

# TORBAY MARINE LIFTING

## CONDITIONS OF BOATYARD SERVICES

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### 1. DEFINITIONS

1.1. When the following words with capital letters are used in these Terms, this is what they will mean:

- **Agreement:** these Terms, the Booking Form and the Regulations;
- **Boat:** the Boat shown on the Booking Form;
- **Booking Form:** the form which contains the details of service(s) requested from the boatyard.
- **Boat Length:** the overall length of the Boat calculated including davits, bowsprits, bumpkins, boarding ladders, stern drives, tenders, outdrives, outboards, rudders, anchors, pulpits, pushpits and any other extension forward of the Boat;
- **Event Outside Our Control:** any act or event beyond Our 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 or other natural disaster, interruption of electricity supply or failure of public or private telecommunications network.
- **Premises,** being South Pier: and specifically the element of the South Pier under the direct administration of Torbay Marine Lifting Ltd;
- **Price List:** the list of prices as defined within [www.torbaymarinelifting.co.uk](http://www.torbaymarinelifting.co.uk) or as confirmed in any subsequent booking email.
- **Regulations:** the Marina or Harbour Regulations issued from time to time;
- **Terms:** the terms and conditions set out in this document
- **We/Our/Us:** the Torbay Marine Lifting Company, (TML) or any directors of the above;
- **You/Your:** the owner, skipper or person in charge of the Boat

### 2. PROVISION OF BOATYARD SERVICE

2.1. Your completed Booking Form will be deemed acceptance of these Terms, the Regulations, and any specific terms associated to a current, valid promotional offer.

2.2. Berth to Premises delivery (or vice versa) options may be requested at the time of booking, or up to 28 days before the lift. If this facility is requested within 28 days, we will do our utmost to satisfy the request, but may need to reschedule the dates to comply.

2.3. Tows, where requested may take place at an extra charge up to five working days before a lift, but are only accepted as a confirmed arrangement by subsequent confirmatory email by Us.

2.4. We reserve the right to seek additional disclaimers against responsibility for damage to wooden or older boats, or if We consider the structure of Your Boat to be unsound or unsuitable.

2.5. High pressure jet washing does not include scraping or barnacle removal. Excessively dirty hulls will be charged at double the published rate.

2.6. Shot blasting is not permitted. Antifouling will be applied in accordance with manufacturers instructions, which may mean that that We reserve the right to amend the booking date at short notice if adverse weather conditions prevail. We strongly suggest that if antifouling is requested, the Berth to Premises option is discussed, to give flexibility to both parties.

2.7. Your Boat will be positioned ashore based on the launch date requested on your Booking Form. Changing Your launch date once ashore may not be possible, where it can be accommodated the difference will be charged at the prevailing rate on the Price List.

2.8. Cradles are subject to availability, and their allocation is at the sole discretion of the TML.

2.9. Electricity and water supplies are subject to availability and not guaranteed. Where supplied, you must provide your own suitable cable / hose.

2.10. Suitable numbers of fenders must be provided by you, to prevent damage to hulls during mooring to the pontoons, together with adequate lengths of good quality mooring sheets.

2.11. We reserve the right to board, move, moor or reposition the Boat for reasons of safety, security, an emergency or to prevent or stop a nuisance.

### 3. YOUR OBLIGATIONS

3.1. You 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 You, Your crew,

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passengers, guests or persons carrying out work on Your Boat by arrangement with You or with Your consent. If We suffer any loss due to any such act, failure to act or omission then You will be liable to make payment to Us to make good our loss.

- 3.2. You must complete the Booking Form with all relevant information about Your Boat, including laden weight, any specific information with regards to lifting and shoring. In particular, owners of racing, deep drafted, light displacement or non- production boats should provide any additional pertinent hull and lifting information, even if it has not been specifically requested on the Booking Form. Deep draft boats may need to be lifted plus/minus 3 hrs of high tide.
- 3.3. Failure to notify Us of any work that requires Your Boat to be moved once ashore (e.g. crane work to lorry) will incur a vessel movement charge at the prevailing charge within the Price List.
- 3.4. You must remove sails, canvas work and all equipment that would cause unnecessary windage prior to Your Boat being lifted ashore unless:
  - 3.4.1. Your booking is between 1st April – 30th September; and
  - 3.4.2. Your Boat will be ashore less than fourteen days; and
  - 3.4.3. You have not been instructed by Us to remove such items.
- 3.5. Prior to Us lifting or launching Your boat you must ensure:
  - 3.5.1. You have removed all through hull protruding transducers such as logs.
  - 3.5.2. that Anodes, shafts and hull fittings are clearly marked above the waterline.
  - 3.5.3. that You have provided adequate warps and fenders for the movement between the berth and the hoist dock.
- 3.6. Once your Boat is ashore You must not alter or interfere with any of the props, boat cradles or boat supports.
- 3.7. You are responsible for ensuring that Your Boat is seaworthy prior to launch. Any additional lifts, time ashore or launches required for boats with inadequate watertight integrity will be charged in addition at the prevailing rate on the Price List. In a genuine emergency, We will complete this work without further reference to You, until such time as the Boat is safely ashore.
- 3.8. You must ensure that at all times we have a current postal address and a current email address to which we can send You (or Your representative) any notice or

