

# MARINA AND SHIPYARD AGREEMENT



## REFERENCE SCHEDULE

OUR DETAILS	
<b>Name:</b>	Rivergate Marina & Shipyard Pty Limited ABN 12 116 163 912 ("RMS")
<b>Address:</b>	Rivergate Place, Murarrie, Queensland 4172
<b>Contact Numbers:</b>	(Phone) +61 (0) 7 3907 1600      (Fax) +61 (0) 7 3907 1666      (After Hours) +61 (0) 410 114 799
OWNER'S DETAILS <i>(please print)</i>	
<b>Name:</b>	ABN:
<b>Address:</b>	Post Code:
<b>Owner's representative:</b>	Name: * <b>Attach a copy of authority to act</b>
<b>Contact Numbers:</b>	(Bus) <span style="margin-left: 150px;">(Mob)</span>
	(Fax) <span style="margin-left: 150px;">(Email)</span>
VESSEL DETAILS <i>(please print)</i>	
<b>Name of Vessel:</b>	
<b>Boat Size / Model:</b>	
<b>Boat Details:</b>	LOA: <span style="margin-left: 50px;">Dry Weight:</span> <span style="margin-left: 50px;">Beam:</span> <span style="margin-left: 50px;">Draft:</span> Registration No.: * <b>Attach a copy of the Vessel's registration papers</b>
<b>Insurance Details:</b>	Insurance Company: <span style="margin-left: 100px;">Policy Number:</span> * <b>Attach a copy of the Certificate of Currency for the insurance policy</b>
CREDIT CARD AUTHORISATION	
(The Owner <b>must</b> provide a credit card authorisation on execution of this Agreement.)	
<i>I hereby authorise that all fees payable under this Agreement and the charges for any other goods and services provided by RMS be debited from my credit card immediately on those fees and charges becoming payable.</i>	
<b>Mastercard</b> <input type="radio"/> <b>Visa</b> <input type="radio"/> <b>Diners Club</b> <input type="radio"/> <b>Amex</b> <input type="radio"/>	
<b>NOTE:</b> An additional service fee of 4% for Amex and Diners Club credit cards and 2% for all other credit cards shall apply.	
<b>Name on card:</b>	.....
<b>Card Number:</b>	.....
<b>CCV:</b>	.....
	<b>AMEX ID:</b> <span style="margin-left: 50px;"><b>Expiry Date:</b></span> .....
<b>Signature:</b>	<b>Date:</b> .....

The signing party acknowledges having read the conditions of this Agreement, accepts the conditions in full and warrants that he/she has the authority to execute this Agreement for the Owner of the Vessel.

SIGNED for and on behalf of **Owner:**

Print Name: ..... Signature: ..... Date: .....

SIGNED for and on behalf of **RMS:**

Print Name: ..... Signature: ..... Date: .....

# MARINA AND SHIPYARD AGREEMENT



## REFERENCE SCHEDULE

AUTHORISED SERVICES		
<b>A. MARINA SERVICES</b>		(\$)
Marina Berth number:		N/A
Commencement date:		N/A
Berth Fee: <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly		\$
Owner's proposed dates ( <i>describe expected period of berthing, departure date, etc</i> ):		
<b>B. GENERAL SERVICES</b>		Estimate (\$)
<input type="checkbox"/> Fuel (Daily bowser rates apply unless otherwise agreed)		N/A
<input type="checkbox"/> Security keys	Number/s: FOB No's:  Non Returned or Lost Keys: \$50.00 per key	\$
<input type="checkbox"/> Electrical metre reading:	Open:                      Close:	\$
<input type="checkbox"/> Other:		\$
<b>C. SHIPYARD SERVICES</b>		Estimate (\$)
<input type="checkbox"/> 75 tonne lifting service (incl. retrieval and launch)		\$
<input type="checkbox"/> 300 tonne lifting service (incl. retrieval and launch)		\$
<input type="checkbox"/> Hardstand fee (per day)		\$
Commencement date:      /      /		N/A
<input type="checkbox"/> Pressure wash		\$
<input type="checkbox"/> Environmental Fee		\$
<input type="checkbox"/> Prepare and antifoul		\$
<input type="checkbox"/> Prepare and apply Prop speed to Running Gear		\$
<input type="checkbox"/> Survey Lift		\$
<input type="checkbox"/> Dry Store		\$
<input type="checkbox"/> Scaffold Hire		\$
<input type="checkbox"/> Crane Access Fee (per vessel per visit)		\$
<input type="checkbox"/> Anodes		
<input type="checkbox"/> Rubbish Service: <input type="checkbox"/> 240 litre bin <input type="checkbox"/> 1.5 cubic metre skip		\$
<input type="checkbox"/> Power		
Other: ( <i>describe any other works – use additional pages if required</i> )		
<b>TOTAL SHIPYARD SERVICES (ESTIMATE) INCL GST</b>		<b>\$</b>

## GENERAL CONDITIONS

### BACKGROUND

A. This Agreement is between the Owner and Rivergate Marina and Shipyard Pty Limited ABN 12 116 163 912 (RMS) for the provision of Authorised Services at the Complex.

