

# TERMS & CONDITIONS

## 1. DEFINITIONS & EXPLANATIONS

Where the following words appear in these and any terms and conditions, they have these meanings:

**In Writing** means by email or letter.

**Company** means F C Mitchell & Sons Ltd, T/A Parkstone Bay Marina or one or more of its Associated Companies.

**A Contract** is deemed in place between the Company and a Customer when: payment is made for an invoice, either in full or in part; a deposit is paid; the arrival of a vessel, its' gear or equipment on the Premises; confirmed booking of a service with the Company.

**Annual Contracts** mean a berthing term that runs from 1<sup>st</sup> April to 31<sup>st</sup> March.

**Seasonal Contracts** mean either a swinging mooring (1<sup>st</sup> April to 30<sup>th</sup> September) or winter storage (1<sup>st</sup> October to 31<sup>st</sup> March).

**Berthing Contract** means the agreement between The Company and The Owner, which is in place on payment of a security deposit or at the time of the vessel, gear or equipment being on Company premises.

**Shorter Term Contracts** refers to ad-hoc, visitors, storage ashore or other berthing at less than 6 months in length.

**Company Premises** means any area of land, sea or moorings owned or leased by F C Mitchell & Sons Ltd or one of its' associated companies.

**Services** means any provision of work by The Company or its' staff as detailed in our price list or that is not included within an already paid for facility.

**Water Toy** refers to jet skis, SUPs, kayaks or any other significant object that requires additional storage.

**Commercial Usage** refers to any operation involving other persons having use of the Vessel in return for value.

## 2. BERTHING CONTRACT

- a. Pontoon and Dry Berthing run from 1<sup>st</sup> April to 31<sup>st</sup> March. When a new Berth Contract is taken part way through the year, this will be invoiced on a pro-rata basis.
- b. Swinging Moorings run from 1<sup>st</sup> April to 30<sup>th</sup> September. When a new Berth Contract is taken after 1<sup>st</sup> July, a 15% discount is given on the price.
- c. Shorter term berths will be invoiced pro-rata, with the berthing term detailed in the Berthing invoice.
- d. Berthing Contracts are subject to the rates in place at the commencement of the berth. Rates are available on request to the marina office and may be updated at any time.
- e. Berths will be invoiced at the Vessel's LOA and this may be measured on arrival of the Vessel and the Berthing Contract amended accordingly.
- f. New Berth Contract will commence on the 1<sup>st</sup> of the month following 30 days after a deposit payment is made, unless otherwise agreed.
- g. All facilities and services are subject to a minimum 7m charge.
- h. All facilities and services are subject to availability.
- i. Vessels on pontoon berthing contracts are entitled to free storage ashore for two weeks, during February and March, to undertake annual maintenance. Lifting and pressure washing charges apply.
- j. Vessels on dry berthing contracts are entitled to an initial lift from transport at the start of the berthing term. Subsequent lifts onto and off transport are chargeable.

## 3. PAYMENT

- a. Berthing contracts, storage and services will be subject to the prices applicable at the date of service or commencement of the berth.
- b. A deposit is required to secure a berth as per the following terms:
  - i. Annual berthing contracts require a £1,000 non-refundable deposit.
  - ii. Seasonal berthing contracts require a £500 non-refundable deposit.
  - iii. For all annual berthing contracts, deposits will be taken automatically by Direct Debit, on 1<sup>st</sup> February each year, unless notice is received as per Clause 5a. Failure to make a deposit payment by this date may result in the berth being re-allocated.
  - iv. For seasonal berthing contracts, a deposit is required one calendar month prior to the commencement of that berthing contract.
  - v. The deposit payment will be designated for a particular berthing option and not for a berth allocation.
  - vi. Deposits are non-refundable if the berth is cancelled, unless at the discretion of the Company.
  - vii. When berths are subsequently paid for in full in advance, the deposit is deductible from the berthing invoice.
  - viii. When berths are paid by Direct Debit instalments, the deposit will be deducted from the balance due.
  - ix. The deposit amount payable may be updated at any time.
  - x. A Direct Debit Mandate must be in place for all berth contracts so that deposit payments can be taken.
- c. Annual Berth Contracts: Customers may choose from two options:
  - i. In full by 15<sup>th</sup> March by BACS transfer.
  - ii. By 8 Direct Debit instalments with the invoice equally divided and due on 1<sup>st</sup> April, 1<sup>st</sup> May, 1<sup>st</sup> June, 1<sup>st</sup> July, 1<sup>st</sup> August, 1<sup>st</sup> September, 1<sup>st</sup> October, 1<sup>st</sup> November.
- d. Seasonal Berth Contracts: Customers may choose from two options:
  - i. In full by the 15<sup>th</sup> March for summer berths or 15<sup>th</sup> September for winter berths.
  - ii. By 4 Direct Debit instalments with the invoice equally divided and due on 1<sup>st</sup> April, 1<sup>st</sup> May, 1<sup>st</sup> June, 1<sup>st</sup> July or 1<sup>st</sup> October, 1<sup>st</sup> November, 1<sup>st</sup> December, 1<sup>st</sup> January.
- e. If a Direct Debit payment fails, The Company may request the payment again. Any failed Direct Debit payments will incur a £25 fee, which will be taken in the next Direct Debit instalment.
- f. Shorter term berths are payable as detailed on the invoice.
- g. Services are payable as detailed on the invoice.
- h. Water Toy invoices are all payable in advance.
- i. All berthing fees are strictly non-refundable unless under the provisions of Clause 5.
- j. Where a customer delays in payment for more than 30 days or withholds more than a proportionate sum against rectification of any alleged defects we reserve the right to charge interest on the outstanding amount at 2% over Barclays Bank Plc base rate, to be calculated monthly.
- k. Any debt collection services that are required to be used to recover outstanding invoices, will be fully recoverable.

