

**TEMPLATE FOR AN AGREEMENT FOR THE SALE AND PURCHASE OF
 A SECOND-HAND VESSEL SUBJECT TO SURVEY AND SEA TRIAL
 ("THE CONDITIONAL AGREEMENT") [June 2007]**
SPONSORED BY THE BRITISH MARINE FEDERATION IN CONSULTATION WITH THE ROYAL YACHTING ASSOCIATION

**THIS DOCUMENT IS INTENDED TO CREATE A LEGALLY BINDING CONTRACT;
 IF YOU ARE UNSURE AS TO THE EFFECT OF ANY OF THE PROVISIONS YOU ARE ADVISED TO TAKE
 APPROPRIATE PROFESSIONAL ADVICE**

THIS AGREEMENT is [date of signing by Purchaser and Seller / Broker] and is made between:

1. *Insert Seller's Full Names, permanent address and Occupation*

("the Seller"), and

2. *Insert Purchaser's Full Names, permanent address and Occupation*

("the Purchaser")

(jointly "the Parties")

in respect of the Vessel described below: ("the Vessel")

Ensure that all items are completed by the seller or are marked "not applicable to this vessel"

NAME OF VESSEL:

FLAG and PORT OF REGISTRY:

Registered Status: (Part I /SSR/ Other /Unregistered) *

OFFICIAL NUMBER:

HIN / CIN NUMBER:

PRINCIPAL DIMENSIONS:

Length Overall: Beam: Draft:

Gross registered tonnage:

Engines (make, power and date of build):

DESCRIPTION and CONSTRUCTION MATERIALS:

BUILDER:

DATE OF BUILD:

DATE OF PURCHASE BY SELLER:

VAT Paid in EU: [YES]/[NO] *

FINANCED ?: [YES]/[NO] * FINANCE HOUSE ?:

NOW LYING AT:

* *Delete as appropriate; all parties to initial any deletions*

The Seller is represented in this transaction by ***[Insert Broker's Name, business address and contact details]***

(**"the Broker"**) who is a member of The British Marine Federation and The Boat Retailers and Brokers Association.

1. Purchase Price

- 1.1. The Seller agrees to sell and the Purchaser agrees to purchase the Vessel free from all debts, claims and charges of every kind subject to the terms of this Agreement for the sum of £[*price in figures*] (pounds sterling *price in words*) together with all the gear and equipment bought for and belonging to the Vessel as detailed in the attached inventory but excluding provisions and the Seller's personal effects.
- 1.2. The Seller warrants that VAT and Customs Duty **[is] / [is not]*** payable on the sale of the Vessel which is the subject of this Agreement.

If VAT or any other tax or duty is payable on this sale terms should be agreed and recorded regarding responsibility for their payment.

2. Deposit and other payments

- 2.1. On signing this Agreement the Purchaser is to pay a deposit of 10% of the purchase price to the Broker. In consideration of his appointment to hold the deposit the Broker undertakes, for the benefit of the Purchaser and the Seller, to pay the deposit (and any other part of the purchase price which he may receive at any time) into a Client Trust account named as such and to keep it at all times separate and distinct from the Broker's own monies and undertakes to keep proper books of account in respect of all such sums received.
- 2.2. The balance of the purchase price shall be paid by the Purchaser to the Broker as agent for the Seller on completion. Payment shall be deemed to have been made when cleared funds are received in the Broker's client trust account. Upon completion the Broker will release to the Seller the purchase price, net of any commission and charges to which the Broker is entitled, and also retaining sufficient funds to discharge any finance, borrowing or other charges relating to the Vessel.
- 2.3. In the event that a dispute between the parties arises before completion then (and in the absence of any other action agreed between the parties) the deposit shall be retained in the Broker's client trust account pending resolution of the dispute in accordance with Clause 16.

3. Warranties

- 3.1. This sale **[is] / [is not]*** related to the Seller's business, trade or profession

If the Vessel is or has been a business asset of the Seller (for example a charter boat) or the Seller is a regular trader in boats this fact must be disclosed; failure to do so may make the Agreement unenforceable against a private purchaser, give rise to claims for damages and entitlement to reject the Vessel and recover the costs of any necessary repair or replacement work on the Vessel, its gear or equipment.