B. This Agreement is formed at the time that the Owner and RMS execute this document.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

- (1) **"Agreement"** means this document, the Reference Schedule, the Rules, and any special conditions agreed by the parties.
- (2) **"Additional Services"** means goods or services provided by RMS at the request of the Owner.
- (3) **"Authorised Services"** means the Marina Services, the Shipyard Services, the General Services or any Additional Services provided by RMS.
- (4) **"Authority"** means any State, federal or local government or authority having jurisdiction over the Vessel or the Complex.
- (5) **"Berth"** means the marina berth specified in the Reference Schedule.
- (6) **"Complex"** means the land, all improvements and facilities which comprise the Marina and Shipyard operated by RMS at Rivergate.
- (7) **"Contractors License Agreement"** means the licence agreement with RMS that all contractors must hold before being entitled to access and undertake any work within the Complex.
- (8) **"Environmental Requirement"** means any Law or requirement of an Authority relating to waste, pollution, use of land, or the protection, preservation and enhancement of the environment.
- (9) **"Fees"** means all amounts payable by the Owner to RMS for the provision of the Authorised Services in accordance with this Agreement including amounts payable for the provision of Additional Services or in accordance with clause 5.3.
- (10) **"General Services"** means the services described as such in the Reference Schedule.
- (11) **"Hardstand"** means the concrete surface on the Complex designated as such by RMS.
- (12) **"Headlease"** means the seabed lease granted by the Minister to the Lessee for the Marina.
- (13) **"Headlessor"** means the Minister administering the Lands Act 1994.
- (14) **"Law"** means any present or future local, state, or federal government statute, rule, regulation, proclamation, ordinance or by-law.
- (15) **"Lessee"** means Murarrie Developments Pty Limited ACN 098 549 538
- (16) **"Marina"** means that area of the Complex comprising the marina berths, seawall, slipways, piers, pontoons, gangways, ramps, mooring gear, and all other associated improvements and infrastructure, and includes the Berth.
- (17) **"Marina Services"** means the services described as such in the Reference Schedule;
- (18) **"Person"** means an individual, a partnership or a company.
- (19) **"Other Services"** means services or works carried out by persons other than RMS at the Complex.
- (20) **"Owner"** means the party specified as such in the Reference Schedule.
- (21) **"Owner's Representatives"** means any of the Owner's employees, agents, contractors, crew, clients, visitors and includes all Persons providing Other Services to the Owner.
- (22) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
- (23) **"RMS"** means Rivergate Marina and Shipyard Pty Limited ABN 12 116 163 912 and includes its employees, agents, or other persons authorised by RMS to act on its behalf.
- (24) **"RMS Safety Induction Program"** means a safety induction conducted by RMS in its offices that the Owner must complete before it is entitled to access the Complex.
- (25) **"Rivergate"** means the Rivergate Community Titles Scheme 33393 located at Rivergate Place, Murarrie, Queensland.
- (26) **"Rules"** means the rules and regulations made and amended from time to time by RMS for the safe and efficient use and management of the Complex.
- (27) **"Security Deposit"** means any monetary security specified in the Reference Schedule for the provision to the Owner of the Security Keys;
- (28) **"Security Key"** means the access keys provided by RMS for the purpose of allowing the Owner access to the Complex.
- (29) **"Shipyard"** means that part of the Complex comprising the lifting bays, travel lift, open hardstand area, dry storage, sheds, offices and other associated improvements and facilities.
- (30) **"Shipyard Services"** means the services described as such in the Reference Schedule.
- (31) **"Term"** means the period starting on the date of this Agreement and ending on the date that the Authorised Services have been completed.
- (32) **"Vessel"** means the vessel described in the Reference Schedule.
- (33) **"WH&S Act"** means the *Workplace Health and Safety Act 1995* (QLD) and associated Regulations.

### 2. SERVICES PROVIDED BY RMS

2.1 RMS will provide the Authorised Services.

2.2 RMS may arrange for part or all of the Authorised Services to be performed by any of its contractors.

2.3 If RMS provides Additional Services:

- (1) the Fees payable for the Additional Services will be as agreed between the parties or if no there is no agreed price for the Additional Services a reasonable amount will be determined by RMS; and
- (2) the Additional Services shall be provided in accordance with this Agreement.

