

Terms of Business section of the Licence Agreement

1st April 2016 – 31st March 2017

1 DEFINITIONS

Where the following words appear in these terms of business, the Licence and the Company's Regulations they shall have these meanings:

“Agreement” means the Licence Agreement, which includes these terms of business, cover sheet, annual booklet and the Company’s Regulations.

“We” or “Us” or “Our” means Maryport Harbour and Marina Limited

“Company” means Maryport Harbour and Marina Limited

“You” or “Your” means the skipper or person in charge of the boat.

“Rules” means the Rules and Regulations and Safety Information of the Marina issued in the Annual Booklet or amendments on the notice board or website.

“Start Date” means the date the boat enters the Marina or the date of a new Licence Agreement

“End Date” means the date the boat leaves the Marina or the date the Licence Agreement expires

“Berthing/Storage Fee” means the fee due to the Company for the berthing or storage of your Boat as set out in the Licence Agreement

“Total Length Overall” means the overall length of the space occupied by the boat including any fore and aft projections, temporary or permanent. (davits, bowsprits, bumpkins boarding ladders, stern drives, tenders, outdrives, outboards, rudders, pulpits, push pits, etc.)

“Boat” or “Vessel” means any craft, ship, yacht, dinghy, multihull, or other marine structure which is in the care and control of the Owner.

“Working day” means a day (not being a Saturday or Sunday) when banks are open for business in the City of London.

“Berth” shall mean the space on water or land from time to time allocated to the Owner by the Company for the boat during the term of this Licence.

“Cover Sheet” means the front sheet of the Licence Agreement, which contains the details of this Licence and signed by the parties.

“Harbour” means a yacht harbour, marina, mooring or any other facility for launching, navigating, mooring or berthing a Boat.

“Owner” shall include any charterer, master, agent or other person for the time being in charge of the Boat, excluding the Company.

“Premises” means all land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mud berths, sheds, lofts, workshops, hard standing, roadways and car parks.

“Pontoon” means a moored and decked floating structure providing landing or mooring facilities.

“Storage Ashore” means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the boat during the term of this Licence.

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2 ALLOCATION AND PROVISION OF BERTH/STORAGE

- 2.1 For the duration of this Licence Agreement we will allocate you a berth. You must not allow any Boat other than the Boat shown on the Licence to occupy the berth.
- 2.2 We are entitled from time to time to reallocate berths and whilst we do make reasonable efforts to ensure you can use the same berth you are not entitled to the exclusive use of any particular berth.
- 2.3 We reserve the right to board, move, moor, or re-berth the boat for reasons of safety, security and emergency or to prevent or stop a nuisance.
- 2.4 We reserve the right at any time during the period of agreement to measure the Boat and charge you additional fees if the Total Overall Length (as calculated and set out in the Licence Agreement) of the Boat appears to be greater than the length stated on the Licence Agreement.
- 2.5 Should you sell your Boat, you may NOT assign your Licence Agreement to the new owner.

3 YOUR OBLIGATIONS

- 3.1 You must observe and perform the Marina Rules and Regulations, these are in the form of an Annual Marina Booklet, which a copy is issued with your Licence Agreement. We may change these rules and regulations by placing notices on the Marina notice board(s) and/or on our website: www.maryportmarina.com.
- 3.2 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 or a crew member or family member or visitor. You will be liable to make payment to this Company to make good your loss.
- 3.3 If you sell the Boat or lose your right to the 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 received a notice containing all the 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 rules.
- 3.4 You must ensure that at all times we have a current postal address and current email address to which we can send you any notice or details of any matter arising out of this agreement. You must also provide telephone contact details in case of emergency.
- 3.5 We cannot guarantee that the water level in the Marina will be sufficient to enable your Boat to safely navigate 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.
- 3.6 You must keep the berth which you are allocated from time to time in a clean and tidy condition. No items of Boat gear, equipment or stores shall be left on the pontoons or jetties. You may not have barbeques on the pontoons and it is recommended that you do not have barbeques on your boat.
- 3.7 Your Boat must be kept in a seaworthy and reasonably smart condition. Should we have cause to believe your Boat is not sound or seaworthy, we reserve the right to give you notice of our intention to lift the Boat and request that you commission a survey report at your expense, that report to be made available to use within 30 days of the date of our formal request. Your Boat will not be returned to the berth until we are satisfied that the Boat is structurally sound and poses no threat to safety or safe navigation within the Marina.

