

# NYA BROKERAGE AGREEMENT, TERMS AND CONDITIONS FOR THE LISTING OF A SECOND-HAND VESSEL

This Listing Agreement (the "Agreement") forms our terms and condition of Brokerage between the vessel owner as stated in our Craft Detail Form (the "Owner") and Norfolk Yacht Agency Ltd of Brundall Bay Marina, Brundall, Norfolk NR13 5PN and Ferry Marina, Ferry Road, Horning, Norfolk, NR12 8PS (the "NYA")

NYA, who are a member of British Marine irrevocably and unconditionally undertakes to hold and apply any deposit(s), sale proceeds and any other sum received in accordance with the terms of this Agreement and any Sale and Purchase Agreement subsequently entered into in relation to the Vessel. NYA's Account for this purpose is:

**Account Name:** Norfolk Yacht Agency Ltd  
**Account Number:** 40667005  
**Sort Code:** 20-62-53  
**IBAN:** GB20 BARC 2062 5340 6670 05  
**BIC:** BARCGB22  
**Bank's name:** Barclays  
**Bank's address:** Barclays Corporate, 3 St James's Court, Whitefriars, Norwich, NR3 1JR (the "NYA's Account")

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In respect of the vessel described in the Craft Detail Form;

**1. THE APPOINTMENT** shall be a sole and exclusive appointment of NYA. The Owner agrees not to sell the Vessel privately or authorise any other broker to sell or list the Vessel.

**2. ASKING PRICE** is as stated on the Craft Detail Form but is subject to amendment by agreement with the Owner (the "Asking Price")

**3. AGREED COMMISSION** is 8% plus VAT and Subject to a minimum commission of £1500 including VAT (the "Agreed Commission")

**4. PRESENTATION CHARGES** apply in order to guarantee the presentation of vessels within the sales area. NYA operate a mandatory wash down service at the rate of £1.50 per foot per month, payable monthly while the vessel is on site and displayed for sale.

**5. MOORING CHARGES** NYA will supply a berth within the sale area free of charge whilst the vessel is for sale, for a period of 6 months, after such time a charge of £16 per metre per month will apply.

## 6. Declarations and Undertakings of the Owner

**6.1** The Owner declares and warrants to NYA that:

**6.1.1** The proposed sale of the Vessel is not related to the Owner's business, trade or profession and that VAT is not chargeable on the selling price (unless otherwise declared within the Craft Detail Form);

**6.1.2** The factual matters set out in the description of the Vessel above are true, accurate and complete;

**6.1.3** He/she/they are the sole legal and beneficial owner of the Vessel and absolutely entitled to transfer title to the Vessel free and clear of any liens, charges, claims, mortgages and encumbrances of any kind (subject only to the agreement of any joint Owner, mortgagee or financier whose details and identity have been disclosed above); and

**6.2** The Owner acknowledges that NYA is entitled to (and will) rely on the accuracy of the description of the Vessel, the declarations above and the information provided by the Owner to NYA from time to time in relation to the Vessel.

**6.3** The Owner agrees and undertakes:

**6.3.1** To provide NYA with specifications for the Vessel, an inventory of the equipment to be included in the sale and copies of all relevant registration and other certificates relating to it (confirming which originals he/she holds). Promptly thereafter and at the NYA's request, the Owner shall provide any further information relating to the Vessel and its ownership which the NYA may reasonably request;

**6.3.2** To supply NYA with the names and details of all prospective purchasers who contact the Owner directly in relation to the sale of the Vessel;

**6.3.3** To be responsible for the cost of all cleaning, maintenance, berthing, storage and security of the Vessel pending sale;

**6.3.4** To insure the Vessel against usual marine perils and third party risks and to ensure that the Vessel remains insured until completion of a sale. Such insurance shall cover all viewing and sale arrangements, including slipping for survey;

**6.3.5** To indemnify and hold harmless NYA 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 above declarations or information provided by or on behalf of the Owner prove to be incorrect or misleading;

**6.3.6** To sell the Vessel to any willing buyer who makes an offer to purchase at the Asking Price or, following negotiations, at such other price as may be agreed with the Owner; and

**6.3.7** To negotiate reasonably with any willing buyer introduced by NYA and to enter into an agreement for the sale of the Vessel based on British Marine's standard terms or such other terms as may be agreed with the purchaser (the "Sale and Purchase Agreement").

