

TERMS AND CONDITIONS

THE LANDING - OKAHU BAY

1. DEFINITIONS

1.1. In these terms and conditions:

“**Boat Mover**” means the machinery and associated equipment for the transportation of boats to and from the water and around the Hardstand.

“**Auckland Council**” means Auckland Council; Park Sports and Recreation division, as manager of The Landing or its nominees or assignees, and includes, where appropriate, its officers, agents and employees.

“**Cradle**” means a singular structure for supporting vessels while they are out of the water.

“**Hardstand**” means the area situated at The Landing utilised for the storage of boats and masts, and for the moving of boats into and out of the water by the Boat Mover, for the general manoeuvring of boats on the storage area and for the washing, cleaning, and other repair and maintenance work of boats.

“**The Landing**” means the Hardstand and facilities known as “The Landing, Okahu Bay”.

“**The Landing Rules and Regulations**” means the rules and regulations promulgated by Auckland Council with respect to the Customer’s use of The Landing as notified to it by Auckland Council from time to time.

2. USE OF HARDSTAND AND BOAT MOVER SERVICES

2.1. Auckland Council hereby grants to the Customer the right to use that part of the Hardstand nominated by Auckland Council for the term subject to these terms and conditions.

2.2. Auckland Council may provide the Customer as an incident to its right to use the Hardstand, the services of Auckland Council’s Boat Mover to transport or tow the Boat to and from the Hardstand. If Auckland Council provides the Boat Mover, it does so on the terms and conditions of this Contract.

2.3. In consideration for the grant of the right to use the Hardstand and provision of the Boat Mover (if applicable), the Customer agrees to pay the all amounts payable under this Contract when due without any deduction or set-off with the first payment being due on the commencement of this Contract.

2.4. Without prejudice to Auckland Council’s rights, if Auckland Council permits the Customer to continue to occupy the Hardstand beyond the expiry of the term, the Customer will do so as a weekly basis and the fee shall be

payable weekly in advance (or a greater period, should Auckland Council require it) (“Holding Over Fee”), with the first payment to be payable on the day immediately following the Expiry Date. The Holding Over Fee will be the greater of the amount determined by Auckland Council. Such occupancy will be determinable by 1 days’ notice in writing by Auckland Council to the Customer but will otherwise be on the same terms and conditions as set out in this Contract.

3. TERMS AND CONDITIONS OF USE:

3.1. The Customer shall:

3.1.1. At all times keep the area of the Hardstand immediately adjacent to the surrounding of the Boat in a clean and tidy condition and so as not to be a nuisance or cause damage to any other person or property, and shall not store supplies and materials, accessories or debris on that area.

3.1.2. Comply with The Landing Rules and Regulations.

3.1.3. Deposit all waste in the relevant receptacles provided, provided that where the amount of waste to be removed from and around the Boat is considered by Auckland, in its sole discretion, to be unusually excessive, then the removal of this waste shall be at the Customer’s expense (payable on demand).

The Customer’s obligation under this clause is not derogated if Auckland Council fails to provide the receptacles.

3.2. The Customer shall not:

3.2.1. Make nor permit to be made, any noise or disturbance, or perform any act which in the opinion of Auckland Council, in its sole discretion may be an annoyance or cause a nuisance to any other person or body in and around the Hardstand.

3.2.2. Remove or tamper with any of the propping arrangements or equipment to sit the Boat on the Cradle or Hardstand.

3.2.3. Carry out any work on the Boat or on the Hardstand between the hours of sundown and 7.00am.

3.2.4. Undertake dry sanding or dry sandblasting of the Boat in and around any part of the Hardstand.

3.2.5. Carry out any spray painting work without the prior written consent of Auckland Council (at its sole discretion), and any such spray painting work shall be undertaken only with adequate covers for the protection of other vessels and the environment.

3.2.6. 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 or any other relevant statute or regulations.

3.3. Any breach of the duties in clause 3.2 shall be deemed to be a substantial breach of this Contract entitling Auckland Council to cancel this contract forthwith without notice.

