

Short Term Hire Agreement

Shute Harbour Marine Terminal

Terms and Conditions

1. Right to berth Your Vessel and use the Shute Harbour Marine Terminal

1.1 In consideration of You paying to the Whitsunday Regional Council 'the Council' the Fee by the Payment Date, the Council agree to allow You to:

- a) berth Your Vessel in the Berth as nominated by Council,
- b) use the Berth for the purpose of embarking and disembarking from Your Vessel; and
- c) access those parts of the Shute Harbour Marine Terminal intended by the Council for common use by:
 - i. occupants of the Shute Harbour Marine Terminal; and
 - ii. visitors from the general public 'the Common Areas',for the purposes for which they are intended,

during any Berthing Period from the Start Date to the End Date, pursuant to the terms and conditions set out in this Agreement or as otherwise varied in writing.

1.2 You acknowledge and agree that the terms and conditions of this Agreement will apply to any berthing of Your Vessel at the Shute Harbour Marine Terminal at any time, pending an updated agreement being entered into.

2. Compliance with the Shute Harbour Marine Terminal Rules

2.1 You must at all times, promptly and at Your own cost, comply with the Shute Harbour Marine Terminal Rules (as may be supplemented or amended from time to time), a current copy of which are annexed to this Agreement.

3. Payment and other important matters

Payment and cancellation

3.1 You must pay any amounts owing under this Agreement by a method stated by the Council, in full and without set-off, counterclaim, withholding or deduction. You may be required to complete a credit application form.

3.2 If You fail to pay the Fee by the Payment Date, or any other amount owing under this Agreement has not been paid by the relevant due date, the Council, at its discretion reserves the right to:

- a) refuse to allow You to use, access and/or occupy the Berth and/or the Shute Harbour Marine Terminal;
- b) stop providing utility and other services; and/or
- c) charge interest at the standard contract default rate published by the Queensland Law Society from time to time.

3.3 Once You have paid the Fee for any particular Berthing Period, the Fee will be non-refundable and is not transferable

Key

3.4 On arrival at the Shute Harbour Marine Terminal, the Council will issue You with a key/access device 'the Key' to enable you to access 'Finger 2' and the Berth. We may require You to pay the Council a security deposit in exchange for the Key.

3.5 You must ensure that the Key is safely and properly guarded at all times and used only by You or Your Associates to access 'Finger 2' as intended within this Agreement.

3.6 At the end of each Berthing Period, or as otherwise agreed to by the Council, You must return the Key to the Council.

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3.7 If the Key is not returned to the Council, or is returned damaged, You must pay any costs incurred to replace or repair the Key and/or to secure the Shute Harbour Marine Terminal. We reserve the right to have recourse to any security deposit paid by You.

4. Reservations

4.1 You acknowledge and agree that:

Non-exclusivity

- a) Your right to occupy and use the Berth is non-exclusive.

No representations or reliance

- b) The Council have not made any representations to You (in any form) regarding the suitability or otherwise of the Berth for its intended use;
- c) You must make and rely on Your own enquiries regarding the suitability and appropriateness of the Berth for its intended use;

Risk

- d) You will be using and/or occupying the Berth at Your own risk;

Interruption to services

- e) The Council will not be liable to You for any loss or damage which You may suffer because of any unforeseen interruption to any utility, refuelling or other service provided to the Berth and/or the Shute Harbour Marine Terminal at any time.

5. Insurance

5.1 You must take out and maintain with a reputable insurer for the duration of any Berthing Period:

- a) public liability insurance (including but not limited to marine liability insurance) for at least \$20,000,000.00 per occurrence which contains a principal's extension clause and covers the operation of Your Vessel and any personal injury and/or property damage to third parties, including any liability arising out of a cyclone, windstorm or other severe weather event;
- b) comprehensive property damage insurance for the market value of Your Vessel from time to time, which includes cover for (and does not exclude) damage to Your Vessel caused by a cyclone, windstorm or other severe weather event and any associated costs, including costs involved with salvage and wreck removal;
- c) any other insurances required by law or which, in the Council's reasonable opinion, a prudent person in Your position would take out in relation to Your Vessel or Your use of Your Vessel.

