



CONTRACT TO CHARTER

Prepared for:
Daily Boats Member
"The Charterer"

Created by:
Daily Boats Limited

1. The Agreement

- 1.1** By signing this Agreement and making payment to the Charterer, the Charterer agrees to subscribe for and pay a fee to enable it to access and use the Services and Vessels as permitted by and in accordance with the terms and conditions of this Agreement, for the term of this Agreement.

2. The Parties

- 2.1** Daily Boats Limited a duly incorporated company having its registered office at Level 10, 34 Shortland St, Auckland City and or the legal owner of the Vessel (“the Charterer”).
- 2.2** **The person signing this Agreement** (“the Charterer”)

3. The Vessel

- 3.1** The Vessel is one of a fleet of Buccaneer 635 HT powerboats and it’s associated chattels.
- 3.2** Upon mutual agreement between Charterer and Charteror, the Charteror may substitute permanently or temporarily another vessel and chattels in place of the Vessel defined in this Agreement. Any such substitution will be deemed as being the Vessel as defined in this agreement.

4. Background

- 4.1** This contract is conditional on a successful induction and sea trial on the Vessel and the acceptance after such by both parties.
 - 4.1.1** The Charteror may require the Charterer to undertake further training or certification prior to the use of the Vessel.
- 4.2** The Charteror and or it’s parent company is the legal and beneficial owner of the Vessel.
- 4.3** The Charteror wishes to charter to the Charterer and the Charterer wishes to charter from the Charteror, the Vessel.

5. Commencement Date

- 5.1** The Commencement Date for entitlement to charter under the terms of this contract is as defined by the Charterer upon entering a subscription for the service offered by the Charteror.

6. Annual Renewal

- 6.1** The Renewal Date is defined as being one calendar year from the Commencement Date as defined in this contract as selected by the Charterer. the Charteror reserves the right to issue a new contract to the Charterer on the Renewal Date provided such terms of the new contract do not in any way diminish the obligations of the Charteror.
- 6.2** This contract is renewed on the anniversary of the Commencement Date at the discretion of the Charteror.

6.3 If the Charterer does not wish to renew this contract for a further term, then one months notice in writing is to be given prior to the Renewal Date.

7. Minimum Term

7.1 The minimum term for the contract is for one year, thereafter this or a successive contract will be renewed for further terms of one year.

8. Bookings

Contract Type	Week Day	Any Day	Multi Day
Availability	Monday to Friday	All Days	All Days
Booking Period	1 Day	1 Day	1 Day
Forward Bookings > 7 days	1	1	2
Short Notice Bookings < 48 Hours	1	1	1

8.1 Forward bookings may be placed for bookings required more than 7 days in advance.

8.2 Short Notice bookings are available for bookings within 48 Hours.

8.3 All booking entitlement starts on the Commencement Date of this contract .

8.4 Partial use of a day is counted as a full day.

8.5 A day is defined as being from midnight to midnight. (Note the Vessel cannot be operated in hours of darkness)

8.6 If for any reason the Vessel is not in a safe state for departure and in the unlikely event that the Vessel cannot be made available or is adjudged by the Charteror to be in any way unsafe for a particular charter period, the Charterer may be offered a substitute Vessel acceptable to the Charterer.

8.7 Bookings may be joined together consecutively.

8.8 If a booking is only partially used, no credit is available for the balance of the booking.

8.9 Any forward booking cancellation must be > 24hours in advance. If the Charterer' s booking is cancelled less than 24 hours prior, then the Charteror retains the right to charge the Charterer a fee of \$225.00.

9. Annual Membership Entitlement

- 9.1 While this Agreement relates to an annual membership entitlement, each booking constitutes a separate charter and is subject to all conditions as detailed in this Agreement.
- 9.2 The Charterer has no rights, either legal or beneficial in the Vessel other than their membership. The Charterers membership is terminated where:
- 9.2.1 the Charteror receives notice from any party holding a security interest in the Vessel that the Charteror is in default under any security agreement and has failed to remedy that fault within 30 days; or
- 9.2.2 The Vessel becomes permanently unavailable for use for any reason whatsoever.

10. Insurance

- 10.1 the Charteror will keep the Vessel fully insured against loss or damage.
- 10.2 If an insurance claim is to be lodged for damage to or loss, on account of the Charteror, of the Vessel while under the control of the Charterer, then the Charteror shall invoice the Charterer for the cost of the insurance excess (nominally \$3000.00) and the Charterer agrees to make payment on such invoice within 7 days. If such insurance claim under the terms of the current insurance policy is not accepted by the insurance company and the Charterer is liable for such damage or loss, the Charterer shall indemnify the Charteror for such costs to rectify any such damage or loss.
- 10.3 The Charterer indemnifies the Charteror against any third party claim or liability arising while the Vessel is under the control of the Charterer and is liable if such claim or liability is outside the terms of the insurance policy.
- 10.4 A copy of the insurance policy is available to the Charterer for viewing at any time.

