

PORT GEOGRAPHE MARINA Pty Ltd

MARINA PEN LICENCE AGREEMENT TERMS & CONDITIONS

- The Pen Licensee has requested and Port Geographe Marina Pty Ltd has agreed to grant a non-exclusive contractual licence to the pen licensee to use the Port Geographe Marina jetty and to occupy a Pen for the purpose of the Permitted use only (the "Licence")
- Port Geographe Marina Pty Ltd and the Pen Licensee by signing the Application Form have agreed to the terms and conditions within this Document

PURSUANT TO THIS AGREEMENT THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS AND INTERPRETATIONS

In this Document unless the context otherwise requires, the following words and expressions have the following meanings;

"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 Manager as appointed by Port Geographe Marina Pty Ltd from time to time;

"Authority" means any Federal, State, or Local governmental 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;

"Document" means this marina pen licence agreement as varied, amended, supplemented or modified from time to time;

"Jetty" means the jetty referred to in the Rental Agreement

"Licence" means the Terms and Conditions applicable to the Pen Licence Application Agreement when signed by both parties

"Marina" means the Port Geographe Marina 21 Spinnaker Boulevard Busselton Western Australia

"Marina Manager" means the authorised officer who has been delegated the authority to manage the Port Geographe Marina complex

"Mooring Area" means all those waters contained within the waterbed lease area held by Port Geographe Marina Pty Ltd

"Party" means a party to this document

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

"Pen Licensee's Employees, Agent and Customers" means each of the Pen Licensee's employees, officers, agent, contractors, service suppliers, sub-licensee, concessionaires, customers and those other persons who at any time are under the control of the Pen Licensee and are on the jetty or in the Mooring Area or its surrounds with the consent (express or implied) of the Pen Licensee but does not include Port Geographe Marina Pty Ltd or its servants or agents

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

"Rental Agreement" means the Rental Agreement to this Document

"Tax" includes GST, taxes, levies, imposts, deductions, excises, charges, stamp transaction and other duties and withholdings together with any related interests, penalties, fines and expenses in connection with any of them including but not limited to goods and services tax, income tax, capital gains tax, payroll tax, stamp duty, financial institutions duty, bank accounts debit tax, withholding tax, and customs duty

"Term" means the term of occupancy of the Pen specified in the application form and includes any extension period

"Vessel" means the vessel specified in the Rental Agreement

Grant of Access

In consideration of the Pen licensee paying the prescribed fee to Port Geographe Marina Pty Ltd and complying with the obligations under this document, Port Geographe Marina Pty Ltd hereby grants to the Pen Licensee access and use of the Pen for the Permitted Use during the Term(s) subject to the Terms and Conditions in this Document

If Port Geographe Marina Pty Ltd is required to rectify any breach of this Document by the Pen Licensee during the Term, and after notifying the Pen Licensee of such breach, Port Geographe Marina Pty Ltd may recoup such cost from the Pen Licensee

Pen Licensee's Covenants

The Pen Licensees covenants with Port Geographe Marina Pty Ltd, on its own behalf and on behalf of the Pen Licensees Invitees, that throughout the Term the Pen Licensee will:

Use of Pen

Not use, or permit the use of, the Pen for any purpose other than the Permitted Use, or for any purpose which is not permitted under any Act or by any Authority, without the prior written consent of Port Geographe Marina Pty Ltd and any relevant Authority

Commercial Use

Not use the Pen, Jetty or any portion of the Marina for any Commercial Operation without first obtaining the Marina Managers approval whereby such approval may have separate Terms and Conditions that will form part of this agreement

Indemnity

At all times during the Term and notwithstanding any policy of insurance required by this Document, Indemnify Port Geographe Marina Pty Ltd from and against

1. All damage to, or loss of, any property of Port Geographe Marina Pty Ltd, or any other person or any injury to any person; and
2. 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 Licensee or its Employees, Agents and Customers in relation to the use or misuse of the Licence, the Pen, the Jetty or the Vessel whilst 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 Pty Ltd

Licences and Permits

Keep in force all licences, permits and permissions required for the carrying on of a Permitted Use conducted by the Pen Licensee or others in relation to the Jetty, the Pen or the Vessel within the Marina

