

## **GENERAL TERMS & CONDITIONS**

**Edition: January 2021**



### **1. Definitions**

1.1 In these Terms unless the context otherwise requires, the terms set out shall have the meanings ascribed to them herewith:

- “Byelaws”** means the byelaws of PIP currently in force, including the Portsmouth Mile End Quay Byelaws 1988;
- “CHA Orders”** means the Portsmouth (Pilotage) Harbour Revision Order 1988 and the Portsmouth (Pilotage) Harbour Revision Order 1992;
- “Charges”** includes all dues, charges, payments, fines, costs, expenses and any other sums payable to PIP;
- “Directions”** means any special directions given by the Harbour Master and the Pilotage Directions;
- “Equipment”** includes any plant, machinery, container, package, case, pallet, vehicle, trailer, truck wagon or other piece of equipment of any description;
- “Goods”** includes passenger luggage and personal effects, any cargo, wares, merchandise, articles and things of any description;
- “Harbour Master”** means the PIP Harbour Master as appointed by Portsmouth City Council, his deputies or any nominee of theirs;
- “Harbour Office”** means the Harbour office at Whale Island Way, Portsmouth, PO2 8EB;
- “Insolvency Event”** includes the User ceasing to trade (either in whole, or as to any part or division involved in the performance of these Terms), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or if an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or (being an individual) the User shall become bankrupt or make any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, or suspending or threatening to suspend payments, admits inability or is unable to pay debts as they fall due;
- “Land”** includes land covered by water;

- “Manifest”** means (unless otherwise agreed in writing by PIP), written confirmation of marks and number of packages, description of Goods, gross weight, any weight imbalances, cubic measurement, name of 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 User or the User’s Representative to whom Charges are to be rendered;
- “Owner”** includes all persons (other than PIP) with or claiming to have any proprietary, financial possessory or security interest, partial or otherwise, including lessors, charterers, sub-charterers, consignors, consignees, shippers, receivers, mortgagees and pledgees;
- “Pilotage Directions”** means the pilotage directions made by Portsmouth City Council under the Pilotage Act 1987 and contained in section 2 of the PIP’s “Dues, Rates and Charges and Pilotage Arrangements 2019” (as amended from time to time);
- “PIP”** means Portsmouth City Council as SHA and therein Portsmouth International Port as the operating department;
- “Plan”** means the plans annexed to these Terms named "The Camber and Gunwharf Statutory Dredge Extents" and "Portsmouth International Port - Statutory Dredge Extents";
- “Port Area”** means the Statutory Port Limits and any additional area of Land or premises leased or operated by PIP;
- “Quay”** includes any quay, pier, jetty, berth, mooring or other place at which Vessels can load or discharge Goods and/or Equipment or embark or disembark passengers or vehicles, and the waters surrounding the same, within the Port Area;
- “Representative”** includes any employee, agent, consolidator, broker, driver, contractor or sub-contractor (other than PIP), the master or any other person having command and crew of any Vessel;
- “Services”** includes any service, advice or facility that PIP provides to the User whether any Charges are rendered or not;
- “SHA”** means Portsmouth City Council acting as statutory harbour authority under the SHA Acts including the Harbours Act 1964;
- “SHA Acts”** means the following:
- i. Act For Enlarging The Town Quay of the Borough of Portsmouth and for improving that Portion of the Harbour of Portsmouth called the Camber 1839;
  - ii. Harbours, Docks and Piers Clauses Act 1847 (as incorporated);
  - iii. Portsmouth Camber Quays Act 1868;
  - iv. Landport Wharf Act 1883;

