

## 1 DEFINITIONS

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

**Alongside Berth** means a berth where a Vessel of appropriate draft may be secured, with access to the shore without the need for a dinghy or tender.

**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.

**Company** shall mean the Company or any of its agents to whom the application for berthing is made which may be one or more of its associated companies, concessionaires, tenants and assignees for the operation of the boat repair yard, brokerage or other harbour facility.

**Cover Sheet** shall mean the attached sheet, signed by the parties to this Licence, which contains the details of this Licence.

**Harbour** shall include a yacht harbour, marina, mooring or any other facility for launching, navigating, mooring or berthing a vessel.

**HRO** means The Maryport Harbour Revision Order 2007 (*SI 2007/3463*).

**Length Overall (LOA)** means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.

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

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

**Premises** means all the 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.

**Regulations** mean those regulations (if any) made by the Company as the same may be amended from time to time in accordance with clause 15 (including, but not limited to, the Maryport Harbour Customer Guide and Safety Information and Harbour Byelaws), which the Company in its absolute discretion, considers necessary to enable the Company or those using the Premises to comply with applicable legal requirements or for the safety or security or good management of the Harbour or Premises.

**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 this Licence.

**Vessel** shall include any form of craft, boat, ship, yacht, dinghy, multihull, or other marine structure which is in the care and control of the Owner.

## 2 THE LICENCE AND CHARGES

- 2.1 The Berth at the Harbour or Premises shall be licensed for the period and at the Charges on the Cover Sheet.
- 2.2 This Licence shall not be automatically renewed but will end at the End Date specified on the Cover Sheet if not terminated sooner by the Company or by the Owner under the provisions of Clauses 8 or 10.
- 2.3 The Owner shall pay, in full and in cleared funds, to the Company the Charges (as set out in the Cover Sheet) and any other sums due under this Licence within 30 days of each invoice submitted to it by the Company.
- 2.4 Without prejudice to any other right or remedy that it may have, if the Owner fails to pay the Company any payments by the relevant due date, the Company may:
- 2.4.1 charge interest on such sum from the due date for payment at the annual rate of 12%, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and/or
- 2.4.2 suspend this Licence until payment has been made in full.
- 2.5 All sums payable to the Company under this Licence shall become due immediately on its termination, despite any other provision. This clause 2.5 is without prejudice to any right to claim for interest under the law, or any such right under this Licence.
- 2.6 The Company may, without prejudice to any other rights it may have, set off any liability of the Owner to the Company against any liability of the Company to the Owner.

## 3 LIABILITY, INDEMNITY AND INSURANCE

- 3.1 The Company shall not be liable for any loss or damage caused by events or circumstances beyond its reasonable control, such as severe weather conditions, the actions of third parties not employed by it or any defect in a customer's or third party's property, ("Force Majeure Event"); this extends to loss or damage to Vessels, gear, equipment or other property left with it for work or storage, and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment.
- 3.2 The Company's obligations under this Licence are suspended for the period that the Force Majeure Event continues, and the Company will extend the time to perform these obligations for the duration of that period. The Company will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which its obligations under this Licence can be performed despite the Force Majeure Event.
- 3.3 The Company shall take reasonable and proportionate steps having regard to the nature and scale of its business to maintain security at the Premises, and to maintain the facilities and equipment at the Premises and in the Harbour in reasonably good working order. But in the absence of any causative negligence or other breach of duty on the part of the Company, Vessels, gear, equipment and other property are left with the Company at the Owner's own risk and Owners should ensure that their own personal and property insurance adequately covers such risks.

- 3.4 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 in 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 which has not been caused by the Company's negligence or some other breach of duty on its part. However the Company reserves the right to do so 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 a normal commercial charging basis and, where appropriate, to claim a salvage reward.
- 3.5 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 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. The Owner shall be obliged to produce evidence to the Company of such insurance within 7 days of a request to do so.
- 3.6 The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using the Company's Harbour and Premises.
- 3.7 Subject to clause 3.8, if either the Company or the Owner fails to comply with the terms of this Licence, neither of them shall be responsible for any losses that the other suffers as a result, except for those losses which the Company or the Owner could reasonably foresee would result from the failure to comply with this Licence.
- 3.8 Neither the Company nor the Owner shall be responsible for losses that result from their failure to comply with the terms of this Licence, including, but not limited to, losses that fall into the following categories:
- 3.8.1 loss of income or revenue;
  - 3.8.2 loss of profit;
  - 3.8.3 loss of business;
  - 3.8.4 loss of anticipated savings; or
  - 3.8.5 loss of data.
- However, this clause 3.8 shall not prevent claims for foreseeable loss of, or damage to, the Company's or the Owner's physical property.
- 3.9 Clauses 3.7 and 3.8 do not exclude or limit in any way the Company's liability for:
- 3.9.1 death or personal injury caused by its negligence; or
  - 3.9.2 fraud or fraudulent misrepresentation; or
  - 3.9.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 3.9.4 losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
  - 3.9.5 any other matter for which it would be illegal or unlawful for the Company to exclude or attempt to exclude its liability.

