

## **Port Waterhouse Terms and Conditions**

These Terms and Conditions are sent to all owners at the time of invoicing. They may however be updated during the season. For the most up-to-date T's & C's please check our website: [www.portwaterhouse.co.uk](http://www.portwaterhouse.co.uk).

### **1. APPLICATION AND DEFINITIONS**

- 1.1. These Conditions (which include the Regulations) apply to all contracts between the Company and an Owner in relation to the use of the facilities by an Owner and the Owner acknowledges that they have been made aware of these conditions either prior to submitting an Email Booking Application, or the acceptance by the Company of a telephone booking.
- 1.2. Where the following words appear in these Conditions they shall have these meanings unless the context otherwise requires or admits:-
  - 1.2.1. **Mooring** means the space on water allocated to the Owner by the Company for the Vessel during the term of the License.
  - 1.2.2. **Charge** means the charges for a mooring as set out on the Company's website and confirmed by the Company prior to accepting an Owners booking request.
  - 1.2.3. **Contract** means the contract between the Owner and the Company for the provision to the Owner by the Company of a mooring at the facility incorporating these Conditions.
  - 1.2.4. **Company** means the Port Waterhouse partnership to whom the application for a mooring is made.
  - 1.2.5. **Email Booking Application** means an email from an Owner to the Company requesting a mooring, subject to these Conditions, and including the prescribed information required to be included in the application as set out on the Company's website.
  - 1.2.6. **License** means the license granted by the Company to the Owner pursuant to the Contract.
  - 1.2.7. **Facility** means the facilities located at Port Waterhouse comprising swinging moorings, pontoons, boat shed, and related equipment located there for mooring or berthing a vessel.
  - 1.2.8. **Notices** means all publicly displayed signs, notices and information at the premises relating to the facility and its use from time to time.
  - 1.2.9. **Owner** includes any owner, charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.
  - 1.2.10. **Premises** means all the land, foreshore, adjacent water and buildings occupied by or under the control of the Company where the facility is located and which relate to the facilities, including pontoons, boatshed, slipways and car parking areas.
  - 1.2.11. **Vessel** means any form of craft, canoe, SUP, boat, ship, yacht, dinghy, multi-hull, or other marine structure which is in the care and control of the Owner.
  - 1.2.12. **Pontoon** means a moored and decked floating structure providing landing or mooring facilities and any related access gangways or bridges to the shore.

### **2. CONTRACT FORMATION**

- 2.1. The Contract shall be formed when the Company accepts the booking by confirming by telephone or email the availability of a mooring on the requested or agreed dates and takes payment from the Owner.
- 2.2. Prior arrival at the facilities the Owner shall pay the invoice for the facilities required. A refusal or failure to do so may mean the mooring is not available.

### **3. THE LICENSE AND PAYMENT**

- 3.1. Moorings at the facility shall be licensed at the rates of charge published by the Company on its website or on an email at the time a booking is accepted.
- 3.2. Unless expressly agreed in writing by the Company in advance, a License shall commence on the first day of the period of the License and expire on the last day of the License. For a seasonal mooring these dates are 1st April to 31st October.
- 3.3. Payment of the charges by the Owner shall be made in full by BACS transfer or by cheque in accordance with clause 3.1 and any failure to make payment of the charges in full before arrival may mean the mooring is not available. Payments shall be non-refundable.
- 3.4. The Owner shall remove the Vessel immediately on expiry or termination of the License.

### **4. LIABILITY, INDEMNITY AND INSURANCE**

- 4.1. The Company shall not be liable for its non-performance or any loss or 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); 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 and/or using any facilities or equipment. Nothing in the Contract shall exclude the Company's liability for death or personal injury caused by its negligence or any other liability the exclusion of which is prohibited by law.
- 4.2. The Company shall take all reasonable steps to maintain security at the Premises and to maintain the facilities at the Premises and in the Facility 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.
- 4.3. 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 to the Vessel or property concerned unless it shall have been expressly engaged to do so by the Owner on written 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).

