

## TERMS OF BUSINESS

### Berthon Boat Co Ltd Terms of Business

Insofar as you have any dealings with our related company, Lymington Marina Ltd ("the Marina") or make use of or benefit from the Marina's services, you acknowledge that such dealings will be on the basis of the Marina's published standard terms and conditions and in respect of such dealings you agree to contract also with the Marina and to be bound by those terms and conditions to the extent that they are not inconsistent with these terms.

### 1. LIABILITY

We and our employees accept no responsibility for any loss or damage or delay arising from any cause whatsoever unless caused by or resulting from our negligence or deliberate act or that of those for whom we are responsible. When dismantling or removing any materials, parts or equipment we will use reasonable endeavours to prevent breakages and damage but in the nature of such work we accept no liability for any damage which might occur; likewise, we accept no liability for damage or defects which become apparent on or after re-assembly by us of materials, parts or equipment dismantled or removed by others.

Subject to those exceptions:

- A. all vessels and gear are repaired, worked on, moved, stored or otherwise managed and kept at the sole risk of the customer who shall ensure that his vessel and/or property is adequately insured against all risks; he should also ensure that he is adequately insured against third party risks as he may be liable for damage caused by his vessel, himself or his crew while on or about our premises; and
- B. all persons entering upon or using any part of our premises, facilities or equipment do so at their own risk.

### 2. PRICES AND ESTIMATES

A. In the absence of express agreement to the contrary our price for work shall be based on time and materials actually expended on, or used in connection with, the work at our then current hourly rate or price. Unless otherwise indicated, all prices and estimates are exclusive of VAT. We will exercise reasonable skill and judgment in preparing estimates but estimates are not binding and do not represent fixed prices.

B. Estimates are subject always to the accuracy of information provided by the customer and are usually based only on a superficial examination unless we are requested to carry out any necessary opening up or dismantling. Estimates will not include the cost of any emergent work, i.e. additional repairs or work found necessary to the vessel and/or gear or equipment during the work, nor the cost of any extensions to the work comprised in an estimate.

C. We are not precluded from exceeding an estimate where necessary for the

performance of the work and we are not bound to inform customers of any cost increase while work is ongoing. If we inform the customer of any increase in costs which arise the customer will have the right to cancel the element of work to which the proposed increase relates. In those circumstances the customer's liability for any work already completed and/or part-completed/to be completed or goods already supplied and/or ordered or to be supplied shall be unaffected.

D. Length Overall (loa) means the length of the vessel including all extensions such as tenders, dinghies in davits, bowsprits, bumpkins, anchors, pulpits, bathing platforms etc. Fractions of a foot measuring below 6" will be rounded down to the nearest whole foot and fractions of a foot measuring 6" and above will be rounded up to the nearest whole foot.

### 3. DELAYS

The time for completion of work is given in good faith but is an estimate only and is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our negligence or deliberate act or wilful default or that of those for whom we are responsible.

### 4. VESSEL MOVEMENTS

We reserve the right to move any vessel and/or gear at our discretion for reasons of safety or good management.

### 5. PAYMENT

A. Unless otherwise agreed in writing the price of all work, goods and services shall be due immediately on the date of invoice or, if earlier, prior to the departure from our premises of the vessel to which the work, goods or services relate and shall be paid by direct debit. On large refits, we may require regular stage payments. If payment is not received within 30 days of the due date, interest shall become due and payable from the due date until the date of actual payment at a rate of 2% per month. In the case of invoices not paid within 30 days, we have the right to discontinue work for the customer, whether or not the unpaid invoice relates to such work.

B. We have the right to exercise a general lien upon any vessel and/or its gear and equipment and/or any goods while upon our premises pending payment in full of all sums due to us. For the purposes of this provision, our premises shall be deemed to include those of our associated company, Lymington Marina Ltd.

C. We reserve the right to continue to charge for storage and / or berthing at our usual commercial rates during the period of the exercise of our lien.

## 6. STATUTORY RIGHTS AND GUARANTEE

A. Nothing in these terms affects the statutory rights of any customer who contracts with us as a consumer.

B.1 Without prejudice to any other provision in these terms, we guarantee our work for a period of 12 months from completion against defects which are due solely to defective workmanship or the supply of defective materials or equipment. We shall be liable under this guarantee only for repairs of defects appearing during this period which must be notified to us in writing within 21 days of the date on which they are discovered, failing which this guarantee will be invalidated in respect of such defects.

B.2 On notification of such defects we will verify their cause and if they are our responsibility under the terms of this guarantee we will remedy those defects at our Lymington premises: it is the customer's responsibility and cost to return the boat to Lymington and collect it afterwards. We shall have no liability under this guarantee for the cost of remedial work which is put in hand by the customer other than through ourselves and in accordance with the terms of this guarantee.

B.3 We shall have no liability under the guarantee or otherwise:

(i) if all invoices relating to the vessel have not been paid in full by the due date(s) for payment;

(ii) for work carried out for, or invoiced to, or paid for by, someone else;

(iii) for any consequential or indirect losses including without limitation loss of use or for any loss, damage, costs or expenses of whatever nature beyond the reasonable cost of rectifying any defective workmanship or replacing any defective materials, parts or equipment supplied by us;

(iv) for defects arising from fair wear and tear, wilful damage, marine perils, negligence, abnormal operating conditions, failure to follow instructions (whether oral or in writing), misuse, alteration or repair carried out elsewhere.

