



2018 BERTHING AGREEMENT

This agreement is made between the Marina Owner and the Operator. The agreement comprises the Reference Table, the Standard Berthing Agreement Terms and Conditions, the Marina Rules and the Guarantee and Indemnity (if applicable) ("the Agreement").

| | | | | | |
|---|---|------------------------------------|---------------------------------|--------------------------------|--|
| Marina Owner: | Emprja Pty Ltd 135 384 039 as trustee for the Darrouzet Property Trust (the " Marina Owner ") | | | | |
| Address: | Abell Point Marina, Shingley Drive, Airlie Beach, Queensland, 4802 | | | | |
| Contact Details: | <i>Phone:</i> | (07) 4946 2400 | <i>Fax:</i> | (07) 4946 2444 | |
| | <i>Email:</i> | reservations@abellpointmarina.com | | | |
| VESSEL OWNER DETAILS | | | | | |
| Name & Title: | | | | (the " Operator ") | <i>Mobile:</i> |
| Postal Address: | <i>Address:</i> | | | <i>State:</i> | <i>Postcode:</i> |
| | <i>Email:</i> | | | <i>Home:</i> | |
| VESSEL DETAILS | | | | | |
| Name: | | | | (the " Vessel ") | <i>Registration No.</i> |
| Captain/Master: | | | | | |
| Vessel Contact Details: | <i>Contact Mobile:</i> | | | | This Number will be used for all Marina Matters |
| | <i>Email:</i> | | | | |
| Manufacture: | <i>Make & Model:</i> | | | <i>Year:</i> | <i>Type:</i> |
| Size: | <i>LOA:</i> | | | <i>Beam:</i> | <i>Draft:</i> |
| Power: | <input type="checkbox"/> 15Amp | <input type="checkbox"/> 2 x 15Amp | <input type="checkbox"/> 32Amp | <input type="checkbox"/> 63Amp | <input type="checkbox"/> 125Amp |
| Construction: | <input type="checkbox"/> Fiberglass | <input type="checkbox"/> Aluminium | <input type="checkbox"/> Timber | <input type="checkbox"/> Steel | <input type="checkbox"/> Ferro <input type="checkbox"/> Poly |
| Insurance Details: | <i>Insurance Company:</i> | | | | <i>Policy No:</i> |
| | | | | | |
| HOW DID YOU HEAR ABOUT US? | | | | | |
| <input type="checkbox"/> Mag/News <input type="checkbox"/> Internet Search <input type="checkbox"/> Boat Show <input type="checkbox"/> Word of Mouth <input type="checkbox"/> Social Media <input type="checkbox"/> Repeat Customer | | | | | |
| Specify which source: | | | | | |
| ACCEPTANCE | | | | | |
| Signed by Operator: | I, the Operator, acknowledge that I have read this Agreement (including the Standard Marina Berthing Agreement Terms and Conditions, the Marina Rules and the Guarantee and Indemnity (if applicable)) and agree to its conditions which apply between 01/01/18 to 31/12/18 including every berthing unless otherwise notified to me by the Marina Owner. <input type="checkbox"/> Tick if you do not wish to stay up to date with the opportunities offered by the Marina Owner from time to time | | | | |
| | <i>Name:</i> | | | | <i>Title:</i> |
| | <i>Signed:</i> | | | | <i>Date:</i> |
| Signed by Marina: | <i>Name:</i> | | | | <i>Title:</i> |
| | <i>Signed:</i> | | | | <i>Date:</i> |

STANDARD BERTHING AGREEMENT TERMS AND CONDITIONS

1. Berthing Fee and Other Charges

- 1.1 The Operator must pay the berthing fee as agreed between the parties.
- 1.2 From time to time the Marina Owner may, by notice in writing to the Operator, adjust the berthing fee payable. The Operator may terminate the Agreement in writing within one (1) month of receiving this notice.
- 1.3 The Operator must promptly pay for any services supplied by the Marina Owner to the berth or the Vessel. The Marina Owner may terminate all or any services to the berth or the Vessel if any amount is unpaid for seven (7) days from the due date for payment.
- 1.4 Each party must bear its own costs in relation to the Agreement (but the Operator must pay any legal or other costs incurred by the Marina Owner in relation to any enforcement of the Agreement).
- 1.5 The Operator agrees that any amount unpaid for seven (7) days from the due date for payment (including the berthing fee) attracts interest at the rate of 13% per annum.
- 1.6 The Operator agrees that:-
 - (a) the use of one 15amp power outlet is included in the berthing fee;
 - (b) if multiple 15amp power outlets are required, a charge of \$5.00 per day applies; and
 - (c) if three phase power is required (i.e. 32, 63 or 125amp) a charge of \$0.30 per kilowatt unit applies (according to Australian standard meters).

