

All use of the Marina Premises is subject to Mayflower Marina Terms & Conditions

These Terms and Conditions will be subject to English Law and the jurisdiction of the courts of England and Wales.

Definitions

Under these Terms & Conditions, the following words will have the following meanings:-

"Harbour" includes a yacht harbour, marina, moorings, or any other vessel berthing facility owned or operated by Us;

"Marina Premises" means the Harbour, including its dock walls, and any roads, car parks, buildings and other areas, equipment and facilities owned or operated by Us;

"LOA" means the length overall of a vessel, being the furthest point aft to the furthest point forward and shall include but not be limited to, bowsprits, davits, bathing platforms, bumpkins etc;

"Licence" means the licence granted to You to berth a vessel on Our Marina Premises under these Terms and Conditions.

"Licence Fee" means the fee payable by You to Us in accordance with these Terms and Conditions at Our standard rates at the date of this Licence for the type of licence and licence period granted to You;

"You", "Your" etc means a person whose application for an annual berth has been accepted by Us, any casual, short-term visitor, long-term licence holder, any agent thereof and any charterer, master, skipper, sub-contractor or other person for the time being lawfully in charge of the vessel (excluding Us or Our employees or agents);

"Us", "We", "Our" etc means Sailport plc (trading as Mayflower Marina) and/or its servants and agents;

"vessel" means only the vessel described in the licence application form or any replacement or other craft (including rigid inflatable boats, dinghies, tenders, inflatables, auxiliary craft, jet skis and windsurfers) that with Our prior written consent will be licensed to use the berth.

These Terms & Conditions, together with Our operating policies and all notices and information sheets issued in connection with them, will apply to You and Your licence to the exclusion of any other terms. A copy of these Terms & Conditions together with current applicable operating policies notices and information sheets and details of Our Licence Fees was provided to You at the time of Your application for a Licence.

We reserve the right to amend these Terms & Conditions or introduce amended or new notices and/or information sheets where necessary to comply with legal requirements or to the extent that we consider appropriate for the safety or security or good management of the Marina Premises. Any such changes replacements or additions will be published in a prominent place at the Marina Premises and will be effective from publication.

The Licence

- (a) We agree to provide to You berthing or shore storage facilities (as set out in Your application or as otherwise confirmed in writing by Us) in the Marina Premises for Your vessel for the duration of this Licence in consideration for Your paying to Us the Licence Fee.
- (b) Licences will be granted for the periods published by Us from time to time.
- (c) The licence will not automatically be renewed but will end at the end of the agreed licence period if not earlier terminated in accordance with these terms.
- (d) Nothing in this Licence entitles You to the exclusive use of a particular berth and We may in our discretion issue revised berth allocations from time to time. You must not lend or transfer any berth allocated to You by Us from time to time (this Licence being personal to You, relating to a particular vessel and non-assignable) nor may You use it for any other vessel without Our prior consent.
- (e) You may not permit any other vessel to occupy the berth allocated to You without Our express written permission. Such permission may be refused at our sole discretion and, if granted, will only be granted on the basis that:
 - the owner of such other vessel undertakes in writing to observe these Terms and Conditions;
 - the owner of such other vessel provides evidence of satisfactory insurance to cover the risks set out in condition below; and
 - You will not be relieved from Your obligations under these Terms and Conditions.

Licence Fees

- (a) The Licence Fee will be calculated by reference to Our published charges prevailing at the time of the grant of this Licence. Details are set out in Our marina handbook. Additional charges may apply for further services, such as vessel movements and winter storage ashore, in accordance with Our published details from time to time.
- (b) Our charges are subject to VAT at the prevailing rate and in the event of any increase or reduction in the rate of VAT We have the right to adjust the fees accordingly.
- (c) The Licence Fee will be paid in advance (except where We agree in writing to the contrary) and We reserve the right to charge You at the rate applicable to short term visitors for each day where Your vessel is on the Marina Premises before the Licence Fee is paid or for any period in excess of the agreed Licence period. Unless otherwise agreed by Us, You are responsible for all outgoings which may become payable in respect of Your use of Our berthing facilities.

