



## BOAT HIRE TERMS AND CONDITIONS

This document records the Hire Terms and Conditions on which APYAC agrees to hire a Boat to the Hirer.

### 1. DEFINITIONS

For the purposes of this agreement and unless the context requires otherwise:

- 1.1. **APYAC** means Albert Part Yachting & Angling Club Inc.
- 1.2. **Boat** means the vessels with inboard diesel or petrol engines as well as vessels with outboard petrol engines owned by APYAC and hired to the Hirer in accordance with these terms and conditions and includes any related equipment (i.e. personal floatation devices) supplied by APYAC.
- 1.3. **Claim** includes any claim, including a notice, demand, debt, account, action, expense, damage, the loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.
- 1.4. **Commencement** means the actual time and date when the Hirer takes possession of a Boat.
- 1.5. **Hire Agreement** means a document or electronic form which APYAC requires the Hirer to complete and sign (or accept in a way APYAC requires including via the Site) which includes Hirer name and contact details, hire fees, the Hire Period and such other information as APYAC may require and includes corporate Hire Agreements.
- 1.6. **Hirer** means the person named in the Hire Agreement.
- 1.7. **Hire Period** means the time period on the booking date which the Hirer has selected and APYAC has confirmed during which the Hirer may use the Boat.
- 1.8. **Member** means an individual who holds a current Full, Provisional, or Life Membership with the Albert Park Yachting & Angling Club Inc.
- 1.9. **Price** shall mean the cost of the rental as agreed between APYAC and the hirer subject to other terms of this Agreement.
- 1.10. **Risk Waiver** means a waiver form provided by APYAC which the Hirer must sign on the day of hire prior to using a Boat.
- 1.11. **Services** means all service supplied by APYAC to the Hirer.
- 1.12. 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.
- 1.13. Time is of the essence except where specific provision is made or the contrary intention appears.
- 1.14. A reference to a person includes the person's heirs, executors, administrators, successors, substitutes and assigns and this document is intended to be binding upon such persons.
- 1.15. The singular includes the plural and vice versa and words importing a gender includes other genders.
- 1.16. Other grammatical forms of defined words and expressions have corresponding meanings.
- 1.17. An agreement, covenant, representation, warranty or indemnity in favour of two or more persons is for the benefit of them jointly and severally.
- 1.18. An agreement, covenant, representation, warranty or indemnity made by two or more persons is made by them jointly and severally.

- 1.19.** Headings are for ease of reference only and do not affect the construction of this agreement.
- 1.20.** The terms appearing on the company's document entitled "Boat Hire Agreement" apply and supersede the terms herein to the extent of any inconsistency.
- 1.21.** Where the context admits, the provisions of this document extend beyond any termination.

## **2. HIRE OF A BOAT**

### **2.1. Hirer of the Boat is subject to the following:**

- 2.1.1.** The Boat is only to be used for fishing or recreational trip purposes;
- 2.1.2.** The Boat is only to be operated in the Port Phillip Bay;
- 2.1.3.** The Boat is not permitted outside of Port Phillip Bay;
- 2.1.4.** The Boat is only to be operated during daylight hours, sunrise to sunset;
- 2.1.5.** The Boat must not be operated in adverse conditions where the wave height exceeds 1 metre and/or the wind speed exceeds 20 knots unless otherwise advised by a representative of APYAC;
- 2.1.6.** The Boat must not be operated following an accident or if it has sustained damage and/or is any way not fit for safe operation. The Hirer must immediately notify a representative of APYAC of any issues arising and for direction;
- 2.1.7.** Smoking is not permitted on the Boat;
- 2.1.8.** The Hirer is responsible for any fines, penalties, infringements, levies or charges payable as a result of the Hirers use of the Boat during the Hire Period;
- 2.1.9** The Boat must not be operated in contravention of any State or Federal Laws.

### **2.2. APYAC BOAT HOUSE will:**

- 2.2.1.** Ensure that the Boat is clean and in good working order at the start of the Hire Period;
- 2.2.2.** Ensure that the Boat is equipped with all the required Safety Equipment (in accordance with Schedule 3 of the Marine Safety Regulations 2012), is fully serviced, current, and on board the Boat at the time of Hire and will include:
  - a. Type 1 Personal Floatation Device (Life Jacket) for each person on board the Boat. Life jackets will come in both adult and child sizes;
  - b. 1 Adequate and approved fire extinguisher positioned away from the engine and fuel tank for safe and easy access in the event of a fire;
  - c. 1 Anchor and Chain Line;
  - d. 1 Electric or manual bilge pumping system;
  - e. 1 Bucket with lanyard;
  - f. 1 Bailer;
  - g. 2 hand-held orange smoke signals and 2 red distress flares;
  - h. 1 Waterproof buoyant torch; and
  - i. 1 Pair of paddles.

