



## **Boat Retailers and Brokers Code of Practice**

**Boat retailers and brokers must adhere to the following terms:**

### **1. Standard of Service**

a. Members are required to maintain the best practicable standard of service to Customers having regard to the nature and price of the goods and services supplied;

b. Members shall comply fully with all statutory and regulatory requirements applicable to their business, products and services, including in particular all safety regulations.

c. Members shall act fairly and honestly in all their business dealings and will maintain a professional attitude at all times.

d. Members shall not conduct their business in a manner which tends to bring the Federation or its membership into disrepute.

e. Members shall provide Customers with accurate and reliable information including as to price, specification and time of delivery of their products and shall neither misrepresent nor misdescribe their products or services. So far as possible Members shall establish the individual requirements of each Customer before making recommendations to them.

f. Members will at all times act in an environmentally responsible manner, observing law, the recommendations of the BMF Environmental Code of Practice and any other special or group code of conduct or practice that may apply to the Member.

### **2. Advertising**

a. No Member shall commission or use advertising which tends to mislead Customers or the public at large.

b. Members shall observe the requirements of all laws, regulations and Codes of Practice applicable in the place of advertising and the relevant area of circulation or broadcast.

c. Any finding by a competent Court or enforcement authority or regulatory body against a Member in respect of the advertising requirements set out in the Code shall be deemed to be

evidence of a breach of the Code.

d. Members are encouraged to incorporate the Federation's Boat Retailers and Brokers logo in their corporate literature and visual advertising material provided always that they comply with the terms of Rule 3 of the Federation's Rules regarding use of the logo.

### **3. Privacy and Data Protection**

Members shall comply with the Data Protection Act 1998 and any other related and applicable legislation in force in their geographical area of operation.

### **4. Contracts with customers**

#### **a. Contract Forms**

1. Members shall maintain proper written records of the basis of agreement between them and their Customers in respect of all transactions entered into.
2. Members are strongly encouraged to transact their business upon the Federation's standard form contracts and terms of business wherever practicable and should only depart from such terms in the case of contracts with consumer Customers where they are accepting an equivalent or higher standard of contractual responsibility toward the Customer than provided by the standard form, or by the standard forms of other trade bodies relevant to the particular trade.
3. Members shall not trade upon edited or amended copies of the Federation's standard form contracts or Terms of Business without making the extent of such editing or amendment clear to the Customer before entering into any contractual arrangements.

#### **b. Warranties**

Where a Member supplies a warranty or guarantee free of charge to consumer Customers it shall comply with the requirements of the Sale and Supply of Goods to Consumers Regulations 2002 or equivalent legislation under the law of the contract.

### **5. Handling Customer Monies (Brokerage)**

Boat brokers must protect customer monies by using:

1. A solicitor's trust account (escrow account) whereby

1.1 A solicitor holds the money until the transaction is completed. This will require an agreement between the parties and the account will require all party signatures for funds to be released.

1.2 Confirmation of use of this method will be required by BMF from the member's solicitor that such an arrangement is in existence initially and then at any such intervals as the BMF may decide. Members are also required to sign a declaration that such an account is being used to hold brokerage monies. Members will then be required to declare that such arrangements continue to be in place and that such an account is used to keep brokerage monies on an annual basis via the BMF turnover declaration form. OR;

2. A separate client bank account whereby:

2.1 The member will set up a bank account exclusively for holding customer monies, preferably with a separate bank to that which holds the business's other accounts.

2.2 Confirmation will be required from the member's bank that such an account is in existence initially and then at any such intervals as the BMF may decide. Members are also required to sign a declaration that such an account is being used to hold brokerage monies. Members

will then be required to declare that such arrangements continue to be in place and that such an account is used to keep brokerage monies on an annual basis via the BMF turnover declaration form.

Suggested wording acceptable to the BMF for confirmation from the bank is shown in appendix A or available directly from the BMF.

Guidance: Client or customer monies for the purpose of this code is defined as any and all deposits and sale proceeds. All such monies must be held in one of the two above described accounts or pass through these accounts before being passed on to the vendor or back to the purchaser in order to ensure that all such monies are clearly identified as monies belonging to clients. At no time, should any such monies be held or passed through any other business account save for debit and credit card transactions which may be paid into a company's general account and must be transferred immediately from that account to the client account in order to remain distinct as client monies. Where the majority of card transactions are for brokerage, credit and debit transactions should be set up to go directly into the client account and any non brokerage monies transferred out of the client account to the other account immediately.

You must not hold any money other than client money in the designated client account. Legitimate deductions, for example, VAT, commission, and interest may be withdrawn from the client account and transferred to another business account when these deductions are due.