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3.8 You shall warrant that your crew, members of your family and visitors comply with any rules, regulations and laws when using the Harbour and Company's premises.

4. OUR RIGHTS AND OBLIGATIONS

4.1 For all berths/storage we provide in the Marina the invoiced fee includes the following:-

- Boats on the pontoons checked at least twice a day to ensure the fenders, warps, etc. are in good order;
- Boats in storage area are checked daily to ensure chocks, props, etc. are in good order;
- Fresh water for use on board the boat;
- Access to electricity on the pontoons system (electricity cards are available for purchase in the marina reception)
- Toilets, shower and washbasin in dedicated facilities;
- Receptacles for the deposit of general refuse and dedicated receptacles for recyclable materials;

5 BERTHING/STORAGE FEES AND PAYMENTS

5.1 You must pay the berthing/storage fee to us in the manner set out in the Licence Agreement. The fee will only include the services set out in condition 4.1

5.2 We are entitled to charge for all Marina services other than those set out in condition 4.1 and may invoice you for all such Marina services according to the terms stated on our invoice.

5.3 We will only issue receipts for payment on request.

5.4 Payment of invoice can be made by cash, cheque with valid debit card and debit card free of charge. Credit card payments may incur a 1.5% charge, which is the charge levied by the card machine company. A ten month standing order scheme is available, but is subject to agreement with the office.

5.5 If you fail to make any payment on the date it is due we reserve the right to charge interest at 8% per annum and refer the invoice to our Debt Recovery Agent, where the debt may be subject to additional charge in lieu of recovery. Until payment is received without affecting any other right or remedy, this Company reserve the right to suspend access via the fob system. We shall be entitled to take all or any steps of the following:-

5.5.1 Terminate this agreement immediately by giving you notice in writing:

5.5.2 Suspend the provision of any services (including but not only the provision of berth) to you:

5.5.3 Prevent the Boat from leaving the Marina;

5.5.4 Use any payment made by you to us, no matter what you intended the payment to be used for, to pay for any or all of the services supplied by us or the berthing/storage fee as we think fit:

5.5.5. Charge and claim from you the cost of recovering any overdue amount including, but not limited to, legal costs:

5.5.6. Any Boat or Vehicle left at the Marina is subject to the provision of the Torts (Interference with Goods) Act 1977, which confers on the Company a right of sale exercisable in certain circumstances.

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, these losses will be limited to the amount of berthing fees paid by you to us.

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6.3 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, such as 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. **MATTERS OUTSIDE OUR CONTROL**

7.1 We will not be liable for delay in performing or failure to perform our obligations if the delay or failure results from any cause or circumstance beyond our reasonable control (including, but not limited to, acts of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government authority (including refusal or revocation of 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, lockout or industrial action of any kind).

8 **YOUR WARRANTY TO US**

8.1 Your warranty to us, is that you are the owner of the Boat, have the immediate right to possess the Boat and that the total overall length of the Boat is as stated in the Licence Agreement.

8.2 You shall maintain adequate insurance including third party liability cover for not less than £3,000,000 (three million pounds), and cover against wreck removal and salvage, and where appropriate, Employers' Liability cover to at least the statutory minimum. You are obliged to produce evidence to the Company of such insurance within 7 days of a request to do so.

9 **TERMINATION**

9.1 The 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 If you have a 12 month Licence Agreement you will have been given specially discounted berthing/storage rates for committing to a 12 month period. Therefore if you end the Agreement within that 12 month period the fee for the period of occupation of the berth/storage will be recalculated and the amount due will be the lower of:

9.2.1 The number of months, weeks or days of occupation charged at the monthly, weekly or daily rate:
and/or

9.2.2 The full amount due under the 12 month berthing contract.

9.3 We reserve the right to charge you a cancellation fee which is sufficient to cover our losses and expenses, but which shall not be more than 4 weeks berthing fees at the prevailing visitors berthing rate.

9.4 Without affecting any right or remedy available to either of us, either you or us will be entitled to end this agreement immediately by notice in writing to the other if:-

9.4.1 The other commits any 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:

9.4.2. 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 undertaking or assets:

9.4.3 The other party being a company ceases or threatens to cease to carry on its business, 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 or composition with its creditors.