- 3.2. By the terms of this Agreement the Purchaser is given every proper opportunity to inspect, survey and sea trial the Vessel and all gear and equipment included within the sale and to satisfy himself as to its condition, quality, specification and fitness for purpose. If the Seller is selling the Vessel in a private capacity and not in the course of, or for the purpose of a business then, subject to these rights of inspection, survey and sea trial and the other terms of this Agreement (in particular Clause 3.3) the Purchaser waives all rights relating to the condition, quality, description and fitness for purpose of the Vessel, its gear and equipment, and the Purchaser agrees to buy the Vessel, its gear and equipment with all defects and faults of description without any allowance whatsoever.
- 3.3. The Seller warrants to the Purchaser that the factual matters set out in the description of the Vessel on page 1 of this Agreement are true and that he is the sole legal and beneficial owner of the Vessel and absolutely entitled to transfer his interest in the Vessel in the manner provided by this Agreement.

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4. Survey and inspection

- 4.1. The Seller will make the Vessel and all the gear and equipment included within the sale available for inspection and survey by the Purchaser's surveyors or advisers at a mutually convenient time and place for as long as shall reasonably be required to complete the inspection and survey.
- 4.2. Unless time for the survey shall be extended by agreement between the parties the survey shall be completed not later than [.....insert specified agreed date] / [one calendar month from the date of signature of this Agreement]*

If the Parties sign the Agreement on different dates then time for completion of the survey shall run from the date of the last signature in time.

- 4.3. At the Purchaser's request and at the Purchaser's sole cost the Seller will arrange to slip or crane the Vessel ashore for the purpose of this survey at a venue to be agreed.
- 4.4. If the Purchaser or his surveyor wish to carry out any inspection requiring more than superficial non-destructive dismantling and limited removal of anti-fouling the Seller's consent shall be obtained before such work is undertaken. Consent shall not be unreasonably withheld and delay on the part of the Seller in granting consent will extend the time for completion of the survey under Clause 4.2.
- 4.5. The Purchaser shall be entitled, [before] / [after]* inspection and survey, to require the Seller to perform a sea trial of the Vessel, her gear and machinery and all items included within the sale. The duration of the sea trial shall be proportionate to the cost and complexity of the Vessel and its systems but unless specifically agreed at the date of this Agreement shall not be shorter than 1 hour nor longer than 4 hours. The Seller shall be obliged to insure the Vessel for the duration of the sea trial and shall provide any necessary crew. The Purchaser shall be entitled to be accompanied by up to two surveyors or advisers, any co-purchasers and not more than 1 member of his immediate family, subject to space constraints. The sea trial shall take place in reasonable weather conditions and not more than 5 miles offshore. Unless agreed otherwise the Purchaser and his party shall be responsible for supply of their own lifejackets and other safety equipment. The Purchaser shall be responsible for the cost of any fuel and oils consumed during the sea trial.
- 4.6. Following Survey and /or sea trial the Seller shall not use the Vessel unless and until the Purchaser has given notice of rejection of the Vessel in accordance with this Agreement.

5. Defects

- 5.1. If the inspection, survey or sea trial reveals any defect in the Vessel, its machinery, gear or equipment which was not disclosed to the Purchaser in writing prior to the signing of this Agreement, or if there are any deficiencies in the inventory prepared and attached to this Agreement, for which the aggregate cost of rectification by a competent and reputable shipyard or replacements (on a like for like basis, discounted to second hand prices) is collectively equal to or exceeds [5][†]% of the purchase price then the Purchaser may give written notice to the Seller or the Broker within 7 days of completion of the inspection, survey and sea trial, whichever is the later, specifying the defects and/or deficiencies and including a copy of all relevant extracts from a surveyor's or adviser's report, and either:

5.1.1. reject the Vessel, or

5.1.2. require the Seller to make good the defects and/or deficiencies or make a sufficient reduction in the purchase price to enable the Purchaser to do so. In this case all agreed items of work shall be completed without undue delay and shall be carried out to the express requirements contained in the Notice served by the Purchaser.