- v. Portsmouth Camber Quays Order 1898
- vi. Portsmouth Camber Dock And Flathouse Wharf Order 1911;
- vii. Portsmouth (Camber Dock And Flathouse Wharf) Harbour Revision Order 1990;
- viii. Portsmouth Flathouse Quay Harbour Revision Order 1990;
- ix. Portsmouth (Camber Dock) Harbour Revision Order 1995;
- x. Portsmouth Corporation Act 1959;
- xi. Portsmouth Corporation Act 1967;
- xii. Portsmouth Mile End Quay Revision Order 1966;
- xiii. Portsmouth Mile End Quay Revision Order 1973;
- xiv. Mile End Gardens Portsmouth Act 1978;
- xv. Portsmouth Mile End Quay Revision Order 1981;
- xvi. Portsmouth Mile End Harbour Quay Revision Order 1988;
- xvii. Portsmouth Mile End Quay Harbour Revision Order 1991;
- xviii. Portsmouth Mile End Quay (Albert Johnson Quay) Harbour Revision Order 1992;
- xix. Portsmouth Mile End Quay (Berth No. 2 Extension) Revision Order 1993;
- xx. Portsmouth Mile End Quay (Continental Ferry Port Phase 7) Revision Order 1994;
- xxi. The Portsmouth (Continental Ferry Port) Harbour Revision Order 1999;
- xxii. The Portsmouth (Continental Ferry Port Berth 2 Extension) Harbour Revision Order 2011;
- xxiii. Portsmouth New Dock Act 1859;
- xxiv. Portsmouth (Millennium Waterbus Landing Stages) Harbour Revision Order 2000;
- xxv. Portsmouth (Tall Ships Berths) Harbour Revision Order 2000; and
- xxvi. any other relevant and applicable statutes, delegated or subordinate legislation which are duly bound to be complied with;

**“Statutory Port Limits”** means the area over which PIP is the SHA below mean high water springs under the SHA Acts as shown shaded yellow on the Plan;

- “Terms”** means these general terms and conditions (as updated from time to time);
- “User”** includes (a) any person who enters the Port Area; (b) any person who or by any Representative requests or receives the benefit of any Services; (c) any Owner or carrier of any Vessel, Goods or Equipment which may be on or come into the Port Area; and (d) any successor or assignee of the above;
- “Vessel”** means any boat, ship, barge, pleasure craft or other vessel of any description and any part thereof.

## **2. Interpretation**

- 2.1 Headings are for ease of reference and do not form part of or affect interpretation of these Terms. 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 ‘in particular’ or any similar expressions shall not limit the sense of the words which appear thereafter.
- 2.2 Any reference to ‘person’ includes any natural person, company, corporate or unincorporated body or other judicial person, partnership, firm, joint venture or trust and their assigns. If the User comprises more than one person obligations and liabilities of those persons are joint and several.
- 2.3 Any reference to an act, statute or secondary legislation 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.
- 2.4 The rights of PIP under these Terms are in addition to the rights and powers conferred by statute, the SHA Acts, the CHA Orders, the Byelaws and the Directions, each of which take precedence over these Terms in the event of any inconsistency.

## **3. Application of Conditions**

- 3.1 These Terms shall apply:
- a. to all Services provided by PIP whether directly or indirectly and whether within the Port Area or elsewhere; and
  - b. to all physical access by any Vessel, person, 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 these Terms.
- 3.3 PIP 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 these Terms.
- 3.4 Subject to Condition 3.5, no terms or conditions whether express or implied which are at variance with these Terms, whether in any User documentation or otherwise, shall apply unless and to the extent that they have been agreed in writing by PIP. Any User’s terms that purport to imply PIP’s agreement to those terms shall be ineffective.

- 3.5 PIP may agree specific contracts with a User and/or issue special terms and conditions governing the provision of certain Services. In which case these Terms shall apply unless and to the extent inconsistent with any such specific contract and/or special terms and conditions.
- 3.6 These Terms may be altered or varied by written notice at any time by PIP as it may consider appropriate from time to time in such manner and in such respects as PIP may consider desirable.

