

FAIRWAY BAY MARINA BERTH RENTAL AGREEMENT - Page 1 of 8

The Owner hereby grants permission to the Customer to occupy the Berth nominated in The Schedule within Fairway Bay Marina ("the Marina") for the Term from the Commencement Date and at the Rental Rate herein stated under the following Terms and Conditions.

The Schedule

Customer/Renter name: _____

Address: _____

Email: _____

Phone: Mobile: _____ Home: _____ Work: _____

Emergency Contact: _____

Commencement Date: _____ Finish Date: _____

Vessel Name: _____ **Launch** **Yacht** **Multihull**

Insurer: _____ Policy # _____ Expiry: _____

Electrical Warrant of Fitness (EWOFF) **Yes** Expiry: _____ **No**

Rental Rate: NZD \$ _____ incl GST Bond: NZD \$ _____ (one month rental)

Payment requirements – please refer to Clause 17 of the Terms and Conditions

Acknowledgement

I hereby agree to comply with the Terms and Conditions of the Fairway Bay Marina Berth Rental Agreement.

I hereby agree this agreement is valid once the Manager has a copy of the Customer's Vessel insurance policy, which includes a minimum of \$10m limited liability, plus a current copy of the Vessel's EWOFF and Lead Tags.

Signed on behalf of the Owner

Signed on behalf of Customer/Renter

(Please initial all pages)

Date: _____

Date: _____

Office Use: Insurance EWOFF Lead Tags INUGO FOB code: _____

Boat Image on file Customer Approved by: _____

Terms and Conditions

1. Commencement Term and Termination

- a. The Owner grants a licence to the Customer to occupy the Berth during the term of the Agreement on the terms and conditions of the Agreement, and the Customer agrees to accept the same.
- b. Nothing in the Agreement shall create a lease, a tenancy, or any other property rights in the Berth.
- c. It is the Customer's responsibility to read and understand the Agreement. Failure to do so does not exempt the Customer from any liability to the Owner. From the earlier of the date on which the Customer signs the Berth Rental Agreement and the date on which the Customer accesses the Berth, the Customer will be deemed to have accepted and will be bound by the Agreement Terms and Conditions.
- d. The Owner may vary individual Agreements (or any document comprising the Agreement) by written notice to the Customer, provided such variation is reasonably required to manage the Marina in a safe, effective, and commercially sustainable manner, and the same variation can be applied to all customers of the Marina who occupy a Berth. Any variation will take effect five (5) Working Days after the date of the notice.
- e. The Customer shall vacate the Marina on or before midday on the last day of the Term.
- f. The Owner may terminate this Agreement on written notice if the Customer is in default, in accordance with the provisions of Clause 11.
- g. On the termination of the Agreement for any reason other than "end of Term", the Customer shall remove the Vessel and all the Customer's goods and effects from the Marina within seven (7) Working Days of the relevant date of termination.
- h. This Agreement commences upon the Commencement Date stated in the schedule, and thereafter remains in effect until terminated by either party giving one month's written notice to the other or upon expiry of the Term, whichever occurs first.

2. Rent

- a. The Customer agrees to pay the Rental Fee ("Rent") to the Owner in advance in monthly instalments as invoiced by the Manager. Rental for the Berth is payable on or before the Rental Commencement Date at the Rental Rate set out in The Schedule, or as amended from time to time, and thereafter in advance of any renewal term. The obligation to pay the rental fee is an essential term of the agreement.
- b. The Owner may, in its sole and absolute discretion propose a new Rental Fee by giving the Customer not less than one (1) month's written notice (Review Notice). The Customer shall, within ten (10) Working Days of the date of the Review Notice (Response Date) advise whether, or not it accepts the proposed new Rental Fee. If the Customer does not agree with the proposed new Rental Fee, then notwithstanding anything contained in the Agreement, the Owner may terminate this Agreement by notice to the Customer, such termination to take effect on the expiry of the Review Notice. The Customer's failure to respond by the Response Date shall be deemed acceptance of the proposed new Rental Fee. The new Rental Fee shall apply from one (1) day after the expiry of the Review Notice.
- c. Rent shall be paid by direct credit from a nominated bank account or by approved credit card. Any other payment method must have express prior approval from the Owner.
- d. Any costs associated with collecting unpaid or overdue amounts owed under this agreement will be on charged, plus interest calculated at 10% per month for the period that the debt is outstanding.

