

## **STANDARD TERMS AND CONDITIONS OF BERTHING**

*Payment shall automatically mean that the client has accepted these terms and conditions in full.*

### **1. DEFINITIONS**

- a. "Berth" means a berth, mooring, or other onshore storage.
- b. "Company" means Manoel Island Yacht Marina Limited, its officers, employees, agents, mandataries and representatives.
- c. "Facilities" means any buoys, mooring, wharves, jetties, piers, pontoons, slipways, pumps, walkways, boats and any fittings or appurtenances connected therewith, and any property movable or immovable provided at the Marina including the Sea Area forming part of the premises of Manoel Island Yacht Marina Limited.
- d. "Permit" means a berth permit issued to the Owner for the Vessel.
- e. "Marina" means Manoel Island Yacht Marina Limited's facilities situated on Manoel Island, Malta, including its berths, moorings, land, quays, pontoons, breakwaters, buildings, movable and designated Sea Area and other items or things under the control of the Company.
- f. "Owner" shall include the captain, charterer, agent, superintendent or any other person who acts in command or full representation of the Vessel, even if not its legal owner;
- g. "Period" means the period of time during which this agreement remains in force between the parties.
- h. "Rules" means the norms contained in this document, and any other reasonable norm duly communicated in writing to the Owner.
- 1. "User" shall include Owners and all other persons within the Marina who utilise the services provided at the Marina.
- j. "Vessel" means any vessel using the facilities, including but not limited to a yacht.

### **2. RIGHT TO BERTH**

- 2.1 The Company hereby grants to the Owner, who accepts, the permit to berth the vessel at the Marina, on the terms and conditions contained in this agreement.
- 2.2 The permit is personal to the Owner and is valid only for the vessel named on it. The permit may not be assigned, nor may be used for an alternative vessel, unless the Owner obtains the prior approval in writing from the Company. The Company reserves the right to refuse an assignment or the utilisation of the berth by an alternative vessel without giving any reasons whatsoever. An alternative vessel may only berth when the Company has issued a permit in writing.
- 2.3 The Owner declares that the berth and all other relevant parts of the Marina, including the connections to the utility supplies, are in all respects satisfactory and compatible with the vessel.
- 2.4 The right to berth at the Marina does not include the right to lay-up or to store the Vessel ashore, or vice-versa, and any such service will require to form the object of a separate agreement between the Parties to these terms and conditions.
- 2.5 The Owner is entitled to the exclusive use of the berth for the period, but the company may, if it deems reasonably appropriate, move at the Owner's sole expense or require the Owner to move the Vessel from one berth to another. The Owner will not receive any compensation for such movement which shall take place at his own sole expense. The Owner may not move the Vessel from one berth to another within the Marina without the prior written approval of the Company.
- 2.6 The Company may board, enter, move, or carry out emergency work on an unattended Vessel if this is necessary for safety or urgent operational reasons. The Owner shall be liable to pay the Company reasonable costs incurred in carrying out such work. The Owner is obliged, at any time on the request of the Company, to deliver to the Company at any time on the request of the Company, a duplicate set of all the keys of the vessel and any written instructions that may be needed, in order to enter the Vessel safely and move accordingly should the need arise.



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2.7 The Owner shall keep the Company informed of the Vessel's movements, and the Company may utilise the berth without compensation to the Owner if the vessel will leave it vacant for over 24 hours. The Company will at all time use its best endeavours to ensure that the Vessel may use its usual berth, or an alternative berth as the Company may deem fit, until such time as the usual berth shall be vacated. The Owner may not request any compensation for movements nor be entitled to retain any berthing fees in respect thereof. Vessel movements are to be notified to the Company 24 hours in advance.

2.8 The Owner shall not use the Marina or his Vessel for any commercial purpose without the Company's prior approval which will not be unreasonably withheld.

2.9 The Owner may sell his Vessel whilst it is at the Marina providing that he or his representative is present at all times when the Vessel is being viewed or inspected. "For Sale" notices shall not be displayed without the prior written authorization of the Company. Before the completion of the sale, the Owner shall seek the Company's permission to transfer the berthing space to the new Owner. The Company may, at its sole discretion, agree to transfer such berthing space on either the same terms and conditions applicable to the Owner or on new terms and conditions. Should the Vessel be scheduled to depart from the Marina upon completion of sale, the Owner shall, nevertheless, promptly notify the Company in writing supplying the name, address and contact details of the new owner. In such a case, no berthing fees will be refunded by the Company.

### 3. SERVICES AND UTILITIES

3.1 Water and electricity supplies provided by company for the use of the Vessel cannot be shared with any other Owner, user or Vessel or Yacht. The Owner agrees and accepts that the Company cannot guarantee a constant supply of electricity. Connection and re-connection will only be carried out during office hours. Requests for re-connection are to be submitted on the company forms, at least four hours prior to closing of the Marina for the day.

