



SEA AUCKLAND

SEA AUCKLAND. Terms and conditions.

This agreement records the terms on which Ghidorah Group Limited, trading as, Sea Auckland (“we” or “us”) will lease/rent a PWC (“Personal Water Craft”/“Waverunner”) or any other equipment (collectively “Equipment”) to you and the terms on which Sea Auckland provides its tour (“Tour”), or any other services (collectively “the Services”), to you. Once signed by you, this agreement will be binding on you and any other person you authorise, or allow to use Sea Auckland’s Equipment as well.

Your booking

- You must complete our booking form including the following details:
 - What tours or other services you would like to receive; and
 - The dates you would like to participate in any tours or other services.
- Your booking will be confirmed when:
 - We have notified you that we accept your booking and have received the due payment; and
 - You have taken the time to review our FAQ’s (frequently asked questions) and full terms and conditions, and accept them in their entirety.

Payment

You will pay all fees as recorded on our website or otherwise notified by us when you submit your completed booking form. Those rates may change from time to time. However, we will not alter those rates applicable to your rental once your booking has been confirmed.

You will pay the total fee prior to the start of a Tour/Hire with Sea Auckland, or prior to hiring/leasing any of its Equipment.

All fees and other charges are inclusive of GST (Goods & Services Tax) and must be paid in New Zealand Dollars.



We accept payment by credit or debit card through our online booking system or via a mobile payment system.

Sea Auckland accepts the following credit cards: *Visa* or *Mastercard*.

You agree that by signing this agreement and by providing a credit card for payment, all charges under this agreement (including any amounts payable under the “liability” and “insurance” sections) may be charged to that credit card.

Changing your booking and/or cancellations

If you wish to make any amendments to your booking once it has been confirmed and we agree to those amendments, the fees you will pay will be re-calculated at the rate applicable on the date of amendment.

If you wish to cancel your booking you must provide written notice to us. If you cancel your booking less than 24 hours before the booking, the total fee will be forfeited unless we can transfer your booking to another date (at our entire discretion).

We may cancel or reschedule your booking (including location) in the event of adverse weather conditions, mechanical failure, or in any other circumstances which prevent us from providing tours or other services to you. If we cancel or reschedule your booking in these circumstances:

- Before the start of the tour and we cannot reschedule your booking to a different date or location, we will refund the fees paid by you; or
- Sea Auckland may cancel your booking if-
 - You are or appear to be intoxicated, under the influence of drugs or for any other reason we consider you may be a hazard to yourself or anyone else;
 - Any mechanical failure is a result of misuse of the equipment, use of the equipment other than instructed by Sea Auckland, or deemed outside of “normal” operating procedures.



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If we cancel your booking in these circumstances all fees paid will be forfeited.

Use of the equipment

The PWC operator must be 18 years of age or older. Up to 2 additional passengers (maximum total weight of 200kgs) are permitted and are recommended to be at least 8 years of age or older and must be accompanied by a legal parent or guardian.

You, the PWC operator and your passengers (as appropriate) must:

- Follow all safety and usage guidelines provided by us;
- Maximum speed of 5 knots within 200m of shoreline
- Maximum speed of 5 knots within 50 metres of other vessels or persons
- Maximum speed of 5 knots within 200 metres of blue & white dive flag
- Comply with all New Zealand Maritime and other applicable laws.
- Wear or use any safety equipment provided by us;
- Ensure all reasonable care is taken in operating the PWC;
- Monitor any warning lights or sounds indicating any potential malfunction and immediately notify us and shut down the PWC if it is safe to do so.

You, the PWC operator and your passengers (as appropriate) must not:

- Operate the PWC under the influence of alcohol and/or drugs;
- Allow the PWC to be operated outside of your authority;
- Smoke on the PWC;
- Unintentionally, intentionally or recklessly cause damage to the PWC or any other equipment, including safety equipment, supplied by Sea Auckland to you in regards to any service offered by Sea Auckland. This includes submerging the PWC in water, beaching, or allowing the PWC to leave the water or using excessive force in operating the PWC.

If you intentionally, unintentionally or recklessly or misuse the equipment whilst in the care of Sea Auckland and the equipment provided by Sea Auckland, then your hire/tour will be



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terminated and a non-refundable \$1000 PWC retrieval fee will be charged plus any additional costs for damages (see insurance section of Terms & Conditions).

