

Vendors Agreement - For the Sale of Second Hand Boats

This Vendors Agreement instructs Church Minshull Marina Ltd., Aqueduct Brokerage to act as 'Agent' for the sale of the Boat described below in accordance with the Terms and Conditions.

SELLERS DETAILS

Name:
Telephone:
Mobile:
Email:

Address:

Postcode:

BOAT DETAILS

Name:
Manufacturer:.....
Fitter:(If other)
R.C.D:
Length:
Construction:
Index number:.....

Year:
BSSc until:
CIN:
Beam:
Style:
Draft:
Paint Colour:

Engine

Manufacturer:.....
Installed:

Model:
Power HP/KW:

Gearbox

Manufacturer:.....
Type:

Model:
Installed:

INITIAL ASKING PRICE

INVENTORY (items to be included in sale)

.....

Continue on attached 'Schedule A' if required.

OTHER INFORMATION INCLUDING ANY KNOWN DEFECTS

.....

Continue on attached 'Schedule B' if required.

SUMMARY of COMMISSION & CHARGES. For full details refer to the Terms and Conditions overleaf.

Commission Fee:	£1,450.00* + 3%* Of Funds Greater Than £20,000.00	No Sale, No Fee**
Minimum Fee:	£1,450.00*	No Sale, No Fee**
Maximum Fee:	£4,500.00*	No Sale, No Fee**

*All fees are exclusive of Vat; a minimum fee applies to final sale values equal to or lesser than £20,000.00 & a maximum fee applies to final sale values equal to or greater than £100,000.00

**To qualify for our "No Sale, No Fee" policy including 12 weeks free storage the Seller is bound to offering the Boat for sale for a minimum of 12 weeks. The Agent reserves the right to apply storage charges for the full term a boat has remained at Church Minshull Aqueduct Marina under circumstances in which the Boat has been removed before 12 weeks has completed or the Contract is breached.

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DECLARATION:

I/We have read the Vendors Agreement and Terms & Conditions overleaf, have fully understood them and agree to their content. I/We confirm that all the particulars given are true to the best of my/our knowledge and I/we confirm that any known defects have been detailed. I/We confirm that the boat is not subject to any outstanding mortgage, finance contract or hire purchase unless **detailed in writing attached to this document**. If this is the case, I/we agree that payment will be made in full to the lender before any proceeds from the sale is paid to the seller. I/We have furnished proof of ownership and confirm that I/we have the authority to offer the boat for sale. I/We confirm that I/we fully understand the implications of the Misrepresentations Act 1967 and agree to indemnify Church Minshull Marina Ltd., Aqueduct Brokerage should any information given prove to be incorrect. I/We are not a VAT registered business and not supplying goods in the course of my/our business unless detailed in writing and accompanying this agreement.

Signed by:
(Please Print)

Signed by:
(Please Print)

Signature:

Signature:

Date:
For and on behalf of The Vendor

Date:
For and on behalf of the Agent

Church Minshull Marina Ltd., Aqueduct Brokerage – Vendors Agreement, Terms & Conditions

1. Definitions and interpretation

The definitions and rules of interpretation in this clause apply in these Conditions:

Agent: Church Minshull Marina Limited, Aqueduct Brokerage (Company Number 06434627) whose registered office is at Church Minshull Marina, Church Minshull, Nantwich, Cheshire C25 6DX.

Boat: the boat owned by the Seller to be sold by the Agent pursuant to these Conditions including any items listed in the inventory and at 'Schedule A'.

Commencement Date: the date of signing the Vendors Agreement.

Conditions: these Terms and Conditions.

Contract: the sales agency between the Agent and the Seller in relation to the Boat in accordance with the Vendors Agreement and its Terms & Conditions.

Marina: the marina at the Agent's registered office as detailed above.

Price: in relation to the Boat subject to the Vendors Agreement, the Price actually paid by the eventual buyer.

Seller: the person so described in the Vendors Agreement.

Agreement for Sale and purchase of a Second Hand boat – Conditional: The Agents Standard Contract between the Seller and Purchaser where the sale is subject to a Survey or other specified conditions.

Agreement for Sale and purchase of a Second Hand boat – Unconditional: The Agents Standard Contract between the Seller and Purchaser where there are no conditions.

2. Appointment

2.1 The Seller hereby appoints the 'Agent' as its sole agent to sell the Boat at the initial asking price detailed on the Vendors Agreement or any subsequent final price negotiated between Seller and Purchaser by the Agent. The Agent hereby accepts the appointment in accordance with these Conditions.

2.2 The Seller shall not, during the continuance of the Contract, appoint any other person, firm or company as its Agent, or in any other capacity, for the sale of the Boat.

2.3 The Seller shall not, without the Agent's consent and, subject to the following, make offers or quotations to or negotiate with or sell the Boat to any person, and shall refer all such possible transactions to the Agent.

