

Withybed Moorings of Alvechurch.

C/o Coopers Hill Farm

Alvechurch

B48 7BX

TERMS AND CONDITIONS

Definitions

1. Throughout the following terms and conditions:

'Boat Safety Certificate' means the certificate issued by the British Safety Scheme.

'Boat Safety Scheme' means the public safety initiative owned by the Canal and River Trust and the Environment Agency.

'CRT' means the Canal and River Trust.

'Environment Agency' means the executive non-departmental public body sponsored by the Department for Environment, Food & Rural Affairs.

'Force Majeure' means any event or circumstance (whether arising from natural causes, human agency or otherwise) beyond the control of the Licensor including extreme weather conditions, riots, civil commotion, aircraft, fire, breakdown or war

'Guest' or 'Guests' shall refer to any charterer, agent, crew, guest or sub-contractor associated with the Moorer for business or pleasure.

'Health and Safety' means regulations and procedures intended to prevent accident or injury on the Premises.

'Licence' means the permission granted to the Moorer by the Licensor to use the Premises as stipulated within these Terms and Conditions for the time agreed between the Licensor and Moorer.

'the Licensor' shall refer to Withybed Moorings Limited;

'The Moorer' shall refer to the person, apart from the Licensor, in current and lawful control of the Vessel or vehicle.

'Marina' means the harbour at Coopers Hill Farm, Coopers Hill, Alvechurch, Worcestershire, B48 7BX whereby the Vessels can be docked.

'Premises' means all areas shown on the site plan at Schedule 2.

'Property' shall refer to the Marina, Premises, adjoining land, or other property belonging to the Licensor.

'Terms and Conditions' means this document together with the attached schedules.

'Vessel' means the boat of the Moorer.

Basis of Contract

- 1) By entering into this agreement, the Moorer confirms the suitability of the berth allocated to the Vessel and the structures, facilities, and the gear of the Marina or Premises.
- 2) Under no circumstances shall any part of the Licensor's Property or any Vessel or vehicle situated there be used by the Moorer or their Guest for any commercial purposes without gaining prior written consent from the Licensor.
- 3) All Vessels and vehicles in or on the Licensor's Marina or Premises may be moved by the Licensor to any other part of the same Marina or Premises without notice.
- 4) The Moorer is fully responsible for making their Guests aware of these terms and conditions.
- 5) Water levels are not guaranteed by the Licensor and it is the Moorer's responsibility to ensure the Vessel is secured in such a manner as to cope with fluctuations in water level.

- 6) The Marina facilities are provided for the Moorers and the Vessel's occupants only, unless otherwise agreed by the management.
- 7) The Moorer shall, and shall procure that their Guests shall, abide by the Site Rules contained in Schedule 1 at all times
- 8) The physical layout of the Marina, and the varying needs and obligations of the Licensor and its customers, requires the Licensor to retain absolute control of berth allocation within the Marina. Accordingly the Moorer 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 them by the Licensor.
- 9) If in the Licensor'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 Licensor's Marina, Premises, plant or equipment, the Licensor 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 Licensor or those for whom the Licensor is responsible, the Licensor's reasonable charges therefore shall be paid by the Moorer.

Licence & Insurance

- 10) Vessels must display a valid CRT licence and hold a current Boat Safety Certificate or equivalent documentation.
- 11) All berths, irrespective of the condition of the occupying Vessel, shall be licensed for the period agreed upon between the Licensor and the Moorer. License (mooring) fees will be calculated by referring to the Licensor's most up to date published list of charges. All prices are subject to change without prior notice.
- 12) The Moorer's Vessel, gear, equipment or goods are present at the Moorer's own risk and it is the Moorer's responsibility to ensure they have appropriate insurance against all relevant risks. The Moorer shall maintain third party insurance in respect of them self and each of their Vessels, in a sum of not less than £2,000,000 in respect of each accident or damage and in respect of each Vessel. Such insurance shall be effected and maintained in an insurance office of repute and the Moorer shall produce the policy or policies relating thereto to the Licensor on signing of the Terms and Conditions. Any damage to the Licensor's property by Vessels or occupiers will be repaired and costs will be recovered from the Moorer or the Moorer's insurance.

