

SERVICE ORDER

TERMS OF BUSINESS

(to be read in conjunction with the completed Service Order)

IMPORTANT ADVICE

YOUR ATTENTION IS DRAWN TO SPECIFIC CONDITIONS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP (INCLUDING CONDITION 5) AND ABP'S RIGHT TO DETAIN AND SELL YOUR VESSEL (CONDITION 11).

ABP UNDERTAKES NO OBLIGATION TO EFFECT INSURANCE (AND MAKES NO CHARGE FOR INSURANCE). CUSTOMERS ARE ADVISED TO EFFECT INSURANCE THEMSELVES.

ABP RESERVES THE RIGHT TO MAKE CHANGES TO THESE CONDITIONS AT ANY TIME. THE CUSTOMER WILL BE SUBJECT TO THE CONDITIONS IN FORCE AT THE DATE OF THE SERVICE ORDER.

EXCEPT TO THE EXTENT THAT A BESPOKE WRITTEN AGREEMENT HAS BEEN ENTERED INTO BETWEEN YOU AND ABP, WHERE THESE CONDITIONS ARE INCONSISTENT WITH TERMS AND CONDITIONS THAT PREVIOUSLY APPLIED OR WERE UNDERSTOOD TO APPLY TO THE SERVICE ORDER, THESE CONDITIONS WILL PREVAIL.

1. DEFINITIONS & INTERPRETATION

1.1 In these Conditions, the following words shall have the following meanings:

“**ABP**” means Associated British Ports whose principal office is at 25 Bedford Street, London WC2E 9ES or such other address as may be notified by ABP from time to time;

“**ABP Regulations**” means all rules, codes of practice or other directions or regulations issued by ABP from time to time in relation to the Port;

“**Applicable Laws**” means all applicable law and legislation of any jurisdiction including all or any statutes, rules, regulations, statutory guidance, treaties, directives, decisions, directions, recommendations, codes of practice, guidance notes, circulars, byelaws, orders, notices, demands, regulations or official guidance issued by any Competent Authority which are applicable to the Customer and/or to the Port as the same may be amended or modified from time to time;

“**Car Park**” means the car park at the Port where ABP authorises a vehicle belonging to the Customer or Customer Invitees to be parked from time to time;

“**Competent Authority**” means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over ABP or the Owner or having responsibility for the regulation or governance of any aspect of the performance of this Licence and/or any activities carried out at the Port;

“**Conditions**” means these terms of business, as may be updated by ABP from time to time;

“**Customer**” means the person specified as the owner of the Vessel on the Service Order;

“**Customer Invitees**” means any person or company whom the Customer invites onto the Port;

“**Customer Property**” means any gear, equipment, dinghy, luggage, keys (including keys to the Vessel), goods or any other property (other than the Vessel) which is owned by or in the control and possession of the Customer or any of the Customer Invitees (including, without limitation, that which is onboard a Vessel);

“Harbour Master” means the ABP Harbour Master or Dock Master for the Port (as appropriate) or their authorised representative;

“Marina” means Fleetwood Haven Marina at the Port;

“Port” means ABP’s Port of Fleetwood (including the Marina, the Berth, the Car Park, slipways, roadways and all other land, water, quays, jetties, buildings and other structures within ABP’s statutory harbour jurisdiction or otherwise owned or operated by ABP), and references to the **“Port”** are to be construed as if it was immediately followed by the words “or any part of it”;

“Services” means those services specified in the Service Order to be provided by ABP to the Customer which have been agreed between ABP and the Customer prior to the completion of the Service Order;

“Service Order” means the attached service order which has effect as part of these Conditions; and

“Vessel” means the vessel specified as such on the Application Form.

