

PORT GEOGRAPHE MARINA PEN AGREEMENT

TERMS & CONDITIONS & Rules of Marina.

The following terms and conditions form the agreement referred to in the Pen Application Form duly signed by both parties.

- A. The Pen Holder has requested, and Port Geographe Marina has agreed to grant a non-exclusive contractual licence to the Pen Holder to use the jetty and to occupy a pen for the purpose of the permitted use only (the "licence").
- B. Port Geographe Marina and the Pen Holder by signing the Pen Application Form have agreed to the terms and conditions within this document.

Pursuant to this agreement the parties agree as follows:

1. DEFINITIONS & INTERPRETATIONS

Act means any present or future Act of Parliament (Federal or State) and includes any amendment or re-enactment of it for the time being in force and includes by-laws and regulations under any act.

Authorised Officer means the Marina Staff as appointed by Port Geographe Marina from time to time.

Authority means any federal, state or local government or other public body or authority of any kind.

Commercial Use means the receiving of money or kind for the use of the vessel, pen, jetty or any portion of the Marina but does not include commercial fishing vessels that are licensed by the WA Fisheries Department.

Document means this marina pen agreement terms and conditions as varied, amended, supplemented or modified from time to time.

Jetty means the jetty of which the pen forms part.

Licence means the terms and conditions applicable to the Pen Application Agreement when signed by both parties.

(SUB) Licensee means the person or persons whose name(s) appear(s) on the Application for a Pen Licence.

Marina Manager means an authorised officer who has been delegated the authority to manage the marina.

Mooring Area means all those waters contained within the waterbed lease surrounding the Port Geographe Marina.

Party means a party to this document;

Pen means the particular section of the jetty for mooring purposes and the adjacent waters;

Pen Holder's Employees, Agents and Customers means each of the pen holder's employees, officers, agents, contractors, service supplies, sub-licensees, concessionaires, customers and those other persons who at any time are under the jetty or in the mooring area or its surrounds with the consent (express or implied) of the pen holder but does not include Port Geographe Marina, its servants and agents;

Permitted Use means the mooring of a single vessel for recreational purposes in accordance with this document;

Term means the term of occupancy of the pen as specified in the application form and includes any extension period;

Vessel means the vessel specified in the Pen Application Form.

2. PORT GEOGRAPHE MARINA AUTHORISED OFFICER

- 2.1 Port Geographe Marina Authorised Officer (Marina Manager) may act for and on behalf of Port Geographe Marina as its agent and all things done and all actions taken by the Marina Manager pursuant to this clause will be deemed done and taken by Port Geographe Marina for the purposes of this Document.
- 2.2 The Pen Holder and Port Geographe Marina agree that the Marina Manager is hereby authorised by Port Geographe Marina to do all acts under this Document as agent on behalf of Port Geographe Marina which Port Geographe Marina is entitled to do under this Document.
- 2.3 Any payments required to be made by the Pen Holder to Port Geographe Marina may be made by the Pen Holder to the Marina Authorised Officers whose receipt will be a full and sufficient satisfaction and discharge to the Pen Holder.

3. CHANGE OF DETAILS

If any of the details contained in the Pen Application change during the term, the pen holder must notify the Marina Authorised Officer within seven days of the change occurring. The Pen Holder must obtain the consent of the Marina Authorised Officer before changing the Vessel occupying the Pen. In the event of the sale of the Vessel, the pen holder is to give immediate written notice to the Marina Authorised Officer of any sale or disposition of the vessel or any interest therein and the name and residential address of the purchaser or transferee and upon any such sale or disposition to immediately remove the vessel from the Pen.

