

**GENERAL CONDITIONS**

**Edition: January 2025**

**1. Definitions**

1.1. In these Conditions, unless the context otherwise requires, the terms set out below shall have the meanings ascribed to them:

<b>Byelaws</b>	means the byelaws of NPP currently in force, including the Byelaws of the Southern Railway Company for the Regulation of Newhaven Harbour 1931;
<b>CHA</b>	means NPP acting as competent harbour authority under the Pilotage Act 1987;
<b>Charges</b>	includes vessel, cargo and any other dues and charges levied by NPP as SHA for Newhaven Harbour, in accordance with NPP's standard Port and Pilotage charges published by NPP from time to time and any other charges, fines, costs, expenses and other sums imposed by or due to NPP from time to time;
<b>Conditions</b>	means these general conditions of business (as updated from time to time);
<b>Directions</b>	means any special directions given by the Harbour Master, any General Directions and Pilotage Directions;
<b>Equipment</b>	includes any plant, machinery, container, package, case, pallet, vehicle, trailer, or other piece of equipment of any nature;
<b>Enactment</b>	means any enactment whether public, general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;
<b>General Directions</b>	means any General Directions given by NPP in accordance with the powers in articles 4 to 6 of the Newhaven Harbour Revision Order 2016;
<b>Goods</b>	includes passenger luggage and personal effects, any cargo, wares, merchandise, articles and tangible items of any description;

<b>Harbour Area</b>	means the Statutory Harbour Limits and any additional area of Land or premises leased, owned or operated by NPP;
<b>Harbour Master</b>	means the Harbour Master employed by NPP, the Harbour Master's assistants or any nominee of theirs;
<b>Harbour Office</b>	means the Harbour office at Port Administration Office, East Quay, Newhaven, East Sussex, BN9 0BN;
<b>Harbour Premises</b>	means the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied or administered by NPP as part of its harbour undertaking;
<b>Harbour Undertaking</b>	means the undertaking of NPP authorised by the SHA Acts;
<b>Insolvency Event</b>	means the User ceases to trade (either in whole, or part including any division thereof which is involved in the performance of these Conditions), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), a creditor or encumbrancer of the User attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the User's assets and such attachment or process is not discharged within 14 days; or (being an individual) the User becomes bankrupt or makes any composition or arrangement with its creditors; or in any case, anything analogous happens in any jurisdiction, or the User suspends or threatens to suspend payments, admits inability or is unable to pay its debts as they fall due;
<b>Land</b>	includes land covered by water;
<b>Length Overall</b>	means a Vessel's length overall which shall be rounded up to the nearest full metre;
<b>Manifest</b>	means (unless otherwise agreed in writing by NPP), 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
<b>NPP</b>	means Newhaven Port & Properties Limited (company number 01923744), as SHA;

<b>Owner</b>	includes all persons (other than NPP) with or claiming to have any proprietary, financial, possessory or security interest in any Vessel, Goods or Equipment, partial or otherwise, including lessors, charterers, sub-charterers, consignors, consignees, shippers, receivers, mortgagees and pledgees;
<b>Pilotage Directions</b>	means the pilotage directions made by NPP under the Pilotage Act 1987 and contained in Newhaven Pilotage Directions 2021 (as amended from time to time);
<b>Plan</b>	means the plan annexed to these Conditions named "Newhaven Harbour Limits Plan";
<b>Quay</b>	means any quay, pier, jetty, or any 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 Harbour Area;
<b>Representative</b>	means any employee, agent, consolidator, broker, driver, contractor or sub-contractor employed or engaged by the User (other than any such person employed or engaged by NPP), or the master or any other person having command and crew of any Vessel;
<b>Services</b>	includes any service, advice or facilities that NPP provides or makes available to the User whether any Charges are rendered or not;
<b>SHA</b>	means NPP acting as statutory harbour authority under the SHA Acts including the Harbours Act 1964;
<b>SHA Acts</b>	means the following: <ul style="list-style-type: none"> <li>(a) Harbours, Docks and Piers Clauses Act 1847 (as incorporated);</li> <li>(b) The Newhaven Harbour and Ouse Lower Navigation Act 1863;</li> <li>(c) The Newhaven Harbour Act 1878;</li> <li>(d) The Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991;</li> <li>(e) The Newhaven Harbour Revision Order 2016; and</li> <li>(f) any other relevant and applicable Enactments which are duly bound to be complied with;</li> </ul>
<b>Statutory Harbour Limits</b>	means the area over which NPP is the SHA under the SHA Acts comprising: <ul style="list-style-type: none"> <li>(g) all tidal reaches of the Ouse river and estuary that are covered at the level of high water south of the parallel of latitude 50 degrees 48.20N (approximately 85m north of the</li> </ul>

