



West Mersea Yacht Club

BERTHING, MOORING AND/OR STORAGE ASHORE LICENCE FOR VESSELS AT WEST MERSEA YACHT CLUB AND BOATYARD

GENERAL CONDITIONS

1. DEFINITIONS

Where the following words appear in these Conditions, the berthing licence and the Club's Regulations they shall have these meanings:

Alongside Berth: means a berth where a vessel of appropriate draft may be secured, with access to the shore without the need for a dinghy or tender.

Berth: means the space on water or land within the Premises from time to time allocated to the MEMBER by the Club for the Vessel during the term of this Licence.

Berthing Licence: means the berthing licence entered into by the Club and the member.

Club: shall mean West Mersea Yacht Club Ltd with the Club number 00300433 or any of its agents to whom the application for berthing or other facilities connected with the Club's activities is made.

Commencement Date: means the date specified in the Berthing Licence.

Conditions: means the terms and conditions set out herein.

End Date: means the end date specified in the Period of Licence granted in the berthing licence.

Harbour: shall include a yacht harbour, marina, mooring or any other facility for launching, navigating, mooring or berthing a vessel.

Length Overall (LOA): means the overall length of the space occupied by the vessel including any fore and aft projections, temporary or permanent.

Licence: means the berthing licence and these conditions taken together.

Member: means the person or persons named on the berthing licence, and includes any person using the facilities with the permission of the Club. Facilities (including but not limited to Club moorings) are allocated to members personally and may not be sold, transferred or assigned to any other person (even if a Club member) without the express prior consent of the Club

Period of Licence: means the length of time for which an member is licensed to use a berth or other facility provided by the Club

Pontoon: means a moored and decked floating structure-providing landing or mooring facilities.

Premises: means all the land, adjacent water and buildings occupied by or under the control of the Club.

Regulations: means those regulations (if any) made by the Club as may be amended from time to time in accordance with , which the Club in its absolute discretion, considers necessary to enable the Club or those using the premises to comply with applicable legal requirements or for the safety or security or good management of the facilities and property, and in accordance with West Mersea Yacht Club Articles of Association and Bylaws, which includes Moorings and Boatyard Bylaws.

Storage Ashore means: the land space temporarily allocated to the member from time to time by the Club for the storage ashore of a vessel or items associated with any such vessel during the term of the Licence.

Vessel: shall include any form of craft, boat, ship, yacht, dinghy, multihull, or other marine structure, or item which is associated with such a vessel, and which is in the care and control of the member, either directly or indirectly.

Website: means the website of the Club, currently <https://www.wmyc.org.uk>

2 THE LICENCE

2.1 Berths at premises shall be licensed for the Period of Licence as specified in the Berthing Licence and at the rates of charge from time to time published by the Club at its premises and/or on its website and/or by any correspondence between the member and the Club and which are in force at the commencement of the licence, and incorporating any changes to the terms and conditions (including fees payable) during the period of the licence, as necessary. The Club reserves the right to increase prices during the term of a licence at its sole discretion and the prices for the forthcoming calendar year will be published, thereby giving the member at least one month's notice of any such price increase.

2.2 The licence will commence on the Commencement Date and shall remain in place for the time specified in the Berthing Licence and shall terminate on the stated End Date, unless terminated sooner by the Club or by the member in accordance with Club rules, terms, and conditions. The member may give notice that he wishes to renew the Licence, which the Club can, in its sole discretion, decide to accept or reject.

2.3 Should a member begin to use any assigned facility but fail to sign and return a copy of the berthing Licence within a reasonable time from the issue date, he shall nonetheless be deemed to have given full acceptance to and be bound by the conditions of the Licence.

2.4 The member must pay all amounts due to the Club promptly.

3 LIABILITY, INDEMNITY AND INSURANCE

3.1 The Club shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control, (such as extreme weather conditions, government action or legislation, the actions of third parties not employed by it or any defect in any part of a customer's or third party's vessel) or for any other losses suffered by a member. This extends to loss or damage to vessels, gear, equipment or other goods or any other items associated with a vessel, left with it for repair or storage, and harm to persons entering the premises and/or using any facilities or equipment. Nothing in this licence shall exclude the Club's liability for death or personal injury caused by its negligence or any other liability, the exclusion of which is prohibited by law.

