

# The Hayling Yacht Company Limited Terms and Conditions

## Hayling Yacht Company (HYC) Berthing Package Terms and Conditions

### 1 Definitions

Wherever the following terms appear in these Conditions, the Package Details, or the Berthing Package Special Conditions they will have the following meanings:

**Additional Services Tariff** means the HYC standard Charges for the Boatyard which is set out in the Standard Charges Section. This is available on our web site: <http://haylingyacht.co.uk/standard-charges>

**Berth** means the space on water or land, within the Boatyard allocated to the Owner for the Boat by the Company from time to time during the duration of the Berthing Agreement.

**Berthing Agreement** means the contract between HYC and the Owner consisting of the Package Details, these Conditions, the applicable Berthing Package Special Conditions and the Regulations.

**Berthing Fee** means the fee set out in the Package Details. **Boat** means the vessel set out in the Package Details.

**Boat Length** means the overall length of the Boat including but not limited to davits, bowsprits, boarding ladders, stern drives, tenders, outdrives, rudders, anchors, pulpits, pushpits and any other extension or projection to the fore or aft, temporary or permanent.

**Code of Conduct** means the rules that apply to any visitor (including the Owner) to a Boatyard. The current version is attached to this Berthing Agreement and updated from time to time in accordance with clause 4.2.

**Conditions** means these terms and conditions.

**End Date** means the expiry date of the Berthing Agreement as set out in the Package Details.

**Event Outside of HYC Control** means any act or event beyond HYC's reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster, interruption of electricity or water supply or other utilities, or failure of public or private telecommunications networks or actions or failure to act of a third party and any closure of a Marina required by any Government body, Local Authority, other statutory body or emergency services for any reason.

**Boatyard** means the Berthing facilities set out in the Package Details.

**Implied Terms** means the terms and rights implied into this Berthing Agreement by Section 185 and Schedule 7 to the Merchant Shipping Act 1995 (as amended by the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (amendment) Order 1998), which cap liability for loss and damage based on the tonnage of the vessel, and any other similar legislation seeking to limit, cap or exclude liability in relation to the vessel.

**Invitation to Renew** as defined in clause 2.2.1.

**Boatyard Services** means those facilities and services made available to the Owner and at a Marina at the prevailing tariffs, including but not limited to: car parking, electrical hook up points, water points, toilets, showers, wash areas, laundry facilities and waste and refuse disposal.

**Package Details** means the details set out on page 1 of this Berthing Agreement.

### 2 Provision of the Berth

2.1 In consideration of the Owner paying the Berthing Fee, HYC agrees to allocate to the Owner a Berth for the Boat for the period of the Berthing Agreement.

2.2 The Berthing Agreement shall commence on the Start Date and will expire on the End Date unless terminated earlier in accordance with clause 7. The Berthing Agreement will automatically renew unless terminated with one month's notice in writing.

2.2.1 HYC shall, not less than 30 days before the End Date, notify the Owner of the berthing fees payable if the Owner wishes to renew the Berthing Agreement immediately after the End Date ("Invitation to Renew").

2.2.2 The Owner shall notify HYC by the date specified in the Invitation to Renew if they wish to renew their Berthing Agreement.

2.2.3 If HYC does not receive a notice pursuant to clause 2.2.2 from the Owner, HYC gives no assurance that a berth will be available to the Owner after the End Date.

2.3 Nothing in the Berthing Agreement entitles the Owner to the exclusive use of any Berth. HYC will retain absolute discretion as to the utilisation of the space within the Boatyard. The benefit provided by HYC under this Berthing Agreement is a licence to occupy whichever Berth may from time to time be allocated to the Owner by HYC.

2.4 HYC will be entitled to make use of the Berth whilst it is left vacant by the Owner.

2.5 The Berthing Agreement is personal to the Owner and for the benefit of the Boat set out in the Package Details. The Owner may not transfer or assign the Berthing Agreement to a third party or use the Berth for any vessel other than the Boat without the prior written consent of HYC, which may be withheld in HYC's absolute discretion.

