



# Berthing Terms and Conditions

## Definitions.

<b>“Harbour”</b>	means Eyemouth Harbour Trust;
<b>“Acts”</b>	means the following:  The Eyemouth Harbour Act 1797;  General Pier and Harbour Act 1861  Piers And Harbour Confirmation Act 1874;  The Eyemouth Harbour Order 1882;  The Eyemouth Harbour Order 1920;  The Harbour Revision Order 2021
<b>“Byelaws”</b>	means Scottish Borders Council On Street Parking Places (Eyemouth) (Traffic Regulation) Order 2012, Eyemouth Harbour Berthing Terms And Conditions; and any other bye-laws made by Eyemouth Harbour Trust from time to time;
<b>“Berthing Licence”</b>	means permission granted by Eyemouth Harbour Trust to a vessel owner to berth their vessel at a location specified by the Harbour Master.
<b>“Charges”</b>	means vessel and any other dues and charges levied by Eyemouth Harbour Trust as Harbour Authority for Eyemouth and any other sum payable to Eyemouth Harbour Trust;
<b>“Directions”</b>	means any other special, general or pilotage directions made by Eyemouth Harbour Trust and any port user handbook of Eyemouth Harbour Trust;
<b>“Property”</b>	means any vehicle, trailer, goods, cargo or other piece of equipment or property of any nature;
<b>“Harbour Area”</b>	means any area of land, premises or water owned, leased or operated by Eyemouth Harbour Trust, including for the avoidance of doubt that area of water within the Harbour Limits;
<b>“Harbour Limits”</b>	means the Harbour of Eyemouth Harbour Trust as defined by the “Limits” in the 1882 Act, as shown in the harbour limits plan which forms part of the 2021 Harbour Revision Order;
<b>“Harbour Master”</b>	means the Harbour Master, his deputy or any nominee of theirs duly appointed as such by the Eyemouth Harbour Trustees, who by virtue of Statutory or Delegated powers is responsible for the day-to-day management of the Harbour;

<b>“Harbour Office”</b>	means the Harbour Office, Gunsreen Basin, Eyemouth TD14 5SD.
<b>“Commercial vessel”</b>	means a vessel primarily engaged in commercial operations as part of a business.
<b>“Commercial berth”</b>	means a berth for a vessel that is engaged in commercial operations, commercial vessels shall berth in the designated or contracted berthing area as designated by Eyemouth Harbour Trust or as directed by the Harbour Master or his appointed deputy. Leisure berths may only be used by commercial vessels with the Harbour Master’s prior approval.
<b>“Leisure vessel ”</b>	means a vessel that is privately owned and used for leisure and recreational purposes and not as part of a business or for any commercial purpose.
<b>“Leisure berth”</b>	means a berth for a vessel that is privately owned and used for leisure and not as part of a business or for any commercial purpose. Leisure berths may only be used by commercial vessels with the Harbour Master’s prior approval.
<b>“Owner”</b>	means any person or persons or corporate body who shall have received from Eyemouth Harbour Trust a Berthing Licence or approval to moor a Vessel in a Berth in the Harbour for a stipulated term and purpose.
<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 Eyemouth Harbour Trust provides to the User;
<b>“Terms”</b>	means these General Terms & Conditions.
<b>“User”</b>	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; 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 every description of craft used or capable of being used as a means of transportation on the water including personal watercraft or other marine structure of any description.

## **2 Interpretation**

- 2.1 Words importing the neuter gender only include the masculine and feminine genders, words importing the masculine gender only 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 executors and representatives whomsoever.
- 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 Eyemouth Harbour Trust under these Terms are in addition to the rights and powers conferred by statute, statutory instrument, the Acts, the Byelaws and the Directions.
- 2.8 No failure by Eyemouth Harbour Trust or its Officers to exercise any power given to it or them hereunder or to insist upon strict compliance by the Owner with any obligations herein shall constitute any waiver of any of the Eyemouth Harbour Trust's rights under the Berthing Licence.
- 2.9 The Vessel covered by the Berthing Licence is the one stated in the Berthing Licence and the name of any proposed replacement Vessel shall forthwith be notified to the Harbour Master and will be authorised only if such replacement Vessel is suitable in all respects for the Berth.

