

ROYAL MALTA YACHT CLUB MARINA

Ta' Xbiex Seafront, Ta' Xbiex, Malta



ANNEX 1 – Marina Rules & Regulations

GENERAL BERTHING CONDITIONS

1. DEFINITIONS

- a. "Berth" means a berth, mooring, or other onshore storage;
- b. "Berthing Agreement" means the Agreement entitled 'Berthing Agreement' executed by and between the Royal Malta Yacht Club Marina and the Owner, whereby the Marina granted to the Owner, who accepted, the right to berth the Vessel specified in the 'Berthing Agreement' at the RMYC Marina. For the avoidance of any doubt, the term 'Berthing Agreement' shall be construed as including this 'Annex 1' and all other Annexes to the Berthing Agreement, all of which shall be deemed as forming an integral part of the Berthing Agreement;
- c. "Berthing Fees" means the fees payable by the Owner to the Marina as consideration for the granting of the right to berth by the Marina to the Owner, which fees are payable on the terms and with the modalities specified in 'Annex III';
- d. "Facilities" means any buoys, mooring, wharves, jetties, piers, pontoons, slip ways, pumps, walkways, boats and any fittings or appurtenances connected therewith, and any property movable or immovable provided at the Marina;
- e. "Marina" means the Royal Malta Yacht Club, including as the context may require, its berths, moorings, quays, pontoons, breakwaters, movable and other items or things under the control of the Royal Malta Yacht Club;
- f. "Owner" shall include the captain, charterer, agent or other person who acts in command of the Vessel, even if not its legal owner;
- g. "Parties" means the Marina and the Owner;
- h. "Period" means the period of time during which the Berthing Agreement remains in force between the Parties;
- i. "Rules" means the norms contained in this "Annex I", and only other reasonable norm duly communicated in writing by the Marina to the Owner from time to time;
- j. "Royal Malta Yacht Club" means the Royal Malta Yacht Club including its officers, employees, agents representatives and mandatories;
- k. "User" shall include the Owners and all other persons within the Marina who utilise the services provided at the Marina;
- l. "Unattended Vessel Form" this form (Annex II of this document) must be filled by owners in case of their absence from the Island;
- m. "Vessel" means any yacht using the Marina, whether registered as a commercial yacht or as a pleasure yacht.

2. RIGHT TO BERTH

- 2.1 The Marina hereby grants to the Owner, who accepts, the right to berth the Vessel at the Marina, on the terms and conditions contained in the Berthing Agreement and in these rules.
- 2.2 The right to berth is personal to the Owner and is valid only for the Vessel named on it. The right to berth may not be assigned, nor may it be used for an alternative Vessel, unless the Owner obtains the Marina's prior approval in writing. The Marina reserves the right to refuse an assignment or the utilisation of the Berth by an alternative Vessel. Alternative Vessel may only berth when the Marina has issued a right to berth 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 store the Vessel ashore, or vice-versa, and any such service will form the object of a separate agreement between the Parties.
- 2.5 The Owner is entitled to the exclusive use of a Berth for the Period, but the Marina may, if it deems reasonably appropriate, move or require the Owner to move the Vessel from one berth to another. The Owner will not receive any compensation for such movement. The Owner may not move the Vessel from one Berth to another within the Marina without the prior written approval of the Marina.
- 2.6 The Marina 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 Marina reasonable costs in carrying out such work. The Owner is hereby delivering to the Marina 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, provided that the Vessel is left unattended and the Owner is not available in Malta.
- 2.7 The Owner shall keep the Marina informed of the Vessel's movements, and the Marina may utilise the Berth if the Vessel leaves the Berth vacant for at least twenty four (24) hours. The Marina shall at all times use its best endeavours to ensure that the Vessel may use its usual Berth, or an alternative Berth as the Marina 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 Marina at least twenty four (24) hours in advance.

- 2.8 Save with the prior written approval of the Marina, the right to berth is limited to berthing of Vessels as defined herein, and excludes the berthing of any other type of vessels.
- 2.9 Prior to entering or exiting the Marina, the Captain or Owner of the Vessel is obliged to contact Royal Malta Yacht Club Marina on Channel 13 for authorisation for safe manoeuvring within Marina waters. Captain / Owners shall ensure that maximum speed within marina area shall not exceed 3 knots.