2.6 HYC reserves the right to move the Boat and any other associated gear and equipment at any time for reasons of safety, security or good management of the Boatyard.

2.7 HYC reserves the right to relocate any Boats within the Marina during any special events subject to reasonable notice being provided to the Owner.

### **3 The Owner's General Obligations**

3.1 The Owner must provide HYC and keep HYC updated of the Owner's current postal address and email address to enable HYC to send any notice or details of any matters arising under the Berthing Agreement. The Owners postal address must not be the HYC Boatyard. HYC reserves the right to refuse services to an Owner that fails to provide a home address.

3.2 The Owner must provide HYC and keep HYC updated of the Owner's mobile or landline telephone contact details for use in an emergency.

### **4 Boatyard Regulations**

4.1 The Owner must ensure that any other person on board or accessing the Boat whilst in the Boatyard (excluding any employee or representative of HYC) complies with the Regulations published from time to time by HYC.

4.2 A copy of the current Marina Code of Conduct is attached to this Berthing Agreement. HYC reserves the right to introduce new Regulations where required on legal grounds or for the safety or security or good management of the Marinas, and to amend such Regulations as from time to time may be necessary. Such Regulations and any amendments to them will become effective on being displayed on the public notice board or other prominent place at the Boatyard.

4.3 A breach of any of the Regulations by the Owner or any other person onboard or accessing the Boat whilst in the Boatyard will amount to a breach of the Berthing Agreement and entitle HYC to end the Berthing Agreement in accordance with clause 8.3.

## 5 Commercial or Residential Use

5.1 The Owners must not (and must not allow anyone else to) use the Boat or any part of the Marina for any commercial or residential purpose without obtaining HYC's prior written consent, which may be withheld in HYC's absolute discretion.

5.2 For the avoidance of doubt:

5.2.1 use of the Boat to provide overnight accommodation in exchange for payment or a reciprocal arrangement is deemed to be commercial use;

5.2.2 stays onboard the Boat in excess of 14 nights aboard the Boat in any 30-day period unless on a is deemed to be residential use;

5.2.3 use the boat for a charter or corporate charter activity including but not limited to shared ownership or managed ownership, or commercial accommodation for profit is deemed to be commercial use; and

5.2.4 use of the boat as a boatel, or for providing commercial accommodation for profit is deemed to be commercial use.

5.3 In the event that permission is granted in writing by HYC, HYC shall not accept any responsibility for service interruptions that effect the experience of a customer of a commercial business not operated by HYC. This includes but not exclusively unexpected failure of utilities, machinery or equipment, lack of fuel supply or failure to provide lifting services for safety reasons such as but not limited to, inclement weather.

## 6 Berthing Fee and Payment

6.1 The Owner must pay the Berthing Fee to HYC in the amounts and on the dates set out in the Package Details.

6.2 If the Berthing Fee is payable monthly the initial monthly payment must be paid in full by the Start Date. All monthly payments are payable on or around the 4<sup>th</sup> day of the month to which they relate.

6.3 If the Berthing Fee is payable annually the initial annual payment must be paid in full by the Start Date or such other date as notified to the Owner by HYC in the Invitation to Renew. All subsequent annual payments are payable prior to the beginning of the year to which they relate.

6.4 HYC are entitled to charge the Owner, in addition to the Berthing Fee, for all Marina Services used by the Owner.

6.5 If the Owner fails to pay any instalment of the Berthing Fee within 30 days of the date on which it is due HYC will serve a notice to the Owner in respect of the outstanding sum, requiring the Owner to make payment within 30 days. If after the expiry of the 30-day period, the outstanding sum has not been paid this will be treated as a breach of the Berthing Agreement and HYC shall be entitled to take all or any of the following steps:

6.5.1 end the Berthing Agreement under clause 8.2;

6.5.2 prevent the Boat from leaving the Boatyard;

6.5.3 charge the Owner interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the Bank of England base rate from time to time in place, calculated on a daily basis;

6.5.4 charge the Owner for use of the Berth as set out in clause 8.5.

