

# PREMIER MARINAS CONDITIONS OF WET AND DRY BERTHING

## ANNUAL CONTRACT – PAY ANNUAL

Effective from 01.04.2019 v1.0/2019

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### 1 DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

- **Agreement:** the Berthing Licence, these Terms and the Regulations;
- **Berthing Fee:** the amount set out in the Berthing Licence;
- **Berth:** a marina berth, dry stack berth, pile mooring or river mooring as set out within the Berthing Licence;
- **Boat:** the Boat shown on the Berthing Licence;
- **Boat Length:** the overall length of the Boat calculated including davits, bowsprits, bumpkins, boarding ladders, stern drives, tenders, outdrives, outboards, rudders, anchors, pulpits, pushpits and any other extension fore and aft of the Boat;
- **End Date:** the end date in the Berthing Licence;
- **Event Outside Our Control:** any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, interruption of electricity supply, or failure of public or private telecommunications network.
- **Marina:** the Marina owned by Us identified in the Berthing Licence;
- **Monthly Berthing Rate:** the rate shown as such in the Price List;
- **Price List:** the list of prices for Marina services and berthing fees available at Marina reception and at: [www.premiermarinas.com/legals/pricing](http://www.premiermarinas.com/legals/pricing)
- **Regulations:** the Marina Regulations issued from time to time;
- **Start Date:** the start date in the Berthing Licence;
- **Terms:** the terms and conditions set out in this document
- **We/Our/Us:** the Premier Marinas group company named in the Berthing Licence;
- **Visitor Berthing Rate:** the rate shown as such in the Price List;

- **You/Your:** the owner, skipper or person in charge of the Boat.

### 2 PROVISION OF BERTH

- 2.1 For the period of this Agreement We will allocate You a Berth for the Boat (shown in the Berthing Licence). You must not allow any boat other than the Boat to occupy the Berth.
- 2.2 Whilst You are not entitled to the exclusive use of any particular Berth, we will make reasonable efforts to ensure that You can use the same Berth for the period of this Agreement. In the event that we need to reallocate Your Berth You will be provided with an equivalent Berth in the Marina.
- 2.3 We reserve the right to board, move, moor or re berth the Boat for reasons of safety, security, an emergency or to prevent or stop a nuisance.
- 2.4 We reserve the right to ask that You or any member of Your party leave the Marina immediately if You or they act recklessly or unreasonably.
- 2.5 We rely on You to provide us with an accurate measurement of the Boat Length and Your Berthing Fee is calculated by reference to the Boat Length. We therefore reserve the right at any time during the period of the Agreement to measure the Boat and charge You additional berthing fees if the Boat Length is greater than the length stated in the Berthing Licence, in accordance with the Price List. We will refund to You berthing fees if the Boat Length is less than the length stated in the Berthing Licence, in accordance with the Price List.
- 2.6 Should You sell Your Boat, You may transfer Your rights under this Agreement to the new owner, only with our written consent and payment of the then prevailing Assignment Fee, as set out in our Price List.
- 2.7 If Your Boat is stored in a dry stack:
- 2.7.1 access to Your Boat is strictly forbidden whilst stored in the dry stack.
  - 2.7.2 you will be allocated a temporary berth afloat when Your Boat is launched or waiting to be lifted back into the dry stack
  - 2.7.3 Service racks are available on request, subject to availability
- 2.8 If Your Boat is moored on a pile mooring berth:

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- 2.8.1 We will provide the pile, the mooring riser and the mooring ring.
- 2.8.2 in addition to your pile mooring berth You are permitted to store one dinghy in an assigned area within the Marina. This is entirely at Your own risk, and We take no responsibility for any loss or damage to dinghies or tenders kept within the Marina.
- 2.9 If Your Boat is stored in a dry sailing berth
- 2.9.1 We will allocate you space ashore that we consider suitable for Your Boat.
- 2.9.2 We will allocate you a temporary berth afloat when Your Boat is launched or waiting to be lifted.
- 2.9.3 We will make reasonable effort to return Your Boat to the same position ashore, but we reserve the right to reposition Your Boat as we feel necessary for reasons of safety, security or operational practicality.

