

## Terms & Conditions BCKLWN

### General Terms and Conditions of Berthing or Mooring a vessel at South Quay Berth 5. King's Lynn

#### 1 DEFINITIONS

In these Conditions the following definitions will apply:-

**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 Council for the Vessel during the term of this licence.

**Board** means the King's Lynn Conservancy Board, the Statutory Port, Harbour and Pilotage Authority for King's Lynn.

**Council** shall mean the Borough Council of King's Lynn 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 brokerage or other harbour facility.

**Cover Sheet** shall mean the attached Booking sheet, signed by the parties to this booking, which contains the details of the booking.

**Harbour** shall include the Port harbour, 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.

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

**Pontoon** means a moored and decked floating structure providing short term mooring facilities for visiting leisure Vessels at South Quay berth 5.

**Premises** means all the land, adjacent water and buildings occupied by or under the control of the Council or the King's Lynn Conservancy Board, including docks, slipways, pontoons, jetties, quays, mudberths, hardstanding, roadways and car parks.

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

**Vessel** shall include any form of craft, boat, ship, yacht, dinghy, multi-hull, or other marine structure which is the property of or is in the care and control of the Owner.

## 2 THE CONDITIONS

- 2.1 The Berth at the Harbour or Premises shall be conditioned for the period and at the Charges on the Cover Sheet
- 2.2 This booking shall not be automatically renewed but will end at 12 noon on the End Date specified on the Cover Sheet booking form if not terminated sooner by the Council or by the Owner under the provisions of Clauses 8 or 10. The Council reserves the right to refuse or issue a booking form at its discretion and all vessels granted such a mooring shall be kept in a seaworthy and reasonable condition. The opinion of the Harbour Master shall be final in this case. No variation of the Council's charges or standard terms and conditions can be entertained unless such variation is confirmed in writing by an authorised officer of the Council.
- 2.3 The maximum stay permitted for overnight berthing at the pontoons per booking is 7 nights.
- 2.4 The public have access to the South Quay, which borders the pontoons. Notwithstanding any security measures which are established or implemented from time to time, owners are advised to ensure their boats, cars and other property are made secure against entry or theft.
- 2.5 The Council provides short stay overnight moorings only upon written acceptance of a booking form for same and such acceptance is at the Council's discretion.
- 2.6 Craft over 20 meters LOA or 4 m beam are only permitted at the pontoon with prior written consents
- 2.7 The maximum draft of craft allowed to moor at the pontoons is 1.5m
- 2.8 The Council policy is to make pontoon berths available that are 75% of the LOA of vessels so berthed but no guarantee can be made in this respect.
- 2.9 Berthing charges are quoted per meter length overall of all projections, inclusive of rates, Conservancy charges, harbour dues, water and VAT unless otherwise stated. Fractions of a decimetre count as the next whole decimetre and a minimum charge is equivalent to 6.0 meter. Car parking is subject to availability and local charging restrictions.
- 2.10 Entry onto the pontoons by land or water entails acceptance of its published terms and conditions, regulations and charges. Charges are payable 24 hours in advance of arrival by completion of booking form.
- 2.11 Electricity is supplied for vessel's domestic purposes only, on a metered basis, controlled by 'swipe' cards, available from the Tourist Information Centre at Purfleet Quay and Marriott's Warehouse at South Quay. For safety purposes and to comply with EU regulations, the supply is fitted with sensitive overload and earth leakage devices. Because of these the Council cannot guarantee continuity of supply or be

liable for the consequences of these safety devices operating from time to time. Leads are to be routed safely to ensure they do not present a tripping hazard.

### **3 LIABILITY, INDEMNITY AND INSURANCE**

3.1 The Council and Board 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 and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment.

3.1.1 The Council 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 in reasonably good working order. But in the absence of any causative negligence or other breach of duty on the part of the Council, Vessels, gear, equipment and other property are left with the Council at the Owner's own risk and Owners should ensure that their own personal and property insurance adequately covers such risks.