## 7. NYA's Obligations

**7.1** NYA agrees:

**7.1.1** To seek prospective purchasers for the Vessel through direct promotion of the Vessel;

**7.1.2** To prepare information describing the Vessel and to publish this information in the relevant markets;

**7.1.3** 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 to be unacceptable to the Owner;

**7.1.4** To qualify any particulars issued by it in relation to the Vessel with a disclaimer in the following or similar form:-

**7.2** The company normally acts as broker for the vendor who unless otherwise stated is not selling in the course of a business. Whilst every care has been taken in the preparation of these particulars the correctness is not guaranteed and they are intended as a guide only and do not constitute a part of any contract. A prospective buyer is strongly advised to check these particulars and where appropriate and at his own expense to employ a qualified marine surveyor to carry out a survey and/or to have an engine trial conducted which if conducted by us shall not imply any liability on our part.

**7.2.1** To maintain professional indemnity cover for NYA 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. Brokerage commission**

**8.1** Sale to party introduced by NYA after termination of Agreement – if a sale of the Vessel is completed to a party introduced to the Owner by NYA, NYA shall be entitled to the Agreed Commission on the actual price paid by the purchaser.

**8.2** Incomplete Sales – if:

**8.2.1** A prospective purchaser has entered into a Sale and Purchase Agreement in relation to the Vessel but subsequently, in breach of that agreement, fails to complete the purchase in circumstances in which any deposit which he has paid becomes forfeit;

**8.3** NYA shall nevertheless be entitled to be paid one half (1/2) of the Agreed Commission on the Asking Price from the forfeit deposit.

**8.4** Owner's Default - If the Owner has entered into a Sale and Purchase Agreement in relation to the Vessel but subsequently, in breach of that agreement, fails to complete the purchase in circumstances in which the purchaser is entitled to the return of all or substantially all of the deposit, the Owner shall pay NYA the Agreed Commission in full on the Asking Price.

## **9. Commission Rate**

**9.1** The rate of commission to be paid by the Owner to NYA shall be the Agreed Commission which shall, unless otherwise indicated, be calculated on the net sale price of the Vessel.

**9.2** In addition, and where applicable, NYA shall be entitled to charge and recover VAT on the Agreed Commission, at the rate then prevailing.

## **10. Client monies and Proceeds of sale**

**10.1** NYA shall receive and hold any deposits and the balance of sale proceeds in the NYA's Account in accordance with the terms of this Agreement and any related Sale and Purchase Agreement. NYA shall keep proper books of account in respect of all such sums received. The basis and capacity in which such funds are held shall be determined in accordance with the Sale and Purchase Agreement under which they have been paid and the terms of this Agreement.

**10.2** The Owner hereby irrevocably authorises and instructs NYA promptly to distribute the net proceeds of any sale in accordance with the ownership of the Vessel and the terms of any Sale and Purchase Agreement.

**10.3** The Owner further irrevocably authorises and instructs NYA to settle any other outstanding charges relating to the vessel which are for the account of the Owner (including but not limited to any berthing or mooring fees due up to and including the date of completion).

## 11. Retention by NYA of commission and outstanding charges

**11.1** On completion of the sale of the Vessel NYA may deduct the Agreed Commission and VAT payable on the Agreed Commission, together with any other outstanding charges relating to the sale of the Vessel, which are for the account of the Owner, from the proceeds of the sale.

**11.2** When NYA is entitled to one half of the Agreed Commission as a result of an incomplete sale, NYA may deduct that commission and VAT together with any other outstanding charges relating to the sale of the Vessel which are for the account of the Owner, from any deposit forfeited by the purchaser.

