

# STANDARD TERMS & CONDITIONS

Applicable to all rentals of Orakei Marina Berths.

## 1. DEFINED TERMS

1.1 In these terms:

**"Berth"** means the berth at Orakei Marina that the Berth Owner has agreed to rent you, and any other berth Orakei Marina Management Trust may, with the authority of the relevant Berth Owners, move you to in accordance with clause 9.1.

**"Berth Licence"** means the licence of the Berth granted by OMMT to the Berth Owner, the terms of which are set out in the Schedule to these Terms.

**"Berth Owner"** means the holder of the Berth Licence relating to any berth which you may rent at Orakei Marina from time to time.

**"Berth Rental"** means the rental of the Berth by you from the Berth Owner during the Rental Term, in accordance with these Terms, including Standard Rentals and Private Rentals.

**"Bylaws"** means all regulations made by OMMT regarding the use of Orakei Marina from time to time, including specific regulations relating to specific classes of berths or berth users.

**"Charges"** means all rent and other charges payable by you in respect of your use of the Berth and other goods, services and facilities provided by OMMT at Orakei Marina and include (without limitation):

- (a) an initial booking fee at a rate set by OMMT from time to time, plus GST;
- (b) Rent;
- (c) charges for all power consumed in respect of the Berth; and
- (d) charges equal to the amount of any additional fees charged by OMMT to the Berth Owner in accordance with clauses 4.3 or 4.4 of the Berth Licence in respect of matters arising during the Rental Term.

**"Manager"** means any manager of Orakei Marina appointed from time to time by OMMT.

**"OMMT"** means the Orakei Marina Management Trust.

**"Orakei Marina"** means the marina and facilities (including pier structures, carpark deck, administration office and amenity facility, rock breakwaters, fuel jetty and gardens) located at Okahu Bay, Orakei, Auckland.

**"Private Rental"** means any Berth Rental that is arranged directly between you and the Berth Owner and is not administered by OMMT.

**"Rent"** means rent payable by you for the Berth at the rate agreed between you and the Berth Owner (such agreement to be facilitated, for Standard Rentals, by OMMT).

**"Standard Rental"** means any Berth Rental that is arranged between you and OMMT where OMMT has been authorised by the Berth Owner to arrange and administer the rental of the Berth on the Berth Owner's behalf.

**"Rental Term"** means the period of time during which the Berth Owner has agreed, with OMMT's consent, to rent the Berth to you, commencing from 11am on the first day of such period and, unless terminated earlier in accordance with these Terms, expiring at 10am on the day following the last day of such period.

**"Terms"** means these standard terms and conditions, which may be altered or replaced by OMMT from time to time in OMMT's sole discretion.

**"Vessel"** means any vessel that OMMT expressly authorises you to bring into Orakei Marina and berth at the Berth.

**"you"** and **"your"** means you as the person to whom OMMT (on behalf of the Berth Owner, in the case of a Standard Rental) or the Berth Owner (with OMMT's consent, in the case of a Private Rental) has agreed to rent the Berth.

## **2. APPLICATION**

- 2.1 Subject to clause **2.2**, these terms apply to any and all rental of berths at Orakei Marina by persons other than the owners of such berths.
- 2.2 Certain provisions of these Terms shall not apply to Private Rentals, namely, clauses **4.1.6** and **8.1**.
- 2.3 It is your responsibility to read and understand these Terms and the terms of the Berth Licence. Failure to do so does not exempt you from any liability to the Berth Owner and/or OMMT (as the case may be) and is at your own risk. If, having arranged to rent the Berth and berthed the Vessel in it, the Vessel remains berthed for more than 2 hours, you will be deemed to have accepted and agreed to these Terms.

