

Berthing, Mooring and/or Storage Ashore Licence

Standard Terms and Conditions

1. Definitions

- 1.1. Where the following words appear in these Conditions, the Licence and Falmouth Haven'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 Falmouth Haven for the Vessel during the term of this Licence

Charges means the prices advertised on our website, provided to Owners and available at the office on request.

Falmouth Haven shall mean, 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.

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 the Licence signed by the parties including these Standard Terms and Conditions.

Licence Schedule shall mean the schedule sent by Falmouth Haven to the Owner to confirm period of services and other provisions.

Owner 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 Falmouth Haven.

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 Falmouth Haven, including docks, slipways, pontoons, jetties, quays, piers, mudberths, sheds, lofts, workshops, hardstanding, roadways and carparks.

Regulations mean those regulations (if any) made by Falmouth Haven as the same may be amended from time to time in accordance with clause 15, which Falmouth Haven in its absolute discretion, considers necessary to enable Falmouth Haven 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 Owner from time to time by Falmouth Haven 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 Owner.

2. The Licence

- 2.1. The Berth at the Harbour or Premises shall be licensed for the period and at the Charges specified in the published scale of charges
- 2.2. This Licence shall be automatically renewed if not terminated sooner by Falmouth Haven or by the Owner under the provisions of Clauses 8 or 10.
- 2.3. Falmouth Haven reserve the right to increase the Charges upon giving notice to the Owner of the increase in Charges immediately before automatic renewal.

3. Liability, Indemnity and Insurance

- 3.1. Falmouth Haven shall not be liable for any loss or damage caused by events or circumstances beyond its reasonable control (which includes, without limitation, 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. Falmouth Haven 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 Falmouth Haven, Vessels, gear, equipment and other property are left with Falmouth Haven at the Owner's own risk and Owners should ensure that their own personal and property insurance adequately covers such risks.
- 3.1.2. Falmouth Haven 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 Falmouth Haven 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 Falmouth Haven's negligence of some other breach of duty on its part. However Falmouth Haven 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 and salvage, and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Owner shall be obliged to produce evidence to Falmouth Haven of such insurance within 7 days of a request to do so.
- 3.1.4. The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using Falmouth Haven's Harbour and Premises

4. Address Details and Subsequent Change Of Details

- 4.1. The Owner must supply to Falmouth Haven 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 Falmouth Haven of such home address within 7 days of a request to do so.
- 4.2. The Owner must notify Falmouth Haven 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 every Harbour and Premises and the varying needs and obligations of Falmouth Haven and its customers requires that Falmouth Haven 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 Falmouth Haven.

6. Personal Nature of The Licence

- 6.1. This 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, without the express written consent of Falmouth Haven and;
- 6.2. Within 7 days of any Licence for the sale, transfer or mortgage of a Vessel subject to this Licence the Owner shall notify Falmouth Haven 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 Falmouth Haven when vacant

01326 310990 welcome@falmouthhaven.co.uk
Falmouth Haven, 44 Arwenack Street, Falmouth, Cornwall TR11 3JQ