4. CHARGES AND PAYMENT:

4.1. The Customer shall duly and punctually pay all charges when levied by Auckland Council, and in any event, before the Boat is removed from the Hardstand, at the rate specified based upon overall boat length.

4.1.1. the right for Auckland Council to review those charges at any time without notice; and

4.1.2. unless prior arrangements have been made with Auckland Council will double after the Boat has been situated on the Hardstand for 180 continuous days.

4.2. Auckland Council shall be entitled to charge the Customer a one off administrative fee of \$20 in the event of the Customer failing to keep a launching appointment for the use of the Boat Mover.

4.3. Payment for Boats on the Hardstand is due monthly by the 20th day of each month. Any amounts outstanding after the 20th of the month shall be subject to default interest chargeable at the rate of 2.5% per month regardless whether Auckland Council has demanded the outstanding amount. The default interest will accrue daily from the due date for payment to the date payment is actually received.

4.4. Postponement of launching due to circumstances beyond our control will result in normal daily rate charges applying.

4.5. If the Boat is launched after 10.30am on any given day, the daily rate will apply plus any applicable charges.

4.6. If any moneys are owing under this contract by the Customer for the use of the Boat Mover, or for the use of the Hardstand, Auckland Council shall be entitled to distrain the Boat and shall, from the date of such distraintment, have a general lien upon, and the right of retention of the Boat so distrained until all moneys payable by the Customer under this contract have been paid in full.

4.7. If the moneys owing remain unpaid for a period of 21 days after Auckland Council shall have given notice to the Customer of distraintment of the Boat, Auckland Council 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 all the expenses of distraintment and sale and that incurred due to the Customer’s breach, secondly the payment of moneys due to Auckland Council and lastly the payment of the balance (if any) to the Customer. The Customer will be liable for Auckland Council’s full legal and collection costs which will be added to any amounts due.

4.8. If there shall be a deficiency of funds from any sale pursuant to this clause to meet the costs noted above, Auckland Council may proceed to recover such deficiency from the Customer as liquidated damages.

4.9. The Customer indemnifies and saves harmless Auckland Council from all claims, suits and demands made by any person or corporation in respect of the Boat or any chattels distrained and sold pursuant to this Contract.

5. RISKS, EXCLUSIONS AND INDEMNITIES:

5.1. 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 Auckland Council in any manner whatsoever, including during any period while the Boat is being prepared for transport or transported to, on or from or stored upon the Hardstand, unless and until Auckland Council exercises its rights of seizure and sale referred to in clause 4.7.

5.2 The Customer acknowledges and agrees that:

5.2.1. Auckland Council gives no warranty to the Customer as to the suitability or condition of the Boat Mover and/or the Hardstand and/or the facilities and the Customer agrees that the Customer will use the Boat Mover, Hardstand and facilities solely at the Customer's own risk, and that Auckland Council shall have no liability whatsoever (including, without limitation, in contract, equity, negligence or tort, or under statute (to the fullest extent permitted by statute)) in relation to any such use;

5.2.2. Auckland Council is not responsible for and shall have no liability whatsoever (including, without limitation, in contract, equity, negligence or tort, or under statute (to the fullest extent permitted by statute)) in relation to the care or protection of any property at the Hardstand and The Landing or affected by the Boat Mover; and

5.2.3. During the duration the Customer is using the Boat Mover, Hardstand and facilities there will be other activities carried on in or around the Boat Mover, Hardstand and The Landing and the Customer shall have no claim against Auckland Council and Auckland Council shall have no liability whatsoever (including, without limitation, in contract, equity, negligence or tort, or under statute (to the fullest extent permitted by statute)) in relation to the same even though the activities may interfere with the Customer's use of the Boat Mover, Hardstand and facilities.

5.3 The Boat, and any other craft which is transported to, on or from, or stored upon the Hardstand, is entirely at the risk of the Customer, and shall remain at the risk of the Customer throughout the term of this contract.

