

CHARTER BOOKING CONDITIONS - SCHEDULE

Customer Details	
Customer Name:	
Customer Address:	
Telephone Contact:	
Email Address:	
Vessel	
Vessel Details:	
Vessel Location:	
Charter Details	
<input type="checkbox"/> Day Charter	<input type="checkbox"/> Overnight Charter
Charter Date:	
Charter Period:	
Location:	
Charter Rate (per hour):	
Charter Fee (total):	
Deposit	Fifty per cent (50%) of the Hire Charge, due on acceptance of these Terms & Conditions by the Customer.
Maximum Persons Onboard:	
Special Conditions:	(a) Guests will be required to remove footwear whilst on board the Vessel. (b) Smoking and vaping is not permitted on board unless advised otherwise. (c) Additional Activities – (d) Catering Charges – (e) Food & Beverage Fee - [insert details]
Bond:	

Customer Declaration

The party named as the Customer and each signatory agree and declare that:

1. It has read and understood the attached Terms & Conditions which form part of this Schedule (**Terms & Conditions**).
2. By signing this Schedule the Customer agrees to be bound by the Terms & Conditions as attached or which have been provided to the Customer and each signatory and of which receipt is acknowledged without the need for further execution.
3. It has read any Special Conditions, annexures and/or attachments included in these Terms & Conditions and by signing this Schedule agrees to be bound by said Special Conditions, annexures and/or attachments or which have been provided to the Customer and each signatory and of which receipt is acknowledged without the need for further execution.
4. The Customer and each signatory warrant that each signatory is authorised to sign this document in any relevant capacity.

Signing

SIGNED BY THE CUSTOMER:

.....

Signature

.....

Name

.....

Date

**SIGNED BY CLUB NAUTICAL ON BEHALF OF THE OWNER
OR THE OWNER:**

.....

Signature

.....

Name

.....

Date

Office Use Only

Approved:

☐

Signed:

Rejected:

☐

VESSELCHARTER BOOKING - TERMS & CONDITIONS

The following are the terms and conditions for the hire of the Vessel. Please read these Terms & Conditions carefully. It is a condition of the Customer's hire and charter of the Vessel that the Customer comply with these Terms & Conditions.

1. Terms

In these terms & conditions the following terms mean:

- 1.1 **Address for Service** means the address of each party appearing in this Agreement or any new address notified by any party to all other parties as its new Address for Service;
- 1.2 **Bond** means the amount payable by the Customer to the Owner or Club Nautical (as directed) as set out in the Schedule to secure the hire of the Vessel and any loss or damage to the Vessel pursuant to these Terms & Conditions;
- 1.3 **Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Queensland, and concludes at 5 pm on that day;
- 1.4 **Captain** means the captain of the Vessel appointed by the Owner in the Owner's discretion;
- 1.5 **Charter** means the charter of the Vessel by the Owner for the Customer on the Charter Date for the Charter Fee pursuant to these Terms & Conditions;
- 1.6 **Charter Date** means the date that the Customer hires the Vessel from the Owner as set out in the Schedule or as agreed to between the parties;
- 1.7 **Charter Details** mean the details of the Charter as set out in the Schedule;
- 1.8 **Charter Fee** means the total fee payable by the Customer for the hire of the Vessel as set out in the Schedule;
- 1.9 **Charter Period** means the period that the Owner agrees to charter the Vessel to the Customer as set out in the Schedule;
- 1.10 **Charter Rate** means the charter rate payable by the Customer for the hire of the Vessel per hour as set out in the Schedule;
- 1.11 **Club Nautical** means ADF Group Pty Ltd ACN 659 916 373 trading as Club Nautical;
- 1.12 **Crew** means all and any deckhands, crew or waitstaff aboard the Vessel appointed and required by the Owner is their absolute discretion;
- 1.13 **Customer** means the customer who engages Club Nautical for the hire of the Owner's Vessel and is responsible for the Customer Guests pursuant to these Terms & Conditions;
- 1.14 **Customer Guests** means all and any persons aboard the Vessel as a guest of the Customer and includes the Customer;
- 1.15 **Deposit** means the deposit payable by the Customer to Club Nautical for the hire of the Vessel as set out in the Schedule;
- 1.16 **Force Majeure** means an event that prevents the Charter being performed and delivered and is limited to:
 - (a) acts of God, civil commotion, riots, insurrections; blockades, embargoes; malicious damage caused by third parties; strikes, lock-outs or other labour disturbances resulting in cessation;
 - (b) earthquakes, tempests, extraordinary and unusual snow, frost, ice, storm or winds;
 - (c) pandemic, epidemic or quarantine restriction; and
 - (d) anything analogous with the above;
- 1.17 **GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under this agreement and GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) together and any regulations made pursuant to it;
- 1.18 **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.19 **Invoice** means an invoice issued by Club Nautical or the Owner to the Customer;
- 1.20 **Location** or **Locations** means the location or locations that the Vessel is available for charter as set out in the Schedule and as updated by the Owner or Club Nautical to the Customer from time to time;

