

BREWER HAWTHORNE COVE MARINA

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General Marina Rules and Conditions

Definitions: When capitalized and used herein, the term **Marina** shall refer to the boatyard or marina named above, its owner, operator and any affiliates or successors; the term **Owner** refers to the Vessel's owner, owner's agents and/or representatives; and the term **Vessel** refers to the vessel's hull, equipment and all other vessel related property of the Owner when the vessel is stored at the Marina.

Laws Applicable: The parties to this contract are governed by applicable federal, state and local laws and regulations, including those of EPA, OSHA and state environmental offices.

Apparent Obligation and Severability: Due to the magnitude of potential liability, no language in this contract authorizing the Marina to take specific actions on the Owner's behalf shall be construed to create an obligation on the Marina's behalf. The parties agree that if any part of this contract is deemed unenforceable by an administrative agency or court of law, the remainder of this document shall remain in full effect and binding upon the parties.

Apparent Authority: The Marina is unable to police the various representatives of an Owner. Therefore, the Owner agrees that unless the Marina is notified in writing beforehand, anyone in possession or apparent charge of the Vessel shall be deemed to have the authority to act on behalf of the Owner, and the Marina shall be entitled to accept and act in reliance upon orders or requests of such persons for services, supplies, work or other materials of any kind for the benefit of the Vessel.

Ownership by Entity: In the event that Ownership of a Vessel is a corporation or entity other than an individual, the person signing this contract on behalf of the Ownership shall be jointly and personally liable for all obligations of the Owner under this contract.

Absence of Security: This contract contains no provision or obligation for the providing of on-site security, guard service or surveillance by the Marina. While the Marina will make reasonable efforts to provide as secure a facility as possible, the Owner agrees that the Marina shall not be held liable for theft or vandalism or other criminal acts taking place on Marina property.

Condition of Vessel: By signing this contract, the Owner represents that the Vessel is seaworthy and safe to be worked on by the Marina's employees, unless specifically stated otherwise in this contract and initialed by Marina staff. The Owner and the Vessel will be liable to the Marina for any loss, damage or injuries attributable to any such causes not disclosed and that were not reasonably foreseeable by nature of the work involved.

When Vessel is in Danger: If the Vessel is in danger as defined below, the Owner hereby authorizes the Marina to take reasonable and appropriate actions, at the Owners expense, to mitigate the danger. A Vessel shall be deemed to be in danger when it poses a threat of sinking, burning, capsizing, causing a hazard to navigation, causing unlawful pollution, causing damage to Marina property or that of other Marina customers, or if, in the Marina's judgment, the Vessel poses any similar threat. The Owner agrees to be bound by the Marina's actions and shall be fully responsible for all related expenses incurred.

Insurance Requirements: The Owner warrants and stipulates that the Vessel will be fully insured against loss or damage to itself, other Vessels at the Marina and the Marina property. Where adequate coverage is not obtained and maintained, the Owner warrants and stipulates that he intends to act as self-insurer against such losses. Proof of insurance as well as a valid copy of the Vessel's state registration or federal documentation must be filed annually at the Marina office.

Invoices and Payments: Invoices shall be mailed monthly and are due and payable at the time they are rendered. An interest charge not greater than 1.5% monthly (18% annually) will be applied to any balance greater than thirty (30) days past due. The Marina reserves the right to retain the Vessel without additional legal action until such time as all debts are satisfied. Any expense associated with such retention shall accrue to the unpaid balance due and payable before release. If a Vessel leaves the Marina with an outstanding invoice due, the Marina in no way relinquishes its claim to payment or right to regain possession of the Vessel until all debts are satisfied. In addition, the Marina retains full ownership rights in all tangible property installed as part of its work on the Vessel until payment for such work is made in full, including the right to physically remove any such equipment from the Vessel. All payments shall be final and non-refundable.

Vessel's Left at Marina Beyond Original Contract Period: In the event the Owner does not arrange to have the Vessel removed from the Marina property at the end of the contract period, the Marina may, but will have no obligation to, continue to store the Vessel in a manner most convenient for the Marina, and the rates charged for such storage will be the then-prevailing rates. In such an instance, all terms and conditions regarding collection costs and expenses, including the recovery of attorney's fees, will continue to apply.

Environmental Surcharge: The Marina shall have the right to assess a 1.5% surcharge on all invoices to offset the cost of complying with environmental laws and regulations pertaining to the disposal of hazardous materials originating on customers' boats and to the operation of the Marina in compliance with such laws and regulations.

Legal Rights of the Marina: The Owner stipulates and agrees that any and all services provided by the Marina give rise to federal maritime and state liens against the Vessel for the period of time that a debt is owed under this contract. THE VESSEL AND ITS CONTENTS MAY BE SOLD AT PUBLIC AUCTION FOR THE SATISFACTION OF THESE LIENS, and the minimum bid for such auction may be set by the Marina in its sole discretion at an amount sufficient to cover all outstanding debts under this contract, including all expenses, attorney's fees and interest. The proceeds of any sale shall be applied first to the outstanding amount due and then to the expenses of such sale, including attorney's fees, with the remainder, if any, being disbursed to the Owner.

