

MEMORANDUM OF AGREEMENT



APPROVED BY

THE MEDITERRANEAN YACHT BROKERS ASSOCIATION

The use of this Agreement does not necessarily indicate that the Broker or Brokers are members of the Mediterranean Yacht Brokers Association

(A) NAME OF VESSEL	(B) LENGTH OVERALL	(C) OFFICIAL NO./REGISTRY NO.	(D) FLAG AND PORT OF REGISTRY
(E) CLASSIFICATION SOCIETY AND CLASSIFICATION	(F) TYPE	(G) G.R.T.	(H) WHERE LYING

The above hereinafter to be called "the **VESSEL**"

BETWEEN THE UNDERSIGNED IT HAS BEEN AGREED AS FOLLOWS:

(1) DATE OF THIS AGREEMENT:

This Agreement must be signed by all parties within four banking days of the date hereof; otherwise, the stakeholder shall return the deposit to the Buyer, if received, this Agreement shall be deemed void and the parties shall have no further rights and obligations to one another hereunder.

(2) NAME OF SELLER:

(hereinafter called "the **SELLER**")
Address and Nationality/Place of
Incorporation

(3) NAME OF BUYER:

(hereinafter called "the **BUYER**")
Address and Nationality/Place of
Incorporation

(4) SELLER and BUYER recognise as
the authorised **BROKER(s)** of record
in this transaction:
(hereinafter called "the **BROKER(s)**")

Broker 1

MYBA Member Number

Broker 2
(delete if not applicable)

MYBA Member Number

Please Initial: SELLER: BUYER:

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(5) **STAKEHOLDER:**
The Stakeholder (*hereinafter called "the Stakeholder"*) shall be Broker 1

(6) **SALES PRICE:**
(*hereinafter called "the Sales Price"*)

(7) **DEPOSIT:**
(*hereinafter called "the Deposit"*)

(8) **BALANCE:**
(*hereinafter called "the Balance"*)

(9) **SEA TRIAL and CONDITION SURVEY**
to be completed no later than:

(10) **PLACE OF COMPLETION MEETING:**

(11) **PLACE OF DELIVERY OF THE VESSEL:**

(12) **COMPLETION DATE:**
time being of the essence
or such earlier date as may be agreed between the **SELLER** and the **BUYER**

(13) **SPECIAL CONDITIONS:**

Please Initial: SELLER: BUYER:

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SELLER'S RIGHTS & OBLIGATIONS

(14) GENERAL

The **SELLER** hereby agrees to sell the **VESSEL** on the terms and conditions of this Agreement. The **SELLER** agrees not to enter into any other agreement for the sale of the **VESSEL** prior to the termination of this Agreement in accordance with its terms.

(15) SELLER'S WARRANTY

The **SELLER** hereby warrants that the **VESSEL** shall at the time of delivery be free and clear of all debts, claims, liens and encumbrances of any kind whatsoever. The **SELLER** further warrants that it is the legal registered owner of the **VESSEL** and has title to and the right to sell the **VESSEL** and that at the time of delivery of the **VESSEL** it will be the legal registered owner of the **VESSEL** and have title to and the right to sell the **VESSEL**. If at the time of delivery of the **VESSEL** to the **BUYER** there is in fact existing any debt, claim, lien or encumbrance against the **VESSEL** of whatsoever kind and howsoever arising incurred prior to the time of delivery of the **VESSEL**, the **SELLER** shall pay the same as a condition to completion, or if the debt, claim, lien or encumbrance becomes known subsequent to completion, the **SELLER** will indemnify and hereby indemnifies the **BUYER** against all losses and expenses arising from any such debt, claim, lien or encumbrance against the **VESSEL**.

(16) INVENTORY

Within seven days of the date of this Agreement as specified in Clause (1) hereof the **SELLER** shall deliver to the **BUYER** or his/its representative an inventory including everything belonging to the **VESSEL** on board and ashore and on order. Such inventory shall be agreed between the Parties hereto, shall be signed and dated by them and thereafter shall form part of this Agreement. In any event the inventory shall be deemed to have been accepted by the **BUYER** unless such inventory has been rejected by the **BUYER** prior to the date specified in Clause (9) hereof.

