



EMSWORTH YACHT HARBOUR LTD

BERTHING AND/OR STORAGE ASHORE LICENCE
STANDARD TERMS AND CONDITIONS

1. DEFINITIONS:

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

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 Emsworth Yacht Harbour Ltd or any of its agents to whom the application for berthing or storage is made which may be one of more of its associated companies, tenants and assignees for the operation of the boat repair yard, brokerage or other harbour facility

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

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

Licence shall mean the Licence signed by the parties including these Standard Terms and Conditions

Owner shall mean the person or company named on the front of the Licence, 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, workshops, hard standing, roadways and car parks.

Regulations means those regulations (if any) made by the Company as the same may be amended from time to time in accordance with Clause 16, 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 the Licence.

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

2. THE LICENCE

- 2.1. The Berth or Storage Ashore Accommodation at the Harbour or Premises shall be licensed for the period specified in the Licence and charged at the rates from time to time published by the Company and in force at the commencement of this Licence. Details of the charges applicable to the Berth or Storage Ashore Accommodation at the beginning of the licensed period will be given to the Owner at the time that the Licence is granted or renewed.
- 2.2. The Licence shall not be automatically renewed but may be renewed with the agreement of the Company and on the payment of the amount due for the renewal period. Otherwise the License will end at the End Date specified in the Licence, if not terminated sooner by the Company or by the Owner under the provisions of Clauses 8 or 10.
- 2.3. Failure to renew the Licence prior to the commencement of the new Licence period will result in berthing or storage being charged at visitor rates. The Owner will forfeit any right to a permanent Berth. Renewal will be at the discretion of the Company, subject to any waiting list.

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 the Owner's or third party's property): 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.

3.1.1. 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 behalf 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.

3.1.2. 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.

3.1.3. 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 £2,000,000 and cover against wreck removal and salvage and, where appropriate, Employer's 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.

3.1.4. The Owner shall, and shall procure that his crew and members of his family comply with all applicable laws when using the Company's Harbour and Premises.

4. ADDRESS DETAILS AND SUBSEQUENT CHANGE OF DETAILS

- 4.1. The Owner must supply to the Company in writing details of the Owner's current postal address and email address. The postal 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. The Owner must also provide mobile or landline telephone contact details for use in case of emergency.
- 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, email address or telephone numbers 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 retain 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.
- 5.2. Berth Allocation and berthing and storage fees are based on the Length Overall. The Company reserves the right at any time to measure the Vessel and charge additional fees if the Length Overall is greater than the length provided by the Owner. The Company will refund fees if the Length Overall is less than the length stated by the Owner.

6. PERSONAL NATURE OF THE LICENCE

- 6.1. This Licence is personal to the Owner and relates to the Vessel described in the Licence. 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 and;
- 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 WHEN VACANT

- 7.1. The Company may have the use of the Berth whilst 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 with two full calendar months written notice, and 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 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 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; and/or
 - 8.1.2.3. Remove the Vessel from the Berth to elsewhere on the Premises in accordance with clause 11.
- 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 debts 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 judgement 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 two full calendar months written notice by the Owner to the Company. In this event the Company will be entitled to recalculate the charge for the Berth or Storage Ashore Accommodation 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 charge originally contracted for berthing or storage. If this recalculation results in a balance payable to the Company then the Owner shall be required to pay the 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.

11. REMOVAL OF BOAT

11.1. The Company reserves the right (after giving the Owner at least 7 days written notice) to secure the Vessel or remove the Vessel from its Berth and place it under the Company's control ashore in the event that:

11.1.1. The berthing fee remains unpaid within sixty days of the date on which it is due and the Company has served upon the Owner a final warning in respect of the outstanding sum; or

11.1.2. The Owner fails to remove the Vessel from its Berth within 7 days of the end of the Licence (however that occurs):

11.2. The Owner gives the Company irrevocable authority to secure or remove the Vessel and store it ashore pursuant to clause 11.1 and the Owner agrees to be responsible for the Company's costs in taking these steps, in accordance with the Company's published prices for lifting and storing the Vessel.

GENERAL RULES

12. VESSEL MOVEMENTS

12.1. 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.

12.2. Vessels shall be berthed 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. The Vessel, its warps and any attachments are to be fit for purpose and maintained in clean and operational order.