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

- 4.1 Subject to any other provisions of these Terms, PIP shall exercise reasonable skill, care, speed and judgement in carrying out the Services. No greater obligation, express or implied, is accepted.
- 4.2 PIP may appoint contractors or sub-contractors to perform all or any part of the Services. PIP shall have no greater obligation or liability whether express or implied than it would have had if the Services had been provided by it directly.
- 4.3 Unless specifically otherwise agreed in writing with the User, where PIP provides Services in respect of, Goods or Equipment being loaded onto or unloaded from, or passengers and their Goods and Equipment embarking or disembarking, any Vessel, it does so solely as agent of the actual and/or contractual carrier.
- 4.4 PIP shall have absolute discretion in the handling, storage and transportation of any Vessel, Equipment or Goods and in the allocation of Quays, plant, machinery, labour and storage space. All Vessels berthing or anchoring within the Port Area must act in accordance with the directions of the Harbour Master. No Vessel is to be launched, lifted into or out of the water at any Quay without prior permission of the Harbour Master.
- 4.5 PIP may in its absolute discretion:
- a. refuse to accept any Vessel into, or require it to leave, the Port Area, if the Vessel, its Equipment or Goods are not compatible with the port facility or Quay;
  - b. require any Vessel, Equipment or Goods having entered the Port Area to leave it or require the same to be removed at any time; and
  - c. decline to undertake or suspend the performance of all or any part of Services;

and in such event PIP shall not have any liability and shall not be liable to pay any compensation in respect thereof. The User waives any and all claims against PIP for any breach of statutory duty relating to the exercise of its above discretion.

- 4.6 Following any exercise of PIP's rights under Condition 4.5, the User shall remove the Vessel, Equipment and Goods from the Port Area within 48 hours (or such shorter time period as the Harbour Master may direct), failing which PIP may do so, take possession of and sell them, and reimburse to the User the net sale proceeds if any. PIP shall refund any Charges paid in advance in respect of Services not performed but may deduct any

sums due to it including any loss, damage, liability, cost or expense incurred by or caused to PIP by or in respect of such Vessel, Equipment or Goods.

4.7 In the event that:

- a. the User fails to remove the Vessel, Equipment and Goods from the Port Area in accordance with Condition 4.6; or
- b. any Goods and/or Equipment are not collected and removed from the Port Area by the User at the time of landing;

PIP shall be entitled at the expense and sole risk of the User to remove and place wherever PIP (acting reasonably) deems appropriate such Vessel, Goods and Equipment. Charges for transit shed, Quay rental and any other storage, removal and associated costs will be made where appropriate and shall be recoverable from the User and payable by the User to PIP.

4.8 PIP shall have no obligation to check the accuracy of any documentation handled by it.

4.9 All instructions to PIP by any User in relation to a Vessel, Equipment or Goods must be given in writing. PIP shall nevertheless retain absolute discretion as to the handling, storage and transportation of any Vessel, Equipment or Goods, including the allocation of Quays, plant, machinery, labour and storage space.

4.10 PIP shall not be obliged to authorise the removal of imported Vessel, Goods and/or Equipment unless such Vessel, Goods and/or Equipment are correctly released and cleared with no statutory or other holds.

## **5. Payments**

5.1 The User shall be liable for all Charges and for any loss, liability and/or damage suffered or incurred by PIP in connection therewith (including direct and indirect, whether foreseeable or not foreseeable). The Charges shall be those published (<https://www.portsmouth-port.co.uk/shipping/dues-rates-charges>) or as otherwise advised by PIP from time to time. The User shall, on request, provide PIP with a bond or other security (in an amount to be determined by PIP in its absolute discretion) for all sums due or expected to be due to PIP.

5.2 Prior to a Vessel entering the Port Area, the User shall provide PIP with:

- a. details of the length overall, width and draught of the Vessel;
- b. details of the gross tonnage of the Vessel;
- c. details of the purpose of the port call and type (including the tonnage) of any cargo to be loaded or discharged; and
- d. any other information requested by PIP or required to be disclosed to PIP pursuant to the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004.

