

## HIRE TERMS AND CONDITIONS

## Order Form

Term	Meaning
<b>Hirer Details</b>	Name: _____ Email address: _____ Phone number: _____
<b>Collection Time</b>	You will collect the Watercraft from us at _____ time on _____ date.
<b>Location</b>	You will collect and return the Watercraft from us at _____ address.
<b>Return Time</b>	You must return the Watercraft to us by _____ time on _____ date.
<b>Watercraft</b>	<i>Insert details of watercraft for hire</i>
<b>Hire Fee</b>	You must pay the Hire Fee of \$_____ (including GST), which covers <b>fuel charges</b> for the Hire Period.
<b>Bond</b>	\$_____ (including GST).
<b>Late Fee</b>	If the Watercraft is not returned by the Return Time, you must pay a fee of \$_____ (including GST) per <b>30 minute</b> interval (or part thereof) past the Return Time.
<b>Cancellation Fee</b>	\$_____ (including GST).
<b>Payment Terms</b>	You agree to pay us: <ul style="list-style-type: none"> <li>the Hire Fee and the Bond when making a Booking; and</li> <li>any other amount due and payable under these Terms, by the payment date and in accordance with the payment method as set out in our invoice.</li> </ul>

## EXECUTION

EXECUTED by Luan Memishi t/a Vanquish Watersport ABN  
71 469 920 235:

EXECUTED by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Terms and Conditions

These Terms are entered into between Luan Memishi t/a Vanquish Watersport ABN 71 469 920 235 (**we, us or our**) and you, the person, making the Booking, as described in the Order Form (**you or your**), together the **Parties** and each a **Party**.

### 1. Acceptance and Term

- 1.1 You accept these Terms by the earlier of:
- (a) signing and returning these Terms to us;
  - (b) confirming you accept these Terms via our website;
  - (c) confirming by email that you accept these Terms; and
  - (d) making part or full payment of the Hire Fee.
- 1.2 These Terms will commence on the date they are accepted and will continue until the date you have returned the Watercraft in accordance with clause 7 (as reasonably determined by us), unless earlier terminated in accordance with its terms (**Term**).

### 2. Our obligations / Watercraft Hire

- 2.1 In consideration of your payment of the Hire Fee and the Bond and your compliance with these Terms, we agree to hire out the Watercraft to you for the Hire Period, and in accordance with these Terms.

### 3. Your Obligations

- 3.1 You acknowledge and agree that:
- (a) you possess a recreational marine licence and a personal watercraft licence, you will carry these licences with you when operating the Watercraft, and you will provide a copy of these licences when making a Booking Enquiry and at our request;
  - (b) you have not had your recreational marine licence or personal watercraft licence suspended or cancelled;
  - (c) you will not hire or operate the Watercraft under the influence of alcohol or drugs or other intoxicating substances;
  - (d) the Watercraft will only be driven by you;
  - (e) you will keep a proper lookout especially on busy waterways and reduce your speed to no more than 6 knots if you are within 60 metres of people in the water, anchored or moored boats, structures, boat ramps, jetties or pontoons, the boundary of any bathing reserve or the shore;
  - (f) you will keep a distance of 30 metres from any other moving boats or watercraft;
  - (g) where the Watercraft is a jetski:
    - a. you will only use the Watercraft with passengers who can place both their feet at the same time firmly in the foot wells of the Watercraft; and
    - b. where any passengers are under the age of 18, ensure that passenger is seated behind you and never between you and the handle bars;
  - (h) you will comply with our reasonable requests or requirements, including wearing a correctly fitted life jacket, and complying with our safety procedures;
  - (i) you will report any Accident or other issue with the Watercraft which occurs during the Hire Period to us as soon as possible after it occurs;
  - (j) during the Hire Period, you will protect and keep the Watercraft in the Original Condition subject to any fair wear and tear; and
  - (k) you will provide all assistance and information and any other things reasonably necessary to enable us to comply with our obligations under these Terms or at law.

### 4. Booking process

- 4.1 You agree that you may make a Booking Enquiry with us online, in person, by email, over the phone or by any other means agreed to by us.
- 4.2 You must provide us with all information that we require in relation to the Booking Enquiry, including but not limited to:
- (a) the intended pick-up date and time of the Watercraft; and
  - (b) your contact name and number.
- 4.3 If we accept your Booking Enquiry, we will notify you of the confirmed Booking by online, in person, by email, over the phone or by any other means.

