



# ESSEX MARINA LLC

35 Dodge Street

Essex, MA 01929

essexmarinallc.com

---

---

## TERMS AND CONDITIONS

### 1. USE OF MARINA FACILITIES

During the term of this agreement, provided that Boat Owner is not in default, Boat Owner shall have the right to use assigned space in the Marina, subject to the right of all Boat Owners to use such facilities. The Boat Owner acknowledges that this agreement is non-transferable and that the Boat Owner may not sublease the space. The Boat Owner is permitted to use the assigned space only for the Vessel described. If the Boat Owner wishes to change the Vessel occupying the assigned space, the Boat Owner must execute a new dockage agreement with the Marina. The Marina is not obligated to enter into a new agreement with the Boat Owner but will not unreasonably deny such requests. The Marina reserves the right to increase the rent should the new Vessel exceed the overall length of the original Vessel but shall not be obligated to reduce the rent should the original Vessel exceed the overall length of the new Vessel. Boat Owner, his family, friends, relatives, crew, invitees, visitors, agents, and servants shall use the space, ramp and the Marina at their own risk.

### 2. CARE AND MAINTENANCE OF SPACE

Boat Owner shall maintain the space and immediately adjacent areas in a clean and uncluttered condition. Boat Owner shall not paint, decorate, or otherwise alter the appearance of the space without permission from the Marina. Boat Owners shall not store supplies, materials accessories or debris upon floats or fingers and shall not construct thereon any lockers, chests, cabinets, steps or similar structures, repairs or modifications without permission from the Marina.

### 3. DELIVERY OF SPACE

In the event the Marina is not able, for any reason, to deliver the space to the Boat Owner on the date called for by this agreement, a comparable space will be provided and, in the event, that a comparable space is not available, the rent shall be abated on a pro rate basis until the space is made available for occupancy.

### 4. RIGHT TO TERMINATE

The Marina shall have the right to terminate this contract for cause, upon reasonable notice in writing to the Boat Owner. Cause shall include, but shall not be limited to, the breach of any term, condition, covenant or the rules and regulations herein contained. Reasonable notice shall depend on circumstances and may be dispensed with where an emergency exists and where immediate action appears to be required in the Marina's judgment. If the boat is not promptly removed, the Marina may cause it to be removed and charge the Boat Owner accordingly.

### 5. CONDITION OF VESSEL

Boat Owner shall at all times maintain and operate the Vessel in a safe, seaworthy condition. Boat Owner shall not at any time permit the Vessel to constitute a fire, explosion or sinking hazard. If, in the Marina's opinion, the condition of the Vessel at anytime creates a safety hazard, the Marina may, but shall have no duty or obligation to, take any actions necessary, without liability to the Marina, to abate the hazard, including without limitation, moving the Vessel to another berthing area at the Marina or removing the Vessel from the Marina or gain entry into the vessel for dewatering purposes or removing the vessel from the water. Should the Marina take any such actions the Boat Owner shall be liable to the Marina to pay the Marina for such services provided, including but not limited to salvage fees or any other costs or attorney fees.

### 6. WORK PERFORMED ON VESSEL

Personnel from other marinas or service contractors shall not be allowed to perform any work on Vessel without permission from the Marina. Such permission will not be unreasonably withheld from reputable vendors, provided the contractor provides to the Marina proof of sufficient levels of insurance which is a minimum of \$2,000,000 liability insurance. Said outside contractors must sign in and out of the Marina office and provide proof of worker's compensation or longshore harbor workers compensation coverage. Work shall include but not be limited to original installation or repairs to carpentry, fiberglass, mechanical, plumbing, interior and exterior finishes, electrical, electronics, canvas, diving, cleaning, and any other tasks performed by any vendor. All work is to be performed during normal business hours. Boat Owner agrees to be liable for any charges not paid by its outside contractor including pay \$10.00 per hour to compensate for use of facility (e.g. parking, water, electric and other miscellaneous usage).

### 7. REMOVAL OF VESSEL ON TERMINATION

Upon expiration or other termination of this agreement, Boat Owner shall remove the Vessel and all other personal property from the space and the Marina and shall vacate the space and the Marina premises. Notwithstanding the foregoing, all the other terms and conditions of this agreement shall continue in effect during and holdover period to the extent that they may be applicable. Said holdover period shall be deemed to include any period during which the Vessel is occupying any area of the Marina for a period of time not specifically covered in this agreement, or in the case of termination, any period after this agreement is terminated and the Vessel continues to occupy

any area of the Marina. In the event Boat Owner fails to remove the Vessel upon expiration or termination of this agreement, Marina may remove the Vessel and any of Boat Owner's personal property and store the same elsewhere, all at the Boat Owner's expense and without liability to Marina for any loss or damage thereto. The Marina reserves the right to charge for dockage at the marina not to exceed the Marina's normal summer daily transient dockage rates to the Boat Owner should the Boat Owner fail to remove the Vessel upon expiration or Termination of this agreement, even if said holdover continues into the winter period.