2. Key Deposit

- 2.1 The Operator must pay the key deposit to the Marina Owner on or before berthing.
- 2.2 The Marina Owner must refund the key deposit to the Operator when the key is returned. If the Operator does not return the key on or before vacating the berth, the Operator forfeits the key deposit.

3. The Vessel

- 3.1 The Operator must:
 - (a) maintain all licenses and registrations required for the use of the Vessel;
 - (b) observe all law and direction from the manager in relation to navigation of the Vessel and otherwise operate the Vessel in a manner which does not endanger or inconvenience other users of the marina; and
 - (c) at its cost, observe and adhere to any requirements of the manager and all law, Australian standards and engineering ratings affecting the marina and berth.

4. Use of marina and the berth

- 4.1 The Operator acknowledges that no representation is given by the Marina Owner regarding the suitability of the berth for the permitted use or the sufficiency or efficiency of the services. The Marina Owner is not liable to the Operator for any damage due to interruption of any services. The Operator occupies the berth and uses the marina at its risk.
- 4.2 The Operator and the Operator's visitors may use the common areas and the facilities but not obstruct the common areas or misuse, overload, interfere with or alter the connections, fittings or equipment relating to the supply of water, gas, electricity or other services.
- 4.3 The Operator must notify the Marina Owner of any damage of which it is aware to the marina and must pay the cost of repairing any damage caused by the Operator or its visitors.
- 4.4 The Operator must not, unless with the written consent of the manager:
 - (a) carry out repairs on the Vessel or the berth or engage any tradesmen to work on the Vessel or the berth. The Operator is responsible for ensuring that any tradesman engaged by the Operator is appropriately insured to carry out work on the Vessel or the berth;
 - (b) carry on from the Vessel or the berth any activity of a commercial nature; or
 - (c) use the Vessel as a permanent place for human habitation or keep any animal or pet on the Vessel;
 - (d) display any "for sale" or other sign on any vessel moored in the berth or offer the vessel for sale from the berth.
- 4.5 The Marina Owner may in emergencies, where the Operator is in breach, or in matters of public safety enter upon the Vessel to conduct inspections and move the Vessel to another berth if necessary without the Operator's consent.

5. Rules

- 5.1 The Operator must comply with the Marina Rules in force for regulating the use of the Vessel and the marina.

6. Insurances and Indemnities

- 6.1 The Operator must take out, maintain and provide proof of appropriate insurance including comprehensive insurance on the Vessel and public risk insurance in respect of the Vessel for at least \$10 million for any single accident. The Operator must notify the Marina Owner when insurance is obtained and of any changes to cover.
- 6.2 The Operator insurance must be an agency or underwriting agent that is licensed to operate in Australia under the Australian Prudential Regulation Authority (APRA).
- 6.3 The Operator is liable for and indemnifies the Marina Owner against any liability arising from the Vessel or a breach of the Agreement by the Operator.

7. Default of Operator

- 7.1 The Marina Owner may terminate the Agreement by notice in writing to the Operator if:
 - (a) the Operator fails to comply promptly with any of the terms of the Agreement;
 - (b) the Operator abandons the berth or Vessel (which will be deemed to occur if the berthing fee remains unpaid for more than one month); or
 - (c) the Operator is declared bankrupt or (if a company) enters into any form of external administration, liquidation or insolvency.
- 7.2 If the Marina Owner terminates the Agreement, it may move the Vessel, shall have a lien over the Vessel and may sell the Vessel at the Operator's cost.

