

## **BROKERAGE TERMS AND CONDITIONS**

*For the purpose of this Agreement Marlex Marine Technology Ltd. shall be referred to as "The Company and / or The Broker".*

*This document is intended to create a legally binding contract. If you are unsure of any conditions you are advised to take appropriate professional advice.*

*Prior to accepting a vessel on Brokerage terms. The company will inspect the vessel's suitability for sale, including test run, advising the Owner of any deficiencies and approximate rectification costs if executed by The Company.*

*When requested to value vessel for sale the Broker will advise a price based on boating industry comparisons, make, age and general condition of vessel.*

*All vessels berthed at Buckden Marina, whether on the sales pontoons, or elsewhere, or lying ashore are subject to the terms and conditions of Buckden Marina; copies are available from the Marina Office.*

*The Company reserves the right to decline to offer a vessel for sale at any time without reason to the Owner.*

*Words denoting the masculine include the feminine and neuter and vice versa.*

### **1. DECLARATION AS TO CORRECTNESS OF PARTICULARS SUPPLIED BY THE OWNER**

1.1 The Owner hereby instructs the Broker to act as Sole Agent for the sale of the above vessel, and declares that to the best of his knowledge and belief the attached particulars or those otherwise signed or supplied by the Owner are correct and that he has power to dispose of the vessel with the agreement of any Owner, Mortgagee, Leasing Company or Hire Purchase Company and that all known defects have been declared. He also agrees to indemnify the Broker if any of the information given proves to be incorrect in the event of any claim being proven by a Purchaser (including the cost of defending any such claim or resisting any such liability as may arise) or 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.

1.2 The Owner accepts that the Broker must qualify any particulars with the following disclaimer: "In this case we are acting as Brokers only. The Owner is  / is not  \* selling in the course of a business. 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 Purchaser is strongly advised to check the particulars and where appropriate 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 for such engine on our part."

1.3 The Owner to provide to the Broker satisfactory evidence of ownership, VAT status and RCD compliance, as applicable, on the signing of this Agreement as defined in Schedule 1.

### **2. AGREEMENT BY THE OWNER TO SIGN A CONTRACT ON A SALE BEING EFFECTED**

The Owner agrees to sell the vessel for the asking price or other agreed price and to sign a contract under the standard terms of ABYA as required by the Broker on the introduction of a willing Purchaser. A separate Director's indemnity may be required in the case of a company selling in the course of business. The Broker shall perform all actions required of the Broker in such a contract (whether or not signed by the Owner at the request of the Broker).

*\* Tick as appropriate*

**3. BROKERAGE COMMISSION PAYABLE**

This Agreement being a sole agency Agreement, on the happening of any of the following the Broker shall be entitled to this full commission at the rate stated in the attached schedule:

- (a) A sale is completed to a Purchaser whether introduced by the Broker or not;
- (b) a Purchaser introduced by the Broker wishes to proceed at the asking price or other price agreed with the Owner, but the Owner is subsequently unwilling to proceed;
- (c) when a sale falls through after survey and a Purchaser introduced by the Broker has not rejected the vessel and the Owner is unwilling to make allowance for defects (unless such unwillingness has been previously stated in writing).

If the broker shall introduce a prospective Purchaser for the vessel under the terms of this Agreement, where a Purchaser defaults after Agreement and his deposit / part payment is forfeit under the terms of the Sale & Purchase Agreement the Broker shall be entitled to commission on the agreed selling price.

**4. RETENTION BY BROKER OF COMMISSION AND OUTSTANDING CHARGES**

On completion the Broker may deduct his commission and VAT thereon from the proceeds of sale, together with any monies due to other parties. When the Broker is entitled to commission in accordance with clause 3 above the Broker may deduct commission and VAT thereon from the deposit / part payment forfeited by the Purchaser.

**5. PROCEEDS OF SALE TO BE DEALT WITH BY THE BROKER IN A PROPER MANNER**

The Broker shall hold any deposit or purchase funds in a 'Client Account' named as such and kept at all times separate and distinct from the Broker's own monies and shall distribute the net proceeds of sale in accordance with the registered Ownership of the vessel or as directed by all parties to Ownership, within seven days of clearance of the final payment, or provision by the Owner of the Certificate of Registry and a properly executed Bill of Sale in favour of the Purchaser or his nominee, showing the vessel to be free of encumbrances and, where applicable, on transfer of clear title, whichever is the later.

**6. NOTIFICATION OF ALTERATIONS TO PRICE OR LOCATION OR CONDITION**

The Owner agrees to advise the Broker of any change in the asking price or location of the vessel or of any material change in the vessel's condition or inventory and undertakes that the vessel will not be offered for sale elsewhere.

