

MDL MARINAS SHORT-TERM SERVICES AND BERTHING PACKAGE AGREEMENT



Between **MARINA DEVELOPMENTS LIMITED** ("the **COMPANY**") and the customer ("the **OWNER**") detailed on the invoice.

SERVICES AND BERTHING PACKAGE TO BE PROVIDED FOR THE TERM OF THIS AGREEMENT.

1. Licence and use of the BERTH allocated from time to time by the MANAGER of the MARINA to the OWNER.
2. Use and enjoyment of the MARINA SERVICES at the MARINA. Certain services and goods attract an ADDITIONAL CHARGE (e.g. electricity, laundry, ice) and this varies between marinas and OWNERS should refer to the current editions of the Marina Information Brochure and Additional Services Tariff for current availability and charges.

TERMS AND CONDITIONS

1.1 Definitions

Additional Charges

means the charges made by the COMPANY for those MARINA SERVICES which are provided at the MARINA or other COMPANY marinas in accordance with the prices set out in the relevant Additional Services Tariff which are not included in the APPLICABLE WEEKLY, OVERNIGHT OR SHORT STAY CHARGE.

Berth

means the water or land space temporarily allocated to the OWNER from time to time by the COMPANY for the mooring of the BOAT (subject to any local conditions and ADDITIONAL CHARGES) during the TERM of this Agreement.

Boat

means the vessel or craft whether or not their principal propulsion shall be by wind or engine which is detailed on the invoice.

Charges

means the APPLICABLE MONTHLY, WEEKLY, OVERNIGHT OR SHORT STAY CHARGE and the ADDITIONAL CHARGES referred to on the invoice.

Company

means Marina Developments Limited (and/or any parent, subsidiary and associated companies) a company incorporated in England whose Registered Office is situated at Outlook House, Hamble Point, School Lane, Hamble, Southampton SO31 4NB.

Invoice

means the invoice document issued by the MARINA staff when the Boat enters the MARINA.

LOA

means length overall of the BOAT including davits bowsprits boarding ladders sterndrives tenders outdrives rudders anchors pulpits pushpits and any other extensions fore and aft of the BOAT.

Manager

means the person or his representative who shall be responsible on behalf of the Company for the day-to-day management and administration of the MARINA.

Marina

means all the land, structures and water adjacent thereto including but not limited to slipways, pontoons, finger pontoons, fuelling pontoons, jetties, quays, piers, moorings, buildings, facilities and car parks which the COMPANY makes available for use from time to time by its customers.

Marina Regulations

means those regulations set out in the MDL Marina Regulations and Annual Berthing Refund Policy booklet which govern the activities and safety of all persons in or about the MARINA, which regulations are imported herein by reference, copies of which are displayed in the MARINA Office or otherwise available on request.

Marina Services

means all facilities and services normally made available to the berth holders at the MARINA at the current prevailing tariffs and terms including (but not limited to) car parking, use of luggage trolleys, electricity and water points, fuelling facilities, toilets, showers and wash areas, laundry waste and refuse disposal.

Owner(s)

means the customer(s) detailed on the invoice who is deemed to be the legal and/or beneficial owner of the BOAT or is otherwise lawfully in possession of the BOAT and duly authorised to act as agent on the legal or beneficial owner's behalf.

Owner's

means the OWNER'S family and private guests, or visitors lawfully on or about the BOAT at any time Party within the MARINA during the TERM of this Agreement.

Term

means the period of time you have been charged for and as detailed on the invoice.

1.2 Interpretation

- 1.2.1 A waiver by the COMPANY of any breach of this Agreement by the OWNER shall not be taken as a waiver of any other breach and any delay by the COMPANY in exercising its rights under this Agreement shall not affect the COMPANY'S rights in respect of any other breach of this Agreement.
- 1.2.2 The COMPANY will do its best to maintain the provision [and operation] of the services in accordance with the information that you have received about them. We cannot and do not accept any responsibility where circumstances beyond the COMPANY'S control or in the control of someone other than the COMPANY prevents the services from being available.

2.0 Payments due to the COMPANY

- 2.1 In consideration of the provision of the MARINA SERVICES the OWNER shall pay the CHARGES to the COMPANY as set out on the invoice.
- 2.2 All payments paid by virtue of this Agreement by the OWNER to the COMPANY are subject to the addition of Value Added Tax or such other tax required to be paid by law at the rate for the time being in force.