3.2 The Club shall take all reasonable steps to maintain security at the premises, and to maintain the facilities at the premises in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Club, vessels, dinghies, tenders, trailers, rafts, gear, equipment or other good are left at the member's own risk and members should ensure that they have appropriate insurance against all relevant risks.

3.3 The Club shall not be under any duty to salvage or preserve a member's vessel or other property.

3.4 Members may themselves be liable for any loss or damage caused by them, their crew, their visitors or guests or their vessels and they shall be obliged to maintain adequate insurance including third party liability cover, and, where appropriate, Employers' Liability cover. The member shall be obliged to produce evidence to the Club of such insurance within 14 days of being requested to do so by the Club. The member warrants, represents and undertakes to the Club that the member has or will for the duration of the Period of Licence have in place the insurance described in this clause and agrees to indemnify and keep indemnified the Club at all times against all losses, liabilities, costs, expenses, claims and damages of any kind it may suffer or incur as a result of a breach of this clause 3.4 by the Member.

3.5 The Member shall, procure that his crew and/or members of his family, and visitors or guests comply with all applicable laws when using the Club's facilities.

4 CHANGE OF DETAILS

4.1 The member must notify the Club in writing, of details of the member's home address, and other contact details such as a phone number and email. This address must be different address to the address of the Yacht Club, unless expressly permitted to do so, in writing, by the Rear Commodore (M&B). It is anticipated that this will only rarely be the case, for example for members who may from time to time occupy the residence at the Yacht Club. The member shall be obliged to produce evidence to the Club of such home address with 14 days of a request to do so.

4.2. The Member must notify the Club in writing of the details of any change of names of the vessel or change of address or telephone number or email of the member.

5 BERTH ALLOCATION

5.1 The physical layout of the Club facilities and the varying needs and obligations of the Club and its customers requires that the Club shall retain absolute control of allocation of berths, moorings or other facilities under its control. Accordingly, the member shall not be entitled to the exclusive use of any particular berth, mooring or facility but shall use such berth or facility as is from time to time allocated to him by the Club.

6. PERSONAL NATURE OF THE LICENCE

6.1 This licence is personal to the member and relates to the vessel described in the Berthing Licence. It may not be transferred or assigned to a new member or to a different vessel, temporarily or permanently, without the express written consent of the Club.

6.2 Within 14 days of any agreement for the sale, transfer or mortgage of a vessel subject to this Berthing Licence the member shall notify the Club in writing of the name, address, telephone numbers and email address of the purchaser, transferee or mortgagee, as the case may be.

7 USE OF BERTH BY CLUB WHEN VACANT

7.1 The Club shall have the use of the berth or other facilities when left vacant by the member, at the Club's sole discretion. This is in accordance with the Club's legal rights to berth or other facilities

8 TERMINATION

8.1 The Club shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Licence by the member) to terminate this Licence in its sole discretion by giving 14 days written notice (including notice by email) to the member of its decision to terminate this licence or, in the event of any breach by the member of this licence, including but not limited to any non-payment of fees due to the Club.

8.1.1 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Club, and/or of the Club's customers and if the breach is capable of remedy, the Club may serve notice on the member specifying the breach and requiring him to remedy the breach within a reasonable time specified by the Club. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy may be immediate or extremely short. If the member fails to effect the remedy within that time, or if the breach is not capable of remedy, the Club may serve notice on the member requiring him to remove the vessel immediately (a "Termination Letter").

8.1.2 If the Member fails to immediately remove the vessel on termination of this licence (whether under this clause 8 or otherwise), the Club shall be entitled:

8.1.2.1 to charge the member at the Club's rate for overnight visitors for each day between termination of this licence and the actual date of removal of the vessel, or:

8.1.2.2 at the member's risk (save in respect of loss or damage caused by the Club's negligence or other breach of duty during such removal) to remove the vessel and thereupon secure it elsewhere

and charge the member with all costs reasonably arising out of such removal including alternative berthing fees.

8.2 The member will be responsible for all the Club's legal costs should a solicitor be required to draft a Termination Letter and any further legal costs in serving and enforcing this action on the member. The member shall also be liable to pay all costs, fees, disbursements and charges including legal fees and costs reasonably incurred by the Club in the recovery of any unpaid fees or boatyard service costs regardless of the value of the claim.

