

**EAST COAST MARINA**  
**BOATLIFTER and FACILITY USAGE**  
**TERMS AND CONDITIONS**

FORM –BL2

The following are the Company's terms and conditions (**Terms and Conditions**) for the provision of boat lifting and hardstand services as set out in the Schedule (**Services**). Please read these terms and conditions carefully. It is a condition of the Boat Owner's use of the Services that the Boat Owner comply with these Terms and Conditions.

**1. DEFINITIONS & INTERPRETATION**

- 1.1 In these Terms and Conditions, any reference to
- 1.1.1 **agreement** means the Schedule, these Terms and Conditions and the Marina Rules and Regulations;
  - 1.1.2 **Boat** means the Boat Owner's boat as set out in the Schedule;
  - 1.1.3 **Boat Owner** means the owner of the Boat as set out in the Schedule;
  - 1.1.4 **Boatlifter** means any type of machinery and associated equipment used for the transportation of boats to and from the water and around the Hardstand;
  - 1.1.5 **Business Day** means any day that is not a Saturday, Sunday or gazetted public holiday in Queensland, and concludes at 5pm on that day;
  - 1.1.6 **Company** means ECM(Aust) Pty Ltd, or its nominees or assignees, and includes, where appropriate, its officers, agents and employees;
  - 1.1.7 **Fee** means the fee of the Company for the provision of the Services as set out in the Schedule;
  - 1.1.8 **Hardstand** means the sealed area situated at the Marina and utilised for the storage of boats and masts, and for the lifting of boats into and out of the water by Boatlifter, for the general manoeuvring of boats on the sealed area and for the washing, cleaning, painting and other repair and maintenance work of boats;
  - 1.1.9 **Marina** means East Coast Marina, Manly in the State of Queensland;
  - 1.1.10 **Marina Rules and Regulations** means the rules and regulations for the operation and use of the Marina as provided to the Boat Owner on the commencement of this agreement and as displayed and amended from time to time;
  - 1.1.11 **Permitted Hours** means:
    - (a) 7.30am-5pm during weekdays; and
    - (b) 8am-4pm during weekends and public holidays;
- 1.2 **PPSA** means the Personal Property Securities Act 2009 (Cth) as amended;
- 1.3 **Security Interest** has the same meaning as under the PPSA;
- 1.4 **Schedule** means the schedule to this agreement and executed by the parties.
- 1.5 Words importing a person shall be deemed to include a corporation. Words importing the single or plural number or any one gender shall be deemed to include the plural or single number or any other gender as the case may require.

**2. SERVICES**

- 2.1 The Company agrees to provide the Services on these Terms and Conditions.
- 2.2 The Company does not supply or make available the following as part of the Services:
- 2.2.1 Ladders;
  - 2.2.2 Scaffolding;
  - 2.2.3 Tools or equipment of any type.
- 2.3 The Boat Owner agrees that:
- 2.3.1 Boat lifting is only carried out between Monday to Friday each week (excluding public holidays);
  - 2.3.2 Any proposed lifting may be cancelled, at the Company's sole discretion, as a result of weather conditions or such other event beyond the reasonable control of the Company;
  - 2.3.3 It will be responsible in all respects for all dealings with and instructions given to the travel lift operator as to the placement of the travel lift slings on the Boat prior to any lifting of the Boat; and
  - 2.3.4 the Company takes no responsibility for any damage to the Boat caused by the Boat Owner's dealings and instructions to any travel lift operator.
- 2.4 The Boat Owner must not remove any cradle arm or prop once the Boat has been placed on the Hardstand. Any cradle arm or prop can only be removed by the Company or staff of the Marina.
- 2.5 The Boat Owner must book a relaunch of the Boat with the Company and will provide a minimum of three (3) days notice to the Company for a relaunch of the Boat.
- 2.6 The Boat Owner agrees to cooperate with, act reasonably and follow the reasonable directions of the Company and the Marina at all times.