### 5. Rescheduling and cancellations

- 5.1 If you contact us to cancel your Booking at least 24 hours before the Collection Time, we will fully reimburse you for any amounts you have paid us.
- 5.2 If you contact us to cancel your Booking within 24 hours of the Collection Time, we will reimburse you for the Bond (if applicable), and you agree that we may charge you a Cancellation Fee. You agree that the Cancellation Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your cancellation of the Watercraft hire.
- 5.3 You agree to notify us immediately if you need to re-schedule your Booking. While we will make all reasonable efforts to accommodate any request to re-schedule your Booking, you acknowledge and agree that:
- (a) we may be unable to re-schedule your Booking to your preferred date or time; and
  - (b) any re-scheduled Booking is subject to Watercraft availability.
- 5.4 If we are unable or unwilling to re-schedule the Booking to your preferred date or time, we will notify you and you may cancel the Booking in accordance with this clause 5.

### 6. Payment

- 6.1 You agree to pay us the Hire Fee, the Bond (if applicable), any charges incurred by you (or the Watercraft) during the Hire Period and any other applicable fee as set out in the Order Form, in accordance with the Payment Terms.
- 6.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) take steps to recover payment of the relevant amount, including by engaging a debt recovery agency, and recover from you our additional costs of doing so, as a debt due and immediately payable from you; and/or
  - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid 7 days after the due date for payment in accordance with the Payment Terms.

### 7. Collection and Return of Watercraft

- 7.1 You may collect the Watercraft from the Location and at the Collection Time. You [**must/may**] attend a short lesson on using the Watercraft when you collect the Watercraft. We may assess your blood alcohol content (**BAC**) using a breathalyser and where your BAC is higher than 0 we may terminate these Terms for your breach of clause 3.1(c).
- 7.2 You agree that despite any delay in the collection of the Watercraft by you, your obligation to pay the full Hire Fee will remain.
- 7.3 Subject to these Terms, you agree to return the Watercraft to us, in the Original Condition, at the Location and by the Return Time.
- 7.4 You agree to comply with any requirements, policies or procedures which apply at the Location.

- 7.5 We will allow a grace period of [15 minutes] for the return of the Watercraft, after which, we will charge you the Late Fee until you have returned the Watercraft to us. You agree that the Late Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your delay in returning the Watercraft.
- 8. Original Condition**
- 8.1 You are responsible for visually inspecting the Watercraft prior to use to ensure that you understand and accept the Watercraft and its Original Condition and for determining whether the Watercraft is in compliance with its description.
- 8.2 You agree that, as between us and you, the Watercraft is hired on an "as is" basis as at the Collection Date and throughout the Hire Period.
- 8.3 Unless you otherwise notify us within 30 minutes of the Collection Time, you agree that the Watercraft is in good condition, free from damage or defects, fit for purpose and in accordance with these Terms (**Original Condition**). If you provide us with notice under this clause, you may agree to accept the Watercraft in the condition provided, which will then be deemed the Original Condition.
- 9. Bond**
- 9.1 If applicable, we will hold the Bond until the Watercraft is returned to us.
- 9.2 You acknowledge and agree that the Bond will be used as a security by us for the performance of any of your obligations, and satisfaction of your liabilities, under this Agreement.
- 9.3 We may call upon the Bond to satisfy any obligations or liabilities owed by you to us under this Agreement (including payment of any amounts due and payable to us by you under this Agreement).
- 9.4 Subject to your compliance with this Agreement, we will refund you the balance (if any) of the Bond within a reasonable time after you return the Watercraft, in accordance with this Agreement.
- 10. Title and Risk**
- 10.1 Risk in the Watercraft will pass to you when you have collected the Watercraft from the Location. You agree that once you have collected the Watercraft from the Location, you will be solely responsible for the Watercraft until it is returned to us and is in our full custody and control.
- 10.2 Title in the Watercraft will at all times remain with us, and you take the Watercraft as a bare bailee only.
- 11. Repossession and Security Interest**
- 11.1 We may, at any time throughout the Hire Period, request that the Watercraft be returned to us. If you do not return the Watercraft to us upon our request, we may report the Watercraft as stolen and take steps to recover and repossess the Watercraft.
- 11.2 You agree to not create an encumbrance, lien, charge or other interest on or over the Watercraft. You agree that we hold a general lien over the Watercraft, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).
- 12. Risk warning**
- 12.1 You agree that your use of the Watercraft may expose you to risk of death, physical harm or personal injury. You agree and acknowledge that death, physical harm or personal injury may arise from your or a third party's acts, omissions or negligence. You understand and voluntarily accept any risk that may arise from your use of the Watercraft.
- 13. Warranties**
- 13.1 You represent, warrant and agree that:
- (a) there are no legal restrictions preventing you from entering into these Terms;
  - (b) all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
  - (c) you have not relied on any representations or warranties made by us in relation to the Watercraft (including as to whether the Watercraft is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
  - (d) we will have no responsibility for any damage to personal items contained within or on the Watercraft whilst in your possession and use, including any items getting wet, submerged in water, or otherwise getting lost in the water;
  - (e) you will not use the Watercraft, or allow the Watercraft to be used, in breach of any laws;
  - (f) you will not make or conceal any addition or alteration to the Watercraft without our prior written consent; and
  - (g) you will keep the Watercraft under your custody and control at all times, and you will not sublease, rent, sell, or otherwise transfer the Watercraft to any other person.
- 14. Australian Consumer Law**
- 14.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Watercraft by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 14.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Watercraft hire provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
- 14.3 Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Watercraft) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 15. Indemnity**
- 15.1 Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:
- (a) your acts or omissions (including a breach of these Terms or any applicable law);
  - (b) any personal injury or death to any person, except to the extent caused or contributed to by us or our Personnel in providing the Watercraft to you; and
  - (c) any loss or damage to any property, including the Watercraft, caused or contributed to by you, or any third party (including but not limited to any Accident).
- 16. Limitations on liability**
- 16.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) we will not be liable to you for any Liability arising out of or in connection with events outside of our control;
  - (b) neither Party will be liable for any Consequential Loss;
  - (c) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and