5.3 All Goods and/or Equipment and/or passengers brought to the Port Area must be accompanied by a written Manifest, such Manifest shall be delivered to PIP on the earlier of:

- a. request by PIP; or
  - b. the arrival of such Goods and/or Equipment and/or passengers at the Port Area.
- 5.4 All sums payable are exclusive of value added tax and any other duty, tax and/or levy, which shall (to the extent applicable) be payable by the User at the rate and in the manner from time to time prescribed by law.
- 5.5 Payment of all sums due by the User to PIP shall be made within the earlier of:
  - a. 30 calendar days of (a) receipt of the Services or (b) request for payment, whichever shall occur earlier; or
  - b. such shorter timescale as PIP may request in writing (which may include payment on demand).
- 5.6 Payment shall be made to PIP without deduction, withholding, abatement, set-off, claim, or any counterclaim whatsoever, save as may be required by law. All payments shall be made in cleared funds in GB pounds sterling.
- 5.7 The User shall be liable to pay interest to PIP on any sums outstanding accruing from day to day for the period from the due date to the date of payment (i) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable); or (ii) where the said Act is not applicable, at 4 per cent per annum above the base lending rate of the Bank of England from time to time. Interest shall be compounded at monthly rests.
- 5.8 Subject to all applicable laws and regulations, PIP shall have a general and specific lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to PIP of the User or the Owner of such Vessel, Equipment or Goods. PIP shall be entitled to refuse to deliver up any Vessel, Equipment or Goods until all such sums have been paid. Any Charges accruing shall continue to accrue during such period. If any Charges remain unpaid by the User for a period of 60 calendar days from the invoice date or from when the charges were incurred, PIP shall be entitled to take possession of any such Vessel, Equipment or Goods and to sell them by any means, reimbursing the User the net sale proceeds (if any) after deduction of any loss, sums due to or incurred by PIP (including the reasonable sale costs and expenses incurred by PIP (including administrative fees)). PIP shall have no liability in this regard.
- 5.9 In the exercise of Condition 5.8 PIP reserves to itself absolute discretion as to the means and procedure to be followed in the handling, storage, transportation and sale of any Vessel, Equipment or Goods notwithstanding any express instructions or requests given by the User in relation thereto.
- 5.10 If an Insolvency Event occurs, PIP shall be entitled immediately to recover from the User or any other person liable for the Charges (notwithstanding the periods stated above or any period of credit extended to the User may not have expired) all sums then due to PIP (including any accrued interest and other Charges properly levied in accordance with these Terms) and all loss and expense incurred by PIP arising out of or in connection with the Insolvency Event.

5.11 Any query to be raised by the User on any invoice issued by PIP must be made in writing within 30 calendar days of the invoice date failing which the User shall be deemed to have accepted the invoice.

## **6. Hazardous Goods And Waste**

6.1 The User shall remove from the Port Area and dispose of all trade and other waste as often and in such manner as may be necessary or as reasonably directed by PIP.

6.2 No waste material or goods of a dangerous, hazardous, toxic, flammable, radio-active, injurious or poisonous nature will be handled by PIP except with the prior approval of the Harbour Master and then only in accordance with conditions prescribed by him and all applicable laws, regulations, regulatory requirements and codes of practice.

6.3 The User warrants that any approved waste material or goods of a dangerous, hazardous or poisonous nature are stored in suitable containers and properly marked with a warning as to the hazardous nature of any contents and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to ensure the safety and health of all persons handling or coming into contact with the same and in any event in accordance with all applicable laws, regulations, regulatory requirements and codes of practice.

6.4 PIP shall be entitled to remove and dispose of any trade or other waste material or goods of a dangerous, hazardous or poisonous nature found within the Port Area in contravention of Conditions 6.1, 6.2 and/or 6.3 and recover their reasonable costs in respect thereof from the User. PIP shall have no liability in respect thereof.

6.5 Nothing within this Condition 6 obviates the requirement for PIP to provide waste disposal services as and required by existing regulations or Acts of Parliament.

## **7. Import And Export Goods**

7.1 Authorisation for the removal of imported Goods and Equipment shall not be granted by PIP unless such Goods and Equipment are correctly released and cleared with no statutory or other holds.

