



TERMS OF BUSINESS

DEFINITIONS

Applicable Laws on Consumer Rights . 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.

Authority. The organisation responsible for directing and licensing all activities at the mooring site. Under these Terms of Business, the Authority is taken to be the River Yealm Harbour Authority.

Company. The Party or Parties undertaking the Work, as well as any authorised member, agent, employee or representative of the Company. Under these Terms of Business the Company is taken to be The River Yealm Mooring Services Ltd.

Consumer. A Customer who is considered a Consumer under the Applicable Laws on Consumer Rights.

Customer. The Party or Parties with 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. Under these Terms of Business the Customer is taken to be the Licensee of the mooring (public or private).

Competent Person. A person who has sufficient training, experience, knowledge and ability to complete Work in a recognised, efficient and safe manner, and has to knowledge and skills to identify and mitigate all hazards associated with that Work.

Licensee. The owner of the Mooring Equipment who has been provided with a Licence from the Authority to use the Mooring Equipment at an authorised Mooring Site to moor a Vessel agreed by the Authority. In the context of this document the Licensee is also the Customer of the Company.

Order. The Customer's order for the Work, as set out in the Customer's Order Form, or the Customer's written acceptance of the Company's quotation.

Parties. The Company and the Customer; each a Party and collectively the Parties.

Vessel. A floating craft of any nature (or part thereof)

Work. The goods and services supplied to the Customer and/or activities undertaken by the Company pursuant to these Terms of Business.

Warranty Period. The period where the Company guarantees the Work.

STATUS

Legality. 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.

Basis. These Terms of Business shall be the basis for all Pricing and Work provided by the Company to the Customer in order to comply with the requirements of the Authority.

Exclusions. 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 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

The terms implied by Sections 13 to 15 of the Sale of Goods Act 1979 and 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.

Transfers. 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.

Acceptance. On engagement of the Company the Customer agrees to the Company's Terms of Business.

CONSUMER RIGHTS

Contradictions

To the extent that these Terms of Business contradict with the Applicable Laws on Consumer Rights, the rights conferred on Consumers under the Applicable Laws on Consumer Rights remain unaffected.

Advice

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.

THIRD PARTY RIGHTS

Enforcement

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 of these Terms of Business.

DISPUTES

Jurisdiction

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.

Mediation

Disputes arising out of or in connection with an agreement between Parties , when they cannot be resolved by negotiation, may, with the written agreement of the Parties, first be submitted to mediation under British Marine's Dispute Resolution Scheme.

AUTHORITY

The authority for all moorings on the River Yealm is The River Yealm Harbour Authority [The Authority]. The Authority requires all moorings in use on the River Yealm to be **Certified by a Competent Person** be appropriate and secure for use by the intended Vessels. Moorings without Certification shall not be used by any Vessel.

ACCREDITATION

The Authority shall only recognize mooring maintenance operations on the deep-water moorings if they are conducted by an organization that has been professionally recognized through:

- The employment of operators who are deemed **Competent Persons**, trained in all skills necessary for the operations.
- The adoption of industrially- approved operating practice and safety measures where identifiable and applicable in line with local best practice.
- The use of Vessels and operating equipment that is suitable and safe for mooring maintenance operations, particular to the conditions of the River Yealm. Risk assessments, method of works statement, insurance particulars and vessel accreditation can be provided on request.
- The fitting of Mooring Equipment that has been:
 - Supplied from an accredited source

- Load-tested as secure for its intended use and intended lifespan in a sub-surface marine environment

MOORINGS LOCATION & SPECIFICATIONS

The River Yealm Harbour Authority Harbour Master [The Harbour Master] and the Kitley Estates Moorings Manager shall determine the location for each mooring site and shall define to The Company:

- The specifications for each Mooring site
- The specifications of the Vessels that can be moored at each mooring site.

MOORING LICENCE

The Authority shall grant and maintain a License for the use of each Mooring instructed for inspection by the company, only when the equipment used on the mooring site has been inspected and certified by The Company as suitable and secure for use by:

- The Vessel as declared to the Authority by the Licensee; or
- Other Vessels as directed by the Harbour Master.