details of any matter arising out of this Agreement. You must also provide mobile or landline telephone contact details for use in case of emergency.

- 3.9. You must not use Your Boat for any residential purpose whilst Your Boat is ashore.

### 4. OUR OBLIGATIONS

- 4.1. Subject to suitable plant availability and the prevailing conditions, We will complete boatyard services as requested on the Booking Form. We will advise of alternative dates if we are unable to accommodate preferred lifting and launch dates at the time of booking.
- 4.2. We 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 Us, Our contractors or persons carrying out work at the Premises by arrangement with Us. If You suffer any loss due to any such act, failure to act or omission then We will be liable to make payment to You to make good Your loss.
- 4.3. We will grant access to Your chosen contractor(s), subject to them complying with our registration and sign-in processes, which include:
  - 4.3.1. providing supporting risk assessments and method statements for the work they are to complete;
  - 4.3.2. supplying evidence of valid public liability insurance covering at least £5 million.
  - 4.3.3. registering on site each day with Us;
  - 4.3.4. payment of our non-tenant contractor charge where applicable.
- 4.4. We are committed to protecting and respecting your privacy. Our Privacy Policy on our website sets out the basis on which any personal data we collect from You, or that which You provide to Us is handled and stored. For the purposes of the relevant data protection legislation (consisting of the General Data Protection Regulation ((EU) 2016/679) the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation) the data controller is Torbay Marine Lifting Ltd, Temple End Farmhouse, Haverhill, Suffolk, CB9 7LL. Our nominated representative is named in our privacy policy.

### 5. PAYMENT

- 5.1. Payment in full is required for all boatyard services, approved methods of payment are set out in the Marina's Price List.

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- 5.2. If your Boat remains ashore longer than stated on the Booking Form at Your request, or due to an Event Outside Our Control, You will be charged for all additional days Your Boat is stored ashore at the prevailing storage rate on the Price List.
- 5.3. We will only issue receipts for payment on request.
- 5.4. We rely on You to provide us with an accurate measurement of the Boat Length, weight, and boatyard services are calculated by reference to the Boat Weight and Length. We therefore reserve the right at any time during the period of the Agreement to measure the Boat and charge You additional fees if the Boat Weight or Length is greater than stated on the Booking Form, in accordance with the Price List.
- 5.5. Your booking is only secured on receipt of the required 50% deposit, regardless of when booked. Final payment is due on relaunch.
- 5.6. If a cancellation is made by You more than 28 days prior to the service being provided, the deposit will be refunded in full; otherwise the deposit is forfeited on cancellation.
- 5.7. If You fail to pay within 7 days of the time or date on which it is due We may serve a final warning in respect of the outstanding sum, requiring You to make payment within a further 24hrs. If after the expiry of that 24hrs the outstanding sum has not been paid this will be treated as a repudiation of Your obligations under this Agreement and We shall be entitled to take all or any of the following steps:-
- 5.7.1. end this Agreement under condition 9;
  - 5.7.2. exercise Our rights under condition 10
  - 5.7.3. prevent the Boat from leaving the Premises
  - 5.7.4. charge You interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above the HSBC Bank PLC base rate from time to time calculated on a daily basis;

## 6. LIMITATION OF LIABILITY

- 6.1. We do not exclude liability for death or personal injury resulting from our negligence.
- 6.2. We are responsible for losses suffered by You as a result of our breaking this Agreement, if the losses are a foreseeable consequence of us breaking this Agreement. We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by us or You. We 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.

- 6.3. We do not accept any liability for loss or damage to any removable property or valuables whilst the boat is ashore.

## 7. EVENTS OUTSIDE OUR CONTROL

- 7.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 7.2. If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- 7.2.1. We will contact You as soon as reasonably possible to notify You; and
  - 7.2.2. Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our performance of Services to You, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.
- 7.3. You may cancel the contract if an Event Outside Our Control takes place and we are unable to deliver the services described within the Booking Form for a continuous period of 6 weeks.

