

# STANDARD CONDITIONS OF CHARTER (VER 1 - 27.07-18)

Escape Yacht Charters Pty Ltd, ABN 62 159 266 369 ACN 159 266 369 - trading as

## Fraser Escape Bareboat Yacht Charters

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**1. DELIVERY:** The operator shall deliver the Boat at the Port of Delivery staunch, clean and in full commission ready for service by 10.00am on the commencement date. The Operator may allow credit pro rata for charter fees covering periods of delay in delivery. The Operator has the full right, at its discretion, to substitute a boat of similar type or to cancel a charter and to refund the charter fee. If the Operator fails to make delivery within twenty-four hours after the due time then the Charterer may cancel the agreement and a full refund of the charter fee will be paid. The Operator shall then have no further liability to the Charterer beyond that refund. The Charterer warrants that he will examine the Boat before taking delivery and by accepting the Boat shall be deemed to have satisfied himself that the Boat is staunch and properly outfitted for a yacht or motor cruiser of her type, size and accommodation. Should the Charterer not be ready to accept delivery of the Boat at the stated time for delivery for any reason the Operator has the right to set the time of delivery anytime within the next twenty-four hour period. In the event there shall be no partial refund for any of the charter for time lost. The charter period commences with the area briefing and boat familiarisation or sail orientation.

**2. PAYMENT, CANCELLATION AND BOND:** The Charterer shall pay:

- An agreed deposit on or before signing this agreement. This deposit will form the 'fuel bond' for the period of the charter.
- The full charter fee within sixty days prior to commencement of the charter period;
- A security bond prior to delivery, limiting Charterer's liability subject to Clause 19 below.

In the event the Charterer cancels this agreement by notice in writing received by the Operator at Great Sandy Strait Marina, Buccaneer Ave, Urangan, 4655, more than sixty days prior to the commencement of the charter period, the deposit will be refunded in full less a service fee of \$150.00. If less than sixty days of notice of cancellation is given the full charter fee shall remain due and payable and will not be waived or refunded unless the Operator is able to obtain an alternative booking for the same charter period. In the event that such an alternative booking is secured, the charter fee is refundable less 25% as costs for securing the replacement charter and administration expenses.

**3. REFUND OF BOND MONIES:** If there are no deductions from the bond it shall be credited to the Charterer within fourteen days of the end of the Charter. In the event of any deductions from the bond for insurance excess or consequential credit card or banking charges, fuel costs if applicable, demurrage, repair of any damage or loss of equipment, or any accident, breakdown, recall or repossession of the Boat, the balance will be posted to the Charterer as soon as is reasonably practicable once the deduction can be calculated by the Operator.

**3. INVENTORY:** At the time of delivery the Charterer shall, if requested by the Operator, complete, check and sign an inventory and on redelivery to attend to checking with the Operator and to countersign the record of inventory after checking. Any lost or damaged inventory items shall have all expenses relating to the loss or damage debited against the security bond. If the Operator does not require signing of a record of inventory, it's right to debit against the security bond is not waived.

**4. RUNNING EXPENSES:** The Charterer shall pay all running expenses during the charter period including pilotage, port charges, sail guide, crew charges, refuelling costs, provisions and any service calls not the fault of the Operator.

**5. COMPETENCY:** In this clause "competent person" means a person competent in the handling of the type of boat chartered including:

- Knowledge and practical experience in coastal navigation seamanship; and
- Knowledge and practical experience in overnight anchoring, the handling of the associated tender and any onboard equipment for the type and size of boat to be hired.

(a) The Charterer warrants that he is a competent person in the handling and operations of the type of boat chartered.

(b) The Charterer undertakes not to permit any other person to operate the Boat unless that person is a competent person.

(c) The Operator reserves the right to require the Charterer and any other person who shall operate the Boat to demonstrate to the Operator that they are competent persons. Should the Operator not be satisfied with the competency of the Charterer, the Operator may require a sailing guide on board the Boat for such period as determined by the Operator.