2.4 RMS does not warrant the uninterrupted provision of the Authorised Services and is not liable to the Owner for any damages which the Owner may suffer because of any interruption to the provision of the Authorised Services.

### 3. BERTH

3.1 The Owner is licenced to moor the Vessel in the Berth for the Term.

3.2 The Owner must not moor a vessel other than the Vessel referred to in the Reference Schedule without the prior written consent of RMS.

3.3 Nothing in this Agreement confers on the Owner any rights of tenancy nor creates the relationship of landlord and tenant.

3.4 If the Owner fails to remove the Vessel upon the expiry of the Term, RMS may charge the Owner a reasonable amount for the period that the Vessel remains at the Complex and the Owner is deemed to have agreed to such charges.

3.5 RMS may require the Owner to relocate the Vessel to another berth in the Marina. If the Owner fails to relocate the Vessel to the berth and within the time nominated by RMS, the Owner is deemed to have authorised RMS to relocate the Vessel to any place on the Complex that RMS considers appropriate. In the event of an emergency or for urgent operational reasons, RMS may relocate the Vessel as required without prior notice to the Owner.

3.6 If the Berth is required by RMS for a boat show or any similar event and RMS gives to the Owner 7 days prior written notice of that event, RMS may instruct the Owner to relocate the Vessel to another berth or area in the Marina or remove the Vessel from the Marina entirely. RMS may relocate the Vessel where the Owner fails to comply with an instruction issued under this clause and the Owner is deemed to have granted permission to do so

3.7 The Owner is not entitled to any payment or compensation if RMS exercises its rights under clauses 3.5 or 3.6. If RMS has instructed the Owner to remove its Vessel from the Marina entirely, the Owner is not required to pay any fees for the period that the Owner cannot moor the Vessel in the Berth.

### 4. HARDSTAND

4.1 If the Owner wishes to retain the Vessel on the Hardstand after the expiry of the Term, the extended period and the fee payable for the ongoing use of the Hardstand will be as agreed between the parties. If there is no agreement as to a daily fee for the extended period, RMS shall determine a reasonable amount that will be charged to the Owner. The conditions of this Agreement will apply for the entire period that the Vessel remains on the Hardstand.

### 5. FEES

5.1 The Owner agrees that:

- (1) Where not payable in advance, all Fees payable under this Agreement must be paid on the earlier of:
  - a) the date of the invoice for those Fees; or
  - b) prior to the Vessel being returned to the water or to the Owner.
- (2) RMS may debit the Owner's credit card on the date for payment of any Fees and charges due and owing to RMS in accordance with the credit card authorisation that it holds.
- (3) RMS is not required to give the Owner any notice prior to debiting the Owner's credit card in accordance with clause 6.1(2).
- (4) Interest of 10% per annum, compounded daily, will be charged on any Fees due to RMS under this Agreement but unpaid for 7 days.
- (5) All Fees and charges payable under this Agreement and pursuant to any invoice issued to the Owner by RMS are to be paid in full in \$AUD. If any payment received by RMS is in a currency other than \$AUD, RMS may convert the payment into \$AUD at the spot, cross or forward rate at the time of its receipt. The Owner is responsible for payment of any shortfall due to any costs of conversion.

5.2 The Owner must make payment of the Fees in strict accordance with this Agreement and any invoice issued by RMS under this Agreement.

5.3 Any amounts referred to in this Agreement are inclusive of GST where applicable and unless otherwise indicated. If a party makes a taxable supply in connection with this Agreement for a consideration representing its value, then the party liable to pay for the taxable supply must also pay, at that time, the amount of any GST payable in respect of that taxable supply.

5.4 The Fees payable for the Shipyard Services stated in the Reference Schedule are only an estimate. RMS will provide the Shipyard Services based on the rates stated in the Reference Schedule or if no rates are stated then at a reasonable rate determined by RMS. The Fees payable for those the Shipyard Services will take account of the actual time time, works, materials and resources provided under this Agreement.