### 3 YOUR OBLIGATIONS

- 3.1 You must observe and perform the Regulations copies of which are available from Marina reception. We may change these Regulations if necessary for the safe and efficient operation of the Marina. We will endeavour to give you at least four weeks' notice of the changes by placing notices on Marina notice boards and on our website: [www.premiermarinas.com](http://www.premiermarinas.com).
- 3.2 We will provide a maximum of two Marina access fobs and should You lose either of Your Marina access fobs we will provide one replacement fob free of charge. For each replacement fob after that We will charge You an administration fee as published in Our Price List. You shall be solely responsible for the usage of any Marina access fob allocated to You and we reserve the right to cancel same in the event of any misuse of that access fob.
- 3.3 You will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by You, Your crew, passengers, guests or persons carrying out work on Your Boat by arrangement with You or with Your consent. If We suffer any loss due to any such act, failure to act or omission then You will be liable to make payment to Us to make good our loss.
- 3.4 If You sell the Boat or lose Your right to possession of the Boat, You must immediately notify Us in writing. You must include in the notice the date of the change of ownership or right to possession and the name and address of the new owner or person having the right to possess Your Boat. Until We receive a notice containing all of this information We will treat Your Boat as being Your property and You will continue to be responsible for all charges in connection with it and bound by the terms of this Agreement and the Regulations.
- 3.5 You must ensure that at all times we have a current postal address and a current email address to which we can send You (or Your representative) any notice or details of any matter arising out of this Agreement. You must also provide mobile or landline telephone contact details for use in case of emergency.
- 3.6 We cannot guarantee that the water level in the Marina will be sufficient to enable Your Boat to navigate safely to, from and within the Marina. You are responsible for checking at all relevant times that there is sufficient water for You to navigate to, from and within the Marina.
- 3.7 You must keep the Berth which You are allocated from time to time in a tidy condition. No boat gear, equipment or stores shall be left on pontoons or jetties.
- 3.8 Where permitted, dinghys, tenders and trailers must clearly display the identification sticker provided by the Marina, and must be kept in a reasonable condition. Unidentified items will be removed without further notice.
- 3.9 Your Boat must be kept in a structurally sound and seaworthy condition. If we reasonably believe that Your Boat is not structurally sound or seaworthy and may present a risk to safety at the Marina or a risk to safe navigation in the Marina we reserve the right to lift the Boat and place it ashore. Where practicable we will give You notice of our intention to lift the Boat and an opportunity for You to do the necessary work to make the Boat sound and seaworthy. Your Boat will not be returned to the Berth until we are satisfied that the Boat is structurally sound and seaworthy and poses no threat to safety or safe navigation within the Marina and we may require You to commission a survey report (at Your expense) to demonstrate that it is structurally sound and seaworthy.
- 3.10 You will not use Your Boat for any commercial purpose, except where You have sought permission from Us, and We have agreed in writing.
- 3.11 You must not use Your Boat for any residential purpose without obtaining Our prior written consent, which will be granted at Our absolute discretion. For the avoidance of doubt, the Boat is deemed to be for residential use if:
- 3.11.1 the Boat is used as Your principle or main place of residence; or

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3.11.2 if anyone stays on-board in excess of an average of more than 10 nights per month, over a three month period.

### 4 OUR OBLIGATIONS

4.1 We will provide in the Marina (included in the Berthing Fee) the following:-

4.1.1 A Berth as specified in the Berthing Licence

4.1.2 water for use on-board the Boat;

4.1.3 toilets, showers and washbasins in dedicated facilities;

4.1.4 navigable access by water in to the Marina (subject to the level of the seabed, tides and the draft of the Boat);

4.1.5 receptacles for the deposit of refuse and dirty oil and dedicated receptacles for recyclable materials.

4.2 We will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by Us, Our contractors or persons carrying out work at the Marina by arrangement with Us. If You suffer any loss due to any such act, failure to act or omission then We will be liable to make payment to You to make good Your loss.

4.3 The dry stack lifting and launching service will normally be available with 1 hours' notice between 9am and 5pm, seven days a week, excluding Christmas Day, Boxing Day and New Years' Day. The lifting and launching service will not operate in bad weather, or when plant is under maintenance or repair

4.4 Dry sailing boats can normally be launched with not less than 24 hours' notice between 9am and 5pm, Monday to Friday (excluding public holidays), from the 1<sup>st</sup> April until 30<sup>th</sup> September. The lifting and launching service will not operate in bad weather, or when plant is under maintenance or repair

4.5 We are committed to protecting and respecting your privacy. Our privacy and customer communications policies on our website set out the basis on which any personal data we collect from You, or which You provide to Us is handled and stored. Please visit [premiermarinas.com/Legals/Privacy-Policy](http://premiermarinas.com/Legals/Privacy-Policy) for details. In performance of this Agreement with You it is agreed that we can contact you with important information about the Marina and Your Boat, where such information relates to your home marina and things which may impact on the use

of your Boat. Examples include lock closures, dredging and navigation updates, weather warnings and planned marina maintenance notices. Other communications with you (such as those to promote Our products and services or those of selected third party suppliers) will be based on the contact preference choices You make on Your MyPremier customer account on Our website. For the purposes of the relevant data protection legislation (consisting of the General Data Protection Regulation ((EU) 2016/679) the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation) the data controller is Premier Marinas Limited, Swanwick, Hampshire SO31 1ZL. Our nominated representative is named in our privacy policy.

