

The Marine & Property Group Ltd: Berthing Agreement: Terms and Conditions

1. **DEFINITIONS:** Where the following words appear in these Terms and Conditions they shall have these meanings:
 - 1.1 **Company** shall mean the Company or any of its Agents to whom the application for berthing is made.
 - 1.2 **Harbour** shall include the Marina, Mooring or any other facility for launching, navigating, mooring or berthing a vessel belonging to the Company.
 - 1.3 **Premises** means all the land, adjacent water and buildings occupied by or under the control of the Company, including, slipways, pontoons, quays, sheds, lofts, workshops, Storage Ashore Accommodation, drystack, roadways and car parks.
 - 1.4 **Owner** shall include any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the company.
 - 1.5 **Vessel** shall include any form of craft, boat, ship, yacht, dinghy, multihull, or the marine structure which is in the care and control of the Owner.
 - 1.6 **Length Overall (LOA)** means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.
 - 1.7 **Berth** means the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of this licence.
 - 1.8 **Storage Ashore Accommodation** means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the Vessel during the term of the licence.
 - 1.9 **Pontoon** means a moored and decked floating structure providing landing or mooring facilities.
2. **THE BERTHING AGREEMENT**

Berths at the Harbour or Premises shall be licensed for the periods and at the rates of charge from time to time published by the Company at its Premises and in force at the commencement of this berthing agreement. Details of the charges applicable to the Berth at the beginning of the berthing agreement will be given to each licensee at the time that the berthing agreement is granted.

