



PORT OF MILFORD HAVEN GENERAL TERMS AND CONDITIONS EDITION: OCTOBER 2017

I DEFINITIONS AND INTERPRETATION

- Acts** means the Milford Haven Conservancy Act 1983, the Milford Haven Port Authority Act 1986, the Milford Haven Port Authority Harbour Revision Order 2000, the Milford Haven Port Authority Act 2002 and the Milford Haven Port Authority (Constitution) Harbour Revision Order 2012
- Byelaws** means the MHPA byelaws currently in force, including the Milford Docks Byelaws, the Milford Haven Conservancy (Harbour) Bye-laws 1984, Milford Haven Harbour Bye-laws 1987
- Berth** includes any berth, quay, pier, jetty, mooring, buoy or other place at which Vessels can load or discharge Goods, or embark or disembark passengers or vehicles, and the waters surrounding the same
- Charges** includes all dues, charges, fees and expenses or other sums which are payable to MHPA
- Conditions** means these MHPA general terms and conditions as updated from time to time
- Customer** includes (i) any person visiting the Port Area (ii) any person who or by any Representative requests or receives the benefit of any Services (iii) any Owner or carrier of any Vessel, Goods or Equipment which may be on or come into the Port Area and (iv) any successor or assignee of the above
- Directions** The Milford Haven Port Authority Pilotage Directions and General Directions 2016 as updated from time to time
- Equipment** includes any machinery, plant, container, package, case, pallet, private or commercial vehicle, truck, trailer, wagon or other piece of equipment of any description
- Goods** includes passenger luggage and personal effects, any wares, merchandise, articles and things of any description



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Harbour Master	includes MHPA's Harbour Master, Milford Dock Dockmaster, their deputies and nominees
Insolvency Event	includes the Customer being dissolved, liquidated, made bankrupt, ceasing to trade, becoming insolvent, having a receiver or administrative receiver or administrator or manager appointed, making any composition or arrangement with creditors, suspending or threatening to suspend payments, admits inability or is unable to pay debts as they fall due
MHPA	means the Port Authority of Milford Haven (as constituted by the Milford Haven Conservancy Act 1983) and its subsidiaries
Owner	includes all persons (other than MHPA) with or claiming to have any proprietary, financial possessory or security interest, partial or otherwise, including lessors, charterers, sub-charterers, consignors, consignees, shippers, receivers, mortgagees, pledgees
Port Area	means the area to which any of the Byelaws or any standing or general directions apply as defined therein and any land or premises owned, leased or operated by MHPA
Representative	includes any employee, agent, consolidator, broker, driver, contractor or sub-contractor (other than MHPA), the Master or other person having command and crew of any Vessel
Services	includes any service, advice or facility provided by MHPA, whether any Charges are rendered or not
Vessel	means any vessel to which the Byelaws or any standing or general directions may apply and includes all tenders, machinery, equipment, fittings, nets, sails, fuel, stores and provisions and everything connected with the Vessel.



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- 1.1 Headings are for ease of reference and do not form part of or affect interpretation of the Conditions. If the context so requires (i) words denoting the singular include the plural, and vice versa; (ii) words denoting any gender include all genders. Use of the word 'include' or any similar expression shall not limit the sense of the words which appear thereafter.
- 1.2 Any reference to 'person' includes any natural person, company, corporate or unincorporated body or other judicial person, partnership, firm, joint venture or trust and their assigns. If the Customer comprises more than one person obligations and liabilities of those persons are joint and several.
- 1.3 Any reference to an act, statute or secondary legislation 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 made pursuant thereto.
- 1.4 The rights of MHPA under the Conditions are in addition to the rights and powers conferred by statute, the Acts, the Byelaws and the Directions, each of which take precedence over the Conditions in the event of any inconsistency.

