

Folkestone Harbour Company Limited

Folkestone Harbour Users Terms and Conditions 2018

1. Interpretation

The “Berthing Licence” is the authority granted by the Folkestone Harbour Company Limited to use the Harbour under these Terms and Conditions

The “Company” shall mean the Folkestone Harbour Company Limited which operates Folkestone Harbour.

The “Manager” shall mean the Harbour Manager and all persons acting under the authority of the Harbour Manager.

“Folkestone Harbour” or the “Harbour” shall include any area of the estate, including any area on or beneath the surface of the water, and any other facility provided by the Company for, or in connection with, any user of the Harbour.

The “Owner” shall include a lawful owner, Charterer, Master or Agency or any person for the time being lawfully in charge (other than the Company) of a vessel, vehicle or goods within the harbour area.

The ‘Folkestone Harbour Company Schedule of charges’ shall be applicable where appropriate to these terms and conditions.

2. Acceptance

Entry into the area of the Harbour by water, land or the use of a mooring buoy indicates recognition and acceptance of these Terms and Conditions which govern use of the Harbour and set out the obligations that the Owner must observe.

Upon acceptance of the Owner’s application for mooring, or other use of the Harbour, the Company grants the Owner a Berthing Licence only. Under no circumstances does any form of Landlord and Tenant relationship arise under these Terms and Conditions and the Owner shall have no rights of residency or entitlement to the exclusive use of any particular berth or mooring.

3. Statutory Powers, Bye-laws, Safety and Management

3.1. Statutory Powers

The Manager is empowered by the Company to give directions regarding the mooring, removal from and or movement of vessels within the limits of the Harbour.

3.2. Bye-laws

The Owner’s attention is drawn to the authority of the Manager under the Harbour Bye-laws. All instructions of the Manager must be obeyed. Any use of vessels or vehicles within the area of the Harbour and its approaches is subject to the Harbour Bye-laws and other requirements administered by the Manager. Copies of the Bye-laws may be obtained from the Company upon request.

3.3. Safety

The Owner shall navigate and control their vessel at all times in a safe and seaman-like manner and in accordance with the law of the sea, where applicable, and so as not to cause danger or inconvenience to any other person or vessel. At all times, the vessel shall proceed at a speed which is safe in relation to prevailing conditions and shall at no time exceed the speed limit of 4 knots within the Harbour.

Supervised recreational water sports are permitted within the harbour area.

Young children must wear adequate life jackets and must be supervised by a responsible adult at all times.

Dangerous, flammable, poisonous or noxious substances, spirit, oil or fluid may not be brought into the Harbour except in properly secured containers, staunch against leakage and in compliance with relevant legal requirements. The Owner shall comply with the Dangerous Goods in Harbour Areas Regulations 2016 and the Control of Substances Hazardous to Health Regulations 2002 at all times.

The Owner shall take all necessary precautions against the outbreak of fire in or about the vessel and shall observe statutory and local regulations relating to fire prevention. Each vessel should carry at least one fire extinguisher of a BSI standard type and size, in good working order ready for immediate use in case of fire.

Access to, and use of, the hard standing is on the basis that boat Owners have read, understood, and agree to abide by the Company safety checklist issued by the Manager relating to the hard standing area.

3.4. Management

The Company accepts no liability for any loss, damage or costs of whatsoever nature suffered by the Owner, except to the extent that such operation is caused by the negligence or wilful act of the Company or those for whom the Company is responsible.

The Company accepts no responsibility for the suitability of any berth, structure or gear provided, unless full and accurate details of the vessel, crew, gear and contents which might affect use of the berth or mooring are provided to the Company prior to the allocation of a berth or mooring.

The Company reserves the right to allocate moorings or berths at its discretion and to refuse an Owner's request for a specific berth or mooring.

The Company accepts no responsibility for any disturbance, noise, dust or any other inconvenience caused by commercial operations or any other activity which may be carried out within the Harbour area or on any adjoining land controlled by the Company.

