

# CONDITIONS OF HIRE

## 1. Definitions

In these conditions and agreement:

'the Company' means ABC Leisure Group Limited and Subsidiaries who act as agents for Boat Owners.

'the Hirer' means the person or persons named on the booking confirmation. Where there is more than one Hirer they shall be individually responsible and liable under this agreement.

'the Boat Owner' means the person (corporate or otherwise) who owns the boat that is hired to the Hirer under the terms of these Conditions.

'the Conditions' means the conditions set out in this form.

'the price' means the price for the booking set out in the booking confirmation.

'the start date' means the date when the booking starts as set out in the booking confirmation.

'the end date' means the date when the booking ends as set out in the booking confirmation.

'the period of hire' means the period between the start date and the end date.

## 2. Booking Agreement

The parties acknowledge and agree that the Company is acting for the Boat Owner and is authorised to enter into contracts with Hirers on behalf of Boat Owners and to collect payment from Hirers and to otherwise manage the hiring of boats to Hirers.

A booking is a legally binding contract between the Hirer and the Boat Owner. Submission of a completed booking form is an offer by the Hirer and the booking agreement is made only if and when the Company gives a written boat hire confirmation. Telephone bookings do not create legal agreements and any offer by the company to hold a reservation is not legally binding until the written boat hire confirmation is issued.

The entire contract between the Boat Owner and the Hirer is contained in these Conditions and the booking form and to the extent permitted by law no representations, terms, warranty or condition expressed or implied shall be deemed to be or have been made or agreed or imported by reference to any other writing, advertisement or conversation. No agent, servant or representative of the Company has any right to alter or vary or waive any of these conditions. Nor is any such person authorised to undertake any liability whatsoever on behalf of the Boat Owner. These conditions can only be varied with the written permission signed by a Director of the Company. The Hirer acknowledges that no statement or representation which may have been made by or on behalf of the Company or the Boat Owner induced the Hirer to enter into the contract and that any such statements or representations do not form part of the contract. Any liability of the Company or the Boat Owner and any remedy of the Hirer in respect of any such statement or representation is excluded save in so far as liability in respect of any particular statement or representation may not be excluded by law. In accepting a booking, the Company's and the Boat Owner's responsibility does not extend beyond the provision of the boat and in particular there is no warranty that any particular route will be available for navigation during the period of hire. Where more than one boat is booked on the same booking form each boat shall be deemed to be the subject of a separate contract. Bookings, including optional extras, are taken subject to availability on the start date.

## 3. Group Bookings, Age Limits and Unsuitable Hirers

The Hirer must be aged 18 years or over. There needs to be a minimum of two competent persons on each boat to enable safe navigation. Although there is no age limit for driving the boat, the Hirer warrants that whenever the boat is driven by a person aged under 18 years old they will always be under the close supervision of a competent adult. Where a boat is occupied by a group the Hirer warrants that at all times a responsible person aged more than 18 years will be in charge of the group. The Hirer must provide on the booking form full details of all persons in their party. The Company or the Boat Owner may at their discretion cancel any booking made in contravention of this condition before or at the start date.

The Company or the Boat Owner may at their discretion cancel the booking and refuse to hand over the boat to any person or group who in its opinion is not suitable to take charge on the grounds of infirmity, ill health, disability, suspected influence of alcohol or drugs or who have failed to demonstrate a reasonable standard of competence following appropriate instruction in boat handling. The Company or the Boat Owner may repossess the boat at any time if in the opinion of the Company or the Boat Owner the Hirer is unsuitable for the reasons given above or if the Hirer is not behaving responsibly or if the boat or any persons are at risk. In this event as the holiday period is deemed to have started the Hirer shall remain liable to pay the hire price and no refund shall be due.

