



# BWML Terms & Conditions

## General Conditions

**Issue Date: 6 March 2009**

### Definitions

In these General Conditions:

“**BWML**” refers to British Waterways Marinas Limited, its employees and agents to whom these General Conditions apply.

“**the Marina**” shall include the marina, mooring and all other facilities provided by BWML for launching, navigating, mooring, berthing and storage of vessels, vehicles and property and all the land, adjacent water and buildings occupied or under the control of BWML, including boat yard, boat shed, car park, docks, jetties, hard-standing and roadways.

“**the Office**” means the Marina office on site at the Marina or the administrative Marina office responsible for that Marina that is based at a different BWML Marina.

“**the Owner**” means the owner of a Vessel or Vessels using the facilities of the Marina. Where the Owner is more than one person, all obligations of the Owner under these General Conditions shall be joint and several.

“**Vessel**” means the Vessel or Vessels, including but not limited to boats, caravans, trailers and cars, belonging to the Owner using the facilities of the Marina. No person shall anchor or make fast any Vessel in a manner which is incapable of being easily removed in case of emergency.

“**Length Overall (LOA)**” means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent. In the exceptional circumstances where the rudder is moveable by 90 degrees it is not included in the Length Overall (LOA).

“**Berth**” means the space on water or land from time to time allocated to the Owner by BWML for the Vessel.

“**Grade**” means the Berth usage type that reflects specific benefits as stipulated in the current **BWML Berth Definitions** document.

### 1. The Contract

- 1.1. Berths at the Marina shall be licensed for the periods and at the rates and terms applicable for the Grade charge from time to time published by BWML at the Marina and in force at the commencement of a Contract. Details of the charges applicable to the Berth at the beginning of the Contract will be given to each licensee at the time that the Contract is granted.
- 1.2. The Contract shall not be automatically renewed but will end at the conclusion of the period agreed if not terminated sooner by BWML or by the Owner under the provisions of Clause 9.
- 1.3. The Owner must notify BWML in writing of the details of any change of names of the Vessel or change of the Owner’s own name, emergency contact, address or telephone number. This can be done using the **BWML Change of Details Form**.

## 2. Liability, Indemnity and Insurance Obligations

- 2.1. BWML shall not be liable whether in Contract, tort or otherwise, for any loss, theft or any damage of whatsoever nature suffered by any Vessel or vehicle or other property of the Owner, his crew, contractors or visitors, except to the extent that such loss, theft or damage was caused by the negligence of BWML.
- 2.2. Notwithstanding Clause 2.1 above, BWML shall not be liable for any indirect or consequential loss or damage.
- 2.3. The Owner shall maintain a minimum of third party insurance in respect of himself and his Vessel, vehicles, crew, agents, visitors and contractors in a sum of not less than £2,000,000 (two million pounds) in respect of each accident or incident, including sufficient cover against full foundering, salvage and wreck removal claims. Such insurance shall be effected and maintained by a reputable insurance company authorised under the Financial Services Authority (FSA) to carry on in Britain or in Northern Ireland, insurance business of a relevant class or who has corresponding permission under the law of another member state of the European Community. The Owner shall produce the above policy or policies and evidence of payment of the premiums to BWML on demand in addition to the request to provide a copy to BWML on a new Contract and when the Owner renews or changes their insurance. The Owner agrees not to do anything that could lead to the above policy or policies being revoked, vitiated or not renewed in the ordinary course.
- 2.4. BWML shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of any defect in the Vessel or property concerned unless it has been expressly engaged to do so by the Owner on commercial terms. Similarly BWML shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident for which BWML is not responsible. However, BWML reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so it shall be entitled to charge the Owner concerned on a normal commercial charging basis (and, where appropriate, to claim a salvage reward).
- 2.5. The Owner shall ensure that the Vessel is insured for any lifting, mast removal and storage ashore and produce the insurance policy in accordance with Clause 2.3 to BWML prior to booking any boat lift operation through BWML.

## 3. Commercial Use

- 3.1. Except with the previous written consent of BWML, the Owner shall not use any part of the Marina or Vessel for any commercial purposes including, but without limitation hire of the Vessel, embarkation of charter parties, rental accommodation or advertising of any kind. Please note that if BWML does give its written consent for commercial use, such use will be subject to further terms and conditions and to the payment of additional fees, over and above those referred to in these General Conditions. For the avoidance of doubt, the occasional use of the Vessel by a friend of the Owner on payment to the Owner of a contribution towards the actual running costs of the Vessel shall not be deemed to be a commercial purpose.
- 3.2. Upon request, the Owner shall supply to BWML, full details in writing of all such use of the Vessel by friends or relations in accordance with Clause 3.1 above.

