

Community Moorings Scotland

Mooring Terms and Conditions

1. Definitions

In these Mooring Terms and Conditions, the Mooring Agreement (as hereinafter defined) and the Mooring Agreement Schedule (as hereinafter defined), the following terms have the definitions set out opposite them:

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| Berth | A location specified by us within the Home Mooring listed in the Mooring Agreement Schedule. |
| Boat | The vessel listed and described in Mooring Agreement Schedule. |
| Boat Safety Scheme Certification | The certification issued by the Boat Safety Scheme as administered by Canal & River Trust. |
| Canal | The canals on which we operate Mooring Sites. |
| Charitable Purposes | The charitable purposes set out in our constitution as recorded by the Office of the Scottish Charities Regulator. |
| Data Protection Policy | Our Data Protection Policy in force from time to time and made available on our Website. |
| Commercial Boater | A person operating their Boat wholly or mainly for business purposes. |
| Deposit | The amount set out in Mooring Agreement Schedule. |
| End Date | The date listed in Mooring Agreement Schedule, subject to any amendments made in accordance with Clause 12.1. |
| General Rules | Our general rules applicable to all of our Mooring Sites and/or other locations published by us from time to time and made available on our Website. |
| Home Mooring | The Mooring Site specified in the Mooring Agreement Schedule. |
| Landlord | Any person with whom we have an agreement to use or occupy land at or adjacent to one of our Mooring Sites. |
| Mooring Agreement | The Mooring Agreement in force between you and us including the Mooring Agreement Schedule and these Mooring Terms and Conditions. |
| Mooring Agreement Schedule | The Mooring Agreement Schedule annexed to the Mooring Agreement |
| Mooring Fee | The fee calculated in accordance with Clauses 5.2 and 5.3. |
| Mooring Site | Any of our locations where we operate moorings. |
| Navigation Licence | A Scottish Navigation Licence issued by Scottish Canals as described in Scottish Canals' "Boating on Scotland's Canals Licences and Moorings (Terms and Conditions)" or otherwise by Scottish Canals. |

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| Payment Due Date | In respect of Mooring Fees, the last day of the month prior to the month to which the Mooring Fees apply. In respect of all other payments, 28 days following the date of our invoice. |
| Privacy Policy | Our Privacy Policy in force from time to time and made available on our Website. |
| Residential Boater | A person for whom their Boat is their main residence. |
| Scottish Canals | British Waterways Scotland trading as Scottish Canals, Applecross St, Glasgow, or successor organisations responsible for maintenance of the Canal and/or acting as the navigation authority for the Canal. |
| Service | Services we supply at each Mooring Site, including without limitation water, electricity, waste disposal, accessways and parking. |
| Service Charge | Charges for Services |
| Site Rules | Our rules applicable to a particular Mooring Site and/or other location published by us from time to time and made available on our Website. |
| Start Date | As set out in the Mooring Agreement Schedule. |
| Trading Agreement | The agreement between you and us governing trading which you conduct from our Mooring Sites and set out in the Mooring Agreement Schedule. |
| Vehicle | Any vehicle at our Mooring Sites for which you are responsible. |
| Website | www.communitymoorings.com or such other internet location as we determine from time to time (and we will inform you of such changes). |
| You, we | The parties to the Mooring Agreement as set out therein, and including us, your, our as the context requires. |

2. You may moor your Boat at your Home Mooring between the Start Date and the End Date provided that:
 - 2.1. A Mooring Agreement is valid and in force;
 - 2.2. You hold a valid Navigation Licence for your Boat and you comply with its terms;
 - 2.3. Your Boat is covered by a valid Boat Safety Scheme Certification and a valid insurance policy providing cover of at least £5 million for third party risks, damage to infrastructure and recovery in the event of sinking;
 - 2.4. You pay all Mooring Fees and other fees or charges when they fall due;
 - 2.5. You are at all times compliant with:
 - 2.5.1. the Mooring Agreement;
 - 2.5.2. the General Rules and the Site Rules;
 - 2.5.3. all applicable rules imposed by Scottish Canals; and
 - 2.5.4. if you are a Commercial Boater, the terms of your Trading Agreement; and
 - 2.6. You shall pay to us all reasonable costs resulting from claims, charges and expenses reasonably incurred in relation to your breach of the Mooring Agreement.

3. We will allocate a Berth for your Boat at the Home Mooring stated in the Mooring Agreement Schedule. We may change the Berth allocated to you within the Home Mooring from time to time and with reasonable advance notice, in doing so having regard to your needs and the needs of our other customers for accessibility and services. If we change your Berth, you agree to move your boat timeously to the new Berth, and we may move your boat if you do not.
4. Subject to availability, you may make use of our other Mooring Sites as permitted under the General Rules. You must pay any applicable Service Charges for any Services you use while your Boat is located at another Mooring Site, and you remain liable to pay Service Charges which apply to your Home Mooring. We do not guarantee that space will be available for your Boat at any of our other Mooring Sites, and you must give priority to our Customers whose Home Mooring is at such other Mooring Site when they require it. At any time and with reasonable notice we may require you to return your Boat to your Home Mooring, and you agree to do so timeously unless passage is prevented by restrictions imposed by Scottish Canals, or by ice or blockages on the canal.
5. Fees and charges
 - 5.1. Prior to making use of our Mooring Sites you must pay to us the Deposit set out in Mooring Agreement Schedule. Upon termination of the Mooring Agreement we will repay this Deposit to you less any outstanding amounts which you are due to pay us.
 - 5.2. During the first twelve months of the Mooring Agreement the Mooring Fee will be as set out in the Mooring Agreement Schedule. Thereafter the Mooring Fee will follow our standard table of mooring fees (and mooring fees may vary between Mooring Sites) and be subject to annual revision in accordance with our procedures set out on our Website.
 - 5.3. Where the Mooring Fee is specified per metre of length, the length used will be the greater of the length of mooring set out in Mooring Agreement Schedule or the length of your Boat as calculated in accordance with Clause 7.12.
 - 5.4. Service Charges will be in accordance with our table of charges applicable to the Mooring Site concerned and set out on our Website.
 - 5.5. If you fail to make any payment due to us by the relevant Payment Due Date, then, without limiting our remedies under Clause 13 you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
6. You agree to pay on or before the relevant Payment Due Date:
 - 6.1. The Mooring Fee;
 - 6.2. Any Service Charges; and
 - 6.3. Any other amounts due.
7. Moorings, your Boat and your Vehicles

- 7.1. The Mooring Agreement is in respect of your Boat listed in the Mooring Agreement Schedule. If at the date of the Mooring Agreement your Boat is not specifically identified in the Mooring Agreement Schedule then the dimensions given will serve as maximum dimensions for the boat which you are permitted to bring to your Home Mooring. You agree to provide us with details of your Boat as soon as possible (and provided that the boat is in a good state of repair, the subject of a valid Navigation Licence and Boat Safety Scheme Certification, insured in accordance with the Mooring Agreement and otherwise compliant with the conditions of the Mooring Agreement) following which we will issue a revised Mooring Agreement Schedule specifically identifying your Boat, and such revised Mooring Agreement Schedule will be deemed to form part of the Mooring Agreement and be binding on you and us.
- 7.2. You agree to keep your Boat and Vehicles in a good state of repair, and will ensure that they do not pose a risk to the health and safety of any persons or of damage to the environment.
- 7.3. You will ensure that your Boat (except when under way) is moored safely and securely at a designated mooring in accordance with the Site Rules and without obstructing the Canal, the towpath or any paths or accesses.
- 7.4. You agree to keep your Boat and the area around your Berth clean and tidy.
- 7.5. You may only use your Boat as your principal residence if Mooring Agreement Schedule states that your Berth is a Residential Mooring. If we reasonably believe that you are in breach of this condition we may require that you:
- 7.5.1. provide evidence that you are not using it as your principal residence (and, where relevant, such evidence must be sufficient to satisfy the relevant local authority); or
 - 7.5.2. remedy the situation either by transferring to a Residential Mooring (if one is available) or by ceasing to use your Boat as your principal residence. If you do not do so, we may terminate the Mooring Agreement with 28 days' notice.
- You are liable for any costs or losses we suffer as a result of your default under this Clause 7.5.
- 7.6. You may only trade from our Mooring Sites if Mooring Agreement Schedule states that your Berth is a Commercial Mooring and if a Trading Agreement has been executed by you and us and is in force in respect of the trade which you wish to carry out. We are under no obligation to enter into a Trading Agreement with you, and will not enter into such an agreement if doing so would be contrary to our Charitable Purposes or place us in breach of a duty we owe to any third party, including Scottish Canals or any Landlord.
- 7.7. You may only display commercial signs from your Boat or your Berth (i) if you hold all consents which you are required to hold by law and (ii) with our prior written consent, which we will not unreasonably withhold or delay. In seeking our consent you must provide us with adequate drawings of the proposed signage. We will not give consent if we believe that such signage is incompatible with our charitable purposes or any obligation we owe to any third party, including Scottish Canals or any Landlord.
- 7.8. You will ensure that your Vehicles are in roadworthy condition and are covered by insurance and valid MOT test certificates and that all applicable taxes including Vehicle Excise Duty are paid. You will ensure that your Vehicles are at no time the subject of Statutory Off-Road Notifications or similar declarations.

- 7.9. You will ensure that your Vehicles do not obstruct other users of our Mooring Sites. You acknowledge that parking facilities at our Mooring Sites may be limited and you agree to abide by the Site Rules in respect of parking. You acknowledge that permission will normally be required if you wish to bring more than one Vehicle to our Mooring Sites.
- 7.10. If you fail to comply with this Clause 7 we may take reasonable actions to remedy such failure and you must pay our reasonable costs in doing so.
- 7.11. You agree to store tenders on your Boat or out of the water in accordance with Site Rules.
- 7.12. The dimensions of your Boat are taken to include bowsprits, boarding ladders, davits including their loads, stern drives, out drives, rudders, anchors, pulpits, push pits, stern and bow fenders and any other extensions beyond the hull of your Boat.

8. Conduct

- 8.1. You agree that you will:
 - 8.1.1. act in a courteous and helpful manner towards other users of our Moorings Sites and the Canal, staff or officers of Community Moorings Scotland and Scottish Canals, and members of the public;
 - 8.1.2. comply with all instructions and directions given by Scottish Canals staff from time to time, to the extent that these are reasonably required for the safe and efficient operation of the Canal; and
 - 8.1.3. pay to the appropriate body any taxes, levies, duties and fees which you are due to pay (including without limitation Council Tax, Business Rates, Fuel Duty and Navigation Licence fees as applicable) and you agree to indemnify us in respect of any and all claims and losses we may incur as a consequence of your non-compliance with this Clause 8.1.3.
- 8.2. You agree that you will not and will procure that any of your customers and employees will not:
 - 8.2.1. obstruct the Canal, pontoons, jetties, landing stages, paths, towpath, parking areas or access to our Mooring Sites;
 - 8.2.2. do anything which could give rise to a hazard for any Vessels or create a risk of damage to property;
 - 8.2.3. make alterations to our Mooring Sites without our express permission;
 - 8.2.4. cause nuisance, damage or harm to, or endanger or put at risk any users of our Moorings Sites or the Canal, staff or officers of Community Moorings Scotland or Scottish Canals, or members of the public.
- 8.3. You are responsible for people you bring to our Mooring Sites or who attend with your permission, shall hold them to the same standards as are required of you under the Mooring Agreement, and shall bear liability for their actions or defaults as if such actions or defaults were yours.
- 8.4. You agree not to keep any animals other than domestic pets at our Mooring Sites, to keep domestic pets for which you are responsible under proper control, and to clear up their mess. You accept that Site Rules at each Mooring Site may impose further restrictions in respect of animals.

9. Health, Safety, Environment, Damage

- 9.1. You agree
 - 9.1.1. to always act in a safe manner on and around our Mooring Sites;
 - 9.1.2. to comply with all applicable rules and regulations concerning health, safety and environmental protection in force at each Mooring Site or generally on the Canal, including, without limitation, all health and safety and other rules, policies, bye-laws and procedures laid down by Scottish Canals which are notified to you;
 - 9.1.3. to comply with all applicable rules and regulations concerning maintenance works;
 - 9.1.4. not to allow or conduct welding, grinding, blasting or other maintenance work involving the use of heat or likely to create noise, dust or fumes, except in designated areas and with proper containment measures in place;
 - 9.1.5. not to permit any oil, silt, foul, deleterious, discolouring, objectionable or solid matter to pass into any of Scottish Canals' canals or waterways or to pollute or degrade the Mooring Sites and the surrounding areas;
 - 9.1.6. not to carry out any physical construction or alteration works at the Mooring Sites;
 - 9.1.7. to exercise caution in locations where we are conducting works;
 - 9.1.8. to promptly clear up waste and spillages, and to use any waste and recycling facilities provided at the Mooring Sites appropriately; and
 - 9.1.9. to promptly report to us and to the relevant third parties including as appropriate the emergency services, Scottish Canals, other Landlords and local authorities, any accident, near miss, unsafe situation or risk of pollution.
- 9.2. You shall be responsible for making good any damage to our property, our Mooring Sites, the Canal or the property of Scottish Canals or other Landlords caused by you or arising as a result of any act, neglect or default by you or people for whom you are responsible. You agree to promptly report to us and to any relevant third party any such damage.

10. Emergencies

- 10.1. You must ensure that we hold up-to-date contact information for you.
- 10.2. You must designate and provide us with contact information for a key holder who can access your boat in an emergency.

11. Works

- 11.1. We may undertake works at our Mooring Sites. When we wish to do so:
 - 11.1.1. If your Home Mooring is affected by works, we will give you reasonable notice using the contact information you have provided us with, and where such works are disruptive, we will give you at least one month's notice.
 - 11.1.2. We may require you to move your Boat to allow such works to take place, and we may move it if you fail to do so. We will provide an alternative mooring at the same Mooring Site if we are reasonably able to do so.
- 11.2. We will provide reasonable notice of such works and take reasonable steps to minimise disruption to you.

- 11.3. Certain Mooring Sites (or parts thereof) may lack facilities such as mooring infrastructure, access paths and service infrastructure. Accordingly:
 - 11.3.1. You acknowledge that if you use such Mooring Sites (whether as your Home Mooring or otherwise) then it may be necessary for you to use gangplanks and unimproved surfaces for access, and mooring pins to secure your Boat;
 - 11.3.2. In entering into the Mooring Agreement in respect of a Mooring Site you confirm that you are satisfied with its condition at the Start Date;
 - 11.3.3. While it is our intention to provide such facilities at our Mooring Sites, we are under no obligation to do so; and
 - 11.3.4. When we undertake works to install such facilities, you agree to co-operate with us in facilitating such works, including moving your Boat from time to time where necessary and making use of temporary accesses.

12. Renewal, assignation, use of moorings

- 12.1. On the End Date, if you remain compliant with the Mooring Agreement and you have not given us notice in accordance with Clause 13.4, the term of the Mooring Agreement will be automatically extended for a further year and the End Date adjusted accordingly.
- 12.2. You may not assign the Mooring Agreement to any person.
- 12.3. We may assign our benefits and responsibilities under the Mooring Agreement to another charitable and/or community interest organisation having substantially similar objectives and (if a charity) Charitable Purposes as us.

13. Termination

- 13.1. The Mooring Agreement shall terminate on the End Date as may be extended in accordance with Clause 12.1.
- 13.2. The Mooring Agreement shall terminate immediately if your Boat is no longer the subject of a valid Navigation Licence.
- 13.3. We may terminate the Mooring Agreement by giving you one month's notice if during a period of four months your Boat is not located on the Union Canal or the Forth and Clyde Canal, if you sell or otherwise dispose of your Boat, or if within four months of the Start Date you have not moored your Boat at your Berth.
- 13.4. You may terminate the Mooring Agreement before the End Date by giving us three months' written notice.
- 13.5. We may terminate the Mooring Agreement immediately with notice in writing if:
 - 13.5.1. any sum due remains unpaid 30 days after we have notified you that you have failed to pay a sum due;
 - 13.5.2. your actions or your failure to act place us in breach of obligations we owe to Scottish Canals or other third parties such as Landlords;
 - 13.5.3. you fail to hold any of the necessary licences, permits or certifications listed in Clause 1;
 - 13.5.4. you no longer own or have the use of the Boat listed in Mooring Agreement Schedule;

- 13.5.5. you commit a material breach of the Mooring Agreement including these Mooring Terms and Conditions (for which purpose a series of minor breaches shall constitute a material breach) and such breach remains unremedied at the expiry of any period which we (acting reasonably) allow for you to remedy the breach; or
- 13.5.6. Scottish Canals terminates the agreement between us and Scottish Canals which provides us with rights to operate Mooring Sites. In such an event we will endeavour to provide you with as much notice as is reasonably possible for us to do so.
- 13.6. On or before the End Date you must:
 - 13.6.1. remove your Boat, your Vehicles and your other belongings from our Mooring Sites;
 - 13.6.2. tidy your Berth and return it to a condition which is not inferior to its condition when it was first allocated to you.
- 13.7. If you fail to comply with Clause 13.6 then:
 - 13.7.1. you remain responsible at all times for your Boat, Vehicles and belongings and shall indemnify us and keep us indemnified against all losses or claims we may incur;
 - 13.7.2. we may remove your Boat, Vehicles and belongings from our Mooring Sites, and charge you reasonable costs we incur in doing so or in storage;
 - 13.7.3. we will charge you any reasonable costs we incur in tidying your Berth and restoring it to its condition when it was first allocated to you; and
 - 13.7.4. we may elect to dispose of your Boat, Vehicles and/or belongings, subject to providing proper notice of the date and place of sale, in order to recover reasonable costs we incur and amounts lawfully due to under Clauses 4, 7, 8.3 and this Clause 13.7, and any residue of such disposal shall fall to us; and
 - 13.7.5. we shall give you 28 days' notice prior to exercising our rights under Clauses 13.7.2 – 13.7.4.
- 13.8. You consent to us informing Scottish Canals in the event that the Mooring Agreement terminates.

14. Scottish Canals, Landlords and other third parties

- 14.1. You acknowledge that Scottish Canals and other third parties such as Landlords impose certain requirements on you and us concerning, *inter alia*, your conduct; the condition of your Boat and/or Vehicles; and health, safety and environmental protection; and other users of the Canal. These requirements may be stated in:
 - 14.1.1. The Mooring Agreement;
 - 14.1.2. The General Rules and the Site Rules;
 - 14.1.3. The Navigation Licence, the Skippers' Guide and other communications of Scottish Canals;
 - 14.1.4. The terms of any agreement for the supply of Services.
- 14.2. You agree to comply with your obligations referred to in Clause 14.1. You agree to ensure that your actions or your failures to act do not place us in breach of the obligations referred to in Clause 14.1.

- 14.3. You agree that Scottish Canals has the right to enforce the Navigation Licence and the terms of the Mooring Agreement, and will co-operate with Scottish Canals and with us as necessary in permitting Scottish Canals to do so.
- 14.4. Subject to Clause 14.3 above, the Mooring Agreement does not create or give rise to any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any term of this Agreement.

15. Personal data and communication

- 15.1. Our Data Protection Policy and our Privacy Policy govern our use of personal data under the Mooring Agreement, and you agree to our use of personal data as set out therein.
- 15.2. You agree to provide us with up-to-date contact information. Where we require to contact you or give you notice for the purposes of the Mooring Agreement, we will use the contact information you have provided us with to do so.