7.2 The User shall be responsible for all import duties, export duties, levies, fines and charges relating to the Vessel, Goods and Equipment. The User shall indemnify PIP, its employees, agents, consultants and contractors against any and all claims made by H.M. Revenue & Customs or any other statutory or government authority and any other duties, levies, fines, charges and expenses in respect of such Vessel, Goods and Equipment.

## **8. User Warranties**

8.1 The User warrants to PIP 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 Goods, Equipment or Vessel to accept these Terms and has specifically notified these Terms to such persons. Finance companies, lessors and others having or claiming to have title to or an interest in such Goods, Equipment or Vessel are advised that unless PIP is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of any relationship between PIP and the User, these Terms shall be deemed to have been accepted with the authority of such persons. Such persons' rights

over and in respect of the Goods, Equipment or Vessel shall be subordinated to the rights of PIP hereunder.

8.2 The User warrants that all rights, defences, exceptions, and limits available to any carrier or bailee by law or contract are extended to PIP and its employees.

8.3 The User warrants that its employees (and those of any agents or contractors it may engage including hauliers and stevedores) are properly trained and competent to carry out the tasks assigned to them at the time those tasks are assigned and undertaken and will comply in all respects with any relevant permits to work, and that in relation to the giving of any instructions to PIP or the inputting of any information into any electronic service or system operated or managed by or on behalf of PIP that such persons have the full authority to give such instructions or input such information. The User 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.

8.4 The User warrants that it and its Representatives shall at all times comply in all respects with:

- a. all applicable laws (including those relating to the security, confidentiality, protection or privacy of personal data which the User shall also use its reasonable endeavours to assist PIP comply with in so far as relates to the Services),
- b. regulations, codes of practice and international conventions,

relating to the Port Area (including the SHA Acts, Byelaws, Directions, these Terms and requirements of PIP or its staff) and to the Vessel, Goods and/or Equipment (including navigation, manning, carriage, packing, handling, storage, and movement).

8.5 The User warrants that it has or shall obtain and maintain at its own expense, all necessary permits, licences and authorisations relating to the carriage, handling, storage and movement of the Vessel, Goods and Equipment.

8.6 Save as otherwise agreed by PIP in writing no less than 24 hours in advance of arrival at the Port Area, the User warrants that while within the Port Area or its locality any Goods, Equipment or Vessel:

- a. are not not dangerous, hazardous, poisonous, toxic, radio-active, flammable or injurious (whether by emitting dust, gas, fumes, liquid or otherwise) or liable to become so;
- b. will not contaminate or cause danger, injury, pollution or damage to any person, the Port Area, any other Goods, Equipment or Vessel or any other property or the environment;
- c. are not over-heated, under-heated, rotten, mouldy, infested, verminous or subject to fungal attack or liable to become so;
- d. do not require for their safekeeping any special protection arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will

remain safe if left standing in the open on the Port Area or in covered accommodation (if agreed with PIP);

- e. do not comprise or contain unauthorised controlled substances, contraband, pornographic, sanctioned or other illegal matter;
- f. are properly, accurately and sufficiently packed, documented and labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice for all shipping, handling, storage, dispatch, customs and similar purposes; and
- g. are in a safe, fit and proper condition to be handled or otherwise dealt with by PIP, its equipment and its employees, agents, contractors and sub-contractors; and

PIP shall be entitled at the User's sole risk and expense to remove and dispose of Goods, Vessels and/or Equipment that are not in compliance with any part of this warranty.

8.7 The User warrants that it shall immediately inform the Harbour Master of any occurrence or incident which might affect the safe and efficient operation of the Port Area or other persons at the Port Area or result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience arising as a result of the Vessel, Goods and/or Equipment, as may be required by PIP.

8.8 The User warrants that it shall not:

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

without the prior written consent of PIP, except that the User may use marine band, walkie talkies, mobile phones, radar radio frequencies and wi-fi to the extent that they do not breach the above warranties and are specifically permitted by PIP.

