

Terms of Business

(Subject to which all work is undertaken and facilities provided)

Fourth Edition – 06/03/2009

1 Definitions

- 1.1 In these Terms of Business the following words shall have the following meanings:
- 1.1.1 "Company" means Wicormarine Limited, its staff and agents;
 - 1.1.2 "Boatyard" shall mean all the property, land and water under the control of the Company;
 - 1.1.3 "Owner" means any person who owns or has the control of any Vessel or Vehicle in the Boatyard;
 - 1.1.4 "Person" shall mean any person, firm, Company or other legal entity;
 - 1.1.5 "Rules" means these Terms of Business as amended from time to time;
 - 1.1.6 "Vehicle" means any vehicle or trailer;
 - 1.1.7 "Vessel" means any vessel or its gear and equipment;
 - 1.1.8 "User" means any person entering or using the Boatyard for any purpose.
 - 1.1.9 "Berth/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 any services and Berthing/Mooring agreement.
- 1.2 Entry in to the Boatyard by any means for any purpose whatsoever entails acceptance of the Rules and an obligation to observe and perform them and compliance with all the bye-laws affecting the Boatyard.
- 1.3 Users understand and agree to leave the Boatyard at the request of the Company if they fail in a material way or to a material extent to observe these Rules.
- 1.4 Subject to express agreement to the contrary, all orders written or verbal are accepted on the understanding that the following Rules & Regulations shall apply to each and every transaction.
- 1.5 Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
- 1.6 The headings in these rules shall not affect their interpretation.
- 1.7 The Company reserves the right to introduce Regulations and new terms and conditions or to vary these Regulations and terms and conditions in order to promote the better administration of the Boatyard in the interests of the Boatyard Users as a whole or to comply with statutes, regulations or By Laws.

2 Lien and Power of Sale

- 2.1 Each owner shall promptly pay to the Company all amounts properly due in respect of Vessels and Vehicles at the Boatyard.
- 2.2 If an Owner fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
- 2.2.1 Suspend the provision of any services to the Owner;
 - 2.2.2 Prevent the Owner's Vessel leaving the Boatyard;
 - 2.2.3 Appropriate any payment made by the Owner to such of the services supplied by the Company as the Company may think fit (notwithstanding any purported appropriation by the Owner) and

2.2.4 Charge the Owner interest (both before and after any judgement) on the amount unpaid, at the rate of 2.5% per month (or part of a month) compounded monthly until payment in full is made.

2.3 The Company has the right to exercise a general lien upon any Vessel whilst in or upon a berth or elsewhere and any vehicle at the Boatyard until such times as any monies due however arising (including interest due on late payments) to the Company from the Owner shall be paid.

2.4 Any Vessel or Vehicle left at the Boatyard is subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on the Company as bailee a right of sale exercisable in certain circumstances.

3 Safety and Management

- 3.1 Berths, mooring and navigation within or outside the Boatyard and the parking and movement of vehicles in the Boatyard shall at all times be subject to rules, regulations, bye-laws and other requirements administered by the Queen's Harbour Master, Portsmouth City Council, Fareham Borough Council and other competent Authorities, and Users shall at all times observe and comply with them.
- 3.2 Owners shall ensure that vessels or vehicles moving within the Boatyard or in the general vicinity of the moorings shall not proceed at such speed or in such manner as may endanger or cause nuisance to other Users or any Vessels or Vehicles.
- 3.3 Each User is responsible for checking at all relevant times that there is sufficient water for access to and egress from the Boatyard for his Vessel.
- 3.4 Users shall comply with all requests of the Company which in the opinion of the Company contribute towards the safe and efficient running of the Boatyard.
- 3.5 Sailboarding, swimming, fishing, waterskiing, water scooting, diving and the like are not permitted in the Boatyard.
- 3.6 Tenders under way to gain access to other parts of the Boatyard shall keep clear of the fairways and observe the Rules of the Road.
- 3.7 Luggage trolleys must be returned either to the landward end of the jetty after use or to the requisite storage area at the end of the jetty. Trolleys must not be left where they could constitute an obstruction or hazard.
- 3.8 No-one other than the Owner of Vessels, their crew and invited guests are allowed access to any of the pontoons or any boatyard areas.
- 3.9 No Vessel stored ashore may be moved nor shall any shores or blocks be moved without the Company's consent. Owners or their agents must not at any time interfere with, alter or remove shores, blocks, cradles or legs used for the storage of any vessel.
- ### 4. Nuisance
- 4.1 Users undertake that they will not use or operate any noisy, noxious or objectionable engines, radios or other apparatus or machinery within the Boatyard so as to cause any nuisance, annoyance, damage or inconvenience to the Company or any other Users or to any person residing at or near to the Boatyard, nor cause such nuisance, annoyance, damage or inconvenience by excessive noise or inappropriate conduct. Owners shall secure all halyards and all other loose rigging so as not to cause such nuisance or annoyance.
- 4.2 No obstruction shall be caused or permitted to be caused on any of the access roads, pontoons, passageways, car parks or boat parks of the Boatyard.