- 1.21 **Maximum Persons Onboard** means the maximum persons (including the Customer and Customer Guests) allowed onboard the Vessel at any time, excluding the Captain and any Crew required by the Owner, as set out in the Schedule;
- 1.22 **Owner** means the owner of the Vessel together with its successors and assigns of the Vessel;
- 1.23 **parties** mean the Customer, Customer Guests, the Owner and Club Nautical together with their successors and assigns and **party** means any of them;
- 1.24 **Special Conditions** means any special conditions to these Terms & Conditions as set out in the Schedule;
- 1.25 **Terms & Conditions** means these Charter Booking Terms & Conditions for the hire of the Vessel and includes the Schedule and any Special Conditions, annexures and/or attachments to these Terms & Conditions;
- 1.26 **Vessel** means the vessel owned by the Owner as set out in the Schedule and includes all component parts, equipment and systems incorporated within the Vessel; and
- 1.27 **Vessel Details** mean the specifications and details of the Vessel as set out in the Schedule.

2. **Vessel Hire**

- 2.1 The Owner agrees to hire the Vessel to the Customer for the Charter Period on the Charter Date on the terms and conditions set out in this Agreement.
- 2.2 Club Nautical agrees to facilitate the hire of the Vessel between the Owner and the Customer on the terms and conditions set out in this Agreement and their obligations under this Agreement are limited to facilitating communication between the Customer and the Owner and arranging a suitable Charter Date for the Customer to hire the Vessel from the Owner.
- 2.3 The Customer accepts that the Charter Period may include weekends and public holidays and such dates may be subject to public holiday, weekend and/or peak rates and surcharges, as determined by the Owner in their sole discretion.
- 2.4 The Charter Period may only be extended with the consent of the Owner, including during the Charter Period, provided that the Customer pay all additional charges. The Customer acknowledges and agrees that any extension to the Charter Period will be subject to these Terms & Conditions and that the Charter Fee will be adjusted accordingly.
- 2.5 The Customer will arrive for embarkment on the Vessel from the Location at the commencement of the Charter Period on time and acknowledges that any reduction in the Charter Period due to the Customer's lateness will not result in a reduction of the Charter Fee.
- 2.6 The Owner retains full title to the Vessel notwithstanding use of the Vessel by the Customer.

3. **Customer's Rights and Responsibilities**

- 3.1 The Customer acknowledges and agrees that:
- (a) it has satisfied itself as to the suitability, condition and fitness for purpose of the Vessel for the Charter and neither the Owner nor Club Nautical makes no representations and give no guarantee or warranty that the Vessel is suitable for the Customer's intended purpose and enjoyment of the Vessel during the Charter;
 - (b) the Vessel is in a clean and tidy condition as at the commencement of the Charter Period and that the Owner may complete a completion report as to its condition at the commencement and expiry of the Charter;
 - (c) the Captain and the Crew, as appointed by the Owner, have the necessary skills and experience to perform the Owner's obligations under these Terms & Conditions;
 - (d) no employee, agent or contractor of Club Nautical will be present on the Vessel during the Charter Period;
 - (e) Club Nautical's obligations under these Terms & Conditions are limited to facilitating communication between the Customer and the Owner and arranging a suitable Charter Date for the Customer to hire the Vessel from the Owner;
 - (f) responsible service of alcohol regulations apply and any Customer Guest intoxicated or appearing to be intoxicated may be refused alcohol service or may result in the early termination of the Charter;
 - (g) the Customer Guests must follow the reasonable directions of the Captain and the Owner in relation to the Vessel at all times;
 - (h) swimming or other water activities may be authorised by the Owner or Captain in their absolute discretion and only in the daylight hours when the Vessel is stationary;
 - (i) the Charter will stay within Australian waters;

- (j) any swimming or other water activities by the Customer Guests is at the sole risk of the Customer and Club Nautical and Owner takes no responsibility for the safety of any Customer Guest.

