

## LONDONDERRY PORT AND HARBOUR COMMISSIONERS

### TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

#### 1. INTERPRETATION

##### 1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in Belfast are open for business;

**Byelaws** mean the Londonderry Port and Harbour Commissioners Byelaws 2005 a copy of which are available from the LPHC upon request;

**Cargo** means any articles, goods, materials or merchandise of whatever nature (including any packaging) carried on a Vessel or vehicle (as the case may be);

**Charge** means the charge payable by the Customer for the supply of the Services in accordance with clause 11;

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 22.8;

**Contract** means the contract between the LPHC and the Customer for the supply of the Services in accordance with these Conditions;

**Crane Services** means the provision by the LPHC to the Customer of mobile harbour cranes for the purpose of loading or unloading Cargo to or from a Vessel or for any other purpose authorised by the Harbour Master;

**Customer** means the person, agent, firm or Owner who purchases Services from the LPHC;

**Customer Property** means any materials, equipment, machine or other property belonging to or under the control of the Customer or Owner (including any Vessel or vehicle);

**Effective Date** has the meaning set out in clause 2.2;

**Harbour** means the harbour as defined by Article 6 of the Londonderry Port and Harbour Commissioners Order 1971;

**Harbour Master** has the meaning ascribed to it in the Byelaws;

**Hopper Services** means the provision by the LPHC to the Customer of a hopper for the purpose of discharging Cargo from a Vessel onto a vehicle;

**LPHC** means the Londonderry Port and Harbour Commissioners a body corporate whose principal office is situated at Port Road, Lisahally, Londonderry BT47 6FL and shall include their successors;

**Marine Plant Services** means the provision by the LPHC to the Customer of a marine plant (to include tugs, seabed levelling vessels, dredgers, pilot boats and work boats);

**LPHC Property** has the meaning set out in clause 9.1(f);

**Order** means the Customer's order for Services as set out in the Shipping Information Form, or in the Customer's written acceptance of a quotation by the LPHC, or by the Customer requesting provision of the Services either verbally or in written form, as the case may be;

**Owner** has the meaning ascribed to it in the Byelaws;

**Port Marine Safety Code** means the port marine safety code issued by the Department for Transport (as amended from time to time) a copy of which is available from the LPHC upon request;

**Port User Handbook** means the LPHC port user handbook (as amended from time to time) a copy of which is available from the LPHC upon request;

**Published Schedule of Rates** means the LPHC's published schedule of rates (as amended from time to time) which is available from the LPHC upon request;

**Quay Services** means the provision by the LPHC to the Customer of berthing facilities at the Harbour;

**Services** means any or all of the Crane Services, Hopper Services, Marine Plant Services and Quay Services or any other services associated with the business of the Harbour from time to time;

**Shipping Information Form** means the form, available from the LPHC, to be completed by the Customer and sent to the LPHC prior to any Vessel entering the Harbour;

**Vessel** has the meaning ascribed to it in the Byelaws.

**1.2** Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) 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 preceding those terms;
- (e) a reference to **writing** or **written** includes faxes and e-mails; and
- (f) clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

**2. BASIS OF CONTRACT**

- 2.1** The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

- 2.2** The Order shall only be deemed to be accepted on the earlier of either the LPHC: (i) issuing writing acceptance of the Order; or (ii) starting to provide the Services to the Customer, at which point and on which date the Contract shall come into existence (**Effective Date**).
- 2.3** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the LPHC which is not set out in the Contract.
- 2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5** Any quotation given by the LPHC shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue (unless otherwise agreed by the LPHC).
- 2.6** The Customer warrants that it has the authority of all persons having title to or interest in the Cargo or Customer Property to accept these Conditions on their behalf.

### **3. ARRIVAL**

The Customer shall immediately notify the Harbour Master prior to the arrival of its Vessel at the Harbour and provide all requested documents and information (including relevant documents and information relating to any Customer Property brought into the Harbour by the Customer).