### 6. SECURITY KEYS AND SECURITY DEPOSIT

6.1 On expiry or the termination of this Agreement, the Owner must return to RMS all Security Keys provided by RMS.

## GENERAL CONDITIONS

- 6.2 In the event that the Owner does not comply with clause 6.1, RMS may charge to the Owner the fee for replacement of lost or unreturned keys specified in the Reference Schedule.
- 7. RULES**
- 7.1 The Owner must ensure that it and the Owner's Representatives:
- (1) promptly comply with any directions given by RMS in relation to any aspect of the Complex; and
  - (2) at all times comply with the Rules (including any amendments to the Rules made by RMS from time to time).
- 7.2 RMS may cancel or waive any Rule in relation to any person and will not be liable to the Owner for any non-enforcement of any Rule.
- 8. OWNER'S WARRANTIES**
- 8.1 The Owner warrants:
- (1) That all information provided by the Owner in this Agreement is true and correct and that it has all requisite authority to enter into this Agreement including from any co-owner, financier and/or other party with an interest in the Vessel;
  - (2) it has given RMS all information which may be relevant to RMS for the purposes of providing the Authorised Services; and
  - (3) it is personally liable for all fees, accounts, costs, claims or liabilities of whatsoever nature arising under this Agreement.
- 8.2 Any person signing this Agreement for the Owner warrants that he/she has the authority to execute this Agreement on behalf of the Owner and/or the registered owner of the Vessel and RMS is not required to make any enquiries in this regard.
- 8.3 Notwithstanding clause 8.2, RMS may ask for any further evidence it requires at any time in order to satisfy itself that the Owner's signatory has the authority to execute the Agreement on behalf of the Owner and/or the registered owner of the Vessel.
- 9. OWNER'S OBLIGATIONS**
- 9.1 The Owner must:
- (1) ensure that the Vessel is kept in a clean, sound, seaworthy and watertight condition, and free of any vermin, pests and insects;
  - (2) at its cost observe, strictly perform and fulfil all requirements of any Law and any Environmental Requirement affecting the Vessel and ensure that all licences and registrations for the Vessel are maintained;
  - (3) use the facilities of the Complex solely for the purpose they were intended;
  - (4) promptly comply with the requirements of all statutes, regulations and bylaws relating to the use of the Berth and the facilities of the Complex (in particular, requirements relating to pollution of any part of the environment and any directions of the Headlessor and the Lessee consistent with the Headlease as notified to the Owner from time to time);
  - (5) keep the Vessel free of people while any Authorised Services or Other Services are being performed.
- 9.2 The Owner must not:
- (1) obstruct or interfere with the provision of the Authorised Services;
  - (2) do anything on the Complex or the Vessel which is immoral, unlawful, noxious, offensive, hazardous, or likely to cause nuisance or injury to RMS or to any other person;
  - (3) assign or otherwise deal with its interest under this Agreement;
  - (4) while the Vessel is located at the Complex, sell or attempt to sell the Vessel or advertise the Vessel for sale or place any sign on the Vessel without the prior written consent of RMS;
- 9.3 The Owner warrants that it has made its own enquiries in respect of the facilities of the Complex and agrees that:
- (1) no promise, representation or warranty is given by RMS as to the:
    - a) condition or state of repair of the Complex; or
    - b) suitability, adequacy or efficiency of the Authorised Services; and
  - (2) the Authorised Services provided do not include inspection, assessment or assumption of responsibility for the condition of the Vessel; and
  - (3) RMS's obligations are limited to providing those Authorised Services as may be agreed by the parties under this Agreement.
- 10. REPAIR OF DAMAGE**
- 10.1 The Owner agrees that:
- (1) it is responsible for any damage to the Complex or to any property on the Complex or for any injury to persons using the Complex arising from any act, omission, neglect or default by the Owner; and
  - (2) it must give immediate notice to RMS of any damage, accident, or defect in the Complex, property on the Complex or the Vessel of which it becomes aware.
- 11. INSURANCE AND RISK**
- 11.1 The Owner must take out and maintain:
- (1) public risk insurance for at least \$10,000,000.00 in respect of any single accident;
  - (2) comprehensive insurance on the Vessel and its contents including loss, theft and damage for market value, from time to time; and
  - (3) any other insurance reasonably required by RMS.
- 11.2 The Owner must give RMS evidence that it has taken out adequate insurance and give RMS immediate notice if any insurance policy is cancelled.
- 11.3 The Owner must not:
- (1) do anything which may affect rights under any insurance policy taken out by RMS or other person; or
  - (2) store chemicals, inflammable or volatile liquids or substances in the Vessel other than as is reasonably necessary for the operation of the Vessel and in the appropriate approved safety container.
- 11.4 The Owner acknowledges that the Vessel and all property on it, remain at the sole risk and liability of the Owner at all times, including (but not limited to) when RMS has possession of the Vessel and its fittings and contents in accordance with clause 12, and:
- (1) RMS is not required to insure the Vessel or the contents for any purpose;
  - (2) RMS will not be liable to the Owner for any direct, indirect, special or consequential loss or damage suffered other than as a result of wilful misconduct or gross negligence on the part of RMS; and
  - (3) the Owner will remain responsible for keeping the Vessel in good repair and maintenance at all times notwithstanding possession by RMS or any lien RMS may have exercised.
- 11.5 The Owner must ensure that where it is connecting the Vessel to shore power that shore power isolation is fitted to the Vessel (as a precautionary measure against galvanic corrosion). Where shore power isolation is not installed, any resulting damage to the Vessel or any other adjacent vessels, property or improvements will be at the Owners sole risk and liability
- 12. LIENS AND SECURITY INTERESTS**
- 12.1 The Owner charges in favour of RMS the Vessel, its fittings and contents as security for the payment of all money due to RMS under this Agreement.
- 12.2 Depending on the nature and characteristics of the goods and/or services provided by RMS to the Owner, RMS will be deemed to have:
- (1) a contractual lien in accordance with clause 14;
  - (2) a Security Interest pursuant to the PPSA in accordance with clause 14; and/or
  - (3) possession of the Vessel and its fittings and contents for the purposes of storing the Vessel as a bailee for reward within the meaning of 'storer' as that term is defined in section 2 of the *Storage Liens Act 1973 (Qld)*;
- 12.3 The interests, rights and powers arising from or as outlined in clause 12.2 will operate and prevail in the order described in that clause to the extent of any inconsistency or failure of operation in the interests, rights and/or powers granted to RMS pursuant to any part of clause 12.2.
- 13. PPSA**
- 13.1 In this clause, the terms 'Register', 'Proceeds', 'Purchase Money Security Interest', 'Security Agreement', 'Security Interest', 'Verification Statement', 'Financing Statement' and 'Financing Change Statement' will have the meanings given to them in the PPSA.
- 13.2 Subject to clause 12, the Owner:
- (1) acknowledges that the Agreement constitutes a Security Agreement for the purposes of the PPSA;
  - (2) grants a Security Interest to RMS in the Vessel and its fittings and contents (and the proceeds of the Vessel and its fittings and contents); and
  - (3) acknowledges that the Security Interest granted in accordance with clause 13.2(2) is a Security Interest for the purposes of the PPSA.
- 13.3 The Owner must execute documents and do such further acts and things and provide such further information as may be required by RMS to enable registration of the Security Interest granted by the Owner on the Register, or to perfect or correct any registration.
- 13.4 The Owner agrees that to the extent permitted by law, RMS owns, and the Owner waives any rights it may have to anything installed on or affixed to the Vessel, including any rights it might otherwise have under Part 3.3 of the PPSA.
- 13.5 The Owner acknowledges and agrees that where the PPSA applies to action taken by RMS in relation to the Vessel, the Owner:
- (1) agrees that sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply; and
  - (2) waives its right to receive any notice RMS is required to give the Owner under the PPSA (to the extent that the notice can be excluded) and includes any right to receive a notice under section 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA and any Verification Statement.
- 13.6 The Owner irrevocably appoints RMS and each of its directors severally for the Term as its attorney to sign any document required under clause 13.3 on the Owner's behalf and to do anything else RMS considers necessary to make the Security Interest enforceable and capable of registration. (A statutory declaration by a director of RMS will be sufficient proof of the lawful exercise of a power of attorney for the purpose of registering the security on the PPSA)
- 14. LIEN**
- 14.1 Notwithstanding clause 13, the Owner grants to RMS a right of lien against the Vessel, its fittings and contents until such time as it has made all payments due to RMS arising under or incidental to this Agreement.
- 14.2 The existence of either of:
- (1) the lien granted pursuant to clause 14.1; and
  - (2) the Security Interest granted pursuant to clause 13.2;
- does not affect any common law lien or statutory lien RMS may otherwise have against the Vessel, its fittings and contents (including pursuant to the *Storage Liens Act 1973 (Qld)*).