2 APPLICATION OF THE CONDITIONS

- 2.1 The Conditions shall apply to (i) all Services provided by MHPA as principal, agent, bailee, sub-bailee or otherwise whether within the Port Area or elsewhere and (ii) all physical access by any person, Vessel, Goods or Equipment to or from the Port Area.
- 2.2 Application for or use of the Services, or the entry of any Vessel, person, Goods or Equipment into or onto the Port Area, will constitute acceptance of the Conditions.
- 2.3 MHPA acts on its own behalf and for the benefit of its employees, agents, consultants contractors and sub-contractors all of whom shall have the benefit of the Conditions. The Customer agrees not to pursue any claim against any employee, agent, consultant, contractor or sub-contractor of MHPA.
- 2.4 No term which is at variance with the Conditions, whether in any Customer documentation or otherwise, shall apply unless and to the extent that it shall have



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been agreed in writing by MHPA. Any Customer's terms that purport to imply MHPA's agreement to those terms shall be ineffective.

- 2.5 MHPA may agree specific contracts with a Customer and/or issue special terms and conditions governing the provision of certain Services in which case these Conditions shall apply unless and to the extent inconsistent with any such specific contract or special terms and conditions.

3 MHPA'S PROVISION OF SERVICES

- 3.1 MHPA shall exercise reasonable skill, care and judgment in carrying out the Services. No greater obligation whether express or implied is accepted.
- 3.2 MHPA may appoint contractors or sub-contractors to perform all or any part of the Services, in which case MHPA shall have no greater obligation or liability than it would have had if the Services had been provided by it directly.
- 3.3 Unless specifically otherwise agreed in writing with the Customer, where MHPA provides Services in respect of Goods or Equipment being loaded onto or unloaded from or passengers and their Goods and Equipment embarking or disembarking any Vessel it does so purely as agent of the actual and/or contractual carrier.
- 3.4 MHPA provides no services or facilities for live animals or any passenger's pets or domestic animals, which remain at the Customer's risk and responsibility at all times.
- 3.5 MHPA gives no warranty as to the accuracy of any nautical or other information about the facilities within the Port Area or as provided through Vessel Traffic Service. The Owner and its Representatives shall at all times remain responsible for navigation of any Vessel.
- 3.6 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by MHPA except by prior agreement with the Harbour Master.
- 3.7 MHPA may in its absolute discretion (i) refuse to permit any person (whether or not a Customer) to enter the Port Area or require them to leave it; (ii) refuse to accept any Vessel, Equipment or Goods on or into the Port Area or require the same to be removed; and (iii) decline or suspend performance of all or any part of the Services. In particular, MHPA shall be entitled to exercise its discretion where (i) the Customer is in breach of the Conditions, including where payment has not been made; (ii) in MHPA's reasonable opinion there is a risk of public disorder,



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disruption to the Port's trade, or a risk to security of persons or property in the Port Area or the vicinity; or (iii) if to perform the Service would contravene any law, regulation or sanction or would expose MHPA to the risk of sanction. The Customer waives any

and all claims against MHPA for any breach of statutory duty relating to exercise of its discretion.

- 3.8 Following any exercise of MHPA's rights under Clause 3.7, the Vessel, Equipment or Goods shall be at the Customer's risk and expense, and the Customer shall remove the same from the Port Area within 14 days, failing which MHPA may do so, take possession of and sell them, and reimburse to the Customer the net sale proceeds if any. MHPA 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 MHPA by or in respect of such Vessel, Equipment or Goods.
- 3.9 MHPA shall be entitled at the expense and sole risk of the Customer to remove and place wherever MHPA deems appropriate Goods or Equipment which for any reason cannot be collected and removed from the Port Area by the Customer at the time of landing.
- 3.10 MHPA shall have no obligation to check the accuracy of any documentation handled by it.
- 3.11 All instructions to MHPA by any Customer in relation to Equipment or Goods must be given in writing. MHPA shall nevertheless retain absolute discretion as to the handling, storage and transportation of any Vessel, Equipment or Goods, including the allocation of Berths, plant, machinery, labour and storage space.
- 3.12 MHPA shall not be obliged to authorise the removal of imported Goods and/or Equipment unless such Goods and/or Equipment are correctly released and cleared with no statutory or other holds.
- 3.13 All Goods and/or Equipment must be accompanied by a manifest, as agreed with MHPA, to be delivered to MHPA upon request or the arrival of such Goods and/or Equipment at the Port Area or within 72 hours of the Vessel's arrival in the Port Area, whichever is the earlier.



