



RACK STORAGE TERMS & CONDITIONS

1 Licence to use and occupy facilities

- 1.1 The Licensor (Hillarys Marina Lifting Service) hereby grants to the Licensee a non-exclusive licence and right to use and occupy the Facilities for the purpose of racking the Vessel for the term described in Item F of the Agreement.
- 1.2 The rack number allocated may be changed in the discretion of the Licensor by giving seven (7) days' notice in writing to the Licensee of the change. If the Vessel is berthed in the Storage Rack when the number is changed, the Licensor may relocate the Vessel without prior notice to the Licensee.

2 Obligations of

Licensee The Licensee

- (a) shall duly and punctually make each payment of the licence fee described in the Agreement;
- (b) shall be responsible for all damage to the Facilities or other property of the Licensor or to persons using the Facilities or other property of the Licensor arising from any act, omission, neglect or default by the Licensee or its employees, servants, agents, contractors or invitees;
- (c) shall indemnify and keep indemnified (to the maximum extent permitted by Law) the Licensor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor shall or may become liable in respect of, or arising from, loss, damage or injury to any person or property arising out of the use by the Licensee of the Facilities or any other property arising out of the use by the Licensee of the Facilities or other property of the Licensor, or any act, omission, neglect, breach or default by the Licensee or its employees, servants, agents, contractors or invitees;
- (d) shall comply with any and all rules and regulations determined from time to time by the Licensor with respect to the management or use of the Facilities ('the Rules and Regulations');
- (e) shall use the Facilities solely for the purpose of racking the Vessel;
- (f) shall not assign its interest in the licence or sub-licence or part with possession of the Facilities without the prior consent in writing of the Licensor which consent the Licensor may withhold at its absolute discretion;
- (g) shall not affix any sign or notice to the Vessel advertising the sale or availability for charter of the Vessel without the prior consent in writing of the Licensor;



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- (h) shall ensure that no undue noise or other disturbance shall emanate from the use of the Facilities by the Licensee or its employees, agents, contractors or invitees so as to disturb or annoy or otherwise cause a nuisance to other persons;
- (i) shall ensure that no use of bilge pumps and sewerage discharge occurs within the vicinity of the Marina;
- (j) shall take out and maintain at its own cost, the following policies of insurance with a public insurance office approved by the Lessor:-
 - (i) a public liability insurance policy providing for coverage of not less than TEN MILLION DOLLARS (\$10,000,000.00) for any one accident or event; and
 - (ii) a policy insuring the Vessel against loss or damage from fire, theft and such other risks as the Licensor shall reasonably require.
- (k) shall produce to the Licensor from time to time upon request a certificate of currency for each insurance policy referred to in paragraph (j);
- (l) shall promptly comply with the requirements of all statutes, regulations and by-laws relating to the use and occupation of the Facilities, the Vessel and the Marina.

3 Care, Protection, Safety and Security of Vessel

The Licensee agrees and acknowledges that the Licensor shall not be liable for the care, protection, safety and security of the Vessel, its fittings and contents and shall not be liable for any loss or damage to the Vessel (including consequential loss or damage) however caused.

4 Licensor may Relocate Facilities

The Licensee hereby agrees and acknowledges that the Licensor may at any time at its absolute discretion relocate the Facilities within the Marina at the risk and cost of the Licensee.

5 Lien

- a) The Licensee charges in favour of the Licensor the Vessel, its fittings and contents, with the payment of all and any outstanding moneys due to the Licensor under this Agreement and the Licensee acknowledges that such charge shall constitute a possessory lien in favour of the Licensor;
- b) In the exercise of its lien, the Licensor may secure or relocate the Vessel and shall only be obliged to deliver up possession of the Vessel and its fittings and contents to the Licensee upon payment of the outstanding Moines and additional storage charges up to the date of release of the lien.

6 Termination

The Licensor may forthwith terminate this agreement by written notice to the Licensee:-



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- a) if the Licensee is in breach of any of the provisions of this Agreement or the Rules and Regulations;
- b) if in the opinion of the Licensor, any of the Facilities become unsafe or otherwise unusable; or
- c) if in the opinion of the Licensor, any conduct by the Licensee or its employees, agents, contractors or invitees is prejudicial to the Licensor or other users of the Marina.

