

SANCTUARY COVE INTERNATIONAL BOAT SHOW

Sanctuary Cove International Boat Show

Terms and Conditions

17 November 2009

1. INTRODUCTION

1.1 Terms and conditions

Subject to section 2.1, these terms and conditions form an agreement between the Exhibitor and us for the Exhibitor to participate in the Exhibition. These terms and conditions may be amended from time to time in accordance with section 10. The latest version of these terms and conditions can be obtained from the Website.

1.2 Display Regulations

The Display Regulations are published separately to these terms and conditions, but form part of this agreement. The Display Regulations can be obtained from the Website. The Exhibitor must comply, and must ensure that its exhibit complies, with the Display Regulations.

1.3 Defined terms

Certain capitalised words and phrases have the meaning given to them in section 12.

2. EXHIBITOR LICENCE

2.1 Application and acceptance

- (a) Any person (except an individual under 18 years of age) may apply to become an Exhibitor by completing a Display Licence Application and paying the Application Fee. The Application Fee is not refundable in any circumstances.
- (b) This agreement is subject to us accepting a Display Licence Application by notifying the applicant (including by sending an invoice to the applicant). We reserve the right to refuse a Display Licence Application for any reason we see fit.
- (c) If we accept a Display Licence Application, we will provide the Exhibitor with details of the Display Area allocated to it.
- (d) The Exhibitor will need to submit a new Display Licence Application for each Exhibition, and our acceptance of a Display Licence Application for one Exhibition does not give the Exhibitor any rights in respect of any future exhibitions.

2.2 Licence of the Display Area

- (a) Subject to this agreement, and provided the Exhibitor has paid the Display Licence Fee and all other fees owing, we grant the Exhibitor a non-exclusive, non-transferable and non-sublicensable licence to enter the Site to install and display the Exhibitor's exhibit in the Display Area, and to remove the Exhibitor's exhibit from the Display Area, during the Licence Period.
- (b) Nothing in this agreement creates any relationship of landlord and tenant between us and the Exhibitor, or confers on the Exhibitor any tenancy rights or interest in the Display Area or the Site.

2.3 Changes to the Display Area

- (a) We reserve the right to change the size, shape, position or other characteristics of the Display Area at any time. We may consider, but we are not required to agree to, any changes to the Display Area requested by the Exhibitor.
- (b) If we change the Display Area and the Display Licence Fee for the changed Display Area, calculated in accordance with the fees in the Display Licence Application, would be lower than the Display Licence Fee the Exhibitor has paid or is due to pay, then the lower Display Licence Fee will apply and we will refund any overpayment to the Exhibitor.
- (c) If we change the Display Area and the Display Licence Fee for the changed Display Area, calculated in accordance with the fees in the Display Licence Application, would be higher than the Display Licence

Fee the Exhibitor has paid or is due to pay, then the higher Display Licence Fee will apply only if the changes were made at the request of the Exhibitor or the Exhibitor agrees to the higher Display Licence Fee.

2.4 Sublicensing

- (a) The Exhibitor must not sublicense any part of the Display Area without our prior written consent. For this purpose, "sublicense" includes sharing or in any way allowing another person to display or advertise goods or services in the Display Area.
- (b) Where we consent to the Exhibitor sublicensing the Display Area, we may charge an additional fee and specify additional conditions that the Exhibitor must comply with.
- (c) Where the Exhibitor sublicenses the Display Area, the Exhibitor is responsible for the acts or omissions of its sub-licensees as if they were the acts or omissions of the Exhibitor.

3. PAYMENT

3.1 Fees

- (a) The Exhibitor must pay:
 - (i) the Application Fee at the time of submitting the Display Licence Application;
 - (ii) the Display Licence Fee in full no later than the Final Payment Date; and
 - (iii) other fees as set out in the Display Licence Application no later than the Final Payment Date.
- (b) We may discount the Display Licence Fee by the amount set out in the Prospectus if the Exhibitor is a current member of an approved boating industry organisation. To qualify for the discount, the Exhibitor must attach evidence of its membership to its Display Licence Application and pay the Display Licence Fee on time.
- (c) All fees include GST.