(17) SEA TRIAL/CONDITION SURVEY

The **SELLER** shall make the **VESSEL** available for the purpose of the Sea Trial as referred to in Clause (26) and the Condition Survey as referred to in Clause (27).

(18) COMPLETION OF SALE

On delivery of the **VESSEL** and in exchange for payment of the Sales Price the **SELLER** shall provide the documentation set out in Addendum One.

(19) RUNNING COSTS

All running costs for the **VESSEL** including berthing fees and crew's wages shall be for the **SELLER's** account until completion of the Sale in accordance with Clauses (18) and (30). Notwithstanding what is contained in this Clause, the Condition Survey expenses referred to in Clause (27) are for the **BUYER's** account.

(20) DEFAULT OF SELLER

If the **SELLER** fails to deliver the **VESSEL** and the documentation in accordance with Clauses (18) and (21) of this Agreement the reasonable expenses of the **BUYER's** Condition Survey in accordance with Clause (27) and the **BROKER's** remuneration become solely the obligation of the **SELLER** and the Deposit shall be released to the **BUYER** with interest, if any. The **BUYER** shall be entitled to claim from the **SELLER** further compensation for provable losses and expenses reasonably incurred following from such failure of the **SELLER**, together with interest thereon at the rate of Libor + 2% per annum.

(21) DELIVERY

The **VESSEL** shall be delivered safely afloat or as otherwise agreed at the Place of Delivery (as stated in Clause (11) hereof) at the **SELLER's** expense in the same condition (fair wear and tear excepted) and outfitted as at the time of the Sea Trial, if any, and the Condition Survey and with all materials, equipment, tackle, apparel, spare parts, stores (including bonded stores), fuel, lubricating oils, spare gear and outfit (including, but not limited to, furniture, linen, crockery and cutlery) belonging to the **VESSEL** on board and ashore and as more particularly described and set out in the inventory and including items ordered but not delivered (excepting fuel) all without extra cost to the **BUYER**, but excluding the **SELLER's**, Master's and crew's personal effects.

(22) RISK

The **SELLER** undertakes not to use the **VESSEL** after the Sea Trial and/or the Condition Survey. The risk of loss, damage, or destruction of the **VESSEL** shall be borne by the **SELLER** until the completion of the Sale. In the event that the **VESSEL** is an actual, constructive or compromised total loss before delivery of the **VESSEL**, all expenses incurred by the **BUYER** in relation to the Condition Survey under Clause (27), if any and if unpaid, shall be payable and shall be paid from the Deposit, the balance shall be returned to the **BUYER** with interest, if any, and this Agreement shall thereafter be deemed null and void. The **BROKER's** remuneration shall remain solely the obligation of the **SELLER**.

(23) TAXES/PERMISSION TO SELL

If permission of any governmental, regulatory or other authority is necessary to sell the **VESSEL** then it shall be the responsibility of the **SELLER** to obtain the same. Any duties, taxes, costs, fees or expenses due on the **VESSEL** prior to and up to but not including the time of completion of the Sale shall be for the **SELLER's** account.

Please Initial: SELLER: BUYER:

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BUYER'S RIGHTS & OBLIGATIONS

(24) GENERAL

The **BUYER** hereby agrees to buy the **VESSEL** on the terms and conditions of this Agreement.

(25) DEPOSIT

Within four banking days of the signing of this Agreement the Deposit of 10% of the Sales Price shall be paid by the **BUYER** to the Stakeholder and held subject to the terms and conditions of this Agreement. Interest, if any, is to be credited to the **BUYER**.