(d) In the event that the Charterer or any other person is considered by the Operator to be a competent person as a result of any misleading, deceptive conduct or misrepresentation by the Charterer and upon which the Operator has relied to form an opinion, then the Operator shall have the right to install a sailing guide aboard the Boat and at its election terminate this agreement. The Operator shall have the right to recover all losses from the Charterer without any liability to refund or compensate the Charterer.

**6. NAVIGATION AND OTHER LIMITS:** The Charterer shall restrict the cruising of the Boat from 0700 to 1600 hours unless authorised by the Operator. The Charterer shall limit his cruising perimeter to the area and limitations clearly defined and specified by the Operator. The Boat shall be employed exclusively as the sole and proper use of members of the Charterers party. The Charterer shall not carry on the Boat more than the specified number in the party and the Charterer shall not permit any other party, except competent persons within the Charterers party, to operate the Boat unless the prior written permission of the Operator is obtained. The Charterer shall not race the Boat. The Charterer shall not raft the Boat up against any other vessel. Except with authorisation of the Operator the Boat must not be used for towing any vessel other than the tender. There must be no transferring of equipment from the Boat. The Charterer shall not engage in trade including transporting merchandise or passengers for pay. No goods, documents or drugs shall be carried which would involve the risk of seizure of the Boat by any government. Pets shall not be taken on the boat. Children must be under the control of a responsible adult. That adult is responsible for the conduct and personal safety of the children while on board the Boat. The Charterer shall not allow any person on board to conduct any act contrary to the laws of Australia, or any other government within the jurisdiction of which the Boat may be at any time and shall comply with the law in all other respects. The Charterer shall not tie the Boat up at any jetties or piers except those approved by the Operator prior to the charter or make any landing with the Boat.

**7. CHARTERER'S AUTHORITY:** At the commencement of the charter period the Operator shall relinquish its possession and command of the Boat to the Charterer and full authority regarding management of the Boat and its crew or members of the charter party shall be transferred to the Charterer for the period of this charter. Should a sailing guide be put on board either at the Charterer's request or at the Operator's option the sailing guide shall be under the sole discretion and control of the charterer who shall be fully responsible for the sailing guide. The Charterer shall pay the Operator for the sailing guide at the current daily rate listed at the Operator's offices and feed and accommodate the sail guide. If a sailing guide is put on the Boat, then although the Charterer shall have possession, command, navigation and full control over the Boat, the sailing guide is to be the sole judge as to whether it is reasonable or prudent to sail at any time and as to whether any specified anchorage is reasonably safe.

**8. REDELIVERY:** The Charterer shall redeliver the Boat to the Operator free from any indebtedness which may have occurred on the Charterer's account at the Port of Return with all of its equipment, in the same good condition as it was at delivery, save for fair wear and tear from ordinary and proper use. If for any reason other than that the Boat has become a total loss, he shall pay the Operator demurrage at the rate of the charter fee per night of the Boat plus 50% for every day or part of a day ("Agreed Demurrage") until redelivery is effected. If the Charterer leaves the Boat at any other place than the Port of Return he shall pay the Operator: all expenses involved in transferring the Boat to the Port of Return; Agreed Demurrage for the number of days required for the transfer; plus any losses or damage not covered by the Operator's insurance which may occur on or to the Boat or otherwise arises from the redelivery until it has been redelivered to the Operator at the Port of Return. In the event the Charterer should elect for any reason to redeliver the Boat prior to the end of the charter period the Operator shall not be liable to return any part of the charter fee, unless otherwise approved by the operator, the vessel must be returned and vacated by 11 AM on the return date.

**9. CLEANING:** If upon completion of the charter the Charterer has not left the Boat and tender in clean and tidy condition (including the removal of all garbage) then the Charterer shall pay for the costs of cleaning the Boat.

