

SOUTHPORT YACHT CLUB INC. ABN 98 569 906 907
MARINA BERTH/SWING MOORING TERMS AND CONDITIONS

THIS AGREEMENT is made between SOUTHPORT YACHT CLUB INCORPORATED of Macarthur Parade, Main Beach in the State of Queensland (hereinafter referred to as ("the Club")) and the person or corporation named in Item 1 of the Schedule as the Customer (hereinafter referred to as "the Customer").

WHEREAS: A: The Club conducts the Marina to allow boats to be kept at a berth within the Marina upon and subject to certain conditions and restrictions.

B: The Club has agreed, under this Agreement, to permit the Customer to moor the Vessel at the Berth for the Term on the terms and conditions set out in this Agreement in return for the Rent.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions - In this Agreement, unless the context requires otherwise:

- 1.1 "Agreement" means this Agreement and all schedules or amendment to it;
- 1.2 "Berth" means the Berth specified in Item 2 of the Schedule;
- 1.3 "Facilities" means the facilities within the Marina supplied by the Club and includes the Club's ablutions, garbage disposal, rubbish collection and recycling facilities, car parking, short and long term dinghy storage (both in and out of the water) and, if required, the walkways giving access to the Berth;
- 1.4 "GST" means any tax, impost or duty, including any goods and services, consumption, value added or similar tax applying on goods, services or other things imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST ACT") and associated legislation (as amended), or under legislation passed by a State or Territory Parliament which is charged or levied on goods, services or other things;
- 1.5 "Live Aboard" means a vessel being lived aboard for four or more nights per week;
- 1.6 "Force Majeure" includes any extraordinary event or circumstances beyond the control of the Club, such as war, strike, riot, crime, act of God (such as hurricane, flooding, earthquake, volcanic eruption);
- 1.7 "Marina" means the business of providing berths and swing moorings for the mooring of boats within the Southport Boat Harbour adjoining the Club's premises at Macarthur Parade, Main Beach, Queensland;
- 1.8 "Party" or "Parties" means the parties to this Agreement;
- 1.9 "Refundable Access Card Deposit" means the refundable access card deposit referred to in Item 7 of the schedule;
- 1.10 "Rent" means the rent payable by the Customer to the Club in accordance with the Agreement identified at Item 5 of the Schedule;
- 1.11 "Security Deposit" means the Security Deposit identified in Item 6 of the Schedule;
- 1.12 "Term" means the period specified in Item 3 of the Schedule;
- 1.13 "Vessel" means the vessel identified in Item 4 of the Schedule.

2. Use:

- 2.1 The Customer shall, for the Term, be entitled to the use of the Berth for the mooring of the Vessel and to the reasonable use, in common with others, of the Facilities AND in consideration thereof, the Customer shall pay to the Club, the Rent. The Customer will remain liable to pay the Rent up to and including the day upon which it delivers up possession of the Berth to the Club;
- 2.2 The Rent is payable by the Customer to the Club monthly in advance;
- 2.3 Interest will accrue on any Rent outstanding and in arrears, at a rate of 1.5% per month;
- 2.4 Upon execution of this Agreement by the Customer, the Customer must pay to the Club or its agent as the Club may direct from time to time, and as security for payment of the Rent and performance of the Customer's obligations under this Agreement, a sum equal to the Security Deposit;
- 2.5 The Customer hereby authorises and directs the Club to apply all or any part of the Security Deposit, to make good any default or breach by the Customer of the terms and conditions of this Agreement or any other damage caused to the Marina by the Customer, including, but not limited to, applying the Security Deposit in full or part payment of any outstanding Rent due and payable to the Club pursuant to clause 2.1 of this Agreement;
- 2.6 The Customer hereby agrees and acknowledges that any application of the Security Deposit in part payment of any default, Rent, damage or otherwise by the Club, does not in any way limit or compromise the Club's entitlement or legal rights based on the terms of this Agreement, at law or otherwise, to recover any further amount outstanding to the Club by the Customer in respect of such default, breach, damage or outstanding Rent;
- 2.7 Upon receiving notice that the Club has applied all or any part of the Security Deposit as permitted by clause 2.5 herein, the Customer will, within three business days of receipt of such notice, pay to the Club, such amount required to replace all or any part of the Security Deposit applied by the Club so that, at all times during the Term, the Club holds the quantum of the Security Deposit as set out in the schedule;
- 2.8 On execution this Agreement by the Customer, the Customer must pay to the Club or its agent as the Club may direct from time to time, a sum equal to the Refundable Access Card Deposit. Upon receipt of the Refundable Access Card Deposit, the Club will supply to the Customer an access card necessary to permit the Customer access to the Marina and Facilities;
- 2.9 The Customer and its invitees hereby agree and acknowledge to use the Marina and the Facilities reasonably and otherwise in accordance with the terms and conditions of this Agreement and all applicable By-Laws;
- 2.10 On payment of the Refundable Access Card Deposit and whilst the Agreement remains in effect and the Customer is not in default, the Customer and his invitees may make reasonable use of Facilities whether or not the Customer is a member of the Club.

