

# BERTHING LICENCE AGREEMENT

This agreement is made between the Licensor and the Licensee. The agreement comprises the Reference Table, the Standard Marina Site Licence Terms and Conditions, the Marina Rules and the Guarantee and Indemnity (if applicable) ("the Agreement").

## REFERENCE TABLE

### ITEM 1 – PARTIES

**BETWEEN:** Emprja Pty Ltd 135 384 039 as trustee for the Darrouzet Property Trust (the "**Licensor**"), Abell Point Marina, Shingley Drive, Airlie Beach, Queensland, 4802  
Telephone (Office): (07) 4946 2400 Fax: (07) 4946 2444 Email: reservations@abellpointmarina.com.au

#### AND

Vessel Owner Name: ..... (the "**Licensee**")  
Address .....  
Telephone (Home) ..... (Work) ..... (Mob) .....  
Email: ..... (Emergency Contact Number) .....  
ABN / ACN (if applicable) .....

### ITEM 2 – THE VESSEL

Name of **Vessel**: .....  
Vessel Type: ..... Model: ..... Year: .....  
Length Overall (LOA): ..... (m/ft) Beam: ..... (m/ft) Draft: ..... (m/ft)  
Registration Number: .....  Recreational  Commercial  
Construction:  Fibreglass  Aluminium  Timber  Steel  Ferro  Poly  
Vessel Hull: Colour: .....  Mono  Multi  
Power Requirements:  15Amp  32Amp  63Amp  125Amp  
**Insurance Details:**  
Insurance Company: .....  
Policy Number: ..... Expiry Date: ..... Copy Supplied:  Yes  No

### ITEM 3 – BERTHING LICENCE

Commencement Date:..... Expiry Date:.....  
Licence Fee:..... Licence Payment Period:.....  
Key Deposit:..... Date Paid:.....

### LICENSEE'S ACKNOWLEDGEMENT

I, the Licensee, acknowledge that I have read this Agreement (including the Standard Marina Berth Licence Terms and Conditions, the Marina Rules and the Guarantee and Indemnity (if applicable)) and agree to its conditions which apply for every Licence Term unless otherwise notified to me by the Licensor.

Tick if you do not wish to stay up to date with the opportunities offered by the Licensor from time to time

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Name of Licensee \_\_\_\_\_ Signature of Licensee \_\_\_\_\_

Name of Witness \_\_\_\_\_ Signature of Witness \_\_\_\_\_

## STANDARD MARINA BERTH LICENCE TERMS AND CONDITIONS

### 1. Licence Fee and Other Charges

- 1.1 The Licensee must pay the Licence Fee in advance on or before the Commencement Date and thereafter in accordance with the agreed Licence Payment Period.
- 1.2 From time to time the Licensor may, by notice in writing to the Licensee, adjust the Licence Fee payable.
- 1.3 The Licensee must promptly pay for any services supplied by the Licensor to the berth or the Vessel. The Licensor 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 Licensee must pay any legal or other costs incurred by the Licensor in relation to any enforcement of the Agreement).
- 1.5 The Licensee agrees that any amount unpaid for seven (7) days from the due date for payment (including the Licence Fee) attracts interest at the rate of 13% per annum.
- 1.6 The Licensee agrees that:-
  - (a) the use of one 15amp power outlet is included in the licence fee;
  - (b) if multiple 15amp power outlets are required, an excess utilities service 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 Licensee must pay the Key Deposit to the Licensor on or before the Commencement Date.
- 2.2 The Licensor must refund the Key Deposit to the Licensee when the key is returned. If the Licensee does not return the key on or before the last day of the Licence Term (or upon vacating the berth, whichever is earlier) the Licensee forfeits the Key Deposit.

### 3. The Vessel

- 3.1 The Licensee 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 Licensee acknowledges that no representation is given by the Licensor regarding the suitability of the berth for the Permitted Use or the sufficiency or efficiency of the services. The Licensor is not liable to the Licensee for any damage due to interruption of any services.
- 4.2 The Licensee and the Licensee'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 Licensee must notify the Licensor of any damage to the marina and must pay the cost of repairing any damage caused by the Licensee or its visitors.
- 4.4 The Licensee 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;
  - (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 Licensor may enter upon the Vessel to conduct inspections and move the Vessel to another berth if necessary without the Licensee's consent.