**10. RECALL:** Operator reserves the right to recall the Boat at any time if the weather is considered by the Operator to be a threat to safe operation or in the Operator's opinion the Boat is being improperly or incorrectly sailed, managed or controlled so as to imperil the Boat, other vessels or property or life. A recall may include but is not limited to a recall to the Operator's base or an instruction to proceed to a haven deemed to be safe for the prevailing conditions. During a recall the Charterer may be required to vacate the Boat depending on conditions. The Operator shall not be liable for any lost time, expense or losses to personal goods or property due to recall and the Operator is not liable to repay any charter fees. **The Charterer is advised to take out the appropriate insurance for such events.**

**11. SERVICE CALLS:** In the event of a malfunction of the Boat or its equipment, the Operator shall subject to prevailing weather conditions use its best endeavours to reach the Boat with a service call at the earliest opportunity. In the event a service call is not in the Operator's opinion reasonably possible, or if the problem cannot be otherwise rectified, the Charterer shall proceed to the point designated by the Operator where repairs or replacement, where possible, will be made. If the service call is in the reasonable opinion of the Operator due to no fault of the Operator, costs incurred shall be at the cost of the Charterer.

**12. REPLACEMENT:** In the event that a fault in the Boat is detected before or during the charter period that may cause unsatisfactory performance of the Boat equipment, then the Operator has the right to expeditiously effect repairs. In the event the Boat is in the Operator's opinion inoperable during part of the charter period through no fault of the Charterer rendering tidal or premature termination of the charter, the Operator may at its discretion endeavour to provide as a substitute an alternative boat of similar size and quality for the charter period. If no substitute boat can be provided the Charterer shall be entitled to reimbursement of charter fees for each full day (midday to midday) of the charter which has not been used.

**13. ACCIDENT OR BREAKDOWN:** In the event of any accident, loss, breakdown or disaster, the Charterer shall give immediate notice to the Operator and shall not except to the extent necessary to minimise a loss of the Boat, authorise or undertake repairs without prior authorisation of the Operator. The Charterer shall be responsible for the costs and consequence of any unauthorised repairs. The Charterer shall make no admission of liability to any party and no refund shall be made in respect of any claim arising out of such accident, loss, breakdown or disaster, save as is otherwise provided in this agreement. The Operator at its discretion shall determine if the cost of any repair, service (including cost for service vessels), breakdowns, recall or repossession or any other costs incurred by the Operator are chargeable to the Charterer and if so shall be deducted from the security bond or otherwise be owing by the Charterer.

**14. LIMITATION OF LIABILITY:** To the extent permitted by law, the liability of the Operator for indirect, special or consequential damages in connection with or arising out of the services under this agreement shall be limited to the supply of those services again. The Operator shall not be liable for any other indirect, or consequential damages.

**15. ALCOHOL AND DRUGS:** The use or consumption or illegal drugs by anyone using the Operator's facilities, property or boats, either ashore or afloat is prohibited. The consumption of alcohol may increase the risk of injury around docks, water and boats and the Charterer accepts that risk. The Operator shall not be liable for any personal injury or death arising from or in any way related to the use or consumption of alcohol or illegal drugs.

**16. PERSONAL LOSSES:** The Operator shall not be liable for any loss of personal property or goods of the Charterer whilst on the Operator's property or boats.

**17. INSURANCE:** The Boat chartered is customarily insured for the charter period as protection against any accidental loss or damage that may occur, or be caused by, the Boat during the charter period so long as the Boat remains in the cruising limits and perimeters established in clause 7 and is operated in compliance in all of this agreement. The Operator against the security bond may debit any excesses in connection with claims made under the policy. In case of loss, accident, breakdown or a disaster, the Charterer shall give immediate notice to the Operator and shall not except to the extent necessary to avert or minimise damage or loss of the Boat, attempt repairs without authorisation of the Operator.

