

## Terms and Conditions of Charter

### 1. Agreement

- 2.1 This contract will contain all of the terms and conditions of the agreement between Us and You (**Contract**).
- 2.2 You represent that you are authorised by all Guests to accept and that they agree to be bound by all the terms and conditions of this Contract.

### 2. Duration

- 2.1 The Charter includes time taken by passengers to embark and disembark and the Captain may pull into the point of disembarkation up to 10 minutes prior to the end of the Charter to allow time for passengers to disembark the Vessel.
- 2.2 If passengers take longer than 15 minutes past the end of the Charter to disembark, the Operator reserves the right to charge for every 30-minute period thereafter (or part thereof) at pro rata the Charter Fee.
- 2.3 We are not responsible for any delays caused by the late arrival of You or any Guests, delays at the wharf caused by third parties or any other events beyond the control of Us.
- 2.4 Any extension to the Charter beyond the agreed duration is subject to availability of the Vessel, Captain and staff and is at our sole discretion. Additional charges will apply.

### 3. Availability

- 3.1 Should the Vessel become unavailable for any reason including inoperability, damage, safety or crew availability, We reserve the right to substitute a suitable alternative vessel or where a suitable alternative vessel is unavailable a refund will be offered.
- 3.2 We will not be liable to You beyond that refund.

### 4. Rescheduling

- 4.1 Rescheduling of the Charter is based on availability of the Vessel, Captain, staff and preferred date and must be approved by Us (in Our sole discretion).
- 4.2 Rescheduled charters must be used within 6 months of the original booking date (or such other time as We determine).
- 4.3 We will not accept any rescheduling due to weather conditions, unless otherwise agreed in writing Us.

### 5. Weather

- 5.1 If the weather is dangerous or We (or the Captain) deem it not safe for boating, We and the Captain will decide (in our sole discretion) on the morning of the Charter whether the Charter will be postponed. Unsafe weather is not classified as raining, cloudy, windy, cold or usual rainy circumstances.
- 5.2 If We or the Captain declare the weather to be unsafe, You will be notified the morning of the Charter and will be given the opportunity to reschedule.

### 6. Maximum Capacity

- 6.1 You must not, at any time during the Charter, exceed the maximum number of booked passengers.
- 6.2 Final guest manifest must be provided by You, and confirmed by Us, at least 48 hours prior to the commencement of the Charter (or such other time as We agree).

### 7. Access

- 7.1 Day charters have access to one guest cabin to store belongings and change. Day charter guests are not permitted use of the beds.
- 7.2 Overnight charters have full access excluding crew areas, flybridge, helm and engine room.

- 7.3 You and Guests may only board the Vessel at the time the booking is scheduled to commence. Access prior to this time (e.g. for event setup) must be approved in writing by the Operator at least 48 hours prior to the Charter commencing.

### 8. Destination and itinerary

You may determine the general movements, program and destination of the Vessel within limits of this Contract and Our directions, but You acknowledge and agree:

- (a) the Captain is in full command of the Vessel, including for safe navigation of the Vessel; and
- (b) at all times to abide by the Captain's judgment and directions as to sailing, weather, anchorage, clearance, and the like in connection with the Vessel and Voyage.

### 9. Captain's authority

- 9.1 The Captain will observe all reasonable directions given by You regarding the movement of the Vessel subject to wind, weather and other conditions, but retains full authority as the Captain of the Vessel and is not bound or liable to observe any direction which, in the Captain's sole discretion, might result in the Vessel, crew, You or any of the Vessel's guests being placed at risk.
- 9.2 Without prejudice to any other remedy of Ours, if in the reasonable opinion of the Captain, You or any Guest fail to observe all or any part of their obligations and after the Captain has given due warning to You in respect of same, the Captain may return the Vessel to port and upon such return the Charter shall be terminated without any entitlement by You to any refund of the Charter Fee.

### 10. Crew

- 10.1 We shall provide a Captain qualified in accordance with the survey requirements and acceptable to the insurers of the vessel.

