

## TERMS OF BUSINESS

“We”/“Us”/“Our” refers to Lymington Marina Ltd.

“Berthholder” means a person whose application for an annual berth has been accepted by Us.

“Berthon” means Berthon Boat Co Ltd

“COSHH” means control of Substances hazardous to health

“Craft” means the Vessel and any other craft within the Marina including rigid inflatable boats (“RIBs”), dinghies, tenders, inflatables, auxiliary craft, jetskis and windsurfers.

“Long Term Casual” berth means one that is charged at the long-term casual rate and / or not at the annual rates. Long term casual berths may be terminated at will on one (1) day’s notice, notwithstanding clause 7 below.

“Marina” means Lymington Marina and all grounds, buildings, harbours, pontoons and other property belonging to Us.

“Owner” includes the Berthholder and any casual, short-term visitor, any long-term licence holder, and any agent thereof and any charterer, master, skipper or other person for the time being lawfully in control of the Vessel (excluding Us or Our employees or agents).

“User” includes Berthholders and Owners and any other person lawfully using the Marina.

“Vessel” means the vessel described in the licence application form or any replacement Craft that with Our prior written consent shall be licensed to use the berth.

These Terms & Conditions (and all notices and information sheets – which are available for inspection at the Marina office) shall apply to Berthholders, Owners and Users as appropriate. We will supply the Owner with a copy of Our and Berthon’s Regulations (“the Regulations”) current at the time of application for a Licence, which Regulations, as amended from time to time, shall become part of these Terms & Conditions. We reserve the right to introduce new regulations on grounds of legal requirement or for the safety or security or good management of the Marina, and to amend such regulations as may from time to time be considered appropriate. All such Regulations and any amendments shall become effective and shall form part of these

Terms & Conditions on being displayed on Our public notice board or other prominent place at the Marina or on Our website. Entry into the Marina and adjacent boatyard, by land or water, for any purpose

## 1. CONDITIONS OF USE

Berthholders, Owners and Users, for themselves, their guests and crew and all those lawfully using their Vessels undertake, where appropriate whilst they or their Craft are in the Marina, and/or acknowledge (as applicable):

Berthholders, Owners and Users, for themselves, their guests, crew, sub-contractors and all those lawfully using their Vessels undertake, where appropriate whilst they or their Craft are in the Marina, and/or acknowledge (as applicable):

1.1 Not to use Craft for commercial purposes, including but not limited to sale, demonstration, hire or charter of Craft or of berths thereon; and

1.2 Not to do work on Craft other than minor running repairs or routine maintenance carried out by Owners or their crew; the terms on which any other work may be performed shall be governed by Berthon's Terms of Business which are available for inspection at the Marina office.

1.3 To navigate Craft at a safe speed, in a seamanlike and considerate manner and in accordance with all applicable bye-laws, laws, statutes and other rules and regulations.

1.4 To maintain Craft at all times in good, clean and operable condition.

1.5 That We shall have an absolute right to moor, berth, move, board, lift ashore, enter and carry out work on Craft for reasons of safety or good management and that the Berthholder will pay on demand all reasonable charges incurred in this connection.

1.6 To berth or moor Craft in a safe, seamanlike and considerate manner only where and as directed from time to time by Us; to provide all necessary warps and fenders unless otherwise agreed with Us in writing and to be solely responsible for such berthing and mooring arrangements and for the safety, maintenance and replacement of all such warps and fenders.

1.7 To notify the Marina office prior to the departure of Vessels from the Marina, also providing notice of the anticipated date and time of return and of any car left in the car park. Failure to provide such notification may result in a berth not being available on return.

1.8 To deposit a set of keys at the Marina office to allow Us to access the interior and lockers of the Vessel and to operate the engine(s).

1.9 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 Control of Substances Hazardous to Health (COSHH) and/or Health & Safety.

1.10 Not to cause damage, nuisance, annoyance or inconvenience to, the other Users, neighbouring residents, US or Berthon or others whether by the use of noisy, noxious or objectionable engines, music systems, radios or other equipment or otherwise and in particular to secure halyards, flags, covers and the like so as not to cause noise, nuisance or annoyance.

1.11 Not to keep flammable, pyrotechnic, poisonous, noxious or dangerous substances on Craft or elsewhere unless stored in purpose-designed marked containers and to fuel Craft only at the marked fuel berth.

1.12 To take all necessary precautions against the outbreak of fire on or in the vicinity of all Craft and to provide Craft at all times with appropriate fire-extinguishing equipment of approved BSI type, size and installation for immediate use, regularly maintained and in good working order. Lighting of BBQs on Craft or elsewhere in the Marina is strictly forbidden.

