

PORT DENARAU MARINA LTD TERMS AND CONDITIONS OF USE OF BOATLIFTER, HARDSTAND AND CRANE

1. DEFINITIONS

1.1. In these terms and conditions:

"Boat" means the boat identified on the front page of the Contract.

"Company" means Port Denarau Marina Ltd, or its nominees or assignees, and includes, where appropriate, its officers, agents and employees.

"Customer" means the customer identified on the front page of this Contract.

"Hardstand" means the sealed area situated at the Marina and utilised for the storage of boats and masts, and for the lifting of boats into and out of the water by the Boatlifter, for the general manoeuvring of boats on the sealed area and for the washing, cleaning, spray painting and other repair and maintenance work of Boats.

"Marina" means Port Denarau Marina Ltd, Fiji.

"Crane" means the crane and associated equipment utilised in the removal of masts, engines etc from boats situated at the Marina.

"Boatlifter" means the machinery and associated equipment for the transportation of boats to and from the water and around the Hardstand.

2. TERMS AND CONDITIONS OF USE:

2.1. The Customer shall:

(a) At all times keep the area of the hardstand immediately adjacent to the surrounding the Boat in a clean and tidy condition, and shall not store supplies and materials, accessories or debris on that area.

(b) Deposit all garbage in the receptacles provided, provided that where the amount of waste to be removed from and around the Boat is considered by the Company, in its sole discretion, to be unusual y excessive, then the removal of this waste shall be at the Customer's expense.

2.2. The Customer shall not:

(a) Make nor permit to be made any noise or disturbance, or perform any act which in the opinion of the Company, in its sole discretion may be an annoyance or cause a nuisance to any other person or body in and around the Marina.

(b) Carry out any work on the Boat or on the Hardstand between 1930 and 0730 hours.

(c) Undertake dry sandblasting of the Boat in and around any part of the Hardstand.

(d) Carry out any spray painting work without the prior written consent of the Company, and any such spray painting work shall be undertaken only with adequate covers for the protection of other vessels.

(e) Nor shall the Customer permit, any work or activity to be carried out or undertaken on the Boat or on the Hardstand in contravention of any of the provisions of the Environmental Management Act 2005.

2.3. Any breach of the above conditions shall be penalised a fine of \$300.00 and be deemed to be in breach of this Contract entitling the Company to cancel this Contract forthwith without notice.

2.4. The Customer will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by the Customer, or any agent, employee, contractor or invitee of the Customer carrying out work on The Boat by arrangement with the Customer or the Customer's consent. If the Company suffer any loss due to any such act, failure to act or omission then the Customer will be liable to make payment to the Company to make good of the Company's loss.

3. CHARGES AND PAYMENT:

3.1. The Customer shall duly and punctually pay all charges when levied by the Company, and in any event, before the Boat is removed from the Hardstand, subject only to:-

(a) The right for the Company to review those charges at any time without notice.

3.2 Hardstand charges apply until the physical re-launch regardless of delays due to weather or inability to re-launch on the desired date. It is strongly recommended that re-launches are booked at least 3 days in advance (or a minimum of 5 days during peak season)

3.3. The Company shall be entitled to charge the Customer a penalty fee of \$100 in the event of the Customer failing to keep an appointment for the use of the Boatlifter.

(a) Payment for Boats on the hardstand is due monthly by the 20th day of each month. Any amounts outstanding after the 20th of the month shall be chargeable at the rate of 2.5% interest per month.

(b) If any moneys are owing under this Contract by the Customer for the use of the Boatlifter, or for the use of the Hardstand, Crane or otherwise, the Company shall be entitled to seize the Boat and shall, from the date of such seizure, have a general lien upon, and the right of retention of the Boat so seized until all moneys payable by the Customer under this Contract have been paid in full.

(c) If the moneys owing remain unpaid for a period of 21 days after the Company shall have given notice to the Customer of seizure of the Boat, the Company shall be entitled without further notice to sell the Boat by auction or otherwise, together with any chattels situated on or in the Boat, and the proceeds of such sales shall be applied first towards the expense of seizure and sale, secondly the payment of moneys due to the Company and lastly the payment of the balance (if any) to the Customer. Full legal and collection costs will be added to any amounts due.

(d) If there shall be a deficiency of funds from any sale pursuant to this clause to meet the costs noted above, the Company may proceed to recover such deficiency from the Customer in a summary manner.

(e) All costs associated with the collection of any outstanding debt will be on charged to the Customer plus interest at current overdraft rates for the period the debt remains outstanding. Port Denarau Marina Ltd reserves the right to circulate the name of any customer who becomes a bad debtor to any other relevant bodies.

(f) The Customer indemnifies and saves harmless the Company from all claims, suits and demands made by any person or corporation in respect of the Boat or any chattels seized and sold pursuant to this Contract.

4. RISKS AND INDEMNITIES:

4.1. The customer acknowledges that the Boat placed on the Hardstand in accordance with this Contract, and any chattels in, on or fixed to the Boat shall not be deemed to be in the custody, possession or control of the Company in any manner whatsoever unless and until the Company exercises its rights of seizure and sale referred to in clause 3.3.

