



GENERAL TERMS & CONDITIONS

1 Definitions

“Byelaws”	means the Scrabster Harbour Trust Byelaws - 2003 and any other bye-laws made by the Trust from time to time;
“Charges”	means vessel, cargo and any other dues and charges levied by the Trust as Harbour Authority for Scrabster Harbour and any other sum payable to the Trust;
“Directions”	means any special, general or pilotage directions made by the Trust and any port user handbook of the Trust;
“Equipment”	means any plant, machinery, container, package, case, pallet, vehicle, trailer, truck wagon or other piece of equipment of any nature;
“Goods”	means cargo, livestock and all other goods of whatever nature (including any package or container whatsoever in which goods are packed or conveyed) and which may or may not be in the ownership of the User;
“Harbour Area”	means any area of land, premises or water owned, leased or operated by the Trust, including for the avoidance of doubt that area of water within the Harbour Limits;
“Harbour Limits”	include the following area from a point on the shore at Holburn Head at grid reference (310949, 971559) in a straight line due north to (310949, 973168), then in a straight line due east to (316617, 973168) then in a straight line approximately east south east to (319813, 971844) then in a straight line due south to (319813, 969431) then in a straight line approximately west north west to (316840, 970662), then in a straight line due west to (314423, 970662), then in a straight line approximately west south west to the Coastguard Station Scrabster at (310700, 969120);
“Harbour Master”	means the Scrabster Harbour Master, his deputy or any nominee of theirs;
“Owner”	means any persons (other than the Trust) with or claiming to have any proprietary or possessory interest including owners, lessors, charterers, sub-charterers, consignors, consignees, shippers and receivers;
“Quay”	means any quay, pier, jetty, berth, mooring or other place at which Vessels can load or discharge Goods or embark or disembark passengers or vehicles, and the waters surrounding the same, all within Harbour Limits;
“Representative”	means any employee, agent, broker, driver, contractor, sub-contractor, master or any other person having command or crew of any Vessel;
“Services”	means any service or facility that the Trust provides to the User;
“Terms”	means these General Terms & Conditions;
“Trust”	means Scrabster Harbour Trust constituted by The Scrabster Harbour Revision (Constitution) Order 2005 and having its principal place of business at Scrabster Harbour, Thurso, Caithness, KW14 7UJ;

“User” means (a) any person who enters the Harbour Area; (b) any person who or by any Representative requests or receives the benefit of any Services; and (c) any Owner or carrier of any Vessel, Goods or Equipment which may be on or come into the Harbour Area;

“Vessel” means any boat, ship, barge or other vessel of any description and any part thereof.

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+~~, ~~%a 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 the Trust under these Terms are in addition to rights, powers and remedies conferred by statute, statutory instrument, the Byelaws and the Directions. In the event of any conflict between these Terms and any statute, statutory instrument, the Byelaws or the Directions (~~%legislation+~~) the legislation shall prevail. Nothing in these Terms shall prejudice the right of the Trust, in any circumstance, to rely on any relevant statutory provision including the Merchant Shipping Acts, Harbours Acts and all other relevant statutes.

3 Application of Conditions

- 3.1 These Terms shall apply:
- (a) to all Services provided by the Trust whether directly or indirectly and whether within the Harbour Area or elsewhere; and
 - (b) to all physical access by any Vessel, person, Goods or Equipment 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, Goods or Equipment into or onto the Harbour Area or by application (oral or otherwise) to the 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 Subject to Condition 3.4, 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 specifically agreed in writing by the Trust.
- 3.4 The Trust may issue special terms and conditions governing the provision of certain services. Such special terms and conditions shall apply in respect of the certain services. These Terms shall continue to apply to the extent they are not at odds with the special terms and conditions.

4 Provision of Services

- 4.1 Subject to any other provisions of these Terms, the Trust shall exercise reasonable skill and care in carrying out the Services. No greater obligation, express or implied, is accepted.
- 4.2 The 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.
- 4.3 Where the Trust provides Services in respect of Goods or Equipment being loaded onto or unloaded from or passengers and their Goods and Equipment embarking or disembarking from any Vessel it does so purely as agent of the actual and/or contractual carrier.
- 4.4 The Trust shall have absolute discretion in the handling, storage and transportation of any Vessel, Equipment or Goods and in the allocation of Quays, plant, machinery, labour and storage space. All Vessels must berth in the Harbour Area or anchor within the Harbour Limits according to the directions of the Harbour Master or the Trust. 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 The Trust may in its absolute discretion:
- (a) refuse to permit any User to enter the Harbour Area and refuse to accept any Vessel, Equipment or Goods on or into the Harbour Area;
 - (b) require any User, Vessel, Equipment or Goods 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 the Trust shall not have any liability and shall not be liable to pay any compensation in respect thereof.