## GENERAL CONDITIONS

### 15. DEFAULT OF OWNER

- 15.1 The Owner is in default of this Agreement if:
- (1) the Fees or any part of the Fees or any other money payable by the Owner to RMS is in arrears and remains unpaid for seven (7) days after the due date for payment;
  - (2) the Owner fails to comply in a timely manner with its obligations under this Agreement or if the Owner fails or refuses to comply with any of the Rules or directions of given by RMS; or
  - (3) the Owner enters into any form of liquidation or insolvency or is wound up or dissolved, enters into a scheme or arrangement for creditors, is placed under administration, or a receiver (or receiver and manager) is appointed.
- 15.2 If the Owner is in default under this Agreement, RMS may immediately terminate this Agreement by written notice to the Owner.
- 15.3 Without prejudice to RMS's rights in law or equity, if the Owner is in default, RMS:
- (1) may suspend all or part of any Authorised Services;
  - (2) may remove the Vessel to another area within the Complex at the Owner's cost; and
  - (3) may take such action as is necessary to enforce its charge and lien over the Vessel, and to prevent the Vessel from being removed from the Complex until the default is remedied or all outstanding money is paid.
- 15.4 RMS may also immediately terminate this Agreement by written notice to the Owner if:
- (1) RMS, in its absolute discretion, determines that the Marina or Shipyard has suffered damage and is unable to continue providing any or of all of the Authorised Services; or
  - (2) in the opinion of RMS any conduct by the Owner or the Owner's Representatives is harmful to the interests of Rivergate or RMS; or
  - (3) the Headlease, or any agreement relating to the Marina between RMS and the Lessee, is terminated.
- 15.5 Termination of this Agreement by RMS does not affect any other rights that RMS may have against the Owner arising on or before the date of termination.
- 15.6 RMS's acceptance of any Fees or other money under this Agreement (before or after termination) is not a waiver of a breach or an acceptance of the repudiation of this Agreement by the Owner.

