



WESTERNPORT
MARINA

GREAT BY DAY - MAGIC AT NIGHT
MORNINGTON PENINSULA

21 Skinner Street, Hastings, Vic, 3915
Phone: 03 5979 7400
Email: clientservices@westernportmarina.com.au

BERTHING AGREEMENT

Details:

Item 1 - Occupier

Full Name: _____ ABN: _____

Address: _____
Street Address *Apartment/Unit #*

City *State* *Post Code*

Phone: _____ Mobile: _____

Email: _____

Item 2 - Vessel

Vessel Name: _____

Vessel Type _____ Model: _____ Year: _____

Length
Overall (m/ft): _____ Beam (m/ft) _____ Draft (m/ft) _____

Registration No: _____ Please Circle: Commercial Recreational

Insurance
Provider: _____ Policy No: _____ Expiry Date: _____

Item 3 - Vessel

Wet Berth: _____ Hard Stand: _____ Dry Berth: _____

Fob Key Number _____ 2nd Fob Key Number _____



Item 4 - Fee

Berthing Fee: \$ _____ per _____

Commencing on: _____ Paid in advance: _____

Item 5 - Term

Commencing on: _____ Ending on: _____

Item 6 - Check List

Have you provided us with a copy of your current Insurance documents?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have you provided us with a copy of your current Boat Licence documents?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have you completed and signed the Boat Owners Induction?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have all required electricals been tested and tagged in the past 12 months?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Do you have or need to purchase a Clipsal Top Straight Plug 15 amp as required by the Terms and Conditions?	YES <input type="checkbox"/>	NO <input type="checkbox"/>

TERMS AND CONDITIONS

WESTERN PORT MARINA PTY LTD (ABN 19 006 102 736) of 21 Skinner Street, Hastings, 3915, Victoria ("WPM"), being the owner and operator of the Westernport Marina at Hastings ("the Marina") will supply berthing services to the person referred to at item 1 ("the Occupier") on the following terms and conditions, unless otherwise notified or agreed in writing by WPM to the Occupier.

- 1) In these terms and conditions:
 - a. Details means the section of this agreement headed "Details";
 - b. Item means an item in the Details;
 - c. Vessel means the vessel as specified in item 2;
 - d. Space means the wet berth, dry berth or hard stand in the Marina as specified in item 3;
 - e. Fee means the Berthing Fee as specified in item 4;
 - f. Term means the term commencing and ending on the dates specified in item 5.
- 2) The rights granted to the Occupier under these Terms and Conditions are not proprietary, do not create any tenancy or other estate or interest in the Space or the Marina and cannot be assigned by the Occupier.
- 3) The Occupier warrants and represents that the Occupier is the owner of the Vessel or is legally entitled to use and the Vessel.
- 4) In consideration of payment by the Occupier of the Fee, WPM grants to the Occupier the right to store the Vessel (and only that Vessel) in the Space for the Term.
- 5) The Fee must be paid in advance.
- 6) WPM will not unreasonably interfere with or disturb the Occupier's use of the Space.
- 7) WPM may enter the Space to view the state of repair and/or condition of the Space and/or the Vessel, or to effect any repair to or maintenance of the Space that is reasonably necessary.
- 8) The Occupier must ensure that all required licences, registrations and surveys for the Vessel are kept current and that the Vessel (and all her gear, equipment and contents) is insured for complete marine cover including its market value and public liability claims of not less than \$5,000,000 for a single incident. The Occupier must promptly provide evidence of the currency of such insurance policy on request by WPM. The Occupier must not do or permit anything which may prejudice the rights of WPM under any insurance policy.
- 9) The Vessel's electrical equipment must be tested and tagged every 12 months, at the cost of the Occupier, including any tools used for repairs.
- 10) Vessel's stored in a wet berth space must have a Clipsal Top Straight Plug 15 amp when using an electrical lead on the main walkway. It must be a threaded type 15A PLUG fitted to the lead in order to meet the standards of the Marina. The Occupier will be liable to repair, at its cost, any damage whatsoever caused to the Marina as a result of the Occupier's failure to comply with this paragraph.



