

TERMS OF BUSINESS - BERTHING

DEFINITIONS

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

Berth means the space on water or land within the Marina Premises allocated to the Vessel by the Company from time to time during the duration of Licence.

Company means the Company as identified in the Licence, including its associated companies and any of its servants or agents.

Conditions means these standard terms and conditions.

Facility means the type of berthing, mooring and/or shore storage facility to be provided by the Company to the Owner in relation to the Vessel as set out in the Licence

Length Overall means the overall length of the Vessel, including any fore and aft projections, temporary or permanent.

Licence means the contract between the Company and the Owner for the provision of the Facility, which incorporates these Conditions.

Licence Fee means the fee payable by the Owner to the Company in consideration for the Company providing the Facility, as specified in the Licence.

Marina means the marina, yacht harbour, mooring or any other facility for launching, recovering, mooring or berthing vessels, which is owned and/or operated by the Company.

Marina Premises means the Marina and all the associated land and buildings occupied by or under the control of the Company, including docks, locks, bridges, slipways, pontoons, jetties, quays, piers, walkways, mud-berths, sheds, lofts, workshops, hardstanding, roadways and carparks.

Owner means the person or organisation identified in the Licence.

Regulations mean those regulations (if any) made by the Company as the same may be amended from time in accordance with Condition 11, which the Company in its absolute discretion, considers necessary to enable the Company or those using the Marina Premises to comply with applicable legal requirements or for the safety or security or good management of the Marina Premises.

Vessel means the vessel identified in the Licence.

1. THE LICENCE

- 1.1 In consideration for the Owner paying the Licence Fee, the Company agrees to provide to the Owner the Facility in the Marina Premises in relation to the Vessel for the duration of the Licence..
- 1.2 The Licence will start on the Start Date and will end on the End Date specified in the Licence, unless terminated sooner under the provisions of Conditions 12 or 13. The Licence will not be automatically renewed after the End Date.
- 1.3 The Licence is personal to the Owner and relates to the Vessel described in the Licence. The Owner may not transfer or assign the Licence to a third party. The Owner may not use the Berth for a vessel other than the Vessel, either temporarily or permanently, without the written consent of the Company
- 1.4 Within 7 days of any Licence for the sale, transfer or mortgage of a Vessel, the Customer shall notify the Company in writing of the name, address, email and telephone numbers of the Purchaser, Transferee or Mortgagee, as the case may be.

2. BERTH ALLOCATION



2.1 The physical layout of the Marina Premises and the operational requirements of the Company are such that the Company must retain absolute discretion as to the utilisation of space within the Marina Premises. Nothing in the Licence or these Conditions entitles the Owner to the exclusive use of any particular space within the Marina Premises. The benefit provided by the Company pursuant to the Licence is accordingly merely a licence to occupy whichever Berth may be from time to time allocated to the Vessel by the Company.

2.2 The Company is entitled to make use of the Berth whilst it is left vacant by the Owner.

3. RIGHTS OF SALE AND OF DETENTION

3.1 The occupation of the Berth by the Vessel is subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers on the Company a right of sale in circumstances where the Owner fails to collect or accept re-delivery of the Vessel (and/or any other property left in the Marina Premises) following termination of the Licence. Such sale will not take place until the Company has given notice to the Owner in accordance with the Act. For the purpose of the Act it is recorded that:

2.1.1 The Licence is granted to the Owner by the Company on the basis that the Owner is the owner of the Vessel or the owner's authorised agent and that the Owner will take delivery or arrange collection of the Vessel (and/or any other property left in the Marina Premises) following termination of the Licence.

2.1.2 The Company's obligation as custodian of the Vessel (and/or any other property left in the Marina Premises) ends on its notice to the Owner of termination of that obligation;

2.1.3 The place for delivery and collection of the Vessel (and/or any other property left in the Marina Premises) shall be at the Marina Premises, unless agreed otherwise. Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of solicitors

3.2 Maritime Law entitles the Company in certain other circumstances to bring an action against the Vessel to recover a debt or damages. Such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of the Vessel may also occur through the ordinary enforcement of a judgment debt against the Owner.