Fees & Service Charge

- 13) Mooring fees are to be paid in advance. The Moorer shall pay fees in full upon being issued an invoice by the Licensor. Late payment of fees or failed Direct Debit payments or failed BACS payments or dishonoured cheques issued by the Moorer will incur admin charges of £30 per day. Any authorised mooring fee refunds will be subject to a 10% admin fee.
- 14) A non-refundable service charge, as detailed in the mooring fees documentation, is to be paid by the Moorer at the commencement of a Licence. This fee will be subject to change without prior notice.
- 15) The service charge allows the Moorer, or Guest, to use the shower and toilet facilities, the wi-fi, and the waste disposal facilities for a period of 4 days out of a 7-day period at the Vessel, berth, Marina or Premises. If the period is exceeded, the service charge is subject to a weekly high usage rate as set out in the Licensor's published fees.

Sale of the Vessel

- 16) Within seven days of any sale, transfer or mortgage of any Vessel which is subject to a current Licence granted to the Moorer by the Licensor subject to these conditions, the Moorer shall notify the Licensor of the name and address of the purchaser, transferee or mortgagee as the case may be. The Moorer must also notify the Licensor immediately in writing of any change in the name of the Vessel or a change in the address, telephone number, email or other personal details of the Moorer.
- 17) Any boat which is moored at the Marina, and is subsequently sold, relinquishes their mooring on the date of sale. The new Moorer is then responsible for completing and securing a new mooring therein.

Liability

- 18) The Licensor shall not be liable for any Force Majeure; 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 Marina and/or using any facilities or equipment.
- 19) The Licensor 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 Moorer or others claiming through the Moorer except to the extent that such loss, theft or damage may be caused by the negligence or wilful act of the Licensor or those for whom the Licensor is responsible.
- 20) The Moorer shall indemnify the Licensor against all loss, damage, costs, claims or proceedings incurred by, or instituted against the Licensor or its servants or agents which may be caused by the Moorer's Vessel or vehicle or by the Moorer or their Guests except to the extent that such loss, damage, costs, claims or proceedings may be caused by the negligence or wilful act of the Licensor or those for whom it is responsible.
- 21) All persons using any part of the Marina for whatever purpose and whether by invitation or otherwise do so at their own risk unless any injury or damage to person or property sustained within the Marina was caused by or resulted from the Licensor's negligence or deliberate act of those for whom the Licensor is responsible.
- 22) Without prejudice the Licensor will not be liable to the Moorer in the event of a temporary failure of any of the facilities and/or services at the Marina due to a reason not within the Licensor's control, but agrees to use its reasonable endeavours to ensure that the affected services and/or facilities are repaired/restored as soon as reasonably possible.

Regulations Affecting Your Cancellation Rights

- 23) The Consumer Contracts (Information, Cancellation and Additional Charges) regulations 2013:
 - 23.1 **If we have not met you either in person** (because, for example, instructions and signing of the contract documentation is taking place by telephone/mail, e mail or on-line – ie: by way of a “distance” contract) **or we have taken instructions and a contract has been concluded away from our business premises** (because, for example, we have met with you at home - ie: by way of an “off-premises” contract) and the contract was entered into on or after 14 June 2014, you have the right to cancel this contract within 14 calendar days of entering into the contract without giving any reason.
 - 23.2 The cancellation period will expire after 14 calendar days, starting from the day of the conclusion of the contract.
 - 23.3 To exercise your right to cancel, you must inform the Licensor of your decision to cancel this contract by a clear statement (eg: a letter sent by post, or e mail). To meet the cancellation deadline, you must send your communication concerning your exercise of the right to cancel before the cancellation period has expired.
 - 23.4 Should you require the mooring to be commenced within the 14 calendar day cancellation period, you must provide your agreement to that in writing, by e mail or post to enable us to do so.
 - 23.5 Where you have provided your consent for the mooring to commence within the 14 calendar day cancellation period and you later exercise your right to terminate, you will be liable for any fees incurred up to the point of cancellation. Unless you make an express request for the mooring to commence within the 14 day period (i.e. by provide your agreement to that in writing, by e mail or post to enable us to do so), you will not be able to moor during that period.