### **3 Application of Conditions & Termination of Licence**

- 3.1 These Terms shall apply:
- (a) to all Services provided by Eyemouth Harbour Trust whether directly or indirectly and whether within the Harbour Area or elsewhere.
  - (b) to all Vessels, both commercial and leisure.
  - (c) 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 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust.
- 3.4 If the Owner shall in the opinion of the Harbour Master be in breach of any Term of the Berthing Licence and shall not have remedied such breach within fourteen days of written notification thereof by the Harbour Master, Eyemouth Harbour Trust shall have the right to terminate the Berthing Licence forthwith by notice in writing to the Owner.
- 3.5 Upon such termination of the Berthing Licence, Eyemouth Harbour Trust shall have the right to require the Owner to remove the Vessel from the Harbour within fourteen days and if the Owner shall fail to remove it Eyemouth Harbour Trust shall be entitled to remove the Vessel from its berth and locate it elsewhere and the Owner shall pay storage, removal and all other fees reasonably incurred by or due to Eyemouth Harbour Trust including alternative berthing fees.
- 3.6 The Owner shall have the right to terminate the Berthing Licence by twenty-eight days' notice (fourteen days' notice for any temporary berth) and shall remain liable for Harbour Dues and Charges until such notice is completed and the Vessel has been removed from the Harbour in accordance with the terms of the Licence. A written termination of Berthing Licence notice must be submitted to the Eyemouth Harbour Trust at its Harbour Office to formally notify the Harbour Master and to record the Owner's decision. The notice period does not commence until the signed termination of Berthing Licence notice has been received by the Eyemouth Harbour Trust.

### **4 Provision of Services**

- 4.1 Subject to any other provisions of these Terms, Eyemouth Harbour Trust shall exercise reasonable skill and care in carrying out the Services. No greater obligation, express or implied, is accepted.
- 4.2 Eyemouth Harbour Trust 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. Eyemouth Harbour Trust 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.
- 4.3 Unless specifically otherwise agreed [in writing] with the User, where Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 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, Eyemouth Harbour Trust 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 Services;

In such event Eyemouth Harbour Trust shall not have any liability and shall not be liable to pay any compensation in respect thereof.

4.6 Following any exercise of Eyemouth Harbour Trust's rights under Condition 4.5, the User shall remove the Vessel and Property from the Harbour Area within 14 days. Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 14 days following the exercise of any of Eyemouth Harbour Trust's rights under Condition 4.5;
- (b) any Property is not collected and removed from the Harbour Area by the User at the time of landing;

Eyemouth Harbour Trust shall be entitled at the expense and sole risk of the User to remove and place wherever Eyemouth Harbour Trust (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 Eyemouth Harbour Trust shall be under no obligation to provide berthing facilities, but in the event it does, such facilities shall be granted on the following terms and conditions: -

- (a) berths may be rented for the periods and rates published from time to time by Eyemouth Harbour Trust. Where a 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 to the nearest whole metre. **No Owner or User is entitled to the exclusive use of a particular berth.**
- (b) All leisure berthing offered at Eyemouth Harbour is subject to Double Berthing requirements unless clearly agreed in writing in advance with the Harbour Master. Any agreed single or dedicated berthing offer shall be via contract with Eyemouth Harbour Trust and will be subject to additional dedicated single mooring fees.
- (c) 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 in full as demanded by invoice. Otherwise, the User will be liable to pay the rental charges published by Eyemouth Harbour Trust at the daily/weekly rate for the period of berth occupancy.
- (d) No fixings to, or changes, are to be made to the infrastructure without permission from the Harbour Master; this includes attachments to ladders, fendering on pontoons and cleats or casual repairs. If something does not meet the needs of a User or is broken, the Harbour Office should be informed so that it can be investigated in a controlled manner with a long-term view. If modifications are made without permission they may be corrected by the Harbour and the cost re-charged to the Owner or User.
- (e) no refund is due for berths that are vacated part way through a year. If payment for a berth is not received by the due date, Eyemouth Harbour Trust reserves the right to cancel the berth.
- (f) Waiting lists will operate when there is more demand than berth availability. The categories for waiting lists will be decided by the Harbour Master. When a berth becomes available for a particular type and size of vessel the customers on the waiting list with compatible vessels will be contacted and those expressing an interest will be considered in list priority order. If an offer of a suitable Berth is declined, the reason will be noted on the list and considered when making future offers.

4.9 The right to berth a Vessel in the Harbour Area relates to a particular User and Vessel. Eyemouth Harbour Trust reserves the right to cancel an offer of a berth if on inspection of the Vessel it is considered unsuitable for 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 berth rental charges already paid will be made.

- 4.10 The safe and correct mooring of any vessel is the User's responsibility; Users are legally obligated to comply with the lawful requirements of the Harbour Master and authorised deputies as directed in compliance with the Eyemouth Harbour Trust's berthing terms and conditions.