FALMOUTHHAVEN.CO.UK

Falmouth Haven is a service of Falmouth Harbour Commissioners

7.1. Falmouth Haven may have the use of the Berth whilst it is left vacant by the Owner.

8. Termination by Falmouth Haven

- 8.1. Falmouth Haven shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Licence by the Owner) to terminate this Licence in the following manner in the event of any breach by the Owner of this Licence;
- 8.1.1. Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of Falmouth Haven and/or of Falmouth Haven's customers and if the breach is capable of remedy, Falmouth Haven may serve notice on the Owner specifying the breach and requiring him to remedy the breach within a reasonable time specified by Falmouth Haven. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy may be immediate or extremely short. If the Owner fails to effect the remedy within that time, or if the breach is not capable of remedy, Falmouth Haven may serve notice on the Owner requiring him to remove the Vessel from the Harbour or Premises immediately.
- 8.1.2. If the Owner fails to remove the Vessel on termination of this Licence (whether under this Condition or otherwise), Falmouth Haven shall be entitled:
- 8.1.2.1. to charge the Owner at Falmouth Haven's 24 hour rate for overnight visitors for each day between termination of this Licence and the actual date of removal of the Vessel from the Harbour and Premises; and/or
- 8.1.2.2. at the Owner's risk (save in respect of loss or damage directly caused by Falmouth Haven'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 reasonably arising out of such removal including alternative berthing fees.
- 8.1.3. Any notice of termination under this Licence shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner's last known address and in the case of Falmouth Haven shall be served at its principal place of business or registered office.
- 8.2. This Licence may be terminated on 8 weeks' written notice by Falmouth Haven to the Owner. In this event Falmouth Haven 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 Falmouth Haven then the Owner 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 Owner Falmouth Haven shall pay it to the Owner upon the Vessel's departure from the Harbour or Premises.

9. Rights of Sale and of Detention

- 9.1. Where Falmouth Haven accepts a Vessel, gear, equipment or other goods for repair, refit, maintenance or storage Falmouth Haven does so subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on Falmouth Haven 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 Falmouth Haven 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 Falmouth Haven on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out.
- 9.1.2. Falmouth Haven'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 Falmouth Haven'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 Falmouth Haven 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.
- 9.3. To the extent permitted by law, the Owner hereby grants us a lien and a continuing security interest, and where applicable, a maritime lien, over the Owner's Vessel as security of payment by the customer. Therefore, Falmouth Haven reserves the right to detain and hold onto the Owner's Vessel or other property pending payment by the Owner of any sums due to Falmouth Haven. If the Licence is terminated or expires while Falmouth Haven is exercising this right of detention it shall be entitled to charge the Owner at Falmouth Haven'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 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 Falmouth Haven's prospective legal costs.

10. Termination By Owner

- 10.1. This Licence may be terminated on 16 weeks' written notice by the Owner to Falmouth Haven. In this event Falmouth Haven 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 Falmouth Haven then the Owner 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 Owner Falmouth Haven shall pay it to the Owner upon the Vessel's departure from the Harbour or Premises.

General Rules

11. Vessel Movements

- 11.1. Falmouth Haven 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 Falmouth Haven's scale of charges for Vessel movements is available on request. Where a specific date or tide range for relaunch of the Vessel has been agreed between the Owner and Falmouth Haven at the time of slipping or lifting out (or arrival by land) this charge alone will be payable for the launch. However where the Owner requests a different date or tide range Falmouth Haven 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. Falmouth Haven will provide the Owner with an estimate of such costs and charges prior to incurring them.
- 11.3. Vessels shall be berthed or moored by the Owner in such a manner and position as Falmouth Haven may require and unless otherwise agreed adequate warps and fenders for the Vessel shall be provided by the Owner.
- 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.

Advisory note: Owners, their guests and crew are advised that Vessels are at all times subject to any speed restrictions and byelaws of Harbour and navigation authorities 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 may be criminal penalties for the breach of such restrictions, requirements and Byelaws.

12. Commercial Usage

- 12.1. No part of Falmouth Haven's 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 Licence from Falmouth Haven.

13. STORAGE

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

14. Parking

- 14.1. Subject always to the availability of parking space Owners and their crew may only park vehicles on the Premises in accordance with the directions of Falmouth Haven.

15. Regulations

- 15.1. The Owner shall at all times observe Falmouth Haven's Regulations and in particular:
- 15.1.1. The Owner shall provide and maintain at least one fire extinguisher, which is approved and manufactured to EN3 standards for portable fire extinguishers, and ensure it is fit for purpose for the vessel and ready for immediate use in case of fire.
- 15.1.2. Owners shall refuel only at the designated fuelling berth and are to vacate the berth when the fuelling operation is completed. Where fuel is required to be transferred in portable containers, Falmouth Haven reserves the right to refuse the use of any container deemed unfit for the purpose.
- 15.1.3. Owners shall be prohibited from the discharge of sewage within the Harbour; such discharge may result in termination by Falmouth Haven of this Licence and ejection of the Owner from the Harbour.
- 15.2. Falmouth Haven shall supply the Owner with a copy of the supplementary Regulations current at the time of the Licence. Falmouth Haven 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 Falmouth Haven's public notice board or other prominent place at Falmouth Haven's Premises, and Falmouth Haven shall have the same rights against the Owner for a breach of the Regulations as for a breach of the terms of this Licence.