For the purposes of this Clause 5.1 and Clause 6.1.2 "completion of survey" shall mean the date of receipt by the Purchaser of a written or emailed survey report.

- 5.2. If the Purchaser serves notice under Clause 5.1.1, or Clause 5.1.2, and;

5.2.1. the Seller fails within 21 days after service of the notice to agree to make good the defects or deficiencies specified in the notice without unreasonable delay or;

* **Delete as appropriate: all parties to initial any deletions**

[†] **5% will not always be an appropriate figure and the point should be negotiated between the Parties prior to signing**

- 5.2.2. the parties shall not have agreed within 14 days after service of the notice upon the amount by which the purchase price is to be reduced

THEN this Agreement shall be rescinded and any deposit paid shall be refunded to the Purchaser in accordance with Clause 8.

- 5.3. In the case of any deficiencies in the Vessel's inventory remaining or arising within 7 days of Acceptance the deficiencies shall be made good by the Seller or the purchase price shall be reduced by a sum agreed between the Parties which should reflect the reasonable cost of replacement of such items with second hand items of similar specification.

6. Acceptance

- 6.1. The Vessel shall be deemed to have been accepted by the Purchaser upon the happening of any of the following events ("Acceptance"):

- 6.1.1. Upon the expiry of [21] days from the date of this Agreement or such extended period as may be agreed between the parties if no survey or sea trial has been initiated by the Purchaser by the date set out in Clauses 4.2 and 4.5; or
- 6.1.2. [7] days after the date of completion of the inspection, survey and sea trial, whichever is the later, provided that the Purchaser has not served any notice under Clause 5.1; or
- 6.1.3. Upon notification in writing by the Seller or his Broker to the Purchaser of completion of the remedial works specified in any notice given by the Purchaser under Clause 5.1.2; or
- 6.1.4. Upon mutual agreement between the Seller and the Purchaser of a reduction in the purchase price under Clause 5.1.2.

7. Completion

- 7.1. Completion shall take place within [7] days of Acceptance at a location mutually convenient to the parties and preferably in close proximity to the Vessel. It shall be a condition precedent to Completion that the Broker is in receipt of the full purchase price as detailed in Clause 1, and the properly executed original documentation detailed in Clause 7.2. Immediately upon completion the Seller will give delivery of the Vessel to the Purchaser and will hand over to the Purchaser the Delivery Documents described in Clause 7.2. The parties shall record the time at which Completion occurs by means of a Protocol of Delivery and Acceptance for the purpose of notifying their respective insurers.
- 7.2. The following original Documents shall be prepared by the Seller and held by the Broker in advance of Completion and shall be delivered to the Purchaser on Completion;
- 7.2.1. All Certificates of Registry in the Seller's possession relating to the Vessel, current or expired;
- 7.2.2. A properly executed Bill of Sale relevant to the Purchaser in favour of the Purchaser or his nominee;
- 7.2.3. All other documents of title to the Vessel which are in the Seller's possession or control;
- 7.2.4. Evidence by way of original or true copy documents regarding the VAT status of the Vessel including Builder's invoices, evidence of VAT payment and dates of arrival in the European Community;
- 7.2.5. Evidence of compliance with the Recreational Craft Directive;
- 7.2.6. An express written declaration by the Seller that at the moment of Completion and delivery to the Purchaser the Vessel is free of all debts, claims and charges of every kind.
- 7.2.7. Where the seller is a company certified copies of the corporate authorities approving this Agreement and appointing the signatories for the Bill of Sale;
- 7.2.8. Any delivery order or authority necessary to enable the Purchaser to take immediate possession of the Vessel.

