



COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

# COMHAIRLE NAN EILEAN SIAR

## HARBOURS TERMS AND CONDITIONS

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| <b>Contents</b> | <b>Description</b>        | <b>Page</b> |
|-----------------|---------------------------|-------------|
| Part 1          | Definitions               | 3           |
| Part 2          | Interpretation            | 4-5         |
| Part 3          | Application of Conditions | 5           |
| Part 4          | Provision of Services     | 5-8         |
| Part 5          | Payments                  | 8-9         |
| Part 6          | User Warranties           | 9-12        |
| Part 7          | Liability                 | 13-15       |
| Part 8          | Indemnity                 | 15-16       |
| Part 9          | Insurance                 | 15          |
| Part 10         | Miscellaneous Provisions  | 16          |



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

### Part 1 Definitions

- “Acts”** means the various Comhairle nan Eilean Siar Harbour Acts; The Lochmaddy Pier and Harbour Order 1878, Lochmaddy Pier Order 1949, Portnaguiran Pier Order 1951, Ardveenish Harbour Order Confirmation Act 1980, Breasclete Harbour Confirmation Act 1980, Western Isles Islands Council (Loch Roag) Order Confirmation Act 1982, Western Isles Islands Council (Kallin Pier, Harbour Jurisdiction) Order Confirmation Act 1984, Lochmaddy and East Loch Tarbert (Improvement of Piers &c.) Order Confirmation Act 1984, Western Isles Islands Council (Bernaray Harbour) Order Confirmation Act 1986, Western Isles Island Council (Ardveenish) Harbour Revision Order 1992, Western Isles Island Council (Breasclete) Harbour Revision Order 1992, Western Isles Council (Brevig) Harbour Empowerment Order 1993, Western Isles Island Council (Leverburgh) Harbour Revision Order 1995, Comhairle nan Eilean Siar (Aird Mhor, Barra) Harbour Empowerment Order 2001 and Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002.
- “Byelaws”** means any byelaws made by the Harbour Authority from time to time;
- “Charges”** means vessel and any other dues and charges levied by Comhairle nan Eilean Siar as Harbour Authority and any other sum payable to Comhairle nan Eilean Siar;
- “Comhairle nan Eilean Siar”** means the local authority acting as a Harbour Authority, as constituted as the Western Isles Islands Council in terms of the Local Government (Scotland) Act 1973, thereafter designed and known as the Western Isles Council in terms of the Local Government etc (Scotland) Act 1994 and having changed its name conform to the Local Government (Gaelic Names) (Scotland) Act 1997, having its principal offices at Council Offices, Sandwick Road, Stornoway, Isle of Lewis HS1 2BW.
- “Directions”** means any Special or General Directions made by Comhairle nan Eilean Siar pursuant to the Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002;
- “Harbour Authority”** means Comhairle nan Eilean Siar;
- “Harbour Area”** as defined within the Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002.
- “Harbour Limits”** are as set out in Paragraph 1 of Schedule 2 of the Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

|                                     |                                                                                                                                                                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Harbour Master”</b>             | means the Comhairle nan Eilean Siar Harbour Master, his deputy or any nominee of theirs;                                                                                                                                                                                    |
| <b>“Harbour Office”</b>             | means Council Offices, Comhairle nan Eilean Siar, Balivanich, Isle of Benbecula, HS7 5LA;                                                                                                                                                                                   |
| <b>“Owner”</b>                      | means any persons with or claiming to have any proprietary or possessory interest including lessors, charterers and sub-charterers;                                                                                                                                         |
| <b>“Property”</b>                   | means any vehicle, trailer, goods, cargo or other piece of equipment or property of any nature;                                                                                                                                                                             |
| <b>“Quay”</b>                       | means any quay, pier, jetty, berth, mooring or other place at which Vessels can load or discharge or embark or disembark passengers or vehicles, and the waters surrounding the same, all within Harbour Limits;                                                            |
| <b>“Representative”</b>             | means any employee, agent, driver, contractor, sub-contractor, master or any other person having command or crew of any Vessel;                                                                                                                                             |
| <b>“Services”</b>                   | means any service or facility that Comhairle nan Eilean Siar provides to the User;                                                                                                                                                                                          |
| <b>“Schedule of Rates and Dues”</b> | means the standard tariff of charges for use by a User of the Services published under the title ‘Full Schedule of Rates’ or similar on the Comhairle nan Eilean Siar website and as amended from time to time by Comhairle nan Eilean Siar;                                |
| <b>“Terms”</b>                      | means these General Terms and Conditions;                                                                                                                                                                                                                                   |
| <b>“User”</b>                       | means any of the following: (a) any person who enters the Harbour Area; (b) any person who or by any Representative requests or receives the benefit of any Services; and (c) any Owner or carrier of any Vessel or Property which may be on or come into the Harbour Area; |
| <b>“Vessel”</b>                     | means any vessel, craft, boat, yacht, dinghy or other marine structure of any description.                                                                                                                                                                                  |