No Residential Use

- (a) You must not use any vessel occupying a berth provided by Us for residential purposes without obtaining Our prior written consent, which may be withheld in Our absolute discretion or granted on such terms as We will see fit. For the avoidance of doubt, a vessel will be regarded as being used for residential purposes if:

- You use Your vessel as Your principal or main place of residence; or
- You stay on board Your vessel in excess of an average of four nights per week over a twenty six week period; or
- You use Our offices at the Marina Premises as Your mailing address; or
- in Our opinion, You use Your vessel as a place of residence

No Commercial Use

- (a) Except with Our written consent, which may be withheld at Our sole discretion, no part of the Marina Premises or any vessel kept in or on the Marina Premises may be used by You for any commercial purpose, including hiring, embarkation or disembarkation of charter parties, sale or demonstration of sale or hire of the vessel provided that the occasional use of the vessel by a personal friend of Yours on payment to You of a contribution towards the actual running costs of the said vessel without profit by You will not be deemed a commercial purpose. You must upon request by Us supply to Us full details in writing of all such use under the proviso to this condition;
- (b) We consider that non-commercial use would reasonably involve the private sale of not more than one vessel (such vessel usually being berthed at the Marina Premises) during any one or more periods of six consecutive months of the Licence period granted to You. We reserve the right to deem any more frequent sales to be a commercial activity and a breach of the terms of the Licence granted to You. A private sale will be deemed to be any sale that is not made in the course of a trade or business. In the event of such a private sale You must:
 - notify Us as soon as possible of the vessel being for sale and the identity of any broker instructed by you in connection with the sale. In the interests of security, We reserve the right to refuse entry to or remove from the Marina Premises any person whom we are not advised or do not consider has a legitimate reason to be on the Marina Premises or attending any vessel;
 - be present at all times during which the vessel is to be viewed, and You are not permitted to display a "For Sale" notice on Your vessel in or on the Marina Premises;
 - within seven days of such a private sale, notify Us in writing of the name and address of the buyer of the vessel. Your Licence is not transferable without Our consent. Failure to notify Us of a transfer will constitute a breach of the terms of Your Licence and may result in the termination of Your Licence.
- (c) No work will be done to the vessel whilst in or on the Marina Premises (unless with Our consent which may be withheld at Our discretion or granted subject to any conditions that We may see fit) other than minor running repairs or minor maintenance of a routine nature by You, Your regular crew, or members of Your family, not causing any nuisance or annoyance to any other users of the Marina Premises or any other premises or any person residing in the vicinity.
- (d) You may fish from Your vessel whilst it is in the Harbour but You may not fish from the Harbour's breakwater without first obtaining a licence from Us. You may not dive or engage divers to dive in the Harbour.

Interest and Lien

- (a) Any monies payable by you that are not paid on or before the date for payment will attract interest at the rate of 8% per annum.
- (b) We have the right to exercise a general lien (i.e. the right to take possession of and prevent You from gaining access to, using or moving a vessel and/or other property including gear and equipment left at the Marina Premises) over any vessel and/or other property whilst in or on the Marina Premises until such time that any sums due to Us in respect of the vessel and/or other such property, whether on account of services provided or work done or damage to Our property or otherwise (including, without limitation, interest and Our costs in enforcing the general lien and obtaining from You payment of any sum due to Us under these Conditions) are paid.
- (c) We will not have the right to exercise a general lien in accordance with condition 5 (b) above unless the sums due to Us exceed £100.

