

QUEENSCLIFF HARBOUR PTY LTD

CASUAL BERTHING TERMS & CONDITIONS

1. INTERPRETATION

In these Terms and Conditions, unless the context requires otherwise:

- words importing the singular include the plural and vice versa and words denoting a gender include all other genders;
- the word person includes a firm, a body corporate, an unincorporated association and an authority.
- headings are for convenience only and do not affect the interpretation;
- if a word or phrase is defined, cognate words or phrases have corresponding definitions;
- references to any party includes that party's executors, administrators and permitted assigns;
- reference to any document includes a variation or replacement of any of them.

2. DEFINITIONS

In these Terms and Conditions, unless the context requires otherwise:

- "Authorised Officer"** means any person appointed by the Supplier to be an officer under the Direction of Queenscliff Harbour Pty Ltd.
- "GST"** has the meaning ascribed to it in the GST Act.
- "GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).
- "Licence"** means the licence granted pursuant to clause 3, incorporating these Terms and Conditions.
- "Supplier"** has the meaning ascribed to it in the Schedule and includes any Authorised Officer of the Supplier, Harbour Manager or person authorised to act on its behalf.
- "Customer"**, **"Fee"** and **"Term"** have the meaning ascribed to them in the Schedule;
- "Marina Berth"** means the berth(s) within the Harbour Facilities which from time to time, the Supplier at its complete discretion, designates as the berth where the Vessel is to be berthed.
- "Marina Facilities"** means a marina facility under the control of the Supplier within the Queenscliff Harbour Area and designated as such by the Supplier.
- "Harbour Manager"** means the person appointed (if any) by the Supplier to act on the Supplier's behalf as the manager of the Harbour Facilities from time to time, who is responsible for the day to day running of the Marina Facilities.
- "Rules and Regulations"** means the rules and regulations of the Marina Facilities as amended from time to time by the Supplier and available for viewing by the Customer at the Supplier's offices.
- "Schedule"** means the Queenscliff Harbour Berthing Agreement Schedule to which these Terms and Conditions apply.
- "Services"** means the services provided by the Supplier directly to the Marina Berth, including, but not limited to electricity, water, sewer, fire control and communications.
- "Vessel"** has the meaning ascribed to it in the Schedule and also includes all the vessel's fittings, fixtures, contents and equipment.
- "Vessel Insurance"** has the meaning (if any) ascribed to it in the Schedule.
- "Vessel Length"** means the extreme length of the vessel including the length of any appendages or attachments fixed or attached to the Vessel.

3. LICENCE TO USE AND OCCUPY HARBOUR MAINTENANCE BERTH

The Supplier grants to the Customer for the duration of the Term a personal non-exclusive right to use and occupy a Harbour Berth to berth the Vessel in accordance with these Terms and Conditions.

4. PAYMENT

- The Customer must pay the Fee to the Supplier at the rate set out in the Schedule.
- If the Term is less than three months the Fee must be paid in advance. Unless otherwise provided in this Agreement the Storage Fee is non refundable.
 - The Fee is inclusive of GST.
 - Any charges or damages incurred by the Supplier arising out of a direct debit transaction and delivery charges are additional to the Fee and may be invoiced as a separate charge and must be paid by the Customer.
 - The Customer must pay to the Supplier interest on any moneys due but unpaid for so long as they remain unpaid at a per annum rate of 2 percentage points above the per annum rate from time to time prescribed under section 2 of the *Penalty Interest Rates Act 1983*.
 - If the Term is greater than 3 months, the Customer must at the time of entering into the licence, complete and sign a Credit Card Authority request service agreement with the Queenscliff Harbour.
 - The Customer must comply with the terms and conditions contained in the Credit Card Authority request service agreement. Any breach of the Credit Card Authority request service agreement is a breach of the licence.
 - The Customer must not cancel a direct debit without the written authority of the Queenscliff Harbour.
 - If any of the details provided by the Customer to the Queenscliff Harbour is incorrect or must be altered, the Customer must notify Queenscliff Harbour 7 days prior to the first or next debit date. The Customer is responsible for any costs and expenses incurred by Queenscliff Harbour in relation to any correction or alteration and will pay those costs and expenses on demand.

5. INSURANCES

- All risk in the Vessel, and responsibility for its loss, theft, damage, and all other risks whatsoever remain with the Customer at all times.
- The Customer must insure the Vessel, third parties and their properties against any loss and damage of any kind and caused by or associated with the Vessel.
- The Vessel Insurance must not be allowed to lapse during the Term.
- The Vessel Insurance must during the Term be in a form approved by Queenscliff Harbour and for the amount outlined in the Schedule.
- Upon request by the Queenscliff Harbour, the Customer must provide a copy of the Vessel Insurance policy and a certificate of currency of insurance for the Vessel Insurance, current for the duration of the Term or for such lesser period to Queenscliff Harbour's satisfaction.