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 Falmouth Haven and the breach of which may result in criminal penalties.

16. Access to Premises/Work on The Vessel

- 16.1. Subject to Clause 16.2 no work shall be done on the Vessel, gear, equipment or other goods while on the Premises without Falmouth Haven'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 Falmouth Haven's schedule of work, nor involving access to prohibited areas.
- 16.2. Prior written consent will not be unreasonably withheld where:
- 16.1.1. The work is of a type for which Falmouth Haven would normally employ a specialist sub-contractor; or
- 16.1.2. The work is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of the equipment to which the warranty relates.
- 16.1.3. Notwithstanding the foregoing, during periods of work by Falmouth Haven on the vessel, neither the Owner nor his invitees shall have access to the Vessel without Falmouth Haven's prior consent, which shall not be unreasonably withheld.

17. Health, Safety and the Environment

- 17.1. Attention is drawn to Falmouth Haven's relevant Health, Safety and Environmental policy, as amended from time to time. A copy of this policy is available on request. Any amendments shall be displayed on Falmouth Haven's public notice board or other prominent place at Falmouth Haven's Premises and further copies shall be available on request. The Owner, his regular crew, members of his family and/or any person or Falmouth Haven carrying out work on the Vessel, with the permission of the Falmouth Haven, must comply with Falmouth Haven's Health, Safety and Environmental Policy.
- 17.2. The Owner, his crew, members of his family and any person carrying out work on the Vessel is responsible for reporting to Falmouth Haven 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.
- 17.3. 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 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.
- 17.4. No refuse shall be thrown overboard or left on the pontoons, or car parks or on any other part of the Premises, or disposed of in any way other than in the receptacles provided by Falmouth Haven or by removal from Falmouth Haven's Harbour and Premises. Falmouth Haven's further directions regarding waste management shall be posted on Falmouth Haven's Public Notice Board or other prominent place and copies will be available from Falmouth Haven on request.
- 17.5. The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using Falmouth Haven's Harbour and Premises.

18. Law & Jurisdiction

- 18.1. This Licence and any non-contractual obligations arising out of, or in connection with, this Licence shall be governed by and construed in accordance with English law.
- 18.2. 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 this Licence shall:
- 18.2.1. 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
- 18.2.2. Where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

19. THIRD PARTY RIGHTS

- 19.1. A person who is not a party to these Terms of Business shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Business.

20 SEVERANCE

20.1 If any provision of these Terms of Business is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant part-provision shall be deemed deleted. Any modification to or deletion of a part-provision under this Clause [20](#) shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

21. Dispute Resolution Scheme

21.1. The BMF and the RYA recommend that disputes arising out of or in connection with this Licence, 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.

TERMS OF BUSINESS

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN BY FALMOUTH HAVEN ON OR AFTER 1 JANUARY 2014.

1 LIABILITY

- 1.1 We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (which includes, without limitation, severe weather conditions, the actions of third parties not employed by us 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 us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment.
- 1.2 We shall take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at our premises, and to maintain our facilities and equipment in reasonably good working order; but in the absence of any negligence or other breach of duty by us vessels and other property are left with us at the customer's own risk and customers should ensure that their own personal and property insurance adequately covers such risks.
- 1.3 We 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 we have been expressly engaged to do so by the customer on commercial terms. Similarly we 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 our negligence or some other breach of duty on our part. However we reserve 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 we do so we shall be entitled to charge the customer concerned on a normal commercial basis.1.4 Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels and while their vessel or other property is on our premises or is being worked on by us 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 cover in respect of any employee. Customers shall be obliged to produce evidence of such insurance to us within 7 days of a request to do so.
- 1.5 Nothing in these Terms of Business shall limit or exclude our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors; for fraud or fraudulent misrepresentation; or otherwise to the extent that it would be illegal for us to exclude or attempt to exclude liability.
- 1.6 Subject to Clause 1.5, We shall under no circumstances whatsoever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, or indirect or consequential loss arising under or in connection with these Terms of Business.

