

## TERMS & CONDITIONS TRAVEL LIFT & HARDSTAND

**Acceptance of these terms and conditions is implied for any boat lifted at Gulf Harbour Marina.**

### 1. DEFINITIONS

1.1. In these terms and conditions:

**Boat** means the boat identified on the front page of the contract.

**Company** means Gulf Harbour Investments Limited, or its nominees or assignees, and includes, where appropriate, its officers, agents and employees.

**Customer** means the customer identified on the front page of this contract.

**Hardstand** means the sealed area situated at the Marina and utilised for the storage of boats and masts, and for the lifting of boats into and out of the water, for the general manoeuvring of boats on the sealed area and for the storing, washing, cleaning, spray painting and other repair and maintenance work of Boats.

**Marina** means Gulf Harbour Marina, Whangaparaoa.

**Boatlifter** means the machinery and associated equipment for the transportation of boats (or associated equipment) to and from the water and around the Hardstand including but not limited to: travel lifts, low loader, fork hoists, cherry picker, cranes.

### 2. TERMS AND CONDITIONS OF USE:

2.1. The Customer shall:

- (a) At all times keep the area of the hardstand immediately adjacent to the surrounding the Boat in a clean and tidy condition, and shall not store supplies and materials, accessories or debris on that area.
- (b) Deposit all garbage in the receptacles provided, provided that where the amount of waste to be removed from and around the Boat is considered by the Company, in its sole discretion, to be unusually excessive, then the removal of this waste shall be at the Customer's expense.
- (c) Deposit all hazardous waste in the appropriate waste receptacles.
- (d) Take all appropriate precautions to maintain the safety of themselves and anyone working on or around their boat.

2.2. The Customer shall not:

- (a) Make nor permit to be made any noise or disturbance, or perform any act which in the opinion of the Company, in its sole discretion may be an annoyance or cause a nuisance to any other person or body in and around the Marina.
- (b) Carry out any work on the Boat or on the Hardstand between the hours of sundown and 7.00am.
- (c) Undertake, or allow to be undertaken, dry sandblasting of the Boat in and around any part of the Hardstand.
- (d) Carry out, or allow to be carried out, any spray painting work without the prior written consent of the Company, and any such spray painting work shall be undertaken only with adequate covers for the protection of other vessels.
- (e) Nor shall the Customer permit, any work or activity to be carried out or undertaken on the Boat or on the Hardstand in contravention of any of the provisions of the Resource Management Act 1991, and the Health and Safety in Employment Act 1992.
- (f) Refuel the vessel whilst on the hardstand. Prior approval must be obtained from the Company and fuel is to be supplied directly via the Company if approved.

2.3. Any breach of the above conditions shall be deemed to be a breach of this Contract entitling the Company to cancel this contract forthwith without notice.

### 3. CHARGES AND PAYMENT:

- 3.1. The Customer shall duly and punctually pay all charges when levied by the Company, and in any event, before the Boat is removed from the Hardstand.
- 3.2. Acceptance of cheques is at management's absolute discretion. No reason need be provided for not accepting cheques as a method of payment. If payment is by electronic deposit, funds must be showing in the company's bank account prior to boat being released for launching or removal.
- 3.3. Charges applicable under this contract are those published at the time of hauling the vessel. The company reserves the right to change and apply these rates at any time.
- 3.4. Charges will be calculated based on the measured length overall of the vessel. If there is any doubt, the prevailing measurement used will be as measured and determined by the company.
- 3.5. Additional charges may be incurred, if deemed necessary by the company, including but not limited to: additional sling usage, use of divers to assist with sling placement, hazardous waste disposal, environmental charges and excessive growth removal.
- 3.6. The Company shall be entitled to charge the Customer a penalty fee of \$100 in the event of the Customer failing to keep an appointment for the use of the Boatlifter.
- 3.7. Boats on the hardstand longer than 28 days will be invoiced at the end of each 28 day period (or at any time after the first 28 days) and payment is due within 10 working days of the date of the invoice. Any amounts outstanding after the due date for payment shall be chargeable at the rate of 2.5% interest per month.
- 3.8. If any moneys are owing under this contract by the Customer for the use of the Boatlifter, or for the use of the Hardstand, Mast Gantry or otherwise, the Company shall be entitled to seize the Boat and shall, from the date of such seizure, have a general lien upon, and the right of retention of the Boat so seized until all moneys payable by the Customer under this contract have been paid in full.