3. By-Laws:

- 3.1 The Customer agrees to be bound by and observe all provisions of the *Transport Infrastructure Act 1994*, the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000* and the Club's Constitution and By-Laws as may be in existence and adopted by the Club from time to time applicable to the use of the Marina, Facilities and the Berth;
- 3.2 The Customer hereby agrees and acknowledges to be bound by and observe clause 3.1 of this Agreement whether or not the Customer is a member of the Club and agrees to be bound by clause 3.1 of this Agreement as if the Customer were such a member;
- 3.3 The Customer hereby agrees and acknowledges that it has been provided with an opportunity to review the Club's Constitution and By-Laws prior to entering into this Agreement;
- 3.4 The Club agrees to maintain a full and up to date copy of the Club's Constitution and By-Laws on the Club's Notice Board at all times during the Term.

4. Insurance:

- 4.1 The Customer will, during the Term maintain, at its own cost and expense, adequate insurance for the Vessel, its contents and fittings with an insurer accredited by the *Australian Prudential Regulatory Authority*;
- 4.2 The policy of insurance referred to at clause 4.1 must include:
 - 4.2.1 indemnity coverage for the total current market value of the Vessel, its content and fittings;
 - 4.2.2 indemnity coverage for removal of wreck;
 - 4.2.3 indemnity coverage of at least \$10,000,000.00 for:
 - 4.2.3.1 damage to other Vessels;
 - 4.2.3.2 property;
 - 4.2.3.3 bodily injury;
 - 4.2.3.4 public liability.
 - 4.2.4 if applicable, indemnity coverage for tiedown lines, attachments and lifting straps.
- 4.3 The Club may, at any time during the Term or at any time after the termination of this Agreement, require the Customer to produce to the Club or its agent, a copy of the relevant certificate of insurance;
- 4.4 A copy of either a policy of insurance or letter from an insurer confirming that adequate insurance coverage is held by the Customer (such policy of insurance or letter to be in the English language) shall be provided by the Customer to the Club upon the execution of this Agreement by the Customer.

5. Marketing/Brokerage:

- 5.1 The Customer acknowledges and agrees as follows:
 - 5.1.1 The Vessel shall not be advertised for sale or offered for sale at the Marina during the Term or otherwise;
 - 5.1.2 Marine brokers, other than the broker approved by the Club, are not permitted on the Marina;
 - 5.1.3 Vessels stored in the Marina must not be used for any commercial enterprise, in any case, without the prior written approval of the Club.

6. Assignment:

- 6.1 This Agreement and the rights conferred upon the Customer hereunder are personal to the Customer and are not capable of assignment by the Customer.

7. Repairs and Maintenance:

- 7.1 The Customer acknowledges major repairs and/or refits of Vessels in the Marina are prohibited and no outside contractor or service organisation or individual is permitted to work on any Vessel in the Marina without the prior written approval of the Club.

