



PUERTO BANÚS
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REGULATIONS FOR OPERATION AND MAXIMUM TARIFFS OF PUERTO JOSE BANUS

CHAPTER I.

GENERAL PROVISIONS

Article 1. Purpose and objective

1. These Regulations for Service Operation and Maximum Tariffs, hereinafter the “Regulations” or “RETM”, are intended to establish the regime for the management, operation and provision of the public port service by the concessionaire of the facilities of the “JOSÉ BANÚS” marina located in Marbella (Málaga).

The waters included in the concession are divided into Zone I and Zone II:

ZONE I. This is the water area comprised between the coastline, the inner face of the breakwaters and the line joining their ends, that is, the area included between the so-called Levante Breakwater, Levante Breakwater-Quay, Ribera Quay, the eastern face of the Benabolá Breakwater-Quay, the fuel quay, the Benabolá Breakwater, the Benabolá Spur and the line joining the end of the latter with the southern tip of the first.

ZONE II. This covers the water area within a band one nautical mile wide, measured from the shore and comprised between the prolongations of the two lines delimiting the concession land area.

2. The legal regime for operating the concession title shall be that regulated in these Regulations, without prejudice to the concession title itself and the application of the legislation in force regarding ports, port dues and other applicable provisions, as well as any rules from other areas of competence that may apply to the operation of the conceded goods and services. In case of discrepancy, the legislation in force shall prevail.

Article 2. Scope of application

The scope of application of these RETM extends to the Port Service Area of the José Banús Marina, in accordance with the project approved when granting the concession title, as well as any amendments thereto approved by the administration of the port system of Andalusia.



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In this document, reference shall be made interchangeably to the “port area under concession”, “port area”, “conceded facilities”, “port facilities”, or analogous expressions, referring to its objective scope of application.

The relationships established between the concessionaire and users and assignees of rights in the port area shall be reviewed, where appropriate, by the ordinary jurisdiction, except in those cases in which, pursuant to the Law on Contentious-Administrative Jurisdiction, acts of the concessionaire must be reviewed by the contentious-administrative courts.

Article 3. Purpose of the concession facilities: port services and complementary and compatible activities

1. In accordance with the provisions of Article 41.1 of Law 21/2007, of 18 December, on the Legal and Economic Regime of the Ports of Andalusia (hereinafter “Law 21/2007”), the activities listed therein and intended to guarantee and meet the operations and needs of maritime traffic are deemed public port services.

The purpose of the port area under concession is to provide the services required by vessels, crews and users, in accordance with the conditions of the concession title and as established by the RETM, and by means of the material and human resources provided by the concessionaire or by those other persons who, with prior administrative authorisation, have entered into contracts with the concessionaire to carry out certain services.

The provision of services, performance of complementary activities, or the utilisation and operation of areas of the concession that are not intended for the provision of public port services but are compatible with them, shall not be subject to maximum tariffs, nor to the control and intervention of the Port Administration defined in Article 40.

The following services are of a minimum and essential nature for the operation of the marina or nautical-sports facility:

- Safe access for vessels, guaranteed by an adequate depth for the provision of port services and sufficient separation between pontoons, fingers and revetments.
- Operation of the aids to navigation (buoyage/markings) as determined by the competent administration.
- Maintenance of internal agitation levels below a wave height of 0.40 m in the berthing area, in response to any external swell or that generated within the basin itself.



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- Safe berthing for vessels, including their connections to water and electricity networks.
- Fire-fighting services, as established in the approved project, applicable regulations and by-laws, and as defined by the competent authority in the matter.
- Communications services to be used by crew or passengers of vessels based in or transiting the port: telecommunications, telephony, Internet, e-mail, including the need to undertake technological adaptation and subject to the applicable regulations on the matter.
- Environmental services:
 - Collection of rubbish in the quay, gangway and apron areas.
 - Collection of waste in accordance with the measures deriving for the concessionaire from compliance with the regulations in force during the term of the concession at the time of grant, and with the prescriptions approved in the project. The service for removal and disposal of such waste shall be subject to what is established by the competent administration in the matter, without prejudice to the obligation on the concessionaire to guarantee the service.
- Radiocommunications and other navigational aids.
- Meteorological information.
- Toilets and sanitary facilities, including showers.

The following services are optional:

- Haul-out and launching of vessels.
- On-land parking of vessels and of vehicles or trailers for their transport.
- Management of the port technical area for vessel maintenance and repair.
- Embarkation and disembarkation of passengers.
- Storage of gear, equipment and/or vessels.
- Promotion of nautical activities.
- Trade in victuals, nautical supplies, catering and laundry.

- Supply of fuel.
 - Support for commercial or industrial activities carried out by means of vessels.
2. Anchoring of vessels outside the conceded Zone II or other areas specifically designated for that purpose is strictly prohibited.
3. By way of exception, in the event of emergency or force majeure, any affected vessel shall be entitled to refuge in the port facilities granted under concession for the time strictly necessary to guarantee its safety, without prejudice to the accrual and enforceability of the fee that may correspond by law or regulation.

Article 4. Management of public port services and indivisibility of the concession

1. The operation, maintenance and conservation of the public domain, works and facilities subject to an administrative concession correspond to the concessionaire.
2. Without prejudice to the fact that the administrative concession is legally indivisible, the concessionaire may manage the public port services in any of the forms established for that purpose by the legislation in force; accordingly, any contracts to be entered into between the concessionaire and another natural or legal person for the management of the concession or part thereof, or for the use and enjoyment of its elements, must be previously authorised by the Public Ports of Andalusia Agency. In no case shall powers be deemed acquired by means of such notified action that run counter to the basic or regional legislation regarding property of the public domain.

