

**FOR THE PURCHASE OF A SECOND-HAND VESSEL SUBJECT TO SURVEY**

**THIS DOCUMENT IS INTENDED TO CREATE A LEGALLY BINDING CONTRACT. BEFORE SIGNING IT YOU ARE ADVISED TO TAKE INDEPENDENT LEGAL ADVICE**

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**THE VESSEL**

Name of the Vessel: CRT No: Length: Ft  
Description: (and as per Sale Details attached)

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**THE PARTIES**

**ABC LEISURE GROUP LTD** SCARFIELD WHARF, ALVECHURCH, WORCESTERSHIRE. B48 7SQ **(the "Broker")** as agent for the seller

Telephone: Email:

**Purchaser's Details**

Name(s): **(the "Purchaser")**

Address:

County: Postcode:

Telephone: Email:

Occupation(s):

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**THE TERMS**

Purchase Price: £

Amount Amount in words

The Seller **IS NOT** \* selling in the course of a business trade or profession. VAT **IS NOT** \* payable by the seller on the sale of the vessel.  
(\*Amend to "IS" or "IS NOT" as appropriate) (where VAT is payable it is included in the above Purchase Price)

Survey To Be Completed By: (Survey Date) At Marina  
dd/mm/yyyy Name of Marina

Deposit: £

Amount Amount in words

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**The Client Account the Broker will operate for this purpose is:**

Royal Bank of Scotland, Account Name: ABC Clients Account  
79/83 Colmore Row Branch, Sort Code: 16-31-12  
Birmingham, B3 2AP Account Number: 10370981

All transactions using this account should be referenced by the **Name of the Vessel**

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**1. Purchase Price**

1.1 Subject to the terms of this Agreement the Purchaser agrees to purchase the Vessel together with all the gear and equipment belonging to the Vessel as listed in the Sale Details, free from all liens, charges, claims, mortgages and encumbrances of any kind, for the Purchase Price. The sale shall exclude any provisions or any of the Seller's personal effects on board the Vessel.

**2. Part Payment**

2.1 On signing this Agreement the Purchaser shall pay the Deposit to the Broker to hold as stakeholder. In consideration of his appointment the Broker undertakes to pay the Deposit (and any other part payment which may be received at any time) into the Broker's account and to keep it at all times separate and distinct from the Broker's own monies so far as possible and to keep proper books of account in respect of all sums received.

2.2 The balance of the Purchase Price shall be paid by the Purchaser to the Broker as agent for the seller prior to completion (see clause 7). Payment will be deemed to have been made when cleared funds are received into the Broker's account.

2.3 The Broker is authorised by the Seller and the Purchaser, on the instructions of and as agent for the Seller, to apply part or all of the balance of the Purchase Price immediately before or at Completion to discharge any existing finance, borrowing or other charges relating to the Vessel. The Seller shall, however, at all times remain responsible for ensuring that the vessel is delivered in accordance with Clause 7.

2.4 In the event that a dispute between the Parties arises before Completion then (and in the absence of any other action agreed between the Parties) the Deposit shall be retained in the Broker's Account pending resolution of the dispute in accordance with Clauses 16 and 17.

**3. Warranties**

3.1 The Seller warrants to the Purchaser that the factual matters set out in the description of the Vessel above are true and correct at the date of this Agreement and that he/she is the sole legal and beneficial owner of the Vessel and absolutely entitled to transfer the Vessel, with full title guarantee, to the Purchaser in the manner provided by this Agreement.

3.2 The terms of this Agreement provide the Purchaser with a sufficient and proper opportunity to inspect, trial and survey the Vessel and all gear and equipment included within the sale to satisfy himself/herself as to the Vessel's condition, quality, specification and fitness for purpose.

3.3 Unless Clause 18 applies subject to the rights of survey and trial and the other terms of this Agreement, the Purchaser waives all rights relating to the condition, quality, description and fitness for purpose of the Vessel, its gear and equipment, and the Purchaser agrees to buy the Vessel, its gear and equipment with all defects and faults of description without any allowance whatsoever.

**4. Survey**

4.1 The Vessel and all the gear and equipment included within the sale will be made available for a survey by a qualified marine surveyor appointed by the Purchaser at the time and place noted in The Terms for as long as shall reasonably be required to complete the survey. If the Purchaser requests, at the Purchaser's sole cost, the Vessel will be docked or craned for the purpose of this survey.

