

SECOND SCHEDULE - TERMS AND CONDITIONS

Valid from 22 September 2009

1. Licence Period

- 1.1 The licensor hereby grants an exclusive license to the licensee during the licence period to use the berth/storage space for the storage of the vessel as set out in the First Schedule
- 1.2 The berth/storage space shall not be used for any other purpose without the licensors consent.
- 1.3 If the licence is expressed to be a periodic licence then the licence shall be automatically renewed for a further specified period at the end of the current period provided that:
 - (i) there is no unremedied default under this agreement;
 - (ii) the agreement has not otherwise been terminated as provided herein.
- 1.4 The licensor may in its absolute discretion direct the licensee to use a different berth or storage space.

2. Use of Car Park

- 2.1 The licensee shall during the term of the licence have a non-exclusive right to use the car park area designated from time to time by the licensor.
- 2.2 The licensee shall not use the car park area to park a vehicle if not for the purposes of the licensee using the vessel

3. Licence Fee

- 3.1 On or before the first day of the licence period the licensee shall pay in full to the licensor the licence fee specified in the First Schedule.
- 3.2 The licensor shall have the right to vary the licence fee payable for any licence period after the initial period upon giving to the licensee reasonable written notice prior to the commencement of the new licence period.
- 3.3 In the event the licence fee is varied it shall be payable on or before the first day of the new licence period.

4. Additional Charges and Fees

- 4.1 In addition to the licence the licensee shall pay all additional charges and fees to the licensor within seven (7) days of written demand by the licensor.
- 4.2 Additional charges shall mean other services separately provided to the licensee.

5.0 Parting with Possession of Berth/Storage Space

- 5.1 The licensee shall not sublet or otherwise part with possession of the berth/storage space or assign the licensee's rights under this agreement without the consent in writing of the licensor.
- 5.2 Notwithstanding clause 5.1 the licensee may permit its servants/agents and visitors access to the berth/storage space for purposes connected with and not inconsistent with this agreement.

6. Insurance / indemnity

- 6.1 The licensee shall take out and maintain during the licence period a public risk insurance policy for an amount not less than \$1,000,000 for a single event.
- 6.2 The licensee must maintain such insurance for the licence period of the berth/storage space.
- 6.3 The licensee indemnifies and holds harmless the licensor, its related companies, servants, agents and employees from and against all claims, suits, demands, costs and expenses which the licensor or its related companies may incur by reason of:-
 - (i) use of the berth/storage space; marina; marina appurtenances; vessel equipment associated therewith by the licensee or the licensees servants, agents, employees and invitees;
 - (ii) any act or omission of the licensee or the licensees servants, agents, employees and invitees;
 - (iii) the sale of the vessel or other equipment owned by the licensee pursuant to clause 13.1(B) hereof;
 - (iv) a breach by the licensee of this agreement.

7. Risk

- 7.1 The licensee acknowledges and agrees that the storage of the vessel and other equipment of the licensee is at the sole risk of the licensee.
- 7.2 The licensee releases the licensor, its related companies, servants, agents and employees or any person for any loss, damage, deterioration or expense caused to the vessel and other equipment of the licensee however caused including bill not limited to storage, movement or removal inside or outside of the marina of the vessel, trailer and other equipment of the licensee, or sale, in a manner authorised or permitted by this agreement.

8. Damage to Marina and Appurtenances

- 8.1 The licensee must:-
 - (i) immediately notify the licensor of any loss or damage caused to the marina or its appurtenances by any act or omission of the licensee, its servants, agents, employees and invitees;
 - (ii) repair all such damage at the licensees cost.
- 8.2 The licensor may itself repair any damage referred to in clause 8.1 hereof and recover the cost thereof from the licensee.

9. Alterations

- 9.1 The licensee shall not make any alterations, additions or repairs to the berth, storage space or marina without the consent of the licensor.
10. Rules / Regulations / Statutory Ordinances
- 10.1 The licensor may from time to time make rules in its absolute discretion for the regulation of the marina.
- 10.2 The licensee shall comply with any rules made and all statutory regulations, ordinances and by-laws insofar and any reasonable directions by the licensor, its servants, agents and employees in respect thereof.
- 10.3 The licensee shall ensure that the licensee's servants, agents, employees and invitees comply in a like manner.

11. Default

- 11.1 The licensee will be in default under this agreement if:-
- (i) the license fee or any part of it remains unpaid for 7 days after the due date for payment whether or not demand has been made;
 - (ii) any other monies owing to the licensor by the licensee under this agreement remain unpaid for 7 days after demand for payment has been made;
 - (iii) the licensee fails to observe any other covenant or condition of this agreement;
 - (iv) the licensee fails or refuses to observe or comply with any lawful direction by the licensor under this agreement within a reasonable time;
 - (v) the licensee abandons the vessel;
 - (vi) the licensee commits an act of bankruptcy or is wound up or dissolved or enters a scheme of arrangement with creditors or is placed under administration or a receiver/manager appointed to its property.