8.9 The User warrants the accuracy of all descriptions, weights, values and other particulars relating to Goods, Equipment and Vessels, (including the verified gross mass of any container) furnished to PIP by it or its Representatives for handling, customs and any other purposes. PIP shall not be responsible for checking the accuracy of any documentation handled by it and shall be entitled to rely on the accuracy thereof. The handling of any Goods or Equipment which do not comply shall be at the sole risk of the User.

## **9. Liability**

9.1 This Condition 9 sets out PIP's entire liability to the User in respect of any breach of these Terms 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.

- 9.2 Nothing in these Terms shall exclude or in any way limit PIP's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same cannot be excluded or limited by law.
- 9.3 Any Vessel, Equipment, Goods or other property which is located within the Port Area, is located entirely at the User's and Owner's own risk. Save as otherwise contracted with PIP in writing, PIP will not be responsible for the safe custody of any Vessel, Goods or Equipment or other property entering the Port Area or being landed or placed on any Quay.
- 9.4 PIP shall have no liability whatsoever in contract, tort (including negligence or breach of statutory duty) or otherwise in respect of any of the following howsoever caused or arising and whether or not the same was reasonably foreseen or foreseeable, known or unknown, actual or anticipated or otherwise: (a) any indirect, incidental, special or consequential or pure economic loss, costs, damages, charges; (b) any loss of actual or anticipated income, profits, revenues, contracts, goodwill, business, hire or freight or both; (c) loss of revenue or of the use of money; (d) loss of anticipated savings; (e) loss which might reasonably have been avoided, mitigated or minimised by the User or claimant; (f) betterment; (g) any increased costs or expenses or both; (h) any delay, or demurrage or detention of any Vessel, Goods or Equipment; and (i) any wasted investment, capital expenditure.
- 9.5 PIP 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 any loss, damage, cost, expense or delay caused by or arising directly or indirectly as a consequence of any of the following:
- a. any act, event or omission beyond its reasonable control;
  - b. force majeure (including adverse weather, storm, high winds, lightning, earthquake, tidal wave storm surge, flood, epidemic, pandemic or disease);
  - c. any strike, lock-out, labour dispute or other industrial dispute (whether or not involving the workforce of PIP);
  - d. interruption, disruption or failure of any utility service or transport network;
  - e. war, state of emergency, riot, terrorism or civil commotion;
  - f. malicious damage, theft (unless proved to have been committed by an employee of PIP) or piracy;
  - g. wear and tear, inherent vice, improper or insufficiency of marks, leakage, insufficient or unsuitable packing or packaging or latent defect of Goods or Equipment;
  - h. compliance with any law or governmental or official order, rule, regulation or direction;
  - i. accident;
  - j. 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 or refrigeration equipment insulation or thermostatic controls);

- k. loss, deletion or unauthorised access of data;
- l. fire (including steps to extinguish fire), combustion, smoke, radiation, radioactive contamination or explosion;
- m. temperature variation, exposure to heat or cold or light, vermin, mould, insects, rot, fungal attack or corrosion;
- n. any Vessel, Goods or Equipment being unfit or in an unsuitable condition for the Service or any Vessel being unseaworthy;
- o. acts or default of third parties including suppliers or sub-contractors;
- p. insufficient depth of water at any Quay or its approaches;
- q. harbour closures (or any other situations that may impact on operations) as may be enforced by the Harbour Master, the Ministry of Defence or other Government Department;
- r. any act by or on behalf of PIP reasonably necessary for the preservation of life or property;
- s. fraud (whether actual or attempted) by any User or its Representative or any third party; and
- t. the failure of the User or its Representatives to comply with these Terms, the SHA Acts, the Byelaws, the Directions or order and directions of PIP and its employees.

9.6 The burden of proof that any loss or damage was caused by the actionable fault of PIP shall be on the User. That such loss or damage occurred within the Port Area or under PIP's control shall not satisfy the User's burden of proof.

