



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

This is an important document, and you should read it carefully before signing. If you do not understand anything contained in this agreement, then please discuss it with us before signing this agreement.

Item 1 - User

Full Name: _____ ABN: _____

Address: _____
Street Address *Apartment/Unit #*

_____ *City* *State* *Post Code*

Phone: _____ Mobile: _____

Email: _____

Emergency Contact: _____

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 – Space

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: _____

TERMS AND CONDITIONS

WESTERNPORT MARINA PTY LTD (ABN 19 006 102 736) of 21 Skinner Street, Hastings, Victoria 3915 (“**WPM**”), being the owner and operator of the Westernport Marina at Hastings (“**Marina**”) agrees to supply berthing services to the person referred to in Item 1 (“**User**”) on the following terms and conditions:

Definitions

- 1) A number of words used in these terms and conditions have defined meanings. Those words are defined in this paragraph (1), or are defined in the body of these terms and conditions using capitalised letters and are contained in quotation marks (“**Sample**”).
In these terms and conditions:
 - (a) “**Agreement**” means this Berthing Agreement;
 - (b) “**Details**” means the section of this Agreement headed “Details”;
 - (c) “**Fee**” means:
 - (i) for the Initial Term, the berthing fee as specified in item 4; and
 - (ii) for any Renewal Term, WPM’s then current casual berthing fee for the Space;
 - (d) “**Initial Term**” means the term commencing on the dates specified in item 5;
 - (e) “**Item**” means an item in the Details;
 - (f) “**Rules**” means the rules of the Marina as in effect from time to time;
 - (g) “**Space**” means the wet berth, dry berth, or hard stand in the Marina as specified in item 3;
 - (h) “**Term**” means the Initial Term, and any and all Renewal Terms; and
 - (i) “**Vessel**” means the vessel as specified in item 2.

Nature of Agreement

- 2) The rights granted to the User under this Agreement are contractual, and do not create any tenancy or other estate or proprietary interest in the Space or the Marina.

Duration of Agreement

- 3) This Agreement commences on the date it is signed by the User and WPM, or such other date as is agreed in writing by the User and WPM and continues until it is terminated in accordance with these terms and conditions.

Term

- 4) Until this Agreement is terminated in accordance with these terms and conditions, if no such notice is given, this Contract shall automatically renew for a further period equal to the Contract Term commencing the day after the expiry of the initial Contract Term on the same terms contained in this Contract with the exception of the Contract Fee, which shall be updated so as to reflect WPM then current standard rate for the space occupied by the vessel.

Space

- 5) In consideration of the payment by the User of the Fee, WPM grants to the User the right to store the Vessel (and no other vessel) in the Space for the Term.
- 6) If the Space is a wet berth or hard stand, during the Term a User may move the Vessel from and to wet berth and hard stand, and the Space will be correspondingly amended.

Fee

- 7) The Fee must be paid in advance, prior to the commencement of the Term.



Vessel

- 8) The User warrants and represents that the User is the owner of the Vessel, or is legally entitled to possession and use of the Vessel.
- 9) The User must ensure that all required licences, registrations, and surveys for the Vessel are kept current, and that the Vessel (and all the gear, equipment, and contents) is covered by comprehensive insurance. The public liability component needs to be covered for claims no less than \$5,000,000 for a single incident. The User must promptly provide evidence of the currency of such insurance policy on request by WPM. The User must not do or permit anything which may prejudice the rights of WPM under any insurance policy.
- 10) The Vessel's electrical equipment, including any tools used for repairs, must be tested and tagged every 12 months, at the cost of the User.
- 11) If the Space is a wet berth, and the Vessel uses an electrical lead connected to the main walkway, the lead must be fitted with a Clipsal Top Straight 15A threaded plug, and the lead will be tested and tagged by WPM on an annual basis. If the lead fails a test, WPM will issue the User with a notice to replace the lead within 48 hours. If the lead is not replaced within such time, WPM will replace the lead at the User's cost.
- 12) During the term of this Contract and while the Vessel is moored, stored or berthed at WPM, it shall not sell the Vessel without first notifying WPM of the purchaser's details or attempt to sell or hire out the Vessel without providing WPM with prior written notice.