Maintenance and Repair

To report to the Marina Manager any item of concern that may require servicing

Cleanliness

Keep the Pen, the Jetty, the Vessel and immediate surroundings in a thorough state of cleanliness and:

1. 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 upon the Jetty, the Pen or within the Marina.
2. Not allow, and will do all reasonable things to prevent, any pollution or contamination of the Jetty, the Pen 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.
3. Will do, and pay for, all things required to fulfill its obligations under this clause

Additions by Pen Licensee

Not make any addition or alteration to any part of the Jetty or the Pen whatsoever without Port Geographe Marina Pty Ltd 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 materials used therein shall be approved by Port Geographe Marina Pty Ltd and any relevant Authority

Negligent Use of Pen

Not commit, or permit, anything whereby any insurance taken out in respect to the Jetty or the Pen or suffer anything to be done upon the Jetty or the Pen or within the Mooring area that may be, or become obnoxious or objectionable or a nuisance to Port Geographe Marina Pty Ltd, adjoining tenants or to the public and will not allow or suffer to be carried out on upon the Pen or within the Mooring Area any Act, matter or thing which may be prohibited by law. Indemnify Port Geographe Marina Pty Ltd from and against any claims or demands and all costs (on a full indemnity basis) incurred by Port Geographe Marina Pty Ltd by any reason of any claim made whether justifiably or not in relation to any of the matters referred to in this clause

Entry by the Manager

Permit the Marina Manager, and his or hers Authorised Officers of Port Geographe Marina Pty Ltd, 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 licensee of any of the Terms, Conditions, Covenants and Agreements in this Document (with out 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 licensee to Port Geographe Marina Pty Ltd upon demand

Entry by the Marina Manager to Rectify Breach

Permit the Marina Manager to do, or cause to be done, all things necessary to rectify any breach by the Pen licensee of any of the Terms, Conditions, Covenants and Agreements in this Document (without the licensee being under any obligation to do so and without prejudice to the Licensee's other rights, powers, remedies or discretions) and all reasonable costs and expenses incurred by the Marina Manager resulting from such breach (including wages, 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 Licensee to the Licensor upon demand

Encumbrances, Sub-Licensing and Assignment

Not allow any use, encumbrance over the Jetty or the Pen 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

Insurance

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 Pty Ltd against all claims which may be made against Port Geographe Marina Pty Ltd by any person arising out of the use of the Jetty, the Pen or the Mooring Area in an amount not less than \$10,000,000.00

The Pen Licensee must at all times keep the Vessel and any other property owned or brought into the Marina by the Pen Licensee and/or invitees of the Pen licensee fully insured whilst within the confines of, or near to the Marina against any loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God

The Pen Licensee will deliver copies of all policies of insurance to Port Geographe Marina Pty Ltd on commencement of Term and following on as soon as practicable upon their renewal. All copies of the receipts for payment of premiums to be sent to Port Geographe Marina Pty Ltd within 7 days of the Port Geographe Marina Pty Ltd requesting them

Signs

Not affix, exhibit or permit to be affixed or exhibited any advertising poster or sign (including For Sale signs) to any part of the Vessel, Jetty and Pen in the Marina without first have obtained permission from the Marina Manager whose absolute discretion may be withdrawn at any time.

Animals on Jetties

No animals, including but not limited to dogs or cats are permitted to be left unattended or unrestrained by a suitable lead on any Pen or Jetty structure within the Marina. Pen Licensees wishing to take their pet on board or to any part of the Marina Area may only do so if the pet is fully controlled by a suitable lead or by carrying the animal to the Vessel or Marina Area

Responsibility for Damage

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

1. Any damage from any cause whatsoever that any vessel owned or used by the Pen Licensee, or by any person lawfully authorised by the Pen Licensee pursuant to this Document, any 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 Pty Ltd or Port Geographe Marina Pty Ltd's breach of this Document;
2. Any loss resulting from the theft of any property or vessel owned or used by the Pen Licensee or any person lawfully authorised by the Pen Licensee pursuant to this Document, while in the Pen or the theft of any parts, equipment or contents of any such Vessel; and
3. Any injuries which the Pen Licensee or any of the Pen Licensees 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 Licensor or the Licensor's breach of this Document

Removal of Vessel

The Marina Manager may in case of an emergency, (or upon the termination of this Document should the Pen Licensee fail to remove after having received formal notification to remove), remove the Vessel from the Pen and anchor or moor it at such a 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 Licensee or any person claiming through or under the Pen licensee in respect of anything done by the Marina Manager pursuant to this clause.