Article 5. Processing of assignments of rights of use and/or enjoyment over port elements

1. Without prejudice to the provisions of Article 3.1 of these Regulations, those elements of the concession susceptible to assignment of their use and/or enjoyment shall be those specified in the concession title, including, among others, berths, apartments, commercial premises and parking spaces.
2. The regime governing assignments of use of the aforementioned elements shall be that established in the grant title, without prejudice to the application of the port regulations in force.

Assignees of elements of the concession and users thereof under any title are obliged to comply with the prescriptions governing the concession.

With respect to the remaining concession elements susceptible to assignment, and unless otherwise provided in the concession title, utilisation contracts may be processed.

3. Under the terms established in Article 39 of Law 21/2007, the concessionaire shall be obliged to formalise by means of a public deed and to notify the Agency in advance of any contracts it intends to enter into with third parties for the assignment of rights of use and enjoyment over berths or concession elements susceptible to such assignment.

5. Assignees of elements of the concession and users thereof under any title are obliged to comply with the prescriptions governing the concession.

6. Supplies of water, electricity and similar to premises and facilities, as well as different services that may be carried out with concession elements, shall always be subject to their availability. As regards the order of preference for their provision, it shall be that most convenient for the general service provided, as determined with due reasoning by the Operations Director and without infringement of the principles of equality and non-discrimination.

The concessionaire may document the aforementioned supplies by means of a supply contract.

Article 6. Particular features of berth usage

Within the scope of the concession, the only party authorised to manage the public port service to vessels is the concessionaire, either directly or by means of a management assignment contract, previously authorised by the port administration.

The berths of a port facility are divided into two groups: base berths and transit berths.

Base Berths

This group comprises those defined below:

1. A preferential-use assignment of a berth shall be deemed to exist when the concessionaire or authorised managing entity and a third party agree the continued use of that berth for mooring a vessel owned by the latter for a period exceeding one year and up to the remainder of the concession term. In such cases, the berth is classified within the group of base berths.

A maximum of 80% of the berths available at the facilities, as identified in Annex II, may be assigned in this manner.

2. Annual use of a berth shall be deemed to exist when the concessionaire or authorised managing entity and the owner of a given vessel agree the use of that berth for mooring a vessel owned by the latter for a period of one year. In such cases, the berth is classified within the group of base berths and must be formalised by means of an annual base contract. This type of contract does not require prior notification to the Public Ports of Andalusia Agency. This contract may be tacitly renewed on an annual basis if so agreed by the parties. This type of berth is identified in Annex II.

Transit Berths

1. Temporary use of a berth shall be deemed to exist when the concessionaire or authorised managing entity and the owner of a given vessel agree the use of that berth for mooring a vessel owned by the latter for a period of less than one year. Their number shall never be less than 10% of the berths available at the port facilities. In such cases, the berth is classified as a transit berth and must be formalised by means of a transit contract between the concessionaire or managing entity and the third party; this type of contract does not require prior notification to the Public Ports of Andalusia Agency.

This transit contract shall not be extendable, and a new transit contract may only be agreed between the parties where there are no other requests to receive the service, in which case they shall be served by the concessionaire in chronological order and pursuant to the principles of equality and non-discrimination. This type of berth is identified in Annex II.

Notwithstanding the initial identification in the aforementioned Annex II, the Operations Directorate may redistribute them due to operational or service needs, in all cases respecting the indicated proportion for each berth modality, with prior notification to the Public Ports of Andalusia Agency, or the entity that may replace it.

2. In accordance with the provisions of Article 16.3 of Law 21/2007, rights of exclusive use may not be constituted over any water surface within ports, and, in particular, no exclusive right of mooring use may be constituted over berth points.

Consequently, the power to assign such elements shall have as its object the preferential and non-exclusive use thereof, which shall allow the concessionaire or authorised third party to manage them temporarily while they are not occupied by the vessels of their assignees under the terms regulated in Article 22.



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3. Berths shall revert to the concessionaire upon expiry of the agreed term or to the Autonomous Community where this coincides with the end of the concession term.

Article 7. Common elements to partial management assignments of the concession and to assignments of use and enjoyment of its elements

1. The parties entering into the contracts must obtain the corresponding administrative authorisations and licences that may be required, and the use or enjoyment assigned may not be carried out in the absence thereof.

2. Pursuant to the regulations in force, only the concession title is registrable in the Land Registry, and rights assigned for total or partial operation, or for use and enjoyment of concession elements, may not be registered independently without reference to the concession title.

In no case shall the individualisation of the elements of the concession be subject to the regime of the Horizontal Property Law. The concessionaire undertakes, for the purposes of ensuring compliance with the foregoing, to submit to prior approval by the Agency the terms of any deed(s) intended to be registered.

3. Real security rights may only be constituted over the concession title, for which the express authorisation of the Agency shall be required, and the Agency shall likewise hold pre-emption and redemption rights in the event of transfers deriving from the aforementioned security.

4. The parties are free to contract except as regards the limitations deriving from the public-law nature of the administrative concession and its elements, any clause agreed between private parties that is contrary to the concession title, the Law, or the underlying public interests being null and void.

CHAPTER II.

ORGANISATION OF OPERATION

Article 8. Concessionaire

1. The operation of the port facilities is the responsibility of the concessionaire; in all cases the concessionaire shall retain such capacity vis-à-vis the Public Administration for the purposes of

rights and obligations, and shall be responsible for the entirety of the concession as regards the operation and conservation of the port area, as well as compliance with the concession obligations, even in the event that it assigns management in whole or in part and likewise in respect of those elements whose rights of use and enjoyment it has assigned.