3.2 The Customer, and the Customer Guests, must not:

- (a) use the Vessel for any illegal purpose;
- (b) carry on board the Vessel any goods, documents or drugs which would involve the risk of seizure of the Vessel by any government;
- (c) use any illegal substances on board the Vessel and acknowledges that if the Owner, Captain or any Crew believe that illegal substances are being consumed by the Customer or Customer Guests, the Captain may return to the point of embarkment and terminate the Charter;
- (d) allow any Customer guests to commit any act contrary to the law of Australia, or of any other government within the jurisdiction of the of which the Vessel may be at any time and shall comply in all respects with all relevant provisions of law, including (without limiting the scope thereof) all relevant statutory and regulatory provisions, and all other requirements of all competent authorities.

3.3 The Customer represents and warrants that all information provided to Club Nautical and the Owner by the Customer on which the parties have relied upon in providing the Charter is true and correct in all respects.

3.4 In the event that the Vessel is not in a clean and good working condition, or any part of the Vessel or its equipment is damaged in any way, at the expiry of the Charter Period due to the use of the Vessel or its equipment by the Customer, the Vessel will be cleaned and/or repaired at the Customer's cost and expense and such costs may be deducted from the Bond at the Owner's discretion prior to being returned to the Customer.

4. The Owner's Rights and Responsibilities

4.1 The Customer acknowledges and agrees that:

- (a) the Owner is the legal and beneficial owner of the Vessel;
- (b) the Vessel will be ready in a clean condition and fit for use on the Charter Date for the use and enjoyment of the Customer;
- (c) the Owner has obtained all relevant licences, permits, certificates or other approvals from any competent authority necessary and required for the Vessel, including registration as a domestic commercial vessel with the Australian Maritime Safety Authority; and
- (d) the Vessel complies with all applicable laws and regulations in force as at the date of these Terms & Conditions.

4.2 The parties acknowledge and agree that the Owner is responsible for the appointment of the Captain and any Crew onboard the Vessel for the Charter and the Owner warrants that such persons have the necessary qualifications, licences, skills and experience to perform the Owner's obligations under the Charter Booking Terms & Conditions.

5. Interruptions to Charters

5.1 The parties acknowledge and agree that the Owner is not responsible, before or during the Charter Period, for:

- (a) the weather conditions or any adverse sea conditions;
- (b) a fault in the Vessel that may cause unsatisfactory performance of the Vessel or its equipment;
- (c) any accident loss, breakdown or disaster to the Vessel; or
- (d) any Force Majeure event.

5.2 The Owner will determine, on the Charter Date, in their absolute discretion, if the weather conditions are safe to operate the Charter as planned.

5.3 In the event of an interruption pursuant to clause 5.1 before or during the Charter Period, that does not permit the Charter to proceed or continue under the Owner's absolute discretion, the following will apply:

- (a) the Customer will be notified by the Owner as soon as practicable;
- (b) the Customer will be offered a credit for an alternative Charter Date;
- (c) if the Owner cannot guarantee an alternative Charter Date within twelve (12) months of the original Charter Date, the Customer will be entitled to a refund of the Charter Fee. The Customer must not act unreasonably in resolving an alternative

Charter Date with the Owner and the Customer will not be entitled to a refund under this clause 5.3(c) where the Customer fails to use reasonable endeavours to facilitate an alternative Charter Date and/or unreasonably refuses to accept an alternative Charter Date.