### 11. Safety Briefing

- 11.1 You must, and You must ensure all Guests:
- (a) participate in a safety briefing on embarking;
- (b) comply with all our safety policies and procedures; and
- (c) follow all safety instructions and directions given by Us, Captain and crew during the Charter.
- 11.2 If You or Guests fail to comply with clause 11.1, in Our and/or Captain's sole discretion:
- (a) the Charter may be brought to an end early;
- (b) You or any Guest may be removed from the Vessel;
- (c) You or any Guest may be prohibited from participating in certain activities, including Water Activities, during the Charter;
- (d) We or Captain may take any other steps or actions we deem fit,
- at Your cost and no refund will be given.

### 12. Swimming and Water Activities

- 12.1 All guests entering the water do so at their own risk.
- 12.2 Swimming is only permitted during daylight hours when the Vessel is stationary and in the absolute discretion of the Captain and crew.
- 12.3 You and Guests may have the option, subject to local weather conditions as well as the laws and regulations of each port of

call, to utilise Our equipment and to participate in various Water Activities off, around, about and in the environs of the Vessel.

**12.4 You acknowledge and agree for You and Guests that:**

- (a) there are inherent risks and dangers involved with Your and Guest participation in Water Activities that can result in serious injury or death;
- (b) We can in no way guarantee Your or Guest safety or welfare in any Water Activities or use of Our equipment;
- (c) You must have the training necessary to participate in Water Activities and must follow the rules and procedures maintained by Us, the Captain and crew;
- (d) You and each Guest knowingly and voluntarily assume all risks arising out of or in connection with the use of Our equipment and participating in Water Activities;
- (e) We accept no responsibility whatsoever or howsoever arising in connection with Your or Guest use of Our equipment or participation in Water Activities.

**13. Use of the yacht**

**13.1** You and Guests may use the Vessel exclusively during the Charter for your enjoyment.

**13.2** You must take care when using the Vessel, including with all surfaces such as timber floors and stone benchtops. Do not use products that could mark fabrics or cause damage to the finishes of the Vessel.

**13.3 You agree that:**

- (a) no more than the number agreed by Us will be carried aboard the Vessel;
- (b) no pets or animals are brought on board;
- (c) the use of the Vessel by You and Guests must not cause any disturbance, nuisance or offence to any person;
- (d) You and all Guests must comply with:
  - (i) all laws, regulations and government rules;
  - (ii) the terms, conditions and rules in connection with any qualification, licence or permit you may have in connection with use of the Vessel, including Water Activities;
  - (iii) Our policies, procedures and directions; and
  - (iv) the directions of Captain and the crew.
- (e) Maximum guests on the Vessel's tender at one time must not exceed 11.
- (f) Strictly no:
  - (i) shoes;
  - (ii) candles;
  - (iii) smoking or vaping;
  - (iv) nudity;
  - (v) pornographic or adult content creation or development; or
  - (vi) unlawful conduct,
 is permitted aboard the Vessel.
- (g) All chargers must be unplugged while not in use.
- (h) Operation of the tender is by and under the control of Captain and crew. You nor any Guest is permitted to operate the tender.

**13.4 Minors**

- (a) The Vessel is intended for adult guests over the age of eighteen (18) only. Children under the age of eighteen (18) (**Minors**) at the time of the Charter will be

accepted in Our sole discretion and we may deny Minors access to, or use of, any part or the whole of the Vessel, facilities or services.

- (b) All Minors must be accompanied by an adult guest over the age of eighteen.
- (c) You are fully responsible for Minors' safety, conduct and entertainment and must fully supervise and care for Minors at all times during the Voyage.
- (d) We, the Captain and crew are not responsible for Minors, including their entertainment or care.

**13.5 Baggage and personal effects**

- (a) You and all Guests may take a reasonable amount of luggage on board the Vessel containing clothing, toiletry articles and personal effects and subject to Our, the Captain and crew's directions.
- (b) Guests may not take on board the Vessel:
  - (i) knives, blades, firearms or explosives;
  - (ii) controlled or prohibited substances, including drugs and other mind-altering substances;
  - (iii) inflammable or hazardous items;
  - (iv) any items prohibited by law; or
  - (v) any other item directed by Us or the Captain.
- (c) The Captain and crew have the right to enter and search guest cabins, baggage, personal effects or person, for any items set out above in clause 13.5(b).
- (d) We accept no responsibility for the loss or damage to Your or Guests baggage or personal effects.