Termination

- 24) The agreement between the Licensor and the Moorer may be terminated by either party on 3 months written notification. Upon notice, the Licensor shall prepare a final account of all sums owed by the Moorer in respect of services or facilities used up to the actual date of departure of the Vessel
- 25) The Licensor has the right to exercise a general lien upon any Vessel and/or other property of the Moorer whilst in or on the Property until such time as any money due to the Licensor in respect of the Vessel and/or other such property, whether on account of rental, storage, commission, access or berthing charges, work done or otherwise shall be paid.
- 26) The Licensor shall have the right (without prejudice to any other rights in respect of breaches of these conditions by the Moorer) to terminate the Licence granted to the Moorer in the following manner in the event

of any breach by the Moorer of these conditions or of any failure by the Moorer to make any payment due to the Licensor:

1. If the breach is capable of remedy or the Moorer has failed to make any such payment the Licensor may serve notice on the Moorer specifying the breach or the failure to pay and requiring them to remedy the breach or pay the amount due within 14 days.
 2. If the Moorer fails to remedy such breach or pay the amount due within 14 days, or if the breach is not capable of remedy, the Licensor may serve notice on the Moorer specifying the breach or failure to pay (when not already specified) and requiring them to remove the Vessel within 7 days, at the expiration of which the Moorer shall pay any amounts due together with any charges and remove the Vessel and any other property of theirs from the Licensor's Property.
- 27) In the event of such termination as aforesaid the Licensor shall refund to the Moorer the unexpired portion of the licence fee being the total fee paid less any charges at the appropriate rate for the expired portion.
- 28) When no date of termination has been agreed in writing between the parties, the Moorer may terminate the Licence by giving the Licensor 3 months' notice of such termination, at the expiration of which the Moorer shall remove the Vessel and any other property of theirs from the Licensor's Property.
- 29) In the circumstances set out in clause 28 above, the Moorer shall not be entitled to a refund of any monies paid under the terms of this Licence. If the Moorer fails to remove the Vessel and any other property on termination of the Licence (whether under this condition or otherwise) the Licensor shall be entitled to:-
1. Charge the Moorer with the rental which would have been payable by the Moorer to the Licensor if the Licence had not been terminated for the period between termination of the Licence; and
 2. Remove the Vessel and any other property from the Marina, (which will bear the Moorer's risk save in respect of loss or damage by the Licensor's negligence during such removal) and thereupon secure it elsewhere and charge the Moorer with all costs arising out of such removal including alternative berthing fees.
- 30) In all cases where a contract of hire or licence to occupy any moorings, berth, storage space, property or facilities may be lawfully terminated by notice, the notice shall be deemed to be lawfully served if served personally on the Moorer or sent by "special delivery" or "signed for" service to the last known address in the United Kingdom of the Moorer or to the principal place of business of the Licensor.
- 31) Any Vessels or other goods left at the Licensor's Property are subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on the Licensor as baillee a right of sale exercisable in certain circumstances. Such sale will not take place until the Licensor has given notice to the Moorer or has taken responsible steps to trace them in accordance with the Act. A similar right of sale shall also arise when any Vessel or other goods of which the Licensor is not a baillee are left at the Licensor's Marina or Premises. Any obligation of the Licensor towards Vessels or goods left at its Marina or Premises ends upon the expiry or lawful termination of the grant to the Moorer of facilities in respect of such Vessels or goods left at its Marina or Premises without its consent save in so far as such loss or damage is caused by the negligence of the Licensor or those for whom the Licensor is responsible.
- 32) The Licensor shall have the right by notice in writing to the Moorer to terminate this licence immediately if at any time the Licensor's Marina or Premises shall be so damaged, impeded or interfered with by Force Majeure as to render it likely that the Licensor will be unable to continue to provide a berth or mooring in accordance with the Licence entered into between the Licensor and the Moorer.
- 33) The Licensor shall have the right to terminate the Licence on three months written notice in the event that development of the Marina or any other works shall result in a changed layout and/or any reduction and/or alteration of the number and/or location of the berths available at the Marina. In the event of such termination by the Licensor the Licensor shall refund to the Moorer the unexpired portion of the licence fee being the total fee paid less any charges at the appropriate rate for the expired portion.
- 34) It is a condition of our planning permission that 'the boat is not a principal private residence'. All Moorers must provide their private, principal residential address, for where they are paying council tax.