When double berthed or when mooring alongside /inside of any other vessel, Users are responsible for the correct adjustment of other vessels' moorings altered to allow safe access to and from your berthing position. Suitable safe access must be maintained and available at all times with correct and suitable mooring lines provided and appropriate fending provided as protection to each and all vessels when moored in Eyemouth Harbour. 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.

The tying of mooring ropes to anything other than dedicated mooring cleats is strictly prohibited. For example, ladders, ladder heads and electric box poles or branders.

- 4.11 A licence to berth in the Harbour Area may not be transferred, nor may it be used for any other vessel without the prior written consent of Eyemouth Harbour Trust. A licence to berth in the Harbour Area issued on an annual basis will be valid from the date of issue until the following 31 March. The User must provide Eyemouth Harbour Trust with a current address and contact telephone number. Any change in the details relating to the User or Vessel provided on the application form, shall be notified to Eyemouth Harbour Trust forthwith.
- 4.12 Electricity is available at most 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, in such circumstances the User shall pay on demand at the current rate of charges in force in the Harbour Area. Equipment, connectors, and cables not supplied by Eyemouth Harbour Trust shall only be used if they are of proper manufacture and comply with UK standards. No daisy chaining is permitted unless in suitable, weather-proof housing. The User will be liable for any damage to the electrical equipment incurred as a result of the acts or neglect of the User.
- 4.13 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust's premises, plant or equipment and/or any other reason determined by the Harbour Master acting reasonably. If required by Eyemouth Harbour Trust, the User shall leave a duplicate set of their Vessel keys with Eyemouth Harbour Trust at all times. Keys will not be released to third parties without the User's prior written consent.
- 4.14 If in any doubt as to the correct location to berth your vessel or if complying to the above conditions is not reasonably practicable for safety reasons, please contact the Harbour Master or Harbour Office at the first opportunity.

## **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 Eyemouth Harbour Trust in connection therewith.
- 5.2 Prior to a Vessel entering the Harbour Area, the User shall provide Eyemouth Harbour Trust with:
- (a) details of the length (measured to the next highest full metre) and draft of the Vessel;
  - (b) any other information requested by Eyemouth Harbour Trust or required to be disclosed to Eyemouth Harbour Trust in terms of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 prior to arrival.
- 5.3 Unless otherwise stated, 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 Eyemouth Harbour Trust shall be made within 30 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 Eyemouth Harbour Trust 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 Royal Bank Of Scotland.

- 5.6 (a) Subject to all applicable laws and regulations, Eyemouth Harbour Trust 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 Eyemouth Harbour Trust of the User or the owner of such Vessel or Property. Eyemouth Harbour Trust 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 90 days from the invoice date Eyemouth Harbour Trust 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 Eyemouth Harbour Trust and the reasonable sale costs and expenses incurred by Eyemouth Harbour Trust. Eyemouth Harbour Trust shall have no liability in this regard.
- (b) In the exercise of Condition 5.6(a) Eyemouth Harbour Trust 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 becomes insolvent/bankrupt, then Eyemouth Harbour Trust 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 Eyemouth Harbour Trust (including any accrued interest and other Charges properly levied in accordance with these Terms) and all loss and expense incurred by Eyemouth Harbour Trust as a result of such circumstances arising.
- 5.8 Any query to be raised by the User on any invoice issued by Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust is notified in writing of their title or interest in any particular Property or Vessel prior to the commencement of any relationship between Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust) 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).
- 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 Eyemouth Harbour Trust.
- 6.4 The User warrants that it shall not:
- (1)
- (a) use any devices which transmit radio signals or 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;
- (c) use or attempt to use any devices or software to gain access to unauthorised data and information;
- without the prior written consent of Eyemouth Harbour Trust except that the User may use marine band and radar radio frequencies and wi-fi.
- (2) cause or permit or allow to be caused or permitted by his crew or passengers any nuisance, private or public, such as to cause alarm, distress, or harassment to any other user of The Harbour.
- 6.5 No part of the harbour shall be used for water skiing, jet skiing, kite surfing, parascending, recreational swimming or diving or such other similar activity without the prior written consent of the Harbour Master.
- 6.6 No person shall leave on the pontoon decks, walkways, access bridge or boat compound 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. Eyemouth Harbour Trust shall have the right to remove and dispose of any such items left on the Harbour Area without the prior consent of Eyemouth Harbour Trust.