3.2 Method of payment

- (a) All fees must be paid in Australian dollars, and (unless we require payment by a particular method) may be paid by cash, cheque, credit card or electronic funds transfer.
- (b) All tax invoices and receipts will be issued in the name of the Exhibitor. Any refunds or other amounts payable by us under this agreement will be paid by cheque to the Exhibitor.

3.3 Late payment

- (a) If the Exhibitor does not pay the Display Licence Fee in accordance with section 3.1(a)(ii) then, without limiting our other rights, we may charge the Exhibitor a late payment fee as set out in the Prospectus.
- (b) The Exhibitor is not permitted to access the Display Area while there are any fees outstanding under this agreement. If the Exhibitor accesses the Display Area while there are fees outstanding, we may require the Exhibitor to immediately leave the Site and remove the Exhibitor's property from the Site, and if the Exhibitor fails to do so we may remove the Exhibitor's property from the Site at the Exhibitor's expense.

3.4 Refund on termination

- (a) If the Exhibitor terminates this agreement under section 9.2 before the Final Payment Date, we will refund all fees paid by the Exhibitor (except the Application Fee and after we deduct the cancellation fee (if any) set out in the Prospectus) if we are able to license the Display Area to another exhibitor on terms reasonably acceptable to us.
- (b) We will refund all fees paid by the Exhibitor (except the Application Fee) if:
 - (i) the Exhibitor terminates this agreement under section 9.2 within 7 days after we notify the Exhibitor of a material change to this agreement or the Exhibition due to circumstances within our reasonable control; or
 - (ii) we cancel the Exhibition under section 5.6 due to circumstances within our reasonable control; or
 - (iii) we terminate this agreement under section 9.3(b),
- (c) Except as set out in sections 2.3(b), 3.4(a) and 3.4(b), fees paid by the Exhibitor are not refundable.

4. INSURANCE

- (a) The Exhibitor is at all times solely responsible for its property and ensuring that its property is adequately secured and insured while on the Site. We accept no liability for loss or damage to the

Exhibitor's property, including loss or damage resulting from storms, fire, flooding, vandalism, theft or any other cause whatsoever.

- (b) The Exhibitor must have public liability insurance covering its participation in the Exhibition. This may be done by either:
 - (i) the Exhibitor effecting and maintaining its own public liability insurance policy for a minimum cover of AUD 10,000,000 with an insurer and on terms acceptable to us during the Licence Period. The insurance policy must include us as a named insured. The Exhibitor must include a copy of the certificate of currency of the policy with its Display Licence Application, and provide us with a copy of the policy on request; or
 - (ii) electing to participate in the public liability group insurance plan organised by us and as detailed in the Display Licence Application.
- (c) The Exhibitor must comply with all applicable legislative requirements in relation to workers' compensation insurance.

5. EXHIBITION

5.1 Entry to the Site

- (a) Entry to the Site is subject to the Sanctuary Cove Resort Conditions of Entry, which can be obtained from the Website. The Exhibitor must comply, and ensure that its Personnel comply, with the Sanctuary Cove Resort Conditions of Entry.
- (b) We reserve the right to refuse entry to, or remove from, the Site, any person on any reasonable grounds that we determine.
- (c) We will issue the Exhibitor with the number of exhibitor passes set out in the Prospectus for use by the Exhibitor and its Personnel. The Exhibitor will be able to purchase additional exhibitor passes. During the Installation Period and Removal Period, we may refuse entry to the Site to any person who does not have an exhibitor pass. During the Exhibition Period, each exhibitor pass permits one person to enter the Site once per day.
- (d) We may confiscate exhibitor passes that are not used in accordance with this agreement.

5.2 Open-area displays

If the Exhibitor has an open-area display, it must submit a plan of the layout and construction of its proposed display to us no later than 60 days before the start of the Exhibition. The Exhibitor must not put in place any part of its proposed display, including any boats, structures, viewing stages or banners, unless and until we have approved the display.