The Berthing Licence is not assignable by the Owner and the Owner shall not lend it or permit any third party to use it. Nor shall the Owner use his allocated berth or mooring for any other vessel unless the Owner has the Manager's prior consent.

No person may use any vessel for residential purposes or as a houseboat within the Harbour and, under no circumstances should any Owner register personal documents (for example, driver's licence, bank statements, loyalty cards, etc.) to the Harbour. Use of the Harbour address for the purpose of diverting personal correspondence is strictly forbidden. The Owner must supply details of the Owner's home address and shall be obliged to produce evidence to the Manager within 7 days of a request to do so.

All Owners are required to give one month's prior written notice to the Manager before vacating their berth or mooring. Failure to do so may render the Owner liable to pay an additional cancellation charge.

Within 7 days of any sale, transfer or mortgage of any vessel which is subject to a Berthing Licence, the Owner shall notify the Manager in writing of the name and address of the purchaser or transferee or mortgagee, as the case may be. In the case of a sale or transfer, the Owner shall notify the purchaser or transferee that according to clause 3.4 the Berthing Licence is not assignable and shall ensure that it is a term and condition of the sale that the purchaser or transferee makes an application to the Manager for a Berthing Licence, should the new owner wish to remain in the Harbour. If the Owner fails to ensure that the purchaser or transferee makes such an application and the vessel continues to berth or moor in the Harbour, then until such an application is made, the original Owner will continue to be liable under these Terms and Conditions in all respects.

4 Payment

The Owner shall pay any invoice submitted in respect of a berth, mooring or other service provided by the Company, and all relevant dues and charges levied by the specified due date.

Any payment received shall not be deemed to have been made until such payment is cleared into the Company's bank account.

The Company reserves the right to levy an administration fee as per the schedule of charges. This charge may apply to each and every variation to the Berthing Licence. Interest may be charged, as per the Schedule of Charges, on all overdue accounts. In addition, should annual berthing/mooring fees not be paid by the due date then the Company reserves the right to withdraw the annual rate and levy charges on a different basis, as it shall decide at its discretion.

Any accounts remaining unpaid after the due date may be referred to the Company's legal advisors, and the costs of any proceedings or bailiff charges will be added to the outstanding debt and recovered accordingly.

The Company has a lien on any vessel or vehicle within the Harbour area until any monies due to the Company in respect of that vessel or vehicle, whether in respect of Berthing Licence or otherwise, have been paid. For the avoidance of doubt the Company reserves the right, without giving prior notice, to lift and store ashore, move or relocate the vessel or vehicle should it be reasonable to do so in order to protect the Company's rights under this provision. The Owner shall be charged for all reasonable costs arising out of such lift, move, relocation and/or removal, including but not limited to storage. In the exercise of this power, the Company shall incur no liability for loss or damage to the vessel howsoever the same shall arise.

5 Termination of permission to berth or moor and Cancellation

The Company reserves the right, at its discretion, and without giving reason to immediately terminate the Berthing Licence by giving notice in writing at any time, and in particular, following a breach of any condition herein mentioned or following any force majeure which renders it unlikely that the Company will be able to continue to provide a berth or mooring or shore storage in accordance with any previously made agreements. Force majeure in this context means any event or circumstance, whether arising from natural causes, human agency or otherwise beyond the control of the Company.

Subject to the Owner's account being paid to the Company's satisfaction, the Owner may terminate the Berthing Licence at any time by giving the Company a minimum of one month's prior notice (applicable to annual fees only) and the Owner must ensure that the vessel is removed from the Harbour on or before the effective date of termination. See section 18 for further information regarding the Company refund policy.

The termination of the Berthing Licence shall not affect the Company's right to recover from the Owner any monies due to the Company.

The obligation of the Company towards any vessel, vehicle or any goods left in the Harbour area ends upon the expiry, or lawful termination, of the Berthing Licence and the Company accepts no responsibility for loss or damage to any vessel, vehicle or goods left at the Harbour after the expiry or termination of any Berthing Licence, save as may be implied by law.