9.7 Nothing in these Terms shall prejudice PIP'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.

9.8 Subject to Conditions 9.2 to 9.7 PIP's liability (if any) shall be limited as follows:

9.8.1 The total aggregate liability of PIP (if any) to all Users and/or otherwise for any loss, damage, liability, claim, contribution, cost and/or expense (including legal costs) arising out of or in respect of any one event, occurrence or incident, or series of related incidents, occurrences or events shall in no case be more than £10,000,000 (ten million pounds).

9.8.2 PIP's liability to a User and/or any other person for all loss, damage, liability, claim, contribution, cost and/or expense (including legal costs) arising out of or in respect of any one incident, occurrence or event shall in no circumstances exceed the sum of £1,000,000 (one million pounds).

#### **Loss or damage to a Vessel:**

9.8.3 In respect of any loss or damage to a Vessel, the lowest of the following as applicable:

- (a) the market value at the time of the damage or loss of that part or parts of the

Vessel to which the claim relates;

(b) the reasonable cost of repairs (where capable of repairs); or

(c) the sum of £1,000,000 (one million pounds).

**Loss or damage to Equipment:**

9.8.4 In respect of any loss or damage to Equipment, the lowest of the following as applicable:

(a) the reasonable cost of repairs;

(b) the market value at the time of the damage or loss or part thereof to which the claim relates;

(c) the sum of £5,000 (five thousand pounds) per any unit of Equipment; or

(d) the sum of £500,000 (five hundred thousand pounds).

**Loss or damage to Goods:**

9.8.5 In respect of any loss or damage to Goods the lowest of the following as applicable:

(a) the market value of the Goods lost or damaged and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole consignment (to be calculated by weight in the absence of specific values for the damaged part);

(b) the reasonable cost of repairs;

(c) in any other case the sum of £100 per tonne (pro rata for any part of a tonne) (or any higher general limit of liability figure per tonne in the United Kingdom Warehousing Association's (UKWA) standard Conditions of Contract as amended from time to time) unless the nature and value of the Goods had been declared to PIP and the latter has agreed a higher limit of liability with the User (evidenced in writing) prior to such Goods arriving at the Port Area; or

(d) the sum of £500,000 (five hundred thousand pounds).

**Advice**

9.8.6 In respect of any advice, the lowest of the following as applicable:

(a) the fee (exclusive of VAT) charged to the User for that advice; or

(b) the sum of £50,000 (fifty thousand pounds).

9.9 It is a condition precedent to any liability of PIP that in the event of loss of or damage to any Vessel, Goods or Equipment, PIP is notified in writing of such loss or damage (i) prior to sailing of or to commencement of repairs to a Vessel; (ii) prior to any reconditioning or within 30 days of arrival or 30 days of leaving the Port Area in respect of loss of or damage to Goods; (iii) prior to commencement of repairs or to the Equipment leaving the Port Area; and the User hereby grants permission to PIP to inspect any damage alleged to have been caused to any Vessel, Goods or Equipment prior to their leaving the Port Area, or their repair, disposal or destruction;

and failure to meet with these requirements shall absolve PIP from any liability whatsoever.

9.10 If PIP handles any Vessel, Goods or Equipment whose gross weight is incorrectly stated such handling by PIP shall be at the sole risk of the User tendering the said Vessel, Goods or Equipment.

9.11 The User is under a duty to mitigate its losses, including but not limited to, in obtaining salvage.

## **10. Provisions Relative to Goods and Equipment**

10.1 PIP shall have the following powers in respect of Vessels, Goods and Equipment abandoned in, on or within the Port Area:

- a. the power immediately to remove and where necessary dispose of such Vessels, Goods and Equipment in the case of hazard or other emergency without prior notice or where reasonably suspected;
- b. the power generally to remove and dispose of or sell by any means such Vessels, Goods and Equipment on reasonable notice to the User (the length of such notice to be determined by PIP acting reasonably on a case by case basis). If the identity of the User or the User's contact details are not known to PIP then PIP can remove and dispose of or sell such Vessels, Goods and Equipment after leaving written notice on the Vessels, Goods and Equipment for a reasonable period of time (the length of such period to be determined by PIP acting reasonably on a case by case basis), such proceeds of sale (after deduction of reasonable costs) may be retained by PIP if not claimed within 2 months;

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

## **11. Indemnity**

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

- a. any act, omission, instruction, misrepresentation, negligence, recklessness, fraud, willful misconduct or breach of statutory duty of the User or the Owner or any other person interested in the Goods, Equipment or Vessel;

- b. the failure of the User to comply with the requirements of any authority or any statutory requirement;
- c. any inaccuracy (or omission) in any warranties, declarations, particulars or information (including gross weight) given to PIP in respect of a Vessel, Goods or Equipment; and
- d. the failure of the User to comply with any of these Terms or to take any step which PIP shall consider to have been reasonably required to remedy such failure.

11.2 Any sums payable to PIP under Condition 11.1 shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

## **12. Insurance**

12.1 The User shall be fully insured (and shall ensure that any Vessel, Goods and Equipment are fully insured) against all risks (including, without prejudice to the generality of the foregoing, fire, damage (including to PIP's property in the Port Area), environmental incident, salvage, public liability and theft, whether due to the negligence of others or not), for a sum of not less than £10,000,000 (ten million pounds), (unless as otherwise agreed between PIP and the User), at all times that they or any of their Vessels, Goods or Equipment shall remain on the Port Area. PIP shall advise the User if they require the sum so insured to be a figure higher than £10,000,000 (ten million pounds). The User shall provide evidence of such insurance to the Harbour Master, or their assistant, on request. Any "pay to be paid" clause or like provision in the insurance shall be waived in respect of claims by PIP.

12.2 PIP has no responsibility to insure Vessels, Goods or Equipment.

## **13. Miscellaneous Provisions**

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

13.2 The failure of PIP to exercise or enforce any right conferred on that party by the Terms shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

13.3 These Terms and in particular the limitations on liability are intended to inure for the benefit of both PIP and its representatives to which end PIP contracts on these Terms on its own behalf and as agent for and trustee for the benefit of its employees, consultants, agents contractors and sub-contractors. Save for those persons, any person who is not a party to any agreement to which these Terms apply shall have no rights under or in connection with it.

13.4 All legal relationships and agreements between PIP and the User shall be governed in all respects by the laws of England and Wales.

13.5 All claims or disputes arising out of or in connection with the Services are to be determined exclusively by the Courts of England & Wales to which jurisdiction the User

irrevocably submits, save that PIP shall be at liberty to seek any interim relief, arrest or secure property of the User or to take steps to enforce any obligation or judgement against the User in any jurisdiction.

- 13.6 All of the User's rights shall be waived and all claims against PIP shall become absolutely barred unless proceedings are commenced against PIP in accordance with Condition 13.5 within 12 months of the date of any incident alleged to give rise to the claim.
- 13.7 Subject to Condition 13.8 both parties will treat information by the other as confidential. Third parties, regulators and auditors may have access from time to time to such information but they will be required to keep it confidential unless the law or regulation states otherwise, or the disclosing party otherwise agrees.
- 13.8 The obligation of confidentiality under Condition 13.7 will not apply to any confidential information which: (a) is in or enters the public domain (otherwise than as a result of an unlawful disclosure by the party receiving such information); (b) the recipient can demonstrate was already lawfully in its possession at the time of disclosure; (c) is disclosed to the recipient by a third party (otherwise than in breach of any confidentiality obligation owed to the party whose confidential information it is); or (d) is required to be disclosed pursuant to any law or regulation, or arbitral order or by any supervisory or regulatory body to whose rules a party is subject or with whose rules it is necessary for that party to comply (e) is required to be disclosed for the purposes of a party procuring legal or financial services; or (f) both parties otherwise agree can be disclosed.