8. Acknowledgements:

- 8.1 The Customer hereby agrees and acknowledges that:
 - 8.1.1 the Club, its agent or representatives have not provided the Customer with any advice, warranty and/or representation as to the sufficiency, safety or adequacy of the Berth, Facilities, Marina or any of the services provided by the Club for use at the Marina or the Facilities;
 - 8.1.2 it has conducted its own research and obtained its own advice in respect of the sufficiency, safety or adequacy of the Berth, Facilities, Marina and any of the services provided by the Club and this Agreement and that it has not relied on any advice, warranty or representation made by the Club or any of its agents or representatives as to the sufficiency, safety or adequacy of the Berth, Facilities, Marina and/or services provided by the Club or this Agreement when entering into this Agreement;
 - 8.1.3 the Customer hereby acknowledges and agrees that the Vessel is moored at the Marina and/or Berth at the Customer's own risk and the Club will not be responsible for any loss or damage to the Vessel, its contents or fittings how so ever caused including, but not limited to, by reason of any theft, accident or Force Majeure;
- 8.2 the Customer acknowledges and agrees that it utilises the Berth, Marina and Facilities at its own risk and that the Club is not responsible for any injury or loss sustained by the Customer, its agents, crew, guests, visitors or contractors, or for any loss or damage of any description to the Vessel, the contents of the Vessel or any other property owned by the Customer that may be present on or in the Marina, Berth and/or Facilities for any reason whatsoever, including, but not limited to, by reason of any theft, accident or Force Majeure.



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Please initial each box to acknowledge your compliance while staying on the Marina.

- No Jerry cans will be used for refueling on the Marina
- No Smoking on the Marina Walkways
- No fishing or cleaning fish on the Marina
- No Diving or Swimming
- No Animals
- No Raucous or unseemly behaviour

Toilets, oil, chemicals, spirits, inflammables and oily bilges shall not be discharged into the waters of the Marina

- Craft on the Marina must be registered and Insured
- Equipped and maintained as required by law and safe practice standards
- Only be berthed and manoeuvred where directed by Southport Yacht Club staff
- Ensure no loose ropes float or obstruct the adjacent berths
- Berthed so that no part or attachment projects over the walkway, regardless of wind direction
- Marina walkways must be clear of all hazards and obstructions, including dinghies, trolleys, and bikes.
- All hoses are to be stored on board the vessel when not in use

The undertaking of major repairs, painting & fitting on the marina is prohibited

- When conducting **minor** repairs, painting, mechanical adjustments or electrical work you must:
- Not interfere with, or endanger others using the facility
- Keep noise to a minimum
- Use contractors who are authorised by the Southport Yacht Club
- Use only the designated electrical outlet for your berth

The Marina is a no wash zone and speed limits in place shall be observed within, departing from or when approaching the Marina

- Living aboard the vessel is not permitted without prior approval from the Waterfront Committee
- Laundry is not to be hung in public view
- An adult must accompany children under the age of 12 at all times
- Any collision or damage within or to any part of the marina will be reported within 24 hours

I am aware of the location of the emergency contact details for the Marina and have received a copy of the By-Laws.

I (Name) _____ on this day _____

I have read & understand the above & agree to comply with each of the guidelines stated and with the By-Laws and the Terms and Conditions of any applicable berth or mooring agreement.