2. In this regard, the concessionaire is generally obliged to:

- a) Maintain all essential services.
- b) Provide the necessary services with the agreed continuity and guarantee to private parties the right to use them, in accordance with the principles of equality and non-discrimination, under the established conditions and upon payment of the consideration in the terms regulated in the Chapter on Tariffs.
- c) Ensure the good order of the service, being able to issue appropriate instructions, without prejudice to the policing powers of the Administration of the Port System of Andalusia or other competent administrations.
- d) Compensate for damages caused to the Administration or third parties as a consequence of operations required for the development of the service, where attributable to it.

3. Specifically, the concessionaire has the following obligations:

- a) Ensure the proper governance of the port facilities and services, the exact fulfilment of the conditions and prescriptions of the administrative concession and of the guidelines issued by the competent administration, applying in each case the provisions of the RETM.
- b) Issue invoices to each user for the amount due by them in respect of the tariffs established in the RETM.
- c) Regulate the right of entry, and the provision of services may be refused where, in its judgement, the condition of vessels or port facilities does not meet the safety conditions deemed necessary, save for refuge, or for non-payment of accrued charges and tariffs.

4. The technical functions of operation and conservation must, in each case, be performed by personnel with appropriate professional qualifications.

5. It is the exclusive power of the concessionaire to propose to the Agency, for its approval, improvement works, extraordinary conservation works, dredging and maintenance of depths,



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and any other works entailing modification of existing works or facilities in accordance with the project approved for the concession.

6. The Operations Directorate may exercise supervisory powers in urgent situations requiring rapid intervention, except for policing powers in all cases, in order to maintain the order provided for in the concession title and in the RETM, for its elements, and for the movement of users, vessels, equipment, gear and supplies, being obliged to notify accordingly, pursuant to Article 72.4 of Law 21/2007.

Article 9. Operations Directorate and Technical Directorate

1. The Operations Directorate of the concession shall be exercised by a person with a university education, with appropriate aptitude and professional competence, appointed by the concessionaire as Operations Director of the port facilities. Such appointment shall be approved by the Agency, which may refuse it in cases of lack of professional competence.

The employment relationship between the concessionaire and the Operations Directorate shall be carried out in any of the forms legally established for this type of relationship, it being essential that they be available at all times to the Port Administration.

2. The powers of the Operations Directorate, and therefore exercised under its responsibility, without prejudice to that of the concessionaire, are as follows:

- a) Representation of the concessionaire, for which the person must be legally empowered.
- b) The organisation and direction of the material and human resources necessary for the provision of services under the conditions established by the concession title and as established by these Regulations.
- c) The conservation and repair of the concession elements required for the provision of services.
- d) The regulation of the general movement of vessels, entries, departures, mooring, berthing and unberthing, and other port services, as well as the activities carried out in the waters within the physical scope of the concession.
- e) The regulation of operations involving the movement of equipment, gear, supplies and vehicles on quays, car parks, service roads and all land subject to the concession.



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- f) Proposing to the Agency the approval of limitations on the public and free use of the service area necessary for correct operation.
- g) Proposing to the Agency through the concessionaire, for approval, improvement works or other works entailing modification of existing ones.
- h) Administrative functions relating to operation, including:
 - Preparing the general budget of expenses and income of the port operation for each financial year.
 - Keeping accounts and general statistics.
 - Managing the collection of established tariffs, including bringing legal action to recover them.
 - Reporting promptly to the Agency on any matters requested in relation to operation of the granted concession. Specifically, the Director is responsible for controlling and reporting the daily movements of arrival and departure of vessels.
 - Representing the assembly of berth-holders.

3. The **Technical Directorate** of the Port Facilities shall be exercised by a person qualified as a Civil Engineer (Roads, Canals and Ports), certified by their corresponding Professional Association, who, under the direction of the Operations Director, shall assume and coordinate the technical tasks corresponding to the supervision and maintenance of the port facilities. They shall be appointed by the concessionaire as Technical Director of the port facilities; such appointment shall be approved by the Agency, which may refuse it in cases of lack of professional competence.

The professional services relationship between the concessionaire and the Technical Directorate shall be carried out in any of the forms legally established for this type of relationship.

4. The powers of the Technical Directorate, and therefore exercised under its responsibility, without prejudice to that of the concessionaire, are as follows:

- a) Knowledge of the works, infrastructures and facilities that constitute the material support necessary for the provision of the port service of the administrative concession, and ensuring compliance with the conditions of stability, safety for persons and the environment, and regulatory compliance of the same for their intended use.



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b) Carrying out an annual technical audit or assessment on the state of maintenance and conservation of the works, infrastructures and facilities defined in the previous paragraph, evidencing their suitability for operation and use, as well as duly reporting any actions necessary to remedy any deficiency analysed.

c) Assuming the role of Works Director for the maintenance and conservation works that must be carried out at the port facilities during the concession term, being able to employ the team of professionals deemed appropriate according to the scope of the different actions.

d) Being a member of the Works Directorate for the Modification works of the concession requested by the concessionaire and approved by the Port Administration.

The Operations Directorate and the Technical Directorate may be exercised by the same person if they meet the requirements set out above in each case.

Article 10. Control of the concession by the Administration of the Port System

1. The Administration of the Port System shall exercise control powers over the concession and its operation, in the exercise of its competences established in Law 21/2007, or any provisions replacing it.

2. The supervision carried out shall likewise cover the rights assigned by the concessionaire, such supervision being notified solely to the concessionaire by the Agency in its capacity as the sole party responsible for the indivisible concession.

CHAPTER III.

USE OF THE PORT AREA

Article 11. Use of the area subject to concession

1. The basins, moorings, pontoons, quays, storage areas, car parks, roadways, surfaces and, in general, all infrastructure and facilities within the port area under concession are intended for the provision of services, subject to these Regulations and to such instructions as may be issued by the concessionaire and by the Agency in matters of planning, organisation and management



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of the facilities regarding entry, departure and berthing of vessels, on-land stays, provisional installation of facilities, circulation of vehicles and persons, as well as the exercise of any other activity; their use is subject to the authorisation of the concessionaire and to obtaining any additional permits required in each case by the provisions in force.