3.3 The Company reserves a general right ("a general lien") to detain and hold onto the 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 the Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Marina 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.

4. USE OF BERTH BY COMPANY WHEN VACANT

5.1 The Company may have the use of the Berth whilst it is left vacant by the Customer.

5. CONDITION AND OPERATION OF VESSEL

5.1 The Owner must ensure that at all times the Vessel is maintained in a clean and tidy state and in a seaworthy or navigable condition (as appropriate).

5.2 It is the responsibility of the Owner to ensure the Vessel is in a seaworthy condition prior to launch. The Company takes no liability for damage caused by ingress of water or any consequential losses other than where caused by negligence on behalf of the Company.

5.3 If electricity is required, the Owner must use a metered lead. The Owner must either supply their own lead or borrow one from the Marina. Electricity is charged at cost plus an admin fee.

5.4 The Owner must ensure that, while underway within the Marina, the Vessel is manoeuvred and navigated:



- 3.2.1 with reasonable skill and care;
 - 3.2.2 in accordance with any applicable speed limits and any other applicable laws or regulations; and
 - 3.2.3 in such a manner so as not to endanger or inconvenience any other vessels in the Marina.
- 5.5 The Owner must ensure that, while moored within the Marina, the Vessel is appropriately secured using such number of fenders and warps of sufficient size and strength and in such configuration as may be appropriate to the Vessel, the mooring and the anticipated weather conditions. Unless otherwise agreed by the Company, such fenders and warps shall be provided by the Owner.
- 5.6 Boats must be adequately covered, particularly in winter months. Owners will be charged if checks on boats are requested, or if covers need to be re-secured.

6. VESSEL MOVEMENTS

- 6.1 The Company reserves the right to move the Vessel and any associated gear and equipment at any time for reasons of safety, security or good management of the Marina Premises.
- 6.2 Where a specific date or tide range for 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), the Company's published scale of charges for vessel movements will apply. 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.
- 6.3 When instructed by the Owner, boats will be launched and moored, if necessary, more than one abreast on the pontoons within the Elephant Boatyard Marina. Launch and haul out instructions may be made by telephone, email, or in writing completing a haul out form.
- 6.4 The company will endeavour to meet all launch and haul out requests but no guarantee can be given to meet such requests and no liability will be accepted in the event requests cannot be met.

7. STORAGE ASHORE

- 7.1 Storage ashore is subject to availability and will be charged at the published rate. Details of our rates can be found on our website www.elephantboatyard.co.uk/moorings
- 7.2 No boats are to be left ashore for a period of more than 12 months without going back into the water, unless there is ongoing work being undertaken by the yard team. If boats are left for a period longer than this, with no activity, the rate being charged will be increased to the equivalent of the Outer Pontoon rate. The yard also has the right to terminate the storage agreement.
- 7.3 Engines must not be started whilst boats are ashore.
- 7.4 Under no circumstances may boat shores be moved or tampered with.

8. LIABILITY AND INSURANCE

- 8.1 The Company will not be liable for any loss or damage of whatsoever nature caused by events or circumstances beyond its reasonable control (such as adverse weather conditions, the actions of third parties or any defect in the Owner's or any third party's property); this extends to loss or damage to the Vessel, its gear, equipment or other property whilst in the Marina Premises and to harm to persons entering the Marina Premises and/or using any of the Company's facilities or equipment therein.
- 8.2 The Company will take reasonable and proportionate steps (having regard to the nature and scale of the Marina Premises and the Company's business) to maintain security at the Marina Premises and to maintain the facilities and equipment at the Marina Premises in reasonable working order. In the absence of any negligence or other breach of duty on the part of the Company, however, the Vessel, its gear, equipment and other property remain at the Owner's own risk and the Owner should ensure that their own personal and property insurance adequately covers such risk.
- 8.3 Where access for vessels to and from the Marina is via a lock gate, swing or lift bridge or other restriction, the Company will not be liable for any loss or damage of whatsoever nature suffered by the Owner as a result of the lock gate, swing or lift bridge or other restriction being inoperative,



except to the extent that such inoperation may be caused by any negligence or other breach of duty on the part of the Company.