## 4. Sale of Vessel

- 4.1. The Berth is not transferable to the new Owner without permission from BWML and payment of brokerage fees or a Sale on Berth Fee where applicable. If a Berth is being transferred the current Owner must complete a **BWML Sale on Berth Application Form**.
- 4.2. The Owner shall not offer any Vessel for private sale, without the prior written consent of BWML, whilst it is in the Marina. In the event that BWML consents to the Vessel being offered for sale whilst it is in the Marina, the Owner must use BWML's brokerage service to effect the sale of the Vessel, or alternatively, in the event that the Owner sells the boat privately BWML reserves the right to charge the Owner a Sale on Berth Fee to allow an alternative party to occupy a BWML Berth. The Sale on Berth Fee is also applicable in the scenario when the boat is sold to a customer within the Marina. Proof of sale value is required for all situations.

- 4.3. Within seven days of any sale, transfer or mortgage of any Vessel, the Owner shall notify BWML in writing of the name and address of the purchaser, transferee or mortgagee, as the case may be if the new purchaser is remaining at the Marina using the **BWML Sale on Berth Application Form**.

## 5. Condition of the Vessel

- 5.1. The Owner shall ensure that the Vessel remains in a seaworthy condition at all times whilst it is at the Marina.
- 5.2. All Vessels must be kept clean and in reasonable repair at all times. Should a Vessel be damaged, then repair works must be carried out as soon as is reasonably possible. Tarpaulins and temporary covers are allowed as a temporary cover only.
- 5.3. Vessels berthed at Marinas connected to British Waterways' navigations must be in possession of the requisite valid Boat Safety Certificate and British Waterways' Craft Licence which shall at all times be prominently displayed on the Vessel. Vessels berthed in Marinas connected to Environment Agency waterways must be in possession of the requisite valid Boat Safety Certificate and must display a current valid Navigation Certificate and registration number at all times. Any Vessel registered on the Small Ships Register must display its SSR number at all times. Any exemptions to this must be authorised in writing by BWML Senior Management.
- 5.4. In addition to the requirements set out in Clause 5.1, the Owner shall ensure that the Vessel remains in an aesthetically-pleasing condition whilst it is at the Marina. For the avoidance of doubt, BWML shall be the sole judge of what is considered "aesthetically-pleasing" by having reference to the condition of the majority of the vessels moored at the Marina.

## 6. Work to Vessel

- 6.1. Minor running repairs or minor maintenance works of a routine nature, including but not limited to light sanding, staining, minor painting etc which does not cause noise, disturbance, disruption or pollution to the Marina or other Marina users may be carried out to your Vessel without BWML's permission. Extensive external sanding, angle grinding, welding, internal refit, spray-painting etc are considered major works and cannot be carried out within the Marina unless with BWML's prior written consent and in accordance with Clause 6.4. Maintenance may be carried out daily between 09.00 and 18.00 hours. When carrying out work, all BWML facilities, bollards, pontoons, service points etc must be suitably protected, kept clean and tidy at all times, and appropriate Health and Safety issues adhered to. We reserve the right to charge you for the full cost of any remedial works required as a result of your work.
- 6.2. Prior written consent for work to be carried out at the Marina shall not, without good cause, be withheld where the work is to be carried out in strict accordance with the documents Working on Craft in Dry Docks, Working on Craft in Dry Storage and Working on Craft on British Waterways Property where:
- 6.2.1. the work to be carried out is work for which BWML would normally employ a specialist sub-contractor; or
- 6.2.2. BWML is satisfied that the whole of the work is remedial and not servicing and is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of her equipment to which the warranty relates; or
- 6.2.3. BWML has set aside an area of the Marina where the Owner may carry out work on the Vessel and the work for which consent is sought is restricted to that area.
- 6.3. The Owner must ensure that suitable risk assessments, method statements and a copy of the contractor's third party liability insurance policy in the sum of £5,000,000 (five million pounds) accompanies the request for consent referred to in Clause 6.1 above. The Owner must also ensure that contractors are only employed to carry out such repairs that they are qualified to undertake and that the contractors have the appropriate and requisite accreditations. For the avoidance of doubt, BWML reserves the right to refuse its prior written permission for the work once it has had an opportunity to consider the risk assessments and method statements of the contractor.

- 6.4. The Owner will only be permitted to undertake works on their craft, for which they have deemed competencies in being experienced in the carrying out of the required operation or the use of any power tools, such as welders, grinders or hot cutting equipment that would require professional certification. Operations that require the use of such equipment should be advised to the Manager or Supervisor for that Marina prior to commencement and be accompanied with a method statement and risk assessment for this task. Where this is the case then this must be carried out in accordance with a Permit-to-Work (Hot Work Permit). For the avoidance of doubt, BWML reserves the right to prevent any person from operating such equipment in the Marina if appropriate certification or records of competency cannot be produced when requested by any member of BWML staff.
- 6.5. If the Owner is using contractors to carry out any work, the Owner must ensure that the contractors register with the Office upon their arrival and pay a registration fee, details of which are available at the Office upon request.

The Contractor must register with the Office or in the absence of an Office to the prearranged person on arrival and on departure of each day.