## **2** **Interpretation**

- 2.1 Words importing the neutral gender only shall include the masculine and feminine genders, words importing the masculine gender only shall include the feminine gender and vice versa.
- 2.2 Words importing the singular number only shall include the plural number and vice versa. Where there are two or more persons included in the expression “User” then obligations undertaken by the User shall be obligations undertaken by such persons jointly and severally and their respective successors, executors and representatives whomsoever.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 2.3 Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 2.4 Condition headings are for ease of reference and do not form part of or affect the interpretation of these Terms.
- 2.5 Any phrase introduced by the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms.
- 2.6 Any reference to “person” includes any natural person, company, body corporate or un-incorporate or other judicial person, partnership, firm, joint venture or trust.
- 2.7 The rights of Comhairle nan Eilean Siar under these Terms are in addition to the rights and powers conferred by statute, statutory instrument, the Acts, the Byelaws and the Directions.

### **3 Application of Terms**

- 3.1 These Terms shall apply:
- (a) to all Services provided by Comhairle nan Eilean Siar whether directly or indirectly and whether within the Harbour Area or elsewhere; and
  - (b) to all physical access by any Vessel, person and Property to or from the Harbour Area.
- 3.2 In the absence of express acceptance of these Terms by the User, acceptance shall be constituted in the event of the entry of any Vessel, person or Property into or onto the Harbour Area or by application (oral or otherwise) to Comhairle nan Eilean Siar for entry to the Harbour Area or for any Services or the use of any facility by or on behalf of any User.
- 3.3 No terms or conditions whether express or implied which are at variance with these Terms shall apply unless and to the extent that they have been agreed in writing by the Comhairle nan Eilean Siar.
- 3.4 Any costs incurred by Comhairle nan Eilean Siar in enforcing these Terms against a User shall be recoverable from that User.

### **4 Provision of Services**

- 4.1 Subject to any other provisions of these Terms, the Harbour Authority shall exercise reasonable skill and care in carrying out the Services. No greater obligation, express or implied, is accepted.
- 4.2 Comhairle nan Eilean Siar reserves the right to appoint sub-contractors to perform all or any part of the Services. Any sub-contractor shall have the benefit of these Terms. Comhairle nan Eilean Siar shall have no greater obligation or liability in respect of any sub-contracted services than it would have had if the Services had been provided by them directly.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 4.3 Unless specifically otherwise agreed in writing with the User, where Comhairle nan Eilean Siar provides Services in respect of Property being loaded onto or unloaded from or passengers and their Property embarking or disembarking from any Vessel it does so purely as agent of the actual and/or contractual carrier.
- 4.4 Comhairle nan Eilean Siar shall have absolute discretion in the handling, storage and transportation of any Vessel or Property and in the allocation of Quays, plant, machinery, labour and storage space. All Vessels must moor or berth in the Harbour Area or anchor within the Harbour Limits according to 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 Other than as provided for in s.33 of the Harbours, Docks, and Piers Clauses Act 1847, Comhairle nan Eilean Siar may in its absolute discretion:
- (a) refuse to permit any User to enter the Harbour Area and refuse to accept any Vessel or Property on or into the Harbour Area;
  - (b) require any User, Vessel or Property who/which has entered the Harbour Area to leave it or require the same to be removed at any time;
  - (c) decline to undertake or suspend the performance of all or any part of the Services;

In such event Comhairle nan Eilean Siar shall not have any liability and shall not be liable to pay any compensation in respect thereof.