7 Removal of Vessel

Upon termination of this Agreement, through time or pursuant to Clause 6 or otherwise, the Licensee shall immediately remove the Vessel from the Facilities, and if the Licensee shall fail to do so within two (2) days of the termination, the Licensor may, at its discretion, remove the Vessel without incurring any liability for any damage caused to the Vessel by such removal.

8 Licensee not to be Tenant

Nothing in this Agreement shall be construed as giving the Licensee any right as Tenant of the Facilities or any part of the Marina, and shall not create the relationship of Landlord and Tenant.

9 Licensee's Reliance on own Judgement

The Licensee acknowledges and warrants that it has examined the Facilities and relies on its own judgement as to the suitability of the Facilities for its purposes.

10 Whole Agreement

This Agreement constitutes the whole Agreement between the Licensor and the Licensee, and the Licensee warrants that it had not relied upon any statement, representation or warranty made by the Licensor or its servants or agents which is not expressed in this Agreement.

11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit in the jurisdiction of the Courts of Western Australia.

12 Notice

Any notice required to be given shall be in writing and signed by the party giving the notice or their respective agents or solicitors and may be delivered or sent by post to



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the address of the addressee shown on this Agreement, or last known, to the party giving the notice. Any notice sent by post shall be deemed to have been received by the addressee at the expiration of forty eight (48) hours after it has been posted.

13 Disclaimer

The Licensee hereby agrees that: (a) the Vessel is Racked; and

(b) The Licensee and its employees, servants, agents, contractors or invitees use the Facilities, Marina and other property of the Licensor;

entirely at their own risk, and to the maximum extent permitted by Law, hereby releases and indemnifies the Licensor and its employees, servants, agents or invitees from any liability, loss or damage whatsoever sustained or incurred by the Licensee and its employees, servants, agents, contractors and invitees

Rules and Regulations

- 1 The Licensee shall ensure that the Marina area used is kept clean and free from rubbish. No responsibility is taken by Hillarys Yacht Club Inc. Marina Lifting Services for gear etc. left at racks area.
- 2 Disorderly conduct by a Licensee or a Licensee's employees, servants, agents, contractors or invitees is prohibited.
- 3 Noise shall be kept at a minimum.
- 4 The Facilities of the Marina are to be used in such a way as to not cause a nuisance to any other person using the Marina.
- 5 Swimming, diving and fishing within the Marina is prohibited.
- 6 Young children must be accompanied by adults at all times.
- 7 Animals are not permitted within the Marina without prior permission from Hillarys Yacht Club Inc. Marina Lifting Services.
- 8 No advertising on Vessels for sale shall be permitted at the Marina without the prior permission of Hillarys Yacht Club Inc. Marina Lifting Services.
- 9 All clothing worn by Licensees and the Licensee's employees, servants, agents and contractors when carrying out work at the Marina, shall comply at all times with the requirements of the Department of Occupational Health, Safety and Welfare (and any other relevant statutory or Government Authority).
- 10 No spray painting or grinding work shall be permitted at the Marina without the prior permission of Hillarys Yacht Club Inc. Marina Lifting Services.



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- 11 No hazardous or dangerous liquids or materials may be brought onto the Marina without the prior permission of Hillarys Yacht Club Inc. Marina Lifting Services.
- 12 One hour's notice must be given prior to launching a vessel. Owners must be present at time of launching.
- 13 Cars must not block travel-lift runway at any time. Car keys to be left at Hillarys Yacht Club Inc. Marina Lifting Services when unattended.
- 14 Vessels will not be taken off/on trailers on weekends and must be booked in advance. There is a charge for this service.
- 15 Pens are to be used on a first come/first serve basis and are not able to be reserved. Non-members cannot use the HYC Pen facilities.
- 16 The forklift may be inoperable due to unavoidable repairs. The first Wednesday of each month is reserved for regular maintenance.
- 17 All vessels must be insured. Please refer to Licensee obligations in the Terms and Conditions.
- 18 The forklift is operational between 8am and 4pm Monday to Sunday.
- 19 The yard is closed Xmas Day, Boxing Day, New Year's Day and Good Friday.