Energy Recovery Facility) and extending out to sea bounded within the co-ordinates set out in sub-paragraph (b);

- (h) from approximately the position of the southern extremity of Mill Drove at 50 degrees 46.95'N, 0 degrees 04.10'E; thence following an imaginary straight line in a southerly direction to a location at 50 degrees 45.00'N, 0 degrees 04.10'E thence following an imaginary straight line in a west north westerly direction to a location at 50 degrees 45.55'N, 0 degrees 00.75'E; thence following an imaginary straight line in a north easterly direction to a location at 50 degrees 46.50'N, 0 degrees 03.20'E; thence following an imaginary straight line in a north north westerly direction to a position at approximately the position of Burrow Head/Castle Hill Cliffs at 50 degrees 46.88'N, 0 degrees 00 03.00'E (all coordinates in degrees, minutes and decimals of minutes and based on WGS 84 datum); and
- (i) the harbour premises, whether or not within the areas described in sub-paragraphs (a) and(b),

the area described in sub-paragraphs (a) and (b) being shown for information purposes on the Plan;

**User**

means:

- (a) any person who enters the Harbour Area;
- (b) any person who, or by any Representative, requests or receives the benefit of any Services;
- (c) any Owner or master of any Vessel;
- (d) any carrier of any Goods or Equipment which may be on or come into the Harbour Area; and
- (e) any successor or assignee of the above

**Vessel**

means a ship, boat, raft, pontoon or water craft of any description and includes non-displacement craft, jet bike, seaplane and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or any other amphibious vehicle, which in all cases is used or is capable of being used as a means of transportation, storage or access on or under the water.

**2. Interpretation**

- 2.1. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.2. Unless the context otherwise requires, words importing the singular shall include the plural and vice versa. Where there are two or more persons included in the expression "User" then

obligations undertaken by the User shall be obligations undertaken by such persons jointly and severally and their respective executors and Representatives whomsoever.

- 2.3. Any reference to an Enactment shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 2.4. Headings in these Conditions are for ease of reference and shall not affect the interpretation of these Conditions.
- 2.5. Any phrase introduced by the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms.
- 2.6. Any reference to “person” includes any natural person, company, body corporate or unincorporate or other judicial person, partnership, firm, joint venture or trust.
- 2.7. A reference to “writing” or “written” excludes fax but not email.
- 2.8. The rights of NPP under these Conditions are in addition to the rights and powers conferred on NPP as SHA or CHA by Enactment including the SHA Acts, the Pilotage Act 1987, the Byelaws and the Directions, each of which take precedence over these Conditions in the event of any inconsistency.

### **3. Application of Conditions**

- 3.1. These Conditions shall apply:
  - a. to all Services (directly or indirectly) provided by NPP either within the Harbour Area or elsewhere; and
  - b. to all physical access by any Vessel, person, Goods or Equipment to, from or within the Harbour Area including the use of any facilities within the Harbour Area by the foregoing.
- 3.2. In the absence of express acceptance by the User of these Conditions, acceptance shall be implied:
  - a. in the event of the entry or delivery of any Vessel, person, Goods or Equipment into or onto the Harbour Area; or
  - b. by application to NPP for (i) entry to the Harbour Area, (ii) the provision of any Services or (iii) the use of any facility, in each case by or on behalf of any User and whether such application is made orally or in writing.
- 3.3. NPP 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 Conditions.
- 3.4. Subject to Condition 3.5, no terms or conditions whether express or implied which are at variance with these Conditions shall apply unless they have been agreed in writing by NPP and the User or have been separately prescribed by any Enactment. Any User’s terms and conditions that purport to imply NPP’s agreement to such terms or conditions shall be ineffective.
- 3.5. NPP may agree specific contracts with a User and/or issue special terms and conditions governing the provision of certain Services. In which case these Conditions shall apply unless and to the extent inconsistent with any such specific contract and/or special terms and conditions.

3.6. These Conditions may be altered or varied by written notice at any time by NPP in such manner and in such respects as NPP may consider appropriate.