2. The use of infrastructure and facilities must at all times be in accordance with the specific purpose for which they are intended and within the approved limits regarding maximum levels of use and operating hours.

3. The concessionaire shall establish the operating hours of services, which must be approved by the Agency. These hours shall be made public and displayed by means of noticeboards or similar in a suitable place to ensure adequate awareness by users or interested parties.

4. Without prejudice to holding the corresponding authorisation from the concessionaire, the intended uses are also subject to obtaining any additional permits, habilitations, licences, certificates, authorisations, or similar that are necessary in each case in accordance with the provisions in force.

Article 12. Service request

1. In order to use any port service, interested parties must submit the corresponding request to the Operations Directorate, with the formalities it may establish depending on the characteristics of the service and the needs of statistics and control of the area subject to concession.

2. When issuing an authorisation for the provision of any service(s), the Operations Directorate shall indicate the rules for their use, advising inter alia of the existence of these Regulations.

3. When authorising berthing, the Operations Directorate shall indicate to the user which services are provided by the concessionaire together with the berthing service and included in the corresponding tariff; other services not included with berthing must be requested from the Operations Directorate with payment of the corresponding tariffs, likewise advising of the existence of these Regulations.

Article 13. Access to the port area

1. Access to the port is free, subject only to the limitations set out in these Regulations or as established by the concessionaire for reasons of safety or operation. The concessionaire may establish access and exit control for vehicles by means of a barrier in any of the areas designated or to be designated for that purpose.

2. The spaces corresponding to access roads to the port, internal roads and freely accessible areas and any area where there is no restriction on pedestrian access are for general, public and free use, subject only to the limitations arising from their proper use and the port's policing rules.

3. The Operations Directorate, for operational reasons and with the express agreement of the Agency, may impose restrictions and limited opening hours for access to the pontoons, both for pedestrians and for vehicles. In such cases, the restriction must be published by means of a sufficiently conspicuous notice at the entrance to the area.

4. In all cases, any restriction of access, whether of persons or vehicles, shall be justified to those seeking such access. It shall be sufficient cause to limit access of persons where the number of persons already present may be presumed to entail a risk to persons due to capacity of the facility or disturbance of public order. In all cases, the notice referred to in the previous paragraph must state the maximum permitted capacity.

5. Access by vehicles may likewise be prevented where more than 90% of the area designated for parking is occupied. The aforementioned notice must indicate the number of spaces and the applicable parking tariff.

6. Access by vehicles carrying nuisance, flammable or hazardous materials may also be prevented. In order to load and unload such materials, the corresponding authorisation must be requested from the Directorate.

Article 14. Prohibitions on remaining

1. The Operations Directorate may establish restrictions or prohibitions on remaining in certain places within the service area applicable to vessels, goods, persons or vehicles, on grounds of operational needs or the safety of its users and of vessels. The same may be imposed both on land and in water areas.

2. All substances deemed by the Operations Directorate to be nuisance, flammable or hazardous that enter the port area by land or sea with the Directorate's authorisation shall be loaded and/or unloaded directly from vehicles to the vessels that are to transport them, or directly from the vessels to the vehicles that are to transport them, their storage on quays and in port premises being prohibited.

3. In cases where vehicles, equipment, gear, cargoes or supplies do not comply with the time, place or manner for which parking on port service roads, or the authorisation for land or facilities, was granted, their responsible owners must remove them immediately, without prejudice to payment of any tariffs that may apply for the services provided.

4. In all cases, vessels, goods, vehicles, equipment, gear, cargoes or supplies found in the port area may be moved at the owner's expense to any place within it due to operational needs, breach of traffic rules and signals, or for reasons of safety of persons or property. The movement shall be carried out by the owner; in the event of absence or failure to do so in the manner and within the time indicated by the Directorate, it shall be carried out using the means available to the Directorate, provided the legal requirements for this are met. The Operations Directorate shall issue the corresponding expense note, which must be paid by the owner of the item in question upon presentation and, in all cases, prior to its removal from the port area.

Article 15. Traffic, pedestrians and remaining on land

1. The Operations Directorate shall determine the places where users and visitors may circulate on foot or by vehicle, placing illustrative signage in the area for this purpose. It shall likewise determine loading and unloading areas, placing directional signs on roadways and illustrative signs in the area.

2. The direction of traffic and authorised parking areas shall be duly signposted. Use of such areas shall accrue the corresponding vehicle parking tariff.

The accessibility of the Emergency Services—and specifically the Fire Service—takes precedence over hospitality installations. Consequently, the operators of such establishments are obliged to comply immediately with any instructions issued to guarantee such accessibility, as well as to cooperate in their enforcement, even where such instructions entail total or partial removal of the installation.

3. Vehicles carrying nuisance, flammable or hazardous loads must proceed directly, without voluntary stops, to the area where the vessel that is to transport them is located.

Section 1.

GENERAL RULES ON PORT SERVICES

Article 16. General obligations of users of port services

The general obligations of users of moorings, premises and other facilities, as well as of any user of port services, shall be:

- a) To respect all concession elements and to enable their proper use.
- b) To comply with the applicable regulations on the matter, with the provisions of the concession title, and with these Regulations.
- c) To exercise due care in the use of services and to collaborate in the maintenance of concession elements allocated to the provision of those services, keeping them in perfect working order and in the same condition as received, and without making any modification thereto.
- d) To be liable for breakdowns and damage caused to works, facilities, networks, roads and general services.
- e) To pay the tariffs established by the concessionaire as a consequence of the provisions of these Regulations, in accordance with the maxima approved by the Agency.
- f) To inform the Operations Directorate immediately of the sale of a vessel located in the port area, for appropriate purposes.