### 5 BERTHING FEE AND PAYMENT

5.1 You must pay the Berthing Fee to us in the manner set out in the Berthing Licence. The Berthing Fee only includes the services set out in condition 4.1.

5.2 We are entitled to charge You, in addition to the Berthing Fee, for all Marina services which You use (other than those set out in condition 4.1) The methods of payment which we accept and our payment terms are set out in our Price List .

5.3 We will only issue receipts for payment on request.

5.4 If You fail to pay Your Berthing Fee within 30 days of the date on which it is due We may serve a final warning in respect of the outstanding sum, requiring You to make payment within a further 7 days. If after the expiry of that 7 days the outstanding sum has not been paid this will be treated as a repudiation of Your obligations under this Agreement and We shall be entitled to take all or any of the following steps:-

5.4.1 end this Agreement under condition 9;

5.4.2 exercise Our rights under condition 10

5.4.3 prevent the Boat from leaving the Marina

5.4.4 charge You interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above the HSBC Bank PLC base rate from time to time calculated on a daily basis;

5.4.5 charge You for use of the Berth as set out in conditions 9.2.1 to 9.2.3

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### 6 LIMITATION OF LIABILITY

- 6.1 We do not exclude liability for death or personal injury resulting from our negligence.
- 6.2 We are responsible for losses suffered by You as a result of our breaking this Agreement, if the losses are a foreseeable consequence of us breaking this Agreement. We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by us or You. We are also not responsible for increased costs or expenses, loss of profit, opportunity, business, contracts, revenues or anticipated savings or for any special indirect or consequential loss of any nature suffered by any person.

### 7 EVENTS OUTSIDE OUR CONTROL

- 7.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 7.2 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- 7.2.1 We will contact You as soon as reasonably possible to notify You; and
- 7.2.2 Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our performance of Services to You, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.
- 7.3 You may cancel the contract if an Event Outside Our Control takes place and a Berth is not available for your Boat in the Marina for a continuous period of 6 weeks. If you cancel this Agreement for this reason we will provide you with a refund of the Berthing Fee for the period from when a Berth was unavailable until the End Date.

### 8 YOUR WARRANTY TO US

- 8.1 You warrant to us that You are the owner of the Boat, have the immediate right to possess the Boat and that the Boat Length is as stated in the Berthing Licence.
- 8.2 You shall maintain at all times a suitable policy of insurance (with a reputable insurer) for public liability and third party liability in respect of claims for damage to persons and property in the sum of at least £3,000,000 for any one event. We require a record of Your current insurer, policy reference number and policy expiry date. You must provide Us with these details whenever You change or renew Your

policy. We reserve the right to request a copy of Your insurance certificate to confirm these details relate to an active policy.

### 9 TERMINATION

- 9.1 This Agreement shall start on the Start Date and shall continue until the End Date unless it is ended earlier in accordance with this Agreement.
- 9.2 Other than Your rights under condition 7.3 and condition 9.3 of this agreement, You may only end the Agreement before the End Date by giving us one months' notice in writing as set out in condition 11.11. We will treat notice as being received on the first day of the following month and Your notice will run from that day. If You end the Agreement in this way:
- 9.2.1 We will charge You a fee for the period of occupation of the Berth which will be the lower of:
- (a) the number of days of occupation of Your berth (including notice period) at the Monthly Berthing Rate; or
- (b) the total premium set out in the Berthing Licence.
- 9.2.2 We will refund You the balance of any amount You have paid us in advance less the amount set out in condition 9.2.1
- 9.2.3 We reserve the right to charge You a £95 cancellation fee which is sufficient to cover Our losses and expenses.
- 9.3 Without affecting any right or remedy available to either of us, either You or We will be entitled to end this Agreement immediately by notice in writing to the other if:-
- 9.3.1 the other party commits a serious or repeated breach of this Agreement and, if it can be put right, they do not put it right within 7 days of the party in breach being given a notice setting out full details of the breach and the action required to put it right;
- 9.3.2 the other party being a company passes a resolution for winding up or a Court makes a winding up order in respect of that party or it has a receiver, administrative receiver, manager or administrator appointed over all or any of its business or assets;
- 9.3.3 the other party is unable to pay its debts or becomes insolvent (in the meaning of the Insolvency Act 1986) or makes or proposes to make an arrangement with its creditors.

