

Port Nikau Joint Venture Marine Precinct Terms and Conditions



The provision of marine services and facilities by Port Nikau Joint Venture or its appointed Manager ('Port Nikau') will be upon the following terms and conditions.

Any Vessel owner or their appointed Boat Master, or commercial operator accessing vessels berthed at Port Nikau ('the User') transacting such business or entering Port Nikau's premises agrees to and will be bound by these terms.

1. Services available at Port Nikau

- a) Port Nikau may provide berthage for the User's vessel. Berthage will be subject to the absolute right of Port Nikau to require a vessel berthed at any wharf to be moved or relocated to another berth at Port Nikau, or to vacate the allocated berth and to moor in the stream or harbour as directed and any such requirement will be carried out by the User.
- b) Port Nikau will use its best endeavours to provide a berth for the User's vessel on a date convenient to the User's sailing schedules but Port Nikau will be under no liability for the consequences direct or indirect, if for any reason Port Nikau is unable to provide berthage as requested by the User.
- c) Port Nikau may provide power and water on some berths and hardstand facilities.
- d) Port Nikau has a diesel facility available and Mains 1. Port Nikau reserves the right to restrict access to other fuel suppliers. Fuel may only be delivered to vessels by arrangement with Port Nikau as set out in clause 11.
- e) Port Nikau may arrange haul-out or haul-in services for vessels and/or hard stand facilities, and/or services for users.
- f) Port Nikau reserves the right to interrupt supply of services for maintenance.
- g) Services may not be supplied to any User who is in breach of these terms and conditions, including breach of the agreed Payment Terms.
- h) Port Nikau may provide access to the facilities for Commercial Operators who require access to vessels. Such access will be payable by the Commercial Operators.

2. Charges and fees

- a) Unless otherwise agreed in writing, the charges for berthage and marine services will be in accordance with Port Nikau's Schedule of Fees in force at the time of actual provision of the services. Particulars of such Price Schedule are available upon request.
- b) Marine service and berthage charges will be calculated using the overall length (LOA) of the User's vessel or marina berth length and where appropriate the wharf or land area used for support services.
- c) Commercial Operators will be charged according to negotiated rates.

3. Payment Terms

The User agrees to the following payment terms (if no payment terms are selected then payment is due on invoice):

- Payment on invoice prior to departure (short-term services)
- Payment 7 days after invoice (long-term services)
- Payment in advance on the 1st of each month (Annual Berthage)
- Payment annually in advance (Annual Marina lease)

- a) Payment may be made by cheque, direct credit, Credit Card (via Pay Pal) or cash to the Port Nikau office (opening hours apply).
- b) Credit Card fees may apply.
- c) Payment terms for fuel suppliers are set out in clause 11.
- d) Charges for power and water use are payable on demand.

4. Users Liability

- a) The User will be liable for loss or damage caused to the Port Nikau's property where such loss or damage is caused by the negligence of the User, its employees, agents or subcontractors.
- b) The User will be liable for all expenses incurred by Port Nikau in storing, moving or berthing the Vessel and any costs relating thereto.
- c) The User will comply with its duties and obligations under all relevant statutes, bylaws, local authority and other regulations or plans including but not limited to the Health & Safety in Employment Act 1992, the Maritime Transport Act 1994, the Resource Management Act 1991, the Marine Pollution Act 1974 and District or Regional Council Plans to the extent applicable to that User
- d) If at any time the User or Port Nikau becomes aware that the User is in breach, or is likely to be in breach, of any such duty or obligation, the party who detects a breach or possible breach will immediately notify the other party and the User will follow all directions to avoid, remedy, or mitigate any such breach or possible breach.
- e) The User will ensure that its agents, subcontractors and employees are aware of these terms and will abide by them.
- f) All hot work must be completed to NZ Standards and requires a Hot Work Permit.
- g) Port Nikau will not have any duty to supervise, check, or issue directions to the User, and the User is solely responsible for ensuring that relevant laws are complied with.
- h) The User will keep the berth area and premises neat, clean and tidy and free from any rubbish or flammable substances, and will store any flammable substances (except where a User is a fuel supplier in the process of delivering fuel), pollutants or hazardous materials in accordance with best practice.
- i) The User will berth, operate and maintain the Vessel in a seaworthy condition and responsible manner, and will not do or permit anything to be done by a guest, employee, crew or agent who, in the opinion of Port Nikau may be or become a nuisance or disturbance or cause damage to Port Nikau's facilities or other Users and their vessels.
- j) The User will ensure the vessel is capable of moving under the vessel's own power except during refit for such a time as is approved by Port Nikau in writing.
- k) The User will not carry out any commercial enterprise at the berth except as permitted by Port Nikau.
- l) For the term of their stay the user will carry appropriate public liability and marine hull insurance for the Vessel and make proof of such insurance available if requested by Port Nikau. User's are advised to inform their insurance company if their vessel is on the hardstand.
- m) Port Nikau is party to the Whangarei Marine Biosecurity Charter (September 2013) available from the Northland Regional Council www.nrc.govt.nz All marine facilities at Port Nikau are monitored for marine pests. However, vessel owners are responsible for protecting their vessels from marine pests through regular hull maintenance and inspection. Port Nikau will not be held liable for marine pest infestations of vessels using its facilities.
- n) Port Nikau will take all reasonable care to avoid situations where one vessel may cause damage to another at the wharf. However, vessel owners are responsible for protecting their vessels from damage caused by proximity to other vessels.

