

All use of the Marina Premises is subject to these Terms & Conditions.

Definitions

1. Under these Terms & Conditions, the following words shall have the following meanings: -

"Us", "We", "Our" etc. means Emsworth Yacht Harbour Ltd and/or its servants and agents;

"Berth" means the space on water or land within the Marina Premises allocated to the Vessel by Us from time to time;

"You", "Your" etc. means any person using the Marina Premises and includes a charterer, master, or agent, or other persons (other than Us) for the time being lawfully in charge of a Vessel or vehicle;

"Harbour" includes a yacht harbour, marina, mooring, or any other facility for launching, navigating, mooring or berthing a vessel;

"Licence" means the licence granted to You to berth or store any Vessel on Our Marina Premises under these Terms and Conditions.

"Licence Fee" means the fee payable by You to Us in accordance with these Terms and Conditions;

"LOA" means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent;

"Marina Premises" means the Harbour, including its dock walls, and any roads, car parks, buildings and other areas, equipment and facilities owned or operated by Us;

"Regulations" means those regulations (if any) made by Us as the same may be amended from time to time, which We in Our absolute discretion consider necessary to enable Us or those using the Marina Premises to comply with any legal requirements or for the safety, security or good management of the Harbour or Marina Premises.

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

The Licence

2. We agree to provide to You berthing or shore storage facilities in the Marina Premises for Your Vessel for the duration of this Licence in consideration for You paying Us the Licence Fee.

3.

(a) Licences will be granted for the periods published by Us from time to time. Your Purchase order and/or invoice will show the licence period agreed between Us and You.

(b) The Licence Fee shall be paid in accordance with our Payment terms, which are available upon request.

(c) The Licence Fee will be calculated by reference to Our published charges prevailing at the time of the grant of this Licence. In the event of any increase or reduction in any statutory taxes we have the right to adjust the fees accordingly.

(d) Licences shall not be automatically renewed but may be renewed with Our agreement and on the payment of the amount due for the renewal period. Otherwise, the Licence will terminate at the conclusion of the License period, if not terminated sooner by Us or You under the provisions of clause 18.

(e) For Annual Berth licence holders, failure to renew the Licence prior to the commencement of the new Licence period will result in berthing being charged at visitor rates. You will forfeit any right to an annual berth and renewal will be at our discretion, subject to any waiting list.

(f) The Licence is personal to You and relates to Your Vessel as 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 Our express written consent.

(g) Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel subject to the Licence, You shall notify Us in writing of the name, address, email and telephone numbers of the purchaser, transferee or mortgagee, as the case may be.

- (h) You must notify Us in writing of the details of any change of names of the Vessel or change of Your name, address, email or telephone number.
- (i) Nothing in this Licence entitles You to the exclusive use of a particular berth. You must not lend, transfer or assign any berth allocated to You by Us from time to time, nor may You use it for any other Vessel, without Our prior written consent.
- (j) Berth allocation and fees charged are based on the LOA of the Vessel. We reserve the right at any time to measure the Vessel and charge additional fees if the LOA is greater than the length provided by You. We will refund fees if the LOA is less than the length provided by You.

Condition and Operation of the Vessel

4.

- (a) You must ensure that at all times Your Vessel is maintained in a clean and tidy state and in a seaworthy condition, with adequate and secure mooring lines and fenders when afloat.
- (b) You are responsible for ensuring the Vessel is secured against theft and break-ins including all external removal equipment.
- (c) If You request Us to launch your vessel in your absence it is your obligation to ensure that the vessel is in all respects watertight and all hull openings inspected and closed prior to the planned date of launch. We will not accept any liability for the watertight integrity or otherwise of the vessel upon launch.
- (d) The Vessel must be berthed or moored in such a configuration and position as We may from time to time require. This applies to Vessels when stored ashore or afloat.
- (e) Vessels must be clearly identifiable by name.
- (f) Although We will make all reasonable effort to ensure the safe-keeping of all Vessels in our care, We will not accept any liability for any damage and/or loss suffered as a result of bad/adverse weather.

5.

The Vessel when entering, leaving or manoeuvring in the Harbour must not be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Harbour. It is your responsibility to ensure that Your Vessel is operated by a competent person.

6.

- (a) We have the right to moor, re-berth, move, board, enter, lift ashore, or carry out any emergency work on the Vessel, if in Our opinion it is necessary for the safety of the Vessel or the safety and/or convenience of other users of the Marina Premises or for the safety of Our plant and equipment. You must pay Our reasonable charges for such work and a scale of Our charges shall be available on request from Our offices at the Marina Premises.
- (b) If at any time during the period of this Licence the berth previously allocated by Us to You is not used by You for mooring Your Vessel, then We shall be entitled to moor or permit a third party to moor a Vessel at that berth and We shall be entitled to all income (if any) arising. **You must use all reasonable endeavours to give to Us not less than 24 hours previous notice of Your intention to return Your Vessel to the Harbour.**

Liability, Indemnity and Insurance

7. All persons using any part of the Marina Premises 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 Marina Premises was caused by or resulted from an act or omission of Ours or those for whom We are responsible.

