

# Marine General Terms and Conditions

December 2020

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**PLEASE NOTE CLAUSES 5, 7 AND 8 WHICH CONTAIN LIMITS AND EXCLUSIONS OF LIABILITY AND OBLIGATIONS ON THE CUSTOMER TO INDEMNIFY.**

**1 DEFINITIONS**

<b>Acts</b>	means the Belfast Harbour Acts and Orders 1847 to 2002 (as in force from time to time)
<b>Byelaws</b>	means any BHC byelaws (as in force from time to time)
<b>Berth</b>	includes any berth, quay, pier, jetty, mooring, buoy or other place at which Vessels can load or discharge Goods, or embark or disembark passengers or vehicles, and the waters surrounding the same
<b>BHC</b>	means Belfast Harbour Commissioners as constituted by the Belfast Harbour Act 1847, and its subsidiaries
<b>Charges</b>	includes all rates, dues, charges, fees and expenses or other sums which are payable to BHC
<b>Conditions</b>	means these BHC terms and conditions as updated from time to time
<b>Customer</b>	includes (i) any person visiting the Port Area (ii) any person who or by any Representative requests or receives the benefit of any Services (iii) any Owner or carrier of any Vessel, Goods or Equipment which may be on or come into the Port Area and (iv) any successor or assignee of the above
<b>Directions</b>	means any standing, general or pilotage directions issued by BHC as in force and as updated from time to time
<b>Equipment</b>	includes any machinery, plant, container, package, case, pallet, private or commercial vehicle, outsize load, truck, trailer, wagon or other piece of equipment of any description
<b>Goods</b>	includes passenger luggage and personal effects, any wares, merchandise, articles, chattels and things of any description
<b>Harbour Master</b>	includes BHC's Harbour Master, deputies and nominees

<b>Insolvency Event</b>	includes the Customer being dissolved, liquidated, made bankrupt, ceasing to trade, becoming insolvent, having a receiver or administrative receiver or administrator or manager appointed, making any composition or arrangement with creditors, suspending or threatening to suspend payments, admits inability or is unable to pay debts as they fall due
<b>Owner</b>	includes all persons (other than BHC) with or claiming to have any proprietary, financial, possessory, insurable or security interest whatsoever and whether partial or otherwise in any property - including lessors, managers, charterers, sub-charterers, consignors, consignees, shippers, receivers, mortgagees, pledgees
<b>Port Area</b>	means the area to which the Acts, any of the Byelaws or any Directions apply and as such area is defined therein together with any land or premises owned, leased or operated by BHC
<b>Representative</b>	includes any employee, agent, consolidator, broker, driver, contractor or sub-contractor (other than BHC), the Master or other person having command and crew of any Vessel
<b>Services</b>	includes any service, advice or facility provided by BHC, whether gratuitously or for which any Charges are rendered
<b>Temporary Storage Approvals</b>	means any temporary storage approvals granted to BHC by UK Border Force in conjunction with HMRC in accordance with EU 952/2013 Union Customs Code (UCC)
<b>Temporary Storage Facilities</b>	means any quay, wharf, shed or other storage area as may from time to time be designated by BHC which is covered by any Temporary Storage Approvals
<b>Vessel</b>	means any commercial or pleasure vessel or craft (whether being used in navigation or not) to which the Byelaws or any Directions may apply and includes all tenders, machinery, equipment, fittings, nets, sails, fuel, stores and provisions and everything connected with the Vessel.

## **2 INTERPRETATION**

- 2.1 Headings are for ease of reference and do not form part of or affect interpretation of the Conditions.
- 2.2 If the context so requires (i) words denoting the singular include the plural, and vice versa; (ii) words denoting any gender include all genders. Use of the word 'include' or any similar expression shall not limit the sense of the words which appear thereafter.
- 2.3 Any reference to 'person' includes any natural person, company, corporate or unincorporated body or other juridical person, partnership, firm, joint venture or trust and their assigns. If the Customer comprises more than one person obligations and liabilities of those persons are joint and several.
- 2.4 Any reference to an act, statute or secondary legislation (including the Acts) 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 made pursuant thereto.
- 2.5 The rights of BHC under the Conditions supplement and shall not in any way replace, reduce or extinguish the rights enjoyed by and powers conferred on BHC by statute, the Acts, the Byelaws and the Directions, or the relevant Schedule of Charges, all of which BHC shall remain entitled to rely upon (whether at BHC's discretion or otherwise).
- 2.6 Any obligations of the Customer under the Conditions shall not in any way replace, reduce or extinguish obligations imposed on the Customer by virtue of any statute, the Acts, the Byelaws or the Directions.