4. ENCUMBRANCES, SUBLICENCING & ASSIGNMENT

- 4.1 Not allow any use, encumbrance over the pen or jetty nor sub-licence, assign, transfer or part with possession of the Jetty or the Pen or the Licence or any entitlement in relation to the pen arising under this document.
- 4.2 If at any time during the Term the Pen Holder leaves the Pen unoccupied for any extended period, the Marina Manager shall be entitled in their absolute discretion and with prior written notice to the relevant Pen Holder, to permit any other Vessel to temporarily occupy the Pen until the return of the Pen Holder's Vessel, at such fee and upon such conditions as the Marina Manager considers appropriate and the Marina Manager may, in their absolute discretion (but shall not be obligated to do so), refund such portion of the licence fee at such time and in such manner as the Marina Manager sees fit.
- 4.3 The Marina Manager shall be entitled to terminate at any time during the term of the Sub licence by notice to the Sub licensee, the Sub Licensee's occupation of the Pen pursuant to the Sub licence and to allocate the Sub Licensee such other mooring Pen of similar size and dimension within the Marina as the Licensor may in its absolute discretion determine and that other mooring pen shall from the date specified in such notice be deemed to be the pen the subject of these Terms and Conditions and the Sub Licensee shall make no requisition, objection or claim for compensation in respect of such change in the pen.

5. GRANT OF ACCESS

- 5.1 In consideration of the pen holder paying the prescribed fee to Port Geographe Marina and complying with the obligations under this document, Port Geographe Marina hereby grants to the pen holder access and use of the pen for the permitted use during the term, subject to the terms and conditions contained in this document. If Port Geographe Marina is required to rectify any breach of this

document by the pen holder during the term, and after notifying the pen holder of such breach, Port Geographe Marina may recoup such costs from the pen holder.

- 5.2 To permit the Marina Manager, and Authorised Officers of Port Geographe Marina, servants or agents to enter upon the Vessel, Pen or the Mooring Area at any reasonable time to do, or cause to be done, all things necessary to rectify any breach by the Pen Holder of any of the terms, conditions, covenants and agreements in this document (without the Marina Manager being under any obligation to do so and without prejudice to the Marina Manager's other rights, powers, remedies or discretions under the Agreement) and all reasonable costs and expenses incurred by the Marina Manager resulting from such breach (including the wage, fees and remuneration of any workmen, servants, agents, solicitors, surveyors or architects employed or engaged in that respect) will be a debt due and payable by the Pen Holder to Port Geographe Marina upon demand.

6. INDEMNITY

At all times during the term and notwithstanding any policy of insurance required by this document, indemnify Port Geographe Marina from and against all damage to or loss of any property of Port Geographe Marina, or any other person or any injury to any person and all actions, suits, proceedings, claims costs, expenses and demands (on a full indemnity basis), caused by, arising out of, or incidental to any negligent act, default or omission of the pen holder or its employees, agents and customers in relation to use or misuse of the licence, the pen, the jetty or the vessel while within the marina. This indemnity will not apply where the relevant occurrence was caused or contributed to (to the extent of that contribution) by the negligent act or omission of Port Geographe Marina.

7. INSURANCE & PROOF OF OWNERSHIP

- 7.1 Insure and keep insured with insurers approved under the Insurance Act 1973 for all claims based on what is commonly known as public liability and all other usual maritime risks and so as in particular to insure Port Geographe Marina against all claims which may be made against Port Geographe Marina by any person arising out of the use of the Jetty, the Pen or the Mooring Area in an amount of not less than \$10,000,000.00.
- 7.2 The Pen Holder must at all times keep the Vessel and any other property owned or brought into the Marina by the Pen Holder and/or invitees of the Pen Holder fully insured whilst within the confines of, or near to the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of god.
- 7.3 The Pen Holder will deliver copies of all policies of insurance and proof of ownership (registration) to Port Geographe Marina on commencement of term and following on as soon as practicable upon their renewal. All copies of the receipts for payment of premiums are to be sent to Port Geographe Marina within 7 days of Port Geographe Marina requesting them.
- 7.4 The Pen Holder must not commit or permit anything whereby any insurance taken out in respect of the pen, jetty, mooring area or the permitted use may be rendered void or voidable or whereby any relevant insurance premium may be increased.
- 7.5 The Pen Holder will deliver all certificates relating to Electrical and Gas Compliance on commencement of term and following on as soon as practicable upon their renewal. All copies of receipt of compliance are to be forwarded to Port Geographe Marina within 7 days of Port Geographe Marina requesting them.

