

Boat Hire Terms and Conditions – SGH Pty Ltd

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms unless inconsistent with the context or subject matter:

- (a) **Applicable Laws** means all acts, legislation and all orders, by-laws and regulations made thereunder in any way governing or affecting the exercise of the parties' rights or the performance of their obligations under these Terms;
- (b) **Boat** means the equipment hired by the Hirer from SGH pursuant to these Terms, consisting of a boat and any trailer, fishing gear, accessories, parts, items of equipment and devices affixed to or supplied with the Boat;
- (c) **Default Rate** means 12% per annum, accruing daily;
- (d) **Force Majeure Event** means events, circumstances or causes beyond a party's reasonable control;
- (e) **GST** means any tax imposed by or pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) on a supply;
- (f) **Hire Fee** means fees price payable for the hire of the Boat as specified in the Quote;
- (g) **Hire Period** means the period within which the Hirer has agreed to hire the Boat, as specified in the Quote. If no period is specified, then the Hire Period is one day;
- (h) **Late Fee** means \$500+GST, plus an additional \$500+GST for each day that follows the last day of the Hire Period until such time as the Boat is returned in accordance with these Terms;
- (i) **Loss** includes any loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence);
- (j) **Operator** means those persons authorised and licensed to operate the Boat;
- (k) **Quote** means the quote for the hire of the Boat provided by SGH to the Hirer;
- (l) **Related Entity** has the meaning given to it in section 9 of the Corporations Act 2001 (Cth);
- (m) **Security Bond** means a \$500 deposit or such other amount as specified by SGH;
- (n) **SGH** means Spencer Gulf Hire Pty Ltd ABN 31 654 918 153;
- (o) **State** means South Australia;
- (p) **Terms** means these terms and conditions.

1.2 Interpretation

In these Terms unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (d) headings are for reference purposes only and must not be used in interpretation;
- (e) no provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of that provision or these Terms;
- (f) a reference to a statute includes all regulations and subordinate legislation and amendments;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
- (h) a reference to a monetary amount is a reference to an Australian currency amount;
- (i) an obligation of two or more parties binds them jointly and each of them severally;
- (j) an obligation incurred in favour of two or more parties is enforceable by them severally.

2. HIRE

- 2.1 These Terms apply to, and become binding on, the Hirer upon the earlier of the Hirer indicating acceptance of the Quote, paying any amount to SGH or otherwise taking possession of the Boat.
- 2.2 SGH agrees to hire the Boat to the Hirer for the Hire Period at the Hire Fee in accordance with the Quote on the terms and conditions contained in these Terms.
- 2.3 If there is any inconsistency between the terms set out in these Terms and the terms set out in a Quote, the terms set out in the Quote prevail to the extent of the inconsistency.

3. HIRE PERIOD

- 3.1 The Hire Period commences on the date specified in the Quote and will continue for the Hire Period.
- 3.2 The Hire Period may be extended by agreement between the parties.

4. PRICE AND PAYMENT

- 4.1 Unless otherwise specified in the Quote, SGH will issue an invoice to the Hirer for the hire of the Boat upfront, prior to the commencement of the Hire Period.
- 4.2 The Hirer must pay the Hire Fee, Security Bond and any other amounts as indicated on the invoice to SGH upfront, in full, prior to the commencement of the Hire Period, unless other payment terms are specified in the Quote.
- 4.3 Should the Hirer fail to pay SGH the Hire Fee or any other amount payable under these Terms by the due date for payment, then without limitation to SGH's other rights, SGH may:
 - (a) cancel the Hirer's hire of the Boat; and/or
 - (b) charge the Hirer default interest calculated at the Default Rate calculated daily on the outstanding amount from the due date for payment and such interest will continue to accrue until such time as the outstanding amount is paid in full.
- 4.4 Payment will be made by any method approved by SGH to SGH's nominated bank account or in such other manner directed by SGH. All payments must be made by the due date without set-off or counterclaim, even if a dispute in respect of the invoice exists.
- 4.5 Unless otherwise stated, all amounts and prices provided are exclusive of GST and the Hirer must pay to SGH GST on any amounts at such time as making payment of those amounts.
- 4.6 To the extent permitted by law, all payments made under these Terms are non-refundable. SGH does not provide a partial refund for any early return of the Boat.
- 4.7 All amounts must be paid via the method specified by SGH. Any credit card payment may incur a small processing fee.

