

GENERAL TERMS AND CONDITIONS OF CONTRACT OF BERTH AT KORKYRA MARINA

General Berthing Terms and Conditions at Korkyra Marina (hereinafter the “**General Terms and Conditions**”) shall apply to the users of the nautical port services and they constitute an integral part of the Contract of Berth at Korkyra Marina (hereinafter the “**Berthing Contract**”) concluded between the company OVALIS NOVA d.o.o. (Ltd), Ulica 58/15, 20270 VELA LUKA, tax identification number/OIB: 11365197544 (hereinafter the “**Marina**”) and the Berth User.

1. General Terms and Conditions shall apply to all Vessels located in the Marina.

2. Berth User:

The Berth User is the person with whom the Marina concludes the Berthing Contract. The Berth User can be:

- the registered owner of the Vessel;
- the user of the Vessel under a contract of affreightment or a lease agreement;
- the yacht manager, i.e. any natural or legal person who has assumed responsibility from the registered owner for managing the Vessel operation and/or technical equipping and/or crewing;
- the mortgage lender in possession of the Vessel under a mortgage agreement.

The Berth User who is also not the registered owner of the Vessel must possess the authorization of the registered owner of the Vessel and the mortgage lender to conclude a written Berthing Contract. The Berth User concludes the Berthing Contract in his own name and on behalf of the registered owner of the Vessel and the mortgage lender, and they are jointly liable for all obligations under the Berthing Contract.

3. Vessel:

The Vessel is any ship, boat, or yacht for which the Marina allocates a berth in accordance with the Berthing Contract. The technical characteristics and the purpose of the Vessel are stated in the Berthing Contract. Their accuracy is assumed and the Marina is not obligated to verify them but reserves the right to do so. A berth is allocated to a specific Vessel stated in the Berthing Contract and the Berth User may not use the allocated berth for another vessel without the Marina’s explicit consent. If the Berth User wants to replace the Vessel under the Berthing Contract with another vessel, the parties may conclude an annex to the Berthing Contract according to which the Berth User shall settle the difference in the berthing fee if the new vessel belongs to a higher price category. If the new vessel is in the lower price category, the Berth User is not entitled to a reduction of the agreed berthing fee.

4. Berth:

The Marina allocates a berth in accordance with the Ordinance on the Port Order and its berthing layout. A wet berth implies space on sea suitable for accommodating the Vessel of the technical characteristics specified in the Berthing Contract, as well as the appropriate port infrastructure, devices and equipment necessary for secure berthing (e.g. anchor block, chain, mooring ropes, bits, etc.) and, as a rule, the supply of fresh water and electricity for the Vessel. The Marina may at any time and without consulting or receiving approval from the Berth User, relocate the Vessel to another appropriate berth within the Marina. If the relocation occurs during the Berth User’s absence, the Marina shall notify the Berth User thereof. The Marina is entitled, at its own discretion, to relocate and tow the Vessel free of charge to more protected parts of the Marina for the purposes of winter berth of the Vessel. Relocation to another berth within the Marina during the Contract validity has no effect on the Marina’s liability.

5. Berthing Fee:

The berthing fee is the price the Berth User pays for the Marina’s services provided under the Berthing Contract. The amount of the berthing fee shall be determined according to the Marina’s Services Price List, and shall be calculated, invoiced and payable in accordance with the Berthing Contract.

6. Berth Allocation and Maintenance:

The Marina shall allocate the Berth User a location for safe berthing, and shall keep the berth in a safe and proper condition, shall maintain the port, construction facilities in the port, port infrastructure and port equipment in good working order, and shall maintain security and port order, including the vessels waste reception and handling system, fire protection, security and video surveillance of port facilities, piers and other property of the Marina. The service of berth allocation includes supplying electricity to the Vessel according to the network capacity, and fresh water for standard Vessel purposes, as well as the use of sanitary facilities, the radio service and the provision of hydro-meteorological forecasts.