8. LIVE ON BOARD

To protect the amenity, environment and security of the marina full time live on board are not accommodated without prior written approval by Port Geographe Marina. A full time live on board is defined as where, on a boat in any pen, licensed on an annual basis, one or more persons spends on board more than 5 consecutive weeks in any 12 month licence period, and for the balance of that period, spends more than 6 consecutive nights in any given month.

9. MAINTENANCE AND REPAIR

- 9.1 To report to the Marina Manager any item of concern that may require servicing.
- 9.2 Not make any additions or alteration to any part of the pen or jetty whatsoever without Port Geographe Marina and any relevant Authority's prior written consent. All permitted alterations or additions shall be made, completed and carried out to the entire satisfaction of, and the material used therein shall be approved by Port Geographe Marina and any relevant authority.
- 9.3 Keep the Vessel in a state of good and substantial repair, order and condition during the term.
- 9.4 To maintain on the Vessel such safety equipment as are required by the Department of Transport, Port Geographe Marina or any other statutory body.
- 9.5 Not to carry out any refuelling of any vessel within the Marina, other than at the fuel jetty from the designated pumps.
- 9.6 Not to bring into or store within the vessel or marina any motor spirit, petroleum, petroleum products, fuel, oil, kerosene, combustible gases or goods of a similarly dangerous or similarly inflammable nature, without the prior approval of the Marina Manager. Provided that nothing within this sub-clause prevents the Pen Holder from carrying small quantities of fuel, in safe containers, in quantities reasonably required for small outboard engines or stoves; or engine fuel aboard the vessel contained in the Vessel's normal fuel tanks.
- 9.7 Maintenance and repairs to Vessel's accommodated in the Marina's recreational pens are to be carried out at the area designated for such repairs:
- ❖ Permitted in pens – maintenance / repairs that do not risk the contamination of water or damage to Marina deck surfaces (eg) electrical, carpet, canvas, plastics (not frames), internal carpentry, washing (with water), polishing.
 - ❖ Restricted to, service jetty areas and subject to the Marina Manager's approval – maintenance/repairs that do not risk the contamination of water (eg) oil changes, minor mechanical work that will leave the vessel disabled for no longer than eight hours and do not require power tools.
 - ❖ Hard stand only – highest risk activities (eg) external carpentry (sawing, grinding, sanding), hull scraping, engine/gearbox rebuild, stern drives and antifouling.
- 9.8 Contractors entering the Marina to perform repairs, maintenance or any works whatsoever on a vessel at the request of the owner must:
- ❖ Contractors must report to the Marina Office and sign in before entering Hardstand or Jetty System.
 - ❖ Contractors must complete a Contractors Repair and Maintenance Induction Forms Handbook prior to access to the Marina Hardstand and Jetty System.

- ❖ Ensure repairs/maintenance is undertaken at the appropriate location dependent on the nature of such maintenance/repairs as described in Clause 9.7.
- ❖ Provide proof of Public Liability Insurance cover of \$10m in respect of each incident.
- ❖ Acknowledge that under the Western Australian Environmental Protection (Unauthorised Discharge) Regulations 2004 a \$5,000 fine can be issued if the work undertaken is found to have resulted in contamination of the Marina waters.
- ❖ Acknowledge liability for any damage caused to Marina surfaces or structures as a result of carrying out maintenance/repairs.

10. NATURE OF RIGHTS

The rights conferred by this Document are in mutual agreement only and do not create in or confer upon the Pen Holder any tenancy of, or any proprietary rights in, and to, the physical ownership of any part of the Pen, the Jetty or the Mooring Area.