6 Power of Removal

On the termination of any Berthing Licence as described in clause 5, the Company has the right, upon giving notice in writing to the Owner of a vessel, to require removal of that vessel within 14 days.

Such notice shall be served on the Owner personally, by leaving it on the vessel or by posting it by recorded delivery to the Owner's last known address.

If the Owner fails to remove the vessel within the said period of 14 days, the Company has the right, at the expiration of the period, to charge the Owner at a rate equivalent to the visitor's daily rates for the period between the date of termination and the date of removal or relocation of the vessel. The Company also has the right to relocate or remove the vessel from the berth/ mooring and store it ashore and to charge the Owner for all reasonable costs arising out of such relocation or removal, including but not limited to storage. In the exercise of this power the Company shall incur no liability for loss or damage to the vessel howsoever the same shall arise.

7 Power of Sale

Where monies are owed in respect of any vessel or vehicle, or in respect of goods using or stored at the Harbour, the provisions of the Torts (Interference with Goods) Act 1977, conferring power of sale upon bailees in the circumstances set out in the Act, shall apply. Such sale shall not take place until statutory notice has been given to the Owner or the Company has taken reasonable steps to trace the Owner, in accordance with the Act.

Where a vessel, vehicle or goods have been left or abandoned in the Harbour area and the Owner fails to collect the items within the one month written notice period, title shall pass to the Company who shall be entitled to dispose of or sell any such vessel, vehicle or goods as the Company deems appropriate.

8 Prevention of Nuisance

The Owner undertakes for themselves and all other persons visiting his vessel, to behave in a considerate manner and shall avoid causing any nuisance, annoyance, or inconvenience to other Harbour users. In particular, any abusive, offensive or drunken behaviour towards the Company staff or other Harbour users will not be tolerated and may result in the immediate termination of the Berthing Licence.

The use of noisy, noxious or objectionable engines, radio or other apparatus or machinery is prohibited. If any dispute arises, the opinion of the Company staff is final.

Refuse must be disposed of only in the receptacles provided and in accordance with any instructions displayed thereon. It must not be put into the Harbour waters. Appropriate disposal of waste is the responsibility of the Owner.

Except where receptacles are provided for the specific purpose, no oil, tar, petrol, paint or other noxious or deleterious substance, nor any pollutants, chemicals or waste shall be discharged into the Harbour or otherwise disposed of within the Harbour area. All such items will be removed from the Harbour by the Owner.

Animals brought within the Harbour area shall be kept under control, at all times. Dogs must be kept on a leash and must not foul any area within the Harbour. Attention is drawn to HM Government Legislation "Bringing food, animals or plants into the UK".

Maintenance work must not be carried out to the annoyance of others, nor in such a way as to cause damage or defacement to the Company property.

The obstruction of any means of access ways is prohibited.

9 Tidiness

Vessel tenders must have the vessel's name clearly marked on them and must not be left such as to inconvenience other Harbour users.

Items of gear, cradles, trailers, fittings and other equipment may not be left within the Harbour area unless shore storage has been arranged with the Company staff.

10 The Company's Right to Move any Vessel

The Manager has the power at any time to relocate, move and/or re-berth/re-moor any vessel within the Harbour area although reasonable notice will be given to the Owner where practicable. Company staff may, without notice, relocate, moor, re-berth, move, board, enter or carry out any emergency work on any vessel if, in the opinion of Company staff, such action is necessary for reasons of safety. The Owner shall reimburse any reasonable expenses which the Company incurs.

11 The Vessel

The vessel's name shall be clearly displayed on board and on any related tenders, cradles trailers etc. The vessel must be kept in a seaworthy, mobile and reasonable condition.

12 Reporting Damage

The Owner, or any person responsible, for any vessel or any vehicle must report immediately to Company staff, any damage which may be caused to or by the vessel or vehicle while in the Harbour area.