## **3. PRE-CONDITION**

- 3.1 You and the Berth Owner acknowledge and agree that, in accordance with the Berth Licence, the following conditions and restrictions must first be satisfied before the Rental Term of any proposed Berth Rental can commence:
  - 3.1.1 The written approval of OMMT to such Berth Rental must be obtained, provided that OMMT may, without reason, refuse to provide such approval.
  - 3.1.2 Where the proposed Berth Rental is a Private Rental, in order to enable OMMT to consider whether it is prepared to provide its approval in accordance with clause **3.1.1**, the Berth Owner must provide OMMT and the Manager with:
    - (a) your full name, address, email and contact telephone numbers;
    - (b) full details of the proposed Vessel; and
    - (c) a copy of the terms of the proposed Private Rental.
  - 3.1.3 The Berth Owner must pay OMMT's costs incurred in considering whether it is prepared to provide its approval in accordance with clause **3.1.1**.

## **4. OMMT & MANAGER**

- 4.1 Both you and the Berth Owner recognise, acknowledge and agree that:
  - 4.1.1 OMMT is the owner of the Orakei Marina facilities and licensor under the Berth Licence;
  - 4.1.2 OMMT is empowered and authorised to exercise all powers of the Berth Owner, on the Berth Owner's behalf, arising under these Terms or the terms of any Private Rental (as applicable);

- 4.1.3 OMMT may appoint a Manager from time to time to perform the obligations of OMMT arising in relation to the Marina. Such Manager shall act for and on behalf of OMMT, and shall have all rights and powers of OMMT arising under the Berth Licence, these Terms or the terms of any Private Rental (as applicable), the Bylaws and the Marina;
- 4.1.4 you and the Berth Owner shall obey all lawful directions of the Manager whether or not the specific instruction is covered by these Terms;
- 4.1.5 the Manager shall not be liable, accountable or responsible in any way to you or the Berth Owner; and
- 4.1.6 if the Berth Rental is a Standard Rental, you and the Berth Owner shall not deal directly with each other in relation to the Berth Rental, but shall direct all enquiries and correspondence whatsoever to the Manager.

## **5. BERTH LICENCE**

- 5.1 You agree and undertake to perform, observe and keep all the covenants, conditions, restrictions and provisos contained or implied in the Berth Licence to be performed, observed or kept by the Berth Owner as if all such covenants, conditions, restrictions, and provisos were set out at length in these Terms. Except where inconsistent with the provisions of these Terms, all such provisions shall apply between you and the Berth Owner with all necessary modifications as if the Berth Owner was licensor, and you were licensee, under the Berth Licence, except that:
  - 5.1.1 you will obtain the consent and approval of both the Berth Owner and OMMT in any circumstance where OMMT's consent or approval would be required under the Berth Licence;
  - 5.1.2 the rights reserved to OMMT in the Berth Licence shall be deemed in these Terms to extend to and include the Berth Owner, OMMT, the Manager and their respective servants, agents, contractors and invitees; and
  - 5.1.3 you shall not have the benefit of any right to assign your rights in relation to the Berth.
- 5.2 You indemnify, and shall keep indemnified throughout the Rental Term, the Berth Owner, OMMT and the Manager against all costs, claims, damages, expenses, actions and proceedings on account of any wilful act, negligence act or omission, or breach of these Terms, the terms of the Berth Licence, the terms of any Private Rental or the Bylaws, by you.

## **6. USE OF BERTH**

- 6.1 During the Rental Term, you are entitled to use the Berth, together with the facilities and amenities forming part of Orakei Marina, subject to the directions and instructions of the Manager.
- 6.2 During the Rental Term you shall be entitled, free of charge and without displaying a parking permit, to utilise those carparks (on the Orakei Marina wharf) that are marked with red lines. You are not authorised to utilise those car parks that are marked with yellow lines.
- 6.3 You may only use the Berth for berthing the Vessel, and for no other purpose or activity.
- 6.4 While berthed at Orakei Marina, the Vessel can only be used for personal recreational purposes. You must not use the Vessel for commercial activities or to make financial gain without OMMT's prior permission (which may be given subject to additional terms and conditions, including a requirement to pay a commercial use surcharge).

