

LOAD N GO BERTH TERMS AND CONDITIONS



WESTHAVEN MARINA

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TERMS AND CONDITIONS – LOAD N GO

1. Definitions and Interpretation

1.1 Definitions:

Account Code means the code given by the Manager to the Customer for the Customer to register their credit card on Payment Express;

Agreement means the full agreement between the Customer and the Manager in respect of the Customer's use of the Berth, more particularly set out in clause 2.4;

Berth means the Load N Go berth located at Z Pier in the Marina;

Booking Period means a block or blocks of time for the Berth booked by the Customer, a single block of time being 30 minutes;

Commencement Date means the date both parties have signed the Registration Form;

Customer means the customer named in the Registration Form;

Guarantor means the guarantor named in the Registration Form (if applicable);

Invitees means any of the Customer's agents, servants, contractors, employees, licensees, guests or invitees;

Manager means Panuku Development Auckland Limited as the manager of the Westhaven Trusts (as appointed by Westhaven Marina Limited as trustee of the Westhaven Trusts), the body appointed to run the Marina and to bind the Marina in its legal affairs, and includes its successors and assigns;

Marina means Westhaven Marina, and includes the Berth, all structures, wharves, foreshore areas, parking areas, driveways, accessways, services, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, Westhaven Marina;

Online Booking System means the online booking system used to book the Booking Period;

Payment Express means the third-party online payment services provider <https://www.paymentexpress.co.nz/>;

Registration Form means the registration form attached to this Agreement, which is to be completed by the Customer and submitted to the Manager for approval;

Rental Fee means the fee payable for each Booking Period, being \$50.00 (including GST and outgoings) per 30-minute block as at the date of this Agreement;

Termination date means the termination date noted in the Registration Form;

Vessel means the charter vessel owned by the Customer, the details of which are noted in the Registration Form; and

Working Day means any day of the week other than: (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and Auckland Anniversary Day; and (b) a day in the period commencing with 24 December in any year and ending 5 January in the following year. A Working Day shall be deemed to commence at 9.00am and terminate at 5.00pm.

1.2 **Defined Expressions:** expressions defined in these Terms and Conditions have the defined meaning in the whole of this



Agreement, including the Registration Form.

- 1.3 **Headings:** sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this Agreement.
- 1.4 **Joint and Several Obligations:** an obligation by two or more persons binds those persons jointly and severally.
- 1.5 **Negative Obligations:** an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.6 **Parties:** references to parties are references to parties to this Agreement.
- 1.7 **Plural and Singular:** the singular includes the plural and vice versa.
- 1.8 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.

1.9 **Clauses:** references to clauses are references to clauses in these Terms and Conditions, unless the context suggests otherwise.

1.10 **Statutes and Regulations:** references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. Licence

2.1 The Manager grants a licence to the Customer, and the Customer accepts such licence, to occupy the Berth during the Booking Period on the Terms and Conditions of this Agreement.

2.2 Nothing in this Agreement shall create a lease, a tenancy or any other property right in the Berth.

2.3 It is the Customer's responsibility to read and understand this Agreement. Failure to do so does not exempt the Customer from any liability to the Manager.

2.4 The full agreement and the terms of the licence between the Manager and the Customer comprise:

- a) these Terms and Conditions;

b) the "A – Z Guide to Westhaven Marina" (available from the Manager upon request and Westhaven website); and

c) any other document published or administered by the Manager or its duly authorised employee, contractor or agent for the purposes of managing the Marina.

2.5 If there is any inconsistency between the provisions of the documents listed in clause 2.4, the documents shall have the following order of priority (to the extent of any inconsistency): 1) these Terms and Conditions; 2) the "A - Z Guide to Westhaven Marina"; and 3) any other document published or administered by the Manager or its duly authorised employee, contractor or agent for the purposes of managing the Marina.

2.6 Without derogating from clauses 2.4 and 2.5, the Customer agrees to comply with all relevant bylaws, rules, regulations and legislation affecting the Berth.

3. Term

3.1 This Agreement will commence on the Commencement Date and terminate on



the Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

- 3.2 The Manager's countersigning of the Registration Form shall be deemed acceptance by the Manager of registration of the Vessel to use the Berth on the terms of this Agreement.