Signature: _____

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9. **Indemnity:**
- 9.1 The Customer whether or not it is the owner of the Vessel, indemnifies and agrees to keep indemnified the Club, its agent, employees and contractors against any and all claims, demands, actions and proceedings whatsoever and howsoever arising directly or indirectly by, through or in connection with the mooring, launching, occupation or moving of the Vessel or the use by the Customer or its crew, guests, visitors, invitees or licensees, of any the Berth and/or Facilities and/or the Marina;
- 9.2 The Customer, whether or not it is the owner of the Vessel, indemnifies and agrees to keep indemnified, the Club, its agent, employees and contractors, in respect of any and all loss, damage, cost, expense or claim or injury (fatal or non fatal) to person or property (including the Vessel) or liability, including legal fees incurred by the Club on a full indemnity basis, whatsoever and howsoever arising and suffered either by the Club, its agents, employees and contractors or the Customer's crew, guests, visitors, invitees or licensees or any of them or any other person or persons whatsoever by, through or in connection with the mooring, launching, occupation or moving of the Vessel or any consequential use of the Berth and/or the Facilities and/or the Marina;
- 9.3 Should the Club or its agent, employees and/or contractors suffer, incur or become liable for or should demand be made on the Club or its agent, employees and/or contractors for any loss, damage, costs, expenses or liability including legal fees, whatsoever by reason of any act or omission on the part of the Customer or the Customer's invitees, agents, employees, crew, guests, visitors or licensees, or any person for whose actions the Customer is vicariously liable, the Club or its agents, as the case may be, shall be entitled to a lien upon the Vessel and its equipment and contents as security for performance of the Customer's obligations under clauses 9.1 and 9.2 of this Agreement and may, at the Customer's own expense, detain the Vessel until the Customer's obligations under clauses 9.1 and 9.2 of this Agreement have been satisfied in full or to the satisfaction of the Club or the Customer has offered reasonably acceptable substitute security to the satisfaction of the Club;
- 9.4 The Customer acknowledges and agrees that the Club, its agent, employees and contractors will not be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer or any crew, guests, visitors, invitees or licensee of the Customer in or about or while crossing over or going through the Facilities and/or Marina any other property for the purpose of gaining access to the Vessel, the Marina, and/or the Facilities and/or the Berth and the Customer hereby indemnifies and agrees to keep indemnified the Club, its agents, employees and contractors from any and all claims, loss, damage and costs (including legal costs on a full indemnity basis) incurred by the Club arising from such injuries, loss or damage;
- 9.5 The Customer acknowledges and agrees that the Club, its agent, employees and contractors will not be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer or any crew, guests, visitors, invitees, licensee or any property of the Customer arising from or as a result of the use of the Marina, the Berth and the Facilities (including the Club's car park) and the Customer hereby indemnifies and agrees to keep indemnified the Club, its agents, employees and contractors from any and all claims, loss, damage and costs (including legal costs on a full indemnity basis) arising from such injuries, loss or damage.
10. **Additional Security:**
- 10.1 If the Customer is a company, the director/s of the company ("the Guarantor") must also execute this Agreement and, upon execution of this Agreement, hereby undertakes and guarantees the payment by the Customer to the Club of all and any monies payable by the Customer to the Club under this Agreement, including, but not limited to, any Rent owing to the Club pursuant to the terms of this Agreement and/or loss or damage suffered by the Club, any money payable to the Club pursuant to clause 9 of this Agreement and further, hereby undertakes and guarantees the observance and performance by the Customer of all of the terms, covenants and conditions of this Agreement either express or implied including the indemnities provided by the Customer to the Club pursuant to clause 9 of this Agreement;
- 10.2 The Customer hereby acknowledges and agrees that the Club may, at any time and as security for the payment of all monies due and payable under this Agreement, register a security interest over the Vessel, pursuant to the provisions of the *Personal Property Securities Act 2009 (Cth)* ("PPSA") and hereby unconditionally authorises the Club to register such security interest over the Vessel in accordance with the PPSA upon the execution of this Agreement. The Customer's unconditional authority for the Club to register a security interest in accordance with the provisions of the PPSA is not affected by any other clause contained in this Agreement or the provision of any other security by the Customer to the Club pursuant to the terms of this Agreement, including any guarantee provided;