## **6. Liability Law**

A Member shall not attempt to oust the application of relevant consumer protection legislation by nominating a governing law for the contract other than the law of the country with which the transaction has the closest connection, or the law of the states in which the Member and the Customer are domiciled.

## **7. Dispute Resolution**

Where appropriate Members shall encourage their Customers to refer disputes which arise between them, and which cannot be amicably settled, for resolution under the Federation's Alternative Dispute Resolution scheme.

## **8. Transactions and Correspondence**

a. In the event of a dispute between a Member and a Customer, all correspondence shall, wherever possible, be dealt with within the following time limits:

b. An acknowledgement shall be sent not later than 21 days from the date of receipt of correspondence: and

c. A detailed reply, or a reply containing a detailed explanation for any delay, shall be sent not later than 28 days from the date of receipt of correspondence.

d. If a matter that comes within the scope of this Clause is dealt with other than in writing, the Member shall nevertheless produce evidence in writing or other appropriate form that the matter has been dealt with in accordance with the time limits stated above.

## **9. Complaints**

a. In the event of a complaint by a Customer, Members shall make every reasonable effort to reach a swift and fair solution.

b. Where a transaction has taken place "on-line" Members shall accept "on-line" complaints from Customers and deal with them within an appropriate period of time, which time period

shall be no longer than that set out above

c. Retailers shall make every reasonable effort to deal with complaints of a minor and general character with a view to avoiding recourse to suppliers. When complaints are of such a nature that reference to the supplier is necessary, a Retailer shall use his best endeavours acting as an intermediary to bring about a satisfactory conclusion.

d. Any unresolved complaint arising out of an alleged breach of contract or negligence by a Member may be referred to Alternative Dispute resolution. It shall be subject to such time, financial and other restrictions as from time to time shall be agreed.

## **GENERAL CONDUCT**

### **10. Misleading Use of the BMF Logo, etc.**

a. A Member shall not, directly or indirectly, cause, permit, assist, encourage or in any other way provide any person, company or firm not in membership of the Federation with the opportunity to represent itself as a Member or as being associated with or connected to the Member or the Federation in any way that is likely to mislead any person by the use of the Federation logo.

b. Where a Member is alleged to be in breach of this provision the Member shall comply with any requirement placed upon it by the Federation within any time limit that may be specified.

### **11. Payment of Debts**

Members shall settle all debts properly due without any undue delay or within any period agreed with the creditor.

### **12. Insurance**

a. Members shall carry appropriate levels of insurance cover with insurers authorised to conduct insurance business in the Members' geographical area of operation so as to comply with 1. Their statutory obligations to insure in respect of Employer's Liability and motor risks, and 2. Any professional body requirements they may be under in respect of professional indemnity insurance – see 14a

b. Prudent risk assessment principles in respect of public liability, occupiers' liabilities, product liabilities and bailee's liabilities

### **13. Intellectual Property Rights**

a. Members shall respect the intellectual property rights of third parties' and shall not market, sell or facilitate the sale of counterfeit goods or pirated material; nor shall they abuse or infringe trademark, patent or design right registrations in any jurisdiction.

b. They shall supply Customers with good title to all intellectual property rights reasonably necessary to use the goods or services they supply in the manner intended and advertised without infringing the rights or interests of any third party in those goods or services.

### **14 On-line**

In addition to the other provisions of this Code any Member transacting business or transferring data on-line (including the use of E.mail) shall use commercially reasonable security procedures to protect Customer information and payment details and to guard against the distribution of electronic viruses.

15. All Boat Retailer and Brokers shall have and/or will offer to clients:-

- a. Use their best endeavours to verify the complete history of ownership of any second-hand craft offered for sale.
- b. Use their best endeavours to verify (if possible) the VAT status of second-hand Craft, advising prospective clients of any VAT liabilities that may exist in the absence of proof positive of VAT paid status.
- c. All craft offered for sale to conform with relevant legislation (RCD etc).
- d. For second-hand craft the ability to offer clients a choice of at least 3 suitably accredited surveyors from IIMS, RINA or YBDSA.
- e. Staff training – minimum standards and staff development and on-going training

## **APPENDIX A**

**The BMF will require confirmation from the broker's bank that a separate client account is in existence from time to time as the BMF may decide.**

**Below is suggested wording that will be accepted by BMF from the broker's bank. It is suggested that members forward this wording to the bank when requesting confirmation:**

" In respect of the money standing to the credit of the account held by the account holder the Bank is not entitled to combine any account with any other account or to exercise any right of set-off or counter claim against money in that account in respect of any sum owed to it by any other account of the account holder and that the title of the account sufficiently distinguishes that account from any account containing money that belongs to the account holder, and is in the form requested by the account holder. "

**If the member is using a Solicitor's trust account instead, a confirmation will be requested from the solicitor that such an arrangement is in place and being used by the member.**