1.2 In these Conditions: (a) unless otherwise provided or unless the context otherwise requires: (i) the singular shall include the plural and words in the plural shall include the singular; (ii) the words **"include"**, **"including"** and **"in particular"** are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them; and (iii) the words **"other"** and **"otherwise"** are not to be construed as being limited by any words preceding them; (b) the headings are to be ignored in construing these Conditions; and (c) reference to any statute or statutory provision includes a reference: (i) to that statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any statute or statutory provision; and (ii) any subordinate legislation made under the relevant statutory provision; and (d) the specificity of any particular Condition is without prejudice to the generality of any other Conditions.

2. SERVICES

2.1 ABP will only provide the Services upon its receipt and acceptance of a Service Order completed and duly signed by or on behalf of the Customer.

2.2 ABP will carry out any Services with reasonable skill and care.

2.3 Unless otherwise agreed in writing, ABP has complete freedom in respect of the way in which any Services are carried out. In the event that the Customer gives ABP any specific instructions, ABP reserves the right to deviate from the Customer’s instructions (whether or not accepted by ABP) in any respect, where it is reasonable for ABP to do so, and the Customer shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in relation to such deviation.

3. FEES AND ESTIMATES

3.1 In the absence of express agreement to the contrary, the fees payable by the Customer to ABP for the provision of the Services by ABP or, where applicable under these Conditions, for the use by the Customer of ABP facilities, shall be based on time and materials expended and services provided.

3.2 When ABP gives to the Customer an estimate or indication (whether in writing or orally) of the fees for the Services or, where applicable under these Conditions, for the use of ABP’s facilities at the Marina, ABP will exercise skill and judgement in doing so. Such estimates are subject always to the accuracy of information provided by the Customer, and are usually based only on a superficial examination and will not include the cost of any additional repairs or work found necessary to the Vessel and/or Customer Property during the work nor the cost of any extensions to the work comprised in the estimate.

3.3 ABP will inform the Customer promptly of any proposed increase in estimated prices and the reasons therefore, and will only proceed with the work or supply with the approval of the Customer. The Customer 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 to the fee estimate.

3.4 Fees in respect of storage of a Vessel on the hard-standing shall be payable in accordance with the tariff rates. If the Customer holds a 12 month annual Berthing Licence and the Berthing Licence terminates early for any reason, the full tariff rate shall be payable in respect of any use of the hard-standing (whether during the period in which the Berthing Licence was held or after its early termination), and such amount shall be payable on the date of termination of the Berthing Licence.

4. DELAYS

4.1 The time for completion of the Services is given in good faith but is not guaranteed. ABP shall not be responsible for any delay in completion of the Services or for the consequences of any such delay, unless it arises from its willful acts or omissions or from its negligence.

5. LIABILITY

5.1 ABP shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by ABP or any defect in any part of Vessel); this extends to loss or damage to the Vessel or Customer Property left with ABP for repair or storage, and harm to persons entering the Port or using any of ABP's facilities or equipment at the Marina.

5.2 Customers may themselves be liable for any loss or damage caused by them, their Vessel, and while their Vessel or other Customer Property is at the Port or is being worked on by ABP. As such, Customers are obliged to maintain adequate insurance in accordance with the terms of Condition 18 below.

5.3 Subject to Condition 5.5, ABP shall not be liable to the Customer for any:

- (a) loss of profit (direct or indirect);
- (b) loss of business, contracts, anticipated savings or depletion of goodwill (direct or indirect);
- (c) any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (howsoever caused);
- (d) the wrongful act, omission and/or neglect or any breach of this Licence by the Customer or any Customer Invitees; or
- (e) any failure or inability of the Customer, the Customer Invitees or any other persons (other than ABP) to comply with their obligations under the Applicable Laws or the directions or orders of the Harbour Master or with any ABP Regulations,

in each case whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise which arises out of or in connection with this Licence.

5.4 Subject to Condition 5.5, ABP's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising out of or in connection with this Licence will be limited to the amount which is the lesser of:

- (a) the market value of the Vessel or Customer Property (as applicable) immediately prior to its loss, destruction, damage or theft (as applicable); or
- (b) £300,000 (three hundred thousand pounds sterling).

