

# Dumfries & Galloway Council

## Terms and Conditions of Harbour Use

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## Terms and Conditions of Harbour Use

### Part I – Definitions and Interpretation

#### 1. Definitions and Interpretation

1.1 Within these Terms the following words and phrases shall have the following meanings: -

“**Abandoned**” means the Owner has failed to tend the Vessel and/or put the Vessel to sea in the last 12 months.

“**Berth**” means the space on water or land from time to time allocated to the Customer for the Vessel.

“**Breach of Duty**” means breach:

- (a) of obligation, arising from the express or implied terms of the Contract, to take reasonable care or exercise reasonable skill in the performance of the Contract;
- (b) of any common Law duty to take reasonable care or exercise reasonable skill;
- (c) of the duty of care which as occupier of premises is reasonable in the circumstances to see that a Person entering such premises will not suffer injury or damage; or
- (d) of any statutory duty to take reasonable care.

“**Business Day**” means any weekday on which the Scottish clearing banks (or a majority of them) are open for business in the City of Glasgow.

“**Bounce Back**” means an automated message which is sent to the sender of an email when delivery of the email to the intended recipient fails.

“**Charges**” means the charges which arise under or due pursuant to the Terms and shall include but not be limited to tolls, rates and dues of every description as specified in the Schedule of Charges.

“**Competent Authority**” means any competent authority from time to time exercising a regulatory role under, or for the purposes of, any Environmental Law, including (without limitation) all courts, tribunals and other judicial or quasi-judicial bodies.

**“Commercial Vessel”** means a Vessel registered to undertake commercial activities.

**“Condition”** means a numbered provision of these Terms.

**“Container”** means any container whatsoever in which Goods are or may be packed or conveyed and shall include, but not be limited to, any container designed to form part of a Vehicle or of a Trailer to a Vehicle or any standard shipping container empty or loaded, including flats, reefers and tank containers.

**“Contract”** means any contract for the provision of Services entered into between DGC and the Customer to which these Terms apply.

**“Customer”** means any Person who has entered into a Contract with DGC for the provision of Services.

**“DGC”** means Dumfries & Galloway Council, the Local Authority in terms of the Local Government etc (Scotland) Act 1994, having their principal offices at Council Offices, English Street, Dumfries DG1 2DD

**“Environment”** means the natural and manmade environment and all or any of the following media namely; air (including air within buildings and air within other natural or manmade structures above or below ground), water (including water under or within land or in pipes, drains or sewers) and land and soil (including buildings and structures thereon) and any living organisms (including man) or ecological systems supported by any one or more of such media.

**“Environmental Law”** means all Law, statutes and subordinate legislation, European Union treaties, regulations and directives, rules of common Law and other international, European, national or local Laws and all regulations, orders, guidance notes or awards, codes of conduct or practice, byelaws and directions and all judgements, decrees, notices or orders, instructions and other lawful statements of any Competent Authority in respect of a Harbour, the Facilities, and all amendments, re-enactments and consolidations of same but only insofar as enforced in Scots Law from time to time and relating to the protection of the Environment or human health or safety and animal welfare and emissions, discharges, releases or escapes into the Environment of Hazardous Substances, or the production, processing, treatment, storage, transport or disposal of Hazardous Substances and having the force of Law from time to time.

**“Facilities”** means such facilities as may be provided by DGC and shall include, but not be limited to, aids to navigation, power, plant, machinery and equipment of any description (including without prejudice to the foregoing generality Vessels, Vehicles, cranes, grabs, lifts, conveyors and fork-lift trucks), Harbour Premises or Containers.

**“Goods”** means any items which are the subject of the Contract (whether or not in the ownership of the Customer) and shall include but not be limited to cargo, wares, merchandise, any Vehicle handled as cargo, any grain, fish, fish products, shellfish,

livestock and animals of all descriptions, any oils, liquids and bases and any other materials, property or anything whatsoever including any part thereof, any package or Container.

**“Harbour”** means the area of the relevant harbour owned by DGC together with the Harbour Premises, including without limitation the moorings and marina situated within the relevant harbour, as detailed in the relevant harbour revision order.

**“Harbour Directions”** means the directions and byelaws published by DGC as applied by DGC to the Harbour from time to time.

**“Harbour Master”** means DGC’s harbour master and includes that person’s deputies and assistants, and any other employee of DGC or other person as may from time to time perform the role of harbour master for DGC either generally or for a specific purpose.

**“Harbour Premises”** means the quays, Berths, landing places and all other works, land or buildings for the time being vest in or occupied or administered by DGC as part of the Harbour undertaking.

**“Harbour Revision Order”** means any harbour revision order applying to the Harbour available on the Transport Scotland website (<https://www.transport.gov.scot/transport-network/ports-and-harbours/harbour-orders/>)

**“DGC Harbours Safe Operating Agreement”** means the Harbours Safe Operating Agreement published by DGC as applied by DGC to the Harbour from time to time.

**“Hazardous Substance”** means any natural or artificial substance, material, liquid, gas or other matter of whatsoever nature, (in whatsoever form) which is capable of causing harm or damage to the Environment or to human health or safety, without limitation, capable of causing a common Law or statutory nuisance or which is subject to regulatory control as being hazardous.

**“HMRC”** means HM Revenue and Customs.

**“Law”** means any applicable (i) legislation, (ii) Harbour Revision Order (iii) guidance, and (iv) judgment of a relevant court of law which is a binding precedent; in each case in force in Scotland.

**“Leisure Vessel”** means a Vessel other than a Commercial Vessel

**“Master”** in relation to a Vessel means any Person having or taking the command, charge or management of the Vessel for the time being.

**“New Customer”** shall have the meaning given at Condition 6.2.

“**Owner**” in relation to a Vessel shall include the owner, agent, Master, charterer, consignee or other Person in charge of the Vessel, and in relation to Goods includes the owner, agent, consignor, shipper, consignees or other Person depositing, in charge of or holding title to the Goods and their respective agents in relation thereto.

“**Parties**” means DGC and the Customer. The term “**Party**” shall be construed accordingly.

“**Passage Plan**” means the plan prepared by the Customer in accordance with SOLAS Chapter V Regulation 34.

“**Person**” shall include any individual, partnership, company, statutory or other body or association whether unincorporated or incorporated.

“**Required Insurances**” means the insurances taken out and maintained by the Customer as set out in Condition 13.

“**SOLAS**” means the **International Convention for the Safety of Life at Sea (SOLAS), 1974**

“**Schedule of Charges**” means the standard tariff of charges published by DGC under the title of Schedule of Berthing Charges and Harbour Charges at DGC owned Piers and Slipways by DGC as applied by DGC to the Harbour from time to time.

“**Services**” means the provision of any Facilities (including without limitation, all Facilities situated at the Harbour), manpower, experience, advice, information, administration, management services, means of communication, Berthing, Un-berthing, shifting, loading, discharging, transportation, carriage, , marine services, pilotage and such other services as may be provided from time to time by DGC pursuant to the Terms, including passenger facilities and/or amenities.