- 4.4. 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, employer's liability cover to at least the statutory minimum. The Owner may be obliged to produce evidence to the Company of such insurance on arrival at the facility and Owners warrant represent and undertake to the Company that they have or will for the duration of the License period have in place the insurance (against the risks and in the amounts) described in this clause and agree to indemnify and keep indemnified the Company at all times against all losses, liabilities, costs expenses, claims and damage or any kind it may suffer or incur as a result of a breach of this clause by the Owner.

## **5. CHANGE OF DETAILS**

- 5.1. The Owner must notify the Company in writing of the details of any change of names of the Vessel or change of email address, postal address or telephone number of the Owner.

## **6. MOORING ALLOCATION**

- 6.1. The Company shall retain absolute control of mooring allocation within the Facility. Accordingly, the Owner shall not be entitled to the exclusive use of any particular mooring but shall use such mooring as is from time to time allocated to them by the Company before arrival or during the period of the License.

## **7. PERSONAL NATURE OF THE LICENSE**

- 7.1. This Contract including the related License is personal to the Owner and relates to the Vessel described in the Email Booking Application or by telephone when the Owner makes a booking by telephone. It may not be transferred or assigned to a new Owner or to a different Vessel, either temporarily or permanently, without the express prior written consent of the Company.
- 7.2. Any agreement for the sale, transfer or mortgage of a Vessel which is to complete during the License period must be notified to the Company in writing on booking a mooring and in any event immediately including the name, address and telephone numbers of the purchaser, transferee or mortgagee, as the case may be.

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

- 8.1. The Company may have the use of the mooring when it is left vacant by the Owner and may grant a License in respect of it to another owner but subject to providing the Owner with a suitable alternative mooring for their Vessel.

## **9. TERMINATION**

- 9.1. The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of the Contract by the Owner) to terminate the Contract immediately without cause or in the event of any breach by the Owner of this Contract.
- 9.2. Where the Owner is in breach of the Contract, then having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Company and/or of the Company's customers and the threat to the health, safety or welfare of any other person or property the

Company may serve notice on the Owner requiring them to remove the Vessel from the Facility immediately.

- 9.3. If the Owner fails to immediately remove the Vessel on termination of this Contract or under clause 9.2 above whether under this Condition or otherwise, the Company shall be entitled:-
  - 9.3.1. to charge the Owner pro-rata at the Company's weekly rate each day between termination of this Contract and the actual date of removal of the Vessel from the Facility; and/or
  - 9.3.2. 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 Facility and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.
- 9.4. Any notice of termination under the Contract shall, in the case of the Owner, be served personally on the Owner or by being left on the Vessel (if at the Facility) or sent by registered post or recorded delivery service to the Owner's last known address or sent by email to the Owner's email address provided and in the case of the Company shall be served at its principal place of business or registered office.

## **10. RIGHT OF DETENTION**

- 10.1. The Company reserves a general right to detain and hold onto the Owner's Vessel or other property pending payment by the Owner of any sums due to the Company. If the Contract 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 weekly rate for visitors for each day between termination or expiry of the Contract and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Facility. 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.

## **11. VESSEL MOVEMENTS**

- 11.1. The Company 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 Facility and Premises.
- 11.2. 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 warps and fenders for the Vessel shall be provided by the Owner.
- 11.3. No vessel, when entering or leaving or maneuvering in the Facility, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Facility.
- 11.4. 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 Salcombe Harbour authority, 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 Facility 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 this Contract is with an Owner whose Vessel is operated for hire or reward in the course of trading, special conditions will apply to this Contract.

### **13. STORAGE**

- 13.1. Dinghies, tenders and rafts shall be stowed in the space as allocated by the Company.