- 2.3 The COMPANY will be entitled to charge interest on payments which are overdue by more than 14 days at the rate of 3% above the base rate of Barclays Bank plc from time to time.
- 2.4 The COMPANY may retain the BOAT and/or its gear and equipment or any other property of the OWNER whilst in or upon the MARINA until such time as all monies due to the COMPANY have been paid in full.
- 2.5 Where monies due to the COMPANY remain outstanding for a period of ninety days then the COMPANY reserves the right to bring legal proceedings against the OWNER and/or the BOAT and to apply for the arrest of the BOAT. The COMPANY also reserves the right to give notice requiring the removal of the BOAT from the MARINA under the Torts (Interference with Goods) Act 1977. Failure then by the OWNER to collect the BOAT by the date specified in the notice will entitle the COMPANY to sell the BOAT. For further information about this Act the OWNER should contact their local authority Trading Standards Department or Citizens Advice Bureau.

3.0 Insurance, Liability, Indemnity and Exclusion

- 3.1 The Company does not limit its liability (if any) for personal injury or illness or death resulting from the Company's negligence or for any matter where it would be illegal for the Company to exclude its liability.
- 3.2 In the absence of any negligence or other breach of duty by the COMPANY the use by the OWNER of the MARINA or its facilities is entirely at the OWNER'S own risk. The COMPANY will not be liable under this Agreement for any loss or damage caused by us or our employees or agents in circumstances where:
 - i) there is no breach of a legal duty of care owed to the OWNER by the COMPANY or by any of the COMPANY'S employees or agents;
 - ii) any increase in loss or damage resulting from breach by the OWNER or OWNER'S PARTY of any term of this contract.
- 3.3 The COMPANY is responsible for losses suffered as a result of the COMPANY breaching this Agreement if the losses are a foreseeable consequence of such breach. Losses are foreseeable where they could be contemplated by the OWNER and the COMPANY at the time this Agreement is made. The COMPANY is not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by the OWNER or the COMPANY and the COMPANY'S liability shall not in any event include losses related to any business of the OWNER such as lost profits.
- 3.4 In the absence of any negligence or other breach of duty by the COMPANY, the use by any person by invitation or otherwise of any part of the MARINA is entirely at his own risk and we recommend that the OWNER brings this clause to the attention of the OWNER'S PARTY.
- 3.5 The OWNER shall be liable for any loss or damage to the MARINA and its facilities or for any loss or damage caused to third parties where such loss or damage has been caused by an intentional, reckless or negligent act of the OWNER or a member of the OWNER'S PARTY.
- 3.6 All reasonable care will be taken in the provision of facilities but the COMPANY does not warrant the suitability of the BERTH or of any BERTH, structure or gear for the BOAT.
- 3.7 The OWNER and the OWNER'S PARTY and all persons authorised by the OWNER must behave reasonably and responsibly and observe and perform the MARINA REGULATIONS. The MARINA REGULATIONS are available at all times and are displayed in the MARINA Office. The COMPANY reserves the right to vary the MARINA REGULATIONS if it is necessary to meet current safety requirements or other changes in legislation or where changes in circumstances make such variation necessary for the proper and safe management of the MARINA and provision of MARINA SERVICES. The COMPANY will make every endeavour to give due notice of any significant variations.
- 3.8 As OWNER you must not transfer this Agreement, as it is personal to you, without written agreement from the COMPANY. Such agreement will not be refused without good reason.
- 3.9 This Agreement is not intended to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999) on any person who is not named as a party hereto.

4.0 Termination

- 4.1 The COMPANY shall have the right to terminate this Agreement forthwith by notice in writing to the OWNER in any of the following circumstances:
 - 4.1.1 If the OWNER commits a serious breach of this Agreement. Non-payment of monies due to the COMPANY or any act or omission which causes a health and safety risk to the MARINA and other OWNERS and users of the MARINA would be considered serious breaches of this Agreement.
 - 4.1.2 If the OWNER commits a breach, other than a serious breach, of this Agreement and, if capable of remedy, fails to remedy such breach within 14 days of written notice requiring him to do so.
 - 4.1.3 If the OWNER repeats a breach of the terms of this Agreement after a written notice.
- 4.2 Upon termination of this Agreement the COMPANY shall have the right to require the OWNER to remove the BOAT from the MARINA within fourteen days.
- 4.3 If the OWNER shall fail to remove the BOAT the COMPANY shall be entitled to:
 - 4.3.1 Damages equivalent to the COMPANY'S published short term rate for so long as the BOAT remains in the MARINA.
 - 4.3.2 Remove the BOAT from the MARINA and locate it elsewhere in which event the OWNER shall pay cramage storage removal and all other fees reasonably incurred by the COMPANY including, in the event that the BOAT is stored at another marina, operated by the COMPANY, damages calculated at the COMPANY'S published short term rate for such BERTH.
 - 4.3.3 Sell the BOAT in accordance with the provisions of the Torts (Interference with Goods) Act 1977 as previously referred to in clause 2.5.