1.13 Not to erect washing lines on Craft or elsewhere, nor to dry washing on the exterior of Craft.

1.14 Not to leave gear, equipment or other property on pontoons, jetties or in the carparks, and to stow dinghies, tenders, rafts and all other auxiliary craft aboard the Vessel.

1.15 To return trolleys to their storage area after use.

1.16 Each Berthholder (but no other Users) may, for purposes directly connected with the use of the Vessel, park not more than one car where and as directed from time to time by Us and shall permit Us to move cars at their owners' risk and cost, forcing entry if necessary in an emergency without being liable for any damage reasonably occasioned; and each Berthholder (but no other Users) (for purposes directly connected with the use of the Vessel) may occupy temporarily no more than one car parking space, although We may, at Our absolute discretion, allow the use of

additional car parking spaces, such spaces to be vacated on demand. Any User other than the Berthholder may occupy a parking space only by prior arrangement with Us. Due to restrictions on space, 'casual' car parking for purposes not directly connected with the use of the Vessel is strictly forbidden.

1.17 Not to park or use caravans or other vehicle adapted for or designed for sleeping or tents, and to leave trailers in the car park only with Our approval and on such terms (including cost) as We shall from time to time direct.

1.18 That any fouling of the Marina or adjacent car park or grass area or boatyard by their animals is cleared up and disposed of into the relevant red bins provided throughout the site.

1.19 That all Craft, their contents and all gear are moved, stored and otherwise managed and kept at the sole risk of Owners (including all risks and liabilities to COSHH and/or Health & Safety over which Owners have any degree of control or involvement and that the same shall be kept adequately insured in respect of all usual marine perils, such insurance to cover third party liability of at least £2,000,000 and to provide evidence of such insurance on demand.

1.20 That the very nature of pontoons are dangerous by the lack of handrails and their proximity to water; care must be taken at all times when alighting from Craft or from a pontoon; pontoons, ramps, staircases, and other surfaces can be slippery in damp, wet or icy conditions. All Users accordingly acknowledge the need to take all reasonable precautions whilst in the Marina, particularly during inclement weather conditions and when Marina surfaces are slippery and in damp conditions.

1.21 To report to the Marina manager (and, if orally, with written confirmation as soon as possible thereafter) all accidents involving injury to any person or damage to any property within the Marina or adjacent boatyard as soon as possible after such occurrence, and in any case within 24 hours.

1.22 That their invitees are sufficiently qualified or experienced for the purpose(s) for which the Berthholder or Owner has caused them to be in the Marina, and/or are under the direct supervision of the Berthholder or Owner.

1.23 Berth holders acknowledge that they have no right of residency at any time.

1.24 Insofar as you have any dealings with Our related company, Berthon, you acknowledge that such dealings will be on the basis of Berthon's published terms and conditions and in respect of such dealings you agree to contract also with Berthon and to be bound by those terms to the extent that they are not inconsistent with the terms herein.

1.25 To provide your own hose for filling water tanks, preferably of the lay-flat type and to acknowledge that hoses supplied by Us are not intended for drinking water. Use of hoses supplied by Us is at your own risk as We are unable to guarantee hoses have not been contaminated by a previous user.

1.26 To 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.

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

## 2. LICENCE

2.1 The licence to berth (“the Licence”) is granted to the Berthholder for 12 months, renewable, commencing 1st April (“the Licence Period”) and permits the Berthholder to berth the Vessel in whichever berth may from time to time be allocated by Us subject to change at Our absolute discretion at any time without prior notice. The berthing agreement shall comprise these terms and the application form.

2.2 If the Berthholder wishes to terminate the Licence at the end of any Licence Period, notice must be received by Us not later than 1st January prior to the 1st April renewal, otherwise the Licence will be deemed renewed for a further 12 months and a further Licence Fee will be payable as above.

2.3 Save in the case of a licence of a RIB, if the Berthholder gives written notice of intention to vacate a berth for not less than one month, such notice to have been acknowledged in writing by Us, We will give credit (at the annual rate, pro rata) for any period for which We are able to re-license the berth.

2.4 Save in the case of a licence of a RIB, the Berthholder may (with Our prior written consent, such consent being within Our absolute discretion) sub-license the berth (for use by a Craft no longer in terms of overall length, beam or draft than the Vessel) for a period of not less than one month, such sub-license to be on the terms and conditions of the Licence, save that the Berthholder shall additionally be liable for all acts/defaults of the sub-licensee and those for whom he is responsible. The Berthholder may not otherwise let, loan, sub-license or otherwise transfer the Licence or any berth.

