

TERMS AND CONDITIONS OF EXMOUTH MARINA LTD
GENERAL CONDITIONS

1. INFORMATION ABOUT US

We are Exmouth Marina Ltd., a company registered in England and Wales under company number 56685 and having its registered office address is Greendale Business Park, Woodbury Salterton, Exeter, EX5 1EW (the **Company**).

2. IMPORTANT INFORMATION

2.1. These terms and conditions will apply to the Licence agreed in accordance with these terms and conditions (the **Conditions**). Please read these Conditions carefully because they form part of a legally binding contract between the Company and the Owner. Your attention is particularly drawn to the following clauses within these Conditions:

- a) Clause 5 (Liability, indemnity and insurance);
- b) Clause 6 (Payment of charges);
- c) Clause 11(Termination by the Company); and
- d) Clause 13 (Termination by Owner)

2.2. If you wish to contact us for any other reason, including because you have any complaints, you can contact us by telephoning us on 01395 269314 or by emailing us at info@exmouthmarina.net.

3. DEFINITIONS

Unless the context requires otherwise, where the following words appear in these Conditions, the Licence and the Company's regulations they shall have these meanings:

Alongside Berth means a berth where a Vessel of appropriate draft may be secured, with access to the shore without the need for a dinghy or tender.

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.

Harbour shall include a yacht harbour, marina, mooring or any other facility provided by the Company for launching navigating, mooring or berthing a vessel.

Length Overall (LOA) means the length overall of the Vessel including davits, bowsprits, boarding ladders, sterndrives, tenders, outboards, rudders, anchors, pulpits, pushpits and any other extensions fore and aft the Vessel.

Licence shall have the definition given to the term in clause 4.

Owner shall include any charterer, master, agents or other person for the time being in charge of the Vessel, excluding the Company.

Pontoon means a decked floating structure providing landing or mooring facilities attached to the land, piles, anchors or sinkers.

Premises means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, gangways, quays, piers, mud berths, sheds, lofts, workshops, hard standing, roadways, car parks, gates and barriers.

Regulations shall mean the Company's regulations described in clause 19.

Storage Ashore Accommodation means the land space temporarily allocated to the Owner from time to time by the Company or the storage ashore of the Vessel during the term of the Licence.

VAT means value added tax.

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.

4. THE LICENCE

4.1. Berths at the Harbour or Premises shall be licensed to the Owner for the periods and at the rates of charge set out in the agreed licence application (the **Licence**).

4.2. The Licence shall not be automatically renewed and 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 11 or 13.

5. LIABILITY, INDEMNITY AND INSURANCE

5.1. The Company will be liable for any death or personal injury caused by the Company's negligence. Subject to that, 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 the Company or any defect in any part of an Owner's Vessel or third party's Vessel or vehicle) including loss or damage to the Vessel, any vehicle or trailer, gear, equipment or other goods left with it for repair or storage.

5.2. The Company shall take all reasonable steps to maintain security at the Premises, and to maintain the facilities at the Premises and in the Harbour in reasonably good working order. However, all 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.

5.3. 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 in writing 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).

5.4. 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 insurance 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.

6. PAYMENT OF CHARGES

6.1. The Owner must:

6.1.1. pay the deposit payable under the Licence in accordance with the time-frame

specified in the Licence;

6.1.2. pay the licence fees payable under the Licence by direct debit and return a completed standard direct debit mandate within the time-frame specified in the Licence.

6.2. As a condition of granting the Licence, the Owner must pay the berth rate set out in the Licence in full by the earlier of: (i) 1st April in the calendar year in which the Licence has been granted; or (ii) 14 days after the date of the Company's acceptance of the licence application. If payment is not received by the Company by such date, then the Company shall have the right to terminate Licence and the Owner shall have no right to bring the Vessel into the marina or to use Berth.

6.3. If the Owner does not make any payment by the due date for payment then the Company may charge interest on the outstanding balance at the rate of 8% above the base lending rate from time to time of Lloyds TSB bank plc, calculated on a daily basis from the date payment was due until the date payment is actually made (and whether before or after any judgment).