Space

- 13) WPM will not unreasonably interfere with or disturb the User's use of the Space.
- 14) WPM may enter the Space to view the state of repair and/or condition of the Space and/or the Vessel, and/or to effect any repair to, or maintenance of, the Space that is reasonably necessary.
- 15) WPM may temporarily or permanently relocate the Vessel to another space in the Marina on reasonable notice to the User, and without prior notice to the User in the event of an emergency.

Fees, charges, and other amounts payable

- 16) Unless otherwise stated in these terms and conditions, all amounts due by the User to WPM under this Agreement are due and payable within seven (7) days of an invoice being given to the User in which the amount is invoiced.
- 17) WPM may charge the User a fee (in addition to the Fee) in accordance with WPM's then current rates for:
 - (a) the following services provided by WPM to the User at the User's request:
 - (i) Travel lift;
 - (ii) Lift and hold;
 - (iii) Water blast;
 - (iv) Crane;
 - (v) Tow;
 - (vi) Forklift;
 - (vii) Fob key issue;
 - (b) storage of a Vessel in hard stand;
 - (c) the entry into the Marina of any contractor engaged by the User to undertake any works on the Vessel;
 - (d) any after hours attendance at the Marina by Marina personnel at the User's request, or that is reasonably necessary to maintain the safety of the Marina by reason of any act or omission of the User with respect to the Vessel, or the condition of the Vessel. The User must reimburse WPM for any materials and/or equipment supplied by WPM to the User or to the Vessel during any such attendance, and/or any third party contractor fees reasonably incurred by WPM during any such attendance.
- 18) WPM has a lien over the Vessel and all her gear, equipment, and contents for any Fees and/or other amounts due by the User to WPM under this Agreement. The lien shall enure for the benefit of WPM notwithstanding the termination of this Agreement.
- 19) 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 and/or other amounts due by the User to WPM under this Agreement that remains unpaid after seven (7) days from the due date for payment, calculated daily, until the date of payment.
- 20) Where any Fees and/or other amounts due by the User to WPM under this Agreement remains unpaid after thirty (30) days from the due date for payment, WPM may retain a debt collector and/or a legal practitioner to recover those amounts from the User. The User indemnifies WPM in respect of all costs and/or expenses (including legal costs on a full indemnity basis) payable by WPM to such debt collector and/or legal practitioner.
- 21) Where any Fees and/or other amounts due by the User to WPM under this Agreement remains unpaid after ninety (90) days from the due date for payment, or the User 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 by the User to WPM under this Agreement, with the balance (if any) paid to the User. The User unconditionally and irrevocably appoints WPM as its duly constituted attorney for the purposes of such sale, and the application of the sale proceeds in accordance with this paragraph.

Termination of Agreement

- 22) Either party may in its absolute discretion immediately terminate this Agreement **without prior notice** to the other party if the other party commits a breach of serious and/or substantial import of these terms and conditions.
- 23) Without limitation, each of the following constitute a breach of serious and/or substantial import of these terms and conditions by the User:
 - (a) non-payment of the Fees or other amounts due by the User to WPM under this Agreement within thirty (30) days from the due date for payment;
 - (b) discharge of effluent from the Vessel into the waters of the Marina; and
 - (c) non-compliance by the User and/or the User's agents, employees, and/or guests with the Rules (or any Amended Rules).
- 24) Either party may in its absolute discretion terminate this Agreement where the other party has committed a breach of this Agreement, and the other party has failed to remedy such breach within fourteen (14) days of written notice specifying the breach, and what is required for that party to remedy the breach (if capable of remedy).