The Marina Manager may at any time require the Pen Licensee 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) and/or vacate the Pen and take up a mooring at another location within the Port Geographe canal system to accommodate the requirements of any special events (subject to availability) The Marina manager will not be liable to the Pen Licensee to pay any compensation in respect to such a change of pen or mooring. The Terms of this Document will continue to apply for the remainder of the Term to the new Pen

Nature of Rights

The rights conferred by this Document are in mutual agreement only and do not create in or confer upon the Pen licensee 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

Events of Default

An Event of Default occurs if:

1. The Pen Licensee commits a fundamental breach of this Document; or
2. Any moneys payable under this Document, are at any time in arrears and unpaid for 14 days after Port Geographe Marina Pty Ltd request for payment; or
3. The Pen Licensee does not comply with any of its other obligations under this Agreement and that the non-compliance continues for 14 days written notice from Port Geographe Marina Pty Ltd to effect compliance

Port Geographe Marina Pty Ltd's Right to Terminate

1. If an event of Default occurs, Port Geographe Marina Pty Ltd may terminate the Pen Licensees right to use the Pen by notice in writing to the Pen Licensee effective immediately upon receipt of that notice by the Pen Licensee.
2. Port Geographe Marina Pty Ltd's rights in clause 8.1 are in addition to any other rights, which Port Geographe Marina Pty Ltd may have against the Pen Licensee under this Document, or at law.
3. Termination of the Pen Licensees entitlement to use the Pen under clause 8.1 entitles Port Geographe Marina Pty Ltd to all moneys due at the date of termination together with all costs, expenses and damages arising from the termination and the loss of the Fee (if any) or any other moneys due under this Document

Waiver

Waiver by Port Geographe Marina Pty Ltd of the Pen Licensees 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 Pty Ltd of any Fee or other moneys payable under this Document does not constitute a waiver by Port Geographe Marina Pty Ltd

Port Geographe Marina Pty Ltd's Authorised Officer

1. Port Geographe Marina Pty Ltd's Authorised Officer (Marina Manager) may act for and on behalf of the Port Geographe Marina Pty Ltd 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 Pty Ltd for the purposes of this Document
2. The Pen Licensee and Port Geographe Marina Pty Ltd agree that the Marina Manager is hereby authorised by Port Geographe Marina Pty Ltd to do all acts under this Document as agent on behalf of Port Geographe Marina Pty Ltd which Port Geographe Marina Pty Ltd is entitled to do under this Document
3. Any payment required to be made by the Pen Licensee to Port Geographe Marina Pty Ltd may be made by the Pen Licensee to the Marina Manager whose receipt will be a full and sufficient satisfaction and discharge to the Pen Licensee.

Additional Covenants by the Pen Licensee

1. The Pen Licensee to the intent that the obligations continue throughout the Term and, where the case so requires, beyond the Term, agrees with Port Geographe Marina Pty Ltd as follows
2. To keep the Vessel in a state of good and substantial repair, order and condition during the Term;
3. To ensure that at all times all dinghies tenders and rafts are securely stowed aboard the Vessel;
4. To maintain on the Vessel such safety equipment as are required by the Department of Transport, Department of Planning and Infrastructure or any other statutory body;
5. Not to permit nor allow any property, gear or equipment under the control or direction of the Pen Licensee to be stored on the Marina, including the Jetty, the Pen walkways and finger piers;
6. Not allow the hanging and drying of clothing or other items on the Vessel or otherwise in the Marina
7. Not to carry out any maintenance or repairs to any Vessel in the Pen Area including the sanding and painting of any external part of the Vessel without the express permission of the Marina Manager;

