

PELICAN WATERS MARINA

INFORMATION SHEET – PLEASE READ

Dear Consumer (**you, your**),

Before entering into an agreement with Pelican Waters Marina (**us, our, we**), please ensure that you have read and understand this Information Sheet and our Marina Terms to which this information Sheet is annexed and to which it relates.

If you do not understand this Information Sheet or the Marina Terms you should seek independent legal advice.

These documents govern our dealings with you and how we are to provide our services to you, as well as our obligations to you and your obligations to us. **You should be aware that the Marina Terms contain provisions that may substantially prejudice your interests**, including the following clauses:

Clause 7: You may be liable to pay us interest on any amount overdue for more than 14 days.

Clause 16: This clause completely exclude our liability for any claims or loss, damage or expense you may suffer to the fullest extent permitted by law, as a result of you using and accessing the marina facilities.

Clause 17: Under this clause, in the event a claim cannot be excluded by law, you will be limited to receiving the amounts received from an insurer as a result of a successful claim against us.

Clauses 18-19: Under these clauses, you indemnify us from and against any claims, demands, losses, damages, costs or expenses which we may become liable, including any that arise from loss, damage or injury, arising from any cause in your use or occupation, of the marina or any act or omission by you which may result in any discharge or spillage from your Vessel, or any damage, derogation or erosion of the natural environment.

Clause 20: Under no circumstances will we be liable to you for any indirect or consequential loss, loss of income, profit, opportunity or damage arising out of or in connection to this agreement.

Clause 25: If you do not remove your vessel after the termination of the Agreement, we may remove your Vessel from the current berth or render it inoperable at your cost. We may also treat your Vessel as abandoned and sell it and any other property contained within it without your permission in accordance with the Uncollected Goods Act 1995.

Clause 29: Under this clause we have a lien on your Vessel, its appurtenances, and contents. In addition to the interest payable on any amount overdue for more than 14 days, we may exercise our right and sell your Vessel to cover any amounts owed to us.

PELICAN WATERS



MARINA

These **MARINA** terms, any order form or proposal to which these terms are attached or in which these terms are referred, together make up a legally binding Licence and Facility Agreement (“**the Agreement**”) between PELICAN WATERS MARINA (“**PWM**”) and The Boat Owner identified in Item 1 of Schedule A (“**the Owner**”). The Agreement may be accepted by the Owner by doing either one or more of the following:

- i. Signing these terms and conditions of trade; or
- ii. Signing the Customer Details, Schedule, proposal or quotation issued by PWM in which these terms and conditions were attached or referred; or
- iii. Leaving a vessel at PWM’s marina or accepting a quotation or proposal after receiving notice of these terms and conditions of trade.

The Owner has requested that PWM supply, and PWM has agreed to supply, a berth, mooring or storage facility and ancillary services for the duration of the term which commences on the date of this Agreement and:

- i. where the Owner is a permanent user (as identified in Schedule A), will run for at least the minimum period set out in Schedule A and if no period, then 3 months from the date of this Agreement; and
- ii. where the Owner is a casual user (as identified in Schedule A), at the end of the period nominated in the tax invoice submitted to and paid by the Owner to PWM, (“**the Term**”) to permit the Owner to store the goods described at Item 2 of Schedule A hereto (“**the Vessel**”) in accordance with these Terms and Conditions.

TERM AND AMENDMENT

- 1) This Agreement will commence and will have effect on and from the date of acceptance as set out in the preamble hereto and will expire on the expiry of the Term unless terminated earlier in accordance with clause 22) or 23) or extended by permission of PWM. Should PWM allow the Owner to continue to store the Vessel beyond the initial Term set out above, unless otherwise agreed, it will be on a month to month holding over basis, and otherwise subject to these terms and conditions.
- 2) PWM reserves the right to amend this Agreement, provided such amendments are conveyed to the Owner in writing after the date of any agreed fixed term (to allow the Owner the ability to terminate this Agreement in accordance with clause 22 if the Owner is not satisfied with the amended Agreement). The Owner further acknowledges that such written notice may be provided by email or ordinary mail to the current address for the Owner held by PWM at the time. Any amendments will be deemed to be accepted if no written objection is provided to PWM within 14 days of written notice being sent to the Owner.

