



## BWML Terms & Conditions

You (“**the Owner**”) have agreed to enter into a contract with British Waterways Marinas Limited (“**BWML**”) for the use of BWML’s Berth at the Marina. Your permitted use is set out in the Contract Invoice. Your level of use is explained in the “**BWML Mooring Berth Definitions**” which is found in Appendix A of these Terms.

**BY ENTERING INTO THE CONTRACT INVOICE WITH BWML YOU WILL BE BOUND BY THESE TERMS AND CONDITIONS. PLEASE READ THESE CAREFULLY AND ENSURE YOU HAVE UNDERSTOOD THEM.**

### General Conditions

**Issue Date: 18<sup>th</sup> October 2018**

#### Definitions

In these General Conditions:

“**Annual Contract**” means the Contract where the Annual Subscription Fees apply and are paid for the full Year in advance (and the Contract shall be identified as an Annual Contract on the Contract Invoice).

“**Annual Subscription Fees**” means, in relation to an Annual Contract, the amount due for your Contract in respect of the Year, as set in the Contract Invoice.

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

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

“**BWML Senior Management**” means a Director or Manager who retains responsibility for several units or a geographical area.

“**Commencement Date**” means the 1<sup>st</sup> day of the Month the Vessel has been advised as arriving at the Marina and detailed on the Contract Invoice

“**Coastal Marinas**” means a BWML marina connected to tidal waterways or estuaries.

“**Coastal Marinas Standard Berth**” means, in respect of Coastal Marinas, the maximum width of Berth/Vessel of 4.5 metres.

“**the Contract**” means these Terms and Conditions and the Contract Invoice.

“**Contract Duration**” means the period of one (1) Year or such other longer period as set out in the Contract Invoice.

“**Contract Invoice**” means the contract invoice issued by BWML to the Owner which sets out the Subscription Fees, the Grade and the Contract period relating to the Owner’s use of the Berth at the Marina.

“**Grade**” means the Berth usage type as stipulated in your Contract Invoice that reflects specific benefits as stipulated in the current **BWML Mooring Berth Definitions** document which can be found on our website at [www.bwml.co.uk](http://www.bwml.co.uk)

“**Inland Marinas**” means a BWML marina connected to the inland canal system, inland docks or rivers.

“**Inland Marinas Standard Berth**” means, in respect of Inland Marinas, the maximum width of Berth/Vessel of 3.0 metres.

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

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

**“Major Works”** means work on the Vessel covering over 20% of the Vessel.

**“Month”** means a calendar month.

**“Monthly Contract”** means the monthly Contract where Monthly Subscription Fees apply and are paid 1 Month in advance on 1<sup>st</sup> of each Month (and the Contract shall be identified as a Monthly Contract on the Contract Invoice).

**“Monthly Subscription Fees”** means, in relation to a Monthly Contract, the amount due for your Contract in respect of each Month, as set out in the Contract Invoice.

**“Overstay Charges”** means the charge applied for the continued use of the marina facilities after the expiry of a designated contract period, until departure from the marina, the charges are weekly or part thereof and applied at the Overstay Rate.

**“Overstay Rate”** means 120% of the rate charged for the Contract immediately preceding the overstay period.

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

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

**“Standard Berth”** means in respect of Inland Marinas, the Inland Marina Standard Berth and, in respect of Coastal Marinas, the Coastal Marina Standard Berth.

**“Subscription Fees”** means the Monthly Subscription Fees or the Annual Subscription Fees and such other fees as set out in the Contract Invoice.

**“Vessel”** means the Vessel or Vessels, including but not limited to boats, caravans, trailers and cars, belonging to the Owner using the facilities of the Marina.

**“Visitor Contracts”** means a period of less than 3 months and for which the charges are applied at our published daily rates for a specified marina.

**“Widebeam Surcharge”** means the percentage surcharge that is applied, in addition to our standard rates, to any Vessel that exceeds the relevant Standard Berth and set out in the Contract Invoice.

**“Year”** means a successive period of 12 months starting on the Commencement Date.

## **1. The Contract**

- 1.1 Berths at the Marina shall be licensed for the periods and at the rates and terms applicable for the Grade charge from time to time published by BWML at the Marina and in force at the commencement of a Contract. Details of the charges applicable to the Berth and details of the type of Contract (namely a Monthly Contract or an Annual Contract) are set out in the Contract Invoice.
- 1.2 To the extent that an Owner is on a Monthly Contract, at the end of each Year the Monthly Contract shall renew automatically for further periods of up to 12 Months unless the Contract is terminated sooner by BWML or by the Owner in accordance with clause 9 of this Contract.
- 1.3 To the extent that an Owner is on an Annual Contract, at the end of the Contract Duration the Annual Contract shall automatically terminate unless the Contract is terminated sooner by

BWML or by the Owner under this Contract. BWML shall have the sole discretion on the offer of a renewal of any contract, as there is no automatic right to renew upon the end of a contract.

1.4 The Owner shall either notify BWML in writing of the details of any change of name of the Vessel or change of the Owner's own name, emergency contact details, address, email address or telephone number using the **BWML Change of Details Form** which can be found at [www.bwml.co.uk](http://www.bwml.co.uk), or alternatively they can amend some personal details via their on-line account.

1.5 BWML do not accept a mooring to be classified as a home, the vessel is the home.

## **2. Liability, Indemnity and Insurance Obligations**

2.1 BWML shall not be liable whether in contract, tort or otherwise, for any loss, theft or any damage suffered by any Vessel or vehicle or other property of the Owner, his crew, contractors or visitors, except to the extent that such loss, theft or damage was caused by the negligence of BWML.