11. PAYMENT

- 11.1 The Pen Holder shall pay any invoice submitted in respect of a berth, mooring or other services provided by Port Geographe Marina and all relevant dues and charges levied by Port Geographe Marina within 7 days of the date of the invoice.
- 11.2 Where payment is made by cheque payment shall not be deemed to be made until such payment is cleared into Port Geographe Marina's account.
- 11.3 Any account remaining unpaid at the end of the 7 days of the date of the invoice, will be deemed to be in breach of Port Geographe Marina's Terms and Conditions and therefore be at risk of the said Terms and Conditions being enacted upon and maybe referred to Port Geographe Marina's Debt Collection Agency.
- 11.4 A refund of fees for any remaining licence term, may be approved by the Marina Manager, whereby licence termination is not a result of a breach of this document, on justified compassionate grounds or in the situation where another customer is prepared to enter into a long term licence (six months duration or longer) on the relinquished pen.
- 11.5 Any approved refund shall be calculated against the applicable licence rate for the period of the term completed at the termination date. A processing fee will apply.
- 11.6 Where the Marina Manager removes any Vessel in accordance with clause 15.2 of this Document, Port Geographe Marina is entitled to a lien over the Vessel to the extent of all costs incurred by the Marina manager for its removal and storage.

12. RENEWAL

- 12.1 Prior to the expiry of the Term, Port Geographe Marina may in its absolute discretion offer to the Pen Holder, the right to renew the Agreement for such period and for such fee applicable at the time of renewal.
- 12.2 A Pen Holder intending to exercise the right to re-new, must do so within 14 days of receipt of the offer to renew, by meeting the conditions of renewal (see Clause 12.3). Where an offer is not exercised within 14 days, the right to the pen returns to Port Geographe Marina on the expiration of the current term.

12.3 A Pen Licence Agreement is deemed renewed when the following conditions have been met:

- ❖ The prescribed fee has been received by Port Geographe Marina.
- ❖ A signed Pen Licence Application Form has been received by Port Geographe Marina.
- ❖ The requirements under (Clause 7) of this Document have been met.

13. RESPONSIBILITY FOR DAMAGE

Port Geographe Marina will not be responsible in any way for:

- 13.1 Any damage from any cause whatsoever that any vessel owned or used by the pen holder, or by any person lawfully authorised by the pen holder pursuant to this document, may at any time sustain while in the pen or entering or leaving the pen other than damage resulting from a negligent act or omission of Port Geographe Marina or Port Geographe Marina breach of this document;
- 13.2 Any loss resulting from the theft of any property or vessel owned or used by the pen holder, or any person lawfully authorised by the pen holder pursuant to this document, while in the pen or for the theft of any parts, equipment or contents of any such vessel.
- 13.3 Any injuries which the pen holder or any of the pen holders employees, agents and customers may at any time sustain while in or upon the pen however occurring other than injuries resulting from a negligent act or omission of the licensee's breach of this document.

14. REMOVAL OF VESSEL

- 14.1 The Marina Manager may in case of an emergency, or in relation to unpaid pen fee's as per our stated Terms and Conditions, remove any vessel from the Pen and anchor or moor it at such place and by such means as the Marina Manager (using reasonable care) determines. The Marina Manager will not be liable in any way whatsoever to the Pen Holder or any person claiming through or under the Pen Holder in respect of anything done by the Marina Manager pursuant to this clause.
- 14.2 The Marina Manager may at any time require the Pen Holder to vacate the Pen either on a temporary or on a permanent basis, and to take up another pen within the Marina (subject to availability) to accommodate the requirements of any special or organised events held at Port Geographe Marina. The Marina Manager will not be liable to the Pen Holder to pay any compensation in respect of such a change of Pen. The terms of this Document will continue to apply for the remainder of the Term to the new Pen.
- 14.3 Where the Marina Manager removes any vessel in accordance with Clause 15.2 of this document, Port Geographe Marina is entitled to a lien over the vessel to the extent of all costs incurred by the Marina Manager for its removal and storage. The Marina Manager may place and maintain on any such vessel such number of custodians as may be necessary and Port Geographe Marina will be entitled to a lien on the Vessel to cover the costs associated with appointing the custodian. If the Pen Holder fails to claim such vessel within the period of three months after the date of such removal, Port Geographe Marina may at any time thereafter offer the vessel for sale and appropriate the proceeds of any resultant sale in satisfaction of all expenses as may be incurred by the Marina Manager.