2 PRICES AND ESTIMATES

- 2.1 In the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.
- 2.2 We will exercise reasonable skill and judgment when we give an estimate or indication of price. However such estimates are always subject to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.
- 2.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons for it and will only proceed with the work or supply with the approval of the customer. The customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in price.

3 DELAYS

- 3.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.

4 VESSEL MOVEMENTS

- 4.1 We reserve the right to move any vessel, gear, equipment or other property at any time for reasons of safety, security or good management of our business and premises.

5 PAYMENT

- 5.1 Unless otherwise agreed between us payment for all work, goods and services shall be due immediately on invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank. Time for payment is of the essence.
- 5.2 We have the right to charge interest on any sum outstanding for more than 30 days (except in the case of a reasonable and proportionate retention by the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 4% above Bank of England base rate which may be calculated daily up to the date of actual payment. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after actual judgment. In the case of business customers this rate will be substituted with the current rate applicable under late payment legislation.
- 5.3 To the extent permitted by law, the customer hereby grants us a lien and a continuing security interest, and where applicable, a maritime lien, over the vessel as security of payment by the customer. Therefore, we can detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent reasonably acceptable to us, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for our prospective legal costs. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defects but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.
- 5.4 Our customers' attention is drawn also to the note at Clause 10.2 of these Terms of Business regarding other rights which exist at law.
- 5.5 The customer shall pay all amounts due under these Terms of Business in full without any set off, counter claim, deduction or withholding except as permitted by law. We may, without limiting our other rights or remedies, set off any amount owing to it by the customer against any amount payable by us to the customer.

6 RETENTION OF TITLE / RISK

- 6.1 Title to all goods, equipment and materials supplied by us to a customer shall remain with us until full payment has been received by us.
- 6.2 Risk in all goods, equipment and materials supplied by us to a customer shall pass to the customer at the time of supply to the customer.

7 GUARANTEE

7.1 Advice on whether a customer is "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of solicitors (who may charge). Online guidance may be obtained at www.adviceguide.org.uk.7.2 A customer who is a consumer has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.

- 7.3 In addition to the statutory rights provided by English law we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. This guarantee applies only to the customer to whom the work or materials were supplied. We shall be liable under this guarantee only for defects which appear during this 12 month period and which are promptly notified to us in writing at our trading address or registered office set out on our letterhead. The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.
- 7.4 The customer shall, immediately after the discovery of any defective work, take all appropriate steps to mitigate any loss or damage and to prevent the defective work becoming more serious.
- 7.5 On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.
- 7.6 We shall not be liable for any defective work if the defect arose as a result of:
- 7.6.1 The customer's failure to follow our oral or written instructions;
 - 7.6.2 Us following any drawing or specification supplied by the customer;
 - 7.6.3 Fair wear and tear, wilful damage, negligence or abnormal working conditions; and/or
 - 7.6.4 Changes made to ensure compliance with applicable statutory or regulatory standards.
- 7.7 Where we supply goods or services to a partnership or company or to a customer who is acting in the course of a business or a commercial operation (a "Business Customer") then:
- 7.7.1 no article supplied by us to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement;
 - 7.7.2 no proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article; and
 - 7.7.3 We accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in

- consequence of the failure of any faulty or unfit article supplied by us.
- 7.8 The customer is responsible for any damage or loss caused directly or indirectly from any breach of its obligations under these Terms of Business.
- 7.9 The customer shall take all necessary precautions to avoid pollution of the environment and shall indemnify us for any loss or damage arising from any pollution of the environment.
- 7.10 The customer shall ensure that it does not cause any nuisance or annoyance to us, any other person or customer in the vicinity and does not interfere with the company scheduled for the work and/or the good management of the company's premises and business.