Any contractors must follow the BWML registration process, providing copies of risk assessments, method statements as relevant and their liability policy. The Contractor Registration Request must be submitted to BWML. Any contractors will only be permitted to work on site once the Manager or Supervisor for that Marina has authorised all documents and provided a site induction.

All documents must be submitted annually. Method statements and risk assessments must be resubmitted more regularly should the method of work change. New or additional method statements and risk assessments should also be resubmitted if the Owner or contractors need to change the method of working or use different materials once work has commenced.

- 6.6. BWML reserves its right to insist that contractors working on the Vessel on behalf of the Owner leave the Marina if either the Owner or the Contractor has failed to comply with this Clause 6.
- 6.7. BWML also reserves its right to withdraw its consent if any work is carried out in contravention of the Guidance for Work in Dry Docks and/or in contravention with relevant Health and Safety legislation or approved codes of practice.
- 6.8. In carrying out any work the Owner shall not cause any nuisance and agrees to use his best endeavours to ensure that his contractor does not cause any nuisance to BWML and/or to any other users of the Marina and/or to any person residing in the vicinity of the Marina. If BWML receives any complaints regarding the work from any person using the Marina and/or from any person residing in the vicinity of the Marina, BWML reserves the right to either request a review of the method statement of the contractor so as to minimise or remove the nuisance or to withdraw its consent for the work.
- 6.9. In the event that BWML withdraws its consent for the work for any reason set out in this Clause 6, the Owner shall immediately, (save to the extent that the consent may further be extended in accordance with Clause 6.8), instruct the contractor to leave the Marina forthwith and the Owner shall immediately commence restoring the area in which the work was being carried out, into the condition it was in prior to the commencement of the work, including undertaking any remediation work that BWML decide is required, and shall complete same within a reasonable time from commencement of the work.
- 6.10. Prior to changing or modifying a Vessel, the Owner must receive written permission from BWML in order for the Vessel to remain at the Marina. This permission will not unreasonably be withheld.

## **7. Fees**

- 7.1. Contract fees are calculated on a per Berth rate or Length Overall (LOA) of the Vessel as measured, including bowsprit or stem fittings, bathing platforms, out-drives or transom hung ladders and stern mounted dinghies. There is a minimum charge of 6.4 metres.

- 7.2. If the Owner wants a Vessel to occupy more than one Berth, BWML reserves the right to charge accordingly for the number of berths occupied. For all inland craft with a beam in excess of 3.0 metres BWML reserves the right to levy a minimum of 30% surcharge to a maximum of 100%, the maximum relevant if taking up the equivalent of 2 complete berths. The exception to this is at Kings Marina where a fixed Berth rate is applied for wide Vessels that occupy specific Berths. With regards our coastal Marinas, namely Hull, Glasson & Limehouse, non-inland craft with a beam in excess of 4.5 metres BWML reserve the right to effect a surcharge as inland craft which is a minimum of 30% and a maximum of 100%.
- 7.3. All Contract fees are payable in advance. Instalment payments can only be made on 12 month contracts with the first instalment of 10% due on the first day of the Contract, then 9 equal monthly instalments of 10% each on the first of each month following. One off payments are due no later than the start of the Contract period. All fees are inclusive of standard rated VAT. Fees will be adjusted to reflect any VAT changes. Contract fees are subject to an annual review and notice of any changes to the fees will be deemed to have been sufficiently given by BWML by the display of the amended Contract fees in the Office.
- 7.4. All Contracts start on 1<sup>st</sup> day of the Month the Vessel intends to arrive at the Marina.
- 7.5. Charge scaling of term length Contract invoices except at Glasson Basin Marina is as follows:

Months	Percentage of Full Annual Charge
3	30%
6	60%
12	100%

At Glasson Basin Marina only, the scaling charges shall be:

Months	Percentage of Full Annual Charge
3	40%
6	66%
12	100%

- 7.6. All Contract fees are inclusive of berthing fees, potable water and access to all the Marina facilities.
- 7.7. Where an electrical supply is available at an extra charge, it is guaranteed to be at a maximum load of 8 to 32 amps subject to Berth definitions.
- 7.8. Full details of all BWML charges in respect of this Clause 7 may be found at the Office reception and are incorporated into these General Conditions by reference. BWML reserves the right to alter these charges from time to time. In addition, please note that with regard to fuel bought, BWML reserves the right to determine what a fair market price without consultation is.
- 7.9. All payments may be made in sterling by crossed cheque (if backed by cheque guarantee card and made payable to BWML), credit or debit card or cash. Please note BWML is unable to accept American Express and Diners Club International cards.
- 7.10. BWML reserves the right to exercise a general lien upon any Vessel and/or other property belonging to the Owner whilst in or at the Marina until such time as any money due to BWML in respect of the Vessel and/or other property, whether on account of rental, storage, commission, access or berthing charges, work done, administration charges, legal costs or otherwise shall be paid by the Owner. In the event that the aforementioned lien remains unsatisfied for the specific period of time notified in writing to the Owner by BWML, the Vessel will be sold on brokerage and the proceeds of the sale used to satisfy the monies owed by the Owner to BWML. Any remaining monies after this will be remitted to the Owner.