**4. Use of Harbour Area and provision of Services**

4.1. Subject to any other provisions of these Conditions, NPP shall exercise reasonable skill, care and speed in carrying out the Services. No wider obligation, express or implied, is accepted.

4.2. Unless otherwise agreed or otherwise directed by NPP in writing, the User shall ensure that all Goods:

- a. delivered to the Harbour Area for loading to a Vessel are loaded as soon as reasonably practicable and in any case, within forty eight (48) hours of the date of delivery of the Goods to the Harbour Area; and
- b. discharged from a Vessel in the Harbour Area are removed from the Harbour Area as soon as reasonably practicable, and in any case within forty eight (48) hours of completion of discharge of the Vessel.

4.3. Goods and Equipment which for any reason are not collected and removed from the Harbour Area by the User in accordance with Condition 4.2 or the time otherwise agreed or directed by NPP will (subject to the availability of space) be placed on the Quays or elsewhere, wherever NPP (acting reasonably) deems appropriate, at the sole risk and expense of the User. Charges for Quay rental and any other storage will be made where appropriate at NPP's prevailing rates from time to time and the User hereby agrees to pay such Charges. Alternatively, and in NPP's sole discretion, NPP may deal with such Goods or Equipment in accordance with Condition 10.

4.4. NPP reserves the right to appoint contractors or sub-contractors to perform all or any part of the Services. Any contractor shall have the benefit of these Conditions and NPP shall have no greater obligation or liability in respect of any sub-contracted services than it would have had if the Services had been provided directly.

4.5. NPP may in its absolute discretion:

- a. refuse to permit any person to enter the Harbour Area or require them to leave it;
- b. refuse to accept any Vessel into, or require any Vessel to leave the Harbour Area if the Vessel, its Equipment or any Goods are not compatible with the harbour facility or Quay;
- c. require any Vessel in the Harbour Area to be relocated within the Harbour Area at any time;
- d. require any Equipment or Goods in the Harbour Area to be removed from or relocated within the Harbour Area at any time; and
- e. decline to undertake or suspend the performance of all or any part of Services.

4.6. The User waives any and all claims against NPP for any breach of statutory duty relating to the exercise of its above discretion.

4.7. In the case of NPP exercising any of its rights under Condition 4.5, the User shall at its own expense, promptly and in accordance with any time period directed by the Harbour Master comply with NPP's instruction, failing which NPP may remove or relocate the Vessel, Goods or Equipment, as the case may be, at the expense and risk of the User. The User shall reimburse NPP

on demand its reasonable costs incurred in removing, relocating or storing the Vessel, Goods or Equipment.

- 4.8. NPP shall have absolute discretion in all aspects of harbour operations, including but not restricted to handling, storage and transportation of any Vessel, Equipment or Goods, the allocation of Quays, quay plant, machinery, labour and storage space. All Vessels must either berth in the Harbour Area, or anchor at the dedicated anchorage areas according to the Directions of the Harbour Master. No Vessel is to be stored on the Harbour Area without prior permission of the Harbour Master, whose decision will be final as to the storage area to be used. No Vessel is to be launched, lifted into or out of the water at any Quay without prior permission of the Harbour Master.
- 4.9. Unless specifically otherwise agreed in writing with the User, where NPP provides Services in respect of Goods or Equipment being loaded onto or unloaded from any Vessel, or in respect of passengers and their belongings embarking or disembarking from any Vessel, it does so solely as agent of the actual and/or contractual carrier.
- 4.10. NPP shall have no obligation to check the accuracy of any documentation handled by it for or on behalf of the User.
- 4.11. All instructions given to NPP by any User in relation to a Vessel, Equipment or Goods must be in writing. NPP 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.
- 4.12. NPP shall not be obliged to authorise the removal of any Vessel or imported Goods and/or Equipment from the Harbour Area unless NPP is satisfied that such Vessel, Goods and/or Equipment are correctly released and cleared with no statutory or other holds.
- 4.13. The User shall not use any third party stevedores in the Harbour Area without the prior written consent of NPP. If NPP consents to any such proposed use, the User shall comply with any conditions of NPP's consent and shall ensure such persons comply at all times with all applicable site rules and policies, including health & safety policies and procedures, and any other directions or instructions of NPP. The User will notify NPP in advance of the dates and times the stevedores will be coming on site. Notwithstanding NPP's consent to the User's use of third party stevedores, the User shall remain fully responsible for the acts or omissions of such persons and NPP shall have no liability whatsoever in respect thereof. The User shall indemnify NPP in accordance with Condition 11 against any liability suffered or incurred by NPP arising from the User's use of any such persons.