- 2.3.** Risk in the Boat lies with the Hirer at all times from Commencement until the end of the Hire Period;

## **3. THE HIRERS OBLIGATIONS**

### **3.1. The Hirer agrees and acknowledges:**

- 3.1.1.** That the Hirer is a current paid up Member of APYAC and has completed the Boat House induction for launching and retrieving the boats and a demonstration in the last 12 months;
- 3.1.2.** That the Hirer is the holder of a current Victorian General Marine Licence which must be produced at the time of hire;

- 3.1.3. That the Hirer is the only authorised person who will operate the Boat;
- 3.1.4. That the Hirer is 18 years or over;
- 3.1.5. That the Hirer is physically capable of operating the Boat;
- 3.1.5.1. That the Hirer must not be under the influence of drugs or have alcohol present in their system at any time during the Hire Period in excess of 0.05% blood alcohol content;
- 3.1.6. That the Hirer will take due care when operating the Boat and not cause any loss or damage to the Boat and its equipment during the Hire Period;
- 3.1.7. That the Hirer take all due care when using the Boat to prevent injury to any person or any loss or damage;
- 3.1.8. The Hirer must notify a representative of APYAC prior to using the Boat of any apparent damage, defects, hazards or risks identified with the Boat, or otherwise it will be deemed that the Boat is in good working order and without damage;
- 3.1.9. That the Hirer does not permit an excess of passengers in accordance with the licensed capacity of the Boat;
- 3.1.10. The Hirer does not permit all persons on board the Boat to swim, jump off or leave the Boat into the water during the Hire Period.

### **3.2. Return from Hire:**

- 3.2.1. The Hirer will return the Boat to APYAC within the time stipulated in the Hire Agreement;
- 3.2.2. In the event the Boat is not returned within the time stipulated in the Hire Agreement, the Hirer must immediately notify a representative of APYAC;
- 3.2.3. The Hirer will be charged the equivalent to a single day hire, or part thereof shall be charged until the Boat is returned;
- 3.2.4. The Hirer will ensure that all on board Safety Equipment as listed in clause 2.2.2 above is properly used and maintained throughout the duration of the Hire. If any on board Safety Equipment as listed in clause 2.2.2 is damaged and/or lost, the Hirer will be charged for a replacement;
- 3.2.5. The Hirer will return the Boat to APYAC in a clean state and good working order. In the event a Boat and any on board Safety Equipment is not returned clean and in good working order, APYAC may charge the Hirer for all cleaning and repair costs incurred by APYAC;
- 3.2.6. The Hirer must notify APYAC immediately of any concern the Hirer has about the Boat including but not limited to apparent damage, defects, hazards during the Hire Period;
- 3.2.7. The Hirer must (if not previously advised) immediately report and provide full details to APYAC as soon as any accident or damage to the Boat.

## **4. DAMAGES**

- 4.1. The Hirer agrees and acknowledges that they are responsible for all costs to repair any and all damage(s) to the Boat during the Hire Period. This acknowledgement will include any storage, towing and/or recovery costs;
- 4.2. Clause 4.1 will not apply if, at the sole discretion of APYAC, it determines that there is a material fault with the Boat and subject to the Hirer complying with the terms of this agreement (**'warranty'**).
- 4.3. The warranty will not apply in the following non-exhaustive situations:
  - 4.3.1. The Hirer has failed to follow APYAC's instructions regarding the proper use of the Boat;
  - 4.3.2. The Hirer recklessly and wilfully operated the Boat in such a manner so as to cause damage;
  - 4.3.3. The Hirer operated the Boat in a manner other than its intended purpose;
  - 4.3.4. The Hirer continued to operate the Boat following any accident and/or sustaining any form of damage;
  - 4.3.5. The Hirer has made alterations or changes to the Boat without APYAC's knowledge and/or consent;
  - 4.3.6. The fault has occurred outside the control of APYAC.
- 4.4. APYAC will not be liable for any losses as a result of any delays in the repair or replacement of the Boat.

## **5. FEES AND PRICES**

- 5.1.** The Hirer agrees to pay the Hire fee prior to Commencement of the hire (or at such other times as agreed in writing by APYAC for corporate Hirers).
- 5.2.** Without limiting the ability of APYAC to recover all amounts owing to it, the Hirer authorises APYAC to charge any amounts owing by the Hirer (including but not limited to the Hire Charge) to any credit card or bank account details of which are provided to APYAC;
- 5.3.** All services and products are subject to Goods & Services Tax (GST) unless and services or products are GST exempt.