The Documents listed in Clause 7.2 are those which a Purchaser should obtain wherever possible; it should be recognised however that they will not always be available and in that case the pre-printed terms should be amended BEFORE the contract is signed so that the Purchaser knows what documents he is contractually entitled to receive at Completion

8. Rescission

- 8.1. In the event of rescission by the Purchaser under the terms of this Agreement he shall, at his own expense reinstate the Vessel to the condition and position in which he found it and shall pay all yard and surveyor's charges for this work. The Broker as agent for the Seller shall thereupon return the deposit to the Purchaser without deduction and without interest save that he or the Broker shall be entitled to retain such part of the deposit as is necessary to meet any yard or surveyor's charges which may have been incurred by or at the request of the Purchaser but which have not been paid by the Purchaser. Neither party shall thereafter have any claim against the other under this Agreement.

9. Risk

- 9.1. Until completion and delivery of the Vessel to the Purchaser, including while undergoing survey, the Vessel shall be at the sole risk of the Seller who shall make good any damage (other than damage caused by the Purchaser or his surveyor) sustained before actual delivery to the Purchaser. If the Vessel becomes an actual or constructive total loss before completion this Agreement shall terminate and the deposit shall be immediately returned to the Purchaser without interest but without deduction or charge and the Purchaser shall have no claim against the Seller for damages. The Purchaser shall, however, remain liable for the cost of any yard work or surveyor's fees commissioned by him or at his request. Upon Delivery of the Vessel to the Purchaser risk in the Vessel shall pass to the Purchaser.

10. Title

- 10.1. Title in the Vessel shall pass to the Purchaser upon completion in accordance with Clause 7.

11. Default

- 11.1. If the Purchaser defaults in paying the balance of the purchase price by the last date for completion under Clause 7 of this Agreement the Seller may serve a written notice on the Purchaser requiring him to complete the purchase within a further 7 days. If the Purchaser fails to comply with that notice the Seller shall be free to re-sell the Vessel by public auction or private treaty and any deposit paid shall be forfeit without prejudice to the Seller's right to claim from the Purchaser any loss on re-sale together with all his reasonable costs and expenses; in the event of such a claim the Seller shall be obliged to give credit for the amount received by way of the forfeited deposit.
- 11.2. If the Seller fails or refuses to complete the sale by the last date for completion under Clause 7 of this Agreement the Seller or Broker (as appropriate) shall immediately return the deposit to the Purchaser together with any interest earned. Such payment shall be entirely without prejudice to any other rights which the Purchaser may have under this Agreement.

12. Broker's Commission

- 12.1. The Broker's fees and commission shall be paid by the Seller and shall become due upon Acceptance and may be retained by the Broker out of the purchase price at Completion. The Broker shall not be entitled to delay or prevent repayment to the Purchaser of the deposit in the event that the Seller refuses or fails to complete the sale.

13. Notices

- 13.1. Any notice to be served under this Agreement on the Seller, Purchaser or Broker 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. Any notice posted shall be deemed to have been received on the third business day (excluding Saturdays) after posting.

14. Entire Agreement

- 14.1. This Agreement together with any Schedules, inventories and Addenda forms the entire agreement between the Parties.

15. Law and Jurisdiction

- 15.1. This Agreement shall be governed by the law of England and Wales.
- 15.2. Any dispute arising under this Agreement shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.

16. Dispute Resolution

- 16.1. The BMF and the RYA recommend that disputes arising under this form of Agreement which cannot be resolved by negotiation, should, with the written agreement of the Parties, be submitted to mediation or failing that to arbitration under the BMF's Dispute Resolution Scheme, which is approved by the RYA.
- 16.2. Details of the mediation scheme operated by the BMF are available at www.britishmarine.co.uk/mediation.
- 16.3. Matters suitable for arbitration shall be submitted to a single Arbitrator in accordance with the BMF's Dispute Resolution Scheme. The provisions of the Arbitration Act 1996 shall apply.

Signed: SIGNATURE OF SELLER

[Date]

WITNESS NAME

Address:

Occupation:

Signed: SIGNATURE OF PURCHASER

[Date]

WITNESS NAME

Address:

Occupation:

BROKER

Signed:

Date:

N.B. IF THE SIGNATURES OF THE SELLER AND PURCHASER ARE OBTAINED ON DIFFERENT DATES THEN THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE ON WHICH THE LAST SIGNATURE IS OBTAINED.

THE INVENTORY *[continue on separate sheet / back page if necessary]*