**14. Alcohol, drugs and mind-altering substances**

**14.1 Drugs and mind-altering substances**

You and all Guests are prohibited from using, selling, purchasing or being under the influence of any drugs or mind-altering substances onboard the Vessel, and at all times during the Charter. Any guest found to be under the influence of any drugs or mind-altering substances may be immediately removed from the Vessel.

**14.2 Alcohol**

- (a) The consumption of alcohol may increase the risk of injury and You and Guests accept that risk.
- (b) Minors are strictly prohibited from consuming alcohol or using drugs or mind-altering substances.
- (c) We, the Captain and crew have responsibilities for the responsible serving of alcohol. We, the Captain and crew will enforce responsible service of alcohol and You or any Guest may be prohibited from consuming alcohol at any time during the Charter at Our, the Captain and crew's sole discretion.

**14.3 Conduct**

- (a) Disrespectful or unruly behaviour because of, or in connection with, the consumption or use of alcohol, drugs and mind-altering substances will not be tolerated.
- (b) We or the Captain may, in Our or the Captain's sole discretion, take any of the following action if You or a Guest conducts themselves contrary to this clause 14 or this Contract:
  - (i) terminate the Charter (and You will not be entitled to any refund);
  - (ii) summon the police (or relevant authority) to remove the offending person(s);
  - (iii) discuss with You to agree on some other course of action to resolve the issue, which must be satisfactory to the Captain; or

- (iv) any other action We or the Captain see fit.

## 15. Health and medical care

- 15.1 You acknowledge and agree that You and all Guests understanding of the character and nature of the Vessel and Charter and assume all liability and risks associated with and incidental to the Voyage and travel at sea.
- 15.2 The Vessel does not carry physicians or other medical personnel on board and while at sea or in port and:
- (a) the availability of medical care may be limited or delayed;
  - (b) all or part of the Voyage may be in areas where medical care and evacuation may not be available at all or to Your or Guests satisfaction;
  - (c) You and Guests must assume full responsibility and risk for their own health and safety, including the use of medicine and medical treatment;
  - (d) We, the Captain and crew cannot guarantee and are not liable whatsoever for Your or Guest health while on board the Vessel or at port.
- 15.3 It is Your and Guests responsibility to consult all appropriate medical practitioners, governmental agencies and authorities to determine if vaccines, special medical provisions or recommendations apply and/or to the regions the You anticipate visiting during the Voyage. We assume no responsibility for gathering or provision of such information.
- ## 16. Personal services and shore excursions
- 16.1 All health, medical or other personal services in connection with the Voyage, including any shore excursions, tours, or travel in any aircraft, bus, car, train or other conveyance whatsoever, may be provided or arranged, if at all, solely on behalf of and for the convenience and benefit of You and Guests, who will be charged for such services. Payment shall be made upon demand and prior to disembarkation from the Vessel.
- 16.2 We, the Captain and crew do not supervise or control the actions of connecting land and sea carriers, shore excursion or tour operators or providers of any other personal services in connection with the Voyage, who will be independent service providers working directly for You.
- 16.3 We, the Captain nor crew:
- (a) make no express or implied representations as to the suitability of any such service providers or their facilities;
  - (b) do not guarantee performance of other service providers; and
  - (c) in no event, be liable for any act or omission, loss, damage, injury, illness, death, expense, cost, liability or delay in connection with such services whatsoever.
- 16.4 You and Your Guests agree to use all such service providers and their services at Your and Guests' sole risk.

## 17. Travel insurance

You and Guests are responsible taking out any travel insurance policy.

## 18. Payment terms

### 18.1 Bond

- (a) A Bond is payable no less than 14 days prior to the commencement of the Voyage.
- (b) The Bond will be refunded within 7 days of the Voyage completion except where there has been loss of or damage to the Vessel, including its fittings, fitout, parts or equipment, caused or contributed by You or

Guests or an unreasonable amount of excessive uncleanness caused by Your or Guests.