## **5. Payments**

- 5.1. The User shall be liable for all Charges in connection with any Vessel, Equipment, Goods or passengers and for any payments, fines, expenses, loss, liability and/or damage suffered or incurred by NPP in connection therewith (whether of a direct or indirect nature and whether foreseeable or not foreseeable). The Charges shall be those published at <https://www.newhavenport.com/> or as otherwise advised by NPP from time to time. The User shall, on request, provide NPP with a bond or other security (in an amount to be determined by NPP in its absolute discretion) for all sums due or expected to be due to NPP.

- 5.2. Prior to a Vessel entering the Harbour Area, the User shall provide NPP 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 NPP or required to be disclosed to NPP pursuant to the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, prior to arrival.
- 5.3. All Goods and/or Equipment and/or passengers brought to the Harbour Area must be accompanied by a written Manifest, such Manifest shall be delivered to NPP on the earlier of:
- a. request by NPP; or
  - b. the arrival of such Goods and/or Equipment and/or passengers at the Harbour Area.
- 5.4. Save as otherwise stated in these Conditions, all sums payable are exclusive of value added tax and any other duty, tax and/or levy applicable thereon, which shall (if and 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. Unless otherwise agreed or stipulated in writing by NPP, payment of all sums due by the User to NPP 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 NPP may request in writing (which may include payment on demand).
- 5.6. Payment shall be made to NPP without deduction, withholding, abatement, set-off, claim, or any counterclaim for any reason whatsoever, save as may be required by law. All payments shall be made in cleared funds in GB pounds sterling.
- 5.7. If the User fails to pay any sum due by it to NPP by the due date, the User shall be liable to pay interest to NPP on such sum from the due date, for the period from that 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. Notwithstanding any other provision in these Conditions, if the User fails to pay any amount payable by it to NPP by the due date, NPP shall have the right to suspend provision of any and all Services until such time as payment is made in full.
- 5.9. NPP reserves the right to pass any unpaid invoices to a debt collection service and the costs of the debt collection service will be for the User and will be added to the debt.
- 5.10. Subject to all applicable laws and regulations, NPP 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 NPP of the User or the Owner of such Vessel, Equipment or



Goods. NPP 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 amounts remain unpaid by the User for a period of 60 calendar days from the invoice date or from when they became payable, NPP 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 NPP (including the reasonable sale costs and expenses incurred by NPP (including administrative fees)). NPP shall have no duty to obtain any particular price for the items and shall have no liability to the User in respect of the sale, except to account to the User for the net proceeds of sale.

- 5.11. In the exercise of Condition 5.10, NPP 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.
- 5.12. If an Insolvency Event occurs, NPP 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 NPP (including any accrued interest and other Charges properly levied in accordance with these Conditions) and all loss and expense incurred by NPP arising out of or in connection with the Insolvency Event.
- 5.13. Any bona fide query to be raised by the User on any invoice issued by NPP 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 Harbour Area and dispose of all trade and other waste as often and in such manner as may be necessary to maintain the Harbour Area in a clean, tidy and safe condition, or as reasonably directed by NPP.
- 6.2. No waste material or goods of a dangerous, hazardous, toxic, flammable, radio-active, injurious or poisonous nature will be handled by NPP except with the prior agreement with the Harbour Master and then only in accordance with the conditions prescribed by the Harbour Master 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 health and safety of all persons handling or coming into contact with the same or who are likely to do so and in any event in accordance with all applicable laws, regulations, regulatory requirements and codes of practice.
- 6.4. NPP shall be entitled to remove and dispose of, or organise the removal and disposal of, any trade or other waste material or Goods of a dangerous, hazardous or poisonous nature found within the Harbour Area in contravention of Conditions 6.1, 6.2 and/or 6.3 and recover its reasonable costs in respect thereof from the User. NPP shall have no liability in respect thereof.

6.5. Nothing within this Condition 6 obviates the requirement for NPP 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 NPP 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 NPP, 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 due in respect of such Vessel, Goods and Equipment.

## **8. User's obligations**

8.1. Each User warrants to NPP 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 Conditions on their behalf as well as on its own behalf as principal and that it has specifically notified these Conditions 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 NPP is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of any relationship between NPP and the User, these Conditions 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 NPP hereunder.

