



## TERMS AND CONDITIONS OF BUSINESS

1. The 'Commissioners' means the Brightlingsea Harbour Commissioners their servants and agents. The Owner means any person or organisation or company incorporated under the Companies Act who contracts with the Commissioners for the hire use or licence to occupy any mooring berth storage space property or facilities or whose vessel enters Brightlingsea Harbour. In Clause 10 hereof the expression 'The Owner' shall be confined to the person who actually owns the vessel its engine or gear or other property which is the subject of the contract but elsewhere in these terms and conditions it shall include a charter Master or Authorised Agent. 'Brightlingsea Harbour' shall mean the area defined by the Brightlingsea Harbour Order 1927 and any extensions to the same subsequently authorised namely the limits within which the Commissioners shall have authority and which the powers of the harbour master and the power to levy rates may be exercised shall comprise so much of Brightlingsea Creek in the County of Essex as situate within the area bounded on the west by an imaginary straight line drawn from Martello Tower Number 1 at St. Osyth Point to Bateman's Tower at West Marsh Point Brightlingsea and within the area coloured blue on the map deposited at the offices of the Commissioners.
2. The Commissioners shall be under no obligation to provide mooring facilities berthing facilities or storage facilities but in the event they do so any such facilities whether granted in writing or agreed in any other manner shall be provided only on the following terms and conditions and no alteration or variation to the same shall be binding on the Commissioners unless the Commissioners agree to such variation in writing and no person, persons or organisation shall take up such mooring facilities berthing or storage facilities without entering into a prior agreement with the Commissioners but in the event any person persons or organisation shall do so he or they shall be deemed to do so with full knowledge and acceptance of the terms and conditions herein set out.
3. All vessels entering Brightlingsea Harbour shall be liable to pay the Harbour and Light dues set out in the enclosed schedule and all such dues shall be recoverable from the Owner Charterer or Master of such vessel or their Authorised Agent who shall be bound by such charges and shall be deemed to have entered Brightlingsea Harbour with full knowledge and in acceptance of the terms conditions and charges set out herein and no variation of the same shall be binding on the Commissioners unless they accept such variation in writing.



4. In so far as the provision of mooring berthing and storage facilities is concerned except as expressly stated herein all warranties conditions and representations expressed or implied statutory or otherwise are (to the extent that they may in Law be executed) hereby excluded and the Commissioners shall not be liable in contract or otherwise for any loss damage expense or injury arising out of or in connection with the use of the Commissioners' mooring berths storage space property or facilities for whatever purpose provided always that the Commissioners shall accept
  - (i) liability in respect of death or injury arising out of the Commissioners' negligence
  - (ii) such liability in respect of other loss or damage arising out of the Commissioners' negligence or breach of contract as may in the circumstances be unreasonable to exclude.
  
5. (i) So far as the powers conferred upon the Commissioners by S.26 Harbours Act 1964 and the provision of navigational facilities set out in sub paragraph (ii) hereof are concerned the Commissioners shall not be liable for any loss damage or injury to any person vessel or cargo whatsoever whether in tort or contract unless it shall be proved that such loss damage or injury was caused by any willful act or neglect on the part of the Commissioners their servants or agents and in any event the Commissioners shall be entitled so far as the same is permitted by law to limit their liability in respect of such loss damage or injury.

The navigation aids owned by the Commissioners are the lit Cardinal Marker Buoy, the lit Port Hand Can Buoys, the lit Starboard Hand Buoys, the North Cardinal lit Beacon, and such leading lights as are presently installed or such further additional or substituted navigational aids as the Commissioners see fit to install or substitute.
  
6. No condition warranty or representation is made either expressly or shall be implied that the Commissioners shall provide any navigational facilities insofar as the Commissioners are entitled at law to exclude such warranties conditions or representations but where such navigational facilities are provided by the Commissioners they will (subject to Clause 5 hereof of these terms) use their best endeavors to maintain the same. Owners and/or Cargo Owners should therefore see that their vessels and/or property are adequately insured against all risks.
  
7. Owners and/or Charterers and/or Cargo Owners must be adequately insured against third party risks as they may be liable for damage caused by their vessels, themselves or their crew whilst in or about the harbour or on the moorings. Where vessels are moored alongside each other the Owners are mutually responsible to each other to properly make fast their vessels and not in any way to damage or obstruct neighbouring vessels.



8. Repair or other work may be carried out on vessels in the harbour but the Commissioners reserve the right to prevent the work being carried out if they consider that the work is being carried out in a dangerous manner or for any other reason it is undesirable that it should proceed.
9. In all cases where a contract between the Commissioners and the Owner may be terminated by notice the same shall be deemed to be served if served personally or sent by registered post or recorded delivery service to the last known address in the United Kingdom of the Owner.
10. The attention of Owners is drawn to the Commissioners' Byelaws which can be inspected at the Harbour Office. A proven breach by an Owner or his Representative or an Associate of the Commissioners' Byelaws or those of Colchester Borough Council and Tendring District Council for which the Commissioners have been given the responsibility for enforcement will be considered grounds for the termination of any contract between the Commissioners and the Owner.
11. The Commissioners' fees will be demanded by invoice or by the Harbour Master or his staff. Where demanded by invoice the fees will be those ruling at date of contract and payment is to be made within 30 days from the date of invoice and where demanded by the Harbour Master or his staff the fees will be those ruling at the date of demand and payment is to be made on demand.
12. All invoices or demands not paid within 30 days as referred to in Clause 12 shall bear interest at the maximum rate permitted by Government legislation.
13. Subject to any agreement to the contrary the Commissioners shall have a lien upon any vessel gear or cargo for the time being at any of their moorings or in Brightlingsea Harbour or in their possession for any sum due to them in respect of such vessel cargo or gear.
14. Acceptance by the Commissioners of vessels and their engines or gear for mooring or storage is subject to the Torts (Interference with Goods) Act 1977 which confers on the Commissioners as bailees a right of sale exercisable in certain circumstances. Such sale will not take place until the Commissioners have given notice to the Owner or taken reasonable steps to do so in accordance with the Act. For the purposes of the Act it is hereby recorded that the Commissioners' obligation as custodians of vessels their engines or gear accepted for mooring or storage ends upon the expiry or lawful termination of the contract between the Commissioners and the Owner.
15. Provided that prior written notice is given to the Harbour Master, where a mooring is vacated for the remainder of the season, the Commissioners at their discretion may refund a pro rata amount of the fees subject to a 25% administrative charge. Any changes to mooring arrangements requested by an Owner during the period of contract will be subject to an administration charge.



16. The Commissioners reserve the right to re-allocate a mooring on a temporary basis when a boat owner is not in occupation.
17. The Commissioners' staff have a right to work without being subject to verbal or physical abuse. Any such act by an Owner or his Representative or an Associate will be considered grounds for the termination of any contract between the Commissioners and the Owner.
18. Brightlingsea Harbour Commissioners do business and supply services in accordance with these Terms and Conditions of Business. All orders for goods and services are accepted by us on these Terms and Conditions. No variation of these Terms will be accepted unless agreed in writing by an authorised person of Brightlingsea Harbour Commissioners.

**Brightlingsea Harbour Commissioners - Constituted in the Brightlingsea Harbour Order 1927 by  
Ministry of Transport 29<sup>th</sup> July 1927.**