

# BOATCARE TERMS OF BUSINESS

## 1. PRELIMINARY PROVISIONS AND DEFINITIONS

1.1 These Terms of Business form an integral part of all estimates, quotations and contracts for Work provided by the Company.

1.2 These Terms of Business apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.3 In these Terms of Business:

**'Applicable Laws on Consumer Rights'** means all applicable laws, rules, regulations, instruments and provisions in force from time to time relating to consumer protection, including but not limited to the Consumer Rights Act 2015.

**'Company'** means Boatfolk Marinas Limited (company no. 02746437), as well as any authorised member, agent, employee or representative of the Company.

**'Consumer'** means a Customer who is considered a "consumer" under the Applicable Laws on Consumer Rights.

**'Customer'** means the party or parties for whom the Company agrees to perform the Work and shall include the legal owner of any relevant Vessel, any parent or associated company and/or firm, as well as any authorised member, agent, employee or representative of the Customer. Where the Vessel is under demise charter and the agreement is with the demise charterer, the Customer shall also include the demise charterer. In the event that the Company enters into an agreement with more than one party, the obligations of such other parties shall be joint and several, unless otherwise agreed in writing.

**'Marina'** means any marina or other premises operated by the Company where the Work is carried out on behalf of the Customer.

**'Order'** means the Customer's order for the Work, as set out in the Company's Request for Work form, or the Customer's written acceptance of the Company's estimate or quotation, or otherwise, as the case may be.

**'Parties'** means the Company and the Customer; each a Party and collectively the Parties.

**'Vessel'** means any vessel or a floating craft of any nature (or part thereof), or any other comparable object such as a yacht, a lighter, a barge, a pontoon, a tug, a drilling-platform, a rig as well as any other object entrusted to the Company for the Work to be undertaken.

**'Work'** means the goods and/or services supplied to the Customer and/or work undertaken by the Company pursuant to the Order and these Terms of Business.

## 2. COMMENCEMENT OF CONTRACT

2.1 A contract will come into existence between the Company and the Customer when the Company accepts the Customer's Order in writing (or the Company otherwise expressly accepts the Customer's Order).

2.2 If the Company is unable to accept an Order, it will inform the Customer of this and will not charge for the Work. This might be because a product is out of stock or because of unexpected limits on the Company's resources.

## 3. LIABILITY

3.1 The Company shall not be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage, caused by or arising from events or circumstances beyond its reasonable control (which includes, without limitation, acts of God, pandemic, wars (whether declared or not), riots, civil commotions, malicious damage, embargoes, compliance with any law or governmental order, rule, regulation or direction, breakdown of plant or machinery, fire, flood, accidents, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other Party), failure of a utility service or transport network, unusually severe weather conditions, default of suppliers or subcontractors or the actions of third parties not employed by the Parties).

3.2 The Company shall take reasonable steps to maintain security at its premises, and to maintain its facilities and equipment in reasonably good order and condition.

3.3 Notwithstanding Clause 3.2, the Vessel, and any other property of the Customer left at the Company's premises, is at the Customer's own risk.

3.4 The Company shall not be under any duty to salvage or preserve the Vessel from the consequences of: (a) any defect in the Vessel and/or (b) an accident which has not been caused by the Company. However, the Company reserves the right to salvage or preserve the Vessel, at its sole discretion, in appropriate circumstances and in particular where the safety of people, property or the environment is at risk.

3.5 The Company may need certain information from the Customer so that it can carry out or supply the Work. If so, the Company will ask for this information from the Customer. If the Customer does not give this information within a reasonable time of the Company asking for it, or if the Customer gives incomplete or incorrect information, the Company may either end the contract or make an

additional charge of a reasonable sum to compensate the Company for any extra work that is required as a result. The Company will not be responsible for carrying out or supplying the Work late or not performing or supplying any part of them if this is caused by the Customer not giving the information needed within a reasonable time of being asked for it.

3.6 The Customer shall effect and maintain, at no cost to the Company, liability insurance providing cover for any loss or damage for which the Customer may be liable under these Terms of Business (including third party liability cover and, where appropriate, employer's liability cover in respect of any of its employees).

3.7 The Company shall effect and maintain, at no cost to the Customer, liability insurance for such loss or damage for which the Company may be held liable under these Terms of Business.

3.8 Each Party shall produce copies of insurance policies as evidence of cover, immediately and (in any case within seven (7) days) upon request by the other Party.

