

1. Declarations by the Owner/Owners

1.1. Declarations by the Owner as to his business and VAT status and the VAT status of the Vessel.

The Owner declares that the factual matters set out in the description of the Vessel are true and that he is the sole legal and beneficial owner of the Vessel and absolutely entitled to transfer his interest in the Vessel, subject only to the concurrence of any joint Owner, mortgagee or financier whose details and identity have been disclosed above. Furthermore he understands that the Broker will rely on the accuracy of the facts and matters referred to in this Clause 1 and that the accuracy of the information provided by him to the Broker forms a material part of the consideration for this agreement and that proper documentary evidence will be required to substantiate this information in due course.

1.1.1. Declarations by the Owner as to correctness of particulars:

1.1.1.1. The Owner hereby instructs the Broker to act as his Agent for the sale of the Vessel, and declares that to the best of his knowledge and belief the particulars attached or otherwise signed or supplied by the Owner are correct and that all known defects have been disclosed.

1.1.1.2. The Owner accepts that the Broker shall qualify any particulars issued in relation to the Vessel with a disclaimer in the following or similar form:-

"In this transaction we are acting as Brokers only. Whilst every care has been taken in their preparation, the correctness of these particulars is not guaranteed. The particulars are intended only as a guide and they do not constitute a term of any contract. A prospective buyer is strongly advised to check the particulars and where appropriate to have the vessel fully surveyed, inspected and water trialled".

1.1.1.3. The Owner agrees to indemnify the Broker against any claim or liability (including the cost of defending any such claim or resisting any such liability as may be alleged) from any third party should any of the information provided by or on behalf of the Owner and subject to these declarations prove to be incorrect or misleading.

2. Agreement to sell

2.1. The Owner agrees to sell at the asking price or to give the Broker authority to negotiate reasonably and enter into a sale agreement with a prospective buyer.

2.2. In the absence of the Owner attending the Vessel to perform necessary periodic cleaning and maintenance this will be undertaken by the Broker to ensure the vessel is maintained to a suitable standard to reflect the listing for sale. Any reasonable costs incurred to commission the Boat, Engine, Electrics and serviceability of the Trailer for the purpose of effecting a sale will be deducted from the proceeds of sale.

2.3. The Broker does not charge for storage unless the Owner decides to remove the Vessel from sale, following the agreed notice period, where the storage cost will be due based on a weekly charge depending on the Length Overall. This is to be settled in full before removal of the Vessel.

3. Brokerage commission.

3.1. If a sale of the Vessel is completed to a purchaser (or his nominee or agent) who was introduced by and and/or with whom the Broker conducted negotiations in relation to the Vessel during the validity of this agreement then the Owner shall pay commission to the Broker on the actual price paid by the Purchaser at the rates set out in Clause 3.2 below. This commission shall be payable whether the sale occurs during the term of this Agreement or within 12 months after the termination of this Agreement.

3.2. Commission Rates

3.2.1. The rate of commission to be paid by the Owner to the Broker shall be 8 % which shall be calculated on the net sale price of the Vessel.

3.2.2. The Broker shall, in addition and where applicable, be entitled to charge and recover VAT on any commission earned at the rate then prevailing in the relevant territory.

- 3.3. If the Broker introduces a prospective purchaser for the Vessel, the Broker shall be entitled to one half of the commission rate set out in Clause 3.2 on the agreed price if:
- 3.3.1. the purchaser defaults on a contractual obligation to complete the purchase in circumstances in which any deposit which he has paid becomes forfeit; or
- 3.3.2. a sale falls through following survey and the Owner is unwilling to abate the price in accordance with clause 5 of the standard form sale and purchase agreement described in Clause 2.1 or any analogous term in any other contract form, for defects in the Vessel or deficiencies in the inventory revealed on survey and not previously disclosed by the Owner to the purchaser.
- 3.4. If the Broker introduces a prospective purchaser for the Vessel who is ready, willing and able either to complete the purchase at the asking price, or (where the price has been renegotiated with the Owner's consent) at any renegotiated price, but the Owner refuses to proceed with the sale of the Vessel in a reasonable time or manner or at all then the Broker shall be entitled to his full commission at the rate set out in Clause 3.2 on the asking or renegotiated price, as the case may be.

4. Retention by Broker of commission and outstanding charges

- 4.1. On completion of an agreement for sale the Broker may deduct commission and VAT from the proceeds of sale together with any other outstanding charges relating to the Vessel and which are for the account of the Owner.
- 4.2. When the Broker is entitled to half commission in accordance with clause 3.3 the Broker may deduct that commission and VAT together with any other outstanding charges relating to the Vessel which are for the account of the Owner from any deposit forfeited by the Purchaser.