5.5 Nothing in these Conditions excludes or limits the liability of ABP for death or personal injury caused by ABP's negligence, or for fraudulent misrepresentation, or for any other matter which it would be unlawful to exclude or limit ABP's liability.

6. VESSEL MOVEMENTS

- 6.1 ABP reserve the right to move any Vessel or Customer Property at any time, for reasons of safety, security or good management of its business and premises.

7. PAYMENT OF FEES

- 7.1 In consideration of the provision of the Services by ABP or, where applicable under these Conditions, for the use by the Customer of ABP facilities, the Customer agrees to pay ABP the fees determined in accordance with Condition 3 in accordance with these Conditions.
- 7.2 Unless otherwise stated, the fees (and any other charges due to ABP under these Conditions) are exclusive of VAT.
- 7.3 Unless otherwise agreed between ABP and the Customer, any fees due to ABP under these Conditions shall be due and payable on demand and before the Vessel departs the port. No Vessel will normally be permitted to leave the port until all sums outstanding have been paid by the Customer and agreement has been obtained from the Port Manager, Harbour Master or one of ABP's authorised representatives.
- 7.4 Without prejudice to any other rights or remedies which ABP may have under these Conditions, ABP has the right to charge interest at the rate of 4% above the National Westminster Bank plc base rate on all amounts overdue and such interest shall accrue on a daily basis until payment is received.
- 7.5 Any payments due and owing to ABP pursuant to these Conditions will be made without set-off, withholding or deduction of any kind.
- 7.6 In the event of any non-payment of any monies due to ABP under these Conditions, ABP reserves all its rights to recover any unpaid sums, including those rights set out in Condition 11.

8. RETENTION OF TITLE/RISK

- 8.1 Title to all goods, equipment and materials supplied by ABP to a Customer shall remain with ABP until full payment has been received by ABP.
- 8.2 Risk in all goods, equipment and materials supplied by ABP to a Customer shall pass to the Customer at the time of supply to the Customer.

9. GUARANTEE

- 9.1 Advice on whether a Customer is "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of Solicitors (who may charge). Online guidance may be obtained at the following website: www.citizensadvice.org.uk/consumer.
- 9.2 Where a Customer is a consumer he has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these Conditions.
- 9.3 Where ABP supply goods or services to a partnership or company or to a customer who is acting in the course of a business or a commercial operation (a "**Business Customer**") then:
- (a) no article supplied by ABP to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply, the Business Customer has sufficiently explained the purpose for which it is required and made it clear that it is relying on ABP's skill and judgement; and

- (b) no proprietary article specified by name, size or type by a Business Customer shall carry any such express, or implied term, but ABP will assign to the Business Customer any rights ABP may have against the manufacturer or importer of that article.