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- 3.14 Unless otherwise agreed by MHPA the manifest must specify marks and number of packages, description of goods, gross weight, verified gross mass of any container, any weight imbalances, cubic measurement, name of the Vessel, port to which the Goods or Equipment are to be shipped, port from which the Goods or Equipment have arrived, any special carriage or storage requirements of the Goods or Equipment and the name and address of the Customer or its Representative to whom Charges are to be rendered.

4 PAYMENTS

- 4.1 The Customer shall be liable for all Charges, payments, fines, and expenses due in connection with any Vessel, Goods or Equipment. The Customer shall, on request, provide MHPA with a bond or other security (in an amount to be determined by MHPA in its absolute discretion) for all sums due or expected to be due to MHPA. Save as otherwise stated all sums payable are exclusive of value added tax and any other tax, which shall to the extent applicable be payable by the Customer in addition at the rate and in the manner from time to time prescribed by law.
- 4.2 Payment of all sums due to MHPA in respect of Goods or Equipment shall be made on demand and in any event within 7 calendar days. All other sums due to MHPA shall be paid within 30 calendar days of receipt of the Services or request for payment, whichever shall occur earlier.
- 4.3 Payment shall be made by the Customer in GB pounds sterling in full, without deduction, withholding, abatement, set off, claim or any counterclaim whatsoever, save as may be required by law.
- 4.4 Any query must be raised by the Customer within 14 days of the invoice date, failing which the invoice will be deemed to have been accepted.
- 4.5 The Customer shall be liable to pay interest on any sums outstanding for the period from the due date to the date of payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 where the Act applies, otherwise at 4 per cent per annum above the Bank of England base lending rate from time to time. Interest shall be compounded at monthly rests.
- 4.6 MHPA shall have a general and specific lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of the Charges. MHPA shall be entitled to refuse to deliver up any Vessel, Equipment or Goods until all Charges



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including interest have been paid. Any Charges accruing shall continue to accrue during such period. If any Charges remain unpaid for a period of 60 days from the invoice date MHPA shall be entitled at the Customer's risk and expense to take possession of any such Vessel, Equipment or Goods and to sell them, reimbursing the net sale proceeds (if any) after deduction of any loss sums due to or incurred by MHPA, including any administrative fees.

- 4.7 If an Insolvency Event occurs MHPA shall be entitled immediately to recover from the Customer or any other person liable for the Charges all sums then due to MHPA (including any accrued interest) and all loss or expense incurred by MHPA arising out of or in connection with the Insolvency Event.

5 CUSTOMER OBLIGATIONS

- 5.1 It is a condition of any contract with MHPA and the Customer warrants that it and its Representatives shall at all times comply in all respects with all applicable international conventions, laws, regulations, and codes of practice relating to the Port Area (including the Acts, Byelaws, standing directions and orders, and all directions and requirements of MHPA or its staff) and to the Vessel, Goods and/or Equipment (including navigation, manning, carriage, packing, handling, storage, and movement).
- 5.2 The Customer warrants that it has the authority and consent for itself and for and on behalf of all persons having or claiming to have any title to or interest in any Vessel, Goods or Equipment to accept the Conditions and has specifically notified the existence and terms of the Conditions to such persons.
- 5.3 The Customer warrants that all rights, defences, exceptions, and limits available to any carrier or bailee by law or contract are extended to MHPA and those parties mentioned in clause 2.3.
- 5.4 The Customer warrants that its employees and those of any agents, contractors or sub-contractors it may engage including hauliers and stevedores will be and are properly trained and competent to carry out any tasks assigned to them at the time those tasks are assigned and undertaken and will comply in all respects with any relevant permits to work, and that in relation to the giving of any instructions to MHPA or the inputting of any information into any electronic service or system operated or managed by or on behalf of MHPA that such persons have the full authority to give such instructions or input such information. The Customer agrees that its employees and those of any person whom it may engage may be subject to drug and/or alcohol testing at any time.