2.2 Notwithstanding Clause 2.1 above, BWML will not be liable for:

- (a) losses that were not foreseeable to both parties when the Contract was formed
- (b) losses that were not caused by any breach on the part of the BWML, and
- (c) business losses and/or losses to non-consumers.

2.3 The Owner shall maintain for the duration of the Contract a minimum of third party insurance in respect of himself and his Vessel, vehicles, crew, agents, visitors and contractors in a sum of not less than £2,000,000 (two million pounds) in respect of each accident or incident, including sufficient cover against full foundering, salvage and wreck removal claims. Such insurance shall be affected and maintained by a reputable insurance company authorised under the Financial Services Authority (FSA) to carry on in Britain or in Northern Ireland, insurance business of a relevant class or who has corresponding permission under the law of another member state of the European Community. The Owner shall produce the above policy or policies and evidence of payment of the premiums to BWML within 7 days of any request to view such documents. The Owner shall also produce a copy of the policy or policies to BWML before any new Contract, including renewal Contracts. The Owner agrees not to do anything that could lead to the above policy or policies being revoked, vitiated or not renewed in the ordinary course.

2.4 The Owner shall maintain for the duration of the Contract a RCD (Recreational Craft Directive) or Boat Safety Scheme Certificate for the Vessel which shall evidence that the Vessel has passed a Boat Safety Scheme examination. The Owner shall produce the Boat Safety Scheme Certificate to BWML within 7 days of any request by BWML to view the certificate.

2.5 BWML shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of any defect in the Vessel or property concerned unless it has been expressly engaged to do so by the Owner on commercial terms. Similarly, BWML shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident for which BWML is not responsible. However, BWML reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so it shall be entitled to charge the Owner concerned on a normal commercial charging basis (and, where appropriate, to claim a salvage reward).

2.6 The Owner shall ensure that the Vessel is insured for any lifting, mast removal and storage ashore and produce the insurance policy in accordance with Clause 2.3 to BWML prior to booking any boat lift operation through BWML.

2.7 BWML reserves the right to terminate the Contract, pursuant to clause 9.2, if the Owner cannot prove that the Vessel is insured or certificated in accordance with clauses 2.3, 2.4 and 2.6 above.

## **3. Commercial Use**

3.1 Except with the previous written consent of BWML, the Owner shall not use any part of the Marina or Vessel for any commercial purposes including, but without limitation, hire of the Vessel, embarkation of charter parties, rental accommodation or advertising of any kind. Please note that if BWML does give its written consent for commercial use, such use will be subject to further terms and conditions and to the payment of additional fees, over and above those

referred to in these General Conditions. Occasional use by family and friends for no payment reward will be at the discretion of local BWML management. This type of use must receive BWML approval prior to the occupation so BWML are able to monitor the correct usage and notify Emergency Services of those present in such emergency situations. BWML will not allow vessels to be utilised for multiple occupation i.e. the berthing recommendation by the manufacturer or to a maximum of 6 berths for larger vessels.

- 3.2 Upon request, the Owner shall supply to BWML, full details in writing of all such use of the Vessel by friends or relations in accordance with Clause 3.1 above.

#### **4. Sale of Vessel**

- 4.1 The Berth is not transferable to any new Owner without permission from BWML whose permission will not be withheld unreasonably and payment of brokerage fees or a Sale on Berth Fee may be applicable. The Owner must complete a **BWML Sale on Berth Application Form** which can be found at [www.bwml.co.uk](http://www.bwml.co.uk) if they wish to sell the Vessel and transfer the existing Berth to a new Owner.
- 4.2 The Owner shall not offer any Vessel for private sale, without the prior written consent of BWML, whilst it is in the Marina which will not be withheld unreasonably. In the event that BWML consents to the Vessel being offered for sale whilst it is in the Marina, the Owner must either use BWML's brokerage service to effect the sale of the Vessel, or a broker who is a BWML Appointed Broker, that will require a **Berth Transfer form** to be completed or alternatively, in the event that the Owner sells the Vessel privately, BWML reserves the right to charge a Sale on Berth Fee to allow an alternative party to occupy a BWML Berth and for the service provided as per our Sale on Berth Fee Definitions. The Sale on Berth Fee is also applicable in the scenario when the Vessel is sold to a customer within the Marina. Proof of sale value is required for all situations.
- 4.3 Within fourteen days of any sale, transfer or mortgage of any Vessel, the Owner shall notify BWML in writing of the name and address of the purchaser, transferee or mortgagee, as the case may be if the new purchaser is remaining at the Marina using the **BWML Sale on Berth Application Form**.

#### **5. Condition of the Vessel**

- 5.1 The Owner shall ensure that the Vessel remains in a seaworthy condition at all times whilst it is at the Marina. The Vessel is to have an operational engine, and must be able to navigate and steer under its own power. Exception to this will need BWML approval.
- 5.2 All Vessels must be kept clean and in reasonable repair at all times. Should a Vessel be damaged, then repair works must be carried out as soon as is reasonably possible. Tarpaulins and temporary covers are allowed for no more than 3 months unless authorised by the local Manager.
- 5.3 Vessels berthed at Marinas connected to the Canal and River Trust's navigations must be in possession of the requisite valid Boat Safety Certificate or RCD (Recreational Craft Directive) certificate for new craft and a Canal and River Trust Craft Licence which shall at all times be prominently displayed on the Vessel. Vessels berthed in Marinas connected to Environment Agency waterways must be in possession of the requisite valid RCD/Boat Safety Certificate and must display a current valid Navigation Certificate and registration number at all times. Any Vessel registered on the Small Ships Register must display its SSR number at all times. Any exemptions to this must be authorised in writing by BWML Senior Management.
- 5.4 BWML reserves the right to terminate the Contract, pursuant to clause 9.2, if the Owner cannot prove that the Vessel is in possession of the requisite documentation (where applicable) in accordance with clause 5.3 above.
- 5.5 In addition to the requirements set out in Clause 5.1, the Owner shall ensure that the Vessel remains in an aesthetically pleasing condition whilst it is at the Marina. Any disputes relating to this Clause will be resolved by The Yacht Harbour Association appointed representative.
- 5.6 All Vessels berthed at the Marina must have a minimum level of on board facilities to allow the ability to be self-sufficient and these should include the provision for potable water storage, grey waste collection with toilets connected and wash cubicles and BWML reserve the right to request confirmation from the Owners upon granting/renewal of a mooring Contract that their

