

# **BERTH RENTAL TERMS AND CONDITIONS OF TAURANGA BRIDGE MARINA LTD**

## **1. DEFINITIONS**

- 1.1 "Berth" means the berth in the Marina described in the Berth Rental Agreement.
- 1.2 "Berth Occupier" means the person or entity named in the Berth Rental Agreement.
- 1.3 "Commencement Date" means the date specified in the Berth Rental Agreement.
- 1.4 "Default Rate" means the Marina Manager's bank overdraft interest rate plus a further 4% per annum.
- 1.5 "Facilities" means the foreshore areas, parking areas, driveways, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, the Marina Area.
- 1.6 "Marina" means the relevant facility in which the Berth Occupier is keeping a vessel or interest and includes the Marina Structures, access ways, facilities and services.
- 1.7 "Marina Management" means the body appointed to run the Marina business and to bind the Marina in its legal affairs and includes its successors and assigns.
- 1.8 "Marina Rules" means the rules established by the Marina Management as contained in this agreement and those published and updated by the Marina Management from time to time.
- 1.9 "Nominated Vessel" means the vessel specified in the Berth Rental Agreement. Details or any other vessel nominated by the Berth Occupier by notice in writing to the Marina Management.
- 1.10 "Services" means the power, water and any other services provided for the benefit of the Berth Occupier in the Marina.
- 1.11 "Structures" means the breakwater, fenders, jetties, fuelling jetty, loading jetty, piles and other structures constructed or placed on or in the Marina Area.
- 1.12 "Term" means the period commencing on the Commencement Date and ending on the Termination Date.
- 1.13 "Termination Date" means the date specified in the Berth Rental Agreement, or a date specified in a notice to terminate this agreement giving the required written notice period as described in the Rental Agreement.
- 1.14 "Working Day" means any day of the week other than: (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and Auckland Anniversary Day; and (b) a day in the period commencing with 24 December in any year and ending 5 January in the following year. A working day shall be deemed to commence at 8.00am and terminate at 6.00pm.

## **2. BERTH RENTAL**

- 2.1 The Marina Management grants a Berth Rental Agreement to the Berth Occupier to occupy the berth specified for the period stated and at the rate stated.
- 2.2 The Berth Occupier agrees to accept the rental licence under the following terms and conditions.
- 2.3 Should the Berth change ownership during the term of this Berth Rental Agreement and be withdrawn from the Marina Management rental system, Tauranga Bridge Marina will give the Berth Occupier 10 day's notice. Marina Management will make all best endeavours and efforts to find the Berth Occupier an alternative or larger berth to accommodate the nominated vessel but is in no way liable or obligated and the arrangement may have to be terminated.
- 2.4 The Marina Management may, in its sole and absolute discretion propose a new berth rental rate by giving the Berth Occupier not less than 1 month's written notice.

## **3. THE FULL AGREEMENT**

- 3.1 The full agreement and terms of licence between the Marina Management and the Berth Occupier is contained within the:
  - (a) Berth Rental Agreement
  - (b) Berth Rental Terms and Conditions
  - (c) Any other document published or administered by the Marina Management or its duly authorised employee or agent for the purpose of managing the Marina.

## **4. COMMENCEMENT**

- 4.1 The agreement commences upon the start date stated in the Berth Rental Agreement and remains in effect until terminated by either party giving the required notice as stated in the Berth Rental Agreement.

## **5. RENT**

- 5.1 The Berth Occupier agrees to pay all the Marina Accounts to the Marina Management by one of the following methods:
  - (a) Short Term Renter - Prior to removing the vessel from the Marina.
  - (b) Long Term Renter - On the 20th of the month following invoice.The Berth Occupier agrees to provide a credit card and an authorisation for Marina Management to debit the said credit card if payment does not occur within 10 days of the due date.
- 5.2 A late payment fee will be charged for rent unpaid following these 10 working days.

## **6. JURISDICTION**

- 6.1 When a Berth Occupier enters the Marina premises the Berth Occupier and those persons accompanying the Berth Occupier are subject to the jurisdiction, terms and conditions outlined in clause 3 above.
- 6.2 When a pleasure craft owned or under the control of the Berth Occupier enters the Marina then the vessel and its occupants are subject to the jurisdiction, terms and conditions outlined in clause 3 above.

## **7. PURPOSE OF OCCUPATION**

- 7.1 The Berth Occupier shall only use the berth for pleasure boating purposes and not for any commercial or other use or purpose unless the Marina Management at its sole discretion has approved such a use.

## **8. MAXIMUM DIMENSIONS OF BOAT**

- 8.1 The Berth Occupier shall at no time allow any part of any vessel using or moored in the berth (including spars, bowsprits, anchors davits and tenders or any other thing affixed to the vessel) to exceed the published or nominal dimensions of the berth. For avoidance of doubt, the published or nominal dimensions are less than the physical dimensions of the berth and indicate the maximum dimension of an occupying vessel.

