

JB Marine Ltd

Ship Repairers Standard terms and conditions

For JB Marine Bay of Islands Marine – Opuia

1. Definitions

“Agreement” means this document.

“Customer” means the person, firm, body corporate, association or company who, or on whose behalf, requests the Repairer to perform the works.

“Repairer” means JB Marine Ltd, Bay of Islands Marina and any of its employees, agents or subcontractors.

“Vessel” means the boat or watercraft described on any quotation, invoice, job sheet or other document issued by the Repairer, to the Customer and it includes the hull, motors, controls, equipment, accessories, dinghies, tenders and their motors.

“Works” means all works carried out by the Repairer at the request of the Customer, its employees or agents, including and without limitation:

- All repairs, maintenance, improvements or shipwright work
- The supply machinery, parts, materials, equipment, accessories, labour or specialised tools and/or the removal from the Vessel or any of the machinery, parts, materials, equipment or accessories
- Any operation, movement or storage of the Vessel

2. Scope of works and Authorisation

The Customer warrants that it is the owner of the Vessel or the Vessel owner’s agent and that it has the authority to request that the Repairer perform the works. The Customer authorises the Repairer to move and store the Vessel by whatever means and in whatever circumstances the Repairer considers necessary and appropriate for the performance of the works. The Customer acknowledges that quotes for works are valid for the period stated in the quote.

3. Payment

3.1 Unless otherwise expressly stipulated by the Repairer, payment for all works including services and goods must be made by the Customer to the Repairer’s nominated bank account within 30 days of an invoice being issued by the Repairer. The Repairer may, at its option, issue a monthly interim invoice where the delivery of any goods and services is over a period exceeding one month.

3.2 Payment of all money due shall be without any set-off or deduction of any kind.

3.3 If payment is made by credit card, a surcharge of 3% will be added to the price.

- 3.4 The Repairer may at its discretion require the Customer to pay a deposit being an advanced payment for the works, or pay for the works in full, before the Repairer commences the services.
- 3.5 If the Customer fails to make payment in full by the due date the Customer will be in default and must pay default interest on any outstanding amount, calculated at 5% above the official cash rate of the Reserve Bank of New Zealand against the total balance outstanding.
- 3.6 Any expenses, disbursements and legal costs incurred by the Repairer in enforcement of any rights contained in these terms and conditions will be paid by the Customer, including any reasonable solicitors' fees or debt collection agency fees.
- 3.7 The Repairer may apportion payments to outstanding accounts in its absolute discretion.

4. Delivery risk and title

- 4.1. Goods, machinery, parts, materials, equipment or accessories supplied by the Repairer are deemed to have been delivered to the Customer when, as relevant:
 - (a) The Customer collects them from the Repairer; or
 - (b) The Repairer installs them in the Customer's Vessel, premises, installation or transport (as applicable).
- 4.2 Risk in goods passes to the Customer on delivery as above.
- 4.3 Title in goods does not pass to the Customer until payment for the works is made to the Repairer in full. The Customer is not entitled to delivery of the Vessel until payment of all outstanding amounts have been paid.
- 4.4 If the Customer is asked to accept delivery of the Vessel the Customer must do so within 2 days of the Repairer providing notification to the Customer that the Vessel is ready for delivery. If the Customer does not accept delivery of the Vessel within that time, the Repairer shall be entitled to claim storage costs at the rate of 2% of the invoiced price of the work for each day that the Vessel remains in the custody of the Repairer.
- 4.5 The Customer agrees that by accepting delivery of the Vessel it has inspected the works and satisfied itself that all works have been performed and completed with due care and skill and to a proper and satisfactory standard.
- 4.6 The Repairer is entitled to a repairer's lien over the Customer's vessel and/or a general lien over any other property of the Customer that comes into the possession of the Repairer for any reason until all amounts owing by the Customer to the Repairer are paid in full. It is agreed by the parties that the lien is granted to the Repairer and the Repairer is entitled to enforce the lien over the Customer's vessel and other property in respect of the cost of all works, including storage costs, interest and collection expenses payable by the Customer and is enforceable by the Repairer pursuant to section 341 of the Contract and Commercial Law Act 2017.

