer software, telephone, radio satellite or other communication systems, alarm, locking mechanisms, C.C.T.V. machinery (including computer hardware, computer software, telephone, radio satellite or other communication systems, alarm or C.C.T.V. or refrigeration equipment); (k) loss/deletion or unauthorised access of data; (l) fire (including steps to



extinguish fire) heat or smoke; (m) temperature variation, mould or corrosion, exposure to heat or cold or light, vermin, mould, insects, rot or corrosion; (n) any Vessel, Goods or Equipment being in an unsuitable condition for the Service or any Vessel being unseaworthy; (o) acts or defaults of third parties (including suppliers and sub-contractors); (p) insufficient depth of water at any Quay or berth or its approaches; (q) voluntary use of a NAABSA berth; (r) scarcity of labour, equipment, storage areas or any other facilities; (s) acts by or on behalf of C.H.C. for the preservation of life or prevention of damage to the environment; (t) late receipt of Customs entries or landing orders, or other documents, disputes in respect of documents, or declarations made for entry purposes by or on behalf of any person, delay in passing Customs entries or obtaining clearance of the Goods or omission of information from, or a mis-statement in any statement or order to C.H.C. relating to the Goods; (u) the failure of the User or their Representative to comply with these Terms, the Byelaws or the Directions or a breach of any of the warranties or confirmations given by the User.

- 10.5 The burden of proof that any loss or damage was caused by the actionable fault of C.H.C. shall be on the User. That such loss or damage occurred within the Harbour Area or under C.H.C.'s control shall not satisfy the User's burden of proof.
- 10.6 Subject to Condition 9.1, the total liability of C.H.C. (if any) for any loss, damage, liability, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than **£100,000** and shall be the lowest of the following as applicable:

**Vessel:**

- (a) the market value at the time of the damage or loss of that part or parts of the Vessel to which the claim relates (the value of any fish or other commercial licences associated with the Vessel shall not be included in any appraisal of the Vessel's market value);
- (b) the reasonable cost of repairs;
- (c) the sum of **£50,000**.

**Equipment:**

- (a) the reasonable cost of repairs;
- (b) the market value at the time of the damage or loss to which the claim relates;
- (c) the sum of **£300** per any unit of Equipment.

**Goods:**

- (a) the market value of the Goods lost or damaged 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);

- (b) the cost of reasonable repairs;
- (c) in any other case, the sum of £100 per tonne (pro rata for any part of a tonne) or any higher general limit of liability figure in the UK Warehouse Association's standard Conditions applicable as at the date of the loss or damage unless the nature and value of the Goods have been declared to C.H.C. and C.H.C. has agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving in the Harbour Area.

10.7 Nothing in these Terms shall prejudice C.H.C.'s right to rely on any contract, convention or statutory provision providing for limitation and/or exclusion of liability including the provisions of the Merchant Shipping Acts and subordinate legislation.

10.8 It is a condition precedent to any liability of C.H.C. that C.H.C. is notified in writing in respect of:

- (a) any damage alleged to have been caused to a Vessel (and to be permitted to inspect such damage) prior to sailing or the commencement of repairs, or within 7 days from the date of such damage, whichever is the earlier;
- (b) any alleged misdelivery 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 within 7 days of the Goods leaving the Harbour Area;
- (c) any damage alleged to have been caused to Equipment prior to such Equipment leaving the Harbour Area or within 7 days from the date of such damage, whichever is the earlier, (and to be permitted to inspect such damage).

Failure to meet with these requirements shall absolve C.H.C. of any liability whatsoever. In any event C.H.C. shall be entitled (and the User hereby grants permission) to inspect any such Goods or Equipment prior to their disposal or destruction. The User shall not bring any claim in respect of any single incident below the *de minimis* limit of **£100**.

10.9 Notwithstanding the provisions of Condition 9.8, C.H.C. shall in any event be discharged of all liability whatsoever and howsoever arising to any User or its Representative unless court proceedings are commenced against C.H.C. within 12 months from the date of the event or occurrence alleged to have given rise to a claim against C.H.C.

