

TERMS OF BUSINESS

1. Definitions:

1.1 Where the following words appear in these Conditions, the Licence and Blackness Marine's Regulations they shall have these meanings:

Blackness Marine shall mean, Blackness Marine or any of its agents to whom the application for storage or drystack is made which may be one or more of its associated companies, concessionaires, tenants and assignees for the operation of the boat yard, brokerage or other facility.

Consumer means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

Dry Stack A Vessel storage method that provides a launch, recovery and storage facility.

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

Licence shall mean the Licence signed by the Parties including these Standard Terms.

Monthly rates shall be taken to mean any calendar month period, beginning on the first day that the contract for storage began (e.g: from the 26th April to the 26th May and so on). Any part of a month being charged at the full single monthly rate applicable to the Vessel.

Owner shall mean the person or company named on the front of this Licence, any charterer, master, agent or other person for the time being in charge of the Vessel, excluding Blackness Marine.

Parties means Blackness Marine and the Owner; each party and collectively the Parties.

Premises means all the land, adjacent water and buildings occupied by or under the control of the Blackness Marine, including slipways, pontoons, jetties, sheds, offices, lofts, workshops, hardstanding, roadways and car parks.

Regulations mean those regulations (if any) made by Blackness Marine as the same may be amended from time in accordance with clause 19, which Blackness Marine in its absolute discretion, considers necessary to enable Blackness Marine or those using the Premises to comply with applicable legal requirements or for the safety or security or good management of the Premises.

Rolling Agreement an agreement between the Parties that continues until one Party exercises the right to terminate.

Special conditions separate, jointly applicable terms that are specific to types of Storage.

Start date the date that the Owner's Vessel arrives on Blackness Premises.

Storage Ashore means the land space/Dry Stack/Covered Storage space temporarily allocated to the Owner from time to time by Blackness Marine for the storage ashore of the Vessel during the term of the Licence.

Vessel shall include any form of craft, boat, ship, yacht, dinghy, multihull, or other marine structure which is in the care and control of the Owner.

2. The Licence

2.1 Storage at the Premises shall be Licensed for the period and at the Charges specified in the published scale of charges.

2.2 This Licence shall be automatically renewed (unless specified under separate Special Conditions or contract provided by Blackness Marine), if not terminated sooner by Blackness Marine or by the Owner under the provisions of Clauses 14 or 15.

3. Liability, Indemnity and Insurance

3.1 Blackness Marine shall not be liable for any loss or damage caused by events or circumstances beyond its reasonable control (such as severe weather conditions, the actions of third parties not employed by it or any defect in a Owner's or third party's property); this extends to loss or damage to Vessels, gear, equipment or other property left with it for work or storage, and harm to persons entering the Premises and/or using any facilities or equipment.

3.2 Blackness Marine shall take reasonable and proportionate steps having regard to the nature and scale of its business to maintain security at the Premises, and to maintain the facilities and equipment at the Premises in reasonably good working order. But in the absence of any causative negligence or other breach of duty on the part of Blackness Marine, Vessels, gear, equipment and other property are left with Blackness Marine at the Owner's own risk and the Owner should ensure that their own personal and property insurance adequately covers such risks.

3.3 Blackness Marine 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 shall have been expressly engaged to do so by the Owner on commercial terms. Similarly Blackness Marine shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident which has not been caused by Blackness Marine's negligence or some other breach of duty on its part. However, Blackness Marine 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.

- 3.4 The Owner may be liable for any loss or damage caused by them, their crew or their Vessels and they shall be obliged to maintain adequate insurance including third party liability cover for not less than £3,000,000. The Owner shall be obliged to produce evidence to Blackness Marine of such insurance within 7 days of a request to do so.

4. Address Details and Subsequent Change of Details

- 4.1 The Owner must supply to Blackness Marine in writing, details of the Owner's home address. This address must be a different address to the address of the Premises. The Owner shall be obliged to produce evidence to Blackness Marine of such home address within 7 days of a request to do so.
- 4.2 The Owner must notify Blackness Marine in writing of the details of any change of names of the Vessel or change of address or telephone number of the Owner.

5. The Licence and Assignment

- 5.1 This Licence is personal to the Owner and relates to the Vessel described in the Licence. It may not be transferred or assigned to a new Owner or to a different Vessel, either temporarily or permanently, without the express written consent of Blackness Marine and;
- 5.2 Within 7 days of any Licence for the sale, transfer or mortgage of a Vessel subject to this Licence the Owner shall notify Blackness Marine in writing of the name, address and telephone numbers of the Purchaser, Transferee or Mortgagee, as the case may be.