5.2 You must also:

- a) upon Your Vessel first arriving at the Shute Harbour Marine Terminal and at any time requested by the Council prior to the End Date, give written evidence, including copies of any certificate/s of currency and/or policy wordings, showing that You have taken out adequate insurance in compliance with this clause; and
- b) promptly notify the Council if an insurance policy required by this Clause is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with any part of the Berth, the Shute Harbour Marine Terminal and/or surrounding areas; and
- c) not do anything which might affect Council's rights under any insurance policy taken out in relation to the Berth, the Shute Harbour Marine Terminal and/or surrounding areas.

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6. Release & Indemnity

6.1 You agree:

- a) not to make any claim or demand against the Council;
- b) to release the Council from any liability (to the extent permitted by law); and
- c) to indemnify the Council and keep Council indemnified,

in relation to:

- i. any claim, demand, suit, proceeding or other action made against the Council; or
- ii. damage, cost, expense or any other form of loss the Council may suffer or incur,
- iii. caused or contributed to by, or arising out of or in connection with:
 - a. the use and/or occupation of the Berth, the Shute Harbour Marine Terminal, the Common Areas, and/or the Surrounding Environment by You or Your Associates;
 - b. any damage, loss, injury or death caused or contributed to by any act, omission, negligence or default of You or Your Associates; and/or
 - c. Your breach of, or failure to observe the terms and conditions of, this Agreement,
 - d. except to the extent any such loss is caused by the Council's own negligence.

7. Default

7.1 You will be in default of this Agreement if:

- a) the Fee, any part of it or any other moneys payable by You to Us pursuant to this Agreement or otherwise are in arrears and remain unpaid for seven (7) days after any of the due date/s for payment (whether demanded or not);
- b) You fail to promptly comply with, or ensure compliance with, any of the terms and conditions of this Agreement which ought to be performed or observed by You or Your Associates;
- c) You abandon, vacate or otherwise surrender the Berth or Your Vessel in a manner which is inconsistent with the use contemplated by this Agreement (in Our reasonable opinion); or
- d) You enter into any form of external administration, liquidation, bankruptcy, insolvency or are wound up or dissolved, enter into a scheme of arrangement for creditors, are placed under administration or a receiver and manager is appointed.

8. Termination

Council's right to terminate

8.1 If You are in default under this Agreement and have not remedied the default within a reasonable time after being given written notice by the Council to remedy the default (bearing in mind that what constitutes "a reasonable time" will vary significantly from case to case and will be determined by the Council at its absolute discretion), the Council may terminate this Agreement by notice in writing to You and in such a case, without prejudice to the Council's other rights (whether accrued under this Agreement or otherwise), the Council:

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- a) May
 - i. immediately enter upon and move Your Vessel to another area either within or outside of the Shute Harbour Marine Terminal (including to dry storage);
 - ii. exercise a lien or other similar right over Your Vessel for any amounts which are owed by You to the Council;
 - iii. retain possession of Your Vessel until such time as any amounts which are owed by You to the Council have been paid in full;
 - iv. immediately seize, sell and/or dispose of Your Vessel in any manner the Council may see fit (including by way of public auction or private sale) – which you hereby authorise the Council to do; and/or
 - v. charge You for, or recover from any sale proceeds, the reasonable costs incurred by the Council in doing any of the above, which becomes a debt due and payable, without further notice or any liability to You and notwithstanding the provisions of any law (to the extent permitted by law); and
- b) will not otherwise be restricted or limited in the Council's right to continue or pursue any recovery claim or proceeding that the Council may otherwise have against You.

