

**Terms of Business**



**MARYPORT**

**DEVELOPMENTS LTD**

**DATED 1<sup>st</sup> APRIL 2008 – 31<sup>st</sup> MARCH 2009**

---

**(1)**

**and**

**MARYPORT DEVELOPMENTS LTD**

**(2)**

# **TERMS OF BUSINESS**

**TYHA terms**

**Terms of Business / F: Marina Information**

## CONTENTS

Clause		Page
	GENERAL CONDITIONS.....	3
1	DEFINITIONS.....	3
2	THE LICENCE.....	4
3	LIABILITY, INDEMNITY AND INSURANCE.....	4
4	CHANGE OF DETAILS .....	4
5	BERTH ALLOCATION .....	4
6	PERSONAL NATURE OF THE LICENCE.....	5
7	USE OF BERTH BY COMPANY WHEN VACANT .....	5
8	TERMINATION .....	5
9	RIGHTS OF SALE AND OF DETENTION .....	5
10	TERMINATION BY OWNER .....	6
	GENERAL RULES .....	7
11	VESSEL MOVEMENTS.....	7
12	COMMERCIAL USAGE.....	7
13	STORAGE .....	7
14	PARKING .....	7
15	MARINA, HARBOUR AND OTHER REGULATIONS .....	8
16	ACCESS TO PREMISES/WORK ON THE VESSEL.....	8
17	HEALTH, SAFETY AND THE ENVIRONMENT .....	8
18	CLOSURE OF THE HARBOUR AND/OR PREMISES .....	9

## GENERAL CONDITIONS

### 1 DEFINITIONS

Where the following words appear in these Terms of Business, the Licence and the Company's Regulations they shall have these meanings:

<b>Company</b>	shall mean the Company and/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.
<b>Harbour</b>	shall include a Yacht Harbour, Marina, Mooring or any other facility for launching, navigating, mooring or berthing a vessel.
<b>Premises</b>	means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mud berths, sheds, lofts, workshops, hard standing, roadways and car parks.
<b>Owner</b>	shall include any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.
<b>Vessel</b>	shall include any form of craft, boat, ship, yacht, dinghy, multi-hull, or other marine structure, which is in the care and control of the Owner.
<b>Length Overall (LOA)</b>	means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent
<b>Berth</b>	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.
<b>Alongside Berth</b>	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.
<b>Storage Ashore Accommodation</b>	means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the Vessel during the term of the Licence.
<b>Pontoon</b>	means a moored and decked floating structure providing landing or mooring facilities.

## **2 THE LICENCE**

Berths at the Harbour or Premises shall be Licenced for the periods and at the rates of charge from time to time published by the Company at its Premises and in force at the commencement of the Licence. Details of the charges applicable to the Berth are on the schedule attached to the Licence and will be given to each Licencee at the time that the Licence is granted.

The Licence shall not be automatically renewed but 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 8 or 10.

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

- 3.1 The Company shall not be liable whether in contract, tort or otherwise for any loss, theft or any damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by it or any defect in any part of a customer's or third party's Vessel) except to the extent that such loss, damage, costs or claims or proceedings may be caused by the negligence or willful act of the Company or those whom it is responsible; this extends to loss or damage to Vessels, gear, equipment or other goods left with it for repair or storage, and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment
- 3.2 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. Subject to this, and in the absence of negligence or breach of duty on the part of the Company, 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.
- 3.3 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 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]
- 3.4 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 £3,000,000, and, where appropriate. Employers' Liability covers 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.
- 3.5 The Owner shall indemnify the Company against all loss, damage, costs, claims or proceedings incurred by, or instituted against the Company or its servants or agents which may be caused by the Owner's vessel or vehicle or by the Owner, his servants, agents, crew, guests or sub-contractors except to the extent that such loss, damage, costs, claims or proceedings may be caused by the negligence or willful act of the Company or those for whom it is responsible.

## **4 CHANGE OF DETAILS**

- 4.1 Within 7 days of any sale, transfer or mortgage of any vessel which is subject to a current Licence granted to the Owner by the Company subject to these conditions the Owner shall notify the Company, in writing of the name and address of the Purchaser, Transferee or Mortgagee, as the case may be.

## **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 the Company to retain 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.

## **6. PERSONAL NATURE OF THE LICENCE**

The Licence is personal to the Owner and relates to the Vessel described on the schedule and/or the application for berthing. It may not be transferred or assigned to a new Owner or to a different Vessel, either temporarily or permanently.

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.

## **7. USE OF BERTH BY COMPANY WHEN VACANT.**

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

## **8. TERMINATION**

The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of the Licence by the Owner) to terminate the Licence in the following manner in the event of any breach by the Owner of these Conditions or of any failure by the Owner to make any payment due to the Company.