8 QUALITY STANDARDS

- 8.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

9 ACCESS TO PREMISES/WORK ON THE VESSEL

- 9.1 No work or services shall be carried out on a vessel, gear, equipment or other property on our premises without our prior written consent (which consent shall not be unreasonably withheld or delayed) except for minor running repairs or minor maintenance of a routine nature by the customer or his regular crew. It shall be an absolute condition that all work is carried out in full compliance with our health and safety, environmental and access policies and that it does not cause any nuisance or annoyance to us, any other customer or person residing in the vicinity, and does not interfere with our schedule of work or the good management of our business and our said consent to work or services being carried out may be revoked with immediate effect in the event of any breach of such conditions. We shall not be responsible to customers or third parties for the consequences of any person's failure to respect any part of this clause 9.1 but we shall be entitled to demand the immediate cessation of any work which in our view breaches the requirements of this clause 9.1.
- 9.2 While we or our subcontractors are working on a customer's vessel or equipment the customer shall not have access to it except by prior arrangement. We will agree reasonable access when it is safe to do so and when it will not interrupt or interfere with our work schedule.

10 RIGHT OF SALE

- 10.1 We accept vessels, gear, equipment and other property for repair, or edit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
- 10.1.1 goods for repair or other treatment are accepted by us 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;
- 10.1.2 our obligation as custodian of goods accepted for storage ends when we give notice to the customer;
- 10.1.3 the place for delivery and collection of goods shall normally be at our premises. Advice regarding the Act and its effect may be obtained from any of the sources referred to a Clause 7.1 above.
- 10.2 Maritime Law entitles us in certain circumstances to bring action against a vessel to recover a debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. This right of arrest and sale may continue to exist against a vessel after a change of ownership. Sale of a vessel or other property may also occur through the enforcement of a court order or Judgment.

11 SUBCONTRACTING

- 11.1 We may subcontract all or part of the work entrusted to us by the customer, on terms that any such subcontractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, which exist for us under these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.

12 ASSIGNMENT AND OTHER DEALINGS

- 12.1 We may at any time assign, transfer or deal in any other manner with all or any rights under these Terms of Business and may sub-contract or delegate in any manner any or all of its obligations under these Terms of Business to a third party as noted above under Clause 11.
- 12.2 The customer shall not assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms of Business.

13 NOTICES

- 13.1 Notice to a customer shall be sufficiently served if personally given to him or if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address or registered office.
- 13.2 All communications and notices given under these Terms of Business shall be in writing.

14 LAW AND JURISDICTION

- 14.1 Any contract or series of contracts made subject to these terms and any non-contractual obligations arising out of, or in connection, therewith shall be governed by and construed in accordance with English law.
- 14.2 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 a contract or series of contracts subject to these terms shall:
- 14.2.1 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
- 14.3.2 where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

15 THIRD PARTY RIGHTS

- 15.1 A person who is not a party to these Terms of Business shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce at any term of these Terms of Business.

16 SEVERANCE

- 16.1 If any provision of these Terms of Business is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant part-provision shall be deemed deleted. Any modification to or deletion of a part-provision under this Clause 16 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

17. DISPUTE RESOLUTION SCHEME

- 17.1 The BMF and the RYA recommend that disputes arising out of or in connection with a contract or series of contracts subject to these terms, when they cannot be resolved by negotiation, be submitted with the written agreement of the parties, to mediation under the BMF's Dispute Resolution Scheme. Details of the Scheme are available at www.britishmarine.co.uk. Published by the British Marine Federation and in consultation with the RYA, who recommend that where disputes cannot be negotiated they be submitted to mediation under the BMF's Dispute Resolution Scheme. ©BMF