6. Prices and Estimates

- 6.1 In the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.
- 6.2 We will exercise reasonable skill and judgement when we give an estimate or

indication of price. However such estimates are always subject to the accuracy of information provided by the Owner and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.

- 6.3 Blackness Marine will exercise reasonable skill and judgement when giving an estimate or indication of Price. However, estimates are always subject to the accuracy of information provided by the Owner, 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. Blackness Marine 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 20.2, increase the Price for the Work.
- 6.4 Blackness Marine will inform the Owner of any proposed increase in the estimated Price, and will proceed with the Work after having obtained the Owner's approval (such approval not to be unreasonably delayed or withheld). The Owner 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 storage of any type and/or work provided shall be due in accordance with any date for payment on Blackness Marine's invoice. Payment shall be deemed to have been made when received by Blackness Marine in cash or cleared funds at Blackness Marine's nominated bank account.
- 7.2 If the Owner fails to make any payment due to Blackness Marine by the due date for payment, Blackness Marine has the right to charge interest on the overdue amount at the rate of four percent (4% per annum) above Bank of England base rate from time to time (where the Owner is not a consumer interest will be charged at a rate of 8% per annum above Bank of England base rate). 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 Where debts are outstanding for a period of more than two (2) calendar months, Blackness Marine reserve the right to charge an administration fee as follows:
- o Sums owing up to £999.99 (£28 admin fee)

shall not pass to the Owner until Blackness Marine receives payment in full (in cash or cleared funds) for the Work.

- 7.4 All agreements between the Parties for storage of any type are a Rolling Agreement. At the End Date of any period of storage agreed, the agreement will automatically renew on the same terms at the new annual rate as notified to the Owner.
- 7.5 The Owner 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. Blackness Marine may, without limiting its other rights or remedies, set off any amount owing to it by the Owner against any amount payable by Blackness Marine to the Owner.
- 7.6 To the extent permitted by law, the Owner hereby grants to Blackness Marine 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 Owner, or until the Owner has given security to Blackness Marine in a form and substance acceptable to Blackness Marine (for example a letter of guarantee from a bank reasonably acceptable to Blackness Marine or lodgement of a cash deposit with a professional third party agent reasonably acceptable to Blackness Marine). The security provided shall be sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for Blackness Marine's prospective legal costs and expenses.
- 7.7 Blackness Marine shall be entitled to charge the Owner for storage and the provision of any ongoing services at Blackness Marine's normal daily rates until full payment (or provision of security) by the Owner and removal of the Vessel from Blackness Marine's premises. The Owner shall be entitled to remove the Vessel upon providing proper security or payment in full.

8. Delay

- 8.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.

9. Title and Risk

- 9.1 Risk in all goods, equipment and materials supplied by Blackness Marine to the Owner shall pass to the Owner at the time of supply to the Owner 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.
- 9.2 Title to all goods, equipment and materials supplied by Blackness Marine to the Owner

10. Guarantee

- 10.1 Blackness Marine 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 Owner shall give notice in writing (as per Clause 12) to Blackness Marine of any defects in material or workmanship which may become apparent and shall provide Blackness Marine with sufficient evidence so as to establish the nature and extent of the Defective Work. This guarantee applies only to the Owner: a person who is not a Party to these Terms of Business shall not have any rights to enforce these Terms of Business.
- 10.2 On notification by the Owner of the Defective Work, Blackness Marine will be given a reasonable opportunity to inspect the Defective Work and if it is Blackness Marine's responsibility, Blackness Marine 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. The Owner 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.
- 10.3 Blackness Marine shall not be liable for any Defective Work if the defect arose as a result of: (a) the Owner's failure to follow Blackness Marine's oral or written instructions; (b) Blackness Marine following any drawing, design or specifications supplied by the Owner; (c) fair wear and tear, wilful damage, negligence or abnormal working conditions; and/or (d) changes made to ensure compliance with applicable statutory or regulatory standards.

- 10.4 Any remedial work which is put in hand by the Owner directly without first notifying Blackness Marine and allowing Blackness Marine a reasonable opportunity to inspect the Defective Work shall invalidate the guarantee.