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

8.3. The User shall ensure that its employees (and those of any agents or contractors it may engage including without limitation, hauliers and stevedores) are properly trained and competent to carry out the tasks at any time assigned to them and will comply in all respects with any relevant permits to work, including in relation to the giving of any instructions to NPP or the inputting of any information into any electronic service or system operated or managed by or on behalf of NPP. The User further and separately warrants 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 it may engage who is present in the Harbour Area may be subject to drug and/or alcohol testing at any time.

8.4. The User shall and shall ensure that 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 NPP comply with in so far as relates to the Services); and
- b. regulations, codes of practice and international conventions,

relating to the Harbour Area (including the SHA Acts, Byelaws, Directions, these Conditions and requirements of NPP or its staff) and to the Vessel, Goods and/or Equipment (including navigation, manning, carriage, packing, handling, storage, and movement). NPP may remove from the Harbour Area or require the removal from the Harbour Area of any Representative of the User who fails to comply with this Condition 8.4 or who, in NPP's opinion, poses a risk to any property or person.

- 8.5. The User shall obtain and maintain at its own expense, all necessary permits, licences and authorisations and comply with all applicable, laws, regulations, regulatory requirements and codes of practice relating to the carriage, handling, storage and movement of the Vessel, Goods and Equipment.
- 8.6. Save as otherwise agreed by NPP in writing no less than 24 hours in advance of arrival at the Harbour Area, the User warrants and represents that while within the Harbour Area or its locality, any Goods, Equipment or Vessel:
- a. are not dangerous, hazardous, poisonous, toxic, radio-active, flammable or injurious (whether by emitting dust, gas, fumes, liquid or otherwise) 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. will not contaminate or cause danger, injury, pollution or damage to any person, the Harbour 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 while on the Harbour Area;
  - d. do not require for their safekeeping any special protection arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other Goods or from their flammability but will remain safe if left standing in the open on the Harbour Area or in covered accommodation (if applicable agreed with NPP);
  - 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 NPP, its Equipment and its employees, agents, contractors and sub-contractors,

and NPP 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 and representation. The User acknowledges and agrees that NPP relies on the foregoing representations.

- 8.7. The User shall immediately inform the Harbour Master of any occurrence or incident which might affect the safe and efficient operation of the Harbour Area or other persons at the Harbour Area or result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience arising as a result of the Vessel, Goods and/or Equipment, as may be required by NPP. Without prejudice to the foregoing, the User shall indemnify NPP in respect of any and all claims including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) whether directly or

indirectly incurred by NPP as a result of the failure of the User to comply with the foregoing. If any Vessel sinks or grounds or otherwise becomes, in the opinion of NPP, an obstruction or danger in any part of the Harbour Area and the Owner of the Vessel fails to remove the obstruction or danger within a period stipulated by NPP, NPP shall be entitled to take any steps it deems necessary to remove the obstruction or danger, and the User shall reimburse on demand and in full the costs and expense of such removal.

8.8. The User 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 Harbour Area;
- b. interfere with any systems, communication links and Equipment or computer hardware and software whilst on the Harbour Area; or
- c. use or attempt to use any devices or software to gain access to unauthorised data and information,

without the prior written consent of NPP, 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 not specifically prohibited by NPP.

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 and in relation to Vessel stability) furnished to NPP by it or its Representatives for handling, customs and any other purposes. NPP shall not be responsible for checking the accuracy of any documentation handled by it and shall be entitled to rely on the information contained therein. The handling of any Goods or Equipment which do not comply shall be at the sole risk of the User. The User shall indemnify NPP against all loss, damages, expenses, claims and fines arising from any inaccuracy or omission in such particulars or from any such declaration made by NPP.

8.10. The User shall conduct its activities and shall ensure its Representatives conduct their activities in the Harbour Area at all times in such a way as to minimise any nuisance or disturbance to NPP or to any other person in and any other Vessel using the Harbour Area, and the owners and occupiers of other Land within or adjacent to the Harbour Area. NPP reserves the right to remove from the Harbour Area any person, Vessel, Goods or Equipment which it considers to be non-compliant with the foregoing obligation.

## **9. Liability**

9.1. This Condition 9 sets out NPP's entire liability to the User in respect of any breach of these Conditions or for any representation, statement, act or omission (including negligence or breach of statutory duty), contribution, restitution or indemnity arising under or in connection with the Services.