- (c) The cost recovery of damages caused or contributed to by You or Guests is not limited by the amount to the Bond and we may recover from You any amount in excess of the Bond for loss or damage to the Vessel caused or contributed by You or Guests.
- (d) Any loss or damage caused or contributed to by You or Guests will be the responsibility of You. You indemnify Us against all loss, damage, cost, expense and liability suffered or incurred by Us arising out of or in connection and loss or damage, including rectification of that loss or damage, to the Vessel.

### 18.2 Deposit

- (a) A deposit of 50% of the total Charter Fee must be paid within 2 days (or such other time as directed by Us) to secure a booking.
- (b) Payment of the deposit confirms Your acceptance of these terms and conditions.

### 18.3 Charter Fee

- (a) The Charter Fee less the deposit must be paid in full and cleared funds no less than 14 days prior to the start of the Charter.
- (b) Failure to pay the deposit or balance Charter Fee will void or otherwise terminate the booking.
- (c) A fee of \$400 and any rate difference is required to amend an existing Charter dates.

- 18.4 We reserve the right to amend payment amounts and terms on busy dates or public holidays.

## 19. Advancing provision allowance - applicable to term charters only

- 19.1 Advance provisioning allowance (APA) in the amount directed by Us, which will not be less than an amount equal to 15% of the Charter Fee, is to be paid in addition to the Charter Fee to cover provisioning expenses, including additional fuel, food, beverages, special requests, relevant costs for the Vessel and its tender, and additional costs for Charter.
- 19.2 A reconciliation of the APA will be provided at the conclusion of the Charter and:
- (a) any APA not used will be returned to You post Charter by direct deposit; or
  - (b) if expenses exceed the APA, You will be required to reimburse the Vessel before the end of the Charter.

## 20. Cancellation

### 20.1 Cancellation by You

- (a) If You cancel the Charter for any reason and provide us at least three weeks' written notice prior to the start of the Charter, We may, in our sole discretion, offer alternate dates
- (b) If You do not wish to utilise any alternate dates offered and You have cancelled the Charter:
  - (i) more than 45 days prior to the start of the Charter, the deposit will be returned less 20% of the total Charter Fee; or
  - (ii) less than 45 days prior to the start of the Charter, the 50% deposit will be forfeited.
- (c) If You cancel the Charter for any reason 14 days or less to the start of the Charter, 100% of the Charter Fee will be payable.

### 20.2 Cancellation by Us

- (a) In the event the Charter is cancelled due to an event beyond the control of Us:

- (i) alternate dates suitable to both parties will be offered; and
- (ii) if alternate dates cannot be agreed, You will be entitled to a refund of any deposit or Charter Fee paid.
- (b) We may cancel the Charter for any reason in Our sole discretion by providing you not less than 30 days written notice, in which case We will return Your deposit in full.
- (c) If we cancel the Charter or terminate this Contract as a result of:
  - (i) Your or Guests' breach of You and Guests obligations in connection with this Contract; or
  - (ii) Us enforcing Our rights under this Contract, You will not be entitled to any refund.

## 20.3 Force Majeure

If by reason of Force Majeure, the Vessel is not available:

- (a) We may replace the Vessel by at least similar or better vessel; or
- (b) We or You may cancel the Contract, and a full refund of the Charter Fee will be paid.

## 21. GST

- 21.1 Amounts payable under this Contract exclude GST unless otherwise specified. If GST is payable in relation to a taxable supply by a party to the other, the amount payable for that taxable supply will be the amount specified in this Contract plus GST.
- 21.2 The recipient of the supply that is subject to GST must pay to the supplier making that supply, as consideration in addition to any consideration payable or to be provided elsewhere in these Terms of Trade, subject to issuing a valid tax invoice (in accordance with relevant tax laws), an amount on account of GST calculated by multiplying the consideration by the applicable rate of GST.
- 21.3 Any GST payable under this clause 21 must be paid to the supplier making the supply together with the consideration payable for the supply.
- 21.4 If any party is required to reimburse or indemnify the other party for a cost, expense or liability incurred by the other party, the amount payable is less the amount of GST to which the party incurring the cost is entitled to claim.