6. Termination and Recovery

- 6.1 The Owner or the Captain may terminate the Charter at any time and return to the point of embarkment after the Charter Period has commenced if:
- (a) the Captain believes that the safety of the Vessel or its passengers are at risk;
 - (b) there is an interruption to the Charter pursuant to clause 5;
 - (c) the Customer or Customer Guests fail to comply with their obligations pursuant to these Terms & Conditions;
 - (d) the Customer or Customer Guests fail or refuse to comply with the directions of the Captain or the Owner;
 - (e) the number of persons on board exceeds the Maximum Persons Onboard; and/or
 - (f) the Customer or Customer Guests engage in any unauthorised swimming.
- 6.2 In the event that the Charter is terminated earlier pursuant to clause 6.1, the Customer acknowledges and agrees that the Customer will receive no refund or discount in relation to the Charter Fee.
- 6.3 If the Customer fails to comply with the terms or conditions of these Terms & Conditions then these Terms & Conditions may be affirmed or terminated by the Owner and/or Club Nautical. If these Terms & Conditions are affirmed, the Owner and/or Club Nautical may sue the Customer for breach of these Terms & Conditions or specific performance and damages in addition to or instead of specific performance. If these Terms & Conditions are terminated by the Owner and/or Club Nautical, the Owner and/or Club Nautical may sue the Customer for damages. The rights under this clause are in addition to the rights which the Owner and/or Club Nautical may have at law or in equity.
- 6.4 In the event that the Customer cancels the Charter in writing to Club Nautical prior to the Charter Date, the Customer will not be entitled to a refund of the Deposit and/or the balance of the Charter Fee. The Owner may in their sole discretion, offer a credit to the Customer (minus any administrative fees or charges) for an alternative Charter Date. If an alternative Charter Date cannot be guaranteed within twelve (12) months of the original Charter Date, the Customer will be entitled to a refund of the Charter Fee (minus the Deposit and any administrative fees or charges). The Customer acknowledges and agrees that the Deposit is non-refundable in all circumstances. The Customer must not act unreasonably in arranging an alternative Charter Date with the Owner and the Customer will not be entitled to a refund under this clause 6.4 where the Customer fails to use reasonable endeavours to facilitate an alternative Charter Date and/or unreasonably refuses to accept an alternative Charter Date.

7. Fees and charges

- 7.1 In consideration of the Vessel being provided for hire by the Customer in accordance with these Terms & Conditions, the Customer will pay the Charter Fee as directed by Club Nautical or the Owner in accordance with this clause and the Schedule.
- 7.2 Unless otherwise specified in the Schedule, the parties acknowledge and agree that:
- (a) the Customer must pay the non-refundable Deposit on acceptance of these Terms & Conditions;
 - (b) the Customer must pay the balance of the Charter Fee as detailed on any Invoice or at least twenty-one (21) days prior to the Charter Date, and
- failure to pay the Deposit and/or the balance of the Charter Fee by the Customer may result in the cancellation of the Charter and is deemed a breach of these Terms & Conditions.
- 7.3 The Owner and Club Nautical reserve the right to charge the Customer interest on overdue payments calculated at the rate of fifteen percent (15%) per annum from the due date and up to and including the date of payment in full of the due amount (including any interest incurred) and reserve the right to cancel the Charter at any time.
- 7.4 The Customer agrees to pay all and any expenses (including legal costs on an indemnity basis) incurred by the Owner and/or Club Nautical in connection with the collection of any outstanding amount that may be due by the Customer to Club Nautical.
- 7.5 In the event that the Customer fails to make any payment pursuant to these Terms & Conditions, the Owner/Club Nautical may at its discretion terminate or suspend the Charter and take such action as is available to the Owner pursuant to these Terms & Conditions and at law generally.
- 7.6 All payments pursuant to this clause will be paid by electronic funds transfer into the nominated bank account notified to the Customer by Club Nautical in writing.

