

# Windermere Aquatic Ltd - Terms of Business

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN

BY US ON OR AFTER: 31 OCTOBER 2012

**PLEASE DETACH AND RETAIN**

## 1 LIABILITY

1.1 We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to vessels, gear, equipment or other property left with us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment.

1.2 We shall take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at our premises, and to maintain our facilities and equipment in reasonably good working order; but in the absence of any negligence or other breach of duty by us vessels and other property are left with us at the customer's own risk and customers should ensure that their own personal and property insurance adequately covers such risks.

1.3 We shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we have been expressly engaged to do so by the customer on commercial terms. Similarly we shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of an accident which has not been caused by our negligence or some other breach of duty on our part. However we reserve the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge the customer concerned on a normal commercial basis.

1.4 Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance, including third party liability cover for not less than £2,000,000, and, where appropriate, Employer's Liability cover in respect of any employee. Customers shall be obliged to produce evidence of such insurance to us within 7 days of a request to do so.

1.5 Nothing in these Terms of Business shall limit or exclude our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors; for fraud or fraudulent misrepresentation; or otherwise to the extent that it would be illegal for us to exclude or attempt to exclude liability.

## 2 PRICES AND ESTIMATES

2.1 In the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.

2.2 We will exercise reasonable skill and judgment when we give an estimate or indication of price.

However such estimates are always subject 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 emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.

2.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons for it 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 in price.

## 3 DELAYS

3.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our willful acts or omissions or from our negligence.

## 4 VESSEL MOVEMENTS

4.1 We reserve the right to move any vessel, gear, equipment or other property at any time for reasons of safety, security or good management of our business and premises.

## 5 PAYMENT

5.1 Unless otherwise agreed between us payment for all work, goods and services shall be due immediately on invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank.

5.2 We have the right to charge interest on any sum outstanding for more than 30 days (except in the case of a reasonable and proportionate retention by the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 4% above Bank of England base rate which may be calculated daily up to the date of actual payment. In the case of business customers this rate will be substituted with the current rate applicable under late payment legislation.

5.3 We reserve a general right ('a general lien') to detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent reasonably acceptable to us, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for our prospective legal costs. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defects but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.

5.4 Our customers' attention is drawn also to the note at Clause 10.2 of these Terms of Business regarding other rights which exist at law.

## 6 RETENTION OF TITLE/RISK

6.1 Title to all goods, equipment and materials supplied by us to a customer shall remain with us until full payment has been received by us.

6.2 Risk in all goods, equipment and materials supplied by us to a customer shall pass to the customer at the time of supply to the customer.

## 7 GUARANTEE

7.1 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 [www.adviceguide.org.uk](http://www.adviceguide.org.uk).

7.2 A customer who is a consumer has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.

7.3 In addition to the statutory rights provided by English law we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. This guarantee applies only to the customer to whom the work or materials were supplied. We shall be liable under this guarantee only for defects which appear during this 12 month period and which are promptly notified to us in writing at our trading address or registered office set out on our letterhead. The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.

7.4 On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.

7.5 Where we 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:

7.5.1 no article supplied by us 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 he is relying on our skill and judgement;

7.5.2 no proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article; and

7.5.3 we accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.

## 8 QUALITY STANDARDS

8.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

## 9 ACCESS TO PREMISES/WORK ON THE VESSEL

9.1 No work or services shall be carried out on a vessel, gear, equipment or other property on our premises without our prior written consent (which consent shall not be unreasonably withheld or delayed) except for minor running repairs or minor maintenance of a routine nature by the customer or his regular crew. It shall be an absolute condition that all work is carried out in full compliance with our health and safety, environmental and access policies and that it does not cause any nuisance or annoyance to us, any other customer or person residing in the vicinity, and does not interfere with our schedule of work or the good management of our business and our said consent to work or services being carried out may be revoked with immediate effect in the event of any breach of such conditions. We shall not be responsible to customers or third parties for the consequences of any person's failure to respect any part of this clause 9.1 but we shall be entitled to demand the immediate cessation of any work which in our view breaches the requirements of this clause 9.1.

