

# PORT BANNATYNE MARINA – TERMS AND CONDITIONS

## GENERAL TERMS AND CONDITIONS OF BERTHING, STORAGE ASHORE AND YACHT REPAIRS

In these conditions the following definitions will apply:-

'Company' shall mean Port Bannatyne Marina Ltd and Sterling Yacht Services Ltd.

'Marina' shall include;- the marina, shore storage or any other facility for berthing a vessel, which is owned or leased by the Company.

'Owner' shall include a charterer, master, agent or other person for the time being lawfully in charge (other than the Company) of the vessel or vehicle.

'Owner's Party' shall mean the Owner's family and/or private guests or visitors and/or his servants, agents, crew, or sub-contractors.

'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 their care and control whether or not detailed in any services and/or berthing/mooring storage agreement and/or lease agreement between the Company and the Owner.

'Berth or Storage' shall mean the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of any berthing/storage/repair agreement and/or lease agreement between the Company and the Owner.

'User' shall mean any person using the Marina for any purpose whatsoever.

'Manager' shall mean the person responsible for the day-to-day management of the Marina.

1. Every Owner, Owners Party or User or any other person entering the Marina for any purpose and by any means shall be deemed to agree to and be bound by these Conditions and Regulations.
2. The Company accepts no responsibility to an Owner, Owner's Party or User or any other person to enforce any provision of these Conditions or Regulations against any other Owner, Owner's Party or User.
3. All Vessels and vehicles in or on the Company's premises may be moved by the Company to any part of the same Marina and/or premises as required for operational purposes.
4. The Company shall not be liable whether in contract, tort or otherwise, for any loss, theft or any other damage of whatsoever nature caused to any vessel or vehicle or other property of the Owner or others claiming through the Owner.
5. The Owner shall indemnify the Company against 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 and/or Owner's Party except to the extent that such loss, damage, claims or proceedings may be caused by the negligence or wilful act of the Company.
6. The Owner shall maintain third party insurance in respect of himself and each of his vehicles or vessels, his crew and agents, visitors and guests and sub-contractors in a sum of not less than £3,000,000 in respect of each accident or damage and in respect of each vessel adequate salvage insurance. Such insurance should be affected and maintained in an Insurance office of repute and the Owner shall produce the policy or policies relating thereto to the Company on demand.
7. No part of the Company's Marina or premises or any Vessel or vehicle while situated therein or thereon shall be used by the Owner for any commercial purposes. The Owner shall not sell or charter the Vessel or offer it for sale or charter whilst berthed in the Company's Marina or premises unless:-
  - He notifies the Company in writing of each sale or charter and the Company agrees in writing.
  - He pays the Company forthwith upon each sale or charter one per cent of sale price and/or charter fee.
8. The Owner shall not instruct any broker in connection with the sale or charter of the Vessel whilst at the Company's Marina or premises unless he also instructs the Company (or such other Brokerage as the Company shall from time to time nominate) on its usual terms and gives it or them equal opportunity with any other broker instructed by the Owner to sell the vessel.
9. No sign shall be shown on any Vessel or property at the Company's Marina or premises indicating that the vessel or property is for sale or charter unless the Company has given its prior written consent. Consent is given for signs placed by the Company or such other brokerage, as the Company shall from time to time nominate.
10. Within seven days of any sale, transfer or mortgage of any vessel which is subject to a current license granted to the Owner by the Company subject to these conditions the Owner shall notify the Company of the name and address of the Purchaser, the Transferee or Mortgagee, as the case may be.
11. Subject to 12 no work shall be done to the Vessel whilst at the Company's Marina or premises (unless with prior written consent of the Company which may be withheld at its sole discretion) other than minor running repairs or minor maintenance of a routine nature by the Owner, or Owner's Party on a non-paying basis not causing any nuisance or annoyance to any other users of the Company's Marina or premises or any other person residing in the vicinity.
12. Prior written consent may be given or withheld at the Company's sole discretion for work to be carried out on the Company's Marina or premises – but will generally be given in the following circumstances:
  - Where the work to be carried out is work which the Company decides, and states in writing that it cannot by itself or by the use of sub-contractors carry out.
  - Where the Company is satisfied that the whole of the work is remedial and not servicing and is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of her equipment to which the warranty relates.
13. The Company has the right to exercise a general lien upon any Vessel and/or other property of the Owner whilst in or on the Company's Marina or premises until such time as any money due to the Company from the Owner in respect of the Vessel and/or other such property whether on account or otherwise if rental, storage commission, access or berthing charges, work done or otherwise is paid.
14. Notwithstanding and in addition to Condition 23, the Company is irrevocably appointed the agent and attorney of the Owner for the sale or other disposal of any vessel and/or other property of the Owner so long as any money is due from the Owner to the Company and the Company shall be entitled to charge and pay all usual commissions and expenses in connection with such sale or disposal.
15. The Company shall have the right (without prejudice to any other rights in respect of breaches to these conditions by the Owner) to terminate the license granted to the Owner in the following manner in the event of a 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 fourteen days. If the Owner fails to remedy such breach or pay the amount due within fourteen 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 twenty eight days, at the expiration of which the Owner shall remove the vessel and any other property of his from the Company's Marina and premises provided always that there is no money owed to the Company at that date. The owner is liable for all costs, including but not limited to rental, storage, yard charges and management costs as detailed in the license fee and yard charge price list in use at the time if the Owner is in credit then the Company shall refund to the Owner the unexpired portion of the license fee (disregarding any discount given) less ten per cent for administration expenses and loss of profit and subject to a right of set-off in respect of any damage suffered by it and/or other monies owing as a result of the matters giving the Company the right to terminate the license. In the event that moneys are owed to the Company the vessel must remain at the Company's premises - with charges being levied in line with the price list until these are paid at which point the Owner shall remove the vessel from the Company's Marina and premises.
16. When no date of termination has been agreed in writing between the parties the Company or the Owner may terminate the license granted to the Owner by giving the other twenty-eight days notice of such termination, at the expiration of which the Owner shall remove the vessel from the Company's Marina and premises provided always that there is no money owed to the Company at that date. In the event that moneys are owed to the Company the vessel must remain at the Company's premises - with charges being levied in line with the price list until these are paid at which point the Owner shall remove the vessel from the Company's Marina and premises.
17. If the Owner fails to remove the vessel or any other of his property on termination of the license (whether under this Condition or otherwise) the Company shall be entitled
  - To charge the Owner with the rental which would have been payable by the Owner to the Company if the license had not been terminated for the period between termination of the license and removal of the vessel from its Marina and/or premises.
  - At the Owner's risk (save in respect of loss or damage caused by the Company's negligence during such removal) to remove the vessel from its Marina premises and thereupon secure it elsewhere and charge the Owner with all costs arising out of such removal including alternative berthing fees.
18. The Owner understands and agrees that the Company has the right to require the Owner or Owner's Party or anyone of them to leave the Marina immediately if they act recklessly or unreasonably.