You as a competent operator

You represent and certify that you are familiar with the operation of the Equipment, and You are reasonably competent and physically fit to use the Equipment. By choosing to operate a PWC, You assume all responsibilities and risks for any injuries and/or medical conditions, as detailed further below. You are responsible for determining weather conditions, including rain, snow, hail, ice or electrical storms, and/or any other conditions, whether caused by the weather or otherwise, that make it dangerous to operate our Equipment. You are advised to adjust your operating behaviour to suit all conditions and variables, including weather, sea conditions and marine traffic.

We may restrict your use of PWC's, in certain areas due to public events and/or adverse weather conditions. Sea Auckland will advise you of any travel restrictions during the Tour/hire period.

If you intentionally, unintentionally or recklessly damage any of Sea Auckland's Equipment you hire or whilst on your Tour, then the Tour/hire will be terminated and you will be held liable for the cost of making good the damage. If the damage cannot be repaired or remedied, you will accept ownership of the damaged Equipment at current recommended retail price of replacement.

Compliance with Laws

You agree to follow all laws, by-laws, rules, regulations, and/or ordinances pertaining to the use, riding and/or operation of the PWC including those pertaining to the PWC in the local area where You are operating the PWC, including, without limitation, maritime laws.

You are solely responsible and liable for any violation of any laws, by-laws, rules, regulations, and/or ordinances while using the Services, including improper operation of the PWC, and you agree that you are solely responsible and liable for any and all consequences, claims,



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demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, lawyers' fees, judgments, fees (including impounding fees charged by any local government) and/or disbursements of any kind, or nature whatsoever, whether foreseeable or unforeseeable, and whether known or unknown, as a result of any such violation while using the Services of Sea Auckland.

Fines.

The Waitemata Harbour & Hauraki Gulf have localised and specific rules, regulations and by-laws that must be followed. These include, but are not limited to, the 12 knot speed limit through the passage of water between the Auckland Harbour Bridge & North Head. The whereabouts of where it is allowable & not allowable to exceed 12 knots when in this area will be and has been made aware to you and your party. Should you exceed this imposed speed limit, you are liable for any fines & penalties should they be imposed on you by the NZ Police and/or Auckland Harbour Master. You will also be liable for a daily charge of \$500 should the PWC be impounded or confiscated due to such activities, which represents our loss of income from the PWC being impounded and Sea Auckland being unable to use it for business.

Limited liability of Sea Auckland / assumption of risk by you.

Limited Liability: Nothing in these terms shall limit or exclude Sea Auckland's liability to You for any liability that, by law, may not be limited or excluded.

Cap on Liability: To the extent permitted by law, Sea Auckland's liability to you under or in connection with this Agreement must not exceed the net amount paid by You to Sea Auckland under this Agreement.

Indirect Loss: To the extent permitted by law, under no circumstances shall we be liable to You under or in connection with this Agreement for indirect or consequential losses.

Risk: You acknowledge that accidents can happen when you are operating the equipment provided to you by Sea Auckland, that you have been warned about this possibility, and you assume all risk in relation to the operation of the PWC and your use of it. To the extent permitted by law, you release Sea Auckland & Ghidorah Group Limited from all claims (including negligence claims) in this respect.



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If the Equipment suffers a mechanical breakdown or some other defect during the Tour/hire period, we may in our discretion provide you with replacement equipment, rebook you to a later date or refund the fees paid by you.

Application of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986:

These limitations do not however limit any rights you may have under the Consumer Guarantees Act 1993 or Fair Trading Act 1986.

Except to the extent that the Consumer Guarantees Act 1993 applies or any other obligations cannot be excluded or limited under New Zealand law, the following provisions apply:

- We, our directors and employees, will not be liable to you in contract, tort (including negligence), breach of any legislative requirement, equity or for any other reason for damage to property, personal injury, disability, illness or death or for any consequential loss (including financial loss) suffered by you or any other person as a result of the use of the equipment or in connection with any tours/hire or other services provided or any act or omission of any person.
- If we are liable to you or any other person for any reason including in contract, tort (including negligence), breach of any legislative requirement, equity or for any other reason, our total liability is limited to the fees you have paid to us for the use of the equipment and provision of tours or other services to you.
- You will indemnify us and our directors against any loss or liability whether direct or consequential (including loss of profits) or costs of any nature whatsoever incurred or suffered by any of them, arising from or in relation to:
 - Any breach of your obligations to us whether under this agreement or otherwise in contract, tort (including negligence), breach of any legislative requirement or for any other reason; or



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- Any breach of your obligations to any other person in contract, tort (including negligence), breach of any legislative requirement, equity or for any other reason for damage to property, personal injury, disability, illness or death, relating to the use of the equipment.