- 4.2 If the Purchaser or his surveyor wishes to carry out any survey requiring more than superficial non-destructive dismantling and limited removal of anti-fouling, written consent shall be obtained before such work is undertaken.
- 4.3 Unless time for the survey is extended by agreement in writing between the Parties, the Purchaser will ensure that the survey is completed in full no later than the date specified in The Terms.
- 4.4 Following completion of the survey the Seller shall not use the Vessel further unless the Purchaser gives notice of rejection of the Vessel in accordance with this Agreement.
- 5. Express Acceptance or Rejection of the Vessel**
- 5.1 The Purchaser may, by written notice to the Broker, accept the Vessel, at any time after the date of this Agreement, whereupon the sale shall be unconditional (subject only to the terms of this Agreement).
- 5.2 Following the survey, the Purchaser may (if he/she has not already accepted the Vessel under Clause 5.1), at his/her sole discretion, by written notice to the Broker, either:
- 5.2.1 reject the Vessel outright; or
- 5.2.2 reject the Vessel but offer to proceed with the purchase and accept the Vessel on the condition that the Seller agrees either:
- (a) to rectify specific listed defects or deficiencies in the Vessel or the Inventory before Completion; or
- (b) to a reduction in the Purchase Price to enable the Purchaser to rectify such defects or deficiencies after Completion.
- Such notice must be in writing and must be received by the Broker no later than the seventh (7<sup>th</sup>) day following completion of survey.
- 5.3 If, the Vessel is rejected by the Purchaser in accordance Clause 5.2.1 or negotiations through the Broker for the Seller to agree to rectify defects or deficiencies or reduce the Purchase Price under Clause 5.2.2 fail, this Agreement shall be automatically terminated and the Deposit shall be immediately refunded by the Broker to the Purchaser in accordance with Clause 8.
- 6. Deemed Acceptance**
- 6.1 In the absence of any express notice from the Purchaser accepting or rejecting the Vessel in accordance with Clause 5.1 or 5.2 above, the Vessel shall be deemed to have been accepted by the Purchaser in any of the following circumstances:
- 6.1.1 **No Survey:** if no survey has been initiated by the Purchaser or has not been completed by the Survey Date the Purchaser shall on the Survey Date be deemed to have accepted the Vessel;
- 6.1.2 **Satisfactory Survey:** if following a survey the Purchaser has not rejected the Vessel, the Purchaser shall be deemed to have accepted the Vessel seven (7) days after the date of completion of such survey;
- 6.1.3 **Defects Rectified:** if a survey has been initiated and completed by the Purchaser and the Purchaser has given a notice under Clause 5.2.2(a), upon confirmation in writing by the Purchaser that the remedial works specified in his notice have been carried out (such confirmation not to be unreasonably delayed or withheld);
- 6.1.4 **Agreed Reduced Price:** upon agreement, in writing, between the Parties of a reduction in the Purchase Price under Clause 5.2.2(b).
- 6.2 Express or deemed acceptance of the Vessel by the Purchaser shall be referred to herein as "Acceptance" and upon such Acceptance the sale shall become unconditional (subject to the terms of this Agreement).
- 7. Completion**
- 7.1 Completion refers to the process of passing the ownership of the Vessel to the Purchaser in accordance with this Clause 7. Completion shall take place within seven (7) days of Acceptance.
- 7.2 At Completion the Vessel shall be delivered free from all liens, charges, claims, mortgages and encumbrances of any kind to the Purchaser, in the same condition (fair wear and tear excepted) and outfitted as at the time of the Survey and with all materials, equipment, tackle, apparel, spare parts, stores, fuel, lubricating oils and spare gear belonging to the Vessel.
- 7.3 Original Documents shall be held by the Broker in advance of Completion and shall be delivered by the Broker to the Purchaser on Completion.
- 8 Rejection, Rescission & Cancellation**
- 8.1 In the event of rejection of the Vessel or rescission by the Purchaser in accordance with the provisions of this Agreement, the Purchaser shall, at his/her own expense, reinstate the Vessel to the condition in which he/she found it and shall pay any yard and surveyor's charges for which the Purchaser is responsible. The Broker shall thereupon return the Deposit to the Purchaser without deduction and without interest, save that the Broker shall be entitled to retain such part of the Deposit as is necessary to meet any yard or surveyor's charges which may have been incurred by or at the request of the Purchaser but which have not been paid by the Purchaser. Neither Party shall thereafter have any claim against the other under this Agreement.
- 9 Risk**
- 9.1 Until Completion, including while undergoing survey, the Vessel shall be at the sole risk of the Seller who shall make good any damage (other than damage caused by the Purchaser or his/her surveyor(s)) sustained before actual delivery to the Purchaser. If, in the reasonable opinion of the Purchaser, such damage affects the operational integrity of the Vessel or her systems or renders her unseaworthy or will take more than 4 weeks to repair the Purchaser shall be entitled to terminate this Agreement and the Deposit shall be returned immediately to the Purchaser without interest and the Purchaser shall have no claim against the Seller for damages. The Purchaser shall, however, remain liable for the cost of any yard work or surveyor's fees commissioned by him/her or at his/her request.
- 9.2 If the Vessel becomes an actual or constructive total loss before Completion, this Agreement shall terminate and the Deposit shall be returned immediately to the Purchaser without interest and the Purchaser shall have no claim against the Seller for damages. The Purchaser shall, however, remain liable for the cost of any yard work or surveyor's fees commissioned by him/her or at his/her request.
- 9.3 Upon Completion risk in the Vessel shall pass to the Purchaser.
- 10 Title & Permission to Sell**
- 10.1 Title in the Vessel shall pass to the Purchaser upon Completion in accordance with Clause 7.
- 10.2 The Seller shall be responsible for discharging all duties, taxes, costs, fees or expenses due on the Vessel up to Completion and, if required by any governmental or regulatory authority, the Seller shall obtain any and all permissions necessary or desirable to sell the Vessel.
- 11 Default**
- 11.1 If the Purchaser defaults in paying the balance of the Purchase Price by the last date for Completion provided by Clause 7 of this Agreement, the Broker may serve a written notice on the Purchaser requiring him/her to complete the purchase within a further seven (7) days. If the Purchaser fails to comply with that notice, the Seller shall be free to re-sell the Vessel and any Deposit paid shall be forfeit without prejudice to the Seller's right to claim from the Purchaser any loss on re-sale together with all his associated reasonable costs and expenses; in the event of such a claim the Seller shall be obliged to give credit for the amount received by way of the forfeited Deposit.
- 11.2 If the Seller fails to make the Vessel available for survey under Clauses 4 or unreasonably refuses the Purchaser's request for the more detailed survey under Clause 4.2 or the Seller fails to complete the sale by the last date for Completion under Clause 7 of this Agreement, the Broker shall immediately return the Deposit to the Purchaser together with any interest earned. Such payment shall be entirely without prejudice to any other rights which the Purchaser may have under this Agreement.

