**TERMS AND CONDITIONS OF HIRE
1. Interpretation 1.1** The following words have these meanings in this Agreement unless the contrary intention appears: **Agreement** means this written document and shall be deemed to include any deed, agreement or instrument amending, novating or supplementing this document; **The Company** means Riverland Boat hire Pty Ltd, any related corporations of it providing goods or services to the Hirer and any person acting with due authority of the Company. **Hirer** means the person or persons named in the documentation for this agreement as the Hirer and any person signing or initialling this agreement (other than on behalf of the Company). **Price** means the cost of the rental as agreed between the Company and the Hirer subject to the other terms of this agreement. **Services** means all Services supplied by the Company to the Hirer. **Boat** means any vessel, craft or thing made or intended to float on or in or travel on or through water. It includes a Boat booked or provided in the absence of a signed agreement.
**1.2** In this Agreement, unless the contrary intention appears: (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them; (b) No rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it. (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; (d) Time is of the essence except where specific provision is made or the contrary intention appears. (e) the singular includes the plural and vice versa; (f) a person includes the person’s heirs, executors, administrators, successors, substitutes and assigns and this document is intended to be binding upon such persons (g) a party to this Agreement includes that party’s executors, administrators, successors and permitted assigns; (h) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally; (i) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and (j) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually. (k) The terms appearing on the company’s document entitled “Hire Agreement” apply and supersede the terms herein to the extent of any inconsistency. (l) The terms appearing on the company’s document entitled “Hire Agreement” apply and supersede the terms herein to the extent of any inconsistency. **1.3** Headings are inserted for convenience only and do not affect the interpretation of this Agreement. **1.4** Where the context admits, the provisions of this document extend beyond any termination.
**2. Terms of Agreements & Risks** **2.1** Any further performance of this agreement after receipt of these terms and any subsequent or other offers or agreements between the Hirer and the Company for the supply of a Boat or equipment, shall be on the terms and conditions contained herein unless otherwise agreed (including any terms on any part of this agreement entitled “Hire Agreement”). **2.2** Where the Hirer constitutes more than one person, the Hirers shall be jointly and severally liable for all amounts payable by the Hirer to the Company in connection with this agreement. **2.3** The terms of this Agreement may not be altered except in writing. The Hirer acknowledges that the Company’s personnel and agents are not authorised to vary this agreement except in writing. **2.4** Any variation to this agreement extending the period of the Hire shall, unless otherwise agreed, be on the basis of the Company’s prevailing daily rates applicable for the rental as at the date of variation. **2.5** The Hirer/s must not be under influence of alcohol and/or drugs. **2.6** The Hirer/s agree to disclose any pre-existing medical conditions to the Company that could affect the Hirer/s ability to operate and/or be a passenger on a Boat and/or equipment provided. **2.7** In consideration of the Hirers use of the Boat and/or Equipment provided by the Company, I the Hirer understand and acknowledge that these activities involve inherent risks including (but not limited to) variable surf and weather conditions, water life, debris in the water, and the presence of other water users. These inherent risks can result in injury (including mental injury, disability, paralysis and/or death) and damage, some of which may be caused and/or contributed to by my own actions/inactions, and/or by persons around me, and/or the inherently risky nature of the activity.
**3 Release 3.1** Except where required by mandatory operation of law, the Company shall not be liable to the Hirer or any other person for any injury, damage, and/or indirect, special or consequential loss (including without limitation loss of profits, loss of opportunity or business interruption) suffered by the Hirer or any other person howsoever caused (including by negligence where allowed by law) by the Boat or the use thereof or any delay or non-performance. Furthermore, the Hirer hereby waives and releases the Company from any action, claim, loss or right which the Hirer may now or in the future have against the Company or its officers, agents, contractors and employees.