Further rights of termination

8.2 In addition to the rights contemplated in clause 8.1, the Council may also: -

- a) terminate this Agreement with immediate effect if you breach clause 2 of this Agreement and the breach (in our opinion) threatens the safety of any person or property within the Shute Harbour Marine Terminal; and
- b) suspend the performance of or elect to terminate this Agreement if the performance of this Agreement is, or will be significantly impacted by any circumstance or event beyond the Council's reasonable control, including but not limited to acts of god, storms, tidal surges, tidal lows, extreme weather or any other form of inclement weather, acts of war, terrorism, malicious damage, pandemics, COVID-19 and/or strikes.

Termination for Convenience

8.3 Either Party may, at its discretion, terminate this Agreement for any reason, providing 24 hours' written notification.

8.4 If a termination of the Agreement occurs under Clause 8.3, You may be entitled to a refund of costs paid, if paid in advance.

9. End of term obligations

9.1 In addition to Your general obligations contained in the Shute Harbour Marine Terminal Rules, You must, on or before the end of each Berthing Period or the earlier termination of this Agreement:

- a) remove Your property and Your Vessel from the Berth and the Shute Harbour Marine Terminal; and
- b) otherwise remedy any breaches of this Agreement.

9.2 If You fail to comply with Clause 9.1(a), You authorise the Council to do anything contemplated in Clause 8.1(a) in relation to Your Vessel.

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10. General Rules

The following general rules apply in relation to the use and/or occupation of the Shute Harbour Marine Terminal by You and/or Your Associates from time to time:

Vessel

- 10.1 Your Vessel must be kept in a sound, safe, secure, watertight and seaworthy condition.
- 10.2 Your Vessel will only be admitted to the Shute Harbour Marine Terminal if it is in a seaworthy condition and is under its own power, except in the case of a volunteer marine rescue recovery.
- 10.3 A maximum speed limit of six (6) knots (no wash) is to be observed when Your Vessel is approaching, within or departing from the Shute Harbour Marine Terminal.
- 10.4 Upon entering the Shute Harbour Marine Terminal, Your Vessel will be immediately subject to the Council's direction. Your Vessel must only be manoeuvred and berthed by You as directed by the Council.
- 10.5 You must:
 - a) promptly comply with and observe the Council's directions, including any directions by authorised Council Officers;
 - b) comply with standard navigational practices and navigate Your Vessel in the Shute Harbour Marine Terminal so as to not endanger or inconvenience other users of the Shute Harbour Marine Terminal;
 - c) ensure Your Vessel is operated in a safe and proper manner by a person who has sufficient skills, qualifications, training and experience to do so;
 - d) ensure Your Vessel is not operated recklessly or negligently or cause any damage to any part of the Shute Harbour Marine Terminal.
- 10.6 Any refuelling of Your Vessel at the Shute Harbour Marine Terminal must only be done at the fuelling facility as designated by the Council from time to time.
- 10.7 Fuel must be booked in advance. The Council may also require You to make payment for the fuel in advance. If You are required to pay in advance, the Council may issue You with a fuel card with pre-loaded credit. You will be bound by the terms and conditions which govern the use of fuel cards issued by the Council.
- 10.8 Upon completion of refuelling (and payment if not already made), Your Vessel is required to depart from the fuelling facility immediately.
- 10.9 No spilling of fuel or oil is permitted from Your Vessel during refuelling (or otherwise). It is Your responsibility to ensure this does not occur. Any such incidents must be reported to the Council immediately. The Council will then ascertain what steps are necessary to rectify the situation. The costs of any such rectification will be borne by You.
- 10.10 If any oil leak occurs from Your Vessel or otherwise, it must be:
 - a) contained by a suitable method (for example, by using the spill kits located throughout the Shute Harbour Marine Terminal);
 - b) reported to the Council immediately;
 - c) disposed of in the oil recycling containers located at the Shute Harbour Marine Terminal;

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- d) repaired as soon as possible; and
- e) inspected by the Council.

10.11 You must not discharge anything of whatever nature into the waters in the Shute Harbour Marine Terminal and must not (while Your Vessel is in the Shute Harbour Marine Terminal) use any toilet on Your Vessel unless the toilet is connected to an approved holding tank in Your Vessel.