## 4. LIABILITY, INDEMNITY AND INSURANCE

- a. The Company shall not be liable for any loss or damage caused by any event or circumstance beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us or any defect in any part of a customer's or third party's vessel); this extends to loss or damage to vessels, gear, equipment or other goods left with us for repair or storage, and harm to persons entering our premises or using any of our facilities or equipment.
- b. Where a Vessel is launched on the Dry Berthing service, the Company is not responsible for ensuring the person using the Vessel is authorised by the Customer. Customers are reminded to use the Dry Berthing Launch App, with the associated password, which should be kept protected. If The Customer requires the password to be changed or is concerned about the security of the Vessel, it is their responsibility to make the Company aware.
- c. The Company shall take all 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. Subject to this and in the absence of any negligence or other breach of duty by us, vessels, gear, equipment or other goods are left with us at the customer's own risk and customers should ensure that their own personal and property insurance covers such risks.
- d. The Company shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we shall 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 another breach of duty on our part.
- e. 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.
- f. The Customer is required to maintain adequate insurance including third party liability cover, for not less than £2,000,000, and cover against wreck removal and salvage. The Customer shall be obliged to make a copy of the Insurance Policy available to The Company within 7 days of a request to do so.
- g. Any damage caused by the Company to a vessel should be notified to the Marina Office as soon as possible. No liability can be admitted by any employee other than the Marina Manager or a Director of the Company. A maximum repair contribution of £250 plus VAT will be made towards any admitted liability of damage to a vessel.

## 5. RENEWAL, TERMINATION OF BERTHING CONTRACT AND REFUND POLICY

- a. Annual Berth Contracts will be automatically renewed unless notice is received by The Company from The Customer in writing, or The Customer is advised by the Company, before the last day in January.
- b. For annual berthing contracts, a new deposit will be taken automatically by Direct Debit on the 15<sup>th</sup> February, unless notice is received as per Clause 5.a.
- c. Summer Berth Contracts will be automatically terminated at the 30<sup>th</sup> September. The customer is requested to inform the marina office of their future plans with as much notice as possible.
- d. Winter Berth Contracts will be automatically terminated at the 31<sup>st</sup> March. Boats remaining ashore after this date will be subject to storage invoices at the weekly rate. The customer is requested to inform the marina office of their future plans with as much notice as possible.
- e. Shorter Term Berth Contracts will automatically renew on the same basis as previously invoiced unless otherwise notified by The Company.
- f. Boats remaining at Parkstone Bay after the end of the berthing term will be subject to charges, as per the rates in force at that point.
- g. All outstanding monies must be paid by The Customer to The Company before the end of the berthing term. Where a debt remains, we reserve the right to withhold our launching service until such point at the account is cleared. Storage charges will continue to be applicable where the boat is held ashore after the end of the berthing term, until the debt is cleared.
- h. No refunds will be given where berths are terminated part way through a contract unless at the discretion of The Company.
- i. Berthing Contracts are non-transferable between owners, unless agreed in advance by The Company. Any change or planned change in ownership should be notified to The Company as soon as possible.
- j. Berthing Contracts are non-transferable between vessels, unless agreed in advance by The Company. Any change or planned change in vessel should be notified to the Company as soon as possible.