4.3 The Company reserves the right to enter and/or remove, (using reasonable force if necessary), any Vessel or Vehicle at the Boatyard in an emergency or in order to prevent or stop a nuisance. The Owner shall be responsible for the cost of such action. The Company shall not be liable to the Owner for any loss, cost or damage suffered or incurred by the Owner where such action is taken.

5. Discharge or Refuse and Effluent

5.1 No chemical or sea toilet or other toilet shall be discharged on or into the Boatyard.

5.2 No refuse shall be thrown or permitted to fall overboard or be left on the pontoons, jetties or car parks or disposed of on or into the Boatyard nor shall oil, petrol, tar, paint or other noxious or deleterious substance or material be discharged on or into the Boatyard other than in receptacles provided for the specific purpose. Users shall remove all such items from the Boatyard.

5.3 Users with animals at the Boatyard shall keep them under control and dogs must be kept on leads at all times when not on a Vessel or in a vehicle. Users shall ensure that any fouling of the Boatyard by their animals is cleared up.

5.4 Users shall comply with such steps as may reasonably be required from time to time by the Company to ensure the safe and hygienic operation of the Boatyard.

6. Working practices

6.1 The only work permitted to be undertaken whilst a Vessel is on a berth is limited to minor running repairs or minor routine maintenance.

6.2 Prior written consent of the Company is required for any work to any Vessel at the Boatyard other than that permitted by Rule 6.1. The Company reserves the right to require the Owner to move the Vessel to a designated area of the Boatyard or a specific berth before such work may be carried out.

6.3 The Owner shall ensure that all work carried out to a Vessel in the Boatyard is carried out in a safe, workmanlike and tidy manner and does not cause a nuisance or annoyance to others or damage to any Vessel or mooring and that all reasonable steps are taken to minimise any potential nuisance that may be caused by works on any Vessel. No tools or equipment shall be placed or left on any part of the Boatyard and Owners shall ensure that no spillage of liquids is occasioned. All waste materials shall be removed by the Owner after any work on a Vessel. The Company shall charge the Owner for removing any tools, equipment or waste materials and making good any damage to the Boatyard. Such remedial work shall be charged to the Owner at the Company's publicised hourly rates or at the cost incurred by the Boatyard to the third party contractors.

6.4 No contractor may work on a Vessel for reward without the Company's written permission which will normally be given only to resident contractors and to off site contractors registered with the Company for that purpose. Such contractor will have to demonstrate his competence and provide proof of current insurance against such risks and to such amounts as the Company may reasonably require.

6.5 No person shall be permitted to build any Vessel or complete a part-built Vessel on any part of the Boatyard without obtaining the prior written approval of the Company.

6.6 No goods, articles or material (including scrap capable of being recycled) are to be stored, stocked, displayed or disposed of on any open or undeveloped land of the Boatyard.

6.7 Company employees are not permitted to carry out work on Vessels except in their capacity as Company employees. The Company accepts no responsibility for work carried out by any employee unless arranged with the Boatyard Reception and properly authorised by the Company.