5.3 Installation and removal of exhibits

- (a) The Exhibitor will, at its own expense and risk:
 - (i) deliver, install, construct and prepare its exhibit in the Display Area during the Installation Period; and
 - (ii) dismantle and remove its exhibit from the Site during the Removal Period.
- (b) The Exhibitor will ensure that:
 - (i) the installation and removal of its exhibit is carried out promptly and in a proper and efficient manner, and only during the Installation Period and Remove Period respectively (unless we direct otherwise);
 - (ii) it has a representative available at the Site at all times during the installation and removal of its exhibit;
 - (iii) it keeps all the stands, gangways and thoroughfares in the Site clear and tidy during the installation and removal of its exhibit;
 - (iv) its vehicles only use the authorised routes within the Site; and
 - (v) the Exhibitor does not damage the Site (including surfaces and landscaping) or any property belonging to us, our Personnel or our tenants or licensees, and leaves the Display Area clean and in substantially the same condition as it was in at the start of the Licence Period.
- (c) We will not accept responsibility for the delivery or storage of any property on behalf of the Exhibitor.
- (d) If the Display Area is on the Sanctuary Cove marina, then prior to the Installation Period we will notify the Exhibitor of the schedule for the delivery and removal of boats. The Exhibitor must comply with this schedule. If the Exhibitor fails to comply with the schedule, it may not be able to access its allocated marina berth.

- (e) The Exhibitor must comply with our schedule if it requires a crane, forklift or other machine to install or remove its display. Exhibitors who cause delays to the Exhibition timetable or obstruct any other exhibitors may be required to pay for any charges relating to additional labour, overtime or equipment hire that we deem necessary.
- (f) Only cranes booked through our official logistics contractor will be permitted onto the Site for setting up exhibits. Cranes may only be used at times approved by us.
- (g) Any part of the Exhibitor's exhibit which is not removed from the Site by the end of the Removal Period will be deemed forfeited to us without compensation or liability for damage or loss of any kind.
- (h) The Exhibitor must not dismantle or remove any part of its exhibit without completing a goods removal form which will be issued to the Exhibitor during the Exhibition.
- (i) The Exhibitor must not begin to dismantle or remove its exhibit before the start of the Removal Period.

5.4 Exhibitor obligations relating to the Site

- (a) The Exhibitor must comply, and ensure its Personnel comply, with our directions while on the Site.
- (b) The Exhibitor must promptly notify us of any accident on the Site, or any defect to the water, electrical fittings or other services on, from or to the Display Area.
- (c) If the Exhibitor wishes to host a social function on the Site outside the Exhibition Opening Hours, it may apply in writing giving full details of the proposed function, not less than 30 days before the start of the Exhibition Period. We reserve the right to refuse such a request at our discretion. If we approve the request then we may require the Exhibitor to provide additional security for the duration of the social function, in which case the Exhibitor may engage our recommended security contractor or an alternative security contractor approved by us.

5.5 Non-complying exhibits

Without limiting our other rights, we may require the Exhibitor to make changes or remove any part of an exhibit which does not comply with this agreement or where we have other reasonable grounds, and the Exhibitor must promptly comply with this request.

5.6 Changes to the Exhibition

At our discretion we may cancel all or any part of the Exhibition, postpone the Exhibition or make changes to the format, timing, location or other aspects of all or any part of the Exhibition. If the Exhibitor is not satisfied with a change to the Exhibition, the Exhibitor may terminate this agreement under section 9.2. If we cancel the Exhibition, this agreement is automatically terminated.

6. INTELLECTUAL PROPERTY

- (a) We reserve exclusive broadcast rights, photographic rights, and audio and video rights relating to the Exhibition.
- (b) The Exhibitor and its Personnel must not make or permit to be made any broadcast, photograph or audio or video recording of the Exhibition (**Exhibition Material**) without our prior written consent.
- (c) If the Exhibitor breaches section 6(b) then, without limiting our rights:
 - (i) to the extent the Exhibitor has intellectual property rights in the Exhibition Material, the Exhibitor assigns those rights to us and, to the extent a person other than the Exhibitor has intellectual property rights in the Exhibition Material, the Exhibitor will obtain an assignment of intellectual property rights from that person to us in a form acceptable to us; and
 - (ii) to the extent the Exhibitor has moral rights in the Exhibition Material, the Exhibitor gives a Moral Rights Consent and, to the extent a person other than the Exhibitor has moral rights in the Exhibition Material, the Exhibitor will obtain a Moral Rights Consent from that person and provide it on request by and in a form acceptable to us.
- (d) **Moral Rights Consent** means a waiver of moral rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Exhibition Material by or on behalf of us, our contractors and personnel or any licensee or subsequent owner of copyright in the Exhibition Material.

