



STANDARD TERMS & CONDITIONS

Standard Terms Applicable to all Whangamata Marina Berth Renters.

DEFINED TERMS

1 In these terms:

“**Berth**” means the berth that manager of the Whangamata Marina has agreed to rent to you, on behalf of the licensee or, any other berth that the Whangamata marina management may move you to under clause 13.

“**Bylaws**” means all regulations made by the Whangamata Marina Society regarding the use of marina from time to time, including specific regulations relating to specific classes of berths or berth users.

“**Charges**” means all berth rental and other charges payable by you to the Whangamata Marina for the use of the berth and other goods, services and facilities provided by the marina and includes Goods and Services Tax (“GST”)

“**Terms**” means these standard terms and conditions, as altered by the Whangamata Marina from time to time.

“**Usage Period**” means the period of time the Whangamata Marina has agreed to rent to you the Berth, commencing from 11am on the first day of such rental period, and unless terminated earlier, expiring at 10am on the day following the last day of such rental period.

“**Vessel**” means any vessel that the Whangamata Marina permits you to bring into the Marina, including pier structures, car park, administration office and amenity facility, rock breakwaters, fuel jetty, gardens.

“**you**” and “**your**” means you as the person to OML has agreed to rent the berth.

APPLICATION

2. These terms apply to all persons who rent berths at the Whangamata Marina other than berth owners.

3. It is your responsibility to read and understand these Terms. Failure to do so does not exempt you from any liability and is at your own risk. If your Vessel remains berthed at your berth for more than 2 hours after you first arrive at the Whangamata Marina, you will be deemed to have accepted these Terms and **have agreed to comply with them.**

USE OF BERTH

During the Usage Period, you are entitled to use your Berth and the car park free of charge. You do not require a parking permit to park here.

4. You can only use your Berth for berthing your vessel. Prior to berthing, you must obtain Whangamata Marina permission to berth the vessel in the marina.

5. While berthed in the marina, your Vessel can only be used for personal recreational purposes. You must not use the Vessel for commercial activities or to make financial gain without prior permission (which may be given subject to additional terms and conditions, including a requirement to pay a commercial use surcharge).

6. No part of your Vessel, when berthed at the Berth, is allowed to extend beyond the physical confines of the Berth). If this occurs because you have misrepresented your Vessel’s dimensions, the Whangamata Marina may either immediately terminate your right to use your Berth without compensation, or relocate your Vessel to a suitably sized berth and require you to pay additional charges and relocation costs.

COMMENCEMENT

7. This agreement commences upon the commencement date stated on the Marina Berth Application Form and thereafter remains in effect until terminated by either party giving one month’s written notice to the other.

RENTAL PAYMENTS

8. All charges shall be at the rate specified by the Whangamata Marina from time to time. Rental rates are based upon the greater of the rate for the relevant berth and the Vessel’s overall maximum length. the Whangamata Marina may amend the rate of any charges by giving you at least one month’s prior notice.

9. All Rental Agreements require a signed Credit Card Authority to debit marina berthage charges. The first Berth rental Charge (including GST) must be paid to the Whangamata Marina in advance or within 24 hours of arrival. Subsequent Berth rental Charges must be paid monthly in advance. All other Charges must be paid immediately as directed by the Whangamata Marina. All long term rentals must pay by Automatic Payment.

10. If you fail to pay any Charges on time you are liable to the Whangamata Marina (on demand) a late payment fee of 1.5% per month (compounding) on all outstanding Charges, or at the rate the Whangamata Marina specifies from time to time and all of the marina’s debt recovery costs (including debt collection and other agency and legal fees). In addition, the Whangamata Marina may subject to clauses 32 to 37, lock and/or impound your Vessel at the Berth and shall not be required to release it until you have paid all Charges and other amounts owing.

DEPARTURE

11. If your Berth is not vacated at the expiry of the Usage Period, the Whangamata Marina may either charge you an extension fee and/or remove your Vessel and deal with it under clauses 32 to 37.

RELOCATION

12. At any time during the Usage Period, the Whangamata Marina is entitled to temporarily or permanently relocate you from your current Berth to another comparable berth without compensation.

WATERSPACE AND ACCESS RIGHTS

13 You have the right, together with other users of the marina, to use the common waterways, walkways and facilities.

REFURBISHMENT AND REDEVELOPMENT

14. The Whangamata Marina may at any time, refurbish or redevelop all or any part of the marina as it sees fit.

BYLAWS

15. You must comply with all Bylaws while at the marina. The Whangamata Marina may amend, add or remove any Bylaws at any time without consulting you.

