

CASUAL BERTH RENTAL AGREEMENT

To be completed by applicants for a casual berth at Te Ana Marina. Applicants renting a berth for less than three months (or such other period as LPC may agree) are regarded as casual. Applicants wishing to use a berth for longer than three months must complete LPC's standard application for a Berth Licence.

For Office Use Only

Registration of Interest No. (if applicable): _____ Application for Berth Number: _____
Accepted: Yes / No Pier: _____ Berth Number: _____

Applicant details

Applicant Name
(full legal name of the owner(s) of the vessel referred to below, including partner or trustee names plus firm/trust name if applicable)
Individual(s) Company Trust Partnership Other (specify)
Postal Address
.....
Phone Email Mobile
Contact Name

Vessel details

Vessel name Make and type (yacht/launch/multihull)
Overall length (LOA)* (m) Beam (m) Draught (m) Colour
** Overall length for this purpose includes hull length at the vessel's longest point as well as any fittings or attachments (including pulpits, platforms, bowsprit, engines, rudders and dinghies). All must fit within the berth dimensions so it is imperative the information provided above is accurate*
Displacement VHF call sign:
Registration number (if registered under Ship Registration Act 1992, if not enter "Not Applicable")
On board Toilet? No Yes
Holding Tanks? Black Water Grey Water
Tagged Power Lead? No Yes
EWoF number:
Date of Issue: _____ Date of expiry: _____

A current Electrical Warrant of Fitness (EWoF) is required for all vessels that wish to connect to on shore power

Insurance details:
(insurer, policy type and insured amount, expiry date)
The Applicant must provide a certificate of currency of insurance to evidence the insurance cover in place prior to the Commencement Date, promptly following any change to such insurance and otherwise on request by LPC

Rental fee

The Rental Fee is \$..... per day/month (delete that which does not apply), payable monthly in advance and in accordance with the Rental Agreement

Rental Period

Commencement Date: End Date:

Your right to use a berth may be terminated before the End Date in accordance with the Rental Agreement. You must vacate the berth by 9am on the End Date or earlier date of termination.

Rental Agreement

The Applicant named above ("you", "your") applies for a right to use a casual berth at Lyttelton Port Company Limited's ("LPC") Te Ana Marina ("Marina") for the purpose of berthing the vessel named in this application. If LPC in its sole discretion accepts your application, it will notify you and advise you of your allocated berth. The terms and conditions of the attached Rental Agreement will apply to your use of any berth and the Marina. By making this application, you acknowledge that you have read and understood the attached Rental Agreement and agree to its terms.

Authorised Signatory	Full Name	Date	Position
For and on behalf of the Applicant			
<i>The above named signatory personally represents and warrants that he/she has all necessary right, power and authority to enter into the Rental Agreement on behalf of the Applicant and to bind the Applicant to its terms.</i>			

Approved By LPC

.....
Authorised Signatory
For and on behalf of Lyttelton Port Company Limited

RENTAL AGREEMENT TERMS AND CONDITIONS

1. Grant of Licence

- 1.1 By counter-signing the attached application form, Lyttelton Port Company Limited ("**LPC**") grants to the person named in such form ("**you**", "**your**") a right to use the berth at Te Ana Marina ("**Marina**") specified by LPC in writing from time to time ("**Berth**") on the terms and conditions set out in this Rental Agreement and you accept such grant.
- 1.2 The Te Ana Marina Rules ("**Rules**") published from time to time on the Marina website at www.teanamarina.co.nz and/or displayed on signs located on or about the Marina form part of this Rental Agreement.
- 1.3 You shall at all times be bound by and strictly comply with, and ensure that all of your agents, contractors, employees and invitees ("**Representatives**") at all times strictly comply with:
- the Rules and the rest of this Rental Agreement;
 - any access routes or restrictions designated by LPC from time to time; and
 - all lawful directions, instructions, guidelines or signage issued by LPC or any person whom LPC notifies has been appointed as the Marina manager (provided they are not inconsistent with the terms of this Rental Agreement).
- 1.4 In the event of inconsistency between the Rules and the rest of this Rental Agreement, the terms of the Rules shall prevail.
- 1.5 This Rental Agreement binds each person named in the attached application form jointly and severally.