12.3. 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.

12.4. The Company cannot guarantee that the water level in the Harbour and the water depth over the sill will be sufficient to enable the safe navigation of the Vessel to, from and within the Harbour. Tide table and gauges are provided by the Company to provide an indication of water

depth but the Owner is responsible for checking at all relevant times that there is sufficient water to navigate the Vessel to, from and within the Harbour.

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.

13. COMMERCIAL USAGE

13.1. 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.

14. STORAGE

14.1. Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocates a separate berth for them.

14.2. Where permitted, dinghies, tenders and trailers must clearly display any identification marks mandated by the Company and must be kept in a reasonable condition.

14.3. The Vessel and Berth and/or Storage Ashore Accommodation are to be kept tidy and the Berth may not be used for any other purposes. No boat gear, equipment or stores shall be left on pontoons.

14.4. Owners of Vessels in long term storage ashore, either due to owner absence or as long term projects, must provide annual progress reports and schedules of work for Company approval. Except in exceptional circumstances it is unlikely that the Company will approve storage ashore for more than three consecutive years.

15. PARKING

15.1. Subject always to the availability of parking space, Owners and their crew may only park vehicles, displaying a valid Parking Permit, on the Premises in accordance with the directions of the Company and ensuring that they are clear of all main access routes for emergency services, other traffic, site servicing and the Company machinery and plant. Owners may leave their vehicle parked for extended periods only if their Vessel is away, and should lodge a set of keys with the Harbour Office. The Company reserves the right to move any vehicle at any time for the good management of the Harbour and Premises.

16. REGULATIONS

16.1. The Owner shall at all times observe the Company's Regulations and in particular:

16.1.1. 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.

16.1.2. 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.

16.1.3. Owners shall be prohibited from the discharge of sewage within the Harbour; such discharge may result in termination by the Company of this Licence and ejection of the Owner from the Harbour.

16.2. The Owner is not permitted to use their Vessel as a residence, or to give the Harbour as a residential address, without written permission given by the Company. The Owner is not permitted to offer the Vessel or part of the Vessel as residence or temporary residence to any other party.

16.3. The Company shall supply the Owner on request with a copy of the Regulations current at the time of the Licence. 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.

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.

16.4. Specifically Owners will be in breach of this Licence if their conduct or that of their Vessel is in breach of any Chichester Harbour Conservancy Regulations and Byelaws. In the case of breaches of such that occur whilst the Vessel is within the Premises the Company retains the right to terminate the Licence.

17. ACCESS TO PREMISES/WORK ON THE VESSEL

17.1. Non tenant Contractors engaged to work on the Vessel should be listed on the Approved Contractors List maintained by the Company or be governed by the terms of the Company's Contractor Policy. Contractors working on the Vessel are to report to the Harbour Office prior to commencement of work and must provide details of their public liability insurance to the Company. It is the Owner's responsibility to inform the Harbour Office when a contractor has been engaged to work on the Vessel, otherwise access may be refused. Casual labour should be covered by the Owner's insurance as detailed in Clause 3.1.3.

18. HEALTH, SAFETY AND THE ENVIRONMENT

18.1. Attention is drawn to the Company's Health and Safety Policy and its Environmental Policy, as amended from time to time. These shall be available for inspection by the Owner at the Harbour Offices. Any amendments shall be displayed on the Company's public notice board or other prominent place at the Company's Premises and 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 and Safety Policy and its Environmental Policy.

18.2. 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 the 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.

- 18.3. 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 other person residing in the vicinity. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.
- 18.4. 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 correct marked 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.
- 18.5. Oily bilge water must not be discharged into the Harbour as well as any black water.

19. LAW AND JURISDICTION

- 19.1. This Licence and any non-contractual obligations arising out of, or in connection with, this Licence shall be governed by and construed in accordance with English law.
- 19.2. 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 this Licence shall:
- 19.2.1. 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
 - 19.2.2. Where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

20. DISPUTE RESOLUTION SCHEME

- 20.1. British Marine and the RYA recommend that disputes arising out of or in connection with this Licence, when they cannot be resolved by negotiation, be submitted with the written agreement of the parties, to mediation under British Marine's Dispute Resolution Scheme. Details of the Scheme are available at www.britishmarine.co.uk/drs.