



ROYAL SYDNEY YACHT SQUADRON

HAUL OUT CONTRACT

Telephone: (02) 9017 0161, Fax (02) 9959 3135, louise@rsys.com.au

MEMBER TERMS: Normal house account terms apply unless charges exceed \$2,000 when RSYs may at its discretion apply Clause 4.

NON-MEMBER TERMS: Direct debit to Credit Card or other security for payment of charges to be established before Haul Out (see Clause 4).

Signature / Initial

	The owners/agents must advise travel lift operator of any underwater appendages before lifting of Vessel.	
	If delivery of Vessel is required to/from the Boatyard, RSYs and its employees shall not be liable for damage. See Clause 5 overleaf.	
	All persons in the Boatyard must obey directions from Club employees and adhere to key safety standards, Bylaws, Occupation Health & Safety and Environmental Policies of RSYs as displayed in the Boatyard and advised by Staff.	
	All lifting, movement, blocking, standing and water blasting to be undertaken by RSYs staff only.	
	No cradle arm, block or prop shall be removed or repositioned except by Club staff.	
	Any wet rubbing, painting, welding, grinding, blasting or other dirty work to be undertaken must be the subject of prior notification to the Boatyard Supervisor together with details of the persons who will undertake the work. RSYs may in its absolute discretion prohibit any work proposed to be undertaken.	
	It is the responsibility of the owner/agent to ensure that furling headsails, awnings, main sail covers and biminis are secured.	
	The work to be carried out in the Boatyard is;	
	Work is expected to take	



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	The work will be carried out by		
	RSYS is requested to move the Vessel to and from (as below) and the Boatyard. Location (if applicable)		
	The Vessel is insured for \$.....and against Public Liability of \$..... With..... under Policy number(s).....		
	If anodes are required this will be completed by one of the onsite contractor engineers.		

NB: In particular the requirement to obtain consent to work in the Boatyard in Clause 3 and for Insurance in Clause 5

I ACCEPT THESE TERMS AND CONDITIONS AND THOSE OVERLEAF

Agreement ID			
Name of person lodging the Vessel: (may be Vessel owner or their agent)			
Vessel Owner (if different to person lodging Vessel): If Vessel Owner is a Company, include company name, ABN, directors' names and addresses			
Vessel Name			
Lift out of water		Time:	am / pm
Relaunch into water		Time:	am / pm
SIGNED by Vessel Owner/Agent			
Date			



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1. DEFINITIONS

In these terms and conditions:

“Boat lifter” means the machinery and associated equipment for lifting and launching vessels, lifting and storing masts and for the transportation of vessels to and from the water and around the Boatyard.

“Boatyard” means the area that RSYS utilises for the storage of vessels and masts, for lifting and launching vessels from and into the water, lifting and stepping masts from and into vessels and for carrying out Haul Out activities.

“Customer” means the Vessel Owner/Agent identified on the front page of this contract.

“Goods” means any goods provided by the RSYS to the Customer for the purposes of any Haul Out activity.

“Haul Out” means all activity undertaken by the RSYS in connection with the movement of the vessel between its berth, mooring or anchorage and the Boatyard, the lifting and launching of the vessel by the boat lifter or the lifting and stepping of its mast by the Mast Crane, the storage of the vessel or mast in the Boatyard or on the Mast Deck and all work carried out by the RSYS on the Vessel or Mast including washing, cleaning, water blasting, painting, repair or maintenance work whether carried out in the Boatyard or in the water.

“Mast Crane” means the Crane and associated equipment situated at the RSYS utilised in the removal and stepping of masts from vessels.

“RSYS” means the Royal Sydney Yacht Squadron ABN 40 000 002 693, or its nominees, and includes, where appropriate, its officers, agents and employees.

“Vessel” means the vessel identified on the front page of this contract and includes its mast and all its other goods, equipment and machinery.

2. PRIVACY ACT 1988 (CTH) (AS AMENDED)

- (a) RSYS collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy. This policy may be located at <https://www.rsys.com.au/>. A hardcopy of this policy can also be provided to the Customer free of charge, upon request.
- (b) The Privacy Policy sets out: the personal information RSYS collects; how RSYS collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of RSYS' management of the information.
- (c) By the Customer providing instructions to RSYS for the supply of Goods and Haul Out, the Customer is consenting to RSYS collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of RSYS' Privacy Policy, and in accordance with Australia's privacy laws.