 - 2.1 The berthing agreement shall not be automatically renewed but will end at the conclusion of the period agreed if not terminated sooner by the Company or by the Owner under the provisions of Clauses 8 or 10.
 - 2.2 All berthing charges are payable in advance, if payment is not received by the time the berthing period commences, fees will accrue at the daily rate until such time as payment is received. Owners opting to pay in instalments by monthly direct debit will be subject to a 10% surcharge.
 - 2.3 Berthing charges are applied to the Length Overall of a Vessel.
 - 2.4 Where possible the Company will let berths on a 12-month basis. If available, berths will be let on a short-term basis. Vessels on a short-term contract, at the Company's discretion, maybe moved to different berths during the contract. The Company will do their utmost to accommodate, but cannot guarantee, that further periods of short term berthing will be available on expiry of existing short term contracts in the same berth.
3. **LIABILITY, INDEMNITY AND INSURANCE:**
 - 3.1 The Company shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by it or any defect in any part of a customer's or third party's vessel); this extends to loss or damage to Vessels, gear, equipment, cars or other goods left with it for repair or storage, and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment.
 - 3.2 The Company shall take all reasonable steps to maintain security at the Premises and to maintain the facilities at the Premises and in the Harbour in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Company, Vessels, gear, equipment or other goods are left with the Company at the Owner's own risk and Owners should ensure that they have appropriate **fully comprehensive insurance** against all relevant risks.
 - 3.3 The Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of any defect to the Vessel or property concerned unless it shall have been expressly engaged to do so by the Owner on commercial terms. Similarly, the Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident for which the Company is not responsible. However, the Company reserves the right to do in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so it shall be entitled to charge the Owner concerned on normal commercial charging basis (and where appropriate, to claim a salvage reward).
 - 3.4 Owners may themselves be liable for any loss or damage caused by them, their crew or their Vessels and they shall be obliged to maintain adequate **fully comprehensive insurance** including third party liability cover for not less than £3,000,000 and where appropriate, Employer's liability cover to at least the statutory minimum. The Owner shall be obliged to produce evidence to the Company of such insurance within 7 days of being requested to do so by the Company.
 - 3.5 The Company provides Wi Fi internet at the Harbour free of charge for use by Owners. The Company offers no guarantee of availability, stability or performance of service and accepts no liability from any reliance placed or loss arriving from the use of the service.
4. **CHANGE OF DETAILS:** The Owners must notify the Company in writing of the details of any change of names of the Vessel or change of address or telephone number of the Owner.
5. **BERTH ALLOCATION:** The physical layout of every Harbour and Premises and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Harbour and Premises. Accordingly, the Owner shall not be entitled to the exclusive use of any particular Berth but shall use such Berth as is from time to time allocated to him by the Company.
6. **PERSONAL NATURE OF THE BERTHING AGREEMENT:**
 - 6.1 This berthing agreement is personal to the Owner and relates to the Vessel described in the application for berthing. It may not be transferred or assigned to a new Owner or to a different Vessel, whether temporarily or permanently, without the express written consent of the Company
 - 6.2 Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel subject to this berthing agreement the Owner shall notify the Company in writing of the name, address and telephone numbers of the Purchaser, Transferee or Mortgagee, as the case may be.
7. **USE OF BERTH BY COMPANY WHEN VACANT:** The Company may have the use of the Berth when it is left vacant by the Owner. If Owner's remove vessels from the Harbour or take them away for an extended period of time the Company must be notified in advance.
8. **TERMINATION**
 - 8.1 The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of this berthing agreement by the Owner) to terminate this berthing agreement in the following manner in the event of any breach by the Owner of this berthing agreement;
 - 8.2 Having regard to the nature and seriousness of the breach is capable of remedy, the Company may serve notice on the Owner specifying the breach and requiring him to remedy the breach within a reasonable time specified by the Company. Where the breach is serious or poses an immediate risk or threat to the health, safety and welfare of any person or property the time specified for remedy may be immediate or extremely short. If the Owner fails to affect the remedy within that time, or if the breach is not capable of remedy, the Company may serve notice on the Owner requiring him to remove the Vessel from the Harbour or Premises immediately.
 - 8.3 If the Owner fails to remove the Vessel on termination of this berthing agreement whether under this Condition or otherwise, the Company shall be entitled:-
 - 8.3.1 to charge the Owner at the Company's 24hour rate for overnight visitors for each day between terminations of this berthing agreement and the actual date of removal of the Vessel from the Harbour and Premises and/or at the Owner's risk (save in respect of loss or damage caused by the Company's negligence or other breach of duty during such removal) to remove the Vessel from the Harbour and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berth fees.
 - 8.4 Any notice of termination under this berthing agreement shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner's last known address and in the case of the Company shall be served at its principal place of business or registered office.
 9. **RIGHT OF SALE AND OF DETENTION:**
 - 9.1 Where the Company accepts a Vessel, gear, equipment or other goods for repair, refit, maintenance or storage the Company does so subject to the provision of the Torts (Inference with goods) Act 1977. This Act confers a Right of Sale on the Company in circumstances where a customer fails to collect or accept re-delivery of the goods (which includes a Vessel and/or any other property). Such sale will not take place until the Company had given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
 - 9.2 Goods for repair or other treatment are accepted by the Company on the basis that the customer is the Owner of the goods or the Owner's authorised agent and that he will take delivery or arrange collection with the repair or treatment has been carried out.
 - 9.3 The Company's obligation as custodian of the goods accepted for storage ends on its notice to the customer of termination of that obligation.
 - 9.4 The place for delivery and collection of goods shall be at the Company's Premises until agreed otherwise.
 - 9.5 Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of solicitors.
 - 9.6 Maritime Law entitles the Company in certain other circumstances to bring action against a Vessel to recover debt or damages, such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of a Vessel may also occur through the ordinary enforcement of a judgement debt against the Owner of a Vessel or other property.
 - 9.7 The Company reserves a general right ("a general lien") to detain and hold onto the Owner's Vessel or other property pending payment by the Owner of any sums due to the Company. If the berthing agreement is terminated or expires while the Company is exercising this right of detention it shall be entitled to charge the Owner at the Company's 24hour rate for overnight visitors for each day between termination or expiry or this berthing agreement and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Harbour or Premises. The Owner shall at any time be entitled to remove the Vessel or other property upon providing proper security, for example a letter of guarantee from a Bank or a cash deposit, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs.
 10. **TERMINATION BY OWNER:**
 - 10.1 This berthing agreement may be terminated on one calendar month written notice by the Owner to the Company. Following such notice the Company shall prepare an account of:-
 - 10.2 All sums owed by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel, and
 - 10.3 The charge that would have been payable by the Owner to the Company in respect of this berthing agreement if the original term of this berthing agreement had ended on the date of expiry of the Notice of Termination, less
 - 10.4 The sum actually paid by the Owner to the Company in respect of this berthing agreement.
 - 10.5 Where the balance is in favour of the Company the Owner shall be required to pay the balance before removal of the Vessel from the Harbour or Premises and where the balance is in favour of the Owner the Company shall pay it to the Owner at the end of the notice period and

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following the departure of the Vessel from the Harbour or Premises.