8.3 Any notice of termination under clause 8 shall be communicated in writing, and left on the vessel if appropriate or sent by registered post to the member's address and in the case of the Club shall be served at its principal place of business or registered office.

9. TERMINATION BY MEMBER

9.1 After the Commencement Date, should the member wish to terminate the licence earlier than the End Date specified, he must notify the Club in writing (including by email), and such notice is subject to clause 2.2 and 9.2.

9.2 Any notice of termination under this clause 9 shall be served at the Club's principal place of business or registered office.

10. RIGHTS OF SALE AND RETENTION

10.1 Where the Club accepts a vessel, gear, equipment or other goods for repair, refit, maintenance, or storage the Club does so subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on the Club in circumstances where a customer fails to collect or accept re-delivery of the goods (which includes a Vessel and/or any other property). Such sale will not take place until the Club has given notice to the customer in accordance with the Act. For the purpose of the Act, it is recorded that:

10.1.1 Goods for repair or other treatment are accepted by the Club on the basis that the member is the member of the goods or the member's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out.

10.1.2 The Club's obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation.

10.1.3 The place for delivery and collection of goods shall be at the Club's premises unless agreed otherwise.

10.2 Maritime Law entitles the Club in certain other circumstances to bring action against a vessel to recover debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. Sale of a vessel may also occur through the ordinary enforcement of a judgment debt against the member of a vessel or other property.

10.3 The Club reserves a general right ("a general lien") to detain and hold onto the member's vessel or other property pending payment by the member of any sums due to the Club. If the licence is terminated or expires while the Club exercises this right of detention, it shall be entitled to charge the member at the Club's rate for overnight visitors for each day between termination or expiry of the licence and the actual date of payment (or provision of security) by the member and removal of the vessel.

10.4 For the avoidance of doubt, all costs involved in any action necessary to enforce the Club's legal rights pursuant to this Clause 10 shall be recoverable from the member.

GENERAL RULES

11. VESSEL MOVEMENTS

11.1 The Club reserves the right to move any vessel, gear, equipment or other goods at any time for reasons of safety, security or good management..

11.2 All members must remove the head sail(s) and mainsail(s) and shall, remove or reposition canvas works and all equipment that would cause unnecessary windage prior to the vessel being moved ashore, launched, or moved within or between the Club's premises.

11.3 Vessels shall be berthed or moored by the member in such a manner and position as the Club may require and unless otherwise agreed adequate warps and fenders for the vessel shall be provided by the member.

11.4 No vessel, when leaving, returning, or manoeuvring, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels. This is in addition to any pre-existing national or local laws regarding the movement and control of vessels.

11.5 Members, their guests, visitors, and crew are advised that vessels are at all times subject to the speed restrictions and bylaws of navigation authorities and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and The Health and Safety Executive; there are criminal penalties for the breach of such restrictions, requirements and Byelaws.

11.6 No part of the Club's premises or any vessel or vehicle while situated therein or thereon shall be used by the member for any commercial purpose, except where the member has sought and obtained prior written agreement from the Club. Where this licence is granted, to a commercial operator whose vessel is operated for hire or reward in the course of trading, special conditions will apply to the licence, as may be agreed from time to time.

11.7 When not being used, dinghies, tenders, trailers and rafts shall be stowed aboard the vessel unless either (i) the Club allocates a separate berth or designates an area for them; or (ii) the Club has given express written permission. The Club reserves its right to require payment of any fees connected to the usage of a separate berth or trailer storage area for this purpose. All trailers, dinghies, tenders and rafts must display the name of the member and/or the name of the member's vessel so that it is clearly visible. In the absence of (i) the member asking for permission for storage for any such dinghies, tenders, trailers and rafts, or (ii) in the absence of adequate marking to identify the member of any such items, the Club reserves the right to remove and dispose of these items at their discretion.

11.8 Subject always to the availability of parking space members may only park vehicles on the premises in accordance with the directions of the Club.

11.9 Members and visitors must use the designated parking areas behind the Yacht Club building, and in the City Road car park. Parking in any other areas is not permitted at any time unless agreed in advance. Vehicles must have a valid motor insurance cover at all times, and clearly display the Club parking permit in the front windscreen.