**4 Indemnity 4.1** To the extent permitted by law, the Hirer hereby indemnifies the Company against all losses and expenses which the Company or its officers, contractors, employees or agents may suffer or incur (including dishonour fees, debt collection costs and legal costs on an indemnity basis) due to the failure of the Hirer to fully observe its obligations under this agreement, or any other wilful or neglectful conduct by any person not directly connected with the Company in connection with the Boat.
**5 Fees & Prices 5.1** The Hirer agrees to pay the rental fee to the Company before the start of the rental period or as otherwise demanded or required by the Company. **5.2** The cost of fuel for the Boat shall be in addition to the cost of the Hire and may be deducted by the Company out of any Security Deposit. **5.3** The Price will be determined by the Company’s prevailing price list at the time of this agreement. **5.4** Any quotation provided by the Company shall be valid for a period of 14 days only. **5.5** All products and services are sold subject to goods & services tax (GST) unless the products or services are classified as GST exempt. **5.6** A security deposit, may, in the Company’s discretion, be required before the commencement of the Hire of the Boat, and will be specified on the front page of this agreement or by the Company through another means. **5.7** A non-refundable booking fee may apply to the Hire of the Boat. **5.8** Payment will be made by such reasonable means as the Company may require.
**6 Delivery and Condition of the Boat** **6.1** The Hirer shall be responsible for arranging the receipt or delivery of the Boat. **6.2** Any vehicle used by the Hirer (including the Hirer’s agents) to move the Boat must meet the appropriate standards and tow rating for the Boat and trailer. **6.3** Delivery of the Boat to any third party nominated by the Hirer, (including carriers), is deemed to be delivery to the Hirer for the purposes of this agreement. **6.4** The Hirer shall bear all costs associated with any delivery or transport of the Boat arranged by the Company either at the Hirer’s request or due to any failure or default on the part of the Hirer. **6.5** The Hirer must inspect the Boat upon receipt and delivery and notify the Company immediately of any concern the Hirer has about the Boat. The Hirer must notify to the Company any issue identified during the course of the Hire as soon as practicable after it is identified. **6.6** If the Hirer fails to inspect or notify the Company of any issue with the Boat when provided by the Company then in the absence of clear contrary evidence the Boat shall be deemed to be in good condition when so provided by the Company. **6.7** If through no fault of the Hirer a material fault is identified in the Boat, then provided that the Hirer has complied with this agreement the Company shall repair the Boat, replace the Boat, or refund the balance of the rental fee (at the Company’s sole discretion) (“the warranty”). **6.8** The warranty shall not be applicable in a situation where; a) The Hirer has failed to follow instructions supplied by the Company in relation to proper use of the Boat; b) The Boat or any Services have been used in a manner other than for their intended purpose; c) The Hirer wilfully or reckless causes damage or fails to maintain the Boat; d) The Hirer continues to use the Boat after any issue with the Boat is identified, or would have been apparent to an ordinary person licensed or qualified for the use of that equipment; e) Any alteration is made to the Boat without the Company’s knowledge and consent; or, f) The fault has occurred as a result of circumstances outside the control of the Company. **6.9** The Company shall not be liable for any losses caused by any delay in repairing or replacing the Boat.
**7 Cancellation 7.1** The Hirer may not cancel the contract except where the Hirer is entitled to rely upon the warranty in clause 6.7, and does so rely, and the Boat also cannot be replaced or repaired within a reasonable time after notice is given to the Company. **7.2** At the Company’s sole discretion, the Hirer may request a cancellation of the booking or Hire of the Boat by giving written notice to the Company not less than fourteen (14) days prior to the booking date. Failure to provide such notice will result in the Hirer forfeiting any booking fee to the Company even if the Company accepts the cancellation. **7.3** The Hirer acknowledges that they hire the Boat relying solely upon their own skill and judgement and not upon any representations or statements by the Company (including of a broad or general nature). **7.4** The Company may cancel delivery of the Boat Services at any time before delivery by giving notice to the Hirer. **7.5** The Company shall not be liable for any direct, indirect, special, or consequential loss or damage whatsoever arising from such cancellation by the Company.
