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Terms and Conditions of Boat Lifting and Hard-Standing Jurien Boat Lifters

These terms and conditions form part of the binding agreement between Comen Ltd (t/a Jurien Boat Lifters) and the Vessel owner (customer) to store the said Vessel at Jurien Boat Lifters situated at Breakwater Drive, Jurien Bay WA 6516.

A signed copy of these terms and conditions must be received by the Comen office prior to the lifting of any Vessel. Whereby lifting or slipping of a Vessel is seasonal, only one copy of these Terms and Conditions require signing and a copy will be held at the Comen office for the initial and subsequent lifting/slipping and hard-standing of any Vessel owned by the one person or syndicate. When the ownership of a Vessel is transferred to a new owner this agreement including any pre-paid services or lifts and the hard-standing contract (eg PPO) including any unused hard-standing days or hard-standing days remaining after the sale date are revoked. A new Terms and Conditions document must be signed by the new owner and a new hard-standing (eg PPO) and/or lifting contract must be entered into by the new owner. These terms and conditions take effect as at 1st December 2019 and are subject to change by the Comen Board of Directors when and as they see fit.

Failure to sign and agree to these Terms and Conditions gives Comen full rights to decline the lifting/slipping and hard-standing of any Vessel. If the Vessel is already on the hard-stand the owner will be asked to remove the Vessel within one week or at the discretion of Management from the hard-stand at the full cost of slipping/lifting invoiced to the owner. If at the time the owner is instructed to remove the Vessel from the hard-stand or a hard-stand pre-paid option has expired the owner will be invoiced at the current daily rate of hard-standing until the Vessel has been removed from the yard. All invoices must be paid in full before the Vessel is lifted/slipped into the water.

Failure to abide by these terms and conditions will lead to legal action for full recovery of monies owed and any subsequent costs incurred to have the Vessel removed from the premises.

I _____ acknowledge that I have read and understood, and agree to the Terms and Conditions of Hard-standing and Boat Lifting as set out by the Comen Board of Directors and agree to abide by all such terms and conditions.

Signed: _____

Dated: _____

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1. Terms and Conditions

By the execution of the Slipping/Hard-standing Requisition Request for Services attached hereto the Customer agrees that the use by the Customer of the Slipway, Travelift Machine, Hard-stand and/or Boat Yard of Jurien Boat Lifters shall be on the terms and conditions hereinafter set out.

2. Definitions

In these Terms and Conditions:

- i) "Boat Yard" shall mean the boat yard of Jurien Boat Lifters situated at Breakwater Drive, Jurien Bay, Western Australia.
- ii) "Yard Manager" shall mean the person employed by Jurien Boat Lifters (Comen Ltd) to manage and control the operation of the slipway and hard-stand yard.
- iii) "Customer" shall mean the person with whom Jurien Boat Lifters enters into a contract for the slipping, lifting and/or hard-standing of Vessel;
- iv) "Jurien Boat Lifters Occupational Health agreement for Travelift/Boat Yard" shall mean the Jurien Boat Lifters Occupation Health Agreement for Travelift/Boat Yard attached.
- v) "Hard Stand" shall mean the hard-standing area and shall include the Wash Down Area and Sheds situate at the Boat Yard.
- vi) "Services" shall mean all services provided by Jurien Boat Lifters to the Customer including the services described on the Slipping/Hard-Stand Requisition Request (Docket Books) for Services.
- vii) "Slipway" shall mean the Jurien Boat Lifters slipway (finger jetty) at the Boat Yard.
- viii) "Travelift Machine" shall mean the Jurien Boat Lifters Travelift (Tammy Lift, Boat Lifter) machine at the Boat Yard.
- ix) "Vessel" shall mean the Vessel (boat) delivered by the Customer to Jurien Boat Lifters together with its equipment, fixtures, fittings and appurtenances.
- x) "Hours of Operation" are Monday – Thursday 9:00am to 4:00pm (Bookings essential) or at the discretion of Management. Friday by appointment only (Bookings essential). Hours of Operation does not include Public Holidays, Saturday or Sunday. The office and hard-standing yard are closed over the Christmas / New Year period at the discretion of Management. These hours of operation are also subject to change without notice. Emergency Lifts - are available outside of "Hours of Operation" and are only for Vessels in distress - at the discretion of Management.