3. Agent's obligations

The Agent undertakes and agrees at all times during the term of the Contract:

3.1 To market the sale of the Boat on its website at <http://www.aqueductmarina.co.uk>, at the Marina and in the main trade publications

3.2 To promptly forward to the Seller details of all offers received from potential buyers (being the price a potential buyer has offered to pay and not the amount the Seller may receive after any deductions under Clause 6.) at any time until termination of the Contract under the terms of Clause 8, or until any sale has been agreed for the Boat within the agreed Contract period.

4. Sale of Boat

4.1 All physical items to be included as part of the Boat in any sale shall be listed by the Seller and included on the Vendors agreement and in 'Schedule A'.

4.2 All defects known to the Seller shall be listed on the Vendors Agreement and in 'Schedule B'.

4.3 Notwithstanding clause 4.1, all physical items on the Boat will be considered part of the Boat for the purposes of any sale irrespective of whether they are listed in the Vendors agreement inventory and 'Schedule A', unless such items are specifically excluded in writing by the Seller and attached to these Conditions.

4.4 The Boat shall be stored and marketed for sale at the Marina either in the water or on hard standing. The decision as to which location used shall be at the sole discretion of the Agent and dependant on current space available although the Agent shall use reasonable endeavours to accommodate the wishes of the Seller in this regard.

4.5 The Seller shall not be entitled to accompany the Agent on any viewings or conduct viewings during the term of the Contract without the Agent being present, unless otherwise agreed in writing by the Agent.

4.6 The Seller acknowledges that the Boat is stored at the Marina at the Seller's own risk and must be insured in accordance with clause 5.2.

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4.7 The Seller accepts that the Agent shall qualify any particulars issued in relation to the Boat with a disclaimer in the of following or similar form:
"In this transaction we are acting as Agent 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, inspected and trialed."

5. Seller's undertakings

The Seller undertakes and agrees with the Agent during the term of the Contract:

- 5.1 That he will not use the Boat or allow the Boat to be used during the term of the Contract unless otherwise agreed in writing by the Agent, such written agreement to be attached to these Conditions.
- 5.2 At his own expense to insure and keep insured the Boat during the term of the Contract to its full replacement value against all normal risks (including third party risks) and to perform any obligations required of it under the terms of such insurance and to do nothing which could invalidate any such insurance.
- 5.3 To be responsible for complying with the requirements of HMRC that VAT is paid in relation to the original sale of the Boat within or importation to the EU including providing the necessary written evidence of the VAT Paid Status (VPS) and to indemnify the Company against all actions, claims, proceedings and costs suffered by the Company in connection with a breach by the Seller of this undertaking.
- 5.4 That the standard Church Minshull Marina 'Agreement for the Sale and Purchase of a Second Hand Boat Conditional Or Unconditional' will be used as the form of Contract between the Seller and the Purchaser and that Church Minshull Marina Brokerage, will act as Broker only, in the transaction.

6. Commission and payments

- 6.1 The Seller shall pay to the Agent a commission equal to £1450.00 plus 3% of funds greater than £20,000.00 against the Price for which the Agent concludes a sale contract on behalf of the Seller pursuant to and during the term of the Contract.
- 6.2 Notwithstanding clause 6.1 there shall be a minimum commission payment of £1,450.00 (which applies to a final sale value equal to or lesser than £20,000.00) and a maximum commission payment of £4500.00 (which applies to a final sale value equal to or greater than £100,000.00) payable by the Seller to the Agent.
- 6.3 The commission detailed in clauses 6.1 and 6.2 above shall also be payable in the event that a sales contract for the Boat is concluded in the following circumstances: -
 - a. a sale contract for the Boat is concluded during the term of the Contract and the buyer is not found by the Agent but by another agent or by any other person, including the Seller;
 - b. a sale contract for the Boat is concluded after the termination of the Contract but to a buyer who was found during the term of the Contract (whether or not by the Agent) or with whom the Agent had negotiations about the Boat during that period in which case the commission payable shall be based on the asking price agreed with the Agent during the term of the Contract.
- 6.4 The Seller shall pay a slipway charge (if applicable) based on the Agent's current price list from time to time. Should the Agent move the boat for their own purposes No charge will be incurred.
- 6.5 The Seller shall pay a storage charge to the Agent for the Boat based on the Agent's current price list from time to time less any applicable "free" period detailed in the Vendors Agreement to these Conditions.
- 6.6 The Seller agrees to appoint the Agent to hold the Deposit as Stakeholder, and the balance of the Purchase Price (or other sums) as Agent for the Seller and paid into a separate client account. As soon as any sale has been satisfactorily completed and cleared funds received, the money (being the agreed sale price less any commission payable and any outstanding mortgage, finance contract or hire purchase agreement or arrangement, Clause 6.1) will be paid by cheque to the Seller. Payment to the Seller by CHAPS can be processed where possible. A charge (approximately £25.00) will be made to cover costs if the Seller requests payment by this method.
- 6.7 The Seller undertakes and agrees that the deposit will be subject to the terms of the Agreement for Sale and purchase of a second hand boat – Conditional or Unconditional, between the Seller and Purchaser and with the Agent as Stakeholder.
- 6.8 All sums payable under the Contract are exclusive of any value added tax or other applicable sales tax, which shall be added to the sum in question. A VAT invoice shall be provided against any payment.
- 6.9 All sums payable by the Seller under clause 6.4 and 6.5 shall be paid in full and in cleared funds within 30 days of the date of the invoice.
- 6.10 In the event of the Boat being subject to any outstanding mortgage, finance contract or hire purchase agreement or arrangement the Seller agrees that payment will be made in full by the Agent from the sale proceeds and the balance (if any) sent to the Seller in accordance with clause 6.6.