10.12 If the Council observe that Your Vessel is discharging contaminants (including but not limited to oil, fuel or sullage water) in the Shute Harbour Marine Terminal, Council will attend to Your Vessel and endeavour to contain and manage the situation. In such an event:

- a) the Council will notify You of the incident as soon as reasonably practicable;
- b) You must cease any activity resulting in the discharge;
- c) the Council may, at its absolute discretion, board Your Vessel if it is unattended to de-activate the pumps;
- d) the Council will deploy anti-pollution materials (if necessary) and take steps to remove the contaminant from the Shute Harbour Marine Terminal by mechanical or other suitable methods;
- e) You will be liable to reimburse the Council for any costs or expenses incurred in relation to any such clean-up; and
- f) the Council will prepare and file a report pursuant to the Environmental Protection Act 1994 (Qld), if necessary.

10.13 You must:

- a) ensure that Your Vessel does not become unsightly or dilapidated so as to reflect unfavourably on the Shute Harbour Marine Terminal;
- b) keep the decks of Your Vessel free and clear of debris, bottles, papers, trash and other unsightly material at all times;
- c) ensure that Your Vessel is kept free from pests, insects, vermin, infectious diseases and infections;
- d) ensure that all dinghies, tenders, rafts, equipment and other property are stowed aboard Your Vessel at all times while in the Shute Harbour Marine Terminal, unless You have obtained the Council's prior written permission;
- e) take all necessary precautions against the outbreak of fire in or upon Your Vessel while it is the Shute Harbour Marine Terminal;
- f) ensure that Your Vessel is secured appropriately when not in use for any period of time;
- g) take all reasonable precautions to protect Your Vessel and Your property from theft and/or vandalism;
- h) ensure that Your Vessel has adequate covers (for example a canopy, storm curtains/covers or tonneau covers) to protect Your Vessel from any inclement weather; and
- i) not use Your Vessel in the Shute Harbour Marine Terminal as a residence, sleeping quarters or permanent place for human habitation, unless Your Vessel is being used by a private operator pursuant to a Private Berthing Agreement.

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Berth

10.14 Your Vessel must, at all times while moored within the Shute Harbour Marine Terminal:

- a) sit within the dimensions of the Berth;
- b) not encroach on the boundary of any other berth in the Shute Harbour Marine Terminal or overhang any walkway or pier;

NOTE: Measurement of Your Vessel is to be length overall (LOA), being the measurement to its outer most extremities, including the anchor, bow, motor and tender.

- c) be moored with mooring lines (provided by You) which are adequate for the size and weight of Your Vessel and in good condition;

10.15 You must:

- a) arrange (at Your expense) for any additional or replacement mooring lines to be obtained and used if, in the Council's opinion, the mooring lines you have provided are inadequate or the Council consider additional lines are necessary;
- b) keep the Berth, and any other area of the Shute Harbour Marine Terminal used by You from time to time, in a clean state and free from rubbish at all times;
- c) keep the sight line of any navigation leads, light or mark which crosses the Berth clear of obstruction (to Council's satisfaction); and
- d) not leave any fuel containers on the Berth or anywhere else within the Shute Harbour Marine Terminal.

10.16 Only approved power leads which are compliant with Australian Standard AS 3760:2010 In-service safety inspection and testing of electrical equipment or equivalent as amended from time to time, have been checked for correct polarity, have been tested and tagged by a licensed electrical contractor within a reasonable time prior to the Start Date and inspected by the Council can be used to connect to the power supply which runs to the Berth.

10.17 We reserve the right to disconnect (without notice) power cords if the Council consider them to be potentially dangerous, damaged, across walkways and (in particular) if they are being used in non-compliance with Clause 10.16.