8. Determination of Term

- 8.1 The Operator acknowledges that the Agreement is to apply to each berthing within the calendar year.
- 8.2 A new agreement will be entered into for each subsequent calendar year.
- 8.3 At the end of the berthing period or on earlier termination of the Agreement, the Operator must:
 - (a) deliver all keys to the Marina Owner; and
 - (b) vacate the berth and leave it in a clean state and without any damage.
- 8.4 If the Operator terminates this Agreement before the end of the agreed berthing period then:-
 - (a) if the agreed berthing period is for three (3) months or less, the Operator will not be entitled to any refund or credit the dollar value of on the balance berthing period;
 - (b) if the agreed berthing period is for more than three (3) months the Operator can elect between:-
 - (i) a credit on the dollar value of the balance berthing period towards the Operator's next stay provided that the credit is used by the Operator within twelve (12) months of the Operator's departure from the marina (otherwise the credit will be forfeited); or
 - (ii) a refund of 50% of the balance amount paid, excluding the first three (3) month period for which there is no credit or refund.

MARINA RULES

1. Berths & vessels

- (a) The vessel must be kept in a sound, safe, secure, seaworthy, watertight condition free of pests, insects and vermin at all times.
- (b) Period of Berthing is from 12 noon to 11.00am (on day of departure)
- (c) Measurement of a vessel is length overall or LOA (see rule 6), being the measurement to its outer most extremities, including the anchor, bow, motor and tender.
- (d) Only vessels in a seaworthy condition and under their own power will be admitted to the Marina. All vessels must be registered as required by law and safe boating practice.
- (e) Upon a vessel or person entering the Marina they shall immediately be subject to the direction of marina staff and vessels shall be berthed only where ordered and manoeuvred as directed.
- (f) The vessel must be moored within the boundaries of the allocated berth dimensions at all times and the vessel must not exceed the engineering rating of the Marina Berth or be larger than that recommended under AS3962 "Guidelines for Marina Design.
- (g) Mooring lines must be provided by the berth occupier, adequate for the vessel's size and weight and maintained in good condition. If in the opinion of the Marina Manager that these lines are inadequate or additional lines are necessary, the berth occupier will need to comply with that direction at their expense
- (h) No part of any vessel may overhang a walkway, including anchors, bows, davits, etc. Piers, jetties & walkways must be kept clear of gear, including dinghies & skiffs at all times.
- (i) Berth occupiers shall not permit their craft to become unsightly or dilapidated so as to reflect unfavourably on the Marina as a whole. Decks of all craft shall be kept free and clear of debris, bottles, papers, trash and other unsightly material at all times.
- (j) Laundry of any type or items of personal apparel shall not be hung out to dry or air in public view aboard any boat or any pier or jetty.
- (k) No chemicals, inflammable or volatile liquids or substances may be stored in the vessel other than those that are reasonably required for the operation of the vessel (and then only in such quantities as are reasonably required and in appropriate and approved containers).
- (l) All dinghies, tenders and rafts are to be stowed aboard the vessel when mooring.
- (m) No fishing trawlers are to be moored in the marina berth.
- (n) No items of personal property are to be left on the piers at any time.
- (o) All sewerage must be disposed of ashore by using any sewage pump out station provided at the marina.

2. Conduct

- (a) All persons whilst within the marina precinct must not do anything which is immoral, noxious, offensive, hazardous or likely to cause nuisance or injury to any person.
- (b) Every person shall be responsible for the conduct of their guests and invitees. Disorderly conduct by a person or their guests and/or invitees may result in the cancellation of the berthing agreement or ejection from the marina precinct.
- (c) Enclosed footwear must be worn at all times whilst within the marina precinct including walkways, fuel wharf, refuse station and other common areas.
- (d) Noise should be kept to a minimum at all times. Berth occupiers shall have regard for others when operating radios and musical apparatus so as not to create a nuisance.
- (e) Swimming, diving or fishing within the Marina is prohibited.
- (f) Children must be supervised and accompanied by adults at all times.
- (g) Animals must be leashed / caged at all times and must not be permitted to foul the Marina area. It is at the Marina Manager's discretion whether animals are allowed to live aboard vessels.
- (h) Consumption of alcohol is prohibited within the marina precinct except within licenced premises or onboard private vessels.

3. Common Area, Conveniences and Contractors

- (a) Power is connected to each berth. Only approved power leads with the following shall be permitted. All vessels to power pole leads must be:
 - (i) compliant with Australian standards AS3760
 - (ii) be checked for correct polarity
 - (iii) tested and tagged by a licensed electrical contractor within the first week of arrival.