- 4.6 Following any exercise of the Comhairle nan Eilean Siar rights under Clause 4.5, the User shall remove the Vessel and Property from the Harbour Area within six hours or if otherwise agreed in writing, within a timescale as prescribed by Comhairle nan Eilean Siar. Comhairle nan Eilean Siar shall refund any Charges paid in advance in respect of Services not performed but may deduct any sums due to it as well as any loss, damage, liability, cost or expense incurred by or caused to Comhairle nan Eilean Siar by or in respect of such Vessel or Property.
- 4.7 In the event that:
- (a) the User fails to remove the Vessel or Property from the Harbour Area within the period set out in Clause 4.6 following the exercise of any of Comhairle nan Eilean Siar's rights under Clause 4.5;
  - (b) any Property is not collected and removed from the Harbour Area by the User at the time of landing;

Comhairle nan Eilean Siar shall be entitled, at the expense and sole risk of the User, to remove and place wherever Comhairle nan Eilean Siar (acting reasonably) deems appropriate such Vessel or Property. Charges for transit shed, Quay rental and any other storage will be made where appropriate.

- 4.8 Comhairle nan Eilean Siar shall be under no obligation to provide mooring or berthing facilities, but in the event it does, such facilities shall be granted on the following terms and conditions:-



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- (a) moorings or berths may be rented for the periods and rates published from time to time by Comhairle nan Eilean Siar. Where a mooring or berth rental charge is calculated with reference to the overall length of the Vessel, the length will include extensions such as davits, bowsprits, etc. and will be rounded up to the nearest whole metre. A User is not entitled to the exclusive use of a particular mooring or berth.
  - (b) in the case of a User renting a berth on an annual basis the berthing year will be the period of twelve months commencing on 1<sup>st</sup> April and rental charges will be payable in advance and demanded by invoice payable within 28 days of issue. Where annual charges are not appropriate (in the view of Comhairle nan Eilean Siar acting reasonably), the User will be liable to pay charges set out in the Schedule of Rates and Dues at the daily/weekly rate for the period of mooring or berth occupancy.
  - (c) no refund is due for moorings or berths that are vacated part way through a year. If payment for a mooring or berth is not received by the due date, Comhairle nan Eilean Siar reserves the right to cancel the mooring or berth.
- 4.9 The right to moor or berth a Vessel in the Harbour Area pertains to a particular User and Vessel. Comhairle nan Eilean Siar reserves the right to cancel an offer of a mooring or berth if on inspection of the Vessel it is considered unsuitable for mooring or berthing in the Harbour Area because of its dimensions, weight, method of construction, state of repair, type of fendering or other reason. In such circumstances a proportionate refund of any future mooring or berth rental charges already paid will be made.
- 4.10 A licence to moor or berth in the Harbour Area may not be transferred, nor may it be used for any other vessel without the prior written consent of Comhairle nan Eilean Siar. A license to moor or berth in the Harbour Area issued on an annual basis will be valid from the date of issue until the following 31<sup>st</sup> March. The User must provide Comhairle nan Eilean Siar with an address and contact telephone number and e-mail address. Any change in the details relating to the User or Vessel provided on the application form shall be notified to Comhairle nan Eilean Siar immediately.
- 4.11 Electricity may be available at some berths although the supply is not guaranteed. If electricity is required to be supplied to unattended vessels or for use other than for low powered equipment, a metering system must be provided by the User. In such circumstances the User will be charged for the number of units consumed and shall pay on demand at the current rate of charges in force at the Harbour Area from time to time. Connectors and cables shall be supplied by the User and shall only be used if they are of proper manufacture and comply with UK standards. The User will be liable for any damage caused to equipment owned by Comhairle nan Eilean Siar arising from the User's use of the electricity supplied.
- 4.12 Comhairle nan Eilean Siar shall have the power to move, enter or board any Vessel if in its opinion this is necessary for the safety of the Vessel and/or safety or convenience of other Harbour users and/or safety of Comhairle nan Eilean Siar's premises, plant or equipment and/or any other reason determined by the Harbour Master acting reasonably. If required by Comhairle nan Eilean Siar, the User shall leave a duplicate set of their Vessel keys with Comhairle nan Eilean Siar at all times. Keys will not be released to third parties without the User's prior consent.
- 4.13 Comhairle nan Eilean Siar is entitled to vary the Schedule of Rates and Dues at any time, such variation to apply to any use of the Services following publication of the said variation on the Comhairle nan Eilean Siar website.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 4.14 Where based on volume, rates and dues may be subject to adjustment at any time for extraordinary items and/or significant increases or decreases in volume and/or significant changes in the delivery profile or storage characteristics.
- 4.15 In the event of any movement of a Vessel leading to a closure of the harbour (or part thereof) to other Vessels, Comhairle nan Eilean Siar shall be entitled to impose an enhanced level of charge on the Vessel whose movement has resulted in such closure. Enhanced charges will be notified to the User prior to such movement.
- 5 **Payments**
- 5.1 The User shall be liable for all Charges, payments, fines and expenses due in connection with any Vessel or Property and for any loss and/or damage suffered or incurred by Comhairle nan Eilean Siar in connection with the use of the said Vessel or Property.
- 5.2 Prior to a Vessel entering the Harbour Area, the User shall provide Comhairle nan Eilean Siar with:
- (a) details of the length (measured to the next highest full metre) and draft of the Vessel;
  - (b) any other information requested by Comhairle nan Eilean Siar or required to be disclosed to Comhairle nan Eilean Siar in terms of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 /2110 or other relevant legislation, prior to arrival.
- 5.3 All sums payable are exclusive of value added tax and any other duty or tax, which shall (to the extent applicable) be payable by the User at the rate and in the manner from time to time prescribed by law.
- 5.4 Payment of all sums due by the User to Comhairle nan Eilean Siar shall be made within 28 calendar days of receipt of the Services or request for payment, whichever shall occur earlier. Payment shall be made without deduction, withholding, abatement, set-off, or any counterclaim whatsoever, save as may be required by law. All payments shall be made in cleared funds in GB pounds sterling.
- 5.5 The User shall be liable to pay interest to Comhairle nan Eilean Siar on any sums outstanding for the period from the due date to the date of payment (i) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable); or (ii) where the said Act is not applicable, at 4 per cent per annum above the base lending rate of the Royal Bank of Scotland.
- 5.6 (a) Subject to all applicable laws and regulations, Comhairle nan Eilean Siar shall have a general and specific lien over any Vessel or Property and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to Comhairle nan Eilean Siar of the User or the owner of such Vessel or Property. Comhairle nan Eilean Siar shall be entitled to refuse to deliver up any Vessel or Property until all such sums have been paid. Storage and other charges accruing shall continue to accrue during such period. If any sums remain unpaid for a period of 60 days from the invoice date Comhairle nan Eilean Siar shall be entitled to take possession of any such Vessel or Property and to sell them, reimbursing the User the sale proceeds less sums due to Comhairle nan Eilean Siar and the reasonable sale costs and expenses incurred by Comhairle nan Eilean Siar. Comhairle nan Eilean Siar shall have no liability in this regard.





## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- (b) In the exercise of Clause 5.6(a) Comhairle nan Eilean Siar reserves to itself absolute discretion as to the means and procedure to be followed in the handling, storage and transportation of any Vessel or Property notwithstanding any express instructions given by the User in relation thereto.
- 5.7 If the User:
- (a) passes a resolution to be wound up, or a court makes an order that it is to be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or is are unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (b) makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or creditors, or if an administrator or trustee is appointed to manage its affairs; or
  - (c) has appointed a receiver, manager, administrator or administrative receiver over all or any part of its property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver; then Comhairle nan Eilean Siar shall be entitled immediately to recover from the User or any other person liable for the Charges (notwithstanding that the periods stated above or any period of credit extended to the User may not have expired) all sums then due to Comhairle nan Eilean Siar (including any accrued interest and other Charges properly levied in accordance with these Terms) and all loss and expense incurred by Comhairle nan Eilean Siar as a result of such circumstances.
- 5.8 Any query to be raised by the User on any invoice issued by Comhairle nan Eilean Siar must be made in writing within 30 days of the invoice date failing which the User shall be deemed to have accepted the invoice.

## **6 User Warranties**

- 6.1 The User warrants to Comhairle nan Eilean Siar that it is either the owner of the Vessel and the Property or it has the authority and consent for itself and for and on behalf of all persons having any title to or interest in any Property 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 Property or Vessel are advised that unless Comhairle nan Eilean Siar is notified in writing of their title or interest in any particular Property or Vessel prior to the commencement of any relationship between Comhairle nan Eilean Siar 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 Property or Vessel shall be subordinated to the rights of Comhairle nan Eilean Siar hereunder.
- 6.2 The User warrants that it and its Representatives shall at all times comply in all respects with all applicable laws, regulations, codes of practice and international conventions relating to the Harbour Area (including the Acts, Byelaws, Directions and requirements of the Harbour Authority) and to the Vessel, and/or Property (including navigation, manning and movement) and with all other statutory duties, requirements and obligations incumbent on the User).