“**Terms**” means these Terms and Conditions of Harbour Use, read together (subject to Condition 3.2) with the Schedule of Charges and Harbour Directions, and DGC Harbours Safe Operating Agreement as respectively in force from time to time.

“**Trailer**” means any item intended or adapted for use as an attachment to a Vehicle or Vessel, chassis or body, with or without wheels this specifically includes a caravan.

“**Un-berthing**” means the controlled departure of a Vessel from alongside a Berth.

“**Vehicle**” means a vehicle, machine, plant and equipment (including any mobile crane or excavator), Trailer or chassis (whether or not carrying or incorporating any container; and

“**Vessel**” means every description of vessel however propelled or moved, and includes anything (whether in, on, under or supported by a cushion of air over water) constructed or used to carry persons or goods by water.

1.2 In these Terms: -

- 1.2.1 the headings appearing in the Terms are for identification only and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of the Terms;
- 1.2.2 a reference in the Terms to a statute, statutory provision or subordinated legislation is a reference to such as it is in force from time to time, taking account of any statute, statutory provision or subordinate legislation which it amends or re-enacts; and
- 1.2.3 in the event of a conflict between the Terms and any or all of the Schedule of Charges, Harbour Directions and the DGC Harbours Safe Operating Agreement the Terms shall prevail.

**2. Prohibition on Corruption**

- 2.1 By accepting the Terms, the Customer and/or Owner confirms that the Customer and/or Owner is aware that DGC is bound by the Laws of the United Kingdom, including the Bribery Act 2010 in relation to its activities in the UK and abroad. The Customer and/or Owner shall not, by act or omission, cause DGC to be in breach of any national and international legislation, regulations, national standards and codes of practice, and in particular the Bribery Act 2010.
- 2.2 Without limitation to Condition 2.1, the Customer and/or Owner will not offer to any Person, including but not limited to, a public official in a jurisdiction other than the UK, or holding a position in any international or multinational organisation, any financial or other inducement or advantage of any kind in order to obtain or to retain business or other advantage for DGC.

**Part II – Basis of Contract**

**3. Extent of the Contract**

- 3.1 Unless specifically agreed in writing by the DGC:
  - 3.1.1 Subject to Condition 3.1.5 and save for statutory powers and obligations, the Terms shall be the sole conditions of the Contract and shall apply to the supply of the Facilities or Services by DGC to the exclusion of any other conditions, whether put forward by the Customer or not and of any representations outside the Terms.
  - 3.1.2 If the Customer's acceptance document, purchase order or other documentation, whether received by DGC before or after notification of the Terms, contains terms or conditions additional to or at variance with the Terms, then every such additional or varying term or condition shall be of no effect.



- 3.1.3 All Vessels, Vehicles, Containers, Goods and all Persons entering into a Contract with DGC are subject to the Terms.
- 3.1.4 DGC only accepts a Vessel or Goods for any purpose subject to the Terms and delivery of Goods to DGC or arrival of a Vessel in the Harbour shall be deemed to be acceptance by the Customer of the Terms.
- 3.1.5 The Customer shall comply and shall procure that its employees, agents, contractors, sub-contractors (of any tier), personnel, guests or any other person connected to the customer or representatives entering or utilising the Harbour comply with all terms of the Contract (to the extent applicable) including without limitation, the Terms and also all applicable byelaws, regulations (including Environmental Law), DGC Harbours Safe Operating Agreement, Harbour Directions, Harbour Revision Order and other reasonable requirements of DGC in the exercise of its rights granted and obligations due pursuant to the Terms (as such requirements are notified to the Customer by DGC from time to time) including any requirements of DGC which arise as a result of rights granted to third parties or rights claimed by third parties and any reasonable requests or instructions issued by the Harbour Master or their representative.
- 3.2 DGC will review the Terms from time to time and upon publication of an update to the Terms, the Terms as so revised shall apply to all subsequent business subject to any future review of the Terms.

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

- 4.1 DGC will only provide the Services by prior written agreement with the Customer, either at the time each Service is required or in accordance with any contractual arrangement to provide such Services over a period of time.
- 4.2 DGC reserves the right to decline to carry out any Services until DGC is satisfied that any official formalities are complied with, including authorisation from the Owner or agents, proof of compliance with all customs and other official formalities and that any necessary consents have been obtained.
- 4.3 DGC may in its discretion provide the Services or procure that the Services are provided by a successor or assignee or sub-contractor of DGC.
- 4.4 Where DGC procures that the Services are provided by a successor or assignee or sub-contractor of DGC, references in the Terms to DGC shall apply equally to such successor, assignee or sub-contractor.

#### **5. Customer's Enquiries**

- 5.1 The Customer shall be deemed to have:
- 5.1.1 satisfied itself as to the nature and extent of the risks assumed by it under these Terms.

- 5.1.2 gathered all information necessary to secure the performance of its obligations under these Terms; and
  - 5.1.3 obtained for itself all necessary information as to the risks, contingencies and all other circumstances influencing and affecting the entering into of the Terms by the Customer.
- 5.2 Without prejudice to the foregoing generality the Customer acknowledges that:
- 5.2.1 it has not agreed to the Terms in reliance on the accuracy of any information or data provided by DGC.
  - 5.2.2 the use of, or reliance upon, any of the information supplied by DGC is entirely at the Customer's own risk; and
  - 5.2.3 except where expressly provided in the Terms the Customer shall have no entitlement as against DGC under the Terms or otherwise to any relief from its obligations or to claim any expenses in relation to the performance of its obligations or to any other payment or compensation from DGC in respect of the Terms on grounds that it has used or relied upon any information or data to which Condition 5.2.1 and 5.2.2 (as the case may be) apply.

## 6. Ownership and Authority

- 6.1 The Customer warrants that it is either (a) the Owner of the Goods and/or the Vessel and has the full power to enter into the Contract and to accept the Terms; or (b) is unconditionally authorised by the Owner of the Goods and/or the Vessel to do so. The Customer shall indemnify DGC against any loss or damage, including consequential loss, which DGC may incur or suffer as a result of or arising from a breach of this warranty by the Customer.
- 6.2 The Customer may, subject to the prior written consent of DGC, give written authority for the Goods or any part thereof to be transferred by DGC to the account of another party (the "**New Customer**"), but subject to the Customer procuring that before the effective date of such transfer the Customer notifies DGC in writing of the transferee's agreement to becoming the Customer in respect of the transferring of Goods and that subject to the Terms. The Customer from whose account any Goods or any part thereof are transferred shall guarantee payment by the New Customer of the cost of any transfer and of Charges accruing during the period of 14 days after such transfer. The Charges due by the New Customer shall not necessarily be at the same rate as the Charges to the transferring Customer.
- 6.3 The Owner and the Customer shall be joint and severally liable to DGC for all Charges and other obligations due to DGC.