5. Responsibility for maintenance and performance

- 5.1. Goods purchased by you and parts supplied by the Repairer may be accompanied by the manufacturers' user manual and/or installation manual. For the avoidance of any doubt it is your responsibility to read these manuals carefully and to strictly adhere to the maintenance and inspection schedules and instructions detailed in them.

- 5.2 The Repairer takes no responsibility and accepts no liability for any failure or malfunction of goods and parts resulting from the Customer's failure to strictly adhere to the schedules and instructions detailed in these manuals or otherwise (see clause 8).

6. Liability

- 6.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon the Repairer which cannot by law (or which can only to a limited extent by law) be excluded. The Repairer excludes all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 6.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires the services and/or goods from the Repairer for the purposes of a business in terms of sections 2 and 43 of that Act.
- 6.3 Except to the extent that the law prevents the Repairer from excluding liability and as expressly provided for in these terms, the Repairer shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the Customer or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the services provided or goods supplied by the Repairer to the Customer.
- 6.4 To the extent that the Repairer is liable for any reason for any loss suffered or liability incurred by the Customer arising from any breach of these terms or for any other reason, the Repairer's liability is limited to the amount of the actual cost being the price of any goods supplied by the Repairer as part of the services or otherwise supplied at the Customer's request.
- 6.6 The Customer shall indemnify the Repairer against all damages, costs, claims and expenses suffered by the Repairer arising from the provision of the services including (but not limited to) loss or damage to any equipment (including that of third parties) caused by the Customer, the Customer's employees, sub-contractors or agents including by way of negligence, breach of contract, breach of duty of bailment or wilful act.

7. Liability of employees, agents and subcontractors

It is expressly agreed that every exemption from liability, defence, immunity and right under this Agreement will extend to and protect every employee, agent and subcontractor defined as the Repairer in this Agreement and in this regard the Repairer who is a party to this Agreement will be deemed to be acting as agent or trustee on behalf of all Repairers.

8. Warranty

- 8.1 Other than warranties imposed by law and that are not expressly excluded (refer to clause 6), the Repairer warrants only that any goods supplied by the Repairer will comply with the warranties offered, and for the period specified, by the manufacturer of the goods. Any such warranties shall be claimed only against the manufacturer and the Repairer shall have no responsibility or liability whatsoever for such warranties.
- 8.2 Save to the extent set out in clause 8.1 the Repairer does not give any warranty for any goods supplied and installed by the Repairer.

- 8.3 To the extent any warranties do apply, the Repairer will, at its sole discretion, either repair or replace defective goods, or provide a refund. This is conditional upon:
- (a) The defects not being caused or partly caused by, or arising through failure on the part of the Customer to properly maintain the goods;
 - (b) The Customer following any user and/or installation manual, instructions or guidelines provided by the Repairer or the manufacturer;
 - (c) Use of the goods immediately ceasing once any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
 - (d) The defects not being as a result of fair wear and tear or any accident or act of God; and
 - (e) The goods not having been repaired, altered or overhauled in any way.
- 8.4 Where the Repairer undertakes any services pursuant to any warranty on behalf of a supplier or manufacturer of goods the Customer acknowledges and agrees that the Repairer's responsibility extends only to the repair or replacement of such goods (as instructed) and the Repairer gives no warranty in respect of repaired or replaced goods. The Repairer will always be entitled to payment for its actual costs in respect of such services.
- 8.5 Save as agreed, in the event of a warranty claim you shall be responsible for arranging return of the goods to the Repairer and all costs associated with the return of the goods. If this is not possible the Customer shall be invoiced the actual costs incurred by the Repairer in arranging a return of the goods.
- 8.6 All goods must be returned in the same new condition as supplied and where possible, in the original packaging. Items not returned in this condition or manner will not be accepted.
- 8.7 Other than warranties imposed by law and that are not expressly excluded (refer clause 6) and without prejudice to any other rights under these terms, the Repairer warrants only that any works shall be provided by the Repairer in accordance with clause 2. In the event of defective works the Repairer will in its sole discretion undertake rectification works at the port or place where the original works were carried out, so long as:
- (i) Notice of defective works is given to the Repairer within 30 calendar days of the completion of the original works; and
 - (ii) The Vessel is returned to the port or place where original works were provided at the Customer's cost.
- 8.8 In respect of all warranty claims the Repairer shall not be liable to compensate the Customer for any delay in properly assessing any claim, undertaking rectification works or repairing or replacing any goods. During such time the Repairer is not required to provide the Customer with works or loan or replacement goods.
- 9. Cancellation/termination**
- 9.1 The Customer may not cancel a request for works without first obtaining the Repairer's written consent. Such notice of cancellation must be in writing.