- 4.6 Following any exercise of the Trust's rights under Condition 4.5, the User shall remove the Vessel, Equipment and Goods from the Harbour Area. The 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 the Trust by or in respect of such Vessel, Equipment or Goods (including storage costs).
- 4.7 In the event that:
- (a) the User fails to remove the Vessel, Equipment and Goods from the Harbour Area within 14 days following the exercise of any of the Trust's rights under Condition 4.5;
 - (b) any Goods and Equipment are not collected and removed from the Harbour Area by the User at the time of landing;

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

5 Payments

- 5.1 The User shall be liable for all Charges, payments, fines and expenses due in connection with any Vessel, Equipment or Goods and for any loss and/or damage suffered or incurred by the Trust in connection therewith.
- 5.2 On the earlier of (i) request by the Harbour Master or the Trust; and (ii) 30 days of a Vessel entering the Harbour Area, either the master/skipper, or Owner, or agent of such Vessel shall furnish, as appropriate, details of:

- (a) the gross value of fish, fish products and shellfish landed direct from the sea (vessel's own catch either fresh or frozen), or
- (b) description of Goods and/or Equipment loaded and unloaded (or to be loaded and unloaded) including number of packages, gross weight and port to which the Goods and/or Equipment are to be shipped/port from which the Goods and/or Equipment have arrived,
- (c) passengers embarked and disembarked (or to be embarked or disembarked),
- (d) name of Vessel,
- (e) name and address of the User or the User's Representative to whom Charges are to be rendered.

In the absence of such details, the Trust reserves the right to invoice vessels/agents/owners, as it shall deem appropriate, on an estimated basis. The Trust's normal terms of payment, as set out below shall apply to all such invoices.

- 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 the 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. If the Trust agrees to accept payment in any currency other than GB pounds sterling, the User shall be liable for an additional handling charge, which shall be calculated at the sole discretion of the Trust.
- 5.5 The User shall be liable to pay interest to the 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 The Royal Bank of Scotland plc. Notwithstanding any other provision of these Terms, if the User fails to pay any Charges due to the Trust, the Trust shall have the right to suspend provision of any and all Services without penalty until such time as payment is made in full.
- 5.6
 - (a) Subject to all applicable laws and regulations, the Trust shall have a general and specific lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to the Trust of the User or the owner of such Vessel, Equipment or Goods. The Trust shall be entitled to refuse to deliver up any Vessel, Equipment or Goods 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 45 days from the invoice date the Trust shall be entitled to take possession of any such Vessel, Equipment or Goods and to sell or otherwise dispose of them, reimbursing the User any sale proceeds less sums due to the Trust and the reasonable sale costs and expenses incurred by the Trust. The Trust shall have no liability in this regard.
 - (b) In the exercise of Condition 5.6(a) the Trust reserves to itself absolute discretion as to the means and procedure to be followed in the handling, storage and transportation of any Vessel, Equipment or Goods notwithstanding any express instructions given by the User in relation thereto.
- 5.7 If the User ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or if an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or (being an individual) the User shall become bankrupt or make any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then the 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 the Trust (including any accrued interest and other Charges properly levied in accordance with these Terms) and all loss and expense incurred by the Trust as a result of such circumstances arising.

- 5.8 Any query to be raised by the User on any invoice issued by the 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.
- 5.9 Any Vessel loading and/or discharging personnel, Goods and/or Equipment and using on-board or off-board lifting equipment onto/off any pier will be deemed as having berthed alongside. This includes Vessels alongside but held in position by DP (dynamic positioning).

6 Hazardous Goods And Waste

- 6.1 The User shall remove from the Harbour Area and dispose of all trade and other waste as often as may be necessary or as reasonably directed by the Trust.
- 6.2 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by the Trust except with the prior approval of the Harbour Master and then only in accordance with conditions prescribed by him and all applicable laws, regulations, regulatory requirements and codes of practice.
- 6.3 The User warrants that any approved waste material or goods of a dangerous, hazardous or poisonous nature are stored in suitable containers and properly marked with a warning as to the hazardous nature of any contents and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to ensure the safety and health of all persons likely to handle or come into contact with the same.
- 6.4 The Trust shall be entitled to remove and dispose of any trade or other waste material or goods of a dangerous, hazardous or poisonous nature found within the Harbour Area in contravention of Conditions 6.1, 6.2 and/or 6.3 and recover their reasonable costs in respect thereof from the User. The Trust shall have no liability in respect thereof.