3. SERVICES AND UTILITIES

- 3.1 Water and electricity supplies provided by the Marina for the use of the Vessel must not be shared with any other Owner, User or Vessel. The Owner recognises that the Marina cannot guarantee a constant supply of electricity. Connection and re-connection shall only be carried out during office hours. Requests for re-connection are to be submitted on the prescribed Marina forms, at least four (4) hours prior to the closing of the Marina for the day.
- 3.2 The Owner shall ensure that the Vessel's connections to the utility supplies are properly designed, fitted and maintained. Electricity cables must be disconnected from the supply point before being disconnected from the Vessel.
- 3.3 Water and electricity consumption is to be metered and the Owner shall be charged at the tariffs referred to in 'Annex III'. Non-payment of tariffs shall result in the water and electricity supply being terminated and a re-connection fee may be levied as provided for in the aforementioned 'Annex III'.
- 3.4 The provisions of Clause 4.2 hereof 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 shall be 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 Owner's account.
- 3.6 The Marina may offer berthing assistance when requested, however, it will not be held responsible in the event of any damages sustained by the owner.

4. CONSIDERATION AND PAYMENT

- 4.1 In consideration of the right to berth, the Owner hereby agrees to pay the Marina the Berthing Fees listed in 'Annex III', on the terms and with the modalities listed therein. The said fees consist in the fees due to the Marina by the Owner according to its current tariff of charges, also as attached as 'Annex III'.
- 4.2 Subject to the provisions of 'Annex III' the Marina reserves the right in its sole discretion to amend its current tariff of charges at any time by giving the Owner one (1) month's advance written notice. During the said period of one (1) month, the Owner may choose, either to refuse the said amendment to the tariff of charges and vacate the Berth, 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 one (1) month following notice shall be deemed to constitute acceptance of the amended tariff.
- 4.3 The tariff then applicable shall be charged for water and electricity provided by the Marina 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 Owner.
- 4.4 Delay in payment beyond the period established in 'Annex III' will cause the Owner to pay the Marina 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 Marina is authorised to retain the Vessel by way of a possessory lien in consideration of any outstanding debts due to the Marina 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 right to berth is being granted only for the Period stated in the Berthing Agreement, after which the berth must be immediately vacated.
- 5.2 Without prejudice to any other provision of these Rules, either Party may terminate the provisions hereof by giving one month's notice in writing.
- 5.3 Berthing Fees paid in advance will not be refunded by the Marina to the Owner.

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 (€1,165,000) one million one hundred and sixty five thousand Euro for injury or death to any one person, per occurrence and at least (€466,000) four hundred and sixty six thousand Euro for damage to property, for any one (1) accident;
 - ii. A policy or policies of insurance covering loss or damage to the Marina (including fixtures and fittings) in the amount of full replacement value. Such policy shall provide protection against all perils included with the classification of fire, extended coverage, vandalism, special extended perils (all risks), sprinkler leakage, an inflation guard endorsement and other coverage that the Marina may consider necessary. The Marina shall have the right, from time to time, to obtain professional appraisal of the Marina as well as professional appraisals of the public liability insurance limits, by an appraiser reasonably acceptable to the Owner's insurer, and the Owner will adjust the premium and coverage accordingly;
 - iii. A policy against salvage claims.
- 6.2 The Owner shall furnish the Marina immediately upon execution of the Berthing Agreement and thereafter when reasonably required, with certificates or otherwise satisfactory evidence of all insurance policies required to be procured by the Owner in terms hereof. *Each certificate shall state that the Marina 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 marina accordingly.* Should the Owner fail to procure any insurance required hereon the Marina 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 Marina's demand.

- 6.3 The Owner shall indemnify the Marina and hold it harmless from and against any and all claims arising from the Owner's or the Vessel's use of the Marina, or from any activity, work or thing done, permitted or suffered by the Owner in or about the Marina. The Owner shall furthermore indemnify the Marina 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 the Berthing Agreement, or arising from any negligence of the Owner's principals, agents, contractors, employees, and guests, and from and against all costs, advocate 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 Marina by reason of any such claim the Owner, upon notice from the Marina, shall defend the same, at the Owner's expense, by advocates satisfactory to the Marina. As a material part of the consideration to the Marina, the Owner hereby assumes all risk of damage to property or injury to persons in or about the Marina arising from any cause, and the Owner hereby waives all claims in respect thereof against the Marina, except from any claim arising out of the Marina'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. Repair and maintenance work of a minor nature only may be carried out on a Vessel on its Berth. Other work is to be carried out in such area or repair berth as may be designated by the Marina for such purposes from time to time. Such work may be carried out by the owner or by the Vessel's regular crew.
- 7.2 The Marina may at any moment in its absolute discretion order that any repair work then being carried out ceases immediately if it considers that such work is or may cause damage, inconvenience, nuisance or constitutes a health and safety risk to the marina, its Users, or to persons or premises nearby.
- 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 Marina 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 the harbour, marina, navigation or other authorities, in a seamanlike manner such that other Vessels and Marina Users are not endangered or inconvenienced. Vessels shall not drop anchor in the Marina except in emergency or unless directed to do so by the Marina.
- 8.3 The Owner agrees not to allow anything to take place at the Marina or aboard the Vessel that may annoy, cause nuisance of offence to any Marina User, 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 Marina may in its absolute discretion order that any animal be removed immediately and thereafter banned from the Marina.
- 8.4 Waste and refuse must be placed in appropriate receptacles provided by the Marina. No person shall discharge or allow to escape, any oil, garbage, or other refuse into the waters of the Marina or left on the pontoons or jetties. The Marina reserves the right to charge the cleaning of the waters from any pollution to any one or more Owners that it deems responsible.
- 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 authorised to provide services or carry out works on any Vessel in the Marina unless with the prior written approval of the Marina.
- 8.7 No items will be left on the pontoons or quays or anywhere else in the Marina, unless the place has been designated by the Marina as a storage place. Any items, including vehicles, which are left unattended at the Marina, on the pontoons, or quays or within the Marina's environs, may be removed by the Marina at the Owner's expense.
- 8.8 The Marina shall not be used for swimming, fishing or other water sports.
- 8.9 No person may live habitually or permanently aboard any Vessel unless the Owner has obtained the written authorisation of the Marina.
- 8.10 Fuelling, refuelling and maintenance services to Vessels shall only be made at the designated points or as authorised by Marina personnel.