- 11) While an Occupier has a Vessel in dry storage, WPM offers a service of washing, flushing, retrieving/launching and placement of the Vessel. In providing these services, WPM is acting as agent for the Occupier. Subject to those actions available to the Occupier under the Australian Consumer Law, WPM, its officers, employees and agents are not liable for any damage or loss of any kind whatsoever, including, without limitation, for consequential, indirect, incidental, special, punitive, or exemplary damages, or damages of any other kind whatsoever, economic loss or loss of profits or revenues, whether foreseeable or unforeseeable, even if WPM has been advised of the possibility of such damage or loss, and even if due to the negligence of WPM, its officers, employees or agents, arising out of or in connection with the supply of those services by WPM to the Occupier.
- 12) WPM offers travel lift services for the movement and/or transportation of the Vessel. In providing these services, WPM is acting as agent for the Occupier. Subject to those actions available to the Occupier under the Australian Consumer Law, WPM, its officers, employees and agents are not liable for any damage or loss of any kind whatsoever, including, without limitation, for consequential, indirect, incidental, special, punitive, or exemplary damages, or damages of any other kind whatsoever, economic loss or loss of profits or revenues, whether foreseeable or unforeseeable, even if WPM has been advised of the possibility of such damage or loss, and even if due to the negligence of WPM, its officers, employees or agents, arising out of or in connection with the supply of those services by WPM to the Occupier.
- 13) The Occupier, and any contractors engaged by the Occupier, must complete and sign all relevant induction documents prior to commencing any works on the Vessel at the Marina.
- 14) The Occupier, and any contractors engaged by the Occupier, must wear a hi-vis vest/top and closed in footwear at all times when in the work yard at the Marina.
- 15) WPM may temporarily or permanently relocate the Vessel to another space in the Marina at its sole discretion, on reasonable notice to the Occupier. WPM may relocate the Vessel without notice in the event of an emergency.
- 16) The Occupier must ensure that the Vessel remains within the boundaries of the Space and that it does not encroach beyond such boundaries.
- 17) The Occupier must not undertake any repairs of or make any alterations to the Space without WPM's prior written consent, which may be given or withheld in WPM's absolute discretion.
- 18) WPM may in its absolute discretion and without being required to explain or justify its decision immediately terminate this Agreement without prior notice to the Occupier if the Occupier commits a breach of serious or substantial import of these Terms and Conditions.
- 19) For the avoidance of doubt, the following will constitute a serious breach of these Terms and Conditions and could lead to termination of the Agreement and your eviction from the Marina:
 - a. Non-payment of the Fees; and
 - b. Discharge of effluent into the Marina waters.
- 20) WPM may in its absolute discretion and without being required to explain or justify its decision terminate this Agreement in circumstances where the Occupier has committed a breach of this Agreement, and the Occupier has failed to remedy such breach within ten (10) days of written notice from WPM specifying the breach and what is required for the Occupier to remedy the breach (if capable of remedy).
- 21) Either party may terminate this Agreement on thirty (30) days written notice to the other party.
- 22) If this Agreement is terminated by WPM under paragraph 18 or 20:
 - a. The Fee for the unexpired part of the Term shall not be refundable or reduced; and
 - b. Any monies owing under this Agreement will become immediately due and payable to WPM in the event of such termination and the Occupier shall have no rights to compensation.
- 23) If this Agreement is terminated under paragraph 21:
 - a. The Fee for the unexpired part of the Term shall not be refundable or reduced, unless such termination is at the instigation of WPM, in which case any Fee prepaid by the Occupier for the unexpired part of the Term shall be refunded to the Occupier; and
 - b. Any monies owing under this Agreement will become immediately due and payable to WPM in the event of such termination and the Occupier shall have no rights to compensation
- 24) The Occupier will be deemed to have terminated this Agreement if the Vessel is permanently removed from the Space. The Vessel will be deemed to have been permanently removed from the Space if the Vessel is not in the space for a consecutive period of thirty (30) days (unless otherwise notified by the Occupier in writing to WPM prior to the Vessel's removal).
- 25) Within five (5) days of termination of this Agreement the Occupier must:
 - a. return to the WPM all keys and passes issued to the Occupier;
 - b. remove the Vessel from the Space;
 - c. leave the Space in a clean condition and in a state of good repair; and
 - d. remove all the Occupier's property from the Space.
- 26) The Occupier will be liable for all costs incurred by WPM as a result of non-compliance with the Occupier's obligations under this paragraph.
- 27) If the Occupier has not removed the Vessel from the Space in accordance with paragraph 25 after the termination of this Agreement:
 - a. WPM may, in its absolute discretion and at the cost of the Occupier move the Vessel to another area in the Marina (including from a wet berth to a hard stand or otherwise) and/or padlock the Vessel within the Marina; and
 - b. The Fee shall continue to be due and payable save and except that the Fee shall be varied to reflect WPM's advertised casual rate for the space where the Vessel is stored.
- 28) WPM shall have a lien over the Vessel and all its gear, equipment and contents for all amounts due by the Occupier to WPM under this Agreement. This lien will ensure for the benefit of the WPM notwithstanding the termination of this Agreement.