10.6 If the licence is paid for by Direct Debit, the full balance of all berthing charges including the one calendar months notice must be paid in full before the licence may be cancelled. The Owner must notify the Company immediately if the Direct Debit mandate is cancelled, any fees incurred by the Company resulting from a failed Direct Debit will be charged to the Owner.

10.7 Should the Vessel continue to be berthed at the Harbour or stored at the Premises beyond the agreed cancellation date then berthing or storage will be charged at the Company's published daily rates.

10.8 Refunds for termination will not be given retrospectively. The refund will apply from the date when one calendar months notice was formally given to the Company by the Owner.

GENERAL RULES

11 VESSEL MOVEMENTS:

11.1 The Company reserves the right to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of the Harbour and Premises.

11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an Agreement with the Company. Where a specific date or tide range for relaunch if the Vessel had been agreed between the Owner of the Company at the time of slipping or lifting out (or arrival by land) this charge alone will be payable for the launch. However, where the Owner requests a different date or tide range the company reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. The Company will provide the Owner with an estimate of such costs and charges prior to incurring them.

11.3 Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require and unless otherwise agreed adequate warps and fenders for the Vessels shall be provided by the Owner.

11.4 No Vessel, when entering or leaving or manoeuvring in the Harbour, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Harbour.

11.5 Advisory Note: Owners, their guests and crew are advised that Vessels are at all times subject to the speed restrictions and bylaws of the Harbour and Navigation Authorities and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and the Health and Safety Executive; there are criminal penalties for the breach of such restrictions, requirements and Byelaws.

12 COMMERCIAL USAGE: No part of the Company's Harbour or Premises or any Vessel or vehicle while situated therein or thereon shall be used by the Owner for any commercial purpose, except where the Owner has sought and obtained prior written agreement from the Company. Where this berthing agreement is granted to a commercial operator whose Vessel is operated for hire or reward in the course of trading, special conditions will apply to this berthing agreement as appended.

13 STORAGE:

13.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocated a separate Berth for them.

13.2 No gear, fittings or equipment, supplies, stores or the like shall be left upon the pontoons, in the car parks or throughout the Harbour and Company's Premises.

13.3 At the Company's discretion, and only subject to specific criterion, may masts remain stepped whilst the vessel is laid up in the Storage Ashore Accommodation. Removal of sails, spray hoods and dodgers will be obligatory.

13.4 It is strictly forbidden to start Vessel engines in gear and other boat machinery whilst stored in the Storage Ashore Accommodation.

13.5 Children are not permitted onto the Storage Ashore Accommodation without prior permission of the Company.

13.6 Owners are instructed not to move or interfere with boat supports put in place by the Company.

13.7 Owners carrying out work in the Storage Ashore Accommodation must ensure that all debris is cleaned up and disposed of correctly at the end of each day. Appropriate steps must be taken to contain the work area around the Vessel, particularly when undertaking any kind of work involving spraying or blasting.

13.8 Owner's using ladders to access their Vessels whilst on the Storage Ashore Accommodation, do so at their own risk. Owners are responsible for ensuring they are in good working order and correctly secured to the Vessel before use. All Owner's ladders must be removed from the Vessel and secured or removed from site when not in use. The Company will not provide ladders to Owners to access their Vessels.

13.9 Vehicles are not allowed to park in the Storage Ashore Accommodation, only the loading and unloading of vehicles is permitted in this area with supervision.

14 PARKING: Subject always to the availability of parking spaces, Owners and their crew may only park vehicles on the Premises in accordance with the directions of the Company. Parking permits must be displayed at all times and all vehicles parked on the Premises must be insured, taxed and road worthy. Motor caravans, trailers and tents may not be parked or used anywhere on the Company's Premises without the prior written consent of the Company. Boat trailers may only be parked with prior agreement of the Company in the designated storage area and the published storage charges must be paid in advance. The Company shall not accept any liability for any loss or damage to vehicles left on the Premises.

15 MARINA AND HARBOUR REGULATIONS:

15.1 The Owner shall at all times observe the Company's regulations and in particular:

15.1.1 The Owner shall provide and maintain at least one fire extinguisher, which is approved and manufactured to EN3 standards for portable fire extinguishers and ensure it is fit for purpose for the Vessel and for immediate use in case of fire.

15.1.2 The Owner shall refuel only at the designated fuelling berth and are to vacate the berth when the fuelling operation is completed. Where fuel is required to be transferred in portable containers, the Company reserves the right to refuse the use of any container deemed unfit for the purpose.

