

General Terms and Conditions of Berthing, Mooring and Storage Ashore

In these conditions the following definitions will apply:

“Company” shall mean York Design & Construction Ltd. (Port Dinorwic Marina)

“Marina” shall include: the Marina, shore storage or any other facility for berthing a vessel, which is owned or leased by the Company.

“Owner” shall include a charterer, master, agent or other person for the time being lawfully in charge (other than the Company) of the vessel or vehicle.

“Vessel” shall include any form of craft, boat, ship, yacht, dinghy, multi-hull or other marine structure which is the property of or is in the care and control of the Owner whether or not detailed in any services and/or berthing/mooring storage agreement and/or lease agreement between the Company and the Owner.

“Berth or Mooring” shall mean the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of any Services and/or berthing/mooring storage agreement and/or lease agreement between the Company and the Owner.

“User” shall mean any person using the Marina for any purpose whatsoever.

General Berthing Conditions

1. The Owner warrants that he/she is either the lawful owner, or the authorised agent of the lawful owner of the vessel or vehicle and any other party who is or may become interested in the vessel or vehicle. The Owner warrants that he accepts these conditions not only for himself, but also as authorised agent for and on behalf of the lawful owner of the vessel or vehicle and any other person who is or may become interested in the vessel or vehicle.

2. a). All vessels and vehicles in or on the Company's Marina or premises may be moved by the Company to any other part of the same Marina premises.

b). The Company shall not be liable whether in contract, tort or otherwise, for any loss, theft, or any other damage whatsoever nature caused to any vessel or vehicle or other property of the Owner or others claiming through the Owner except to the extent that such loss, theft, or damage may be caused by the negligence or wilful act of the Company or those for whom it is responsible.

c). The owner shall indemnify the Company against all loss, damage, costs, claims, or proceedings incurred by, or instituted against the Company or its servants or agents which may be caused by the Owners vessel or vehicle or by the Owner, his servants, agents, crew, guests or sub-contractors except to the extent that such loss, damage, costs, claims or proceedings may be caused by the negligence or wilful act of the Company or those for whom it is responsible.

d). The Owner shall maintain third party insurance in respect of himself and each of his vehicles or vessels his crew for the time being, and his agents, visitors, guests and sub-contractors in a sum of not less than £3,000,000 in respect of each accident or damage, and in respect of each vessel adequate salvage insurance. Such insurance shall be affected and maintained in an insurance office of repute and the Owner shall produce the policy or policies relating thereto to the Company on demand.

3. Payment shall be due for Marina and boatyard fees and services provided by the Company within 7 days of the invoice date. Such invoices shall be paid in full without reduction, deferment of account of any claim, counterclaim, or set-off. If the Owner becomes insolvent or any sums owed by the Owner on any invoice or account become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or account issued by the Company shall be deemed due for payment and thereupon immediately payable. The Company reserves the right to charge interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 on outstanding accounts.
4. No part of the Company's Marina or premises or of any vessel or vehicle while situated therein or thereon shall be used by the Owner for any commercial purposes, except with the prior written consent of the Company.
5. a). The Owner must supply to the Company in writing, details of the Owner's home address. This address must be a different address to the address of the Marina (unless living onboard). The Owner shall be obliged to produce evidence to the Company of such home address within 7 days of a request to do so.
- b). The Owner 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.
- c). Except with the prior written consent of the Company, no person shall use, or permit the use of, a Vessel in the Marina as the only or main place of abode of any person and, without prejudice to the foregoing, no person shall use or permit the use of the Vessel as accommodation for more than 21 consecutive days or for more than a total of 180 days in any calendar year.
6. a). Subject to paragraph b) of this condition, no work shall be done to a vessel whilst at the Company's Marina, premises or moorings (unless with the prior written consent of the Company, which may be withheld at its sole discretion); other than minor running repairs or minor maintenance of a routine nature by the Owner, his regular crew, or members of his family. Any work undertaken, must not cause any nuisance or annoyance to any other users of the Company's Marina, premises or moorings or any other person residing in the vicinity.
- b). Prior written consent for work to be carried out on the Company's Marina premises or moorings shall not without good cause be withheld in the following circumstances:
- (i) Where the work to be carried out is work for which the Company, its concessionaires or those who normally carry out work on its behalf would normally employ a specialist sub-contractor; or
 - (ii) Where the Company is satisfied that the whole of the work is remedial and not servicing, and is being carried out under warranty by the manufacturer and / or supplier of the vessel or any part of her equipment to which the warranty relates.
 - (iii) If the Company has set aside an area of the Company's Marina premises or moorings where owners may carry out work on their vessels, and the work for which consent is sought is restricted to that area and is not to be carried out in a manner prohibited under regulations for the time being made by the Company with regard thereto.
7. a). The Company shall have the right (without prejudice to any other rights in respect of breaches of the term of this licence by the Owner) to terminate the licence granted to the Owner in the following manner in the event of any breach by the Owner of these conditions or of any failure by the Owner to make any payment due to the Company. If the breach is capable of remedy, the Company may serve notice requiring the Owner to remedy the breach within 28 days. Where the breach is serious, or poses an immediate risk or threat to the health, safety or welfare of any other person or property, the time specified for remedy may be immediate. 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 marina immediately.