6. AUTHORITY TO MOVE VESSEL

- Upon direction from Queenscliff Harbour, the Customer must:
 - move the Vessel to another Marina Berth as directed; and/or
 - move the Vessel from the Queenscliff Harbour area,
 - when Queenscliff Harbour deems it necessary or expedient in situations including, without limitation, emergencies, events and on termination of the licence.
- In any event, the Customer authorises and empowers Queenscliff Harbour to:
 - move the Vessel within the Marina Berth; and/or
 - move the Vessel from the Marina Facilities to another place within the Queenscliff Harbour Area,when Queenscliff Harbour deems it necessary or expedient in situations including, without limitation, emergencies, events and on termination of the licence.
- The obligation imposed and the authority granted under this clause is in addition to any rights or powers of Queenscliff Harbour to deal with the Vessel under the Local Law.
- Where possible, Queenscliff Harbour will use its best endeavours to notify the Customer of any movement or intended movement of the Vessel.

7. WARRANTIES

The Customer warrants:

- that all information provided by the Customer to Queenscliff Harbour is accurate, including the information set out in the Schedule;
- that it is the owner of the Vessel or has the authority to deal with it;
- that the Vessel does not contain any dangerous, corrosive, or explosive materials, other than fuel for the Vessel;
- to observe and be bound by the Rules and Regulations;
- to observe and be bound by all applicable State, national, and international boat regulations, rules, laws, by-laws and practices; and
- to observe and be bound by the Local Law.

8. LIABILITY AND INDEMNITY BY THE CUSTOMER

- The Customer is solely responsible for and indemnifies and keeps Queenscliff Harbour fully indemnified against any cost, claim, demand, liability, loss or damage whatsoever, including, without limitation,
 - all liability for death and/or injury to persons;
 - all loss of or damage to property; and
 - all loss suffered by Queenscliff Harbour including economic loss, arising directly or indirectly out of or in connection with:
 - the Vessel;
 - the use or situation of the Vessel;
 - the Customer's use of the Marina Berth; and/or
- Without limiting clause 8.1, the Customer is responsible for any loss or damage caused to structures, wharves, gates, pilings, marina walling, walkways, moorings, and any other property of Queenscliff Harbour as a result of any act or omission of the Customer, its agents or those in or about the Harbour Facilities at the invitation of the Customer. The certificate of Queenscliff Harbour as to the cost of making good such damage is conclusive evidence of that cost which may be recovered from the Customer as liquidated damages.

9. LIABILITY OF QUEENSCLIFF HARBOUR AND NO REPRESENTATIONS OR WARRANTIES

The Customer agrees and acknowledges that:

- Queenscliff Harbour is not liable for the care and protection of the Vessel and is not liable for any loss or damage (including consequential loss or damage) however caused which may be suffered or incurred or which may arise directly or indirectly by or in respect of the Vessel or its fittings or contents;
- to the fullest extent permitted by law, all implied terms and conditions are hereby excluded. Where an implied term cannot be excluded, the liability of Queenscliff Harbour is limited (to the extent permitted by law) to the resupply of the affected goods and services or the cost of resupply of those goods or services.

10. TERMINATION

- If the Customer breaches any term of the licence then Queenscliff Harbour may, without prejudice to any other remedy available to it:
 - require immediate payment of all moneys due or payable or which would become payable by the Customer to Queenscliff Harbour at a later date on any account. The Fee so payable for the unexpired term is to be capped at a maximum amount equivalent to the Fee payable for a Term of three months;
 - charge the Customer interest on all moneys then and thereafter due and payable by the Customer to Queenscliff Harbour at 2 percentage points above the rate prescribed from time to time by section 2 of the *Penalty Interest Rates Act 1983* from the date the moneys were due and payable until the date of payment in full;
 - charge the Customer for all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the breach and in taking whatever action it deems appropriate to remove the Vessel and make the Marina Berth available;
 - claim damages from the Customer for breach of the licence; and/or
 - by notice in writing to the Customer and without prejudice to its rights under clause 10.1 (a), (b) and (c), immediately terminate the licence, without affecting the accrued rights of Queenscliff Harbour under the licence.
- Upon termination of the licence in any circumstances, the Customer must immediately remove the Vessel from the Marina Berth and the Marina Facilities. If the Customer does not do so, Queenscliff Harbour may, exercise all of its rights including its rights under clause 6 of these terms and conditions and move the Vessel.
- Queenscliff Harbour may forthwith terminate the licence by giving written notice to such effect to the Customer.
- The Customer may terminate the licence by giving written notice to such effect to Queenscliff Harbour. However, this notice is only effective if the Customer is not in breach of the licence, and the notice is accompanied by payment of all money then owing to Queenscliff Harbour.