### 16. INDEMNITY

- 16.1 The Owner indemnifies RMS against all losses, damages, costs and expenses including legal costs on a full indemnity basis arising from the acts, omissions, or negligence of the Owner or the Owner's Representatives at the Complex or under this Agreement that results in any of the following:
- (1) Personal injury or the death of any person; or
  - (2) Loss of, or damage to, or loss of use of any property, including the property of RMS;
  - (3) Economic loss including consequential loss to RMS or any other person.

### 17. NOTICES

- 17.1 Notices under or relating to this Agreement may be served on either party by delivering, posting or faxing the notice to the respective address or facsimile number of the relevant party as stated in the Reference Schedule.
- 17.2 A notice given;
- (1) personally will have been served on delivery;
  - (2) by post will have been served 3 days after posting if to an address in Australia or 7 days if by airmail to an overseas address;
  - (3) by facsimile transmission will be served on receipt of a transmission report by the machine from which the facsimile was sent indicating that the facsimile number specified in Reference Schedule or such other number as may have been notified by the receiving party. If the facsimile has not been completely transmitted by 5.00pm (determined by reference to time of day at the recipient's address) it will be deemed to have been served on the next day.

### 18. GENERAL PROVISIONS

- 18.1 If anything in the Agreement requires the consent or approval of RMS, RMS may withhold that consent or approval in its absolute discretion or grant its consent subject to any conditions.
- 18.2 RMS is not liable to the Owner for any loss suffered by the Owner in connection with this Agreement.
- 18.3 This Agreement constitutes the entire agreement and understanding between the parties about its subject matter.
- 18.4 Any covenants implied by Law or otherwise are not excluded but will be taken to have been modified (where permitted) to the extent of any inconsistency with this Agreement.
- 18.5 If there is more than one Owner under this Agreement their liability is joint and several.
- 18.6 If the whole or any part of the provision of this Agreement is void, illegal or unenforceable in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause will not operate if the severance alters the basic nature of this Agreement or is contrary to public policy.

### 19. COSTS

- 19.1 Each party will bear its own costs for the preparation of this Agreement, but the Owner must (if demanded by RMS) pay all stamp duties from time to time assessed on this Agreement.

### 20. TIME

- 20.1 Time is of the essence for performance of all obligations of the Owner under this Agreement.

### 21. JURISDICTION

- 21.1 The law of Queensland governs this Agreement.
- 21.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.

### 22. COUNTERPARTS

- 22.1 This Agreement may consist of one or more counterpart copies and all counterparts will, when taken together, constitute the one document.

### 23. WORKPLACE HEALTH & SAFETY

- 23.1 The Owner must strictly comply with its obligations under the WH&S Act during the Term of this Agreement. The Owner's obligations under the WH&S Act include but are not limited to the following:
- (1) Ensuring that the Owner and its employees, agents representatives and contractors understand and comply with their respective WH&S Act obligations.
  - (2) Ensuring that the Owner or the Owner's Representative who will be supervising or performing the Other Services properly coordinates, supervises and oversees the work and all matters pertaining to the health and safety of those persons carrying out any part of the work in order to minimise any risks for all persons carrying out that work in accordance with the WH&S Act;
  - (3) Ensuring that the Owner or Owner's Representative, employees, agents and contractors performing the Other Services undertakes the RMS Safety Induction Program prior to commencing the work;
  - (4) Providing a Work Method Statement to RMS in relation to the Other Services prior to commencing work;
  - (5) Ensuring that the Owner, the Owner's Representative, and each employee, agent of contractor performing the Other Services holds a general safety induction card;
  - (6) Ensuring that the Owner, Owner's Representative, employees, agents or contractors performing the Other Services which involve a high risk activity are given sufficient information, induction, training and supervision to prevent or minimise exposure to the risk of fatality, injury or illness.
  - (7) Ensuring that the Owner, Owner's Representative, agents or contractors performing the Other Services display adequate safety signs;
  - (8) Ensuring that the Owner, Owner's Representative, agents or contractors performing the Other Services identify and manage all risks associated with common plant, plant, housekeeping, hazardous substances, working at heights, falling objects and other WH&S Act requirements in order to prevent or minimise the risk or exposure to injury or illness.