- 7.11. Payments made under these General Conditions shall be made without deductions. The Owner shall punctually pay to BWML all sums owing to BWML under these General Conditions. BWML reserves the right to levy an administration charge in the sum of £20 plus VAT where applicable per letter against the Owner in the event that it becomes necessary for BWML or BWML's appointed legal advisors to write to the Owner to seek payment of any overdue payment or to advise of BWML's intention to commence legal proceedings against the Owner. For the avoidance of doubt, the Owner accepts that any administration charge levied against him by BWML in the circumstances set out in this Clause 7 represents a genuine pre-estimation of loss on the part of BWML. In addition to the administration charge the Owner will be liable for the payment of interest at the rate of the current Bank of England Base Rate plus 8% on any sum owing to BWML from the date of the third letter that BWML or BWML's appointed legal advisors are obliged to write to the Owner seeking payment of a debt until the payment of the debt by the Owner.
- 7.12. BWML will only make refunds of payments made under these General Conditions in the circumstances specifically provided for under these General Conditions and for no other reason whatsoever.
- 7.13. BWML must be in receipt of full settlement for the previous Contract before a new Contract will be issued unless a formal payment plan is in existence that covers the outstanding amount. Any deviation of this will lead to termination of the Contract under Clause 9.
- 7.14. BWML will not accept payments from a statutory body.
- 7.15. If a Contract commences for a Vessel not yet purchased by the Owner a nominal charge (in the absence of any known length will be based on a minimum of 10.0 metres if a metre rate is applicable, or a Berth rate if a Berth rate is applicable) will be charged for that Grade Berth starting the period the customer has requested for. When the Vessel arrives at the Marina, the original Contract will be terminated if the fee was based on a metre rate and the actual length is plus or minus 0.5 metres more than the length used on the current Contract and a new one raised starting the same date as the original Contract with a charge relevant to the Vessel purchased, with a **BWML Change of Details Form** signed by the Owner in agreement to the change. The credit of the original Contract will be based on the number of complete months utilised to date.
- 7.16. If the Length Overall (LOA) of a Vessel is recognised as being different to what is stated on the current Contract is greater than plus or minus 0.5 metres then the current Contract will be terminated as at the end of the month the discrepancy is recognised and a new one raised starting the same date as the original Contract, with a **BWML Change of Details Form** signed by the Owner in agreement to the change. The credit of the original Contract will be based on the number of complete months utilised to date.
- 7.17. If the Contract Grade stated on the current Contract is to be changed then the current Contract will be terminated as at the end of the month the discrepancy is recognised and a new Contract will commence on the 1<sup>st</sup> day of the following month at the rate prevailing for the start of the new Contract, with a **BWML Change of Details Form** signed by the Owner in agreement to the change. The credit of the original Contract will be based on the number of complete months utilised to date.

## 8. Berth Sublets

- 8.1. Berth Sublets are available only for a 12 month mooring Contracts subject to the Manager's discretion. All requests for Berth Sublets must be made in writing to the Manager or Supervisor for that Marina where the Berth is. The discount as tabulated directly below will only be made at the end of the 12 month Contract providing the Contract has not since been terminated and full payment has been made. The Owner of the Vessel occupying the Berth for sublet period will have to complete and sign a **BWML Berth Sublet Application Form**.

Length of Sublet	Discount on 12 Month Full Contract
Full 3 Months	10%
Full 6 Months	20%

## 9. Termination

- 9.1. Either the Owner or BWML may terminate a Contract by giving the other 28 days notice in writing. This can be done by the customer using the **BWML Notice To Terminate Contract Form**.

In the absence of written notice BWML will assume that the customer gave 28 days notice on the date that it became aware the Vessel had vacated the Marina permanently.

- 9.2. Without prejudice to any other rights BWML may have in respect of any breaches of the General Conditions by the Owner, BWML may terminate the Contract forthwith in the following circumstances:

9.2.1. if the Owner commits a breach of any term of the General Conditions which is capable of remedy but which is not cured within 14 days of the written notice to the Owner, at the Owner's last known address, specifying the breach and requiring its remedy; or

9.2.2. if the Owner commits a breach of any term of the General Conditions which is not capable of remedy.

- 9.3. Upon termination by BWML pursuant to Clause 9.1 above, BWML shall refund to the Owner the unexpired portion as a fraction of days to the full Contract period of the mooring/hardstanding fees subject to a right of set-off in respect of any monies owed by the Owner to BWML.