7. Estimates

7.1 Subject to express agreement in writing to the contrary, all estimates given by us are subject to the cost of labour and materials remaining at the same level as those prevailing at the time of the estimate, and the estimated price shall be increased or decreased by the amount by which the actual cost of labour, materials and overheads has increased or decreased by reason of variations of the aforesaid levels since the date of the estimate. However, the estimate shall not be adjusted to meet increased costs which would not have occurred but for our failure to proceed with the work with reasonable despatch.

7.2 Estimates cover only the work and/or items specified thereon, and all additions, alterations, waiting time and any additional costs due to modified instructions will be charged to the customer at ruling prices. If, in the course of executing any work, we find any defect in the vessel and/or its gear that in our opinion should be rectified without delay, and before the Owner's consent can be obtained, we reserve the right to carry out such necessary repair at our discretion and to charge same to the Owner. Notice of any such rectification will be forwarded to the Owner forthwith.

8. Payments

8.1 All charges invoiced are payable on receipt of invoice unless otherwise specified. Interest on overdue balances will be charged at 2.5% per month. Unless by special arrangement, no vessel will be launched or handled until all outstanding accounts are paid in full.

8.2 All mooring, storage and boatyard charges paid by standing order will be subject to a 5% administration charge.

9. Storage of Dinghies, etc

9.1 Dinghies, tenders and rafts when not in use shall be stowed aboard the relevant Vessel or in the racks provided on the main dinghy pontoon. Trailers when not in use shall be stored in the area designated from time to time.

9.2 No items of craft gear, cradles, fittings, equipment, supplies, stores or the like shall be left otherwise than upon a Vessel (and in particular not upon the pontoons or jetties or in the car or boat parks within the Boatyard) unless shore storage has been arranged by the Company.

10. Fire

10.1 All necessary precautions to prevent the outbreak of fire in or upon Vessels shall be taken and Owners shall observe any statutory or local regulations relative to fire prevention. There shall be provided and maintained adequate BSI approved fire extinguishers in good efficient working order in or on Vessels which shall be kept ready for immediate use in case of fire.

10.2 No dangerous, flammable, poisonous or noxious substance, spirit, oil or fluid shall be brought into the Boatyard other than such substances normally used in connection with Vessels which shall be kept in properly secured containers staunch against leakage and all bye-laws and statutory rules and regulations with regard thereto shall be strictly observed.

11. Right to Move Vessels

11.1 In the interests of safety and expedience, the Company reserves the right to board, move, moor or re-berth any Vessels and/or gear at the discretion of the Company and charge accordingly.

12. Provide details of Vessels' Movements

12.1 Owners of Vessels berthed in the Boatyard shall notify Boatyard Reception prior to each departure of the Vessel from the Boatyard. The Owner shall specify the departure time, the period the Vessel will be away from the Boatyard and the anticipated date and time of return. The Company will rely

upon this information in planning access for visitors. If the information supplied by the Owner is inaccurate or incomplete the Company is unable to guarantee that the Berth/Mooring will be available upon the return of the Vessel to the Boatyard.

13. Keys

13.1 Owners shall leave all necessary keys of Vessels at Boatyard Reception in the care of the Company. The keys may be used by the Company to enter or move a Vessel if requested by the Owner or if the Company believes it is necessary or desirable to do so. The keys will not be released by the Company to a third party without the prior consent of the Owner.

14. No Living Aboard Vessels

14.1 No person or persons shall be permitted to reside aboard any Vessel nor shall a Vessel be used as a houseboat, although the Company may waive this restriction in particular cases from time to time at its entire discretion. This restriction shall not prevent residence aboard a Vessel during a period of holiday for the purpose of that holiday.

15. Condition of Vessels

15.1 Vessels must be kept in a seaworthy and reasonably smart condition.

16. Display of Name

16.1 The name of the Vessel must be clearly displayed on the Vessel and on dinghies, cradles, trailers and other equipment related to the Vessel. Where dinghies are stored on the main dinghy pontoon, names must be clearly visible when in storage.