MOORING CERTIFICATION

Certification shall be based on an Annual Inspection by the Company or on a Supplementary Inspection directed by the Authority when there is:

- Suspicion of damage to Mooring Equipment through abnormal degradation, impact, misuse or any other Third Party action.
- A change in the size and type of the intended Moored Vessel

In addition, Certification shall be based on an Interim Inspection of Ground Tackle (Base Block, Shackle and Ground Chain) to be conducted at the 10 year anniversary of placement (new Base Blocks) or the 5 year anniversary of replacement (reconditioned Base Blocks)

Given normal use in reasonable conditions the Mooring may be considered secure for a period of 12 months from the date of the Annual Inspection, subject to conditions:

- The Certification shall be valid for the use of the Mooring by a Vessel and its tender as declared by the Customer/Licensee, or a Vessel of similar characteristics (displacement, Length Over All, and reaction to tide flow and wind) as authorized by the Harbour Master.

- Where the use of the Mooring is to be by a substituted Vessel in the long term, the details of the Vessel are to be passed to the Company 14 days prior to the substitution. The Company shall certify the Mooring for that Vessel without the need to conduct a Supplementary Inspection; the Company shall not make a charge for this Certification, which shall run to the original anniversary. If the Company considers that an Supplementary Inspection is required, this shall be charged pro-rata to correspond with lapsed time, up to the 6 month point; thereafter this will be a full charge and the Certification shall run for a full 12 months from the date of the Inspection unless the previous inspection was not carried out by the Company whereby a full inspection charge will be incurred irrespective of lapsed time.

GENERAL PROVISIONS

Company Liabilities

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.

Damage to Mooring Equipment

The Company accepts no liability for damage to Mooring Equipment caused by Acts of God, vandalism, misuse or collision.

Mooring Equipment Failure

In the event of a failure of the Mooring Equipment and any subsequent litigation procedures, the Company reserves the right to inspect all remaining Mooring Equipment independently in the first instance.

Salvage or Preservation of Vessel

The Company shall not be liable to salvage or preserve the moored Vessel from the consequences of:

- Any structural defect in the Mooring Equipment that could not be readily identified at Inspection; and/or
- An accident which has not been caused by the Company.

The Company reserves the right to salvage or preserve any moored Vessel, at its sole discretion, in appropriate circumstances and in particular where the safety of people, property or the environment is at risk, associated costs will be transferred on completion to the owner.

Position of Moorings

The position of individual Moorings has been determined by The Authority. The Company accepts no liability for damage caused to the moored Vessel and its adjacent Vessels as a result of the close proximity of the Moorings.

BASE BLOCKS

Specification

The Authority reserves the right to examine any Base Block supplied by the Company.

The Company shall certify to the Authority that the Base Block is compliant with the Specification before it is placed at the Mooring Site on request.

Warranty

The life of the Base Block shall be 20 years and a further 10 years if reconditioned. The Base Block shall be subject to an Interim Inspection after 10 years or for 5 years in the case of reconditioned Base Blocks. The Company shall guarantee the structure of the Base Block for a period of 5 years after siting and for a period of 5 years after the Interim Inspection.

Positioning

The position of Base Blocks within the River Yealm and its adjoining creeks will be as directed by the Authority. Base Blocks (serviceable or condemned) may not be repositioned without authorization from the Authority.

Security

The Company accepts no liability for the unseating or dragging of Base Blocks caused by the use of the mooring by Vessels not authorized by the Harbour Master.

If during the annual inspection of Mooring Equipment the Base Block is identified as insecure on the seabed, then the mooring License shall be suspended by the Authority until remedial action has been completed. This action will take priority over all scheduled Inspections, Work and Substitutions

Licence For Use

The Licence for the Mooring shall continue provided that any Interim Inspection of the Base Block is completed in accordance with the due date or special conditions as defined in these Terms of Business, and the Base Block is certified as serviceable or otherwise replaced.

Record of Base Blocks

The Company shall maintain a record of all Base Blocks it has sited on the River Yealm and its adjoining creeks. The Authority shall have oversight of this record if requested and may notify the Licensee of the Mooring when the mooring's Base Block requires an Interim Inspection or is about to enter its final year of life. The Base Block shall be condemned as unusable on reaching the end of its life if deemed so by the inspecting authority.

Condemned Base Blocks. Condemned Base Blocks shall be retained at the designated wet store provided to the company by the authority, until a cost effective amount is attained for removal to Bridgend, subsequent collection by low loader and recycled accordingly. The Authority will be notified of this activity when undertaken.