- 10.5 Where the Owner is not a Consumer:

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 Blackness Marine and the Owner has stipulated that it is relying upon Blackness Marine's skill and judgement to ensure this purpose has been met; and

Blackness Marine accepts no liability to the Owner in respect of any loss of profit or turnover which the Owner or any other person may sustain in consequence of the failure of any

faulty or unfit article supplied to the Owner by Blackness Marine.

Blackness Marine shall assign to the Owner any and all of its rights against the manufacturer or supplier of any particular article used in the Work or supplied to the Owner as part of the Work.

11. Quality and Standards

11.1 Blackness Marine 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.

12. Communication and notices

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 Blackness Marine's official email, trading address or registered office.

13. Access to Premises/Work on The Vessel

13.1 No work or services shall be carried out by the Owner on the Vessel or Blackness Marine's premises without Blackness Marine's prior written consent except for minor running repairs or minor maintenance of a routine nature. Blackness Marine's consent may be revoked with immediate effect in the event of any breach of these Terms of Business by the Owner, in which case Blackness Marine shall be entitled to demand the immediate cessation of any work.

13.2 The Owner is subject to Blackness Marine'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 Owner is responsible for any damage or loss caused directly or indirectly from any breach of its obligations under these Terms of Business.

13.4 The Owner shall take all necessary precautions to avoid pollution of the environment and shall indemnify Blackness Marine for any loss or damage arising from any pollution of the environment.

13.5 The Owner shall ensure that it does not cause any nuisance or annoyance to Blackness Marine, any other Owner or person present or residing in the vicinity and does not interfere with Blackness Marine's schedule for the Work and/or the good

management of Blackness Marine's premises and business.

13.6 During performance of the Work by Blackness Marine (and/or any of Blackness Marine's sub-contractors), the Owner shall not have access to the Vessel unless Blackness Marine's prior written consent has been obtained.

13.7 Where the Owner requires electricity or water to work on the Vessel, Blackness Marine reserve the right to require the use of a metered lead or hose and will charge rates inline with those of the utility provider to Blackness Marine at the time.

14. Termination

14.1 Blackness Marine shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Licence by the Owner) to terminate this Licence in the following manner in the event of any breach by the Owner of this Licence;

14.2 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of Blackness Marine and/or of Blackness Marine's Owners and if the breach is capable of remedy, Blackness Marine may serve notice on the Owner specifying the breach and requiring him to remedy the breach within a reasonable time specified by Blackness Marine. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy maybe immediate or extremely short. If the Owner fails to effect the remedy within that time, or if the breach is not capable of remedy, Blackness Marine may serve notice on the Owner requiring him to remove the Vessel from the Premises immediately.

14.3 If the Owner fails to remove the Vessel on termination of this Licence whether under this Condition or otherwise), Blackness Marine shall be entitled:

14.3.1 to charge the Owner at Blackness Marine's (single) Monthly rate for any whole or part thereof charged as a full month. Between termination of this Licence and the actual date of removal of the Vessel from the Premises; and/or

14.3.2 at the Owner's risk (save in respect of loss or damage directly caused by Blackness Marine's negligence or other breach of duty during such removal) to remove the Vessel from the Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative storage fees.

14.4 Any notice of termination under this Licence shall, in the case of the Owner, be served

personally on the Owner or sent by First Class post or recorded delivery service to the Owner's last known address and in the case of Blackness Marine, service shall be made at its principal place of business or registered office.

15. Termination by Owner

15.1 This Licence may be terminated on 30 days written notice by the Owner to Blackness Marine. In this event Blackness Marine will be entitled to recalculate the charge for the Storage using the rate or rates that would have been applicable to the actual period of the Licence instead of the annual, 6 monthly or 3 Monthly rate (e.g. 12 month rate increased to 6 or 3 or monthly where applicable); If this recalculation results in a balance payable to Blackness Marine then the Owner shall be required to pay that balance before removing the Vessel from the Premises. If there is a balance in favour of the Owner the Blackness Marine shall pay it to the Owner upon the Vessel's departure of the Vessel from the Premises.

16. Rights of Sale and of Detention

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

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

16.1.2 Blackness Marine's obligation as custodian of goods accepted for storage ends on its notice to the Owner of termination of that obligation;

16.1.3 The place for delivery and collection of goods shall be at Blackness Marine's Premises unless agreed otherwise. Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of Solicitors.

16.2 Maritime Law entitles Blackness Marine in certain other circumstances to bring action against a Vessel to recover debt or damages.