- 9.4. Upon expiry of the 28 days referred to in Clause 9.1 or upon BWML terminating this agreement pursuant to Clause 9.2, the Owner shall be required to take delivery of his Vessel and remove it from the Marina within 7 days. If the Owner fails to take delivery and remove his Vessel within this period, BWML shall be entitled:

9.4.1. to charge the Owner the amount which would have been payable by the Owner to BWML if the agreement had not been terminated for the period between termination of the agreement and removal of the Vessel from the Marina; and/or

9.4.2. to remove the Vessel from the Marina and secure it elsewhere and then charge the Owner with all costs arising out of such removal, including alternative berthing fees; and/or

9.4.3. to sell the Vessel by auction and deduct from the sale proceeds

(1) all costs arising out of such sale, including but not limited to, removal costs, alternative berthing fees, auction fees, administration fees and legal costs; and

(2) arrears of Contract fees, accrued interest and any charges made pursuant to Clause 9.4.1 provided that BWML will account to the Owner thereafter in respect of any net sale proceeds.

- 9.5. If the Vessel is removed by British Waterways or other authorised body then the day the Vessel is removed from a BWML Marina, the Contract is deemed terminated, with the value of the Contract being reduced by the 10% refund scale as noted in Clause 9.6 below as if the Contract had ended on the last day of the month the Vessel was removed.

9.6. Upon termination by the Owner only 12 month contracts are eligible for refunds.

If the Owner is remaining with BWML and is taking out a new Contract for the reasons disclosed in Clause 7.16 where the Length Overall (LOA) of the Vessel is to be changed and/or Clause 7.17 where the Contract Grade is to be changed, BWML shall credit the Owner's original Contract invoice in accordance with Clauses 7.16 and 7.17. If a refund is due the refund is subject to a right of set-off in respect of any monies owed by the Owner to BWML or alternatively it will be used to set-off the value of the new Contract.

If the customer is leaving the Marina, the scaling of refunds for 12 month contracts is as follows:

Complete Months Remaining	Percentage of Total Annual Charge to be Refunded to the Customer
1	0%
2	0%
3	10%
4	20%
5	30%
6	40%
7	50%
8	60%
9	70%
10	80%

The amount to be refunded fits with the complete number of months remaining e.g. if a customer provides notice on 14 March, the refund is calculated on complete months from 1 May.

## 10. Refund Policy

- 10.1. There is no refund due on a Contract except on the termination of a 12 month Contract which is detailed above in Clause 9.6. Refund cheques will not be paid until after the customer has left the Marina.
- 10.2. If a 12 month Platinum Mooring Contract is being terminated, any third party services that have been paid for by BWML on the Owner's behalf, for example the River Canal Rescue Ltd cover, the full costs will be deducted from the refund if a refund is due regardless of the unexpired portion of the third party service contracts.
- 10.3. Subject to Berth availability, there is a non-refundable deposit on advance bookings of visitor moorings, based on taking full payment in advance of the period of stay booked.

If a Vessel is unable to arrive at the Marina on the first day of the intended stay and if a berth is available there will be an allowance made if the Vessel arrives within 2 days on either side of the first day of the intended stay.

Length of Stay Booked and Paid for in Advance	Non-Refundable Deposit
1 to 3 days	100% of mooring fee
4 to 28 days	50% of mooring fee

- 10.4. Subject to Berth availability, a non-refundable deposit will be paid on advance bookings of Berths for 3 or 6 month periods. The non-refundable deposit is payable in full at the time of booking at a fee noted in the table below. If the Owner then occupies the Berth in the Contract period reserved, the non-refundable deposit will be off set against the mooring fee for the Contract period. If the Contract period booked has started and the Owner then wishes not to occupy the Berth, the Contract will be subject to the formal Termination policy in Clause 9 above with no refund of the non-refundable deposit.

Period of Time Between Reservation Date and Contract Start Date	Fee for Contract Period to be Reserved	
	6 Months	3 Months
1 month or less	£100	£50
1 to 3 months	£200	£100
3 to 6 months	£400	£200
6 to 12 months	£600	£300
1 year or more	£800	£400

- 10.5. Refunds will not be issued for unexpired electricity credit left in service bollards at any time.

## 11. Launching of Vessels Stored Ashore

- 11.1. Subject to availability, both in terms of time and space, BWML will launch or put afloat any Vessel stored ashore at the request of the Owner upon the Owner signing the BWML Terms & Conditions relevant to the launching, lifting or slipping of the Vessel.

## 12. Rights of BWML to Reberth and Move Vessels

- 12.1. BWML reserves the right to moor, reberth, move, board, enter or carry out emergency work on any Vessel if, in BWML's opinion, it is necessary to do so for the purposes of trying to:

- 12.1.1. avoid damage to the Vessel or to any other vessel in the Marina; and/or
- 12.1.2. ensure the safety of other users of the Marina; and/or
- 12.1.3. ensure the safety of BWML's staff, premises, plant or equipment.

- 12.2. BWML also reserves the right to moor, reberth or move the Vessel if, in BWML's opinion, it is necessary to do so in order to launch or put afloat any other vessel.

- 12.3. BWML also reserves the right to moor, reberth or move the Vessel, and/or to move any equipment and/or goods belonging to the Owner, if, in BWML's opinion, it is necessary for the good management, safety or security of the Marina.