- 25) Either party may terminate this Agreement on thirty (30) days' written notice to the other party.
- 26) The User 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 notified by the User to WPM in writing prior to the Vessel's removal).
- 27) If this Agreement is terminated by WPM under paragraph (22) or (24), or by the User under paragraph (25) or (26):
 - (a) the Fee for the unexpired part of the Term will not be refundable or reduced;
 - (b) all amounts due by the User to WPM under this Agreement:
 - (i) that have been invoiced, will become immediately due and payable to WPM; and
 - (ii) that have not been invoiced, will become immediately due and payable to WPM on an invoice being given to the User in which the amount is invoiced.
- 28) If this Agreement is terminated by the User under paragraph (22) or (24), or by WPM under paragraph (25):
 - (a) the Fee for the unexpired part of the Term will be refunded to the User;
 - (b) all amounts due by the User to WPM under this Agreement:
 - (i) that have been invoiced, will become immediately due and payable to WPM; and
 - (ii) that have not been invoiced, will become immediately due and payable to WPM on an invoice being given to the User in which the amount is invoiced.
- 29) Within five (5) days of termination of this Agreement, the User must:
 - (a) remove the Vessel from the Space;
 - (b) return to WPM all keys and passes issued by WPM to the User;
 - (c) leave the Space in a clean condition, and in a state of good repair; and
 - (d) remove all of the User's property from the Space.
- 30) The User will be liable for all costs and/or expenses incurred by WPM as a result of a breach of the User's obligations under paragraph (29).
- 31) If the User has not removed the Vessel from the Space in accordance with paragraph (29) after the termination of this Agreement:
 - (a) WPM may, at the cost of the User, 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 continues to be due and payable, in the amount of WPM's then current casual berthing fee for the Space.
- 32) On the transfer of ownership of the Vessel by the User, this Agreement is terminated when:
 - (a) any Fees and/or other amounts due by the User to WPM under this Agreement are paid in full; and
 - (b) the new owner of the Vessel enters into a Berthing Agreement with WPM.
 - (c) unexpired berthing fees are not transferrable upon change of vessel ownership.
- 33) On the transfer of ownership of the Vessel by the User, until this Agreement is terminated in accordance with paragraph (32), access the Vessel by any person other than the User is only permitted with the consent of WPM.
- 34) For the avoidance of doubt, on the transfer of ownership of the Vessel by the User:
 - (a) this Agreement is not terminated; and
 - (b) there is no novation of the User's rights and obligations under this Agreement.

Risk

- 35) The Vessel is stored in the Space at the User's sole risk, and WPM is not liable for the care or protection of the Vessel (including her gear, equipment, or contents).

Remedies

- 36) The remedies for a failure by WPM 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 remedies available to the User under the Australian Consumer Law.

Waiver and indemnities

- 37) For the purposes of paragraphs (39), (40) and (41), "**Loss or Damage**" means loss or damage of any kind whatsoever, whether foreseeable or unforeseeable, including, without limitation, consequential, indirect, incidental, special, punitive, or exemplary damages, damages of any other kind whatsoever, economic loss, or loss of profits.
- 38) For the purposes of paragraph (41), "**Liabilities**" means any and all current, prospective, or contingent claims, costs, legal costs and disbursements on a full indemnity basis (whether or not the subject of a court order), expenses, interest, fees, charges, complaints, liabilities, penalties, demands, debts, accounts, obligations, promises, suits, or actions, including those the amount of which is not ascertained, and whether direct, indirect, or consequential.
- 39) Subject to those actions available to the User under the Australian Consumer Law, WPM, its officers, employees, and agents are not liable to the User for any Loss or Damage, even if WPM has been advised of the possibility of such loss or damage, arising out of or in connection with the use by the User of:
 - (a) the Vessel in the Marina, including in the Space; and
 - (b) the facilities of the Marina.
- 40) WPM offers services of:
 - (a) washing, flushing, retrieving/launching, and placement of the Vessel in dry storage; and
 - (b) travel lift for the movement and/or transportation of the Vessel.
 In providing these services, WPM is acting as agent for the User. Subject to those actions available to the User under the Australian Consumer Law, WPM, its officers, employees, and agents are not liable for any Loss or Damage arising out of or in connection with the supply of those services by WPM to the User.
- 41) Subject to WPM acting reasonably to minimise any Loss or Damage and any Liabilities, the User indemnifies WPM in respect of any Loss or Damage and any Liabilities:
 - (a) caused by the Vessel and/or any ropes, fenders, and fittings attached to it, to the Marina;
 - (b) arising from, in any way connected with, or incidental to:
 - (i) the use of the Vessel in the Marina (including in the Space);
 - (ii) the use of the facilities of the Marina by the User and/or the User's agents, employees, and/or guests;
 - (iii) any breach of this Agreement by the User; and
 - (iv) non-compliance by the User and/or the User's agents, employees, and/or guests with the Rules (or any Amended Rules).