7. Surveillance of the Vessel on Berth

The Marina shall monitor the condition of the Vessel on berth. Surveillance implies external inspection as well as checking of the condition of the Vessel and its equipment, and control of berth and fenders carried out by the Marina’s technical service under the direction of the Marina’s captain. Surveillance of the Vessel on berth is carried out in the usual manner and dynamics by the Marina’s sailors, who perform inspections and checks from the pier, and who also employ video surveillance, and electronic and IT support to the surveillance system. Surveillance also implies security surveillance in accordance with the Marina’s approved Security Plan. Surveillance of the Vessel on berth does not entail custody of the Vessel and it does not imply the Vessel is delivered into the Marina’s possession. If in the course of performing surveillance the Marina notices any changes in the Vessel, its equipment or mooring ropes that affect the safety of the Vessel on berth or indicate the risk of damage to the Vessel, the Marina shall notify the Berth User thereof.

The surveillance obligation arises from the following conditions: the Vessel is on berth and the Berth User or his/her authorized representative is not present on the Vessel. The Marina’s obligation to monitor the Vessel on berth is suspended each time the Berth User or a third party authorized by the Berth User boards the Vessel, at which point the Marina shall be relieved of any responsibility for monitoring the Vessel, whether the Vessel is in the Marina or in navigation. The Berth User or his/her authorized representative is considered to have boarded the Vessel upon taking over the keys and the Vessel documents at the Marina’s reception, i.e. they are considered to have left the Vessel upon handing over the keys and the Vessel documentation at the Marina’s reception. The handing over of the keys, Vessel documents and/or inventory list according to these General Terms and Conditions does not imply delivering of the Vessel into the Marina’s possession.

8. Obligations of the Berth User

The Berth User shall:

- at the time of concluding the Contract submit the Vessel documents in writing (registration certificate/sailing licence or other documents of corresponding content), and a photocopy of a valid Vessel insurance policy (mandatory and of marine hull), and shall have the Vessel documents/certificates/insurance policies in place for the duration of the Contract; he/she shall submit an extract from the Companies Register of the respective country or from other appropriate registers (if the Vessel is owned by a legal entity), as well as the authorization to conclude the Contract and use the Vessel (in the cases where the Contract is not concluded by the Vessel owner, and the extract from the Companies Register does not entail a representative authorization for the person wanting to conclude the Contract). The Marina reserves the right of requesting additional documents or certificates deemed necessary or appropriate in a particular case;
- notify the Marina of any change of postal and e-mail address; the Marina's messages sent to the Berth User's last known address shall be considered as actually and duly delivered;
- notify the Marina of any change of telephone numbers at which the Berth User can be reached in case of emergency. The Marina does not assume any responsibility for damage that could have been prevented if it were possible to contact the User on the telephone number mentioned in the Contract;
- keep the Vessel and its equipment in a good, proper and seaworthy condition for the whole duration of the Contract, and in accordance with the applicable regulations equip the Vessel with appropriate mooring ropes, fenders, and quality canopy, and take care of their regular maintenance and replacement as needed;
- equip the Vessel with fire-fighting equipment efficient for the Vessel itself, provided the Vessel must have at least one automatic fire extinguishing system in the engine compartment, and the Marina may request additional fire-fighting appliances in the case the existing ones are not considered sufficient;
- fit the Vessel's bilge with an eco-sponge or a similar device for collecting contaminants that can be released directly into the sea through the bilge discharge system;
- fit the Vessel with a proper and standardized water supply connection, hose cable and connection to the electrical power cabinet;
- clearly display the Vessel's marks (name or registration number);
- for performing any work on the Vessel, notify the Marina about the performance of such works;
- keep all movable property of the Vessel locked in the Vessel's enclosed space;
- pay in advance the annual, winter or monthly berthing fee for the Vessel, unless otherwise stipulated in the Contract;
- use the berth solely to moor the registered Vessel for which the service has been paid. The Berth User may not allow any third party to use the berth, whether for a consideration or free of charge. Should the Vessel depart before the expiration of the Contract, the Berth User is not entitled to transfer the Contract to another Vessel. In such a case, a new Contract shall be concluded. When selling the Vessel, the owner shall, before transferring the ownership to the new owner, settle all outstanding claims of the Marina.