**7. OWNER RESPONSIBLE FOR INSURANCE, CLEANING, BERTHING, ETC.**

The Owner confirms that the vessel is insured, and will remain insured until completion of a sale to a Purchaser, and such insurance shall cover all viewing and sale arrangements, including slipping for survey and sea trials. The Owner shall be responsible for all cleaning, maintenance, berthing, storage and security of the vessel until sold. The Broker is not responsible for any loss of contents or damage to the vessel however caused.

**8. PROFESSIONAL INSURANCE OF THE BROKER**

The Broker undertakes to maintain professional indemnity cover for himself, his employees in respect of their prospective liability in respect of any breach by them of this Agreement or any other act, omission or breach of duty giving rise to loss.

**9. ACCESS TO VIEW AND KEY TO BE AVAILABLE**

The Owner will instruct the proprietor of the mooring or marina where the vessel lies and shall make a key available to the Broker or proprietor for this purpose at all times.

**10. SUBMISSION OF OFFERS**

The Broker undertakes to submit promptly to the Owner all offers received for the vessel, regardless of whether such offers shall be at the asking price or at a level known by the Broker to be unacceptable to the Owner.

**11. NOTICE OF TERMINATION OF THIS AGREEMENT**

- (a) This Agreement shall be for a minimum period of six months (unless the Agreement is terminated under clause 12 below) and shall continue until either the vessel is sold or it is terminated under clause 11(b) or 12 below.

- (b) Without prejudice to the subsisting rights of the Broker or Owner under this Agreement it may be terminated by either party on giving seven days' notice in writing to the other expiring no earlier than at the end of the minimum period specified in paragraph 11(a) above. If the Owner shall agree a sale outside the Agreement to a Purchaser introduced by the Broker within twelve months following the date of the termination of this Agreement, the Broker shall be entitled to his full commission at the agreed rate.
- (c) If the Owner wishes to remove the vessel from brokerage up to six months from signing this Agreement then a fee of £250 (two hundred and fifty pounds) plus VAT is payable to The Company as payment towards costs of brokerage of the vessel plus any lifting charges incurred if moving the vessel out of the water. All vessels are subject to a mooring fee of £6 (six) + VAT per metre per month if the vessel remains unsold after three months on brokerage.

**12. TERMINATION ON BANKRUPTCY OR LIQUIDATION OF EITHER PARTY OR ON BREACH OF THIS AGREEMENT**

- (a) This Agreement shall terminate if either party goes into bankruptcy or liquidation whether compulsory or voluntary or compounds with his / its creditors or takes or suffers any similar action in consequence or debt;
- (b) Either party may terminate this Agreement forthwith by notice in writing to the other if the other party commits a breach of any term of this Agreement.

**13. INTERPRETATION**

The word "Owner" shall include all Owners and anyone acting with the written authority of the Owner or part Owners of a yacht or vessel giving instructions for sale; the word "Broker" shall include any person or firm being a member of the Association of Brokers & Yacht Agents.

**14. DECLARATION**

The Owner declares that this vessel is offered free of all import duties and other UK, EU or foreign taxes in respect of which the Owner agrees either to indemnify the Broker, or that these will be settled by the Broker from the sale proceeds on completion of the sale.

**15. JURISDICTION**

- (a) This Agreement shall be construed according to and governed by the laws of England and Wales (for Scotland if the transaction shall be in that Country) and the parties hereby submit to the jurisdiction of the Courts of the same countries.
- (b) The construction of this Agreement is not be affected by any Note as used in text or clause title.
- (c) Subject always to the Statutory Rights of the parties, this Agreement forms the entire Agreement between the parties unless otherwise specifically agreed in writing between them.
- (d) Reference to any Statutory Provision includes a reference to that Provision as amended, extended or re-enacted and to any statutory replacements thereof (either before or after the date of this Agreement).

**16. DISPUTES**

A dispute arising from this Agreement which cannot be resolved between the parties to this Agreement should initially be referred to Alternative Dispute Resolution.

**17. THIRD PARTY RIGHTS**

For the purpose of the Contracts (Right of Third Parties) Act 1999 this Agreement does not and is not intended to give any rights to enforce any of its provisions to any person who is not a Party to it.

**18. NOTICES**

Subject to express Agreement to the contrary, all instructions written or verbal are accepted on the understanding that the foregoing terms of business shall apply to each and every transaction. Any notice under this Agreement shall be in writing and any notice to the Purchaser or Owner shall be sufficiently served if delivered to him personally or posted to his last known address or sent by e-mail or facsimile. Any notice posted shall be deemed to have been received within 48 hours after the time of posting and any notice given by e-mail or facsimile transmission shall be deemed to have been received within 48 hours after dispatch to the correct e-mail address /facsimile number of the addressee.