

- 1.2 If for any cause the Yacht is not delivered in accordance with clause 4.1 then, subject to Clause **Error! Reference source not found.**, a pro rata refund shall be made to the Hirer for each complete 12 hours' delay. If the delay should exceed 48 hours, this agreement shall become null and void and the Owner shall return to the Hirer the Advance Payment, the proportion of the Charter Fee already paid and the Security Deposit in full, but without further liability for either party to pay compensation to the other.

2. SECURITY DEPOSIT

- 2.1 The Hirer shall pay the Security Deposit to the Owner as security against the Yacht not being returned in good condition and towards any loss of or damage to the yacht occurring during the Charter Period which is the responsibility of the Hirer under Clause 5.3 and against any loss or damage suffered by the Owner due to any breach of this agreement by the Hirer but without prejudice to any claim over and above the Security Deposit which the Owner may have.
- 2.2 The Security Deposit or any balance remaining shall be returned to the Hirer within 14 days after re-delivery of the Yacht to the Owner or, in the case of dispute, upon the determination of that dispute.

3. DELIVERY OF YACHT

- 3.1 Before the start of the Charter Period the Hirer shall have the opportunity to inspect the Yacht in company with the Owner or his agent for the purpose of ensuring that the Yacht and its equipment are in proper working order and further shall have the right to insist on a trial of at least one hour's duration. By accepting the Yacht the Hirer confirms it is in good order.
- 3.2 If the Owner is unable to deliver the Yacht in a full bunkered condition in accordance with clause 4.1 then he shall agree with the Hirer upon handover the levels of usable fuel, lubricating oil, water and other similar stores.
- 3.3 If the Hirer fails to accept delivery of the Yacht within 48 hours from the start of the

Charter Period and does not notify the Owner in advance of the Charter Period of his intention to accept delivery later during the Charter Period, then the Owner shall be at liberty to treat this agreement as determined. The Owner's rights upon termination shall be as set out in Clause 9.1. The Hirer shall, however, be given credit for any sum recovered by the Owner if he succeeds in re-letting the Yacht in accordance with the conditions set out in Clause 9.3.

4. OBLIGATIONS OF THE OWNER

The Owner hereby UNDERTAKES as follows:

- 4.1 To hand over the Yacht to the Hirer at the start of the Charter Period in full commission, fully bunkered (subject to Clause **Error! Reference source not found.**) in good condition and with all the necessary gear and equipment, including any items specified in the inventory and any tools and equipment necessary for minor foreseeable repairs.
- 4.2 To obtain and provide any necessary documentation for the Yacht in accordance with the regulations for the time being in force under all local and flag state legislation, and to assist the Hirer to ensure that the Yacht is provided with the necessary ship's papers.

5. OBLIGATIONS OF THE HIRER

In addition to the obligations of the Hirer in respect of insurance in Clause 6 the Hirer UNDERTAKES as follows:

- 5.1 To return the Yacht at the end of the Charter Period in the same condition
- 5.2 To pay for all running expenses during the Charter Period, including the cost of food, laundry charges, water, fuel, bills of health, harbour dues, port dues, pilotage, victuals and provisions for himself and his party.

- 5.3 With the exception of loss or damage arising from latent defects or from fair wear and tear, to make good all loss of or damage to any stores, gear, equipment or furnishings of every kind belonging to the Yacht caused during the Charter Period which is not recoverable under the insurance effected by the Owner as well as any loss or damage arising after the Charter Period but attributable to any act or default of the Hirer or any member of his party.
- 5.4 To report to the Owner (and, where applicable to the insurers) as soon as possible any event likely to give rise to a claim under the insurance any other accident, damage or failure of or to the Yacht, and to comply with any reasonable instructions given to him by the Owner or the insurers.
- 5.5 Not to use the Yacht for any purpose other than private pleasure cruising for himself, his crew and his guests, nor to race the Yacht without the prior consent of the Owner.
- 5.6 Not knowingly or recklessly to permit to be done or to do or fail to do any act which may render void the Owner's policy of insurance or result in the forfeiture of the Yacht.
- 5.7 To indemnify the Owner against any loss consequent upon such act or default if the insurance policy of the Yacht is rendered void or the policy monies withheld in whole or in part by reason of any act or default of the Hirer or any member of his party.
- 5.8 At no time during the Charter Period to allow any animals on board the Yacht.