## 13. Mooring, Reberthing, Moving or Towing at the Owner's Request

- 13.1. Subject to payment by the Owner of BWML's reasonable charges (where appropriate) and berth availability, BWML will moor, reberth, move or tow any Vessel at the request of the Owner. BWML will not be liable for any damage to the Vessel arising as a result of the mooring, reberthing, moving or towing save where such damage is caused by any negligence or default on the part of BWML.

- 13.2. Where BWML complies with an Owner's request pursuant to Clause 13.1 above, the Owner agrees to indemnify BWML in full from and against any and all loss, damage or liability (including all legal fees and costs) incurred by BWML as a result of complying with such request.

#### **14. BWML's Right of Sale**

- 14.1. Any Vessel or other property left at the Marina in breach of the terms of this Agreement will be subject to the provisions of the Torts (Interference with Goods) Act 1977 ("the Act"), which confers on BWML as bailee a right of sale exercisable in certain circumstances.
- 14.2. In circumstances where the Act does not apply or where BWML cannot be regarded as a bailee of the Vessel, section 12 and Schedule 1 of the Act are expressly incorporated into these General Conditions except that where the term 'bailee' appears in the relevant provisions of the Act it is to be replaced with 'BWML' and where the term 'bailor' appears it is to be replaced with 'Owner' and where the term 'bailment' appears it is to be replaced with 'General Conditions'.
- 14.3. BWML will not exercise the right of sale described in this Clause 14 until it has given notice to the Owner or has taken reasonable steps to trace him in accordance with the Act.

#### **15. Non-Assignability**

- 15.1. This agreement is personal to the Owner and his Vessel. The Owner must not assign any of his rights or obligations under this agreement to any third party or to any vessel not named in the BWML Contract signed by the Owner.

#### **16. Non-Exclusivity of Berths**

- 16.1. Nothing in these General Conditions shall entitle the Owner to the exclusive use of a particular Berth. Vessels shall be berthed or moored by the Owner in such a manner and position as BWML shall direct.
- 16.2. Once BWML has allocated a Berth to the Owner, the Owner shall not utilise a different Berth unless such a change of location is approved by BWML in writing prior to the Owner taking such action or is necessitated by emergency circumstances.
- 16.3. Unless otherwise agreed in writing by BWML, all necessary warps and fenders shall be provided by the Owner. BWML reserves the right to replace warps and re-secure any Vessel in the interests of the safety at the Owner's expense without prior notification.

#### **17. Safe Navigation of Vessels in the Marina**

- 17.1. When entering or leaving or manoeuvring in the Marina, the Owner must ensure that the Vessel is not navigated at such a speed or in such a manner as to endanger or inconvenience other vessels.
- 17.2. The Owner must ensure that his Vessel is not navigated by anyone who is under the influence of alcohol or drugs.

#### **18. Prohibition of Nuisances**

- 18.1. No noisy or objectionable engines, radios or other apparatus or machinery shall be operated at the Marina so as to cause a nuisance or annoyance to BWML or to any other users of the Marina or to any person residing in the vicinity.
- 18.2. Engines, generators or other apparatus or machinery must not be operated between the hours of 20.00 and 09.00.
- 18.3. Halyards shall be secured so as not to cause nuisance or annoyance.
- 18.4. No anti-social behaviour or abuse, verbal or physical shall be tolerated towards customers or staff at the Marina. Immediate termination of Contract will occur and criminal prosecution may be considered.
- 18.5. The Owner shall use his best endeavours to ensure that himself, his crew, contractors and visitors do not cause a nuisance as described in this Clause 18.

## **19. Disposal of Refuse**

- 19.1. No refuse shall be thrown overboard or left on the pontoons, jetties or car parks. Any domestic waste shall be disposed of in the receptacles provided by BWML or by removal from the Marina by the Owner. Non domestic waste must be removed from the Marina by the Owner.
- 19.2. The use of sea toilets is strictly prohibited at the Marina. Any Customer whose Vessel is found to be using such a facility will have his Contract terminated as per Clause 9.2.

## **20. Spillages**

- 20.1. The Owner should immediately inform BWML of any spillage of oil, paint or any other pollutant into the Marina. The Owner 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 Owner.

## **21. Stowage and Use of Dinghies**

- 21.1. Dinghies, tenders and rafts shall be stowed aboard the Vessel unless a Berth is separately allocated to them by BWML.
- 21.2. Dinghies and tenders shall not be used in the Marina without the prior permission of the Manager or Supervisor for that Marina.

## **22. Storage of Gear**

- 22.1. No fittings, equipment, supplies, stores or any other property belonging to the Owner shall be stored or left at the Marina other than as directed by BWML.
- 22.2. Except whilst transporting items to or from the Vessel, the Owner must not leave or store any items on the pontoons, pathways, walkways, car parks or anywhere else on the Marina. No ropes, cables, hoses, wires etc. must be trailed across paths or pontoons.

## **23. Vehicle Parking**

- 23.1. Subject always to the availability of parking spaces, the Owner, his crew, contractors and visitors are required to park their validly taxed motor vehicles in such a position and such a manner as directed by BWML.