## 4. Cancellations and Changes

The agreement including the payment terms is a legally binding contract and may not be cancelled or amended except as provided in the Conditions. Should the Hirer wish to cancel or amend the booking they must advise the Company immediately by telephone and at the same time send written confirmation. The Company reserves the right to levy an administration charge of £50 for any alteration to a booking made by the Hirer after it has issued a booking confirmation. It is suggested that hirers take out Cancellation Protection, or other similar protection, which ensures that monies are refundable in the unfortunate event of them being prevented from taking their holiday. In the event of the circumstances not being covered by Cancellation Protection the company will endeavour to rebook the boat for which an administration charge of 15% of the hire price will be levied. In the event of the deposits or balances being eligible for refund the Company will charge a fee depending on the date on which the Cancellation Notice is received. More than 56 days before the Start Date 40% of the hire price, 43-56 days 50% of the hire price, 29-42 days 70% of the hire price, 8-28 days 85% of the hire price and 7 days or less 100% of the hire price.

## 5. Hire Period, Collection and Return of Boat

The hire period is as shown in the booking confirmation. The Company will endeavour to have the boat ready for the Hirer by the time stated on the booking confirmation on the start date. The Hirer must notify the Company of any likely delay in arrival as soon as possible by email or telephone. Before the Hirer departs with the boat the Company will give the Hirer such instructions, demonstrations and trials as it thinks fit and require the Hirer to check and sign for the contents, inventory and Boat Acceptance. In the event that the boat is not available because of circumstances beyond the Company's or Boat Owner's control the Company may substitute a boat of similar accommodation, but if no such boat is available the Company shall refund any payments made but shall not otherwise be liable and the contract shall be discharged. Substitution of a boat of similar accommodation will create a new contract between the Hirer and the Boat Owner of the new boat subject to all the terms set out in these Conditions and the booking form.

The boat shall be returned to the Company's hire base and be vacated in a clean and tidy condition no later than the time stated on the booking confirmation on the end date. Hirers are responsible for ensuring that their cruising schedule allows time for unforeseen contingencies so as to permit their return and vacation of the boat by the scheduled time. Breach of this condition will incur a minimum

additional charge of £50 per hour or part thereof. In addition, the Hirer will be liable for any extra costs and/or damages incurred by the Company and/or the Boat Owner as a result of the boat not being available on time for the next Hirer. Where the Company has to recover a boat and return it to the base, the Hirer shall be liable for all the costs involved.

Where operational circumstances make it necessary the Company reserves the right to require the boat to start from or return to a place other than its normal base of operation. In such circumstances the Company will where necessary provide transport to the original base.

## 6. Prices and Payment

Prices are inclusive of any V.A.T. which may be chargeable and are subject to any change in the V.A.T. rate prior to the settlement of the price in full. The booking confirmation and booking statement are not V.A.T. invoices.

Prices are in pounds sterling. The Hirer shall reimburse the Company on demand for any expenses incurred in the conversion of foreign currencies, bank charges, special clearance, re-presenting cheques, processing payments or otherwise in obtaining cleared sterling funds of the amount due on the due date. Payment is not made until cash or cleared funds have been received by the Company.

The booking deposit must be sent with the booking application and unless otherwise stated is 25% of the hire price and CPP.

The balance of the price is due not less than 8 weeks before the hire start date. Time of payment shall be of the essence of the contract. For bookings made within 8 weeks before the hire start date payment in full must accompany the booking form.

Without prejudice to any other rights of the Company it may charge interest (both before and after any judgement) at the rate of 3% over the Company's bankers base lending rate on any monies due from the due payment date until the date of payment and interest shall accrue from day to day.

## 7. Insurance

The Company insures the boat and its equipment and inventory against public liability risks. The Company's insurance does not cover personal accidents or loss or damage to personal effects. Hirers and their crews are advised to take out their own personal insurance cover. The Hirer shall pay a compulsory non-refundable accidental damage waiver of £50.00 per booking. Accidental damage waiver excludes damage arising from speeding, contact with a lock cill causing damage to the rudder, skeg or stern gear, TV aerials, chimneys, negligence, malicious or intentional damage to the boat. Also excluded is negligence, malicious or intentional damage to other boats and property and the late return of the boat and return of the boat in unclean condition.

The Hirer will indemnify the Company and the Boat Owner against all costs, damage, expenses, liability and claims howsoever arising from the negligence, neglect or default of the Hirer to the extent that they are not covered by the Company's policy.