2. Term

- 2.1 Except as set out below, this Rental Agreement shall start on the Commencement Date and end on the End Date.
- 2.2 If a daily rental fee is specified in the attached application form, either party may terminate this Rental Agreement at any time by giving at least 24 hours' written notice to the other party. If a monthly rental fee is specified in the attached application form, either party may terminate this Rental Agreement at any time by giving at least 7 days' written notice to the other party.
- 2.3 Without limiting LPC's rights or remedies, if LPC permits you to continue using the Berth after the End Date, any such use will on a holding over basis at LPC's prevailing daily rental fee and will be terminable in accordance with clause 2.2.
- 2.4 On expiry or termination of this Rental Agreement:
- you must immediately: (i) remove the Named Boat (and all of your other property) from the Berth (unless LPC has exercised its lien over the Named Boat or other property for unpaid amounts pursuant to clause 3.4); and (ii) remove all rubbish and clean and repair any damage to the Berth and Marina to LPC's satisfaction. If you fail to do so, LPC may take whatever action it considers necessary itself at your risk and cost.
 - LPC will refund to you any Rental Fees you have paid in advance (less any amount owed by you to LPC) if LPC terminates this Rental Agreement prior to the End Date and you are in full compliance with your obligations under this Rental Agreement (including under paragraph (a)). In all other circumstances, LPC is *not* required to refund and may retain any Rental Fees paid in advance.

3. Rental Fee

- 3.1 You will pay the Rental Fee (and all other applicable charges) to LPC monthly in advance, with each payment due on or before the 1st calendar day of each calendar month (other than the first payment which is due on or before the Commencement Date).
- 3.2 The initial Rental Fee is specified on the attached application form. LPC may adjust the Rental Fee from time to time by giving at least 30 days' written notice (including by publishing the adjusted Rental Fee on the Marina website). All other charges are set out on the Marina fee schedule which may be varied by LPC from time to time and is published on the Marina website.
- 3.3 You must also pay interest to LPC on demand, at the interest rate which is 5% above the overdraft rate charged by LPC's principal bankers at the

relevant due date, on any amount not paid when due, from the due date for payment until the date of actual payment. You are liable for all costs and expenses incurred by LPC in recovering any amount you owe (or otherwise enforcing this Rental Agreement), together with interest on such sums at the rate specified above.

- 3.4 LPC has a lien over any vessel (or other property) located at the Berth or the Marina for all amounts payable by you under this Rental Agreement. If any amount is more than 14 days in arrears and you do not make payment in full within a further period specified in a notice from LPC, LPC may sell or otherwise dispose of such vessel and/or other property as LPC sees fit and apply the proceeds of such sale or disposal towards satisfaction of all amounts owed by you and LPC's costs in exercising its rights under this clause, returning the balance (if any) to you. If a common law or statutory lien applies, nothing in this clause shall exclude the application of such lien and LPC may elect to exercise its rights under such lien in addition to or instead of its rights under this clause 3.4.

4. Use of Berth and Marina

- 4.1 You may only use the Berth for the purpose of berthing the vessel specifically identified in the attached application form, or such other vessel as LPC may approve in writing ("**Named Boat**"). You warrant that you own the Named Boat.
- 4.2 You may, in common with all other permitted users of berths in the Marina:
- make fast the Named Boat to the allocated berth structures in the Marina; and
 - access and use the common waterways and pathways of the Marina,
- 4.3 You may also use the water, power and any other resources and facilities forming part of the Marina in common with other permitted users of berths in the Marina. If LPC determines in its discretion that any such use is excessive or unusually high (including by comparison with other berth users), LPC may charge such sum as it considers appropriate for such use, separate from and in addition to the Rental Fee.
- 4.4 You may not make any alterations or additions to the Berth or adjacent structures.
- 4.5 You may not, without LPC's prior written consent, permit any other person to use the Berth nor assign, sublet, transfer or otherwise part with or dispose of, mortgage or grant a security interest in or over, your rights under this Rental Agreement.
- 4.6 You acknowledge and agree that your rights are contractual only and you are not entitled to any proprietary right or interest in any real or personal property (including the Berth, any water space or any part of the airspace or seabed above or below the Berth or Marina).