Vessel Condition and Insurance

- (a) You must ensure that at all times Your vessel is maintained in a clean and tidy state and in a seaworthy condition.
 - (b) The vessel must be berthed or moored by You in a seaman-like manner and in such a configuration and position as We may from time to time require and unless otherwise agreed the necessary warps and fenders will be provided and maintained or replaced by You. Vessels must be clearly identifiable by name or alternatively by number (to be agreed with Us).
- You must insure Your vessels and vehicles against loss or damage however caused, which insurance must include cover for liability to third parties (including public liability and where relevant employer's liability) in respect of Yourself and each of Your vehicles or vessels, Your crew for the time being, and Your agents, servants, visitors, guests and sub-contractors in a sum of not less than £3,000,000 in respect of each accident or damage and must maintain in respect of each vessel adequate removal of wreck insurance. You must produce the policy or policies relating to Your insurance (together with proof of payment of premiums) to Us within 7 days of demand.

General Conditions

8. (a) We have the right to moor, re-berth, move, board, enter, lift ashore, slip or carry out any emergency work on the vessel, if in Our opinion it is necessary for the safety of the vessel or the safety and/or convenience of other users of the Marina Premises or for the safety of Our plant and equipment and You must pay Our reasonable charges for such work.
- (b) If at any time during the period of this Licence the berth previously allocated by Us to You is not used by You for mooring Your vessel, then We will be entitled to moor or permit a third party to moor a vessel at that berth and We will be entitled to all income (if any) arising. You must use all reasonable endeavours to give to Us not less than 24 hours previous notice of Your intention to return Your vessel to the Harbour.
9. Your vessel when entering or leaving or manoeuvring in the Harbour must be navigated under power and not be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Harbour. You must at all times comply with any speed restrictions and bye-laws relating to the Harbour, details of which will be provided by Us on request. You must notify Us when You intend to leave the Harbour (giving an indication of Your anticipated date and time of return and details of any motor vehicles left by You in the car park) and must comply with the appropriate navigation and safety signals given by the responsible Harbourmaster.
10. All persons using any part of the Marina Premises or facilities provided thereon 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 Premises was caused by or resulted from the negligence of Ours or those for whom We are responsible.
11. No noisy, noxious or objectionable engines, radio, or other apparatus or machinery may be operated within the Marina Premises nor may animals be allowed within the Marina Premises so as to cause any nuisance or annoyance to Us, to any other users of the Marina Premises or any person residing in the vicinity and You undertake for Yourself, Your guests and all using the vessel that they will not behave in such a way as to offend as aforesaid. Halyards must be secured so as not to cause such nuisance or annoyance.
12. No refuse or noxious substances or sewage may be discharged or thrown overboard or left on the pontoons, jetties or car parks, or disposed of in any way other than in the receptacles provided by Us or by removal from the Marina Premises. Any sea toilet fitted to the vessel may not be used whilst the vessel is in the Harbour.
13. Dinghies, tenders and other small craft must be stowed aboard the vessel unless a berth is separately provided by Us.
14. (a) You and Your guests are required to park their motor vehicles in such position and in such manner as will from time to time be directed by Us. Caravans, motor homes or tents may not be parked in the car park without Our prior written permission. Only one car per vessel may be parked in the car park free of charge and any car not belonging to the owner of a vessel berthed in the Marina Premises will be charged a parking fee in accordance with Our published rate from time to time.
- (b) All vessels and vehicles in or on the Marina Premises may be moved by Us to any part of the same Marina Premises without Your knowledge or consent where such movement is necessary for the proper or efficient operation of the Marina Premises. We will use reasonable endeavours to avoid or minimise damage arising from such movement.
- (c) If You wish to make use of Our boat hoist and instruct Us to store your boat and/or mast ashore You must acquaint Yourself with the conditions of lifting set out in the hoist booking form. All work undertaken by Us will be done so in accordance with our operating policies in force from time to time.
15. No items of boats, gear, fittings or equipment, supplies, stores, or the like may be left upon the pontoons, jetties or car parks without our prior written consent.
16. You must take all necessary precautions against the outbreak of fire in or upon Your vessel and You must observe all statutory and local regulations relative to fire prevention. You must provide and maintain at least one fire extinguisher of a government approved or BSI standard type and size in or on the vessel in case of fire, which extinguisher must at all times be kept ready for immediate use, in good and efficient working order and within the manufacturer's recommended lifespan. Vessels may not be refuelled on the Marina Premises except from Our supply.
- (c) Without prejudice to the provisions of clause 17(b), We will not be liable to you for any loss or damage caused by events or circumstances beyond Our reasonable control (such as severe weather conditions, the actions of third parties not employed by Us or any defect in a customer's or other third party's property). This extends to loss or damage to vessels, gear, equipment and other property left with Us for work or storage and to harm to persons entering the Marina Premises or the Harbour and/or using any facilities or equipment.
- (d) We will not be liable for loss, damage or costs of whatsoever nature suffered by You as a result of any means of granting vessel access to the Harbour being inoperative except to the extent that such inoperation may be caused by the negligence or deliberate act or deliberate omission of Ours or those for whom We are responsible.
- (e) Where We are liable to You and You are dealing with Us or using Our facilities or services other than as a consumer:
- (i) we will not be liable to You or any other person for any indirect consequential loss (both of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by Us or any person for whom We are vicariously liable (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise); and
- (ii) all warranties conditions and other terms implied by statute or common law and not expressly incorporated in these Terms and Conditions are, to the fullest extent permitted by law, excluded;
- (f) If We are in breach of contract or otherwise in breach of any legal duty or obligation to You to which these terms and conditions relate and have a liability to You that is not excluded by these terms and conditions (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise) Our liability to You will not exceed the higher of £1,000,000 and the amount for which We are effectively insured against such liability. Details of Our insurance cover are available on request.
- (g) The limitation of liability under these conditions is reflected in the fees charged by Us. In the event that You require a greater extent of liability on Our part, We will be happy to discuss alternative arrangements with You and may be able to offer further insurance protection, subject to You being responsible for Our additional charges associated with Our assumption of this greater risk and increased insurance costs, but You are recommended to ensure that You have your own adequate insurance for Your vessel, personnel and any person for whom you may be acting and any other losses and damages that may be caused or sustained by them or their use.
- (h) You must inform Us of any accident or incident likely to give rise to a claim occurring on the Marina Premises within 7 days of the date of such accident or incident;
- (i) You will indemnify Us against (i.e. pay for) any loss, damage or costs reasonably incurred by, and all claims or proceedings instituted against, Us or Our servants or agents which may be caused by Your vessel or vehicle or by You, Your servants, agents, crew, guests, or sub-contractors except to the extent that this is caused by the negligence or deliberate act or deliberate omission of Ours or those for whom We are responsible;