15.2 The Company shall supply the Owner with a copy of the Regulations current at the time of application for a berthing agreement. The Company reserves the right to introduce new regulations on the grounds of legal requirement or for the safety or security or good management of the Harbour or Premises and to amend such regulations as from time to time shall be necessary. Such regulations and any amendments to them shall become effective on being displayed on the Company's public notice board or other prominent place at the Company's Premises and the Company shall have the same rights against the Owner for a breach of the Regulations as for a breach of the terms of this Licence.

15.3 Advisory Note: Owners, their guests and crew are advised that their conduct and that of their Vessels is likely to be regulated and governed at various times by statutory, local authority and Harbour regulations which may be more extensive than those of the Company and the breach of which may result in criminal penalties.

15.4 No Owner shall use, or permit the use of a Vessel in the Company's Harbour or Premises as the only or main place of abode of any person. **Liveboards are strictly forbidden in all of the Company's Harbours and Premises.** The Owner must supply to the Company in writing, details of the Owner's home address. This address must be different to the address of the Harbour or Premises. The Owner shall be obliged to produce evidence to the Company of such home address within 7 days of a request to do so.

15.5 Personal pets of the Owners are permitted at the Harbour and Premises and shall be kept under control at all times and on leads whilst walking around the Harbour and Premises. Owners must ensure their pets are not allowed to behave in any manner as to cause a nuisance to other

Owners or the Company. Owners must ensure any fouling caused by their personal pets is disposed of in the receptacles provided by the Company. There are no quarantine Berths in the Harbour, Vessels with animals from abroad will be refused a Berth.

16 ACCESS TO PREMISES/WORK ON THE VESSEL:

16.1 Subject to Clause 16.2 no work shall be done on the Vessel, gear, equipment or other goods while on the Premises without the Company's prior written consent other than minor running repairs or minor maintenance of a routine nature by the Owner, his regular crew or members of his family not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with the Company's schedule of work, nor involving access to prohibited areas.

16.2 Prior written consent will not be unreasonably withheld where:-

16.2.1 The work is of a type for which the Company would normally employ a specialist sub-contractor: or

16.2.2 The work is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of the equipment to which the warranty relates.

16.3 Notwithstanding the foregoing, during periods or work by the Company on the vessel, neither the Owner nor his invitees shall have access to the Vessel without the Company's prior consent, which shall not be unreasonably withheld.

16.4 On such occasion that the Owner requests that a concession not the Company is required to work on the Vessel the Owner must gain the prior permission of the Company. The contractor must report to the Harbour office, sign a Concession Agreement or an Annual Permit to Work, pay the relevant charge and produce a valid public liability insurance certificate with a minimum cover of £5,000,000 before commencing any work on the Vessel.

17 HEALTH, SAFETY AND THE ENVIRONMENT:

17.1 Attention is drawn to the Company's Health, Safety and Environmental Policy, as amended from time to time. The Company shall make available in the Company's offices a copy of the Policy current at the time of application for a berthing agreement. Any amendments shall be displayed on the Company's public notice board or other prominent place the Company's Premises and further copies available upon request. The Owner, his regular crew, members of his family and/or any person or company carrying out work on the Vessel, with the permission of the Company, must comply with the Company's Health, Safety and Environmental Policy.

17.2 The Owner, his crew, members of his family and any person carrying out work on the Vessel is responsible for reporting to the Company all accidents involving injury to any person or damage to any public or private property that occur in the Harbour or on the Premises as soon as possible after they occur.

17.3 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Harbour or Premises so as to cause nuisance or annoyance to other users of the Harbour or Premises or to any person residing in the vicinity and the Owner undertakes for himself, his guests and all using the Vessel that they shall not behave in such a way as to offend as aforesaid. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.

17.4 No refuse shall be thrown overboard or left on the pontoons, or car parks or on any other part of the Premises, or disposed of in any way other than in the receptacles provided by the Company or by removal from the Company's Harbour and Premises. The Company's further directions regarding waste management shall be posted on the Company's Public Notice Board or other prominent place and copies will be available from the Company on request.

17.5 Bathing, diving and fishing within the Harbour or Premises is not permitted.

17.6 For the purpose of keeping the water clean and unpolluted, whilst moored in the Company's Harbour, all Owners must refrain for using onboard toilets. The toilet facilities provided ashore by the Company must be used.