### Part III – Charges, Payment, Cancellation and Lien

#### 7. Maintenance

- 7.1 The Harbour Master shall provide reasonable advanced notice to any Customer when maintenance works are to be carried out at the Harbour.
- 7.2 The Customer shall be responsible for the overall welfare and maintenance of their Vessel.
- 7.3 The Customer shall be responsible for the overall welfare of their Vessel. Without prejudice to the generality of the foregoing, this shall include:
- 7.3.1 maintaining the structural integrity of the hull;
  - 7.3.2 maintaining the mast, rigging and fittings so that the Vessel will float;
  - 7.3.3 not polluting the environment; and
  - 7.3.4 suitably mooring the Vessel so that it does not break out of the Berth or mooring and does not cause damage to any other Vessel or the Harbour infrastructure.
- 7.4 It is the Customer's responsibility to ensure that all ropes and fenders must be positioned correctly by the Master of a Vessel and have sufficient strength and integrity to maintain the vessels position without damaging other vessels or Harbour infrastructure
- 7.5 With respect to moorings, the Customer shall ensure that they, and the Master of a Vessel:
- 7.5.1 shall satisfy themselves as to the suitability and safety of the ground conditions at their mooring location;
  - 7.5.2 shall provide suitable riser chains, mooring lines and marker buoys.
  - 7.5.3 shall ensure risers should be shackled to the main ground chain or independent mooring block; it is not permitted to shackle on to an adjacent mooring; and
  - 7.5.4 maintain the riser chains and mooring buoy(s)

#### 8. Charges

- 8.1 The Charges for Services and Facilities shall be those quoted in writing to the Customer or, if no Charges have been quoted or a quote is no longer valid, the Schedule of Charges shall apply. Berthing and mooring Charges will be payable annually by the Customer to DGC (in connection with the period from 01 April – 31 March) in accordance with the Schedule of Charges

- 8.2 DGC's standard Charges are as set out or referred to in the Schedule of Charges, as amended from time to time. DGC is entitled to vary the Schedule of Charges at any time in respect of subsequent business.
- 8.3 All Charges are exclusive of VAT and all other statutory impositions which the Customer shall be liable to pay to DGC in addition to the Charges and in accordance with the relevant regulations in force at the time.
- 8.4 Where based on volume, Charges may be subject to adjustment at any time for extraordinary items and/or significant increases or decreases in volume and/or significant changes in the delivery profile or storage characteristics.
- 8.5 DGC may require a deposit or other financial security in respect of any Services and/or Facilities to be provided, having regard to the likely amount of charges.
- 8.6 Any Vessel that remains at the Harbour following completion of loading or unloading may be charged on the basis of the Schedule of Charges, and the Customer shall be liable to pay such charges.
- 8.7 Notwithstanding any other provision of the Terms, all charges shall be subject to annual review by DGC.
- 8.8 The Customer shall procure that the Harbour Master may, either alone or with any other Persons, enter into any Vessel or Container within the Harbour in order to ascertain the Charges payable in respect of such Vessel or any Goods therein.
- 8.9 If any Vessel for which the Charges have been paid be obliged from stress of weather or other sufficient cause after leaving the Harbour to return with the same cargo, the Charges so applied shall not again be payable in respect of such Vessel.

## **9. Payment**

- 9.1 Subject to any written agreement between DGC and the Customer and subject to Conditions 8.1 and 9.2, Charges shall be due and payable by the Customer to DGC, as follows:
- 9.1.1 in respect of Commercial Vessels, upon the date of issue of the invoice for Services, and DGC shall require payment of the same within 30 days of that date or within such other period as may have been agreed in writing between DGC and the Customer.
- 9.1.2 in respect of Leisure Vessels, payment shall be made in advance using one of the methods available on the DGC website.

- 9.2 In the event that the Charges are not settled in full within the prescribed or otherwise agreed timescale pursuant to Condition 9.1.1, DGC may: -
- 9.2.1 claim interest from a Customer using a Commercial Vessel on the unpaid debt in accordance with the Late Payment of Commercial Debts (Interest) Act, 1998. For Customers using a Leisure Vessel, charge the Customer and/or the Owner interest on the amount unpaid at the annual rate of 5% above the base lending rate from time to time of the Royal Bank of Scotland plc accruing on a daily basis (or such other period as DGC may notify in writing to the Customer) and being compounded quarterly until payment is made, whether before or after any decree; and / or
  - 9.2.2 appropriate any payment made by the Customer and/or the Owner to such Services as DGC thinks fit (notwithstanding any purported appropriation by the Customer); and / or
  - 9.2.3 recover from the Customer and/or the Owner all costs, expenses and losses (including professional fees on an indemnity basis) incurred by DGC in recovering the Charges and accrued interest due by the Customer to DGC; and/or
  - 9.2.4 suspend provision of the Services until all sums due and to become due to DGC by the Customer have been paid with cleared funds in full to DGC and/or require advance payment in respect of any future Services; and/or
  - 9.2.5 implement the raising of Court proceedings; detention of a Vessel; refusal to Berth a Vessel; the exercise of lien over a Vessel; and sale of a Vessel in satisfaction of the debt.
- 9.3 The Customer and/or the Owner shall pay all Charges, interest and costs and expenses in full, without deduction, retention, or set-off.

## 10. Vat

- 10.1 Where under these Terms, one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first Party shall also reimburse any VAT paid by the other which forms part of its payment or costs incurred to the extent that such VAT is not available for credit for the other under Sections 25 and 26 of the Value Added Tax Act 1964.

## 11. Cancellation and Refunds

- 11.1 If the Customer wishes to cancel all or any part of the Services at any time, the Customer will notify DGC accordingly immediately in writing, in accordance with Condition 29 below.
- 11.2 Notwithstanding Condition 11.1, claims for refunds for booked services may be made by email to [DGC-harbours@dumgal.gov.uk](mailto:DGC-harbours@dumgal.gov.uk)

- 11.3 Refunds to the Customer shall be made in accordance with the following:
- 11.3.1 any reasonable costs incurred by DGC as a result of preparing, conducting or delivering the service, may be deducted from the refund;
  - 11.3.2 refunds will not be made in the event that a Berth is cancelled less than 24 hours before the agreed date.
  - 11.3.3 With regards to annual berth bookings partial refunds may be granted, on a pro rata basis, if the annual berth can be resold for the duration of the service provision;
  - 11.3.4 refunds may be made if poor weather causes cancellation of the provision of the service by DGC and an agreed alternative date cannot be found;
  - 11.3.5 refunds will be made if DGC Harbours cannot provide the service for other operational reasons.
- 11.4 Without prejudice to any other right or remedy available to DGC, DGC may by written notice to the Customer suspend any or all further Services or terminate the Contract without any liability to the Customer in the event of: -
- 11.4.1 any default of the Customer in respect of the Terms;
  - 11.4.2 the Customer (being a corporate body) having a petition presented for its liquidation or administration (otherwise than a voluntary liquidation for the purpose of amalgamation or reconstruction), having a receiver appointed over any of its assets or undertakings, or becoming subject to any other insolvency proceedings or process (formal or informal);
  - 11.4.3 the Customer becoming the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;
  - 11.4.4 the Customer becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 save that for the purposes of these Terms the minimum amount referred to in section 123(1) shall be £10,000;
  - 11.4.5 the Customer (being an individual or partnership) becoming apparently insolvent, bankrupt or granting a trust deed for its creditors;
  - 11.4.6 the Customer making any composition with its creditors or ceasing or threatening to cease carrying on business or disposes of all of its assets (or any part of its business to which the Services relate); or
  - 11.4.7 DGC reasonably apprehending that any of the abovementioned events is about to occur in relation to the Customer and notifying the Customer accordingly;
- 11.5 Charges in respect any Services which have been provided but not paid for prior to suspension or termination, shall become immediately due and payable

notwithstanding any previous agreement or arrangement to the contrary, and if the Customer fails to so pay the Charges, DGC shall be entitled to exercise all or any of the remedies competent to it pursuant to the Terms (including the lien conferred in Condition 12). Any termination of the Contract shall not relieve the Customer of any obligations it has as a result of any antecedent breach of the Contract. This Condition shall apply equally against the Customer and any trustee, receiver, liquidator or administrator of the Customer.