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3. Delivery, Slipping, Lifting and Hard-Standing of Vessel

- i) Subject to the directions of Jurien Boat Lifters the Yard Manager shall have the management and control of the Slipway, Travelift Machine, Hard-Stand, Boat Yard and sheds and of all work and of all operations carried out thereon or therewith
- ii) The Customer wishing to use the Slipway, Travelift Machine, Hard-Stand, Boat Yard or Sheds shall contact the Comen office requesting the period that the Customer wishes to use the Slipway, Travelift Machine, Hard-Stand, Boat Yard or Shed to make a booking at a time suitable to both parties within hours of operation or at the discretion of the Yard Manager.
- iii) The customer shall be notified as soon as reasonably practicable by the Office of the date and the time the Customer will be required to take the Vessel on or off the Slipway or make the Vessel available for lifting. The Travelift Machine and the Customer shall have the Vessel ready to be taken on the Slipway or removed therefrom or lifted by the Travelift Machine on the date and at the time appointed by the Office staff. Failure to be ready at the time booked may incur a fee.
- iv) Whether or not the Vessel is taken on the Slipway or lifted by the Travelift Machine at the time appointed shall be subject to weather conditions and such other conditions as Jurien Boat Lifters shall in its absolute discretion decide and in the event that the Yard Manager is of the opinion that the weather conditions or any other conditions are unfavourable then the Vessel shall not be taken on the Slipway or removed or lifted by the Travelift Machine. Both parties acknowledge and agree that the Boat Yard Manager's decisions in this regard shall be final and binding on the Customer.
- v) Upon being given notice by the Office staff, or the Yard Manager that the Slipway or Travelift Machine is ready for the Vessel the Customer shall cause the Vessel to be brought to berth where directed by the Yard Manager and the Customer shall ensure that the Vessel is secured in a manner to the complete satisfaction of the Yard Manager. Upon the Vessel being secured to the satisfaction of the Yard Manager the Yard Manager shall have control of all operations connected with the slipping of the Vessel.
- vi) The Customer shall render to the Yard Manager all such assistance during the slipping/lifting and hard-standing of the Vessel as the Yard Manager may require after the Yard Manager has assumed control.
- vii) The Customer shall ensure that the Vessel shall not run or start or attempt to start its engines whilst on the Slipway or whilst lifted by the Travelift Machine and no engines connected to propellers shall be turned or be caused to be turned by the Customer whilst on the Hard-Stand.
- viii) All water closets, urinals, ash and effuse chutes shall be thoroughly cleansed and disinfected by the Customer before the Vessel is taken on the Slipway or lifted by the Travelift Machine and those conveniences shall not be used whilst the Vessel

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remains on the Slipway or whilst lifted by the Travelift Machine and no refuse or waste materials of any nature or kind shall be emptied on the Slipway.

- ix) Before being slipped the Vessel shall be made trim and upright by the Customer to the complete satisfaction of the Yard Manager and any and all expenses whatsoever incurred by Jurien Boat Lifters in placing the Vessel in the correct trim shall be borne and paid for by the Customer.
- x) The Customer shall if required by Jurien Boat Lifters supply slipping plans of the Vessel for use in preparing the Slipway to receive the Vessel and shall be liable for all damages which may be sustained by the Vessel or the Slipway or the equipment of the Slipway should the slipping plans be incorrect.
- xi) In the event of a Slipping Plan not being supplied by the Customer such extra charges as may be determined by Jurien Boat Lifters for examining the Vessel's bottom shall be paid for by the Customer.
- xii) Should any modifications or alterations of the keel blocks or any other equipment whatsoever on the Slipway or with respect to the Travelift Machine be necessary for the proper slipping or lifting of the Vessel then such extra charges as may be determined by Jurien Boat Lifters shall be paid for by the Customer.
- xiii) No ballast or other weight, the shifting of which could cause the Vessel to list or alter her draft shall be shifted whilst the Vessel is on the Slipway or lifted by the Travelift Machine without the prior express written consent of the Yard Manager.
- xiv) The Customer shall ensure that it keeps clear of the Travelift Machine whilst the Travelift Machine is in operation. This includes all representatives of the Customer including vehicles. All vehicles must be parked in the designated car parking area during the hours of operation and kept out of the Travelift Machine main path of operation. Any damage caused to any vehicle or asset of Jurien Boat Lifters due to the incorrect parking of a vehicle shall be paid for by the Customer.
- xv) The Yard Manager shall notify the Customer when the Vessel is to be removed from the Slipway or the Travelift Machine and forthwith upon receipt of such notice the Customer shall take or cause to be taken such action as may be required of the Yard Manager in connection with the removal of the Vessel from the Slipway or Travelift Machine.
- xvi) When the Vessel is to be removed from the Slipway the Yard Manager shall have and shall assume control of all operations connected with such removal until the Vessel is floating in the water free from the Slipway and thereupon the Customer shall have and shall assume control thereof.
- xvii) The time at which the Yard Manager hands over control as aforesaid shall be indicated by appropriate communication by the Yard Manager.

