

BOAT STORAGE COMPOUND RENTAL AGREEMENT

TERMS AND CONDITIONS

1. Grant of Licence

- 1.1 By counter-signing the attached application form, TDC grants you a right to use allocated space as specified by TDC from time to time (**Storage Space**) in the boat storage compound (the **Compound**) at Port Tarakohe (the **Port**), on the terms and conditions set out in this rental agreement (the **Agreement**) and you accept such grant.
- 1.2 References to “**TDC**” in this Agreement means Tasman District Council and includes, where appropriate, TDC’s Port Manager (or someone acting in that role) and other TDC authorised representative(s).
- 1.3 [The Marina Rules](http://www.tasman.govt.nz) (the **Rules**) form part of this Agreement to the extent that you use the Marina. The Rules are published on www.tasman.govt.nz and are available on request from the Port Manager and may be displayed on signs located on or about the Port. The Rules may be updated or varied from time to time by TDC. In the event of inconsistency between the Rules and the rest of this Agreement, the terms of this Agreement prevail.
- 1.4 You agree to 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:
- (a) the Rules and the terms of this Agreement;
 - (b) all access routes or restrictions designated by TDC from time to time; and
 - (c) all lawful directions, instructions, or signage issued by TDC (provided they are not inconsistent with the terms of this Agreement).
- 1.5 This Agreement binds each person named in the attached application form jointly and severally.

2. Term and Termination

- 2.1 This Agreement starts on the Commencement Date, as specified in the attached application form, and unless an end date has expressly been agreed between the parties, will continue on a rolling over basis until terminated in accordance with this Agreement.
- 2.2 Either party may terminate this Agreement at any time by giving written notice (which may include email) to the other party. The period of notice required relates to whether the rental fee is being charged on a weekly, monthly, or annual basis, as follows:

<i>Type of rental fee specified in attached application form:</i>	<i>Period of notice required:</i>
weekly	7 days
Monthly	7 days
Annual	30 days

- 2.3 If you do not occupy the Storage Space for a period exceeding six months, TDC may terminate this Agreement on 30 days’ written notice unless you’ve obtained the Port Manager’s prior written consent to leave it empty for such a period.
- 2.4 TDC may terminate this Agreement on notice with immediate effect in the event of a material breach of this Agreement.
- 2.5 On expiry or termination of this Agreement (for whatever reason):
- (a) you must immediately: (i) remove the boat named in the application (the **Named Boat**) and all of your other property from the Compound (unless TDC 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 Compound or Port to TDC’s satisfaction. If you fail to do so, TDC may take whatever action itself that it considers necessary at your risk and cost;
 - (b) TDC will refund to you any rental fees you have paid in advance (less any amount owed by you to TDC) if TDC terminates this Agreement early and you are in full compliance with your obligations under this Agreement (including paragraph (a) above). In all other circumstances, TDC is not required to refund and may retain any fees paid in advance.

3. Rental Fees

- 3.1 You will pay the rental fee (and any other applicable charges) to TDC as follows:

<i>Type of rental fee specified in attached application form:</i>	<i>Payment terms:</i>
Weekly	weekly payment, unless agreed otherwise with the Port Manager