7. LIABILITY

7.1 Exclusion of implied conditions and warranties

To the extent permitted by law, all implied conditions and warranties are excluded from this agreement. Without limiting the foregoing, we do not represent or warrant that:

- (a) we will undertake any particular level of advertising or promotion of the Exhibition, or that the Exhibition will attract any particular number of exhibitors or visitors; or

(b) the Exhibitor will achieve any particular results or outcomes by participating in the Exhibition.

7.2 Exclusion of consequential loss

To the extent permitted by law, we will not be liable for any loss of profit, savings, contracts, revenue, interest or goodwill or for any consequential, indirect, incidental, special or punitive loss, damage or expenses or loss of data or for any amounts payable by the Exhibitor to any third party, even if we have been advised of their possible existence and even if such loss, damage or expense is caused by our negligence.

7.3 Limitation of liability

Subject to section 7.4, our liability, other than that addressed in section 7.2, in relation to this agreement, howsoever caused, including negligence, is limited to the amount of fees paid by the Exhibitor under this agreement (after taking into account any refunds paid by us to the Exhibitor).

7.4 Time for making claims

We will not be liable to the Exhibitor in respect of any claim whatsoever arising under this agreement or relating to the Exhibition, unless such a claim is made in writing to us within 30 days after the end of the Licence Period.

7.5 Events beyond our control

We will not be liable for any delay or failure to perform this agreement where such delay or failure was caused by circumstances beyond our reasonable control (including fire, flood, earthquake, storm, war, terrorism, government regulation, strike, civil disturbance or infectious disease).

8. INDEMNITY

(a) The Exhibitor indemnifies and will defend us and our Personnel, and our related companies and their Personnel, (**Those Indemnified**) against claims, liabilities, losses, damages, costs and expenses made against, or suffered or incurred by, Those Indemnified as a result of:

- (i) the Exhibitor's participation in the Exhibition;
- (ii) a breach of this agreement, or negligence relevant to this agreement, by the Exhibitor; or
- (iii) any claim against Those Indemnified by the Exhibitor's sub-licensees or Personnel.

(b) In conducting a claim, suit or action in respect of which the Exhibitor indemnifies Those Indemnified, the Exhibitor will, at the Exhibitor's expense, comply with our reasonable directions.

9. TERM AND TERMINATION

9.1 Term

This agreement commences on the date we accept the Display Licence Application and continues until the end of the Licence Period, unless it is terminated earlier.

9.2 Termination by the Exhibitor

The Exhibitor may terminate this agreement at any time by notifying us.

9.3 Termination by us

(a) If:

- (i) the Exhibitor breaches any term of this agreement;
- (ii) any information supplied to us by the Exhibitor is false or misleading;
- (iii) we consider an Exhibitor's exhibit to be unsuitable or of an inadequate standard; or
- (iv) the Exhibitor becomes or in our opinion is likely to become bankrupt or insolvent,

we may, at our discretion, do any or all of the following:

- (v) restrict or suspend the Exhibitor's use of the Display Area; or
- (vi) terminate this agreement.

(b) We may also terminate this agreement at any time for any reason we see fit by notifying the Exhibitor.

9.4 Effect of termination or expiry

(a) The Exhibitor will only be entitled to a fee refund in the circumstances set out in section 3.4.

(b) Termination or expiry of this agreement does not affect the operation of sections 3.4, 5.3, 6, 7 and 8, or any rights or remedies already accrued to either party under, or in respect of any breach of, this agreement.

10. CHANGES AND COMMUNICATIONS

10.1 Changes to the agreement

We may change the terms of this agreement at any time at our absolute discretion. We will notify the Exhibitor of relevant changes in accordance with section 10.2. If the Exhibitor is not satisfied with a change to this agreement, the Exhibitor may terminate this agreement under section 9.2.