2.5 Subject as provided at 2.4, the Licence is exclusive to the Vessel and the Berthholder and is not transferable without Our prior written consent, such consent being within Our absolute discretion.

## 3. LICENCE FEE AND PAYMENT TERMS

3.1 The Licence Fee shall be calculated on the basis of the Vessel's Length Overall x the rate indicated from time to time in Our standard charges displayed at the Marina office, plus VAT or any other tax or local harbour surcharge as applicable. 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. All vessels with outboard engines will be measured and charged in the engine up mode.

3.2 Payment of the Licence Fee shall be due in advance of 1st April renewal. A 10% deposit plus VAT or any other tax as applicable will be paid by 1st January of the renewal year with the balance plus VAT or any other tax or local harbour surcharge as applicable being paid by 1st March. Both payments shall be made by direct debit.

If a berth is cancelled after 1st January and prior to 1st March, We shall be entitled to retain (or recover, if not then paid) the 10% deposit plus VAT or any other tax as applicable; if a berth is cancelled after 1st March, We shall be entitled to retain (or recover as appropriate) the entire Licence Fee, whether or not paid at that time, in both cases as agreed liquidated damages.

If a Licence is granted after 1st March, the entire Licence Fee shall be due for payment immediately and shall not be refundable, in whole or in part, if the berth to which it relates is subsequently cancelled.

Payment of the Licence Fee is of the essence of the Licence. If payment of the Licence Fee or any other sums due is not received within 30 days of the due date, We shall have the right either (i) to charge interest from the due date until the date of payment at a rate of 2% per month, or (ii) to terminate the Licence on written notice with immediate effect without prejudice to any other remedy to which We may also be entitled."

3.3 Casual berthing fees, fuel, utilities and certain services (such as boatyard work) will, unless paid for immediately in cash, be collected by direct debit and invoiced by Berthon, rather than by Us, who will act as Our agents in such circumstances. These terms, including the payment terms, will continue to apply in such circumstances. Long Term Casual berthing is subject to payment being collected by direct debit. Where however Berthon provide refit, maintenance, repair or other yard services, they will do so on their own terms of business, which are available for inspection at the Marina office.

3.4 In addition to any other remedy available to Us, We shall have the right to exercise a general lien upon any Craft and/or gear and equipment and/or any goods whilst in or on Our premises or in the Marina pending payment in full of all sums due to Us or to Berthon. For the purposes of this provision, Our premises shall be deemed to include those of Berthon. We reserve the right to continue to charge for storage, hardstanding and berthing and electricity and other services at Our usual rates while exercising Our lien.

## 4. ELECTRICITY

4.1 Electricity is supplied for the use of the Vessel alone and must not be shared with any other User or Craft. Electricity consumed must be paid for on demand at the rate applicable from time to time; non-payment will result in the termination of the supply and the imposition of a reconnection charge. We cannot guarantee a constant supply and We make no assurance as to the suitability of the Vessel to accept the supply, it being the responsibility of the Owner to assess the Vessel's suitability. We accept no responsibility for loss or damage arising out of the supply or its termination. Connection and reconnection will be carried out only during Marina office hours.

4.2 All Berthholders and Owners are required to have an electricity meter connected at all times at the dockside or shoreside terminal for ease of continuous verification and regular reading of the meter which will be invoiced by Us. If a yacht is found to have been connected for longer than five days without a meter the daily berthing rate will be charged for berthing. If, subsequently, a meter is not fitted by the Owner, We will fit one and charge it to the Owner's account. All other electricity usage (electric vehicle charging, other car and camper van use and any other usage) must be notified to and approved in advance by the Dockmasters and all applicable directions followed. Electricity charges will be as per our website.

## 5. SALE OF VESSEL

5.1 Our yacht brokerage concessionaire is Berthon International, a division of Berthon Boat Co. Ltd. The Berthholder 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. In the event that the Berthholder wishes to market the Vessel or arrange a sale otherwise than exclusively through Berthon International, the Berthholder shall ensure that persons viewing the Vessel are accompanied by the broker concerned who must report his presence on site prior to visiting the Vessel, and who must provide proof of full professional indemnity and liability insurance totalling at least £1,000,000; the Berthholder shall further provide Us with details of any offer immediately one is received and report to Us any ultimate sale price; and shall refrain from displaying any notice of sale on the Vessel or within the Marina. Within 7 days of any sale or transfer

of the Vessel, the Berthholder shall notify Us in writing of the name, address and telephone numbers of the purchaser or transferee.