17. Measurement of Vessels

17.1 For all purposes vessel length shall be calculated including all davits, bowsprits, bumkins, boarding ladders, sterndrives, tenders, outdrives, outboards, rudders, anchors, pulpits and pushpits and any other extension fore and aft the Vessel.

17.2 The Company reserves the right at any time to measure any Vessel and to charge the Owner of the Vessel additional fees (if appropriate) if the length of the Vessel is greater than that notified to it by the Owner.

18. No Commercial use of Vessels

18.1 Subject to Rule 18.2 no Vessel shall be used except for personal, non-commercial purposes.

18.2 No Vessel or Vehicle shall be offered for sale or for hire or charter or be advertised or permitted to be used for such purposes or for the purpose of time share except with the Company's prior written consent which it may, at its sole discretion, withhold.

18.3 Each owner shall be permitted to arrange a private sale of not more than one Vessel (such Vessel being usually berthed at the Boatyard during any period of 12 consecutive months). In the event of such private sale:

18.3.1 The owner shall be present at all times during which the Vessel is viewed and shall not be permitted to display a "for sale" sign notice on the Vessel whilst at the Boatyard;

18.3.2 The Company reserves the right to charge commission on a private sale at the rate of 2.5% of the total sale price plus VAT, if the provisions of Rule 18.3 are not adhered to.

18.4 The Owner shall notify the Company of his intention to sell the Vessel. The Owner shall not instruct any broker without simultaneously instructing the Boatyard's resident broker to sell the Vessel on similar terms.

18.5 The Owner is responsible for the payment of the resident broker's agreed commission if as a result of the resident broker's introduction such purchaser deals directly with the Owner and buys the Vessel.

18.6 Should the sale of a Vessel result from the introduction of a purchaser by a broker other than the resident broker, then the Owner shall ensure that such broker pays the Company commission of 1% of the sale price of the Vessel plus VAT.

19. Report Damage

19.1 Users shall promptly report to the Company any and all damage done to the Boatyard or to any plant, machinery or equipment of or situated at the Boatyard by any Vessel or Vehicle or any damage done by any Vessel or Vehicle to any other Vessel or Vehicle or any alleged defect in the Boatyard.

20. Mooring & Storage of Vessels

20.1 No Vessel shall be anchored in the Boatyard nor moored in such a way as to cause any obstruction to the Company or any other user.

20.2 The Company retains all rights of possession in respect of the Berth/Mooring.

20.3 The Company shall have an absolute right to alter the location of the Berth/Mooring within the Boatyard and the Vessel shall be moored in the Berth/Mooring allocated by the Company from time to time and shall not be moored elsewhere in the Boatyard without the prior approval of Company.

20.4 At any time when the Berth/Mooring is not actually occupied by the Vessel the Company shall be free to permit its use by any other vessel without paying compensation or giving any discount to the Owner.

20.5 Vessels shall only be moored to bollards and equipment designated for such purpose and in such a manner and within berths or such other position as the Company may reasonably require. Owners shall provide the necessary warps and fenders for the Vessel and Owners shall be responsible to ensure that all such warps and fenders are adequate and replaced, maintained and adjusted as necessary.

20.6 No Vessel shall be made fast to any other Vessel within the Boatyard without the previous consent of the Company and the Owner or person in charge of the other Vessel.

20.7 The Company reserves the right to charge an Owner berthing fees at the Company's then prevailing daily berthing rate for any period during which the Owner leaves a Vessel at the Boatyard if there is no current berthing licence in relation to that Vessel between the Company and the Owner.

20.8 Vessels to be stored ashore will be hauled out as near to the preferred date as in our opinion, tide, weather conditions and available labour permit in order to make the most economical use of the area at our disposal and in such sequence as to enable the preferred launching dates to be fulfilled. In either case specific dates or times will not be guaranteed. Vessels not ready for launching by the date given may be moved to gain access to the vessel behind and a fixed charge incurred.

20.9 The minimum charge for owners wishing to reserve storage space in the boatyard during the laying-up period is for 22 weeks at the prevailing rate.