At some of BWML's Marinas parking restrictions are enforced by third parties who will charge independently to BWML for parking offences.

## **24. Security**

- 24.1. The Owner, his crew, contractors and visitors are required to ensure that all security barriers and gates are closed and locked after use. It is not permitted to leave gates ajar at any time. It must be noted that there are some barriers and gates that are allowed to be left open for specific hours of the day but they will always have a notice beside them stating the relevant hours.
- 24.2. Security access keys may be purchased from the Office reception for long-term use. BWML will buy back any security access keys that are returned undamaged at the price prevailing at the day of return. BWML reserve the right to offer a reduced amount or refuse to buy back the security access keys depending on the condition of the security access keys at the time of re-sale to BWML. Visitors must leave a deposit at the Office before collecting a key for short-term use which will be held at the Marina in a safe. This deposit will only be returned to the visitor if the key is returned undamaged. For the avoidance of doubt, a key will be adjudged to be undamaged if it is capable of being used for the purpose for which it was designed. Where electronic security access keys are used, an annual clearance of all electronic keys will be carried out for security purposes. To re-validate an electronic key the Owner must bring the key to the Office reception.

Where keys are not managed directly by BWML then these keys maybe subject to different requirements that will be provided by the relevant issuing Office as appropriate.

## **25. Health and Safety and Fire Precautions**

- 25.1. The Owner shall abide by all relevant health and safety regulations, codes of practice and any health and safety guidance issued by BWML whilst using the Marina.
- 25.2. The Owner shall take all necessary precautions against the outbreak of fire in or upon his Vessel and the Owner shall observe the statutory and local regulations relating to fire prevention exhibited in the Office. The Owner shall provide and maintain in good working order 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.
- 25.3. The Owner shall not refuel the Vessel in the water, except when moored at BWML's refuelling Berth. No naked flames or mobile electronic devices allowed in close proximity to the refuelling berth.
- 25.4. The lighting of open fires or use of fireworks is strictly prohibited. Barbecues or portable gas cookers may be used when placed on a suitable stand and only in designated areas. All barbecues and cookers must not be left unattended and must be properly extinguished. The area around the equipment must be left in a clean and tidy condition.
- 25.5. Persons under the age of 16 years invited to the Marina by the Owner are the sole responsibility of the Owner and must remain under the Owner's supervision at all times. They must not be allowed to cause a nuisance to any other user of the Marina as per Clause 18.
- 25.6. Running/cycling on the pontoons is not permitted.
- 25.7. When connecting to a designated electrical outlet bollard, BWML approved leads and plugs must be used. These must be maintained in accordance with the relevant regulations and standards. The Owner is not permitted to alter the Berth of facilities in any way.
- 25.8. The Owner must provide BWML with current address and contact details and telephone numbers so that the Owner can be contacted in an emergency. These details can be submitted to BWML using the **BWML Change of Details Form**.

## **26. Diving, Bathing or Fishing**

- 26.1. Diving, bathing or fishing in the waters of the Marina is not permitted.
- 26.2. Persons under the age of 12 must wear adequate life jackets and be attended by a responsible adult at all times whilst at the Marina.
- 26.3. Any person at the Marina unable to swim is advised to wear adequate life jackets at all times whilst at the Marina.

## **27. Washing**

- 27.1. Laundry may only be hung in the areas designated for such use and not from Vessels.

## **28. Television Aerials, Satellite Dishes and Wind Generators**

- 28.1. Every effort will be made by the Owner 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.

## **29. Additional Regulations, Rules and British Waterways Byelaws**

- 29.1. BWML reserves the right to amend these General Conditions and/or to introduce other Marina specific rules and regulations which are necessary for the efficient and effective running of the Marina. Such amendments and rules and regulations shall become effective on being displayed on BWML's public notice board in the Office reception or in any other prominent place at BWML's Office.
- 29.2. Any such rules and regulations introduced pursuant to this Clause 29 shall be deemed to form part of these General Conditions and BWML shall have the same rights against the Owner for a breach of these rules and regulations as for a breach of these General Conditions.

29.3. The Owner shall at all times abide by, and shall use his best endeavours to ensure that his crew, contractors and visitors abide by any applicable British Waterways, Environment Agency and any other local authority bye-laws. Any failure to comply is a criminal offence and may result in a fine.

29.4. The Owner further undertakes to abide by any reasonable instructions issued by BWML.

### **30. Occupation of Vessels**

30.1. The Owner shall not live permanently on board the Vessel nor shall he encourage or permit anyone else to do so, without the prior written permission of BWML.

30.2. If the Owner is given permission in accordance with Clause 30.1, the Owner must immediately notify BWML of the date upon which he wishes to commence his stay on the Vessel and the date upon which he ceases to occupy the Vessel in the manner prescribed by that permission.