**12 Third Party Rights**

12.1 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.

**13 Notices**

13.1 Any notice to be served under this Agreement on the Seller, Purchaser or Broker 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. Any posted notice shall be deemed to have been received on the third (3<sup>rd</sup>) business day after posting.

13.2 Notices may also be served by e-mail or fax, 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.

**14 Entire Agreement**

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

14.2 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.

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

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

14.5 This Agreement may be executed by the Parties and the Broker 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 all the Parties and the Broker and delivered to the other Party and the Broker.

**15 Interpretation**

15.1 The construction and meaning of this Agreement is not to be affected by any headings.

15.2 To the extent that the terms of this Agreement contradict any laws on consumer rights, the rights conferred on any Party who is a consumer shall remain unaffected.

15.3 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 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 provision.

**16 Law and Jurisdiction**

16.1 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.

16.2 Subject to Clause 17 below, each of the Parties and the Broker irrevocably agrees that any and every dispute (and any non-contractual obligations) arising out of or in connection with this Agreement shall be subject to the non-exclusive jurisdiction of the English courts.

**17 Dispute Resolution Scheme**

17.1 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.

**18 Off-Premises or Distance Contracts**

18.1 This clause is only applicable if:

- i) the Seller is acting in the course of his/her trade; and
- ii) the Purchaser is a consumer for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013; and
- iii) this Agreement is a distance or off-premises contract for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013.

18.2 Where this clause applies the Purchaser may be entitled to cancel this Agreement within fourteen (14) days from the day on which the Purchaser acquired physical possession of the Vessel. If this right to cancel this Agreement is exercised by the Purchaser, the Purchaser shall bear the cost (if any) of transporting and redelivering the Vessel to the Seller, as well as any other relevant charges as may be notified to the Purchaser by the Seller. If, as a result of the Purchaser's handling of the Vessel the Vessel's value is diminished by any amount, the Seller may recover that amount (up to the Purchase Price) from the Purchaser.

**Signed for and on behalf of the Purchaser:**

..... Signature ..... Date

..... Name

**In the presence of (Purchaser's Witness):**

..... Name

..... Address

.....

.....

..... Occupation

..... Signature

**Signed for and on behalf of the Broker:**

..... Signature ..... Date

..... Name

**In the presence of (Broker's Witness):**

..... Name

..... Address

.....

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..... Occupation

..... Signature