- 10.3 In the event that an amount of money is owing by the Customer to the Club (for any reason whatsoever) under this Agreement, the By-Laws or on any other basis, and such amount of money remains unpaid for a period of 14 days following any written demand for payment by the Club, the Customer acknowledges and agrees that the Club may take such action as it considers appropriate (at its sole discretion) to recover such money from the Customer, including (without limitation and in addition to all other legal rights) taking possession of and effecting a sale of the Vessel (by use of a receiver or otherwise) and to deduct and retain the money owing (and any consequential costs or expenses or other amounts owing to the Club, including receiver or legal costs on an indemnity basis) from the proceeds of such sale.
11. **Entire Agreement:**
- 11.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all of the representations, warranties, covenants and agreements of such parties. This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter;
- 11.2 The Customer hereby covenants and irrevocably acknowledges that it has not been induced to enter into this Agreement by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person or Party other than expressly recorded in this Agreement.
12. **Waiver:**
- 12.1 A party's failure or delay to exercise a power or right under this Agreement does not operate as a waiver of that power or right;
- 12.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right;
- 12.3 A waiver is not effective unless it is in writing;
- 12.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
13. **Warranties:**
- 13.1 The Customer warrants that:
- 13.1.1 it has read, understood and agrees to be bound by:
- 13.1.1.1 the terms and conditions of this Agreement;
- 13.1.1.2 the terms and conditions of the By-Laws that form part of this Agreement;
- 13.1.2 it will do all things necessary to give effect to the Agreement;
- 13.1.3 it will do all things necessary to comply with the By-Laws;
- 13.1.4 the Vessel is in a seaworthy condition and is registered, identified, marked, equipped and maintained as required by law and will remain that way at all times during the Term;
- 13.1.5 it agrees to indemnify and keep indemnified, the Club, its agents, employees and contractors from any and all loss, damage, cost, expense or claim arising out of or in relation to the use of the Berth, Marina and Facilities, including the Club's car park, by the Vessel, the Customer and/or the Customer's crew, guests, visitors, invitees or licensees.
14. **Joint and Several Liability:**
- 14.1 Unless otherwise expressly provided, all covenants and agreements on the part of two or more persons who comprise a single party shall be deemed to bind each of them severally and any two or more of them jointly.
15. **Costs of Agreement:**
- 15.1 The Customer shall pay all costs, charges and expenses arising out of any necessary negotiation or amendment to this Agreement;
- 15.2 The Customer shall pay all costs, charges and expenses of and incidental to the Club's enforcement of the terms of this Agreement including all legal costs on an indemnity basis.
16. **Notices:**
- 16.1 Any notice, communication or other document authorised or required to be given or served pursuant to this Agreement ("a Notice") shall be either:
- 16.1.1 personally served on the party or an officer of the party to whom it is given;
- 16.1.2 mailed to the party by prepaid post; or
- 16.1.3 sent to the party by facsimile or other electronic transmission.
- 16.2 The address for service of a Notice on the Club is its address stated in this Agreement and on the Customer shall be such address as may from time to time be notified in writing by the Customer to the Club and unless so notified shall be the address specified in the Schedule hereto.
17. **Applicable Law:**
- 17.1 The interpretation and construction of this Agreement shall be governed and determined in accordance with the laws of the State of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State.
18. **Termination:**
- 18.1 This Agreement may be terminated by the Club by written Notice of Termination to the Customer in the following circumstances:
- 18.1.1 If the Customer is in arrears in the payment of any money payable pursuant to this Agreement including, but not limited to, Rent;
- 18.1.2 If the Customer is in breach of any of the terms and conditions of this Agreement.
- 18.2 Upon giving Notice of Termination the Club may forthwith or at any time thereafter enter upon the Berth to remove the Vessel from the Berth and to move or otherwise moor it in a safe place as determined by the Club PROVIDED ALWAYS that the cost of such removal and/or mooring plus all money then owing under this Agreement (including any amounts under clause 9 and/or in respect of legal or other costs incurred by the Club by reason of the Customer's breach) shall be paid by the Customer before delivery of the Vessel by the Club to the Customer. The Club shall not be responsible or liable at the suit of the Customer for any damage or loss which results from any such movement or removal or mooring of the Vessel;