Occasionally marina staff may have to disconnect power cords if they are potentially dangerous, damaged, across walkways and particularly if they have not been tested and tagged. Staff will try to contact the berth occupier prior to doing so, however on occasion the need to unplug a cord may override this contact.

- (b) A maximum speed limit of 4 knots is to be observed, departing from, or when approaching the entrance to the Marina area. When entering or leaving the Marina observe all maritime laws and regulations, always keep to the right - power gives way to sail.

- (c) All refuelling must be done at the fuelling facility designated by the manager from time to time.
- (d) Fuel must be booked in advance. Upon completion and payment the vessel is required to depart immediately.
- (e) Car parking is not included in the berthing fee and depending on availability will incur an additional charge. All persons park at their own risk.
- (f) No unregistered vehicles / trailers are permitted on the marina site. No boats or tenders on trailers are permitted to be parked in any general marina car park, that is, they must be stored within a designated storage area within the facility.

4. Vessel Maintenance & Cleaning (also refer Licence Terms & Conditions)

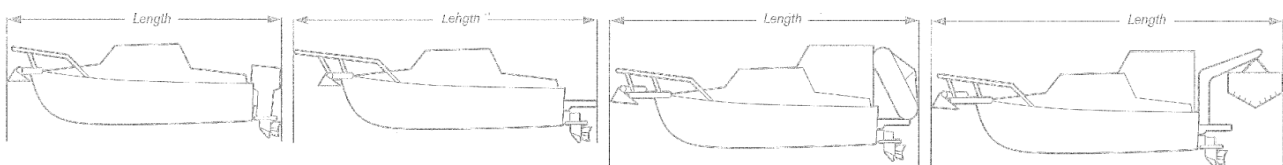
- (a) Nothing must be thrown overboard. Refuse, garbage and plastic bags, should be placed in rubbish bins provided. If refuse items are too large, the Marina Manager will assist in arranging for their disposal.
- (b) It the berth occupier's responsibility to ensure that no harm is caused to the environment by spilling fuel or oil during fuelling. Any incidents must be reported to marina staff who will determine any steps necessary to rectify any problems.
- (c) Any oil leaks from any vessel must be repaired immediately and inspected by marina staff.
- (d) Any oil leaks must be contained by a suitable method and the collected oils must be disposed of in the oil recycling containers located on site. Any such incident must be reported to marina staff.
- (e) Any vessel found to be discharging contaminants including but not limited to oil, fuel, or sullage water in the marina will be attended to by marina staff as a first response to contain and manage the situation:
 - (i) The berth occupier will be notified immediately by phone and or mail to of the incident and to rectify the fault and cease any activity resulting in the discharge.
 - (ii) The vessel, if unattended, may be boarded and pumps de-activated at the discretion of management if deemed applicable.
 - (iii) Anti-pollution materials will be deployed and the discharge will be removed by mechanical or other method at the expense of the berth occupier.
 - (iv) A report will be made and filed for E.P.A. records.
- (f) The berth occupier must not carry out any repairs, sandblasting, painting, hull cleaning, fitting out or refitting of the vessel within the Marina Berth (other than minor internal repairs, mechanical adjustments and electrical work on the vessel for which the berth occupier has obtained the prior written consent of the Manager).
- (g) Any contractors and tradespeople working within the marina precinct must be registered with the marina office prior to commencing work. Insurance and qualification certificates must be presented and all tools and cords must be tagged. Berth occupier's are responsible for any trades people they engage to undertake work on their vessel/s. It is the berth occupier's responsibility to ensure registration has occurred and insurance and qualifications are in place.
- (h) Berth occupiers must not discharge anything of whatever nature into the waters in the marina and must not (while the vessel is in the marina) use any toilet on the vessel unless the toilet is connected to an approved holding tank in the vessel.

5. Fire Fighting Equipment / Emergency Evacuation:

- (a) Fire fighting equipment shall not be used for any purpose other than fire fighting without prior written consent of marina staff.
- (b) The marina has cyclone, fire & emergency evacuation procedures in place with signage available within the public toilets for assembly points.

6. Vessel measurements

HOW TO MEASURE YOUR BOAT



Measure to outer most extremities, including anchor, bow, motor, tender etc.
 When measuring, state on form if anchor and/or dinghy are fitted.