Auckland Council shall not directly, indirectly or vicariously, nor shall any officer, agent, invitee, contractor or employee of Auckland Council, be liable howsoever (including, without limitation, in contract, equity, negligence or tort, or under statute (to the fullest extent permitted by statute)) for any damage to or theft or loss from the Boat, and any goods, gear or machinery situated on or around the Boat whilst the Boat is being prepared for transport or transported to, on or from or stored upon the Hardstand, 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 Auckland Council or not.

5.4 Auckland Council shall not directly, indirectly or vicariously, nor shall any officer, agent, invitee, contractor or employee of Auckland Council, be liable howsoever (including, without limitation, in contract, equity, negligence or tort, or under statute (to the fullest extent permitted by statute)) 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 water, or on the Hardstand or the Boat Mover, or inside the adjoining buildings howsoever such loss, damage or injury may occur.

5.5 To the extent permitted at law, the Customer indemnifies and will keep Auckland Council indemnified against all actions, suits, claims, debts, obligations, damage, losses, costs, or other liabilities (including, without limitation, any indirect or consequential damage, losses, costs, or 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 including without limitation in relation to the Hardstand, Boat Mover or any other craft on the water or on the Hardstand, or to any other property (whether owned by Auckland Council or other parties).

5.6 If the signatory to this contract, executes this contract as 'agent' or 'representative' for or on behalf of the owner of the Boat, then the signatory to this Contract must confirm in writing that the signatory has the authority to bind the owner. The signatory must also warrant to Auckland Council that all work carried out by the signatory has been carried out within his/her authority and with the full knowledge and consent of the owner of the Boat. The signatory and the owner of the Boat must jointly and severally indemnify Auckland Council from and against all and any claims against Auckland Council, arising from the action and omission of the signatory or owner, in addition to the provisions contained in this Contract.

6. GENERAL:

6.1 Auckland Council 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 Auckland Council may, in its sole discretion, deem satisfactory.

6.2 Notice –

(a) The Customer must advise Auckland Council (in writing) of any change to the Customer's address and contact numbers stated in the Contract or alternatively the name, contact, phone number and address of any agent to whom the Customer grants unlimited authority to act for the Customer in all matters concerning this contract. If an agent is appointed, Auckland Council is entitled to deal with that agent as if the agent were the Customer and the Customer shall be bound accordingly. If there is more than one customer or the Customer is a company or trust then all Customers must appoint either one of their number or some other person to be their agent otherwise the first named Customer shall be deemed to be the agent of all the Customers.

(b) Any notice of communication required or authorised to be given under this contract by:

(i) Auckland Council may be given, served or communicated if given in writing by Auckland Council and either delivered personally to the Customer or left at the Boat or posted to the Customer or the Customer's agent at the last address recorded with Auckland Council;

(ii) The Customer must be given in writing and either delivered personally or posted (by recorded delivery) to Auckland Council at Auckland Council's address (Private Bag 92300, Victoria Street West, Auckland) and if not will be of no effect whatever.

Any notification when given or served by post shall be deemed to have been delivered and received by the other party 2 days after the date of posting.

7. TERRITORIAL AUTHORITY:

Not applicable.

8. INSURANCE:

8.1 The Customer must, during the duration of this Contract, including preparation of the Boat for transportation, and transportation of the Boat to or from, and during use and occupation, of the Hardstand and The Landing at the Customer's own expense effect and maintain adequate public liability insurance cover, being at least One Million Dollars (\$1,000,000), and marine liability insurance to indemnify Auckland Council against public liability. The insurance must be with an insurer approved by Auckland Council. Auckland Council will not

unreasonably withhold its approval. The Customer shall produce reasonable proof to Auckland Council of the existence of that insurance before the Customer commences usage of the Hardstand, the facilities and The Landing.

9. HEALTH, SAFETY AND STATUTORY COMPLIANCE:

9.1 No person or Boat shall enter the vicinity of The Landing with any hazardous substances as defined under the Hazardous Substances and New Organisms Act 1996.