Monthly or Annual	Monthly in advance with each payment due on or before the 20 th of each calendar month
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- 3.2 The rental fee is payable whether or not you utilise the Storage Space, until the expiry or termination of this Agreement.
- 3.3 TDC may adjust the rental fee and any other applicable fees and charges on an annual basis and any adjusted fees will be published in the prevailing Schedule of Fees and Charges (the [Fees Schedule](#)) on www.tasman.govt.nz.
- 3.4 If your payment is late, TDC may require you to pay interest at the interest rate set out in the Fees Schedule (and if no such rate is specified then at the interest rate which is 5% above the overdraft rate charged by TDC'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 TDC in recovering any amount you owe (or otherwise enforcing this Agreement), together with interest on such sums at the rate specified above.
- 3.5 TDC has a lien over any vessel (or other property) located in the Compound for all amounts payable by you under this 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 TDC, TDC may sell or otherwise dispose of such vessel and/or other property as TDC sees fit and apply the proceeds of such sale or disposal towards satisfaction of all amounts owed by you and TDC'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 will exclude the application of such lien and TDC may elect to exercise its rights under such lien in addition to or instead of its rights under this clause.
- 4. Use of Compound**
- 4.1 You may only use the Storage Space for the purpose of storing the Named Boat (or such other vessel as TDC may approve in writing). You warrant that you own the Named Boat.
- 4.2 You may, in common with other permitted users of the Compound:
- (a) store the Named Boat in the Storage Space; and
 - (b) access and use the common waterways and pathways at the Port, in accordance with this Agreement. You will ensure that gates into the Compound are kept closed and locked (except when in use).
- 4.3 You may use the water, power, and any other resources and facilities forming part of the Port in common with other permitted users. If TDC determines in its discretion that any such use is excessive or unusually high (including by comparison with other users), TDC 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 store anything that is alive, dangerous, hazardous, illegal, stolen, flammable, explosive, environmentally harmful, perishable, or anything that may cause a risk to the Compound, Port, or any property at the Port.
- 4.5 You must not undertake any maintenance or repair work on the Named Boat or other property in the Compound without the Port Manager's prior consent or use the Storage Space for any unlawful purpose or conduct any business or activities from the Storage Space or make any alterations or additions to the Compound or any structures at the Port.
- 4.6 You may not, without TDC's prior written consent, permit any other person to use the Storage Space nor assign, sublet, transfer or otherwise part with or dispose of, mortgage, or grant a security interest in or over, your rights under this Agreement. If you sell the Named Vessel, this Agreement will end and the new vessel owner must submit a new application to TDC.
- 4.7 This Agreement is not a lease or tenancy and 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 in the Compound or Port.
- 5. TDC's rights**
- 5.1 TDC may, and you irrevocably authorise TDC to, enter the Storage Space 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 TDC) or if you fail to promptly comply with any of your obligations under this Agreement. TDC will not be liable for, and you indemnify TDC 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 TDC's negligence.
- 5.2 TDC may at any time require you to move the Named Boat to a different space within the Compound, as allocated by TDC. You must promptly comply with any such requirement.
- 5.3 TDC generally operates surveillance devices for the purpose of protecting the safety and security of TDC'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 Agreement. TDC's [Privacy Policy](#) (published on www.tasman.govt.nz and as may be amended from time to time) applies to TDC's collection, use and disclosure of personal information.

6. Insurance

- 6.1 You must at all times hold and maintain, and on request promptly provide TDC with evidence of the currency of: (i) material damage insurance for the Named Boat and your other property at the Port 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 Compound is on an "as is where is" basis. You use and access the Compound at your own risk. TDC does not provide security services or safekeeping or any other services and gives no representation as to the adequacy or otherwise of the Storage Space, Compound, or other facilities at the Port. Subject to clause 7.3, TDC 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 Compound or Port, except to the extent caused by TDC's negligence.
- 7.2 In any event, TDC's liability is limited to the aggregate rental fees paid by you in the 3 months preceding the relevant event. Subject to clause 7.3, in no circumstances will TDC 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 TDC was or should have been aware of the likelihood of such loss).
- 7.3 Nothing in this 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 Port 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 TDC against any loss, expense, liability, actions, claims, demands and costs reasonably incurred by TDC arising as a result of your, or your Representatives, acts or omissions (except to the extent caused by TDC's negligence).

8. Health and Safety

- 8.1 You agree and undertake to ensure so far as is reasonably practicable the health and safety of all workers and other persons whose activities are influenced or directed by you and to undertake all activities in strict compliance with the Health and Safety at Work Act 2015 and all other applicable law and TDC's health, safety, security and environmental directions, instructions, policies and procedures.
- 8.2 You must immediately notify the Port Manager:
- (a) of any personal injury or property damage, or any incident exposing any person to a serious risk to their health or safety, caused by the Boat or by any of your or your Representatives' acts or omissions (in addition to complying with any applicable law or legal requirement);
 - (b) if you identify any actual or potential health and safety hazard in the Compound (or anywhere at Port Tarakohe), whether due to your activities or not.

9. General

- 9.1 This Agreement is to be interpreted in accordance with New Zealand law and governed by the jurisdiction of the New Zealand courts.
- 9.2 This 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.
- 9.3 If any part of this Agreement is held by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Agreement.
- 9.4 No waiver of any breach of, or failure to enforce any provision of this Agreement at any time by TDC will in any way limit TDC's rights.
- 9.5 TDC may at any time transfer any or all of its rights and obligations under this Agreement to any subsequent operator of the Port.
- 9.6 Whenever TDC's consent or approval is required in connection with this Agreement, such consent or approval may be given conditionally or unconditionally or withheld by TDC in its absolute discretion and, if given, may only be given in writing (which may include email).