

## 1 DEFINITIONS

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 Customer by the Company for the Vessel during the term of this Licence

**Company** shall mean **Hamble Yacht Services Ltd**, the Company or any of its agents to whom the application for berthing is made which may be one or more of its associated companies, concessionaires, tenants and assignees for the operation of the boat repair yard, brokerage or other harbour facility.

**Customer** shall mean the person or company named on the front of this Licence, any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.

**Harbour** shall include a yacht harbour, marina, mooring or any other facility for launching, navigating, mooring or berthing a vessel.

**Length Overall (LOA)** means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.

**Licence** shall mean any Licence signed by the parties including these Standard Terms and Conditions.

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

**Premises** means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mudberths, sheds, lofts, workshops, hardstanding, roadways and carparks.

**Regulations** mean those regulations (if any) made by the Company as the same may be amended from time in accordance with clause 15, which the Company in its absolute discretion, considers necessary to enable the Company or those using the Premises to comply with applicable legal requirements or for the safety or security or good management of the Harbour or Premises.

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

**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 Customer.

## 2 LICENCE

- 2.1 The Berth at the Harbour or Premises licensed for the period and at the Charges specified in the Licence.
- 2.2 The Licence shall not be automatically renewed but will end at the End Date specified in the Licence if not terminated sooner by the Company or by the Customer 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 events or circumstances beyond its reasonable control (such as severe weather conditions, the actions of third parties not employed by it or any defect in a customer's or third party's property); this extends to loss or damage to Vessels, gear, equipment or other property left with it for work or storage, and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment.
  - 3.1.1 The Company shall take reasonable and proportionate steps having regard to the nature and scale of its business to maintain security at the Premises, and to maintain the facilities and equipment at the Premises and in the Harbour in reasonably good working order. But in the absence of any causative negligence or other breach of duty on the part of the Company, Vessels, gear, equipment and other property are left with the Company at the Customer's own risk and Customers should ensure that their own personal and property insurance adequately covers such risks.
  - 3.1.2 The Company shall not be under any duty to salvage or preserve a Customer'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 Customer on commercial terms. Similarly, the Company shall not be under any duty to salvage or preserve a Customer's Vessel or other property from the consequences of an accident which has not been caused by the Company's negligence or some other breach of duty on its part. 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 Customer concerned on a normal commercial charging basis and, where appropriate, to claim a salvage reward.
  - 3.1.3 Customers 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 cover against wreck removal and salvage, and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Customer shall be obliged to produce evidence to the Company of such insurance within 7 days of a request to do so.
  - 3.1.4 The Customer shall, and shall procure that his crew, members of his family comply with all applicable laws when using the Company's Harbour and Premises.

## 4 ADDRESS DETAILS AND SUBSEQUENT CHANGE OF DETAILS

- 4.1 The Customer must supply to the Company in writing, details of the Customer's home address. This address must be a different address to the address of the Harbour. The Customer shall be obliged to produce evidence to the Company of such home address within 7 days of a request to do so.

- 4.2 The Customer 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 Customer.

## 5 **BERTH ALLOCATION**

- 5.1 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 Customer 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 Any Licence is personal to the Customer and relates to the Vessel described in the Licence. It may not be transferred or assigned to a new Customer or to a different Vessel, either temporarily or permanently, without the express written consent of the Company and;
- 6.2 Within 7 days of any Licence for the sale, transfer or mortgage of a Vessel, the Customer 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 whilst it is left vacant by the Customer.

## 8 **TERMINATION**

- 8.1 The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of any Licence by the Customer) to terminate the Licence in the following manner in the event of any breach by the Customer of the 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 Customer 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 Customer fails to effect the remedy within that time, or if the breach is not capable of remedy, the Company may serve notice on the Customer requiring him to remove the Vessel from the Harbour or Premises immediately.

8.1.2 If the Customer 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 Customer 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

8.1.2.2 at the Customer's risk (save in respect of loss or damage directly 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 Customer 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 Customer, be served personally on the Customer or sent by registered post or recorded delivery service to the Customer'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 Customer of the goods or the Customer'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.

Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of Solicitors

9.2 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 Customer of a Vessel or other property.

9.3 The Company reserves a general right ("a general lien") to detain and hold onto the Customer's Vessel or other property pending payment by the Customer 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 Customer at the Company's 24 hour rate for overnight visitors for each day between termination or expiry of this Licence and the actual date of payment (or provision of security) by the Customer and removal of the Vessel from the Harbour and Premises. The Customer 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 CUSTOMER**

10.1 The Licence may be terminated on 16 weeks' written notice by the Customer to the Company. In this event the Company will be entitled to recalculate the charge for the Berth using the rate or rates that would have been applicable to the actual period of the Licence instead of the annual rate; the amount so calculated not to exceed the annual charge originally contracted for berthing. If this recalculation results in a balance payable to the Company, then the Customer shall be required to pay that balance before removing the Vessel from the Harbour or Premises. If there is a balance in favour of the Customer the

Company shall pay it to the Customer upon the Vessel's departure of the Vessel from the Harbour or Premises.

- 10.2 For annual drysail licenses clause 10.1 will not apply. The Customer may terminate their agreement by giving 30 days' notice and will be eligible for a refund amounting to the charges associated with storage ashore of the Vessel for the remaining period at the published storage ashore rates.

## 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 Harbour and Premises.
- 11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Customer before they enter into a Licence with the Company. Where a specific date or tide range for relaunch of the Vessel has been agreed between the Customer 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 Customer requests a different date or tide range the Company reserves the right to charge the Customer 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 Customer with an estimate of such costs and charges prior to incurring them.
- 11.3 Vessels shall be berthed or moored by the Customer 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 Customer
- 11.4 No vessel, when entering or leaving or manoeuvring in the Harbour, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Harbour.