11.6 Without prejudice to any other rights or remedies to which DGC may be entitled, DGC shall have the right to:

11.6.1 cancel the Services in whole or in part at any time, by giving the Customer not less than 7 Business Days' written notice. The Customer shall, within 28 Business Days of receipt of such notice remove the Vessel, equipment and any other items which belong to the Customer or the Owner from the Harbour Premises;

11.6.2 in the event of any operational need, cancel the Services in whole or in part at any time, by giving the Customer not less than 48 hours written notice. The Customer shall, immediately and without unreasonable delay remove the Vessel, equipment and any other items which belong to the Customer or the Owner from the Harbour;

11.6.3 cancel the Services in whole or in part at any time, in response to inappropriate conduct or behaviours by the Customer or individuals connected to the Customer. Following such cancellation, the Customer shall, immediately and without unreasonable delay, remove all of the Customer's property (including without limitation, the Customer's Vessel) from the Harbour.

11.6.4 cancel the Services in whole or in part at any time and remove all of the Customer's property (including without limitation, Vessels, Trailers and equipment) from the Harbour where: -

- (a) the Customer has failed to maintain its Vessel in accordance with Condition 7 above;
- (b) the Customer has failed to make payment to DGC in connection with the performance of the Services in accordance with Condition 9 above these Terms and the Schedule of Charges,
- (c) the Customer has placed their Vessel at a location in the Harbour that has not been allocated to them by DGC;
- (d) the Customer has Abandoned its Vessel;

11.6.5 without prejudice to Condition 32, notwithstanding the DGC failing to take any actions available to them at the time in respect of Condition 11.6, DGC

shall be entitled to refuse to enter into any future Contract with the Customer.

11.7 Provided always that any cancellation under this Condition 11.6 shall not relieve the Customer from:

11.7.1 any liability under these Terms; and

11.7.2 if any Services have been provided by DGC to the Customer, the Charges due by the Customer to DGC in respect of such Services.

## 12. Lien

12.1 DGC shall have a general lien on Goods and/or Vessels for payment of all amounts due from the Customer on any account.

12.2 DGC may exercise its lien at any time by giving written notice to the Customer, such notice to specify the amount of the debt due by the Customer to DGC or particulars by which the Customer may calculate such amount. If the debt for which the lien has been exercised has not been settled within 14 Business Days of receipt of such written notice, DGC may sell or otherwise dispose of the Goods and/or Vessels or any part of them at the Customer's entire risk and expense by the best method reasonably available. The proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts due to DGC from the Customer on any account, including any claim by DGC for losses, expenses of any nature or kind whatsoever, including any cost of recovery.

12.3 Charges for storage and other applicable Services and/or Facilities shall continue to accrue on Goods and/or Vessels detained under lien.

## Part IV – Warranties, Claims and Performance

### 13. Indemnity and Insurance

13.1 All Goods belonging to the Customer, within the Harbour are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer.

13.2 The Customer undertakes to make appropriate comprehensive insurance arrangements in respect thereof, including third party public liability insurance (with a minimum value of £5 million) for Berthing, mooring and Vessels, Vehicles, Containers, Goods and employees in or operating within the Harbour ("**Required Insurances**"). Subject to Condition 13.1, the Customer shall indemnify DGC against all proceedings, claims, expenses and losses incidental thereto (including legal costs on a full indemnity basis) arising out of any loss of or damage to the Goods.

13.3 The Owner or the Customer in respect of the Container, Vehicle, Vessel or Goods as the case may be, shall be responsible for insuring against all risks and contingencies including death or personal injury of any Person or loss of or damage



to any property or goods wheresoever, whatsoever or howsoever arising from the use of or presence of his Container, Vehicle, Vessel or Goods at the Harbour.

- 13.4 The Customer shall indemnify DGC, its officers, agents and employees (and shall keep DGC fully indemnified) from and against any and all costs, liabilities, proceedings, losses, expenses, accidents, claims, demands, penalties, fines, forfeiture, damages, and any expenses incidental thereto (including legal costs properly incurred on a full indemnity basis) which DGC may sustain, incur, become responsible for, or pay arising out of or in connection with:
- 13.4.1 the Owner or the Customer's negligent or wilful acts or negligence or wilful omissions in their performance of their obligations under these Terms, or, the negligent or wilful acts or negligence or wilful omissions of the Owner or Customer's contractors, agents or servants (other than DGC);
  - 13.4.2 any inherent quality or defect of the Container, Vehicle or Vessel, or of any Goods at the Harbour or on the Container, Vehicle or Vessel;
  - 13.4.3 any claim against DGC made by a third party as a result of any act or omission of the Customer;
  - 13.4.4 any claim against DGC including any claim made by a third party as a result of any work or repairs carried out by the Customer's sub-contractor within the Harbour, including any claims for damage to the property of the sub-contractor;
  - 13.4.5 any claim for, or in respect of, death or personal injury by any employee of, or Person engaged by the Customer;
  - 13.4.6 any claim for, or in respect of, death or personal injury of any third party arising out of, or in the course of, the performance of the Customer's obligations under these Terms, save to the extent caused (or contributed to) by any breach of any express provision of these Terms by DGC or deliberate act or omission of DGC;
  - 13.4.7 any loss of, or damage to, property or a harbour arising by reason of any act of the Customer, save to the extent that such loss or damage arises out of the breach of any express provision of these Terms by DGC or any deliberate act or omission of DGC;
  - 13.4.8 any breach of statutory duty to the extent caused by an act or omission by the Customer in breach of its obligations under these Terms or the Law;
  - 13.4.9 any liability under Environmental Law;
  - 13.4.10 any infringement or alleged infringement of a third party's intellectual property rights; and

13.4.11 the Customer's breach of any provision of the Contract (including without limitation, any provision of the Terms), irrespective of cause including where caused by the negligent or wilful act or omission of the Owner or the Customer or its and their respective employees, agents, contractors, subcontractors (of any tier), personnel or representatives.

13.5 Owners and Customers shall produce evidence of the Required Insurances within 7 Business Days of a request to do so from the Harbour Master.