3.9 Each Party accepts responsibility and liability for:

3.9.1 death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors;

3.9.2 fraud or fraudulent misrepresentation; or

3.9.3 any other reason for which it would be illegal for the Parties to exclude liability.

3.10 Subject to Clause 3.9, the Company shall under no circumstances whatsoever, be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms of Business.

3.11 The Company's liability to the Customer for all other losses arising under or in connection with any contract between the Customer and the Company, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 100% per cent of the total sums paid by the Customer for the Work under such contract unless otherwise agreed between the parties in writing.

3.12 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms of Business.

3.13 The Customer shall comply with all reasonable instructions given by the Company or any of its representatives in connection with all matters relating to the safe and efficient operation of the Marina and shall at all times comply with the Company's Marina Terms and Conditions, a copy of which is available upon request.

## 4. THE WORK

4.1 The images of any products on the Company's websites are for illustrative purposes only. Although the Company has made every effort to display colours accurately, it cannot guarantee that a device's display of the colours accurately reflects the colour of the products. Products may vary slightly from those images.

4.2 If the Company is making any item to any specification that the Customer has provided the Customer is responsible for ensuring that the specification is correct. The Customer may contact the Company if it has any questions about this.

## 5. CHANGES

5.1 If the Customer wishes to make changes to the Work it has ordered it should contact the Company. The Company will let the Customer know if the change is possible and (if it is possible) about any changes to the price of the Work, the timing of supply, or anything else which would be necessary as a result of the requested change and ask the Customer to confirm whether it wishes to go ahead with the change.

5.2 The Company may change the Work to reflect changes in relevant laws and regulatory requirements and/or to implement minor technical adjustments and improvements. These changes will have minimal, if any, affect upon the Customer's use of the Work.

5.3 If the Company wishes to make more significant changes to the Work it will notify the Customer and the Customer may either accept these changes or end the contract before the changes take effect and receive a refund for any Work that it has paid for but not received.

## 6. PRICES AND ESTIMATES

6.1 The price for the Work shall be the price set out in the Order, or if no price is quoted for the Work, the price will be determined based upon the labour and materials expended and services provided in accordance with the Company's usual tariff at the time when the Work was performed, as duly invoiced to the Customer (the "Price").

6.2 The Price shall include VAT (where VAT is applicable) unless expressly stated otherwise. If the rate of VAT changes between the date an Order is placed and the date the Work is supplied, the Company reserves the right to adjust the rate of VAT that the