Termination

18. (a) In the event of any breach of these Terms and Conditions by You, if (having regard to the nature and seriousness of the breach and the risk it poses for Our financial or reputational status or the security of Our property or Our customers or their property). We consider the breach to be a serious breach or posing an immediate risk to property or persons, then we have the right to terminate this Licence with immediate effect by serving a written notice on You or Your vessel. For the purposes of these terms and conditions a serious breach means serious in the widest sense of the term and not minimal or trivial in its consequences.
- (b) Otherwise We will have the right to serve a written notice on You or Your vessel specifying the breach and requiring compliance within a reasonable period, usually 14 days of the notice. If the breach is not rectified within the period specified in the notice or You commit a further breach of these Terms and Conditions, We have the right to terminate this Licence with immediate effect by serving a written notice on You or Your vessel.
- (c) Upon termination of this Licence in accordance with conditions 18(a) or (b) above, We may refuse to provide any further services at Our sole discretion and You must remove Your vessel and all other property and effects belonging to You or under Your control from the Marina Premises immediately on termination of this Licence. We will not be obliged to make any refund to You of any of the Licence Fee.
- (d) We also have the right to terminate this Licence by the giving of written notice to You, if at any time the Marina Premises are so damaged, impeded, or interfered with by accident or events beyond our reasonable control as to render it unlikely that We will be able to continue to provide a berth or mooring in accordance with this Licence. For the purposes of this condition, events beyond our control may include (and is not limited to) any event or circumstances arising from natural causes, weather conditions, riots, civil commotion, fire, explosion, terrorism or war.
- (e) In the event of termination by Us in accordance with condition 18(d) above, We will refund to You part of the Licence Fee in proportion to the unexpired period of the Licence.
17. (a) Nothing in these conditions including the following provisions of this clause 17 seeks to exclude or limit Our liability for any matter which it would be illegal for Us to exclude or attempt to exclude Our liability, including for losses sustained resulting from personal injury or death caused by the negligence of Ours or those for whom We are responsible, or for Our fraud or fraudulent misrepresentation