(26) SEA TRIAL

Prior to the date at Clause (9) and prior to the **VESSEL** being placed ashore for the Condition Survey, the **SELLER** at his/its own expense is to make the **VESSEL** available to the **BUYER** for a Sea Trial of a maximum of four hours duration at a time to be mutually agreed between the parties hereto. It is at the **BUYER's** discretion to take advantage of this facility. In the event that the **BUYER** or his/its nominee does not attend such Sea Trial or otherwise take advantage of this facility then the **BUYER** shall be deemed to have accepted the **VESSEL** subject to Clause (27). Notwithstanding what is contained elsewhere in this Agreement, if for any reason whatsoever and in his/its discretion the **BUYER** considers that the **VESSEL** has not performed to his/its satisfaction on the Sea Trial and he/it does not therefore wish to proceed with the purchase, he/it shall give written notice of his/its rejection of the **VESSEL** to the **SELLER** or the **BROKER** within twenty-four hours of completion of the Sea Trial or prior to the placing of the **VESSEL** ashore for the Condition Survey as mentioned in Clause (27) hereof, whichever shall be the sooner. In the event that notice of rejection is given by the **BUYER**, all expenses incurred by the **BUYER**, if any, in relation to such Sea Trial shall be payable and shall be paid from the Deposit and the balance of the Deposit shall be returned to the **BUYER** forthwith and this Agreement shall thereafter be deemed null and void. If such notice of rejection is not given, the Sea Trial shall be deemed to have been to the **BUYER's** satisfaction.

(27) CONDITION SURVEY

The **BUYER** may at his/its own cost place ashore and/or open up the **VESSEL** and her machinery for the purpose of completing a Condition Survey no later than the date shown at Clause (9) herein, time being of the essence in this respect.

(a) If on completion of the Condition Survey any defects in the **VESSEL** or her machinery have been found other than those disclosed to the **BUYER** in writing prior to the date of this Agreement and thereby accepted by the **BUYER**, the **BUYER** may within seven days of completion of the Condition Survey give to the **SELLER** or the **BROKER(s)** either:

- (i) written notice requiring the **SELLER** forthwith either to make good any or all of the defect(s) and/or alternatively to make a reasonable and sufficient reduction in the Sales Price to enable the **BUYER** after completion of the Sale to make good the same. All agreed items of work shall be completed by the **SELLER** without undue delay in all the circumstances and shall be carried out so as to satisfy the expressly specified requirements of the **BUYER's** Surveyor in respect of defect(s) mentioned in the Surveyor's Report and notified to the **SELLER**, in which case the Completion Date shall be extended by such period as the **SELLER** and the **BUYER** may agree to allow the remedial works to be completed; or
- (ii) written notice of his/its rejection of the **VESSEL** identifying and specifying in that notice the defect(s). If the **BUYER** shall serve written notice under Clause (27 (a) (ii)) then this Agreement shall be deemed terminated and the terms and conditions of Clause (29) shall apply.

(b) If the **BUYER** shall serve written notice under Clause (27(a)(i)) above and if after seven days of service of such notice one or a relevant combination of the following circumstances applies:

- (i) the **SELLER** has not agreed in writing to make good without delay any defect(s) specified in such notice; or
- (ii) the **BUYER** and **SELLER** have not agreed in writing as to the amount by which the Sales Price is to be reduced; or
- (iii) the **SELLER** and the **BUYER** do not agree the period within which the remedial works are to be completed,

then this Agreement shall be deemed terminated and the terms and conditions of Clause (29) herein shall apply.

A defect shall be regarded as a defect for the purposes of this Clause (27) if an officially appointed Marine Surveyor (to be defined as a Marine Surveyor whose day to day business is occupied with the surveying of vessels of a similar quality to and value of the **VESSEL**) shall have certified in writing that the defect(s) affect(s) the operational integrity of the **VESSEL** or her machinery or her systems or renders the **VESSEL** unseaworthy. For the purposes of any time limits herein, the survey shall be deemed to be completed immediately following completion of the physical inspection by the Surveyor.

For the avoidance of doubt, the period of the Condition Survey and the completion thereof shall not depend on the production or provision of any written report by the Surveyor to the **BUYER**.

The **BROKER(s)** is/are not responsible for any errors or omissions of the Surveyor, although the **BROKER(s)** may have suggested a choice of surveyors and may have been made responsible for the engagement of the Surveyor selected by the **BUYER**.