9.5 Without affecting any other right or remedy to us we will be entitled to end this agreement immediately by notice in writing to you if:-

9.5.1. You have a bankruptcy petition presented or die:

9.5.2. Being a partnership you are dissolved

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- 9.6 For the purpose of condition 9.4.1 a breach can be put right if the party can comply with the provision within the agreement in all respects other than as to the time of performance.
- 9.7 If we do not enforce this agreement or any part of it or we do not take action against you for breach of this agreement it does not mean that we cannot enforce that or any other provision or take action against you for a subsequent breach.
- 9.8 The rights to end this agreement given by this condition do not affect any other right or remedy we may have in respect of the breach concerned (if any) or any other breach.
- 9.9 The ending of this agreement does not affect any provision of this agreement which is intended to continue after this agreement has ended, or come into force when this agreement ends.
- 9.10 Notwithstanding any other provision in this agreement or the Rules, on termination of the agreement for any reasons you shall immediately pay to us all monies owing to us and remove the Boat from the Marina on the date of termination or as soon as is reasonably practicable and in any event within 7 days of termination
- 10 REMOVAL OF BOATS**
- 10.1 In respect of a pontoon berth we reserve the right (after giving you at least 7 days written notice) to secure or remove the Boat from its berth and place it under our control ashore in the event that:-
- 10.1.1 You fail to make any payment on the due date:
- 10.1.2 You fail to remove the Boat from its berth within 7 days of the termination of this agreement.
- 10.2 You give us irrevocable authority to carry out removals pursuant to clause 10.1, store the Boat, launch or lift it onto a trailer as necessary and you shall be responsible for all costs and charges relating to such actions including all repairs or other work necessary to facilitate such removal or storage, any subsequent launch and/or lift onto a trailer.
- 10.3 Without limiting the provisions of clause 6 our liability in respect of any damage or loss to the Boat caused during its removal under clause 10.1 is limited to damage or loss caused by our employees' negligence. You remain responsible for insurance of the Boat.
- 10.4 If we have removed a Boat to storage under clause 10.2 we may give you 28 days' notice of our intention to sell the Boat. Upon the expiry of the 28 day period we may sell the Boat and pay the proceeds to you or such person who is entitled to possession of the Boat less any and all sums owed by you to us and any expenses of sale and any legal costs incurred in respect of the sale.
- 10.5 If a Boat has been placed in storage, which is not in a reasonable condition or deemed a Health and Safety hazard or has been deemed abandoned. The Company will seek written opinion from a Yacht Surveyor to the value and potential outcome of the Boat. If it is deemed that the Boat is only suitable for disposal, the Company will write to the Owner giving them 28 days' notice to remove the Boat. If the Boat is not removed after the 28 day notice period, the Company has the right to dispose of the vessel and recharge the owner for all disposal costs.
- 11 GENERAL**
- 11.1 In the event of any conflict between the terms of this agreement and the Rules this agreement shall prevail, if a rule expands the term of this agreement or vice versa, both shall apply.
- 11.2 Even if you fail to sign your Licence Agreement you shall be deemed to have accepted the terms of this agreement if you have taken up a berth/storage at the Marina.

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- 11.3 We reserve the right to charge you berthing fees at our prevailing daily berthing rate for any periods during which you leave the Boat at the Marina if there is no current berthing licence in relation to that Boat between you and us. Our current berthing fees are available online and on the notice board. Such fees shall be due and payable when invoiced.
- 11.4 None of your rights or your obligations under this agreement may be assigned, transferred, sub-contracted or otherwise disposed of in whole or in part without our prior written consent. We may assign, transfer, sub-contract or otherwise dispose of all or any of our rights of the agreement by notice to you provided that such assignment does not affect any of your rights or remedies under the agreement.
- 11.5 A person who is not party to this agreement has no rights under the Contracts (Rights of Third Parties Act 1999) to enforce any terms of this agreement.
- 11.6 This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 11.7 In this agreement singular words include the plural and vice versa and words for one gender include any gender. Reference to persons includes bodies, corporate and unincorporated associations and partnerships.
- 11.8 The headings in these conditions do not affect their interpretation.
- 11.9 Any and all notices served by you or us in respect of this agreement shall be deemed to be sufficiently served when forwarded by hand or sent by post to your address, or in the case of notices to us to our registered office address, or such other address as we may have notified from time to time. Notice shall be deemed to have been received if sent by post, 2 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 or 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 the communication was contained in an envelope which was duly addressed and posted in accordance with this clause.
- 11.10 If the obligations, undertakings and warranties by you in this agreement are undertaken or given by more than one person, then they are deemed to have been given by all persons jointly and also by each of them individually.