6.6 The Owner will be responsible for providing HYC with an accurate measurement of the Boat Length. The Berthing Fee is calculated by reference to the Boat Length. HYC reserve the right at any time during the Berthing Agreement to measure the Boat and charge the Owner the additional berthing fees if the Boat Length is greater than the length stated in the Package Details. HYC will refund to the Owner the berthing fees if the Boat Length is less than the length stated in the Package Details.

## **7 Right to cancel under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**

7.1 The Owner has a right under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 to end the Berthing Agreement within 14 days of the date of the Berthing Agreement without giving any reason. However, the Owner does not have the right to end the Berthing Agreement if HYC have provided services during the cancellation period.

7.2 To exercise the right to cancel, the Owner must inform HYC of their decision to cancel the Berthing Agreement by a clear statement (e.g. a letter sent by post or email) to the HYC Boatyard Manager

7.3 HYC will not start providing the Owner with any services during the 14-day cancellation period unless:

7.3.1 the Start Date agreed by the Owner falls within the 14-day cancellation period or

## **8 Ending the Berthing Agreement**

8.1 Subject to the Owner's rights to end the Berthing Agreement in accordance with clause 8.2 and clause 10.3 the Owner may only end the Berthing Agreement before the End Date by giving HYC four weeks' notice in writing. If the Owner ends the Berthing Agreement in this way:

8.1.1 HYC will charge the Owner a fee for the period of occupation of the Berth which will be the lower of:

(a) the number of days of occupation of the Berth (including notice period) at the applicable published monthly berthing rate detailed in each Marina's Additional Services Tariff or  
(b) the total amount set out in the Package Details.

8.1.2 For the avoidance of doubt the published monthly berthing rate is NOT the pro rata value of the Berthing Fee set out in the Berthing Agreement or the monthly payment charge set out in the Berthing Agreement. Owners should make themselves aware of the monthly berthing charges which can be found in the Additional Services Tariff.

8.1.3 Example of ending the Berthing Agreement prior to the End Date based on:

Annual Berthing Fee for a 10m Boat	£4,280 Inc VAT
12 Month Direct Debit instalments	£392.34 per month
Owner leaving Berthing agreement	4 weeks written notice is required
If paid in full (Single Payment Option)	£4,280

Berthing is re-calculated at the monthly berthing rate published on the Boatyards web site for the length of the stay	£595 per month
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Balance to be refunded to the Owner (less any outstanding payments due to HYC e.g. electricity, car parking boatyard services etc.) If a refund is due to a customer this will be paid to the customers original payment method	
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8.2 Without affecting any right or remedy available to either party, either party may end the Berthing Agreement immediately by notice in writing to the other if:

8.2.1 If the other party commits a serious or repeated breach of the Berthing Agreement or the Regulations and, if it can be put right, they do not put it right within 7 days of the party in breach being given a notice setting out full details of the breach and the action required to put it right. Where the breach is serious or poses immediate risk or threat to the health and safety or welfare of any other person or property the time specified for remedy may be immediate;

8.2.2 the other party being a company passes a resolution for winding up or a Court makes a winding up order in respect of that party or it has a receiver, administrative receiver, manager or administrator appointed over all or any of its business or assets;

8.2.3 the other party is unable to pay its debts or becomes insolvent (in the meaning of the Insolvency Act 1986) or makes or proposes to make an arrangement with its creditors;

8.2.4 the other party, being a business, ceases or threatens to cease to carry on its business;

8.2.5 the other party being an individual has a bankruptcy petition presented or die.

8.3 Without affecting any other right or remedy HYC may have HYC will be entitled to end this Berthing Agreement immediately by notice to the Owner if:

8.3.1 the Owner provided HYC with details which the Owner knew to be false when applying for a berth and the false declaration would have reasonably affected HYC's decision to enter into this Berthing Agreement;

8.3.2 there is a breach of clause 4; or

8.3.3 the Owner fails to pay any sum due under this Berthing Agreement.

8.4 On termination for any reason or on expiry of the Berthing Agreement the Owner shall:

8.4.1 pay to HYC all amounts owing to HYC;

8.4.2 remove the Boat and any associated equipment belonging to the Owner from the Boatyard;

8.4.3 and return any property belonging to HYC including any access cards.