## 12 COMMERCIAL USAGE

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

## 13 STORAGE.

- 13.1 Dinghies, tenders and rafts 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 Customers and their crew may only park vehicles on the Premises in accordance with the directions of the Company.

## 15 ACCESS TO PREMISES/WORK ON THE VESSEL

- 15.1 No work shall be done on the Vessel, gear, equipment or other goods while on the Premises without the Company's prior written consent (which will not be unreasonably withheld) other than minor running repairs or minor maintenance of a routine nature by the Customer, 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 HEALTH, SAFETY AND THE ENVIRONMENT**

- 16.1 Attention is drawn to the Company's relevant Health, Safety and Environmental policy, as amended from time to time. The Company shall make available a copy of the Policy current at the time of the Licence to the Customer upon request. Any amendments shall also be made available on request. The Customer, 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.
- 16.2 The Customer, 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 in the Harbour or on the Premises as soon as possible after they occur.
- 16.3 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 Customer undertakes for himself, his guests and all using the Vessel that they shall not behave in such a way as to cause any nuisance or annoyance to any other users of the Harbour or Premises or to any person residing in the vicinity .
- 16.4 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.
- 16.5 The Customer shall, and shall procure that his crew, members of his family comply with all applicable laws when using the Company's Harbour and Premises.

## **17 LAW & JURISDICTION**

- 17.1 The Licence and any non-contractual obligations arising out of, or in connection with, the Licence shall be governed by and construed in accordance with English law.
- 17.2 Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with the Licence shall:
- 17.2.1 if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or
- 17.2.2 where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

## **18 DISPUTE RESOLUTION SCHEME**

- 18.1 The BMF and the RYA recommend that disputes, when they cannot be resolved by negotiation, be submitted with the written agreement of the parties, to mediation under the BMP's Dispute Resolution Scheme. Details of the Scheme are available at [www.britishmarine.co.uk/drs](http://www.britishmarine.co.uk/drs).

## 19 GENERAL REGULATIONS

- 19.1 In addition to those listed below, 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 Customer for a breach of the Regulations as for a breach of the terms of this Licence.
- 19.2 It is the responsibility of the Customer to ensure his Vessel is in a seaworthy condition prior to launch. The Company takes no liability for damage caused by ingress of water or any consequential losses other than where caused by negligence on behalf of the Company.
- 19.3 No person is permitted to climb the mast or be hoisted aloft, whilst boats are ashore.
- 19.4 Engines must not be started whilst boats are ashore.
- 19.5 All rubbish must be disposed of in the skips provided.
- 19.6 Hazardous waste (oils, batteries, flares and fire extinguishers) must not be placed in bins or skips. Specific hazardous waste disposal can be arranged on request.
- 19.7 No welding, work with naked flames, or spray painting is permitted in the yard without express permission of the Yard Manager.
- 19.8 Under no circumstances may boat shores be moved or tampered with.
- 19.9 Customer's visiting contractors are required to report to the security gatehouse on arrival and departure and must provide proof of third party liability insurance to a minimum of £5,000,000
- 19.10 The Customer and any other person entering the Premises on his behalf, for whatever purpose and whether by invitation or otherwise do so at their own risk. All vehicles and their contents are left at the Customers' risk. No unaccompanied or unsupervised children are permitted on site.

## 20 DRYSAIL SERVICES ADDITIONAL TERMS & REGULATIONS

- 20.1 Drysail packages include a maximum number of launches and recoveries (as specified within the license agreement), storage ashore and weekend and bank holiday berthing afloat. Additional charges may be levied at standard rates, for berthing afloat outside of these times.
- 20.2 When instructed by the Customer, boats will be launched and moored, if necessary, more than one abreast on the pontoons within the HYS marina. Launch and recovery instructions may be made by telephone or email or via the company website at [www.hysgroup.co.uk](http://www.hysgroup.co.uk).
- 20.3 Launch and recovery service is available during the following hours of operation: Monday to Friday – 07.30 to 16.00 hrs. No launch or recovery service is available at weekends or bank holidays other than by special arrangement.
- 20.4 Launch and recovery requests are subject to a minimum 24 hours' notice period.
- 20.5 The Company will endeavour to meet all launch and recovery requests but no guarantee can be given to meet such requests and no liability will be accepted in the event requests cannot be met.

- 20.6 When stored ashore, boats requiring to be totally supported equally on keel and cradle poppets must supply a suitable cradle compatible with the Company's boat movement equipment (details available on request).
- 20.7 Car Parking is subject to availability. Two car parking permits will be issued per licence agreement.

## 21 **DRystack SERVICES ADDITIONAL TERMS & REGULATIONS**

- 21.1 Drystack RIB packages include unlimited launches and recoveries, wash down, storage ashore and weekend and bank holiday berthing afloat. Additional charges will be levied at standard rates, for berthing afloat outside of these times.
- 21.2 RIB's berthed at HYS will automatically be retrieved after use unless instructed otherwise.
- 21.3 Whilst berthed in the drystack facility, climbing or working on any boat is prohibited. A service berth for short term use can be provided at no additional charge subject to availability.
- 21.4 Refuelling ashore is prohibited.
- 21.5 Launch and recovery service is available during the following hours of operation:  
1<sup>st</sup> April to 31<sup>st</sup> October – 07.30 to 18.00 hrs. seven days per week (inc bank holidays)  
1<sup>st</sup> November to 31<sup>st</sup> March – 07.30 to 16.00 hrs. seven days per week (ex bank holidays)
- 21.6 Car Parking is subject to availability. One car parking permit will be issued per licence agreement.