- 9.2 The Repairer may immediately terminate the provisions of the works to the Customer in the event that:
- (a) The Customer fails to pay any money owing when due;
 - (b) The Repairer believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver or liquidator appointed, or is declared insolvent; or
 - (c) The Customer is otherwise in breach of its obligations under these terms.
- 9.3 Termination may also be effected in accordance with clause 10 below.
- 9.4 Notice of termination by the Repairer shall be given in writing to the Customer and shall have immediate effect.
- 9.5 In the event of termination of the works by the Repairer, in addition to any remedies the Repairer may have at law, the Repairer may do one or more of the following:
- (a) Charge default interest on outstanding amounts in accordance with these terms (refer clause 3); and
 - (b) Enter onto the Customer's premises or Vessel and repossess any goods which have not been paid for in full.

10. Force Majeure

If the Repairer by reason of any matter beyond its control, including without limitation: any act of God; strike, lock-out or labour disturbance; war or warlike condition; act of terrorism; civil riot; sabotage; explosion; lightning; fire; earthquake, landslide or tidal wave; storm, flood or other extraordinary weather conditions; pandemics, epidemics, quarantine; requirements of government authorities; unavailability or delay in supplies (including electricity, oil or gas), equipment or transport; refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences; or otherwise is unable to perform any part of its obligations under this Agreement, to the extent and for the period that it is not reasonably able to perform, the Repairer will not be liable to the Customer.

11. Other

- 11.1 The Customer may not assign or transfer all or any of the Customer's rights or obligations under these terms without the prior written consent of the Repairer.
- 11.2 The Repairer is entitled to subcontract on any terms the whole or part of the services.
- 11.3 The Repairer is not bound by any error or omission in any invoice, order, or other document.
- 11.4 The Customer must keep all information it has provided to the Repairer up to date, including advising the Repairer in writing of any change of name, address or other details that would be relevant to the Customer's account with the Repairer.
- 11.5 If any provision of these terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these terms to the extent of such invalidity or unenforceability and such invalidity or unenforceability will not affect the other provisions of these terms, all of which will remain in full force and effect.

- 11.6 The Repairer shall be entitled at any time by notice in writing to the Customer to vary these terms and the Customer shall be bound by such a variation.
- 11.7 Any notice may be given to the Customer, in person, posted or sent by email to the Customer or the Customer's last known postal or email address (or where the Customer is a company, to any of the directors). Notices to the Repairer must be sent to the Repairer at 9 Dufresne Place, Russell 0202.
- 11.8 These terms are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand for any disputes or proceedings arising out of or in connection with these terms.

12. Notification period

Notwithstanding anything herein contained the Repairer will not in any circumstances be liable for any claim for loss, damage or injury (including any economic or consequential loss) arising out of or in any way connected with the performance of the works, whether involving negligence of the Repairer or otherwise, unless such claim is made in writing within 6 months of the earliest of the following occurring:

- The works being completed; or
- The Vessel leaving the care, custody or control of the Repairer