ASSIGNMENT AND OTHER DEALINGS

- 35) The Licensor may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions.
- 36) The Moorer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the terms and conditions.

ENTIRE AGREEMENT

- 37) These Terms and Conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to the mooring.
- 38) Each party acknowledges that in entering into these Terms and Conditions it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms & Conditions.
- 39) Nothing in this clause shall limit or exclude any liability for fraud.

VARIATION

- 40) The Licensor reserves the right to amend the Terms and Conditions and/or to introduce other site specific rules and regulations which the Licensor deems necessary for the efficient and effective running of the Marina. Such amendments and rules and regulations shall become effective on being displayed on the Marina's public notice boards in the office reception and outside the facilities building.

SEVERANCE

- 41) If any provision or part-provision of these Terms and Conditions 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 provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.

THIRD PARTY RIGHTS

- 42) Unless it expressly states otherwise, these Terms and Conditions do not give rise to any rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of the Terms and Conditions.
- 43) The rights of the parties to rescind or vary the Terms and Conditions are not subject to the consent of any other person.

GOVERNING LAW

- 44) These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

JURISDICTION

- 45) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Terms and Conditions or its subject matter or formation.

SCHEDULE ONE

SITE RULES

1. No work is permitted to be carried out on the Vessel or vehicles at any part of the Marina or Premises without having gained prior consent from the Licensor which is granted at the Licensor's discretion. Allowance will be made for minor running repairs or routine maintenance which does not cause nuisance or annoyance to other Moorers or local residents. Engineers and any other people employed by the Moorer to conduct work authorised by the Licensor can be refused entry to the Marina or Premises at the Licensor's discretion. The Licensor can introduce working times to avoid nuisance or annoyance to other Moorers and local residents.
2. More substantial works may be permitted with the prior consent of the Licensor, however permission may be withheld at the Licensor's sole discretion. The Licensor also reserves the right to refuse access to a Moorer's chosen engineer who may be contracted to carry out such works unless permission has been obtained from the Licensor in advance.
3. Any engineers approved by the Licensor to perform work will be required to make access arrangements with the Licensor before attending site and will be required to sign the visitors book.
4. No fishing is allowed in any part of the Marina.
5. Due to restricted parking spaces, a maximum of one car per Vessel only is allowed at any one time and is to be parked in the site car park. No vehicles other than cars/motorbikes are to be parked at the marina without prior approval by the Licensor. All vehicles must be fully insured and roadworthy.
6. Any Guests of the Moorer will not be permitted vehicular access to the site without the prior approval of the Licensor.
7. The Moorer is required to park their motor vehicle in such a position and in such manner as shall from time to time be directed by the Licensor.
8. No items of gear, fittings or equipment, supplies, stores or the like shall be left upon the jetties, pathways, walkways, car parks, or anywhere else within the Marina.
9. Cabin tops should be kept clear of surplus equipment not necessary for the navigation of the Vessel, i.e. logs, bikes, solid fuel, rubbish etc. Storage facilities can be provided for excess equipment, subject to a charge.
10. Laundry may not be hung anywhere in the Marina. Laundry is to be dried only in the laundry room available in the facilities building
11. Every effort must be made by the Moorer to ensure that television aerials, satellite dishes and wind generators are erected in a manner that makes them as inconspicuous as their design allows for whilst the Vessel is in the Marina.
12. Access to Withybed Marina is for the use of the moorings and associated facilities only. The Moorer and their Guests are only permitted to access to the moorings via the main entrance off Coopers Hill. Access is strictly forbidden to other property beyond the boundary of the Marina and its car park and access road.
13. No post will be accepted by the Licensor for the Moorer or on behalf of the Moorer.
14. Boats may not be offered for sale or shown to prospective purchasers within the Marina, except through the Licensor's brokerage.
15. Refunds will not be issued for unexpired electricity credit left in service bollards at any time. Only electricity cards issued by the Licensor may be used on the site.

HEALTH, SAFETY AND THE ENVIRONMENT

16. 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 the speed restriction and byelaws of the CRT.
17. No noisy, noxious or objectionable engines, radio or other apparatus or machinery shall be operated within the Marina so as to cause any nuisance or annoyance to the Licensor, to any other users of the Marina or to any local residents.