- 29) WPM may charge interest at 10% per annum above the rate prescribed from time to time pursuant to the *Penalty Interest Rates Act 1983* (Vic) on any Fees or other monies due by the Occupier to WPM that remain unpaid for seven (7) days, calculated daily, until such monies have been paid to WPM.
- 30) Where any amount owing under this Agreement on any basis remains due and unpaid for three (3) months from the date on which it becomes due and payable, or the Occupier has abandoned the Vessel in the Marina, WPM may sell the Vessel (whether by private sale or public auction) for its then market value and apply the proceeds, firstly, in payment of the sale costs (including any sales commission) and, secondly, towards any amounts due and payable to WPM, with the balance (if any) paid to the Occupier. The Occupier unconditionally and irrevocably appoints WPM its duly constituted attorney for the purposes of such sale and the application of the sale proceeds.
- 31) If monies are owing to WPM under this Agreement by the Occupier for more than ninety (90) days, WPM may refer the outstanding debt to a debt collector. All debt collection fees and legal costs (on a full indemnity basis) will be payable by the Occupier in addition to the original debt and any accrued interest.
- 32) The Vessel is stored in the Space entirely at the Occupier's sole risk and WPM shall not be liable for the care or protection of the Vessel (including its gear, equipment or contents whatsoever).
- 33) The liability of WPM and its officers, employees or agents for failure to comply with a guarantee under the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) in relation to the supply of the Space is limited to those actions available to the Occupier under the Australian Consumer Law.
- 34) Subject to those actions available to the Occupier under the Australian Consumer Law, WPM, its officers, employees and agents are not liable for any damage or loss of any kind whatsoever, including, without limitation, for consequential, indirect, incidental, special, punitive, or exemplary damages, or damages of any other kind whatsoever, economic loss or loss of profits or revenues, whether foreseeable or unforeseeable, even if WPM has been advised of the possibility of such damage or loss, and even if due to the negligence of WPM, its officers, employees or agents, arising out of or in connection with the supply of the Space by WPM to the Occupier.
- 35) The Occupier agrees to hold WPM harmless against all claims, cost, suits, actions, proceedings and liability incurred by reason of any act or omission on the part of the Occupier (or the Occupier's agents, employees and guests) in the use of the Vessel in the Marina or the facilities of the Marina. The Occupier must give immediate written notice to WPM of any relevant loss, injury, damage, accident or incident to the Vessel whilst in the Marina.
- 36) The Occupier (and the Occupier's agents, employees and guests) may use the common areas at the Marina for purposes for which they are intended but must not obstruct the common areas in any way. The Occupier (and the Occupier's agents, employees and guests) must at all times comply with all the rules of Westernport Marina as notified or published from time to time (the current rules are set out on the reverse hereof). The Occupier (and the Occupier's agents, employees and guests) must follow all reasonable directions of WPM in relation to the Vessel, the Space and the general use of the Marina.
- 37) The supply of the Space constitutes the making of a taxable supply for consideration for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the Occupier must also pay, at the same time and in the same manner as the Fee or any other amount is otherwise payable under this Agreement, the amount of any GST payable in respect of the taxable supply.