6.4. If the Licence is terminated by the Company pursuant to clause 6.2, then the Company shall be entitled (without prejudice to any other remedies available to it) to retain the deposit paid. This amount represents a genuine pre-estimate of the Company's loss incurred as a consequence of the Owner's breach of the Licence conditions.

6.5. All charges payable to the Company are exclusive of VAT. If VAT is chargeable in respect of all or any of the charges payable to the Company the Owner shall, upon receipt of a valid VAT invoice, pay to the Company such VAT at the rate for the time being and from time to time properly chargeable.

6.6. Prices per metre (as set out in the Licence) are based on LOA.

7. CHANGE OF DETAILS

7.1. The Owner must promptly notify the Company in writing of any change of names of the Vessel or change of address or telephone number of the Owner.

8. BERTH ALLOCATION

8.1. The physical layout of every Harbour and Premises and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Harbour and 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.

9. PERSONAL NATURE OF THE LICENCE

9.1. The Licence is personal to the Owner and relates to the Vessel described in the Licence. It may not be transferred or assigned to a new Owner or to a different Vessel, either temporarily or permanently.

9.2. 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.

10. USE OF BERTH BY COMPANY WHEN VACANT

10.1. The Company may have the use of the Berth when it is left vacant by the Owner.

11. TERMINATION BY THE COMPANY

11.1. The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of the Licence or these Conditions by the Owner) to terminate the Licence immediately in the event of a breach by the Owner of the Licence or these Conditions where, in the Company's opinion, the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property or is not capable of remedy. The Company may, at its discretion, specify a time-frame for remedy and the Licence shall terminate if the breach has not been remedied by the specified time-frame. The Company may serve notice on the Owner requiring him to remove the Vessel from the Harbour or Premises immediately.

11.2. If the Owner fails to remove the Vessel on termination or expiry of the Licence (howsoever caused), the Company shall be entitled:

11.2.1.1. to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination of the Licence and the actual date of removal of the Vessel from the Harbour and Premises; and/or

11.2.1.2. 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 Harbour and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonable arising out of such removal including alternative berthing fees.

11.2.2. Any notice of termination under these Conditions 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 or sent via email and in the case of the Company shall be served at its principal place of business or registered office or via email to info@exmouthmarina.net

11.2.3. A notice or other communication shall be deemed to have been received by the Owner at the time of delivery if delivered personally, if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting or, if sent by e-mail, upon the sending of any email.

12. RIGHTS OF SALE AND OF DETENTION

12.1. 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 (the **Act**). 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:

12.1.1. 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;

12.1.2. The Company's obligation as custodian of goods accepted for storage ends on its notice to the Owner of termination of that obligation;

12.1.3. The place for delivery and collection of goods shall be at the Company's Premises unless agreed otherwise. Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of solicitors.

12.2. Maritime Law entitles the Company in certain other 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.

12.3. 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 Harbour and 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.

12.4. A Berth may be not let, loaned; sub licensed or otherwise transferred without prior written permission from the Company.

12.5. The sale of all craft when on the Premises shall only be sold or advertised for sale through the Company's brokerage department. All berth holders shall refrain from displaying any notice of sale on the vessel.

12.6. Any Berth holders shall ensure that persons viewing the vessel are accompanied by an employee of the Company. For any private boat sale, the vessel must be removed from the Company's premises prior to advertising. Any Owner selling within the Premises without written notice will incur 1% of the total sale value plus VAT fee payable to the Company at the time of invoice issued by the Company.

13. TERMINATION BY OWNER

13.1. 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;

13.1.1. All sums owed by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel, and

13.1.2. The charge that would have been payable by the Owner to the Company in respect of the Licence if the original terms of the Licence had ended on the date of expiry of the notice of termination served by the Owner, less

13.1.3. 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 Harbour 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 Harbour or Premises.