## **9. CHANGE IN NOMINATED VESSEL**

- 9.1 The Berth Occupier shall ensure that if the vessel nominated on the Berth Rental Agreement changes that:
  - (a) The new proposed vessel fits the dimensions of the berth as listed on the Berth Rental Agreement; and
  - (b) Marina Management is advised of the change in vessel before it occurs.

## **10. VISITORS TO THE MARINA**

- 10.1 The Berth Occupier shall ensure that:
  - (a) All of its invitees comply with the terms of this licence.
  - (b) Any children under the age of 13 and for whom the Berth Occupier or its visitors are responsible, are accompanied by an adult.

## **11. SUBLETTING OF BERTH**

- 11.1 No Berth Occupier can sublet their berth without first applying for permission from the Marina Management.

## **12. POWER AND OTHER SHORE SERVICES**

- 12.1 The Berth Occupier shall ensure that the use of any power, water, sewage, pump or other shore service, complies with all of the relevant regulations and rules governing the supply or discharge of power, water, sewage or other shore services.

## **13. WATER SPACE AND ACCESS RIGHTS**

- 13.1 This rental agreement relates only to the allocated water space of the berth. In common with all others, the Berth Occupier should have the right to tie up to the allocated berth structures and should have the right of access in, and the use of, the common waterways and pathways of the Marina area subject to such rules as to access and during such hours as the Marina Management may specify for the safety, security and preservation of good order.

## **14. CONTRACTOR ACCESS**

- 14.1 The Berth Occupier is responsible for ensuring that any Contractor invited into the complex has in accordance with the Marina's Health and Safety Policy completed a Contractor Access Application Form.
- 14.2 The Berth Occupier must ensure and accept responsibility to ensure that any contractor or tradesman invited into the complex for the purpose of carrying out work on the Berth Occupier's vessel holds sufficient insurance to satisfy the insurance requirements of the Marina Management.
- 14.3 The Berth Occupier indemnifies and will keep indemnified the Marina Management against all actions, suits, claims, debts, obligations and other liabilities arising out of the activities of any contractor invited by the Berth Occupier to work on the Berth Occupier's vessel.

## **15. RESTRICTED ACTIVITIES**

- 15.1 The Berth Occupier and their guests shall at all times comply with the Marina Rules.
- 15.2 The Marina Management may vary the rules by written notice to the Berth Occupiers. If there is any inconsistency between the provisions of these terms and conditions and the Berth Rental Agreement the provisions of the Berth Rental Agreement shall prevail.

## **16. INDEMNITY**

- 16.1 The Berth Occupier shall indemnify the Marina Management against any loss, expense, legal liability, claims and costs incurred by the Marina Management arising as a result of the Berth Occupier's act or omissions or the acts or omission of others to which the Berth Occupier has contributed or the acts or omissions of any person invited into the Marina by the Berth Occupier.

## **17. INSURANCE**

- 17.1 The Berth Occupier shall throughout the term of this agreement keep all of the Berth Occupier's vessel's equipment and other property in the Marina fully insured against loss or damage by any reason and/or other usual maritime risks.

- 17.2 The Berth Occupier shall, if requested by the Marina Management, provide the Marina Management with copies of the policies effected pursuant to this clause together with a certificate of currency for such policies.

## **18. DAMAGE TO MARINA PROPERTY**

- 18.1 The Berth Occupier will be responsible for all damage to all Marina Property including docks, structures, pilings or property in the Marina and or vessels and persons using the Marina arising from any act or omission, neglect or default by the Berth Occupier or its agents, servants, contractors, employees or invitees relating to the use, storage, of the vessel.

## **19. TERMINATION**

- 19.1 Failure to adhere to the full agreement as outlined in clause 3 may result in termination of the Berth Rental Licence and/or a claim being made against the Berth Occupier.
- 19.2 If the Berth Occupier fails to pay the rental fees and charges due under this agreement or otherwise defaults on any of the terms and conditions herein the Marina Management may at its total discretion issue the berth occupier with a Default Notice. Such notice to be sent to the Berth Occupier's address recorded in the Berth Rental Agreement.
- 19.3 If the breach as detailed in the Default Notice is not remedied within 7 working days of receipt of the Default Notice then the Berth Rental Agreement shall, at the discretion of the Marina Management, be terminated immediately, PROVIDED THAT the Berth Occupier shall remain liable for payment of rental fees and other charges until the date the vessel is removed from the Marina.
- 19.4 On the termination of this agreement the Berth Occupier shall promptly remove the vessel and all goods and effects of the Berth Occupier from the Marina and in default of the Berth Occupier so doing the Marina Management shall be entitled to invoke the claim procedure as outlined below.