C. Where we supply goods or services to a customer in the course of his business:

1. no article supplied by us shall carry any express or implied warranty as to its quality or its fitness for any particular purpose unless prior to the supply the customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgment;

2. no proprietary article specified by name, size or type shall carry any such express or implied warranty as to its quality or its fitness for any particular purpose but we will assign to the customer any rights we may have against the manufacturer or importer of that article;

3. notwithstanding the provisions of Clause 3 Delays above, we accept no liability to a business customer for loss, damage, cost or expense of whatever nature beyond the reasonable cost of rectifying defective workmanship or replacing any defective materials or equipment supplied.

## 7. QUALITY STANDARDS

We will complete our work in reasonable accordance with the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

## 8. WORK ON THE VESSEL OTHERWISE THAN BY BERTHON

It is of vital importance to Berthon and its customers that all access and contracting arrangements are operated in a manner that is compliant with applicable Health & Safety and Control of Substances Hazardous to Health (“COSHH”) Regulations and in a manner that ensures best value for the customer from all contractors. The following provisions shall accordingly apply to all work of whatever nature required to be carried out by persons other than Berthon personnel:

- A. To the extent that work of any nature cannot be carried out by Berthon, the customer may select a suitable specialist from a list of authorised contractors to be provided by Berthon. The selected specialist shall then be contracted by Berthon on the customer’s behalf and Berthon shall be responsible for making all necessary attendance and access arrangements with the contractor.
- B. All services so provided shall be invoiced to the customer by Berthon in the same manner as Berthon’s other services.
- C. Notwithstanding the foregoing, the customer and regular crew may carry out minor running repairs and minor maintenance works of a routine nature.

## 9. SALE OF THE VESSEL

- A. Our yacht brokerage concessionaire is Berthon International, a division of Berthon Boat Co. Ltd. Whilst at Berthon a customer may use alternative brokers but Berthon International shall also be given equal opportunity (ie appointed before or at the same time as another broker) to act in any sale of the vessel on their standard terms.
- B. In the event that the customer wishes to market the vessel or arrange a sale otherwise than exclusively through Berthon International, he shall also:
  - ensure that persons viewing the vessel are accompanied by the broker concerned who must report his presence on site prior to visiting the vessel on each occasion and who must provide proof of full professional indemnity and liability insurance totalling at least £1,000,000;
  - provide us with details of any offer immediately one is received and report to us any ultimate sale price;
  - not display any notice of sale on the vessel or within our premises unless it is one of ours.
- C. In the event of any sale of the vessel (whether the vessel was marketed, or the sale negotiated, agreed or completed, whilst the vessel was lying within the Marina or boatyard premises) otherwise than through Berthon International, the customer

undertakes to pay, or to ensure that any broker or other agent involved in the sale will pay, to us a commission of 1% of the gross selling price.

D. No broker (other than Berthon International) is allowed to solicit business in the boatyard or Marina.

## 10. RIGHT OF SALE

A. Where we accept vessels, gear or equipment for repair, refit, maintenance or storage we do so subject to the provisions of the Torts (Interference with Goods) Act 1977. The Act confers a right of sale on us in circumstances where the 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 we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:

1. goods for repair or other treatment are accepted by us 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;
2. our obligation as custodian of goods accepted for storage ends on our notice to the customer of termination of that obligation;
3. the place for delivery and collection of goods shall be at our premises unless agreed otherwise.

B. In certain other circumstances we may be entitled to have vessels or goods sold through the Court for non-payment of invoices.

## 11. AUTHORISATION

We will accept, and you will be bound by, instructions for work and the supply of goods if issued by your appointed skipper, engineer, manager, surveyor or other professional representative purporting to act on your behalf or with your authority, or by the beneficial owner of the vessel to which the work or goods relate, unless we have prior written notice to the contrary.

## 12. MISCELLANEOUS

A. All yacht owners' and yacht crews' cars must be parked in the Marina car park, and not in the boatyard. We will accept no responsibility for any damage howsoever caused to cars parked in the boatyard.

B. All yacht owners and their crew will provide their own hoses for filling water tanks, preferably of the lay-flat type and acknowledge that hoses supplied by us are not intended for drinking water. Use of hoses supplied by us is at the customer's own risk as we are unable to guarantee hoses supplied by us have not been contaminated by a previous user. All yacht owners and their crew will only use private pressure washers that are of the type which includes an integral break cistern and air gap providing fluid category five backflow protection. All yacht owners and their crew will adequately

flush all hose union taps and hoses used to fill tanks for drinking water prior to use.

C. Customers are reminded to place waste and refuse in the appropriate receptacles provided (including absolute adherence to recyclables such as glass, plastics, cans, cardboard, metal) and not to throw the same overboard or to leave it on pontoons or in the yard. Waste oil should be placed only in the waste oil tank; other large items and hazardous waste such as contaminated bilge water etc. should be reported to the dockmasters and/or yard management for appropriate discharge and subsequent cleaning. Customers will be charged for any breaches regarding COSHH and/or Health & Safety.

D. No exercise or failure to exercise or delay in exercising any of our rights, powers or remedies shall be deemed to be a waiver by us of that or any other right, power or remedy.

E. Notices to a customer shall be deemed to have been sufficiently served if sent by first class post to the customer's last known address. Notices to us shall be effective on receipt at our principal trading address.

F. We reserve the right to introduce new provisions on grounds of legal requirement or for the safety or security or good management of the shipyard, and to amend such provisions as may from time to time be considered appropriate. All such provisions and any amendments shall become effective and shall form part of these Terms & Conditions on being displayed on the public notice board or other prominent place at the shipyard or on the Berthon Boat Company website.

G. These terms are subject to English law and any dispute arising under them shall be submitted to the jurisdiction of the English Courts.

H. Please refer to our Privacy Notice which sets out the way we handle personal data and how we keep it secure.