4. Registration, Payment and Booking

- 4.1 The obligation to pay the Rental Fee is an essential term of this Agreement.
- 4.2 Once the Manager has countersigned the Registration Form, the Customer will be provided with an account code to use to register their credit card details on Payment Express.
- 4.3 Payment transactions will take place within a secure payment system provided by Payment Express. The Customer acknowledges and agrees that Payment Express is solely responsible for all transactions.
- 4.4 By providing their credit card details on Payment Express, the Customer warrants that the Customer has authority to use the said credit card, and authorises the

Manager to charge the said account when the Rental Fee falls due.

- 4.5 Once the Manager confirms that the Customer has provided their credit card details on Payment Express, the Manager will assign the Customer with a token (a unique identifier), which will be used to identify the Customer for future transactions involving Load N' Go.
- 4.6 Following the assignment of the token, or if the Customer already has a token assigned to them, the Customer will provide the Manager a health and safety plan, and proof of insurance as per clause 12 of this Agreement.
- 4.7 Once the Manager is satisfied that clause 4.6 has been fulfilled by the Customer, the Manager will provide the Customer their login details to the Online Booking System.
- 4.8 The Customer may use the Online Booking System to make a booking, or alternatively can make a manual booking through the Manager.
- 4.9 Once the Customer makes a booking, the Manager will email the invoice for the booking to the Customer. The payment will automatically come out of the

Customer's credit card registered on Payment Express at the end of the month (or following working day if the last day of the month is a weekend).

- 4.10 If the Manager, in its sole and absolute discretion, permits the Customer to continue using the Berth beyond any booked Booking Period, the Customer acknowledges and agrees that the Manager will be entitled to, without further notice to the Customer, deduct additional Rental Fee (based on 30-min blocks) from the credit card supplied by the Customer.
- 4.11 The Manager may, in its sole and absolute discretion, propose a new Rental Fee during the term of this Agreement on not less than 20 Working Days' written notice to the Customer (**Notice**). If the Customer:
- a) does not agree with the Notice, the Customer may, by written notice to the Manager within 10 Working Days of receipt of the Notice, terminate this Agreement; or
 - b) does agree with the Notice and confirms the same to the Manager, or does not respond to the Notice within the prescribed time period,



the new Rental Fee will apply from the date that is 20 Working Days from the date of the Customer's confirmation or expiry of the prescribed time period, whichever is earlier ("**Review Date**"). The parties acknowledge and agree that the new Rental Fee payable under this Agreement as set out in the Notice will be effective from the Review Date.

- 4.12 The Customer is solely responsible for keeping the Manager apprised of any changes to credit card details provided on the Registration Form (if applicable). Where the Manager incurs costs or penalties on account of the Customer's failure to notify the Manager of any changes to credit card details, the Customer agrees to reimburse the Manager in full without any deductions.

5. Cancellation of Bookings

- 5.1 The Manager may, at any time before the end of a Booking Period, cancel a Booking Period or part of a Booking Period, by giving notice to the Customer where the Manager, in its sole and absolute discretion, requires the Berth for Marina operations.

- 5.2 Where the Manager requires the Berth in an emergency situation, the Manager will not be required to give prior notice.

- 5.3 Where the Manager cancels a Booking Period or part of a Booking Period, the Manager will refund the relevant Rental Fee (or part thereof calculated on a pro rate basis) to the Customer's nominated account.

- 5.4 The Customer may cancel a Booking Period via the Online Booking System or by giving notice to the Manager at any time before the start of a Booking Period. Where the Customer cancels a Booking Period within 24 hours before the start of the Booking Period, the Customer will forfeit 100% of the relevant Rental Fee.

- 5.5 For clarification, this Agreement will continue notwithstanding any cancellation of a Booking Period under clauses 5.1, 5.2, 5.3 or 5.4.

6. Purpose of Occupation, Risk and Security

- 6.1 The Customer shall only use the Berth for commercial/charter or transport boating purposes and not for any or other use or purpose unless the Manager in its sole

discretion has approved such use in writing.

- 6.2 The Customer accepts that no maintenance or repair work of any kind may be undertaken on the Berths.
- 6.3 The Customer accepts that no water or electrical supply is provided to the Berth.
- 6.4 The Customer shall berth the Vessel in the Berth entirely at its own risk. The Manager shall not, whether directly or indirectly, nor shall its agents, employees or contractors, be liable in negligence or otherwise for any damage to or theft or loss of the Vessel or any tackle, goods, gear, machinery or other property while the Vessel is berthed in the Berth or in or around the Marina no matter how or from what cause such loss or damage may arise or occur.
- 6.5 The Customer acknowledges and agrees that, to the fullest extent permitted by law, the Manager makes no warranty whatsoever as to the condition of the shipways, buildings, piers, walkways, pontoons, gangways, ramps, mooring gear and any other facilities that comprise the Marina and the Berth, and the Customer agrees that it will use those facilities solely at its own risk.