3. Bond

- a. The Customer agrees to pay the Bond (equivalent to one month's fee) immediately on completion of this Agreement. The Bond will then hold the berth reservation.
- b. Provided that the Customer has complied with the Terms and Conditions contained within this Agreement, the Bond shall be refunded to the Customer on the termination of this Agreement.

4. Berth

- a. The Customer shall occupy only the Berth indicated in the Schedule, or as amended by Clause 4b.
- b. The Manager may at any time require the Customer to relocate to an alternative Berth. The Customer shall not be liable for any compensation in respect of such change of the Berth. The terms of this Agreement shall apply to any such new Berth.

5. Subletting

- a. The Customer shall not use the Berth other than for mooring the nominated Vessel at the Berth identified in The Schedule.
- b. The Customer shall not be permitted to sublet or to authorise the use of the Berth by any other Vessel.

6. Electricity

- a. Electricity charges are included in the Rental Rate for Berth Rental Terms of less than seven (7) days.
- b. For any Term longer than (7) days, in addition to the Rental Fee, the Customer shall pay the monthly Outgoings invoiced by the Manager within five (5) Working Days of receiving the invoice (time being of the essence). The obligation to pay the Outgoings is an essential term of the Agreement.
- c. For any Term longer than (7) days, electricity will be charged on the basis of the kilowatts used as metered at the power plinth at the rate of \$0.30c/kwh + GST.
- d. Electricity charges are payable on Termination or at the end of each month, whichever occurs first.
- e. No vessel may connect to the electricity without first providing the Manager with a copy of a valid Electrical Warrant of Fitness and Lead Tag certificates. Such certificates must be kept valid for the duration of the Term.

7. Rules

- a. The Customer shall at all times comply with the current Fairway Bay Marina Rules, as notified by the Owner from time to time ("Rules").
- b. A breach of the Rules by the Customer is an act of default under this Agreement.
- c. A copy of the Rules is attached to this Agreement.
- d. The Customer shall only use the Berth for pleasure boating purposes and not for any commercial or other use or purpose unless the Owner at its sole discretion has approved such use in writing.
- e. Rules are subject to amendment by the Owner at any time.

8. Owner not Liable

- a. The Customer shall indemnify and keep indemnified the Owner against all losses, expenses, legal liability including any legal claims, damages, expenses, collection costs and other liabilities (whether direct, indirect or consequential) arising out of the Agreement or of any act or omission of the Customer or its Invitees. Additionally, the Customer agrees to compensate, recompense, pay, indemnify and hold indemnified third parties for any loss or damage suffered by any third party which is caused by or results from the acts or omissions of the Customer or its Invitees.
- b. The Owner is not responsible for the care or protection of any property belonging to the Customer in the Marina. The Vessel and any other property of the Customer are entirely at the risk of the Customer while at the Marina and shall remain at the Customer's risk during the Term of the Agreement.
- c. Neither the Owner, nor any of its employees, agents, officers or contractors, shall be liable (in negligence or otherwise) for any:
 - i. damage to, or theft or loss from, the Vessel, or for any damage to, or theft or loss of, any contents situated on or around the Vessel, while the Vessel is in the Marina howsoever occurring including, but without limiting the generality of the foregoing, loss or damage caused by the removal of the Vessel by any person not authorised by the Customer to remove it, whether such removal was permitted by the Manager or not; or
 - ii. damage to, or theft or loss of any other property belonging to the Customer or any Invitee of the Customer, which property is within the Marina premises (including any vehicle within the Marina car park); or
 - iii. injury, loss or damage sustained or suffered by the Customer, or any Invitee of the Customer or any other person in the Marina howsoever such loss, damage, injury, or death that may occur.
- d. Without limiting clause 8.a, the Customer will be responsible for all damage to the Marina 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 Customer or its Invitees relating to the use and/or storage of the Vessel.
- e. The Owner shall not be liable and shall accept no responsibility for loss or damage to boats, craft, third party property or persons using the same within the confines of, or near to the Marina.
- f. The Owner shall not be responsible or liable for determining whether or not the berth is suitable for the Customer's vessel.