13.6 The Owner and the Customer shall neither take nor fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any of the insurance policies effected in terms of these Terms. Each Party shall assist and co-operate with the other Party in relation to bringing claims under such insurance policies.

13.7 The Owner and the Customer shall not knowingly do or permit to be done anything which may result in any policy or policies of insurance effected in terms of these Terms being restricted or becoming void or voidable in whole or in part.

#### **14. DGC Claims Procedure in Respect of Insurance and Indemnities**

14.1 If it appears to DGC that it is, or may become, entitled to indemnification from the Customer under a provision of these Terms, DGC shall notify the Customer in writing as soon as reasonably practicable.

14.2 Where it appears that DGC is, or may become, entitled to indemnification under a policy of insurance, DGC shall (subject to confirming in writing that the Customer will agree to indemnify DGC and provide DGC with such security in respect of the costs thereby involved as DGC may reasonably require) be entitled to take over the conduct of the claim and having done so to defend, dispute, compromise or appeal the claim.

14.3 If DGC takes over the conduct of the claim, then the Customer will give DGC all reasonable co-operation, access and assistance in considering and dealing with the claim. DGC shall keep the Customer fully informed and consult with it about the conduct of the claim.

14.4 DGC shall not pay or settle any claim without the prior consent of the Customer except as permitted by Condition 14.5 below.

14.5 DGC shall be free to pay or settle any claim on such terms as it may think fit and without prejudice to any of its rights and remedies under these Terms in the event that the Customer fails to notify DGC of its intention to dispute the claim within 10 Business Days of receiving the notice from DGC in terms of Condition 14.1, if the Customer fails to comply with the terms of Condition 14.3 or if DGC believes the dispute is having a material adverse impact on its business.

14.6 Both the Customer and DGC shall, in the event of taking any of the steps envisaged by this Condition 14, comply with the requirements of any insurer who has an obligation in respect of any liability arising under these only to the extent that such requirements are contained in the policies of insurance.

## 15. **Claims and Liability for Loss or Damage**

15.1 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless DGC from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of loss of or damage and/or theft to the Customer's or the Owner's property, including but not limited to any Vessel, Container, Vehicle or Goods irrespective of cause and notwithstanding the negligence or Breach of Duty (whether statutory or otherwise) of DGC, its agents, officers, independent contractors or sub-contractors.

15.2 DGC shall not be liable for any loss or damage caused by authorised or unauthorised access to the Harbour by anyone other than the Customer or Owner. The Customer agrees that their use of the Harbour and/or the Facilities (and the use of the Harbour, and/or the Facilities by any third parties associated with the Customer) shall be at the Customer's sole risk

15.3 DGC shall in no circumstances be liable to the Customer or the Owner, and the Customer and the Owner hereby waive any claims:

15.3.1 for any indirect, consequential or economic loss or damage of any kind whatsoever, arising from any Breach of Duty by DGC; or

15.3.2 for any loss of contract, profit, production, market, reputation, goodwill or opportunity, or for downtime or standing time costs, cost of hire of Vehicles or Vessels, charterparty costs, insurance costs, wages of crews or staff or accommodation costs, port dues and charges, towage, salvage, dry-docking, cost of capital, interest payments, financing or increased financing costs, liquidated damages or contract penalties.

15.4 DGC shall have no liability for ex gratia payments or provision of Goods, Facilities or Services without admission of liability, whether such liability is based on, or purported to be based upon, any negligence or other act or omission on the part of DGC in relation to any or all of the Services, and/or Facilities provided by DGC to the Customer.

15.5 The Owner shall be responsible for compliance with all statutory duties incumbent upon the Owner, and the Owner shall indemnify DGC for all loss or damage, including consequential loss that DGC may incur or suffer as a result of or arising from the Owner's failure to perform such duties or any part thereof.

15.6 The Customer and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of DGC for a claim.

- 15.7 Where DGC suffers or incurs any damage to the Harbour or incurs any loss or expense, either directly or indirectly, owing to the absence, insufficiency or unsuitability of packing, or contamination or decay of food or other perishable goods, or their infestation by insects, rats or vermin, or damage from insecticides or other such chemical applications, or due to the dangerous, toxic or obnoxious nature of goods, or in complying with the requirements of the provisions of the Prevention of Damage by Pests Act 1949 and the Weights and Measures Act 1985 or any other legislation of a similar nature which may impose obligations on DGC arising out of goods brought into the Harbour, then any Person being the Owner of or any other Person interested in the goods shall be jointly or severally liable to pay DGC's reasonable charges and all other costs in respect of the expense so incurred.
- 15.8 In the event of a break-out or any other incident whereby DGC incurs any cost in making any Vessel safe, the Customer shall reimburse all such expenses to DGC (inclusive of any DGC staff time). Any services provided by DGC in connection with making any Vessel safe pursuant to this Condition 15.8 shall be charged in accordance with the rates published on the DGC website as updated from time to time.
- 16. Force Majeure**
- 16.1 DGC shall be relieved of its obligations under the Contract to the extent that at any time whether before or after entry of any Person or acceptance of any Vehicle, Vessel, Container or Goods performance of such obligation is prevented by or non-performance arises wholly or partly, directly or indirectly from the act, neglect or default of the Customer (including but not limited to any breach or default by the Customer of its obligations under the Terms), or if any such obligation is, or is in the reasonable opinion of DGC, likely to be rendered impossible or substantially more difficult as a result of any cause, event or occurrence which DGC was either unable to prevent or could not reasonably be expected to prevent having due regard to the interests of DGC, including, but without prejudice to the foregoing generality, any of the following causes, events or occurrences:
- 16.2 act of God, inclement weather, epidemics, contamination, explosion, flood, tempest, fire or accident;
- 16.3 war (declared or undeclared) or threat of war, warlike actions, sabotage, terrorism, piracy, insurrection, civil disturbance or requisition or any act or omission in response to any notified or reasonably anticipated possibility of any of the same;
- 16.4 visits to or ceremonies at the Harbour or nearby premises involving civilian, military or diplomatic dignitaries or VIP;
- 16.5 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 16.6 import or export regulations or embargoes;

- 16.7 strikes, lock-outs or other industrial action or trade dispute (whether involving employees of DGC or of a third party);
- 16.8 difficulties in obtaining raw materials, labour, fuel, parts, machinery or equipment;
- 16.9 power failure or breakdown in machinery;
- 16.10 pests, insects or vermin; or
- 16.11 any other cause beyond DGC's reasonable control.