- You and any other people using the equipment or participating in any Tours or other services with you must sign an acknowledgement, waiver and release form before you may use the Equipment and participate in any Tours or other Services.

Photography and film

You may not use any photographs or film of you or your companion's use of the PWC to market or promote any other business or organisation without prior written consent from Sea Auckland.

We may use any photographs or film taken during the tour/hire (including any photographs or film of you or your companions) for any purpose including marketing purposes and display on our website and/or social media pages. You will not be entitled to receive any royalties, commissions or compensation for our use of the photographs or film.

Phones and/or cameras are taken out/used at the passengers own risk and Sea Auckland accepts no liability for damage to/loss of personal items during or after the Tour and/or any hire period.

Physical health and medical treatment



You must notify us of any medical condition, injury or disability which may affect your ability to safely operate or participate in any Tour/hire or other Services provided by Sea Auckland and any special requirements you may have as a result of any medical condition, injury or disability. This obligation continues after this agreement is signed until completion of the service provided to you and your companions.

It is your responsibility to ensure your level of fitness is sufficient to allow you to use the PWC and participate in any tours or other services. If we believe that your health, level of fitness or conduct at any time before or during the provided service is risking your or anyone else's health or safety, we may cancel your booking. If we cancel your booking in these circumstances all fees paid will be forfeited.

Insurance

Sea Auckland has insured its Equipment for cover in respect of damage to the PWC's and damage to third party property arising out of the use of the PWC's during a guided tour and/or hire.

If damage is caused to the Equipment or any third party property during the tour/hire period you will be required to pay for repairs up to the insurance excess of-

- \$2,000 for any Public Liability Claim.
- \$1,500 for damage to the PWC.
- \$2,500 for any theft/burglary of the PWC
- \$500 for any additional equipment belonging to Sea Auckland but not listed here.

The excess will be payable even if loss of or damage to the PWC is caused by a third party, unintentionally or intentionally. Sea Auckland will require the excess to be paid to Sea Auckland immediately by debit or credit card. Sea Auckland will also require a copy of your ID (either a valid New Zealand Driver Licence, Passport, or New Zealand Gun Licence) and your address, if any damage is done to any Equipment. If payment is not received immediately,



your credit card may be charged using the credit card information Sea Auckland has in its possession.

Sea Auckland will refund the excess paid by you if we or our insurer are successful in recovering the full repair or replacement costs from the third party or, we will refund you any amount residual from the repair invoice. It is at our sole discretion whether we process a claim through insurance or claim the losses from you.

However, you will be responsible for all losses arising from damage to the PWC or damage to third party property due to the use of the PWC during the tour/hire period if your conduct has caused our insurance to fail to respond to cover the losses. This includes, but is not limited to, your failure to comply with your obligations under the heading, “use of the equipment”.

Insurance cover is null and void if there has been any consumption of alcohol or drugs, and the hirer/tour participant will be responsible for all losses arising from damage to the PWC or damage to third party property during the hire/tour period.

If you or your companions have caused damage to the PWC and we are unable to rehire the PWC while it is being repaired or replaced, we may charge you a daily rate of \$1000 representing our loss of ability to rehire for each day that we are unable to use the PWC while it is being repaired or replaced.

We may charge you an additional administration fee of \$60.00 for processing damage claims both internally or involving our insurer.

Our insurance does not cover loss of or damage to your personal belongings. We recommend you obtain personal insurance to cover loss of or damage to those items.

Damage to Sea Auckland’s Property.



If you or your companions have caused damage to the PWC replacement value of any PWC or PWC part damaged will be charged to the hirer. Replacement values for PWC and PWC parts are available for prior viewing, and will be purchased through our supplier on their website www.yamaha-motor.co.nz and will be paid for by the hirer/tour participant as soon as possible via their website or other means agreed upon by both Sea Auckland & the party who caused the damage.

Privacy act 1993

You acknowledge that personal information collected or held by us (whether contained in this agreement or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:

- Marketing;
- Administering, whether directly or indirectly, our contracts with third parties and enforcing our rights under those contracts;
- Enabling us communicate with you for any purpose.

New Zealand law applies

The law of New Zealand applies to this agreement and the hire of equipment and provision of tours or other services to you. The courts of New Zealand have exclusive jurisdiction in respect of this agreement and the services contemplated



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Acknowledgment

I acknowledge that I have read, accepted and understood these terms and conditions, and agree to be bound by them.

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

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Name: _____

Name: _____

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