## 22. Liability

- 22.1 To the extent permitted by law, We are not liable to You or Guests whatsoever for any loss, damage, claim, cost, expense or liability howsoever arising in connection with the Charter or this Contract, including the Vessel, Voyage and Water Activities.
- 22.2 In all circumstances, Our liability to You and Guests will be:
  - (a) reduced proportionately to the extent You or Guests' acts or omissions caused or contributed to the loss, damage, claim, cost, expense or liability; and
  - (b) limited to, in Our sole discretion:
    - (i) the resupply of the Charter;
    - (ii) any amount equivalent to the Charter Fee; or
    - (iii) a refund of the Charter Fees.

- 22.3 This clause 22 survives the termination of the Contract.

## 23. Indemnity

- 23.1 To the extent permitted by law, You indemnify and hold harmless Us, the Captain and crew against all loss, damage, claim, cost, expense or liability suffered or incurred by Us, the

Captain or crew howsoever arising out of or in connection with:

- (a) personal injury, illness or death of a person;
- (b) loss or damage to property;
- (c) any claim by a third party;
- (d) Your or a Guest's breach of this Contract;
- (e) any criminal act, fraud, negligence, wilful act or omission by You or Guests,

caused or contributed by Your or Guests in connection with the Charter or this Contract, including the Vessel, Voyage and Water Activities.

- 23.2 Your liability to us under clause 23.1, will be reduced proportionately to the extent Our, the Captain or crew's negligent act or omission contributes to the loss, damage, claim, cost, expense or liability.

- 23.3 This clause 23 survives the termination of the Contract.

## 24. Dispute Resolution

- 24.1 If You claim that a dispute or difference has arisen between the parties (**Dispute**) You must give Us a written notice within 7 days of the Dispute arising setting out sufficient details to identify the nature of the Dispute (**Dispute Notice**).

- 24.2 Within 14 days of the Dispute Notice, the parties must meet in a genuine attempt to resolve the Dispute.

- 24.3 If:

- (a) the parties are unable to resolve the Dispute within 21 days of the Dispute Notice; or
- (b) the parties are unable to agree on a method of resolution of the Dispute,

the parties must mediate the Dispute as follows:

- (c) by agreeing the appointment of a mediator within 7 days or if the parties cannot agree on a mediator, the mediator is to be appointed by the President of the Law Society of Queensland or the President's nominee;
- (d) the mediation will be conducted in accordance with the 'Mediation Rules' of the Resolution Institute;
- (e) the mediation will be held within 14 days of the appointment of the mediator (unless otherwise agreed in writing by the parties and the mediator); and
- (f) the parties will pay equally the mediator's fees.

- 24.4 You cannot commence court proceedings in relation to a Dispute until this clause 24 has been complied with and exhausted. Nothing in this clause 24 prevents a party from seeking urgent interlocutory or declaratory relief.

## 25. General

### 25.1 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all previous representations, agreements, warranties, guarantees, terms or conditions, and communications between the parties, whether express or implied, whether oral or written, in relation to the subject matter of this Contract.

### 25.2 Amendment

No amendment or variation of this Contract will be of any force or effect unless it is in writing and signed by Us.

### 25.3 Severability

If any provision of this Contract is in any way unenforceable, invalid or illegal it is to be read down so as to be enforceable, valid and legal. If this is not possible the provision is to be

severed from this Contract without affecting the enforceability, validity or legality of the remaining provisions which will continue in full force and effect.

#### 25.4 **Assignment**

You must not assign any of Your rights or obligations under this Contract without the prior written consent of Us in Our sole discretion (including terms).

#### 25.5 **Waiver**

A failure or delay by a party in exercising any right or remedy conferred on the party by the Contract does not operate as a waiver of the right or remedy. A single or partial exercise of a right or remedy does not preclude a further exercise of it or the exercise of any other right or remedy under the Contract. A waiver of a breach does not operate as a waiver of any other breach.

