

Temporary Berth Licence Terms

1. MOORING LINES

- 1.1 Licensees are totally responsible for the safe mooring of their craft.
- 1.2 Mooring lines shall be provided by the Licensee of such nature as may be required by the Licensor and shall be maintained by the Licensee to the Licensor's satisfactions, provided that if such mooring lines prove to be inadequate by design or lack of maintenance no liability shall attach to the Licensor and the Licensee shall keep the Licensor indemnified against all claims arising therefrom and damage to the Marina property.
- 1.3 The Licensor may serve on the Licensee a notice requiring the Licensee, within the time specified in the notice, to repair the mooring lines so as to ensure that they will safely secure the vessel.
- 1.4 Should the Licensee fail to comply with any such notice within the time specified, the Licensor may, without incurring any liability for so doing and without further notice, repair such mooring lines and recover the cost plus 10% from the Licensee.
- 1.5 The Licensee shall leave all mooring lines in the berth in the same condition as they were at the commencement of the Licence.

2. ALTERATIONS & MODIFICATIONS

- 2.1 No Licensee shall make any alterations or modifications nor affix any object to his berth or other parts of the Marina without the prior approval in writing of the Licensor.

3. USE OF BERTH

- 3.1 Licence for use only by nominated Boat.
- 3.2 The berth is only available to and shall only be used by the Licensee for the purpose of berthing the boat nominated in the licence which shall be owned by the Licensee. The Licensee may at any time or times, by notice in writing to the Licensor, nominate a different boat provided that the boat so nominated complies with the relevant size regulations and insurance clause 7.
- 3.3 Recreational Boats Only.
The Licensee shall use the Berth only for berthing the nominated boat whilst the said boat is used for recreational boating purposes.
- 3.4 Maximum Dimensions
No part of your Vessel, when berthed at the Berth, is allowed to extend beyond the physical confines of the Berth (i.e. from the Berth face at the pier end to the outer pile at the entry to the Berth). If this occurs because you have misrepresented your Vessel's dimensions to the Licensor, the Licensor may either immediately terminate your right to use your Berth without compensation, or relocate your Vessel to a suitably sized berth and require you to pay additional charges and relocation costs.

4. RENTAL PAYMENTS

- 4.1 All charges shall be at the rate specified by the Licensor from time to time. Rental rates are based upon the rate for the berth. The Licensor may amend the rate of any charges by giving you at least one month's prior notice.
- 4.2 The berth rental charge (including GST) must be paid to the Licensor in advance or within 24 hours of arrival. Subsequent berth rental charges must be paid monthly in advance. All other charges must be paid immediately as directed by the Licensor.
- 4.3 If you fail to pay any charges on time you are liable to pay the Licensor (on demand) a late payment fee of 1.5% per month (compounding) on all outstanding charges, or at the rate the Licensor specifies from time to time and all of the Licensor's debt recovery costs (including debt collection and other agency and legal fees). In addition, the Licensor may, subject to clause 15, remove lock and/or impound your vessel and shall not be required to release it until you have paid all charges and other amounts owing to the Licensor.

5. LIABILITY OR RISK

- 5.1 Under the License that Licensor agrees to provide the berth and certain associated facilities such as the marina walkways, fingers, power and water supply and fastenings for mooring lines. Under the terms of this Licence and all other Licences within the Marina the Licensees are solely responsible for the safe and secure mooring of craft berthed therein. It is expressly stipulated that security of craft and of equipment, gear and property thereon is the sole responsibility of Licensees and temporary berth occupiers. This applies also to vehicles parked at the marina and to personal injury.
- 5.2 The Travelift and Hardstand facilities are subject to separate agreements which are made at the time of use. This agreement is exclusive of these services.

6. EXCLUSION OF LIABILITY AND OF CONSUMER GUARANTEES ACT WHERE ACQUISITION IS FOR BUSINESS PURPOSES

- 6.1 If the Licensee acquires Marina services, facilities or goods for business purposes as defined under the Consumer Guarantees Act the Consumer Guarantees Act does not apply.