8.5 If the Owner fails to remove the Boat on termination or expiry of the Berthing Agreement HYC will be entitled:

8.5.1 to charge the Owner at HYC's 24-hour rate for overnight visitors for each day between termination or expiry of the Berthing Agreement and the actual date of removal of the Boat from the Marina; and/or

8.5.2 at the Owner's risk (save in respect of loss or damage directly caused by HYC's negligence or other breach of duty during such removal) to remove the Boat from the Boatyard and secure it elsewhere including lifting it ashore and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.

8.6 If HYC have removed the Boat in accordance with clause 8.5.2, HYC may give the Owner reasonable notice of their intention to sell the Boat in accordance with the law. Should HYC sell the Boat they will pay the proceeds to the Owner (or such person who is entitled to possession of the Boat) less all sums owed by the Owner to HYC and any expenses of sale and any legal costs incurred in respect of such sale.

8.7 Clause 8.5 and clause 8.6 will remain in force after the end of the Berthing Agreement.

## **9 Data Protection**

9.1 HYC are committed to protecting and respecting the Owner's personal data. The HYC Privacy Policy sets out the basis on which any personal data collected by HYC from the Owner, or which the Owner provides to HYC is handled and stored.

9.2 A copy of the current Privacy Policy is available at <http://haylingyacht.co.uk/privacy/> HYC reserves the right to amend the Privacy Policy from time to time. Any amendments to the Privacy Policy will become effective on being displayed on the public notice board or other prominent place at the Boatyard.

## **10 Events outside of HYC's control**

10.1 HYC will not be liable or responsible for any failure to perform, or delay in performance of, any of the HYC obligations under the Berthing Agreement that is caused by an Event Outside of HYC's Control.

10.2 If an Event Outside of HYC's Control takes place that affects the performance of the HYC obligations under the Berthing Agreement HYC will contact the Owner as soon as reasonably possible to notify the Owner; and

10.3 If an Event outside of HYC's Control takes place and a berth is not available for your Boat in the Boatyard for a continuous period of 4 weeks, HYC will offer an alternative berth if a suitable berth is available. If the alternative berth is not acceptable or there is no alternative berth available, the Owner may end the Berthing Agreement. If the Owner ends the Berthing Agreement for this reason HYC will provide the Owner with a refund for any sums paid by the Owner for the period from when the Berth is unavailable until the End Date.

## **11. Your Liability and Insurance Requirements**

11.1 The Owner will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by: (i) an act, failure to act or omission by the Owner, the Owner's crew, passengers, guests or persons carrying out work on the Boat by arrangement with the Owner or with the Owner's consent; or (ii) any defect in the Boat, its gear, equipment or other property used or stored on the Boat or brought into the Boatyard by the Owner, the Owner's crew, passengers, guests or persons carrying out work on the Boat by arrangement with the Owner or with the Owner's consent (whether or not such defect is known to the Owner). If HYC suffer any loss or liabilities due to any such act, failure to act, omission or defect then the Owner will be liable to make payment to HYC to make good the loss suffered by HYC. The Owner hereby waives any rights it may have, under any Implied Terms, to limit or cap its liability under or in connection with this clause 11.1.

11.2 The Owner acknowledges and agrees that the Owner's liability in clause 11.1 above shall be uncapped and, for the avoidance of doubt, extends to loss or damage caused by any defect in the Boat, its gear, equipment or other property used or stored on the Boat or brought into the Boatyard by the Owner, the Owner's crew, passengers, guests or persons carrying out work on the Boat by arrangement with the Owner or with the Owner's consent, whether or not such defect is known to the Owner.

11.3 The Owner shall maintain during the Berthing Agreement a suitable policy of insurance (with a reputable insurer) for public liability and third-party liability in respect of claims for damage to persons and property in the sum of at least £5,000,000 for any one event.

11.4 The Owner will provide HYC with a copy of the insurance certificate in place on signature and renewal of the Berthing Agreement. HYC also reserves the right to request a copy the insurance certificate at other times to confirm the policy is active and the Owner must provide the certificate within seven days of being requested to do so. HYC's receipt of the insurance certificate does not imply that HYC considers the insurance cover to be adequate.