Article 17. Prohibitions on the use of services

1. The following are strictly prohibited throughout the port service area, in addition to that established in the Law on the Legal and Economic Regime of the Ports of Andalusia and its implementing regulations:

- a) Using the traffic routes, quays, warehouses and other land and facilities in the service area for any purpose other than that established in the concession title, its implementing documents, these Regulations, the authorised assignment contracts and the measures adopted by the concessionaire for the proper provision of services; it is not permitted to carry out works or installations, repairs, to dump rubbish or objects of any kind, to drive at speeds exceeding 20 km/h, to park in unauthorised areas, or to carry out other activities that are not expressly and individually authorised by the Directorate.
- b) Lighting fires or bonfires, or using naked-flame lamps or pyrotechnic activities.
- c) Carrying out activities that are a nuisance to other users.
- d) Fishing or collecting shells or shellfish at any point within the port service area.
- e) Carrying out any sporting activity other than that provided for in these Regulations; bathing or swimming in the basins, channels or access to the Port.
- f) Having animals at large and unsecured, in a manner that may cause damage, nuisance or dirt, without prejudice to the corresponding legal limitations for animals and dangerous dogs.
- g) Carrying out repairs on vessels or pontoons, except at berths authorised for such use.
- h) Carrying out commercial or industrial activities using the vessel whose berthing is authorised, unless such activity has been expressly authorised by the concessionaire.

2. Likewise, activities contrary to law, morality or public order are prohibited throughout the concession area.

Article 18. Cleaning, conservation and maintenance

1. Users of vehicles or vessels, or owners of equipment, gear and supplies, must ensure that the facilities and other vehicles, vessels and objects are not damaged thereby, taking appropriate



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fire-protection measures and ensuring they are not left in a neglected condition, and they must clean, at their own expense, any floor surfaces that may have been soiled during or after operations, so that the public land they have occupied is left in the same prior state of cleanliness.

2. Repairs that must be carried out for this reason on the facilities or other elements of the conceded port shall be executed under the Operations Directorate and in the manner determined by it, although the user or the person responsible for the damage may inspect the works.

3. Cleaning operations must be carried out directly by the user or owner, or at their expense. If not performed, the Operations Directorate may arrange the execution of the necessary works, the costs thereof being borne by those parties.

4. All users of the port are obliged to comply with environmental rules. The crew of any vessel using the concession facilities must be careful with regard to environmental rules in general, as well as those specifically established by the Operations Directorate. To this end, the concessionaire, in addition to signage throughout the facility, shall make available upon arrival of vessels information on the location of suitable containers for each type of waste generated on board that must be deposited ashore, with particular care regarding those classified as hazardous (used oils, filters, batteries, cells, containers with paint or solvent residues, expired flares, oil- or paint-soiled rags, etc.). In accordance with port legislation in force, it is strictly forbidden to throw any type of waste into the sea.

Section 2.

RULES ON THE USE OF MOORING BERTHS

Article 20. Permitted uses at berths

The holder of the right to use a berth may:

1. Moor at the corresponding berth, of the specified length and beam, as many times and for such time as deemed appropriate always within the agreed periods of use, utilising the bollards, fingers and other elements forming part thereof.



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2. Carry out embarkation and disembarkation of persons and animals and the provisional deposit, in the area designated for that purpose, of materials, utensils and effects necessary for navigation, except for nuisance, harmful or hazardous goods, for which prior permission must be obtained from the Operations Directorate and its instructions followed.

3. Connect, with prior authorisation of the Operations Directorate, to the general electricity, water and other networks, at the outlets or connections of such services located in the distribution boxes intended for each berth or group of berths.

Article 21. Regime for berthing in transit

1. The transit regime applies to those berths whose use and enjoyment are agreed in accordance with Article 6 of these Regulations.

Once the period agreed between the concessionaire or managing entity and the vessel owner has elapsed, the vessel must leave the port area. The Operations Directorate, only where there are no pending requests for transit berths to be served, may agree a new period of stay if so requested, at the same berth or a different one. In all cases, where the vessel may remain due to availability of transit berths, the condition of the berth shall continue to be one of transit and not base.

2. Berthing in transit, or access to or departure from the port area by vessels in transit, must be requested in advance, indicating the data required for their identification, maximum length, beam, draught, type of propulsion, and required services. To make such request, interested parties must proceed to the waiting quay and submit the request to the Directorate. The latter

may authorize or refuse the requested services, based on the cases provided for in these Regulations.

3. In all cases where the applicant does not accept or comply with the time, place or conditions set out in the authorisation granted, they shall not enter the waters of the port area or shall leave them immediately.

Such compulsory departure of the vessel does not exempt payment of the amount of the tariffs for the services that it has used or uses during its stay in the port area.

4. For these purposes, the mere entry of a vessel into port waters shall be deemed to constitute acceptance of the conditions set out in the Regulations.

Article 22. Regime for the use of base berths

1. For the purposes of Article 16.3 of Law 21/2007, the concessionaire shall operate, under the transit regime, those berths whose use has been assigned under the base modality when the holder is absent and in accordance with these Regulations, applying ordinary commercial tariffs in line with the maxima authorised by the Agency, which must be duly published.

2. To that end, berth-holders must notify the port offices in writing of their planned departures where their absence will exceed 72 hours, so that the berth may be used by users under the transit regime. If the holder of the right of use does not expressly notify the availability of the berth, breaching this obligation, the concessionaire may commercialise it after 72 hours of absence until the holder's return, without prejudice to any wait that must be borne until the departure of the transit vessel.