**3 APPLICATION OF THE CONDITIONS**

- 3.1 The Conditions shall apply to (i) all Services provided by BHC as principal, agent, bailee, sub-bailee or otherwise whether within the Port Area or elsewhere and (ii) all physical access by any person, Vessel, Goods or Equipment to or from the Port Area.
- 3.2 Application for or use of the Services, or the entry of any Vessel, person, Goods or Equipment into or onto the Port Area, will constitute acceptance of the Conditions by the Customer.
- 3.3 BHC 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 Conditions. The Customer agrees not to pursue any claim against any director, member of the Board, employee, agent, consultant, contractor or sub-contractor of BHC. Nothing in this clause shall in any way reduce protections which may exist under the Commissioners Clauses Act 1847.
- 3.4 No term which is at variance with the Conditions, whether in any Customer documentation or otherwise, shall apply unless and to the extent that it shall have been agreed in writing by BHC. Any Customer's terms that purport to imply BHC's agreement to those terms shall be ineffective.
- 3.5 BHC may agree specific contracts with a Customer and/or issue special terms and conditions governing the provision of certain Services in which case these Conditions shall apply unless and to the extent that they are inconsistent with any such specific contract or special terms and conditions.

**4 BHC'S PROVISION OF SERVICES**

- 4.1 BHC shall exercise reasonable skill, care and judgment in carrying out the Services. No greater obligation whether express or implied is accepted.
- 4.2 BHC may appoint contractors or sub-contractors to perform all or any part of the Services, in which case BHC shall have no greater obligation or liability than it would have had if the Services had been provided by BHC directly.
- 4.3 Unless specifically otherwise agreed in writing with the Customer, where BHC provides Services in respect of (i) Goods or Equipment being loaded onto or unloaded from any Vessel and/or (ii) passengers and their Goods and Equipment embarking or disembarking any Vessel it does so purely as agent of the actual and/or contractual carrier and shall be entitled to all the protections conferred by any contract of carriage.
- 4.4 BHC 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.
- 4.5 BHC gives no warranty as to the accuracy or availability of any depth, nautical or other information about the facilities within the Port Area or as provided through Vessel Traffic Service. The Owner and its Representatives shall at all times remain fully responsible for navigation of any Vessel and maintain its seaworthiness in all respects.
- 4.6 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by BHC except by prior agreement with BHC.
- 4.7 BHC may in its absolute discretion (i) refuse to permit any person (whether or not a Customer) to enter the Port Area or require them to leave it; (ii) refuse to accept any Vessel, Equipment or Goods on or into the Port Area or require the same to be removed; and (iii) decline or suspend performance of all or any part of the Services.
- 4.8 In particular, BHC shall be entitled to exercise its discretion under clause 4.7 where (i) the Customer is in breach of the Conditions, including where payment has not been made; (ii) in BHC's reasonable opinion there is a risk of public disorder, disruption to the Port's trade, or a risk to security of persons or property in the Port Area or the vicinity; or (iii) if to perform the Services would contravene any law, regulation or sanction or would expose BHC to the risk of sanction. The Customer waives any and all claims against BHC for any breach of statutory duty relating to exercise of its discretion.

