

Western Wave Marine Terms and Conditions (Charter Services)

1. Documents constituting agreement

- (a) The contract between **Western Wave Marine Pty Ltd** (ACN 682 470 293) (**WWM**) and the customer (**Customer**) relates to any of WWM's vessel charter services, activity and recreation services management, or similar such services (**Services**) provided by WWM to the Customer, and are subject to and conditional upon these terms and conditions (**Terms**) and the document to which these Terms are attached if any (together the **Contract**). The Terms and the Conditions apply equally to the Customer, and any and all guests of the Customer aboard the vessel.
- (b) The specific terms of delivery of the Services are as stated in the Contract, or otherwise in documents, quotations or correspondence (**Engagement Documents**) between WWM and the Customer.
- (c) In the event of any inconsistency between:
 - (i) the provisions of these Terms; and
 - (ii) the provisions of the Engagement Documents,
 the provisions of the Engagement Documents will take precedence over these Terms to the extent of the inconsistency.

2. Charter Capacity

- (a) The Customer is to provide a completed guest manifold at least 48 hours prior to the charter commencing.
- (b) The maximum number of guests permitted to board the vessel for the charter can be found on the balance invoice. Requests for additional guest numbers may be made in writing and need to be approved 48 hours prior to the charter commencing.
- (c) No additional guests will be able to board the vessel on the day of the charter, and refunds shall not be provided for any non-attending guests.

3. Provisions of Services and Scheduling

- (a) WWM will provide the Services in accordance with the time frames specified in the Engagement Documents or as otherwise agreed in writing by the parties.
- (b) WWM in its sole discretion reserves the right to re-schedule or cancel Services within 2 hours of departure time due to rough seas, strong winds, or any situation that could pose a safety risk to the Customer or their guests, or the staff of WWM. In such circumstances, the Customer shall receive full reimbursement of the Fee, or the Services may be re-scheduled as agreed between the parties.
- (c) In the event the Services have to be terminated by WWM after they have already begun due to inclement weather or safety concerns, the Customer may receive a partial refund or arrangements may be made with WWM for the Services to be re-scheduled at a later date. In the event the captain is required to return to dock due to sea sickness of a guest, or for any other reason, no refund shall be given.
- (d) If necessary (for example, due to mechanical breakdown, for safety reasons, weather conditions or unforeseen circumstances), WWM may substitute vessels without notice (including any vessels of a third party), or change any cruise schedule/program or Service performance itinerary. WWM will endeavour to provide a similar quality vessel, schedule/program, or Service performance, in these circumstances, however, WWM will not be liable to compensate the Customer for any such changes.
- (e) WWM will not be liable in any way for delay, failure or inability to deliver the Services. The Customer accepts that they are not be entitled to any compensation on account of any cancellation or re-scheduling of Services.

4. Price, Payment and Refund Policy

- (a) The price of the Services is as stated in the Engagement Documents, or as communicated to the Customer from time to time (**Fee**).
- (b) The Customer will pay WWM:
 - (i) the Fee and all relevant expenses and disbursements as set out in the Engagement Documents and such other amounts agreed in writing by the parties;
 - (ii) reasonable adjustments to the Fee and the relevant expenses and disbursements to reflect any additional costs, expenses, liabilities, losses or other amounts incurred or suffered by WWM in providing the Services and arising out of or in connection with any event or matter beyond WWM's control; and
 - (iii) to the extent that any amounts payable under the Contract are not expressed to be GST inclusive, an additional amount for the GST incurred by WWM in relation to the supply of Services.

- (c) (**Deposit**): The Customer is required to pay a deposit in the amount of 15% of the Fee at the time of booking, in order to confirm the booking with WWM.
- (d) (**Fee paid in full**): Payment of the full Fee is due and payable by the Customer no later than 14 days prior to the commencement of the charter and the Services, or as otherwise specified on any invoice issued by WWM to the Customer.
- (e) (**Refunds**): All cancellations or postponements must be submitted in writing to WWM. In the event of a cancellation or postponement within 7 days of the charter Services, the Customer shall forfeit the deposit in favour of WWM. WWM may transfer monies received to a future date or time on the same vessel only at their discretion.
- (f) (**Credit Card**): The Customer shall provide to WWM at the time of booking valid credit card details (in the name of the Customer) as security for the Customers obligations under the Contract, and shall complete and sign the authorisation enclosed with these Terms.

5. Access to Vessel

- (a) The Customer and their guests may only board the vessel at the time their booking is scheduled to commence. Access prior to this time (e.g. for event setup) must be approved in writing by WWM at least 48 hours prior to the charter commencing.
- (b) The Customer and their guests shall vacate the vessel by the agreed time set out on the balance invoice. Specific arrangements to extend must be confirmed by the Captain of the vessel or WWM. Any extension of time or failure to vacate the premises at the agreed time shall incur an additional fee (based on the hourly rate for vessel hire and hourly staff charges).

6. Guest Conduct and Safety

- (a) The safety of WWM crew and guests is the first priority. The Customer is responsible for the behaviour, security and safety of themselves, their guests and any associated contractors whilst they are onboard the vessel. The Customer and their guests shall observe and strictly comply with all instructions given by WWM crew.
- (b) It is prohibited for any person to use, sell, purchase or be under the influence of any illegal substance onboard the vessel. Any guest found to be under the influence of, or in possession of, an illegal substance, will be immediately removed from the vessel.
- (c) WWM crew reserve the right to request the removal of any guest behaving in a dangerous, disorderly, argumentative, offensive, illegal or objectionable way.
- (d) Smoking is prohibited on board the vessel, and food and drink are to be consumed in areas as designated by the Captain or the crew.
- (e) All water based activities are to be arranged as at the time of booking, in consultation with WWM (as additional crew may be required depending on the nature of the activities).
- (f) The Customer and their guests are responsible for any loss or damage to the vessel or the property of WWM, due to the actions of the Customers and their guests, and the Customer shall be immediately responsible for the costs to make good any such loss or damage. The Customer provides to WWM the signed credit card authorisation for this purpose.
- (g) In the event any circumstance set out in clause 6(b) or 6(c) has occurred, WWM reserves the right to immediately terminate the charter Services without consultation with the Customer, and return the vessel to dock for immediate disembarkation. The Fee remains payable in full by the Customer in such circumstances, and no refund shall be provided.