Please Initial: SELLER: BUYER:

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(28) ACCEPTANCE

In the absence of express notice of acceptance by the **BUYER**, which may be made on completion of the Condition Survey, the **VESSEL** shall, unless the **BUYER** has already given written notice of his/its rejection of the **VESSEL** under Clause (26) or (27), be deemed to be accepted by the **BUYER** either:

- (a) On the day after the date mentioned in Clause (9) or as subsequently varied by agreement between the **SELLER** and **BUYER** if no Sea Trial and/or Condition Survey has been completed; or
- (b) On the eighth day after the date on which the Condition Survey has been completed, provided that the **BUYER** has not served a written notice under Clause (27(a)(ii)) hereof; or
- (c) Upon agreement between the **SELLER** and **BUYER** under Clause (27(a)(i)).

(29) CANCELLATION

In the event of this Agreement being terminated under any of the terms and conditions of Clauses (26) or (27) hereof the **BUYER** shall forthwith make good any damage caused to the **VESSEL** by the Sea Trial and/or the Condition Survey in so far as such damage relates to action taken by the **BUYER** or his/its representatives or by the Master of the **VESSEL** while under instructions from the **BUYER** or his/its representatives, and the **BUYER** shall return the **VESSEL** to the port shown at box (H) of this Agreement.

The Stakeholder shall thereupon without delay return the Deposit to the **BUYER** with interest if any, less any costs, fees or debts incurred by the **BUYER** or otherwise in relation to the **VESSEL** arising out of such Sea Trial and/or Condition Survey and neither the **BUYER** nor the **SELLER** shall henceforth have any claim against the other under this Agreement.

(30) COMPLETION OF SALE

On or before the Completion Date identified at Clause (12) herein, subject to any extension agreed pursuant to Clause (27(a)(i)), the Deposit shall be released and the **BUYER** shall pay the balance of the Sales Price to the **SELLER** or the **BROKER**, as indicated and required by the **SELLER**, by means of a bank transfer to the designated account and order of the **SELLER** on delivery of the **VESSEL** in exchange for the documentation set out in Addendum One.

(31) DEFAULT OF BUYER

Should the Deposit not be paid in accordance with Clause (25) the **SELLER** shall have the right to cancel this Agreement and the **SELLER** shall be entitled to claim compensation from the **BUYER** for provable losses and expenses reasonably incurred, together with interest thereon at Libor + 2% per annum. If the **BUYER** fails to pay the balance of the Sales Price on or before the Completion Date in accordance with Clause (30), the **SELLER** shall have the right to cancel this Agreement forthwith, in which case the Deposit with interest, if any, shall be released to the **SELLER** and the **BROKER(s)**, and shared equally on a 50:50 basis between the **SELLER** and the **BROKER(s)** following deduction of any outstanding expenses relating to the Sea Trial and the Condition Survey, as agreed liquidated damages. Thereafter the **SELLER** shall not be entitled to any further claim for compensation from any party under this Agreement.

(32) TAXES/PERMISSION TO BUY

Any and all sales taxes imposed on the purchase of the **VESSEL** are the responsibility of the **BUYER** who guarantees to indemnify and hereby indemnifies the **SELLER** and the **BROKER** for the payment of the same. If permission of any governmental, regulatory or other authority is necessary to purchase the **VESSEL**, then it shall be the responsibility of the **BUYER** to obtain the same and any costs, fees or expenses related thereto shall be for the **BUYER'S** account.

(33) CHANGE OF NAME

The **BUYER** is to apply to change the name of the **VESSEL** within seven days of completion of the Sale and hereby undertakes that the **BUYER** shall make no further reference to the present name thereafter.

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GENERAL CONDITIONS

(34) EXCLUSIONS

Save as provided for in Clause (15), every representation, condition, warranty or other undertaking whether expressed or implied by statute, common law, custom or otherwise howsoever in relation to the **VESSEL**, fault or errors in her description or her quality or her fitness, for any particular purpose whether made or given before or after the date of this Agreement, are hereby excluded for all purposes.