### 5. Marina Events

- 5.1 The marina may hold events for up to 28 days per year ("**the Marina Event**") during which the Licensee may be required to vacate the marina. The Licensor must give the Licensee seven (7) days written notice of the Marina Event. The Licensee is not required to pay the Licence Fee during that period.

### 6. Rules

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

### 7. Insurances and Indemnities

- 7.1 The Licensee 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 Licensee must notify the Licensor when insurance is obtained and of any changes to cover.
- 7.2 The Licensee is liable for and indemnifies the Licensor against any liability arising from the Vessel or a breach of the Agreement by the Licensee.

### 8. Default of Licensee

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

### 9. Determination of Term

- 9.1 At the end of the Licence Term or on earlier termination of the Agreement, the Licensee must:
  - (a) deliver all keys to the Licensor; and
  - (b) vacate the berth and leave it in a clean state and without any damage.
- 9.2 If the Licensee terminates this Agreement before the end of the agreed berthing licence period then:-
  - (a) if the agreed berthing period is for three (3) months or less, the Licensee will not be entitled to any refund or credit the dollar value of on the balance berthing period;
  - (b) if the agreed berthing licence period is for more than three (3) months the Licensee can elect between:-
    - (i) a credit on the dollar value of the balance berthing period towards the Licensee's next stay provided that the credit is used by the Licensee within twelve (12) months of the Licensee'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 your 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 entering the Marina it shall immediately be subject to the direction of marina staff and 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) Customers 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) Berth occupiers must not do anything which is immoral, noxious, offensive, hazardous or likely to cause nuisance or injury to any person.
- b) Berth occupiers shall be responsible for the conduct of their guests and invitees. Disorderly conduct by a berth occupier or his guests and/or invitees may result in the cancellation of the berthing and any other agreement.
- c) 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.
- d) Swimming, diving or fishing within the Marina is prohibited.
- e) Children must be supervised and accompanied by adults at all times.
- f) 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.
- g) Consumption of alcohol is prohibited within the marina 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) not less than 2.5mm round flex cable
  - (ii) have at the pole end a 15 amp plug and have at the vessel end a 15 amp plug
  - (iii) be checked for correct polarity
  - (iv) tested and tagged by a qualified professional

Occasionally marina staff may have to disconnect your power cord if they are potentially dangerous, damaged, across walkways and particularly if they have not been tested and tagged. Staff will try to contact the vessel owner 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 customers 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)**

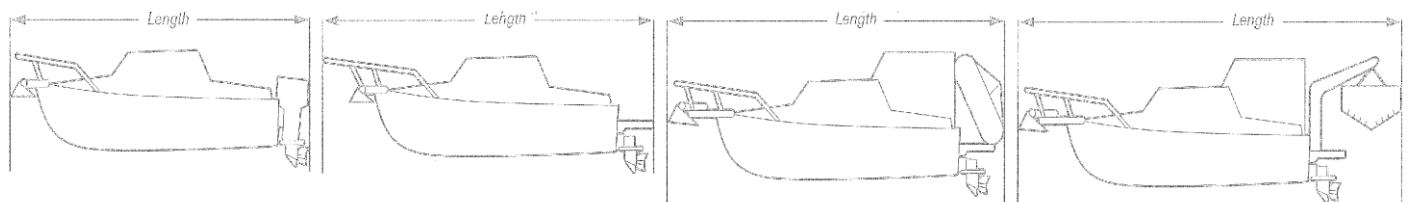
- (a) The Customer must not throw overboard refuse, garbage and plastic bags, these should be placed in rubbish bins provided. If refuse items are too large, the Marina Manager will assist in arranging for their disposal.
- (b) It is your responsibility to ensure that you do not cause harm to the environment 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 your 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 owner 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 owner.
  - (iv) A report will be made and filed for E.P.A. records.
- (f) The Licensee 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 Licensee has obtained the prior written consent of the Manager).
- (g) Any contractors and tradespeople working on the Marina must be registered with the marina prior to commencing work. Insurance and qualification certificates must be presented and all tools and cords must be tagged. Boat owners are responsible for any trades people they engage to undertake work on their vessel/s. It is the boat owner's responsibility to ensure registration has occurred and insurance and qualifications are in place.
- (h) You 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.