3. From the result of such operation, the concessionaire shall pay to the holder of the right of use of the berth 40 per cent of the amount received from the transit user, retaining the remainder of the operating result as consideration for commercialisation rights and services provided.

Article 23. Unauthorized access

1. If a vessel not previously authorised improperly enters port waters, or remains without authorisation after entry, it must leave immediately after being required to do so, subject to any legally applicable exceptions, and the corresponding tariffs for the use of port services shall apply under the terms set out in the following paragraph.

2. If a vessel remains at a berth subject to the base regime and its owner does not hold title to the base berth, or lacks a title enabling such use, and the occupation has not been assigned by the Operations Directorate, it may be deemed to have accessed it improperly.

Without prejudice to the obligation to leave the port waters until holding due authorisation, the basic tariff to be applied shall be that corresponding to daily transit, applicable to the size of the berth and the date of use.

Article 24. Obligations of vessels and crews

Vessels and their crews, as users of the port area, shall, in addition to the general obligations set out above, have the following obligations:

- a) To cooperate with personnel dedicated to the operation of the port area, to facilitate manoeuvres or avoid accidents or breakdowns. The skipper or crew of a vessel may not refuse to take or make fast stern lines, springs or warps of other boats.
- b) To watch over the vessels, their gear and accessories, as well as tools and materials owned by them, being responsible therefor.
- c) To pay invoices issued to them in accordance with the tariffs in force.
- d) To use the assigned berth properly, avoiding encroachment with gear or accessories into areas designated for pedestrian traffic or for manoeuvring equipment used for operating berths or other vessels.
- e) To prevent noise caused by the wind in the rigging, adopting the necessary measures.

Article 25. Transfer of vessels

1. By the mere fact of a vessel entering port waters, and taking into account the operating regime, it is understood that its owner or user accepts that it may be moved to any place within such waters for the needs of the general service, where so reasonably determined by the Operations Directorate.

2. This transfer shall be carried out by the interested party; however, in the event of absence or failure to do so in the manner or within the time determined by the Operations Directorate, it shall be carried out using the Directorate's own means. The Operations Directorate shall issue the corresponding expense note, which must be paid by the owner or user of the vessel upon presentation and, in all cases, before leaving the port area.

3. Access to the port facilities is subject to the concurrence of technical conditions that so permit depending on tides, depth, currents, etc. To this end, users must contact the Operations Directorate so that it may provide information on the aforementioned accessibility conditions.

Article 26. Prohibitions for users of moorings

1. Without prejudice to the prohibitions established generally in port regulations, the following are absolutely prohibited:

- a) Having explosive materials on board vessels, except for smoke signals, rockets and flares that are approved and commonly used in emergencies.
- b) Throwing soil, rubble, rubbish, waste or effluents, or materials of any kind, whether polluting or not, on land or into the water. Rubbish must be deposited by the owner or user of the vessel in the containers provided for this purpose. Infringement of this rule, which essentially affects hygiene, cleanliness and health, shall entitle the Operations Directorate to require the immediate departure of the offender and their vessel, in the case of a mooring user, independently of any complaint that may be lodged with the competent Authority for the initiation of sanctioning proceedings and of the offender's obligation to compensate for damages caused to the concessionaire or third parties. Recurrence of this infringement shall entitle the Operations Directorate to refuse the provision of services within the scope of the concession.
- c) Navigating vessels within areas reserved for other duly signposted uses, as well as carrying out repairs and works on vessels within the waters of the port area, except in the sectors and specific cases designated or individually authorised by the Operations Directorate.
- d) Carrying out works or modifications to the port facilities without the express authorisation of the Operations Directorate.
- e) Showering on the pontoons or outside the designated area for that purpose.
- f) Keeping the engine running during provisioning and refuelling operations and smoking during the same.
- g) Leaving halyards loose so that they may strike the masts.

Article 27. Conservation and safety of vessels

1. Every vessel moored in the port area must be maintained by its owner or user in a good state of mooring, conservation, presentation, buoyancy and safety.



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2. If the Operations Directorate observes that these conditions are not met in a vessel, it shall notify the owner or user, granting a reasonable period to remedy the deficiencies identified or to remove the vessel from the port area.

3. If, after the period granted, this has not been done, or even before then if the vessel is in danger of sinking or causing damage to other vessels, the Operations Directorate shall, at the expense and for the account of the vessel owner, take the measures necessary to place it ashore or in a condition to avoid sinking, without prejudice to the necessary notification to the authorities for appropriate action.

Article 28. Absence of crews

1. Where, due to the absence of users, vessels may remain without crew, such users and/or the owner of the vessel are obliged to give written notice to the Operations Directorate, as well as the place and means of contacting the person responsible for the vessel, skipper or authorised crew member, so that, during the period of absence, the Operations Directorate may carry out the operations required for operation of the port area in accordance with these Regulations.

2. In the absence of such notice, the concessionaire may, without incurring liability, proceed with the necessary technical safeguards to move the vessel's location where necessary, and without prejudice to intervening inside it in case of emergency, without such intervention entailing liability for any damage that may occur during such operations. The cost of such movement or intervention shall be charged to the owner of the vessel.

Article 29. Engine operations

Engine tests, use of searchlights, battery charging and other operations of any kind, whether at sea or on land, which, by being noisy or simply a nuisance, may inconvenience other users, may only be performed with prior authorisation of the Operations Directorate and within the schedule established by it.