11. Repairs & Maintenance

- 11.1 The Charteror undertakes to keep the Vessel in good repair and to the standard required for the MOSS Certificate.
- 11.2 It is the responsibility of the Charterer to immediately inform the Charteror of any damage, loss and / or maintenance issues pertaining to the Vessel whilst under the operation of the Charterer
- 11.3 Any minor damage or loss (under the value of the insurance excess) not caused through fair wear and tear will be charged to the Charterer if the Vessel was under the control of the Charterer during the time of such damage.
- 11.4 Any major damage or loss (over the value of the insurance excess) will be claimed through the Vessel insurance. Any insurance excess payable will be payable by the Charterer if the Vessel was under the control of the Charterer during the time of such damage.

12. Safety

- 12.1 The Charterer does not guarantee or in any way warrant the safety of any person on board the Vessel while under the control of the Charterer or Skipper.
- 12.2 The Charterer warrants that at the time of this contract the Vessel was up to the standard of the Certificate of Survey.
- 12.3 The Charterer does not guarantee or warrant in any way the working order of any equipment on board the Vessel at the time of each individual charter. It is the responsibility of the Charterer and Skipper to ensure that all equipment is working prior to the departure on charter.
- 12.4 During the charter period the Charterer and Skipper has full responsibility for the Vessel, its equipment and the people on board.
- 12.5 The Charterer and Skipper undertake to brief their passengers in hazard awareness and safety prior to departure.
- 12.6 The charterer shall be responsible for the health and safety of any passengers on board the Vessel and must ensure all applicable health and safety laws, regulations, policies and instructions are complied with by the Charterer and all passengers on board the Vessel.
- 12.7 The Charterer and Skipper undertake to inform the Charterer of any hazards that they may identify whilst operating the Vessel and ensure that such hazards are recorded in the log book.
- 12.8 The Charterer and Skipper undertake to regularly review the Marine Transport Operators Plan and to ensure review if notified of a material change by the Charterer.
- 12.9 At all times the maximum people on board shall be no more than that stipulated in the Certificate of Survey.
- 12.10 The Skipper shall ensure that the vessel shall not have passengers in excess nor travel beyond the limits as defined on the Certificate of Survey.
- 12.11 The Skipper shall ensure the practice of relevant emergency drills in relation to fire / man overboard / sinking on a regular basis to ensure their knowledge execution of procedures as detailed in the vessel's Safe Operating Procedures manual.
- 12.12 The Vessel may only be operated during the period 30 minutes before sunrise and 30 minutes after sunset.
- 12.13 The Charterer is responsible for ensuring that the lifejackets on-board the Vessel are of the correct size and quantity for all passengers. the Charterer provides adult lifejackets, however the Skipper must provision appropriate lifejackets for any child passengers.
- 12.14 It is the Skippers responsibility to ensure lifejackets are worn in situations of heightened risk such as rough water, inclement weather and during an emergency.
- 12.15 The Skipper shall ensure they take adequate precautions to avoid any persons swimming in the water near the Vessel, in particular when entering and exiting a beach.
- 12.16 The Skipper shall ensure that the vessel is not operated in conditions above 20kn of wind and / or 1.0m of swell.
- 12.17 The Skipper shall ensure adequate safety precautions are made during water sports activities (including but not limited to skiing, biscuiting, wakeboarding). Provision of a spotter is essential, along with the use of floating lines, suitable life jackets and sensible Vessel operation.
- 12.18 The Skipper must ensure awareness of and adherence to all maritime regulations.
In particular :-

- 12.18.1 5kn maximum speed within 200mtrs of shore.
- 12.18.2 5kn maximum speed within 50mtrs of another vessel.
- 12.18.3 12kn speed zone within the Auckland harbour

13. Cleaning

- 13.1 The Charterer is responsible for the cleanliness of the Vessel to a standard equal or exceeding the standard of the Vessel prior to departure. A cleaning fee of a minimum \$300.00 will be payable by the Charterer if the Vessel is not found to meet acceptable level of cleanliness at the end of the charter. In particular Charterers must ensure that all fishing residue is cleaned from the boat.