11.10 Under no circumstances may any vehicle be parked or left so as to obstruct the roadways, walkways, footpaths, craneage, access points or any area in the premises. The Club reserves the right to remove any such vehicle and to charge the member for the cost thereof. The Club shall not be liable to the member for any loss, cost or damage suffered or incurred by the member where such action is taken.

11.11 Only one vehicle per member is allowed to park in the car park(s). The parking spaces behind the Club are for short term parking only, maximum 24 hours. Longer term parking must use City Road car park. Camper vans and larger vehicles should be parked in the City Road car park. The car park immediately behind the Yacht Club building is only to be used by medium or smaller sized vehicles. Members are expected to use good judgement and fairness in using the car park. Members should only use the car parks when they are using the Yacht Club facilities, including the buildings, premises, launch, or accessing boats.

11.12 Vehicles are parked at the member's sole risk and the Club is not liable **for**, nor can it guarantee, the security of vehicles and/or their contents.

12. OTHER REGULATIONS

12.1 The member shall at all times observe the Club's Regulations. The member shall provide and maintain at least one fire extinguisher, which is approved and manufactured to applicable standards for portable fire extinguishers, and ensure it is fit for purpose for the vessel and ready for immediate use in case of fire. This is in addition to any other requirements of any insurance policy for the vessel.

12.2 No chemical, sea toilet or other toilet facility shall be discharged on the premises, including but not limited to in the clubhouse. The member shall be responsible for any costs incurred by the Club for rectifying damage caused by the incorrect disposal of any refuse, liquids or other materials. (including dog waste pursuant to clause 12.3 below) on the premises.

12.3 Animals should not be left unattended in vehicles parked at the premises. The Club reserves the right to gain entry into any vehicle if an animal is found unattended inside and to call the RSPCA, the police or any other appropriate body if an animal is found in distress, out of control or is a threat to other users of the premises. All members must ensure that all dog fouling is picked up and disposed of in the designated receptacle.

12.4 The member shall maintain their vessel in good, clean and seaworthy condition. The Club may require the member to obtain a report prepared by a qualified professional surveyor (at the expense of the member) to satisfy the Club that the vessel is structurally sound and that it poses no threat to safety or safe navigation in and around the Club's facilities. Any such request will be given in writing and with reasonable notice to the member. Should the member fail to comply with such a request within 14 days from the date of receipt of the notice, the Club reserves its rights to engage its own

professional surveyor to prepare the report and any costs and expenses incurred in connection with the report will be charged to the member.

12.5 The Club reserves the right to introduce new regulations on grounds of legal requirement or for the safety or security or good management, and to amend such regulations as from time to time shall be necessary. Such regulations and any amendments to them shall become effective on being displayed on the Club's public notice board or on the website and the Club shall have the same rights against the member for a breach of the Regulations as for a breach of the terms of the licence.

12.6 Members, their guests, visitors and crew are advised that their conduct and that of their vessels is likely to be regulated and governed at various times by statutory, and local regulations which may be more extensive than those of the Club's and the breach of which may result in criminal or civil penalties.

13.ACCESS TO PREMISES/WORK ON VESSELS

13.1 Subject to Clause 16.2 work can be carried out on any vessel, gear, equipment or other goods while on the premises, including running repairs or maintenance of a routine nature by the member, his regular crew, visitors or guests, or members of his family. You should not be a nuisance, or annoyance to any other person residing or being in the vicinity, nor interfere with the Club's schedule of work, or enter prohibited areas.

13.2 Any major work on any vessel should be notified to the Rear Commodore (M&B) prior to the commencement of work. Permission for major work can be refused, or delayed until the Rear Commodore (M&B) has made satisfactory arrangements for the safety of the Club's property, or the property of other members. Major work would include, but is not limited to, blasting operations on hulls or the structure of any vessel.

13.3 Access to, and work on any vessel on the Club's premises shall be conducted at a reasonable hour. Any work conducted after the hours of darkness shall not cause a nuisance to others. This is in addition to the existing law of public and private nuisance, and Civil/Criminal laws in general.

14 HEALTH, SAFETY AND THE ENVIRONMENT

14.1 The member, his regular crew, members of his family, visitors, guests and/or any person or Club carrying out work on any vessel, must comply with the Club's Health and Safety Policy.