15. TERMINATION OF PEN AGREEMENT

- 15.1 If the Pen Holder wishes to terminate this Agreement prior to the end of the term, the pen holder must give one month's notice in writing which includes justifications, to the Licensor and must vacate the pen prior to the termination date specified in the notice. The Pen Licensee will not be entitled to a refund of the Fee or any part of the Fee notwithstanding compassionate grounds at the sole discretion of the Marina Manager.
- 15.2 Port Geographe Marina may terminate the Pen Holder's right to use the pen by notice in writing to the pen holder effective immediately upon receipt of that notice if an Event of Default occurs. An Event of Default occurs if any of the following happen:
- 15.2.1 The Pen Holder commits a fundamental breach of this Document.
- 15.2.2 Any monies payable under this document are at any time in arrears and unpaid for 7 days after Port Geographe Marina request for payment.
- 15.2.3 The pen holder does not comply with any of its other obligations under this Agreement and that non-compliance continues for 7 days after written notice from the Marina Authorised Officer to effect compliance.
- 15.3 Port Geographe Marina's rights in clause 15.2 are in addition to any other rights, which Port Geographe Marina may have against the pen holder under this Document, or at law.
- 15.4 Termination of the pen holder's entitlement to use the Pen under clause 15.2 entitles Port Geographe Marina to all monies due as at the date of termination together with all costs, expenses and damages arising from termination and the loss of the Fee (if any) or any other monies due under this Document.

16. WAIVER

Waiver by Port Geographe Marina of the Pen Holder's breach or non-observance of any of the covenants or conditions of this Document will not be construed as a general waiver and any waiver will relate only to the particular breach or non-observance in respect of which it was made. Acceptance by Port Geographe Marina of any Fee or other monies payable under this Document does not constitute a waiver by Port Geographe Marina.

17. RULES & REGULATIONS

The Pen holder covenants with Port Geographe Marina, on its own behalf and on behalf of the pen holder's employees, agents and customers that throughout the term the pen holder will abide by the following:

17.1 Prevention of Nuisance

- 17.1.1 Not carry on, permit or suffer to be carried on, any offensive, noisome or noxious activity nor permit or suffer anything to be done upon the pen, jetty or within the mooring area that may be or become, obnoxious or objectionable or a nuisance to Port Geographe Marina, adjoining tenants or to the public and will not allow or suffer to be carried on upon the pen or within the mooring area any act, matter or thing which may be prohibited by law or indemnify Port Geographe Marina from and against any claims demands and all costs (on a full indemnity basis) incurred by Port Geographe Marina by reason of any claim made whether justifiably or not in relation to any of the matters to in this clause.
- 17.1.2 Not to engage in or allow any invitee to any swimming, diving or underwater activities within the Marina.

17.1.3 Not to allow alcoholic beverages to be consumed within the Marina except on private vessels or other premises where consumption of alcoholic beverages is not prohibited by law.

17.1.4 Not use to permit the use of the pen for any purpose other than the permitted use, or for any purpose which in not permitted under any Act or by any authority, without the prior written consent of Port Geographe Marina and any relevant authority.

17.2 Cleanliness

17.2.1 Keep the pen, jetty, vessel and immediate surroundings in a through state of cleanliness.

17.2.2 Not allow any item whatsoever including but not limited to the accumulation of any rubbish, wastes, bilge discharge, containers, property or anything of any nature the pen, jetty or within the marina.

17.2.3 Not allow and will do all reasonable thing to prevent any pollution or contamination of the pen, jetty or any land, water or air surrounding (whether by run-off, discharge or arising from the permitted use or otherwise) which includes the use of automatic bilge pumps.