8. To use only the water and electrical facilities allocated to the Pen and to provide such water hoses, electrical cables and mooring lines required for the Vessel in the Pen; to the standards set out in the Marina's welcome pack documents and as specified by the Marina Manager
9. Not use any part of the Pen, the Jetty, the Mooring Area or the Vessel for any commercial purposes including hire, embarkation and disembarkation of charter passengers, fishing charter boat operations or sale or demonstration for sale, without the written prior consent of the Marina Manager;
10. To comply with all direction of the Marina Manager on the location and method of mooring or anchoring vessels in the Mooring area
11. Not to carry out any refueling of any vessel within the Marina, other than at the fuel jetty from the designated pumps
12. Not to bring into nor store within the Marina nor on the Vessel any motor spirit, petroleum, petroleum products, fuel, oil, kerosene, combustible gases and 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 Licensee from carrying small quantities of fuel, in safe containers, in quantities reasonably required for the small outboard engines or stoves; or engine fuel aboard the Vessel contained in the Vessel's normal fuel tanks;
13. To dispose of all boat waste, including garbage, sewage and any other waste, at the boat waste disposal unit or otherwise where specified or permitted by the Marina Manager and relevant Authorities
14. 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;
15. Not to live on board any Vessel at the Pen, nor permit anyone else to do so without the written permission of the Marina Manager whose absolute discretion may be withdrawn at any time;
16. Not permit or allow any children under the age of 12 years for who the Pen Licensee is responsible, to enter the Marina, the Jetty unless accompanied by an adult
17. Not to engage in or allow any invitee to any swimming, diving or underwater activities within the Marina
18. Not allow alcoholic beverages to be consumed within the Marina except on private vessels or other premises where the consumption of alcoholic beverages is not prohibited by law;
19. Not use fire fighting equipment supplied by Port Geographe Marina Pty Ltd for any purposes other than for fighting of fires
20. That, if at any time during the term the Pen Licensee leaves the Pen unoccupied for any extended period, the Marina Manager shall be entitled in his/her absolute discretion and without prior written notice to the relevant Pen Licensee, to permit any other Vessel to temporarily occupy the Pen until the return of the Pen Licensee's Vessel, at such a fee and upon such conditions as the Marina Manager considers appropriate and the Marina Manager may, in his/her absolute discretion (but shall not be obliged to do so), refund such portion of the license fee at such time and in such manner as the Marina Manager sees fit;
21. In the event of the sale of the Vessel, to give immediate written notice to the Marina Manager 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 such sale or disposition to immediately remove the Vessel from the Marina or immediately arrange for the new registered owner to enter into a Pen License agreement with the Marina Manager
22. To report immediately to the Marina Manager all fires, leakage and spills of fuel, oils or waste from any Vessel and all defects in or malfunctions of equipment in the Marina
23. 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 Pty Ltd for the efficient, safe and harmonious use of the Marina and any of its facilities, by any persons entitled thereto.

Change of Details

1. If any of the details contained in the application form change during the Term, the Pen Licensee must notify the Marina Manager within seven days of the change occurring
2. The Pen Licensee must obtain the consent of the Marina Manager before changing the Vessel occupying the Pen

Licensor's Lien

1. Where the Marina Manager removes any Vessel in accordance with clause 7 of this Document, Port Geographe Marina Pty Ltd is entitled to a lien over the Vessel to the extent of all costs incurred by the Marina Manager for its removal and storage.
2. If the Pen licensee fails to claim such Vessel within the period of three months after the date of such removal, Port Geographe Marina Pty Ltd 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
3. The Marina Manager may place and maintain on any such Vessel such number of custodians as may be necessary and Port Geographe Marina Pty Ltd will be entitled to a lien on the Vessel to cover the costs associated with appointing the custodian

Renewal

Prior to the expiration of the Term, Port Geographe Marina Pty Ltd may at its absolute discretion offer to the Pen Licensee, the right to renew the Agreement for such period and for such fee applicable at the time of renewal

Cancellation of the Pen Agreement

If the Pen licensee wishes to terminate this Agreement prior to the end of the Term, the Pen Licensee must give at least one month's notice in writing to the Marina Manager 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