



# Brokerage Sales Agreement

## Owners Contact Details

Name:

Address:

Phone:

Email:

## Boat Details

Vessel Make / Model:

Hull Number:

Engine Make / Model:

Engine Number:

Registered Status\*: PAM 1 / SSR / Other / Unregistered

Official Registration Number:

Location:

Financed\*: Yes / No

If Yes, Finance House:

Original Proof of VAT Status\*: Yes / No

Service History\*: Yes / No

Optional Extras\*: Yes / No (If Yes see additional sheet)

\*Delete as appropriate

## Sale Details

Sale Price: £

Agreed Commission: 8%

**THIS LISTING IS A CENTRAL / SOLE LISTING APPOINTMENT**

Signed by Owner:

Signed by Marine Matters:

Date:

Date:

## BROKERAGE AGREEMENT FOR THE LISTING OF A SECOND-HAND VESSEL

*This document is intended to create a legally binding contract. Before signing it you are advised to take independent legal advice and following such advice, if necessary, to amend its terms to reflect the terms the parties wish to agree.*

The Broker, by signing this Agreement, 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. The Client Trust Account the Broker will operate for this purpose is:

<b>Client Trust Account</b>	
Account Name:	Marine Matters UK Ltd
Account Number:	54729645
Sort Code:	52-41-32
IBAN:	GB88NWBK52413254729645
BIC:	NWBKGB2L
Bank's name:	NatWest Bank
Bank's address:	52, West Street, Fareham, Hampshire, PO16 0JX
(the " <b>Client Trust Account</b> ")	

THIS LISTING AGREEMENT (the "**Agreement**") as dated on the front of this document is made between:

- 1 The Owner as detailed on the front cover of this Agreement. (the "**Owner**"), and
  - 2 Marine Matters UK Ltd as detailed on the front cover of this Agreement. (the "**Broker**")
- (each a "**Party**" and jointly the "**Parties**")

### 3 Definitions

The "**Owner**" is the legal owner(s), or their agent, of the vessel described on the front cover of this Agreement.

The "**Broker**" is Marine Matters UK Ltd as detailed on the front of this Agreement.

A "**Party**" is either the Owner or the Broker and Jointly the "**Parties**"

"**Central/Sole Listing Agreement**" means the Parties have indicated on the front cover of this Agreement that this shall be a sole and exclusive appointment of the Broker and the Owner agrees not to sell or authorise any other broker to sell or list the Vessel. Any alternative arrangement must be noted on the front cover of this Agreement.

The "**Asking Price**" is the price that the vessel shall be sold at or any other price agreed between the Owner and the Purchaser that the Broker has negotiated.

The "**Agreed Commission**" is 8% of the final sales price plus VAT at the prevailing UK rate at the time of the sale.

### 4 Declarations and Undertakings of the Owner

4.1 The Owner declares and warrants to the Broker that:

4.1.1 the proposed sale of the Vessel [is]/[is not]\* related to the Owner's business, trade or profession and that VAT [is]/[is not]\* chargeable on the selling price;

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

4.1.3 he/she is 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).

4.2 The Owner acknowledges that the Broker 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 the Broker from time to time in relation to the Vessel.

4.3 The Owner agrees and undertakes:

4.3.1 following signature of this Agreement, to provide the Broker 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), together with photographs of the Vessel. Promptly thereafter and at the Broker's request, the Owner shall provide to the Broker any further information relating to the Vessel and its ownership which the Broker may reasonably request;

4.3.2 to disclose promptly to the Broker in writing details of any and all defects or deficiencies relating to the Vessel (or the inventory to be sold with the Vessel) of which he/she is aware (now or in the future);

4.3.3 to supply the Broker with the names and details of all prospective purchasers who contact the Owner directly in relation to the sale of the Vessel;

4.3.4 to be responsible for all cleaning, maintenance, berthing, storage and security of the Vessel pending sale;

- 4.1.5 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 and sea trials;
- 4.1.6 to indemnify and hold harmless 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 above declarations or information provided by or on behalf of the Owner prove to be incorrect or misleading;
- 4.1.7 to sell the Vessel to any willing buyer at the Asking Price or, following negotiations, at such other price as may be agreed with the Owner; and
- 4.1.8 to negotiate reasonably with any willing buyer introduced by the Broker 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").

## **5 Broker's Obligations**

- 5.1 The Broker agrees:
  - 5.1.1 to seek prospective purchasers for the Vessel through direct promotion of the Vessel;
  - 5.1.2 to prepare information describing the Vessel and to publish this information in the relevant markets;
  - 5.1.3 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 by the Broker to be unacceptable to the Owner;
  - 5.1.4 to qualify any particulars issued by it in relation to the Vessel with a disclaimer in the following or similar form:-

*"In this transaction we are acting as Brokers only. We are informed that this sale [is]/[is not]\* related to the Owner's business, trade or profession. 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 and inspected, sea trialed and opened up".*

- 5.1.5 to maintain professional indemnity cover for himself/herself, his/her 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.

