

**MARLBOROUGH SOUNDS STORAGE LIMITED  
COMPANY NO. 1871995  
7 MARKET STREET, PICTON  
PO BOX 683 PICTON**

**SERVICES AGREEMENT**

**Customer**

Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
Postal Address (if different) \_\_\_\_\_  
Phone Numbers \_\_\_\_\_  
E-mail Address \_\_\_\_\_  
Driver's Licence No. \_\_\_\_\_  
Date of Birth \_\_\_\_\_  
Registration No. \_\_\_\_\_

**Fees (incl. GST)**

Annual Storage Fee \$ \_\_\_\_\_  
Launching Fee \$ \_\_\_\_\_  
Retrieval Fee \$ \_\_\_\_\_

**Commencement Date** \_\_\_\_\_

**Business Purposes** Yes / No (delete one)

**Declaration**

I am the Customer or the Customer's authorised agent and declare the above information to be true and correct. I have read and understood the terms of trade, which are set out below. I agree that by signing this declaration I accept and agree to abide by the terms of this agreement including the terms of trade. For the avoidance of doubt, I accept that if I do not sign and return the agreement to you, but still have you do work for me, the terms of this agreement will still apply.

Signed \_\_\_\_\_

Date \_\_\_\_\_

## **Terms of Trade**

These terms and any other additional terms the Company informs the Customer of govern all services provided and any business undertaken by the Company for the Customer. These terms prevail over any additional terms in the event of any inconsistency between such terms. Use of the Company's services constitutes an acceptance of these terms by the Customer.

### **1. Definitions**

- 1.1 "Company" means Marlborough Sounds Storage Limited and includes our servants, agents and subcontractors and includes any or all companies related to any subsidiary of the foregoing.
- 1.2 "Fees" means the fees listed on the first page of this agreement.
- 1.3 "Goods" means the whole or any part of any boat, car or any other chattel, article or thing tendered under this agreement by the Customer and includes any Trailer.
- 1.4 "Trailer" means any trailer, container, pallet or other packaging or article used to carry, consolidate, store or package the Goods.
- 1.5 "Dangerous Goods" means Goods which are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, flammable or capable by their nature of causing damage or injury to their Trailer, other Goods or to any persons, or animals, or property.
- 1.6 "Services" means all services requested by the Customer and which the Company has agreed to provide (whether gratuitously or not).

### **2. Fees**

- 2.1 The Customer agrees to pay the Annual Storage Fee by equal instalments every 2 months in advance on the 1st working day of the relevant month without any deduction, set off or adjustment. The first payment of the Annual Storage Fee in respect of the first period of 2 months shall be paid on the Commencement Date.
- 2.2 The Customer agrees to pay the Launching Fee and Retrieval Fee in each case on demand without any deduction, set off or adjustment.
- 2.3 The Company may review the Fees and these terms after the first period of 2 months from the Commencement Date by giving the Customer not less than 1 month's written notice of the revised Fees and any revised terms. The Customer agrees to pay the revised Fees and abide by the revised terms from the date specified in the notice.
- 2.4 The Customer agrees to reimburse the Company for any costs or expenses that the Company incurs on behalf and at the request of the Customer (including re-fuelling charges or repair or maintenance costs and all relevant Port Marlborough Limited New Zealand charges) without any deduction, set off or adjustment.

### **3. Term**

- 3.1 This agreement commences on the Commencement Date and will continue for a minimum period 2 months (or such shorter period as the Customer and the Company agrees) and thereafter shall continue until terminated by either party on not less than 1 month's written notice.

#### **4. Consequences of breach**

- 4.1 Subject to any other provision of this agreement, if the Customer fails to pay the Fees or any costs or comply with these terms then the Company shall be entitled to a fee for the Company's costs (including legal costs and expenses calculated on a solicitor and own client basis) in recovering the outstanding amount or remedying the breach (where capable of remedy) and such fee shall be payable upon demand.
- 4.2 If any moneys due to the Company pursuant to this agreement are unpaid for 20 days from the date of demand (whether in writing or not), the Company may, at its discretion, charge the Customer:
- a. interest at the rate of 15% per annum calculated on a daily basis, compounded monthly, from the date payment was due to be made until the date payment is made in full and such interest rate shall apply as well after as before any judgment; and
  - b. any additional costs or expenses that are incurred by the Company as a result of the Company incurring costs and expenses on behalf and at the request of the Customer (including late payment charges incurred by the Company for re-fuelling costs where the Customer has failed to reimburse the Company on time).