10. ACCESS TO MARINA/WORK ON THE VESSEL

- 10.1 Subject to the terms of Condition 10.2 no work shall be done on a Vessel or Customer Property while at the Marina, without ABP's prior written consent, other than minor running repairs or minor maintenance of a routine nature by the Customer or Customer Invitees not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with ABP's schedule of work, nor involving access to prohibited area.
- 10.2 Prior written consent will not be unreasonably withheld where:
 - (a) the work is of a type for which ABP would normally employ a specialist sub-contractor; or
 - (b) the work is being carried out under warranty by the manufacturer and/or supplier of the Vessel, or any part of the equipment to which the warranty relates.
- 10.3 The Customer agrees to ensure that neither the Customer nor any Customer Invitees shall have access to the Vessel during periods of work by ABP on the Vessel without ABP's prior consent, which shall not be unreasonably withheld.
- 10.4 The Customer further agrees to ensure that no lifting equipment (including cranes and low loader vehicles) shall be brought onto the Marina by or on behalf of the Customer nor any Customer Invitees except where ABP have given its prior consent to the Customer. Such consent is conditional upon the Customer:
 - (a) agreeing with ABP in advance a fee payable to ABP in consideration of ABP allowing the lifting equipment to be brought onto the Marina and such fee shall be determined in accordance with the provisions of Condition 3 above; and
 - (b) providing ABP in advance with a Risk Assessment Method Statement, a lift plan and a corresponding insurance policy to ABP's reasonable satisfaction.
- 10.5 All Customer Property (including support blocks and cradles) brought onto the Marina by the Customer and/or Customer Invitees in order to carry out work on a Vessel or other property in accordance with this Condition 10 must be removed from the Marina as soon as reasonably practicable and, in any case, within 24 hours after completing such work.
- 10.6 Where Vessel or other Customer Property has been stored in a compound at the Marina in order to carry out work on it in accordance with this Condition 10, the Customer undertakes to clean the compound as soon as reasonably practicable and, in any case, within 24 hours after completing such work such that the compound is returned to the same condition as it was prior to the work. If the Customer fails to clean the compound to ABP's reasonable satisfaction within the stipulated timeframe, then ABP reserve the right (but shall not be obliged) to clean the compound itself and the Customer shall reimburse ABP in full and on demand for all costs and expenses incurred by ABP in undertaking such cleaning.
- 10.7 All hull washing carried out by ABP will be charged at the published tariff rate. Where the Customer wishes to wash the hull of its Vessel at the Marina themselves, the following shall apply:
 - (a) the Customer must obtain ABP's prior written consent;
 - (b) the Customer shall only carry out the wash within the designated wash down bay at the Marina;
 - (c) the Customer must agree that the wash will be completed within the agreed time frame as set out in the tariff;

- (d) ABP will grant consent for self-washing to be completed subject to acceptance of terms and pricing laid out in the tariff;
- (e) granting Customer access to and the use of the designated wash down bay and the applicable fee shall be determined in accordance with the provisions of Condition 3 above.

11. RIGHT OF SALE

11.1 Where ABP accepts a Vessel or Customer Property for repair, refit, maintenance or storage ABP do so subject to the provisions of the Torts (Interference with Goods) Act 1977 (the “**Act**”). This act confers a Right of Sale on ABP 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 ABP have given notice to the Customer in accordance with the Act. For the purpose of the Act it is recorded that:

- (a) goods for repair or other treatment are accepted by ABP 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;
- (b) ABP’s Obligation as custodian of goods accepted for storage ends on its notice to the Customer of termination of that obligation; and
- (c) the place for delivery and collection of goods shall be at ABP’s premises unless agreed otherwise.

Advice regarding the Act and its effect may be obtained from any of the sources referred to at Condition 9.1 above.

11.2 The Customer acknowledges that ABP has rights under law in certain circumstances to bring action against a Vessel to recover debt or damages. Such action may involve the detaining of the Vessel or the arrest of the Vessel through the courts and its eventual sale by the courts. Sale of a Vessel may also occur through the ordinary enforcement of a judgment debt against the Vessel or other Customer Property.

11.3 In addition to the rights in Condition 11.2, ABP may exercise upon the Vessel or any other Customer Property a lien (i.e. a right to detain and hold onto the Vessel or any other Customer Property) in relation to any monies owing to ABP on any account from the Customer. In the event of any such sums not being paid within twenty-one (21) days of the date of the notice of exercise of any such lien, ABP may sell the Vessel and/or any Customer Property without further notice to the Customer and apply the proceeds towards the satisfaction of all such sums on whatsoever account owing and also all charges, expenses and monies reasonably arising during the exercise of any such lien.

12. SUB-CONTRACTING

12.1 ABP may sub-contract all or part of the work entrusted to it 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 Conditions. Where ABP exercise that right ABP shall remain responsible to the Customer for the performance of its sub-contractor.