- 6.6 The Customer acknowledges that any subletting of the Berth is prohibited during the Booking Period.
- 6.7 The Customer must not assign any of its rights or obligations under the Agreement to any person. For the purposes of this clause 6.7, where the Customer is a limited liability company, a change in more than 50% of the shareholding(s) of the Customer from the shareholding(s) in place at the Commencement Date shall be deemed an assignment.
- 7. Registration of the Vessel**
- 7.1 At all times, the Customer shall ensure that the dimensions of the Vessel as noted on the Registration Form are true and correct, and the Customer further undertakes not to allow any part of the Vessel (including spars, bowsprits, anchors, davits and tenders or any other thing affixed to the Vessel) to exceed such dimensions during the term of this Agreement.
- 8. Use of the Berth and Marina**
- 8.1 The Customer shall manoeuvre the Vessel within the Marina so as to avoid creating a danger, obstacle or inconvenience to other users, or obstructing public rights to navigation.
- 8.2 The Customer shall not create a noise nuisance, whether through parties or television, radio, musical apparatus or any other form of sound reproduction or otherwise while the Vessel is in the Marina. All ropes, rigging and sails on the Customer's Vessel must be secured so they do not create noise.
- 8.3 The Customer shall not pollute the Marina or discharge into the Marina boat harbour any poisonous, noxious, dangerous or offensive substance or thing. The Customer shall not discharge any sewage or empty toilet waste into the Marina boat harbour.
- 8.4 The Customer shall not bring pets or animals into the Marina without the Manager's prior consent. The Customer will clean up any pet fouling left by the Customer's pet or any animal under the Customer's control.
- 8.5 The Customer shall not swim or dive in the Marina.
- 8.6 The Customer shall not store any of its property anywhere on the Berth.
- 8.7 The Customer shall not use the firefighting equipment situated in the Marina for any other purpose than the fighting of fires.
- 8.8 The Customer shall not store or bring into the Marina any flammable liquids, gases or goods without the Manager's prior permission.
- 8.9 The Customer shall not refuel the Vessel in the Marina except at the permanent refuelling facility.
- 9. Visitors to the Marina**
- 9.1 The Customer shall ensure that:
- a) all of its Invitees comply with the terms of this Agreement and all relevant bylaws, rules, regulations and legislation; and
 - b) any children under the age of 12 and for whom the Customer or its Invitees are responsible, are accompanied by a person over the age of 18.
- 9.2 Without limiting clause 9.1, the Customer shall not, and shall ensure that its Invitees do not, pollute, permit the pollution of, or discharge into, the Marina any poisonous,



noxious, dangerous or offensive substance or thing.

9.3 If the Customer holds an alcohol on-licence, and alcohol is to be consumed on the Vessel, then the Customer undertakes to comply with all relevant bylaws, rules, regulations and legislation as a responsible host.

9.4 The Customer acknowledges that conspicuous and excessive consumption of alcohol is prohibited, and if such consumption takes place the Manager may remove the Vessel from the Berth or terminate this Agreement in accordance with clause 13.1.

10. Water Space and Access Rights

10.1 This Agreement relates only to the exclusive use of the allocated water space of the Berth during the Booking Period. In common with others, the Customer shall have the right of access in, and the use of, the common waterways and pathways of the Marina subject to the A – Z Guide to Westhaven Marina, and such other rules as to access and access hours as the Manager may specify for safety, security and the preservation of good order.

11. Liability

11.1 The Customer shall indemnify and keep indemnified the Manager against all losses, expenses, legal liability including any legal claims, damages, expenses, collection costs and other liabilities (whether direct, indirect or consequential) arising out of this Agreement or of any act or omission of the Customer or its Invitees. Additionally, the Customer agrees to compensate, recompense, pay, indemnify and hold indemnified third parties for any loss or damage suffered by any third party which is caused by or results from the acts or omissions of the Customer or its Invitees.

11.2 The Manager is not responsible for the care or protection of any property belonging to the Customer in the Marina. The Vessel and any other property of the Customer are entirely at the risk of the Customer while at the Marina and shall remain at the Customer's risk during the term of the Agreement.