Occupier Acknowledgement

I have read and understood the terms and conditions of this Agreement.

Signature: _____ Date: _____

Name: _____

Rules of the Marina

- (a) No vessel is permitted to enter the "Marina unless it is in a sound, safe, secure, sea worthy and watertight condition and all vessels must operate under their own power and be registered, identified, marked, equipped and maintained as required by law.
- (b) All vessels must be insured.
- (c) A vessel shall only be berthed in the Marina where directed and all mooring lines must be kept in good condition and only mooring lines made up to suit the vessel may be used. Marina management reserve the right to provide mooring lines (at the vessel owner's expense) where it is deemed, at the sole discretion of Marina management, that a mooring line supplied by the Occupier is not in good condition or does not suit the vessel.
- (d) All vessels must observe a speed limit of five (5) knots within, departing from, and when approaching the Marina and standard marine procedures must be observed.
- (e) Marina access is restricted to persons berthing a vessel at the Marina and their invitees. Invitees must be supervised at all times and the Marina takes no responsibilities for invitees or their actions. Access to the third parties other than such invitees is strictly prohibited. All gates, entrances and exits within the Marina must be properly closed after each use.
- (f) Unsightly or dilapidated vessels are not permitted in the Marina. Decks and adjacent areas must be kept clear of all debris, bottles, papers, and other rubbish.



- (g) Repairs, grit blasting, painting, hull cleaning, fitting out or refitting a vessel is not permitted in the Marina except in designated areas and subject to the prior written consent of the Marina. Minor repairs, painting, maintenance, mechanical adjustments and electrical work is permitted subject to the prior written consent of the Marina. Tradesmen and other contractors must not be engaged to carry out work on vessels at the Marina without prior written consent of the Marina and must have completed an induction.
- (h) Fuelling or re-fuelling of a vessel is not permitted except at the designated Marina fuelling facility.
- (i) All necessary precautions must be taken to prevent the outbreak of fire.
- (j) A vessel must not obstruct in any way the embarkation or disembarkation of other occupants of the Marina.
- (k) The display of "for sale" or other signs are prohibited. Advertising is not permitted on any vessels except with the prior consent of the Marina.
- (l) Permanent residence is not permitted in a vessel in the Marina unless prior permission is granted by the Marina.
- (m) No laundry or items of a personal nature may be hung out to dry on any vessel or in the Marina.
- (n) Swimming, driving or fishing within the Marina is prohibited.
- (o) Children under the age of eighteen (18) must be accompanied by an adult at all times in the Marina.
- (p) Sewage, oil, spirits, inflammables, oily bilges and other refuse must not be discharged into the water of the Marina but must be disposed of ashore in the receptacles provided in the Marina for that purpose.
- (q) Noise must be kept to a minimum and discretion must be used in operating radios and musical apparatus so as not to create a nuisance and all rigging shall be secured on vessels to reduce noise levels.
- (r) Immoral, unlawful, noxious, offensive, hazardous, or other behaviour likely to cause nuisance, offence, injury or damage to property in the Marina is prohibited.
- (s) No auction, fire, bankruptcy or liquidation sale is permitted in the Marina without the prior consent of Marina management.
- (t) Pets are not permitted in the Marina except with the prior written consent of Marina management and vessels must be kept free of animals, pets, pests, insects, vermin and all infectious diseases and infestations. Feeding birds and cleaning of fish in the Marina is prohibited.
- (u) Bow sprits must not hang over the walkways.
- (v) These rules are made and enforced for the overall welfare of the Marina community and all Marina users are obligated, as members of the community, to at all times accept and abide by them or any other rules, regulations or instructions that may be made or given by Marina management from time to time.

Occupier Acknowledgement

I have read and understood all the rules of Westernport Marina outline above and agree to comply with these rules.

Signature: _____ Date: _____

Name: _____