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- 5.5 Save as otherwise agreed by MHPA, the Customer warrants that while within the Port Area or its locality any Goods or Equipment (a) are not dangerous, hazardous, poisonous, toxic, radioactive, flammable or injurious whether by emitting dust, gas, fumes, liquid or otherwise) or liable to become so; (b) will not contaminate or cause danger, injury, pollution or damage to any person or any other property or the environment; (c) are not over-heated, under-heated, rotten, mouldy, 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 Port Area or in covered accommodation (if same be agreed with MHPA); (e) do not comprise or contain unauthorised controlled substances, contraband, pornographic, sanctioned or other illegal matter; (f) are properly, accurately and sufficiently packed, documented, marked and labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice for all shipping, handling, storage, dispatch, customs and similar purposes; and (g) are in a safe, fit and proper condition to be handled or otherwise dealt with by MHPA, its equipment and its employees, agents and sub-contractors. MHPA shall be entitled at the Customer's sole risk and expense to remove and dispose of material, Goods or Equipment that are not in compliance with any part of this warranty.
- 5.6 The Customer warrants that it has or shall obtain and will maintain at its own expense any and all necessary permits, licences or authorisations relating to the carriage, handling, storage and movement of the Vessel, Goods and Equipment.
- 5.7 The Customer warrants that it or its Representatives shall provide and have provided full, complete, correct and accurate descriptions, weights, values and other particulars of Vessels, Goods and Equipment, including the verified gross mass of any container. The handling of any Goods or Equipment which do not comply shall be at the sole risk of the Customer.
- 5.8 The Customer shall be responsible for all duty, levies, fines or charges relating to the Vessel, Goods and Equipment and shall indemnify MHPA, its employees, agents, consultants and contractors against any and all any claims made by HM Revenue & Customs and any other duty, levies, fines, charges and expenses in respect of such Vessel, Goods or Equipment.
- 5.9 The Customer shall be liable for and shall indemnify MHPA, its employees, agents, consultants, contractors and sub-contractors against any and all claims, including claims for personal injury and/or death, actions, liabilities, fines, losses, damages and



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expenses (including legal expenses on the indemnity basis) incurred by MHPA, its employees, servants, agents contractors or sub-contractors (even if caused or contributed to by MHPA's negligence) which arise out of or in connection directly or indirectly with: (i) the failure of the Customer to comply with the Conditions or to take any step which MHPA shall consider to have been reasonably required to remedy such failure; (ii) the failure to comply with the requirements of any authority; (iii) any act, omission or instruction, misrepresentation, negligence, recklessness, fraud, wilful misconduct or breach of statutory duty of the Customer or Owner of any Vessel, Goods or Equipment.

- 5.10 Any sums payable to MHPA under this Clause 5 shall be chargeable to and payable by the Customer in addition to and subject to the same provisions as the Charges.