17.2.4 To dispose of all boat waste, including garbage, sewage and any other waste, at a boat waste disposal unit or otherwise where specified or permitted by the Marina Manager and relevant Authorities.

17.2.5 Will do and pay for all things required to fulfil the obligations under this clause.

17.2.6 To report immediately to the Marina Manager all fires, leakage and spills of fuels, oils, or waste from any vessel and all defects in or malfunctions of equipment in the Marina.

17.3 Commercial Use

Not to use the pen, jetty or any portion of the marina for any commercial operation including hire, embark and disembark of charter passengers, fishing charter boat operations or sale and demonstration for sale without first obtaining the Marina Managers approval whereby such approval will have separate terms and conditions that will form part of this agreement.

17.4 General

17.4.1 No animals including but not limited to dogs and cats are permitted to be unrestrained whilst on any pen or jetty structure within the marina. Pen holders wishing to take on board their pet may transit the jetties with their animal on a lead or by carrying the animal to the vessel.

17.4.2 Not to allow the hanging and drying of clothing or other items on the Vessel or otherwise in the Marina.

17.4.3 Not to permit or allow any children under the age of 12 years for whom the Pen Holder is responsible, to enter the Marina, the jetty or the Pen unless accompanied by an adult.

17.4.4 Not to use fire fighting equipment supplied by Port Geographe Marina for any purposes other for the fighting of fires.

17.4.5 In the use of the Marina, to comply with all the Rules from time-to-time applicable thereto and with any special instructions from time-to-time issued by Port Geographe Marina for the efficient, safe and harmonious use of the Marina and any of its facilities, by any persons entitled thereto.

17.5 Utilities

To use only the power and water facilities allocated to the pen and to provide such water hoses, power cords and mooring lines required for the vessel in the pen to the standards specified:

- ❖ The current for power cords must not be rated less than 15 amps and have a degree of enclosure protection to IP66.
- ❖ The power cord must be in one length and which should not be less than 12 metres.
- ❖ The power cord must be heavy duty 3 core (including earthing conductor) sheathed cord type complying with AS3191.
- ❖ All components shall be in good condition i.e. No corrosion on electrical contacts and no damage to the cord sheath.
- ❖ The marina provides power with a direct connection to shore supply, which is connected to earth. Unless an isolating transformer is fitted on board the vessel to isolate the electrical system of the vessel from the shore system, corrosion (electrolysis) could damage your vessel or surrounding vessels.

17.6 Mooring

- 17.6.1 To ensure that at all times all dinghies tenders and rafts are securely stowed aboard the Vessel.
- 17.6.2 Not to permit or allow any property, gear or equipment under the control or direction of the Pen Holder to be stored on the Marina, including the Jetty, the Pen walkways and finger piers.
- 17.6.3 To comply with any direction of the Marina Manager on the location and method of mooring or anchoring boats in the Mooring Area and use mooring ropes of a size and standard to suit size of vessel moored in pen. (See Marina mooring hand out for mooring instructions)
- 17.6.4 Not to allow any part of the Vessel to protrude onto a walkway, nor to allow the Vessel to impede the free movement of any other vessel within the marina.

17.7 Signs

Not affix, exhibit or permit to be affixed or exhibited any advertising poster or sign to any part of the Vessel, Jetty, Pen in the Marina with-out the approval of Port Geographe Marina management.

17.8 Vessel Lifting Devices

A vessel lifting device of any type is not to be installed in the pen or marina unless all of the following requirements have been approved by the Marina Manager.

- ❖ Prior approval in writing has been obtained from Marina Manager.
- ❖ A copy of the Owner's Manual, including a dimensional diagram, has been provided to the Marina Manager.
- ❖ The vessel lifter can be wholly contained within the licensed portion of the pen.
- ❖ Immediately following installation, a letter signed by the authorised installer certifying that the vessel lifter has been adequately installed and suits the site conditions is to be provided to the Marina Manager.
- ❖ The pen holder is responsible to ensure the vessel lifting device is maintained in good and proper working order.