## **4. ADDRESS DETAILS AND SUBSEQUENT CHANGE OF DETAILS**

- 4.1 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 Harbour. The Owner shall be obliged to produce evidence to the Company of such home address within 7 days of a request to do so.
- 4.2 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.

## **5 BERTH ALLOCATION**

- 5.1 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 LICENCE**

- 6.1 This Licence 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, either 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 Licence 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**

- 7.1 The Company may have the use of the Berth when it is left vacant by the Owner.

## **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 Licence by the Owner) to terminate this Licence in the following manner in the event of any breach by the Owner of this Licence:

- 8.1.1 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Company and/or of the Company's customers and if 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 or welfare of any other person or property the time specified for remedy may be immediate or extremely short. If the Owner fails to effect 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.

- 8.1.2 If the Owner fails to remove the Vessel on termination of this Licence (whether under this Condition or otherwise), the Company shall be entitled:
- 8.1.2.1 to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination of this Licence and the actual date of removal of the Vessel from the Harbour and Premises and/or
  - 8.1.2.2 at the Owner's risk (save in respect of loss or damage directly 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 berthing fees.
- 8.1.3 Any notice of termination under this Licence 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 RIGHTS 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 provisions of the Torts (Interference 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 has given notice to the customer In accordance with the Act. For the purpose of the Act it is recorded that:
- 9.1.1 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 when the repair or treatment has been carried out.
  - 9.1.2 The Company's obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation.
  - 9.1.3 The place for delivery and collection of goods shall be at the Company's Premises unless agreed otherwise.
- Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of Solicitors.
- 9.2 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 judgment debt against the Owner of a Vessel or other property.

- 9.3 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 Licence 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 24 hour rate for overnight visitors for each day between termination or expiry of this Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Harbour and 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 Licence may be terminated on 90 days' 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 this Licence 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 Harbour or Premises. 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 Harbour or Premises.

## 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 current scale of charges for Vessel movements will be provided to the Owner before they enter into this Licence with the Company and a copy is available, as updated from time to time, at the Company's registered office. Where a specific date or tide range for re-launch of the Vessel has been agreed between the Owner and 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 Vessel 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 byelaws of 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

- 12.1 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 Licence 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 Licence and is available, as updated from time to time, at the Company's Registered office.

## 13 STORAGE

- 13.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocates a separate berth for them.
- 13.2 Trailers and cradles left on the Premises once a Vessel has been launched will incur a storage charge in accordance with the Company's 24 hour rate for overnight visitors.

## 14 PARKING

- 14.1 Subject always to the availability of parking space, Owners and their crew may only park vehicles on the Premises in accordance with the directions of the Company.

## 15 MARINA and HARBOUR REGULATIONS

- 15.1 The Owner shall at all times observe the 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 ready for immediate use in case of fire.
- 15.1.2 Owners 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 Licence and a copy is available, as updated from time to time, at the Company's registered office. The Company reserves the right to introduce new Regulations on 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.
- 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.
- 16.2.3 Notwithstanding the foregoing, during periods of 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.
- 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 supply the Owner with a copy of the said policy current at the time of application for a Licence and a copy is available, as updated from time to time, at the Company's registered office. Any amendments shall be displayed on the Company's public notice board or other prominent place at the Company's Premises and further copies shall be available on 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 any nuisance or annoyance to any 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 cause any nuisance or annoyance to any other users of the Harbour or Premises or to any person residing in the vicinity . 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 The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using the Company's Harbour and Premises.

## 18 GENERAL

- 18.1 If there is any inconsistency between any of the provisions of this Licence, the HRO and the Regulations respectively, the provisions of the HRO shall prevail in preference to this Licence and the Regulations and the provisions of this Licence shall prevail over the provisions of the Regulations.
- 18.2 If the Company fails, at any time while this Licence is in force, to insist that the Owner performs any of its obligations under this Licence, or if the Company does not exercise any of its rights or remedies under this Licence, that will not mean that the Company has waived such rights or remedies and will not mean that the Owner does not have to comply with those obligations. If the Company does waive a default by the Owner, that will not mean that the Company will automatically waive any subsequent default by the Owner. No waiver by the Company of any of terms of this Licence shall be effective unless the Company expressly says that it is a waiver and the Company tells the Owner so in writing.
- 18.3 The terms of this Licence shall be governed by English law and the Company and the Owner we both agree to be bound by the non-exclusive jurisdiction of the English courts.