### **4. SUPPLY OF SERVICES**

- 4.1** The LPHC does not guarantee the availability of the Services at any time.
- 4.2** Subject to clause 4.1, the LPHC shall supply the Services in all material respects in accordance with the relevant definition of such service as set out in these Conditions.
- 4.3** The LPHC shall use all reasonable endeavours to provide the requested Services on times or dates requested by the Customer but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Under no circumstances will the LPHC be liable to the Customer or any third party for any loss caused by a failure to provide the Services on any times or dates requested by Customer.
- 4.4** In the event that the LPHC cannot satisfy demand for the Services, the Harbour Master will allocate priority. The Customer will procure that the crew of the Vessel do all things necessary to give effect to the instructions of the Harbour Master.
- 4.5** The Services shall be provided using reasonable skill and care.
- 4.6** The LPHC may withhold, change or cancel any or all Services at any time for any reason.
- 4.7** The Customer is responsible for the removal of all surplus product or waste following the provision of Services by the LPHC. If this is not completed to the satisfaction of the LPHC, the Customer will be liable to the LPHC for the cost incurred by the LPHC to remove or clean up such product or waste.
- 4.8** The Customer shall ensure that all areas of the Harbour are left to the satisfaction of the LPHC after the Services have been provided.

## **5. CRANE HIRE SERVICES**

- 5.1** The crane shall be operated only by the LPHC (or persons authorised by the LPHC). Under no circumstances shall the Customer or members of the crew operate the crane.
- 5.2** The Customer shall provide all tackle, (including slings, chains, ropes and shackles but not including grabs) (**Tackle**) necessary for attaching Cargo to the crane.
- 5.3** The LPHC may inspect the Tackle at any time and request to see any relevant certification in respect of such Tackle. If either the Tackle or the relevant certification is deemed to be unsatisfactory, the LPHC may refuse to provide the Crane Services to the Customer.
- 5.4** The Customer shall provide all such suitably qualified and experienced personnel as required to:
- (a) prepare, fix and unfix Tackle; and
  - (b) manage and oversee all activities associated with the Crane Services (and ensure such activities are carried out in a safe manner).

## **6. HOPPER SERVICES**

- 6.1** The Customer shall provide such suitably qualified and experienced personnel to manage and oversee all activities associated with the Hopper Services (and ensure such activities are carried out in a safe manner).
- 6.2** Any breakdown or unsatisfactory working or want of repair of the hopper or any part thereof shall be immediately notified by the Customer to the LPHC. In the event that the breakdown, unsatisfactory working or want of repair is such as would interfere with the safe usage of the hopper or cause further damage to the hopper then the Customer shall (and shall procure that members of the crew) discontinue the use of it promptly.

## **7. MARINE PLANT SERVICES**

- 7.1** Marine plants will be crewed and operated by the LPHC personnel at all times.
- 7.2** The Customer shall be liable to the LPHC for the cost of repairing or replacing damage caused to tow ropes in the provision of the Marine Plant Services (excluding fair wear and tear).
- 7.3** Tugs are hired subject to the most recent edition of the UK Standard Conditions for Towage and Other Services.

## **8. QUAY SERVICES**

Berth location will be at the discretion of the Harbour Master and may be changed at any time for any reason. Under no circumstances will the LPHC be liable for any costs incurred by the Customer or Owner due to relocation of the berth.

## **9. CUSTOMER'S OBLIGATIONS**

- 9.1** The Customer shall (and, if applicable, shall procure that members of the crew shall):
- (a) co-operate with the LPHC in all matters relating to the Services;

- (b) if it is in charge of a Vessel or vehicle, provide the LPHC, its employees, agents, consultants and subcontractors, with access to such Vessel or vehicle (or any part of it) upon reasonable request;
- (c) provide the LPHC with such information and materials as the LPHC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) fully and safely prepare its Vessel or vehicle (as the case may be) for the supply of the Services;
- (e) prior to the commencement of the provision of the Services, obtain and maintain all necessary licences, permissions and consents which may be required to use the LPHC's facilities, LPHC Property or to receive the Services;
- (f) keep and maintain all materials, equipment, documents and other property belonging to the LPHC (**LPHC Property**) in safe custody at its own risk, maintain LPHC Property in good condition until returned to the LPHC, and not dispose of or use LPHC Property other than in accordance with the LPHC's written instructions or authorisation;
- (g) use all reasonable skill and care when using LPHC Property; and
- (h) abide by the directions of the Harbour Master at all times.

**9.2** If the LPHC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer (or members of the Vessel's crew) or failure by the Customer (or members of the Vessel's crew) to perform any relevant obligation (**Customer Default**):

- (a) the LPHC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the LPHC's performance of any of its obligations;
- (b) the LPHC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the LPHC's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the LPHC on written demand for any costs or losses sustained or incurred by the LPHC arising directly or indirectly from the Customer Default.