3.1.2 The Council 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 Council shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident which has not been caused by the Council's negligence or some other breach of duty on its part. However the Council 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 cover against wreck removal, foul berth and salvage, and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Owner shall be obliged to produce evidence to the Council of such insurance relating thereto to the Council on demand.

3.1.4 The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using the Council's and Board's Harbour and Premises.

3.1.5 All persons using any part of the Council's and Board's premises or harbour for whatever purpose and whether by invitation or otherwise do so at their own risk unless any injury or damage to person or property sustained within the Council's and Board's Harbour, or premises was caused by or resulted from the Council's negligence or deliberate act or that of those for whom the Council and Board is responsible.

#### **4 ADDRESS DETAILS AND SUBSEQUENT CHANGE OF DETAILS**

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

4.2 The Owner must notify the Council 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 physical layout of the Pontoons and the varying needs and obligations of the Council and its customers requires that the Council retains absolute control of Berth allocation at the Pontoons. 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 Council.

5.2 No double side-on berthing is permitted at the pontoons, the necessary warps and fenders shall be provided by the Owner.

5.3 Any vessel must display its name so as to be clearly visible from the pontoon to which she is moored.

#### **6 PERSONAL NATURE OF THE BOOKING**

6.1 This booking is personal to the Owner and relates to the Vessel described in the application for berthing. 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 Council.

#### **7 TERMINATION**

7.1 The Council shall have the right (without prejudice to any other rights in respect of breaches of the terms of this booking by the Owner) to terminate this booking in the following manner in the event of any breach by the Owner of this booking;

7.1.1 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Council and/or of the Council's customers or the Board and Premises and if the breach is capable of remedy, the Council may serve notice on the Owner specifying the breach and requiring him to remedy the breach within a reasonable time specified by the Council. 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 affect the remedy within that time, or if the breach is not capable of remedy, the Council may request the Board to serve notice on the Owner requiring him to remove the Vessel from the Pontoon, Harbour, or Premises immediately.

7.1.2 If the Owner fails to remove the Vessel on termination of this booking (whether under this Condition or otherwise), the Council shall be entitled

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

7.1.2.2 at the Owner's risk (save in respect of loss or damage directly caused by the Council's negligence or other breach of duty during such removal) to remove the Vessel from the pontoons, Harbour and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.

7.1.3 Any notice of termination under this booking 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 Council shall be served at its principal place of business or registered office.

## **8 RIGHTS OF SALE AND OF DETENTION**

8.1 Maritime Law entitles the Council and Board 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.

8.2 The Council 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 Council. If the booking is terminated or expires while the Council is exercising this right of detention it shall be entitled to charge the Owner at the Council's 24 hour rate for overnight visitors for each day between termination or expiry of this booking and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Pontoon, 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 Council's prospective legal costs.

- 8.3 Any vessel or other goods left at the Council's and Board's Harbour or premises are 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. Such sale will not take place until the Council has given notice to the Owner or has taken reasonable steps to trace him in accordance with the Act. A similar right of sale shall also arise when any vessel or other goods of which the Council is not a bailee are left at the Council's and Board's Harbour or premises.

## 9 **TERMINATION BY OWNER**

- 9.1 This booking may be terminated and a full refund payable on 48 hours' written notice by the Owner to the Council. There will be no refund for a pre paid booking if cancelled within 48 hours of the day of scheduled arrival. The owner is not entitled to a refund if the owner decides to vacate the berth prior to the end date of the booking on the cover sheet.

## **GENERAL RULES**

### 10 **VESSEL MOVEMENTS**

- 10.1 The Council reserves the right to request the Owner to move the vessel and if the Owner fails to move the vessel the Council will authorise the Board to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of the Pontoon, Harbour and Premises.
- 10.2 Vessels shall be berthed or moored by the Owner in such a manner and position as the Council may require and unless otherwise agreed adequate warps and fenders for the Vessel shall be provided by the Owner.
- 10.3 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.
- 10.4 **Advisory note:** Owners, their guests and crew are advised that Vessels are at all times subject to the speed restrictions and byelaws of the Port Authority and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and The Health and Safety Executive; there are criminal penalties for the breach of such restrictions, requirements and Byelaws.