craft has the required basic facilities prior to occupancy of a Berth in the Marina.

## 6. Work to Vessel

- 6.1 Minor running repairs or minor maintenance works of a routine nature, including but not limited to, light sanding, staining, minor painting etc. which does not cause noise, disturbance, disruption or pollution to the Marina or other Marina users may be carried out to your Vessel without BWML's permission. Extensive external sanding, angle grinding, welding, internal refit, spray-painting etc. are considered Major Works and cannot be carried out within the Marina unless with BWML's prior written consent and in accordance with Clause 6.4. Maintenance may be carried out daily between 09.00 and 18.00 hours. When carrying out work, all BWML facilities, bollards, pontoons, service points etc. must be suitably protected, kept clean and tidy at all times, and appropriate Health and Safety legislation adhered to. BWML reserve the right to charge the Owner for the full cost of any remedial works required as a result of any damage caused to the Marina as a result of your work.
- 6.2 Prior written consent for work to be carried out at the Marina shall not, without good cause, be withheld where the work is to be carried out in strict accordance with the documents **Working on Craft in Dry Docks** and **Working on Craft in Dry Storage** (which are available upon request from BWML offices).
- 6.2.1 The work to be carried out is work for which BWML would normally employ a specialist sub-contractor; or
- 6.2.2 BWML is satisfied that the whole of the work is remedial and not servicing and is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of her equipment to which the warranty relates; or
- 6.2.3 BWML has set aside an area of the Marina where the Owner may carry out work on the Vessel and the work for which consent is sought is restricted to that area.
- 6.3 The Owner must ensure that suitable risk assessments, method statements and a copy of the contractor's third party liability insurance policy in the sum of £5,000,000 (five million pounds) accompanies the request for consent referred to in Clause 6.1 above. The Owner must also ensure that contractors are only employed to carry out such repairs that they are qualified to undertake and that the contractors have the appropriate and requisite accreditations. For the avoidance of doubt, BWML reserves the right to refuse its prior written permission for the work once it has had an opportunity to consider the risk assessments and method statements of the contractor.
- 6.4 The Owner will only be permitted to undertake works on their Vessel for which they have deemed competencies in being experienced in the carrying out of the required operation or the use of any power tools, such as welders, grinders or hot cutting equipment that would require professional certification. Operations that require the use of such equipment should be advised to the manager or supervisor for that Marina prior to commencement and be accompanied with a method statement and risk assessment for this task. Where this is the case then this must be carried out in accordance with a Permit-to-Work (Hot Work Permit), copies of which can be found at the Marina office. For the avoidance of doubt, BWML reserves the right to prevent any person from operating such equipment in the Marina if appropriate certification or records of competency cannot be produced when requested by any member of BWML staff.
- 6.5 If the Owner is using contractors to carry out any work, the Owner must ensure that the contractors register with the Office upon their arrival and pay a registration fee to cover an administration fee, details of which are available at the Office upon request.

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

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

All documents must be submitted annually. Method statements and risk assessments must be resubmitted more regularly should the method of work change. New or additional method

statements and risk assessments should also be resubmitted if the Owner or contractors need to change the method of working or use different materials once work has commenced.

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

## **7. Fees**

- 7.1 The amount due for your Contract is set out in the Contract Invoice.
- 7.2 Subscription Fees are calculated inclusive of VAT at the advertised rate on a per Berth rate or Length Overall (LOA) of the Vessel as measured, including bowsprit or stern fittings, bathing platforms, out-drives or transom hung ladders and stern mounted dinghies. There is a minimum charge of 6.4 metres.
- 7.3 However, if any Vessel occupies the water space of more than one Standard Berth, BWML reserves the right to levy a Widebeam Surcharge upon the Owner. The Widebeam Surcharge represents a minimum of an additional 30% of BWML's standard Subscription Fees to a maximum of 100%. The maximum Widebeam Surcharge will be payable where a Vessel occupies the equivalent of the width of 2 Standard Berths. The percentage surcharge applied to a Vessel will be based on the width dimension the Vessel occupies. The only exception to the Widebeam Surcharge is where a wide Vessel occupies specific wide beam berth and a wide beam rate is applied. All Widebeam Surcharges will be calculated before you enter into a new contract if the Owner provides an accurate measurement of the Vessel. If the Vessel is found to exceed the width dimensions provided by the Owner when the Vessel arrives at the Marina, BWML will provide the Owner with the information of the Widebeam Surcharge and the Contract Invoice will be amended accordingly.
4. To the extent that the Owner is on an Annual Contract, the full Annual Subscription Fees are due for payment in advance by the Owner on the Commencement Date.
5. To the extent that the owner remains in the marina upon the expiry of their Annual Contract, fees are charged at the Overstay Rate, the minimum charge of 1 week being applied after 48 hours grace period.
6. To the extent that the Owner is on a Visitor Contract, then the payments of fees are to be made in advance by the owner upon receipt of an invoice. Visitor bookings for multiple occupants shall be invoiced direct to the lead name/organizer/club or association, with payment required in full.
- 7.7 For Contract terms shorter than 12 months, the Subscription Fees are calculated based upon a percentage of the full annual charge. Such Subscription Fees are calculated as follows, save for at Glasson Basin Marina:

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

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

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

8. All Subscription Fees are inclusive of berthing fees, potable water and marina facilities in accordance with **BWML Mooring Berth Definitions**. Some items such as pump out, launderette, electricity service charge, and electricity units supplied are chargeable in addition to the Subscription Fees.
- 7.9 Where an electrical supply is available at an extra charge, it is guaranteed to be at a minimum load of 8 amps to 32 amps maximum subject to the **BWML Mooring Berth Definitions** which can be found at [www.bwml.co.uk](http://www.bwml.co.uk).
- 7.10 Should the Owner not pay electricity charges due to BWML (if any) within 28 days of issue of an invoice, BWML reserves the right to serve upon the Owner a disconnection notice. If payment is still outstanding 7 days after issue of the disconnection notice BWML will be entitled to disconnect the supply of electricity to the Vessel without further notice.
- 7.11 Full details of all BWML charges in respect of this Clause 7 may be found at the Office and are incorporated into these General Conditions by reference. BWML reserves the right to alter these charges from time to time. In addition, please note that with regard to fuel bought, BWML reserves the right to determine what a fair market price is. Calculations for the determination of the electricity unit rate and electricity service charge are available on request and displayed on BWML's website.
- 7.12 All payments may be made in sterling by crossed cheque (made payable to BWML), credit or debit card, BACS transfer, cash, Standing Order or via our on-line payment portal. Please note BWML is unable to accept American Express and Diners Club International cards.
- 7.13 BWML reserves the right to exercise a general lien\* upon any Vessel and/or other property belonging to the Owner whilst in or at the Marina until such time as any money due to BWML in respect of the Vessel and/or other property, whether on account of rental, storage, commission, access or berthing charges, work done, administration charges, legal costs or otherwise shall be paid by the Owner. In the event that the aforementioned lien\* remains unsatisfied for the specific period of time notified in writing to the Owner by BWML, the Vessel will be sold on brokerage and the proceeds of the sale used to satisfy the monies owed by the Owner to BWML. Any remaining monies after this will be remitted to the Owner.
- \* [“Lien” in this clause 7 means a right which entitles “BWML” to hold on to the vessel or other property of the Owner, if the Owner has not paid money BWML is entitled to receive from the Owner in relation to the vessel or other property. The clause specifies what further action BWML may take if the debt remains unpaid after a period of time notified by BWML to the Owner.]
- 7.14 Payments made under the Contract shall be made without deductions. The Owner shall punctually pay to BWML all sums owing to BWML under the Contract. BWML reserves the right to levy an administration charge in the sum of £20 plus VAT where applicable per letter against the Owner in the event that it becomes necessary for BWML or BWML's appointed legal advisers to write to the Owner to seek payment of any overdue payment or to advise of BWML's intention to commence legal proceedings against the Owner. For the avoidance of doubt, the Owner accepts that any administration charge levied against him by BWML in the circumstances set out in this Clause 7 represents a genuine pre-estimation of loss on the part of BWML. In addition to the administration charge the Owner will be liable for the payment of interest at the rate of the current Bank of England Base Rate plus 8% on any sum owing to BWML from the date of the third letter that BWML or BWML's appointed legal advisers are obliged to write to the



Owner seeking payment of a debt until the payment of the debt by the Owner.

- 7.15 BWML will only make refunds of payments made under the Contract in the circumstances specifically provided for under the Contract and for no other reason whatsoever.
- 7.16 Unless otherwise agreed in writing by BWML, BWML must be in receipt of full settlement for the previous Contract before a new Contract will be issued. Any deviation of this will lead to termination of the Contract under Clause 9.
- 7.17 BWML will not accept payments from a statutory body.
- 7.18 If a Contract commences for a Vessel not yet purchased by the Owner, a nominal charge may be due to cover the administration cost of amending the Contract where necessary, this being a fee of £25 including VAT. In the absence of any known length the amount charged will be based on the length of Berth being reserved if a metre rate is applicable, or a Berth rate if a Berth rate is applicable for that Grade Berth starting the period the customer has requested the berth for. When the vessel arrives at the marina, the original contract will be terminated if the actual vessel is plus or minus 0.5 metres of that stated in the original contract. A new contract will be raised with the correct fee but will start on the same date as the original contract. A **BWML Change of Details Form**, signed by the owner in agreement of the change, will be required to effect this. The credit of the original contract will be replaced in its entirety by the new contract.
- 7.19 If the Length Overall (LOA) of a Vessel is recognised as being different to what is stated on the current Contract and is greater than plus or minus 0.5 metres then the current Contract will be terminated at the end of the month the discrepancy is recognised and a new one raised starting the same date as the original Contract, with a **BWML Change of Details Form** signed by the Owner in agreement to the change. The credit of the original Contract will be based on the number of complete months remaining on the original Contract.
- 7.20 If the Contract Grade stated on the current Contract is to be changed then the current Contract will be terminated at the end of the month the discrepancy is recognised and a new Contract will commence on the 1<sup>st</sup> day of the following month at the rate prevailing for the start of the new Contract, with a **BWML Change of Details Form** signed by the Owner in agreement to the change. To the extent that the Owner is on an Annual Contract, the credit of the original Annual Contract will be based on the number of complete months utilised to date.
- 7.21 BWML shall undertake a credit check on all new applications that wish to pay in instalments and, from time to time, customers who are renewing contracts, through our appointed Agents.