5. CANCELLATION

- 5.1 The Hirer may cancel the hire of the Boat at any time prior to commencement of the Hire Period.
- 5.2 In the event that the Hirer gives SGH at least 7 days written notice prior to the commencement of the Hire Period then they will be entitled to receive a refund of all amounts paid to SGH in respect of the hire of the Boat. In the event that the Hirer does not give at least 7 days notice, then the Hirer is not entitled to a refund of any amounts paid to SGH, and if no amounts have been paid then it must pay to SGH a cancellation charge of \$100+GST immediately.
- 5.3 SGH may, however is not obliged to, cancel the hire of the Boat at any time prior to commencement of the Hire Period, including due to inclement weather. In the event that SGH does this, SGH will refund all amounts paid by the Hirer in respect of the hire of the Boat within 7 days of such cancellation.

6. DELIVERY AND RETURN

- 6.1 The Hirer must collect the Boat on the commencement date of the Hire Period (or some other date as agreed) in accordance with the collection instructions as specified in the Quote or as otherwise agreed between the parties in writing.
- 6.2 Upon collection of the Boat, the Hirer must nominate those who will be the Operators of the Boat. The Hirer must ensure that:
 - (a) each Operator has a valid boating licence, and the original licence must be shown to SGH;
 - (b) all persons who will travel on the Boat undertake a safety induction course provided by the Hirer; and
 - (c) where the Hirer will tow the Boat to the water, the Hirer has a vehicle which is suitable for towing the Boat.
- 6.3 In the event that the Hirer fails to comply with these terms, or in the event that SGH has concerns in relation to the capacity of certain persons to be an Operator or otherwise travel in the Boat (such as where they are intoxicated), the Hirer acknowledges that SGH may direct certain persons not to operate or travel in the Boat and the Hirer must comply with such directions. No refunds will be provided by SGH in the event that such a direction is issued and the Hirer is then unable to hire the Boat.
- 6.4 On expiry of the Hire Period or the earlier termination of these Terms, the Boat is to be returned by the Hirer (at its cost) in accordance with the return instructions as specified in the Quote or otherwise to the location where it was collected by the Hirer. The Hirer must ensure that the Boat is returned in good order and repair and in accordance with the Hirer's obligations under these Terms.
- 6.5 The Boat must be returned in accordance with these Terms prior to sunset on the last day of the Hire Period. Should the Boat not be returned to SGH prior to that time, then without limitation to any other rights that

SGH may have, the Hirer must pay to SGH the Late Fee immediately on demand.

7. HIRER'S OBLIGATIONS

- 7.1 The Hirer acknowledges and agrees that it:
- (a) must only use the Boat:
 - (i) within the hours of sunrise and sunset;
 - (ii) solely for the purpose which it was provided;
 - (iii) in accordance with any and directions provided by SGH;
 - (iv) in compliance with all Applicable Laws; and
 - (v) in accordance with these Terms;
 - (b) will only use the Boat at the locations specifically agreed to by the parties, and any location change must be notified to SGH and is subject to the approval of SGH;
 - (c) must ensure that the Boat only travels within semi-protected waters, being waters inshore of a line 2 nautical miles seaward of the low water mark off the coast of the mainland, and does not leave such waters at any time;
 - (d) must only allow authorised Operators to use the Boat, being those Operators approved by SGH following the safety induction;
 - (e) must ensure that the Boat remains in its possession and control at all times during the Hire Period, and the Boat must not be left unattended at any time, except for any trailer which is supplied with the Boat which must be legally parked and secured at the boat ramp where the Boat is deployed;
 - (f) must not, and must ensure that all other passengers and Operators of the Boat do not, smoke or consume alcohol or illicit drugs in the Boat, or otherwise travel in the Boat whilst under the influence of any drugs or alcohol;
 - (g) will be liable for any fine, toll notice, penalty or infringements, including but not limited to speeding or fishing in unauthorised areas, which encountered during the Hire Period (and indemnifies SGH in relation to same), and will be held responsible for ownership of any penalties/demerit points and/or fines;
 - (h) must immediately give notice to SGH if:
 - (i) the Boat is lost, damaged or destroyed in any way; or
 - (ii) there is any accident resulting in injury to persons or damage to property as a result of or in connection with use of the Boat; and
 - (i) accept full responsibility for the safe keeping of the Boat, and ensure appropriate security measures are enforced in order to ensure the safety of passengers.
- 7.2 The Hirer will immediately stop using the Boat and notify SGH if the safety of the Boat is in any way questionable or if the Boat breaks down or becomes unsafe, and will take all necessary steps to prevent injuries to all persons and property arising in connection with the Boat.