## Part V - Vessels

### 17. General Compliance

- 17.1 The Customer shall provide 48 hours written notice prior to arrival at the Harbour. This Condition 17.1 shall not apply to annual Berth holders or fishing Vessels entering the Harbour to land a catch.
- 17.2 The Customer shall ensure that every Vessel approaching, entering or leaving the Harbour shall be fit for purpose and shall be compliant with all national and international legislation, regulations, national standards and codes of practice.
- 17.3 The Customer will comply with all directions it receives from the Harbour Master (including those set out in the Harbour Directions) and the DGC Harbours Safe Operating Agreement and will obtain and comply with all necessary licences, consents and permits for marine services. Berth holders at all times shall use a suitable tender for getting to and from moorings.
- 17.4 The Master of every registered Vessel shall, on demand, produce the certificate of registry/ measurement of such Vessel.
- 17.5 The Customer shall not undertake any commercial activities at the Harbour without obtaining the prior written consent of DGC. The Customer will ensure that the following documents / information are provided to DGC in connection with any such request to perform commercial activities at the Harbour:
  - 17.5.1 a copy of all licences relating to the Vessel,
  - 17.5.2 a copy of the Master and Crew of the Vessel's qualifications and;
  - 17.5.3 a copy of all commercial insurance cover held by the Customer
- 17.6 The Customer shall procure that every Vessel and her Master approaching, or entering, the Harbour pursuant to the Contract shall comply with the Harbour Directions.
- 17.7 The Customer shall ensure that every Vessel is compatible with the Berth and capable of entering the Harbour and manoeuvring into and out of the Berth without assistance from DGC or any other Person in normal operating conditions or without

causing inconvenience or endangerment to other Persons or Vessels at the Harbour.

- 17.8 Before DGC accepts a Vessel, the Customer must provide in writing such details of it as DGC may require. If the Customer wishes to utilise a different Vessel at the Harbour, the Customer must notify DGC in writing of such proposal no later than 48 hours in advance. The Customer will not utilise the Harbour in connection with such substitute Vessel until DGC have consented to such substitution in writing.
- 17.9 Berths and moorings are not transferable, except with the prior written consent of DGC.
- 17.10 The Harbour Master shall be entitled to inspect all Vessels within the Harbour, the results of such inspections being recorded and discussed with the Vessel's Owner and/or Master of the Vessel. The Customer shall fully comply and co-operate with the Harbour Master in respect to such inspections.
- 17.11 The Customer shall be responsible for the safety of every Vessel entering the Harbour and for complying with all safety requirements for the Vessel, passengers, crew, Vehicles, Goods, freight and livestock.
- 17.12 The Customer shall notify DGC immediately of any collision, accident or safety concern at or affecting the Harbour.
- 17.13 The Customer shall keep the harbour free from obstruction caused by any property under the Customer's control.
- 17.14 The Customer shall comply with all applicable Law and all requirements of DGC and directions of the Harbour Master in the performance of its obligations pursuant to the other provisions of this Condition 17 (as such requirements and directions may be notified to the Customer by DGC from time to time) including any requirements of DGC which arise as a result of rights granted to or asserted by third parties.
- 17.15 The Customer shall be responsible for the upkeep, manning, operation, loading and discharge of the Vessel and the ticketing, embarkation, carriage and disembarkation of passengers, Vehicles, goods, freight and livestock using the Vessel and shall ensure that appropriate personnel are provided to marshal the passengers using the Vessel.
- 17.16 The Customer may not make any alterations to the Harbour.
- 17.17 No Customer shall have overnight occupancy on board of any Vessel at the Harbour for a consecutive period of 16 days or for a cumulative period which is in excess of 60 days in any financial year, without the prior written consent of DGC.
- 17.18 DGC shall have the right to prevent any Customers from utilising the Harbour where DGC reasonably considers that: -

17.18.1 the Customer's health would preclude them from utilising the Harbour in a safe manner; and/or

17.18.2 the Customer's use of the Harbour is likely to cause harm or risk to other Persons.

17.19 No Customer shall cause nuisance, inconvenience or annoyance to other users of the Harbour or any neighbouring land or property.

17.20 Any Customer operating a vessel which proceeds to sea should ensure it is operated in accordance with SOLAS Chapter V Regulation 34.

## **18. Port Waste Reception Facilities Regulations 2003**

18.1 These Regulations place new requirements on ships to notify the Harbour Master, in advance of their arrival, of the type and quantities of waste onboard, deliver waste to the reception facilities provided before leaving the Harbour, and pay a mandatory charge to contribute to the cost of providing waste reception facilities. The Customer agrees and undertakes to comply with the requirements set out in the Regulations.

## **19. Salvage**

19.1 DGC shall not be under any duty to salvage or preserve a Customer's Vessel or other property under any circumstances unless DGC has been expressly engaged to do so by the Customer on commercial terms. Similarly, DGC shall not be under any duty to salvage or preserve a Customer's Vessel or other property from the consequences of an accident which has not been caused by DGC's negligence or some other Breach of Duty on DGC's part. DGC reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property, the Environment, or navigation. Where DGC does so, DGC shall be entitled to charge the Customer for the costs incurred by DGC on a normal commercial basis.

## **20. Berth Allocation**

20.1 The physical layout of the Harbour and the varying needs and obligations of DGC and its Customers requires that DGC retains absolute control of Berth allocation within the Harbour. Accordingly, the Customer shall not be entitled to the exclusive use of any particular Berth but shall use such Berth as is from time to time allocated to the Customer by DGC (section 33, Harbours, Docks and Piers Clauses Act 1847). Where DGC directs the Customer to use an alternative Berth, the Customer will immediately move the Customer's Vessel to such alternative Berth. DGC shall have the right to move the Customer's Vessel to an alternative Berth at the Harbour at any time at DGC's sole discretion

20.2 DGC shall have the use of the Berth when it is left vacant by the Customer.

20.3 Where requested to do so by DGC, the Customer shall provide DGC with a copy of a Vessel's Passage Plan.

## **21. Fuelling**

21.1 The Master of a Vessel shall refuel only at the designated fuelling Berth (if any) and are to vacate the Berth when the fuelling operation is completed. The Customer shall ensure that fuel is only transported in suitable containers which are compliant with applicable Laws. Where fuel is required to be transferred in portable containers, DGC reserves the right to refuse the use of any Container not deemed compliant with current legal regulations.

## **22. Stowage**

22.1 All dinghies, tenders and rafts shall be stowed aboard the Vessel unless DGC allocates a separate Berth for them.

## **23. Berth and Storage**

23.1 All storage of Vessels must be on cradles or Trailers, unless otherwise agreed;

23.2 All lifting, movement and storage, including Vehicle and Trailer storage, is entirely at the Owner's risk;

23.3 Masts and Vessels must be suitably prepared by the Owner for hoisting or craning;

23.4 Multihull Vessels may be accommodated dependent on storage availability and may be subject to a surcharge;

23.5 The Length Overall LOA shall be calculated as the maximum length of any Vessel and includes all overhangs such as pulpits, davits and bowsprits. Measurements are taken to the nearest tenth of a metre;

23.6 DGC reserves the right to meter all electricity and water usage;

23.7 A charge will be made for Vessels remaining ashore after the booked period.

## **24. Work on Vessels**

24.1 No work or services shall be carried out on any Vessel, Vehicle or Trailer or other property at the Harbour without DGC's prior written consent except for minor running repairs or minor maintenance of a routine nature by the Customer or his regular crew.

24.2 DGC shall not be responsible to Customers or third parties for the consequences of any Person's failure to respect any part of this Condition 24, but DGC shall be entitled to demand the immediate cessation of any work which in its view breaks these requirements.