- 4.9 Following any exercise of BHC's rights under clause 4.7, the Vessel, Equipment or Goods shall be at the Customer's risk and expense, and the Customer shall remove the same from the Port Area within 7 days, failing which BHC may do so, take possession of and sell them, and reimburse to the Customer the net sale proceeds if any. BHC 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 BHC by or in respect of such Vessel, Equipment or Goods.
- 4.10 BHC shall be entitled at the expense and sole risk of the Customer to remove and place wherever BHC deems appropriate Goods or Equipment which for any reason cannot be collected and removed from the Port Area by the Customer within any time permitted or prescribed by the Acts or Byelaws or otherwise at the time of landing and to recover reasonable charges and expenses for so doing in addition to any fee for which the Customer may be liable.
- 4.11 The Customer agrees that BHC shall have no duty of care or other obligation to check the accuracy of any documentation handled by it and shall have no liability arising out of any inaccuracies therein.
- 4.12 All instructions to BHC by any Customer in relation to Equipment or Goods must be given in writing. BHC 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.
- 4.13 BHC shall not be obliged to authorise the removal of imported Goods and/or Equipment unless such Goods and/or Equipment are correctly released and cleared with no statutory or other holds. The Customer must provide proof of payment of all customs or excise duties and charges on any Goods and/or Equipment or acceptable cash or other security for the same with any request for removal.
- 4.14 All Goods and/or Equipment must be accompanied by a manifest, as agreed with BHC, to be delivered to BHC upon request or the arrival of such Goods and/or Equipment at the Port Area or within 24 hours of the Vessel's arrival in the Port Area, whichever is the earlier.
- 4.15 Unless otherwise agreed by BHC the manifest must specify marks and number of packages, description of goods, gross weight, verified gross mass of any container, any weight imbalances, cubic measurement, name of the Vessel, port to which the Goods or Equipment are to be shipped, port from which the Goods or Equipment have arrived, any special carriage or storage requirements of the Goods or Equipment and the name and address of the Customer or its Representative to whom Charges are to be rendered.

**5 USE OF TEMPORARY STORAGE FACILITIES**

- 5.1 In accordance with EU 952/2013 Union Customs Code (UCC) and subject to the terms of any Temporary Storage Approvals, a Customer or its Representative may apply (whether through the Belfast Harbour Agents Portal for ship bookings or such other system or process as BHC deems necessary) to use the Temporary Storage Facilities to land third country goods (including for the avoidance of doubt goods arriving from Great Britain) prior to customs clearance. BHC may change the location of the Temporary Storage Facilities from time to time.
- 5.2 The importation of goods through BHC's Temporary Storage Facilities by any Customer or its Representative shall be subject to the terms of any approval granted by HMRC or UK Border Force in addition to these Terms and Conditions generally.
- 5.3 By applying for use of the Temporary Storage Facilities, the Customer or its Representative undertakes and shall be deemed to have declared their adherence to the customs arrangements pertaining to the usage of BHC's Temporary Storage Facilities, and shall be deemed to have consented to BHC retaining information and documents necessary to comply with its obligations under UCC and providing the same to HMRC and UK Border Force as may be required.
- 5.4 The Customer and its representative (jointly and severally) warrant to BHC that:
- 5.4.1 each of them shall at all times comply with obligations under the UCC and at law, including Section 167(3) of the Customs & Excise Management Act 1979 and Section 3 of The Customs Traders (Accounts and Records) Regulations 1995;
- 5.4.2 each of them shall at all times act in such a manner as to enable BHC to comply with its obligations under the UCC, at law and under the terms of the Temporary Storage Approvals issued to BHC, including the requirement to use any such system or process including any inventory linked system mandated by BHC for use as part of its obligations under the UCC;
- 5.4.3 each of them shall provide all supporting information or documents as and when required by BHC and such information and documentation will be accurate in all respects;
- 5.4.4 in lodging/presenting a timely declaration to the customs authorities, all information recorded within said declaration will be accurate in all respects;
- 5.4.5 they and each declarant will comply fully with the customs procedure used or the temporary storage procedures applicable to the items;
- 5.4.6 where a clearance or freight agent or third party declarant lodges or presents a declaration to the customs authorities, they are provided with clear written instructions on how these



- goods are to be presented to the customs authorities and the requirement to comply with the customs procedure used or the temporary storage procedures applicable;
- 5.4.7 all goods authorised or permitted to be deposited in the Temporary Storage Facilities will be taken to that area without alteration or diminution;
- 5.4.8 if there is an intention to bring into the Temporary Storage Facilities any goods which fall under the category of restricted or prohibited goods (for example Excise Goods or firearms), the agreement of BHC as the Temporary Storage Approved operator and HMRC as the customs authority shall be obtained in writing and evidence of HMRC's written agreement shall be provided to BHC before these goods are submitted to the Temporary Storage Facilities;
- 5.4.9 the Customer and its representative will keep, preserve and maintain all information, records and accounts of all goods, including entry and removal documentation for 4 years; and
- 5.4.10 the Customer and its Representative will make the same available upon request to BHC for their review and examination as and when required to facilitate execution of their obligations as the authorised holder of a Temporary Storage Approval.
- 5.5 The Customer and its Representative shall (jointly and severally) hold BHC harmless from and indemnify BHC against all loss, damage, liability, cost or expense which BHC may suffer or incur by reason of any non-compliance with these terms.
- 5.6 Without any liability on its part for any loss, damage, liability or delay whatsoever which may thereby be caused, BHC will and shall be permitted to undertake management assurance checks on sample movements of goods through the Temporary Storage Facilities, at quarterly intervals or such other intervals as BHC may be required to undertake by HMRC.
- 5.6.1 These assurance checks shall include cross reference checks using the Customs Declaration and all supporting documentation to ensure that the information declared to the HMRC is accurate in all respects and there has been full compliance with the customs procedure, regime or authorisation used, including Section 167(3) of the Customs & Excise Management Act 1979 and Section 3 of The Customs Traders (Accounts and Records) Regulations 1995.
- 5.6.2 These checks are to be carried out and treated separately to any checks or examinations that may be carried out by UK Border Force of movements/shipments into and out of storage areas within the Port.
- 5.6.3 BHC shall be entitled to report any errors found to HMRC and will use reasonable endeavours to advise the Customer of this circumstance.