If the breach is capable of remedy or the Owner has failed to make any such payment the Company may serve notice on the Owner specifying the breach or the failure to pay and requiring him to remedy the breach or pay the amount due within 14 days. If the Owner fails to remedy such breach or pay the amount due within 14 days, or if the breach is not capable of remedy, the Company may serve notice on the Owner specifying the breach or failure to pay (when not already specified) and requiring him to remove the vessel within 90 days, at the expiration of which the Owner shall remove the vessel and any other property of his from the Company's harbour and premises. The Company shall refund to the Owner any monies due from the Licence fee (disregarding any discount given) subject to a right of set-off in respect of any damage suffered by it and/or other monies owing as a result of any of the matters giving the Company the right to terminate the Licence.

If the Owner 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 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

8.1.2.2 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 reasonably arising out of such removal including alternative berthing fees.

8.1.3 Any notice of termination under the Licence shall, in the case of the Owner, be deemed to be lawfully served if 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 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 owner of the goods or the owner's authorized 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 Owner of a Vessel or other property.
- 9.3 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 monies 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.

## **10 TERMINATION BY OWNER**

- 10.1 The Licence may be terminated on 90 days written notice by the Owner to the Company. Following such notice the Company shall prepare an account of;
  - 10.1.1 all monies owed by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel, and
  - 10.1.2 the charge that would have been payable by the Owner to the Company in respect of the Licence if the original term of the Licence had ended on the date of expiry of the Notice of Termination, less
  - 10.1.3 The monies 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 or within 90 days, whichever is the sooner 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.

## **GENERAL RULES**

### **11 VESSEL MOVEMENTS**

- 11.1 If in the Company's opinion such be necessary for the safety of the vessel or for the safety of other users of the harbour or premises or for their vessels or for the safety of the Company's harbour, premises, plant or equipment, the Company shall have the right to moor, re-berth, move, board, enter or carry out any emergency work on the vessel and except to the extent that such mooring, re-berthing, movement, boarding, entering or emergency work arises from the negligence of the Company or those for whom the Company is responsible, the Company's reasonable charges therefore shall be paid by the Owner.
- 11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an Agreement 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 tide 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.
- 11.3 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 the Owner shall provide warps and fenders for the Vessel.
- 11.4 No vessel, when entering or leaving or maneuvering 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.
- 11.5 Advisory note: Owners, their guests and crew are advised that Vessels are at all times subject to the 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 are criminal penalties for the breach of such restrictions, requirements and Byelaws.

### **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 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, they must be registered and meet the Maritime Coastguard Agency Coding specific to their operation and/or any other Government organization requirement.

### **13 STORAGE.**

- 13.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocates a separate berth for them, at which you will incur a charge.
- 13.2 Trailers and cradles left on site after the Vessel is launched will incur a storage charge.

### **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 the Company.

## **15 MARINA and HARBOUR REGULATIONS**

- 15.1 The Owner shall at all times observe the Company'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, the Company reserves the right to refuse the use of any container deemed unfit for the purpose.
- 15.2 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.
- 15.3 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.

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

- 16.1 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 may be withheld at its sole discretion) other than minor running repairs or minor maintenance of a routine nature by the Owner, his regular crew or members of his family and 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.
- 16.1.1 Prior written consent will not be unreasonably withheld
    - 16.1.1.1 where 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,
    - 16.1.1.2 where the work requires a specialist contractor.
  - 16.1.2 Prior written consent will not be unreasonably withheld to Contractors or acquaintances (other than the boat repair facility)
    - 16.1.2.1 where Owners have received at least two written quotes (including one from the boat repair facility) and
    - 16.1.2.2 where the Company's Health and Safety 3rd party documentation have been completed to the satisfaction of the Company for which a 10% fee of the quote will be charged

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

- 17.1 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 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 Company's 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.
- 17.2 The Owner, 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.

- 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 offend as aforesaid. 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 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.
- 17.5 Owner's who have employed a Contractor or other parties to carry out work on the Vessel, gear, equipment or other goods must ensure they follow the Company's regulations, which means reporting in and out to the duty staff member, before entering and on leaving the site.
- 17.6 No items of boats, gear, fittings or equipment, supplies, stores or the like shall be left upon the pontoons, jetties, underneath boats on the hard standing or in the car park.

## **18 CLOSURE OF THE HARBOUR AND/OR PREMISES**

- 18.1 The Company shall have the right by notice in writing to the Owner forthwith to terminate the Licence if at any time the Company's harbour or premises shall be so damaged impeded or interfered with by force majeure (as hereinafter defined) as to render it likely that the Company will be unable to continue to provide a berth, mooring or storage ashore accommodation in accordance with the Licence entered into between the Company and the Owner.
- 18.2 In this Clause force majeure means any event or circumstances (whether arising from natural causes, human agency or otherwise) beyond the control of the Company including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) weather conditions, riots, civil commotion, aircraft, fire, breakdown or war.
- 18.3 In the event of such termination as aforesaid the Company shall refund to the Owner the unexpired portion of the Licence fee (disregarding any discount given).