#### 25.6 **Jurisdiction**

This Contract is governed by the law of the state of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

### 26. **Definition and interpretation**

#### 26.1 **Definitions**

In this Contract capitalised terms have the following meaning unless the context provides otherwise:

**Bond** means a deposit of in the amount requested by the Operator, being not less than \$5,000, which may be taken by the Oper from you as a credit card guarantee or cash or such other form as agreed by the Operator.

**Captain** means the person appointed by or on behalf of Us who is responsible for the navigation of the Vessel and anyone who from time to time is appointed to act with the captain's authority during the Voyage.

**Charter** means the provision of the Vessel to You for the period of time agreed by Us or where no dates are agreed in writing, from the date you embark the Vessel and continuing for the Voyage.

**Charter Fee** means the price payable by You to Us for the Charter, including any additional costs and expenses.

**Force Majeure Event** means (but is not limited to) any act of God, war, terrorism, piracy or other criminal activities, requisitioning of the Vessel, explosion, collision, stranding, foundering, breakdown or damage to the Vessel or its hull, machinery or fittings howsoever caused, inability to secure supplies or fuel, fire, flood, tidal conditions or any other extreme weather condition, perils of the sea, congestion in ports, docking or anchoring difficulties, thefts, loss of power, epidemics or pandemics, industrial disputes, slow-downs or other strike activities, riots or civil unrest, acts of government, semi government or other authorities, inability to obtain any

necessary license or consent and delays caused by subcontractors, suppliers or other third parties (including telecommunications carriers) material shortages or other disruption to the Voyage beyond Our control, including but not limited to cyber related events or attacks.

**Guest** means persons who board the Vessel with You or by Your invitation and those in Your care.

**Us/Our/We** means NISI Marine Pty Ltd ACN 617 855 526.

**Vessel** means motor yacht NISI and its tender.

**Voyage** means the sailing from the port of departure to the final port of disembarkation, including any road or sea port, any land accommodation components or package sold with, or included in the price of or taken in connection with the voyage, any shore excursions or shore side facilities related to or offered during the voyage, and all transportation to or from the voyage if purchased through or arranged by Us.

**Water Activities** includes (but is not limited to):

- (a) water-based activities including swimming, snorkelling, scuba diving, tunnel diving, fishing, kayaking, paddle boarding;
- (b) motorised water activities including skiing, wakeboarding, tubing, wake surfing and knee-boarding;
- (c) e-foiling, hydrofoiling and sea scooters;
- (d) the use of aerial devices including parasailing, paragliding and air chairs; and
- (e) any ancillary activities or services in connection with the above offered by Us on a Voyage and includes the use of requisite equipment for such activities.

**You/Your** means the person(s) purchasing, accepting or using this Contract or is named on the booking and includes and binds their heirs, successors, assigns and personal representatives.

#### 26.2 **Interpretation**

In this Contract, unless the context requires otherwise:

- (a) other grammatical forms of defined words or expressions have corresponding meanings;
- (b) headings and sub-headings are used for convenience only and do not affect the interpretation of these Terms;
- (c) wherever "include", "for example", or any form of those words or similar expression is used, it means including without limitation;
- (d) if a period of time is specified and dates from a given day or the day of an act or event, it will be calculated exclusive of that day;
- (e) a reference to money amounts are to amounts in AUD, unless otherwise stated

You and NISI Marine Pty Ltd hereby agree that these Terms and Conditions form the agreement between the parties, and You hereby warrant that: all information provided by You is true and correct; and You have fully read and understood this agreement and these Terms and Conditions.

Not included in the charter fee:

- Crew gratuity
- Shore side transfers and excursions
- Hire of Lifeguard or Dive Instructor
- Dockage at Charterer's request
- Meals ashore and on-shore lodging
- Relocation charges for pick-up or/and drop-off from locations.

By making payment, you are accepting all the above Terms and Conditions.

\_\_\_\_\_  
**Signature – Authorised Person for the Hirer**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Agent / Company**

\_\_\_\_\_  
**Signature – Authorised Person for NISI Marine**

\_\_\_\_\_  
**Print Name**