9.2 Without limiting the generality of the other provisions of this clause the Customer must not pollute or permit the pollution of the Hardstand and The Landing or discharge into the Hardstand and The Landing any poisonous, noxious, dangerous or offensive substance or thing, and in particular must comply with the provisions of the Resource Management Act 1991.

9.3 Notwithstanding any other provisions of this Contract, the Customer for the purposes of the Health and Safety in Employment Act 1992, is solely responsible for the health and safety of the Customers employees, contractors, invitees, guests and agents when the same are using or occupying the Hardstand and The Landing or undertaking any works in the Hardstand. The Customer must take all steps to ensure compliance with the Health and Safety in Employment Act 1992.

9.4 The Customer must ensure the Customer (including all officers, agents, employees, contractors and invitees of the Customer) comply with all New Zealand statutes and regulations and all local regulations, rules, bylaws imposed by any property authorised authority (including the Auckland Council).

10. RULES AND REGULATIONS:

10.1 In addition to the Rules and Regulations annexed and marked as First Schedule, Auckland Council can amend the existing rules and regulations or make new rules and regulations at its absolute discretion and as it considers desirable for the better management, safety, cleanliness or harmonious use of The Landing and Hardstand.

10.2 Any rules and regulations made shall be notified to the Customer (in writing) and binding on the Customer (once notified) as if they had been fully set out in the Contract

10.3 Auckland Council shall not be liable for failing to enforce any of the rules and regulations

11. FORCE MAJEURE:

11.1 Without limiting any other term in this Contract, Auckland Council shall not be deemed to be in breach of the

Contract or otherwise be liable to the Customer by reason of any delay in performance or non-performance of any of its obligations under this Contract to the extent that any such delay or non-performance is due to any force majeure which has been notified to the Customer, and the time for performance of that obligation shall be extended accordingly.

11.2 For the purposes of this clause "Force Majeure" means any circumstance beyond the reasonable control of Auckland Council.

12. TRANSFER OR ASSIGNMENT:

12.1 Without limiting clause 2.3, the customer shall have no right to assign, transfer or otherwise part with the right to use The Landing and Hardstand conferred by this Contract.

13. TERMINATION:

13.1 If the Customer at any time shall be in breach of any terms and conditions and provisions of this Contract (including the breach of any rules and regulations) hereof on the Customer's part to be observed and performed, the Customer's right to use The Landing and Hardstand facilities pursuant to this Contract shall terminate forthwith upon service of written notice from Auckland Council of such breach and the further provisions of this clause shall become applicable and maybe enforced by Auckland Council.

13.2 On termination of the Contract (other than due to non-payment stipulated in clause 3 above), the Customer shall promptly remove the vessel and all the goods and effects of the Customer from The Landing and Hardstand; and in default of the Customer so doing, Auckland Council shall be entitled to remove them to any convenient place and to contract for their safekeeping and for payment of storage and insurance fees as agent for the Customer. In that event, Auckland Council may apply to authorising the Customer to remove the vessel charged per customer a panel fee (together with recovering all costs incurred in accordance with this clause). All costs and expenses thereby incurred shall be payable by the Customer to Auckland Council who may sue for and recover the same as liquidated damages.

13.3 The Customer shall indemnify Auckland Council against all liability for fees and expenses incurred in respect of such removal or storage or any matter arising there from. Anything done by Auckland Council pursuant to this clause shall be deemed to be done as agent and at the risk and cost of the Customer.

14. SUITABILITY OF THE LANDING AND HARDSTAND:

14.1 Auckland Council does not warrant The Landing and Hardstand facilities are suitable or adequate for the Customer's purposes. All warranties as to suitability and adequacy implied by law are expressly negated to the full extent permitted by law.

14.2 Auckland Council is not responsible for providing any safety measures to protect the Boat or any fixtures, fittings or equipment from water damage, fire explosions, storm, hazards or potential hazards whether coming from inside or outside The Landing and Hardstand.

15. NOTIFICATION OF DEFECTS:

15.1 The Customer must immediately bring to Auckland Council's attention any damage, breakage or defect in or to any part of The Landing and Hardstand facilities and any circumstances likely to cause damage or injury to property or persons.

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