#### **5. Rules & Regulations**

- 5.1 The Customer shall ensure that all Goods (a) have a current warrant of fitness and certificate of registration (where applicable), (b) do not present a danger or risk to any other Goods or persons, (c) are roadworthy or seaworthy (where applicable).
- 5.2 If at any time any Goods do not comply with the requirements set out in clause 5.1 then, without prejudice to the Suppliers other remedies, the Supplier may suspend any Services until such time as the Goods do comply with such requirements.
- 5.3 The Customer shall observe and perform all other rules and regulations from time to time notified to the Customer by the Company and the requirements of any applicable law relating to the Goods and the expenses and charges of the Company in complying with the provisions of any such law or any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, warehouse or other authority or corporation shall be paid by the Customer and the Customer shall provide to the Company all such assistance, information and documents as may be necessary to enable the Company to comply with such laws, orders or requirements.

#### **6. Dangerous Goods**

- 6.1 The Customer shall not tender any Dangerous Goods for storage without presenting to the Company a full description of such goods and complying with all applicable laws, regulations or other requirements.
- 6.2 If in the opinion of the Company any Goods become an immediate danger the Company may at any time destroy, dispose, abandon or render them harmless without compensation to the Customer and at the Company's cost.
- 6.3 Whether or not the Customer was aware of the nature of the Goods the Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of clause 6.2.

**7. Lien**

- 7.1 All Goods shall be subject to a particular and general lien for moneys due in respect of such Goods and any other moneys due from the Customer to the Company. If any moneys due to the Company are not paid within 30 days after notice has been given to the Customer that the Goods have been detained, they may be sold at the discretion of the Company and at the Customer's expense and the proceeds applied on account of such general or particular lien.
- 7.2 Notwithstanding any transfer of physical possession, the Goods are not released until all moneys owing have been paid to the Company. In the event of any Goods for any reason being delivered to the owner or his nominee without payment having been made in full, the Company retains a lien on such goods and may retake possession of them pending payment and may enter any premises for that purpose.

**8. Warranties**

- 8.1 The Customer warrants that:
- a. it has and throughout the term of this agreement shall continue to have comprehensive insurance (including without limitation adequate property, public and third party liability insurance) for their Goods and themselves and, on or before the Commencement Date and at such other times as the Company requests, it shall produce to the Company such insurance policy or policies;
  - b. it is the owner or the authorised agent of the owner of the Goods and enters into this agreement on its own behalf and also as agent for the owner of the Goods and indemnifies the Company against all claims by any other person for any loss or damage whatsoever arising out of or incidental to or in connection with the Services provided by the Company;
  - c. all information provided by it to the Company in connection with the Goods is accurate and adequate and the Customer agrees to indemnify the Company against all loss, damage, fees and expenses arising or resulting from any inaccuracies or inadequacy in that information.

**9. Consumer Guarantees**

- 9.1 If the Customer has acknowledged on the first page of this agreement that the supply of Services is for the Customer's business purposes (as that term is defined in the Consumer Guarantees Act 1993) then the provisions of the Consumer Guarantees Act shall not apply to the transaction. Otherwise nothing in these terms shall affect or diminish the rights of any Customer under the Consumer Guarantees Act. In the event of conflict between these terms and the Consumer Guarantees Act then the provisions of the Consumer Guarantees Act shall prevail and any such conflict shall be deemed not to be an attempt to contract out of the Consumer Guarantees Act.

**10. Sub-Contracting**

- 10.1 The Company shall be entitled to sub-contract on any terms the whole or part of the Services.
- 10.2 Any person providing the Services (other than the Company) shall have the benefit of these provisions as if they were expressly for his benefit and in entering into this agreement, the Company does so as agent and trustee for such person.

- 10.3 If the Company sub-contracts the whole or part of the Services to another person, the Services provided by the Company are also subject to the terms of any agreement between the Company and that other person and the Company shall have the benefit of all provisions benefiting that other person as if those provisions were expressly for the benefit of the Company. In the event of and to the extent of any inconsistency between these terms and the terms of the agreement between the Company and the other person, these terms shall prevail.

## **11. Miscellaneous**

- 11.1 The Customer acknowledges:
- a. boat trailers may be stored outside away from the Company's main facility when the Customer's boat is in use;
  - b. a minimum of 24 hours' notice for the launch or retrieval of a Customer's boat must be given.
- 11.2 These terms are to be read subject to relevant statutory provisions having effect in New Zealand which by law cannot be excluded, restricted or modified. Any such term and condition of these terms which is inconsistent with or repugnant to that legislation shall be null and void to the extent (but no further) of such inconsistency or repugnance.
- 11.3 Each term of this agreement is severable from the other, and if for any reason a term is invalid or unenforceable it shall not prejudice or affect the validity or enforceability of any other term.
- 11.4 These terms shall be governed and construed in accordance with New Zealand law and any proceedings shall be brought in the courts of New Zealand.