- Customer pay, unless the Customer has already paid for the Work in full before the change in the rate of VAT takes effect.
- 6.3 Unless otherwise agreed in writing, the Price will not include expenses incurred for pilotage, salvage, tugs, harbour dues and similar charges which shall be invoiced separately to the Customer.
- 6.4 The Company will exercise reasonable skill and judgment when giving an estimate or indication of Price. However, estimates are always subject to the accuracy of information provided by the Customer, are often based on a superficial examination and do not include the cost of any emergent work which may be necessary nor the cost of any extensions to the Work. The Company reserves its right to (a) increase the rates under its usual tariff (provided that such increase does not take place more than once in any twelve (12) months) and/or (b) subject to Clause 6.5, increase the Price for the Work.
- 6.5 The Company will inform the Customer of any proposed increase in the estimated Price, together with the reasons for such increase, and will proceed with the Work after having obtained the Customer's approval (such approval not to be unreasonably delayed or withheld). The Customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in the Price.
- 7. PAYMENT**
- 7.1 Unless otherwise agreed between the Parties in writing, payment for all Work provided shall be due immediately upon receipt of the Company's invoice. Payment shall be deemed to have been made when received by the Company in cash or cleared funds at the Company's nominated bank account. Time for payment is of the essence. All Credit and Debit card transactions carried out through the Company's website shall be debited at the point the Customer places an order by checking out their basket through the website.
- 7.2 If the Customer fails to make any payment due to the Company by the due date for payment, the Company has the right to charge interest on the overdue amount at the rate of four percent (4%) above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 7.3 If the Customer does not pay when it is supposed to and still does not make payment within 5 days of the Company reminding it that payment is due, the Company may suspend supply and/or delivery of the Work until the Customer has paid the outstanding amounts. The Company will contact the Customer to tell them of the suspension. The Company will not suspend the Work where the Customer reasonably disputes an unpaid invoice.
- 7.4 The Customer shall pay all amounts due under these Terms of Business in full without any set-off, counterclaim, deduction or withholding except as required or permitted by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 7.5 To the extent permitted by law, the Customer hereby grants to the Company a lien and a continuing security interest, and, where applicable, a maritime lien, over the Vessel as security for payment of the Price until full payment of the Price by the Customer, or until the Customer has given security to the Company in a form and substance acceptable to the Company (for example a letter of guarantee from a bank reasonably acceptable to the Company or lodgement of a cash deposit with a professional third party agent reasonably acceptable to the Company). The security provided shall be sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs and expenses.
- 7.6 The Company shall be entitled to charge the Customer for storage and the provision of any ongoing services at the Company's normal daily rates until full payment (or provision of security) by the Customer and removal of the Vessel from the Company's premises. The Customer shall be entitled to remove the Vessel upon providing proper security.
- 8. DELAYS**
- 8.1 Unless otherwise agreed in writing by the Parties, time estimates given for completion of the Work are given in good faith and without guarantee.
- 8.2 The Company shall not be liable for any failure or delay in the performance or completion of the Work, or for any such loss or damage resulting therefrom, unless the Company has expressly guaranteed completion by a specific date in writing, or the delay arises from its wilful acts or omissions or negligence.
- 8.3 If the Customer does not allow the Company access to its Vessel to perform the Work as arranged (and the Customer does not have a good reason for this) the Company may charge additional costs incurred by the Company as a result. If, despite the Company's reasonable efforts, it is unable to contact the Customer or re-arrange access the Company may end the contract.
- 9. THE VESSEL'S MOVEMENTS**
- 9.1 The Company shall have the right to order such movements of the Vessel and such tests or trials it deems necessary in order to perform and determine the due completion of the Work and/or for reasons of safety, security or good management of the Company's business and premises.
- 9.2 The costs of such movements, trials and/or tests including the cost of any bunkers and/or consumables shall be borne by the Customer.
- 10. TITLE AND RISK**
- 10.1 Risk in all goods, equipment and materials supplied by the Company to the Customer shall pass to the Customer at the time of supply to the Customer of such goods, equipment or materials or at the time when such goods, equipment or material are assigned or affixed to the Vessel, as the case may be.
- 10.2 Title to all goods, equipment and materials supplied by the Company to the Customer shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Work.
- 11. GUARANTEE**
- 11.1 The Company guarantees that, for a period of twelve (12) months from completion of the Work (the "**Warranty Period**"), the Work will be free of defects in material and workmanship and in conformity with the agreed specification. The Customer shall give notice in writing (as per Clause 19) to the Company of any defects in material or workmanship ("**Defective Work**") which may become apparent and shall provide the Company with sufficient evidence so as to establish the nature and extent of the Defective Work. This guarantee applies only to the Customer: a person who is not a Party to these Terms of Business shall not have any rights to enforce these Terms of Business.
- 11.2 On notification by the Customer of the Defective Work, the Company will be given a reasonable opportunity to inspect the Defective Work and if it is the Company's responsibility, the Company shall repair or re-perform, in whole or in part, at its discretion, the Defective Work. Delivery of repairs or re-performance under this guarantee will be made in accordance with these Terms of Business.
- 11.3 The Customer shall, immediately after the discovery of any Defective Work, take all appropriate steps to mitigate any loss or damage and to prevent any Defective Work becoming more serious.
- 11.4 The Company shall not be liable for any Defective Work if the defect arose as a result of: (a) the Customer's failure to follow the Company's oral or written instructions; (b) the Company following any drawing, design or specifications supplied by the Customer; (c) fair wear and tear, wilful damage, negligence or abnormal working conditions; (d) changes made to ensure compliance with applicable statutory or regulatory standards; and/or (e) any changes, repairs or works carried out by anyone other than the Company or the Company's authorised representatives.
- 11.5 Any remedial work which is put in hand by the Customer directly without first notifying the Company and allowing the Company a reasonable opportunity to inspect the Defective Work shall invalidate the guarantee provided under this Clause 11.
- 11.6 Where the Customer is not a Consumer:
- 11.6.1 these Terms of Business do not contain any express or implied term as to quality or fitness for any particular purpose, unless, prior to the Work being performed, the purpose has been clearly identified in writing to the Company and the Customer has stipulated that it is relying upon the Company's skill and judgment to ensure this purpose has been met; and
- 11.6.2 the Company accepts no liability to the Customer in respect of any loss of profit or turnover which the Customer or its customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied to the Customer by the Company.
- 11.7 The Company shall assign to the Customer any and all of its rights against the manufacturer or supplier of any particular article used in the Work or supplied to the Customer as part of the Work.
- 12. QUALITY STANDARDS**
- 12.1 The Company will exercise reasonable care and skill in the performance of the Work in accordance with the provisions of these Terms of Business, the requirements of any relevant regulatory bodies and, in the absence of any other contractual term as to quality, to a satisfactory standard.
- 13. ACCESS TO PREMISES / WORK**
- 13.1 No work or services shall be carried out by the Customer on the Vessel