7 Import And Export Goods

- 7.1 Authorisation for the removal of imported Goods and Equipment shall not be granted by the Trust unless such Goods and Equipment are correctly released and cleared with no statutory or other holds.
- 7.2 The User shall be responsible for all import duties, export duties, levies, fines and charges relating to the Vessel, Goods and Equipment. The User shall indemnify the Trust against any and all claims made against the Trust by H.M. Revenue & Customs and any other duties, levies, fines, charges and expenses in respect of such Vessel, Goods and Equipment.

8 User Warranties

- 8.1 The User warrants to the Trust that it is either the owner of the Goods, Equipment or Vessel or has the authority and consent for itself and for and on behalf of all persons having any title to or interest in any Goods, Equipment or Vessel to accept these Terms and has specifically notified these Terms to such persons. Finance companies, lessors and others having or claiming to have title to or an interest in such Goods, Equipment or Vessel are advised that unless the Trust is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of any relationship between the 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 Goods, Equipment or Vessel shall be subordinated to the rights of the Trust hereunder.
- 8.2 The User warrants that its employees (and those of any agents or contractors it may engage including hauliers and stevedores) are properly trained and competent to carry out the tasks assigned to them at the time those tasks are assigned and undertaken including in relation to the giving of any instructions to the Trust or the inputting of any information into any electronic service or system operated or managed by or on behalf of the Trust. The User warrants that such persons have the full authority to give such instructions or input such information.

- 8.3 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 Byelaws, Directions and requirements of the Trust and to the Vessel, Goods and/or Equipment (including navigation, manning, carriage, packing, handling, storage, and movement) and with all other statutory duties, requirements and obligations incumbent on the User.
- 8.4 The User warrants that it shall obtain and maintain at its own expense, all necessary permits, licences and authorisations relating to the carriage, handling, storage and movement of the Vessel, Goods and Equipment.
- 8.5 Save as otherwise agreed by the Trust, and (if applicable) in accordance with Condition 6.3, the User warrants that while within the Harbour Area any Goods, Equipment or Vessel:
- (a) are not dangerous, hazardous, poisonous, toxic, radio-active, flammable or injurious or liable to become so (other than distress signals/flares which are safely stowed);
 - (b) will not contaminate or cause danger, injury, pollution or damage to any person, the Harbour Area, any other Goods, Equipment or Vessel or any other property or the environment;
 - (c) are not rotten, infested, verminous or subject to fungal attack or liable to become so;
 - (d) do not require for their safekeeping any special protection arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Harbour Area or in covered accommodation (if agreed with the Trust);
 - (e) contains no unauthorised controlled substances, contraband, pornographic, sanctioned or other illegal matter;
 - (f) are properly and sufficiently packed, documented and labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice for all shipping, handling, storage, dispatch, customs and like purposes;
 - (g) are in a safe, fit and proper condition to be handled or otherwise dealt with by the Trust, its equipment and its employees, agents and sub-contractors.

The Trust shall be entitled at the User's sole risk and expense to remove and if reasonably required destroy or dispose of Goods or Equipment that are not in compliance with any part of this warranty.

- 8.6 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, Goods or Equipment, as may be required by the Trust.
- 8.7 The User warrants that it shall not:
- (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 the Trust except that the User may use marine band and radar radio frequencies and wi-fi.

- 8.8 The User warrants the accuracy of all descriptions, weights, values and other particulars relating to Goods and Equipment furnished to the Trust for handling, customs and any other purposes. The Trust shall not be responsible for checking the accuracy of any documentation handled by it.

9 **Liability**

- 9.1 Nothing in these Terms shall exclude or in any way limit the 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.
- 9.2 Any Vessel, Equipment, Goods or other property which is located within the Harbour Area, is located entirely at the User's and Owner's own risk. The Trust will not be responsible for the safe custody of any Vessel, Goods or Equipment entering the Harbour Area or for any damage to such Vessel, Goods or Equipment. The Trust has no custody of any Vessel, Goods or Equipment within the Harbour Area and the Owner must arrange to have them watched appropriately while they remain within the Harbour Area.
- 9.3 The 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.
- 9.4 The Trust shall have no liability whatsoever for any loss, damage, cost, expense or delay caused by or arising directly or indirectly as a consequence of any of the following: (a) any act, event or omission beyond its reasonable control; (b) force majeure (including adverse weather, storm, high winds, lightning, earthquake, tidal wave storm surge, flood or disease); (c) strike, lock-out or other industrial dispute (whether or not involving the workforce of the Trust); (d) interruption, disruption or failure of any 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 the Trust or piracy); (g) wear and tear, leakage, insufficient or unsuitable packing or packaging or addressing or latent defect of Goods or Equipment; (h) compliance with any law or governmental or official order, rule, regulation or direction; (i) accident; (j) damage to or breakdown or failure of Equipment (including computer hardware, computer software, telephone, radio satellite or other communication system, alarm, locking mechanisms, C.C.T.V. or refrigeration equipment); (k) loss, deletion or unauthorised access of data; (l) fire (including steps to extinguish fire), smoke, radiation, radioactive contamination or explosion; (m) temperature variation, exposure to heat or cold or light, vermin, mould, insects, rot or corrosion; (n) any Vessel, Goods or Equipment being unfit or in an unsuitable condition for the Service or any Vessel being unseaworthy; (o) acts or default of third parties (including suppliers and sub-contractors); (p) insufficient depth of water at any Quay or its approaches; (q) any act, omission, delay or default of the Trust, its servants, agents, or any other person for whom the Trust is responsible for in law, which is necessary for the safety or preservation of any person, premises, Goods, Equipment or Vessel; (r) scarcity of labour, Equipment, storage areas or any other facilities; (s) the failure of the User or its Representatives to comply with these Terms, the Byelaws or the Directions or a breach of any of the warranties or confirmations given by the User; and (t) late receipt of Customs entries or landing orders, or other documents, disputes in respect of documents, or declarations made for entry purposes by or on behalf of any person, delay in passing Customs entries or obtaining clearance of the Goods or omission of information from, or a mis-statement in, any statement or order to the Trust relating to the Goods.
- 9.5 The burden of proof that any loss or damage was caused by the actionable fault of the Trust shall be on the User. That such loss or damage occurred within the Harbour Area or under the Trust's control shall not satisfy the User's burden of proof.
- 9.6 Subject to Condition 9.1, the total liability of the 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 £10,000,000 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.

Equipment:

- (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 Equipment.

Goods:

- (a) the market value of the Goods lost or damaged and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole consignment (to be calculated by weight in the absence of specific values for the damaged part);
- (b) the reasonable cost of repairs;
- (c) in any other case the sum of £1,300 per tonne (pro rata for any part of a tonne) (or any higher general limit of liability figure per tonne in the Road Haulage Association's standard Conditions of Carriage as amended from time to time) unless the nature and value of the Goods had been declared to the Trust and the Trust has agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving at the Harbour Area.

9.7 Nothing in these Terms shall prejudice the 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.

9.8 It is a condition precedent to any liability of the Trust, that the 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 alleged misdelivery or loss of or damage to Goods or any deficiency therein together with particulars of the nature and the amount of any claim to be made within 30 days of the Goods leaving the Harbour Area;
- (c) any damage alleged to have been caused to Equipment prior to such Equipment leaving the Harbour Area.

Failure to meet with these requirements shall absolve the Trust of any liability whatsoever. In any event the Trust shall be entitled (and the User and Owner hereby grant permission) to inspect any such Goods or Equipment prior to their 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 £200.

9.9 Notwithstanding the provisions of Condition 9.8, the Trust shall in any event be discharged of all liability whatsoever howsoever arising unless court proceedings are commenced against the Trust within 12 months from the date of the event or occurrence alleged to have given rise to a claim against the Trust.

10 Indemnity

10.1 The User shall be liable for and shall indemnify the 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 the 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, wilful misconduct or breach of statutory duty of the User or the Owner;
- (b) the failure of the User to comply with the requirements of any authority;
- (c) any inaccuracy (or omission) in any warranties, declarations, particulars or information (including gross weight) given to the Trust in respect of a Vessel, Goods or Equipment; and

(d) the failure of the User to comply with any of these Terms (or to take any step which the Trust 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.

10.2 Any sums payable to the Trust under Condition 10 shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

11 Insurance

11.1 The User shall be fully insured against all risks (including, without prejudice to the generality of the foregoing, fire, damage, environmental incident, salvage, public liability and theft, whether due to the negligence of others or not), for a sum of not less than £5,000,000 at all times that they or any of their Vessels, Goods or Equipment shall remain on the Harbour Area. The Trust shall advise the User if they require the sum so insured to be a figure higher than £5,000,000. The User shall provide evidence of such insurance to the Harbour Master on request.

11.2 The Trust has no responsibility to insure Vessels, Goods or Equipment.

12 Miscellaneous Provisions

12.1 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.

12.2 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.

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

12.4 All legal relationships and agreements between the Trust and the User shall be governed in all respects by Scots law and the User hereby submits to the exclusive jurisdiction of the Scottish courts in connection therewith, save that the 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.