**3. FEES AND CHARGES**

- 3.1 The Boat Owner must pay the Fee set out in the Schedule to the Company.
- 3.2 The Fee is payable on the first (1<sup>st</sup>) day of each month in advance.
- 3.3 All Fees must be paid prior to the Boat being removed from the Hardstand. The Fee applies notwithstanding that the removal of the Boat from the Hardstand is delayed due to weather or such other event outside the reasonable control of the Company or the Marina.
- 3.4 The Fee is payable by way of direct debit (see office for detail), cash or credit card. The Fee is non-refundable.
- 3.5 If the Boat Owner fails to pay an amount due under these Terms and Conditions, in addition to any other rights under this agreement, the Company may charge interest on any amount due and payable and the Boat Owner agrees to pay on demand interest on any unpaid amount at the interest rate being 2.5% per month from the date the unpaid amount became due until such unpaid amount is paid to the Company in full.
- 3.6 The Boat Owner agrees that in the event of any action being taken by the Company to recover any overdue amount due and owing under this agreement any costs incurred by the Company in recovering the debt (including without limitation any legal expenses on a solicitor/client basis, collection agency charges or any other reasonable associated costs) are payable by the Boat Owner to the Company and shall be recoverable by the Company as a separate debt.
- 3.7 The Company may review its Fees from time to time. The Company will provide written notice to the Boat Owner of any increase in its Fees.

**4. GST**

- 4.1 For the purpose of this clause the following definitions apply:
- 4.1.1 **GST** means any form of goods and services tax payable under the GST Law;
  - 4.1.2 **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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- 4.2 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
- 4.3 Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.
- 4.4 If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- 4.5 The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- 4.6 If there is an adjustment to a taxable supply made under this agreement then the Supplier must provide an adjustment note to the Recipient.
- 4.7 The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

## **5. OBLIGATIONS AND WARRANTIES OF THE BOAT OWNER**

- 5.1.1 The Boat Owner warrants that it is the sole and exclusive owner of the Boat.
- 5.1.2 The Boat Owner has insured and will keep insured the Boat (together with all its contents and fittings) on the terms set out in the Schedule. The Boat Owner will provide a copy of such insurance policy to the Company on request from the Company.
- 5.1.3 The Boat Owner agrees to abide (and ensure that its servants, agents and personal invitees abide) at all times the Marina Rules and Regulations.
- 5.1.4 The Boat Owner agrees that:
- (a) access to and from the Marina and the Hardstand will be permitted in accordance with the rules and regulation of the Marina and the Boat Owner agrees to abide such rules and regulations as amended from time to time;
  - (b) all gates on the Marina or Company's property are to be kept closed at all times when not in use;
  - (c) a ten (10) minute loading and unloading time only is permitted for vehicles within the Hardstand;
  - (d) it will at all times keep the Hardstand and the areas immediately adjacent to and surrounding the Boat in a clean and tidy condition (including free from oil, fuel, paint and epoxy filler);
  - (e) it will not cause or create a hazard for any other person in or around the Boat and the Hardstand;
  - (f) it will not store supplies (including any containers of fuel or other flammable materials) and materials, accessories or debris on or near the Hardstand;
  - (g) it will dispose of any materials (including any liquids) in a lawful and appropriate manner using appropriate containers;
  - (h) it will notify the Company and the Marina of any spills on or damage to the Hardstand;
  - (i) any and all tools or equipment used in or around the Hardstand or Boat by the Boat Owner (or its servants, agents or invitees) will be tested and comply with all relevant workplace health and safety regulations;
  - (j) it will deposit all waste and garbage in the receptacles provided in the Marina. Where the Company considers that the amount of waste or garbage around the Boat is excessive, the Company may remove such waste or garbage and such removal will be at the Boat Owner's expense;
  - (k) no person or animal shall live aboard the Boat whilst it is in the Hardstand;
  - (l) no children or animals are permitted within the Hardstand;
  - (m) it must not make, nor permit to be made by it (or its servants, agents or personal invitees) any noise or disturbance, or perform any act which in the opinion of the Company or the Marina, in their sole discretion may be an annoyance or cause a nuisance to any other person or body in and around the Marina.
- 5.1.5 In respect of any work to be undertaken by the Boat Owner or its servants or agents, the Boat Owner agrees as follows:
- (a) The Boat Owner will not carry out work and will not permit any work to be carried out on the Boat outside the Permitted Hours;
  - (b) Any dry sand, soda or similar blasting of the Boat in and around any part of the Hardstand is not permitted without the prior written consent of the Company;
  - (c) The Boat Owner will not carry out any spray painting work, welding or grinding on the Boat or on the Hardstand without the prior written consent of the Company. Any spray painting work, welding or grinding must only be undertaken provided adequate covers or vacuum attachments for the protection of other vessels are provided;
  - (d) The Owner will not undertake or permit to be undertaken, any work or activity on the Boat or on the Hardstand in contravention of any legislative or regulatory requirement that may apply (including but not limited to any environmental and workplace health and safety legislation).
  - (e) any person other than Owner who carries out work on the Boat must:
    - (i) be a registered Marina contractor;
    - (ii) have prior written approval of the Company and/or the Marina;
    - (iii) have a relevant permit (if any) for the work to be undertaken;
    - (iv) comply with all relevant laws and regulations relevant to the work to be performed
  - (f) The Company and the Marina reserve the right in their absolute discretion to refuse consent to any work or contractor.
  - (g) Mechanical Dry sanding must only be undertaken provided adequate covers or vacuum attachments for the protection of other vessels and environment, are provided;