Dispute Resolution: The Owner acknowledges that the withholding of payment shall not be an acceptable form of dispute resolution. In the event that the Owner and Marina are unable to agree on the amount due for work performed or services rendered, such disagreement shall be settled as follows: Any complaint about the quality, adequacy or totality of work performed shall obligate the Marina to nothing

more than the correcting of such validly demonstrated defects at no additional cost to the Owner. Any claim of unreasonable charges shall entitle the Owner solely to a detailed written and itemized accounting of the charges. In the event that the Vessel has left the Marina, the Owner accepts full financial responsibility for returning it to the Marina for complaints to be assessed and repairs, if any, to be made. In cases in which work is performed by another company to repair an alleged inadequacy of the Marina's work, excluding repairs that are immediately necessary to the safety and welfare of the Vessel and its crew, that work shall indisputably release the Marina from any obligation to correct or discount the work initially performed.

Right Not to Renew: The Marina retains the right not to renew this contract and/or the right to assign it to a third party.

Damage to Other Boats in the Marina: In the event the Owner's Vessel causes damage to other Vessels in the Marina or Marina property as a result of fire, sinking, capsize, pollution, improper operation by anyone other than Marina staff, or from any other cause not within the direct control of the Marina, including Acts of God, the Owner agrees to be responsible for such damage.

Hazardous Materials: The Marina provides for disposal of all hazardous materials, including batteries, waste oil, solvents, and similar materials. Vessel Owners shall check with Marina office before disposing of any hazardous materials for guidance about the appropriate disposal method. In certain circumstances, charges may apply for disposal of hazardous materials. Disposal of any waste in an improper manner or without consultation of the Marina Office may result in the immediate termination of this contract. Storage of hazardous materials will not be allowed at slip locations.

Use of Marina Dumpsters: Only household waste generated at the Marina shall be put in Marina dumpsters.

Overboard Discharge: The discharge of materials overboard from a Vessel is highly regulated. Overboard discharge of human waste, including the pumping of heads and holding tanks into the water of the Marina is illegal and strictly prohibited. In most cases, the Marina provides holding tank pumpout service at the dock or via the DEP pumpout boat.

Use of Outside Contractors: Owner acknowledges that the Marina is engaged in an entirely private business and is free to exercise its own independent discretion as to the parties with whom it will deal or to whom it will grant access to its premises. Owner acknowledges that the Marina has an interest in the safety of all boats stored or docked on its premises and therefore it has established specific policies with regard to access and insurance requirements. Accordingly, independent contractors or outside labor must check in at the Marina office before working on an Owner's Vessel. Upon checking in, all contractors will be required to demonstrate proof of insurance as outlined in Brewer Yacht Yard Group's Subcontractor Policies (available upon request). The Marina reserves the right to require all subcontractors to bill through the Marina or to pay the Marina an hourly fee for use of Marina facilities. The fee will be set by the Marina Manager on an individual basis after considering the size and nature of the work to be conducted by the subcontractor. A Vessel Owner found to be in violation of these policies will be subject to immediate termination of this contract. The Owner acknowledges that he has been advised of this policy, and consents to the enforcement of this policy. Owner further acknowledges that the Marina does not purport to control Owner's right to utilize the third party of his choosing to perform work on Owner's boat, so long as that work is not performed at the marina. For liability reasons, outside contractors, Owners and captains shall not use Marina ladders or scaffolding or other similar equipment.

Excluded Work: With the exception of shrink wrapping, Vessel Owners are allowed to conduct maintenance or improvement work to the Vessel named on the Winter or Summer Contract only. *Shrink wrapping by anyone other than employees of the Marina is expressly forbidden at all times.* In addition, Vessel Owners agree to abide by all terms and conditions herein when they conduct any type of work to their Vessels. All sanding of bottom paints shall be done only with a vacuum ("dustless") sander that captures all sanding residue. All other work must be conducted in accordance with all environmental best practices and rules and regulations in effect. Vessel Owners are responsible for educating themselves about the appropriate rules, regulations and best practices, and failure to do so shall not be acceptable reason for non-compliance with all such standards.

Fueling: For pollution prevention reasons, Vessel Owners, their representatives and/or guests may not fill fuel tanks from portable containers at any time while on Marina property.

Storage of non-Vessels: No trailers, campers or recreational vehicles are to be stored on Marina property without a signed storage agreement.

Children: Young children shall be accompanied by an adult at all times and the Marina recommends that all non-swimmers wear lifejackets near the water.

Pets: Pets must be kept on a short lead at all times. Owners must clean up after their pets. Any pets found to be a nuisance to other Marina customers may be required to leave the property at the Marina Manager's discretion.

Vehicle Parking: Vehicles found to be improperly parked may be towed at the vehicle Owner's expense.

Use of Electricity: Outlets are provided throughout the Marina for customer use. In some cases, use of electricity will be subject to charge by the Marina. Burned out or otherwise damaged receptacles will be repaired by the Marina staff and charged to the Vessel Owner. Voltage regulation and surge protection shall be the sole responsibility of the Owner. All shore power, adapters and electrical plugs must be equipped with acceptable ground weather proofing in accordance with Article 555 of the National Code. In 220 volt, 50 amp systems, the neutral leg does not constitute a ground leg.

Advertising and Soliciting: Advertising and/or soliciting shall not be permitted on Marina property without the written approval of the Marina manager.

Measurement of Vessels: The Marina reserves the right to measure all Vessels for accurate billing purposes. Total length of a Vessel will be measured including any bow sprits or pulpits, swim platforms and/or similar protuberances or extensions.

Nature of Relationship: Owner acknowledges and agrees that neither the rental of summer slip space nor on-land space for winter storage constitute either a landlord-tenant relationship or the bailment of the Vessel and as such the Marina shall have no responsibility or liability to Owner on such basis.