10.10 In particular, C.H.C. shall be exempt from all liability whatsoever for deficiency, loss, damage or mis-delivery of or to the said Vessel Goods or Equipment or for delay arising out of, caused or contributed to by the handling by C.H.C. of the said Vessel, Goods or Equipment. The User shall be responsible for and shall indemnify C.H.C. against all injury (including fatal



injury), loss or damage however caused and against all claims made against C.H.C. in respect of injury to persons (including fatal injury) or loss or damage to Goods or Equipment 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 C.H.C. of the said Vessel, Goods or Equipment.

10.11 The User is under a duty to mitigate their losses, including for example, in obtaining salvage.

## **11 User Indemnities**

11.1 The User shall be liable for and shall indemnify and hold C.H.C. harmless against any and all loss, damage, claims, (including claims for personal injury and/or death), actions, liabilities, fines, losses, damages and expenses (including legal expenses) incurred by C.H.C., its employees, servants, agents or sub-contractors howsoever caused, which arise out of or in connection directly or indirectly with:

- (a) any act, omission, instruction, misrepresentation, negligence, recklessness, fraud, wilful misconduct or breach of statutory duty of the User or the Owner or any other person interested in the Goods, Equipment or Vessel;
- (b) the failure of the User to comply with the requirements of any authority, including C.H.C.;
- (c) any inaccuracy (or omission) in any warranties, declarations, particulars or information (including gross weight) given to C.H.C. in respect of a Vessel, Goods or Equipment; and  
the failure of the User to comply with any of these Terms (or to take any step which C.H.C. shall consider to have been reasonably required to remedy such failure) or the breach by the User of any of the warranties or undertakings of the User; and
- (d) the User's occupation of any Facility or use of the Services where and to the extent not solely and exclusively directly caused by the actionable fault of C.H.C.

10.2 Any sums payable to C.H.C. under Condition 10 shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

## **12 Insurance**

12.1 The User shall maintain comprehensive vessel insurance together with Public Liability insurance in respect of any Vessel, Goods or Equipment in or on the Harbour Area and any works or activities carried on on the Harbour Area, (including any crew and guests) to cover all risks including but not limited to damage by fire, impact, environmental damage, theft, removal of wreck, legal liability, whether due to the negligence of others or not and to the property of C.H.C.

12.2 The insurances under Condition 10.1 shall be in a minimum sum of **£5,000,000** or such greater sum as may be required by C.H.C. and intimated to the User. Such insurances shall be





maintained with a reputable insurance company and evidence that the Vessel, Goods or Equipment is so insured shall be provided to C.H.C. upon request. Vessels, Goods or Equipment found to be without such insurances may have any allocated berth cancelled immediately, or be removed by C.H.C. in accordance with the provisions of paragraph 4.8 of these Terms and Conditions.

12.3 C.H.C. has no responsibility to insure Vessel(s), Goods or Equipment.

### **13 Miscellaneous Provisions**

13.1 If and in so far as any part or provision of the Terms is or becomes void or unenforceable, it shall be deemed not to be or never to have been or formed a part of the Terms and the remaining provisions of the Terms shall continue in full force and effect.

13.2 The failure of a party to exercise or enforce any right conferred on that party by the Terms 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 Terms and in particular the limitations on liability are intended to inure for the benefit of C.H.C. and its employees, agents and contractors, to which end where C.H.C. contracts on its own behalf and as agent for and trustee for the benefit of those parties.

13.4 All legal relationships and agreements between C.H.C. and the User shall be governed in all respects by Northern Ireland law and the User hereby submits to the exclusive jurisdiction of the Northern Ireland courts in connection therewith, save that C.H.C. shall be at liberty to seek any interim relief, arrest or secure property of the User or to take steps to enforce any obligation or judgement against the User in any jurisdiction.