## 8. Safety and Other Rules

The Hirer agrees to comply with the following rules at all times for the health and safety of the persons on the boat and other persons and for safeguarding the boat and other property:

Not to tow other craft or allow the boat to be towed except under professional assistance in the event of breakdown or emergency.

Not to cruise between sunset and sunrise. The boat is only equipped for cruising during daylight hours.

To observe all speed limits, not to race and not to cruise at a speed which creates a breaking wash or disturbs or inconveniences other waterway users.

Not to take or have on the boat without the Company's prior written permission any dinghies, canoes, inflatables, portable heaters, bicycles, vehicles, lighting equipment, t.v. sets, electrical appliances, (other than razors) inflammable liquids or substances, gas cylinders, barbecues, car batteries, fire arms or any other items which might create dangers or hazards.

Not to use the boat for business purposes.

Not to allow on the boat at any time more persons than the maximum number of berths and under no circumstances more than 12 persons. To give way to laden or unladen cargo boats, sailing craft, rowing boats and other human propelled craft.

Not to take the boat to sea or on tidal waters.

Not to have or carry any live fishing bait on the boat.

At all times to observe all bylaws, navigational limits or instructions and advice of CRT and other navigational authorities and the Company and their respective officers and employees.

To comply with any mooring restrictions and charges, and to be responsible of any fines levied for not doing so.

The Company and the Boat Owner reserve the right at their discretion without liability to restrict cruising areas or routes in the light of prevailing conditions.

## 9. Accidents

The Hirer is in charge of the boat and is responsible for its safe navigation and return. In the event of any accident or damage to the boat other craft or the waterway the Hirer must:

Obtain and record the name and registration number of the other boat and names and addresses of all parties involved including the other boat owners and other hirers.

Notify the Company by telephone immediately with full details of the accident including damage incurred.

NOT IN ANY CIRCUMSTANCES ADMIT OR ALLOW OTHER PERSONS ON THE BOAT TO ADMIT LIABILITY TO ANY OTHER PERSON.

Not to carry out or have carried out repairs without the consent of the Company or the Boat Owner.

Obtain and follow the Company's instructions. In the event of an accident the Company may repossess the boat and the hiring contract shall then terminate without liability on the Company or the Boat Owner.

In the event that the Company's insurance cover is prejudiced or invalidated by any failure on the part of the Hirer to comply with the provisions of this condition the Hirer shall indemnify the Company and the Boat Owner in respect of all liability claims, loss, damage or expenses incurred.

The Hirer is liable for and shall indemnify the Company and the Boat Owner against any claim or charge made by any Navigation Authority for damage to waterway property or loss of water.

## 10. Maintenance, Repairs, Damage and Breakdown

The Hirer shall take reasonable care of the boat, its equipment and contents, and shall return them at the end of the hire period in accordance with the Company's instructions and in good clean and tidy order and condition.

The Hirer shall notify the Company in the event of breakdown, damage, theft or loss and shall provide full details and comply with the Company's instructions.

The Hirer must not undertake or have undertaken any repairs, adjustment or service without the Company's prior approval. Any repairs or replacements by the Hirer without the Company's approval will not be accepted. The Hirer shall be responsible for getting the

boat off mud banks or other grounding and for removal of weeds, rope and other matter from propellers.

The Hirer shall notify the Company if any of these operations cannot be carried out without risk of accident or damage.

The Hirer shall have no claim on the Company or the Boat Owner as a result of breakdown or failures of the boat and its equipment or for any delays caused by repairs to the boat. The Hirer shall comply with the Company's instructions; otherwise the Hirer shall be liable for any loss or damage incurred.

## 11. Hirer's Property

Vehicles may be left in the Company's car parks at the owner's risk. The Company will be under no liability for any loss of or damage to vehicles or contents of the hirers or other peoples property on the boat or elsewhere or howsoever caused except by the Company's negligence or that of those for whom the Company is responsible. Hirers are particularly advised not to leave any valuable or portable items in the car.

The Company shall take such action as may be necessary to silence car alarms in the Company's car parks and to recover the costs from the Hirer.