7. DUTY OF LICENSEE

- 7.1 The Licensee shall at all times keep and maintain the craft and property thereon in proper order repair and condition and will not permit or suffer the craft, persons thereon and property thereon or any part thereof to be or become a nuisance or cause annoyance or damage to any other person or property and will steer manage and control the craft and property thereon so as not to damage or cause to be damaged any part of Half Moon Bay marina or any other craft thereat. (Any breach of this provision shall render this temporary Licence terminable pursuant to Clause 1 of the Licence.

8. INSURANCE

- 8.1 The Licensee shall at all times keep all boats, craft and any other property owned or brought into the Half Moon Bay Marina by the Licensee and/or invitees, fully insured whilst in the confines of, or near to, the Half Moon Bay Marina, against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, act of God and all other usual maritime risks.

- 8.2 The Licensee shall also effect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to property of others (including the Licensor) arising out of the use of water craft and/or use or occupation of the Half Moon Bay Marina. The amount of such liability insurance shall be as specified by the Licensor from time to time.
- 8.3 The Licensee shall, if requested by the Licensor, provide the Licensor with copies of the policies affected pursuant to this clause together with a certificate of currency for such policies.
- 8.4 If the Licensor sub-lets the berth of behalf of the Licensee then the Licensee is not responsible for the insurance requirements as per 7.1, 7.2 and 7.3.

9. LIVING ON BOARD

- 9.1 Living on board craft within the marina bounds is absolutely prohibited.

10. COMPLIANCE WITH ACTS, REGULATIONS ETC.

- 10.1 The Licensee must ensure that he/she and his/her servants, agents, employees, invitees and Licensees at all times comply with the requirements of the Auckland Regional Council and its bylaws, the Half Moon Bay Empowering Act, the Resource Management Act 1991, Health and Safety in Employment Act 1992, the Ship Registration Act 1992 (if applicable), the Marine Pollution Act 1974, The Shipping (Distress Signals and Prevention of Collisions) Regulations 1988, the Water Recreation Regulations 1979, the Water Regulations 1980, the General Harbour Regulations 1968, Maritime Transport Act 1994 and all other relevant Acts, regulations and bylaws which may be in force, or come into force, and in particular shall not dispose of refuse or ships garbage nor pump bilges and tanks into the harbour. Also all persons must use public lavatories and must not discharge excreta in the Marina precincts.

11. ENTRY ON WALKWAYS

- 11.1 Only the Licensee and his servants, agents, employees, invitees and the Harbourmaster or other persons authorised by the Licensor shall be permitted to use and go upon the marina walkways.
- 11.2 The Licensee shall ensure that all gates giving access to the marina walkways are securely locked or fastened in accordance with directions from time to time given by the Licensor.

12. REFUELLING

- 12.1 While in the marina the craft shall be refuelled only in an area designated by the Licensor.

13. REMOVAL OF CRAFT

- 13.1 The craft may be moved or removed from the berth only by the Licensee or someone authorised in writing by the Licensee or by a servant, agent or employee of the Licensor if this licence is terminated pursuant to clause 16 or if the Harbourmaster deems it necessary that the craft should for some other reason be moved or removed from the berth.
- 13.2 If any servant, agent or employee of the Licensor moves or removes the craft in accordance with a request or direction given pursuant to Clause 12.1 hereof such servant, agent or employee shall for that purpose be deemed to be acting as the agent of the Licensee and the Licensor and such servant, agent or employee shall not be liable in negligence or otherwise for any damage to or loss or theft of the craft or property thereon occurring as a result of such moving or removing.

14. INDEMNITY

- 14.1 The Licensee hereby indemnifies and will keep indemnified the Licensor against all actions, suits, claims, debts, obligations and other liabilities arising out of the licence hereby granted or of any act or omission of the Licensee or his servants, agents, employees or invitees and the Licensee agrees to compensate recompense pay indemnify and hold indemnified the Licensor against any loss or damage to the berth or marina or any of the vessels moored or remaining therein or to any other property or persons caused or resulting from the acts or omissions of the Licensee or his servants, agents, employees or invitees.
- 14.2 Nothing in this clause limits or restricts any rights or remedies that may be available to the Licensee as against the Licensor, pursuant to the Consumer Guarantees Act.