5. Client monies and Proceeds of sale

- 5.1. The Broker shall receive and hold all deposits or purchase funds in a designated Client Trust Account denominated as such in the account name and operated by the Broker [or by a Solicitor or Chartered accountant on his behalf] and segregated at all times from his own monies. The basis and capacity in which such funds are held shall be determined in accordance with the contractual instrument under which they have been paid. The Owner hereby authorises and instructs the Broker to promptly distribute the net proceeds of any sale in accordance with the registered ownership of the vessel or as directed by all parties to ownership, no later than 7 days of completion and delivery of the Vessel to the purchaser.

6. Notification of alterations to price or location, withdrawal from sale or sale elsewhere.

- 6.1. The Owner undertakes to advise the Broker promptly of any changes in the asking price or location of the Vessel and undertakes that the Vessel will not be offered at a lower price elsewhere and also undertakes to notify the Broker immediately if the Vessel is withdrawn, or sold elsewhere, and in the latter case, to provide the Broker with written confirmation of the name and address of the purchaser.
- 6.2. The Owner shall notify the Broker of the names of any other brokers instructed in relation to the Vessel at any time.

7. Insurance

- 7.1. The Owner confirms that the Vessel is insured against usual marine perils and third party risks and will remain insured until completion of a sale and such insurance shall cover all viewing and sale arrangements, including slipping for survey, and sea trials. The Owner shall also be responsible for all cleaning, maintenance, berthing, storage and security of the Vessel pending sale.
- 7.2. The Broker undertakes to maintain professional indemnity cover for himself, his employees and agents in respect of their potential liability to the Owner in respect of any breach of this agreement or any other act, omission or breach of duty giving rise to loss.

8. Access to view and key to be available

8.1. The Owner will give written instructions to the relevant mooring or marina operator to permit the Broker to access the Vessel at any time and shall make keys available for this purpose. Where appropriate these instructions may be given in the Broker's standard form.

9. Submission of offers

9.1. The Broker undertakes to submit promptly to the Owner every offer received for the Vessel, regardless of whether such offer shall be at the asking price or at a level known by the Broker to be unacceptable to the Owner.

10. Minimum Period and termination by notice.

10.1. This Agreement shall be for a minimum period of [6] months (unless the Vessel is sold or the Agreement is terminated or frustrated).

10.2. If the Vessel shall remain unsold [5] months after the date of this Agreement either party may terminate this agreement by giving 30 days' notice in writing to the other.

10.3. Termination of this Agreement shall not affect the Broker's right to be paid commission in the event of a sale to a purchaser who was introduced by the Broker or with whom the Broker conducted negotiations during the currency of this Agreement in accordance with Clause 3.1.

11. Termination on insolvency of either party

11.1. This Agreement shall terminate automatically if either party becomes insolvent or undergoes any formal insolvency process or compounds with his/its creditors.

12. Interpretation

12.1. The word "Owner" shall include joint owners and any person acting with the written authority of the Owner or part Owners of the Vessel giving instructions for sale.

12.2. Unless this Agreement has clearly been marked "Central or Sole Listing Agreement" at the front page and initialled by both parties the agency hereby created shall be non-exclusive and the Owner shall have the right to appoint other Brokers in respect of the Vessel (subject to the terms of Clause 6) or to sell it privately. However where the Agreement has been expressed to be a "Central or Sole Listing Agreement" any sale or disposal of the Vessel during the currency of the Agreement shall give rise to a right for the Broker to receive commission on the sale at the rate set out in Clause 3.2, whether or not the purchaser was introduced by the Broker. The minimum term of a "Central or Sole Listing Agreement" shall be [90] days and may be terminated thereafter on written notice. The Broker shall be entitled to commission on any sale made within 12 months of the termination of a "Central or Sole Listing Agreement" to a person introduced to the Vessel by the Broker during the period of the "Central or Sole Listing Agreement".

12.3. If any provision of this Agreement is deemed for any reason to be invalid, void or deleted, the Agreement shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, the Sellers and the Purchaser shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision.

13. Entire Agreement

13.1. The Agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.

13.2. Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.

13.3. Nothing in this clause shall limit or exclude any liability for fraud.

13.4. Any variations or alterations to this agreement must be in writing and signed by the parties.

13.5. This Agreement may be executed by the parties in any number of counterpart, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

14. Law and Jurisdiction

14.1. This Agreement and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by and construed in accordance with English law.

14.2. Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with this Agreement shall:

14.2.1. if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or

14.2.2. where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

15. Dispute Resolution Scheme

15.1. The BMF and the RYA recommend that disputes arising out of or in connection with this Agreement, when they cannot be resolved by negotiation, be submitted with the written agreement of the parties, to mediation under the BMF's Dispute Resolution Scheme. Details of the Scheme are available at www.britishmarine.co.uk/drs.