**6 PAYMENTS**

- 6.1 The Customer shall be liable for all Charges, duty, taxes, payments, fines, and expenses due in connection with any Vessel, Goods or Equipment. The Customer shall, upon request, pay such Charges prior to arrival whether in accordance with the Schedule of Charges or otherwise. The Customer shall, on request, provide BHC with a bond or other security (in an amount to be determined by BHC in its absolute discretion) for all sums due or expected to be due to BHC.
- 6.2 Save as otherwise stated all sums payable are exclusive of value added tax and any other tax, which shall to the extent applicable be payable by the Customer in addition at the rate and in the manner from time to time prescribed by law.
- 6.3 Save as otherwise provided in the Schedule of Charges (i) payment of all sums due to BHC in respect of Goods or Equipment shall be made on demand and in any event within 7 calendar days and (ii) all other sums due to BHC shall be paid within 30 calendar days of receipt of the Services or request for payment, whichever shall occur earlier.
- 6.4 Payment shall be made by the Customer in GB pounds sterling in full, without deduction, withholding, abatement, set off, claim or any counterclaim whatsoever, save as may be required by law.
- 6.5 Any query must be raised by the Customer in writing to BHC within 14 days of the invoice date, failing which the invoice will be deemed to have been accepted by the Customer and any right to challenge the invoice waived.
- 6.6 The Customer shall be liable to pay interest on any sums outstanding for the period from the due date to the date of payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 where the Act applies, otherwise at 4 per cent per annum above the Northern Bank Limited base lending rate in force from time to time. Interest shall be compounded at monthly rests.
- 6.7 BHC shall have both a general and specific lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of the Charges. BHC shall be entitled to refuse to deliver up any Vessel, Equipment or Goods until all Charges including interest have been paid. Any Charges accruing shall continue to accrue during such period.
- 6.8 If any Charges remain unpaid for a period of 60 days from the invoice date BHC shall be entitled at the Customer's risk and expense to take possession of any such Vessel, Equipment or Goods and to sell them, reimbursing the net sale proceeds (if any) after deduction of any loss sums due to or incurred by BHC, including any administrative fees (which BHC shall be entitled to determine in its absolute discretion).

- 6.9 If an Insolvency Event occurs BHC shall be entitled immediately to recover from the Customer or any other person liable for the Charges all sums then due to BHC (including any accrued interest) and all loss or expense incurred by BHC arising out of or in connection with the Insolvency Event.