13. SAFETY

13.1 Any person remaining on board a Vessel during lifts into or out of the water at the Marina must wear a lifejacket. If any person fails to wear a lifejacket during a lift, ABP shall be entitled to terminate the lift immediately and ABP reserve the right to charge the Customer any fees relating to the lift notwithstanding such termination of the lift.

14. VEHICLES

- 14.1 Subject to Condition 14.2, the Customer shall ensure that it and each of its Customer Invitees parks their vehicles only within the Car Park. No more than two Vehicles may be parked in any Car Park at any one time.
- 14.2 The Customer and Customer Invitees may momentarily park their vehicle in the boat compound area at the Marina for the sole purpose of loading or unloading a Vessel and/or Customer Property and provided that, upon completing such loading and/or unloading, such vehicle is then immediately removed from the boat compound area.
- 14.3 The parking of a vehicle by the Customer or any Customer Invitees in any Car Park is at the Customer's or the Customer Invitees' risk (as applicable).
- 14.4 All Vehicles must comply with all Applicable Laws while at the Port.
- 14.5 Vehicles that have a Statutory Off Road Notification declared or licensed against them are strictly prohibited.

15. FORCE MAJEURE

- 15.1 ABP shall not be liable to the Customer for any failure to perform or delay in performing its obligations under these Conditions due to an event beyond ABP's reasonable control including (without limitation): (i) war (actual or threatened), revolution, civil or industrial commotion, blockade of the Port; (ii) closure of or damage to the Port or any relevant part of the Port as a result of: explosion, fire, radio active contamination, cyber attack, ransomware attack or other cyber security issue, terrorist activity (actual or threatened), natural disaster or severe weather, any action of any Competent Authority, impact by ship or vessel, or impact by aircraft or object dropped or falling from them; (iii) epidemic or pandemic; and/or (iv) any act of ABP which, though deliberate, is reasonably necessary for the safety or preservation of persons and/or the Port having taken reasonable steps to mitigate where reasonably practicable to do so in the circumstances.

16. SECURITY

- 16.1 The Customer acknowledges and agrees that the use of the Port is at the Customer's risk and while ABP provides general security at the Port, ABP makes no warranty or representation to the Customer that such security will be adequate or sufficient for the security or safekeeping of the Vessel or Customer Property.
- 16.2 The Customer further acknowledges and agrees that it shall observe and comply with all ABP Regulations including (without limitation) those relating to safety and security at the Port and shall (without limitation to any other instructions relating to safety and security) ensure that all security gates at the Marina are closed behind them when entering or exiting the Marina.

17. NO DUTY TO SALVAGE

- 17.1 ABP shall not be under any duty to salvage or preserve the Vessel or any Customer Property unless ABP agrees to do so on such terms as may be agreed between the Customer and ABP.
- 17.2 Notwithstanding Condition 17.1, ABP reserves the right to salvage or preserve the Vessel or any Customer Property where ABP reasonably believes that a risk is posed to the safety of people, property, the Port or the Environment. In such circumstances, ABP has the right to recover from the Customer the costs of carrying out such works in accordance with ABP's (or its appointed contractor) normal commercial charging basis and, where appropriate, to claim a salvage reward.

18. INSURANCE

- 18.1 The Customer is responsible for maintaining appropriate and sufficient insurance while its Vessel or other property is at the Port or during the Services, including but not limited to: (i) personal and property insurance in relation to the Vessel and Customer Property; (ii) third party

liability cover for not less than £3,000,000 (three million pounds sterling); and (iii) cover against wreck removal and salvage. The Customer shall produce evidence to ABP of such insurance cover prior to the commencement of the Service and together with the Service Order.

19. COMPLIANCE WITH LAW

19.1 The Customer will at all times keep him or her self-informed of, and observe and comply with all Applicable Laws and ABP Regulations relevant to the Customer's and Customer Invitees' use of the Port.