8. OPERATORS

- 8.1 The Hirer must:
- (a) ensure that the Operators are properly trained and competent in use of the Boat in accordance with the directions provided by SGH, have all applicable licences or other approvals required to safely operate the Boat, including a current valid boating licence;
 - (b) ensure that the Boat is used and operated in a skilful, safe and proper manner and is not used in conditions which are unsuitable for it to operate;
 - (c) ensure that the Operators operate the Boat obeying all rules and regulations in the State; and
 - (d) ensure that Operators comply with Applicable Laws.

9. CONDITION ON RETURN

- 9.1 The Hirer must ensure at the completion of the Hire Period and on the return of the Boat, the Boat is returned free from any defects or damage, and is in the same condition as at the commencement of the Hire Period.
- 9.2 If in the reasonable opinion of SGH the Boat is not returned in such condition, the Hirer will be liable for the cost of reinstating the Boat to a its original condition as at the commencement of the Hire Period. The Hirer must pay such costs immediately on demand by SGH.
- 9.3 The Hirer is not required to refuel the Boat.
- 9.4 Whilst SGH acknowledges that the Boat will be used for fishing and therefore may not be in the same clean condition as at the commencement of the Hire Period, the Hirer must ensure that the Boat is not excessively dirty and must wash it down where required prior to returning it. If the Boat is returned in an excessively dirty condition (as determined by SGH), then the Hirer may be required to pay an excess cleaning fee as determined by SGH immediately on demand.

10. BOAT DAMAGE AND REPAIRS

- 10.1 The parties agree that as at the commencement of the Hire Period the Boat is in good condition, and that there is no damage to the Boat except

where the Hirer notes any issues to SGH in writing prior to the commencement of the Hire Period.

- 10.2 The Hirer must return the Boat to SGH in the same condition as it was in as at the commencement of the Hire Period, except that the Hirer is not required to refuel the Boat.
- 10.3 The Hirer must not make any modifications or alterations to the Boat at any time. Without limitation, the Hirer must not alter or deface or remove or conceal any identifying number, name plate or make on the Boat or any part thereof.
- 10.4 The Hirer must immediately inform SGH of any damage caused to the Boat. The Hirer is not authorised to and agrees not to undertake any repairs of the Boat without the express prior written authority of SGH. The Hirer acknowledges and agrees that SGH (and its agents) shall be the only persons entitled to repair or reinstate any part or parts of the Boat (except where otherwise agreed).
- 10.5 The Hirer is liable for, and must indemnify SGH against, damage caused by the Hirer's failure to maintain the Boat in accordance with its obligations under these Terms or otherwise in accordance with the directions of SGH. In the event that any damage to the Boat occurs during the Hire Period and SGH is subsequently unable to hire the Boat out to other clients, in addition to payment of the costs of repair the Hirer must pay to SGH on demand an amount equal to the Hire Fee for each day until the Boat is repaired is able to be hired to clients again (as determined by SGH).

11. INSURANCE

- 11.1 The Hirer is not entitled to the benefit of any of SGH's insurances and SGH recommends that the Hirer and all passengers in the Boat maintain appropriate insurances in respect of damage to the Boat, personal injury and life insurance.

12. NO WARRANTY AND DISCLAIMER

- 12.1 To the extent permitted by law SGH provides the Boat on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory. The Hirer shall be responsible to inspect the Boat at the commencement of the hire and to satisfy itself that the Boat is suitable for the Hirer's use. To the extent permitted by law, SGH specifically disclaims any implied warranties including in relation to title, merchantability, fitness for a particular purpose and non-infringement.

