

CASUAL BERTH/MOORING RENTAL AGREEMENT

TERMS AND CONDITIONS

1. Grant of Licence

- 1.1 By counter-signing the attached application form, TDC grants to the person named in such form ("**you**", "**your**") a right to use an allocated berth or mooring at Port Tarakohe Marina (the **Marina**), as specified by TDC from time to time (the **Berth/Mooring**) on the terms and conditions set out in this rental agreement (the **Agreement**) and you accept such grant.
- 1.2 References to "TDC" in this Agreement means Tasman District Council and includes, where appropriate, TDC's Port Manager (or someone acting in that role) and other TDC authorised representative(s).
- 1.3 The Marina Rules (the **Rules**) form part of this Agreement. The [Rules](#) are published on www.tasman.govt.nz and are available on request from the Port Manager and may be displayed on signs located on or about the Port. The Rules may be updated, replaced, or varied from time to time by TDC. In the event of inconsistency between the Rules and the rest of this Agreement, the terms of this Agreement prevail.
- 1.4 You agree to be bound by and strictly comply with, and ensure that all of your agents, contractors, employees and invitees (your **Representatives**) at all times strictly comply with:
 - (a) the Rules and the terms of this Agreement;
 - (b) all access routes or restrictions designated by TDC from time to time; and
 - (c) all lawful directions, instructions, or signage issued by TDC (provided they are not inconsistent with the terms of this Agreement).
- 1.5 This Agreement binds each person named in the attached application form jointly and severally.

2. Term and Termination

- 2.1 Except as set out below, this Agreement starts on the Commencement Date and ends on the End Date (as set out in the attached application form) or such other date as may have been agreed between the parties.
- 2.2 Either party may terminate this Agreement at any time by giving at least 24 hours' written notice (which may include email) to the other party.
- 2.3 Without limiting TDC's rights or remedies, if TDC permits you to continue using the Berth or Mooring after the End Date, any such use be will on a holding over basis at TDC's prevailing daily rental fee and will be terminable in accordance with clause 2.2.
- 2.4 On expiry or termination of this Agreement:
 - (a) You must immediately: (i) remove the boat named in the application form (the **Named Boat**) and all of your other property from the Berth or Mooring (unless TDC has exercised its lien over the Named Boat or other property for unpaid amounts pursuant to clause 3.4); and (ii) remove all rubbish and clean and repair any damage to the Berth/Mooring and Marina to TDC's satisfaction. If you fail to do so, TDC may take whatever action itself that it considers necessary at your cost;
 - (b) TDC will refund to you any rental fees you have paid in advance (less any amount owed by you to TDC) if TDC terminates this Agreement prior to the End Date and you are in full compliance with your obligations under this Agreement (including paragraph (a) above). In all other circumstances, TDC is not required to refund and may retain any Rental Fees paid in advance.

3. Rental Fees

- 3.1 You will pay the rental fee (and any other applicable fees and charges) to TDC on a daily basis, unless agreed otherwise with TDC.
- 3.2 TDC may adjust the rental fee and any other applicable fees and charges on an annual basis and any adjusted amounts will be published in the prevailing Schedule of Fees and Charges ([the Fees Schedule](#)) on www.tasman.govt.nz.
- 3.3 If your payment is late, TDC may require you to pay interest at the interest rate set out in the prevailing Fees Schedule (and if no such rate is specified then at the interest rate which is 5% above the overdraft rate charged by TDC's principal bankers at the relevant due date on any amount not paid when due), from the due date for payment until the date of actual payment. You are liable for all costs and expenses incurred by TDC in recovering any amount you owe (or otherwise enforcing this Agreement), together with interest on such sums at the rate specified above.
- 3.4 TDC has a lien over any vessel (or other property) located at the Berth/Mooring or the Marina for all amounts payable by you under this Agreement. If any amount is more than 14 days in arrears and you do not make payment in full within a further period specified in a notice from TDC, TDC may sell or otherwise dispose of such vessel and/or other property as TDC sees fit and apply the proceeds of such sale or disposal towards satisfaction of all amounts owed by you and TDC's costs in exercising its rights under this clause, returning the balance (if any) to you. If a common law or statutory lien applies, nothing in this clause will exclude the application of such lien and TDC may elect to exercise its rights under such lien in addition to or instead of its rights under this clause.

