

GREAT YARMOUTH PORT

Pontoon Licence – Terms and Conditions

1. Duration of Licence

The Licence duration will:-

- (a) be for 12 calendar months and be effective for the year of issue only;
- (b) commence on 1 April and expire on 31 March of the following year (“the expiry date”).
- (c) except that if before the expiry date:-
 - (i) the licensee has satisfactorily completed in full and returned the Pontoon Retention Form, after the 1st February but before the 28th February in the year of expiry of the Licence, and
 - (ii) the licensee has paid the Annual fee by the due date,

then the Pontoon Licence shall be deemed to run for a further 12 months period immediately following the expiry date; this being subject to adherence to the terms of the Licence.

- 2. Unless a Pontoon Licence is renewed as mentioned in paragraph (c) above then it will expire on the expiry date of the 31 March of the relevant year and for the avoidance of doubt the Licensee shall not have any rights other than those specifically granted by this licence, including (without limitation) that this Licence shall not create any landlord and tenant relationship whatsoever.

3. Entitlement arising from this Pontoon Licence

3.1 Subject to the terms and conditions of this Licence, the Licensee shall be permitted:-

- (a) to install the Pontoon of the type and specification described in Schedule 1 and in the position shown in Schedule 1 of this Licence with a fixing/securing arrangement as also described in the Schedule; and
- (b) Subject to Section 3 (c), to berth against the Pontoon:-
 - (i) any vessel as agreed with the Harbour Master, and
 - (ii) any such vessel as mentioned in 3(i) above shall not exceed the maximum length, beam or draught as specified in Schedule 2 to this Licence.
- (c) Vessels berthed against the Pontoon shall not be used as a houseboat or be occupied in any way as a means of temporary or permanent residence or place of rest.

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- 3.2 This Licence does not permit a Pontoon the deck of which has an area exceeding 30 square metres. No Pontoon shall in any circumstances whatsoever have a deck which has an area exceeding 30 square metres and shall at all times comply with the specification described in Schedule 1.
- 3.3 This Licence does not permit pontoons which are in any way deposited, attached, secured, anchored or affixed to the river bed. No such works of affixing, securing or otherwise adhering to the river bed shall be permitted by way of this Licence or otherwise by the Licensor.
- 3.4 It is the sole responsibility of the Licensee to obtain other permissions (including without limitation any planning permission or flood drainage consent) from various licensing/consenting authorities prior to the installation of a Pontoon to which this Licence relates. Licensees are advised to seek independent legal advice as to the various licences/permissions/consents that may be required from other authorities prior to installing a Pontoon to which this Licence relates.
- 3.5 If, in the six months before the Pontoon is installed, more than ten other pontoons have been installed by, or with the consent of the Port, the Licensee will, in addition to this Licence, require the prior approval of the Marine Management Organisation before installing the Pontoon. It is the responsibility of the Licensee to ascertain whether or not such approval is required and to obtain it where necessary
- 3.6 For the avoidance of doubt, all costs whatsoever and howsoever incurred in the obtaining of this and any other licences/consents or approvals shall be to the Licensee's sole account.
- 3.7 This Licence does not permit any construction activities whatsoever save as specifically permitted by the terms of this Licence.
- 3.8 As owner of the Pontoon, the Licensee shall be solely responsible for all costs arising from the buying, installing and maintaining of the Pontoon, together with any removal and reinstatement costs.

4. Forfeiture of Licence

Should the Licensee fail to comply with any of the terms and conditions of this Licence then the Port may terminate this licence by sending written notice to the licensee whereupon this licence will terminate 5 business days from the date of issue such written notice. No fee or charge paid up to the date of the forfeiture shall be refundable. The administrative costs of issuing such a notice shall be to the Licensee's account together with any costs arising in connection with the issuance of the said notice.

5. Determination of Licence by the Licensee

The licensee can determine this licence by giving 14 business days notice in writing to the Port, however the licence fee already paid shall be retained by the Port.

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6. Removal or relocation of the Pontoon

6.1 The licensee shall remove the Pontoon from the river no later than 5 business days after the expiration or determination of the licence.