## 8. Berth Sublets

- 8.1 Subject to BWML's permission the Owner may sublet their Berth. Berth Sublets are available only for 12 month mooring Contracts subject to the Manager's discretion. All requests for Berth Sublets must be made in writing to the Manager or Supervisor for that Marina where the Berth is.

The table below identifies the discount payable to the Contract holder and will only be made at the end of the 12 month Contract providing the Contract has not since been terminated and full payment has been made. The Owner of the Vessel occupying the Berth for the sublet period will have to complete and sign a **BWML Berth Sublet Application Form**.

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

## 9. Termination

- 9.1 Either the Owner or BWML may terminate a Contract by giving the other at least 28 days' notice in writing provided that the 28 day notice period ends on the last day of a calendar month. This can be done by the customer using the **BWML Notice to Terminate Contract Form**.

In the absence of written notice BWML shall be entitled to imply that the customer gave 28 days' notice on the date that it became aware the Vessel had vacated the Marina permanently, such notice period ending upon the last day of a calendar month.



- 9.2 Without prejudice to any other rights or remedies that BWML may have, BWML may terminate the Contract immediately by serving written notice on the Owner in the following circumstances:
- 9.2.1 if the Owner commits a serious breach of any term of the Contract which is capable of remedy but which is not cured within 14 days of the written notice to the Owner, at the Owner's last known address, specifying the breach and requiring its remedy; or
  - 9.2.2 if the Owner commits a serious breach of any term of the Contract which is not capable of remedy and in the event of a customer being bankrupt.
- 9.3 Upon termination by BWML pursuant to Clause 9.1 above and where the Owner is on an Annual Contract, BWML shall refund to the Owner the unexpired portion as a fraction of days to the full Contract Duration of the mooring/hardstanding fees subject to a right of set-off in respect of any monies owed by the Owner to BWML.
- 9.4 Upon termination by BWML pursuant to Clause 9.1 above and where the owner is on a Monthly Contract, BWML shall refund to the Owner the unexpired portion of any Month which has been paid by the Owner in advance, subject to a right of set-off in respect of any monies owed by the Owner to BWML.
- 9.5 Upon expiry of the 28 days referred to in Clause 9.1 or upon BWML terminating the Contract pursuant to Clause 9.2, the Owner shall be required to take delivery of his Vessel and remove it from the Marina within 7 days. If the Owner fails to take delivery and remove his Vessel within this period, BWML shall be entitled:
- 9.5.1 to charge the Owner the amount which would have been payable by the Owner to BWML if the Contract had not been terminated for the period between termination of the Contract and removal of the Vessel from the Marina; and/or
  - 9.5.2 to remove the Vessel from the Marina and secure it elsewhere and then charge the Owner with all costs arising out of such removal, including alternative berthing fees; and/or
  - 9.5.3 to sell the Vessel by auction and deduct from the sale proceeds:
    - (1) all costs arising out of such sale, including but not limited to, removal costs, alternative berthing fees, auction fees, administration fees and legal costs; and
    - (2) arrears of Subscription Fees, accrued interest and any charges made pursuant to Clause 9.5.1 provided that BWML will account to the Owner thereafter in respect of any net sale proceeds.
- 9.6 If the Vessel is removed by the Canal and River Trust or other authorised body then the day the Vessel is removed from a BWML Marina, the Contract is deemed terminated, with the value of any Annual Contract being reduced by the 10% refund scale as noted in Clause 9.7 below as if the Contract had ended on the last day of the month the Vessel was removed.
- 9.7 Upon termination by the Owner pursuant to clause 9.1 only Annual Contracts are eligible for refunds. If the Owner is remaining with BWML and is taking out a new Contract for the reasons disclosed in Clause 7.19 where the Length Overall (LOA) of the Vessel is to be changed and/or Clause 7.20 where the Contract Grade is to be changed, BWML shall credit the Owner's original Contract invoice in accordance with Clauses 7.19 and 7.20. If a refund is due the refund is subject to a right of set-off in respect of any monies owed by the Owner to BWML or alternatively it will be used to set-off the value of the new Contract.

If the customer is leaving the Marina, the scaling of refunds for Annual Contracts is as follows:

Complete Months Remaining	Percentage of Total Annual Charge to be Refunded to the Customer
1	0%
2	0%
3	10%
4	20%
5	30%

<b>6</b>	<b>40%</b>
<b>7</b>	<b>50%</b>
<b>8</b>	<b>60%</b>
<b>9</b>	<b>70%</b>
<b>10</b>	<b>80%</b>

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

For the avoidance of doubt, in the event that an Annual Contract being paid for by instalments is terminated before all payments have been received by BWML, the refund as detailed in the table above will be adjusted by any outstanding payments.

9.7.1 BWML may from time to time offer 'special promotions' with contract periods greater than 12 months. In this event product specific refund policies/penalties will be advertised and will supersede our standard refund terms as stated above.

9.8 Upon termination of a Monthly Contract by the Owner pursuant to clause 9.1, and provided the Owner is not in arrears of any Monthly Subscription Fees and has fully paid his or her Monthly Subscription Fees up to the date of termination, no further Monthly Subscription Fees shall be due or payable by the Owner after the Monthly Contract has terminated.

9.9 Upon termination of an annual contract, refunds in respect of the electricity service charge will be calculated in accordance with clause 9.7. There is no refund on the service charge for 3 or 6 month contracts.