15. TERMINATION

- 15.1 If the Licensee shall at any time fail to pay the licence fee herein provided to be paid or shall otherwise be in breach of any of the terms, conditions and provisions herein on his part to be observed and performed, and such breach shall continue for the space of 7 days after notification thereof has been given to him or sent to his last recorded address then the Licensee's right to occupy the berth pursuant to the licence shall terminate upon expiry of such notice and the further provisions of this clause shall become applicable and may be enforced by the Licensor PROVIDED THAT the Licensee shall remain liable for payment of licence fees and other charges until the craft is removed from the marina in accordance with Clause 15.2 hereof.
- 15.2 On the termination hereof the Licensee shall promptly remove the craft and all goods and effects of the Licensee from the marina and in default of his so doing the Licensors shall be entitled to remove the same to any convenient place and to contract for the safe keeping thereof and for payment of storage and insurance fees as agent for the Licensee and all expenses thereby incurred shall be payable by the Licensee to the Licensor who may sue for and recover the same as liquidated damages.
- 15.3 The Licensee shall indemnify the Licensor against all liability fees and expenses incurred in respect of such removal or storage or any matter arising thereout and whatsoever the Licensor shall do in good faith in respect of the such removal or storage or any matter arising thereout and whatsoever the Licensor shall do in good faith under this clause shall be deemed to be done as agent for and with the full authority and at the risk of the Licensee.

16. REGULATIONS

- 16.1 This licence is subject to compliance with any Regulations relating to the rights or duties of the Licensee in upon or about Half Moon Bay Marina that may from time to time be promulgated by the Licensor and which are deemed part hereof as if herein set out.
- 16.2 In the event of failure to comply with any of such Regulations the licence contained herein may be terminated in accordance with the provisions of Clause 14 hereof.

17. TRANSFER OR ASSIGNMENT

- 17.1 The Licensee shall have no right to assign or transfer the right to occupy the berth conferred by this licence.

17.2 This Licence shall apply to the berth nominated on the face of this Licence or to any other marina berth that the Licensee shall be authorised to occupy from time to time.

18. HEAD LEASE AND LICENCE

18.1 The Licensor will pay the rent reserved under Lease No. 624069.1 and the licence fee payable under a licence to use and occupy the "Licensed Premises" as described in a certain Deed of Licence dated the 21st September 1976 and Amendments and made between the Auckland Harbour Board and Half Moon Bay Marina Limited, and will not do or permit to be done any matter act or thing whereby the said Lease or Licence can be determined by the Auckland Harbour Board or other lessor or Licensor thereunder AND will take all reasonable steps to obtain renewal of the said lease and licence on expiry of the same.

19. NOTICES

19.1 All notices and documents hereunder may be served as provided in Section 152 of the Property Law Act 1952 or any enactment for the time being in force in modification or replacement thereof.

20. PRIVACY ACT DISCLOSURE AND CONSENT

20.1 The Licensee hereby authorises the Licensor to:

- (a) Use, and to disclose to any other agency or person, any personal information the Company has obtained from and about you, for any purposes connected with any aspect of the Marina's business.
- (b) To receive from any other agency or person any personal information about you and to use and disclose that information for any purpose connected with any aspect of the Marina's business.

20.2 The purpose referred to in (b) hereof include (but are not limited to) sending you Marina newsletters or marketing material, material marketing Marina tenants goods or services, provision of information to and from Half Moon Bay Berth-Owners Association Inc, provision of information to and from other customers or berth tenants or occupiers, and to or from other marina users.

20.3 The Licensee has the right during normal Marina Office business hours to request access to any material held by the Company concerning you to enable you to correct such material which may be factually incorrect.