14. Fuel

- 14.1 The Vessel is provided with full fuel tanks, however it is the responsibility of the Charterer to ensure there is sufficient fuel in the tank prior to departure.
- 14.2 The Charterer agrees to return the Vessel with full tanks of fuel.
- 14.3 The Charterer will ensure the Vessel is refueled with the correct fuel.
- 14.4 It is agreed by the Charterer, that any damage caused by incorrect fueling will be to account of the Charterer.
- 14.5 Failure by the Charterer to refuel the Vessel prior to return to the marina berth shall incur a refueling charge of \$270.00 including GST plus the cost of the fuel.

15. General

- 15.1 The Charterer shall not allow anyone other than the signatory of this Agreement to skipper or take operational control of the Vessel. The Charterer warrants that the Skipper as signed to this Agreement is over the age of 21 years.
- 15.2 If the Vessel is returned by the Charterer after the booked period of charter (i.e Late), a late fee of \$450 per day or part thereof will be charged to the Charterer. If the Vessel is overdue and can be determined by the Charterer in its sole discretion as a safety related delay, then the late fee will be waived.
- 15.3 If the Skipper allows the Vessel to exceed the allowable survey limits (area of operation, passenger numbers, etc) as detailed in the Certificate of Survey, then the Charterer in it's sole discretion may terminate this agreement.
- 15.4 No Vessel shall be used by the Charterer without a valid booking. Any unauthorised use of a Vessel shall incur a fee of \$450 and may result in the termination of this Agreement.
- 15.5 The Vessel shall not be used for any activity associated with game fishing.

16. Cancellations

- 16.1 The Charterer may cancel their booking for any reason up to 24hours prior to their confirmed booking.
- 16.2 If a cancellation is made by the Charterer less than 24 hours prior to their booking, or the booking is not utilised by the Charterer, a cancellation fee of \$225 is payable unless it can be shown and approved by the Charterer (in its sole discretion) that the Charterer would have been unable to experience a safe boating experience due to weather conditions.

17. Conditions of Charter

- 17.1 The Charterer and Skipper are personally responsible for the care of the Vessel and it's passengers for the full period of charter and it's safe and secure return at the contracted time to the Vessels marina berth
- 17.2 The Charterer and Skipper must be provisionally acceptable to the Charterer as properly competent to handle the Vessel in the normal range of conditions and circumstances before a booking is accepted. Provisional acceptance is conditional upon final acceptance before the Charterer or Skipper departs and may be conditional upon the Charterer or Skipper

agreeing to undergo a course of study of material supplied by the Charterer to ensure confident knowledge of boat handling procedures under the normal range of conditions and circumstances. In the interests of safety, the Charterer reserves the right to cancel the charter at any time if not satisfied that the Charterer or Skipper and / or crew members collectively have sufficient maturity, knowledge, experience or able-bodiedness. The exercise or otherwise of that right is not to be taken as any acceptance of responsibility by the Charterer of the competence or otherwise of the Charterer or Skipper who is solely responsible for the safety of the crew and Vessel while under charter.

- 17.3 Force Majeure. Any prevention of the use of the Vessel due to strikes, lockouts, acts of God, acts of war, terrorist acts, disease, epidemic or pandemic, government ruling, inability to obtain labour services, critical maintenance materials and other causes beyond the reasonable control of the Charterer will not be deemed a breach of this contract. In the event of such prevention of use, the Charterer may extend this Contract for the time period that the Vessel was unavailable caused by such event.
- 17.4 The Vessel must not be operated in stormy weather unless it is unsafe to remain at its current location. If stormy weather is likely to result in a delayed return, the Charterer or Skipper must take all safe and reasonable steps to inform the Charterer as soon as possible.
- 17.5 The Charterer and the Skippers as defined and signed on this agreement and that of the sea trial shall remain unchanged during the period of the charter unless otherwise agreed.
- 17.6 No animal or any other pet may be taken aboard without prior approval.
- 17.7 The Vessel must not be operated if the Skipper and or crew are under the influence of drugs or alcohol over the New Zealand Legal Road Traffic Limit.
- 17.8 The Skipper must at all times whilst in control of the Vessel ensure that they are fit for duty. i.e Alertness, Attention, Acceptable reaction times, Adequate Sleep.
- 17.9 The Vessel must not be used for any unlawful or illegal purposes.
- 17.10 The Vessel must not be used for racing.
- 17.11 The Vessel must not be used for commercial purposes.
- 17.12 Black or Dark soled shoes are not to be worn on the Vessel at any time.
- 17.13 The vessel must not be left moored or anchored and unattended for more than 24hours off an exposed beach or shore.
- 17.14 The Skipper is responsible for filing trip reports with coastguard upon departure, during their excursions and upon return to the marina berth.
- 17.15 The Skipper, Charterer and passengers must ensure their knowledge of any local body or national regulation in regard to fishing, marine reserves or pollution and follow such regulation. In case of any breach of such regulation by the Charterer, Skipper or passengers resulting in the impounding or confiscating of the Vessel, the Charterer will indemnify the Charterer for costs of replacement and revenue loss.
- 17.16 Smoking on the Vessel is prohibited
- 17.17 The Charterer undertakes to ensure the vessel is moored or anchored safely before nightfall and upon leaving the vessel unattended.