- (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us repaying you the Hire Fee.

## 17. Termination

17.1 These Terms will terminate immediately upon written notice by:

- (a) either Party, if mutually agreed in writing between the Parties;
- (b) us, if (1) you breach any provision of these Terms and that breach has not been remedied within 5 Business Days of being notified by us; (2) for any other reason outside our control which has the effect of compromising our ability to provide the Watercraft to you; or (3) you are unable to pay your debts as they fall due; and
- (c) you, if (1) we are in breach of a material term of these Terms, and that breach has not been remedied within 5 Business Days of being notified by you; or (2) are unable to pay our debts as they fall due.

17.2 Upon expiry or termination of these Terms:

- (a) We will cease hiring out the Watercraft to you;
- (b) you must immediately return the Watercraft to the Location; and
- (c) you are to pay all amounts due and payable under these Terms.

17.3 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

## 18. General

18.1 **Amendment:** These Terms may only be amended in writing by the Parties.

18.2 **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

18.3 **Counterparts:** These Terms may be executed in any number of counterparts that together will form one instrument.

18.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute.

18.5 **Entire agreement:** These Terms contain the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

18.6 **Governing law:** These Terms are governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts of Queensland.

18.7 **GST:** If and when applicable, GST payable on the Hire Fee will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Hire Fee.

18.8 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

18.9 **Online execution:** These Terms may be executed by means of such third-party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.

18.10 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

18.11 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

18.12 **Survival:** Clauses 14, 15, 16 and 17 shall survive termination or expiry of these Terms.

18.13 **Waiver:** No failure or delay by us to exercise our rights under these Terms will operate to waive or reduce such rights.

## 19. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Order Form, the body of these Terms and as follows:

**Accident** means any collision or contact between the Watercraft and any other object, including but not limited to another watercraft or person, or any incident or occurrence that results in the Watercraft being damaged, lost or destroyed or any other watercraft, vehicle, property, thing, animal or person being injured, killed, damaged, lost or destroyed (as applicable).

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Booking** means our confirmation of the Booking Enquiry, in accordance with clause 4.

**Booking Enquiry** means an enquiry submitted by you in accordance with clause 4.1.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Queensland.

**Consequential Loss** includes any special loss, consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

**Hire Period** means the period between the Collection Time and the time the Watercraft is returned to us in accordance with clause 7.3.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

**Order Form** means the order form connected to these Terms, whether as a schedule at the start of these Terms or an online order form.

**Original Condition** is defined in clause 8.3.

**Personnel** means our employees, consultants, suppliers, subcontractors or agents.

**Terms** means these terms and conditions and any documents attached to, or referred to in, each of them (including the Order Form and an invoice).