- 6.7 The loading, landing or storage of any creels, fishing related equipment, with the exception of sea angling tackle, is prohibited, unless otherwise agreed with the Harbour Master in writing.
- 6.8 Vessels berthed in the Harbour Area must have their name clearly displayed. The User must ensure that any display sticker provided by Eyemouth Harbour Trust as evidence of the relevant dues having been paid is displayed in a conspicuous position on the Vessel.
- 6.9 The User shall berth and leave the Vessel safely and securely moored and appropriately fendered and in such a manner, position and location as Eyemouth Harbour Trust may require. Eyemouth Harbour Trust shall have the right to alter the location of the berth from time to time.
- 6.10 The Owner shall not operate, neither permit to be operated in the Harbour any engine, generator, other machinery, radio, radar or any apparatus so as to cause nuisance, annoyance, danger or inconvenience to other users of the Harbour or any person residing in the vicinity of the Harbour and he undertakes and agrees for himself, his family and his visitors using the Vessel and Harbour facilities that he and they shall behave in a considerate manner so as to cause no nuisance, annoyance or inconvenience to other Harbour users. User must ensure that no damage, obstruction, nuisance or annoyance is caused to the Harbour Area and other Harbour users.
- 6.11 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.
- 6.12 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 or to any other vessel or property.
- 6.13 The User shall keep any berthed Vessel in a sound watertight and seaworthy condition to the satisfaction of the Harbour Master at all times. Eyemouth Harbour Trust 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.
- 6.14 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 or incident within the Harbour Limits.
  - (b) any defect in the Harbour infrastructure including breakwater, mooring chains, ropes, buoys, pontoon berthing or water/electrical/safety appliances.
- 6.15 If the Vessel sinks within the Harbour Limits, Eyemouth Harbour Trust shall be entitled to raise and salvage the Vessel and to recover from the User reasonable charges, fees and expenses incurred in respect thereof. Where reasonably practicable the User will be given prior warning that Eyemouth Harbour Trust is about to exercise its rights under this clause.
- 6.16 No repairs or works shall be carried out on the Vessel within the Harbour Area 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 Harbour Users and local residents. Eyemouth Harbour Trust 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 through issue of a Permit to Work.
- 6.17 All Users are responsible for the safety of any contractors visiting their boats, ensuring they are briefed on harbour safety procedures including the location and operation of the emergency equipment available. All contractors must obtain Permit to Work from the Harbour Office, which will be issued on receipt of evidence of the contractor's public and employer liability insurance. For any non-minor works, including all hot or welding works, the contractor must also provide a satisfactory risk assessment and method statement.
- 6.18 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 6 knots is in force throughout the Harbour Area, except for vessels attending an emergency. Endangerment, damage, or nuisance must not be caused by creating excessive wash, and individual vessel's speed should be controlled accordingly.
- 6.19 No refuse is to be thrown overboard or left at any place within the Harbour Area except in the appropriate receptacles provided by Eyemouth Harbour Trust. 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.

- 6.20 Discharge of sewage, black water or grey water within the Harbour Area is prohibited. Users should avoid discharge of black & grey water in line with industry standards and best environmental guidance. If any Vessel is found to be in breach of this condition Eyemouth Harbour Trust shall be entitled to terminate the Licence.
- 6.21 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.
- 6.22 Smoking is strictly prohibited in any fueling areas.
- 6.23 The User shall take all necessary precautions for the prevention of fire including providing at least one fire extinguisher on the Vessel suitable for the type of engines, fuel and equipment on the Vessel and shall comply with any requirements of the Harbour Master in this regard.
- 6.24 If the Owner fails to comply with any statute, byelaw, condition of berthing, any of these Terms or any lawful direction given by the Harbour Master, Eyemouth Harbour Trust may terminate any berthing contract by sending written notice to the last known address of the Owner by registered post. If the identity of the Owner or the Owner's contact details are not known to Eyemouth Harbour Trust, Eyemouth Harbour Trust shall serve such written notice by leaving a copy on the Vessel. In such circumstances the Owner shall remove the Vessel and any other property belonging to him within 28 days or sooner if required by Eyemouth Harbour Trust in the event of any material breach of any statute, byelaw, condition of 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). On failure to remove the Vessel within the 28-day period or sooner (if applicable as per the foregoing), Eyemouth Harbour Trust may at the Owner's sole risk and expense remove the Vessel and store or berth it elsewhere and all reasonable costs incurred by Eyemouth Harbour Trust in so doing shall be recoverable from the Owner.