11.3 Neither the Manager, nor any of its employees, agents, officers or contractors, shall be liable (in negligence or otherwise) for any:

a) damage to, or theft or loss from, the Vessel, or for any damage to, or theft or loss of, any contents situated on or around the Vessel, while the Vessel is in the Marina howsoever occurring including, but without limiting the generality of the foregoing, loss or damage caused by the removal of the Vessel by any person not authorised by the Customer to remove it, whether such removal was permitted by the Manager or not;

b) damage to, or theft or loss of any other property belonging to the Customer or any Invitee of the Customer, which property is within the Marina premises (including any vehicle within the Marina car park); or

c) injury, loss or damage sustained or suffered by the Customer, or any Invitee of the Customer or any other person in the Marina howsoever such loss, damage or injury may occur.

11.4 Without limiting clause 11.1, the Customer will be responsible for all damage to the Marina including docks, structures, pilings or property in the



Marina and or vessels and persons using the Marina arising from any act or omission, neglect or default by the Customer or its Invitees relating to the use and/or storage of the Vessel.

12. Insurance

12.1 Throughout the term of this Agreement, the Customer:

- a) must effect and maintain protection and indemnity insurance (to cover any third party loss caused by the Customer, its Invitees or its Vessel) for at least \$5,000,000 per event or claim; and
- b) may effect and maintain marine hull insurance (to cover any loss or damage to the Vessel), and the Customer acknowledges that the Manager recommends such cover.

12.2 The Customer shall provide the Manager with a detailed certificate of currency for the insurance policy effected pursuant to clause 12.1(a). Such certificate is to be provided on execution of the Registration Form, each time that the policy is renewed or amended in any way, and at the request of the Manager. Any certificate of currency provided by the

Customer pursuant to this clause must contain, at a minimum, details of the insured entity, period of insurance, type of insurance, name of the insurer, a policy number, and confirmation of the amount of insurance.

13. Termination

13.1 This Agreement can be terminated in the below ways:

- a) Termination by default: If the Customer is at any time in breach of any of the terms, conditions, or provisions of the Agreement, the Manager may at its sole and absolute discretion issue to the Customer a notice of default setting out the nature of the default and, if in the Manager's opinion the default can be remedied, how it can be remedied ("**Default Notice**"). If the default as detailed in the Default Notice is not remedied within seven (7) Working Days of the Customer's receipt of the Default Notice (or other time period specified in the notice), or is not capable of being remedied, then the Manager may terminate the Agreement immediately by written notice to the Customer.

b) Westhaven development: If Westhaven desires to develop the Berth area, then the Manager can terminate the Agreement with a month's notice.

c) Manager's rights affected: If the Manager's entitlement to manage, use, occupy and/or licence the use of the Marina is terminated for any reason, the Manager may terminate this Agreement immediately by written notice to the Customer.

d) Termination date: The date specified in the Registration Form.

13.2 Upon termination of the Agreement for any reason, or upon expiry of the Term, the Customer shall remain liable for payment of all outstanding Rental Fees and other monies owing to the Manager under the Agreement (**Outstanding Costs**).

13.3 Upon termination of the Agreement for any reason, the Customer shall remove the Vessel and all of the Customer's goods and effects immediately from the Marina.

13.4 If the Customer does not remove the Vessel and all of the Customer's goods and effects as required under clause 13.3,



the Customer acknowledges that the Manager may in its sole discretion:

- a) Enter onto and remove the Vessel and/or goods to any place it so wishes and if required, to contract for its safekeeping and for the payment of storage and insurance fees as agent for the Customer;
- b) Lock and/or impound the Vessel and store it in such place as it sees fit; and
- c) Sell the Vessel.

13.5 The Customer further acknowledges and agrees:

- a) That all costs, fees, charges and expenses (including legal costs and expenses on a solicitor and own client basis) incurred by the Manager pursuant to clause 13.4, or otherwise in respect of such removal or incurred by the Manager in relation to the Customer's breach of any term, condition, or provision of the Agreement (including the breach of any rule or regulation made pursuant to this Agreement or any bylaw under which the Marina operates) will be payable by the Customer immediately upon demand and that the Manager

will not be required to release the Vessel or any goods until such time as all costs and fees have been paid in full.

- b) That it will indemnify the Manager against all liability for costs, fees, charges and expenses incurred in respect of removal, impounding or storage pursuant to clause 13.4 or any matter arising there from and that anything done by the Manager pursuant to this clause shall be deemed to be done as agent for, and at the risk and cost of, the Customer.