b). The licence may be terminated on 16 weeks written notice by the Owner to the Company. In this event the Company will be entitled to recalculate the charge for the berth using the rate or rates that would have been applicable to the actual period of licence, including the period of notice given, instead of the annual rate. If this recalculation results in a balance payable to the Company then the Owner shall be required to pay that balance before removing the vessel from the Marina. If there is a balance in favour of the Owner, the Company shall pay it to the Owner upon the vessel's departure from the Marina.

c). If the Owner fails to remove the vessel on termination of the licence (whether under this condition or otherwise), the company shall be entitled:

(i) to charge the Owner at the marina's 24hr rate for overnight visitors for each day between termination of this licence and the actual date of removal of the vessel from the marina and/or

(ii) at the owner's risk (save in respect of loss or damage caused by the Company's negligence during such removal) to remove the vessel from its Marina and premises and thereupon secure it elsewhere and charge the Owner with all costs arising out of such removal including alternative berthing fees.

d). Termination of the licence granted by Company, whether pursuant to this clause 9 (below) or otherwise, is without prejudice to any other rights of the Company under this Agreement including but not limited to clause 9.

8. a). The Company has a general lien upon any Vessel at any time whilst in or on the Company's Marina or premises for any sums due at any time to the Company from the Owner on any account whatsoever, whether relating to rental, storage, commission, access, berthing charges, work done or otherwise. Rental, storage, berthing and all other charges (including any legal costs) will continue to accrue on any vessel detained under this lien.

b). The Company shall be entitled to, after giving at least 28 days notice in writing to the Owner, to sell or dispose of or deal with the Vessel as agent for, and at the expense of, the Owner and apply the proceeds in or towards the payment of such sums. Any such sale shall be on the basis of a reasonable offer immediately available, which may or may not amount to as much as the Owner may believe the Vessel is worth in any specialist market place. The Company may or may not, in its absolute discretion, advertise the Vessel for sale.

c). The Company shall, upon accounting to the Owner for any balance remaining after payment of any sum due to the Company, and for the cost of sale and disposal and/or dealing (including and legal costs), be discharged of any liability whatsoever in respect of the Vessel.

9. In all cases where a contract of hire or licence to occupy any moorings, berth, storage, space, property or facilities may be lawfully terminated by notice; the same shall be deemed to be lawfully served if: served personally on the Owner, or sent by registered post, or recorded delivery service to the last known address, in the United Kingdom, of the Owner or to the principal place of business of a Company.