18. No person shall use, carry or display any item within the Marina, which may cause a hazard, injury or offence to the Licensor or any other person. The Moorer undertakes for them self, their Guests and all using the Vessel that they shall not behave in such a way as to offend as aforesaid. Any determination of such item(s) will be at the sole discretion of the Licensor.
19. Within the perimeter of the Marina the Moorer shall keep all dogs on a lead and under control at all times. No fouling of jetties, car parks and other areas of the Marina shall be permitted and must be removed immediately. Should dog owners be seen to disrespect this condition, the Licensor will immediately ban the offending dog from the Marina. Maximum of two dogs per Vessel at any one time. No other animal is permitted on a Vessel or in the Marina, without prior approval from the Licensor.
20. The Moorer should immediately inform the Licensor of any spillage of oil, paint or any other pollutant into the Marina. The Moorer should also take such steps as are reasonably practicable in the circumstances to minimise the spread of the pollutant and warn other users of the Marina of the problem. Costs associated with any clean-up operation may be charged to the Moorer.
21. The Moorer shall abide by all relevant Health and Safety regulations, codes of practice and any Health and Safety guidance issued by the Licensor, whilst using the Marina.
22. The Moorer shall take all necessary precautions against the outbreak of fire in or upon their Vessel and the Moorer shall observe the statutory and local regulations relating to fire prevention exhibited in the offices of the Licensor. The Moorer shall provide and maintain fire fighting equipment as required under the terms of the Boat Safety to include at least one fire extinguisher of an EU government approved or BSI standard type and size, in or on the Vessel and readily available for immediate use in case of fire.
23. The Moorer shall not refuel the Vessel in the water, except when moored at the Marina's refuelling berth.
24. The Moorer undertakes to report any accident or injury that occurs within the Licensor's premises, within 24 hours of the accident/injury occurring.
25. The lighting of open fires or use of fireworks is strictly prohibited. Barbecues or portable gas cookers may only be used in the designated barbecue area. All barbecues and cookers must not be left unattended and must be properly extinguished after use. The area around the equipment must be left in a clean and tidy condition.
26. No ash is to be deposited, other than into the ashbins that are provided in the barbecue area.
27. Children invited to the Marina by the Moorer and the Moorer's Guests are the sole responsibility of the Moorer and must remain under the Moorer's supervision at all times. They must not cause a nuisance to any other user of the Marina.
28. Running and cycling on the pontoons is not permitted. No items may be secured to electricity bollards, including bicycles.
29. When connecting to a designated electrical outlet bollard, Licensor-approved leads and plugs must be used. These must be maintained in accordance with the relevant regulations and standards. The Moorer is not permitted to alter the berth or facilities in any way.
30. The Moorer must provide the Licensor with contact details of next of kin in the case of an emergency.

DISPOSAL OF REFUSE

31. No refuse shall be thrown overboard or left on the pontoons, jetties or car parks. Any domestic boat waste shall be disposed of in the receptacles provided by the Licensor or by removal from the Marina by the Moorer. Non-domestic boat waste, including but not limited to, batteries, refrigerators, television or computer screens, soft furnishings, cookers and the like must be removed from the Marina by the Moorer.
32. The use of sea toilets within the Marina or similar disposal of toilet waste into the Marina is prohibited. Failure to observe this rule will result in immediate termination of the contract
33. No bilge water is to be disposed of into or around the Marina site.

SWIMMING, DIVING AND BATHING

34. Swimming, diving and bathing in the waters of the Marina is not permitted.

35. Any person on site unable to swim is advised to wear an adequate life jacket at all times whilst at the Marina.
36. The Moorer shall at all times abide by, and shall use their best endeavours to ensure that their Guests abide by any applicable CRT, Environment Agency and any other local authority bye-laws.
37. The Moorer further undertakes to abide by any reasonable instructions issued by the Licensor.
38. All boats must be secured in such a manner that causes the least amount of bank erosion and disturbance to aquatic habitats. Any boat moored with the propeller facing the bank, must not at any time run the engine so as to cause bank erosion. The Licensor reserves the right to enforce the boat to be turned around if this becomes apparent.

SCHEDULE TWO

SITE PLAN