## **10. Refund Policy**

10.1 There is no refund due on a Contract except on the termination of an Annual Contract which is detailed above in Clause 9.7. Refund cheques will not be paid until after the Owner has left the Marina and the termination date has expired.

10.2 Visitor Contracts will be refunded in full, subject to BWML receiving seven days' notice of cancellation. Refunds on Visitor Contracts where less than seven days' notice is given are at the sole discretion of BWML.

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

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

## **11. Launching of Vessels Stored Ashore**

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

## **12. Rights of BWML to Re-berth and Move Vessels**

- 12.1 BWML reserves the right to moor, re-berth, move, board, enter or carry out emergency work on any Vessel if, in BWML's opinion, it is necessary to do so for the purposes of trying to:
- 12.1.1 avoid damage to the Vessel or to any other vessel in the Marina; and/or
  - 12.1.2 ensure the safety of other users of the Marina; and/or
  - 12.1.3 ensure the safety of BWML's staff, premises, plant or equipment.
- 12.2 BWML also reserves the right to moor, re-berth or move the Vessel if, in BWML's opinion, it is necessary to do so in order to launch or put afloat any other vessel.
- 12.3 BWML also reserves the right to moor, re-berth or move the Vessel, and/or to move any equipment and/or goods belonging to the Owner, if, in BWML's opinion, it is necessary for the good management, safety or security of the Marina and environmental protection.

## **13. Mooring, Re-berthing, Moving or Towing at the Owner's Request**

- 13.1 Subject to payment by the Owner of BWML's reasonable charges (where appropriate) and Berth availability, BWML will moor, re-berth, move or tow any Vessel at the request of the Owner. BWML will not be liable for any damage to the Vessel arising as a result of the mooring, re-berthing, moving or towing save where such damage is caused by any negligence or default on the part of BWML.
- 13.2 Where BWML complies with an Owner's request pursuant to Clause 13.1 above, the Owner agrees to indemnify BWML in full from and against any and all loss, damage or liability (including all legal fees and costs) incurred by BWML as a result of complying with such requests provided that this indemnity will not apply where such loss, damage or liability is as a result of BWML's negligence or default.

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

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

## **15. Non-Assignability**

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

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

- 16.1 Nothing in these General Conditions shall entitle the Owner to the exclusive use of a particular Berth. Vessels shall be berthed or moored by the Owner in such a manner and position as BWML shall direct unless the Contract taken is Residential and the Contract holder is paying a full Council Tax charge to the Local Authority.

Should BWML's records indicate that a craft on a berth on a residential contract has had exclusive use of the berth during a 12 month contract period, then this may result in a charge for council tax being applied to the contract holder, by the relevant local authority.

- 16.2 Once BWML has allocated a Berth to the Owner, the Owner shall not utilise a different Berth unless such a change of location is approved by BWML in writing prior to the Owner taking such action or is necessitated by emergency circumstances.

16.3 Unless otherwise agreed in writing by BWML, all necessary warps and fenders shall be provided by the Owner. BWML reserves the right to replace warps and re-secure any Vessel in the interests of the safety at the Owner's expense without prior notification.

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

17.1 When entering, leaving or manoeuvring in the Marina, the Owner must ensure that the Vessel is not navigated at such a speed or in such a manner as to endanger or inconvenience other vessels.

17.2 The Owner must ensure that his Vessel is not navigated by anyone who is under the influence of alcohol or drugs.

## **18. Prohibition of Nuisances**

18.1 No noisy or objectionable engines, radios or other apparatus or machinery shall be operated at the Marina so as to cause a nuisance or annoyance to BWML or to any other users of the Marina or to any person residing in the vicinity.

18.2 Engines, generators or other apparatus or machinery must not be operated between the hours of 20.00 and 09.00.

18.3 Halyards shall be secured so as not to cause nuisance or annoyance.

18.4 No anti-social behaviour or abuse, verbal or physical, shall be tolerated towards customers or staff at the Marina. Immediate termination of this Contract will occur and criminal prosecution may be instigated.

18.5 The Owner shall try his best to ensure that himself, his crew, contractors and visitors do not cause a nuisance as described in this Clause 18.

18.6 The Owner shall not be permitted to carry, use or store any fire arms upon their property or Vessel while in the marina. The exception to storage is where the named person has been issued with an approved fire arm certificate from the local police constabulary, but this does not permit use on the Marina.

## **19. Disposal of Refuse**

19.1 No refuse shall be thrown overboard or left on the pontoons, jetties or car parks. Any domestic waste shall be disposed of in the receptacles provided by BWML or by removal from the Marina by the Owner. Non domestic waste such as microwaves, fridges or other electrical household appliances must be removed from the Marina by the Owner. BWML reserve the right to recharge to the Owner the costs relating to the disposal of such items where Owners can be clearly identified.

19.2 The use of sea toilets is strictly prohibited at the Marina. Any Owner whose Vessel is found to be using such a facility will have his Contract terminated as per Clause 9.2.

## **20. Spillages**

20.1 The Owner should immediately inform BWML of any spillage of oil, paint or any other pollutant into the Marina. The Owner should also take such steps as are reasonably practicable in the circumstances to minimise the spread of the pollutant and warn other users of the Marina of the problem. Costs associated with any clean-up operation may be charged to the Owner.

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

21.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless a Berth is separately allocated to them by BWML and approved in writing. BWML reserve the right to charge for any additional Berth that is occupied.

21.2 Dinghies, tenders and motorised craft such as jet skis shall not be used in the Marina without the prior permission of the Manager or Supervisor for that Marina.

