

The terms and conditions of trade set out below govern all the supply of Goods and Services from **Pacific Sailing Limited** ("Pacific Sailing", "we", "us", "our") to the **Customer** ("you", "your"). Any requests received by Pacific Sailing from you for the supply of Goods and Services indicates your acceptance of the terms and conditions contained herein.

1.0 Definitions

1.1 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Pacific Sailing to provide Goods and Services, and:

- a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- c) if the Customer is a Trust, then each trustee shall be bound in their capacity as a trustee jointly and severally and shall be deemed to have full authority to transact on behalf of the trust; and
- d) Includes the Customer's executors, administrators, successors and permitted assigns.

1.2 "Services" shall mean all Services provided by Pacific Sailing to the Customer at the Customer's request from time to time and includes any Goods "Goods". Where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other.

1.3 "Vessel" shall mean any boat/marine craft and/or any other accessories to which Pacific Sailing will perform its Services.

1.4 "Price" shall mean the cost of the Services as agreed between Pacific Sailing and the Customer and includes all disbursements e.g. charges Pacific Sailing pays to others on the Customer's behalf.

1.5 "Boat Trip" shall mean any time a Vessel is moved from place to place, and any event held on board and/or alongside a Vessel even if stationary.

2.0 Services

2.1 We will make every effort to carry out and complete the Services agreed upon, and deliver any Goods as required in a timely and professional manner with reasonable skill, care and diligence, but we will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

2.2 Any advice, recommendation, information, assistance, or service provided by Pacific Sailing in relation to Goods and Services supplied is given in good faith, is based on our own knowledge and experience, and shall be accepted without liability on the part of Pacific Sailing.

3.0 Bookings and Boat Trips

3.1 Advance bookings are required for any yard work and/or large projects, and for Boat Trips on long weekends and for the peak season of December to February.

3.2 Bookings cancelled by you less than 48 hours prior to the agreed date may incur a cancellation fee of 50%.

3.3 We reserve the right to make changes and/or to cancel Boat Trips at any time should that become necessary, e.g. (and without limitation) for safety reasons.

3.4 The course taken and destination of the Vessel during a Boat Trip is at our sole discretion in conjunction with Maritime

Law and Local Harbour By-Laws. No guarantee is given or implied by Pacific Sailing that a destination is possible, but all efforts will be made to meet your requests.

3.5 We may use our discretion and issue instruction that intoxicated persons are no longer to be served or to consume alcohol and we may prohibit intoxicated persons from boarding vessels or vehicles or using any other equipment and we may remove such persons from the Vessel (at your cost and loss).

3.6 We reserve the right at our absolute discretion to terminate a Boat Trip without further notice (and at your cost and loss) if you or any member of your party refuses to comply with any of our instructions or orders, or whose behaviour in our opinion is likely to cause distress, damage, danger or annoyance to us, other members of your party, any third party, or to any person or property. This includes use of any illegal substances on board the Vessel, which may result in criminal charges from the New Zealand Police if we choose to lodge a complaint (which by law we may be required to do). Upon such termination, our responsibility to your Boat Trip ceases, and we shall not be liable for any extra costs incurred by you or members of your party.

4.0 Prices and Payment

4.1 Unless otherwise agreed before you place a request, Prices for Services are those stated in our Price List or otherwise in force at the date when you place a request. Prices are subject to alteration without notice.

4.2 At Pacific Sailing's sole discretion a non-refundable deposit may be required.

4.3 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by Pacific Sailing, which may be:

- a) on delivery of the Services, e.g. (but not limited to) fuel; shipyard charges at relaunch; Goods and Services over the value of one thousand dollars (\$1,000.00); or
- b) the date which is seven (7) days following the date of any invoice emailed to the Customer; or
- c) for certain approved Customers, due by the twentieth (20th) of the month in which an invoice is delivered to the Customer's email address.

4.4 The Customer must pay GST and any other government duties, levies, or taxes in respect of the Goods and Services that we supply to you.

4.5 For regular Customers, we have authority to spend up to two hundred dollars (\$200.00) on any item required for your Vessel or for us to perform our service to you, without prior approval (for example cleaning products, gas, etc.)