- 8.4 The Company will not be under any duty to salvage or preserve the Vessel or other property from the consequences of any defect in the Vessel or property concerned unless the Company has been expressly engaged to do so by the Owner on commercial terms. Similarly, the Company will not be under any duty to salvage or preserve the Vessel or other property from the consequences of an accident which has not been caused by negligence or other breach of duty on the part of the Company. Nevertheless, 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, the Company will be entitled to charge the Owner on a normal commercial charging basis and, where appropriate, to claim a salvage reward.
- 8.5 The Owner must, and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Company) does, comply with all applicable laws when in the Marina Premises.
- 8.6 The Owner must maintain adequate insurance in relation to the Vessel, including third party liability cover for not less than £3,000,000, cover against wreck removal and salvage and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Owner must produce evidence to the Company of such insurance within 7 days of a request to do so.

9. COMMERCIAL & RESIDENTIAL USE

- 9.1 The Owner must not (and must not allow anyone else to) use the Vessel for any commercial or residential purpose while in the Marina Premises without obtaining the Company's prior written consent, which may be withheld in the Company's absolute discretion or granted on such terms as the Company sees fit.
- 9.2 For the avoidance of doubt:
- 9.2.1 Use of the Vessel to provide overnight accommodation in exchange for payment or a reciprocal arrangement is deemed to be commercial use; and
 - 9.2.2 the Vessel is deemed to be used for residential purposes if, amongst other things, the Owner (or anyone else) uses the Vessel as their principal or main place of residence; or
 - 9.2.3 stays on board the Vessel for in excess of an average of three nights per week over a twelve week period; or
 - 9.2.4 uses the Company's offices at the Marina Premises as their mailing address.

10. STORAGE

- 10.1 The Owner must stow any dinghies, tenders or rafts aboard the Vessel unless the Company allocates a separate facility for them.

11. PARKING

- 11.1 Subject always to the availability of parking spaces, the Owner and their crew and guests may only park vehicles in the Marina Premises in accordance with the directions of the Company. The Owner must not (and must not allow anyone else to) use a vehicle parked in the Marina Premises for any commercial purpose or for overnight accommodation. For additional long stay parking Owners should use the Bursledon Station Car Park.

12. ACCESS TO & WORK ON THE VESSEL

- 12.1 The Owner must not (and must not allow anyone else to) undertake any work on the Vessel, its gear, equipment or other goods while on the Marina Premises without the Company's prior written consent, other than minor running repairs or minor maintenance of a routine nature carried out by the Owner, their regular crew or members of their family not causing any nuisance or annoyance to any other users of the Marina Premises or any other premises or any person residing in the vicinity, nor interfering with the Company's schedule of work, nor involving access to prohibited areas. The Company's consent will not be unreasonably withheld.
- 12.2 Where the Facility comprises or includes storage ashore, the Company may restrict the Owner's access to the Vessel and, where appropriate (having regard to the nature and scale of the Marina



Premises and the Company's business), the Company may prohibit the Owner from accessing the Vessel while it is stored ashore.