6 MHPA'S LIABILITY

- 6.1 This Clause 6 sets out MHPA's entire liability to the Customer in respect of any breach of the Conditions or for any representation, statement, act or omission (including negligence or breach of statutory duty), contribution, restitution or indemnity arising under or in connection with the Services.
- 6.2 Nothing in the Conditions limits or excludes MHPA's liability for fraud, or for death or personal injury caused by its negligence or any other liability to the extent it cannot be excluded or limited by law.
- 6.3 MHPA shall have no liability whatsoever in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising, including by way of contribution, restitution or indemnity, for or in respect of any of the following whether or not the same was reasonably foreseen or foreseeable, known or unknown, actual or anticipated: (a) any increased costs or expenses or both; (b) any loss of profit, income, business, contracts, revenues, goodwill, hire or freight or both; (c) any special, indirect, incidental, consequential or pure economic loss, costs, damages, charges or expenses or both; (d) delay, or demurrage or detention of any Vessel, Goods or Equipment; (e) any wasted investment, capital expenditure, costs or expenses or both; (f) loss which might reasonably have been avoided or minimised by the Customer or the claimant; (g) betterment.
- 6.4 MHPA shall have no liability whatsoever in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising, including by way of contribution, restitution or indemnity, for any loss, damage, cost, liability expense or delay caused by or arising directly or indirectly as consequence of any of the following: (a) any act, event or omission beyond its reasonable control; (b) force



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majeure including adverse weather, storm, high winds, lightning, earthquake, storm surge, tidal wave, flood, epidemic or disease; (c) any strike, lock-out, labour disturbance or other industrial dispute (whether or not involving the workforce of MHPA); (d) interruption, disruption or failure of any utility service or transport network; (e) war, state of emergency, riot or civil commotion, malicious damage, piracy or terrorism; (f) wear and tear, inherent vice, improper or insufficiency of marks, packing or packaging, leakage or latent defect of Goods or Equipment; (g) compliance with any law or governmental or official order, rule, regulation or direction; (h) failure properly to set or damage to or breakdown of plant, machinery, container or equipment (including fire detecting or extinguishing equipment, computer hardware, computer software, telephone, radio satellite or other communication system, alarm, CCTV, refrigeration equipment, insulation or thermostatic controls); (i) loss, deletion or unauthorised access of data; (j) radiation, radioactive contamination, explosion, fire (including steps to extinguish fire), combustion or smoke; (k) temperature variation, heat, cold, exposure to light, vermin, mould, insects, rot, fungal attack or corrosion; (l) any Vessel being unseaworthy, any Goods or Equipment being unfit, or in an unsuitable condition for the Service; (m) acts or default of third parties including suppliers or sub-contractors; (n) the failure of the Customer or its Representative to comply with the Conditions, Byelaws, directions or orders of MHPA or its staff; (o) theft, unless proved by the Customer to have been committed by the employees of MHPA; (p) any act by or on behalf of MHPA which is reasonably necessary for the safety or preservation of life or property; (q) voluntary use of a NAABSA berth (r) insufficient depth of water at any Berth or its approaches; (s) fraud (whether actual or attempted) by any Customer or its Representative or any third party.

- 6.5 Any Vessel, Equipment or Goods shall while within the Port Area be entirely at the Customer and/or Owner's risk, and save as otherwise agreed by MHPA it shall have no obligation or liability for the safe custody of any Goods or Equipment entering the Port Area or being landed or placed on any Berth.
- 6.6 Nothing in the Conditions shall prejudice MHPA'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.
- 6.7 Subject to Clauses 6.2 to 6.6, MHPA's liability (if any) shall be limited as follows:
- 6.7.1 in respect of loss of or damage to a Vessel, the lowest of (a) the reasonable cost of repairs (b) the market value as at the time of the Loss of that part or parts of the