7. Compliance with laws and regulations

- 7.1 The Seller warrants to the Agent that:
 - a. he is the sole legal and beneficial owner of the Boat and has good, marketable and unencumbered title to the Boat and is authorised to offer the Boat for sale subject only to the concurrence of any mortgagee or financier whose details have been disclosed in accordance with clause 7.1(d) below;
 - b. he has all necessary licences and proofs of ownership (including, but not limited to, BSC, RCD surveys and equipment manuals) all of which are current and valid and copies of which have been provided to the Agent;
 - c. all particulars given by the Seller to the Agent, including those in 'Schedule A & B' are true complete and accurate;
 - d. the Boat is not subject to any outstanding mortgage, finance contract or hire purchase agreement or arrangement other than disclosed to the Agent and detailed in writing and attached to this agreement;
 - e. the particulars in the 'Schedule B' are correct and all known defects have been disclosed;
 - f. he has provided to the Agent copies of the insurance policy documents required under clause 5.2 together with the most recent receipt for premium.
- 7.2 The Agent shall comply with all regulations concerning marketing and sale, and with all and any conditions binding on it in any relevant licences, registrations, permits and approvals.
- 7.3 The Seller agrees to indemnify the Agent for and against any liability, costs or expenses which may be incurred by the Agent as a result of the breach of any provisions of the Contract by the Seller which shall include any costs incurred in the event of an ownership dispute during or after the sale.

8. Duration and termination

- 8.1 The Contract shall come into effect on the Commencement Date and, subject to clause 8.2, shall continue in force indefinitely thereafter until a sale contract for the Boat is concluded between the Seller and a buyer or until it is terminated by either party giving seven days prior written notice.
- 8.2 The Agent may terminate the Contract without liability to the Agent immediately (or following such notice period as the Agent sees fit), by giving written notice to the Seller if:
 - a. the Seller commits a breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

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- b.** the Seller suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
- c.** a person becomes entitled to appoint a receiver over the assets of the Seller or a receiver is appointed over the assets of the Seller; or
- d.** the Seller is the subject of a bankruptcy petition or order.

9. Effects of termination

- 9.1 Termination of the Contract, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 9.2 On termination of the Contract for any reason:
 - a.** the Agent shall cease to market or advertise the Boat for sale; and
 - b.** the Seller shall immediately pay all monies due to the Agent including but not limited to any commission, slippage, storage and charges in relation to work carried out.
- 9.3 In the event of the termination of the Contract or the removal by the Seller of the Boat from the Marina where the Boat has not been sold, the Agent shall be entitled to charge a storage fee for the period of time the Boat is in the Marina or on brokerage based on the rate detailed in clause 6.5.
- 9.4 Unless expressly provided in the Contract and subject to any rights or obligations accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

10. Entire agreement

- 10.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to the subject matter.
- 10.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
- 10.3 Nothing in this clause shall limit or exclude any liability for fraud.

11. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. Assignment and other dealings prohibited

- 12.1 The Seller shall not without the prior written consent of the other assign, transfer, charge or deal in any other manner with the Contract or its rights under it or part of it, or purport to do any of the same, nor sub-contract nor appoint sub-agents or delegates of any or all of its obligations under the Contract.
- 12.2 The Agent may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

13. Freedom to contract

The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under the Contract.

14. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15. Severance

- 15.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. Third party rights

- 16.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not party to the Contract.

17. Notices / contact

- 17.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out at the beginning of the Contract.
- 17.2 Any notice shall be deemed to have been duly received:
 - a.** if delivered personally, when left at the address and for the contact referred to in this clause; or
 - b.** if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - c.** if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 17.3 A notice required to be given under the Contract shall not be validly given if sent by e-mail.
- 17.4 The provision of this clause 17 shall not apply to the service of any proceedings or other documents in any legal action.

18. Governing law and jurisdiction

- 18.1 The Contract and any dispute or claim arising out of or in accordance with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

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SCHEDULE 'A' - INVENTORY (items to be included in sale)

All physical items to be included as part of the Boat shall be listed by the Seller.

Notwithstanding clause 4.1 of the Terms and Conditions, all physical items on the Boat will be considered part of the Boat for the purposes of any sale irrespective of whether they are listed in the Vendors agreement inventory and 'Schedule A', unless such items are specifically excluded in writing by the Seller.

Item

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SCHEDULE 'B' - OTHER INFORMATION INCLUDING ANY KNOWN DEFECTS

All defects known to the Seller shall be listed on the Vendors Agreement and in 'Schedule B'.