Rules

- 42) The User must at all times comply with the Rules.
- 43) The User must ensure its agents, employees, and guests at all times comply with the Rules.
- 44) The current Rules are set out at the end of these terms and conditions.
- 45) WPM may amend the Rules from time to time ("**Amended Rules**").
- 46) The Amended Rules will be effective upon the posting of the Amended Rules on the website <https://westernportmarina.com.au/rules>.
- 47) WPM will provide the User with at least 30 days' written notice in the event of a material change to the Rules.

Australian Consumer Law

- 48) The User acknowledges and agrees that before signing this Agreement, it carefully reviewed the terms and conditions of this Agreement and raised any issues of concern with WPM.
- 49) The User acknowledges and agrees that the terms and conditions of this Agreement are reasonably necessary to protect the legitimate interests of WPM.
- 50) If any part of this Agreement is deemed to be an unfair term and/or void under the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010* (Cth)), then that part must be:
 - (a) read down to the extent necessary to ensure that it is not unfair and/or void; or
 - (b) if it is not possible to so read down a part, then that part is severed from this Agreement, and all parts which are not deemed to be an unfair term and/or void under the Australian Consumer Law continue in full force and effect.

GST

- 51) The supply of the Space by WPM constitutes the making of a taxable supply for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 52) Subject to WPM having provided the User with a valid tax invoice, the User must pay, at the same time and in the same manner as payment of the Fee, the amount of any GST payable in respect of the supply of the Space by WPM.

General

- 53) This Agreement may only be assigned or novated by written agreement of the User and WPM.
- 54) Any variation of this Agreement must be in writing and signed by the User and a duly authorised agent of WPM.
- 55) This Agreement is governed by the laws in force in Victoria.
- 56) WPM and the User submit to the non-exclusive jurisdiction of the courts of Victoria, including any courts of Victoria having appellate jurisdiction.
- 57) The User consents to receiving any notice, invoice, demand, and/or communication under this Agreement, and/or relevant service messages, by email to the email address specified in item 1, or another email address specified in writing by the User to WPM.
- 58) WPM may amend the terms of this Contract from time to time by providing the User with notice of the amendment or by publishing the updated terms on WPM's website. The amendment will take effect 30 days from the earlier of the date on which the User is notified of the amendment or the date on which WPM publishes the updated terms on its website.

[end of terms and conditions]

Acknowledgement and agreement

This is an important document, and you should read it carefully before signing. If you do not understand anything contained in this agreement, then please discuss it with us before signing this agreement.

I acknowledge that I have read, understand, and agree to the terms and conditions of this Berthing Agreement:

Signature: _____ Date: _____

Name: _____

Check List

Copy of current insurance documents?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Copy of current boat licence documents?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Completed and signed the boat owner's 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"/>
Clipsal Top Straight Plug 15 amp?	YES <input type="checkbox"/>	NO <input type="checkbox"/>



RULES

Effective 1 September 2023

Definitions

- 1) In these rules:
 - (a) “**Marina**” means the Westernport Marina at Hastings;
 - (b) “**User**” means the person to whom WPM has agreed to provide berthing services in accordance with a berthing agreement.
 - (c) “**WPM**” means WESTERNPORT MARINA PTY LTD (ABN 19 006 102 736) of 21 Skinner Street, Hastings, Victoria 3915;

Vessel

- 2) A vessel entering the Marina must be in a sound, safe, secure, seaworthy, and watertight condition.
- 3) A vessel must operate in the Marina under its own power.
- 4) A vessel must be registered, identified, marked, equipped, and maintained, as required by law.
- 5) A vessel must be berthed in the Marina in its designated space.
- 6) A vessel must remain within the boundaries of its designated space when stationary in the Marina.
- 7) Decks and adjacent areas must be kept clear of all debris, bottles, papers, and other rubbish.

Equipment

- 8) All mooring lines must be kept in good condition, and must be made up to suit, and be appropriate for, the vessel.
- 9) The cost and supply of all ropes, fenders, and fittings are the responsibility of the User.

- 10) All rigging must be secured on a vessel to reduce noise levels.