13. RISK AND INDEMNITIES

- 13.1 The Hirer uses the Boat at its own risk and SGH is not liable in any circumstances to the Hirer for any damage, injury or death caused to the Hirer, its Operators, employees or any property or to a third party howsoever caused.
- 13.2 The Hirer releases SGH from, and indemnifies SGH against, any Losses, liabilities, costs, charges or expenses (including any direct, indirect, special or consequential losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by SGH arising out of or in connection with:
- (a) any claim made against SGH and/or the Hirer by a third party arising out of or in connection with the use and/or provision of the Boat and/or these Terms to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Hirer, its employees, agents or subcontractors;
 - (b) any claim made against SGH by a third party for death, personal injury or damage to property arising out of or in connection with the use of the Boat;
 - (c) any breach or negligent performance or non-performance of these Terms by the Hirer, including any failure to pay any fees on time;
 - (d) any damage to the Boat;
 - (e) any fine or penalty whatsoever in connection with the use of the Boat by the Hirer or otherwise incurred during the Hire Period;
 - (f) the enforcement of these Terms;
 - (g) any excess payable in respect of an insurance claim made by SGH in connection with any damage to, or loss of, the Boat during the Hire Period; and
 - (h) any negligent act, omission or wilful misconduct of the Hirer, its Operators or any passengers of the Boat.
- 13.3 The Hirer must make payments under this clause:
- (a) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
 - (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.
- 13.4 The Hirer must pay any amount for which the Hirer has indemnified SGH under clause 13.2 immediately on demand.

14. EXCLUSION AND LIMITATION OF LIABILITY

- 14.1 Subject to the other terms of this clause, SGH excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Boat that are not expressly set out in these Terms to the maximum extent permitted by law.
- 14.2 Subject to the other terms of this clause, SGH and its Related Entities' maximum aggregate liability to the Hirer for any loss or damage or injury arising under or in connection with these Terms or the hire of the Boat, whether arising in contract, negligence or any other tort, restitution or for breach of statutory duty or misrepresentation of otherwise, is in all circumstances limited to the Hire Fee paid by the Hirer.
- 14.3 Nothing in these Terms is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision or any liability of SGH in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 14.4 If SGH is liable to the Hirer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, SGH's total liability to the Hirer for that failure is limited to, at the option of SGH to the resupply of the services or the payment of the cost of resupply.
- 14.5 Subject to the other terms of this clause, SGH excludes any liability to the Hirer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms, including any loss of profits, loss of sales or business, loss of production, loss of agreements, project stand down costs and project delay costs, loss of business opportunity, loss of anticipated savings, loss of or damage to goodwill or reputation or loss of use or corruption of data or information.
- 14.6 This clause applies to the fullest extent permitted by law and shall survive any termination or expiration of this agreement.
- 14.7 In this clause "ACL" means the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)).

15. OWNERSHIP

- 15.1 Notwithstanding anything to the contrary express or implied in these Terms, the parties agree that SGH retains full title to the Boat and title will not at any time pass to the Hirer notwithstanding:
- the delivery or collection of the Boat to/by the Hirer (as the case may be); and/or
 - the possession and use of the Boat by the Hirer.
- 15.2 The Hirer acknowledges that the Hirer has the right to possess the Boat as a mere bailee only and will deal with the Boat in such a manner which enables it to be clearly identified as Boat belonging to SGH and does not have any right to pledge SGH's credit in connection with the Boat and agrees not to do so.
- 15.3 Even if SGH retains ownership of the Boat, the risk for the Boat passes to the Hirer on delivery of the Boat to the Hirer.
- 15.4 Except to the extent as expressly permitted in these Terms, the Hirer acknowledges and agrees that:
- it will advise SGH of the precise location of the Boat immediately on request;
 - it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Boat without the express written consent of SGH;
 - in the event that it sells or hires the Boat in breach of these Terms, it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Boat on trust for and as agent for SGH immediately when they are receivable or are received;
 - it must promptly report any incident involving loss or damage to the Boat to SGH, the police (if applicable) and any other proper authority. The Hirer must comply with any directions provided by SGH in this regard;
 - it will, if requested by SGH, return the Boat to SGH following non-fulfilment of any obligation of the Hirer (including payment of monies) without limiting any other right SGH may have;
 - it will deliver up the Boat to SGH upon demand by SGH and gives SGH or its agents or authorised representatives the right to enter any premises occupied by the Hirer and any premises where it believes any Boat may be stored (without liability for trespass or any resulting damage) and to use the name of the Hirer and to act on its behalf, if necessary, to recover possession of the Boat and agrees to indemnify SGH and its agents and/or authorised representatives from any damage, injury and/or loss arising from such recovery or attempted recovery of Boat from the Hirer's possession or control; and