### **14. FACILITY**

- 14.1. The Owner shall at all times observe and comply with the Regulations, insofar as they apply to the Owner, and all Notices.
- 14.2. Port Waterhouse will only recognise one named owner. The named owner is responsible for ensuring that all these conditions are complied with at all times.
- 14.3. The moorings and the boat shed are available only from 1st April through to 31st October inclusive. The moorings and premises are not to be used outside of these dates.
- 14.4. Any mooring or dinghy space which is unused for a season without explanation may result in the mooring or dinghy space being offered to someone else for the following season.
- 14.5. Change of ownership does not constitute a right to a mooring. This must be negotiated and will depend on the existing waiting list.
- 14.6. At the start of the season the owner must contact the company at least three days before arrival to establish which mooring and dinghy storage space has been allocated for the current season.
- 14.7. A mooring and dinghy storage space is allocated for a season only. There is no right to a particular mooring number.
- 14.8. Harbour Dues and Insurance are the responsibility of the owner.
- 14.9. Security is everyone's responsibility. Please take time to get to know your fellow owners. Please report any suspicious activity or unacceptable behaviour to the company.
- 14.10. If you set off the alarm system, please notify the management by phone immediately.
- 14.11. If anyone other than the owner is to use the owners craft (including contractors) please inform the management in advance.
- 14.12. The owner is responsible for the conduct of their family, friends, guests and contractors while they are at Port Waterhouse.
- 14.13. Owners allocated a space inside the boathouse may store; one small inflatable (without wheels), one pump, one set of oars, one outboard of 4hp (or less) and up to one gallon of petrol in an appropriate container. By prior commercial arrangement only it may be possible to store additional dinghies and equipment.
- 14.14. All boats and equipment must be permanently marked with the name of the owner or boat in an easily visible place before being taken onto the premises.
- 14.15. No owner may use another owner's equipment without the express permission of that owner.
- 14.16. Access to the boathouse is via a keycode. The owner is responsible for ensuring that all doors to the boat shed are secure before leaving the premises.

- 14.17. The keycode must not be divulged to anyone other than guests of the owner.
- 14.18. The owner is responsible for the safe mooring of their boats. The Owner must ensure the safety of not only their boat, but other boats moored nearby.
- 14.19. The mooring allocated is for the assigned boat only. Moorings may not be used by guests of the owner to moor a vessel other than that which is specified in the license agreement without prior consent of the management.
- 14.20. Boats should be moored by their own lines (or chain) to the top half of the swivel of the mooring, so that the swivel is just below the surface and free to rotate.
- 14.21. Buoy loops and buoy ropes must not be used for mooring. When moored the buoy should be clear of the water and the buoy rope must be slack.
- 14.22. Yard dinghies are for the use of those people who do not have their own dinghies. They should only be used to fetch a boat and then be immediately returned.
- 14.23. Running moorings are to be pulled out and tied after use. Care should be taken to ensure that the lines are not twisted or wrapped.
- 14.24. Any track to the foreshore is for pedestrian use only.
- 14.25. Parking is permitted only by display of a current permit provided by the management. The permit must be on display at all times. Replacement permits may be issued at the discretion of the management for a small charge.
- 14.26. A parking permit allows one vehicle to park in the customer parking area or the public car park (if it is open). Parking permits are transferrable between vehicles. Additional vehicles, for example those of owners guests, are chargeable at £5 per day or part thereof payable to the box in the car park field.
- 14.27. Please park considerately, i.e. diagonally under the hedge in such a way as to allow others to pass and park.
- 14.28. Please do not leave trailers parked except while you launch. Storage for trailers may be negotiated with the management under a separate commercial agreement.
- 14.29. No refuse shall be thrown overboard or left on the pontoons, or on any part of the Premises including the water around the premises, or disposed of in any way other than by proper removal by the Owner from the Facility and Premises. This includes dog waste, cigarette butts, drinks containers and general litter.
- 14.30. A basic first aid kit is available in the boat shed. If it is used, please notify the management immediately.
- 14.31. Any boat exceeding the harbour speed limits will be reported to the Harbour Master.
- 14.32. A bucket or equivalent guard must be placed to cover the propeller and skeg of any outboard on moored boats both on the pontoon and on swinging moorings.
- 14.33. Where fuel is required to be transferred or stored in portable containers, the Owner shall only use containers which comply with all relevant safety standards and shall fully comply with best practice and all relevant safety guidance and recommendations in relation to the use and storage of such fuel and the Company reserves the right to refuse the use of any container deemed unfit for the purpose or not in compliance with relevant safety standards.
- 14.34. Licensees and their invitees who bring pets to the Facility shall keep them under the strictest control whilst on or outside the Vessel in order not to cause nuisance to other clients or to cause damage to the Facility. Owners with dogs must clean up after their dogs or those of their invitees. Dogs must be kept on a lead at all times. If the Owner fails to comply with this clause