12. Termination

- 12.1 This agreement may be terminated by either party by written notice to the other given at least 1 month prior to, and effective on, the last day of the current licence period.
- 12.2 Notwithstanding any other provision of this agreement, if the licensee is in default under this agreement the licensor may terminate this agreement by notice in writing to the licensee effective forthwith upon service of the notice upon the licensee.

13. Consequences of Default / Termination

- 13.1 If the licensee is in default under this agreement then without prejudice to any other right or remedy of the licensor, the licensor may:-
- A
- (i) remove the vessel or any other equipment of the licensee to an alternative berth/storage space whether inside or outside of the marina
 - (ii) allow the berth/storage area to be occupied by another vessel or trailer;
 - (iii) take possession of and exercise a lien over the vessel and other equipment of the licensee;
 - (iv) refuse the licensee and the licensee's servants, agents employees and invitees access to the berth/storage space and marina;

- (v) prevent the removal of the vessel, trailer or other equipment of the licensee from the marina in pursuance of the lien until the default is remedied and the licensee shall pay to the licensor all costs, charges and expenses incurred by the licensor in so doing;
- B Sell the vessel or other equipment of the licensee by private treaty or public auction (and the licensee irrevocably and unconditionally appoints the licensor as the licensee's lawful attorney so to do) and retain and apply the proceeds of such sale in the following manner
 - (i) firstly in discharge of any registered encumbrance over the vessel or other equipment;
 - (ii) secondly in payment of the proper costs, charges and expenses of and incidental to sale;
 - (iii) thirdly in payment of all other monies owing by the licensee to the licensor under this agreement;
 - (iv) fourthly in payment of the balance (if any) to the licensee.
- C Sue the licensee for damages for breach of this agreement.
- D The licensee shall not be entitled to a refund of any license fee or other charge paid or payable by reason of termination of this agreement
- 13.2 Upon termination of this agreement for whatsoever cause the licensee shall forthwith:
 - (i) pay all monies owing to the licensor under this agreement;
 - (ii) remove the vessel and other equipment of the licensee from the marina;
 - (iii) return all access keys to the licensor;
 - (iv) not enter the marina without the consent of the licensor except for the proper purposes set out in (i), (ii) and (iii) of this clause;
 - (v) pay to the licensor a pro rata licence fee for any unpaid period the vessel or other equipment of the licensee remains in the marina after the period set out in clause 13.3.
- 13.3 In the event the licensee fails or refuses to remove the vessel or equipment of the licensee from the marina within 7 days after termination of this agreement the licensor may:
 - (i) remove same from or within the marina in its absolute discretion in any manner the licensor deems fit;
 - (ii) exercise the power of sale referred to in and in the manner set out in clause 13.1B.
- 13.4 Termination of this agreement shall not affect any rights which the licensor may have against the licensee now or in the future under this agreement or otherwise.

14. Licensor's Right to Move Vessel/Equipment

- 14.1 Notwithstanding that there has been no default by the licensee, or that this agreement has not been terminated, the licensor shall have the right to move the vessel and licensee's equipment at any time whether inside or outside of the marina if deemed reasonably necessary and expedient by the licensor.

15. Miscellaneous

- 15.1 The licensor is not a warehouseman or bailee of the vessel, trailer or licensee's equipment and shall not be deemed to be in possession thereof.
- 15.2 (i) Any notice to be given to a party shall be in writing and given personally or sent by post to the address of the party as specified in the First Schedule or such other address as is notified in writing from time to time, or be sent by facsimile or email and shall be deemed to have been received by the addressee upon transmission;
(ii) notices sent by post shall be deemed to have been received on the second day after posting.
- 15.3 The licensee warrants:-
(i) that the licensee is the sole owner of the vessel and equipment thereon;
(ii) that if the licensee is not the owner of the vessel and equipment, the licensee is duly authorized on behalf of the owner/s to enter into this agreement;
(iii) that all approvals and consent as may be required for the entry by the licensee to this agreement have been obtained;
(iv) that all information given by the licensee to the licensors is true and correct.
- 15.4 The licensee shall not engage any tradesperson to carry out work on the vessel at the marina unless the tradesperson holds a current service providers access licence from the licensor.
- 15.5 This agreement shall be governed by and construed according to the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 15.6 In the event the licensee is more than one person each of them shall be jointly and severally liable for the obligations of the licensee under this agreement.
- 15.7 The parties shall bear their own costs of the preparation and execution of this agreement and the licensee shall pay all stamp duty payable hereon.
- 16. If the consent or approval of the licensor is required to any act or omission under this agreement such consent or approval may be refused in the licensor's absolute discretion.**