The Berth User, the crew and/or other persons on the Vessel shall:

- use the berth with due diligence, comply with all statutory regulations on navigation, environmental protection and maintenance of the port order, as well as with the provisions of the Marina's Ordinance on the Port Order and the Vessels Waste Reception and Handling Plan. In the case of non-compliance with the mentioned official documents, the Marina may terminate the Contract;
- report each arrival/sailing-in and departure/sailing-out at the Marina's reception or to the sailor on duty in the case the reception is not open;
- notify the Marina of any departure of the Vessel lasting more than seven (7) days and announce the return of the Vessel to the Marina no later than twenty-four (24) hours before the return;
- hand over the keys of the Vessel at the Marina's reception prior to leaving. Otherwise, the Berth User shall be liable for any damage caused to third parties, other vessels in the Marina and/or the property of the Marina, due to the mentioned omission;
- further, prior to leaving the Marina, the Berth User or the crew shall submit to the Marina's reception the original copies of the Vessel documents (for Vessels under the Croatian flag), and the original copy of the certificate of payment of maritime safety and pollution protection fee (for foreign vessels);
- attain a connection (cable and a plug) from the electrical power cabinet to the Vessel at own expense. The User is solely liable for any potential damage caused by a cable connected to the Marina's electrical installation;
- turn off and disconnect all electrical cables and water connections and lock the Vessel and deck windows from the inside prior to each departure from the Vessel. The Marina shall not be liable for any damage caused by the User's failure to lock the Vessel, as well as the damage caused by the Vessel's installation (the so-called ship installation). If the Berth User (for whatever reason) wishes to have the Vessel continuously connected to the electricity, he/she is solely liable for any damage caused by this, and shall beforehand submit to the Marina's reception a photocopy of a valid insurance policy covering third party liability;
- moor the Vessel in an expert and proper manner, and in particular shall ensure the Vessel is moored at a safe distance from the pier and with fenders on the Vessel's sides and stern, and shall secure and maintain the ropes for mooring the Vessels to the pier;
- keep all movable equipment and inventory of the Vessel, as well as personal belongings of the crew and persons residing thereon, locked in the Vessel's enclosed space.

9. Vessel Insurance and Liability of the Owner or the Vessel User

The Berth User shall maintain adequate insurance coverage for damage to the Vessel's hull, machinery, and equipment (marine hull insurance), as well as for damage that may occur to third parties in connection with that Vessel (liability insurance). Adequate insurance coverage refers to the standard all-round marine hull insurance up to an insured amount equal at least to the Vessel's purchase value or estimated real value, and the mandatory liability insurance of the owner/user of the Vessel according to the relevant legal regulations, as well as the voluntary liability insurance of the owner/user of the Vessel for damage caused by the Vessel up to the limit of at least EUR 1.000.000 (one million euro) per event. Liability insurance must include liability for damage due to personal injury or death and for damage to the property of the Marina, its employees, and third parties, as well as liability for the wreck removal and for polluting the sea with ship tanks fuel.

Obtaining the above described insurance coverage is the responsibility of the Berth User. In no circumstances shall the Marina be responsible for any damage that may occur to third parties, i.e. to the other users of the Marina's Services, due to the Berth User's failure to fulfil his or her obligation under the previous paragraph.

10. Liabilities of the Berth User

The Berth User is liable for damage resulting from the breach of the obligations set out in the Berthing Contract and these General Terms and Conditions. The Berth User is responsible for his or her own actions and omissions, as well as for the actions and omissions of the crew and all persons he or she authorized to use the Vessel. In case the breach of contractual obligations causes damage to the property of the Marina or third parties, or damage due to death, injury or ill health of the Marina's employees or third parties, or damage due to environmental pollution, the Berth User shall indemnify such damage in accordance with statutory regulations on damage liability. Should the Marina bear any costs incurred in connection with such damage, including legal costs, or if the Marina becomes obligated to pay any amount of damages to third parties, the Berth User shall indemnify the Marina in full.

11. Marina's Liability for Damage

The Marina shall be liable for damage caused by material defects of the berth only if it is proved that such defects stem from the intent or gross negligence of the Marina or its employees. Material defects of the berth exist if the berth is not suitable for safe use or not kept in a proper and safe condition for the entire duration of the Contract. If the damage is caused by the breaking or loosening of a mooring rope, anchor chain, anchor block, pier, or any other part of the mooring system equipment and infrastructure, the fault of the Marina and its liability for damage shall be assumed. In the event of visible sea ingress and/or fire, it is required to intervene and take all actions to save the Vessel and the property of the Marina, at the expense of the Berth User.

The Marina shall be liable for damage or loss of the Vessel's inventory and equipment provided the following cumulative conditions are met:

- such inventory or equipment is on the inventory list,
- the Berth User shall prove the damage or loss occurred while the Vessel was under the Marina's surveillance,
- the Berth User shall demonstrate a causal link between the damage and the failure in performing surveillance, and
- the Berth User shall prove that the failure in performing surveillance stems from the Marina's intent or gross negligence.

12. Marina's Release of Liability

The Marina shall not be responsible nor liable to compensate for any damage if the damage to the Vessel or any part thereof occurs as a result of:

- force majeure;
- war, war-like events, shutdowns, civil unrest, and similar events;
- malicious, negligent or unprofessional conduct of the Berth User and/or the crew and/or other persons on the Vessel;
- lack of maintenance, neglect, wear and tear, and deterioration of the Vessel and/or its equipment;
- latent defects of the Vessel;
- false, inaccurate or incomplete information provided by the Berth User;
- the fault of third parties or fault of another vessel;
- rodents on the Vessel;
- loss of time, earnings, delays, holidays, etc.;
- damage or missing of the equipment that was not locked in an enclosed space or which is found missing without breaking and entering;
- lack of fenders, breaking or untying of the stern lines used for mooring the Vessel to the pier/pontoon;
- unprofessionally fitted or worn-out electrical, gas or water supply installations on the Vessel, or from the pier connection to the Vessel;
- violations of the provisions of the Contract, the General Terms and Conditions and/or the Marina's Ordinance on the Port Order;
- damage due to non-compliance with customs, port and other administrative regulations;
- freezing;
- theft of the Vessel that could not have been prevented with due diligence;
- for works of art, precious metal articles, money, securities, collectables and collections, unique articles, precious articles, and similar items;
- for the loss of potential profit that the Berth User would have earned in the ordinary course of events or under special circumstances had there not been for the harmful event.

Furthermore, the Marina shall not be liable for any costs or damage not caused by the Marina's direct liability, in particular the damage:

- of wreck removal;
- of fire or explosion caused by the failure of the Berth User and/or the crew and/or other persons on the Vessel to comply with the fire protection regulations or caused by the action, inaction or omission of the Berth User and/or third parties for whom the Marina is not responsible;
- resulting from harmful air or sea emissions, of natural origin or caused by the action, inaction or omission of a third party for whom the Marina is not responsible;
- caused by the third parties' actions or omissions, including the damage for which a person is held responsible under strict liability by applying the institute of liability for damage caused by dangerous objects or activities;
- due to the injury or death of a third party caused by the crew, the owner, other authorized persons under the responsibility of the Vessel's owner or a person authorized by the Vessel's owner;
- to the Vessel caused by another vessel in the Marina.

In any event, the Marina's liability for damage shall be limited to EUR 1.000.000 (one million euro) per event and per claim.

13. Payment of Berthing Fee

The Berthing Contract is concluded for the period specified in the Berthing Contract.

If a berth is rented for a month or longer, the Contract shall be made in writing. For all vessels located at the Marina's premises without a written contract, the Marina is entitled to charge a daily berthing fee according to the Marina's valid price list. **The Marina shall issue an invoice for berthing lasting less than one month i.e. for vessels on a daily berth. The Marina does not assume responsibility for vessels on a daily berth. Vessels on a daily berth remain at the risk and liability of the Berth User.**

DAILY BERTH (transit berth): daily berth is any service provided to the Berth User in relation to the berth rental lasting less than one month. A separate berthing contract is not required for a daily berth. For a daily berth, the Marina will issue an invoice. A daily berth includes only the service of using the Marina's infrastructure required for mooring vessels, as well as the use of water and electricity.

For booking an annual and monthly berth, the User shall make an advance payment in accordance with the Marina's valid price list. The advance payment is considered a cancellation fee. Should the Berth User withdraw from concluding the Contract or renting a berth, he or she is not entitled to an advance payment refund. The Berth User can book a daily berth for the Vessel only through the online booking service no later than 24 hours prior to arriving at the Marina, with paid booking fee and daily berthing fee. In the case the Vessel does not arrive, the paid sums are non-refundable.

The User shall pay the berthing fee by the due date in the amount stipulated in the Contract, as well as any other fees for services provided in the Marina. The Marina is entitled to request the User to provide appropriate instruments for securing the payment of berthing fees and/or other fees for services provided at the Marina (e.g. a credit card deposit of at least two monthly instalments of the annual berthing fee amount or a cash deposit of at least two monthly instalments of the annual berthing fee amount, or other appropriate payment security instruments). Otherwise, the Marina is entitled to cancel the Contract and charge the daily berthing fee according to the Marina's valid price list.

The Annual Berthing Contract is automatically extended for another year and charged at current year prices unless cancelled by the Berth User in writing 2 (two) months before the Contract expires. **If the Berth User does not accept the new Contract and he or she fails to cancel the Contract in writing 2 (two) months before the expiry of the valid Annual Berthing Contract, the Marina reserves the right to charge the fees in the amount of one annual berthing fee. In the event of an early Contract cancellation, no refund shall be available.**

All liability of the Marina concerning the Vessel shall cease upon expiry of the billing period for accommodating the Vessel under the paid invoice. The Berth User shall be the sole risk bearer for any potential damage incurred upon the expiry of the billing period. The User may not take the Vessel out of the Marina until he or she has settled the debt and/or any claim of the Marina related to the Vessel.

14. Right of Retention of the Vessel

In the case of outstanding claims of the Marina arising from the Berthing Contract, the Berth User authorizes the Marina to take possession of the Vessel, and the Marina is entitled to retain the Vessel with all appurtenances, either on the agreed berth or by moving it to another wet or dry berth until full settlement of the outstanding berthing fee and other claims from the Berthing Contract, as well as claims arising in connection with the stay and retention of the Vessel on berth after the expiration, termination, rescission or cancellation of the Berthing Contract. The Marina may take possession but is not required to do so. For the purpose of exercising the right to retain the Vessel, the Marina may exercise the possession of the Vessel through a third party as a dependent possessor, which means, among other things, that the Marina may move the retained Vessel to an appropriate location outside the Marina. In order to secure and collect due and outstanding claims, the Marina has the following rights:

- the right of retention of the Vessel and/or the right to request the registration of a mortgage on the Vessel in the appropriate register, on all its equipment and appurtenances (whether these are located on the Vessel or in an appropriate storage facility) and/or right to obtain from the competent court (according to the Vessel's location) a provisional measure of the Vessel's arrest and/or to obtain a provisional measure of prohibiting the disposal and alienation of the Vessel;
- the right to initiate appropriate procedures to settle its claims by:
 - judicial sale of the Vessel;
 - private sale of the Vessel or by taking the possession of the Vessel and putting it to use in accordance with the provisions of the Maritime Code. In this regard, the excerpt from the Marina's business books shall stand as a valid proof of the amount and maturity of the Marina's claim towards the Berth User and/or the Vessel on any grounds;
 - any court or other proceeding deemed appropriate or desirable for achieving the above purpose;
 - relocating the Vessel to a dry berth at the Berth User's expense and without his or her consent. From that day, the Marina is entitled to charge the dry berth daily fee according to the Marina's valid price list, as well as any other expenses.