7. Prohibition on Assignment/ Sub-letting etc

- (a) The pontoon licence is personal to the licensee. The Licensee may not assign or transfer the License to any other person, organisation or company.
- (b) The licensee may not sublet, subcontract, hire out, license or lend to any other person, organisation or company its right to use the Pontoon nor the benefits of the Licence.
- (c) The licensee may not charge, declare any trust over or deal in any way with the benefit of the Licence.

8. Installation and Maintenance of the Pontoon facility

- (a) The Pontoon shall be installed in a proper manner to the satisfaction of the Harbour Master.
- (b) Thereafter the Pontoon shall be maintained in a proper manner to the satisfaction of the Harbour Master.
- (c) In no case shall the Pontoon obstruct, hinder or reduce the free flow and passage of commercial traffic in the river, and the navigation in the river shall not in any way be prejudiced, diminished or negatively impacted by the Pontoon. Where negative impacts arise subsequent to installation, or where complaints from shipping are received, then the Port shall have the right to require the removal of the Pontoon at the Licensee's costs within 10 business days of a complaint being received (and not withdrawn) or negative impacts becoming apparent. In such cases the Licence shall be forfeit and clause 4 shall apply.
- (d) In the event that the Pontoon becomes a danger to navigation (for whatever reason) then any repairs or maintenance required to make the Pontoon safe shall be carried out immediately.
- (e) In the event that the Pontoon adversely impacts the hydrology of the river or is objected to by the Environment Agency on any grounds whatsoever including flood prevention, or by Great Yarmouth Borough Council, then the Pontoon Licence shall be forfeit and clause 4 shall apply.

9. Own Risk and Indemnity

- (a) The Port gives no warranty nor guarantee as to the safety, security or suitability of the pontoon or any vessels moored alongside them.
- (b) The Port gives no warranty nor any guarantee as to any impacts that may be caused now or in the future by the Pontoon

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- (c) The licensee shall be responsible for all liabilities and claims whatsoever and howsoever arising from the presence of the Pontoon and shall fully and without limit indemnify the Port against all such claims.
- (d) By the issuing of this Licence the Port does not warrant nor imply that all statutory requirements have been complied with. It is the responsibility of the Licensee to ensure that all statutory permissions have been obtained before the installation of the pontoons or other related equipment. Refer also to clause 3 of this Licence.

10. Insurance

- (a) The licensee shall at all times have in place an effective and current third party/ public liability insurance policy in the amount of at least £5,000,000 with a reputable insurance company to cover all claims arising from the installation and use of the Pontoon, including in respect of any vessel to be berthed against the Pontoon.
- (b) The licensee shall provide such third party insurance policy for inspection together with a current premium receipt from its insurance broker at the time of applying or re-applying for a Licence.
- (c) The licensee shall at all times have in place an effective and current environmental insurances which responds to spills, clean up and remediation in the amount of £1,000,000 per incident with a reputable insurance company.
- (d) The licensee shall provide such environmental insurance policy for inspection together with a current premium receipt from its insurance broker at the time of applying or re-applying for a Licence.

11. Reckless Conduct and Disorderly Behaviour

- (a) The licensee (including any person in control or in charge of any vessel using the Pontoon by virtue of this licence) shall not use the Pontoon in a reckless or negligent manner or so as to cause danger to other users of the Port or the environment.
- (b) The licensee (including any persons on board a vessel berthed against the Pontoon by virtue of this licence) shall not cause disturbance, nuisance or annoyance to other users of the Port.

12. Compliance with Byelaws and Directions of the Harbour Master

The licensee (including all persons having control or having charge of or being aboard a vessel berthed against the Pontoon) shall observe and perform all statutory and other obligations relating to the Port including all Byelaws and Regulations in force at the Port and Directions given by the Harbour Master or in force at the Port.

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13. Payment of Harbour Dues

13.1 All monies for the Pontoon and vessels using the Pontoon owed to the Port as Port Dues under the various Acts and Orders 1866 to 2005 (as set out in the list attached to this Licence) shall be paid promptly and in any event within five business days of a written demand for payment.

13.2 Any vessel laying alongside the Pontoon shall be subject to the normal Port charges and requirements of the Harbour Master as arise from time to time.

14. Removal of Pontoon

In addition to any requirement for the removal of the Pontoon and vessels as set out in clause 6; the licensee shall remove the Pontoon where there is a need for the Port to carry out maintenance, survey or other works that requires the removal of the Pontoon. Whenever possible the Port will notify the licensee by a Notice in writing from the Harbour Master 14 business days in advance of the required removal. The costs of such removal and reinstatement shall be to the Licensee's account.