- 6.5 At all times while you or the Vessel are located within the Orakei Marina area, you must comply at all times with all directions and instructions of OMMT and the Manager.
- 6.6 No part of the Vessel, when berthed at the Berth, may extend beyond the physical confines of the Berth. If this occurs:
- 6.6.1 the Vessel may be relocated to a suitably sized berth and you may be required to pay additional Charges and relocation costs; or
- 6.6.2 if this has arisen as a result of a misrepresentation by you as to the Vessel's dimensions, the Berth Rental may be immediately terminated and the Vessel removed from Orakei Marina and otherwise dealt with in accordance with clauses **19.3 to 19.6,**

provided that, in either case, you will not be entitled to any notice or compensation.

## **7. COMMENCEMENT & TERM**

- 7.1 The Rental Term shall commence upon the commencement date stated on the Marina Berth Application Form (in the case of a Standard Rental) or as agreed between you and the Berth Owner (in the case of a Private Rental) and shall thereafter remain in effect until expiry or termination in accordance with clause **19.1.2** or clause **19.2.**

## **8. PAYMENTS & CHARGES**

- 8.1 With respect to Standard Rentals:
- 8.1.1 all Charges shall be payable by you to OMMT (together with any GST) to be disbursed by OMMT in accordance with the relevant arrangements between OMMT and the Berth Owner; and
- 8.1.2 you and the Berth Owner acknowledge and agree that any of the Charges may change from time to time as notified to you by OMMT.
- 8.2 You must pay the initial booking fee, and Rent in respect of the first month of the Rental Term (together with any GST), to OMMT in advance or within 24 hours of the arrival of the Vessel at the Berth, and all subsequent Rent must be paid monthly in advance.
- 8.3 Prior to commencement of the Rental Term you must provide OMMT with:
- 8.3.1 a signed Credit Card Authority enabling OMMT to recover all of the Charges (excluding Rent for the purposes of this clause in the case of a Private Rental); and
- 8.3.2 in the case of a Standard Rental under which the Rental Term exceeds one month, a signed bank authority for the automatic payment of Rent monthly in advance.

## **9. RELOCATION**

- 9.1 At any time during the Rental Term, OMMT may temporarily or permanently relocate the Vessel from the Berth to another comparable berth, and these Terms shall continue to apply to the Vessel's occupation of the new Berth, without compensation.

## **10. WATERSPACE AND ACCESS RIGHTS**

- 10.1 During the Rental Term you shall have the right, together with other users of Orakei Marina, to use the common waterways, walkways and facilities at Orakei Marina.

## **11. REFURBISHMENT AND REDEVELOPMENT**

- 11.1 You and the Berth Owner acknowledge that OMMT may at any time, without notice, refurbish or redevelop all or any part of Orakei Marina as it sees fit.

## **12. COMPLIANCE**

- 12.1 You shall, in the use of the Berth and Orakei Marina, comply with and be bound by all Acts of Parliament and regulations which are relevant to Orakei Marina, the terms of any relevant resource consent and all local authority bylaws, the Bylaws, and the instructions of OMMT or the Manager.
- 12.2 OMMT may amend, add or remove any Bylaws at any time without previously consulting you or the Berth Owner.

## **13. INVITEES**

- 13.1 You must ensure that all your invitees comply with all your obligations under these Terms (where the context permits) and all Bylaws.

## **14. ASSIGNMENT & SUBLETTING**

- 14.1 Each of OMMT and the Berth Owner may assign all or any of their rights or obligations in relation to the Berth or Orakei Marina to any person.
- 14.2 You must not assign, sublet or authorise any other person to use the Berth without OMMT's prior permission (which may be given subject to additional terms and conditions).

## **15. WARRANTY/ REPRESENTATION**

- 15.1 You warrant and represent to OMMT and the Berth Owner that the Vessel is seaworthy and in sound working order, that you are fit to operate the Vessel safely at all times, and that the Vessel will at all relevant times be secured properly and safely moored to the Berth (subject to any relocation or removal of the Vessel by OMMT in accordance with these Terms).