**7 CUSTOMER OBLIGATIONS**

- 7.1 The Customer warrants that it and its Representatives shall at all times comply in all respects with all applicable international conventions, laws, regulations, and codes of practice relating to the Port Area (including the Acts, Byelaws, standing directions and orders, and all directions and requirements of BHC or its staff) and to the Vessel, Goods and/or Equipment (including navigation, manning, carriage, packing, handling, storage, customs, import, export and movement).
- 7.2 The Customer warrants that it has the authority and consent for itself and for and on behalf of all persons having or claiming to have any title to or interest in any Vessel, Goods or Equipment to accept the Conditions and has specifically notified the existence and terms of the Conditions to such persons.
- 7.3 The Customer agrees that all rights, defences, exceptions, and limits available to any carrier or bailee by law or contract and to agents thereof are extended to BHC and those parties mentioned in clause 3.3.
- 7.4 The Customer warrants that its employees and those of any agents, contractors or sub-contractors it may engage including hauliers and stevedores will be and are properly trained and competent to carry out any tasks assigned to them at the time those tasks are assigned and undertaken and will comply in all respects with any relevant permits to work. The Customer agrees that its employees and those of any person whom it may engage may be subject to drug and/or alcohol testing at any time.
- 7.5 The Customer warrants that in relation to the giving of any instructions to BHC or the inputting of any information into any electronic service or system operated or managed by or on behalf of BHC that such persons have the full authority to give such instructions or input such information.
- 7.6 Save as otherwise agreed by BHC, the Customer warrants that while within the Port Area or its locality any Goods or Equipment:
- 7.6.1 are not dangerous, hazardous, poisonous, toxic, radioactive, flammable or injurious whether by emitting dust, gas, fumes, liquid or otherwise) or liable to become so;
- 7.6.2 will not contaminate or cause danger, injury, pollution or damage to any person or any other property or the environment;
- 7.6.3 are not over-heated, under-heated, rotten, mouldy, infested, verminous, or subject to fungal attack or liable to become so;
- 7.6.4 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 Port Area or in covered accommodation (if same be agreed with BHC);

- 7.6.5 do not comprise or contain unauthorised controlled substances, contraband, pornographic, sanctioned or other illegal matter;
- 7.6.6 are properly, accurately and sufficiently packed, documented, marked and labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice for all shipping, handling, storage, dispatch, customs and similar purposes; and
- 7.6.7 are in a safe, fit and proper condition to be handled or otherwise dealt with by BHC, its equipment and its employees, agents and sub-contractors.
- 7.6.8 BHC shall be entitled at the Customer's sole risk and expense to remove and dispose of material, Goods or Equipment that are not in compliance with any part of this warranty.
- 7.7 The Customer warrants that it has or shall obtain and will maintain at its own expense any and all necessary permits, licences or authorisations relating to the carriage, handling, storage and movement of the Vessel, Goods and Equipment.
- 7.8 The Customer warrants that it or its Representatives shall provide and have provided full, complete, correct and accurate descriptions, weights, values and other particulars of Vessels, Goods and Equipment, including the verified gross mass of any container. The handling of any non-compliant Goods or Equipment shall be at the sole risk of the Customer.
- 7.9 The Customer shall be responsible for all customs charges, duty, levies, fines and other charges and expenses relating to the Vessel, Goods and Equipment and shall indemnify BHC, its directors, employees, agents, consultants and contractors against any and all any claims made by HM Revenue & Customs and any other duty, levies, fines, charges and expenses in respect of such Vessel, Goods or Equipment.
- 7.10 The Customer warrants that any Vessel while within the Port Area or its approaches is and shall at all times be seaworthy and compliant with all applicable laws, conventions and local and international regulations.

- 7.11 The Customer shall be liable for and shall hold harmless, indemnify and defend BHC, its directors, employees, agents, consultants, contractors and sub-contractors against any and all claims, including claims for personal injury and/or death, actions, liabilities, fines, losses, damages and expenses (including legal costs and expenses on the indemnity basis) incurred by BHC, its employees, servants, agents contractors or sub-contractors (even if caused or contributed to by BHC's negligence) which arise out of or in connection directly or indirectly with: (i) the failure of the Customer to comply with the Byelaws, Directions or these Conditions or to take any step which BHC shall consider to have been reasonably required to remedy such failure; (ii) the failure to comply with the requirements of any authority; (iii) any act, omission or instruction, misrepresentation, negligence, recklessness, fraud, wilful misconduct or breach of statutory duty of the Customer its Representative or Owner of any Vessel, Goods or Equipment.
- 7.12 Any sums payable to BHC under Clause 7 shall be chargeable to and payable by the Customer in addition to and subject to the same provisions as the Charges.