14. OTHER IMPORTANT TERMS

14.1. If the Company fails to insist that the Owner perform any of its obligations under the Licence and the Conditions, or does not enforce its rights against the Owner or

delays in doing so, that will not mean that the Company has waived its rights against the Owner and will not mean that the Owner does not have to comply with its obligations under the Licence and these Conditions. If the Company does waive a default by the Owner, it will only do so in writing, and that will not mean that the Company will automatically waive any later default by the Owner.

14.2. The Licence and these Conditions are governed by English law. Any dispute or claim arising out of or in connection with the Licence and these Conditions or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law.

14.3. The Company and the Owner agree that the courts of England shall have jurisdiction to settle any dispute or claim arising out of or in connection with the Licence or these Conditions (including non-contractual disputes or claims).

GENERAL RULES

15. VESSEL MOVEMENTS

15.1. 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 Harbour and Premises.

15.2. A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into the Licence 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 tidal 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.

15.3. Vessels shall be berthed or moored 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.

15.4. All Vessels, when entering or leaving or manoeuvring in the Harbour, shall be navigated at a safe speed. Owners must not endanger or cause inconvenience to other vessels in the harbour. A safe speed is 3 knots or walking speed.

15.5. Owners must notify the marina office prior to the departure of a Vessel from the marina for any extensive lengths of time. Failure to supply insufficient notification may result in the Berth not being available on return.

16. COMMERCIAL USAGE

16.1. No part of the Harbour 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 the 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 the Licence, as appended.

17. STORAGE

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

18. PARKING

18.1. Subject always to the availability of parking space, Owners may park one vehicle only on the Premises in accordance with the directions of the Company.

19. MARINA AND HARBOUR REGULATIONS

19.1. The Owner shall at all times observe the Company's regulations, a copy of which has been made available to the Owner at the time of entering into the Licence and as the same may be amended from time to time (the **Regulations**). In particular:

19.1.1. 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.

19.1.2. Owners can 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.

19.2. 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 Harbour 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 the Licence and these Conditions.

19.3. There is to be no smoking on the Premises.

19.4. The Company cannot guarantee that the water level within the Premises will be sufficient to enable your Vessel to safely navigate to and from any berth. The Owner is responsible for checking at all times that there is sufficient water to navigate to and from any permitted berth.

19.5. All persons unable to swim must wear a life jacket at all times whilst on the pontoons.

19.6. Advisory note: Owners, their guests and crew are advised that their conduct and that of their Vessels is likely to be regulated and governed at various times by statutory, local authority and harbour regulations which may be more extensive than those of the Company and the breach of which may result in criminal penalties.

20. ACCESS TO PREMISES/WORK ON THE VESSEL

20.1. Subject to Clause 20.2 no work shall be done on the Vessel, 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.

20.2. Prior written consent will not be unreasonably withheld where:

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

20.2.2. 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.

20.2.3. 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.

20.2.4. Any subcontractors working on the premises will have to sign in and out whilst working on the pontoons at the Harbour Office with fee payable £10.00 per visit to the harbour office. Proof of insurance (as required by the Company) will be needed to be registered on annual expiry. The Company's Health, Safety and Environmental policy must be adhered to at all times. Risk assessments (as required by the Company) will be made available prior to visit.

21. HEALTH, SAFETY AND THE ENVIRONMENT

21.1. 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 Health, Safety and Environmental 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 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.

21.2. The Owner, his crew, members of his family and any person carrying out work on the Vessel are 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 Harbour or on the Premises as soon as possible after they occur.

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

21.4. 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 Harbour 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.

21.5. The very nature of pontoons is 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 surfaced 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 in damp conditions when marina surfaces are slippery.

22. USE OF MARINA TOILETS AND CHANGING FACILITIES

22.1. Licensed berth holders are entitled to use the Harbour toilets and changing facilities, however, any damage caused by Owner, their crew and guests will be charged to the Owner. The facilities should be left in a clean and tidy condition as found prior to use.