INVITEES

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

SUBLETTING

17. You must not assign, sublet or authorize any other person to use your Berth without the Whangamata Marina's prior permission (which may be given subject to additional terms and conditions).

WARRANTY/ REPRESENTATION

19. You warrant and represent that your Vessel is seaworthy and in sound working order, that you are fit to operate the Vessel safely at all times, and that your Vessel will at all relevant times be secured properly and safely moored to the Berth.

INSURANCE

20. You must at all times fully insure the Vessel and all other property brought into the Whangamata Marina by you against loss or damage caused by all usual and reasonably insurable risks.

21. You must maintain adequate public liability insurance against death and/ or bodily injury to persons and loss or damage to property of others (including the Whangamata Marina) arising out of the use of your vessel, your Berth and the marina. The minimum public liability insurance is set at \$5,000,000.00. (five million dollars). The amount of such liability insurance may be specified by the Whangamata Marina from time to time.

22. The Whangamata Marina may require you to provide proof of such current insurance, in such form as it may specify.

LIABILITY

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

24. The Whangamata Marina is not liable to any person and has no responsibility for the safety of any property or persons within the marina, or for the adequacy of the facility.

25. The Whangamata Marina is not liable for any loss, damage or injury, occurring within the marina to any property (including the Vessel) or persons, however it may arise and even if it is caused by or attributable to the Whangamata Marina.

INDEMNITY

26. You indemnify the Whangamata Marina against all losses, damages, expenses and claims incurred by it that result from, or are caused or contributed to by, your use of your Berth, the Vessel and/ or the marina, and/or any of your or your invitees' acts or omissions (in each case including breaches of these Terms and the Bylaws).

YOUR ACKNOWLEDGMENTS

27. You acknowledge that the Whangamata Marina has not represented to you that your Berth in the marina is adequate for your intended use.

28. Nothing in, or arising from, these Terms, or the fact of your hire of the Berth, shall constitute the Whangamata Marina as a bailor of your Vessel.

REFUSAL

29. The Whangamata Marina may, without reason, refuse to hire a berth to any person.

TERMINATION AND CONSEQUENCES

30. The Whangamata Marina may immediately terminate your right to use your Berth if you fail to pay your Charges on time and your Charges remain unpaid after 7 days from the date you are notified of such non-payment, or if you breach any of these Terms or the Bylaws and such breach (if capable of remedy) remains unremedied after 7 days from the date the Whangamata Marina notifies you of such breach.

31. If OML terminates your right to use your Berth, you must promptly pay all Charges and other amounts owing to the Whangamata Marina and remove the Vessel from the Berth and the marina. If you do not remove your Vessel from the Berth and from the marina, your vessel may be locked and/or impounded at the Berth and the Whangamata Marina shall not be required to release it until you have paid all charges and other amounts owing.

32. If you do not remove the Vessel, the Whangamata Marina may remove the Vessel and store it in such a place and under such conditions as it sees fit. The Whangamata Marina shall have a lien over the Vessel for all costs of impounding removal, security, storage and sale of the Vessel, and all outstanding Charges and other amounts owed by you under these Terms ("Removal Amounts"). The Whangamata Marina shall not be required to release the Vessel until you have paid all Removal Amounts.

33. If you do not claim the Vessel within one month of the date of its impounding or removal by the Whangamata Marina, the Vessel may be sold and sale proceeds applied to meet all removal Amounts. Any surplus sale proceeds will then be paid to you.

34. In the event that sale proceeds are not sufficient to meet all Removal Amounts, you remain personally liable to the Whangamata Marina for any unsatisfied amount outstanding.

35. Any Charges prepaid by you shall be forfeited to the Whangamata Marina as liquidated damages.

36. The Whangamata Marina may, at your cost, remedy any of your breaches of these Terms.

PRIVACY

37. You authorize the Whangamata Marina to seek and obtain any relevant information about you from any person (including debt collection agencies) and to use that information for purposes associated with your use of the Berth within the Marina.

38. You authorize the Whangamata Marina to send you newsletters and other promotional and marketing material from time to time.

CONTACT DETAILS

39. You must provide the Whangamata Marina with your current residential and postal address or addresses and contact phone numbers, and any changes to those contact details.

SERVICES OF NOTICES

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