**8 BHC'S LIABILITY**

- 8.1 This Clause 8 sets out BHC's entire liability to the Customer and its Representative in respect of any breach of the Conditions or for any representation, statement, act or omission (including negligence or breach of statutory duty), contribution, restitution or indemnity arising under or in connection with the Services.
- 8.2 Nothing in the Conditions limits or excludes BHC's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that such liability cannot by law be limited or excluded.
- 8.3 BHC 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:
- 8.3.1 any fine, penalty, duty or customs charges;
  - 8.3.2 any loss of profit, income, business, contracts, revenues, goodwill, hire, freight, or opportunity;
  - 8.3.3 any special, indirect, incidental, consequential or pure economic loss, costs, damages, charges or expenses;
  - 8.3.4 delay, or demurrage or detention of any Vessel, Goods or Equipment;
  - 8.3.5 any wasted or increased investment, capital expenditure, costs or expenses;
  - 8.3.6 loss or expense which was not reasonably avoided or minimised (and the burden of proof of reasonableness shall be on the Customer); or
  - 8.3.7 improvement or betterment.
- 8.4 BHC shall have no liability whatsoever in contract, tort (including by reason of negligence or breach of statutory duty) or otherwise howsoever arising, including by way of contribution, restitution or indemnity, for any loss, damage, cost, liability expense or delay caused by or arising directly or indirectly as consequence of any of the following:
- 8.4.1 any act, event or omission beyond its reasonable control;
  - 8.4.2 force majeure including adverse weather, volcanic activity, storm, high winds, lightning, earthquake, storm surge, tidal wave, flood, pandemic, epidemic or disease;

- 8.4.3 any strike, lock-out, labour disturbance or other industrial dispute (whether or not involving the workforce of BHC);
- 8.4.4 interruption, disruption or failure of any computer network, utility service, transport or satellite network;
- 8.4.5 war, civil war, state of emergency, riot or civil commotion, malicious damage, piracy, terrorism or cyber risk;
- 8.4.6 wear and tear, inherent vice, improper or insufficiency of marks, packing or packaging, leakage or latent defect of Vessel, Goods or Equipment;
- 8.4.7 compliance with any law or governmental or official order, rule, regulation or direction;
- 8.4.8 failure properly to set or damage to or breakdown of plant, machinery, container or equipment (including fire detecting or extinguishing equipment, computer hardware, computer software, telephone, radio satellite or other communication system, alarm, CCTV, refrigeration equipment, insulation or thermostatic controls);
- 8.4.9 loss, deletion or unauthorised release or access of data;
- 8.4.10 radiation, radioactive contamination, explosion, fire (including steps to extinguish fire), combustion or smoke;
- 8.4.11 temperature variation, heat, cold, exposure to light, vermin, mould, insects, rot, fungal attack or corrosion;
- 8.4.12 any Vessel being unseaworthy, any Goods or Equipment being unfit, or in an unsuitable condition for the Service;
- 8.4.13 acts or default of third parties including suppliers or sub-contractors;
- 8.4.14 failure of the Customer or its Representative to comply with the Conditions, Byelaws, Directions, directions or orders of BHC or its staff;
- 8.4.15 theft, unless proved by the Customer to have been committed by an employee of BHC;
- 8.4.16 any act by or on behalf of BHC which is reasonably necessary for the safety or preservation of life or property;
- 8.4.17 insufficient depth of water in any port channel, at any Berth or their approaches;
- 8.4.18 fraud (whether actual or attempted) by any Customer or its Representative or any third party;



- 8.4.19 arising from or in connection with the use of drones or any similar equipment.
- 8.5 Any Vessel, Equipment or Goods shall while within the Port Area be entirely at the Customer and/or Owner's risk, and save as otherwise agreed by BHC it shall have no obligation or liability for the safe custody of any Goods or Equipment entering the Port Area or being landed or placed on any Berth.
- 8.6 Nothing in the Conditions shall prejudice BHC'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.
- 8.7 Subject to clauses 8.1 to 8.6, BHC's liability (if any) shall be limited as follows:
- 8.7.1 in respect of loss of or damage to a Vessel, the lowest of (a) the reasonable cost of repairs (b) the market value of that part or parts of the Vessel to which the claim relates at the time of loss or damage or (c) the sum of GBP 1,000,000;
- 8.7.2 in respect of loss of or damage to any passenger's Goods where the passenger is the Customer for the purpose of the Conditions, the lower of (a) the actual value of the Goods lost or damaged or (b) the GB Pound Sterling equivalent as at the date of loss or damage of (i) 1,800 IMF Special Drawing Rights (SDR) per passenger for all loss of or damage to accompanied luggage (ii) 2,700 SDR per passenger for all loss or of damage to unaccompanied luggage, and (iii) 10,000 SDR per passenger vehicle;
- 8.7.3 in respect of loss of or damage to any other Goods or Equipment to which clause 8.7.2 does not apply, the lowest of (a) the reasonable cost of repairs (b) the market value at the time of the loss or damage or (c) for any item of Equipment the sum of GBP 3,000, or for any Goods or Equipment the sum of GBP 100 per metric ton or pro rata – in each of cases (a) to (c) of that part or quantity of Goods or Equipment actually lost or physically damaged; or (d) GBP 250,000;
- 8.7.4 in respect of any advice for which any fee is charged, the lowest of (a) twice the fee (exclusive of VAT) charged to the Customer for that advice or (b) the sum of GBP 50,000;
- 8.7.5 BHC's liability to a Customer for all loss, damage, liability, claim, contribution, cost and/or expense (including legal costs) arising out of or in respect of any one incident or event shall in no circumstances exceed the sum of GBP 1,000,000.
- 8.7.6 BHC's total aggregate liability to all Customers for all loss, damage, liability, claims, contribution, cost and expense (including legal costs) arising out of or in respect of any one incident or event or a series of related incidents or events shall in no circumstances exceed the sum of GBP 2,000,000.

