

These Terms & Conditions shall apply to anyone (referred to in these terms as “you”) using a Space in the Car Park.

1. Definitions

The following definitions and rules of interpretation apply in these Terms and Conditions (“Terms”).

1.1 Definitions:

Car: one motor car which belongs to you and being not wider than 2.3 metres nor longer than 4.7 metres

Car Park: the car park at the junction of Nelson Place and Quay Road, Lymington.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Annual Fee: the amount payable per annum published from time to time on our website: www.berthon.co.uk

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Permitted Use: the parking of the Car for on the Space for private purposes.

Space: such parking space as may be allotted to you by Us in our discretion from time to time.

We / Us / Our: Berthon Boat Co Ltd, The Shipyard, Lymington, SO41 3YL 01590 673312

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

1.2 Clause headings shall not affect the interpretation of these Terms.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular.

1.5 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 Any obligation not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

1.7 References to clauses are to the clauses in these Terms.

1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Right to park

2.1 Subject to the payment by you of the Annual Fees in advance on the dates we specify from time to time on our website you will be permitted to use the Space for the Permitted Use for the period to which the Annual Fee relates together with access over the Car Park to and from the Space.

2.2 You acknowledge that:

- (a) you will use the Space as a licensee and that no relationship of landlord and tenant is created between Us and you;
- (b) we retain control, possession and management of the Space and you have no right to exclude Us from the Space;
- (c) any right to use the Space is personal to you and is not assignable and may only be exercised by you; and
- (d) without prejudice to our rights under clause 4, we shall be entitled at any time on giving not less than 7 days' notice to require you to transfer to an alternative space elsewhere within the Car Park.

3. You agree:

3.1 To pay to Us the Annual Fee payable without any deduction in advance together with such VAT as may be payable on the Annual Fee.

3.2 To keep the Space clean, tidy and clear of rubbish and not to deposit rubbish in the Car Park.

3.3 Not to use the Space other than for the Permitted Use.

3.4 To give details to Us on request of the make, model and registration number of the Car.

3.5 To ask for Our consent before you park any different Car to 3.4 in the Space and notify Us of the make and model and registration number of the different Car.

3.6 Not to make any alteration or addition whatsoever to the Space.

3.7 Not to display any advertisement, signs or notices at the Space.

3.8 Not to do on or in the Space anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to Us or any owner or occupier of neighbouring property or any occupier of the Car Park.

3.9 Not to cause or permit to be caused any damage to:

- (a) the Car Park or any neighbouring property; or

- (b) any property of the owners or other occupiers of the Car Park, or any neighbouring property.
- 3.10 Not to obstruct any of the entrances to or exits from the Car Park or any other parking spaces in the Car Park.
- 3.11 Not to take into or keep on or in the Space any motor fuel or lubricating oil except that inside the fuel tank and engine of the Car.
- 3.12 Not to maintain, repair (except mechanical repair in cases of breakdown or other emergency) or clean the Car or refill the petrol tank of the Car on or in the Space.
- 3.13 Not to do anything that will or might constitute a breach of any Necessary Consents affecting the Space, or any statutory provision, regulation or bye-laws made by a Competent Authority with regard to the parking or use of motor vehicles.
- 3.14 Not to sleep or reside in any vehicle parked on the Space.
- 3.15 Not to do anything that will or might vitiate in whole or in part any insurance effected by Us or any other person in respect of the Car Park or any other property from time to time or cause the premium to increase.
- 3.16 To comply with any rules and regulations which We make and notify to you from time to time governing your use of the Car Park.
- 3.17 To leave the Space in a clean and tidy condition and to remove the Car and any other property from the Space on termination of your rights to use the Space. If the Car or any other property is not removed on termination of your rights to use the Space, we may dispose of it in any manner that We deem fit without incurring any liability whatsoever to you and shall be entitled to retain from any sales proceeds any sums due to Us.
- 3.18 To ensure that any vehicle using the Space is taxed, (not subject to a SORN), insured and in a roadworthy condition.
- 3.19 To indemnify Us and keep Us indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from any breach of these Terms.
- 3.20 To pay to Us interest on the Annual Fee or other payments at the rate of four per cent per annum above the base rate of Lloyds Bank from time to time calculated on a daily basis from the due date until payment if you shall fail to pay the Annual Fee or any other payments due from you when due (whether formally demanded or not).

4. Termination

- 4.1 Your rights to use the space will end on the earlier of:
 - (a) The date 12 months after they commence; and
 - (b) Us giving notice to you to terminate the rights if you breach any of the provisions of these terms
- 4.2 Termination of the right to park shall not affect the rights of either of us in connection with any breach of any obligation under these Terms which existed at or before the date of termination.

5. No warranties for use or condition

- 5.1 We give no warranty that the Space possesses the Necessary Consents for the Permitted Use.
- 5.2 We give no warranty that the Space is physically fit for the purposes specified in clause 2.
- 5.3 You acknowledge that you do not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of Us before the date the use of the Space by you commenced as to any of the matters mentioned in clause 5.1 or clause 5.2.
- 5.4 Nothing in this clause shall limit or exclude any liability for fraud.

6. Limitation of Our liability

- 6.1 Subject to clause 6.2, We are not liable for:
 - (a) the death of, or injury to you;
 - (b) any theft, damage, destruction or loss of the Car or its contents;
 - (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by you in the exercise or purported exercise of the rights granted by clause 2; or
 - (d) any loss or damage suffered by you as a result of any cause beyond our control that prevents you from using the Space or any difficulty or interruption in obtaining access to the Space by reason of temporary works of repair, maintenance or renewal of the Car Park.
- 6.2 Nothing in clause 6.1 shall limit or exclude Our liability for:
 - (a) death or personal injury or damage to property caused by negligence on the part of Us or our employees or agents; or
 - (b) any matter in respect of which it would be unlawful for Us to exclude or restrict liability.

7. Third party rights

A person who is not a party to the agreement between you and us to use the Space shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that agreement.

8. Governing law

Any dispute or claim arising out of or in connection with the right to use the Car Park shall be governed by and construed in accordance with the law of England.