

GENERAL CONDITIONS**Effective from 1st March 2010****1. DEFINITIONS:**

- 1.1. Where the following words appear in these Conditions, the Licence and the Company's Regulations they shall have these meanings:-
- 1.2. **Company** shall mean Barby Moorings Limited or any of its Agents.
- 1.3. **Marina** shall include Mooring or any other facility for launching, navigating, or berthing a vessel provided by the Company.
- 1.4. **Premises** means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, walkways, workshops, hardstanding, roadways and car parks.
- 1.5. **Owner** shall include any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.
- 1.6. **Vessel** shall include any form of craft, boat, ship, yacht, dinghy, or other marine structure which is in the care and control of the Owner.
- 1.7. **Length Overall (LOA)** means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.
- 1.8. **Mooring** 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.
- 1.9. **Pontoon** means a decked structure providing landing or mooring facilities.
- 1.10. **Allocated Length** means the overall length of the space defined by the Company for a particular Mooring.
- 1.11. **Property** means vehicles, gear, equipment or other goods in the care and control of the Owner

2. THE LICENCE:

- 2.1. Moorings at the Marina or Premises shall be licensed for the stated periods and at the rates of charge from time to time published by the Company at its Premises and in force at the commencement of this licence. Details of the charges applicable to the Mooring at the beginning of the licence will be given to each licensee at the time that the licence is granted.
- 2.2. The licence shall not be automatically renewed but will end at the conclusion of the period stated if not terminated sooner by the Company or by the Owner under the provisions of Conditions 8 or 10.

3. LIABILITY, INDEMNITY AND INSURANCE:

- 3.1. The Company shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by it or any defect in any part of a customer's or third party's Vessel); this extends to loss or damage to Vessels or Property left with it for repair or storage, and harm to persons entering the Premises or the Marina and/or using any facilities or equipment.
- 3.2. The Company shall take all reasonable steps to maintain security at the Premises and to maintain the facilities at the Premises and in the Marina in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Company, Vessels or Property are left with the Company at the Owner's own risk and Owners should ensure that they have appropriate insurance against all relevant risks.
- 3.3. The Company shall not be under any duty to salvage or preserve an Owner's Vessel or Property from the consequences of any defect to 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 Property from the consequences of an accident for which the Company is not responsible. 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).
- 3.4. 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 where appropriate, Employer's Liability Compulsory 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 being requested to do so by the Company.

4. CHANGE OF DETAILS:

- 4.1. 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 or email address of the Owner.

5. MOORING ALLOCATION:

- 5.1. The Company retains absolute control of Mooring allocation within the Marina and Premises. Accordingly the Owner shall not be entitled to the exclusive use of any particular Mooring but shall use such Mooring as is from time to time allocated to the Owner 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 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.
- 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, telephone numbers and email address of the Purchaser, Transferee or Mortgagee, as the case may be.

7. USE OF MOORING BY COMPANY WHEN VACANT:

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

8. TERMINATION BY THE COMPANY:

- 8.1. The Company shall have the right to terminate this Licence on 13 weeks written notice to the Owner.
- 8.2. 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;
- 8.3. 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 the Owner 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 the Owner to remove the Vessel or Property from the Marina or Premises immediately and notwithstanding the provisions of Clause 10 the Owner shall not be entitled to any refund of unexpired mooring fees.
- 8.4. If the Owner fails to remove the Vessel or Property on termination of this Licence whether under this Condition of otherwise, the Company shall be entitled:-
- 8.4.1. 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 or Property from the Marina and Premises and/or
- 8.4.2. at the Owner's risk (save in respect of loss or damage caused by the Company's negligence or other breach of duty during such removal) to remove the Vessel or Property from the Marina and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative Mooring fees.
- 8.5. 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. RIGHT OF SALE AND OF DETENTION:

- 9.1. Where the Company accepts a Vessel or Property for repair, refit, maintenance or storage the Company does so subject to the provision 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:
- 9.2. 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.
- 9.3. The Company's obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation.
- 9.4. The place for delivery and collection of goods shall be at the Company's Premises until agreed otherwise.
- 9.5. The Company reserves a general right ("a general lien") to detain and hold onto the Owner's Vessel or 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 Marina and Premises. The Owner shall at any time be entitled to remove the Vessel or 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 13 weeks written notice by the Owner to the Company. Following such notice the Company shall prepare an account of:-
- 10.1.1. all sums owned by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel, and
- 10.1.2. the charge that would have been payable by the Owner to the Company in respect of this Licence if the original term of this Licence had ended on the date of expiry of the Notice of Termination, less
- 10.1.3. the sum actually paid by the Owner to the Company in respect of this Licence.
- 10.1.4. Where the balance is in favour of the Company the Owner shall be required to pay the balance before removal of the Vessel from the Marina or Premises and where the balance is in favour of the Owner the Company shall pay it to the Owner upon departure of the Vessel from the Marina or Premises.

11. VESSEL MOVEMENTS:

- 11.1. The Company reserves the right to board, enter, move any Vessel or Property at any time for reasons of safety, security or good management of the Marina and Premises.
- 11.2. Vessels shall be Moored or 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.
- 11.3. No Vessel, when entering or leaving or manoeuvring in the Marina, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other Vessels in the Marina.

12. COMMERCIAL USAGE:

- 12.1. No part of the Marina 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, as appended.

13. PARKING:

- 13.1. Each Licence shall confer upon the Owner the right to park one vehicle on the Premises in accordance with the directions of the Company. This right shall not extend to commercial vehicles or to vehicles over 2 tonnes gross weight, vans are also limited to a maximum length of 5m.
- 13.2. Vehicles that are not licensed for use on the Public Highway shall not be permitted within the Marina or Premises.
- 13.3. Parking for additional vehicles may be arranged on request.

14. MARINA REGULATIONS:

- 14.1. Marina Regulations shall mean the Company's Regulations and the Owner shall at all times observe the Company's Regulations.
- 14.2. The Company shall supply the Owner with a copy of the Regulations current at the time of application for a 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 Marina 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. ACCESS TO PREMISES/WORK ON THE VESSEL:

- 15.1. Subject to Clause 15.2 no work shall be done on the Vessel or Property 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.
- 15.2. Prior written consent will not be unreasonably withheld where:-
- 15.2.1. The work is of a type for which the Company would normally employ a specialist sub-contractor; or
- 15.2.2. 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.
- 15.2.3. 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.

16. HEALTH, SAFETY AND THE ENVIRONMENT:

- 16.1. 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 Policy current at the time of application for a licence. 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.
- 16.2. 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 Marina or on the Premises as soon as possible after they occur.
- 16.3. No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Marina or Premises so as to cause any nuisance or annoyance to any other users of the Marina 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 offend aforesaid.
- 16.4. No refuse shall be deposited into the Marina or left on the pontoons, or in 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 Marina 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.
- 16.5. The discharge of any liquid pollutants into the Marina including but not limited to the pumping out of polluted bilge water is forbidden. In the event that a Vessel has an accidental spillage of pollutants into the Marina it must be reported immediately to the Company.