may be asked to remove the pets from the Facility with immediate effect and the Company's decision will be final.

## **15. WORK ON THE VESSEL**

- 15.1. No work shall be done on the Vessel, gear, equipment or other goods in the Facilities or on the Premises without the Company's prior consent other than minor running repairs or minor maintenance of a routine nature by the Owner, their regular crew or members of their family 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. HEALTH, SAFETY AND THE ENVIRONMENT**

- 16.1. The Owner, their crew, members of their 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 Facility or on the Premises as soon as possible after they occur.
- 16.2. No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Facility or Premises so as to cause any nuisance or annoyance to any other users of the Facility or Premises or to any person residing in the vicinity and the Owner undertakes for himself, their 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.
- 16.3. The Owner, their crews and invitees will at all times exercise respect for the peaceful enjoyment of other Facility users and customers. Noise and disturbance from the Vessel must be kept at a reasonable level such that it does not inconvenience or otherwise annoy others.
- 16.4. The Owner shall at all times navigate and control their Vessel in a seamanlike manner so as to cause no danger or inconvenience to any other person or boat. All vessels shall proceed at a speed and in such a manner which is safe in relation to the prevailing conditions and shall at all times comply with speed limits set by the Company or specified by the Salcombe Harbour Authority in the Regulations.
- 16.5. The Owner, their crew and invitees will ensure that Pontoons are kept clear for the safe use of others and nothing shall be affixed to the Pontoons by the Owner or their representatives.
- 16.6. Vessels will be moored in a seamanlike manner. Any warps, fenders or other mooring devices must be capable of securing the vessel in storms, strong currents and gale force winds. Any warps, fenders and other mooring devices which in the opinion of the Company prejudice the safety of the vessel, other vessels in the Facility, persons or the structures of the Facility may be replaced by the Company and charged to the account of the Owner.
- 16.7. Vessels will only be accepted into the Facility that are in a seaworthy condition and maintained in good, safe and serviceable order. Vessels should at all times be kept in a clean and tidy condition and in good repair such that they do not reflect unfavourably on the appearance of the Facility and the Company's decision shall be final.
- 16.8. The Owner shall ensure no dangerous, inflammable, poisonous or noxious substance, oil, petrol, fuel, paint or contaminated bilge water or effluent are discharged or allowed to escape into the Facility from their Vessel or because of their acts or omissions or those of their crew or visitors.
- 16.9. For the safety and enjoyment of owners, equipment and the environment, Port Waterhouse is a strictly no-smoking facility. Owners and their guests are

requested to refrain from smoking whilst using the Port Waterhouse facilities including the car park, boathouse and pontoons.

## 17. **GENERAL**

- 17.1. The information which the Owner provides to the Company in relation to the use of the Facility will be processed by the Company, which is the data controller for the purposes of the Data Protection Act 1998. The personal data that the Owner provides will be used in order to deal with the administration of the Contract and the provision of the mooring to the Owner. The Owner's details may also be retained for statistical purposes and to support staff training. The Company will not disclose the personal information relating to an Owner to any third party except where required to do so by law or with the consent of the Owner.
- 17.2. A person other than the Company or an Owner shall have no rights to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999 but this shall not affect any right or remedy available to any person apart from under that Act.
- 17.3. The failure by the Company to exercise or delay in exercising any right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies that party may otherwise have and no single or partial exercise of any right or remedy under the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.