10. Vessels stored at seasonal rates, ashore or in mud berths will be launched, or put afloat, as near the end of the seasonal period as in the Company's opinion tide, weather conditions and available facilities permit; and in such sequence as to avoid moving other vessels for this purpose and also to make the most economical use of the facilities at the Company's disposal. At the owner's request the company will, if possible, launch his vessel at any suitable tide and weather conditions, but the cost of moving other vessels for this purpose and / or any attendant expenses must be paid for by the Owner. The basis of such charges is available to the Owner on request.

11. Any obligation of the Company towards vessels or goods left at its Marina or premises ends upon the expiry or lawful termination of the grant to the owner of facilities in respect of such vessels or goods and the Company accepts no responsibility for loss or damage to any vessels or goods left at its Marina or premises without its consent save in so far as such loss or damage is caused by the negligence of the Company or those for whom the Company is responsible.

12. If, in the Company's opinion, it is necessary for the safety of the vessel, or for the safety of other users of the Marina or premises, or for their vessels or for the safety of the Company's Marina, premises, plant or equipment; the Company shall have the right to moor, re-berth, move, board, enter or carry out any emergency work on the vessel and, except to the extent that such mooring, re-berthing, movement, boarding, entering or emergency work arises from the negligence of the Company or those for whom the Company is responsible, the Company's reasonable charges therefore will be paid by the Owner.

13. Unless the Owner has the Company's prior consent, the Owner shall not lend or transfer the berth (this licence being personal to the Owner relating to a particular vessel, and non assignable), and shall not use the berth for any other vessel. Subject to any special condition of the Company to the contrary, if the Owner notifies the Company in writing that the vessel will be away from the Marina and premises for 28 days or more the Company may re-licence, on a continuous basis the berth normally occupied by the Owner's vessel.

14. Vessels must be berthed or moored by the Owner in such a manner and position as the Company may require and, unless otherwise agreed, the necessary warps and fenders shall be provided by the owner.

15. The Company reserve the right to raft up vessels, when required to do so

16. Nothing in the licence will entitle an Owner to the exclusive use of a particular berth.

17. Berths (including those occupied by vessels on the Company's Marina or premises or facilities for servicing, overhauling or repair) will be licensed for the periods from time to time published by the Company at its Marina or premises and charges therefore will be calculated by reference to the Company's published list of charges ruling at the commencement of the licence.

18. All persons using any part of the Company's Marina premises or facilities, for whatever purpose and whether by invitation or otherwise, do so at their own risk; unless any injury or damage to person or property sustained within the Company's Marina premises or facilities was caused by or resulted from the Company's negligence or deliberate act, or that of those for whom the Company is responsible.

19 No vessel when entering, leaving or manoeuvring in the Marina, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Marina. Vessels are at all times subject to speed restrictions and the bylaws of Marina, navigation and other authorities, including relevant planning permissions. Furthermore, all vessels must comply with any direction, regulation or designation of the Marina; and/or its harbourmaster or dockmasters, given either specifically or generally, and in accordance with any reasonable condition as may be imposed.

20. No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Marina or premises, so as to cause any nuisance or annoyance to the Company, to any other users of the Marina or premises or to any person residing in the vicinity. 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.

21. Halyards shall be secured in such a way as not to cause nuisance or annoyance. The company may, at their discretion, take steps to secure slack halyards at the Owner's expense.

22. a). No refuse shall be thrown overboard or left on the pontoons, jetties or car parks, or disposed of in any way other than in the receptacles provided by the Company or by the removal from the Company's Marina and premises.

b). Whilst moored in the Company's Marina, and for the purpose of keeping the dock water clean and unpolluted, the Company requires all clients to refrain from using their 'sea toilets'. The proper facilities in the shower and toilet area must be used.

23. Dinghies, tenders and rafts should be stowed aboard the vessel unless a berth is separately provided by the Company.

24. Owners and their crew are required to park motor vehicles in the marina car park, or in a location specified by Marina staff

25 No items of boats, gear, fittings or equipments, supplies, stores or the like should be left on the pontoons, jetties, or in the car parking areas.