## **10. CARGO**

**10.1** The LPHC may, without liability to the Customer or Owner and for any reason whatsoever:

- (a) refuse to permit entry to any Cargo into the Harbour; or
- (b) require the Customer to remove any Cargo from the Harbour at any time.

**10.2** The Customer warrants that the Cargo:

- (a) is not dangerous, toxic or likely to emit injurious dust, gas, fumes liquid or radiation;
- (b) is not flammable (or likely to become so while in the Harbour);

- (c) is not infested, verminous, rotten or subject to fungal attack;
- (d) is stored at, and will continue to be stored at, its correct and safe temperature;
- (e) will not cause danger, injury, pollution or damage to any person, LPHC Property or any other property situated within the Harbour;
- (f) does not require any special protection (other than that agreed between the parties in writing) and will remain safe if left unprotected and in the open;
- (g) is legal;
- (h) does not contain any controlled drugs (unless the Customer is licensed or otherwise lawfully authorised in respect of same);
- (i) is packaged safely, adequately and in accordance with all applicable laws; and
- (j) is marked and labelled in accordance with all applicable laws.

**10.3** The Customer further warrants that it has obtained and shall maintain all necessary licences, permission and consents which may be required in respect of the Cargo or Customer Property.

## **11. CHARGES AND PAYMENT**

**11.1** Subject to clause 11.4(b), and unless otherwise agreed between the parties in writing, the Charges for the Services are as set out in the Published Schedule of Rates.

**11.2** The LPHC shall invoice the Customer on completion of the Services.

**11.3** Subject to clause 11.4(a), the Customer shall pay each invoice submitted by the LPHC:

- (a) within 28 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the LPHC, and time for payment shall be of the essence of the Contract.

**11.4** The LPHC reserves the right to:

- (a) require payment of the Charges prior to departure of a Vessel or vehicle from the Harbour;
- (b) charge overtime rates if the Customer requests the Services to be provided on a public holiday.

**11.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**).

**11.6** Without limiting any other right or remedy of the LPHC, if the Customer fails to make any payment due to the LPHC under the Contract by the due date for payment (**Due Date**), the LPHC shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Ulster Bank Limited's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

**11.7** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the LPHC in order to justify withholding payment of any such amount in whole or in part. The LPHC may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the LPHC to the Customer.

## **12. LIEN**

**12.1** The LPHC:

- (a) shall have a general lien upon all Cargo in its possession, custody or control for all Charges due at any time to the LPHC from the Customer;
- (b) shall be entitled, on at least 28 days' notice in writing to the last known address of the Customer, to sell or dispose of or deal with such Cargo as agent for, and at the expense of, the Customer and apply the proceeds in or toward the payment of such Charges;
- (c) shall, upon accounting to the Customer for any balance remaining after payment of the Charges, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Cargo.

## **13. CUSTOMER PROPERTY**

The LPHC shall not be liable whether in contract, tort or otherwise for any loss, theft or any other damage caused to Customer Property in the provision of the Services.

## **14. LPHC PROPERTY**

**14.1** LPHC Property is the exclusive property of the LPHC.

**14.2** The Customer shall not re-hire, sub-let, lend, sell, mortgage, charge, pledge, part with possession of or otherwise deal with LPHC Property.

## **15. INDEMNITY**

**15.1** The Customer and the Owner shall indemnify the LPHC from and against all losses, damages and expenses which may be sustained or incurred by the LPHC and in respect of all actions, proceedings, claims and demands which may be brought or made against the LPHC in respect of any damage done to any property (including LPHC Property and/or Customer Property) and any injury caused to any person whether in the employment of the LPHC or not and any other damage or injury whatsoever where such loss, damage, expense, action, proceeding, claim, demand or injury in any way arises out of or is in any way either directly or indirectly arising from any negligence of the Customer (or members of the Vessel's crew) or any breach of the Customer's duties and obligations under the Contract except insofar as such loss, damage, expense, action, proceeding, claim, demand or injury is attributable to the act or default of the LPHC or its servants and agents in the ordinary course of their employment or agents acting in their capacity as such.