5. LPC's rights

- 5.1 LPC may, and you irrevocably authorise LPC to, enter the Berth and/or the Named Boat (whether or not you are present) and move or remove or carry out repairs to the Named Boat (or any other property), in order to prevent any loss or damage to any property, in an emergency situation (as reasonably determined by LPC) or if you fail to promptly comply with any of your obligations under this Rental Agreement. LPC will not be liable for, and you indemnify LPC against, any actions, claims, demands, losses, costs and expenses incurred in, or resulting (whether directly or indirectly) from, the exercise of the powers contained in this clause 5.1 except to the extent caused by LPC's negligence.
- 5.2 LPC may at any time require you to move the Named Boat to a different Berth within the Marina allocated by LPC. You will promptly comply with any such requirement.
- 5.3 LPC may install and operate surveillance devices for the purpose of protecting the safety and security of LPC's property and that of its customers or third parties and/or assisting in the investigation and/or prosecution of any illegal act or any breach of this Rental Agreement. LPC's Privacy Policy (which is published on its website, as it is amended from time to time) applies to LPC's collection, use and disclosure of any personal information about you (or any of your agents, employees and invitees).

6. Insurance

You shall at all times hold and maintain, and on request promptly provide LPC with evidence of the currency of: (i) material damage insurance for the Named Boat and your other property at the Marina against all usual risks; and (ii) public liability insurance of at least \$5m.

7. Liability and Indemnity

- 7.1 Your access to and use of the Berth in on an "as is, where is" basis. You use and access the Berth and Marina at your own risk. LPC does not provide security services and gives no representation as to the adequacy or otherwise of the Berth, Marina or its facilities. Subject to clause 7.3, LPC has no liability whatsoever for any loss or damage to the Named Boat or any other property of yours or any other person using the Marina, except to the extent caused by LPC's negligence.
- 7.2 In any event, LPC's liability is limited to the aggregate Rental Fee paid by you in the 3 months preceding the relevant event. Subject to clause 7.3, in no circumstances will LPC be liable (whether in contract, tort or otherwise) for any indirect or consequential loss or for any loss of profit, loss of revenue, loss of goodwill, loss of opportunity or economic loss (in each case whether direct or indirect and whether or not LPC was or should have been aware of the likelihood of such loss).
- 7.3 Nothing in this Rental Agreement is intended to exclude the application of any applicable law which cannot be excluded by contract (including the Consumer Guarantees Act 1993 (unless you use the Berth in trade in which case the parties agree that none of the rights and remedies under that Act will apply) and the Fair Trading Act 1986).
- 7.4 You indemnify LPC against any loss, expense, liability, actions, claims, demands and costs reasonably incurred by LPC arising as a result of your, or your Representatives, acts or omissions (except to the extent caused by LPC's negligence).

8. General

- 8.1 This Rental Agreement shall be interpreted in accordance with the laws of New Zealand.
- 8.2 This Rental Agreement (including the Rules) constitutes the entire agreement of the parties about its subject matter and any previous agreements, arrangements, understandings, representations and negotiations on that subject matter cease to have effect.
- 8.3 If any part of this Rental Agreement is held by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Rental Agreement.
- 8.4 No waiver of any breach of, or failure to enforce any provision of, this Rental Agreement at any time by LPC will in any way limit LPC's rights.
- 8.5 LPC may at any time transfer any or all of its rights and obligations under this Rental Agreement to any subsequent operator of the Marina.
- 8.6 Whenever LPC's consent or approval is required in connection with this Rental Agreement, such consent or approval may be given conditionally or unconditionally or withheld by LPC in its absolute uncontrolled discretion and, if given, may only be given in writing.