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 6.3 The User warrants that it shall immediately inform the Harbour Master of any occurrence or incident which might affect the safe and efficient operation of the Harbour Area or other persons at the Harbour Area or result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience arising as a result of the Vessel or Property, as may be required by Comhairle nan Eilean Siar.
- 6.4 The User warrants that it shall not:
- (a) use any devices which transmit radio signals or attempt to block radio signals (including without prejudice to the foregoing generality, G.P.S.) whilst on the Harbour Area;
  - (b) interfere with any systems, communication links and equipment or computer hardware and software of Comhairle nan Eilean Siar or other Users whilst on the Harbour 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 Comhairle nan Eilean Siar except that the User may use marine band and radar radio frequencies and Wi-Fi.
- 6.5 No part of the Harbour Area shall be used for water skiing, jet skiing, kite surfing, parascending, recreational swimming or diving or such other similar activity without the prior consent of the Harbour Master.
- 6.6 No person shall leave on the pontoon decks, walkways, access bridge, Vessel, compounds or any other part of the Harbour Area, any equipment, fishing gear, ropes or personal belongings or any other thing whatsoever except for brief periods in the course of transporting the items to or from the Vessel, unless with the written permission of Comhairle nan Eilean Siar. Comhairle nan Eilean Siar shall have the right to remove and dispose of any such items left within the Harbour Area without the prior consent of User, at the User's expense.
- 6.7 Vessels moored or berthed in the Harbour Area must have their name clearly displayed. The User must ensure that any display sticker provided by Comhairle nan Eilean Siar as evidence of the relevant dues having been paid is displayed in a conspicuous position on the Vessel.
- 6.8 The User shall moor or berth and leave the Vessel safely and securely made fast and appropriately fendered and in such a manner, position and location as Comhairle nan Eilean Siar may require. Comhairle nan Eilean Siar shall have the right to alter the location of the mooring or berth from time to time without any right of appeal by the User.
- 6.9 The User must ensure that no damage, obstruction, nuisance or annoyance is caused to the Harbour Area and other harbour users. All necessary warps and fenders shall be supplied by the User. In the event that the Vessel has sails, these are required to be removed and stored safely when not in use and all rigging secured safely. Any outboard motors are to be removed from the water and stored safely on the Vessel when not in use.
- 6.10 The User shall, if required to do so by the Harbour Master, give free access across the deck of his Vessel for persons and goods to and from vessels berthed alongside his Vessel.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 6.11 The engines of any Vessel moored in the Harbour Area shall not be operated in such a manner so as to cause damage to the bed or banks of the Harbour Area or to any other Vessel or Property.
- 6.12 The User shall keep any moored or berthed Vessel in a sound watertight and sea worthy condition to the satisfaction of the Harbour Master at all times. Comhairle nan Eilean Siar shall have the right to carry out emergency work on the Vessel and the User shall be liable for all reasonable charges for this work.
- 6.13 The User shall notify the Harbour Master as soon as practicable after becoming aware of:
- (a) any vessel that has sunk or grounded in the Harbour Area or the occurrence of any accident within the Harbour Limits.
  - (b) any defect in the harbour infrastructure including breakwater, mooring chains, ropes, buoys, pontoon berthing or water/electrical/safety appliances.
- 6.14 If the Vessel or Property sinks within the Harbour Limits, Comhairle nan Eilean Siar shall be entitled to raise and salvage the Vessel or Property and to recover from the User all reasonable charges, fees and expenses incurred in respect thereof. Where reasonably practicable the User will be given prior warning that Comhairle nan Eilean Siar is about to exercise its rights under this clause.
- 6.15 No repairs or works shall be carried out on the Vessel within the Harbour Areas other than minor running repairs or minor routine maintenance. Such repairs shall be carried out in a safe manner so as not to cause or be likely to cause any damage or any danger, nuisance, disruption or annoyance to other marina or harbour users and local residents. Comhairle nan Eilean Siar reserves the right to terminate works in progress if it considers that these are being carried out or about to be carried out in breach of this regulation. No welding or hot work is permitted without prior approval of the Harbour Master.