## 6. TERMINATION BY THE COMPANY

- a. The Company shall have the right (without prejudice to any other right in respect of breaches to the terms of this Contract by The Customer) to terminate the Berthing Contract or to not renew the Contract.
- b. Notice will be given to the Customer before the end of the berthing term if The Company is not renewing the Contract.

## 7. RIGHTS OF SALE AND DETENTION

- a. 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:
  - i. 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 authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
  - ii. The Company's obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation;
  - iii. The place for delivery and collection of goods shall be at the Company's Premises unless agreed otherwise.
- b. Maritime Law entitles the Company in certain other circumstances or 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.
- c. We reserve a general right ("a general lien") to detain and hold onto a customer's vessel or other property pending payment by the customer of any sums actually 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 actual payment (or provision of security) by the customer and removal of 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 or with the British Marine Federation, 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.

## 8. BOATS FOR SALE

- a. In the event that the Customer wishes to sell their Vessel, while such Vessel occupies a berth or storage at Parkstone Bay, the Owner shall notify the Company in writing or by email.
- b. The Owner may instruct a broker of their own choice. Such brokers shall be reputable and comply with the British Boating Industry Code of Practice for the Sale of Used Boats.
- c. The Company has the right to refuse entry to Parkstone Bay Marina or its' moorings to any broker that they believe does not adhere to these pre-requisites and not allow the broker to list the Vessel for sale.
- d. The Company reserves the right to charge 1.5% commission on boats sold privately or with a broker other than Parkstone Bay Yachts Ltd, within Parkstone Bay Marina.
- e. The Owner shall not be permitted to display a "For Sale" notice on the Vessel, other than that of Parkstone Bay Yachts, whilst such Vessel occupies a berth or mooring of the Company.

## 9. COMMERCIAL USAGE

- a. Customers are not permitted to operate commercially within Parkstone Bay Marina or from any of our berthing facilities.
- b. If a Vessel is being operated as part of a group venture or charity, this should be notified to The Company and special rules may be applicable to the Berthing Contract.

## 10. BERTH ALLOCATION AND USE

- a. It may be required for The Company to change the layout of berths and moorings to fulfil its' varying needs and obligations. Berth allocations are, therefore, subject to change and Berthing Contracts are not for a particular berth.
- b. Where a berth is changed, The Company will endeavour to give notice in advance to the Customer, but operational requirements mean it may not always be possible to do so.
- c. Berths may be temporarily changed to allow the Company to undertake required works and maintenance to the site and facilities.
- d. The Company may have the use of the Berth for any reason, including the berthing of another vessel, when it is left vacant by The Owner.
- e. It is the responsibility of the Owner to ensure their Vessel is berthed and secured safely and appropriately, using adequate fenders and warps, provided by the Owner.
- f. Vessels should be secured within their berth allocation, without over-hanging pontoons or interfering with walkways and any gear or equipment should be kept on or inside the Vessel.
- g. It is the responsibility of the Owner to provide a mooring strop suitable for their Vessel and ensure this is affixed securely and maintained in good condition.
- h. We advise that Owners make regular checks on their vessels, gear and equipment, especially during inclement weather, to ensure they are secured safely and adequately fendered. Although The Company keeps a general watch over the premises, Vessels remain the Customer's responsibility at all times, and The Company are not liable for damage caused to any vessel, equipment or gear during times of inclement weather.
- i. The Company does not permit Owners to habit permanently on board their Vessels at any time.
- j. It is the responsibility of the Owner to ensure vessels are prepared, seaworthy and watertight, with the bung in place, prior to requesting a launch.
- k. The Company does not accept liability for any damage caused to vessels when hauling and launching, in areas under the waterline or in restricted view.
- l. The company can not be held liable for any damage caused by other users of the premises.

## 11. VESSEL MOVEMENTS

- a. The Company reserves the right to move any vessel, gear, equipment or other goods at any time for reasons of safety, security or to assist with our operations.
- b. Where the Company or its' staff move and secure a Vessel on behalf of The Owner, it is the responsibility of The Owner to check on such Vessel to ensure this has been done as per their requirements.