14.2 Each member is responsible for their vessel and must proceed and navigate with due care at all times, being reliant on good seamanship and in accordance with any navigational signs, signals and directions and any other legal provisions relating to boating and anything ancillary to such activities.

14.3 The member, his crew, members of his family, visitors and guests and any person carrying out work on the Vessel is responsible for reporting to the Club all accidents involving injury to any person or damage to any public or private property that occur on the Club's premises, as soon as possible after they occur.

14.4 All members must have their vessels professionally chocked and shored up as necessary.

14.5 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated on the Club's premises, to cause any nuisance or annoyance to any other users of the premises or to any person residing in the vicinity. The member undertakes for himself, his guests and all using the vessel that they shall not behave in such a way as to offend as previously mentioned. Halyards and other rigging must be secured so as not to cause such nuisance or annoyance.

14.6 No refuse shall be thrown overboard or left on the pontoons or car parks or on any other part of the premises, or disposed of in any way other than in receptacles.

14.7 The Member, his crew, members of his family, visitors and guests and any person carrying out work on any vessel shall at all times exercise respect for the peaceful enjoyment of other users and. Noise and disturbance from vessels must be kept at a reasonable level such that it does not inconvenience or otherwise annoy others.

14.8 The Member must promptly report to the Club any damage which has been done by any vessel or vehicle, including for the avoidance of doubt any damage done to another vessel or vehicle.

15 GENERAL

15.1 The information which the member provides to the Club in relation to the use of the facilities will be processed by the Club, which is the data controller for the purposes of the Data Protection Act 2018 and the General Data Protection Regulations. The personal data that the member provides will be used in order to deal with the administration of the licence and the provision of the berth or other facilities to the member. The Club may from time to time take photography or video that captures scenes for promotional purposes or for the good management of the Club.

15.2 A person other than the Club or a member shall have no rights to enforce any term of this licence under the Contracts (Rights of Third Parties) Act 1999 but this shall not affect any right or remedy available to any person apart from under that Act.

15.3 The failure by the Club to exercise or delay in exercising any right or remedy under the Licence shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies that party may otherwise have and no single or partial exercise of any right or remedy under the Licence shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

15.4 This licence, including any relevant regulations and the Berthing Licence are the entire agreement between the Club and the member in respect of the use of facilities. These conditions and the documents referred to supersedes and extinguishes any previous agreements between the parties, whether orally or in writing.

15.5 This Licence shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute or claim arising out of or in connection with it.

Special Conditions

These conditions apply to berthing, mooring and storage ashore in addition to the general conditions overleaf. Where there is any conflict between the special conditions and the general conditions, the terms of the special conditions shall prevail.

1a Mooring berths and any other facilities are let for a specific period in accordance with the terms published, and special variation to which must be in writing and agreed to by the parties in this document and fees paid will not be refunded or credited for non-use of the berth.

1b Winter storage in City Rd. ends on 30th April each year, and so all vessels and other equipment must be removed by then. Any vessels or equipment left in City Rd after 30th April will be subject to a penalty charge as may be from time to time published in the Club's scale of charges.

2 No solid sewage, oil, diesel, or any other obnoxious matter is to be discharged from any vessel.

3 No sea toilets are to be used or discharged when vessels are ashore.

4 No chemical wastes are to be discharged. Members must comply with clause 15.2 of the licence.

5 Every vessel, dinghy and trailer shall have the name of the vessel clearly displayed.

6 All Vessels are liable to be charged on the length of space occupied including bumpkin, bowsprit, and davits.

7 In no circumstances shall the Club be liable for any claim or part of a claim, which would otherwise be covered by the Member's insurance policy.

8 Members must not dispose of any rubbish over the side of their vessel

9 Members who have pets with them must keep them on leads and monitor them at all times.

10 Members must not clean out their bilges or use their boat toilets to discarding waste matter over the side of the vessel.

11 Members must not obstruct the pontoons or in any way hinder access to the club's facilities.

12 Members must not use the Club's facilities for any commercial activities.

13 Members must not light any type of fires on the Club's premises.

14 We ask members to secure their halyards to prevent them from flapping against the mast or causing any other nuisance.