7. Guest Health and Responsibility

- (a) The Customer and their guests confirm their full understanding of the nature and character of the vessel, and the scope of the activities contemplated during a charter, and undertakes to WWM that all guests:
 - (i) are in good health and will be able to undertake the charter and contemplated activities;
 - (ii) have disclosed any physical or mental disability requiring special attention or treatment at the time of the booking; and
 - (iii) accept the risk that they may suffer from sea sickness, or any other risks which may be set out in clause 7(b).
- (b) The Customer and their guests acknowledge and are aware of the inherent risks of water based activities, including but not limited to injury or damage to personal property, including risks associated with pitching and rolling of vessels, wet and/or slippery surfaces, decks, ladders, stairs, steps and/or railings, vessel traffic that can cause collisions and

wakes which can cause bodily contact with harmful and or moving objects and surfaces, exposure to risks of drowning, hypothermia or injury from marine life and environments, and the Customer and their guests engage WWM and choose to enjoy the charter and the Services at their own sole risk.

8. Limitation of Liability of WWM

To the maximum extent permitted by law:

- (a) Where legislation implies in the Contract any guarantee, condition or warranty as being given by WWM, and that legislation avoids or prohibits provisions in a contract excluding or modifying application of or exercise of liability under such condition or warranty, the guarantee, condition or warranty will be deemed to be included in the Contract subject to sub-clause (b).
- (b) The liability of WWM for any breach of such guarantee, condition or warranty will be limited, at the option of WWM, to either the supplying of the Services again, or the payment of the cost of having the Services supplied again.
- (c) WWM's liability to the Customer and its guests arising out of or in connection with the Contract whether under the law of contract, in tort, in equity, under statute or otherwise, will be limited in aggregate to the amount specified in the Engagement Documents, or the value of the Fee received from the Customer, if no amount is stated.

9. Customer Liability

- (a) The Customer and its guests are liable for themselves, their employees and any contractors whom they may engage in relation to the event onboard a vessel, and releases WWM, and all WWM employees and crew, against any claims, actions losses, demands, damages and expenses for which WWM, its employees and crew shall or may become liable or suffer in respect of any damage to WWM's property, or injury or death of persons, arising out of any wilful, unlawful or negligent act or omission of the Customer or its guests, its employees, agents or subcontractors in connection with the Services.
- (b) The Customer indemnifies WWM against any claim, action, damage, loss, liability, cost, charge, expense, or payment which WWM pays, suffers, incurs or is liable for in connection with the use of the Vessel or Services, including but not limited to in respect of personal injury to or death of any person whomsoever and in respect of any damage to any property real or personal arising out of or in the course of or caused by the Vessel or Services, other than to the extent the same arises from the negligence or wilful default of WWM or any employee, agent or officer of WWM, and this indemnity is a continuing obligation of the Customer and remains in full force and effect until all money owing, contingently or otherwise, under this indemnity has been paid in full. Any Services supplied by WWM shall, unless otherwise arranged in writing with the Customer, remain at the risk of the Customer in case of any loss or damage whatsoever.
- (c) In case of any damage to the vessel or property of WWM caused by the Customer or its guests during the charter, the Customer will be provided with a notice detailing the specifics of the damage (including photos), along with a final tax invoice or statement of charges, including the amount charged for the damage and any other associated fees and losses. The Customer expressly permits WWM to charge the Customer's credit card any amount set out in the final tax invoice not yet paid by the Customer.
- (d) It is expressly agreed that the Customer and its guests will not pursue any claim against WWM or hold WWM liable for any consequential losses whatsoever that may be suffered by the Customer arising out of the performance by WWM of the Contract or failure to comply with any standard as to fitness for purpose or compliance.

10. Force majeure

WWM shall not be liable for any prevention of or delay in performance of its obligations under the Contract which is caused by any event or circumstance which is beyond the reasonable control of WWM including any act of God, strike, lockout or other labour dispute, war, riot or civil commotion, accidental breakdown to any machinery or facilities necessary for the transportation or delivery of any products required to the delivery point.

11. General

- (a) These Terms are governed by the law of Western Australia. The Customer and WWM submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (b) If any term or part of these Terms and conditions is found to be illegal or unenforceable, that part or term shall be deemed not to be part of these Terms and conditions and the remainder of these conditions shall continue in full force and effect.

Signed by the Customer as acceptance of the Terms:

Signature of Customer _____ Date: / /

Full Name of Customer _____

Address of Customer _____

Passport / Drivers Licence # _____

Credit Card Authorisation

*Please complete all fields. You may cancel this authorisation at any time by contacting us.
This authorisation will remain in effect until cancelled*

Credit Card Information	
Card Type: <input type="checkbox"/> MasterCard <input type="checkbox"/> VISA <input type="checkbox"/> AMEX <input type="checkbox"/> Other: _____	
Cardholder Name (as shown on card):	
Card Number:	
Expiry Date (mm/yy):	
CVV:	

I authorise WWM to charge my credit card above for amounts owing pursuant to the Contract.

Signature of Customer _____ Date: / /