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- Vessel to which the claim relates at the time of loss or damage or (c) the sum of GBP 1,000,000;
- 6.7.2 in respect of loss of or damage to any passenger's Goods where the passenger is the Customer for the purpose of the Conditions, the lower of (a) the actual value of the Goods lost or damaged or (b) the GB Pound Sterling equivalent as at the date of loss or damage of (i) 1,800 IMF Special Drawing Rights (SDR) per passenger for all loss of or damage to accompanied luggage (ii) 2,700 SDR per passenger for all loss of or damage to unaccompanied luggage, and (iii) 10,000 SDR per passenger vehicle;
- 6.7.3 in respect of loss of or damage to any Goods or Equipment to which 6.7.2 does not apply, the lowest of (a) the reasonable cost of repairs (b) the market value at the time of the loss or damage or (c) for any item of Equipment the sum of £3,000, or for any Goods or Equipment the sum of GBP 100 per metric ton or pro rata – in each of cases (a) to (c) of that part or quantity of Goods or Equipment actually lost or physically damaged – or (d) the sum of GBP 500,000;
- 6.7.4 in respect of any advice, the lowest of (a) the fee (exclusive of VAT) charged to the Customer for that advice or (b) the sum of GBP 50,000;
- 6.7.5 MHPA's liability to a Customer for all loss, damage, liability, claim, contribution, cost and/or expense (including legal costs) arising out of or in respect of any one incident or event shall in no circumstances exceed the sum of GBP 1,000,000; and
- 6.7.6 MHPA's total aggregate liability to all Customers for any loss, damage, liability, claim, contribution, cost and/or expense (including legal costs) arising out of or in respect of any one incident or event or series of related incidents or events shall in no circumstances exceed the sum of GBP 10,000,000.
- 6.8 It is a condition precedent to MHPA's liability that, in the event of loss of or damage to any Vessel, Goods or Equipment, the Customer shall have given written notice to MHPA of such loss or damage (i) prior to sailing of or to commencement of repairs to a Vessel; (ii) prior to any reconditioning or within 30 days of arrival or 60 days of leaving the Port Area in respect of loss of or damage to Goods; (iii) prior to commencement of repairs or to the Equipment leaving the Port Area.
- 6.9 The Customer hereby grants permission to MHPA to inspect any Vessel Goods or Equipment prior to their leaving the Port Area, or their repair, disposal or destruction.



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- 6.10 No claim shall be brought against MHPA where the amount of such claim (excluding interest and/or legal costs) is less than GBP 500 (or in the case of claims to which clause 6.7.2 applies such deductible amount as is provided for under any international convention applicable to carriage of passengers and their luggage).
- 6.11 The burden of proof that any loss or damage was caused by the actionable fault of MHPA shall be on the Customer. That such loss or damage occurred within the Port Area or under MHPA's control shall not satisfy the Customer's burden of proof.

7 INSURANCE

- 7.1 MHPA has no responsibility to insure Vessels, Goods or Equipment.
- 7.2 The Customer shall insure Goods and/or Equipment against all risks of loss or damage while within the Port Area and for public liability in a sum of at least GBP 10,000,000. The Customer shall insure in respect of any Vessel (a) for liability to MHPA for damage to MHPA's property in the Port Area in a sum not less than GBP 10,000,000 and (b) for environmental and wreck removal liability as may be required by applicable law or international convention or in a sum of GBP 10,000,000 whichever is the greater. Any "pay to be paid" clause or like provision in the insurance shall be waived in respect of claims by MHPA.
- 7.3 The Customer or its Representative shall provide evidence of such insurance to the Harbour Master on request.

8 MISCELLANEOUS PROVISIONS

- 8.1 If any clause, sub-clause or other part of the Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Conditions but the remaining provisions shall continue in full force and effect.
- 8.2 The failure of MHPA to exercise or enforce any right conferred on a party shall not be deemed to be a waiver of any such right or operate to bar its exercise or enforcement at any time or times thereafter.
- 8.3 Save for those persons who may be given the express benefit of the Conditions under Clause 2.3, any person who is not a party to any agreement to which the Conditions apply shall have no rights under or in connection with it.



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- 8.4 Any legal relationship between MHPA and the Customer shall in all respects be governed by the laws of England & Wales.
- 8.5 All claims or disputes arising out of or in connection with the Services are to be determined exclusively by the Courts of England & Wales to which jurisdiction the Customer irrevocably submits, save that MHPA shall be at liberty to seek any interim relief, arrest or secure property of the Customer or to take steps to enforce any obligation or judgment against the Customer in any jurisdiction.
- 8.6 All of the Customer's rights shall be waived and all claims against MHPA shall become absolutely barred unless proceedings are commenced against MHPA in accordance with Clause 8.5 within 12 months of the date of any incident alleged to give rise to the claim.