Safety

- 11) Immediate written notice must be given to WPM of any accident involving a vessel, damage to a vessel, and/or injury to a person that occurs while a vessel is in the Marina (including in a vessel's designated space).
- 12) 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.
- 13) Fuelling or re-fuelling of a vessel is only permitted in the designated Marina fuelling facility and inline with Marine refuelling regulations & guidelines.
- 14) Smoking is only permitted in designated Marina areas.
- 15) Strictly no smoking, and no consumption or possession of alcohol, in the work yard at the Marina.
- 16) All necessary safety precautions must be observed to prevent the outbreak of fire.
- 17) Bow sprits must not hang over the walkways.
- 18) A vessel must not obstruct in any way the embarkation or disembarkation of persons from another vessel in the Marina.
- 19) Swimming, diving, or fishing in the Marina is prohibited.
- 20) The common areas of the Marina must not be obstructed in any way.
- 21) The facilities of the Marina must only be used for the purposes for which they are intended.
- 22) Children under the age of eighteen (18) must at all times be accompanied in the Marina by an adult.
- 23) Sewage, oil, spirits, inflammables, oily bilges, and other refuse must not be discharged into the waters of the Marina, and must only be disposed of ashore in the receptacles provided in the Marina for that purpose.

Repairs

- 24) Repairs, grit blasting, painting, hull cleaning, fitting out, or refitting a vessel in the Marina is only permitted in designated Marina areas, and with the consent of WPM.
- 25) Minor repairs, painting, maintenance, mechanical adjustments, and electrical work to or on a vessel is only permitted in the Marina with the consent of WPM.
- 26) The User, and any contractors engaged by the User, must complete all induction courses and other requirements as in effect from time to time, and sign all necessary documents on completion of all such induction courses and other requirements, prior to commencing any works on a vessel in the Marina.
- 27) The User, and any contractors engaged by the User, must wear a hi-vis vest/top and closed-toe footwear at all times when in the work yard at the Marina.
- 28) Repairs or alterations to any part of the Marina (including a vessel's designated space) is only permitted with the consent of WPM.

Hard stand

- 29) The User must provide WPM with a work plan, which must be approved by WPM, before a vessel is moved to hard stand.
- 30) A vessel must be removed from hard stand promptly and without delay after the completion of works on the vessel.
- 31) No persons are permitted to stay over night or live aboard a vessel while the vessel is in the hard stand.

Marina

- 32) All persons must follow all reasonable directions of WPM personnel in relation to use of the vessel in the Marina (including in a vessel's designated space) and the facilities of the Marina.
- 33) Access to the Marina is restricted to the User and the User's agents, employees, and guests. Access to the Marina by any other persons is strictly prohibited.
- 34) All gates, entrances, and exits within the Marina must be properly closed after each use.
- 35) Unsightly or dilapidated vessels are not permitted in the Marina.
- 36) 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.



Sale of vessel and advertising

- 37) The sale or auction of a vessel in the Marina is only permitted with the consent of WPM.
- 38) The display of "for sale" or other advertising signs in or on a vessel in the Marina is only permitted with the consent of WPM.

General

- 39) Permanent residence in a vessel in the Marina is prohibited.
- 40) Temporary residence in a vessel in the Marina, for a specified duration, is only permitted with the consent of WPM.
- 41) No laundry or items of a personal nature may be hung out to dry in or on a vessel in the Marina.
- 42) Immoral, unlawful, noxious, offensive, hazardous, or other behaviour likely to cause nuisance, offence, injury, or damage to property in the Marina is prohibited.
- 43) Lost or stolen fob keys must be reported to the Marina office immediately.
- 44) Fob keys are \$55.00 with a refundable amount of \$20 upon return for all working fobs. If returned within a month, a full refund will be given.
- 45) A vessel must be kept free of animals, pets, pests, insects, vermin, and infestations.
- 46) Animals are only permitted in the Marina with the prior consent of WPM.
- 47) Feeding birds and cleaning of fish in the Marina is prohibited.
- 48) WPM may consent to any act, matter, or thing that would otherwise constitute a breach of these rules.
- 49) Where any act, matter or thing is permitted with the consent of WPM, such consent:
 - (a) may be given, or withheld, in the absolute and unfettered discretion of WPM;
 - (b) may be given subject to such conditions as WPM thinks fit in its absolute and unfettered discretion;
 - (c) must be in writing for it to have effect; and
 - (d) must be given before the occurrence of the act, matter, or thing for it to have effect.

[end of rules]

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: _____