(35) FORCE MAJEURE

In this Agreement "Force Majeure" means any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or Act(s) of God beyond the reasonable control of the **SELLER** or the **BUYER** (including, but not limited to, strikes, invasion, war, fire, explosion, sabotage, storm, extremes of weather, collision, grounding, fog, government act or regulation). Both **SELLER** and **BUYER** agree that the time scales mentioned in this Agreement may be reasonably extended due to any delay arising from "Force Majeure" circumstances provided that each party uses his/its reasonable endeavours to minimise such delay.

(36) AGREEMENT

This Agreement and its executed Addenda attached, if any, constitute the entire Agreement between the **SELLER** and the **BUYER**, and it is agreed and understood that there are no other duties, obligations, liabilities or warranties implied otherwise. It is effective and binding on the **SELLER** and the **BUYER**, their heirs, executors and permitted assigns as soon as signed by the **SELLER** and the **BUYER**.

(37) BROKER(S)

The **SELLER** and the **BUYER** each agrees with the **BROKER(s)** that:

(a) The **SELLER** will pay to the **BROKER(s)** from the Sales Price the **BROKERS'** remuneration on completion of the Sale in accordance with this Agreement. If the Sale is not completed according to the terms of this Agreement and if within two years of this date the **BUYER** and the **SELLER**, or their nominees, make direct arrangements between themselves for the transfer of ownership of the **VESSEL**, the **SELLER** agrees to pay to the **BROKER(s)** an amount identical to the remuneration that the **BROKER(s)** would have received under the terms of this Agreement had the Sale been completed.

(b) If the **SELLER** fails to deliver the **VESSEL** in accordance with Clauses (18) and (21) hereof, the full **BROKERS'** remuneration becomes due and payable to the **BROKER(s)** by the **SELLER**.

(c) In the event that the Deposit shall be retained by the **SELLER** and the **BROKER(s)**, the Deposit shall be divided equally between the **SELLER** (50%) and the **BROKER(s)** (50%) after all expenses have been paid from the Deposit in accordance with Clause (31). The amount of the Deposit retained by the **BROKER(s)** shall be divided between **BROKER 1** and **BROKER 2** (if any) on the same basis as the full remuneration would have been shared between **BROKER 1** and **BROKER 2**.

(d) The **BROKER(s)** is/are a party to this Agreement for the purpose of this Clause, Clause (4), Clause (40), Clause (41), Clause (42) and Clause (43) only herein.

Each of the **SELLER** and the **BUYER** confirm that **BROKER 1** (and **BROKER 2**) is/are the only broker(s) involved in this transaction and entitled to remuneration for the sale of the **VESSEL**. The **SELLER** acknowledges that it is solely responsible for payment of the **BROKERS'** remuneration, the amount and terms of which are governed by separate agreement, and agrees that any such remuneration due shall be paid no later than the disbursement of the Sales Price to the **SELLER** upon completion of the Sale. Each of the **SELLER** and the **BUYER** agrees to indemnify and hold harmless the other against all losses, damages, costs, claims and demands (including legal fees on an indemnity basis) of whatsoever nature arising out of any claim of any other broker alleging it has dealt with the indemnifying party in relation to this transaction.

(38) STAKEHOLDER

The Stakeholder agrees with the **SELLER** and the **BUYER** that it will hold the Deposit on behalf of the **SELLER** and the **BUYER** in accordance with the terms of this Agreement.

Should any dispute be referred to arbitration then the Stakeholder shall be entitled to pay the Deposit into a designated account mutually agreed between the **SELLER**, the **BUYER** and the Stakeholder until the termination of the dispute.

The Stakeholder is a party to this Agreement for the purpose of this Clause, Clause (42) and such Clauses of this Agreement which relate to the payment, return and release of the Deposit.

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(39) ANTI-FOULING

If it is agreed between the **SELLER** and the **BUYER** that the bottom of the **VESSEL** shall be painted with anti-fouling paint and the cathodic protection anodes shall be replaced while the **VESSEL** is out of the water for the Condition Survey mentioned in Clauses (17) and (27) then the cost of the anti-fouling paint, the cost of applying same, the cost of the cathodic protection anodes and the cost of replacing same shall be for the account of the **BUYER** if he/it purchases the **VESSEL** and for the account of the **SELLER** if the Sale is not completed.