9.2 While we or our subcontractors are working on a customer's vessel or equipment the customer shall not have access to it except by prior arrangement. We will agree reasonable access when it is safe to do so and when it will not interrupt or interfere with our work schedule.

## 10 RIGHT OF SALE

10.1 We accept vessels, gear, equipment and other property for repair, refit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:

10.1.1 goods for repair or other treatment are accepted by us 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;

10.1.2 our obligation as custodian of goods accepted for storage ends when we give notice to the customer;

10.1.3 the place for delivery and collection of goods shall normally be at our premises. Advice regarding the Act and its effect may be obtained from any of the sources referred to at Clause 7.1 above.

10.2 Maritime Law entitles us in certain circumstances to bring action against a vessel to recover a debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. This right of arrest and sale may continue to exist against a vessel after a change of ownership. Sale of a vessel or other property may also occur through the enforcement of a court order or judgement.

## 11 SUBCONTRACTING

11.1 We may subcontract all or part of the work entrusted to us by the customer, on terms that any such subcontractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, which exist for us under these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.

## 12 NOTICES

12.1 Notice to a customer shall be sufficiently served if personally given to him or if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address or registered office.

## 13 LAW AND JURISDICTION

13.1 Any contract or series of contracts made subject to these terms and any non-contractual obligations arising out of, or in connection, therewith shall be governed by and construed in accordance with English law.

13.2 Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with a contract or series of contracts subject to these terms shall:

13.2.1 if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or

13.2.2 where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

## 14. DISPUTE RESOLUTION SCHEME

14.1 The BMF and the RYA recommend that disputes arising out of or in connection with a contract or series of contracts subject to these terms, when they cannot be resolved by negotiation, be submitted with the written agreement of the parties, to mediation under the BMF's Dispute Resolution Scheme. Details of the Scheme are available at [www.britishmarine.co.uk/drs](http://www.britishmarine.co.uk/drs).

**I HAVE READ AND UNDERSTAND THE TERMS OF BUSINESS:**

Signed:

Print Name:

Date:



# Windermere Quays

## The new premier Marina on Lake Windermere



## 2016/2017 Winter Layup Tariff and Authorisation Form

The Aquatic Yacht and Powerboat Centre  
Glebe Road, Bowness on Windermere, Cumbria LA23 3HE

Tel: 01539 44 21 21 Fax: 01539 44 67 16

email: [berthing@aquaticboatcentres.com](mailto:berthing@aquaticboatcentres.com)

[www.aquaticboatcentres.com](http://www.aquaticboatcentres.com)



**PLEASE RETURN THIS FORM FOR WINTERISING INSTRUCTIONS**

*Please enclose a full set of Boat and Ignition Keys if you have not already done so*

Owner's full name:

Full postal address:

Postcode:

Contact telephone numbers:  Mobile:

Email address:

Make of Boat:  Name of Boat:

Fin or Bilge Keel:  LDNPA/SSR Licence No:

Length:  Beam:  Draft:  Weight:

My vessel is insured with (details):

Earliest possible date boat can be available at end of 2016 Summer Season:

Boat will be ready for 17 March 2017 unless otherwise stated:

**Storage/Work Required Schedule** (Please tick applicable boxes)

Type of Storage Required	Work Required	YES <input type="checkbox"/>
Outside on your Trailer or Cradle Hire YES <input type="checkbox"/> (circle as appropriate)	Winterisation and Recommissioning (charge for separately)	YES <input type="checkbox"/>
Afloat at pontoon or on Deep Water Mooring YES <input type="checkbox"/>	Remove Propellers for storage	YES <input type="checkbox"/>
Undercover Trailer Storage as per Summer YES <input type="checkbox"/>	Power Wash Hull on Removal Day	YES <input type="checkbox"/>
Crane Lift required YES <input type="checkbox"/>	Supply and fit Engine Heaters	YES <input type="checkbox"/>
	Engine/Outdrive Service	YES <input type="checkbox"/>
	Antifouling	YES <input type="checkbox"/>
	<b>Free</b> hull inspection and report	YES <input type="checkbox"/>