**18. INSURANCE LIMITATIONS:** The insurance cover on the Boat does not usually cover Charterer negligence or failure to operate the vessel in accordance with the requirements laid out in the OPERATION MANUAL held on the vessel. The Charterer is liable for all damages or loss caused by him or other members of the charter party arising through his or any of the Charterer's party's negligence or incurred by malicious wilful acts of the Charterer or members of the Charterer's party. The Charterer's liability extends to the Operator and other parties to the full cost of making good any loss or damage. The Charterer acknowledges that under this agreement he is not insured for, and he may be liable for damages to persons or property arising in whole or part from the negligence of the Charterer. Failure to report groundings, hull and machinery damage to the Operator at the time of the incident constitutes Charterer negligence.

**19. LIMITED LIABILITY AND INDEMNITY:** Under the proviso that the charterer operates the vessel strictly in accordance with the OPERATIONS MANUAL kept on the vessel, the limit of any claim that the Operator can make against the Charterer will be the value of the security bond lodged with the operator. In the event that the charterer fails to operate the vessel strictly in accordance with the OPERATIONS MANUAL kept on the vessel, the limited liability of the Charterer is forfeited and in such event, the Charterer shall indemnify, reimburse and hold the Operator harmless from and against any acts and all claims, losses, liabilities, demands, suits, judgement or causes or actions and all legal proceedings whether civil or criminal, penalties, fines and other sanctions and any other costs and expenses in connection which may result from, or arise in any manner out of any matter related to the charter agreement or arise out of the management, control, encumbering use or operation of the Boat by the Charterer. The Charterer or any of the charter party shall bring no claim of any nature against the Operator and the Charterer agrees that he shall indemnify the Operator in respect of any amount paid by the Operator in respect of any such claim.

**20. a) DAMAGE:** If the Charterer damages the vessel to the extent the charter cannot continue, the owner is not liable to pay any refunds, compensation or replace the vessel with another.

**b) INOPERABLE BOAT** In the event that in the reasonable opinion of the Operator the Boat becomes inoperable during the Charter Period through an action or inaction of the Charterer or any of his party the Operator may at its option terminate this agreement and retain all the charter fees paid along with the bond. The Operator may then at its option offer a further charter to the Charterer on another vessel. The Charterer shall if he accepts the offer then pay another security deposit and all costs of the further charter including the charter fee.

**21. WATER SPORTS:** The Operator and its insurance underwriters shall not be liable for accidents, injuries or death due to: swimming; windsurfing; paddle boarding; the use of the Boat's dinghy and outboard engine; or the use of snorkels, masks, fins or scuba equipment whether supplied by the Operator or otherwise. The user of the equipment referred to in this clause must ascertain that he is experienced, qualified and capable of using the equipment, and the equipment is suitable and in good condition for the purpose for which it will be used and for the person using it.

**22. RADIO ARRANGEMENTS:** The charterer agrees to contact the Operator's base on or within such time as the Operator may at its discretion stipulate to the Charterer including each morning and afternoon on each day of the charter period and furnish necessary details of the Boat's position, intended plans for the day and intended anchorage position for that evening. In the event that the Charterer fails to so notify the Operator's base on any two consecutive schedule periods, then that Charterer shall be responsible for all costs or expenses incurred by the Operator in searching for the Charterer including but not limited to, the hire of aircraft or other means of transport.

**23. GOVERNMENT FEES AND FUTURE TAXES:** The Charterer shall pay and discharge without exception all taxes, charges, assessments and outgoings and impositions relating to the charter imposed by or under federal or state law, or by federal, state or local authorities and whether on a capital or revenue basis or any other basis and even though of a novel character which may at any time be introduced during the period from execution of this agreement to the end of the charter period.

**24. NON-ASSIGNMENT:** The Charterer shall not assign or sub-charter his interest in the Boat without prior written consent of the Operator. The Operator may assign its rights under this agreement.

**25. APPLICABLE LAW:** The Charter Agreement shall be governed by the laws of the State of Queensland and the Commonwealth of Australia and any dispute arising or relating to the agreement or the charter shall be referred to the courts of Queensland and be heard at the nearest relevant court.

**Signature (Charterer):** ..... **Date:** .....00/00/0000.....