(40) ARBITRATION & LAW

This Agreement shall be governed by and construed in accordance with the laws of England.

Any dispute or difference arising out of or in connection with this Agreement between the **BUYER, SELLER** and/or **BROKER(s)** (hereafter the "parties") shall be referred to arbitration in London to be determined in accordance with the provisions of the Arbitration Act 1996 and any subsequent enactment replacing or amending it.

Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party. If within 14 days of receipt of notification in writing of the appointment of an arbitrator the receiving party fails to appoint an arbitrator then the first arbitrator shall become sole arbitrator. Where two arbitrators are appointed they shall appoint a third as Chairman.

The decision of the Tribunal shall be final and binding upon the parties and can be entered as a judgment of the High Court of England and Wales.

No proceedings of any nature shall be brought in any other state or jurisdiction except that either party may bring proceedings in rem to obtain conservative seizure or other similar remedy against any vessel or property owned by the other party in any state or jurisdiction.

If notice of arbitration proceedings is given by either party, the Stakeholder, after receiving notification of such proceedings, shall not deal with those monies held by them without the agreement of both parties or in accordance with the order of the arbitrators or their final award. The monies should be held in a designated client account, which should be interest bearing where national banking rules permit. The Stakeholder may, with the written agreement of both parties, pay the monies into an escrow account jointly controlled by the legal representatives of both parties pending the result of the arbitration.

(41) ASSIGNMENT

The **SELLER** and the **BUYER** shall not assign and/or transfer any of their respective rights and obligations under this Agreement to any person or corporate entity without the prior written consent of the other party, which consent each party shall have full power to withhold. Provided that the **BUYER** shall have the right, by written notice to the **SELLER**, prior to delivery of the **VESSEL**, to transfer its right, title and interest in this Agreement to its nominee, subject to the original **BUYER** remaining responsible on a joint and several basis for the performance of the obligations of such nominee as **BUYER** under this Agreement.

(42) CONFIDENTIALITY

Each of the **BUYER, SELLER, BROKER(s)** and Stakeholder shall, and shall ensure that their respective employees, officers, directors, shareholders, legal counsel, accountants, consultants and any other person within their respective control shall, keep entirely confidential and secret and not disclose, describe, distribute or otherwise communicate to any person, except to the **SELLER** and to the **BUYER** and to their respective designated representatives, governmental authorities, advisors, banks and sub-contractors or employees in order to assist in the transaction contemplated by this Agreement, to maintain accounts and records or to prepare tax returns (but on the same confidential basis and only to the extent that they are involved and have an absolute need to know), any information whatsoever regarding any of the terms of this Agreement or the documents executed pursuant to this Agreement (including, but not limited to, the present or intended ownership of the **VESSEL** or the Sales Price), except with the prior written agreement of the **SELLER** and the **BUYER**; provided that such information may otherwise be disclosed if and to the extent required by applicable law (including pursuant to legal proceedings).

(43) NOTICES

Any notice required or authorised to be given to or by the **SELLER** and/or the **BUYER** and/or the **BROKER(s)** shall be given in writing and shall be deemed to be validly given if proved to have been dispatched, prepaid and properly addressed to the relevant address or addresses or sent by telefax to the relevant telefax number(s) set out below. Signatures transmitted by telefax shall be binding.

SELLER
(address and telefax number)

BUYER
(address and telefax number)

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BROKER 1

(address and telefax number)

BROKER 2

(address and telefax number)

(delete if not applicable)

(44) COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the several parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. A signed copy received by facsimile shall be deemed to be an original.

Signature of **SELLER**

Witness

Name

Address

Occupation

Signature of **BUYER**

Witness

Name

Address

Occupation

Signature of **BROKER 1**

Witness

Name

Address

Occupation

Signature of **BROKER 2**

Witness

Name

Address

Occupation

Signature of **STAKEHOLDER**

(If different from **BROKER 1**)

Witness

Name

Address

Occupation