PAYMENT, DEPOSITS AND PRICE

- 3) At the time the Owner makes a request for storage of a Vessel, the Owner shall pay a deposit to PWM of the amount specified in Item 3 of Schedule A (“**the Security Deposit**”). The Security Deposit secures to PWM any moneys owed by the Owner to PWM and the performance of any obligation by the Owner. PWM is entitled to deduct from the Security Deposit, an amount equal to any monies due but remain unpaid by the Owner for a period of 14 days or more under this Agreement as well as any loss or damage suffered by PWM caused or contributed to by the acts or omissions of the Owner. The Security Deposit (or such of it then remaining) is refundable on termination of this Agreement after the Owner has satisfied all of its obligations under this Agreement or at law and following deduction of any and all outstanding monies owing to PWM by the Owner.
- 4) The Owner shall pay the Licence fee specified in Item 3 of Schedule A (“**the Licence Fee**”) to PWM. Where the Owner is a permanent user, PWM will submit tax invoices to the Owner on the first day of each month in respect of the Licence Fee. Where the Owner is a casual user PWM will submit a tax invoice to the Owner at the commencement of this Agreement in respect of the Licence Fee. The Owner will pay the amount of each invoice to the account or by the method nominated by PWM **on the date specified in each invoice.**

- 5) The parties agree that the Licence Fee may be reviewed by methods and at intervals determined by PWM in its discretion. PWM will give the Owner at least 1 month's prior notice of any increase to the Licence Fee. If the Owner does not agree with the increased Licence Fee it may terminate this Agreement pursuant to clause 22) but will have no further recourse against PWM in respect of any such increase. Any increases in Licence Fee determined pursuant to this clause 5) will not be applied to any permanent user Licence of at least 12 months duration where the Owner and PWM have executed a Licence agreement and the Licence Fees for the total Licence period have been paid to and received by PWM in advance on the commencement of the Licence period. The Owner must also pay an increased Security Deposit to PWM in proportion to the increase in Licence Fee.
- 6) The Licence Fee is calculated on the allocated berth size or the vessel length, whichever is greater. Including bowsprit and swim boards etc.
Owner warrants that the vessel has the dimensions as set out in Schedule 'A'. The Owner will pay any adjusted fees and shall be liable for any damage or additional expense arising directly or indirectly out of a breach of that warranty or anything contained in that warranty being or becoming untrue, inaccurate or misleading. All amounts payable by the Owner under this Agreement are inclusive of GST.
- 7) If any payments due under this Agreement are not paid, interest shall be payable by the Owner at the rate of 10% per annum compounding daily and calculated from the due date until the date payment is received by PWM.

LICENCE, FACILITIES AND BERTHING

- 8) The Owner acknowledges that PWM has established a number of different rules and regulations governing the use of the vessels in the marina and general access rules for the benefit and safety of all users of the marina, as well as separate rules and procedures for use of slipping and hardstand facilities (collectively, "**Rules and Regulations**"). The Rules and Regulations do not form part of this Agreement, but the Owner undertakes to PWM to comply with the Rules and Regulations whilst ever the Owner uses any of PWM's facilities. For ease of reference only, the current Rules and Regulations are annexed hereto. PWM may, in its discretion, modify, add to or remove portions of the Rules and Regulations from time to time and the Owner agrees to review the Rules and Regulations published on PWM's website periodically so that it is updated on any changes.
- 9) (a) PWM grants a non-exclusive Licence to the Owner to berth or moor the Owner's Vessel at PWM's marina facilities in a location to be determined by PWM from time to time in its discretion for the Term ("**Licence**"). The Licence is not in respect of a particular pen, berth or mooring within PWM's marina facility. PWM may change the location of the allocated pen, berth or mooring from time to time at its discretion. The Licence is granted subject to the Owner complying, and procuring that any employee, guest or invitee complies, with this Agreement and any Rules and Regulations in place from time to time.
(b) Initial berth allocations are made on the basis that the Vessel will arrive at the berth within 30 days of the commencement of the Agreement. Should the vessel not arrive during this time, PWM reserves the right to re-allocate an alternative berth to the Owner. If an alternative berth attracts different Licence Fees, then this Agreement will be terminated and a new Agreement entered into containing new Licence Fees.
- 10) If at any time the vessel is required to be moved or requires work or repairs to be carried out which necessitates the use of any equipment of PWM, then the Owner agrees to be bound by any terms and conditions of usage of that equipment in force for the time being and by any direction of PWM in relation to such use.
- 11) The Owner authorises PWM, if necessary, to enter the Vessel, start the engine, salvage, and/or tow the Vessel so as to move or relocate the Vessel within the Marina if the Vessel is damaged, has sunk or is in the process of sinking, is at risk of causing damage to other vessels or PWM plant, equipment or infrastructure, is at risk of causing harm to the environment, or if such movement or relocation is considered necessary by PWM for any other reason.
- 12) In addition to the preceding, the Owner authorises PWM and its servants or agents to move the Vessel to any other place at the Owner's risk and expense absolutely in the event of any emergency, impending or predicted extreme weather event, or if otherwise required at the discretion of PWM. Nothing in this clause shall be deemed to place any obligation or duty of care on PWM to attempt to minimise or prevent any damage to the Vessel.
- 13) During the Term the Owner shall not sell or attempt to sell or advertise the Vessel for sale without giving prior written notice to PWM. The Owner must obtain the prior written consent of PWM to display any signage or sale material on vessels or marina property, with such consent being granted or withheld in the absolute discretion of PWM. PWM wishes to control the installation of signage in and around the marina. The Owner must provide PWM with prior notice of the Owner's intention to sell the Vessel and of any termination of this Agreement that may result from such sale.
- 14) Nothing in this Agreement shall confer on the Owner any right as a tenant of the storage space, mooring or any part of the marina, nor shall it create the relationship of landlord and tenant between PWM and the Owner.