15. Licence Fee

15.1 The Licence Fee: - The Licence Fee shall be set to cover the costs incurred in assessment and review including external legal and consultants costs of the Licence as applied for, together with in-house costs of issuing and administering the Licence. Hourly charges in this respect will be published from time to time.

15.2 In consideration of the Port's grant of this Licence to the Licensee, the Licensee shall pay the Licence Fee to the Port on or before the commencement date of this Licence.

15.2 Recovery of Unpaid Licence Fee:- Without prejudice to any other method of recovery of any unpaid licence fee by virtue of Section 44 of the Harbours Docks and Piers Clauses Act 1847 [to the extent permissible by law] the Port may distrain and sell any vessel entitled by this licence to be berthed against the Pontoon.

16. Repairing Vessels

No repair or maintenance to a vessel berthed against the Pontoon shall take place without the prior consent of the Harbour Master.

17. Service of Notices

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Any notice which is required to be given to the Port, the Harbour Master or to the Licensee may be given by leaving it or sending it in a prepaid letter, in the case of the Port or the Harbour Master addressed to Great Yarmouth Port Company Ltd, Eastport UK House, South Beach Parade, Great Yarmouth, Norfolk, NR30 3GY or in the case of the licensee addressed to him at his last known place of abode or business. It is the responsibility of the licensee to ensure that contact address details are up to date at all times. Service of notices and documents will be deemed effective to that address as last notified in writing to the Port at the aforementioned address by the licensee.

18. Documentary Evidence of Licence

A pontoon licence incorporating all the terms and conditions contained in this Licence shall be deemed to exist on the later of:- receipted payment of the appropriate pontoon licence fee (being consideration for this Licence) and the receipted provision of evidence of the Insurance requirements set out in clause 10.

19. Definitions

- (a) “the Pontoon” is defined in Schedule 1. Schedule 1 shall, for the avoidance of doubt, form part of this Licence.
- (b) “the expiry date” of this licence is described in paragraph 1(b) above.
- (c) “the Port or port” means Great Yarmouth Port or Great Yarmouth Port Company Ltd as the context best admits.
- (d) “the Licensee” means the person specified as such in the Pontoon Application Form or the Pontoon Retention Form (as applicable).
- (e) “install” shall mean a deposit or works activity carried on for the purpose of providing a pontoon or a removal activity for the purpose of removing a pontoon and “installed” shall have an equivalent meaning.
- (f) “the Licence Fee” shall mean the fee published by the Port as its pontoon licence as at the commencement date of this Licence.

20. Third Party Rights

A person who is not a party to this Licence shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Licence. Nothing in this clause 20 shall affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. Disputes

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21.1 This Licence shall be governed by and construed in accordance with English Law.

21.2 Any dispute arising out of or in connection with this Licence shall be finally resolved by arbitration in accordance with the London Court of International Arbitration Rules provided always that the enforcement of any decision of an adjudicator is not a matter which may be referred to arbitration.

21.3 The parties to the Licence agree that the tribunal shall consist of a single arbitrator and the arbitrator shall be appointed by the parties jointly or (failing agreement) within 5 business days after either party has served notice in writing on the other party requiring the appointment of an arbitrator, by the LCIA Court.

21.4 Any right of application or appeal to Court concerning any question of law arising in the course of arbitration shall be excluded insofar as law allows; and the place of arbitration shall be London and all submissions and awards shall be in English.

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Schedule 1

Part A - Pontoon Particulars:

[set out in detail the exact proposal including below at minimum]

Overall length

Length of Sections

Width

Depth

Draft

Freeboard

Construction Method

Part B – Fitting Requirements

Pontoon shall be fitted with safety features and fittings as required by the Harbour

Master and asset out below:- [detail specifics related to the proposal]

This shall include but not limited to the following:

Means of egress from the water to the pontoon top

Lifebuoys at distances not exceeding 35 metres

Illumination of the pontoon surface

Navigation marks at the extremities of the pontoon and at intervening positions dependent on the overall length of the pontoon.

Adequate fendering along the pontoon and at the extremities