



## **1 DEFINITIONS**

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

Company shall mean Douglas Marine Ltd or its agents (if any) for the operation of the Marina, the Boat Repair Yard, the yacht Brokerage or any other facility at Douglas Boatyard.

Premises means all the land, water and buildings occupied by or under the control of the Company, including slipways, pontoons, jetties, workshops, hardstanding, roadways and car parks.

Owner shall include any charterer, master, agent or person for the time being in charge of the Vessel, excluding the Company. Vessel shall include any form of craft, boat, ship, yacht, dinghy, multihull, or other marine structure which is in the care and control of the Owner.

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 the licence.

Pontoon means a moored and decked floating structure providing landing or mooring facilities.

The Licence means the permission granted by the Company to the Owner, whether expressly given in writing or otherwise, for the Owner's vessel, vehicle or other property to occupy a mooring, berth, storage space or any other facility on the Premises.

Note also that words importing one gender include all other genders and words importing the singular include the plural and vice versa.

## **2 THE LICENCE**

2.1 Berths at the Premises shall be licensed for the periods and at the rates of charge from time to time published by the Company at its Premises. Details of the charges applicable to the Berth at the beginning of the License will be given to each licensee at the time that the License is granted.

2.2 The Licence shall not be automatically renewed but will end at the conclusion of the period agreed if not terminated sooner by the Company or by the Owner under the provisions of Clauses 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, gear, equipment or other goods left with it for repair or storage, and harm to persons entering the Premises and/or using any facilities or equipment.

3.1.1 The Company shall take all reasonable steps to maintain security at the Premises, and to maintain the facilities at the Premises 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, gear, equipment or other goods are left with the Company at the Owner's own risk and Owners should ensure that they have appropriate insurance against all relevant risks.

3.1.2 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 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.]

3.1.3 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, where appropriate, Employers' 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 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 of the Owner.

## **5 BERTH ALLOCATION**

5.1 The Company retains absolute control of Berth allocation within the 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.

## **6 PERSONAL NATURE OF THE LICENCE**

6.1 This licence is personal to the Owner and relates to the Vessel for which the Licence was granted. 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 the 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 BY COMPANY WHEN VACANT**

7.1 The Company may have the use of the Berth when 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 the Licence by the Owner) to terminate this Licence in the following manner in the event of any breach by the Owner of this Licence;

8.1.1 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 effect 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 Premises immediately.

8.1.2 If the Owner fails to remove the Vessel on termination of the 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 Premises and/or

8.1.2.2 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 from the Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.

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 in writing.

9.2 Maritime Law entitles the Company 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.

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 the Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the 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 The Licence may be terminated on 16 weeks written notice by the Owner to the Company. Following such notice the Company shall prepare an account of:

10.1.1 all sums owed 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 the Licence if the original term of the 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 the Licence. 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 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 Premises.

## GENERAL RULES

### 11 VESSEL MOVEMENTS

11.1 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 Premises.

11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an Agreement with the Company. Where a specific date or tide range for re-launch of the Vessel has been agreed between the Owner and the Company at the time of slipping or lifting out (or arrival by land) this charge alone will be payable for the launch. However where the Owner requests a different date or tide range the Company reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. The Company will provide the Owner with an estimate of such costs and charges prior to incurring them.

11.3 The Vessel shall be berthed or moored by the Owner in such a manner and position as the Company may require.

11.4 Unless otherwise agreed in writing, the Owner is entirely responsible for providing and tending any warps and fenders necessary for the safety and security of the Vessel.

11.5 Unless otherwise agreed in writing, the Owner is entirely responsible for tending any props used to support the Vessel when stored ashore.

11.6 No vessel, when entering or leaving or manoeuvring in the Premises, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels.

### 12 COMMERCIAL USAGE

12.1 No part of the Company's Premises or any Vessel or vehicle while situated therein shall be used for any commercial purpose, except where the Owner has sought and obtained prior written agreement from the Company.

### 13 STORAGE

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

### 14 PARKING

14.1 Subject always to the availability of parking space Owners and their crew may only park vehicles on the Premises in accordance with the directions of the Company and only in such a manner as not to disrupt the work of the Company or to cause unreasonable inconvenience or annoyance to other users of the Company's facilities.

### 15 BOATYARD REGULATIONS

15.1 The Owner shall at all times observe the Company's regulations and in particular:

15.1.1 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.

15.1.2 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.

15.2 The Company shall display a copy of the Regulations on the Company's public notice board at the Company's Premises.

15.3 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 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 at the Company's Premises, and the Company shall have the same rights against the Owner for a breach of the amended Regulations as for a breach of the terms of the Licence.

### 16 ACCESS TO PREMISES/WORK ON THE VESSEL

16.1 Subject to Clause 16.2 no work shall be done on the Vessel,

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gear, equipment or other goods 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.

16.2 Prior written consent will not be unreasonably withheld where:

16.2.1 The work is of a type for which the Company would normally employ a specialist sub-contractor; or

16.2.2 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.

16.2.3 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.

**17 HEALTH, SAFETY AND THE ENVIRONMENT**

17.1 Attention is drawn to the Company's Health, Safety and Environmental policies, as amended from time to time, copies of which are 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.

17.2 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 on the Premises as soon as possible after they occur.

17.3 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Premises so as to cause any nuisance or annoyance to any other users of the 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 as aforesaid. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.

17.4 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 receptacles provided by the Company or by removal from the Company's Premises. The Company's further directions regarding waste management shall be posted on the Company's Public Notice Board or other prominent place.

**18 PAYMENT TERMS / LATE PAYMENT PENALTY**

18.1 All payments are due within fourteen days of the date of invoice.

18.2 Invoices that are not settled on time may, at the Company's sole discretion, attract interest charges at the rate of 2.5% per month.

18.3 All accounts must be settled in full prior to the Vessel's departure.

**19 USE OF DEBT RECOVERY AGENTS**

19.1 The company reserves the right to employ debt recovery agents to act on the Company's behalf to recover aged debts or damages.

19.2 In this event, from the moment they are instructed, the debt will be subject to a surcharge of 15% plus VAT. This surcharge together with all other charges and legal fees incurred will be added to the debt and will be legally enforceable as part of the debt.

**20 RESPONSABILITY**

20.1 Any person using any tool, device and/or product within the confines of Douglas Boatyard with or without the Company's consent does so entirely at his/her own risk; the person hereby indemnifies the Company against any claim for any loss or damage to: vessels, property, animals and/or any people, including, but not limited to: personal injury and/or death resulting from negligence, carelessness, illness, accident or simple mistake.

**21 MAINTENANCE CONTRACTORS LICENCES**

21.1 Berth holders wishing to employ maintenance contractors to work on their boats, who are not connected with Douglas Marine Ltd, must notify Douglas Marine Ltd prior to the work being undertaken. The contractor will be required to provide evidence of Third Party/Public Liability Insurance in a sum of not less than £3,000,000 in respect of each incident. A license shall be required for each contractor working at the premises of Douglas Marine Ltd and will be chargeable in accordance with the published schedule of charges.

21.2 The contractor and berth holder are jointly and severally liable for any license charge.

21.3 Contractors found working at the premises of Douglas Marine Ltd without a license shall incur a charge of double the daily rate.

21.4 Douglas Marine Ltd reserves the right to refuse or withdraw permission for contractors to work on the Boatyard premises.

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