- 8.
- (a) We shall take reasonable and proportionate steps having regard to the nature and scale of Our business to maintain security at the Marina Premises, and to maintain the facilities and equipment at the Marina Premises and in the Harbour in reasonably good working order.
 - (b) We shall not be liable for the loss, theft or any other damage caused to any Vessel or vehicle or other property (whether insured or not) belonging to You or others claiming through You, except to the extent that such loss, theft, or damage may be caused by an act or omission of Ours or those for whom We are responsible, save as otherwise excluded by these Terms and Conditions.
 - (c) You shall indemnify Us against (i.e. pay for) any loss, damage or costs reasonably incurred by and all claims or proceedings instituted against Us, which may be caused by Your Vessel or vehicle or by You, except to the extent that such loss, damage, costs, claims or proceedings may be caused by an act or omission of Ours or those for whom We are responsible.
9. You may be liable for any loss or damage which is caused by You and You shall be obliged to maintain adequate insurance including third party liability cover for not less than £3,000,000 and cover against wreck removal and salvage and, where appropriate, Employer's Liability cover to at least the statutory minimum. You are obliged to produce evidence of such insurance within 7 days of a request to do so.

Commercial and Residential Use

- 10.
- (a) Except with Our written consent, which may be withheld at Our sole discretion, no part of the Marina Premises or any Vessel or vehicle kept on the Marina Premises may be used by You for any commercial or residential purpose.
 - (b) For the avoidance of doubt
 - a. Use of the Vessel to provide overnight accommodation in exchange for payment or a reciprocal arrangement is deemed to be commercial use; and
 - b. the Vessel shall be regarded as being used for residential purposes if, amongst other things, You:
 - i. use Your Vessel as Your principal or main place of residence; or
 - ii. stay on board Your Vessel in excess of an average of three nights per week over a twelve-week period; or
 - iii. use Our offices at the Marina Premises as Your mailing address.
 - (c) Any work done to the Vessel, gear or equipment whilst on the Marina Premises should not cause any nuisance or annoyance to any other users of the Marina Premises or any person residing in the vicinity.
11. Non tenant contractors engaged to work on a Vessel shall be governed by the terms of Our Contractors policy. They must report to the Harbour Office prior to commencement of work, provide proof of current relevant insurance cover and agree to comply with all site regulations. You are responsible for reporting to Us all accidents involving injury to any person or damage to any public or private property that occur on the Marina Premises as soon as possible after they occur and, in any event, no later than 48 hours after such accident or damage has occurred.

General Rules

- 12.
- (a) No noisy, noxious or objectionable engines, radio, or other apparatus or machinery may be operated within the Marina Premises, if they cause or are likely to cause nuisance or annoyance to other users of the Marina Premises or any person residing in the vicinity.

Halyards and other rigging must be secured so as not to cause such nuisance or annoyance.

- (b) No animals are allowed within the Marina Premises if they cause (or be likely to cause) any nuisance or annoyance to any other users of the Marina Premises or any person residing in the vicinity.
 - (c) You are asked to behave in a considerate manner and We reserve the right to terminate this Licence with immediate effect if it is brought to our attention that You cause unreasonable interference or nuisance or use intimidating behaviour or language either directed at the marina staff or other users of the Marina Premises.
13. No refuse or noxious substances or sewage or oily bilge water may be discharged or thrown overboard or left on the pontoons, jetties or car parks, or disposed of in any way other than in the receptacles provided by Us or by removal from the Marina Premises. Discharge of sewage into the Harbour may result in termination by Us of this Licence.
14. Dinghies, tenders and other small craft must be stowed aboard the Vessel unless a berth is separately provided by Us.
- 15.
- (a) You and Your guests are required to park Your vehicles in such a way as to not cause an obstruction and wherever possible should park in the main car park. You may leave your vehicle for an extended period only if Your Vessel is away and should lodge a set of keys with the Harbour Office.
 - (b) All vessels and vehicles in or on the Marina Premises may be moved by Us to any part of the same Marina Premises without Your knowledge or consent where such movement is necessary for the proper or efficient operation of the Marina Premises.
- 16.
- (a) No personal property should be left unsecured anywhere on the Marina Premises.
 - (b) The hardstanding area occupied by your Vessel must be kept clean and tidy and at the end of the storage period returned to its original condition. Any damage caused, staining from oil, antifouling, paint and any other substance must be immediately removed. We reserve the right to clean any area not left in its original condition and charge for this service.
17. You shall always observe Our Regulations and in particular:
- (a) You must take all necessary precautions against the outbreak of fire in or upon Your Vessel. You must provide and maintain at least one fire extinguisher of an appropriate type and size in or on the Vessel in case of fire.
 - (b) When on our Marina Premises You shall refuel only at the designated fuelling berth and from fuel purchased from Our supply. Where fuel is required to be transferred in portable containers, We reserve the right to refuse the use of any container deemed unfit for that purpose.
 - (c) We reserve the right to introduce new Regulations 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 published on our web-site and We shall have the same rights against You for a breach of the Regulations as for a breach of the terms of Your Licence.
 - (d) You will be in breach of this Licence if Your conduct or that of your 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 Marina Premises, We retain the right to terminate the Licence.

