

# PREMIER MARINAS LIMITED

## CONDITIONS OF WET AND DRY BERTHING

### 1. Provision of Berth

- 1.1 From the Commencement Date until the Termination Date the Company shall allocate to the Owner a berth of the type set out in the Licence Certificate.
- 1.2 The Company shall be entitled from time to time to reallocate berths and the Owner shall not be entitled to the exclusive use of any particular berth.
- 1.3 The Company reserves the right to move the Vessel for any reason and in any circumstances.
- 1.4 The Owner shall not permit any vessel other than the Vessel to use the allocated berth.

### 2. Owner's Obligations

- 2.1 The Owner undertakes to observe and perform the Rules at all times.
- 2.2 The Owner shall indemnify and keep the Company indemnified from and against all actions, proceedings, claims, demands, costs, expenses, losses and liabilities occasioned by or arising from any damage or injury suffered by any person whatsoever or any property whatsoever so far as the same may be caused by any act or default or omission of the Owner or his crew, passengers, other guests or persons carrying out work on the Vessel by the Owner's arrangement or with the Owner's consent.
- 2.3 The Owner shall give the Company immediate written notification of any change in the ownership or the immediate right to possession of the Vessel, such notice shall include the effective date of such change or right and the name and address of the new owner or person having the immediate right to possession of the Vessel. Until such notice containing all requisite information is received the Company reserves the right to treat the Vessel as the property of the Owner who shall continue to be responsible for all charges in connection therewith and shall continue to be bound by the terms of this Agreement and the Rules.
- 2.4 The Owner shall ensure that at all times the Company has a current address within the United Kingdom to which any notice or matter arising out of this Agreement may be addressed.
- 2.5 In respect of a Dry Sailing Berth the Owner shall:
  - 2.5.1 give to the Company at least 24 hours notice of any requested launch;
  - 2.5.2 have available at each launch the appropriate warps and fenders;
  - 2.5.3 maintain boat trailers in safe working order;
  - 2.5.4 not operate or interfere with any boat moving machinery at the Marina.
- 2.6 In respect of a Trailer Sailing Berth the Owner shall:
  - 2.6.1 maintain boat trailers in safe working order;
  - 2.6.2 occupy only the berth ashore which he is allocated;
  - 2.6.3 immobilise the trailer on which the Vessel sits and provide to the Company a key to the immobilisation device.
- 2.7 In respect of a Storage Berth the Owner shall ensure that all supports for the Vessel which the Owner supplies (if any) are in good condition and capable of supporting the Vessel for as long as it remains on the Storage Berth.
- 2.8 The Owner shall be responsible for checking at all relevant times that there is sufficient water for access to and egress from the Marina for the Vessel.
- 2.9 The Owner shall keep the berth which is from time to time allocated to him in a clean and tidy condition.