15. Non-transferability of the Berthing Contract to Third Parties

Neither the Contract nor the rights under the Contract are transferable to other natural or legal persons. The Berth User may not permanently nor temporarily rent the berth to third parties. In the absence of the Berth User's Vessel, the Marina is entitled to temporarily use the berth, while the Berth User shall notify the Marina 24 (twenty-four) hours before returning by telephone or radio link (channel 17). The Berth User shall report any absence of the Vessel. The time the Vessel spends away from the Marina shall not be deducted from the berthing fee.

16. Additional Works and Services

The Marina shall not be liable for damage caused by service technicians, subcontractors, persons authorised by the Vessel owner and third parties, regardless of whether they were permitted by the Marina to provide their services within the Marina. While the Vessel is in the Marina, the Berth User shall use only the services of the Subcontractors authorised by the Marina.

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17. Termination of the Contract

The Marina has the right to terminate the Contract:

- in the event of any breach or non-compliance with the provisions of the Contract, these General Terms and Conditions and the Ordinance on the Nautical Tourism Port Order by the Bert User, the crew and/or other persons on the Vessel, and to charge the daily berthing fee according to the Marina's valid price list from the date the Contract is terminated;

- in the case of change of ownership of the Vessel during the Berthing Contract;
- in the case the Berth User does not maintain adequate insurance coverage or does not notify the Marina of a significant change in insurance coverage;
- in the case the Berth User uses the berth contrary to its purpose or the Berthing Contract, even after being warned from the Marina, and especially if he or she provides unauthorized use of the berth to third parties;
- in the case the Berth User violates the obligation to pay the berthing fee and other claims of the Marina under the Berthing Contract, the Marina will warn him or her thereof, setting a reasonable period to fulfil the obligation thereafter. Should the Berth User fail to act on the notice even after the additional granted period, the Marina may unilaterally terminate the Contract. In any case, the Marina is entitled to default interest and damages in accordance with the Civil Obligations Act.

The Berth User has the right to terminate the contract:

- if the allocated berth is in a condition unsuitable for safe use or
- if during the Berthing Contract, the berth becomes unsuitable for safe use and the Marina fails to eliminate the defects or move the Vessel to a suitable alternative berth in the Marina, the Berth User may terminate the Contract and shall be entitled to a compensation for damage and to the reimbursement of a proportionate part of the berthing fee.

18. Personal Data Processing

Personal and identification data on the Berth Users will be collected, processed and stored by the Marina in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation), and will only be used for the Marina's own purposes and for purposes consistent with statutory regulations and these General Terms and Conditions. By signing the Contract, the Berth User gives his or her consent to the Marina to process his or her personal data for the purpose of promoting services and for marketing purposes. The Berth User may withdraw his or her consent at any time by sending a notice to the following e-mail address: info@marina-korkyra.com , and may request a correction of the recorded data via the same address. The Berth User agrees the Marina will keep him informed of various sales promotions and new services, as well as current product and service offerings. The Berth User may prohibit such notifications by e-mail or phone.

19. Applicable Law and Jurisdiction

These General Terms and Conditions and the Contract are governed by Croatian law. Any and every dispute arising out of and/or in connection with these General Terms and Conditions and/or the Contract and/or any grounds between the Marina and the Berth User shall be subject to the exclusive jurisdiction of the Commercial Court of Dubrovnik.

The Contract and the General Terms and Conditions have been prepared in the Croatian language. In the case of any inconsistency or discrepancy between the Croatian version of the General Terms and Conditions and any of the translations into other languages, the Croatian version of the General Terms and Conditions shall prevail. The Marina is not responsible for any potential discrepancy between the Croatian version of the General Terms and Conditions and any of the translations into other languages, nor for any printing errors. The Marina reserves the right to amend the provisions of the General Terms and Conditions, of which the Users will be informed in a timely manner.

20. Application of the General Terms and Conditions

These General Terms and Conditions shall become effective as of 11 May 2020 and shall apply to all permanent berthing contracts concluded at the Marina after the effective date of these General Terms and Conditions.