13. REGULATIONS

- 13.1 The Owner must, and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Company) does, observe the Regulations published from time to time by the Company, including Company's Health, Safety and Environmental policies.
- 13.2 The Company will supply the Owner with a copy of the Regulations current at the time of granting the Licence. The Company reserves the right to introduce new Regulations where required on legal grounds or for the safety or security or good management of the Marina Premises, and to amend such Regulations as from time to time may be necessary. Such Regulations and any amendments to them will become effective on being displayed on the Company's public notice board or other prominent place at the Marina Premises, and a breach of any of the Regulations will amount to a breach of these Conditions.
- 13.3 The Owner must, and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Company) does, report to the Company all accidents involving injury to any person or damage to any public or private property that occur in the Marina Premises as soon as reasonably possible after they occur.
- 13.4 The Owner must, and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Company) does, not operate any noisy, noxious or objectionable engine, radio, or other apparatus or machinery within the Marina Premises so as to cause any nuisance or annoyance to any other users of the Marina Premises or to any person residing in the vicinity. Halyards and other rigging must be secured so as not to cause such nuisance or annoyance.
- 13.5 The Owner must, and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Company) does, not throw any refuse overboard or dispose of it anywhere in the Marina Premises, other than in the receptacles provided by the Company or by removal from the Marina Premises.
- 13.6 The Owner must 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.

14. TERMINATION BY COMPANY

- 14.1 The Company has the right (without prejudice to any other rights in respect of breaches of the terms of the Licence by the Owner) to terminate the Licence in the following manner in the event of any breach by the Owner of any term of the Licence or these Conditions:
- 11.1.1 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 them 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.
- 11.1.2 If having been served with notice under Condition 12.1.1 the Owner fails to effect a remedy within the specified period of time, or if the breach is not capable of remedy, the Company may serve notice on the Owner requiring them to remove the Vessel from the Marina Premises immediately.
- 14.2 If the Owner fails to remove the Vessel on termination of the Licence (whether under Condition 12.1 or otherwise), the Company will be entitled:
- 11.2.1 to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination of the Licence and the actual date of removal of the Vessel from the Marina Premises; and/or



11.2.2 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 Marina Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.

14.3 Any notice of termination served by the Company under this Condition may be served personally on the Owner, sent by registered post or recorded delivery service to the Owner's last known address or sent to the email address (if any) set out in the Licence.

14.4 The Licence will terminate immediately and without notice on the death of the Owner. If the Owner's representatives do not either enter into a new licence with the Company or remove the Vessel from the Marina Premises then Condition 12.2 will apply as if references to the "Owner" were references to the "Owner's representatives".

14.5 The Licence will terminate immediately and without notice on the disposal of the Vessel by the Owner.

15. TERMINATION BY OWNER

15.1 The Licence may be terminated on three months' written notice being given by the Owner to the Company. In this event the Company will be entitled to recalculate the Licence Fee using the rate or rates that would have been applicable to the actual period of the Licence instead of the annual rate; the amount so calculated not to exceed the annual rate originally agreed. If this recalculation results in a balance payable to the Company then the Owner must pay that balance before removing the Vessel from the Marina Premises. If there is a balance in favour of the Owner the Company will pay it to the Owner upon the departure of the Vessel from the Marina Premises

15.2 Any notice of termination served by the Owner under this Condition must be served at the Company's principal place of business or registered office or sent to the email address (if any) set out in the Licence.

16. ADDRESS DETAILS AND SUBSEQUENT CHANGE OF DETAILS

16.1 The Owner must supply to the Company details of the Owner's home address. This address must be a different address to the address of the Marina Premises. The Owner must produce evidence to the Company of such home address within 7 days of a request to do so.

16.2 The Owner must notify the Company in writing (which includes by email) of any change of name of the Vessel or change of address or telephone number of the Owner, within 7 days of such change taking place.

17. DATA PROTECTION

17.1 The Company is a data controller for the purposes of the EU General Data Protection Regulation and the UK Data Protection Act 2018. A copy of the Company's Privacy Policy is available from the Company on request..

18. LAW & JURISDICTION

18.1 The Licence, these Conditions and any non-contractual obligations arising out of, or in connection with, the Licence shall be governed by and construed in accordance with English Law.

18.2 Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with the Licence shall:

15.2.1 if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or

15.2.2 where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

19. DISPUTE RESOLUTION SCHEME

19.1 The Yacht Harbour Association recommends that, before commencing court proceedings, the parties to a dispute arising out of or in connection with the Licence should endeavour to resolve their dispute by negotiation or, failing that, by mediation.