9.2. Nothing in these Conditions shall exclude or in any way limit NPP's liability for:

- a. fraud;
- b. death or personal injury caused by its negligence; or
- c. any other liability to the extent the same may not be excluded or limited as a matter of law.

- 9.3. Any Vessel, Equipment, Goods or other property which is located within the Harbour Area is entirely at the User's and Owner's own risk. Save as otherwise contracted with NPP in writing, NPP will not be responsible for the safe custody of any Vessel, Goods or Equipment or other property entering the Harbour Area or being landed or placed on any Quay. Nor will NPP have any liability for any loss (whether partial or total) or for any damage arising which may happen to such Vessel, Goods or Equipment (unless caused by NPP's negligence or wilful misconduct).
- 9.4. In all circumstances, the master of any Vessel shall remain solely responsible on behalf of the Owner for the safety and proper navigation of the Vessel while the Vessel is within the Harbour Area and NPP shall have no liability for any act or omission of the master.
- 9.5. NPP shall have no liability whether 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 loss;
  - b. loss of actual or anticipated income or profits;
  - c. loss of contracts;
  - d. loss of goodwill;
  - e. loss of business, hire or freight or both;
  - f. loss of revenue or of the use of money;
  - g. loss of anticipated savings;
  - h. loss which might reasonably have been avoided, mitigated or minimised by the User or claimant;
  - i. any delay, or demurrage or detention of any Vessel, Goods or Equipment (unless caused by NPP's act or omission); and
  - j. any wasted investment or capital expenditure.
- 9.6. NPP 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. natural disaster (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 NPP);
  - 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 NPP) 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 appointed by the User including suppliers or sub-contractors;
  - p. in circumstances where NPP has issued a Notice to Mariners, insufficient depth of water within the Statutory Harbour Limits;
  - 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 NPP 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 Conditions, the SHA Acts, the Byelaws, the Directions or order and directions of NPP and its employees.
- 9.7. Nothing in these Conditions shall prejudice NPP's right, in any circumstance, to rely on any contract convention or statutory provision providing for limitation and/or exclusion of liability including, but not restricted to, the provisions of the Merchant Shipping Acts and subordinate legislation.
- 9.8. The burden of proof that any loss or damage was caused by the actionable fault of NPP shall be on the User. That such loss or damage occurred within the Harbour Area or under NPP's control shall not, of itself, satisfy the User's burden of proof.
- 9.9. Subject to Conditions 9.2 to 9.7, NPP's liability (if any) shall be limited as follows:
- a. The total aggregate liability of NPP to all Users 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 circumstances exceed the sum of £10,000,000 (ten million pounds).
  - b. NPP's liability to an individual User 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 or series of related incidents, occurrences or events shall in no circumstances exceed the sum of £1,000,000 (one million pounds).

**Loss or damage to a Vessel:**

9.9.1. In respect of any loss or damage to a Vessel, NPP's liability shall be limited to 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:**

9.9.2. In respect of any loss or damage to Equipment, NPP's liability shall be limited to 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:**

9.9.3. In respect of any loss or damage to Goods, NPP's liability shall be limited to 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 £1,300 per tonne (pro rata for any part of a tonne) (or any higher general limit of liability figure per tonne in the Road Haulage Association's standard Conditions of Carriage as amended from time to time) unless the nature and value of the Goods had been declared to NPP and NPP has agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving at the Harbour Area; or
- d. the sum of £500,000 (five hundred thousand pounds).

9.10. It is a condition precedent to the liability of NPP that in the event of loss of or damage to any Vessel, Goods or Equipment, NPP is notified in writing of such loss or damage: (i) in respect of loss or damage to a Vessel, prior to sailing of or to commencement of repairs to a Vessel; (ii) in respect of loss of or damage to Goods, prior to any reconditioning or within 30 days of arrival or 30 days of the Goods leaving the Harbour Area; (iii) in respect of loss of or damage to Equipment, prior to commencement of repairs or to the Equipment leaving the Harbour Area; and the User hereby grants permission to NPP to inspect any damage alleged to have been

caused to any Vessel, Goods or Equipment prior to their leaving the Harbour Area, or their repair, disposal or destruction. Failure to meet with these requirements shall absolve NPP from any liability whatsoever.