## **22. Storage of Gear**

- 22.1 No fittings, equipment, supplies, stores or any other property belonging to the Owner shall be stored or left at the Marina other than as directed by BWML. BWML will make a provision of storage boxes in accordance with the **BWML Mooring Berth Definitions**. Storage boxes that are either provided or approved by BWML will be sited in designated areas or such locations as not to create a nuisance or safety risks to those using the Marina. For the avoidance of doubt the local Manager has sole discretion in relation to the siting of storage boxes.
- 22.2 Except whilst transporting items to or from the Vessel, the Owner must not leave or store any items on the pontoons, pathways, walkways, car parks or anywhere else on the Marina. No ropes, cables, hoses, wires etc. must be trailed across paths or pontoons.
- 22.3 Any additional storage boxes required will require the written consent from the local Manager and for which they are to be of a size, style and quality that align to those provided by BWML. These additional units if provided by BWML will be recharged to the berth holder.

### 23. Vehicle Parking

- 23.1 Subject always to the availability of parking spaces, the Owner, his crew, contractors and visitors are required to park their validly taxed motor vehicles in such a position and such a manner as directed by BWML. Untaxed or SORN vehicles are not permitted to be parked on BWML property.

The Owner is to ensure that only their vehicle which is frequently used is parked within the designated area and this vehicle is not permitted to be used in such a manner as to make the provision for overnight accommodation.

- 23.2 BWML reserve the right to recover from the Owner our reasonable costs that have been incurred in moving, storing or disposing of any vehicle that is in contravention of Clause 23.1.

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

- 23.3 BWML reserve the right to charge for the storage of any vehicles parked upon BWML property. The prior consent of BWML is required before any vehicles are parked on BWML property. =

### 24. Security

- 24.1 The Owner, his crew, contractors and visitors are required to ensure that all security barriers and gates are closed and locked after use. It is not permitted to leave gates ajar at any time. It must be noted that there are some barriers and gates that are allowed to be left open for specific hours of the day but they will always have a notice beside them stating the relevant hours. Owners are required to ensure that where gates and locks are provided they should be closed and locked to retain the security provided by BWML.
- 24.2 Security access keys/cards will be issued free of charge and they can be collected from the Office reception for long-term use. Where electronic security access keys/cards are used, a periodic clearance of all electronic keys/cards will be carried out for security purposes. To re-validate an electronic key/card the Owner must bring the key/card to the Office reception. BWML shall make available electronic keys/cards in accordance with our **Electronic Access Control Policy**. BWML will apply a charge of £30 for any key/card that is not returned to the office at the end of any contracted period.

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

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

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

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

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

## **27. Washing**

- 27.1 Laundry may only be hung in the areas designated for such use and not from Vessels. Where rotary drying appliances have been permitted and installed they must be lowered when they are not in use.

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

- 28.1 Every effort will be made by the Owner to ensure that television aerials, satellite dishes and wind generators are erected in a manner that makes them as inconspicuous as their design allows for whilst the Vessel is in the Marina and approval from the local Manager/Supervisor is to be sought prior to installation where such items are to be fixed to a BWML structure.

## **29. Additional Regulations, Rules and Canal and River Trust Byelaws**

- 29.1 BWML reserves the right to amend these General Conditions and/or to introduce other Marina specific rules and regulations which are necessary for the efficient and effective running of the Marina. Such amendments and rules and regulations shall become effective on being displayed on BWML's public notice board, in the Office reception or in any other prominent place at BWML's Office.
- 29.2 Any such rules and regulations introduced pursuant to this Clause 29 shall be deemed to form part of the Contract and BWML shall have the same rights against the Owner for a breach of these rules and regulations as for a breach of the Contract.
- 29.3 The Owner shall at all times abide by, and shall try his best to ensure that his crew, contractors and visitors abide by any applicable Canal and River Trust, Environment Agency and any other local authority bye-laws. Any failure to comply is a criminal offence and may result in a fine.
- 29.4 The Owner further undertakes to abide by any reasonable instructions issued by BWML.

## **30. Occupation of Vessels**

- 30.1 The Owner shall not live permanently on board the Vessel nor shall they encourage or permit anyone else to do so, without the prior written permission of BWML, the exception being where a residential mooring has been purchased from BWML at Marinas that have full planning approval granted. In this instance the Contract holder may reside, however approval for occupation by others must be sought even for short periods.
- 30.2 BWML reserve the right to seek confirmation from the Owners who have purchased a leisure mooring that they are using the mooring in accordance with the BWML Mooring Berth Definitions and not using the Marina for residential purposes.
- 30.3 BWML reserves the right to transfer the Vessel's mooring to a different Grade, including a residential mooring Grade, and to charge the Owner the difference in mooring fees at any point during the Contract or upon renewal of the Contract if it considers that the Owner is using the Marina for residential purposes.
- 30.4 If the Owner is given permission in accordance with Clause 30.1, the Owner must immediately notify BWML of the date upon which he wishes to commence his stay on the Vessel and the date upon which he ceases to occupy the Vessel in the manner prescribed by that permission.
- 30.5 The Owner must not occupy the Vessel overnight when it is stored ashore.
- 30.6 BWML reserves the right to recover any charges levied in respect of Council Tax or any other charges from the Owner where these charges have been applied to BWML by the Local Authority and/or Council in respect of the Owner's implied occupation of the Marina as a place of residency, even if the Owner has not purchased a residential mooring contract from BWML.