11.5 The Owner hereby waives its rights under the Implied Terms, and acknowledges and agrees that:

11.5.1 the Implied Terms are, to the fullest extent permitted, excluded from this Berthing Agreement;

11.5.2 no statutory right to limit or cap liability under the Implied Terms shall operate to reduce the Owner's liability in respect of this clause 11.

11.6 This clause 11 shall survive termination or expiry of this Berthing Agreement

## **12 Our Liability to You**

12.1 HYC do not exclude or limit in any way their liability for death or personal injury caused by HYC's negligence or the negligence of any HYC employees, agents or subcontractors, or for fraud or fraudulent misrepresentation.

12.2 Subject to this clause 12, HYC will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by HYC, HYC contractors or persons carrying out work at the Boatyard by arrangement with HYC. If the Owner suffers any loss due to any such act, failure to act or omission then HYC will be liable to make payment to the Owner to make good any loss, if such losses are foreseeable.

12.3 In accordance with clause 12.2 above, HYC is not liable for any damage or injury suffered by any person or to any property where it was caused by: 12.3.1 an act, failure to act or omission by a third party accessing or using the Boatyard or using the facilities at any Boatyard;

12.3.2 an act, failure to act or omission by another berth holder in the Boatyard and

12.3.3 any other act, failure to act or omission by a third party whether or not that third party is on or at the Boatyard when the damage or loss is suffered.

12.4 HYC do not exclude liability for death or personal injury resulting from their negligence.

12.5 HYC are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by HYC or the Owner.

12.6 HYC are also not responsible for increased costs or expenses, loss of profit, opportunity, business, contracts, revenues or anticipated savings or for any special indirect or consequential loss of any nature suffered by any person.

12.7 This clause 12 shall survive termination or expiry of this Berthing Agreement.

### **13 General**

13.1 All the terms of the contract between HYC and the Owner relating to the berthing of the Boat at the Marina are contained in this Berthing Agreement. This Berthing Agreement applies to the exclusion of any other terms that the Owner seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing (including but not limited to the Implied Terms). This Berthing Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the berthing of the Boat at the Boatyard.

13.2 Each of the clauses of these Conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

13.3 The Berthing Agreement is between HYC and the Owner. No other person shall have any rights to enforce any of its terms.

13.4 The Owner shall be treated as having accepted the terms of the Berthing Agreement if the Owner has taken up a berth at the Boatyard.

13.5 HYC may transfer their rights and obligations under the Berthing Agreement to another organisation. HYC will notify the Owner in writing if this happens, but this will not affect the Owners rights or HYC's obligations under the Berthing Agreement.

13.6 If HYC delay in enforcing this Berthing Agreement, HYC can still enforce it later. If HYC do not insist immediately that the Owner do anything that they are required to do under this Berthing Agreement, or if HYC delay in taking steps against the Owner in respect of the Owner breaking the Berthing Agreement, that will not mean that the Owner does not have to do those things and it will not prevent HYC taking steps against the Owner at a later date.

13.7 If any clause in the Berthing Agreement requires the Owner to give HYC notice in writing, the Owner can send this to HYC by email to the email address set out in the Package Details, by hand, or by pre-paid post to "The Boatyard Manager" at the address set out in the Package Details. If HYC have to contact the Owner or give the Owner notice in writing, HYC will do so by email to the email address of the Owner held on HYC's system, by hand, or by pre-paid post to the address in the Package Details.

13.8 If the obligations, undertakings and warranties by the Owner in the Berthing Agreement are undertaken or given by more than one person, then they are given by all persons jointly. The Owner and HYC acknowledge that in entering into this Berthing Agreement they do 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 this Berthing Agreement. The Owner and HYC both agree that they shall have no claim for innocent or negligent misrepresentation based on any statement in this Berthing Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

13.9 The Berthing Agreement is governed by English law. The Owner and HYC both agree to submit to the jurisdiction of the English courts.

13.10 Provision for Owner to pay HYC legal costs for Owner's breach of the Agreement.