Termination and Rights of Sale and Detention

- 18.
- (a) In the event of any breach of these Terms and Conditions by You, We shall have the right to serve a written notice on You, at Your last known address, specifying the breach and requiring compliance within 14 days of the notice. If the breach is not rectified within the 14-day period, We have the right to terminate this Licence with immediate effect by serving a written notice on You at Your last known address.

- (b) In the event of any serious or persistent breach of these Terms and Conditions by You, We have the right to terminate this Licence with immediate effect by serving a written notice on You by posting it to Your last known address.
- (c) Upon termination of this Licence in accordance with conditions 18(a) or (b) above, We may refuse to provide any further services at Our sole discretion and You must remove Your Vessel from the Marina Premises within 14 days. Following termination of your Licence by Us, any refunds will be made based on our Refund Policy, which is available upon request.
- (d) We have the right to terminate this Licence, by giving written notice to You, if at any time the Marina Premises shall be so damaged, impeded, or interfered with by force majeure (as defined below) as to render it unlikely that We will be able to continue to provide a berth or mooring in accordance with this Licence. For the purposes of this condition, force majeure means any event or circumstances (whether arising from natural causes, human agency or otherwise) beyond Our control including (but not limited to) weather conditions, riots, civil commotion, disease, fire, or war.
- (e) In the event of termination by Us in accordance with condition 18(d) above, We shall refund to You part of the Licence Fee in proportion to the unexpired period of the Licence.
- (f) You shall have the right to terminate Your Licence with immediate effect by serving a written notice on Us. In the event of You terminating the Licence in accordance with this condition 18(f), You shall remove Your Vessel from the Marina Premises within 14 days of the termination of this Licence. On removal of Your Vessel from the Marina Premises, We shall refund to You a proportion of the Licence Fee in accordance with the provisions of our Refund Policy, details of which shall be provided by Us on request.

19.

- (a) Any obligation of Ours toward vessels or goods left at the Marina Premises ends upon the expiry or lawful termination of this Licence and We accept no responsibility for loss or damage to any vessels or goods left at the Marina Premises without Our consent, save insofar as such loss or damage is caused by an act or omission of Ours or those for whom We are responsible.
- (b) If You fail to remove the Vessel on termination of this Licence in accordance with condition 18 or otherwise, We are entitled:
 - a. To charge You on our highest payable tariff for the period between the termination of the Licence and the removal of the Vessel from the Marina Premises; and/or
 - b. to remove the Vessel from the Marina Premises and thereupon secure it elsewhere or to move the Vessel within the Marina Premises, for example from a berth to the hardstanding, and charge You with all reasonable costs arising out of such removal including alternative berthing fees; and/or
 - c. To give notice to You in accordance with the provisions of the Torts (Interference with Goods) Act 1977 and to sell the Vessel and/or other property by the best method of sale reasonably available in the circumstances. The proceeds of the sale after payment of any monies due to Us and the expenses of the sale shall be paid to the owner of the Vessel and/or property. You may obtain advice relating to this Action from a Citizen's Advice Bureau, Law Centre, or any firm of solicitors.
- (c) Notwithstanding clause 19(b), you hereby irrevocably appoint Us as Your agent and attorney for the sale and disposal of any vessel and/or other property belonging to You, which is left at the Marina Premises without Our consent, so long as any money is due from You to Us, irrespective of whether such money relates to such Vessel and/or property, and We shall be entitled to charge and apply all the usual commissions and expenses incurred by us or a third party in connection with such sale or disposal.
- (d) We have the right to exercise a general lien (i.e. the right to take possession of and prevent You from gaining access to, using or moving a Vessel and/or other property) over any Vessel and/or other property, whilst in or on the Marina Premises. This right holds until such time that any sums due to Us in respect of the Vessel and/or other such property are paid, whether on account of services provided or work done or, damages to

Our property, (including interest and Our costs in enforcing the general lien and obtaining from You payment of any sum due to Us under these Conditions).

- (e) If We exercise such a general lien, You shall be entitled to remove Your Vessel or other property from the Marina Premises upon providing proper security (e.g. a Bank guarantee or a cash deposit) sufficient to cover the sum due to us (including interest and any costs incurred and/or likely to be incurred by Us in enforcing the general lien and obtaining from You payment of any sum due to Us under these Conditions);
- (f) We shall not have the right to exercise a general lien in accordance with condition 19(d) above unless the sums due to Us exceed £100.
- (g) Any monies that are not paid on or before the date for payment shall attract interest at the rate of 3% per annum above the UK Bank Lending Rate, charged at Our discretion from the date for payment. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
- (h) You agree to indemnify Us against (i.e. pay for) any and all reasonable costs of enforcing Our rights under these Terms & Conditions against You.

Law and Jurisdiction

- 20. Maritime Law entitles Us in certain 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.
- 21. The foregoing Terms and Conditions of Marina Use shall apply to all users of the Marina Premises. These Terms and Conditions shall be subject to English Law and the non-exclusive jurisdiction of the courts of England and Wales.
- 22. A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Right of Third Parties) Act 1999.