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 caused by the Vessel or its tender to the Marina, its facilities, or other Vessels therein situated.
- 9.2 Use of the Marina shall be at the User's own risk and the Marina 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 Marina's gross negligence. The Marina shall not provide safety watch, weather watch, or security services to prevent or reduce the likelihood of injury, theft or damage.
- 9.3 The Marina does not guarantee the suitability of any Berth, equipment, gear or other facilities provided.
- 9.4 The Owner is obliged to fill in the Unattended Vessel Form – Annex II of this agreement for periods during which the boat may be left unattended.

10. RESERVATIONS AND DEPARTURES

- 10.1 The Marina retains the right to reserve berthing space at the Marina for any Vessel upon the payment of a non-refundable minimum reservation fee equivalent to twenty five per cent (25%) of the applicable Berthing Fee. Until such time as the reserved Berth is utilised, the Marina may utilise the said Berth at its discretion.
- 10.2 Late departures following the lapse of the contractual or extended period hereof will cause the Marina to charge a penalty fee for each day or part thereof of delay equivalent to double the daily Berthing Fees then current according to the tariff of charges provided in 'Annex III'.

11. FIRE PREVENTION

- 11.1 Marina users 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 standard 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 substance shall be brought onto the Marina unless properly secured. Any such substance kept aboard must be held in appropriate containers and be stowed in a seaman like manner. Gas bottles shall be turned off when not in use. Work with hazardous or inflammable substances cannot be undertaken at the Marina.

12. POLLUTION

- 12.1 Marina users 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 onto the Marina unless properly secured. Any such substance held aboard must be held in appropriate containers and be stowed in a seaman like 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 the Berthing Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance of any of its obligations thereunder 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 affected 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 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.

14. TERMINATION

- 14.1 If the Owner is in breach of any of the conditions of the Berthing Agreement, including without limitation the provisions of Clause 4.6 of these Rules and remains so in default for a period of five (5) working days from receipt of notice in writing indicating the breach and requesting its remedy, the provisions of the Berthing Agreement will be ipso jure terminated, and the Marina will be authorised to terminate all supplies and service to the Vessel and the Owner. Provided that if the nature of the breach is such that more than five (5) working 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 to its completion.
- 14.2 Failure by the Owner to vacate the Berth upon termination of the Berthing Agreement in terms of Clause 14.1 of these Rules will authorise the Marina to charge the Owner by way of penalty due for each day or part thereof, Berthing Fees equivalent to five times the then current tariff, and to take all measures to ensure payments of all amounts due, including the enforcement in terms of law of the possessory lien contemplated in Clause 4.5 of these Rules. The Marina may move the Vessel at the Owners' risk and out of the Marina on tow, and charge the Owner for any subsequent berthing, storage and other costs incurred.

15. JURISDICTION

- 15.1 The Berthing Agreement is covered by the Laws of Malta, and any dispute that may arise in terms hereof shall be determined exclusively by arbitration proceedings contemplated by the Arbitration Act (Cap. 387 of the Laws of Malta).

16. NOTICES

- 16.1 Notice on the Owner Captain shall be deemed to have been duly served after the lapse of two (2) days from the date of posting either by registered letter or when attached to a conspicuous part of the Vessel and documented by a dated photograph, whilst that on the Marina when delivered during office hours to the Marina's offices by means of a registered letter.