### 3. The Company's Rights and Obligations

- 3.1 The Company shall provide in the Marina as part of the Berthing Fee, in respect of all types of Berth (save that condition 3.1.3 shall not apply to a Storage Berth):
    - 3.1.1 fresh water for use on board the Vessel;
    - 3.1.2 toilets and washbasins;
    - 3.1.3 navigable access by water into the Marina (subject to the level of the sea bed, tides and the draught of the Vessel);
    - 3.1.4 receptacles for the deposit of garbage and dirty oil;
    - 3.1.5 one space only in the Marina car park for the purpose of parking one roadworthy vehicle (subject to availability).
  - 3.2 The Company shall provide as part of the Berthing Fee in relation to a Dry Sailing Berth:
    - 3.2.1 the items listed in condition 3.1;
    - 3.2.2 an unlimited number of lifts and launches for the Vessel;
    - 3.2.3 a berth ashore;
    - 3.2.4 a temporary berth afloat for the days of the lift and launch of the boat.
  - 3.3 The Company shall provide as part of the Berthing Fee in relation to a Trailer Sailing Berth:
    - 3.3.1 the items listed in condition 3.1;
    - 3.3.2 use of the boat launching ramp;
    - 3.3.3 a berth ashore.
  - 3.4 In respect of a Dry Sailing Berth the Company shall endeavour to:
    - 3.4.1 launch the Vessel within 24 hours of receipt of a notice in accordance with condition 2.5.1, where such notice is received on a Working Day;
    - 3.4.2 launch the Vessel as soon as practicable in circumstances other than those set out in condition 2.5.1;
    - 3.4.3 lift the Vessel at the earliest reasonable opportunity following:
      - (i) the return of the Vessel to the Marina;
      - (ii) notice of cancellation of request to launch the Vessel.
  - 3.5 The Company reserves the right to lift the Vessel out of the water if the Vessel is in the water in the Marina 36 hours from the requested launch by time (whether or not the Vessel has left the Marina during such 36 hour period).
  - 3.6 The Company reserves the right at any time during the period of this Agreement to measure the Vessel and charge the Owner additional berthing fees if the Total Overall Length of the Vessel is greater than the length stated in the Licence Certificate.
- ### 4. Berthing Fee and Payment
- 4.1 The Berthing Fee shall include only those services set out in conditions 3.1, 3.2 and 3.3, according to the type of berth and the Company shall be entitled to charge the Owner for all marina services other than those set out in conditions 3.1, 3.2 and 3.3.
  - 4.2 The Company shall be entitled to invoice the Owner for all marina services (other than those included in the Berthing Fee) provided to the Owner by the Company on or at any time after provision of such services.
  - 4.3 The Owner shall pay the Company the price of any such marina services within 7 days of the date of the Company's invoice.
  - 4.4 The Owner shall pay the Berthing Fee as set out in the Licence Certificate.
  - 4.5 The time of payment of any sums due from the Owner to the Company shall be of the essence.
  - 4.6 Receipts for payment will be issued only upon request.
  - 4.7 If the Owner fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
    - 4.7.1 terminate this Agreement forthwith by notice in writing;
    - 4.7.2 suspend the provision of any services (including but not limited to the provision of a berth) to the Owner;
    - 4.7.3 prevent the Vessel leaving the Marina;
    - 4.7.4 appropriate any payment made by the Owner to such of the services supplied by the Company or the Berthing Fee as the Company may think fit (notwithstanding any purported appropriation by the Owner); and
    - 4.7.5 charge the Owner interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per month (or part of a month) compounded monthly until payment in full is made.

### 5. Limitation of Liability

- 5.1 The Company does not exclude liability for death or personal injury resulting from the Company's negligence.

- 5.2 In any event and notwithstanding anything contained in these conditions in no circumstances shall the Company be liable, in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for any increased costs or expenses, for any loss of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential loss of any nature whatsoever suffered by any person.

### 6. Matters Outside the Company's Control

- 6.1 The Company shall not be liable for delay in performing or for failure to perform its obligations if the delay or failure results from any cause or circumstance beyond its reasonable control (including, without limitation, act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government authority (including refusal or revocation of any licence or consent), fire, explosion, flood, fog or bad weather, power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles, default of suppliers or sub-contractors, theft, malicious damage, strike, lock-out or industrial action of any kind).

### 7. Warranty by Owner

- 7.1 The Owner warrants that:
  - 7.1.1 he is the owner of the Vessel or has the immediate right to possess the Vessel; and
  - 7.1.2 the Total Overall Length of the Vessel is as stated in the Licence Certificate.