9.11. If NPP handles any Vessel, Goods or Equipment whose gross weight is incorrectly stated, such handling by NPP shall be at the sole risk of the User tendering the said Vessel, Goods or Equipment. In particular, subject to Condition 9.2, NPP shall be exempt from all liability whatsoever for deficiency, loss, damage or mis delivery of or to the Goods or to the Equipment or for delay arising out of, caused or contributed by the handling by NPP of the Goods or the Equipment and the person tendering the Goods or the Equipment shall be responsible for and shall indemnify NPP against all injury (including fatal injury), loss or damage however or whenever caused and against all claims made against NPP for which it may be or become liable in respect of injury to persons (including fatal injury) or loss or damage to property and against any failure of a load bearing part of any lifting appliance arising out of or caused or contributed to by the handling of NPP of the Equipment and/or Goods.

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

9.13. Notwithstanding the provisions of Condition 9.6, NPP shall in any event be discharged of all liability whatsoever howsoever arising unless particulars of the claim are notified to NPP specifying in reasonable detail the nature of the claim within 12 months from the date of the event or occurrence alleged to have given rise to a cause of action against NPP.

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

10.1. NPP shall have the following powers in respect of Vessels, Goods and Equipment abandoned, neglected in, on or within the Harbour Area or which the User does not remove in accordance with agreed time limits or as otherwise directed by NPP:

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

10.2. The User shall reimburse NPP on demand its reasonable costs incurred in respect of the removal, storage and disposal/sale of such Vessels, Goods and Equipment in accordance with Condition 10.1.

## **11. Indemnity**

11.1. The User shall be liable for and shall indemnify NPP 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 NPP 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 any of their Representatives, or the Owner or any other person interested in the Goods, Equipment or Vessel;
- b. the failure of the User or their Representatives to comply with the requirements of any Enactment or any statutory requirement;
- c. any inaccuracy (or omission) in any warranties, declarations, particulars or information (including gross weight) given to NPP in respect of a Vessel, Goods or Equipment; and
- d. the failure of the User or their Representatives to comply with any of these Conditions or to take any step which NPP shall consider to have been reasonably required to remedy such failure.

11.2. Any sums payable to NPP 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 NPP's property in the Harbour 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) per occurrence, (unless as otherwise agreed between NPP and the User), at all times that they or any of their Vessels, Goods or Equipment shall remain on the Harbour Area. The User shall be responsible for insuring the Goods and/or Equipment for any loss or damage, which they may sustain in the Harbour Area. NPP shall advise the User if it requires the sum so insured to be a figure higher than £10,000,000 (ten million pounds) and NPP reserves the right to suspend performance of the Services, refuse access to the User to the Harbour Area or require the User to remove its Vessel, Equipment or Goods from the Harbour Area if it does not comply with such request. 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 NPP.

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

## **13. Confidentiality**

13.1. For the purposes of this Condition 13, "**Confidential Information**" means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives, including but not limited to:

- a. any information that would be regarded as confidential by a reasonable business person relating to:
  - i. the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

- ii. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); or
  - b. any confidential information developed by the parties in the course of the performance of the Services.
- 13.2. Each party undertakes that it shall not at any time during the performance of the Services, and for a period of two years after completion of the performance of the Services, disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 13.3.
- 13.3. Each party may disclose the other party's Confidential Information:
- a. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Services. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this Condition 13; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.4. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions and/or the Services.

**14. Miscellaneous Provisions**

- 14.1. The User will comply with all site rules and policies from time to time in force in the Harbour Area which are available at <https://www.newhavenport.com/>, or as otherwise communicated to the User, including without limitation, NPP's zero-tolerance sexual harassment policy, and the User accepts that appropriate action will be taken in line with that policy in the event of any non-compliance.
- 14.2. If and in so far as any clause, sub-clause or other part of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of these Conditions and the remaining provisions of these Conditions shall continue in full force and effect.
- 14.3. The failure of NPP to exercise or enforce any right conferred on that party by the Conditions 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.
- 14.4. These Conditions and in particular the limitations on liability are intended to inure for the benefit of both NPP and its representatives to which end NPP contracts on these Conditions 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 Conditions apply shall have no rights under or in connection with it.
- 14.5. All legal relationships and agreements between NPP and the User shall be governed in all respects by the laws of England and Wales.

14.6. All claims or disputes arising out of or in connection with the Services are to be determined exclusively by the Courts of England and Wales, to which jurisdiction the User irrevocably submits, save that NPP 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.

**Annex: Newhaven Harbour Limits Plan**