## **7 Liability**

- 7.1 Nothing in these Terms shall exclude or in any way limit Eyemouth Harbour Trust'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 Eyemouth Harbour Trust, Eyemouth Harbour Trust will not be responsible for the safe custody of any Vessel or Property entering the Harbour Area.
- 7.3 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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); (c) strikes, lock-out or other industrial disputes (whether involving the workforce of Eyemouth Harbour Trust 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 Eyemouth Harbour Trust) 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 Service 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) voluntary use of a NAABSA berth; (s) acts by or on behalf of Eyemouth Harbour Trust for the preservation of life and (t) 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 Eyemouth Harbour Trust shall be on the User. That such loss or damage occurred within the Harbour Area or under Eyemouth Harbour Trust's control shall not satisfy the User's burden of proof.
- 7.6 Subject to Condition 7.1, the total liability of Eyemouth Harbour Trust (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 £5,000,000 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;



- (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 £1,000 per any unit of Property.

7.7 Nothing in these Terms shall prejudice Eyemouth Harbour Trust's right to rely on any contract, convention or statutory provision providing for limitation and/or exclusion of liability including the provisions of the Merchant Shipping Acts and subordinate legislation.

7.8 It is a condition precedent to any liability of Eyemouth Harbour Trust that Eyemouth Harbour Trust 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 Eyemouth Harbour Trust of any liability whatsoever. In any event Eyemouth Harbour Trust shall be entitled (and the User and Owner hereby grant permission) to inspect any such Property prior to its' disposal or destruction by the Owner. The User and/or Owner shall not bring any claim in respect of any single incident below the *de minimis* limit of £100.

7.9 Notwithstanding the provisions of Condition 7.8, Eyemouth Harbour Trust shall in any event be discharged of all liability whatsoever howsoever arising unless court proceedings are commenced against Eyemouth Harbour Trust within 12 months from the date of the event or occurrence alleged to have given rise to a claim against Eyemouth Harbour Trust.

7.10 Eyemouth Harbour Trust shall have the following powers in respect of Vessels and Property abandoned on 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 Eyemouth Harbour Trust acting reasonably on a case by case basis). If the User's contact details are not known to Eyemouth Harbour Trust then Eyemouth Harbour Trust 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 Eyemouth Harbour Trust acting reasonably on a case by case basis);

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

7.11 Eyemouth Harbour Trust shall be exempt from all liability whatsoever 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 Eyemouth Harbour Trust of the said Vessel or Property. The person tendering the said Vessel or Property shall be responsible for and shall indemnify Eyemouth Harbour Trust against all injury (including fatal injury), loss or damage however caused and against all claims made against Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust, 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;
- (c) the failure of the User to comply with any of these Terms (or to take any step which Eyemouth Harbour Trust shall consider having 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 Eyemouth Harbour Trust under Condition 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 Eyemouth Harbour Trust for a minimum sum of £5,000,000 for commercial vessels and £3,000,000 for leisure craft, or such greater sum as may be required by Eyemouth Harbour Trust and intimated to the Owner. Insurance must not exclude wreck removal. Such insurances shall be maintained with a reputable insurance company and evidence that the Vessel is so insured shall be provided to Eyemouth Harbour Trust on request. Vessels found to be without such insurances may have any allocated berth cancelled immediately.

9.2 Eyemouth Harbour Trust 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 Eyemouth Harbour Trust and its employees, agents and contractors to which end Eyemouth Harbour Trust 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 Eyemouth Harbour Trust and the User shall be governed in all respects by Eyemouth Harbour Trust law and the User hereby submits to the exclusive jurisdiction of the Eyemouth Harbour Trust courts in connection therewith, save that Eyemouth Harbour Trust 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.

***Eyemouth Harbour Trust – September 2021.***

### **Important – Please Read Carefully**

*Without prejudice to any existing written agreement in force, any services provided by Eyemouth Harbour Trust will be governed by the above Terms & Conditions. It is a requirement that Eyemouth Harbour Trust's customers are made aware of and agree to the above Terms and Conditions. If you wish to continue to engage in business with Eyemouth Harbour Trust and do not inform us of your agreement to these Terms and Conditions in writing, any action taken or behaviour displayed by you that demonstrates your intention to continue receiving any service provided by Eyemouth Harbour Trust will be deemed as your communication to Eyemouth Harbour Trust that you have read, agreed, understood, and accept the above Terms and Conditions. Any demonstration of your intention to continue receiving services provided by Eyemouth Harbour Trust will also communicate that you consent to the secure storage and use of your personal information by Eyemouth Harbour Trust during the course of our business with you.*

**GDPR** - Any personal information is used in accordance with our Privacy Policies (which can be found at [www.eyemouth-harbour.co.uk/privacy-and-policies](http://www.eyemouth-harbour.co.uk/privacy-and-policies)) and UK and EU Data Protection laws.