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

- 31.1 Without prejudice to the generality of Clause 37.4, BWML will not be liable to the Owner in the event of a temporary failure of any of the facilities and/or services at the Marina due to a reason not within BWML's control, but agrees to use its reasonable endeavours to ensure that the affected services and/or facilities are repaired as soon as reasonably possible. This is also applicable to scheduled maintenance.

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

- 32.1 The Owner may not keep any animals on board the Vessel whilst it is in the Marina, other than domesticated animals that have been notified to BWML as being present on the Vessel and approved as suitable to be in the Marina by BWML. The animals approved by BWML as suitable for the Marina must at all times remain on a lead and under the proper control of the Owner whilst they are at the Marina and must never be allowed to cause a nuisance to any other users of the Marina. BWML reserves the right to ask the Owner to remove any offending animals from the Marina immediately if this Clause 32 is consistently breached by the Owner.
- 32.2 Upon the arrival of a Vessel at the Marina from any country outside the United Kingdom, the Owner must immediately inform the Manager or Supervisor for that Marina and the Port Health Authority of the existence of any animal on board. If the animal concerned is not a member of



the Pet Travel Scheme, it will need to be placed in quarantine for such period as is required in accordance with current legislation concerning the avoidance of rabies.

- 32.3 Until such time as it has been established whether the animal in question should be placed in quarantine, the Owner must ensure that it is kept securely confined below decks so that it cannot escape ashore.
- 32.4 Any waste caused by animals in the Marina must be cleared up by the responsible person and disposed of in an appropriate manner. Animal waste should never be discharged into the Marina water at any time. BWML reserve the right to charge any reasonable costs incurred in cleaning up after animals that generate waste and which are not cleared up by that Owner.
- 32.5 Animals are not permitted to enter any Marina buildings, in particular the Marina's Facility Blocks and Chandleries on health and hygiene grounds, the exception being registered assistance animals.

### **33. Lock Operation (where locks are operated by BWML)**

- 33.1 BWML will use all reasonable endeavours to ensure that where applicable the Marina lock is manned during the published hours of operation. If the Owner requires the Vessel to be locked in or out of the lock at times other than those published, the Owner should make prior arrangements with the Manager or Supervisor for that Marina. BWML will use its reasonable endeavours to comply with the Owner's reasonable requests, subject to staff availability, lock maintenance requirements, emergencies and any other reasons beyond its control. BWML will charge a reasonable fee for service outside of normal published operational hours, with these fees being published at the marina.
- 33.2 BWML reserves the right on giving 48 hours prior notice to the Owner (in which respect the display of a prominent notice in the Office reception shall be deemed to be sufficient notice) to restrict or prohibit the use of the lock during routine maintenance, pre-arranged events such as regattas, boat or yacht races, festivals and other planned events.
- 33.3 BWML also reserves the right on giving the Owner reasonable notice (in which respect the display of a prominent notice in the Office reception shall be deemed to be sufficient notice) to alter the published hours of operation of the lock.
- 33.4 At Hull Marina, the Owner must request permission to leave their Berth for any reason or access the lock from the Duty Lock Keeper and await the Duty Lock Keeper's instruction before any attempt is made to manoeuvre the Vessel. The Vessel must contain a working VHF radio that is tuned to the Marina Communications Channel (VHF 80 International) and must remain on and audible to the Owner. All communications must be made via a VHF radio.

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

- 34.1 Upon arrival to the Marina from a country outside the United Kingdom, the Owner must immediately report to the Manager or Supervisor for that Marina and complete the UK Immigration and Service Border, List of Passengers and Crew form.
- 34.2 The Owner must adhere to Clause 32 when animals are on board a Vessel arriving from a country outside the United Kingdom.

### **35. Qualifying Vessel for VAT Purposes**

- 35.1 Should the Owner declare their craft as a 'Qualifying Ship' for VAT purposes (as outlined in *VAT Notice 744C: ships, aircraft and associated services*) and on subsequent adjudication by HMRC that the craft no longer qualifies, BWML reserve the right to recover all VAT and any penalties and interest from the Owner.

### **36. Care of Marina Property**

36.1 No alterations may be made to any part of the Marina property unless with BWML's prior written consent. BWML reserve the right to recharge for the costs of any reasonable works carried out by BWML to reinstate any unauthorised alterations made by an Owner.

### **37. General**

37.1 In this Contract, unless the context otherwise requires, words importing any gender include every gender and words importing the singular number include the plural and vice versa.

37.2 The headings in these General Conditions are for convenience only and shall not affect its interpretation.

37.3 Unless otherwise agreed in writing, BWML's failure to exercise or delay in exercising any right or remedy provided by this Contract does not constitute a waiver of that right or remedy or waiver of any other rights or remedies under this Contract.

37.4 BWML shall not be liable for any failure or delay in performing any of its obligations under this Contract caused by circumstances beyond its control.

37.5 If any part of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, the validity and enforceability of the remainder of this Contract shall not be affected.

37.6 This Contract, the Schedule and any Marina specific rules and regulations introduced by BWML in accordance with Clause 29 above constitute the entire agreement and understanding between BWML and the Owner with respect to all matters referred to within it and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in these General Conditions.

37.7 No person other than a contracting party may enforce any provision of this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

37.8 Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract. The only remedy available to it for any statement, representation, warranty or understanding set out in this Contract (whether made innocently or negligently) shall be for breach of contract under the terms of this Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

37.9 Any notice given or invoice to be delivered in accordance with this Contract shall be delivered by hand, sent by first class post or issued via email to the supplied address. Any notice or invoice delivered by first class post shall be deemed to have been received 48 hours after it has been posted.

37.10 This Contract shall be governed and construed in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts over any claim or matter relating to this Contract.