Conduct

10.18 You must promptly, at all times and at Your own cost:

- a) observe, perform, fulfil and comply with (on time) all requirements of any law, statute, rule, regulation, engineering rating, industry standard or requirement of any State, Federal or local government or other authority with jurisdiction relating to Your Vessel, the Business (in the case of commercial operators) and/or Your use and occupation of the Shute Harbour Marine Terminal;
- b) obtain and maintain any necessary permits, consents, approvals, licences and/or registrations to operate Your Vessel, the Business (in the case of commercial operators) and/or access the Shute Harbour Marine Terminal;
- c) make arrangements to ensure the safe, proper and lawful disembarkation of all persons from Your Vessel and at all times while they are present on the Shute Harbour Marine Terminal (with the same obligation applying in reverse on embarkation);

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- d) ensure that any gates, entrances and/or exits within the Shute Harbour Marine Terminal which are opened by You are properly closed (and secured, if appropriate) after each use; and
- e) ensure that no unauthorised persons or external contractors access the Shute Harbour Marine Terminal, without first obtaining Council's prior written consent.

10.19 You must not at any time:

- a) cause or permit any damage to occur to the Berth, the Shute Harbour Marine Terminal and/or the Precinct or any other vessel or item of property located in the Shute Harbour Marine Terminal, whether by virtue of the operation of Your Vessel or otherwise. If damage does occur:
 - i. You must:
 - a. give immediate verbal and written notice to the Council of any such damage, and the circumstances surrounding same;
 - b. after giving notice, promptly repair any damage caused by the act, omission, negligence or default of You or Your Associates as the case may be as directed by the Council, or (on demand by the Council) pay the cost of undertaking such repairs so the Council can engage contractors to conduct the works;
 - ii. to the Berth such that it cannot safely be used, the Council may at its discretion (and without prejudice to any other remedy or right We may have) require Your Vessel to be relocated to a similar berth within the Shute Harbour Marine Terminal until such time as the Berth is considered safe for use;
- b) in any way obstruct, overload, alter or interfere with:
 - i. the Berth, the Shute Harbour Marine Terminal and/or the surrounding areas;
 - ii. the embarkation or disembarkation of persons or goods from other vessels at the Shute Harbour Marine Terminal;
 - iii. the proper and ordinary operation of the Shute Harbour Marine Terminal; or
 - iv. the connections, fittings or equipment relating to the supply of water, gas, electricity or other services to the Berth
- c) use the Berth or the Shute Harbour Marine Terminal for any purpose other as contemplated by the Council on granting You the right to use the Berth or the Shute Harbour Marine Terminal; and/or
- d) allow any vessel other than the registered Vessel to use the Berth and/or enter the Shute Harbour Marine Terminal.

Council's Rights

10.20 The Council may, at its discretion:

- a) direct You to relocate Your Vessel to any other berth/s in the Shute Harbour Marine Terminal that is appropriate for Your Vessel at any point during the Term; and
- b) enter:
 - i. the Berth at any time to:
 - a. view its state of repair and condition, and that of Your Vessel; and
 - b. undertake any repairs to the Berth which may be reasonably necessary;

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- ii. Your Vessel to conduct inspections and move Your Vessel as necessary without obtaining Your consent in the event of:
 - a. an emergency;
 - b. matters of public safety; or
 - c. breach by You.

Extreme Weather Preparedness

- 10.21 You must promptly comply with, and be aware of Your obligations under, the Shute Harbour Marine Terminal Cyclone Plan.
- 10.22 The Shute Harbour Marine Terminal Cyclone Plan has been developed by the Council to ensure the safety of people, vessels and the Shute Harbour Marine Terminal generally.
- 10.23 A copy of the Shute Harbour Marine Terminal Cyclone Plan is available on the Shute Harbour Marine Terminal website. Council will also provide You with a copy upon request.

General

- 10.24 The Council have fire & emergency evacuation procedures in place which You must comply with from time to time. Copies of these procedures will be provided upon request.
- 10.25 The firefighting equipment within the Shute Harbour Marine Terminal must not be used for any purpose other than firefighting, without the Council's prior written consent.
- 10.26 If the Council request any information and/or document from You in relation to Your Vessel, Your use of the Shute Harbour Marine Terminal or otherwise, You must promptly respond to any such request and provide the requested information and/or document as soon as possible.