## **6. CANCELLATION**

- 6.1.** The Hirer may only cancel a confirmed booking by notifying APYAC no less than 48 hours prior to the date of hire. APYAC will refund all monies prepaid by the Hirer.
- 6.2.** In the event that the Hirer fails to provide at least 48 hours' notice of the cancellation, the full amount under the Hire Agreement remains payable to APYAC, unless the cancellation is due to poor weather conditions or other exceptional circumstances.
- 6.3.** APYAC reserves the right to cancel the hire of a boat due to severe weather conditions or other exceptional circumstances. If APYAC deems it necessary to change a booking, the Hirer will be notified 24 hours in advance of the previously allocated Hire Period;
- 6.4.** APYAC will not be liable for any consequential loss or damage if APYAC cancels the Hire Agreement.
- 6.5.** If a Hire Agreement cannot proceed due to Covid-19 restrictions being enacted by the Government, then APYAC will refund any and all amounts paid by the Hirer.

## **7. INDEMNITY**

- 7.1.** The Hirer agrees to indemnify APYAC against all costs, losses and expenses which APYAC, its officers, agents, contractors or agents may incur or suffer due to the Hirers breach of any obligations under this agreement.
- 7.2.** The Hirer will Indemnify APYAC for all injury and/or damage to any persons or property caused or contributed to by the Hirer or any Passenger while using the Boat.

## **8. CONSUMER RIGHTS & WARRANTIES**

- 8.1.** The Hirer(s) rights as set out in this Agreement are in addition to any available consumers rights including but not limited to the Australian Consumer Law. APYAC's liability for any breach of this Agreement is limited to the supplying of the goods or services to the Hirer including payment of the Hire fee;
- 8.2.** AYPAC makes no representation and provides no warranties, so as they relate to the Australian Consumer Law (or any other law) other than those set out in this Agreement;
- 8.3.** APYAC will not be liable to the Hirer or passengers for any loss, claims, damages, costs or other liabilities (including for consequential loss) in relation to the use of a Boat;
- 8.4.** The Hirer agrees to hold harmless to the extent permitted by law for any claim, loss or damage whatsoever arising in connection with the use of a Boat, including but not limited to any third party Claims;
- 8.5.** AYPAC will not be liable for any indirect or consequential loss (including loss of profit or opportunity) as a result of the Hire of the Boat and liability is limited to the extent that the Hirer caused and contributed to the loss or damage.

## **9. LIMITATION OF LIABILITY**

- 9.1.** The Hirer acknowledges that the hire and use of the Boat is a 'recreational service' within the meaning of Section 22 of the Australian Consumer Law and Fair Trading Act 2012 (VIC) ('ACLFTA').
- 9.2.** In hiring and using the Boat, the Hirer acknowledges that they and other Passengers may be subject to the potential risk of death and personal injury. Personal injury includes:

- 9.2.1.** an injury of a natural person (including the aggravation, acceleration or recurrence of an injury of the individual);
  - 9.2.2.** the contraction, aggravation, acceleration or recurrence of a disease of a natural person; or
  - 9.2.3.** the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to a natural person that is or may be harmful or disadvantageous to or result in harm or disadvantage to a person or the community.
- 9.3.** The Hirer acknowledges, agrees, and understands that the risk warning in the preceding paragraph constitutes a 'risk warning' for the purposes of relevant legislation, including for the purposes of Section 50 of the Wrongs Act 1958 (Vic) ('Wrongs Act').
- 9.4.** The Hirer acknowledges that APYAC's liability arising from the hire of the Boat is excluded or reduced in so far as is possible as a result of the risk warning.
- 9.5.** By hiring the Boat and agreeing to these terms and conditions, the Hirer acknowledges, agrees and understands that, to the full extent permitted by law (including the ACLFTA and the Wrongs Act):
  - 9.5.1.** The Hirer's rights to sue APYAC in relation to the hire and use of the Boat, if the Boat hire or associated services were not provided in accordance with any express or implied warranty or guarantee that the services will be provided with reasonable care and skill, are excluded or alternatively limited to a refund of the cost of the Hire Charge; and
  - 9.5.2.** The Hirer releases APYAC from all liability for a failure to comply with any express or implied warranty or guarantee that the services will be provided with reasonable care and skill.
- 9.6.** The Hirer acknowledges, agrees, and understands that, to bring effect to the provisions in this clause, the Hirer and all Passengers must all sign a Risk Waiver form prior to the use of the Boat. APYAC will provide copies of the Risk Waiver form on the day of the hire.