**8 Default 8.1** If the Hirer fails to pay any amount due to the Company under this agreement when due, then the Hirer shall be liable to reimburse the Company for all additional costs and expenses incurred by the Company in recovering the amount owing, including debt collector’s fees and legal fees on a solicitorclient basis. **8.2** Interest will be payable on any outstanding amounts due to the Company at the rate of 10% per annum compounded daily. **8.3** The Company may at any time suspend or terminate the supply of the Boat/Services to the Hirer if there is any default by the Hirer in any of the provisions of this agreement. The Company will not be liable to the Hirer for any loss or damage sustained by the Hirer due to the exercise of the Company’s rights under this clause or any other default provision.
**9 Retention of Title 9.1** The Company retains complete ownership and title in the Boat being hired at all times. **9.2** The Hirer grants to the Company a general power of attorney granting the Company and its officers, employees, and agents a right of entry to the Hirer’s vehicles, trailers or premises (including any vehicles, trailers or premises leased or licenced by the Hirer) should the Hirer fail to return the Boat to the Company upon such notice, for the purpose of taking possession of the Boat. **9.3** The Hirer shall reimburse the Company for all costs and expenses associated with the Company’s actions under this clause. **9.4** The Hirer shall do all things necessary to ensure that, where the Personal Properties Securities Act applies, the Company obtains and maintains a perfected security interest in the Boat. **9.5** The Hirer may not sub-lease or sub-licence or otherwise encumber the Boat in any manner whatsoever.
**10 Insurance 10.1** Without limitation to the other rights of the Company, the Hirer shall be responsible for reimbursing the Company for any insurance excess which may apply in the event that Hirer breaches this agreement, and an insurance claim is made by the Company. **10.2** The Company is under no obligation to the Hirer to maintain any insurance over the Boat. In certain situations, insurance obtained shall not be available to the Company, in which case the Hirer shall remain liable for any loss arising in connection with the Boat.
**11 Limitation of Liability 11.1** If permitted by law, the liability of the Company to the Hirer in connection with this agreement shall be limited to the amount paid by the Hirer to the Company pursuant to this agreement or the cost of providing the Boat/Services again (at the election of the Company).
**12 Privacy 12.1** The Hirer hereby gives consent to the Company obtaining a credit report about the Hirer pursuant to the Privacy Act 1988. **12.2** The Hirer acknowledges that the information provided by the Hirer to the Company may be supplied to a credit reporting or debt collection agency in the event that the Hirer fails to make payment as required under this agreement and may be supplied to other persons in order to give effect to the terms of this agreement. **12.3** The Hirer agrees that the Hirer’s personal information may be used and retained by the Company for the following purposes and as required by law from time to time; a) Provision of the Boat/Services. b) Marketing of Boat/Services by the Company, its agents, distributors, or contractors, including by electronic message. c) The Collection of monies owed to the Company.
**13 Australian Consumer Law 13.1** If any provision of this agreement would, but for this clause, be contrary to any laws, including any conditions, warranties, rights or remedies which the Hirer may have pursuant to the Competition and Consumer Act or otherwise then that clause is to be severed from this agreement and treated as void, but so that the remaining provisions shall not be affected in any way whatsoever.
**14 General 14.1** The Company may assign or sub-contract the whole or any part of this agreement without the Hirer’s consent. **14.2** The Company shall not be liable for any breach of any provisions of this contract if the cause is outside of the reasonable control of the Company. **14.3** This document and its interpretation, validity and all claims relating to any actions or omissions arising from conduct in connection with this document shall be governed by the laws of South Australia and the parties agree to submit to the exclusive jurisdiction of the Courts of South Australia. **14.4** A waiver of any provision of this agreement by the Company must be in writing. No delay by the Company in exercising any right or power pursuant to this document will operate as a waiver of that right or power nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power. **14.5** The warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.