

LYMINGTON HARBOUR COMMISSIONERS

Conditions of Use of Visitor Moorings

1. DEFINITIONS

Harbour	The area of the Harbour over which Lymington Harbour Commissioners exercise their jurisdiction as defined by the Pier and Harbour Order (Lymington) Confirmation Act, 1951 and the subsequent Lymington Harbour Revision Orders (HRO) 1976 to 2014, and as may be amended by subsequent enactments from time to time.
Visitor Moorings	The mooring facilities provided by us from time to time for mooring visiting vessels, including any buoy, pile, post, chain, pontoon or like apparatus.
us, we, our	Lymington Harbour Commissioners as constituted from time to time (and its employees, servants and / or agents as the context requires).
Vessel	The visiting vessel which is authorised to use the Mooring.
You	You, as the person who made the booking for the Mooring or who is using the Mooring.

2. USE OF VISITOR MOORINGS

- 2.1 **Use of the Mooring:** Unless otherwise agreed by the Harbour Master, use of the designated Visitor Moorings at Town Quay Pontoon, Dan Bran Pontoon, and the Harbour Master Pontoon is conditional upon advance booking in accordance with our “Walk Ashore Moorings – Advance Booking Policy” and payment in advance of the published visitor overnight stay and short stay charges applicable from time to time (failing which we may accept payment on demand at our discretion). Use of the designated Visitor Moorings at Town Quay Buoys is conditional upon payment on demand of the published visitor overnight stay and short stay charges applicable from time to time, as published on our website (www.lymingtonharbour.co.uk/visitor-dues-and-charges) from time to time.
- 2.2 **Acceptance of these Conditions of Use:** Use of the Visitor Moorings constitutes acceptance of these Conditions of Use. We may revise these Conditions of Use at any time.
- 2.3 **Allocation of Mooring and Duration:** Use of the Visitor Moorings is subject to availability and we may limit your length of stay or allocate a different Visitor Mooring to you at our discretion or for operational reasons and at busy times we may require you to raft out. For overnight bookings you must arrive after 13.00 hours and depart before 12.00 hours. Short-stay bookings are between the following times: 08.00 – 12.00; 12.00 – 16.00; 16.00 – 20.00 and 20.00 – 00.00. You must depart at or before the departure time, failing which we shall be entitled to move the Vessel and you will be liable to pay a towage charge as published on our website (www.lymingtonharbour.co.uk/resident-harbour-dues-charges) from time to time.

3. SHORE POWER

Where shore power is available (Dan Bran and Town Quay Pontoons), a connection will be allocated on a first come first served basis, subject to availability of power sockets and will be subject to our Conditions of Use of Electrical Connection which are available on our website at www.lymingtonharbour.co.uk/terms. We do not guarantee a continuous supply of power.

4. YOUR OBLIGATIONS

4.1 Whilst using the Visitor Moorings you must at all times:

4.1.1 notify the Harbour Master or Harbour Office if your Vessel is to be left unattended for more than 24 hours.

4.1.2 provide and correctly use mooring equipment which is suitable for the Vessel and which is maintained and in good condition, including suitable fendering and mooring lines, taking proper account of weather and tide conditions.

4.1.3 comply with all relevant national and local legislation, general and special directions, the International Regulations for the Prevention of Collisions at Sea and reasonable instructions given by us.

4.1.4 accurately declare the vessel's length overall (LOA) for the purpose of calculating charges and assessing suitability of the Mooring.

4.1.5 clear up and properly dispose of any fouling caused by any dog under your control and keep dogs under control and, unless onboard the Vessel, on a short lead at all times.

4.1.6 ensure compliance with these terms and conditions by all persons using or visiting the Vessel.

4.2 You must not:

4.2.1 cause any nuisance or annoyance to other Harbour users, through noise, light or fumes from engines or generators, music or other equipment or machinery or otherwise.

4.2.2 act or behave in such a manner or act in such a way that causes, or is reasonably likely to cause any injury, distress, danger, obstruction, nuisance or annoyance to us, other users of or person in the Harbour or any person residing in the vicinity of the Harbour.

4.2.3 cycle or use any scooter, skateboard or similar on any pontoon or slipway.

4.3 Whilst using the Visitor Moorings you must ensure that at all times the Vessel:

- 4.3.1 is sound, watertight and seaworthy.
- 4.3.2 is insured with a reputable insurer, and that the insurance covers the Vessel for recovery and removal from the Harbour in the event of sinking and carries a minimum of £3,000,000 in respect of public liability and third party insurance.
- 4.4 Whilst using the Visitor Moorings you must ensure that at all times the Vessel and its equipment:
 - 4.4.1 is maintained and kept in a safe, well maintained, seaworthy and clean condition and that the Vessel's electrical systems and equipment, including the shore power cable, are of proper manufacture, professionally inspected and to UK government approved standards.
 - 4.4.2 is kept in such condition that it, they or any part of them:
 - a. is/are not dangerous, hazardous, poisonous, toxic, radioactive, flammable or injurious or liable to become so (other than distress signals/flares which are to be safely stowed);
 - b. will not contaminate or cause danger, injury, pollution or damage to any person, the harbour area, any other goods, equipment or vessel or the environment;
 - c. is/are not rotten, infested, verminous or subject to fungal attack or liable to become so;
 - d. contain no unauthorised or controlled substances, contraband, pornographic material, sanctioned or other illegal matter; and
 - e. is/are in a safe, fit and proper condition to be handled or moved or otherwise dealt with by us and our subcontractors and our or their equipment.

5. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

- 5.1 **Our responsibility:** We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking these terms or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen. We do not exclude or limit in any way our liability to you where it would be unlawful to do so.
- 5.2 **Exclusion for business losses:** We are not liable for economic or business losses under any circumstances. The Visitor Mooring is provided to you for your own leisure purposes and private use only. If you use the mooring for or in connection with any

commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

5.3 **Limitation of liability:** Nothing in these terms affects our entitlement to limit liability in accordance with section 191 Merchant Shipping Act 1995 or any amendment or re-enactment thereof.

5.4 **Business customers:** You are a business customer if your use of the Visitor Mooring is wholly or mainly in connection with your trade, business, craft or profession, even if you are an individual. This paragraph applies to business customers only. These terms constitute the entire agreement between you and Lymington Harbour Commissioners. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by us or on our behalf which is not set out in this document and that you have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions. Notwithstanding anything in paragraphs 5.1 – 5.2:

5.4.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss whatsoever arising under or in connection with any contract between us; and

5.4.2 our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £1,000,000.

5.4.3 The terms implied by sections 13 and 14 of the Supply of Goods and Services Act 1982 are excluded.

6. MISCELLANEOUS

6.1 **Events outside our control:** We are not responsible for circumstances, events or delays outside our control. If our provision of the Visitor Mooring is affected by an event or circumstances outside our control we will take reasonable steps to minimise the effect of the event, circumstances or delay. Provided we do this we will not be liable for delays or effects caused by the event, circumstances or delay, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any period for which the Visitor Mooring was not available to you due to circumstances outside our control.

6.2 **Statutory powers and duties:** Nothing in these Conditions of Use affects our powers or duties under any enactment.

6.3 **Personal Data:** How we use any personal data you give us is set out in our Privacy Policy which is available on our website at www.lymingtonharbour.co.uk/terms.

6.4 **Law and jurisdiction:** These Conditions of Use and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions of Use or their subject matter or formation (save for proceedings for the arrest of a vessel which may be brought in any other jurisdiction).