3.2 The Owner shall ensure that the Vessel's connections to the utility supplies are compatible with the Marina system, properly designed, fitted and maintained. Electricity cables must be disconnected from the supply point by the Company before being disconnected from the vessel and no electricity cables and water hose pipes shall be left on the pontoons/quay when they are not in use.

3.3 Water and electricity consumption is metered and the owner will be charged at the Company's current tariff of charges, from time to time. Non-payment will result in the supply being terminated and a re-connection fee will be charged to the Vessel.

3.4 The provisions of clause 4.2 of these conditions will apply to the current tariff of charges in so far as these concern the provisions of water and electricity services.

3.5 All water hosepipes and connections shall be supplied by the owner and fitted with a spring-loaded nozzle designed to shut-off the water flow when the hose is unattended. Any damage arising due to negligence will be debited to the owners account.

### 4. CONSIDERATION AND PAYMENT

4.1 In consideration of the permit to berth, the Owner undertakes to pay the Company all berthing fees, on the terms and with the modalities listed therein. The said fees consist in the fees due to the Company by the Vessel according to its current tariff of charges.

4.2 The Company reserves the right in its sole discretion to amend its current tariff of charges at any time by giving the owner 15 running days' advance written notice. During the said period of 15 running days, the Owner may choose either to refuse the said amendment to the tariff of charges and in doing so shall vacate the berth immediately, or to accept the new tariff of charges and remain in the berth. The continued use of the berth following the lapse of the period of the above-mentioned 15 days period following notice shall be deemed to constitute full acceptance of the amended tariff.

4.3 The tariff then applicable shall be charged for water and electricity provided by the Company to the Owner. An increase or reduction in the rate of VAT or other tax payable on berthing fees and water and electricity services, or other services provided, shall be charged or decreased from the charges payable by the Vessel.

4.4 The Company reserves the right to verify the length of any vessel berthed at its Marina, including, if



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necessary, to take its own measurements of the vessel. The Owners shall make sure to accommodate any request of the company to carry out the measurement of the vessel should the Company so wish to do so.

4.4 Delay in payment beyond the period established between the Company and the Vessel will entitle the company to charge interest at the rate of eight per cent (8%) per annum.

4.5 Without prejudice to any other right competent to it, the Owner agrees that the Company is authorised to retain the vessel by way of a possessory lien in consideration of any outstanding debts due to the Company by the Owner for berthing of the Vessel and other charges in terms hereof, and to proceed in terms of law in order to extinguish the said debts due to it.

### 5. PERIOD

5.1 The permit is being granted for the period as detailed in the Berthing Agreement.

5.2 Without prejudice to any other provision of this agreement, either Party may terminate the provisions hereof by giving the other notice in writing.

5.3 Berthing fees paid in advance will not be refunded by the Company.

### 6. INSURANCE

6.1 At all times throughout this agreement the Owner shall keep in full force and effect, at his sole expense, the following insurance policies issued by insurance companies of repute:

(i) A public liability insurance that shall have limits of liability of at least EUR500,000 for injury or death to any one person, per occurrence and for damage to property, for any one accident.

(ii) A policy against salvage claims. The owner shall furnish the Company immediately upon completion of the Berthing Agreement and thereafter when reasonably required, with certificates or otherwise satisfactory evidence of all insurance policies required to be procured by Owner in terms hereof. Each certificate shall state that the Company shall be entitled to at least thirty (30) days prior notice of any cancellation, material change or non-renewal, and that the Insurers shall be bound to advise the company accordingly. Should the owner fail to procure any insurance required hereon the Company may, in addition to any other remedies, procure the same on behalf of the Owner. The Owner agrees to pay the premium due therefore promptly on the Company's demand.

6.2. The Owner shall indemnify the Company and hold it harmless from and against any and all claims arising from the Owner's or the Vessel's use of the Company's facilities, or from any activity, work or thing done, permitted or suffered by the Owner in or about the Company's premises and sea area. The Owner shall furthermore indemnify the Company and hold it harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the Owner's part to be performed in terms of this agreement, or arising from any negligence of the Owner's principals, agents, contractors, employees, and guests, and from and against all costs, advocates fees, expenses and liabilities incurred in the defence of any such claim or any action or proceeding brought thereon. If any action or proceeding is brought against the Company by reason of any such claim the owner, upon notice from the Company, shall defend the same, at the Owner's expense, by advocates satisfactory to the Company. As a material part of the consideration to the Company, the Owner hereby assumes all risk of damage to property or injury to persons in or about the Company's premises and sea area arising from any cause, and the owner hereby waives all claims in respect thereof against the Company, except from any claim arising out of the Company's gross negligence or wilful misconduct.