20. BRIBERY / CORRUPTION, MODERN SLAVERY & ANTI-FACILITATION OF TAX EVASION & SANCTIONS

20.1 ABP and the Customer shall not, and shall each procure that its representatives (including the Customer Invitees in the case of the Customer) shall not, engage in any activity, practice or conduct which constitute an offence under any applicable:

- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010; or
- (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015; or
- (c) tax evasion facilitation laws, regulations and codes, including the Criminal Finances Act 2017.

20.2 ABP and the Customer each warrant that they are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including the lists maintained by the UK Government, the United Nations Security Council, the US Government, the Canadian Government, the European Union or its member states, or any other applicable Competent Authority.

20.3 Without prejudice to the generality of Condition 20.2, the Customer further warrants that the:

- (a) Vessel;
- (b) Customers, crew, charterers, operators and/or managers of the Vessel; and
- (c) Customer Invitees,

are in each case not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party.

21. DATA PROTECTION

21.1 Without prejudice to Condition 19.1, in relation to the Customer's use of or activities at the Port, the Customer shall at all times comply with all Applicable Laws and ABP Regulations relating to the security, confidentiality, protection or privacy of personal data.

21.2 The Customer acknowledges that surveillance systems such as CCTV, Automatic Number Plate Recognition (ANPR) and body worn camera systems may be used at the Port (including for the purposes of safety and security). The Customer further acknowledges that the information processed by such systems may include personal data about the Customer or Customer Invitees. This information may be shared by ABP with other persons (including the data subjects themselves, employees, agents or services providers of ABP, police forces, security organisations and persons making an enquiry) and it may be used in any form of proceedings.

21.3 The Customer warrants and agrees that it will make the Customer Invitees aware that ABP may process personal data relating to data subjects who may enter or use the Port (including in relation to the use of any surveillance systems) and as further described in ABP's privacy notice

(as amended from time to time), which can be accessed at <https://www.abports.co.uk/support/privacy-notice/>

- 21.4 Unless the context otherwise requires, the terms "**process**", "**personal data**" and "**data subject**" used in this Condition 21 shall be interpreted and construed by reference to any Applicable Laws relating to the security, confidentiality, protection or privacy of personal data.

22. NOTICES

- 22.1 Any notices in writing under these Conditions will be in writing and delivered by hand or sent by pre-paid first-class post or electronic mail:

- (a) in case of communication to ABP to:

Address: Associated British Ports, Port & Marina Office, Fleetwood, Lancashire, FY7 6PP

Email: fleetwoodhaven@abports.co.uk

or such other address or electronic mail address as will be notified to the Customer by ABP from time to time; or

- (b) in the case of communication to the Customer to:

the Vessel located at the Marina, provided that if the Customer is not present at the Vessel at the time of delivery a copy of the notice will also be delivered to:

- i. the home address specified as such in the Service Order; or
- ii. the last known address of the Customer; or
- iii. the electronic mail address specified in the Service Order or otherwise notified to ABP by the Customer from time to time.

23. GENERAL

- 23.1 These Conditions (and any dispute or claim relating to them, their enforceability or its termination) and any legal relationship between ABP and the Customer shall be governed by and interpreted in accordance with English law.
- 23.2 The Customer submits to the exclusive jurisdiction of the High Court of Justice in England, but ABP may enforce any contract between ABP and the Customer in any court of competent jurisdiction.
- 23.3 Except as otherwise provided in these Conditions, a person who is not a party has no right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.
- 23.4 These Conditions supersede any previous written or oral agreement between the parties in relation to the matters dealt with in these Conditions (read in conjunction with the Service Order) and constitute the whole agreement between the parties relating to the subject matter of these Conditions (read in conjunction with the Service Order).
- 23.5 The rights and powers of ABP under these Conditions are in addition to and not in substitution of the rights and powers of ABP conferred by its current bye-laws or any other statutory legislation which grants ABP rights over the Port.

1st January 2023