Water Space, Access and Use of Facilities

- a) These Terms and Conditions relate only to the allocated water space of the berth and any wharf space of land area specified. In common with others, the User shall have a right of making fast to the allocated Berth structures and access and use fights of the structure of the wharf.
- b) The User shall not alter or modify the Berth or adjacent structures. Any addition or alteration, such as fendering and dinghy supports, shall first be approved by the Owner and fitted by an installer approved by the Owner.

5. Living on board

- a) Any person requiring living on board a vessel berthed at the marina must register with the Marina Manager.
- b) An Effluent Disposal Plan must be provided before any person is permitted to live on board. Effluent may not be disposed of into the marina waters or surrounding land.

6. Animals

- a) Animals may be allowed to stay on vessels with prior approval of the Marina Manager.

7. Shore Power

- a) Vessels requiring a permanent connection to shore power must supply a current electrical warrant of fitness (EWOFF) in accordance with the New Zealand Electrical Code of Practice (ECP-29).
- b) A temporary power supply cord may be used but can only be connected to a maximum of one portable electrical appliance. The vessel may not be left unattended if the electrical supply is active.
- c) The following conditions must be met to ensure compliance with the Electrical Regulations (ECP-29)
 - i) All components of the supply lead shall be appropriate for the demands placed upon it.
 - ii) The supply power cable shall bne one continuous length and be a heavy duty tough rubber sheathed cable.
 - iii) The supply cable should be arranged
 - (1) to permit normal movement of the vessel at its berth
 - (2) Securely to avoid damage
 - (3) To minimise accidental disconnection or leave a trip hazard
 - (4) Without excess cable coiled up – spread the coil inside the vessel to avoid heating and melting insulation

8. Termination

- a) Port Nikau may immediately terminate the User's right to use a berth or facility if the User fails to pay all charges and other amounts on time and such charges remain unpaid seven days after notification of such non-payment, or if the User breaches any of these terms and conditions or the bylaws, regulations and laws applying, and such breach (if capable of remedy) remains un-remedied after seven days from the date of Port Nikau notifying the User of such breach.
- b) If Port Nikau terminates the User's right to use a facility, the User must promptly pay all charges and amounts owing to Port Nikau and remove the vessel from the facility.
- c) If the User does not remove the vessel, Port Nikau may, without incurring any liability, remove the vessel and store it in such a place and under such conditions as it sees fit. Port Nikau shall have a lien over the vessel for all costs including but not limited to, impounding, removal, security, storage and sale of the vessel, and all outstanding charges and other amounts owing by the User to Port Nikau under these terms and conditions. Port Nikau shall not be required to release the vessel until all amounts owing in relation to the vessel have been paid.
- d) After expiry of one month from Port Nikau giving notice to the User that Port Nikau has claimed a lien on the vessel, Port Nikau shall be free to sell the vessel and appropriate the proceeds of sale in satisfaction of any amount due to Port Nikau by the User. Any surplus shall be paid to Port Nikau.

- e) The User agrees to indemnify Port Nikau from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against Port Nikau which arise out of or in connection with the failure of the User, its agents, subcontractors or employees to comply with the provisions of these terms and conditions.

9. Security Registration on the Personal Property Securities Register

- a) The User acknowledges that clause 5(c) creates a security interest ("Security Interest") (as that term is defined in the Personal Property Securities Act 1999("PPSA")) in the User's vessel.
- b) The User will at Port Nikau's request promptly execute any documents, provide all necessary information and do anything else required by Port Nikau to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA), including executing any variations to this agreement reasonable requested by Port Nikau.
- c) The User waives all its rights under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- d) The User acknowledges and agrees that:
 - i) it has received valuable consideration from Port Nikau;
 - ii) attachment of the Security Interest to the User's vessel shall in no way be deferred or postponed;
 - iii) the Security Interest shall remain in force until Port Nikau confirms that the User has paid all amounts and performed all obligations under these Terms and Conditions; Port Nikau may at any time secure, remove and/or uplift the User's vessel;
 - iv) it shall not grant any other security interest, encumbrance or lien over the User's vessel;
 - v) it waives any rights it may have under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA; and
 - vi) it shall give Port Nikau prior written notice of any proposed change of its name or address.

10. Bylaws, regulations & New Zealand Law

11. These terms and conditions are subject to New Zealand Law.

Notices and contact

All notices under these terms will be given by personal delivery, ordinary mail, electronic mail or facsimile transmission:

To Port Nikau at Whangarei:

Port Nikau Joint Venture, 260 Port Road, PO Box 1610, Whangarei, NEW ZEALAND

Fax: 64-9-438 6796

To the User at:

Any of the User's last known places of business whether in New Zealand or elsewhere or at the address of the User's last known agent in New Zealand, or to the User's vessel and will be deemed to have been received two days after despatch by mail or on the day of despatch by facsimile or on the day of delivery if by personal delivery.

Port Nikau must be advised of any change of address, contact details, or ownership of the User or the vessel.

12. VARIATION OF TERMS

These terms may be varied by Port Nikau from time to time. Such variations will be deemed effective and accepted by the User 30 days after they are publicly circulated by Port Nikau (including their insertion on Port Nikau's website) irrespective of whether such notice is actually received. The User acknowledges that these Terms and Conditions apply to all vessels owned by the User regardless of whether or not they are named below.