- 8.8 It is a condition precedent to BHC's liability (if any) that, in the event of loss of or damage to any Vessel, Goods or Equipment, the Customer shall have given written notice to BHC of such loss or damage (i) in the case of a Vessel prior to its departure from the Port Area or to commencement of repairs to the damage, whichever is the earlier; (ii) in the case of Goods prior to any reconditioning or within 30 days of arrival or 60 days of leaving the Port Area; (iii) and in the case of Equipment prior to commencement of repairs or to the Equipment leaving the Port Area. The Customer hereby grants permission to BHC to inspect any Vessel Goods or Equipment prior to their leaving the Port Area, or their repair, disposal or destruction.
- 8.9 No claim shall be brought against BHC where the amount of such claim (excluding interest and/or legal costs) is less than GBP 500 (or in the case of claims to which clause 8.7.2 applies such deductible amount as is provided for under any international convention applicable to carriage of passengers and their luggage).
- 8.10 The burden of proof that any loss or damage was caused by the actionable fault of BHC shall be on the Customer. The Customer agrees that evidence that loss or damage occurred within the Port Area or under BHC's control shall not satisfy the Customer's burden of proof.

**9 INSURANCE**

- 9.1 BHC has no responsibility to insure Vessels, Goods or Equipment. The Customer shall insure Goods and/or Equipment against all risks of loss or damage while within the Port Area and shall insure for public liability in a sum of at least GBP 10,000,000.
- 9.2 The Customer shall insure in respect of any Vessel (a) for liability to BHC for damage to BHC's property in the Port Area in a sum not less than GBP 5,000,000 and (b) for environmental and wreck removal liability as may be required by applicable law or international convention or in the sum of GBP 10,000,000 whichever is the greater. The Customer for itself and with authority for and on behalf of its insurers agrees that any "pay to be paid" clause or like provision in its insurances shall be ineffective in respect of any claims by BHC.
- 9.3 It is a condition precedent to any liability of BHC that the Customer shall have valid insurance in accordance with any part of this Clause 9. The Customer or its Representative shall provide evidence of such insurance to the Harbour Master on request.

**10 MISCELLANEOUS PROVISIONS**

- 10.1 If any clause, sub-clause or other part of the Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Conditions but the remaining provisions shall continue in full force and effect.
- 10.2 The failure of BHC to exercise or enforce any right conferred on a party shall not be deemed to be a waiver of any such right or operate to bar its exercise or enforcement at any time or times thereafter.
- 10.3 Save for those persons who may be given the express benefit of the Conditions under clause 3.3, any person who is not a party to any agreement to which the Conditions apply shall have no rights under or in connection with it.
- 10.4 Any legal relationship between BHC and the Customer or Representative shall in all respects be governed by the laws of Northern Ireland.
- 10.5 All claims or disputes arising out of or in connection with the Services are to be determined exclusively by the Courts of Northern Ireland to which jurisdiction the Customer (and if applicable its Representative) irrevocably submits.
- 10.6 BHC shall nevertheless be entitled to seek any interim relief, arrest or secure property of the Customer (and if applicable its Representative) or to take steps to enforce any obligation or judgment against the Customer (and if applicable its Representative) in any jurisdiction.
- 10.7 All of the Customer's rights shall be waived and all claims against BHC shall become absolutely barred unless proceedings are commenced against BHC in accordance with clause 10.5 within 12 months of the date of any incident, act, neglect or default of BHC alleged to give rise to the claim.