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- xviii) When the Vessel is about to be removed from the Slipway or Travelift Machine responsibility for ensuring that all inlets and outlets and all openings in the hull of the Vessel are closed shall rest with the Customer.
- xix) The agreed date for slipping or lifting of the Vessel shall be subject to adjustment or change due to work being required on other Vessels being slipped, lifted or worked upon by Jurien Boat Lifters of which immediate slipping, lifting or work is deemed in the opinion of Jurien Boat Lifters necessary.
 - (1) Subject to the provisions of Sub-Clauses xx) (2) and (3) hereof the Customer shall use the Hard-stand only for the purpose of storing the Vessel, applying anti-foul and mechanical repairs at the discretion of the Yard Manager.
 - (2) The Customer may use the Wash-Down area and Sheds only if it has the prior express consent of Jurien Boat Lifters which consent may be withheld by Jurien Boat Lifters as it may in its absolute discretion think fit.
 - (3) If Jurien Boat Lifters grants its consent to the Customer using the Wash-Down Area and/or Sheds it may be on terms and conditions as it shall in its absolute discretion think fit. Such terms and conditions may be varied at the option of Jurien Boat Lifters from time to time and Jurien Boat Lifters shall have the right to remove the Vessel from the Wash-Down area or Shed in the event of any breach whatsoever by the Customer of such terms and conditions.
- xx) The Vessel shall be located within the Boat Yard in accordance with the directions of the Yard Manager and may be relocated as Jurien Boat Lifters or the Yard Manager may in their absolute discretion think fit.
- xxi) The Customer acknowledges and agrees that boat stands and props may only be moved or adjusted by employees of Jurien Boat Lifters.
- xxii) The Customer shall at all times keep the area around the Vessel clear and tidy and free from all items which may create a hazard or interfere with the operation of the Boat Yard or other users of the Boat Yard and without in any way limiting the generality of the foregoing shall place or cause to be placed all rubbish in bins provided and in the event of a breach of this Clause by the Customer, Jurien Boat Lifters shall be entitled (but not obliged) to undertake such cleaning and tidying as it in its absolute discretion deems necessary and the Customer shall be liable to reimburse Jurien Boat Lifters the cost of such cleaning and tidying. All oils, rubber, exhausts, tyres and lubricants must be removed from the boat yard by the Customer. Failure to do so will incur a removal fee by an external contractor and paid for by the Customer. The area around the Vessel may not be used at any given time to store items under or around, whilst the Vessel is not being worked on and must be kept clear at all times.
- xxiii) Anti-foul paint may only be applied in low wind conditions. Any damage caused by overspray onto another Vessel or the boat yard will be the responsibility of the

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Customer to clean and make good.