19. The Owner, or any other person whilst in the Marina or its premises must report in writing to the Manager within 24 hours any non-minor injury or accident that occurs within the Marina.
20. The Owner agrees that no Vessel stored ashore may be moved, have its cradle adjusted, nor shall any chocks or shores be moved except with the Company's written consent.
21. In all cases where a contract of hire or license to occupy any moorings, Berths, storage space, property or facilities may be lawfully terminated or any other thing may be done by notice, the same shall be deemed to be lawfully served personally on the Owner or sent by registered post or recorded delivery service to the last known address in the United Kingdom of the Owner or to the principal place of business of the Company.
22. Vessels stored at seasonal rates ashore will be launched or put afloat as near to the end of the seasonal period as in the Company's opinion tide, weather conditions and available facilities permit and in such sequence as to avoid moving other vessels for this purpose and also to make the most economical use of the facilities at the Company's disposal. At the owner's request the Company will, if possible, launch his vessel at any suitable tide and weather conditions, but the cost of moving other vessels for this purpose and/of any attendant expenses must be paid for by the Owner. The basis of such charges is available at the owner's request.
23. Any Vessel or other property left at the Company's Marina and premises are subject to the provision of 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 Company 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 property of which the Company is not a bailee are left at the Company's Marina or premises. The above condition is without prejudice to the general condition 14.
24. Any obligation of the Company towards Vessels or property left at its Marina or premises ends upon the expiry or lawful termination of the grant to the owners of facilities in respect of such Vessels or property and the Company accepts no responsibility for loss or damage to any vessels or property left at its Marina or premises without its consent.
25. The Company takes no day to day responsibility for engines, batteries, mooring warps or water ingress unless a separate turnkey maintenance contract has been agreed by both parties and paid for in advance.
26. If in the Company's opinion such be necessary for the safety of the Vessel or for the safety of other Users of the Marina or premises or for their Vessels or for the safety of the Company's Marina, premises, plant and equipment, the Company shall have the right to moor, re-berth, move, board, enter or carry out any emergency work on the vessel and the Company's reasonable charges therefore shall be paid by Owner. A key giving access to the vessel shall be left with the Company.
27. Unless he has the Company's prior consent in writing, the Owner shall not lend or transfer the Berth (this license being personal to the Owner and relating to a particular Vessel and non-assignable) nor shall he use the berth for any other Vessel.
28. Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require, with due consideration for the safety of all other Marina and Marina Premises users and all employees and people under the control or direction of the Company and unless otherwise agreed the necessary warps and fenders shall be provided by the Owner.
29. Nothing in the license shall entitle an owner to the exclusive use of a particular berth, and at any time when the berth is not actually occupied by a vessel the Company shall be free to permit its use by any other Vessel without paying any compensation or giving any discount to the Owner.
30. Berths (including those occupied by vessels on the Company's Marina premises or facilities for servicing, overhauling or repair) shall be licensed for periods from time to time published by the Company at its Marina or premises and charges therefore will be calculated by reference to the Company's published list of charges at the commencement of the license.
31. If charges are specified as advance payment such charges should be paid prior to the commencement of the license, and failure to do so shall result in the charges being recalculated by the Company at the daily rate.
32. In the event of early termination by the Owner of a license which has been subject to advance payment the Company shall not be liable to refund to the owner any portion, whether unexpired or not, of the license payment
33. All Users using any part of the Company's Marina premises or facilities for whatever purpose and whether by invitation or otherwise do so at their own risk.
34. No Vessel when entering or leaving or manoeuvring in the Marina, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Marina. Vessels are at all times subject to speed restrictions and the byelaws of harbour, navigation and other authorities including relevant planning permissions .. Furthermore all vessels must comply with any direction, regulation or designation of the Marina, and/or its Marina Masters given either specifically or generally and in accordance with any reasonable conditions as may be imposed.
35. No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Marina or premises so as to cause any nuisance or annoyance to the Company, to any other users of the Marina 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 the aforesaid. Halyards shall be secured so as not to cause such nuisance or annoyance The Owner should also ensure that the vessel is moored securely.
36. No refuse shall be thrown overboard or left on the pontoons, jetties or car parks or disposed of in any way other than in the receptacles provided by the company or by removal from the Marina and/or Marina Premises. No oil or noxious substances including discharge from vessels' heads and/or holding tanks shall be discharged from vessels whilst moored in the Marina or on the Marina Premises.
37. Dinghies, tenders and rafts shall be stowed aboard a berth is separately provided by the Company. Owners of vessels stored ashore may store one dinghy or tender ashore in the area designated for such purpose by the Company. Dinghies should be clearly marked with the name of the vessel.
38. Owners and their crew are required to park their motor vehicles in the Marina car park or in such position and in such manner as shall from time to time be designated or specifically directed by the Company.
39. No items of boat gear, fittings, equipment, supplies, stores, tools, materials or rubbish shall be left on the pontoons, jetties or car parks.
40. The Owners shall take all necessary precautions against the outbreak of fire in or upon their Vessels and the Owner shall observe all statutory and local regulations relative to fire prevention, which shall be exhibited at the offices of the Company. The Owner shall provide, and maintain at least one fire extinguisher of a government approved BSI standard type and size in or on the Vessel fit for immediate use in case if fire. Owners shall not refuel vessels in the Marina.
41. The Company reserves the right to introduce regulations which relate to the administration of the Company's Marina and premises and which are not inconsistent with these Conditions and to amend such regulations from time to time. 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 rights against Owners for breach of regulations as for a breach of these conditions.
42. The Company shall be entitled to make such additional charge by metering and service charge or otherwise as it may seem reasonable for electricity and other services supplied to or provided for the use of the Owner or his Vessel or property.
43. Vessels berthed may not be used as static houseboats or for permanent residential purpose and must be kept in a mobile and seaworthy condition. The owner shall at all times be responsible for the proper upkeep and safe condition of the vessel its gear and equipment (whether afloat or ashore) and maintain it in good, clean and seaworthy condition and ensure the vessel is able to navigate under its own power at all times. Vessels must be seen to proceed out of the Marina on at least two separate occasions each year. The Owner shall take all steps to be aware of current Health and Safety. Environmental and other legal requirements and shall comply with all reasonable instructions of the Company and/or the manager and/or the Marina Masters in connection with all matters relating to the safe and efficient operation of the Marina.
44. Owners and/or Owner's Party and/or Users with dogs or other animals on board should keep them under control and dogs must be kept on leads whilst walking on pontoons, and Owners and/or Owner's Party and/or Users shall see that any soiling of the pontoons or Marina property by their animals is cleared up by them immediately and not disposed of into the Marina.
45. Motor Caravans Trailers and Tents may not be parked or used anywhere on the Marina premises without the written consent of the Company, boat trailers may only be parked with the written consent of the Company and in the designated area.
46. The Company reserves the right to remove, at the Owners expense, any Vessel from its allocated position, into storage should any fees not be paid within 14 days of the date they fall due.
47. Any Vessel with a LOA exceeding the allocated Berth length and/or exceeding the LOA invoiced under the contract may be moved, at the Owners' expense, to a suitable alternative Berth or into storage at the sole discretion of the Company. LOA is calculated as the maximum length of the vessel including bow sprit bumpkin or other projections if any (above or below the waterline) and shall be rounded up to the nearest meter for berthing calculations and for storage ashore purposes
48. The Owner must keep the outside of the Vessel in reasonable repair and the area around the Vessel clean and tidy.
49. Berths are let for the period specified in the contract. Fees and Electricity service charges cannot be refunded or credited for non-use of berths. Contracts are not transferable.

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