- SGH may recover as a debt due and immediately payable by the Hirer all amounts owing by the Hirer to SGH in any respect even though title to the Boat has not passed to the Customer.

16. ASSIGNMENT AND TRANSFER

- 16.1 The Hirer must not transfer or assign its rights under these Terms to anyone else, without the prior written consent of SGH.
- 16.2 The Hirer acknowledges and agrees that SGH may transfer, assign or otherwise dispose of its interest in these Terms upon giving written notice to the Hirer.

17. DEFAULT AND TERMINATION

- 17.1 The Hirer will be in default of these Terms if any of the following occurs:
- if any money payable by the Hirer under these Terms is not paid by the payment due date; or
 - if the Hirer fails to comply with a term of these Terms.
- 17.2 In addition to rights at law or inequity, if the Hirer defaults under these Terms, SGH may immediately (without prejudice to any other rights):
- cancel the Hire Period and demand immediate return of the Boat by the Hirer;
 - terminate these Terms by giving written notice to the Hirer; and/or
 - sue the Hirer for any Loss it has incurred.
- 17.3 Upon termination of these Terms:
- the Hirer must immediately deliver up the Boat to SGH in accordance with the terms of these Terms; and
 - all amounts payable but not yet due by the Hirer to SGH become due and payable immediately. Except where agreed between the parties there is to be no refund of any amount paid by the Hirer.
- 17.4 The Hirer irrevocably appoints SGH to be the true and lawful attorney of the Hirer to do all such acts to protect and give effect to SGH's rights under these Terms, in the event SGH has lawfully terminated these Terms (proof of which will be the declaration of SGH).

18. SECURITY BOND

- 18.1 In addition to payment of the Hire Fee, the Hirer must pay to SGH the Security Bond prior to the commencement date of the Hire Period. The Security Bond will be retained by SGH. Without limitation to any other rights of SGH, SGH may in its discretion have recourse to the Security Bond on account of any amounts payable by the Hirer under these Terms which are not paid when due or for any breach of these Terms by the Hirer or for any damage, loss or theft to the Boat, to compensate SGH for the loss suffered directly or indirectly by it as a result of the default by the Hirer.
- 18.2 Within 14 days of the date that the Hire Period has ended and these Terms have been terminated, SGH will refund the balance of the Security Bond not otherwise applied by SGH in accordance with these Terms to the Hirer's nominated bank account.

19. FORCE MAJEURE

- 19.1 SGH will not be in breach of these Terms or liable to the Hirer for any Loss incurred by the Hirer as a direct result of SGH failing or being prevented, hindered or delayed in the performance of its obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.

20. GENERAL PROVISIONS

20.1 Governing law

This Agreement is governed by the laws of the State and the Commonwealth of Australia which are in force in the State. The parties submit to the jurisdiction of the Courts of the State, relevant Federal Courts and Courts competent to hear appeals from them.

20.2 Severance

If a provision of these Terms is void or unenforceable it must be severed from or read down to the extent necessary from these Terms and the provisions that are not void or unenforceable are unaffected by the severance.

20.3 Entire understanding

This Agreement contains the entire understanding and agreement between the parties as to the subject matter of these Terms.

20.4 Costs

The parties must bear their own costs of and incidental to the negotiation, preparation and execution of these Terms.

20.5 Time of the essence

Time is of the essence in respect of any obligation set out in these Terms, including in respect of payment of any amount.

20.6 Waiver

No waiver of any term of these Terms will be effective unless the waiver is in writing and signed by the party giving the waiver.

20.7 Cumulative rights

The rights and remedies of a party to these Terms are in addition to the rights or remedies conferred on the party at law or in equity.