4. Insurance

- i) The Customer shall be responsible for insuring the Vessel under an appropriate hull and machinery policy for its full insurable value together with Protection and Indemnity Cover in an amount of not less than \$A10,000,000.00 and such insurances shall be taken out by the Customer prior to the Vessel being delivered to Jurien Boat Lifters. A copy of the current Insurance Policy must be received by the Jurien Boat Lifters office to be held on file for the duration of the Slipping/Lifting and/or Hard-Standing period.
- ii) The insurances to be effected pursuant to Sub-Clause i. hereof shall be maintained effective until the Vessel has been redelivered by Jurien Boat Lifters to the Customer.
- iii) Each policy of insurance shall contain a non-cancellation clause binding the insurer to give at least one month's written notice of its intention to cancel the policy.
- iv) If the Customer engages any contractor or other person to provide any services with respect to the Vessel whilst the Vessel is in the Boat Yard then the Customer shall be solely responsible for ensuring that such contractors and/or other persons have the following insurance policies:
 - (1) employees indemnity insurance (workers compensation and common law liability to workers);
 - (2) ship repairers liability; (not all contractors require ship repairers liability: Painters, Sign Writers, Electricians, Mechanics);
 - (3) public and product liability insurances; and
 - (4) motor vehicle third party liability for property damage insurance.
- v) The Customer shall ensure that all parties shall be named as insured parties under all insurances referred to in this Clause for their respective rights and interests. All parties shall be construed as separate insureds and all policies of insurance shall contain waivers by the insurer(s) against any of the insured.
- vi) With respect to the insurances referred to in this Clause the Customer shall upon demand produce or cause relevant contractors or other persons to produce certificates of currency acceptable to Jurien Boat Lifters.

5. Liability

- i) Jurien Boat Lifters is not a common carrier and will accept no liability as such. The Vessel is transported, lifted, slipped and/or stored and all services provided by Jurien Boat Lifters to the Customer are subject to these terms and conditions and Jurien Boat Lifters reserves the right to refuse to provide any services to any person or corporation without

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giving any reason therefore.

- ii) The Vessel shall in all respects be at the risk of the Customer and not Jurien Boat Lifters and Jurien Boat Lifters shall not be responsible in tort or contract or bailment or otherwise howsoever for any loss or damage to or deterioration of the Vessel either in transit or whilst being lifted or slipped or whilst in storage for any reason whatsoever including without limiting the foregoing loss and/or deterioration of the Vessel due to the negligence or breach of contract or breach of duty as bailee of Jurien Boat Lifters or others.
- iii) Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to Jurien Boat Lifters or to which Jurien Boat Lifters is entitled hereunder shall also be available and shall extend to protect:
 - a) all sub-contractors of Jurien Boat Lifters
 - b) every servant or agent of Jurien Boat Lifters or of a sub-contractor of Jurien Boat Lifters
 - c) Every other person (other than Jurien Boat Lifters) by whom the services or any part thereof is performed or undertaken;
 - d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within this Sub-Clause and for the purposes of this Clause, Jurien Boat Lifters is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to the agreement between the Customer and Jurien Boat Lifters
- iv) The Customer shall indemnify, keep indemnified and hold harmless Jurien Boat Lifters in respect of any suits, claims, demands, damages, losses, costs, expenses, liabilities and causes of action brought or made by any person whomsoever in respect of any personal injury to or the death of any person whomsoever or loss of and/or damage to any property whatsoever arising out of or as a consequence of any accidents or circumstances involving the Vessel including loss or damage or injury or death caused by contributed to or arising out of the provision of any services rendered by Jurien Boat Lifters hereunder and whether or not such loss or damage or injury or death arises out of breach of contract or negligence whether alleged or proven against Jurien Boat Lifters or its servants, agents or sub-contractors.

6. **Payment**

- a) Unless otherwise expressly agreed in writing between Jurien Boat Lifters and the Customer the fees for moving, lifting, slipping and/or storing the Vessel at the Boat Yard shall be such amounts as calculated according to the rates from time to time set by Jurien Boat Lifters and displayed in the office of Jurien Boat Lifters.
- b) Fees for moving, lifting and slipping of the Vessel shall, unless otherwise expressly agreed

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between Jurien Boat Lifters and the Customer, be payable in advance and before the Vessel is moved, lifted or slipped.