### 24. PRIVACY

- 24.1 RMS may collect personal information about the Owner. Personal information may be collected from the Owner's Representative or from any other authorised representative of the Owner.
- 24.2 Personal information is collected for the purpose of providing the Authorised Services to Customer.
- 24.3 If the personal information is not provided, RMS may be unable to provide the Authorised Services to the Owner.
- 24.4 RMS may disclose personal information collected to its related companies, agents and contractors. RMS is not likely to disclose personal information to overseas recipients.
- 24.5 If you:
- (1) require to access or correct your personal information;
  - (2) make a complaint in relation to your personal information collected and held by RMS; or
  - (3) believe RMS has not complied with the Australia Privacy Principles (APPs) or a registered APP Code that applies to RMS;
- please contact RMS at reception@rivergate.com.au or on 07 3907 1600.
- 24.6 The Owner and the Owner's Representative authorise RMS, its agents and contractors to:
- (1) use the Owner or the Owner's Representative's personal information for marketing, planning and product development purposes by RMS or its related companies. The Owner and the Owner's Representative can request that it does not receive direct marketing communication;
  - (2) contact the Owner or the Owner's Representative by SMS, email and other direct or indirect modes of communication; and
  - (3) disclose the Owner or the Owner's Representative's personal information before, during or after the term of any agreement it may have with RMS.

### 25. WI-FI INTERNET SERVICES

- 25.1 Where a Wi-Fi internet service is supplied by RMS and is available for use by the Owner, the conditions of use will be as determined by RMS from time to time. RMS will supply a password to an Owner on request but the use of that passcode and connection to the wi-fi service is deemed to be an acceptance of the conditions of

# MARINA AND SHIPYARD AGREEMENT



## GENERAL CONDITIONS

use for the wi-fi service. The conditions of use which apply are held at our marina office and may be provided to you on request.



### RIVERGATE MARINA & SHIPYARD RULES & REGULATIONS

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#### GENERAL CONDITIONS – ALL AREAS

1. A "Marina and Shipyard Agreement" must be signed prior to the Vessel being berthed by Rivergate Marina and Shipyard Pty Ltd (RMS).
2. All fees and charges payable to RMS must be settled in accordance with the agreed payment terms with RMS but in any event prior to the launching of the Vessel or the removal of the Vessel from the Complex. **"NO CASH NO SPLASH"**.
3. **Work by unauthorised contractors on any part of the Marina or Shipyard is not allowed at any time.** Access to and use of the Marina or Shipyard and associated facilities is conditional upon the Contractors entering into a "Contractors License Agreement" with RMS. This agreement must be signed before the Contractors undertake works. **Violation of this rule may result in the immediate termination of any occupation or use rights you may have in respect of the Complex and its facilities, your immediate exclusion from the Complex (together with the unauthorised contractors), the immediate settlement of all charges owing to RMS, and the immediate launching of the Vessel regardless of the status of any work in progress.**
4. RMS takes no responsibility for accidents, injury, or death to any persons in, or working within, the Marina or Shipyard at any time. All persons wishing to enter the Marina or Shipyard for any reason do so at their own risk.
5. The carrying out of repairs, painting or refitting of Vessels in wet berths, moorings or parking areas is prohibited, unless prior consent is obtained from RMS.
6. All persons must observe any reasonable direction given by RMS. If a request from RMS is not complied with, RMS reserves the right to remove the person from the Marina or Shipyard.
7. All lines, halyards rigging and loose fittings on Vessels must be secured at all times to eliminate unnecessary noise.
8. Any defects, or malfunction, of facilities within the Marina or Shipyard must be reported to RMS.
9. The hanging and drying of clothing on Vessels in public view is not permitted.
10. Fire hose reels must not be used for any other purpose than fire fighting.
11. The riding of push bikes, skateboards or roller blades within the Marina or Shipyard is prohibited.
12. Marina pontoons, walkways, and access areas must be kept clear at all times and must not be used for the temporary storage of goods. Any offending items may be removed by RMS without prior notice.
13. Persons found tampering with the facilities or improvements of the Marina or Shipyard will be removed from those areas and may be liable for the costs of replacement or repair of any damage caused, and/or prosecution by RMS.
14. Persons using the Marina or Shipyard must ensure they keep the area in use clean at all times. If RMS remedies a breach of this Rule than all associated costs of that cleaning will be invoiced to the responsible contractor or owner of the Vessel.
15. Animals are not permitted in the Marina or Shipyard without the prior approval of RMS.
16. Spray painting within the Marina or Shipyard is only permitted with the prior consent of RMS.
17. Persons must adhere to any directional or instructional signage posted in the Marina or Shipyard.
18. The antifouling of Vessels within the Marina or Shipyard is prohibited without the prior consent of RMS.
19. Dangerous or flammable goods are not to be brought on to the Marina, or the Vessel. All refuelling of Vessels must be undertaken by RMS at the refuelling station.
20. Children under the age of 12 must be accompanied by an adult at all times.
21. Boat owners & contractors must adhere to any water restrictions set by the QLD Government.