## **16. INSURANCE**

- 16.1 You must at all times fully insure the Vessel and all other property brought into Orakei Marina by you against loss or damage caused by all usual and reasonably insurable risks.
- 16.2 You must maintain adequate public liability insurance against death and/ or bodily injury to persons and loss or damage to property of others (including, without limitation, OMMT and OMMT's officers, employees and contractors) arising out of the use of the Vessel, the Berth and Orakei Marina. The minimum amount of such public liability insurance that you must hold is \$5,000,000.00 for 15m or less, or \$10,000,000 16m or greater vessel length, or such other amount as notified to you by OMMT from time to time.
- 16.3 OMMT will require you to provide proof that you hold current insurance in accordance with clauses **16.1** and **16.2**, in such form as OMMT may specify.

## **17. LIABILITY & INDEMNITIES**

- 17.1 The Vessel and any other property brought into Orakei Marina by you and/or your invitees are at all times your own responsibility, and while located at Orakei Marina remain solely at your own risk.

- 17.2 None of OMMT or the Manager or their respective officers, employees, agents or contractors are liable or responsible:
- 17.2.1 for the safety of any vessels, property or persons within Orakei Marina whether in tort (including the negligence of OMMT or the Manager or their respective officers, employees, agents or contractors), contract, breach of statutory duty, equity or otherwise, or for the adequacy or otherwise of the Marina, or for the Berth, or any other part of the facilities of the Marina; or
  - 17.2.2 for any loss, damage or injury, occurring within Orakei Marina to any property (including the Vessel) or persons, however it may arise and even if it is caused by or attributable to OMMT or the Manager or their respective officers, employees, agents or contractors; or
- 17.3 The liability of OMMT or the Manager or their respective officers, employees, agents or contractors, or any other person, for any loss costs, expenses, demands or liability, or for any death, or personal injury incurred or suffered within the Marina whether in tort (including the negligence of OMMT or the Manager or their respective officers, employees, agents or contractors), contract, breach of statutory duty, equity or otherwise, is excluded to the fullest extent permitted by law.
- 17.4 You indemnify OMMT and the Manager and their respective officers, employees, agents and contractors against any loss, costs, expenses, demands, liability or claims suffered by them that result from, or are caused or contributed to by, your use of the Berth, the Vessel and/ or Orakei Marina, and/or any of your or your invitees' acts or omissions or the acts or omissions of others to which you have contributed (in each case including breaches of these Terms, the Berth Licence, the Bylaws or the terms of any relevant Private Rental).

## 18. YOUR ACKNOWLEDGMENTS

- 18.1 You acknowledge that OMMT & OML has not represented to you that the Berth or Orakei Marina is adequate for your intended use.
- 18.2 Nothing in, or arising from, these Terms, or the fact of your hire of the Berth, shall constitute OMMT as a bailor of the Vessel.

## 19. DEFAULT, TERMINATION AND CONSEQUENCES

- 19.1 If any amount payable by you under these Terms or the Bylaws is not paid on the due date for payment (**Due Date**), or in the case of any other breach of these Terms, the terms of the Licence, the Bylaws or the terms of any relevant Private Rental by you:
- 19.1.1 with respect to any unpaid amount that is payable by you to OMMT, you shall pay to OMMT interest (both before and after any judgement) at the rate of 1.5% per month (or such other rate as is notified to you by OMMT at any time prior to such non-payment) calculated daily (and cumulatively) on the amount unpaid from the Due Date until payment (including payment of the default interest in accordance with this clause) is made in full;
  - 19.1.2 if any breach of these Terms, the Berth Licence or the Bylaws remains unremedied within seven days of notice of such breach, specifying the required remedy, is provided to you by OMMT then OMMT shall be entitled to immediately terminate the Rental Term;
  - 19.1.3 you shall pay to each of the Berth Owner and OMMT (as applicable) all reasonable costs, charges and expenses for they shall become liable in consequence of or in connection with any breach or default by you in the performance or observance of any of these Terms, the terms of the Licence, the Bylaws or the terms of any relevant Private Rental; and