- c) The Customer shall inform Jurien Boat Lifters as to the reason for the moving, lifting, slipping and storing of the Vessel and in the event that the Vessel is being moved, lifted, slipped and/or stored for the purposes of sale then moving, lifting, slipping and storage charges shall be payable three (3) monthly in advance.
- d) All pre-paid options (PPO) must be paid in advance and all accounts must be paid in full at the time of the lifting/slipping unless prior arrangements have been made with Management (eg: daily hard stand rate, shed hire etc) and all accounts must be paid in full prior to the Vessel being slipped back into the water or being placed on a truck for removal from the boat yard.

7. Suspension

In the event that the Customer refuses and/or fails to pay to Jurien Boat Lifters any monies due by the Customer to Jurien Boat Lifters in accordance with these terms and conditions Jurien Boat Lifters may immediately suspend any work/or services being provided by it to the Customer and shall be entitled to remove the Vessel from the Slipway, Travelift Machine and/or Hardstand and move the Vessel out of the Boat Yard. If this occurs, any monies owing to Jurien Boat Lifters by the Customer must be paid in full at this time.

8. Lien & Sale

- a) Jurien Boat Lifters shall have a lien on the Vessel for any monies unpaid but due by the Customer to Jurien Boat Lifters, including any costs incurred by Jurien Boat Lifters in recovering such monies and may enforce such lien as it may in its absolute discretion think fit.
- b) Without in any way limiting the generality of the foregoing, Jurien Boat Lifters shall be entitled to sell the Vessel by auction or private treaty to cover the amount of any claims that Jurien Boat Lifters may have against the Customer. The proceeds of such sale shall be used firstly to satisfy the costs of such sale, secondly to satisfy the claim or claims of Jurien Boat Lifters against the Customer (including interest and costs) and the balance if any shall be paid to the Customer.
- c) In the event that the Warehousemen's Liens Act is applicable to the storage of the Vessel by Jurien Boat Lifters, by the provision of these terms and conditions Jurien Boat Lifters gives notice and the Customer acknowledges and agrees that it has received notice that Jurien Boat Lifters also has a lien over the Vessel under the Warehousemen's Liens Act and the Customer acknowledges and agrees that it has received the notice and acknowledge in the Slipping/Hardstand Requisition Request for Service.

9. Personal Property Securities Act

Jurien Boat Lifters and the customer acknowledge and agree that upon the Personal Property Securities Act, 2009 (Cwth) ("PPSA") coming into force Jurien Boat Lifters shall be

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entitled to do all such acts, matters and things as may be necessary or requisite in order to register any security interest that it may be entitled to register pursuant to these terms and conditions and the Customer shall if necessary do all such acts, matters and things and prepare and sign all such papers, writings, applications or notices as may be necessary or requisite in order to assist Jurien Boat Lifters in registering any financing statement pursuant to Jurien Boat Lifters or otherwise perfecting its security interest hereunder.

10. Provisions Severable

If any of these terms and conditions or any part thereof is or are invalid or unenforceable such invalidity or unenforceability shall not affect any other terms and conditions or part thereof.

11. Trade Practices Act & Fair Trading Act

- a) Notwithstanding anything herein contained Jurien Boat Lifters shall continue to be subject to any implied conditions and warranties provided by the Competition & Consumer Act, 2010 (Cwth) (as amended) and the Fair Trading Act, 1987 (WA) (as amended) and the Fair Trading Act, 2010 (WA) (as amended) if and to the extent that those Acts or any of them is or are applicable to these terms and conditions and prevents the exclusion, restriction or modification of any such condition or warranty.
- b) Save for other conditions and warranties (if any) set out in these terms and conditions the only conditions and warranties which are binding on Jurien Boat Lifters in relation to its supply of the services hereunder are those required by the Competition & Consumer Act, 2010 (Cwth) (as amended) (If applicable) and the Fair Trading Act, 1987 (WA) (as amended) (if applicable) and the Fair Trading Act, 2010 (WA) (as amended) (if applicable) and in the event that Jurien Boat Lifters is liable for breach of a condition or warranty implied by the Trade Practices Act, 1974 (Cwth) (as amended) or the Fair Trading Act, 1987 (WA) (as amended) or the Fair Trading Act, 2010 (WA) (as amended) the liability of Jurien Boat Lifters for breach of such condition or warranty shall be limited to supplying the services again or the payment of the cost of having the services supplied again.