**15.2** This clause 15 shall survive termination of the Contract.

## **16. LIMITATION OF LIABILITY**

**16.1** Nothing in these Conditions shall limit or exclude the LPHC's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**16.2** Subject to clause 16.1:

- (a) the LPHC shall under no circumstances whatever be liable to the Customer or Owner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the LPHC's total liability to the Customer (and Owner, if applicable) in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of: (i) an amount equal to the total Charges paid by the Customer under these Conditions in the period of 12 months considered retrospectively from the date of the relevant cause of action (or if shorter, since the Effective Date); or (ii) £50,000.

**16.3** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**16.4** This clause 16 shall survive termination of the Contract.

## **17. INSURANCE**

During the Contract and for a period of 6 months thereafter (or, if longer, the period for which the Customer's (or, if applicable, the Owner's) Cargo is within the Harbour) the Customer shall maintain in force (or shall procure that the Owner maintains in force), with reputable insurance companies public liability insurance and employers' liability insurance both of which for not less than £5 million per claim.

## **18. NOTICE OF ACCIDENTS**

The Customer shall immediately give notice to the LPHC if an accident occurs in the Harbour which results in injury to persons or damage to property.

## **19. BYELAWS AND OTHER LEGISLATION**

The Customer shall (and shall procure that members of the Vessel's crew shall) at all times abide by the Byelaws, the Port User Handbook, the Port Marine Safety Code, ISO 14001 and any other statutes, statutory instruments, rules or regulations in force in respect of the Harbour or imposed at any time by the LPHC.

## **20. ANTI-BRIBERY**



**20.1** The Customer shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the LPHC's anti-bribery policy (as amended from time to time) which is available from the LPHC upon request (**Relevant Policy**);
- (d) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policy and will enforce them where appropriate;
- (e) promptly report to the LPHC any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this Contract;

**20.2** The Customer shall ensure that any person associated with the Customer who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 20 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the LPHC for any breach by such persons of any of the Relevant Terms.

**20.3** Breach of this clause 20 shall be deemed a material breach under clause 21.1(a).

## **21. TERMINATION**

**21.1** Without prejudice to any other rights or remedies which the LPHC may have, the LPHC may terminate the Contract without liability immediately on giving notice to the Customer if:

- (a) the Customer, Owner or members of the Vessel's crew commits a material breach of any of the terms of the Contract and (if such breach is remediable) fails to remedy that breach within 5 Business Days of being notified of the breach; or
- (b) the Customer or Owner passes a resolution, or the court makes an order, that, the Customer or the Owner be wound up otherwise than for the purpose of bona fide reconstruction or amalgamation, or a receiver, manager, administrative receiver or administrator on behalf of a creditor is appointed in respect of the Company's or the Owner's business or any part thereof, or circumstances arise which entitle the court, otherwise than for the purpose of a bona fide reconstruction or amalgamation, to make a winding-up order, or any event occurs or proceeding is taken with respect to the Customer or Owner in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 21.1(b).

**21.2** Without limiting its other rights or remedies, the LPHC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

**21.3** Without limiting its other rights or remedies, the LPHC shall have the right to terminate the Contract by giving the Customer 14 Business Days' written notice.

**21.4** On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the LPHC all of the LPHC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the LPHC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall (or shall procure that members of the Vessel's crew) return all LPHC Property. If the Customer fails to do so, then the LPHC may enter the Customer's Vessel or vehicle (as the case may be) and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping;
- (c) the Customer shall, upon the LPHC's request, immediately remove from the Harbour any Customer Property. If the Customer fails to do so, the LPHC may, at its option and at the Customer's expense: (i) remove such Customer Property from the Harbour; (ii) relocate such Customer Property within the Harbour; or (iii) dispose of such Customer Property;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected; and

clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **22. GENERAL**

**22.1** Force Majeure:

The LPHC shall have no liability to the Customer or Owner under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the LPHC or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, delays in obtaining clearance for individuals, Cargo or Vessels, accident, breakdown of plant or machinery, fire, flood, storm, scarcity of labour, machinery, fuel or power, or default of suppliers or sub-contractors.

**22.2** Assignment and subcontracting:

- (a) The LPHC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the LPHC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**22.3** Notices:

- (e) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.

- (f) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

**22.4 Waiver:**

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**22.5 Severance:**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**22.6 No partnership:**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**22.7 Third parties:**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**22.8 Variation:**

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the LPHC.

**22.9 Governing law and jurisdiction:**

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of Northern Irish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.