30.3. The Owner must not occupy overnight the Vessel when it is stored ashore.

### **31. Restriction of Services and Facilities**

31.1. Without prejudice to the generality of Clause 36.4, BWML will not be liable to the Owner in the event of a temporary failure of any of the facilities and/or services at the Marina due to a reason not within BWML's control, but agrees to use its reasonable endeavours to ensure that the affected services and/or facilities are repaired as soon as reasonably possible. This is also applicable to scheduled maintenance.

### **32. Animals on Board Vessels**

32.1. The Owner may not keep any animals on board the Vessel whilst it is in the Marina, other than domesticated animals that have been notified to BWML as being present on the board and approved as suitable to be in the Marina by BWML. The animals approved by BWML as suitable for the Marina must at all times remain on a lead and under the proper control of the Owner whilst they are at the Marina and must never be allowed to cause a nuisance to any other users of the Marina. BWML reserves the right to ask the Owner to remove any offending animals from the Marina, forthwith if these Rules are consistently breached by the Owner.

32.2. Upon the arrival of a Vessel at the Marina from any country outside the United Kingdom, the Owner must immediately inform the Manager or Supervisor for that Marina and the Port Health Authority of the existence of any animal on board. If the animal concerned is not a member of the Pet Travel Scheme, it will need to be placed in quarantine for such period as is required in accordance with current legislation concerning the avoidance of rabies.

32.3. Until such time as it has been established whether the animal in question should be placed in quarantine, the Owner must ensure that it is kept securely confined below decks so that it cannot escape ashore.

32.4. Any waste caused by animals in the Marina should be cleared up by the responsible person and disposed of in an appropriate manner. Animal waste should never be discharged into the Marina water at any time.

32.5. Animals are not permitted to enter any Marina buildings, in particular the Marina's Facility Blocks and Chandleries on health and hygiene grounds, the exception being for registered dogs for the blind.

### **33. Lock Operation (Where Locks are Operated by BWML)**

33.1. BWML will use all reasonable endeavours to ensure that where applicable the Marina lock is manned during the published hours of operation. If the Owner requires the Vessel to be locked in or out of the lock at times other than those published, the Owner should make prior arrangements with the Manager or Supervisor for that Marina. BWML will use all reasonable endeavours to comply with the Owner's reasonable requests, subject to staff availability, lock maintenance requirements, emergencies and any other reasons beyond its control. BWML will charge a fee for service outside of normal published operational hours.

- 33.2. BWML reserves the right on giving 48 hours prior notice to the Owner (in which respect the display of a prominent notice in the Office reception shall be deemed to be sufficient notice) to restrict or prohibit the use of the lock during routine maintenance, pre-arranged events such as regattas, boat or yacht races, festivals and other planned events.
- 33.3. BWML also reserves the right on giving the Owner reasonable notice (in which respect the display of a prominent notice in the Office reception shall be deemed to be sufficient notice) to alter the published hours of operation of the lock.
- 33.4. At Hull Marina, the Owner must request permission to leave their Berth for any reason or access the lock from the Duty Lock Keeper and await the Duty Lock Keeper's instruction before any attempt is made to manoeuvre the Vessel. The Vessel must contain a working VHF radio that is tuned to the Marina Communications Channel (VHF 80 International) and must remain on and audible to the Owner. All communications must be made via a VHF radio.

#### **34. Upon Arrival From a Country Outside the United Kingdom**

- 34.1. Upon arrival to the Marina from a country outside the United Kingdom, the Owner must immediately report to the Manager or Supervisor for that Marina and complete the UK Immigration and Service Border, List of Passengers and Crew form.
- 34.2. The Owner must adhere to Clause 32.2 when animals are on board a Vessel arriving from a country outside the United Kingdom.

#### **35. Care of Marina Property**

- 35.1. No alterations may be made to any part of the Marina property unless with BWML's prior written consent.

#### **36. General**

- 36.1. In these General Conditions, unless the context otherwise requires, words importing any gender include every gender and words importing the singular number include the plural and vice versa.
- 36.2. The headings in these General Conditions are for convenience only and shall not affect its interpretation.
- 36.3. Unless otherwise agreed in writing, BWML's failure to exercise or delay in exercising any right or remedy provided by these General Conditions does not constitute a waiver of that right or remedy or waiver of any other rights or remedies under these General Conditions.
- 36.4. BWML shall not be liable for any failure or delay in performing any of its obligations under these General Conditions caused by circumstances beyond its control.
- 36.5. If any part of these General Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the validity and enforceability of the remainder of these General Conditions shall not be affected.
- 36.6. These General Conditions, the Schedule and any Marina specific rules and regulations introduced by BWML in accordance with Clause 29 above constitute the entire agreement and understanding between BWML and the Owner with respect to all matters referred to within it and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in these General Conditions.
- 36.7. No person other than a contracting party may enforce any provision of these General Conditions by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 36.8. Any notice given or invoice to be delivered in accordance with these General Conditions shall be delivered by hand or sent by first class post. Any notice or invoice delivered by first class post shall be deemed to have been received 48 hours after it has been posted.
- 36.9. These General Conditions shall be governed and construed in accordance with the laws of England and Wales.