5.2 The Berthholder undertakes, on any sale of the Vessel (whether the Vessel was marketed, or the sale negotiated, agreed or completed, whilst the Vessel was lying in the Marina or in Berthon's premises) otherwise than through Berthon International, to pay, or to ensure that the broker or other agent involved in the sale will pay, to Berthon International a commission of 1% of the gross selling price.

5.3 No broker (other than Us) or User is allowed to solicit business on the Marina or adjacent boatyard.

## 6. LIABILITY AND LIMITATIONS

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

6.2 Nothing in these terms shall create the relationship of landlord and tenant.

6.3 All persons entering upon or using any part of Our premises, facilities or equipment do so at their own risk. We and Our employees accept no responsibility for loss or damage arising from any cause whatsoever unless such loss or damage is caused by or results from Our negligence or deliberate act or that of those for whom We are responsible. Berthholders undertake to bring this provision and these terms to the notice of all Owners, visitors, guests and crew. In any event and notwithstanding anything contained in these conditions in no circumstance (save for death or personal injury caused by Our negligence) shall We be liable, in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for any special, indirect or consequential loss of any nature whatsoever (including, without prejudice to the generality of the foregoing, loss of profit, loss of use and any increased costs or expenses) suffered or incurred by any person.

6.4 No guarantee is given nor responsibility accepted for the suitability of any berth, equipment or other facilities provided.

6.5 Where We are unable to perform any of Our obligations by virtue of fire, flood, storm, explosion, riot, terrorism, malicious damage or any other act, omission or state of affairs beyond Our control, We shall be relieved of all such obligations and shall incur no responsibility or liability in respect thereof whether for damages or otherwise.

6.6 This Licence is 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 Berthholder fails to remove, collect or accept re-delivery of goods (which include Craft and other



property). Such a sale will not take place until We have given notice to the Berthholder in accordance with the Act. For the purpose of the Act it is recorded that Craft and other goods are accepted by Us on the basis that the Berthholder is the owner or the owner's authorised agent and that he will remove, take delivery or arrange collection of the goods on termination of the Licence. Our obligations as custodian end on Our notice to the Berthholder of termination of those obligations, and the place for removal, delivery and collection of goods shall be the Marina unless otherwise agreed. In certain other circumstances We may be entitled to have goods sold through the Courts for non-payment of invoices.

6.7 Where We supply goods or services to a customer in the course of his business:

6.7.1 No such goods or services shall carry any express or implied warranty as to quality or fitness for any particular purpose unless prior to the supply the customer has sufficiently explained the purpose for which they are required and made it clear that he is relying on Our skill and judgment;

6.7.2 No proprietary goods specified by name, size or type shall carry any such express or implied warranty but We will assign to the customer any rights We may have against the manufacturer or importer;

6.7.3 We accept no liability to a business customer for loss or damage of whatever nature beyond the reasonable cost of rectifying defective workmanship or replacing faulty or unsuitable goods.

## 7. TERMINATION

Without prejudice to the definition of Long Term Casual berth above, the Licence shall be terminable by Us at any time on not less than 28 days' written notice to the Berthholder who shall remove the Vessel by the end of the notice period. Provided the Vessel is removed as aforesaid, We will refund any portion of the Licence Fee (less any sums due to Us or to Berthon) already paid by the Berthholder in relation to any period after expiry of the notice period. Should the Berthholder fail to remove the Vessel as aforesaid, We may do so at his expense. Any casual Berthholder's licence is subject to termination on immediate notice, but otherwise on the same terms as above.

## 8. MISCELLANEOUS

8.1 The Berthholder undertakes to comply with Berthon's Authorised User Policy (AUP) (accessible from here <https://www.berthon.co.uk/about-berthon/wifi-authorized-user-policy>) as a condition of using the Marina's internet

8.2 No exercise or failure to exercise or delay in exercising any right, power or remedy shall be deemed to be a waiver by Us of that or any other right, power or remedy.

8.3 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation the same shall be deemed to be deleted and shall be of no force or effect and the terms shall remain in full force and effect as if such provision had not originally been contained herein.

8.4 Nothing in these terms shall oblige Us to enforce Our rights or Users' liabilities hereunder.

8.5 These terms may be amended from time to time by Us in the interests of safety, good management or changes in industry practice or relevant legislative provisions. Any such amendments will be displayed at the Marina office and will be deemed to be incorporated at the date and time when first displayed.

8.6 In the event of conflict between these terms and any provision of a long-term licence, the latter shall prevail.

8.7 Notices required hereunder shall be effective if sent by first-class post: to the Berthholder, at his last known address; to Us, at Our principal trading address.

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

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