10.2 Notifying the Exhibitor

- (a) Where this agreement requires or permits us to notify the Exhibitor, we will use our reasonable endeavours to do so, but we will not be liable for any failure to do so. We may notify the Exhibitor in any way including the following:
 - (i) by making the information available on the Website; or
 - (ii) by contacting the Exhibitor directly by any means, including telephone, facsimile, mail or email.
- (b) Where we make information available on the Website, it is taken to be received by the Exhibitor at the time the information is made available on the Website. Where we give information in person or by telephone, it is taken to be received by the Exhibitor at the time it is given. Where we give information by facsimile, it is taken to be received by the Exhibitor at the time shown on the transmission confirmation report produced by the fax machine from which it was sent. Where we give information by mail, it is taken to be received by the Exhibitor on the day after posting. Where we give information by email, it is taken to be received by the Exhibitor when the email is sent, regardless of any response to the email.
- (c) We will use reasonable endeavour to ensure that the information we provide to the Exhibitor is correct. However, to the extent permitted by law, we accept no responsibility for any inaccuracy in the information provided by us.

10.3 Electronic communications

Where a law requires or permits us to give information to the Exhibitor, the Exhibitor consents to that information being given by way of electronic communication. In all cases, we are not required to provide an unsubscribe facility in electronic communications we send to an account of the Exhibitor.

11. OTHER TERMS

11.1 Assignment

The Exhibitor must not transfer or assign its responsibilities or rights under this agreement without our prior written consent. We may transfer or assign our responsibilities or rights under this agreement at any time to any person without telling the Exhibitor.

11.2 Compliance with laws

The Exhibitor must comply with all applicable laws and regulations, including the Queensland Marine Act 1985 and relevant fire and occupation, health and safety regulations.

11.3 Governing law

The laws of Queensland govern this agreement. The Exhibitor submits to the jurisdiction of the courts of Queensland in any action or legal process concerning this agreement.

11.4 Interpretation

In this agreement, headings are for convenience only and do not affect interpretation, and unless the context requires otherwise:

- (a) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) where this agreement permits us to give our consent or approval, we may do so at our discretion and may give such consent or approval subject to the Exhibitor complying with conditions that we specify;
- (e) "includes" in any form is not a word of limitation; and
- (f) to the extent of any inconsistency between the following documents, the inconsistency is resolved in the following descending order of precedence:
 - (i) these terms and conditions;

- (ii) the Display Regulations;
- (iii) the Sanctuary Cove Resort Conditions of Entry; and
- (iv) the Prospectus.

11.5 Waiver

We may exercise our rights at any time within the limits of the law. If we delay in exercising our rights, this does not mean we give up those rights.

12. DEFINED TERMS

In this agreement:

Application Fee means the non-refundable application fee set out in the Display Licence Application.

Display Area means the area at the Site that we allocate to the Exhibitor.

Display Licence Application means the application to become an Exhibitor, in the form available from the Website, and includes any changes to the Display Licence Application agreed by us in writing.

Display Licence Fee means the display licence fee as set out in the Display Licence Application.

Display Regulations means the regulations relating to the Exhibition, as notified by us from time to time.

Exhibition means the Sanctuary Cove International Boat Show.

Exhibition Opening Hours means the hours the Exhibition is open to the public on each day during the Exhibition Period, as set out in the Prospectus.

Exhibition Period means the period of the Exhibition, as set out in the Prospectus. The Exhibition Period does not include the Installation Period or the Removal Period.

Exhibitor means the applicant named in a Display Licence Application which is accepted by us.

Final Payment Date means the date by which the Display Licence Fee must be paid in full, as set out in the Prospectus.

Installation Period means the period for the installation of exhibits, as set out in the Prospectus.

Licence Period means the period from the start of the Installation Period to the end of the Removal Period, and includes the Exhibition Period.

Personnel of a person means that person's directors, officers, employees, agents, contractors and their respective Personnel.

Prospectus means the document we provide to potential exhibitors which contains details of Exhibition, and which is available from the Website.

Removal Period means the period for the removal of exhibits, as set out in the Prospectus.

Sanctuary Cove means the Sanctuary Cove Resort.

Site means that part of Sanctuary Cove where the Exhibition is held including temporary structures, open areas and marina berths.

Website means the website at www.sanctuarycoveboatshow.com.au.

We, us and our means Mulpha Sanctuary Cove (Management) Pty Ltd.