INSURANCE & RISK

- 15) The Owner will effect and maintain during the Term an adequate public risk insurance policy with a minimum of \$10M for each event and insurance of the Vessel and all its contents and appurtenances for its full replacement value and will **provide evidence of currency of insurance to PWM from time to time upon request and otherwise on each anniversary of the date of this Agreement while the Vessel is moored.**
- 16) The Owner stores the Vessel at the marina and uses and accesses the marina facilities at its own risk absolutely and the Owner hereby releases to the full extent permitted by the law PWM and its agents, servants, contractors and employees from all actions, claims and demands of every kind and from all liability which may arise in respect of any accident, damage or injury occurring from any cause whatsoever in connection with the use of PWM's marina by or on behalf of the Owner.
- 17) The parties agree that, to the extent permitted by law, any liability for a claim against PWM that cannot be excluded will be limited to the total of any amounts received from an insurer as a result of a successful claim made under an insurance policy held by PWM in respect of the event giving rise to the claim against PWM.
- 18) The Owner hereby indemnifies PWM and keeps PWM indemnified from and against all actions, claims, demands, losses, damages, costs and expenses for which PWM shall or may become liable in respect of or arising from loss, damage or injury from any cause whatsoever to property or persons within or without PWM's marina or other premises caused or contributed to by the use of the marina or other premises by the Owner or its servants, agents, employees, contractors, sub-contractors or invitees or by any act, omission, neglect, breach or default by any such person or persons.
- 19) Without limiting any of the foregoing, the Owner indemnifies PWM and keeps PWM indemnified against any cost, loss, damage, expense, liability or claim (including without limitation any fine or penalty) suffered or incurred by PWM as a result of any act or omission of the Owner or any employee, agent or invitee of the Owner which results in any discharge or spillage from the Vessel or the marina or any damage, derogation or erosion of the natural environment.
- 20) Notwithstanding any of the above, the parties agree that PWM will under no circumstances be liable to the Owner for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.

WARRANTIES

- 21) The Owner (and each director and office bearer if the Owner is a company) separately warrants to PWM that:
 - (a) the Owner is the legal owner of the Vessel or is the duly authorised agent and is authorised by the legal owner to enter into this Agreement and receive any notice on the legal owner's behalf including notice required under section 6(2)(b) of the *Storage Liens Act 1935*
 - (b) in the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the Bankruptcy Act or otherwise assigned his/her assets for the benefit of creditors;
 - (c) in the case of a company, it has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due;
 - (d) it is not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of PWM whether in answer to an enquiry or otherwise;
 - (e) it has satisfied itself as to the condition and state of repair of the facilities provided by PWM under this Licence and adequacy of those facilities for the berthing, stowage and mooring of the Vessel and, to the extent permitted by law, the Owner is not relying on any warranty, promise or representation in relation to the facilities or services, either expressly or impliedly given by PWM;
 - (f) it has obtained all required Licences and permits required to legally operate the Vessel.

TERMINATION

- 22) Either party may terminate this Agreement by delivering to the other party **1 months' prior written notice.**
- 23) Without limiting any other rights of PWM, PWM may terminate this agreement immediately upon the happening of any of the following:-
 - (a) breach by the Owner of any of the provisions of this Agreement or the Rules and Regulations set by PWM from time to time; or
 - (b) if in the opinion of PWM the berthing, stowage or mooring facilities become unserviceable; or
 - (c) conduct by the Owner, its servants, agents or guests is in the opinion of PWM prejudicial to the interest of PWM; or

- (d) if the Owner suffers any event similar to those detailed in clauses 21(b) or (c)
- 24)** If this Agreement expires or is terminated for any reason the Owner must remove the Vessel immediately from PWM's marina upon such termination or expiration.
- 25)** If the Owner fails to remove the Vessel or any other property belonging to the Owner after termination or expiration of this Agreement then:
- (a) PWM may at its option, but at the risk of the Owner absolutely, remove the Vessel and berth/moor the Vessel to another suitable site as well as secure the Vessel and/or perform works on the Vessel to otherwise render the Vessel non-operational so that it cannot be retrieved by the Owner without the knowledge or consent of PWM. The Owner will pay the cost of such removal, security, works and any ongoing berth or mooring or other suitable site fees; and
 - (b) PWM may treat the Vessel as abandoned and pursuant to the *Uncollected Goods Act 1995* or any other relevant legislation, advertise the Vessel and/or the property for sale and then proceed to sell the Vessel and/or the property provided that PWM must comply at all times with the *Uncollected Goods Act 1995* or other relevant legislation; and
 - (c) the Owner will continue to be liable to PWM for the Licence Fee and any obligation on the part of the Owner under this Agreement until the Vessel has been removed.