## 8. YOUR WARRANTY TO US

- 8.1. You warrant to us that You are the owner of the Boat, have the immediate right to possess the Boat and that the Boat Length is as stated in the Berthing Licence.
- 8.2. You shall maintain at all times 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 £3,000,000 for any one event. We require a record of Your current insurer, policy reference number and policy expiry date. You must provide Us with these details whenever You change or renew Your policy. We reserve the right to request a copy of Your insurance certificate to confirm these details relate to an active policy.

## 9. TERMINATION

- 9.1. Without affecting any right or remedy available to either of us, either You or We will be entitled to end this Agreement immediately by notice in writing to the other if:-
- 9.1.1. the other party commits a serious or repeated breach of this Agreement and, if it can be put right, they do

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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;

- 9.1.2. 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;
- 9.1.3. 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.
- 9.1.4. the other party, being a business, ceases or threatens to cease to carry on its business.
- 9.2. Without affecting any other right or remedy We may have We will be entitled to end this Agreement immediately by notice in writing to You if:-
  - 9.2.1. You have a bankruptcy petition presented or die;
  - 9.2.2. You are dissolved (if You are a partnership)
  - 9.2.3. You provide us with details which You know to be false when applying for a berth and the false declaration would have reasonably affected Our decision to offer You a berth.
- 9.3. For the purpose of condition 9.1.1 a breach can be put right if the party can comply with the provision within the Agreement in all respects.
- 9.4. The rights to end this Agreement given by this condition do not affect any other right or remedy You or We may have in respect of the circumstances allowing You or Us to terminate the Agreement.
- 9.5. On termination of the Agreement for any reason You shall within 7 days of the end of the Agreement:
  - 9.5.1. pay to us all amounts owing to us;
  - 9.5.2. remove the Boat from the Premises;

## **10. REMOVAL OF BOAT**

- 10.1. We reserve the right (after giving You at least 7 days written notice) to secure the Boat and place it under our control in the event that:-
  - 10.1.1. You fail to pay in accordance with this Agreement and we have taken the steps set out in condition 5.5; or
  - 10.1.2. You fail to remove the Boat within 7 days of the end of this Agreement (however that occurs):
- 10.2. You give us irrevocable authority to secure or remove the Boat and store it ashore pursuant to condition 10.1 and

You agree to be responsible for Our costs in taking these steps.

- 10.3. If we have removed Your Boat under clause 10.2 we may give You reasonable notice of our intention to sell the Boat in accordance with the law. Should we sell the Boat we will pay the proceeds to You (or such person who is entitled to possession of the Boat) less all sums owed by You to Us and any expenses of the storage, transport/removal, sale and any legal costs incurred in respect of the sale.
- 10.4. This condition 10 will remain in force after this Agreement ends.

## **11. GENERAL**

- 11.1. It is Our intention that all the terms of the contract between You and Us relating to boatyard services at the Premises are contained in this Agreement.
- 11.2. In the event of any conflict between the terms of this Agreement and the Regulations, the terms of this Agreement shall apply, but if a Regulation expands a term of this Agreement or vice versa, both shall apply.
- 11.3. You shall be treated as having accepted the terms of this Agreement if You have signed a Booking Form and returned it to Us.
- 11.4. You may only transfer Your rights or Your obligations under these Terms to another person if We agree in writing.
- 11.5. We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify You in writing if this happens, but this will not affect Your rights or Our obligations under these Terms.
- 11.6. Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 11.7. This Agreement is between You and Us. No other person shall have any rights to enforce any of its terms.
- 11.8. If You or We fail to insist that the other performs any of their obligations under these Terms, or if We or You do not enforce their rights against the other, or if We or You delay in doing so, that will not mean that they have waived their rights against the other and will not mean that the other does not have to comply with those obligations. If We or You do waive a default by the other, they will only do so in writing, and that will not mean that We or You will automatically waive any later default by the other.
- 11.9. References to persons includes companies, partnerships and unincorporated associations.

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- 11.10. If You wish to contact Us in writing, or if any clause in these Terms requires You to give Us notice in writing, You can send this to Us by hand, or by pre-paid post to "The Marina Manager" at the address set out in the Berthing Licence. If We have to contact You or give You notice in writing, We will do so by hand, or by pre-paid post to Your address in the Berthing Licence.
- 11.11. If the obligations, undertakings and warranties by You in this agreement are undertaken or given by more than one person, then they are given by all persons jointly.
- 11.12. These Terms are governed by English law. You and We both agree to submit to the jurisdiction of the English courts. However, if You are a resident of Northern Ireland You may also bring proceedings in Northern Ireland, and if You are a resident of Scotland, You may also bring proceedings in Scotland.