4. Use of Berth/Mooring

- 4.1 You may only use the Berth or Mooring for the purpose of berthing/mooring the Named Boat (or such other vessel as TDC may approve in writing).
- 4.2 You may, in common with other permitted users in the Marina:
 - (a) make fast the Named Boat to the allocated berth structures or moorings; and

- (b) access and use the common waterways and pathways of the Marina, in accordance with this Agreement.
- 4.3 You may use the water, power, and any other resources and facilities forming part of the Marina in common with other permitted users. If TDC determines in its discretion that any such use is excessive or unusually high (including by comparison with other berth or mooring users), TDC may charge such sum as it considers appropriate for such use, separate from and in addition to the Rental Fee.
- 4.4 You may not make any alterations or additions to the Berth or Mooring or adjacent structures.
- 4.5 This Agreement is personal to you for the berthing or mooring of the Named Boat only and you must not without TDC's prior written consent permit any other person to use the Berth or Mooring nor assign, sublet, transfer, or otherwise part with or dispose, mortgage or grant a security interest in or over, your rights under this Agreement. **For clarity, if you sell the Named Boat this Agreement ends, and the new owner of the Named Boat will have no berthing or mooring rights unless they submit a new application to TDC for berthing or mooring rights and that application has been approved.**
- 4.6 You acknowledge and agree that your rights are contractual only and you are not entitled to any proprietary right or interest in any real or personal property (including the Berth/Mooring, any water space or any part of the airspace or seabed above or below the Berth/Mooring or Marina).
- 5. TDC's rights**
- 5.1 TDC may, and you irrevocably authorise TDC to, enter the Berth/Mooring and/or the Named Boat (whether or not you are present) and move or remove or carry out repairs to the Named Boat (or any other property) in order to prevent any loss or damage to any property, in an emergency situation (as reasonably determined by TDC) or if you fail to promptly comply with any of your obligations under this Agreement. TDC will not be liable for, and you indemnify TDC against, any actions, claims, demands, losses, costs and expenses incurred in, or resulting (whether directly or indirectly) from, the exercise of the powers contained in this clause 5.1 except to the extent caused by TDC's negligence.
- 5.2 TDC may at any time require you to move the Named Boat to a different berth or mooring within the Marina, as allocated by TDC. You will promptly comply with any such requirement.
- 5.3 TDC generally operates surveillance devices for the purpose of protecting the safety and security of TDC's property and that of its customers or third parties and/or assisting in the investigation and/or prosecution of any illegal act or any breach of this Agreement. TDC's [Privacy Policy](#) (published on www.tasman.govt.nz and which may be amended from time to time) applies to TDC's collection, use and disclosure of any personal information about you (or any of your Representatives).
- 6. Insurance**
- You must at all times hold and maintain (and on request promptly provide TDC with evidence of the currency of): (i) material damage insurance for the Named Boat and your other property at the Marina against all usual risks; and (ii) public liability insurance of at least \$5m.
- 7. Liability and Indemnity**
- 7.1 Your access to and use of the Berth or Mooring is on an "as is where is" basis. You use and access the Berth/Mooring and Marina at your own risk. TDC does not provide security services and gives no representation as to the adequacy or otherwise of the Berth/Mooring, Marina or its facilities. Subject to clause 7.3, TDC has no liability whatsoever for any loss or damage to the Named Boat or any other property of yours or any other person using the Marina, except to the extent caused by TDC's negligence.
- 7.2 In any event, TDC's liability is limited to the aggregate Rental Fees paid by you in the month preceding the relevant event. Subject to clause 7.3, in no circumstances will TDC be liable (whether in contract, tort or otherwise) for any indirect or consequential loss or for any loss of profit, loss of revenue, loss of goodwill, loss of opportunity or economic loss (in each case whether direct or indirect and whether or not TDC was or should have been aware of the likelihood of such loss).
- 7.3 Nothing in this Agreement is intended to exclude the application of any applicable law which cannot be excluded by contract (including the Consumer Guarantees Act 1993 (unless you use the Berth/Mooring in trade in which case the parties agree that none of the rights and remedies under that Act will apply) and the Fair Trading Act 1986).
- 7.4 You indemnify TDC against any loss, expense, liability, actions, claims, demands and costs reasonably incurred by TDC arising as a result of your, or your Representatives, acts or omissions (except to the extent caused by TDC's negligence).
- 8. General**
- 8.1 This Agreement is to be interpreted in accordance with New Zealand law and governed by the jurisdiction of the New Zealand courts.
- 8.2 This Agreement (including the Rules) constitutes the entire agreement of the parties about its subject matter and any previous agreements, arrangements, understandings, representations and negotiations on that subject matter cease to have effect.
- 8.3 If any part of this Agreement is held by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Agreement.
- 8.4 No waiver of any breach of, or failure to enforce any provision of this Agreement at any time by TDC will in any way limit TDC's rights.
- 8.5 TDC may at any time transfer any or all of its rights and obligations under this Agreement to any subsequent operator of the Marina.

- 8.6 Whenever TDC's consent or approval is required in connection with this Agreement, such consent or approval may be given conditionally or unconditionally or withheld by TDC in its absolute discretion and, if given, may only be given in writing (which may include email).