26. Owners and/or owner's party and/or users with dogs or other animals on board should keep them under control; all dogs must be kept on leads while walking on pontoons. Owners and/or owner's party and/or users must ensure that any fouling of the pontoons or Marina property by their animals is immediately cleaned up by them and correctly disposed of – not into the Marina.

27. Motor caravans, trailers and tents may not be parked, or used, anywhere on the Marina premises without the written consent of the Company; boat trailers may only be parked with the written consent of the Company and in the designated area.

28. Swimming, diving and fishing in the Marina are all expressly forbidden.

29. The Owner shall take all necessary precautions against the outbreak of fire in or upon his vessel and the Owner shall observe all statutory and local regulations relative to fire prevention (if any), which are exhibited at the offices of the Company. The Owner shall provide and maintain at least one fire extinguisher of a governmentally approved or BS1 standard type and size in or on the vessel fit for immediate use in case of a fire. Owners shall not refuel vessels in the Marina other than at the Company's refuelling station.

30. The Company reserves the right to introduce regulations which relate solely to the administration of the Company's Marina and premises and which are not inconsistent with these conditions, and to amend such regulations from time to time. 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 these conditions.

31. a). The Company shall have the right, by notice in writing to the Owner, to terminate this licence if at any time the Company's Marina or premises shall be so damaged impeded or interfered with by '*force majeure*' (defined below) as to render it likely that the Company will be unable to continue to provide a berth, mooring or storage ashore accommodation in accordance with the licence entered into between the Company and the Owner.

b). In this clause, '*force majeure*' means any event or circumstances (whether arising from natural causes, human agency or otherwise) beyond the control of the Company including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) weather conditions, riots, civil commotion, aircraft, fire, breakout of war.

c). In the event of such termination of a licence, the Company will refund to the owner the unexpired portion of the licence fee (disregarding any discount given)

32. No "For Sale" or any other signs may be placed on any vessel other than those issued by the Company's Franchisees.

30. Addendum to Terms of Business

- a). All berthing charges are payable in advance, and if paid in full a 5% discount will apply; 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.
- b). Clients wishing to pay their annual berthing charges in instalments and subject to terms and conditions, these may be paid by Standing Order. Payments by instalments will be subject to a 5% surcharge.
- c). Berthing charges are applied to length of vessels and will be calculated to the next 50cm. Overall length of vessels will include bowsprits and dinghies on davits, etc.
- d). At the Marina Managements discretion, and subject to specific criterion, masts may remain stepped whilst the vessel is laid up ashore in the Storage Compound. Removal of sails, spray hoods and dodgers will be obligatory.
- e). Subject to space availability, cradles and trailers may be stored ashore in the Storage compound subject to current price list. This will be on the condition that these items are stored entirely at the owner's own risk.
- f). Short Term Berthing – where possible, the Marina Management will let berths on a 12 month basis. If available, berths will be let on a short term basis (6 months, 3 months and 1 month). Vessels on short term contracts at the Marina Managements discretion maybe moved to different berths during the period of the contract. The Marina Management 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.

Hard Standing Rules

- It is strictly forbidden to climb or to be hoisted up a mast while a vessel is ashore
- It is strictly forbidden to start vessel engines in gear and other boat machinery while ashore
- Children are not permitted onto the designated hard standing without prior permission of the management
- Customers are instructed not to move boat supports without proper consideration of all safety aspects. Customers must never interfere with boat supports of boats not belonging to them
- Customers carrying out work on the hard standing must ensure that all debris is cleaned up, and disposed of correctly, at the end of the day or once work has been completed
- Appropriate steps must be taken to contain the work area when undertaking any kind of work involving spraying or blasting
- Vehicles are not allowed to park on the hard standing, loading and unloading in this area is only allowed under Marina staff supervision.