#### MARINA AREAS

##### *Marina Berths*

1. Access keys to unattended Vessels and all contact details of the Vessels owner must be provided to RMS.
2. Marina users must not cause any nuisance to other marina users or local residents. RMS reserves the right to remove any offending Vessel from the Marina, or, where the Vessel is unattended, to board the Vessel for the purpose of preventing a breach of this regulation.
3. No part of any Vessel is to encroach over any part of the Marina (including, for example, anchors or bowsprits). If RMS is of the opinion that a Vessel is berthed dangerously, it may re-berth or move the Vessel at the cost of the owner without notice.
4. Only Vessels in seaworthy condition and under their own power will be admitted to the Marina. All Vessels must be insured, registered, identified, equipped and maintained as required by law and safe practice.
5. Marina users must, at their own expense, supply suitable mooring lines and maintain them in good condition. RMS reserves the right to replace mooring lines at the Marina user's expense if RMS is of the opinion that the lines are not suitable or could cause injury or property damage.
6. Vessels must be kept tidy and maintained in good condition so as not to reflect unfavourably on the high visual standards of the Marina.

##### *Environmental and Government Regulations*

7. The discharge of waste water from Vessels is strictly prohibited. Marina users must not dispose of sewage, garbage, or any other waste into Brisbane River or in the vicinity of the Marina.
8. All garbage shall be disposed of in the appropriate recycling bins or waste containers provided.

# MARINA AND SHIPYARD AGREEMENT

## SCHEDULE



9. Any fire, or waste, oil or fuel leakage or spill must be reported to RMS immediately.
10. Bilge's must be checked for fumes or spills before starting motors and immediately after refuelling.
11. The bottom scraping or cleaning of Vessels that is likely to remove antifoul or any other deleterious material in the marine environment and Marina is prohibited.
12. All signs and directions for safety and pollution controls are to be adhered to by users.
13. Marina users must observe the rules and regulations of all Queensland Government Regulatory Authorities for the movement of Vessels.
14. The excessive running of engines, motors and generators within the Marina is not permitted.
15. Swimming, fishing, diving and underwater activities within the Marina are not permitted.

### SHIPYARD AREAS

#### *Lifting and Hardstand*

1. Vessel lifting diagrams and/or other appropriate information must be supplied to RMS prior to the Vessel being lifted. If inadequate information is supplied, additional fees may be charged to ensure a safe lift.
2. The positioning & location of the Vessel in the Shipyard is at the discretion of RMS.
3. No person will be allowed to remain on board any Vessel during its transport, lifting or standing within the Shipyard.
4. The raising of sails or the removal of standing rigging is prohibited while yachts are on hard standing. It is prohibited to go aloft in a Vessel within the Shipyard.
5. Standing equipment (including acro-props, cradles, blocks, etc) must not be moved without the consent and assistance of RMS personnel.
6. Children under the age of 16 years are not permitted in the Shipyard, unless approved by RMS. Children are not allowed to enter or climb on Vessels located in the Shipyard, or on any associated scaffolding.

#### *Vehicles, Machinery, Tools & Scaffolding:*

7. Vehicles are not permitted to enter or remain in the Shipyard without the prior approval of RMS.
8. The operation of heavy machinery (for example, forklifts) within the Shipyard is not permitted without the prior approval of RMS.
9. Only scaffolding supplied and rented from RMS is to be used within the Shipyard. Any scaffolding that does not comply with this Rule will be removed by RMS without prior notice.
10. All power leads, tools and any other electrical items must be tagged in accordance with Australian Standards to ensure compliance with occupational health and safety requirements. Items not tagged will be removed with out notice.

#### Please Note:

**RMS may make further Rules and Regulations for the safety and management of the Marina and Shipyard and the associated facilities and RMS reserves the right to add to, remove or vary the Rules and Regulations from time to time.**