4.2. The Boat, and any other craft which is transported to or from, or stored upon the Hardstand in accordance with the provisions of this Contract, is entirely at the risk of the Customer, and shall remain at the risk of the Customer throughout the term of this Contract. The Company shall not either directly or vicariously, nor shall any officer, agent, Contractor or employee of the Company be liable in negligence or otherwise for any damage to or theft or loss from the Boat, and any goods, gear of machinery situated on or around the Boat whilst the Boat is on the Hardstand, the Boatlifter or in the Marina howsoever occurring including, but without limiting the generality of the foregoing loss or damage caused by the removal of the Boat by any person not authorised by the Customer to remove it, whether such removal was permitted by the Company or not.

(b) The Company shall not, either directly or vicariously, nor shall any officer, agent, invitee contractor or employee of the Company be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer, or any agent, employee, contractor or invitee of the Customer or any other person on the Hardstand or the Boatlifter or in and around the Marina, or inside the adjoining Marina buildings howsoever such loss, damage or injury may occur.

4.3. To the extent permitted at law, the Customer indemnifies and will keep the Company indemnified against all actions, suits, claims, debts, obligations and other liabilities arising out of this Contract, or out of any act or omission of the Customer, or the officers, agents, employees, contractors or invitees of the Customer and the Customer agrees to compensate the Company for any loss or damage to the Hardstand, Boatlifter, Crane or the Marina or any of the craft in the Marina or on the Hardstand, or to any other property caused by, or resulting from the acts or omissions of the Customer or its officers, agents, employees, contractors or invitees.

4.4. If the signatory to this Contract, executes this Contract as "agent", or for or on behalf of the owner of the Boat, then the signatory to this agreement warrants to the Company that all work carried out by the Company under this Contract has been carried out with the full knowledge and consent of the owner of the Boat, and the signatory further indemnifies the Company from and against all and any claims against the Company in addition to the provisions contained above.

5. CYCLONE:

5.1. in the event of a cyclone or hurricane warning issued by the Fiji Meteorological Service for the Fiji region, immediately remove the Boat from the Hardstand. If the Customer fails or refuses to remove the Boat from the Hardstand within 24 hours after the issuance of a cyclone or hurricane warning for Fiji, the Company (including its employees or agents) is authorised to remove the Boat from its Hardstand and take any and all reasonable action deemed appropriate by the Company to better secure the Boat and secure the Company's marina property and private property. You may be charged a reasonable fee for any such action and the Company will advise you of the location that the Boat has been moved to (either on land or in water) chosen at the Company's discretion. If the Boat is moved, the Company shall take all reasonable care in transporting the Boat to the new location. Nothing in this paragraph constructs a duty or an obligation on the Company to take any action and the Company may only do so, at its sole discretion, if it thinks such action is necessary and appropriate in the circumstances. The Customer agrees that it is his/her/its sole responsibility to properly secure its Boat in response to a cyclone or hurricane warning being declared for the Fiji area. The Customer further acknowledges and agrees that the Company shall not be liable for any claims, damages, costs, expenses, losses and liabilities arising from any damage to or loss of the Boat arising from its removal or transportation from the Hardstand to a location determined by the Company or any resulting loss to the Boat including that caused by the cyclone or hurricane.

6. GENERAL:

6.1. The Company shall be entitled, from time to time, to deliver up the Boat stored in accordance with this Contract to any person producing this Contract or offering such other evidence of ownership authority to receive the Boat as the Company may, in its sole discretion, deem satisfactory.

6.2. Any notice required to be given to the Customer may be delivered to the Customer either personally, or by posting it by registered letter addressed to the Customer at the address noted on the front page of this Contract.

Boat Yard Job Card

Vessel Name _____
 Owner/Owners Rep Name _____



This document must be signed at each step of the process by owner or owners representative.

1. Boat yard staff will direct you into the boat lift dock.
 Owner is responsible for positioning of the strops or forks.
2. After waterblasting vessel will be moved to designated site and propped by PDML staff only.

Owners Signature _____
 Yard Manager Signature _____

3. For relaunch PDML staff will position strops and remove all boat props.

4. Once refloated owner assumes full responsibility for vessel. Please sign completion of Port Denarau Marina Boat Yard contract.

Owners Signature _____
 Yard Manager Signature _____

Job Card

Date	Job Description			Cost	Staff Name	Customer/Agent
	Travel Lift / Marina Bull (Delete One)					
	Waterblasting hr(s)					
	Prop Hire	Days				
	Hardstand	Days				
	Dry Stack	Days/months				
	Boatyard	Days/Months				
	Scaffolding	Day/ Months (\$150/day)				
	Ladder	Day / Months (\$20/day)				
	S Forklift					
	Marina Bull (Rack In/Out)					
	Scissorlift					
Electricity	Start	Stop	Units			
			Total	\$		