3. USE:

3.1 The Customer will ensure:

- (a) that any person or entity requested by the Customer to carry out any work on the Vessel, obtains the consent of RSYS to work in the Boatyard and provides RSYS with evidence satisfactory to RSYS that the person or entity has insurance acceptable to RSYS and enters into such agreement(s) with RSYS as RSYS may require. The Customer may presume each Concessionaire occupying part of RSYS's facilities has fulfilled the requirements of this Clause.
- (b) at all times keep the area of the Boatyard immediately adjacent to the Vessel in clean and tidy condition, and shall not store supplies and materials, accessories or debris on the Boatyard.
- (c) deposit all garbage in the receptacles provided, other than where RSYS, in its sole discretion, considers the amount of waste to be removed to be excessive, then the removal of this waste shall be at the Customer's expense.

3.2 The Customer shall not:

- (a) make nor permit to be made any noise or disturbance, or perform any act which in the opinion of RSYS, in its sole discretion may be an annoyance or cause a nuisance to any other person or body in and around RSYS or RSYS's neighbours;
- (b) carry out any work on the Vessel or on the Boatyard between the hours of 4.00pm and 7.30am;
- (c) undertake sandblasting of the Vessel;
- (d) carry out any spray-painting work without the prior written consent of RSYS, and any such spray-painting work shall be undertaken only with adequate covers for the protection of other vessels;
- (e) permit any work or activity to be carried out or undertaken on the Vessel or in the Boatyard in a manner which may cause death or injury to any person, damage to property, cause any pollution or breach any applicable law concerning workplace injury, workers compensation, occupation health and safety or protection of the environment.

4. CHARGES AND PAYMENT:

- 4.1 The Customer shall duly and punctually pay all charges when levied by RSYS, and in any event, before the Vessel is removed from the Boatyard, at the rate specified in the published scale of charges, or any tax invoice rendered subject only to the right of RSYS to review those charges at any time without notice.
- 4.2 The Customer shall if requested by RSYS whether before or during the Haul Out authorise RSYS to debit all charges levied by RSYS under this contract to a credit card account of the Customer or provide other security acceptable to RSYS for payment of such charges and by doing so the Customer warrants that there will be sufficient credit or funds available in that account or security to meet the charges incurred by the Customer.
- 4.3 Interest accrues on any amount owing after the due date at the rate of 9% per annum on balances over \$1000, accruing from the time an account exceeds 90 days past the due date until payment is received. In the case of a RSYS member charging to their account, this interest charge is applied to the full balance of the account.
- 4.4 The Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection costs and legal costs which RSYS has incurred or is liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.



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- 4.5 For the purposes of clause 4.4, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of the amount due (as agreed by RSYS and the collection agent) and the Customer expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) RSYS is not liable to pay the collection agent the commission, until the Customer has made payment of the Customer's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Customer makes a payment for an overdue debt.

If any moneys are owing under this contract by the Customer for the use of the services provided, RSYS shall be entitled to seize the Vessel and shall, from the date of such seizure, have a general lien upon, and the right of retention of the Vessel so seized until all moneys payable by the Customer under this contract have been paid in full.

- 4.6 If the moneys owing remain unpaid for a period of 90 days after RSYS shall have given notice to the Customer of seizure of the Vessel, RSYS shall be entitled without further notice to sell the Vessel by auction or otherwise, together with any chattels situated on or in the Vessel, and the proceeds of such sales shall be applied first towards the expense of seizure and sale, secondly the payment of moneys due to RSYS and lastly the payment of the balance (if any) to the Customer.
- 4.7 If there shall be a deficiency of funds from any sale of the Vessel pursuant to clause 4.7 to meet the costs noted above, RSYS may proceed to recover such deficiency from the Customer.
- 4.8 If the lien created by clause 4.6 of this contract is found to be unenforceable, the Customer acknowledges that the RSYS has a statutory lien over the vessel in any event pursuant to the *Storage Liens Act 1935* (NSW) to which section 73(2) of the *Personal Property Securities Act 2009* (Cth) applies.
- 4.9 The Customer indemnifies and saves harmless RSYS from all claims, suits and demands made by any person or corporation in respect of the Vessel or any chattels seized and sold pursuant to this contract.