## Part VI – Vehicles and Trailers

### 25. Vehicles and Trailers

- 25.1 The Customer shall not use Vehicles or Trailers or bring any Vehicles or Trailers to the Harbour unless such is authorised in writing by DGC.
- 25.2 The Customer shall indemnify and keep indemnified DGC from and against all loss or damage caused by the use of Vehicles or trailers at the Harbour.

## Part VII - Goods

### 26. Handling of Goods

#### 26.1 Discharging

- 26.1.1 When a Customer requires goods to be unloaded by DGC, the Customer will ensure that: -
- (a) no less than 48 hours in advance it delivers to DGC in writing details of the name of the Vessel, a cargo manifest showing the Harbour of unloading, bills of lading numbers, the quantity and description of the Goods, a stowage plan and the Person to whom the charges are to be made;
  - (b) the Goods are packed in a manner sufficient to protect them prior to and during loading;
  - (c) an acceptable release note is provided to DGC for Goods when application for collection of the Goods is being made; in the absence of prior agreement with DGC it removes the Goods from the Harbour within 7 days of completion of discharge from the Vessel; and
  - (d) notification for acceptance in respect of all dangerous goods (as defined in the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Goods in Harbour Areas Regulations 2016, and that the Customer shall comply in all respects with the said Code and the directions of the Harbour Master, in respect of such Goods.
- 26.1.2 Unless otherwise agreed in writing between the Parties, DGC shall only be liable for the Goods while they are in the course of being unloaded save to the extent where any loss or damage to the Goods is caused by incorrect or incomplete information provided to DGC by the Customer or the Owner or where any loss or damage to the Goods is caused by the Customer or Owner's breach any of its obligations listed in Condition 26.1.

26.1.3 Prior to and upon completion of unloading, DGC shall have no liability for the Goods.

## 26.2 Loading

26.2.1 When a Customer delivers Goods to DGC for loading by DGC, the Customer will ensure that:

- (a) the Goods are deposited at a location previously agreed by DGC;
- (b) not less than 48 hours before the Goods require to be loaded DGC is provided with a national standard shipping note stating the verified gross weight of the Goods (which should not exceed 5 tonnes without prior consent of DGC);
- (c) the Goods are packed in a manner sufficient to protect them prior to and during loading;
- (d) it has clearly identified, immediately below the shipping mark, each package of the consignment by marking on it the nature of the contents, the package number and the harbour of discharge;
- (e) all HMRC formalities are complied with and evidence of such compliance made available for scrutiny by DGC if required;
- (f) unless otherwise agreed by DGC in writing, such Goods are presented for loading no more than 7 days before the arrival of the Vessel; and
- (g) notification for acceptance in respect of all dangerous Goods (as defined by the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Goods in Harbour Areas Regulations 2016, and that the Customer shall comply in all respects with such Code and the directions of DGC's Harbour Master, in respect of such Goods.

26.2.2 Unless otherwise agreed in writing between the Parties, DGC shall only be liable for the Goods while they are in the course of being loaded save to the extent where any loss or damage to the Goods is caused by incorrect or incomplete information provided to DGC by the Customer or the Owner or where any loss or damage to the Goods is caused by the Customer or Owner's breach of any of its obligations listed in Condition 26.2

26.2.3 Prior to and upon completion of loading, DGC shall have no liability for the Goods.

## 26.3 DGC's rights

- 26.3.1 If the Customer fails to specify the gross weight of the Goods or if DGC wishes to verify the weight or bulk of the Goods, DGC may weigh or measure the Goods and the weights or bulk of the Goods determined by DGC shall be deemed to be the true weight or bulk of them. In any event DGC shall be entitled to invoice the Customer on the basis of the weight of the Goods passing over the weighbridge.
- 26.3.2 Unless otherwise agreed with the Customer, DGC shall not be responsible to the Customer for the accuracy of the equipment used in the process of weighing or measuring the Goods.
- 26.3.3 If Goods unloaded by DGC are not collected by the Customer or its agent within the 7-day period referred to in Condition 26.1.1 of these Terms, DGC may (but shall not be bound to) remove them to and store them at another place of storage in accordance with Condition 27 of these Terms, all at the Customer's expense.
- 26.3.4 If the Customer is unable to provide DGC with a document of title to the Goods or there is an irregularity of the title, DGC may retain the Goods until it is satisfied as to the title of the Person claiming the Goods. DGC may insist on that Person providing an indemnity satisfactory to DGC prior to releasing the Goods.

## 27. Storage of Goods

### 27.1 Customer's Obligations and Rights

- 27.1.1 When a Customer presents Goods for storage (only upon having prior written agreement), it shall: -
- (a) present the Goods in a condition suitable for storage, having regard to the Facilities available, and which complies with any relevant statute or other regulation; and
  - (b) where the Goods require any special treatment, provide full instructions for treatment of them.

In the event the Customer fails to comply with the above directions, DGC shall be relieved of all and any liability for the condition of the Goods and notwithstanding any other powers provided to them, DGC may exercise its remedies in terms of Condition 11.

- 27.1.2 The Customer may inspect the Goods from time to time, provided the Person sent to inspect provides written evidence to DGC of his authority to do so.

27.1.3 The Customer shall indemnify DGC in respect of all proceedings, claims, expenses and losses as a result of any breach of this Condition 27.1.

## 27.2 DGC's Rights

27.2.1 DGC shall be entitled in its sole discretion to: -

- (a) refuse to accept Goods for storage;
- (b) open and reseal Containers and packages to ascertain the condition of Goods, either prior to accepting the Goods for storage;
- (c) inspect the Goods during storage and where, in the reasonable opinion of DGC, the Goods have: -
  - (i) deteriorated;
  - (ii) ceased to be in a condition suitable for storage;
  - (iii) ceased to meet the requirements of any relevant statute or other regulation; and/or
  - (iv) are likely to cause damage to other Goods or property;

serve notice on the Customer to remove such Goods, where necessary or desirable, within a given time.

27.2.2 Where the Customer, having received notice fails to remove Goods promptly or where removal is not practical, DGC may destroy the Goods. The Customer shall be responsible for the cost of such removal or destruction and any other loss connected with the condition of the Goods.

