

LYMINGTON HARBOUR COMMISSIONERS

Conditions of Use for Electric Davit & Electrical Connection on Commercial Quay

1. DEFINITIONS

Commercial Fisher	A fisher (whether an individual or company or other entity) who operates a fishing business from Lymington Harbour and has a commercial fishing berth or mooring licence with us.
Davit	The electric davit located on the commercial quay at Town Quay with a safe maximum working load of 500kg.
Electrical Connection	The electrical connection facility on the commercial quay at Town Quay.
IOSH	Institution of Occupational Safety and Health.
LOLER	Lifting Operations and Lifting Equipment Regulations 1998.
SSOP	Standard Safe Operating Procedures published by us to manage the safe use of the Davit and the Electrical Connection, as updated from time to time.
us, we, our	Lymington Harbour Commissioners as constituted from time to time (and its employees, servants and / or agents as the context requires).
Visiting Commercial Fisher	A fisher (whether an individual or company or other entity) who operates a fishing business and who is not a Commercial Fisher but who lands their catch at Town Quay.
You, your	You, as the Commercial Fisher or Visiting Fisher and includes any individual within your employ or any person who is acting on your behalf or under your direction or control.

2. USE OF DAVIT

2.1 Subject to the paragraph 2.2, the Davit is available for use by you for the purpose of loading and unloading fish boxes, net boxes, and other equipment related to their commercial fishing business, and may be used subject to availability.

2.2 Use of the Davit is conditional upon:

- 2.2.1 the holding of a valid permit by the user (the user being an individual and either a Commercial Fisher or Visiting Commercial Fisher or an individual acting on your behalf or within your employ or who is acting under your direction or control in connection with the fishing business), issued by us.
- 2.2.2 the payment of any charges on demand at the published charges applicable from time to time.
- 2.2.3 your compliance with the SSOP for the use of the Davit.
- 2.3 A permit will be issued at our discretion and we will not issue a permit to any person who has not:
 - 2.3.1 received training in the operation of the Davit from us;
 - 2.3.2 completed an IOSH approved LOLER training course and produced a valid certificate of achievement to us.
- 2.4 We give no guarantee that the Davit will be available for use or operational.
- 2.5 Use of the Davit amounts to acceptance of these Conditions of Use. We may revise these Conditions of Use at any time.

3. USE OF ELECTRICAL CONNECTION

- 3.1 A 16 amp Electrical Connection is available on the commercial quay at Town Quay for the use by Commercial Fishers, subject to: -
 - 3.1.1 payment on demand at the published charges applicable from time to time (if applicable);
 - 3.1.2 compliance with the SSOP for the use of the Electrical Connection.
- 3.2 We do not guarantee a constant supply of electricity and use of the Electrical Connection is subject to availability. We make no assurance as to the suitability of your equipment to accept the electrical supply, it being your responsibility to assess its suitability.
- 3.3 Use of the Electrical Connection amounts to acceptance of these Conditions of Use. We may revise these Conditions of Use at any time.

4. OUR OBLIGATIONS

We are responsible for the maintenance, testing and certification of the Davit, including the lifting cable, hook, and electrical supply.

5. YOUR OBLIGATIONS

- 5.1 You are responsible for providing your own lifting strops, chains, spreader bars and other equipment required which must be in a good and safe working condition. Without

affecting the terms of any mooring or other agreement between you and us, you must ensure that all lifting equipment you provide in connection with the use of the Davit, such as strops, chains, spreader bars etc are properly manufactured, tested and suitable for your intended lift.

- 5.2 Without affecting the terms of any mooring or other agreement between you and us, you must ensure that any electrical systems and equipment you connect to, including the power cable, are of proper manufacture, professionally inspected and to UK government approved standards.
- 5.3 You must comply with the SSOPs for the use of the Davit and the Electrical Connection (as applicable).
- 5.4 You must ensure that at all times the Vessel is insured with a reputable insurer, that you are a named insured, that the insurance covers your use of the Davit and the Electrical Connection and the use of the same by any person within your employ or who is acting on your behalf or under your direction or control, 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 cover.
- 5.5 You will be liable to pay to us the amount of any liability, cost, or expense we incur as a result of your failure to comply with this paragraph 5.

6. **OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

6.1 **Our responsibility:** 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 or is due to circumstances or events beyond our reasonable control, such as adverse weather conditions, power cuts, breakdowns, overloading, damage caused by third parties, or damage caused by your negligence or failure to comply with these terms and conditions. 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.

6.2 **Exclusions / limitation of liability:** Notwithstanding anything in paragraph 6.1:

6.2.1 **Business losses:** We are not liable for economic or business losses under any circumstances. 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, business interruption or loss of business opportunity, 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;

6.2.2 **Limitation of liability:** 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:

- a. in the case of loss of or damage to a vessel the lower of:
 - i. the reasonable cost of repair;
 - ii. the market value of the Vessel immediately prior to the loss or damage, and the value of any fish or other commercial licences associated with the Vessel shall not be included in any appraisal of the Vessel's market value;
 - iii. the sum of £500,000.
- b. In the case of loss of or damage to equipment, the lower of:
 - i. the reasonable cost of repair;
 - ii. the market value of the equipment immediately prior to the loss or damage;
 - iii. the sum of £20,000.
- c. in the case of loss of or damage to goods, including a vessel's catch, the lower of:
 - i. the market value of the goods lost or damaged immediately prior to the loss or damage and in relation to loss or damage to part of the goods, then the value only of the part lost or damaged as a proportion of the whole (to be calculated by weight in the absence of specific values for the damaged part);
 - ii. the reasonable cost of repairs.

and, in any case, shall not exceed £500,000 in respect of one event or occurrence.

6.2.3 **Implied terms:** the terms implied by sections 13 and 14 of the Supply of Goods and Services Act 1982 are excluded.

7. MISCELLANEOUS

7.1 **Entire agreement:** These terms, together with the terms of any applicable mooring agreement or permit, 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 these Conditions of Use and that you have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions of Use.

- 7.2 **Statutory rights and powers:** Nothing in these Conditions of Use affects our rights, powers or duties under any enactment or applicable law or our entitlement to limit liability other than in accordance with these Conditions of Use.
- 7.3 **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.
- 7.4 **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).