## **6. LIEN**

- 6.1 The Company has a general lien on the Boat (including any goods and chattels on or in the Boat) for all Fees due or which become due on any account pursuant to these Terms and Conditions.
- 6.2 If the Fees are not paid and remain outstanding for a period of twenty one (21) days or the Boat is not collected when so required or designated, the Company may, without notice:
- 6.2.1 remove the Boat (including any goods and chattels on or in the Boat) and store as the Company thinks fit at the Boat Owner's risk and expense, or
  - 6.2.2 sell the Boat (including any goods and chattels on or in the Boat) as the Company thinks fit and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- 6.3 The proceeds of such sale shall be applied first towards any expense incurred by the Company in the seizure and sale of the Boat (including any goods and chattels on or in the Boat), secondly the payment of all monies due and owing by the Boat Owner pursuant to these Terms and Conditions and lastly the payment of the balance (if any) to the Boat Owner.
- 6.4 In the event that there is a deficiency of funds from any sale pursuant to this clause, the Company may proceed to recover such deficiency from the Boat Owner as a debt due and owing.
- 6.5 The Boat Owner indemnifies and saves harmless the Company from all and any claims, suits and demands made by any person or corporation in respect of the Boat or any chattels seized and sold pursuant to these Terms and Conditions.

## **7. PPSA**

- 7.1 If requested, the Boat Owner must do all things and execute all documents necessary to give full effect to these Terms and Conditions and the transactions contemplated by these Terms and Conditions, including without limitation, to enable the Company to perfect any Security Interest in the Boat (including any goods and chattels on or in the Boat) and complete any financing statement if this agreement (or a transaction in connection with the agreement) is or contains a Security Interest under the PPSA.

- 7.2 To the extent permitted by law, if the PPSA applies, the Boat Owner irrevocably waives any rights the Boat Owner may have to receive notices under sections 95, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA, or to reinstate these Terms and Conditions under section 143 of the PPSA. The Boat Owner agrees to irrevocably waive any rights the Boat Owner may have to receive a verification statement (as defined in the PPSA).
- 7.3 The Boat Owner indemnifies and upon demand agrees to reimburse the Company for all expenses incurred in registering any security interest pursuant to these Terms and Conditions.

## **8. TERMINATION**

- 8.1 The Services will be terminated as follows:
- 8.1.1 by the Company:
- (a) immediately on any breach by the Boat Owner of any of the terms of the agreement;
  - (b) if the Boat Owner is in arrears for any amount owing under this agreement for a period of seven (7) days or more whether or not payment of any such monies has been demanded by the Boat Owner;
  - (c) in its sole discretion on thirty (30) days written notice to the Boat Owner.
- 8.1.2 by the Boat Owner:
- (a) by 12.00pm on the Business Day prior to the date booked for use of the Boatlift services; or
  - (b) on removal of the Boat from the Hardstand.