- or the Company's premises without the Company's prior written consent except for minor running repairs or minor maintenance of a routine nature. The Company's consent may be revoked with immediate effect in the event of any breach by the Customer of these Terms of Business or the Marina Terms and Conditions, in which case the Company shall be entitled to demand the immediate cessation of any work.
- 13.2 The Customer is subject to the Company's health and safety, environmental and access policies and shall further be obliged to comply with all laws and regulations relating to environmental protection and safety.
- 13.3 The Customer is responsible for any damage or loss caused directly or indirectly from any breach of its obligations under these Terms of Business or the Marina Terms and Conditions.
- 13.4 The Customer shall take all necessary precautions to avoid pollution of the environment and shall indemnify the Company for any loss or damage arising from any pollution of the environment.
- 13.5 The Customer shall ensure that it does not cause any nuisance or annoyance to the Company, any other customer or person present or residing in the vicinity and does not interfere with the Company's schedule for the Work and/or the good management of the Company's premises and business.
- 13.6 During performance of the Work by the Company (and/or any of the Company's sub-contractors), the Customer shall not have access to the Vessel unless the Company's prior written consent has been obtained.
- 14. TERMINATION BY THE CUSTOMER**
- 14.1 The Customer may end the contract for any reason set out below in which case the contract will end immediately, and the Company will refund the Customer in full for any products which have not been provided and the Customer may also be entitled to compensation. The reasons are:
- 14.1.1 the Company has told the Customer about an upcoming change to the product or these terms which the Customer does not agree to;
- 14.1.2 there is a risk that supply of the products may be significantly delayed because of events outside the Company's control;
- 14.1.3 the Customer has a legal right to end the contract because of something the Company has done wrong.
- 14.2 If the Customer is a Consumer then for most products bought online, by telephone or by exchange of emails they have a legal right to change their mind within 14 days and receive a refund. This right does not apply in respect of:
- 14.2.1 services, once these have been completed, even if the cancellation period is still running;
- 14.2.2 customised, bespoke or personalised products; and
- 14.2.3 any products which become mixed inseparably with other items after their delivery.
- 14.3 The 14-day cancellation period is calculated as follows:
- 14.3.1 for services, the Customer has 14 days after the day the Company emails to confirm that it accepts the Order. However, once the services have been completed the Customer cannot change their mind, even if the period is still running. If the Customer cancels after the Company has started the services, the Customer must pay for the services provided up until the time they tell the Company that they have changed their mind.
- 14.3.2 for goods, the Customer has 14 days after the day they (or someone they nominate) receives the goods, unless the goods are split into several deliveries over different days. In this case the Customer has until 14 days after the day they (or someone they nominate) receives the last delivery.
- 14.4 Even if the Company is not at fault and the Customer has no right to cancel under Clause 14.2, the Customer (if it is a Consumer) can still end the contract before it is completed by notifying the Company. The contract will end immediately and the Company will refund any sums paid by the Customer for products not provided but it may deduct from that refund (or, if the Customer has not made an advance payment, charge the Customer) reasonable compensation for the net costs the Company will incur as a result of their ending the contract.
- 14.5 If the Customer ends the contract for any reason after products have been dispatched to it or it has received them, they must return them to the Company. The Customer must either return the goods in person, post them back to the Company at the address the Company specifies or (if they are not suitable for posting) allow the Company to collect them from them. If the Customer is a Consumer exercising their right to change their mind, they must send off the goods within 14 days of telling the Company they wish to end the contract.
- 14.6 The Company will pay the costs of return:
- 14.6.1 if the products are faulty or misdescribed; or
- 14.6.2 if the Customer is ending the contract because the Company has told the Customer of an upcoming change to the product or these terms, a delay in delivery due to events outside its control or because the Customer has a legal right to do so as a result of something the Company has done wrong; or
- 14.6.3 if the Customer is a Consumer exercising their right to change their mind.
- 14.7 In all other circumstances the Customer must pay the costs of return.
- 14.8 If the Customer is responsible for the costs of return and the Company is collecting the product, it will charge the Customer the direct cost to the Company of collection.
- 14.9 If the Customer is entitled to a refund under these terms the Company will refund the Customer the price paid for the products including delivery costs, by the method the Customer used for payment subject to the deductions below.
- 14.10 If the Customer is exercising their right to change their mind:
- 14.10.1 The Company may reduce the refund of the price (excluding delivery costs) to reflect any reduction in the value of the goods, if this has been caused by the Customer's handling them in a way which would not be permitted in a shop. If the Company refunds the price paid before it is able to inspect the goods and later discover the Customer has handled them in an unacceptable way, the Customer must pay an appropriate amount.
- 14.10.2 the maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method the Company offers.
- 14.10.3 where the product is a service, the Company may deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when the Customer told the Company they had changed their mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the contract.
- 14.11 The Company will make any refunds due as soon as possible. If the Customer is a Consumer exercising their right to change their mind, then:
- 14.11.1 if the products are goods and the Company has not offered to collect them, the refund will be made within 14 days from the day on which the Company receives the product back from the Customer or, if earlier, the day on which the Customer provides evidence that they have sent the product back to the Company.
- 14.11.2 in all other cases, the refund will be made within 14 days of the Customer telling the Customer they have changed their mind
- 15. TERMINATION BY THE COMPANY**
- 15.1 The Company may end the contract for a product at any time by writing to the Customer if:
- 15.1.1 the Customer does not make any payment to it when it is due, and the Customer still does not make payment within 14 days of the Company reminding the Customer that payment is due;
- 15.1.2 the Customer does not, within a reasonable time of the Company asking for it, provide the Company with information that is necessary for the Company to provide the products;
- 15.1.3 the Customer does not, within a reasonable time, allow the Company to deliver the products to them or collect the products from the Company; or
- 15.1.4 the Customer does not, within a reasonable time, allow the Company access to their Vessel or any other item the Company requires to supply the services.
- 15.2 If the Company ends the contract in the situations set out in Clause 15.1 it will refund any money the Customer has paid in advance for products the Company has not provided but it may deduct or charge reasonable compensation for the net costs the Company will incur as a result of the Customer breaking the contract.
- 16. ASSIGNMENT AND OTHER DEALINGS**
- 16.1 The Company may at any time assign, transfer or deal in any other manner with all or any rights under these Terms of Business and may sub-contract or delegate in any manner any or all of its obligations under these Terms of Business to a third party.
- 16.2 The Customer may not, without the prior written consent of the Company, assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms of Business.
- 17. CONSUMER RIGHTS**
- 17.1 To the extent that these Terms of Business contradict with the Applicable Laws on Consumer Rights, the rights conferred on