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Article 30. Navigation speed

1. The maximum speed of vessels (including personal watercraft) near the entrance and within the basins, including when entering or leaving them, shall be 3 knots (5.5 km/hour), without prejudice to what the Agency or the competent maritime authorities may set for different areas.
2. The user of the vessel or personal watercraft, its owner, and the holder of the mooring from which the personal watercraft have been launched shall refrain—and shall require others to refrain, as the case may be—from carrying out manoeuvres that hinder internal traffic, generate agitation of the water surface, or represent behaviour forcing other vessels to carry out unnecessary or risky manoeuvres.

Article 31. Fuel spill

1. In the event of a fuel spill in the port area, the party responsible must notify the Operations Directorate immediately, which shall take appropriate measures to reduce damage to beaches, facilities and other users, following the procedure established for such cases in the legislation in force.
2. The Operations Directorate shall urgently notify the competent Authority where the concession facility is located in the event of seriousness or significance of the incident, and in all cases where it affects port facilities or vessels outside the concession limits, it being the responsibility of the Operations Directorate to activate the intervention plans provided.

Article 32. Emergency

1. If a fire breaks out on board a vessel, its owner, skipper, crew and users, in addition to taking the immediate measures on board that may be necessary, shall immediately notify by all means at their disposal the Operations Directorate and the crews of adjacent vessels, in no way concealing the emergency that has occurred. Concealment of the incident shall give rise to a presumption of liability for damage that may be caused directly or indirectly by the fire to port facilities or to third parties, without prejudice to any administrative, criminal and/or civil liabilities that may arise.

In cases of fire where the fire may spread beyond the vessel on which it began or is not controllable by ordinary means, its owner, skipper, crew or users shall be obliged to notify the competent fire prevention and extinguishing services immediately. If such parties have not

notified, the Operations Directorate or any of its personnel shall do so as soon as possible, and shall likewise inform the Agency as soon as possible.

3. In all cases of emergency or catastrophic accident or threat thereof that may affect vessels or waters of the port area, the measures provided for by the applicable legislation shall be adopted.

In all cases, the Operations Directorate shall establish urgent communication with the Agency, as well as with the public authorities that, by reason of their competences, may intervene in the matter and with the Maritime Authority, so that they may adopt appropriate measures. In cases of utmost urgency, where the Operations Directorate adopts unavoidable measures, it shall immediately report to the Agency and other authorities on the measures adopted as soon as possible.

Section 3.

RULES ON THE USE OF BUILDINGS AND SURFACES IN THE SERVICE AREA

Article 34 Rights and obligations

1. The concessionaire may authorise any occupation of the area under concession for the construction of buildings or installations where these are in accordance with the concession title and the planning approved by the Agency, such authorisation not exempting the assignee from obtaining licences and other permits that must be obtained for this purpose.

Likewise, the concessionaire may authorise works to adapt existing premises or buildings that do not entail alteration of the concession project, requiring Port Administration authorisation for works such as:

- Increase in height or volume.
- Change of use.
- Modification of the functional relationship of the building with the surrounding public domain.



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2. Any work that is not in accordance with the concession title for the purposes of its approval by the Agency must be preceded by a file promoted by the concessionaire so that, where appropriate, the granted concession may be modified.

3. Any unauthorised work or intervention shall be duly notified by the concessionaire to the holder of the occupation or utilisation, for the purpose of halting the same and restoring the altered public domain. If the holder does not comply with the indications made by the concessionaire, the concessionaire shall report the facts to the different competent Administrations and to the Agency, attaching to such report a copy of the formal communications made to the holder by the concessionaire, as well as a technical assessment as to whether the actions carried out are contrary to the approved project and/or planning for the concession.

4. The holding of utilisation rights over real estate included in the port service area likewise entails the right to use the access roads and the general networks and conduits, water, electricity, telephone and others, the operation of which corresponds exclusively to the concessionaire.

Article 35. Use of terraces

Terraces are defined as those spaces, open, covered or enclosed, according to the configuration defined in the Project for the Planning of Open Spaces and Regularisation of Terraces and adjoining the vertical projection of the façade of the buildings or houses onto the ground, dedicated or that may be dedicated to a commercial or catering use.

Where the differentiation between pedestrian pavement and terrace is not clearly defined, the pavement shall be understood to be a longitudinal strip with a minimum width of 1.20 metres, measured from the edge of the carriageway.

Article 36. Occupation of surfaces for port service

1. The occupation and operation of areas intended for on-land stays of vessels, motor vehicles and vehicles used for trailering vessels by road, in the areas designated for this purpose for the provision of the port service, shall be subject to payment of tariffs and may be limited insofar as required for efficient service delivery.

2. For the purposes of applying such tariffs, the way to measure the occupied spaces shall be by the rectangle circumscribed externally to the total deposited group, defined such that two sides are parallel to the quay edge or to the axis of the nearest road or street, as may be appropriate in the judgement of the Directorate, and the other two sides perpendicular thereto, rounding the measurements of the sides, taken in metres, up to the next whole number.

3. The period for which authorisation has been granted shall likewise be taken as the basis for determining the amount to be paid to the concessionaire for surface occupation.

Article 37. Particularities for boatyards

The concessionaire shall manage the boatyard, assuming the status of workplace operator, as well as any matters arising from its operation, being subject to the Regulations on Operation and Use of Boatyards in ports managed directly by the Agency, approved by Resolution of 31 March 2008 (BOJA number 74, of 15 April 2008), on the same terms as the Public Ports of Andalusia Agency, adopting its position, without prejudice to the particularities deriving from their private management.

CHAPTER IV.

TARIFFS AND PORT DUES

Article 38. Types of tariffs

The following tariffs are established, up to the maximum amount set out in Article 40, without prejudice to their updating and review:

- Public port services: those corresponding to the provision of public port services requested by users. Within the concession, these comprise the following:
 - a) Service to sports and recreational vessels, applicable to users of moorings or berthing points, within the berth-management types defined in these Regulations.
 - b) Haul-out or launching service for vessels by mechanical elements such as Travelift-type portal cranes.
 - c) Use of ramp for launching or hauling out vessels.