- 18.3 Unless otherwise agreed by the parties in writing, this Agreement shall terminate on the expiry of the Term and at that time the Customer must deliver up possession of the Berth to the Club.
19. **Sub Rental:**
- 19.1 Notwithstanding anything elsewhere herein contained or implied the Customer may if it so desires from time to time, appoint the Club to find a person (acceptable in every respect to the Club) to use the Berth for the purpose of mooring a boat other than the Vessel and the Club may at its sole discretion accept such appointment.
20. **Uncollected Goods:**
- 20.1 The Club hereby gives notice to the Customer that vessels accepted by the Club for mooring within the Marina are subject to the *Disposal of Uncollected Goods Act 1965* (as amended) which confers upon the Club a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which such vessels are ready for re-delivery to the Customer, such date being that upon which the Club gives the Customer written notice to remove the Vessel from the Marina.
21. **Environment:**
- 21.1 The Customer shall not do or direct or permit the doing of any act or the making of any omission which would or might amount to a breach of the *Environmental Protection Act 1994*.
22. **Goods and Services Tax ("GST"):**
- 22.1 In respect of any liability of the Club for GST under this Agreement including for Rent or any other consideration for any other taxable supply made by the Club to the Customer, the Customer covenants to pay to the Club, at the same time as any payment is made involving the Club in GST liability, the additional amount of GST, together with the payment to which it relates;
- 22.2 The Customer's liability under clause 22.1 above is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST;
- 22.3 Notwithstanding clause 22.2, if the Club is entitled to an input tax credit in relation to any amount recoverable from the Customer under clause 22.2, the amount payable by the Customer shall be reduced by the amount of the input tax credit that the Club has received or claims and is entitled to receive;
- 22.4 Where any GST is not paid by the Customer when due to the Club, in addition to any obligation under this Agreement on the part of the Customer to pay interest to the Club, the Customer shall pay to the Club upon demand all Default GST (if any). "Default GST" means any additional GST, penalty or other sum levied against the Club under the GST Act by reason of a non-payment of GST but does not include any such sum levied against the Club by reason of a default by the Club in remitting a GST to the relevant authority after payment of the same by the Customer to the Club.
23. **Miscellaneous:**
- 23.1 If the Customer is not by law the proprietor of the Vessel, then the expression "the Customer" shall include the lawful proprietor of the Vessel for the purpose of identifying invitees, licensees and guests and persons for whom the Customer described herein is vicariously liable in the terms of this agreement;
- 23.2 A reference to persons shall include corporations; words including singular number shall include plural number and vice versa; words including a gender shall include all other genders;
- 23.3 A reference in this agreement to a statute or a section of a statute includes all amendments to that statute or section passed in substitution for the statute or section referred to or incorporating any of its provisions;
- 23.4 Except for the purpose of identification headings and underlinings have been inserted in this agreement for the purpose of guidance only and shall not be part of this agreement;
- 23.5 The Club shall include the Club, its successors in title and assigns and, where relevant, its agent;
- 23.6 The Customer shall include the Customer and its successors in title and assigns;
- 23.7 In the event that any term of provision of this Agreement, for any reason whatsoever, is acknowledged by the Parties or adjudged by a Court of competent jurisdiction or be held or rendered by a government authority to be invalid, illegal or unenforceable such term or provision shall be severed from the remains of the term and provisions of this Agreement and shall be deemed never to have been part of this Agreement and the remainder of the terms and provisions of this Agreement shall subsist and remain in full force and effect unless the basic purpose or purposes of the Agreement would thereby be defeated.
24. **Holding Over:**
- 24.1 If the Customer shall, with the consent of the Club, remain in occupation of the Berth after the expiration of the Term, the Customer shall (in the absence of any express agreement in writing to the contrary) be deemed to hold the Berth for a further period mutually agreed between the Club and the Customer and will in consideration, pay to the Club the Rent as if the period of holding over was part of the Term, but otherwise on the terms and condition of this Agreement (and the By-Laws) so far as they can be applied to such holding over.