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

**12.1** The Owner undertakes:

**12.1.1** To advise NYA promptly of any changes in the Asking Price or intended change in location of the Vessel;

**12.1.2** That the Vessel will not be offered at a lower price elsewhere; and

**12.1.3** To notify NYA immediately if, whether in breach of this Agreement or otherwise, the Vessel is withdrawn from sale, or sold elsewhere, and in the latter case, to provide NYA with written confirmation of the name and address of the purchaser.

## 13. Care, Custody and Control of the Vessel

**13.1** Responsibility for the care, custody and control of the Vessel remains entirely with the Owner. Although NYA may recommend display storage, maintenance, and other services, the final decision to employ such services remains with the Owner. NYA shall not be held responsible for any damages suffered by the Owner as a result of employing such services.

## 14. Access to the Vessel

**14.1** Where applicable the Owner will give authority to any mooring or marina operator to permit NYA to access the Vessel on reasonable notice at any time and shall make keys available for this purpose.

## 15. Commencement of Services

**15.1** Where the Owner is a consumer and this Agreement is an off-premises contract or distance contract, as defined in the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013:-

**15.1.1** The Owner may be able to cancel this contract within fourteen (14) days of the date of the Agreement, without giving any reason, by informing NYA of the decision to cancel it by a clear written statement to that effect; and

**15.1.2** Unless expressly instructed by the Owner not to do so, NYA will commence its service immediately upon verbal instruction; and

**15.1.3** If the Owner subsequently exercises the right under Clause 15.1.1 to cancel this Agreement, the Owner will pay NYA a proportionate amount of the Agreed Commission to reflect the services NYA has performed prior to notification of cancellation

## 16. Termination on insolvency of either Party

**16.1** This Agreement shall terminate automatically if either Party becomes insolvent or undergoes any formal insolvency process or compounds with his/her creditors.

## 17. Notices

**17.1** Any notice to be served under this Agreement on either Party shall be in writing and shall be sufficiently served if delivered personally or posted by recorded delivery to the address set out in this Agreement (unless the Party has by written notice to the other Party substituted a different address in England as the notice address). Any posted notice shall be deemed to have been received on the third business day after the time of posting.

**17.2** Notices may also be served by e-mail, in which case they shall be deemed received upon despatch if despatch was on a business day in the United Kingdom and within 0900-1700 hours UTC and there was no delivery failure notice. If despatched before 0900 hours UTC on a business day, the notice shall be deemed received at 0900 hours UTC that day. If despatched after 1700 hours UTC on a business day or on any non-business day, the notice shall be deemed received at 0900 hours UTC on the next business day.

## 18. Berthing/Mooring/Storage

**18.1** This Agreement does not replace any berthing, mooring or storage agreement(s) which may apply to the Vessel, unless otherwise specifically agreed by the Parties in writing.

## 19. Third Party Rights

**19.1** A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 20. Interpretation

**20.1** 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.

**20.2** 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 Parties 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. If such agreement cannot be reached, the Agreement shall remain in full force and effect without such provisions.

## 21. Entire Agreement

**21.1** This Agreement constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between the Parties relating to the subject matter of the Agreement.

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

**21.3** Nothing in this Clause 21 shall limit or exclude any liability for fraud.

**21.4** Any variations or alterations to this Agreement must be in writing and signed by the Parties.

**21.5** This Agreement may be executed by the Parties in any number of counterparts, 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.

## 22. Law and Jurisdiction

**22.1** 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.

**22.2** Subject to Clause 23 below, 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 be subject to the non-exclusive jurisdiction of the English courts;

## 23. Dispute Resolution Scheme

**23.1** Disputes arising out of or in connection with this Agreement, when they cannot be resolved by negotiation, may, with the written agreement of the Parties, first be submitted to mediation under British Marine's ("BM") Dispute Resolution Scheme. Details of the Scheme are available to current BM members on request from BM and/or on BM's member website.

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