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- d) Occupation of boatyard and dry-marina surfaces, excluding commercial premises (technical service, sale of nautical spare parts, workshops, etc.).
 - e) Parking of vehicles belonging to holders of vessels in transit or base.
 - f) Water and electricity supplies at berths.
 - g) Water and electricity supply at boatyard or for dry storage.
- Agreed services: those corresponding to other services provided within the scope of the concession which are not considered public port services (for example, rental of terraces or other spaces whose commercial use is compatible or complementary to the port service). Their amount shall result from the concessionaire's offer or, subsidiarily, private negotiation between the party requesting the service and the concessionaire.

Article 39. Parties obliged to pay the tariffs

1. According to the nature of the concession tariffs, the party obliged to pay is the user of the service or of the occupation.
2. The provision of services to users of moorings or berthing points shall be deemed to be provided to vessels, and surface occupation shall be deemed to be provided to the items or vehicles deposited or installed.
3. The making available to the Administration of the Port System of Andalusia of moorings or berthing points for the performance of its duties shall not accrue any tariff.
4. In addition to the legally corresponding collection procedure, the concessionaire may request from the user, by way of security, the provision of a deposit by means of a hold on a bank card, in an amount proportionate to the cost of the services to be provided. Likewise, it may refuse to provide services, suspend supplies of any kind—provided this does not entail a danger to navigation—or deny access or revoke port vehicle-access cards or systems, notifying the corresponding administration, in the event of non-payment.
5. No vessel shall be authorised to leave the port facilities without having previously settled the amounts owed for the tariffs applied or for any damage and/or breakdowns caused, unless such amounts have been guaranteed to the satisfaction of the concessionaire, and the vessel may be immobilised for these purposes.



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Vessels immobilised for the reasons set out above may be placed in locations that do not affect the normal operation of the port, including being placed ashore where moving the vessel and the means available so permit, the costs being borne by the vessel owner.

Article 40. Maximum tariffs

1. The maximum tariffs applicable for the services listed below shall be the result of multiplying the unit amount by the following parameters, according to the type of service provided:

SERVICIO	IMPORTE	PARAMETRO
Berth rental for sport and recreational vessels	12,66	€/m2/día
Vessel hauling-out or launching service	63,00	€/metro lineal/movimiento
Occupation of surface area in the boatyard	1,50	€/m2/día
Water supply at berths	13,11	€/m3
Electricity supply at berths	1,37	€/kwh
Water supply in the boatyard	13,11	€/m3
Electricity supply in the boatyard	1,37	€/kwh
Parking of vehicles linked to vessels in transit or home port	123,00	€/vehículo/día

2. The above maximum tariffs are established for the year of approval of the RETM and the concessionaire may update them annually in the same proportion as the review, in the general budget laws of the Autonomous Community of Andalusia, of the charges for port services provided for in Law 21/2007, or any rule replacing it.

3. The amount of the maximum tariffs for port services may be reviewed following an analytical study of the components of the costs necessary for their provision and, in all cases, upon review of the charges for special occupation and use, or where alteration of circumstances requires such review for the re-establishment of the economic-financial balance of the concession.

Article 41. Maximum amount for assignment of use and enjoyment of berths

The maximum amount for assignment of the use and enjoyment of berths shall be calculated on the basis of the applicable maximum tariff (in €/m²/day) multiplied by 365 days and by the square metres of the berth assigned in the year in which the assignment is made, taking into



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account the foreseeable CPI (or index replacing it), and the discount rate to be applied as defined below, and the years for which such port elements are assigned.

DATOS DE CÁLCULO		
Estimated CPI for the concession period	1,5	%
Discount rate	6,4	%

CHAPTER V.

ASSEMBLY OF HOLDERS

Article 42. Applicable regime

The provisions contained in the Special Regulations on Service and Policing of the Puerto José Banús, approved by Order of the Ministry of Public Works of 26 June 1970, governing the assembly of holders, shall apply.

ADDITIONAL PROVISIONS

First. Administration of the Port System of Andalusia

In accordance with Article 3 of Law 21/2007, of 18 December, on the Legal and Economic Regime of the Ports of Andalusia, the competences of the Autonomous Community in port matters shall be exercised by the Council of Government, by the Department competent in port matters and by the Public Ports of Andalusia Agency, in accordance with the provisions of the said law, the regulatory provisions developing it and other applicable rules.



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Second. Supplementary regulations and prevalence of the port regulations of Andalusia

In all matters not expressed in these Regulations, the legislation in force regarding ports of the Autonomous Community of Andalusia and of the State shall apply.

In all cases, where the provisions of these Regulations conflict with a regulatory provision, the latter shall apply; under no circumstances may the provisions of these Regulations contravene the provisions of generally applicable legislation in force.

Third. Validity of the Operating Regulations

The validity of these Regulations shall extend from their entry into force as provided in the Final Provision until the expiry of the concession, without prejudice to possible amendments.

Fourth. Regime for operation of internal networks for electricity supply and for water supply and drainage, and for commercialisation of electricity and water in the concession area

The concessionaire is responsible for the commercial operation of the electricity supply networks and electrical installations and water conduits that run through the concession area, owned by the concessionaire entity until their reversion to the Administration, as well as the supply of electricity and the supply and drainage of water to users of spaces included within the concession, port elements, berths, premises or dwellings, or conceded beach areas.

FINAL PROVISION

Sole. Entry into force

These Regulations shall enter into force on the day following notification of their approval by the Agency to the concessionaire, which must keep them available to users of the port facilities, as well as to any person interested in knowing their content.