18. Payment

- 18.1 The Charterer hereby personally guarantees the payment of all amounts relating with this Agreement including any such collection fees and costs (legal or other) accrued by the Charterer in the course of collection of said fees and costs. The Charterer agrees that if any payment is not made to the Charterer by the due date of such payment pursuant to this Agreement/Contract or any Invoice issued to the Charterer from the Charterer, then the Charterer is entitled to accrue an interest cost of 2.5% of the balance of any such outstanding amount per month to the account of the Charterer.

18.2 The first installment of the charter fee is to be paid to the Charterer upon signing this contract.

19. Intellectual Property

- 19.1 All intellectual property rights subsisting in the service provided by the Charterer namely the charter of vessels, shall be owned wholly by the Charterer.
- 19.2 All intellectual property rights subsisting in the form of this contract to charter shall be wholly owned by the Charterer.
- 19.3 The Charterer will not do anything that would be contrary to the rights of the Charterer's intellectual property rights.
- 19.4 The Charterer will not apply to register any of the intellectual property rights referred to in this clause 19 in it's own name.
- 19.5 The Charterer agrees that the obligations contained in this clause will survive the expiry or termination of this Agreement.

20. Termination by Charterer

- 20.1 The Charterer must give one months notice in writing to the Charterer advising the Charterer of their intention to terminate the contract.
- 20.2 If a contract is terminated before expiry, then all costs remain payable.

The costs will include:-

- (a) Residual amount of annual fee.
- (b) Any repairs to the Vessel caused by damage attributed to the Charterer.
- (c) Any invoiced monies owing to the Charterer.
- 20.3 No refunds of the monthly payments will be given under any circumstances when the Charterer terminates the contract.

21. Termination by the Charterer

- 21.1 The Charterer can terminate the contract without notice for any serious breach of contract, misuse of the Vessel, illegal acts by the charterer and/or the Vessel becoming unavailable for use for any reason. Otherwise one months notice must be given to terminate the contract.
- 21.2 If the Charterer terminates the contract at any time, all costs of the annual fee shall be payable by the Charterer up to the date of termination and any other costs associated with liability or any damage to the Vessel as attributed to the Charterer, will be calculated and payable by the Charterer.
- 21.3 If termination is the result of any serious breach of contract, misuse of the Vessel, illegal acts by the charterer, then the remaining costs of the annual fee shall be payable in full including any other costs associated with any damage to the Vessel as attributed to the Charterer.

22. Disputes

- 22.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 22.2 This Agreement does not intend to limit in any way the rights of the User under any relevant New Zealand consumer protection law. If any part of this Agreement is deemed invalid, void or for any other reason unenforceable, such part shall be deemed void and not affect the validity and enforceability of the remaining Agreement.

23. Confidential Information

- 23.1 The Charterer acknowledges that in the course of the performance of it's obligations under this Agreement, it may obtain access to, or become aware of confidential information which is or maybe of commercial value to the Charteror.
- 23.2 The Charterer agrees not to use for it's own purposes or disclose, communicate to or place at the disposal of any third party, the confidential information in any form or by any means and to keep the confidential information in strictest confidence.
- 23.3 The Charterer agrees not to modify the confidential information for it's own benefit and/or not for the benefit of any third party.
- 23.4 If the Charteror so requests at any time, the Charterer agrees to :-
- 23.4.1 immediately deliver to the Charteror all confidential information which is stored by any means;
- 23.4.2 certify in writing to the Charteror that it has returned all forms of confidential information and that it no longer has any part of the confidential information or any means to recreate the confidential information, in it's possession, custody or control.
- 23.5 The Charterer agrees that the obligation contained in this clause 19 and 23 will survive the expiry or termination of this Agreement.
- 23.6 The Charterer agrees to the Charteror the storage and release to third parties of all such details in relation to the Vessel including position, temperature, fuel, heading, speed, maintenance.

24. Assignment

- 24.1 Charteror has the unilateral right to assign or novate its rights and obligations under this Agreement to a third party without the consent of the Charterer. The Charterer may not assign this Agreement without the written consent of the Charteror, which may be given or withheld in the Charteror's sole and absolute discretion.