### 11 **COMMERCIAL USAGE**

- 11.1 No part of the Council's Pontoons 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 Council.

### 12 **STORAGE.**

- 12.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Council allocates a separate berth for them.

### 13 **PARKING**

- 13.1 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 Council.

### 14 **PORT and HARBOUR REGULATIONS**

- 14.1 The owner and user shall observe and conform with all rules, regulations and bye-laws of the Port of King's Lynn Authority together with all other statutory rules and regulations affecting the Port, Harbour and pontoons and indemnify the Council and Board against all actions, damages, claims or demands which may arise in consequence of any failure to observe or comply with all such bye-laws, rules or regulations.
- 14.2 The Owner shall at all times observe the Council's Regulations and in particular:
- 14.2.1 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.
- 14.2.2 Owners are not permitted to refuel at the pontoon as there are no designated facilities available. Where fuel is required to be transferred in portable containers, the Council reserves the right to refuse the use of any container deemed unfit for the purpose.
- 14.3 The Council shall supply the Owner with a copy of the Regulations current at the time of booking. The Council and Board reserves the right to introduce new Regulations on grounds of legal requirement or for the safety or security or good management of the Pontoon, 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 Council's public notice board or other prominent place at the Council's Premises, and the Council shall have the same rights against the Owner for a breach of the Regulations as for a breach of the terms of this Licence.
- 14.4 Rules are subject to amendments that may be issued from time to time by The Yacht Harbour Association or by the British Marine Federation and a copy of the current edition of their general conditions relating to berthing, mooring, storage, ashore or boatyard work shall be made available upon request.
- 14.5 **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 Council and Board and the breach of which may result in criminal penalties.

## 15 **ACCESS TO PREMISES/WORK ON THE VESSEL**

- 15.1 Subject to Clause 16.2 no work shall be done on the Vessel, gear, equipment or other goods while on the Premises without the Council'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 Council's schedule of work, nor involving access to prohibited areas.
- 15.2 Prior written consent may be given or withheld at the Council's or Board's sole discretion for work to be carried out at the Premises but will generally not be unreasonably withheld.
- 15.3 Notwithstanding the foregoing, during periods of work by the Council on the Premises, neither the Owner nor his invitees shall have access to the Vessel without the Council's prior consent, which shall not be unreasonably withheld.

## 16 **HEALTH, SAFETY AND THE ENVIRONMENT**

- 16.1 If in the Council's and Board's opinion such be necessary for the safety of the vessel or for the safety of other users of the pontoons or for their vessels or for the safety of the Council's pontoons, plant or equipment or for the safety of the Board's harbour, premises, the Council shall have the right to request the Board to moor, rebirth, move, board, enter out emergency work on the vessel and except to the extent that such mooring, reberthing, movement, boarding, entering or emergency work arises from the negligence of the Council or those whom the Council is responsible, the Council's reasonable charges therefore shall be paid by the Owner.
- 16.2 Swimming within the harbour is not recommended. Small children should wear life jackets and have an adult in attendance at all times. Recreational use of dinghies, tenders, personal watercraft within the Harbour is also not recommended. Due regard should be paid to the conditions of the tide and current.
- 16.3 The Owner, his crew, members of his family/party and any person carrying out work on the Vessel is responsible for reporting to the Council 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.
- 16.4 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 cause any nuisance or annoyance to any other users of the Harbour or Premises or to any person residing in the vicinity . Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.

- 16.5 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 Council. The Council's further directions regarding waste management shall be posted on the Council's Public Notice Board or other prominent place and copies will be available from the Council on request.
- 16.6 No paper or other solid matter shall be discharged from boats or boat toilets while at the pontoon.
- 16.7 No items of boats, gear, fittings or equipment, supplies, stores or the like shall be left upon the pontoons, quay or car parks.
- 16.8 The Owner shall, and shall procure that his crew, members of his party comply with all applicable laws when using the Council's and the Board's Harbour and Premises.