- 6.16 Vessels entering, leaving or maneuvering within the Harbour Limits shall do so with care and caution and at such speed and in such a manner so as not to damage, endanger or inconvenience other vessels, individuals, equipment or any part of the Harbour Area. An upper speed limit of 5 knots is in force within 500 metres of any berth (unless otherwise notified by Comhairle nan Eilean Siar) except for Vessels attending an emergency. Endangerment, damage or nuisance must not be caused by a Vessel creating excessive wash, and a Vessel's speed should be controlled accordingly.
- 6.17 No refuse is to be thrown overboard or left at any place within the Harbour Area except in the appropriate receptacles provided by Comhairle nan Eilean Siar. No effluent, detergent, fuel or other pollutants shall be spilled or dumped within the Harbour Limits. Oily rags, waste oil, used filters, etc. must be placed in the appropriate bin and must not be left lying around.
- 6.18 Any flammable materials, fuel oil, gasses and warning flares stored on board a Vessel shall be securely stored and contained in a safe and proper manner.
- 6.19 Smoking is strictly prohibited in or within the vicinity of any fueling areas.
- 6.20 The User shall take all necessary precautions for the prevention of fire and shall ensure that at least one fire extinguisher complying with all relevant legislation and suitable for the type of engines, fuel and equipment is available on the Vessel and shall comply with any requirements of the Harbour Master in this regard.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 6.21 Given any material breach of any statute, byelaw, condition of mooring or berthing, any of these Terms or any lawful direction given by the Harbour Master (the determination of a material breach being made by the Harbour Master in their sole discretion), Comhairle nan Eilean Siar may terminate any mooring or berthing contract by sending written notice to the last known address of the Owner by registered post or e-mail. If the identity of the Owner or the Owner's contact details are not known to Comhairle nan Eilean Siar, Comhairle nan Eilean Siar shall serve such written notice by leaving a copy on the Vessel. Upon such termination the Owner shall remove the Vessel and any other Property belonging to them within 28 days or at a period being determined at the sole discretion of Comhairle nan Eilean Siar. On failure to remove the Vessel within the 28 days (or other period as detailed in the said notice), Comhairle nan Eilean Siar may at the Owner's sole risk and expense remove the Vessel and Property and store, moor or berth it elsewhere and all reasonable costs incurred by Comhairle nan Eilean Siar in so doing shall be recoverable from the Owner.
- 6.22 The User shall ensure that their Vessel is compatible with the berth and/or linkspan and capable of entering the Harbour Area and manoeuvring into and out of the berth without assistance from Comhairle nan Eilean Siar.
- 6.23 The User acknowledges and accepts that when navigating the Harbour Area, priority must be given to lifeline ferry services.
- 6.24 Users shall refuel only at a designated fuelling berth (if there is such a facility in the Harbour Area) and are to vacate the berth when any fuelling operation is completed. Where fuel is required to be transferred in portable containers, Comhairle nan Eilean Siar reserves the right to refuse the use of any container deemed unfit for the purpose.
- 6.25 All storage of Vessels must be on suitable cradles or trailers, unless otherwise agreed. All Vessels unsuitably stored, will be removed by Comhairle nan Eilean Siar at the User's expense.
- 6.26 All lifting and movement operations within the Harbour Area are entirely at the User's risk.
- 6.27 No work is permitted in the Harbour Area without the prior written agreement of Comhairle nan Eilean Siar. Any contractors or sub-contractors will be required to evidence adequate safe systems of work and appropriate indemnity insurance, prior to access being granted.
- 6.28 The User shall not use or bring any vehicles into the Harbour Area unless authorised to do so in writing by Comhairle nan Eilean Siar. The User shall indemnify Comhairle nan Eilean Siar from and against all loss or damage caused by their use of vehicles at the Harbour Area. Vehicles left unattended in such a manner as to interfere with the normal workings of the Harbour Area, may be removed without notice.
- 6.29 The User will be responsible for upkeep, manning, loading, discharging, ticketing, embarkation and disembarkation of freight, livestock and passengers in relation to their Vessel and shall ensure that appropriate personnel are provided to carry out such services.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