13.6 Termination of this Agreement shall not affect:

- a) the continued existence and validity of the rights and obligations of the parties that are intended by their nature to survive termination; and
- b) the accrued rights and obligations of the parties at the date of termination.

13.7 No delay or omission by a party to exercise any right shall constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single

or partial exercise of a right shall restrict the further exercise of that or any other right.

14. Abandoned, Unseaworthy or Ill-repaired Vessels

14.1 The Customer shall keep the Vessel while berthed at the Berth attended or unattended, in good serviceable condition and repair, and shall ensure it is seaworthy. Whether the Vessel complies with the requirements of this clause will be determined by the Manager in its discretion.

15. Emergency Management and Vessel Relocation

15.1 The Manager reserves the right to use the Berth in the case of an emergency and also to require the Customer to vacate the Berth if necessary to allow urgent repairs to be carried out. In such circumstances the Manager will use reasonable endeavours, but shall not be obliged, to provide an alternative berth or mooring.

15.2 In extreme emergencies, the Manager reserves the right to take whatever steps it considers are required, in its sole and



absolute discretion, to promote the integrity and safety of the Marina.

- 15.3 Where the Manager has used reasonable endeavours to contact the Customer regarding a requirement to vacate the Berth pursuant to this clause 15, and the Manager is unable to make contact with the Customer, the Manager is entitled to remove the Vessel from the Berth and the Customer consents to the Manager doing all things necessary to effect such removal. The Manager may, at its discretion, charge the Customer for any costs that the Manager incurs in removing a Vessel pursuant to this clause 15.3, and the Customer agrees to pay such charges.

- 15.4 The Manager shall not be liable to pay any compensation to the Customer in respect of any relocation pursuant to this clause 15.

16. Bailment

- 16.1 The Terms and Conditions of the Agreement are not in any way intended by either party to create a bailment and the Customer understands that the Manager accepts no responsibility for the care of the Vessel or its contents.

17. Force Majeure

- 17.1 The Manager shall not be deemed to be in breach of the Agreement or otherwise be liable to the Customer by reason of any delay in performance, or non-performance, of any of its obligations under the Agreement to the extent that any such delay or non-performance is due to any event outside the reasonable control of the Manager.

18. Costs

- 18.1 The Customer acknowledges and agrees that the Customer is personally liable to the Manager for paying any costs incurred by the Manager (including all debt collection and legal costs and expenses on a solicitor and own client basis) in relation to any breach by the Customer of its obligations under the Agreement (including the enforcement, or attempted enforcement, of the Manager's rights and remedies under the Agreement).

19. Privacy

- 19.1 The Customer hereby authorises the Manager to, upon default under the Agreement by the Customer or termination of the Agreement, disclose to the membership of the Marina Operators

Association of NZ Inc any personal information held by the Manager about the Customer.

- 19.2 The Customer authorises the Manager to obtain and collect any relevant information about the Customer from any person (including credit reference agencies) and to use this information and any information about the Customer already held by the Manager for purposes associated with the Agreement. The Customer has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Manager and to request correction of any errors in that information.

20. Notices

- 20.1 Customer warrants that its contact details on the Registration Form are correct for the purposes of service, and that it shall promptly provide written notice to the Manager if any of its contact details change at any time during the term of the Agreement.
- 20.2 Any notice issued by the Manager to the Customer under the Agreement shall be in writing and delivered personally, affixed upon the Vessel, or posted or emailed to the Customer. A notice is



deemed to be received: a) if delivered personally, when delivered; b) if affixed upon the Vessel; c) if posted, five (5) Working Days after it is posted; or d) if emailed, when recorded as being sent.

21. Guarantee (if applicable)

21.1 In consideration of the Manager entering into the Agreement at the Guarantor's request the Guarantor guarantees the payment of the Rental Fee and the performance by the Customer of the Customer's obligations in the Agreement, and indemnifies the Manager against any monies owed, loss the Manager might suffer should the Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

21.2 The Guarantor covenants with the Manager that:

a) As between the Guarantor and the Manager the Guarantor may for all purposes be treated as the Customer and the Manager shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.

b) This guarantee and indemnity shall extend to any holding over by the Customer.

c) This guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the Rental Fee.

d) The Guarantor's obligations are not released, reduced, or affected by any change to the terms of the Agreement, whether or not such change is notified to the Guarantor.

22. Entire Agreement

22.1 This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.

23. Counterparts

23.1 This Agreement may be executed by email, facsimile or scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.

24. Governing Law

24.1 The Agreement is governed by the law of New Zealand. The Parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.