The Company may return hirer's property left behind if claimed and following the receipt of payment for postage and packing (minimum charge £10). Property not claimed within two months from the end date of the holiday will be disposed of by the Company.

## 12. Fuel

The boat is handed over ready fuelled, but the cost of hire does not include the fuel consumed. A fuel deposit is payable 8 weeks before the start of your holiday. At the end of your holiday period the boat must be refuelled and any difference to the deposit paid will be refunded or charged.

The Boat Owner or the Company may make a fuel surcharge if there is any material increase of diesel or gas prices or duty.

Whilst water supply and moorings on the canals are normally free of charge, any costs incurred are the responsibility of the Hirer.

Where pump-outs are required to toilet tanks, the cost is the responsibility of the Hirer unless carried out at the Company's base.

## 13. Pets

Pets are allowed on the boat but must be pre-booked, and must be paid for (Registered assistance animals will not be charged for). Hirers must provide their own pet baskets or blankets. All pets must be properly house trained or caged as appropriate, must not be left unattended, and must not be allowed on bedding or chairs. Pets are not covered under the Company's insurance policy and the Hirer shall be liable for the cost of any damage or extra cleaning required.

## 14. Complaints

The Hirer shall check the boat, its contents and equipment fully immediately after taking possession of the boat. In the unlikely event of any alleged deficiencies or shortcomings the Hirer must notify the Company before the boat leaves the boat yard. The Hirer shall sign the Boat Acceptance form before departure and thereafter the Hirer is completely responsible for the boat, its equipment and its operation until it is handed back to the Company at the end of the period of hire. Any shortcomings subsequently discovered shall immediately be notified to the Company by telephone in order to give the Company the opportunity to take any necessary remedial action. The Company and the Boat Owner shall not be liable in respect of any matter which is not so notified immediately and in any event shall not be liable in respect of any matter which is notified after the end of the hire period, as the boat may then have been taken over by another hirer and may not be available for inspection.

## 15. Exemption

The Company [and/or] the Boat Owner shall not be liable for any matters arising from any cause beyond the Company's [and/or] the Boat Owner's reasonable control or not due to the Company's [and/or] the Boat Owner's negligence or wilful default including (without limitation) death or personal injury of Hirers their crew and passengers, loss or damage to property, non-fulfilment or interruption of the booking or delays, breakdowns, mechanical problems, defects, damage, restrictions or obstructions, repairs or damage to waterways, non availability of routes, navigational works, storms, floods, droughts, ice, shortage of water or other weather conditions, rationing, shortage or non availability of fuel or in respect of any consequential loss, damage, expense, injury, or claim.

Hirers are recommended to take out personal holiday insurance cover.

## 16. Marketing Material

The specification of boats, their accommodation, facilities and equipment in marketing material is intended as a general guide, but the Company and/or the Boat Owner shall not be liable in the event of any differences in the boat supplied and reserves the right to make modifications. Layout plans are for guidance only and are not to scale and may have steps which are not shown. If the hirer's party includes any infirm persons the Hirer should make relevant enquiries at the time of booking.

The Company and/or the Boat Owner reserve the right to change boat specifications without prior notice.

## 17. Disputes

Any dispute difference or question which may at any time arise out of the booking contract may be referred at the Company's sole discretion to a single arbitrator to be agreed between the parties or failing agreement to be nominated upon application of either party by the President of the Birmingham Law Society. The decision of such arbitrator (acting as an expert and not as an arbitrator) including any direction as to payment of fees and costs in the arbitration shall be binding on both parties.

## 18. Jurisdiction

The contract between the Boat Owner and the Hirer shall be deemed to have been made in England and shall be governed in all respects by English law. The Hirer shall submit to the jurisdiction of the English courts provided that the Company and the Boat Owner at their option may bring any legal proceedings against the Hirer from courts in any other country.

## 19. Waiver

No indulgence, forbearance or delay by the Company or the Boat Owner shall constitute any bar to its enforcement of its rights at any time and no waiver in respect of any breach shall operate as a waiver in respect of any other subsequent breach.

ABC Leisure Group Limited

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