Except as set out in the preceding paragraph:

- (b) While we will take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at the Marina Premises, We will not be liable for the loss, theft or any other damage of whatsoever nature caused to any vessel or vehicle or other tangible property (whether insured or not) belonging to You or others claiming through or against You except to the extent that this is caused by the negligence or deliberate act or deliberate omission of Ours or of those for whom We are responsible; Your attention is specifically brought to Your obligations under clause 7 and the provisions of clause 10;

- (f) You have the right to terminate this Licence at any time by serving written notice on Us specifying a termination date. In the event of Your terminating this Licence in accordance with this condition 18(f), You will remove Your vessel from the Marina Premises on or before the effective termination date set out in your notice.
 - (g) On termination of Your Licence under clause 18(f) and subject to your removing the vessel and all other property and effects belonging to You or under Your control, We will charge or refund to You (as appropriate) a sum equal to the difference (if any) between the Licence Fee originally payable and the berthing or licence fees that would have been charged had the Licence been granted at the outset for a period ending on the termination date. We will also be entitled to charge You a cancellation fee of £500, being an estimation of our reasonable administrative costs and losses arising from the cancellation including additional costs to be incurred in publicising offering and granting a replacement licence and irrecoverable licence fees or any vacant period arising as a result of Your cancellation. If Your licence is replaced by Us with a suitable alternative Licence taking effect before the end of Your original Licence period, a further refund representing Our losses recovered by the new Licence may be made.
 - (h) Failure to ensure removal of Your vessel and all other property and effects belonging to You or under Your control by the effective termination date of Your Licence may result in short term visitor charges being raised for each day or part day your vessel remains on the Marina Premises after that date.
 - (i) Termination of the Licence, however caused, will not release You from any liability to Us that has arisen before the date of termination or which is intended under these terms & conditions to survive termination of the Licence.
 - (j) Any indulgence granted by Us and any failure by Us to insist upon strict adherence to the terms of this Licence will not constitute a waiver of any of Our rights or remedies nor be deemed to be a waiver of any subsequent default by You
19. (a) Any obligation of Ours toward vessels or goods left at the Marina Premises ends upon the expiry or lawful termination of this Licence and We accept no responsibility for loss or damage to any vessels or goods left at the Marina Premises without Our consent save insofar as such loss or damage is caused by the negligence or deliberate act or deliberate omission of Ours or those for whom We are responsible;
- (b) If You fail to remove the vessel on termination of this Licence in accordance with condition 18 or otherwise, We are entitled:
- (i) to charge You with a sum equal to the proportion of the Licence Fee that would have been payable by You to Us if the Licence had not been terminated for the period between termination of the Licence and removal of the vessel from its harbour and premises; and/or
 - (ii) at Your risk (save in respect of loss or damage caused by an act or omission of Ours or those for whom We are responsible during such removal) to remove the vessel from the Marina Premises and thereupon secure it elsewhere and charge You with all reasonable costs arising out of such removal including alternative berthing fees; and/or
 - (iii) to give notice to You in accordance with the provisions of the Torts (Interference with Goods) Act 1977 and to sell the vessel and/or other property by the best method of sale reasonably available in the circumstances. The proceeds of the sale after payment of the said money due and the expenses of the sale (if any) will be paid to the owner of the vessel and/or property. Should the money due exceed the sale proceeds then any shortfall in the money due will be payable by You.