5. RISKS AND INDEMNITIES:

- 5.1 The Customer warrants the Vessel is adequately insured, that the Customer carries Insurance against any loss, damage, injury or death occasioned by the Customer or the Vessel during the course of the Haul Out and that such insurance will remain current throughout the duration of the Haul Out. The Customer will provide evidence satisfactory to RSYS of such insurance(s) on request.
- 5.2 The Customer acknowledges that the Vessel placed in the Boatyard in accordance with this Contract, and any chattels in, or on fixed to the Vessel shall not be deemed to be in the custody, possession or control of RSYS in any manner whatsoever unless and until RSYS exercises its rights of seizure and sale referred to in this Contract.
- 5.3 Without limiting any rights of the Customer under the Australian Consumer Law:
- 5.3.1 the Vessel, and any other craft which is transported to or from or stored upon the Boatyard in accordance with the provisions of this Contract, is entirely at the risk of the Customer, and shall remain at the risk of the Customer throughout the term of this Contract. RSYS shall not either directly or vicariously, nor shall any officer, agent, contractor or employee of RSYS be liable in negligence or otherwise for any damage to the vessel or theft or loss from the Vessel, and any goods, gear or machinery situated on or around the Vessel whilst the Vessel is in the Boatyard, the Boatlifter or in RSYS, howsoever occurring including, but without limiting the generality of the foregoing loss or damage caused by the removal of the Vessel by any person not authorised by the Customer to remove it, whether such removal was permitted by RSYS or not.
- 5.3.2 RSYS shall not, either directly or vicariously, nor shall any officer, agent, invitee contractor or employee of RSYS be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer, or any agent, employee, contractor or invitee of the Customer or any other person in the Boatyard or the Boatlifter or in and around RSYS, or inside the adjoining Club buildings howsoever such loss, damage or injury may occur.
- 5.4 To the extent permitted at law, the Customer indemnifies and will keep RSYS indemnified against all actions, suits, claims, debts, obligations and other liabilities out of this contract, or out of any act or omission of the Customer, or the officers, agents, employees, contractors or invitees of the Customer and the Customer agrees to compensate RSYS for any loss or damage to the Boatyard, Boatlifter, mast Crane or RSYS or any craft in RSYS or in the Boatyard, or to any other property caused by, or resulting from the acts or omissions of the Customer or its officers, agents, employees, contractors or invitees.
- 5.5 If the signatory to this Contract, executes this Contract as "agent", or for or on behalf of the owner of the Vessel, then the signatory to this agreement warrants to RSYS that this Contract has been entered into with the full knowledge and consent of the owner of the Vessel, and the signatory further indemnifies RSYS from and against all and any claims against RSYS in addition to the provisions contained above.
- 5.6 Nothing in this Contract is intended to have the effect of contracting out the provisions of the Australian Consumer Law.

6. JURISDICTION

- 6.1 These terms and conditions and all matters concerning the business relationship between RSYS and the Customer shall be governed by the law of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales for the conduct of any litigation.

7. GENERAL:

- 7.1 RSYS shall be entitled, from time to time, to deliver up the Vessel stored in accordance with this Contract to any person producing this Contract or offering such other evidence of ownership or authority to receive the Vessel as RSYS may, in its sole discretion, deem satisfactory.
- 7.2 Any notice required to be given to the Customer may be delivered to the Customer either personally, or by posting it by Certified Mail addressed to the Customer at the address stated in this Contract.
- 7.3 Any breach of these terms and conditions shall be deemed to be a breach of this Contract entitling RSYS to cancel this contract forthwith without notice.



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- 7.4 The Customer cannot assign these terms and conditions without the prior written consent of RSYS.
- 7.5 RSYS can assign these terms and conditions to a third party without the consent of the Customer.
- 7.6 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of RSYS, RSYS is unable to perform in whole or in part any obligation under these terms and conditions, including delay in delivery of the Haul Out, RSYS shall be relieved of that obligation under these terms and conditions to the extent and for that period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.
- 7.7 Electronic Signatures shall be deemed to be accepted by either party providing that the parties have complied with section 9 of the *Electronic Transactions Act 2000* (NSW) and any other applicable provisions of that Act, or any Regulations referred to in that Act.
- 7.8 Sending Material Electronically: Pursuant to sections 7, 13-13B and 14E of the *Electronic Transactions Act 2000* (NSW), the parties to this Agreement consent to both give and receive information by electronic communication as defined in that Act. RSYS is able to send and receive documents electronically. However, as such transmission is not secure it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically (or you accept any document electronically), you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.