### 7. MAINTENANCE AND REPAIR OF VESSEL

7.1 The vessel shall be maintained in a good and clean condition, in good and in seaworthy condition. Repair and maintenance work may be carried out on a vessel by the Company on its berth. Minor repair work may be carried out by the owner or by the vessel's registered crew only with the prior written approval of the Company which may be granted or withheld by the Company at its own discretion.

7.2 The Company may at any moment in its absolute discretion order that any repair work then being carried out, by the Owner or by the Vessel's registered crew, ceases immediately if it considers that such work is or may



cause damage, inconvenience, nuisance or constitutes a health and safety risk to the Company, its Customers, or to persons or premises nearby or to third party property.

7.3 The Owner undertakes to ensure that all work to be carried out on the Vessel at the Marina will be effected solely by properly authorised, qualified and experienced personnel.

## **8. GENERAL**

8.1 Owners and users shall comply with all reasonable instructions given by the Company for the proper and efficient operation of the Marina.

8.2 In the navigation of their vessels, Owners will observe all speed restrictions implemented by Transport Malta, the Company, and/or any other authorities, in a seamanlike manner in order that other vessels and customers of the Company and third parties are not endangered or inconvenienced. Vessels shall not drop anchor in the Company's sea area or within its facilities except in emergency or unless directed to do so by the Company. Each Vessel shall have on board a VHF Radio Transmitter and is obliged to notify the Company on Channel 13 each time it is departing from or arriving at the Marina.

8.3 The Owner agrees not to allow anything to take place at the Company's premises or aboard the vessel that may annoy, cause nuisance or offence to any Customer, or to persons or property therein or nearby. The Owner shall not keep engines running, loud audio equipment, outdoor cooking, unsecured halyards and sail covers, and anti-social behaviour. All pets shall at all times be kept under strict control, but the Company may in its absolute discretion order that any live animal be removed immediately and thereafter banned from the Company's facilities.

8.4 Waste and refuse must be placed in appropriate receptacles provided by the Company. No person shall discharge or allow to be discharged any oil, garbage, or other refuse into the waters of the Marina or left on pontoons or jetties. The Company reserves the right to charge the cleaning of the waters from any pollution to any one or more owners that it deems responsible including but not limited to any fines that may be imposed on the Company as a result of such pollution.

8.5 No washing lines shall be erected on board the vessel, nor shall washing be dried on the exterior of the Vessel.

8.6 No person is authorized to provide services or carry out works on any vessel in the Marina unless with the prior written approval of the Company.

8.7 No items will be left on quays, slipways, jetties or pontoons or anywhere else within the Company's premises, unless the place has been designated by the Company as a storage place. Any items which are left unattended at the Marina, or quays or within the Marina's environs, may be removed by the Company at the owner's expense.

8.8 Stern mooring lines are to be provided and maintained by the Owner of the Vessel. All stern mooring lines are to be fitted with adequate springs which are to be installed with the required protection thus ensuring that no damage is to be caused to the Company's property.

8.9 Services of a diver, if necessary or requested, will be at the sole cost of the Owner of the Vessel.

8.10 The Company's facilities and sea area shall not be used for swimming, fishing or other water sports.

8.11 No person may live habitually or permanently aboard any Vessel unless the Owner has obtained the written authorization of the Company.

8.12 Fuelling, refueling and maintenance services to the vessels shall only be made at the designated points or as authorized by the Company.

8.13 Users of the Marina shall park their vehicles in accordance with the Company's instructions. During busy periods the Company reserves the right to limit the number of parking places available to the crew of each vessel. If a vehicle is left unattended at the Marina for more than 24 hours, the owner of the vehicle shall ensure that the keys are deposited with the Company so that the Company can move the vehicle if necessary. Vehicles parked in breach of the Company's instructions will be removed at their owners' sole expense.

## **9. RESPONSIBILITY**

9.1 The owner shall at all times be responsible for the safety of the vessel and shall be liable for any damage



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caused by the Vessel or her tender to the Company's facilities, or other vessels therein situated.

9.2 Use of the Company's facilities shall be at the users own risk and the Company shall not be responsible for the death or injury of any user, nor for any loss, theft or any other damage caused to any vessel, vehicle, or personal possessions, except in the case of the Company's gross negligence. The Company shall not provide safety watch, weather watch, or security services to prevent or reduce the likelihood of injury, theft or damage.

9.3 The Company does not guarantee for the suitability of any berth, equipment, gear or other facilities provided.

### **10. RESERVATIONS AND DEPARTURES**

10.1 The Company retains the right to reserve berthing space for any Vessel upon the payment of a non-refundable reservation fee. Until such time as the reserved berth is utilised, the Company may utilise the said berth at its discretion without giving compensation to such Vessel.