- 3.9. If the moneys owing remain unpaid for a period of 21 days after the Company shall have given notice to the Customer of seizure of the Boat, the Company shall be entitled without further notice to sell the Boat by auction or otherwise, together with any chattels situated on or in the Boat, and the proceeds of such sales shall be applied first towards the expense of seizure and sale, secondly the payment of moneys due to the Company and lastly the payment of the balance (if any) to the Customer. Full legal and collection costs will be added to any amounts due.
- 3.10. If there shall be a deficiency of funds from any sale pursuant to this clause to meet the costs noted above, the Company may proceed to recover such deficiency from the Customer in a summary manner.
- 3.11. All costs associated with the collection of any outstanding debt will be on charged to the Customer plus interest on the outstanding debt at current overdraft rates for the period the debt remains outstanding. Gulf Harbour Investments Ltd reserves the right to circulate the name of any customer who becomes a bad debtor to other Marina Operator Association members.
- 3.12. The Customer indemnifies and saves harmless the Company from all claims, suits and demands made by any person or corporation in respect of the Boat or any chattels seized and sold pursuant to this contract.

### 4. RISKS AND INDEMNITIES:

- 4.1. The customer acknowledges that the Boat placed on the Hardstand in accordance with this Contract, and any chattels in, on or fixed to the Boat shall not be deemed to be in the custody, possession or control of the Company in any manner whatsoever unless and until the Company exercises its rights of seizure and sale referred to in clause 3.3.
- 4.2. Without limiting any rights of the Customer under the Consumer Guarantees Act 1993
  - (a) The Boat, and any other craft which is transported to or from, or stored upon the Hardstand in accordance with the provisions of this Contract, is entirely at the risk of the Customer, and shall remain at the risk of the Customer throughout the term of this Contract. The Company shall not either directly or vicariously, nor shall any officer, agent, contractor or employee of the Company be liable in negligence or otherwise for any damage to or theft or loss from the Boat, and any goods, gear of machinery situated on or around the Boat whilst the Boat is on the Hardstand, the Boatlifter or in the Marina howsoever occurring including, but without limiting the generality of the foregoing loss or damage caused by the removal of the Boat by any person not authorised by the Customer to remove it, whether such removal was permitted by the Company or not.
  - (b) The Company shall not, either directly or vicariously, nor shall any officer, agent, invitee contractor or employee of the Company be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer, or any agent, employee, contractor or invitee of the Customer or any other person on the Hardstand or the Boatlifter or in and around the Marina, or inside the adjoining Marina buildings howsoever such loss, damage or injury may occur.
- 4.3. To the extent permitted at law, the Customer indemnifies and will keep the Company indemnified against all actions, suits, claims, debts, obligations and other liabilities arising out of this contract, or out of any act or omission of the Customer, or the officers, agents, employees, contractors or invitees of the Customer and the Customer agrees to compensate the Company for any loss or damage to the Hardstand, Boatlifter, Mast Gantry or the Marina or any of the craft in the Marina or on the Hardstand, or to any other property caused by, or resulting from the acts or omissions of the Customer or its officers, agents, employees, contractors or invitees.
- 4.4. If the signatory to this Contract, executes this Contract as "agent", or for or on behalf of the owner of the Boat, then the signatory to this agreement warrants to the Company that all work carried out by the Company under this Contract has been carried out with the full knowledge and consent of the owner of the Boat, and the signatory further indemnifies the Company from and against all and any claims against the Company in addition to the provisions contained above.
- 4.5. If the rights acquired by the Customer are acquired for business purposes, the Customer agrees that the Consumer Guarantees Act does not apply to this Contract.
- 4.6. Nothing in this Contract is intended to have the effect of contracting out the provisions of the Consumer Guarantees Act except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.
5. **FORCE MAJEURE:**
  - 5.1 The Company will not be liable for failure or delay to perform obligations under this Agreement, which have become practically impossible because of circumstances beyond the reasonable control of the applicable party. Such circumstances include without limitation natural disasters or acts of God; acts of terrorism; labour disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond GHIL's reasonable control. Written notice of GHIL's failure or delay in performance due to force majeure must be given to the Licensee no later than five (5) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. GHIL hereby agree, when feasible, not to cancel but reschedule the pertinent obligations for as soon as practicable after the force majeure condition ceases to exist.
6. **GENERAL:**
  - 6.1. The Company shall be entitled, from time to time, to deliver up the Boat stored in accordance with this Contract to any person producing this Contract or offering such other evidence of ownership authority to receive the Boat as the Company may, in its sole discretion, deem satisfactory.
  - 6.2. Any notice required to be given to the Customer may be delivered to the Customer either personally, or by posting it by registered letter addressed to the Customer at the address noted on the front page of this Contract.