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- Consumers under the Applicable Laws on Consumer Rights remain unaffected.
- 17.2 Advice on whether a Customer is a Consumer or is otherwise protected by some or all of the Applicable Laws on Consumer Rights may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of solicitors practising in England and Wales.
- 17.3 If the Company is carrying out Work on any item or property owned by a Consumer Customer, it will make good any damage to the property caused by the Company while doing so. However, the Company is not responsible for the cost of repairing any pre-existing faults or damage to the item or property that the Company discovers while providing the Work unless expressly agreed between the Company and the Customer.
- 18 THIRD PARTY RIGHTS**
- 18.1 A person who is not a Party to these Terms of Business shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Business.
- 19 COMMUNICATION AND NOTICES**
- 19.1 All communications and notices given under these Terms of Business shall be in writing. A notice shall be sufficiently served if given by effective means of communication, including but not limited to fax, email, registered or recorded mail or by personal service, to the Customer's last known address or to the Company's official email, trading address or registered office.
- 20 WAIVER**
- 20.1 If the Company does not insist immediately that the Customer does anything it is required to do under these Terms of Business, or if the Company delays in taking steps against the Customer in respect of the Customer breaking this contract, that will not mean that the Customer does not have to do those things and it will not prevent the Company taking steps against the Customer at a later date.
- 21 SEVERANCE**
- 21.1 If any provision of these Terms of Business is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 21 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.
- 22 GOVERNING LAW AND JURISDICTION**
- 22.1 These Terms of Business, as well as any contract(s) made subject to these Terms of Business, shall be governed by and construed in accordance with English law.
- 22.2 All disputes arising out of or in connection with these Terms of Business shall be subject to the non-exclusive jurisdiction of the English courts.
- 22.3 Disputes arising out of or in connection with this Agreement, when they cannot be resolved by negotiation, may, with the written agreement of the Parties, first be submitted to mediation under British Marine's ("BM") Dispute Resolution Scheme. Details of the Scheme are available to current BM members on request from BM and/or online on BM's member website.