## 12. USE OF CAR PARK

- a. The Customer may park one car per vessel in the marina car park, solely for the purpose of gaining temporary access to the Vessel.
- b. No caravans, tents or mobile homes are permitted in the car parks or elsewhere on the property belonging to The Company.
- c. Upon payment of a Berthing Contract, the Owner will be provided with one car park pass. This should be displayed prominently in the window of the Vehicle. Failure to display a car park pass may result in the vehicle being clamped and a release fee due.
- d. Boat trailers are not permitted to be left in the Car Park or other area of the premises owned by The Company. Any trailer left without authorisation will be subject to storage charges at the rate currently in force.
- e. Customers are reminded that the Road Traffic Act is in force on Company premises and cars should be manoeuvred safely and slowly at all times.

## 13. ELECTRICITY PROVISION

- a. Where electricity is available to berths, permission must first be given by The Company to obtain access.
- b. An approved meter cable must be purchased from The Company and always used when Vessels are connected to electricity. The Company has the right to refuse the use of alternative meter cables and reserves the right to disconnect any unauthorised or unmetered connections.
- c. Electricity invoices will be raised at least quarterly, detailing the units used during the period and charged at current rates. A standing charge will also be applicable to all electricity invoices.
- d. The Company reserves the right to disconnect Vessels if it is believed they pose a Health & Safety risk or are causing a fault to the electricity circuits. Although The Company will do its' best to inform the Customer of a disconnection, it may not always be possible to do so.
- e. It remains the Customer's responsibility to ensure the Vessel is connected adequately and The Company accepts no responsibility for loss or damage to the Vessel, equipment or gear if the connection is unplugged for any reason. Customers have the right to secure the connection but it The Company reserves the right to break such security if it necessary to do so as per Clause 3.d

## 14. KEY POLICY

- a. Customers may leave a set of Vessel keys with the Company at their discretion, subject to the Key Policy currently in place. A copy of this can be requested from the Marina Office.
- b. The Company has the right to retract this facility at any time.
- c. A permission form must be completed by the Customer, indicating the persons or subcontractors that may sign the keys out.
- d. The Company accepts no responsibility for the loss of keys and does not guarantee the hours at which keys will be available.
- e. Once keys have been 'signed out' by a permitted person, it is not The Company's responsibility to subsequently ensure the keys are returned.

## 15. SUBCONTRACTORS

- a. Any outside contractor entering the Premises to work on a vessel, gear or equipment is bound by the Subcontractors' Policy currently in place.
- b. A daily charge is applicable to all Subcontractors at the rate currently in force.
- c. The Customer has the right to employ a subcontractor to work on their Vessel, gear and equipment but The Company has the right to refuse entry to any contractor that they believe does not operate within any relevant policies currently in place.
- d. Where the Company holds keys for a vessel, the Customer must notify the Company in writing to give permission for keys to be signed out to Subcontractors. The Company accepts no responsibility for the loss of keys once signed out by a Subcontractor and is not required to ensure the return of the keys.

## 16. HEALTH, SAFETY AND THE ENVIRONMENT

- a. The Company publishes a Health & Safety Policy and Environmental Policy at the beginning of each year, which may be updated from time to time.
- b. Customers are reminded that when taking a Berthing Contract or when using a facility or operation of the Company, they are bound by the guidelines of these policies at all times.
- c. If it is believed that the actions of the Owner, its crew or subcontractors are not within the guidelines of either policy, The Company reserves the right to terminate the Berthing Contract with immediate effect or request for the cessation of such activities.
- d. Particular notice is given to the use of the Parkstone Bay access Channel, which has a maximum speed limit of 4 knots and Customers are politely reminded to ensure that wash is kept to a minimum. The Company has the right to terminate the Berthing Contract, without notice, of any Customer that is seen to be regularly causing a dangerous wash in this Channel or within Parkstone Bay.
- e. No noisy, noxious or objectionable engines, radio or other apparatus or machinery shall be operated within the premises of The Company so as to cause any nuisance or annoyance to any other users of Parkstone Bay per persons residing in the vicinity of such premises.
- f. All refuse shall be disposed of appropriately in the Refuse Area provided by the Company or removed from the premises. Any extraordinary refuse arising from maintenance or repair work to a Vessel, its gear or equipment should be removed from the premises and disposed of separately.
- g. Customers are reminded that they are bound to follow the byelaws of Poole Harbour Commissioners at all times whilst operating and manoeuvring their vessels.