

## **TRAILER PARK LICENCE TERMS**

### **1. RENTAL FEE**

- 1.1 The quarterly rental fee payable under the terms of this Agreement shall be subject to review by the Licensor at any time and the rental fee may be varied following any such review upon one month's written notice to the Licensee.
- 1.2 The Licensee shall pay the current rental fee to the Licensor by quarterly payments in advance. The Licensee shall maintain and keep in operation an order with a bank for the payment of the current rental fee. The first payment shall fall due on the date of commencement and subsequent payments shall fall due quarterly thereafter until this Agreement is terminated in accordance with the provisions of clause 12 hereof.
- 1.3 The Licensee shall be deemed in default of this Agreement if the Licensor does not receive payment of any quarterly rental fee payable hereunder within seven days of the due date for payment.

### **2. PARKING OF CRAFT**

- 2.1 The Licensee shall park the craft named on the front of this Agreement in the trailer park allocated and not elsewhere and shall not permit other craft to be parked in the allocated area.

### **3. NO BAILMENT**

The Licensee acknowledges that his is not putting the craft (or any of the tackle, goods, gear, machinery or other property on it) in the Licensor's custody. Accordingly, this is not a bailment agreement.

### **4. LIEN**

The Licensor will have a general lien on the craft, for payment for any monies outstanding for any marina services (Travel Lift, Hard Storage, Berths, Trailer Park or other). Accordingly the Licensor may seize the craft until the Licensee has paid all outstanding monies. Notice of seizure will be given to the address stated on the front of this document, or to the last known address. If the monies remain unpaid for 21 days after that notice, the Licensor may without further notice sell the craft (including any tackle, goods, gear, machinery or other property on it) by auction or otherwise. The proceeds of sale will be applied firstly towards the expenses of seizure and sale, and secondly towards payment of the monies due the Licensor. Any credit balance will be paid to the Licensee though the Licensor may proceed to recover any deficit balance from the Licensee. The Licensee agrees to indemnify the Licensor against any claims made by any third party in respect of the seizure and/or sale. Nothing in this clause limits or restricts any rights or remedies that may be available to the Licensee as against the Trustees pursuant to the Consumer Guarantees Act.

### **5. LIABILITY OR RISK**

- 5.1 Under the License the Licensor agrees to provide the trailer park and certain associated facilities such as the power and water supply and gate controls. It is expressly stipulated that security of craft and of equipment, gear and property thereon is the sole responsibility of Licensee and temporary 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.

### **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 effected 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 9.1, 9.2 and 9.3.

### **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. REFUELLING**

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

### **12. TRANSPORTATION OF CRAFT**

- 12.1 The craft may be transported to or from the allocated trailer park by the Licensee only or by someone authorised in writing by the Licensee or by an agent or employee of the Licensor of this licence is terminated pursuant to clause 11 or if the Harbour master deems it necessary that the craft should for some other reason be moved or removed from the park.
- 12.2 If any agent or employee of the Licensor moves or removes the craft in accordance with a request or direction given pursuant to Clause 12 hereof such agent or employee shall for that purpose be deemed to be acting as the agent of the Licensee and the Licensor or such 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.

### **13. INDEMNITY**

- 13.1 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.
- 13.2 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.

### **14. TERMINATION**

- 14.1 Either party may terminate this Agreement at any time by giving one month's notice to the other party.
- 14.2 The Licensor shall be entitled to terminate this Agreement forthwith at any time in the event that they are prevented or restricted by regulation or otherwise from offering or maintaining the trailer parking facility.
- 14.3 If the Licensee shall at any time be in breach of any of the terms, conditions and provisions herein on his part to be observed and performed then the Licensee's right to occupy the allocated trailer park pursuant to this license shall terminate forthwith and the further provisions of this clause shall become applicable and may be enforced by the Licensor.
- 14.4 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.
- 14.5 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.

### **15. EXCLUSION OF LIABILITY AND OF CONSUMER GUARANTEES ACT WHERE ACQUISITION IS FOR BUSINESS PURPOSES**

If the Licensee acquires or holds himself out as acquiring Marina services, facilities or goods under the agreement for business purposes, the Consumer Guarantees Act does not apply, and the following exclusion of liability provisions do apply:

The Licensor will not (either directly or vicariously) be liable for any damage to or theft or loss of the craft (or any tackle, goods, gear, machinery or other property on it) whilst at the or in the precincts of the Marina.

Nor will the Licensor be liable for any injury, loss or damage sustained or suffered by the Licensee or any other person at the or in the precincts of the Marina (whether on the craft or not) howsoever arising, and including (but not limited to) injury, loss or damage occasioned by the negligence of the Licensor or any of their agents or employees, or caused by the use or removal of the craft or property by any person not authorised by the Licensee, whether such use or removal was permitted by the Licensor or not.

### **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.

### **18. NOTICES**

- 18.1 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.

### **19. PRIVACY ACT DISCLOSURE AND CONSENT**

- 19.1 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.
- 19.2 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.
- 19.3 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.