9. Vessel Insurance

- a. The Customer shall at all times keep all boats, craft and any other property owned or brought into the Marina by the Customer fully insured whilst within the Marina against loss or damage by fire, explosion, storm, tempest, cyclone, earthquake, accidental damage, burglary, act of God, and all maritime risks.
- b. Third party insurance for the vessel shall be maintained by the Customer to a minimum level of NZ\$10,000,000.
- c. The Customer shall provide the Manager proof of insurance at Commencement and at any time on demand.

10. Indemnity

- a. The Customer shall indemnify the Owner against any loss, expense, legal liability, claims and costs incurred by the Owner arising as a result of the Customer's acts or omissions, or the acts or omissions of others to which the Customer has contributed, or the acts or omissions of any persons invited to the Marina by the Customer.
- b. The Customer shall be responsible for determining whether the Berth offered is suitable for the Customer's Vessel including (but not by way of limitation) adequate depth, suitability and strength of Marina mooring lines, piles, cleats together with all other aspects of the Marina.
- c. The Owner offers no guarantee to the Customer in relation to the suitability of the Marina for the Customer's Vessel.

11. Default

- a. If the Customer fails to pay any part of the Rental Fee, Outgoings or other monies due under the Agreement or otherwise defaults on any of the terms and conditions of the Agreement, the Owner may at its sole and absolute discretion issue the Customer a notice of default setting out the nature of the default and, if in the Owner's opinion the default can be remedied, how it can be remedied ("Default Notice"). Where relevant, the Default Notice shall note the total outstanding monies including any interest at the Default Rate.
- b. Any failure by the Owner to enforce a provision of the Agreement shall not limit the Owner's future right to enforce any provision of the Agreement.
- c. In the event of the Customer making default in the observance or performance of any obligation on the Customer's part expressed or implied herein, and such default remaining unsatisfied after five (5) days from the date of written notification specifying the default, the Owner may without the need for any further notice terminate this Agreement.
- d. The Owner may require that the vessel shall be removed from the Marina forthwith; the costs of such removal will be on-charged to the Customer.
- e. If the default shall be the non-payment of the Berth Rental or electricity charges, then the following provisions may apply:
 - i. The Manager may advise the names of the Customer and Vessel to other Marina Operator Association members.
 - ii. The Owner may remove and/or detain the vessel until such time as all amounts owing under the agreement are paid.
 - iii. If the Customer has not remedied such default, or the Customer shall fail to remove the Vessel from the Marina, the Owner may without incurring any liability for so doing and without further notice, remove or detain the Vessel and recover all such costs from the Customer.
 - iv. Where the Owner removes any Vessel in accordance with this clause, it shall be entitled to a lien on the Vessel to the extent of the costs of removal and storage, together with all other amounts owed under this Agreement.

11. Default continued

- f. Should the Customer fail to pay all amounts owing and claim such Vessel within the period of one month after the date of such removal, the Owner may at any time thereafter offer the same for sale and appropriate the proceeds of any resultant sale in satisfaction of such expenses as may be incurred in respect thereof.
- g. The Owner may, if the Owner thinks fit, place and maintain on any such Vessel such number of custodians as may be necessary, and the Owner shall be entitled to a lien on the Vessel to cover the costs in so doing.