DEFAULTS AND RIGHTS

- 26)** In the event of default under this Agreement by the Owner, the whole the Licence Fee payable for the Term, or any outstanding balance, will become immediately due and payable by the Owner to PWM together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis and interest properly accruing on any outstanding amounts.
- 27)** The certificate of a director or the credit manager of PWM will, in the absence of evidence to the contrary, be conclusive as to any outstanding amount/s.
- 28)** No failure or delay of PWM to exercise any right or obligation hereunder and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by PWM of any particular default by the Owner shall affect or prejudice PWM's rights in respect of any subsequent default and no indulgence or forbearance by PWM of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default

STORAGE LIEN

- 29)** The Owner acknowledges that PWM shall have a lien on the Vessel, its appurtenances, and contents in accordance with section 3 of the *Storage Liens Act 1935*. If any fees due by the Owner to PWM remain unpaid for a period of more than 14 days after the due date for payment, then PWM may, at its absolute discretion, exercise any rights to commence proceedings to sell the Vessel and apply proceeds of sale to any amounts owed to PWM including payment of costs incurred in exercising the lien.

FORCE MAJEURE

- 30)** A Force Majeure event means anything outside reasonable control of a party, including but not limited to:
- (a) power, data or communication outages;
 - (b) acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
 - (c) a transaction embargo;
 - (d) industrial action (including a picket); and
 - (e) any legislation or regulation and any action or inaction of any government or government agency.
- 31)** If PWM is wholly or partially unable to perform its obligations because of a Force Majeure event, then:
- (a) as soon as reasonably practicable after the Force Majeure event arises, PWM will notify the Owner of the extent to which PWM is unable to perform its obligations; and
 - (b) PWM's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.

ENVIRONMENT

- 32) The Owner must at all times comply with all laws as they apply to the protection of the environment.
- 33) The Owner must not, and must ensure that its employees, agents or guests do not:
- (a) permit any refuse, waste, fuel, oil, liquid of any description to be thrown or discharged from the Vessel or the marina;
 - (b) discharge any oily or filthy bilges, toilets, oil, chemicals, spirits or inflammable materials into marina waters or on the surrounding foreshore
 - (c) and must ensure that all such refuse is disposed of properly in marked receptacles; AND
 - (d) scrub or allow to be scrubbed the vessels antifoul whilst the vessel is moored the Pelican Waters.
- 34) The Owner will indemnify PWM from any action brought by any Government or other authority either through the neglect or not of the Owner. Any breach of the above conditions, PWM may terminate this agreement immediately.

GENERAL

- 35) **Interpretation:** In this Agreement:-
- (a) words importing the singular number include the plural and vice versa and words denoting a gender include all other genders;
 - (b) the word person includes a firm, a body corporate, an unincorporated association and an authority;
 - (c) headings are for convenience only and do not affect the interpretation, and
 - (d) Reference to any party to this agreement shall include that party's executors, administrators and permitted assignees.
- 36) **Assignment** This Agreement is personal to the Owner and the benefit of this Agreement is not assignable to any other person and the Owner shall not sublet the berthing, stowage, mooring space provided to it. PWM may assign or otherwise transfer any of its rights under this Agreement.
- 37) **Severability** To the extent permitted by law and unless otherwise expressly agreed, PWM does not provide and expressly excludes all warranties whether implied by statute or otherwise in respect of any goods or services it supplies to the Owner.
- 38) **Notices** Any notice to be served hereunder shall be duly served if delivered personally to the other party or sent through the post in a prepaid envelope addressed to that party at its address set out in this Agreement or any other address notified by one party to the other in writing as being its address for service of notice and any notice sent through the post shall be deemed to have been duly served at the time when such letter would in the ordinary course of the post be delivered. The Owner agrees to notify PWM of change of address and contact details within 14 days.
- 39) **Whole Agreement** This Agreement constitutes the whole agreement between PWM and the Owner in relation to its subject matter and the Owner warrants that it has not relied upon any statement, representation or warranty made by PWM or its servants or agents which is not expressed in this Agreement.
- 40) **Governing Law** The parties expressly agree that this Agreement will be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Queensland. This Agreement is deemed to have been entered into at the address of PWM.