10.2 Late departures following the lapse of the contractual or extended period will cause the Company to charge a penalty fee for each day or part thereof of delay equivalent to double the daily berthing fee then current according to the tariff of charges.

### **11. FIRE PREVENTION**

11.1 Customers of the Company in general shall take all reasonable precautions against the outbreak of fire. Each vessel must keep adequate fire fighting equipment on board of an approved or GSI stranded type, size and installation ready for immediate use in the event of fire. Fire extinguishers are to be regularly maintained and in good working order at all times.

11.2 No fuel, gas, or other highly inflammable or explosive substance shall be brought onto the Company's facilities or sea area unless properly secured and unless prior written permission of the Company is obtained. Any such substance kept aboard must be held in appropriate containers and be stowed in a seamanlike manner. Gas bottles shall be turned off when not in use. Work with hazardous or inflammable substances cannot be undertaken at the Company's facilities and sea area unless such works are being carried out by the Company.

### **12. POLLUTION**

12.1 Customers shall take all reasonable precautions to prevent pollution. No garbage, toilet effluent, dirty bilge water or other pollutant shall be discharged or thrown overboard.

12.2 No pollutant shall be brought within the Company's premises or sea area unless properly secured. Any such substance kept aboard must be held in appropriate containers and be stowed in a seamanlike manner.

### **13. FORCE MAJEURE**

13.1 If either party is effectively prevented from observing its obligations by force majeure, it shall forthwith notify the other party of the nature and expected extent thereof. Force majeure means, in relation to either party, any circumstances beyond the reasonable control of that party, such as acts of God, war, civil commotion, labour disputes, strikes, fire, flood or other casualty.

13.2 Neither party shall be deemed to be in breach of this agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any force majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly. The party effected by force majeure shall however exercise its best endeavours to remedy and restrain the effects thereof and render the non-performance of any obligation less burdensome on the other party.

13.3 If the force majeure in question persists for a continuous period in excess of seven (7) days, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.



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### 14. TERMINATION

14.1 If the Vessel is in material breach of any of the conditions of this agreement and remains so in default for a period of seven (7) days from receipt of notice in writing indicating the breach and requesting its remedy, the provisions of this agreement will be ipso jure terminated, and the Company will be authorised to terminate all supplies and services to the Vessel and the Owner; Provided that if the nature of the breach is such that more than seven (7) days are reasonably required for its cure, the owner shall not be deemed to be in breach if during the said period he commences such cure and diligently prosecutes it to completion.

14.2 Failure by the Owner to vacate the berth upon termination in terms of Clause 14.1 will authorise the company to charge the Owner by way of penalty due for each day or part thereof, berthing fees equivalent to five (5) times the then current tariff, and to take all measures to ensure payment of all amounts due, including the enforcement in terms of law of the possessory lien contemplated in Clause 4.5 of this agreement. The company may move the Vessel at the owners' risk and expense out of the Marina on tow, and charge the Owner for any subsequent berthing, storage and other costs incurred.

14.3 The Company reserves the unilateral right to terminate the berthing facility and all services that it is offering to the Owner / Vessel without giving any reasons whatsoever. The Company shall terminate all supplies and services by giving the Owner/Vessel fourteen (14) days' notice for the Vessel to clear the berth, following which, if the Vessel remains in default, the Company shall make arrangements to move the Vessel to another berth. Such removal shall take place at the Vessel's/Owners' sole risk and charge. The berth to which such Vessel is moved shall also be for the account of the Vessel/Owner.

### 15. JURISDICTION AND CHOICE OF LAW

15.1 This agreement is governed by the Laws of the Republic of Malta, and any dispute that may arise in terms hereof shall be determined exclusively by arbitration proceedings in terms of the Arbitration Act, Laws of Malta.

### 16. NOTICES

16.1 Notice on the Vessel shall be deemed to have been duly served when attached to a conspicuous part of the vessel, while that on the Company when delivered during office hours to the Company's office at the Marina.

### 17. CONFIDENTIALITY AND DATA PROTECTION

17.1 Pursuant to the General Data Protection Regulations (Regulation EU 2016/679 of the European Parliament) ('GDPR'), the Company is obliged to receive and process personal data with strict confidence and in line with the requirements of the GDPR. The data subject has certain rights inherent within the GDPR and to that effect, the Company has an internal Data Protection Policy in place which has been designed to cater for the requirements of GDPR. A copy of the Data Protection Policy is available on [www.miym.com.mt](http://www.miym.com.mt) or by requesting a copy on [info@miym.com.mt](mailto:info@miym.com.mt)