21. Car Parking

21.1 Under no circumstances may any Vehicle be parked or left so as to obstruct the roadways, walkways, footpaths, slipways, craneage, access points or any area in the Boatyard. In default, the Company reserves the right to remove any such Vehicle by craneage or towing and to charge the Owner for any loss, cost or damage suffered or incurred by the Owner where such action is taken.

- 21.2 No tent, caravan (motor or trailer) or other Vehicle adapted for sleeping may remain on any part of the Boatyard between the hours of 9.00 pm and 9.00 am except with the prior written consent of the Company.
- 21.3 Each owner will notify the Company of the registration number of all Vehicles regularly parked in the Boatyard car park, and if a Vehicle is likely to remain in the car park for a period of more than 4 consecutive days.
- 21.4 Each owner or visiting crew will obtain from the Boatyard Reception a parking slip which should be completed with the name of the boat that is being visited. A slip must be displayed on the dashboard of any vehicle whilst in the boatyard.

22. Insurance

- 22.1 Each Owner of a Vessel or Vehicle shall maintain at all times a suitable policy of insurance in respect of public liability and third party liability in respect of claims for damage to persons and property. In the case of a Vessel, such insurance shall be in the sum of at least £2,000,000 (or such greater sum as the Company shall from time to time specify in accordance with the requirements of the Port Authority or other competent authority) in respect of any one claim and each Owner shall produce evidence of such insurance whenever so required by the Company and shall maintain and operate the Vessel strictly in accordance with the requirements of such policy.
- 22.2 Users shall not do or permit anything to be done in the Boatyard whereby any policy of insurance taken out or maintained by the Company against any damage to the Boatyard for the time being subsisting may be invalidated or rendered void or voidable or whereby the rate of premium thereon may be increased.
- 22.3 Each owner is responsible for ensuring that every person of the Company carrying out any work to his Vessel is adequately insured and hereby indemnifies the Company against any claim or damage suffered directly or indirectly by the Company arising out of the carrying out of such work or any shortfalls in the adequacy of such insurance.

23. Limitation of Liability and Indemnity

- 23.1 All persons using any part of the Company premises and/or facilities for whatever purpose and whether by invitation or otherwise do so at their own risk.
- 23.2 The Company accepts no liability in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for any increased costs or expenses, for any loss of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential loss of any nature whatsoever suffered or incurred by any person, (save for death or personal injury caused by the Company's negligence). Subject to that exception, all vessels and gear are repaired, worked on, moved, stored or otherwise managed and kept at the sole risk of the Owner.
- 23.3 Each User shall indemnify and keep the Company indemnified from and against all actions, proceedings, claims, demands, costs, expenses, losses and liabilities suffered or incurred by the Company so far as the same are caused by any act, default, neglect or omission of the User.

24 Notice

- 24.1 The Company reserve the right to determine forthwith any agreement for mooring or storage of a vessel where the Owner fails to comply with these conditions or causes nuisance, annoyance or disturbance to the Company or our agents, employees or other customers.

- 24.2 In all cases where a contract of hire or licence to occupy any moorings, berths, storage space, property or facilities may be lawfully terminated by notice, the same shall be deemed to be lawfully served if served personally or sent by registered post or recorded delivery service to the last known address in the United Kingdom of the Hirer or Licensee.

25. Electrical supply

- 25.1 Electricity (where applicable) is provided subject to the following terms & conditions:
- 25.2 The Company cannot guarantee continuous supply as power cuts and breakdowns are not within its control.
- 25.3 Connectors and cables not supplied by the Company shall be approved by the Company. The Owner shall not connect or reconnect the connectors and cables prior to obtaining approval.
- 25.4 Overloading will cause trips to activate and whilst the Company will do all it can to effect immediate reconnection, it may not be possible outside office hours.
- 25.5 Supply is provided to and for the Vessel only. Shared supply is not permitted, although the Company reserves the right to share supply between boats in times of peak demand.
- 25.6 All electricity consumed shall be paid for by the Owner on demand at the current rate of charges in force in the Boatyard from time to time.