5.0 Default:

5.1 If you have not paid in full by the due date, we may charge you interest on the unpaid overdue balance at the rate of 2.5% per month compounding monthly plus all costs and expenses incurred by Pacific Sailing in recovering the overdue amount and suspend the performance of further Services until your account is paid in full.

6.0 Contractors

6.1 Pacific Sailing may engage contractors, employees and/or third-party suppliers in order to complete requested work.

6.2 Where Pacific Sailing engages contractors at your request, we shall not be liable for the performance or remuneration of

those contractors. The Customer indemnifies Pacific Sailing against all costs, disbursements and other obligations arising from the contractor engagement/s.

7.0 Change in Control

7.1 The Customer shall give Pacific Sailing not less than fourteen (14) days prior written notice of any proposed change of ownership of the vessel and/or any other changes to your contact details or those of your business or Trust.

8.0 Privacy

8.1 Pacific Sailing will abide by the Privacy Act 1993 and shall take all practical steps to achieve privacy protection.

8.2 You authorise us to collect, retain and use information about you in order to manage your requests to us, including sending you invoices and statements, organising payment, assessing your credit worthiness, providing you with information and supplying Goods and Services from us and/or from third parties.

8.3 You have the right to request a copy and correct any personal information we hold about you.

9.0 Risk & Ownership

9.1 Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.

9.2 Ownership of the Goods does not pass to the Customer until you have paid Pacific Sailing all amounts owing, and you have met all your other obligations to us. We may at any time enter your Vessel to uplift unpaid Goods that we have a security interest in.

10.0 Warranties

10.1 Where Goods are subject to manufacturers' warranties, we will pass on the benefit of those warranties to you without being directly liable to you under any warranty. You are responsible for the cost of returning Goods to the manufacturer under any warranty, and you may be responsible for additional costs including (but not limited to) freight.

10.2 Where you require Pacific Sailing to do anything related to a warranty claim, you must pay for our service in this regard. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue.

10.3 Any warranty may be voided by unreasonable use, damage, or misuse of equipment.

10.4 Where the Goods or Services that you request from us are for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Contract and Commercial Law Act 2017, or implied by common law will not apply and are excluded from these terms of trade to the fullest extent permitted by law.

11.0 Customer Warranties

11.1 You are responsible for insuring your Vessel and bear the risk of damage to or loss of your Vessel at all times, and you warrant that the insurance details provided to us by you are accurate and current.

11.2 You must ensure that you and any members of your party are aware of the risks that may arise during general boating,

swimming, fishing, snorkelling, jet skiing and any other sporting and outdoor activities. You and all members of your party must be competent to use any sporting equipment required for any such activity and exercise all due care and attention when doing so.

11.3 You agree to accept responsibility for the proper conduct of yourself and any members of your party and you and your party agree to comply with our instructions or orders and will abide by our decisions regarding sailing, navigating, anchorage, location for activities and the like.

12.0 Limitation of Liability

12.1 Pacific Sailing will not be liable for any losses of any kind or any delay in supplying Goods or Services which are caused in whole or in part by circumstances beyond our reasonable control.

12.2 Our liability shall be limited to the value of Goods and Services that we supply, and we will not be liable to you for loss, damage, or injury of any kind however that loss, damage, or injury is caused or arises.

12.3 You and any members of your party agree to engage in general boating and any sporting activities at your own risk, and we shall not be liable in the event of injury or death resulting from any such activity.

13.0 General Conditions

13.1 We may change these terms of trade from time to time by notice to you in writing, which may be by email.

13.2 If we fail to enforce any terms or to exercise any right under these terms of trade at any time, we have not waived that right.

13.3 You may not assign or subcontract any of your rights or obligations under these terms of trade.

13.4 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

13.5 Any agreement between us is governed by the laws of New Zealand. Any dispute is subject to the jurisdiction of the New Zealand courts.

14.0 Dispute Resolution

14.1 If a dispute arises between us, we agree to attempt to resolve it amicably, but either one may give written notice to the other specifying the dispute and requiring its resolution under this clause (Notice of Dispute).

14.2 If the dispute is not resolved within 14 days of the Notice of Dispute, we may jointly refer the dispute to mediation in accordance with this clause.

14.3 We and you must pay the mediator's fees in equal shares, but we will each pay our own costs of the mediation.

14.4 This clause does not prevent any party from obtaining any injunctive, interlocutory, or declarative relief from a court, which may be urgently required.