



**FALMOUTH HARBOUR COMMISSIONERS
GENERAL TERMS OF BUSINESS**

1. LIABILITY

- a) We, Falmouth Harbour Commissioners, (FHC) and our employees shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us or latent defects); this includes loss or damage to vessels, gear, equipment or other goods left with us for repair or storage; and harm to persons entering the premises and/or using facilities or equipment; customers should ensure that their own personal and property insurance covers such risks.
- b) Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels. Any vessel, gear, equipment or other goods are left with us at the customer's own risk; the customer must maintain adequate insurance which must also cover third party liability of at least £500,000 and be at least £1,000,000 for a vessel with LOA of more than 7 metres.

2. SAFETY AND MANAGEMENT

- a) Owners must comply with all statutes, local rules or bye-laws and those of the Harbour Authorities.
- b) No dangerous inflammable, poisonous or obnoxious substance, spirit, oil or fluid shall be brought on the premises except in properly secured containers staunch against leakage.
- c) The owner will ensure that his vessel and other property on our premises will be kept in a safe and tidy state, and that the owner and his guests will not create any nuisance to the injury of Falmouth Harbour Commissioners, its premises or third parties. The owner undertakes to indemnify Falmouth Harbour Commissioners against any claim or proceedings brought against us in consequence of our failure to comply with the provisions of this clause.
- d) All craft moored at the premises must be in a safe and seaworthy condition. Falmouth Harbour Commissioners shall have the right to moor, reberth, move or board or gain entry to carry out any emergency work on the craft if in the opinion of the Falmouth Harbour Commissioners such work is necessary for the safety of the vessel or the safety and/or convenience of our premises or other owners. The owners shall be liable for the costs of such work.

3. PRICES AND ESTIMATES

- a) In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided.
- b) When we give an estimate or indication of price - in writing or orally - we will exercise skill and judgement in doing so. Such estimates are subject always to the accuracy of information provided by the customer.
- c) We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefor. In those circumstances the customer's liability for any service or work already completed or goods already supplied or to be supplied shall be unaffected.

4. DELAYS

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

5. VESSEL MOVEMENTS

We reserve the right to move any vessel, gear, equipment or other goods at our discretion for reasons of safety or good management. If the owner fails to remove a vessel at the expiry of a licence we reserve the right to remove the vessel at the owner's risk and at the owner's expense, including alternative berthing fees.

6. **PAYMENT**

- a) Unless otherwise agreed in writing the price of all services, work and goods shall be due immediately on invoice date.
- b) Pending receipt of payment in full without set off or deduction we reserve the right to charge interest on any sums outstanding after 30 days at 4% over Barclays Bank plc base rate.
- c) We have the right to keep hold of a vessel, its gear and equipment and any other goods in respect of which we have provided services or on which we have worked pending payment in full or all sums due to us in respect of the provision of any such work or services. During any such period of retention we reserve the right to continue to charge for storage, hard standing and berthing at our usual commercial rates.
- d) Any owner not settling mooring/storage fees within 21 days of the due date or occupying a berth beyond the expiry of the current licence will be deemed to be a "visitor" and will be charged a mooring or storage fee at a visitor's rate for the whole period for which the fees remain outstanding or until the vessel is removed from our premises.

7. **GUARANTEE**

- a) Nothing in these terms affects the statutory rights of any customer who contracts with us as a consumer.
- b) We guarantee our work, mooring work excepted, for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. We shall be liable under this guarantee only for defects appearing during this 12 month period which must be promptly notified to us in writing.
- c) On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other specialist contractors to do so. Any remedial work which is put in hand by the customer other than through ourselves in accordance with the terms of this guarantee may invalidate this guarantee in respect of such defects if we are not advised beforehand and given the opportunity to inspect and agree such work and its cost.
- d) Where we supply goods or services to a customer in the course of his business:
 - i) No such goods or services shall carry any express or implied term as to quality or fitness for any particular purpose unless prior to the supply the customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement.
 - ii) No proprietary article specified by name, size or type by a business customer shall carry any such express or implied term but we will assign to the customer any rights we may have against the manufacturer or importer of that article.
 - iii) In no event do we accept liability to a business customer for consequential damage beyond replacement of any faulty or unsuitable service or article supplied by us.

8. **QUALITY STANDARDS**

We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

9. **ACCESS TO PREMISES**

Neither our customers nor the public have the right of access to our workshops or workboats.

10. **RIGHT OF SALE**

- a) Where we accept gear, equipment, vessels or other goods for repair, refit, maintenance, mooring or storage we do so subject to the provisions of the Torts (Interference with Goods) Act 1977. The Act confers a right of sale on us in circumstances where the customer 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 we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:

- i) Goods for repair or other treatment are accepted by us on the basis that the customer 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;
 - ii) Our obligation as custodian of goods accepted for storage ends on our notice to the customer of termination of that obligation;
 - iii) The place for delivery and collection of goods shall be at our premises unless agreed otherwise.
- b) In certain other circumstances we may be entitled to have vessels or goods sold through the Court for non-payment of invoices.

11. **SUB-CONTRACTING**

We may sub-contract all or part of the work entrusted to us by the customer, on terms that any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability contained in these Terms of Business.

12. **ANCILLARY PROVISIONS**

If any provision of these Terms of Business is deemed for any reason to be invalid, void or deleted, the Terms of Business shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, we and the customer shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision.

13. Notices to a customer shall be deemed to have been sufficiently served if sent by post to the customer's last known address. Notices to us should be sent by post to our principal trading address.

14. These terms are subject to English law and any dispute arising under them shall be submitted to the jurisdiction of the Courts of England and Wales.