- 19.1.4 OMMT may, in its sole discretion, lock and/or impound the Vessel at the Berth, or remove the Vessel and store it in such a place and under such conditions as it sees fit, all at your risk and cost and shall not be required to release it until you have paid all Charges and other amounts owing by you under these Terms, the terms of the Licence, the Bylaws or the terms of any relevant Private Rental or otherwise (**Outstanding Amounts**) and remedied all breaches of these Terms, the terms of the Licence, the Bylaws and the terms of any relevant Private Rental to OMMT's satisfaction or until the Vessel is sold in accordance with clause **19.4**.
- 19.2 You, OMMT or the Berth Owner may, in each party's sole discretion, terminate the Rental Term at any time upon providing one month's written notice to the other parties.
- 19.3 Upon expiry or termination of the Rental Term for any reason, the following shall apply:
- 19.3.1 You must promptly pay to OMMT all Outstanding Amounts and remove the Vessel from the Berth and Orakei Marina, provided that, if you do not complete such payment and removal within 24 hours following the date of termination of the Rental Term, OMMT may:
- (a) charge you an extension fee, in an amount determined by OMMT in its sole discretion, in respect of each day during which the Vessel occupies the Berth after the date of such termination; and/or
  - (b) lock and/or impound the Vessel at the Berth, or remove the Vessel and store it in such a place and under such conditions as it sees fit, all at your risk and cost and shall not be required to release it until you have paid all Outstanding Amounts or until the Vessel is sold in accordance with clause **19.4**.
- 19.3.2 Termination or expiry shall not prejudice the rights of OMMT and the Berth Owner against you in respect of any breaches subsisting at the date of termination or expiry.
- 19.3.3 OMMT and the Berth Owner shall be at liberty to enter into a new rental arrangement in respect of the Berth to such person and in such manner as they may determine.
- 19.3.4 You hereby irrevocably appoint OMMT, the Manager and their nominees (severally) as your attorney to execute all documents and do all such things as are necessary to give effect to the exercise of any of their rights or powers in accordance with this clause **19**.
- 19.4 If the Vessel is locked, impounded or removed from Orakei Marina and stored by OMMT in accordance with any of clauses **19.1.4 or 19.3.1(b)**:
- 19.4.1 OMMT (acting on its own behalf and on behalf of the Berth Owner) shall hold a lien over the Vessel securing all costs of locking, impounding, removal, security, storage and sale of the Vessel, and all outstanding Charges and other amounts owing by you under these Terms or the Bylaws or otherwise;
- 19.4.2 In the event that you do not pay all Outstanding Amounts, and remedy all breaches of these Terms, the terms of the Licence, the Bylaws and the terms of any relevant Private Rental, to OMMT's satisfaction within one month of the date of such locking, impounding or removal, OMMT may sell the Vessel and apply the sale proceeds:
- (a) first in payment of the costs of sale;
  - (b) secondly in or towards satisfaction of any monies owing by you under these Terms or the Bylaws or otherwise; and

(c) thirdly to you,

provided that, if the proceeds of such sale are not sufficient to pay all any monies owing by you under these Terms or the Bylaws or otherwise in full, you shall remain personally liable for all amounts which remain unsatisfied.

19.5 Upon termination of the Rental Term for any reason, any Charges prepaid by you shall be forfeited to OMMT as liquidated damages.

19.6 In the case of any default on your part and without prejudice to its other rights OMMT may remedy such default at your cost and both you and the Berth Owner hereby irrevocably appoint OMMT, the Manager and their nominees (severally) to be your attorney for such purpose.

## **20. PRIVACY**

20.1 You authorise OMMT to seek and obtain any relevant information about you from any person (including debt collection agencies) and to use any information about you held by OMMT for purposes associated with your use of the Berth or Orakei Marina.

20.2 You authorise OMMT to send you Orakei Marina newsletters and other promotional and marketing material from time to time.

## **21. CONTACT DETAILS**

21.1 You must provide OMMT with your current residential and postal address or addresses and contact phone numbers, and any changes to those contact details from time to time.

## **22. SERVICES OF NOTICES**

22.1 Where OMMT is required to give notice to or communicate in any way with you under these Terms or the Bylaws, OMMT may do so in writing and by post to your last address notified to OMMT. You are deemed to have received such notice or communication within 3 working days after posting.

## **23. NEW ZEALAND LAW**

23.1 The law to which these Terms are to be subject is New Zealand Law.

23.2 The parties submit to the non-exclusive jurisdiction of the New Zealand courts.