13 Mooring

The vessel shall be moored by the Owner in such a location as shall be directed by the Manager and so as not to cause any obstruction.

The Owner is responsible for ensuring that the vessel is safely secured to its mooring at all times.

14 Vehicle Parking

Vehicle parking is provided for the convenience of users and all users park at their own risk. The Company will not accept liability for any damage caused to a vehicle.

No vehicle may be parked such as to cause an obstruction.

The Company reserves the right to close all or part of the vehicle parks on special occasions (such as Harbour Festivals etc.) and this will necessitate a reduction in parking available.

The Company car park charges are published at the carpark entrance and on the company website.

15 Liability and Insurance

The Company shall not be liable whether in contract, tort or otherwise, for any loss, theft, or any damage of whatsoever nature caused to any vessel or vehicle or other property of the Owner or any other person claiming through the Owner

All persons using the Harbour premises or facilities do so at their own risk, unless any injury or damage to persons or property sustained within the Harbour is proved to have been caused by or resulted from the

negligent or wilful act of the Company, or those for whom the Company is responsible. All persons using the Harbour and associated areas must exercise proper care and attention for their own safety and the safety of others.

Vessels and equipment that are permitted access to the Company property, to be repaired, worked on, moved, stored or otherwise managed, are kept solely at the risk of the Owner.

The Owner shall maintain Third Party Insurance in respect of themselves and each of their vehicles, vessels, crew for the time being, agents, visitors, guests or sub-contractors in a sum of not less than £3,000,000 in respect of each accident or damage. Also, in respect of each vessel, adequate salvage insurance. Such insurance shall be effected and maintained in an insurance office of repute and the Owner shall produce the policy to Harbour staff on demand.

Annual Berthing Licence application must be accompanied by a copy of the policy document and an update provided to the Manager upon policy renewal during the year.

16 Indemnity

The Owner shall indemnify the Company and its servants and agents against all loss, damage, costs, claims or proceedings incurred by, or instituted against the Company or its servants or agents which may be caused by the Owners vessel or vehicle, or by the Owner, servants, agents, crew, guests or sub-contractors except to the extent that such loss or damage, costs, claims or proceedings may be caused by the negligence or wilful act of the Company or those for whom the Company is responsible.

17 Obligations on Change

The Owner must apply, in advance, to the Harbour Manager in writing of any change pertaining to their Berthing Licence. This includes matters such as change of vessel, change of name of vessel and change of the Owner's details. This list is not exclusive.

Each, and every, alteration to the Berthing Licence may incur an administration charge as published in the schedule of charges.

The Company reserves the right to alter these Terms and Conditions annually and may, in the course of the year by giving one month's written notice to the Owner, vary these conditions should it become necessary to do so to comply with any Act of Parliament, order, regulation or Bye-law, in the interests of Health and Safety, or in the interests of the users of the Harbour as a whole or the good management or administration thereof.

18 Refund Policy.

Any outstanding charges relating to the vessel (whether berthing charges or shore service charges) must be paid in full before the Berthing Licence can be cancelled and a refund given.

Where termination is as a result of the Owners breach, the Owner shall not be entitled to a refund of any monies paid to the Company. The Company reserves all rights of action in respect any outstanding sums owed by the Owner.

In the event of termination by force majeure, or by mutual agreement, the Company shall return the unexpired portion of the berthing fee, counting from the next full month. Refunds will be made in respect of full months only.

19 Cancellation and Refund – General Conditions

Should the Owner leave the vessel at the Harbour beyond the agreed cancellation date, then visitors daily rates will be charged.

Refunds will not be given retrospectively.

Any obligation of the Company towards any vessel, vehicle or goods left in the Harbour area, ends upon the expiry or lawful termination of the Berthing Licence and the Company accepts no responsibility for loss or damage to the vessel, vehicle or goods left at the Harbour after expiry or termination of the Berthing Licence, save as may be implied by law.

Signed

Print:

Vessel:

Date: