

# *Midland Mallard Terms and Conditions*

Please make sure you read our terms and conditions below carefully to avoid any confusion or misunderstandings. The terms and conditions form part of the hire agreement and describe both yours and our rights and duties.

## 1. DEFINITIONS

In these conditions and the Agreement the following words have the following meanings:-

“Agreement” means the hire agreement between you and the company which is evidenced by your booking request and the booking confirmation and is made on the basis of these conditions.

“Booking Confirmation” means the written confirmation issued to you by the company confirming the hire period, price, place of delivery and other key particulars of the booking.

“Company” means Midland Mallard, of Bosworth Marina, Carlton Road, Market Bosworth, Nuneaton, CV13 6PG.

“You” means the person or persons named in the booking confirmation. If there is more than one of you each of you shall be individually responsible for complying with the agreement.

“Conditions” means these boat hire conditions.

“Price” means the price in the booking confirmation.

“Start Date” means the start date in the booking confirmation.

“End Date” means the end date in the booking confirmation.

“Hire Period” means the hire period in the booking confirmation.

“Written” means that the item has been printed, typed, written out by hand or sent or displayed by e-mail or other electronic means.

## 2. AGREEMENT TO HIRE

2.1 When you request a booking you are making an offer to hire a boat on these conditions. The hire agreement itself only comes into existence when the company sends out the booking confirmation.

2.2 A provisional or conditional booking is not binding and you may cancel it at any time before the booking confirmation is sent out to you by the company. Similarly the company may hire the boat to another party in place of you at any time before a booking confirmation has been sent to you.

2.3 The entire agreement between you and the company is contained in these conditions, the booking request and the booking confirmation. Nothing in these conditions affects your statutory rights.

## 3. PRICES AND PAYMENT

3.1 The company's advertised prices are in pounds sterling and do not include Value Added Tax. The Company is currently not VAT registered.

3.2 The company reserves the right to correct errors in advertised or quoted prices at the time of booking confirmation.

3.3 Payment is deemed to have been made when cleared funds are received in the company's bank account.

3.4 The deposit is payable at the time of the booking request. The deposit is 25% of the total price. An additional security deposit of £100 (one hundred pounds) per person to a maximum of £600 in total (six hundred pounds in total) is applied to certain groups (see clause 4.2 below).

3.5 The balance of the price is due not less than six weeks before the start date as shown in the booking confirmation. Time of payment shall be of the essence of the Agreement.

3.6 For bookings made less than six weeks before the start date you must pay the full price at the time of the booking request.

3.7 The company may charge interest at 3% p.a. over Bank of England base rate on any money which is overdue from the due date until the

actual date of full payment.

3.8 The booking confirmation is not a VAT invoice.

#### 4. YOUR PARTY.

##### 4.1 Personal agreement and obligations

The hire agreement is a personal one between you and the company and your identity is a material factor in the company's decision to enter into the Agreement. You must be at least 18 years of age at the time of booking. You must be authorised by all other members of your party to enter into the Agreement on their behalf. The full names and ages of all members of your party must be provided to the company at the time of booking. All changes in your party (the addition, substitution or removal of any member of the party) which take place at any time after the booking confirmation has been issued (including during the hire period) must be communicated in writing and approved by the company (such approval is not to be unreasonably withheld). You are responsible for making all members of your party aware of the terms of the Agreement.

##### 4.2 School parties, youth groups, hen or stag parties, business purposes

The company's general policy is that it will not enter into hire agreements for school parties, youth groups, all male or all female crews or for any commercial purpose without more information about the members of the party and the purpose and nature of the hire occasion. If the company later becomes aware that your party actually falls within this policy but that you have not disclosed it to the company then the company may terminate your booking. In this event the deposit and any other part of the price which you have paid will be retained by the company and you will remain liable to pay the balance of the price. The company reserves the right to charge a £600 (six hundred pounds) refundable security deposit against any booking at the time the booking confirmation is made.

##### 4.3 The use of alcohol and controlled drugs: company's right of

immediate cancellation

The boat shall not be navigated while anyone on board is, or appears to be, under the influence of alcohol or drugs and the company may cancel your booking and refuse to hand the boat over to you or repossess it if you or any member of your party is or appears to be under the influence of alcohol or drugs. In such a case the company shall be entitled to recover any loss, damage and expense from the monies already paid by you and if this is insufficient to cover its loss it shall be entitled to bring a claim against you for the balance of such claim.

#### 4.4 Company's right to decline handover for safety reasons

The company may cancel your booking and refuse to hand the boat over to you if, in its reasonable opinion, you are unsuitable to take charge of the boat for any reason that may adversely affect the safety of any person or property. In this event (and provided that you have fully complied with your obligations under this Agreement) the company will refund the deposit and any other monies which you have paid to the company and the contract shall be discharged without further liability on either party.

#### 4.5 Company's right to repossess during the hire

The company may repossess the boat at any time after commencement of the hire period if in the reasonable opinion of the company you are unsuitable to be in charge of the boat for any reason affecting the safety of any person or property including in particular if you or any member of your party is or appears to be under the influence of alcohol or drugs or if you are not behaving responsibly or if there has been a material breach of the terms of this Agreement.

## 5. CANCELLATIONS AND CHANGES REQUESTED BY YOU

5.1 The Agreement is a legally binding contract and may only be cancelled in accordance with these conditions.

5.2 If you want to cancel or change your booking you must give the

company written notice. The date of receipt of the written notice shall be the effective cancellation date but in order to increase the prospects of re-letting the boat you should pre-advise the company of the impending cancellation by telephone.

5.3 The company shall make the following charges for cancellation, depending on the date on which the cancellation notice is received:

Days before Start Date when Cancellation Notice received Cancellation Charge

More than 43 Loss of Deposit (including any part of the deposit which has not yet been paid)

29-42 50% of Total Price

28 -15 70% of Total Price

8 -14 85% of Total Price

7 or less 100% of Total Price

5.4 If an insurance premium is charged...Insurance premium and credit card charges are non-refundable whatever the date of cancellation.

5.5 If the company re-lets the boat to a new customer for the hire period or part of it the company will return the cancellation charge which you have paid in respect of any days for which it has re-let the boat after deducting an administration fee of £50 (fifty pounds) in total together with any insurance and credit card charges which the company has incurred.

## 6. CANCELLATION BY THE COMPANY

6.1 For your safety the company may cancel the Agreement by written notice if any of the following circumstances arise:

For any of the reasons described in conditions 4.2, 4.3, 4.4 or 4.5

In the event of an accident affecting the safety of the boat or navigability of the boat during windy or unsuitable weather conditions.

For breach of any of the rules set out under condition 9.1

for non-payment of any sum due under the booking

6.2 The company is entitled to recover from you any loss which it suffers as a result of cancellation under any of the provisions of conditions 4.2, 4.3 or 4.5 or for breach of condition 9.1 and it may retain all or part of any payments which you have made as security for such claims. Subject to this if the company is able to hire the boat for all or part of the hire period it will give credit for the net sums received as a result of such re-letting and shall prepare and submit to you an account of its claim and of any payment which may be due to you or to the company within seven days of the end date.

## 7. HIRE PERIOD, COLLECTION AND RETURN OF BOAT

7.1 The boat will normally be available at the time shown on your booking confirmation and on the start date from Bosworth Marina or as otherwise shown in the booking confirmation, subject to the provisions of condition

7.2

7.2 You must notify the company as soon as possible if your estimated arrival time is delayed or disrupted as this may lead to difficulties and delays in making the boat available to you. There will be no rebate of the price for late arrival nor will the company accept responsibility for any overnight costs which you may incur if you fail to reach the boat during normal working hours.

7.3 Before you take over the boat the company will give you such instructions, demonstrations and trials as are appropriate and you will then be required to check and sign the hand over sheet.

7.4 In the event that the boat is not available on the start date due to any circumstance for which the company is not responsible (for example adverse weather or navigation conditions, damage, mechanical breakdown, late return by previous hirer) the company may substitute a boat of similar accommodation but if no such boat is available the company shall immediately refund you with the deposit and any other payments you have made.



7.5 The boat must be returned to Bosworth Marina or as otherwise shown on the booking confirmation or notified under condition 7.7 and vacated by you by the time shown on your booking confirmation on the end date and it is your responsibility to allow sufficient time to ensure timely return.

7.6 If you return the boat late or to the wrong place because of poor planning on your part or for another reason which is your responsibility then you will be liable to pay £50 (fifty pounds) for every hour or part hour of the delay in returning the boat or giving possession and the cost of recovering the boat to the return point and any other expenses and losses which the company may incur as a result of the delay including the loss or cancellation of a subsequent booking.

7.7 The company reserves the right to change the places of handover and return for operational reasons. In such event except in the case of emergency the company shall be obliged to give you written notice of the change in sufficient time to allow any necessary re-planning of your itinerary and for you to organise any transport which is reasonably necessary for you and your party as a result of such change.

## 8. INSURANCE AND SECURITY DEPOSIT

8.1 The company insures the boat and its equipment against physical loss and damage and against public liability risks. You are entitled to any protection that may be afforded by the company's insurance policy (subject to your paying any applicable policy excess) but you and members of your party may become legally liable to the company or to third parties for loss or damage caused or contributed to by your acts, omissions or negligence.

8.2 You will indemnify the Company from and against all costs and expenses however arising from your negligence, neglect or default, including but not limited to damage arising from speeding, cill damage, rudder, stern gear, TV aerials, chimneys, malicious or intentional damage,

damage to other boats and their contents and to the waterway.

8.3 You are advised to make your own arrangements for personal accident insurance, insurance of personal belongings and insurance against cancellation by you of the hire agreement.

## 9. SAFETY AND OTHER RULES

9.1 You agree to comply with the following rules at all times during the hire period:

9.1.1 To ensure that at all times while the boat is being navigated or is transiting locks or other waterway's structures the minimum age of the operator onboard and in charge is 18 years.

9.1.2 Not to tow or be towed other than in exceptional circumstances.

9.1.3 When not under way, to moor the boat securely.

9.1.4. Not to navigate after sunset or before sunrise.

9.1.5 To observe all speed limits, and not to navigate at a speed which creates a breaking wash or disturbs or inconveniences other waterway users.

9.1.6 Not to race the boat.

9.1.7 Not to bring on to the boat any portable heaters, lighting equipment, TV sets, electric tools or cooking appliances, inflammable liquids or substances, gas cylinders, car batteries, fire arms, electrical appliances, or any other items which might create dangers or hazards.

9.1.8 Not without the company's prior written permission to bring on to the boat barbeques, dinghies, canoes, bicycles, or vehicles.

9.1. 9 Not to use the boat for any commercial purpose.

9.1.10 To allow the boat to be occupied only by the persons named in the booking confirmation.

9.1.11 Not to allow to be on the boat at any time more people than are approved for the boat as specified by the number of berths.

9.1.12 To give way to laden or un-laden cargo boats, sailing craft, rowing boats, canoes and other human propelled craft.



9.1.13 Not to take the boat on to sea or tidal waters without the consent of the company. To cruise only on canals and rivers approved by the company.

9.1.14 Not to have or carry any live bait on the boat.

9.1.15 At all times to observe all bye-laws and navigational limits and abide by the instructions and advice of the relevant navigational authorities and the company and their respective officers and employees.

9.16 The company reserves the right at its reasonable discretion and without liability to restrict cruising areas or routes in the light of prevailing weather and navigation conditions.

## 10. ACCIDENTS

10.1 You are in charge of the boat and are responsible for its safe navigation. In the event of any accident or damage involving you or any other people or any property including but not limited to the boat, other craft or the waterway you must:

10.1.1 Contact Midland Mallard and obtain and record the name of any other boats and the names and addresses of any other people involved on the form provided by the company.

10.1.2 Notify the company as soon as practically possible with full details of the accident and any damage sustained.

10.1.3 Complete the navigation authority's waterway incident report form.

10.1.4 Proceed in accordance with and follow the company's reasonable instructions.

10.1.5 Not in any circumstances admit or allow any other person on the boat to admit liability to any other person.

## 11. LOOKING AFTER THE BOAT

11.1 You are responsible for and will keep the boat and its equipment and contents in clean and tidy order during the hire period.

11.2 You must notify and provide full details to the company of any breakdown, damage, theft or loss involving the boat as soon as practically possible.

11.3 You must not undertake or commission any repairs, adjustment or service to the boat without the company's prior approval.

11.4 Although the boat and its equipment are insured against many risks by the company you remain responsible to the company for any damage or loss arising from your breach of the Agreement, your deliberate acts or from your negligence including misuse of lavatory facilities resulting in an engineer being called out.

11.5 In the event of an engineer being called out as a result of negligent misuse of lavatory facilities a fixed charge of £100 (one hundred pounds) will be made by the company to you.

11.6 You shall be responsible for getting the boat off mud banks or other grounding and for removal of weeds, rope or other matter from propellers and steering gear and for keeping the company informed of any incidents of this nature. In the event of an engineer being called out for any of these reasons by you, a fixed charge of £100 (one hundred pounds) may be made by the company to you.

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12. HIRER'S PROPERTY 12.1 Vehicles may be left entirely at their owner's risk in the Bosworth Marina car park. The company will be under no liability for any loss or damage to vehicles or their contents or for your property on the boat or unless caused by the company's negligence.

12.2 The company may take such reasonable action as it shall consider necessary to silence car alarms in the company's car park and to recover the costs from you. This is inclusive of any requirements and obligations under the Noise and Statutory Nuisance Act 1993.

12.3 The company will return property if it finds it has been accidentally left on the boat provided that it is claimed promptly and that you either arrange for its collection or agree to pre-pay for any postage and packing.

Property not claimed within two months from the end date may be disposed of by the company.

### 13 FUEL

13.1. The boat is handed over ready fuelled and the price includes the cost of fuel provided at handover. You will not be refunded for any fuel left in the tank and not used on your journey.

13.2 The company may make a fuel surcharge if the cost of diesel at the filling station nearest to Bosworth Marina increases by 10% or more between the date of the booking confirmation and the start date. The surcharge shall be limited to the actual percentage increase in the cost of diesel.

### 14. PETS

14.1 Pets are allowed on certain boats only with the company's permission. You must give notice of any pets you wish to bring at the time of making the booking.

14.2 The company's charges for pets are set out in the manual and on the company's website and brochure.

14.3 You must provide any pet baskets, blankets, or cages.

14.4 All pets must be properly house trained or caged as appropriate, must never be left unattended, and must not be allowed on bedding or upholstery.

14.5 Pets and pet damage are not covered under the Company's insurance policy and you will be liable for any damage or loss caused by them or any additional cleaning (see clause 14.2).

### 15. INVENTORY

15.1 Any shortcomings in inventory discovered during the hire period must be notified to the company as soon as practically possible so as to afford the company the opportunity to rectify the matter. You will be

responsible for the cost of replacing or repairing any items on the inventory which are missing or damaged at the end of the hire period.

## 16. EXCLUSION AND LIMITATION OF LIABILITY

16.1 The company shall not be liable to pay any compensation, damages, costs or expenses for any claim arising from any cause beyond the company's reasonable control which could not have been mitigated or avoided by the company including but not limited to:

loss of or damage to any person's property (including the boat);

non-fulfilment, interruption or delay to the booking;

breakdowns, mechanical problems, latent defects, damage to the boat;

restrictions on cruising, obstructions, repairs, damage or closure of

waterways, non availability of routes, navigational works, storms, floods,

droughts, ice, shortage of water or other weather or climatic conditions;

rationing, shortage or non availability of fuel;

consequential loss, damage or expense which you incur including the cost of alternative transport, accommodation or other holiday provision.

16.2 The company's total liability to you and any person claiming through you in respect of all claims which may arise under the Agreement (other than in respect of claims for personal injury or death due to negligence on the part of the company) shall be limited in aggregate to twice the total price actually paid by you to the company in respect of the Agreement in question.

## 17. BROCHURE

17.1 The specifications of boats, their accommodation, facilities and equipment in the brochure are intended as a general guide and the company shall not be liable in the event of any insubstantial differences in the boats supplied and reserves the right to make modifications. In particular alterations may occur during rebuilding or refitting, boats within classes may differ, colours may vary, layout plans are for guidance only

and are not to scale and boats may have steps which are not shown.

17.2 If your party includes any infirm or disabled persons you should make relevant enquiries at the time of booking and ask for a copy of the Company's Access Policy.

## 18. LAW AND JURISDICTION

18.1 This Agreement shall be governed by the law of England and Wales.

18.2 Any dispute arising under this Agreement shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.

## 19. DISPUTE RESOLUTION

19.1 We hope you are fully satisfied with your holiday. In case you have any problems we do have a formal Complaints Policy to ensure that Midland Mallard (the company) deals fairly and evenly with any of its customers who is not satisfied with goods or service supplied by the company.

19.2 The British Marine Federation and the Royal Yachting Association recommend that disputes arising under this form of Agreement which cannot be resolved by negotiation, should, with the written agreement of the parties, be submitted to mediation or failing that to arbitration under the British Marine Federation's Dispute Resolution Scheme, which is approved by the Royal Yachting Association.

19.3 Details of the mediation scheme operated by the British Marine Federation are available at [www.britishmarine.co.uk/mediation](http://www.britishmarine.co.uk/mediation) . Matters suitable for arbitration shall be submitted to a single arbitrator in accordance with the British Marine Federation's Dispute Resolution Scheme.

19.4 The provisions of the Arbitration Act 1996 shall apply.

## 20. THIRD PARTIES

20.1 Only the named parties to the Agreement may enforce the terms of the Agreement. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.



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