**PLEASE DO NOT IGNORE THIS FORM, IT IS IN YOUR OWN BEST INTEREST TO HAVE YOUR BOAT PROPERLY LAID UP FOR THE WINTER - PLEASE COMPLETE ALL DETAILS AND RETURN A.S.A.P.**

**Estimates required for:**

Road Trailer Service YES

Supply and fit Teak Decking YES

Supply and fit Bow Thruster YES

Supply and fit Heating YES

Polish Hull and Topsides YES

Other work required:

**For further information – contact our Service Department on 01539 44 21 21**

Signature of Owner:  Date:

By signing this agreement you are acknowledging that you have read and understood Windermere Aquatic's Terms of Business (31 October 2012).

**Please retain the Terms of Business overleaf.**

**FOR OFFICE USE ONLY:**

Job No:  Invoice Number:  Date Rec:

**WINDERMERE AQUATIC LIMITED**  
**WINTER LAYUP FOR 2016/2017**

1 November 2016 - 17 March 2017

**CRANING AND HANDLING CHARGES**

Crane Hire (Special Price)  
Cradle Hire

**PER LIFT**

£175.00 inc. handling charge  
£150.00

**MASTWORK**

Step/unstep bare mast and store on deck  
(excluding tensioning/ fitting electrics)

£15.00 per metre of boat length  
each way

NB. Additional crane charges will apply if we are unable to lift your boat during the normal prescribed period i.e. 8-10 November 2016 and 16/17 March 2017.

**POWER WASH HULL BOTTOM**

Up to 22ft £60.00  
22ft-32ft £100.00  
Over 32ft £125.00

**ALL PRICES EXCLUDE VAT**

**Please note:** It is the owner's responsibility to empty waste tanks prior to winterisation. Prior to lifting please ensure all personal belongings are safely secured.

In the event of inclement weather we are unable to guarantee any specific dates for pulling off or putting onto the water. Therefore please arrange for such flexibility with your insurance company.

**Please ensure** the two dates required above for the end and start of the season's boating are completed. Where at all possible, please indicate clearly what work is required.

**Winterisation** means draining engine and freshwater system, charging battery and drying out bilges, and inserting antifreeze and storage oil where necessary. It does **not** include servicing the engine, which must be specifically requested.

**Recommissioning** means reconnecting engine and water system, recharging battery, starting and running engine. It does **not** include servicing engine which must be specifically requested.

**Vehicles and boats and their accessories and contents are left at their owner's risk and responsibility. Save insofar as such loss or damage is caused by the negligence of the company or those for whom the company is responsible.**

Whilst the company shall endeavour to safeguard our clients property to the best of the company's ability, the company cannot be in attendance over each and every boat 24 hours of every day and must therefore strongly advise that all property is adequately insured and that any removable items are stored safely away.

**AQUATIC YACHT AND POWERBOAT SERVICE CENTRE**

*Our Services:*

- Supply & fitting of new Diesel & Petrol Engines
- Winter Layup & Recommissioning
- Full servicing of Engines, Stern Gear & Ancillary Equipment
- Complete Overhauls
- Supply & fitting of Bow Thrusters
- Supply & fitting of Trim Tabs
- Supply & fitting of Teak Decking
- Supply & fitting of Air Conditioning/Heating
- Electrical Services

**Approved by all major insurance companies**

*ALL DEPOSITS AND FEES ARE NON-REFUNDABLE.  
PLEASE REFER TO OUR TERMS OF BUSINESS OVERLEAF.*

**PLEASE DETACH AND RETAIN**