### 7 **Liability**

- 7.1 Nothing in these Terms shall exclude or in any way limit Comhairle nan Eilean Siar's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited by law.
- 7.2 Any Vessel or Property, which is located within the Harbour Area, is located entirely at the User's and Owner's own risk. Save as otherwise contracted with Comhairle nan Eilean Siar, Comhairle nan Eilean Siar will not be responsible for the safe custody of any Vessel or Property entering the Harbour Area.
- 7.3 Comhairle nan Eilean Siar shall have no liability whatsoever in respect of any of the following howsoever caused or arising and whether or not the same was foreseeable, known or otherwise: (a) any indirect, incidental, special or consequential loss or damage; (b) loss of actual or anticipated income, profits, contracts, goodwill, or business; (c) loss of anticipated savings; (d) loss which might reasonably have been avoided or minimised by the User; (e) betterment; and (f) any increased costs or expenses or both.
- 7.4 Comhairle nan Eilean Siar shall have no liability for any loss, damage, cost, expense or delay caused by or arising as a consequence of: (a) acts, events or omissions beyond its reasonable control; (b) force majeure (including adverse weather, storm, high winds, lightning, earthquake, tidal waves or flood), epidemic or pandemic; (c) strikes, lock-out or other industrial disputes (whether involving the workforce of Comhairle nan Eilean Siar or any other party); (d) failure of a utility service or transport network; (e) war, riot or civil commotion; (f) malicious damage, theft (unless proved to have been committed by an employee of Comhairle nan Eilean Siar) or piracy; (g) wear and tear, leakage or latent defect of goods or equipment or packaging; (h) compliance with any law or governmental or official order, rule, regulation or direction; (i) accident; (j) damage to or breakdown of plant or machinery (including computer hardware, computer software, telephone, radio satellite or other communication system, alarm or C.C.T.V.); (k) loss/deletion of data; (l) fire (including steps to extinguish fire) or smoke; (m) temperature variation, mould or corrosion; (n) vermin or insects; (o) any Vessel or Property being in an unsuitable condition for the Services or any Vessel being unseaworthy; (p) acts or default of third parties; (q) insufficient depth of water at any Quay or berth or its approaches; (r) inadequate packaging; (s) acts by or on behalf of Comhairle nan Eilean Siar for the preservation of life; (t) loss of business consequent to dignitaries visiting at the behest of Comhairle nan Eilean Siar and (u) the failure of the User or their Representative to comply with these Terms, the Byelaws or the Directions or a breach of any of the warranties or confirmations given by the User.
- 7.5 The burden of proof that any loss or damage was caused by the actionable fault of Comhairle nan Eilean Siar shall be on the User. That such loss or damage occurred within the Harbour Area or under Comhairle nan Eilean Siar's control shall not satisfy the User's burden of proof.
- 7.6 Subject to Condition 7.1, the total liability of Comhairle nan Eilean Siar (if any) for any loss, damage, liability, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than £1,000,000 and shall be the lowest of the following as applicable:

#### **Vessel:**

- (a) the market value at the time of the damage or loss of that part or parts of the Vessel to which the claim relates;



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- (b) the reasonable cost of repairs.

### **Property:**

- (a) the reasonable cost of repairs;
- (b) the market value at the time of the damage or loss to which the claim relates;
- (c) the sum of £3,000 per any unit of Property.

### **Goods:**

- (a) the value of the goods affected to which the claim relates; and if any claim is 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 Comhairle nan Eilean Siar and Comhairle nan Eilean Siar had agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving at the Harbour Area.

7.7 Nothing in these Terms shall prejudice the Harbour Authority's right to rely on any contract, convention or statutory provision providing for limitation and/or exclusion of liability including but not limited to the provisions of the Merchant Shipping Acts and subordinate legislation.

7.8 It is a condition precedent to any liability of the Harbour Authority that the Harbour Authority is notified in writing in respect of:

- (a) any damage alleged to have been caused to a Vessel (and to be permitted to inspect such damage) prior to sailing or the commencement of repairs;
- (b) any damage alleged to have been caused to Property prior to such Property leaving the Harbour Area.

Failure to meet with these requirements shall absolve the Harbour Authority of any liability whatsoever. In any event, the Harbour Authority shall be entitled (and the User and Owner hereby grant permission to the representatives of Comhairle nan Eilean Siar) to inspect any such Property prior to its disposal or destruction by the Owner. The User and/or Owner shall not be entitled to bring any claim in respect of any single incident below the *de minimis* limit of £500.