12. Emergency Management and Other Vessel Relocation

- a. The Manager reserves the right to use the Berth in the case of an emergency and also to require the Customer to vacate the Berth if necessary to allow urgent repairs to be carried out. In such circumstances, the Manager will use reasonable endeavours but shall not be obliged to provide an alternative berth or mooring.
- b. In extreme emergencies, the Manager reserves the right to take whatever steps it considers are required, in its sole and absolute discretion, to promote the integrity and safety of the Marina.
- c. The Manager reserves the right to require the Customer to vacate the Berth if necessary to facilitate construction, development, alterations or maintenance within the Marina. In such circumstances, the Manager shall provide an alternative Berth for the Customer to use.
- d. Where the Manager has used reasonable endeavours to contact the Customer regarding a requirement to vacate the Berth pursuant to this Clause 12, and the Manager is unable to make contact with the Customer, the Manager is entitled to remove the Vessel from the Berth and the Customer consents to the Manager doing all things necessary to effect such removal. The Manager may, at its discretion, charge the Customer for any costs that the Manager incurs in removing a Vessel pursuant to this clause 12, and the Customer agrees to pay such charges.
- e. The Owner shall not be liable to pay any compensation to the Customer in respect of any relocation pursuant to this Clause 12.

13. Costs

- a. The Customer acknowledges and agrees that the Customer is personally liable to the Owner for paying any costs incurred by the Owner (including all debt collection and legal costs and expenses on a solicitor and own client basis) in relation to any breach by the Customer of its obligations under the Agreement (including the enforcement, or attempted enforcement, of the Owner's rights and remedies under the Agreement).

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14. Notices

- a. The Customer warrants that its contact details on the Berth Rental Agreement are correct for the purposes of service, and that it shall promptly update the Manager if any of its contact details change at any time during the term of the Agreement.

15. Dimensions of Vessel

- a. At all times, the Customer shall ensure that the dimensions of the Vessel (as specified in the Berth Rental Agreement) are true and correct and further undertakes not to allow any part of the Vessel (including spars, bowsprits, anchors, davits and tenders or any other thing affixed to the Vessel) to exceed such dimensions during the term of the Agreement.
- b. The Customer undertakes to inform the Manager:
 - in advance if the Customer intends to moor a new vessel in the Berth. In such circumstances, the Customer shall provide the Manager with written information regarding the new vessel (including name, type of vessel, dimensions, colour and whether it is equipped with holding tanks) and shall confirm to the Manager that the dimensions of the new vessel do not exceed the Vessel dimensions specified in the Berth Rental Agreement. Provided these requirements are complied with, the new vessel shall become the "Vessel" for the purposes of the Agreement; and
 - if any material changes are made to the Vessel.

16. Restricted Activities

- a. Neither the Customer nor any of its Invitees may live anywhere in the Marina.
- b. To avoid doubt, the Customer acknowledges that subletting the Vessel or permitting third parties to stay on board for reward is not permitted.

17. Payment Requirements

- **Bond** - to hold a reservation, payment of equivalent to one month's berth rental

Direct Credit - Internet banking: Westpac 03-0162-0142263-000 - Godwit Marine Limited
- **Berth Rental** – Monthly automatic payment (AP) due on first working day of each month

Direct Credit - Internet banking: Westpac 03-0162-0142263-000 - Godwit Marine Limited due within five (5) working days of invoice.
- **Outgoings** - Invoiced monthly, two payment options, due within five (5) working days of invoice:
 1. Direct Credit - Internet banking: Westpac 03-0162-0142263-000 - Godwit Marine Limited.
 2. Credit Card- via link on emailed invoice.

18. **Defined Terms**

- a. The expression "**Marina**" wherever used herein includes all Marina waters, the floating structures, pontoons, all Marina foreshore areas, administration and service areas under the control or administration of the Owner.
- b. The "**Marina Rules**" are as attached to this agreement or as modified from time to time by the Owner.
- c. The expression "**Owner**" means Godwit Marine Limited, being the Owner of the Marina, together with its authorised representatives including the Manager.
- d. "**Manager**" means the person as is from time to time appointed to manage the Marina by the Owner, or any other duly authorised representative of the Owner.
- e. "**Customer**" means the person or entity named as Renter in the Berth Rental Agreement.
- f. "**Rent**" means the Rental Rate described in the Berth Rental Agreement.
- g. "**Outgoings**" means the cost of all services supplied to or used by the Customer in the Marina (including but not limited to power, water, rubbish collection and any pump out services) during the term of the Agreement at the rate(s) specified by the Manager from time to time.
- h. "**Agreement**" means the full agreement between the Owner and the Customer.

19. **New Zealand Law to Apply**

- a. This agreement is subject to New Zealand law.