Schedule of Work. The Inspection, Maintenance and Replacement of Base Blocks involves the use of heavy lifting equipment. This activity shall be programmed by the Company so as to minimize the disruption of traffic within the Yealm River. The Company shall generally undertake the programme during the Winter months when the demand for Moorings and traffic flow within the Yealm River is at a minimum.

Cost of Inspection & Work. The Customer shall be responsible to the Company for the additional cost of the Interim Inspection and resulting Work, the supplying and siting of a new or reconditioned Base Block and the of disposing of the original condemned Base Block.

DEFECTS

Reporting

The Customer shall give notice in writing to the Company of any defects in material or workmanship which may become apparent, and shall provide the Company with sufficient evidence so as to establish the nature and extent of the defects.

Rectification

On notification of the defect, the Company shall be given a reasonable opportunity to inspect and rectify the defect, and if it is within the conditions of the Warranty the Company, this shall be within 14 days of notification and subject to the state of tide and the prevailing weather conditions. Any remedial Work, which is put in hand by the Customer directly, without first notifying the Company, shall invalidate the Warranty previously provided by the Company.

Damage Limitation

The Customer shall be responsible for immediate actions to limit the impact of a defect until responsibility is assumed by the Company, and then reasonable and related costs incurred by the Customer shall be reimbursed by the Company.

Liability

The Company shall not be liable if the defect arose as a result of:

- The Customer's failure to follow the Company's instructions; or
- Incorrect use, Third Party action or abnormal conditions.

INSURANCE

Liability Insurance

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. This

cover is to include Third Party liability cover and, where appropriate, employer's liability cover in respect of any of the employees of the Company.

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.

Each Party shall produce copies of insurance policies as evidence of cover, within seven days upon request by the other Party or the Authority.

Responsibility and Liability

The Company shall accept responsibility and liability for:

- Death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors;
- Any other reason for which it would be illegal for the Parties to exclude liability.

CONSEQUENTIAL LOSS

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 financial loss, or any indirect or consequential loss arising under or in connection with these Terms of Business.

AUTHORITY FOR WORK

The Company shall proceed with the Work upon receipt of the Customer's instruction to inspect their mooring, this will serve as approval of the Price for the Work and understanding the company's terms of business have been read. This approval shall not be unreasonably withheld

The Company reserves its right to conduct Work at any time without authorisation from the Customer if the mooring is found to be, or suspected to be insecure and considered by the Company or the Authority a danger to a Third Party. This Work will be charged to The Customer/Licensee.

DELAYS

Unless otherwise agreed in writing by the Parties, time estimates given for completion of the Work are given in good faith and without guarantee. 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 in writing the completion by a specific date, or the delay arises from its wilful acts or omissions or negligence.

PRICING

Estimates

The Company shall exercise reasonable skill and judgment when giving an estimate or indication of Price. Estimates are:

- Subject to the accuracy of information provided by the Customer;
- Often based on a superficial examination; and
- Do not include the cost of any emergent Work which may be necessary

Base Line

The Price of Work will be 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. The Price for the Work shall be in accordance with the rates set out upon the Company's website. The rates will be free of VAT and subject to an annual increase in line with RPI

Unless otherwise agreed in writing, the Price will not include expenses incurred for pilotage, salvage, tugs, harbour dues and similar charges should they be required which shall be invoiced separately to the Customer.

PAYMENT

Payment Due Date

Unless otherwise agreed between the Parties in writing, the payment for all Work provided shall be due within 14 days from receipt of the Company's invoice.

Exceptionally, a 50% deposit the payment for the construction, siting and removal of new Base Blocks, and for the hire of additional equipment and/or Vessels required to complete this Work will be due when the Customer places the order.

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.

Late Payment

If the Customer fails to make the full payment 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 above the Bank of England base rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.

Payment Variations

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.

Payment Security

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 by the Customer of the Price plus any accrued interest, 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.

RISK & TITLE

Risk

Risk in all goods, equipment and materials supplied by the Company to the Customer shall remain with the Company during the period of Warranty.

Title

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 for the Work.

GUARANTEE

Applicability

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.

Period

The Company shall guarantee the Work during the Warranty Period which shall be 12 months from the date of the completion of the Work.

Quality Assurance

The Company shall 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. The Work will be free of defects in material and workmanship and in conformity with the agreed specification. 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.

COMMUNICATION AND NOTICES

Form & Media

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.