#### **8. INSURANCE**

The Boat Owner warrants and covenants that at the inception of this agreement and at all times (including holdovers) while the Vessel is at the Marina, the Vessel shall be covered by adequate hull insurance in an amount equal to at least eighty (80) percent of its current market value, and shall be covered also by usual forms of protection and indemnity insurance for all non-collision forms of damage caused by the Vessel or those aboard in the amount of at least \$100,000 per person and \$300,000 per incident, protecting the Boat Owner and the Marina against claims, demands, suits, and judgments in said policy amounts for claims arising within the coverage of said policies. All such insurance shall be written by marine insurance companies duly qualified to do business as insurance companies in Massachusetts and said Policies shall provide that the Marina shall be entitled to at least thirty (30) days notice prior to any cancellation thereof. All insurance covering said Vessel shall contain provisions which deny to the insurer any rights or subrogation against the Marina and shall provide that the Marina shall not be barred from making claim against said policies by reason of being an otherwise covered party under said insurance, to the extent that the Vessel shall cause damage to facilities or persons at the Marina. A copy of the insurance policy and the vessel registration or documentation shall be provided to the Marina before the vessel arrives.

#### **9. SECURITY**

It is agreed and stipulated that the space rental services provided in this agreement do not include a specific type of watchman, guard, or security services, other than the Town of Essex usual police and fire department services supplied to the community at large. The Boat Owner agrees that the Marina shall not be liable to the Boat Owner or the Vessel, or to those in privity with either of them, by reason on any intrusion, theft, vandalism, arson, or other criminal acts of any kind or degree on or about the Vessel, whether by land or water.

#### **10. EXTRAORDINARY CONDITIONS**

The Boat Owner and the Marina stipulate that the Marina shall not be liable for loss, damage, third party damage or loss to property or persons in the event of acts of God, storms, floods, high waves, high winds, lightning, hurricanes, heavy rain, or snow, ice, fire, or other circumstances beyond the control of the Marina.

#### **11. SUBSTANTIAL CASUALTY**

Should a substantial portion of the space or the Marina be damaged by fire, flood or other casualty or be taken by eminent domain, the Marina may elect to terminate this agreement upon written notice given to Boat Owner. If such casualty or taking renders the space or the access thereto substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and the Boat Owner may elect to terminate this agreement upon written notice given to Marina if Marina fails to give Boat Owner written notice within thirty (30) days of intention to restore the space and access, or Marina fails to restore the space and access to a condition suitable for their intended use within sixty (60) days of said casualty or taking.

#### **12. NOTICE TO BOAT OWNER AND MARINA**

Notices to the Boat Owner shall be deemed to be served properly if posted in writing addressed to the Boat Owner sent via first class mail, postage prepaid, to the address indicated in this agreement and if placed on the Vessel in a manner which is reasonably susceptible of giving notice to anyone lawfully boarding the Vessel. Notice to the Marina by the Boat Owner shall be deemed to be served properly if mailed first class, postage prepaid, to the Marina's business address at 35 Dodge Street, Essex, Massachusetts 01929, or in hand to the Marina Manager.

#### **13. ABANDONED VESSEL**

In the event that the Vessel appears to be abandoned, Marina shall give written notice to Boat Owner, which shall state (a) that the Vessel appears to have been abandoned; (b) that the Marina shall at its discretion remove the Vessel from the space and dry store same at an off-site location, all at the sole risk and expense of the Boat Owner; (c) that the cost for such removal and storage will be the sole responsibility of the Boat Owner; and (d) that this agreement shall be null and void at the option of the Marina. The execution of this agreement shall constitute the creation of Documents of Title and shall establish a Warehouseman's Lien in favor of the Marina and give the Marina the right to proceed pursuant to the appropriate statutory authorities to sell the Vessel.

#### **14. WAIVER**

Waiver of any conditions by the Marina shall not be a continuing waiver.

#### **15. SPECIAL HANDLING**

If a vessel requires any special handling, the boat owner must request such in advance and it is to be agreed upon in writing. Additional fees may apply.

#### **16. WINTER STORAGE**

All vessels contracted for summer storage will commit to a minimum of winter storage for the contracted season. Failure to comply will result in non-renewal of contract.