Such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of a Vessel may also occur through the ordinary enforcement of a judgment debt against the Owner of a Vessel or other property.

16.3 Blackness Marine reserves a general right ("a general lien") to detain and hold onto the Owner's Vessel or other property pending payment by the Owner of any sums due to the Owner's Vessel or other property pending payment by the Owner of any sums due to Blackness Marine. If the Licence is terminated or expires while Blackness Marine is exercising this right of detention it shall be entitled to charge the Owner at Blackness Marine's single Monthly rate between termination or expiry of this Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Premises. The Owner shall at any time be entitled to remove the Vessel or other property upon providing proper security, for example a letter of guarantee from a Bank or a cash deposit, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for Blackness Marine's prospective legal costs.

17. Vessel and equipment movements

17.1 Blackness Marine reserves the right to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of the Premises.

17.2 A copy of Blackness Marine's scale of charges for Vessel movements is available on request. Where a specific date or tide range for relaunch of the Vessel has been agreed between the Owner and Blackness Marine at the time of slipping or lifting out (or arrival by land) this charge alone will be payable for the launch. However, where the Owner requests a different date or tide range Blackness Marine reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. Blackness Marine will provide the Owner with an estimate of such costs and charges prior to incurring them.

18. Commercial Usage

18.1 No part of Blackness Marine's Premises or any Vessel or vehicle while situated therein or thereon shall be used by the Owner for any commercial purpose, except where the Owner has sought and obtained prior written Licence from Blackness Marine.

19. Parking

19.1 Subject always to the availability of parking spaces, the Owner may only park vehicles on the Premises in accordance with the directions of Blackness Marine.

20. Amendment of Terms and Conditions or licence

- 20.1 The Owner shall at all times observe Blackness Marine's Terms and Conditions and licence in particular:
- 20.2 Blackness Marine reserves the right to introduce amended terms and conditions or licence on grounds of legal requirement or for the safety or security or good management of the Premises, and to amend such terms as from time to time shall be necessary. Any such amendments to the terms and conditions, tariff scale or licence shall become effective on being displayed on Blackness Marine's website, and Blackness Marine shall have the same rights against the Owner for a breach of the terms and conditions as for a breach of the terms of this Licence.

21. Special Conditions

- 21.1 This Licence and Terms of Business must be read in conjunction with special conditions (if any) that apply to;
- 21.1.1 Dry Stack storage
- 21.1.2 Indoor/Covered storage
- 21.1.3 Yard Storage general

22. Health, Safety and the Environment

- 22.1 Attention is drawn to Blackness Marine's relevant Health, Safety and Environment policies, as amended from time to time. Copies of these policies are available on request. Any amendments shall be available on request. The Owner, his regular crew, members of his family and/or any person or Blackness Marine carrying out work on the Vessel, with the permission of the Blackness Marine, must comply with Blackness Marine's Health, Safety and Environmental Policy.
- 22.2 The Owner, his crew, members of his family and any person carrying out work on the Vessel are responsible for reporting to Blackness Marine all accidents involving injury to any person or damage to any public or private property that occur on the Premises as soon as possible after they occur.
- 22.3 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within their Premises so as to cause any nuisance or annoyance to any

other users of the Premises or to any person residing in the vicinity and the Owner undertakes for himself, his guests that they shall not behave in such a way as to cause any nuisance or annoyance to any other users of the Premises or to any person residing in the vicinity. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.

- 22.4 The Owner, his crew, members of his family and any person carrying out work on the Vessel shall take care to work in a safe, tidy and considerate manner. No refuse shall be disposed of in any way other than in the receptacles provided by Blackness Marine or by removal from Blackness Marine's Premises. Blackness Marine's further directions regarding waste management will be available from Blackness Marine on request.
- 22.5 The Owner shall, and shall procure that his crew, members of his family comply with all applicable laws when using Blackness Marine's Premises.

23. Law & Jurisdiction

- 23.1 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.
- 23.2 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.
- 23.3 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 Dispute Resolution Scheme. Details of the Scheme are available to current British Marine members on request from British Marine and/or online on British Marine's member website.

24. Signed Agreements

- 24.1 All Owners will be sent this Licence and Terms of Business and any Special Conditions (if any) that may apply. Blackness Marine do ask for contracts to be signed and returned. However, Blackness Marine consider that an Owners Vessel being on Blackness Marine's Premise and any payments made, constitute agreement to this Licence and Terms of Business and any Special Conditions that may apply.