6. INSURANCE AND LIABILITIES

- 6.1 The Owner shall insure the Yacht for its full market value against fire and all the usual marine and collision risks with protection and indemnity cover of at least £[£3,000,000 / €4,500,000] (but not so as to cover the first £50 of any claim, or damage to sails unless caused by a dismasting or collision). The Owner also undertakes to inform the appropriate broker or underwriter that the Yacht is on charter to the Hirer for the Charter Period. The Owner will provide for the Hirer on request a copy of the policy or certificate and shall ensure that the Hirer is covered under the policy or certificate for the same risks as the Owner himself.
- 6.2 Subject to clause 7 the Owner shall not be liable for any personal injury, or any loss of, or damage to, the personal property of the Hirer or any member of his party, or any other person invited aboard the Yacht by the Hirer during the Charter Period caused in whole or in part by the negligence of the Hirer or any member of his party or any other person invited aboard the Yacht by the Hirer.
- 6.3 Should major damage occur to the Yacht during the Charter Period so as to involve a claim on the policy of insurance as described in Clause 6.1 or should a major breakdown of the gear or machinery occur of a nature to make the Yacht unseaworthy, a pro rata refund will be made for the period during which the Yacht was unseaworthy, PROVIDED ALWAYS that neither the Hirer nor any member of his party caused or contributed to the damage or breakdown.
- 6.4 Notwithstanding anything in this agreement the Hirer shall not be entitled to claim from the Owner any other compensation in respect of damage or breakdown or of any consequential loss however caused.
- 6.5 If the Yacht shall become an actual or constructive total loss during the Charter Period then provided that the insurance of the Yacht has not been rendered void or the policy monies withheld in whole or in part by reason of any act or default of the Hirer or any member of his party this agreement shall terminate and the Security Deposit and the pro rata proportion of the Charter Fee shall be repaid to the Hirer.

7. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 This clause 7 sets out the entire financial liability of the Owner (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Hirer in respect of:
- (a) any breach of this agreement;
 - (b) any use made by the Hirer of the Yacht; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 7.3 Nothing in this agreement limits or excludes the liability of the Owner:
- (a) for death or personal injury resulting from the Owner's negligence; or
 - (b) for any damage or liability incurred by the Hirer as a result of fraud or fraudulent misrepresentation by the Owner.
- 7.4 Subject to clause 7.2 and clause 7.3 the Owner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to £[AMOUNT INSURED AGAINST], being the amount insured against by the Owner,.
- 7.5 It is for the hirer to arrange any insurance in excess of the amount referred to in clause 7.4.

8. NO WARRANTY

- 8.1 The Owner does not warrant the fitness of the Yacht in all conditions of weather for any particular cruise or passage within the Cruising Limits.

9. TERMINATION OF AGREEMENT

- 9.1 If any payment due under this agreement is not made on or by the appointed day, or if the Hirer fails to comply with any other provision in this agreement, the Owner

may forthwith terminate this agreement and resume possession of the Yacht, but without prejudice to the right of the Owner to recover any unpaid part of the Charter Fee and damages in respect of any breach of this agreement by the Hirer.

- 9.2 If the Hirer gives written notice to the Owner more than two calendar months before the start of the Charter Period that the Yacht will not be required, no liability for the Balance of the Charter Fee will remain (and if it and/or the Security Deposit have already been paid then it and/or they shall be refunded by the Owner to the Hirer), but the Advance Payment shall be forfeit except that 50% will be refunded if the Owner re-lets the Yacht for the Charter Period at the same or a greater Charter Fee. In such circumstances the Owner agrees to use his best endeavours to re-let the Yacht.
- 9.3 If the Hirer gives notice to the Owner within two calendar months before the start of the Charter Period that the Yacht will not be required, then the Owner will use his best endeavours to re-let the Yacht and the following provisions shall apply:
- (a) If the Owner is unable to re-let the Yacht, then the Hirer remains fully liable for all payments due under this agreement;
 - (b) If the Owner is able to do so at the same or a greater charter fee, then the Hirer's liability shall be limited to 50% of the Advance Payment;
 - (c) If the Owner is only able to do so at less than the Charter Fee, then the Hirer will be liable for the difference between the net sum which the Owner receives and the payments due under this agreement.

10. RE-DELIVERY OF THE YACHT

- 10.1 The Hirer will re-deliver the Yacht to the Owner free of indebtedness at the end of the Charter Period in as good, clean and tidy condition as when delivered to the Hirer (fair wear and tear excepted), at the Yacht's base or other mutually convenient place to be notified to the Hirer.

10.2 If the Hirer shall fail to re-deliver the Yacht at the time and place agreed, he shall be liable to pay to the Owner the sum of £[] for every day or part of a day by which re-delivery is delayed unless the delay is caused by the operation of a peril covered by the terms of the policy or certificate of insurance referred to in clause 6.1 hereof or by such damage to, or failure of, the Yacht as may have been reported to the Owner under Clause 5.4.

11. SETTLEMENT OF DISPUTES

In the event of any dispute arising out of this agreement such shall be referred to a sole arbitrator whose decision shall be final. If the parties are unable to agree on the nomination of an arbitrator then he shall be nominated by the Chairman of the Council of the Royal Yacht Association.

12. FORCE MAJEURE

12.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

12.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

- (a) notify the other party of the nature and extent of such Force Majeure Event;
and
- (b) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

12.3 For the purposes of this clause 12, a Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other

national or international calamity or one or more acts of terrorism or failure of energy sources.

13. VARIATION

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

14. WAIVER

Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

15. SEVERANCE

15.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. ENTIRE AGREEMENT

16.1 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

16.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement. Each party agrees that the only remedies available to it arising out

of or in connection with a Representation shall be for breach of contract.

17. ASSIGNMENT

17.1 The Hirer shall not, without the prior written consent of the Owner, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

17.2 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

18. RIGHTS OF THIRD PARTIES

18.1 A person who is not a party to this agreement shall not have any rights under or in connection with it.

19. LAW

19.1 This agreement shall be governed by English Law.

19.2 This agreement shall be subject to the non-exclusive jurisdiction of the English courts.

SIGNED BY THE OWNER

SIGNED BY THE HIRER