- 7.7 The Customer must pay the Charter Fee together with all other amounts referred to in these Terms & Conditions including (but not limited to):
- (a) the cost of repairing or replacing any of the Vessel which is beyond repair due to an act or omission by the Customer;
 - (b) the cost of cleaning any of the Vessel due to an act or omission by the Customer;
 - (c) any additional charges for use of the Vessel outside the Charter Period which will be charged at the standard Charter Rate of the Owner at the relevant time;
 - (d) any toll, penalty and fines;
 - (e) any costs and expenses referred to in these Terms & Conditions as payable by the Customer; and
 - (f) all government charges and taxes relating to these Terms & Conditions or the payments to be made under it, including stamp duty, financial institutions duty and GST.
- 7.8 Words used in this clause that are defined in the GST Law have the meaning given in that legislation. Unless otherwise specified, all amounts payable by the Customer are exclusive of GST and must be calculated without regard to GST.

8. Liability and Indemnity

- 8.1 Subject to Club Nautical and the Owner's statutory obligations under the *Competition and Consumer Act 2010* (Cth) (**CCA**) the following provisions apply.
- 8.2 Club Nautical and the Owner's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the CCA is limited to in the case of the services:
- (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- 8.3 Subject to Club Nautical and the Owner's statutory obligations under the CCA and except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law are expressly excluded. Club Nautical and the Owner are not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of the services or arising out of their negligence or in any way whatsoever.
- 8.4 Club Nautical and the Owner's liability shall be reduced proportionately to represent the share of responsibility that such a party has for the claims and losses according to the extent that such claims and losses were contributed to or caused by Club Nautical and/or the Owner's breach of this agreement or its negligent or wrongful acts or omissions in the course of supplying the services.
- 8.5 The Customer unconditionally, fully, irrevocably and continuously indemnifies the Owner, its agents, employees, the Crew, the Captain and Club Nautical from any liability, loss or damage that may arise from:
- (a) any failure to comply or make payment under these Terms & Conditions;
 - (b) any breach of these Terms & Conditions by the Customer or the Customer Guests;
 - (c) any negligent act or omission of or by the Customer or the Customer Guests, which causes loss or damage to the Vessel, Owner or Club Nautical;
 - (d) any death or personal injury of any person except to the extent that it is caused by the Owner's negligence;
 - (e) any damage or loss to the Customer or Customer Guests that arise from swimming; windsurfing; the use of snorkels, fins, masks or other scuba equipment; or any other water sport equipment;
 - (f) any damage or loss suffered by the Owner or Club Nautical as a direct or indirect result of the Customer providing false information, or engaging in any fraudulent or illegal activity, in respect of the hire of the Vessel or dealings with any law enforcement officer or other authority, and the aggrieved party reserves the right to recover an amount from the Customer in respect of such losses; and
 - (g) any loss of or damage to the Customer or anyone else's personal property, which includes, without limitation, personal property left in any Vessel; and/or
 - (h) which arises out of, or as a consequence of, the carrying out by the Owner or Club Nautical of the services under these Terms & Conditions and which were caused or contributed to by the Customer.
- 8.6 The Owner and Club Nautical has no liability to the other party for any fines, penalties, taxes (except GST) and any exemplary aggravated or punitive damages, liquidated damages or any indirect, special or consequential loss or damage (including but not

limited to loss of business, loss of revenue, loss of contract, loss of production, lost opportunity costs), legal costs and expenses (except reasonable legal costs awarded by a court) in connection with this Agreement or the supply of services, whether for breach of contract, in equity by way of an indemnity statute, in tort (including negligence) or otherwise. This clause does not apply to the extent that liability cannot be lawfully limited or excluded.

8.7 Club Nautical and the Owner's services come with guarantees that cannot be excluded under the CCA. For major service failures, the Owner is entitled to:

- (a) cancel this Agreement; and
- (b) a refund for the unused portion, or to compensation for its reduced value.

8.8 The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not

9. General

9.1 These Terms & Conditions constitute the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made with the Customer, whether orally or in writing.

9.2 These Terms & Conditions must not be varied except by a later written document executed by all parties.

9.3 A right created by these Terms & Conditions cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

9.4 If the time for doing any act or thing required to be done or a notice period specified in these Terms & Conditions, expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

9.5 If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

9.6 The laws applicable in Queensland govern these Terms & Conditions and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.

9.7 If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from these Terms & Conditions without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

9.8 The expiration or termination of these Terms & Conditions does not affect any right that has accrued to a party before the expiration or termination date.

9.9 Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of these Terms & Conditions for any reason, will not merge on the occurrence of that event but will remain in full force and effect.