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

- 7.9 Notwithstanding the provisions of Clause 7.8, Comhairle nan Eilean Siar shall in any event be discharged of all liability whatsoever howsoever arising unless a claim is notified to Comhairle nan Eilean Siar within 28 days and formally submitted within a three month period, and that court proceedings are commenced against Comhairle nan Eilean Siar within 12 months from the date of the event or occurrence alleged to have given rise to a claim against Comhairle nan Eilean Siar.
- 7.10 Comhairle nan Eilean Siar shall have the following powers in respect of Vessels and Property abandoned within the Harbour Area:
- (a) the power immediately to remove and where necessary dispose of such Vessels and Property in the case of hazard or other emergency without prior notice;
  - (b) the power generally to remove and dispose of or sell such Vessels and Property on reasonable notice to the User (the length of such notice to be determined by Comhairle nan Eilean Siar acting reasonably on a case by case basis). If the User's contact details are not known to Comhairle nan Eilean Siar then Comhairle nan Eilean Siar can remove and dispose of or sell such Vessels or Property after leaving written notice on the Vessels or Property for a reasonable period of time (the length of such period to be determined by Comhairle nan Eilean Siar acting reasonably on a case by case basis);

and in each case to charge the User or the Owner for the reasonable costs incurred in respect of the removal, storage and disposal/sale of such Vessels or Property.

- 7.11 In exercise of its powers under Clause 7.10 above, Comhairle nan Eilean Siar shall be exempt from all liability to the fullest extent permitted by law for deficiency, loss, damage or mis-delivery of or to the said Vessel or Property or for delay arising out of, caused or contributed to by the handling by the Harbour Authority of the said Vessel or Property. The person tendering the said Vessel or Property shall be responsible for and shall indemnify Comhairle nan Eilean Siar against all injury (including fatal injury), loss or damage however caused and against all claims made against Comhairle nan Eilean Siar 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 by Comhairle nan Eilean Siar of the said Vessel or Property.
- 7.12 The User is under a duty to mitigate its losses, including for example, in obtaining salvage.

## **8 Indemnity**

- 8.1 The User shall be liable for and shall indemnify Comhairle nan Eilean Siar 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 Comhairle nan Eilean Siar, its employees, servants, agents or sub-contractors howsoever caused, which arise out of or in connection directly or indirectly with:
- (a) any act, omission, instruction, misrepresentation, negligence, recklessness, fraud, willful misconduct or breach of statutory duty of the User or the Owner or any other person interested in the Property or Vessel;
  - (b) the failure of the User to comply with the requirements of any authority;



## COMHAIRLE NAN EILEAN SIAR HARBOURS TERMS AND CONDITIONS

(c) the failure of the User to comply with any of these Terms (or to take any step which Comhairle nan Eilean Siar shall consider to have been reasonably required to remedy such failure) or the breach by the User of any of the warranties or undertakings of the User.

8.2 Any sums payable to the Harbour Authority under this Clause 8 shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

### **9 Insurance**

9.1 Owners shall maintain third party insurance in respect of their Vessel, crew and guests to cover all risks including damage by fire or other hazards to other craft and persons using the Harbour Area, and to the property of Comhairle nan Eilean Siar, for a minimum sum of £3,500,000 or such greater sum as may be required by Comhairle nan Eilean Siar and intimated to the Owner. Owners shall maintain first party removal of wreck insurance for a minimum sum of £3,500,000. Owners deploying staff within the Harbour Limits shall be required to possess a minimum of £10,000,000 employer's liability insurance. Such insurances shall be maintained with a reputable insurance company and evidence of such insurances shall be provided to Comhairle nan Eilean Siar within 14 days of request. Vessels found to be without such insurances may have any allocated berth or mooring cancelled immediately.

9.3 Comhairle nan Eilean Siar has no responsibility to insure Vessels or Property.

### **10 Miscellaneous Provisions**

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

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

10.3 These Terms and in particular the limitations on liability are intended to inure for the benefit of both Comhairle nan Eilean Siar and its employees, agents and contractors to which end Comhairle nan Eilean Siar contracts on these Terms on its own behalf and as agent for and trustee for the benefit of its employees, agents and contractors.

10.4 All legal relationships and agreements between Comhairle nan Eilean Siar and the User shall be governed in all respects by Scottish law and the User hereby submits to the exclusive jurisdiction of the Scottish courts in connection therewith, save that Comhairle nan Eilean Siar 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.