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9.3.4 the other party, being a business, ceases or threatens to cease to carry on its business.

9.4 Without affecting any other right or remedy We may have We will be entitled to end this Agreement immediately by notice in writing to You if:-

9.4.1 You have a bankruptcy petition presented or die;

9.4.2 You are dissolved (if You are a partnership)

9.4.3 You provide us with details which You know to be false when applying for a berth and the false declaration would have reasonably affected Our decision to offer You a berth.

9.5 For the purpose of condition 9.3.1 a breach can be put right if the party can comply with the provision within the Agreement in all respects.

9.6 The rights to end this Agreement given by this condition do not affect any other right or remedy You or We may have in respect of the circumstances allowing You or Us to terminate the Agreement.

9.7 On termination of the Agreement for any reason You shall within 7 days of the end of the Agreement:

9.7.1 pay to us all amounts owing to us;

9.7.2 remove the Boat from the Marina;

9.7.3 return Your Marina Access Control key fobs to the Marina reception.

## 10 REMOVAL OF BOAT

10.1 We reserve the right (after giving You at least 7 days written notice) to secure the Boat or remove the Boat from its berth and place it under our control ashore in the event that:-

10.1.1 You fail to pay Your Berthing Fee in accordance with this Agreement and we have taken the steps set out in condition 5.4; or

10.1.2 You fail to remove the Boat from its berth within 7 days of the end of this Agreement (however that occurs):

10.2 You give us irrevocable authority to secure or remove the Boat and store it ashore pursuant to condition 10.1 and You agree to be responsible for Our costs in taking these steps. The costs of securing a boat, a lift and storage ashore are set out in Our Price List.

10.3 If we have removed Your Boat to storage ashore under clause 10.2 we may give You reasonable notice of our intention to sell the Boat in accordance with the law.

Should we sell the Boat we will pay the proceeds to You (or such person who is entitled to possession of the Boat) less all sums owed by You to Us and any expenses of sale and any legal costs incurred in respect of the sale.

10.4 This condition 10 will remain in force after this Agreement ends.

## 11 GENERAL

11.1 It is Our intention that all the terms of the contract between You and Us relating to You berthing Your Boat at the Marina are contained in this Agreement.

11.2 In the event of any conflict between the terms of this Agreement and the Regulations, the terms of this Agreement shall apply, but if a Regulation expands a term of this Agreement or vice versa, both shall apply.

11.3 You shall be treated as having accepted the terms of this Agreement if You have taken up a berth at the Marina.

11.4 We reserve the right to charge You berthing fees at the Visitor Berthing Rate for any periods during which You leave the Boat at the Marina when there is no current berthing licence in relation to that Boat between You and Us. We shall invoice You for those fees as set out in our Price List. This condition 11.4 will remain in force after this Agreement ends.

11.5 You may only transfer Your rights or Your obligations under these Terms to another person if We agree in writing.

11.6 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify You in writing if this happens, but this will not affect Your rights or Our obligations under these Terms.

11.7 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

11.8 This Agreement is between You and Us. No other person shall have any rights to enforce any of its terms.

11.9 If You or We fail to insist that the other performs any of their obligations under these Terms, or if We or You do not enforce their rights against the other, or if We or You delay in doing so, that will not mean that they have waived their rights against the other and will not mean that the other does not have to comply with those obligations. If We or You do waive a default by the other, they will only do so in writing, and that will not mean that We or You will automatically waive any later default by the other.

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- 11.10 References to persons includes companies, partnerships and unincorporated associations.
- 11.11 If You wish to contact Us in writing, or if any clause in these Terms requires You to give Us notice in writing, You can send this to Us by hand, or by pre-paid post to "The Marina Manager" at the address set out in the Berthing Licence. If We have to contact You or give You notice in writing, We will do so by hand, or by pre-paid post to Your address in the Berthing Licence.
- 11.12 If the obligations, undertakings and warranties by You in this agreement are undertaken or given by more than one person, then they are given by all persons jointly.
- 11.13 These Terms are governed by English law. You and We both agree to submit to the jurisdiction of the English courts. However, if You are a resident of Northern Ireland You may also bring proceedings in Northern Ireland, and if You are a resident of Scotland, You may also bring proceedings in Scotland.