## **6 Brokerage commission**

- 6.1 **Central/sole Listing Agreement** - where this Agreement is a Central/Sole Listing Agreement, any sale, gift, charter (for more than one (1) month) or disposal of the Vessel during the term of the Agreement shall entitle the Broker to receive the Agreed Commission, whether or not the new owner or person entitled to the Vessel or use of her as a result thereof was introduced by the Broker. The Broker shall also be entitled to the Agreed Commission on any sale, gift, charter (for more than one (1) month) or disposal of the Vessel made within twelve (12) months of the termination of this Central/Sole Listing Agreement to a party introduced to the Owner by the Broker during the period of this Central/Sole Listing Agreement.

- 6.2 **Incomplete Sales** - In relation to Listing Agreements, if:

- 6.1.1 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; or
- 6.1.2 a conditional sale of the Vessel does not complete following survey and/or sea trial solely because the Owner is unwilling to abate the price for defects in the Vessel or deficiencies in the inventory not previously disclosed to the Broker, and which are revealed by survey and/or sea trial and documented by a qualified surveyor. The Broker shall nevertheless be entitled to be paid one half (1/2) of the Agreed Commission on the Asking Price.

- 6.3 **Owner's Default** - In relation to any Listing Agreement, 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 the Broker the Agreed Commission in full on the Asking Price.

## **7 Commission Rate**

- 7.1 The rate of commission to be paid by the Owner to the Broker shall be the Agreed Commission that shall, unless otherwise indicated, be calculated on the net sale price of the Vessel.
- 7.2 In addition, and where applicable, the Broker shall be entitled to charge and recover VAT on the Agreed Commission, at the rate then prevailing.

## **8 Client monies and Proceeds of sale**

8.1 The Broker shall receive and hold any deposits and the balance of sale proceeds in the Client Trust Account in accordance with the terms of this Agreement and any related Sale and Purchase Agreement. The Client Trust Account shall be designated as such and at all times it shall be kept separate from the Broker's own monies. The Broker 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.

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

## **9 Retention by Broker of commission and outstanding charges**

9.1 On completion of the sale of the Vessel, the Broker 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 that are for the account of the Owner, from the proceeds of the sale.

9.2 When the Broker is entitled to one half of the Agreed Commission as a result of an incomplete sale, the Broker 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.

## **10 Notification of alterations to price or location, withdrawal from sale or sale elsewhere**

10.1 The Owner undertakes:

10.1.1 to advise the Broker promptly of any changes in the Asking Price or location of the Vessel;

10.1.2 that the Vessel will not be offered at a lower price elsewhere; and

10.1.3 to notify the Broker 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 the Broker with written confirmation of the name and address of the purchaser.

## **11 Care, Custody and Control of the Vessel**

11.1 Responsibility for the care, custody and control of the Vessel remains entirely with the Owner. Although the Broker may recommend storage, maintenance, and other providers of service, the final decision to employ such service providers remains with the Owner. The Broker shall not be held responsible for any damages suffered by the Owner as a result of employing such service providers.

## **12 Access to the Vessel**

12.1 The Owner will give written authority (copied to the Broker) to the relevant mooring or marina operator to permit the Broker to access the Vessel on reasonable notice at any time and shall make keys available for this purpose. Where appropriate this authority may be given in the Broker's standard form.

## **13 Commencement of Services**

13.1 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:-

13.1.1 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 the Broker of the decision to cancel it by a clear written statement to that effect; and

13.1.2 unless expressly instructed by the Owner to do so, the Broker may not commence its service until fourteen (14) days after the date of this Agreement; and

13.1.3 if the Owner expressly instructs the Broker to begin work and the Owner subsequently exercises the right under Clause 13.1.1 to cancel this Agreement, the Owner will pay the Broker a proportionate amount of the Agreed Commission to reflect the services the Broker has performed prior to notification of cancellation.

## **14 Terminations**

14.1 Either Party may terminate this Agreement with 30 days written notice

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

## **15 Notices**

15.1 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.

15.2 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.

## **16 Berthing/Mooring/Storage**

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

## **17 Third Party Rights**

17.1 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.

## **18 Interpretation**

18.1 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.

18.2 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.

## **19 Entire Agreement**

19.1 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.

19.2 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.

19.3 Nothing in this Clause 18 shall limit or exclude any liability for fraud.

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

19.5 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.

## **20 Law and Jurisdiction**

20.1 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.

20.2 Subject to Clause 21 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;

## **21 Dispute Resolution Scheme**

**22** 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.