### 8. Termination

- 8.1 This Agreement shall commence on the Commencement Date and shall subject to earlier termination in accordance with this Agreement continue until the Termination Date.
- 8.2 Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate this Agreement forthwith by notice in writing to the Owner if:
  - 8.2.1 the Owner commits any breach of any of the provisions of this Agreement and in the case of a breach capable of remedy, fails to remedy the same within 7 days of the date of written notice giving full particulars of the breach and requiring it to be remedied;
  - 8.2.2 the Owner shall have a bankruptcy petition presented or shall die;
  - 8.2.3 the Owner shall be unable to pay his debts or become insolvent (within the meaning of the Insolvency Act 1986) or make or propose to make an arrangement or composition with his creditors.
- 8.3 Without prejudice to any other right or remedy available to the Company, where the Owner owns the Vessel through or for the purposes of a business the Company shall (in addition to its rights in Condition 8.2) be entitled to terminate this Agreement forthwith by notice in writing to the Owner if:
  - 8.3.1 the Owner, being a company, shall pass a resolution for winding up or a court shall make a winding up order in respect of the Owner or the Owner shall have a receiver, administrative receiver, manager or administrator appointed of all or any part of its undertaking or assets;
  - 8.3.2 the Owner, being a partnership, shall be dissolved;
  - 8.3.3 the Owner, shall cease or threaten to cease to carry on his or its business.
- 8.4 For the purpose of condition 8.2.1 a breach shall be considered capable of remedy if the Owner can comply with the provision in question in all respects other than as to time of performance (provided that time of performance is not of the essence).
- 8.5 Any waiver by the Company of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 8.6 The rights to terminate this Agreement given by this condition shall be without prejudice to any other right or remedy in respect of the breach concerned (if any) or any other breach.
- 8.7 Any termination of this Agreement (howsoever occasioned) shall not affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 8.8 Notwithstanding any other provision of this Agreement or the Rules, on termination of this Agreement for any reason the Owner shall immediately pay all monies owing to the Company and remove the Vessel from the Marina.

### 9. Removal of Vessel

- 9.1 In respect of a Marina Berth, the Company reserves the right (after giving reasonable notice to the Owner) to remove the Vessel from its berth and place it under the Company's control ashore in the event that:
  - 9.1.1 the Owner fails to make any payment on the due date;
  - 9.1.2 the Owner fails to remove the Vessel from its berth within 7 days of the termination of this Agreement howsoever arising.

For the avoidance of doubt the Owner gives the Company irrevocable authority to carry out such removal and agrees, notwithstanding the termination of this Agreement, to be responsible for all costs and charges relating to such removal and continuing storage.

### 10. Renewal

- 10.1 Where the term of this Agreement is 12 months or more:
  - 10.1.1 the Company shall, not less than 30 days before the Termination Date, notify the Owner of the berthing fees payable in the Marina for the 12 month period commencing immediately after the Termination Date;
  - 10.1.2 the Owner shall notify the Company within 30 days after the date of such notice if he wishes to enter into a new berthing licence stating the desired period thereof and the vessel for which the berthing licence is sought and the Company shall use its reasonable endeavours to accommodate the Owner in this regard;
  - 10.1.3 if the Company does not receive notice pursuant to condition 10.1.2 from the Owner, the Company gives no assurance that a berth will be available to the Owner.

### 11. General

- 11.1 In the event of any conflict between this Agreement and the Rules, this Agreement shall prevail but if a Rule expands a term of this Agreement or vice versa both shall apply.
- 11.2 Notwithstanding the Owner's failure to sign the Licence Certificate the Owner shall be deemed to have accepted the terms of this Agreement on taking up a berth at the Marina.
- 11.3 The Company reserves the right to charge the Owner berthing fees at the Company's then prevailing daily berthing rate for any period during which the Owner leaves a vessel at the Marina if there is no current berthing licence in relation to that vessel between the Company and the Owner.
- 11.4 Neither the rights nor the obligations of the Owner under this Agreement may be assigned, transferred, sub-contracted or otherwise disposed of, in whole or in part, without the prior written consent of the Company. The Company reserves the right to assign, transfer, sub-contract or otherwise dispose of all or any of its rights and obligations under this Agreement.
- 11.5 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 11.6 This Agreement shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 11.7 In this Agreement words importing the singular include the plural and vice versa and words importing one gender shall include any gender.
- 11.8 References to persons include bodies corporate and unincorporated associations and partnerships.
- 11.9 Any and all notices served by the parties with respect to this Agreement shall be deemed sufficiently given when forwarded by hand or sent by first class recorded delivery post to the address of the addressee as set out in this Agreement (in the case of the Owner), or to the registered office from time to time of the Company, or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this condition. Notices shall be deemed to have been received if sent by first class post, two business days after posting exclusive of the day of posting or if delivered by hand on the day of delivery. In proving service, by delivery by hand it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee and by post it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause.
- 11.10 In these conditions:
  - 11.10.1 "Agreement" shall mean the Licence Certificate, these terms and conditions and the Rules;
  - 11.10.2 "Working Day" shall mean a day (not being a Saturday or a Sunday) when clearing banks are open for business in the City of London.