## **9. RISKS AND INDEMNITIES**

- 9.1 The Boat Owner acknowledges and agrees that the Boat is placed on the Hardstand in accordance with these Terms and Conditions.
- 9.2 Any goods or chattels in or on the Boat shall not be deemed to be in the custody, possession or control of the Company in any manner whatsoever unless and until the Company exercises any rights of seizure and sale pursuant to these Terms and Conditions.
- 9.3 Without limiting any rights of the Boat Owner under the Australian Consumer Law:
- 9.3.1 The Boat, and any other craft which is transported to or from, or stored upon the Hardstand in accordance with the provisions of these Terms and Conditions, is entirely at the risk of the Boat Owner, and shall remain at the risk of the Boat Owner throughout the term of this agreement.
- 9.3.2 The Company shall not either directly or vicariously, nor shall any officer, agent, contractor or employee of the Company be liable in negligence or otherwise for:
- (a) any damage to or theft or loss from the Boat, and any goods, gear of machinery situated on or around the Boat whilst the Boat is on the Hardstand, the Boatlifter or in the Marina howsoever occurring including, but without limiting the generality of the foregoing loss or damage caused by the removal of the Boat by any person not authorised by the Boat Owner to remove it, whether such removal was permitted by the Company or not.
  - (b) any injury, loss or damage sustained or suffered by the Boat Owner, or any agent, employee, contractor or personal invitee of the Boat Owner or any other person on the Hardstand or the Boatlifter or in and around the Marina, or inside the adjoining Marina buildings howsoever such loss, damage or injury may occur.
- 9.3.3 To the extent permitted at law, the Boat Owner indemnifies and will keep the Company indemnified against all actions, suits, claims, debts, obligations and other liabilities arising out of this agreement, or out of any act or omission of the Boat Owner, or the officers, agents, employees, contractors or invitees of the Boat Owner and the Boat Owner agrees to compensate the Company for any loss or damage to the Hardstand, Boatlifter and/or the Marina or any of the craft in the Marina or on the Hardstand, or to any other property caused by, or resulting from the acts or omissions of the Boat Owner or its officers, agents, employees, contractors or personal invitees.
- 9.4 If the Boat Owner is not a 'Consumer' within the meaning of the Australian Consumer Law, the Boat Owner agrees that the Australian Consumer Law 2011 does not apply to this agreement.
- 9.5 Nothing in this agreement is intended to have the effect of contracting out the provisions of the Australian Consumer Law 2011 except to the extent permitted by that law, and these terms are to be modified to the extent necessary to give effect to that intention.

## **10. GENERAL**

- 10.1 The Company shall be entitled, from time to time, to deliver up the Boat stored in accordance with this agreement to any person producing this agreement or offering such other evidence of ownership authority to receive the Boat as the Company may, in its sole discretion, deem satisfactory.
- 10.2 Any notice required to be given to the Boat Owner may be delivered to the Boat Owner either personally, or by posting it by letter addressed to the Boat Owner at the address noted on the Schedule.
- 10.3 If the signatory to this agreement, executes this agreement as "agent", or for or on behalf of the owner of the Boat, then the signatory to this agreement warrants to the Company that all work carried out by the Company under this agreement has been carried out with the full knowledge and consent of the owner of the Boat, and the signatory further indemnifies the Company from and against all and any claims against the Company in addition to the provisions contained above.
- 10.4 If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- 10.5 This agreement and its attachments constitute the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- 10.6 A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 10.7 Any notice required to be served shall be sufficiently served on the a party if hand-delivered to that party or the party's representative or if posted to the party's address as set out in the Schedule and shall be deemed to have been received when in due course of post it would be delivered to the address at which it was sent.
- 10.8 If there is more than one Boat Owner, the liability of each party shall be joint and several.
- 10.9 Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this agreement.
- 10.10 The laws applicable in Queensland govern this agreement and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.