## **20. CLAIM PROCEDURE**

- 20.1 In cases of termination of the Berth Rental Agreement and/or failure to comply with a Default Notice the Marina Management may seize and sell a vessel to defray costs.
- 20.2 If the Berth Occupier defaults under this agreement or the Berth Rental Agreement is terminated under clause 19 the Marina Management may at its total discretion, serve a Notice of Claim on the Berth Occupier by posting the same to the Berth Occupier's given address and affixing the Notice of Claim in a prominent position to the vessel requiring the Berth Occupier to remedy the default within 14 working days.
- 20.3 Should the Berth Occupier fail to comply with the Notice of Claim the Marina Management may (but without any obligation to do so) without further notice seize the vessel occupying the berth and sell it to recover the cost of removal and storage from the Berth Occupier.
- 20.4 The Marina Management can at its total discretion either secure the vessel in its berth or alternatively remove the vessel to another berth or hardstand. Where the Marina Management issues a Notice of Claim in accordance with this claim procedure it shall be entitled to a lien on the vessel to the extent of the costs of removal and storage.
- 20.5 If 14 working days after the date for compliance with the Notice of Claim has fallen due the Berth Occupier has failed to remedy the default the Marina Management may, at any time thereafter, offer the vessel for sale by public auction or private contract and apply such of the proceeds of any resulting sale first in satisfaction of the Marina Management's expenses incurred in the removal and or storage including administrative expenses and the cost of providing custodians, secondly in or towards satisfaction of any debts or liabilities owed by the Berth Occupier to the Marina Manager and thirdly to the Berth Occupier.
- 20.6 The Berth Occupier hereby irrevocably appoints the Marina to be the attorney of the Berth Occupier to execute all documents and to do all things as are necessary to give effect to such sale.

## **21. ABANDONED, UNSEAWORTHY OR ILL-REPAIRED VESSELS.**

- 21.1 The Berth Occupier shall keep any vessel occupying the berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthed in the Marina.
- 21.2 Should the Berth Occupier fail to comply with sub-clause 21.1, the Marina Management may, serve a Default Notice on the Berth Occupier requiring the Berth Occupier to remedy specified areas in default within a reasonable period of time.
- 21.3 If the Berth Occupier fails to comply with a Default Notice issued under clause 21.2 within the time specified the Marina Management may at its total discretion invoke the Termination procedure as outlined in clause 19 and/or the Claim procedure as outlined in clause 20 of this agreement.

## **22. EMERGENCY MANAGEMENT**

- 22.1 The Marina Management reserves the right to use the berth in the case of an emergency and also to require the Berth Occupier to vacate the berth if necessary, to allow urgent repairs to be carried out. In such circumstances the Marina Manager may with best endeavours, but shall not be obliged to, provide an alternative berth or mooring.
- 22.2 In extreme emergencies, the Marina Manager reserves the right to take whatever steps are required to ensure the integrity of the facility. The Marina Management's judgment in this respect is actioned at their sole discretion.

## **23. BAILMENT**

- 23.1 The terms of this agreement are not in any way intended by either party to create a bailment and the Berth Occupier understands that the Marina Management accept no responsibility for the care of any vessel and its contents.

## **24. DEFAULT AND CONSEQUENCES OF DEFAULT**

- 24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Marina Management's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 24.2 If the Berth Occupier owes the Marina Management any money the Berth Occupier shall indemnify the Marina Management from and against all costs and disbursements incurred by the Marina Management in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Marina Management's collection agency costs, and bank dishonour fees).
- 24.3 Without prejudice to any other remedies the Marina Management may have, if at any time the Berth Occupier is in breach of any obligation (including those relating to payment) under these terms and conditions the Marina Management may suspend or terminate the supply of Services and access to the Marina and Facilities to the Berth Occupier. The Marina Management will not be liable to the Berth Occupier for any loss or damage the Berth Occupier suffers because the Marina Management has exercised its rights under this clause.
- 24.4 Without prejudice to the Marina Management's other remedies at law the Marina Management shall be entitled to cancel all or any part of any Services to be provided by the Marina Management to the Berth Occupier which remains unfulfilled and all amounts owing to the Marina Management shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to the Marina Management becomes overdue, or in the Marina Management's opinion the Berth Occupier will be unable to make a payment when it falls due;
  - (b) the Berth Occupier becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Berth Occupier or any asset of the Berth Occupier.

## **25. PRIVACY ACT 1993**

- 25.1 The Berth Occupier authorises the Marina Management or the Marina Management's agent to:
  - (a) access, collect, retain and use any information about the Berth Occupier;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Berth Occupier's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Berth Occupier.
  - (b) disclose information about the Berth Occupier, whether collected by the Marina Management from the Berth Occupier directly or obtained by the Marina Management from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Berth Occupier (Excludes Credit Card information).
  - (c) upon default in payment (or termination of this agreement as result of a default in payment), disclose to the membership of the Marina Operators Association of NZ Inc any personal information held by the Marina Management about the Berth Occupier.
- 25.2 Where the Berth Occupier is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 25.3 The Berth Occupier shall have the right to request the Marina Management for a copy of the information about the Berth Occupier retained by the Marina Management and the right to request the Marina Management to correct any incorrect information about the Berth Occupier held by the Marina Management.