## 27.3 Customer's Undertakings

27.3.1 The Customer undertakes that:

27.3.2 when presented for storage, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of DGC or to any other Goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever;

27.3.3 before presentation of the Goods for storage, the Customer will inform DGC in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which DGC may need to comply;

27.3.4 it will reimburse all duties and taxes that DGC may be required to pay in respect of the Goods;

- 27.3.5 unless prior to acceptance of the Goods by DGC, DGC receives written notice containing all appropriate information, none of the goods constitutes “waste” as defined in the Environment Protection Act 1990;
- 27.3.6 unless prior to acceptance of the Goods by DGC, DGC receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution of the Environment or harm to human health;
- 27.3.7 it will report immediately to DGC, any incident which has caused or is likely to cause any damage, injury, damp, infestation, leakage or the escape of fumes or substances at the Harbour;
- 27.3.8 unless otherwise specified in writing to DGC that any Goods, equipment or Vessel, which it delivers, directs to or causes to be upon any open area of the Harbour: and
- (a) are not dangerous, hazardous, poisonous or flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the harbour area.
  - (b) are not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation.
  - (c) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Harbour area.
  - (d) will not contaminate or cause danger, injury, pollution or damage to any Person or any other Goods, equipment or Vessel or the Harbour area or the water or air adjacent thereto.
  - (e) do not require for their safekeeping any special protection (other than as may be agreed in writing between DGC and the Customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, criminal acts, 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 DGC).
- 27.4 Notwithstanding any notice under Condition 27.5 if there is a breach of Contract by the Customer, the Customer will indemnify DGC against any loss or damage it suffers which is related to the breach and will pay all costs and expenses (including professional fees) incurred in, and DGC’s reasonable charges for, dealing with the breach and its consequences. The Customer will pay an extra storage charge equal to the amount of any fine or penalty payable by DGC wholly or partly as a result of a breach by the Customer of this Contract. If DGC suspects a breach of any undertaking in Condition 27.3 it may demand the immediate removal of any Goods

held for the Customer, or itself arrange their removal without notice, at the Customer's expense.

- 27.5 The Goods shall be removed by the Customer from the custody or control of DGC at such date as may have been agreed between the Parties. In the absence of such agreement, and otherwise where reasonably necessary, DGC may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice or, in the case of perishable Goods, within 3 days.
- 27.6 In the event of failure by the Customer to pay any amount due to DGC or to remove any of the Goods from the custody or control of DGC (notice in accordance with Condition 27.5 having been given) at the due time, DGC may, without prejudice to its other rights and remedies against the Customer, give notice in writing to the Customer of DGC's intention to sell or otherwise dispose of the Goods at the Customer's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable Goods within 3 days, from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed, DGC shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Customer's entire risk and expense by the best method reasonably available, and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts due to DGC from the Customer on any account.
- 27.7 In the case of perishable Goods, notice under Condition 27.5 may be combined with a notice under Condition 27.6.

## Part VIII – General Contractual Matters

### 28. Reservation of Rights

- 28.1 DGC reserves the right to refuse to provide the Services for any reason (including, without prejudice to the foregoing generality, weather conditions) or to provide the Services at such times and/or subject to such further conditions as DGC consider to be reasonably necessary.
- 28.2 In the event of any movement of a Vessel leading to a closure of the Harbour (or part thereof) to other Vessels, DGC shall be entitled to impose an enhanced level of Charge on the Vessel whose movement has resulted in such closure
- 28.3 When reasonably necessary and at the sole and unfettered discretion of DGC, the Goods or any part of the same may be carried, stored or handled with other compatible goods or transferred between suitable elements of the Harbour.

### 29. Notices

- 29.1 Notwithstanding Condition 11.2, any notice or other communication pursuant to, or in connection with this Contract shall be:

29.1.1 in writing in the English language;

- 29.1.2 sent by registered post, email or registered airmail; and
- 29.1.3 sent to the relevant Party or Parties for the attention of the contact and at the address or email addresses listed for that Party in Condition 29.4 (where applicable) or at such other address or email addresses (or marked for the attention of such other Person) as such Party may have notified to the other Party in accordance with this Condition 29 (provided that such notification relating to a Party's change in address or email addresses for the purposes of this Contract must state the date on which the change is to occur, which cannot be earlier than the date of deemed delivery of such notice pursuant to Condition 29.2).
- 29.2 Subject to Condition 29.3, any notice or other communications shall be deemed to have been both given and received: -
- 29.2.1 if sent by registered post (other than airmail), at 10.00am (local time at the place of destination) on the second (2<sup>nd</sup>) Business Day after the day of posting;
- 29.2.2 if sent by registered airmail, at 10.00am (local time at the place of destination) on the fifth (5<sup>th</sup>) Business Day after the day of posting; or
- 29.2.3 if sent by email, the following day at 9.00am on the Business Day immediately following the day on which the notice is sent by e-mail. This will not apply where a Bounce Back email is sent by the recipient, in which case the notice will be deemed to not have been given.
- 29.3 If a notice or other communication is given or deemed given at a time or on a date which is not a Business Day, it shall be deemed to have been given on the next Business Day.
- 29.4 For the purposes of Condition 29.1, notices or communications relating to DGC should be addressed to: -

**DGC: Dumfries and Galloway Council**

English Street, Dumfries

DG1 2DD

Email: DGC-Harbours@dumgal.gov.uk

For the attention of: The Harbour Master

**30. Provisions Severable**

- 30.1 If any provision of these Terms shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or other authority whose decisions shall be binding on either of the Parties, the same shall be deemed to be

severable and the remainder of the Terms shall remain valid and enforceable to the fullest extent permitted by Law.

### **31. No Partnership or Lease**

31.1 Save as expressly set out herein, nothing in the relationship between DGC and the Customer under the Terms or any agreement between the Customer and DGC incorporating the Terms (in whole or in part) shall create or be deemed to create a partnership or joint venture between DGC and the Customer or Owner or the relationship of principal and agent between DGC and the Customer or the Owner and neither Party shall have any authority to act on behalf of or otherwise to legally bind the other in any way, and further does not confer upon the Customer or Owner any rights of property, occupation or security of tenure in respect of the equipment, Facilities or any other property of or under the control of DGC.

### **32. Waiver**

32.1 No failure, forbearance or delay by DGC to enforce or otherwise require performance of any of the provisions of these Terms or of an agreement between the Customer and DGC incorporating the Terms (in whole or in part) shall be or be construed as a waiver of DGC's rights.

32.2 No actual, deemed or implied waiver by DGC of any breach by the Customer of the Terms or of any such agreement between the Customer and DGC shall be considered as a waiver of any prior, concurrent or subsequent breach of the same or any other provision.

### **33. Dispute Resolution**

33.1 In the event of any complaint or dispute arising between the Parties in relation to the Contract the matter should first be referred for resolution to the Harbour Master or any other individual nominated by the Council from time to time.

33.2 Should the complaint or dispute remain unresolved within fourteen (14) Business Days of the matter first being referred to the Harbour Master or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive of the Council and the Chair or Chief Executive of the Customer with an instruction to attempt to resolve the dispute by agreement within twenty eight (28) Business Days or such other period as may be mutually agreed by the Council and the Customer.

33.3 In the absence of agreement under Condition 33.2, the Parties may seek to resolve the matter through mediation under such appropriate dispute resolution model as is agreed by both parties. Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.

### **34. Governing Law and Jurisdiction**



34.1 The Terms shall be governed by Scots Law and any disputes arising in relation thereto shall be subject to the exclusive jurisdiction of the Scottish Courts.

**35. Entire Agreement**

35.1 These Terms and any documents referred to herein represent the entire understanding and constitute the entire agreement between DGC and the Customer in relation to the subject matter of the Terms and supersede all prior proposals, representations, agreements and negotiations relating thereto between the Parties.