

BIRCHELL MARINE - PAIGNTON

South Quay, The Harbour, Paignton, Devon, TQ4 6DT
Tel: 01803 558760 Fax:01803 529362

BIRCHELL MARINE - TORQUAY

Beacon Quay, The Harbour, Torquay, Devon, TQ1 2BG
Tel: 01803 214305 Fax: 01803 290624
Email:sales@birchellmarine.co.uk
Web:www.birchellmarine.co.uk

BROKERAGE AGREEMENT



STANDARD AGREEMENT for the LISTING OF A SECOND-HAND VESSEL

THIS DOCUMENT IS INTENDED TO CREATE A LEGALLY BINDING CONTRACT; IF YOU ARE UNSURE OF ANY OF THE CONDITIONS YOU ARE ADVISED TO TAKE APPROPRIATE LEGAL ADVICE

THIS LISTING AGREEMENT

is dated _____

AND IS MADE BETWEEN:

1. NAMES and ADDRESSES OF ALL JOINT OR PART OWNERS OR MORTGAGEES OR HIRE PURCHASE COMPANY:

MOBILE TELEPHONE NUMBER: _____ HOME TELEPHONE NUMBER: _____

BUSINESS TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

("the Owner/ the Owners"), and

2. **BIRCHELL MARINE LIMITED, BEACON QUAY, THE HARBOUR, TORQUAY, DEVON, TQ1 2BG**

("the Broker")

in respect of the Vessel described below:

("the Vessel")

NAME OF VESSEL: _____

MODEL / TYPE: _____

BUILDER: _____

DATE OF BUILD: _____

FLAG and PORT OF REGISTRY: _____

REGISTERED STATUS: (Part I /SSR/ Boatmark / Other /Unregistered) _____

OFFICIAL NUMBER: HIN / CIN NUMBER: _____

PRINCIPAL DIMENSIONS: _____

Length Overall: _____

Beam: _____

Draft: _____

ENGINE (S) _____

Make: _____

Horsepower: _____

Year: _____

DATE OF PURCHASE BY OWNER: _____

ASKING PRICE: _____

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1 Declarations by the Owner/Owners

- 1.1 Declarations by the Owner as to his business and VAT status and the VAT status of the Vessel
 - 1.1.1 This sale is / is not related to the Owner's business, trade or profession
 - 1.1.2 The Vessel is / is not VAT paid in the EU.
 - 1.1.3 VAT is / is not chargeable on the selling price.
- 1.2 The Owner declares that the factual matters set out in the description of the Vessel on page 1 of this Agreement and in this Clause 1 (and its sub-clauses) 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, subject only to the concurrence of any joint Owner, mortgagee or financier whose details and identity have been disclosed above. Furthermore he understands that the Broker will rely on the accuracy of the facts and matters referred to in this Clause 1 and that the accuracy of the information provided by him to the Broker forms a material part of the consideration for this agreement.
 - 1.2.1 Declarations by the Owner as to correctness of particulars
 - 1.2.1.1 The Owner hereby instructs the Broker to act as his Agent for the sale of the Vessel, and declares that to the best of his knowledge and belief the particulars attached or otherwise signed or supplied by the Owner are correct and all known defects have been disclosed.
 - 1.2.1.2 The Owner accepts that the Broker shall qualify any particulars issued 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 trialled and opened up".
- 1.3 The Owner agrees to indemnify the Broker against any claim or liability (including the cost of defending any such claim or resisting any such liability as may arise) 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.

2 Agreement to sell

- 2.1 The Owner agrees to sell at the asking price or to negotiate reasonably for and enter into and perform a sale and purchase agreement upon the introduction of a willing buyer by the Broker. The intended form of such agreement, subject to negotiation with the Purchaser, is the standard form Agreement for the Sale and Purchase of a Second Hand Vessel.

3 Brokerage Commission.

- 3.1 If a sale of the Vessel is completed to a purchaser (or his nominee or agent) who was introduced by and and/or with whom the Broker conducted negotiations in relation to the Vessel during the validity of this agreement then the Owner shall pay commission to the Broker on the actual price paid by the Purchaser at the rates set out in Clause 3.2 below. This commission shall be payable whether the sale occurs during the term of this Agreement or within 12 months after the termination of the Agreement.
- 3.2 Commission Rates
The rate of commission to be paid by the Owner to the Broker shall be 6% which shall be calculated on the net sale price of the Vessel. The Broker shall, in addition and where applicable, be entitled to charge and recover VAT on any commission earned at the rate then prevailing in the relevant territory.

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- 3.3 If the Broker introduces a prospective purchaser for the Vessel, the Broker shall be entitled to one half of the agreed commission on the agreed price if
- 3.3.1 the purchaser defaults on his obligation to complete the purchase in circumstances in which any deposit which he has paid becomes forfeit; or
 - 3.3.2 a sale falls through following survey and the Owner is unwilling to abate the price or any analogous term in any other contract form, for defects in the Vessel or deficiencies in the inventory revealed on survey and not previously disclosed by the Owner to the purchaser.
- 3.4 If the Broker introduces a prospective purchaser for the Vessel who is ready, willing and able either to complete the purchase at the asking price, or (where the price has been renegotiated with the Owner's consent) at any renegotiated price, but the Owner refuses to proceed with the sale of the Vessel in a reasonable time or manner or at all then the Broker shall be entitled to his full commission on the asking or renegotiated price, as the case may be.

4 Retention by Broker of commission and outstanding charges

- 4.1 On completion of an agreement for sale the Broker may deduct commission and VAT from the proceeds of sale and any other reasonable outstanding charges.
- 4.2 When the Broker is entitled to half commission in accordance with clause 3.3 the Broker may deduct commission and VAT and any other reasonable outstanding charges from any deposit forfeited by the Purchaser.

5 Client monies and Proceeds of Sale

- 5.1 The Broker shall receive and hold all deposits or purchase funds in a designated Client Trust Account denominated as such in the account name and operated by the Broker [or by a Solicitor or Chartered accountant on his behalf] and segregated at all times from his own monies. The basis and capacity in which such funds are held shall be determined in accordance with the contractual instrument under which they have been paid, which will normally be as agent for the Owner. The Owner hereby authorises and instructs the Broker to distribute the net proceeds of any sale in accordance with the registered ownership of the vessel or as directed by all parties to ownership, within 7 days of completion and delivery of the Vessel to the purchaser.

6 Notification Of Alterations To Price Or Location, Withdrawal From Sale Or Sale Elsewhere.

- 6.1 The Owner undertakes to advise the Broker promptly of any changes in the asking price or location of the vessel and undertakes that the vessel will not be offered at a lower price elsewhere and also undertakes to notify the Broker immediately if the boat is withdrawn, or sold elsewhere, and in the latter case, to provide the Broker with written confirmation of the name and address of the purchaser.
- 6.2 The Owner shall notify the Broker of the names of any other brokers instructed in relation to the Vessel at any time.

7 Insurance

- 7.1 Unless otherwise specifically agreed the Owner confirms that the Vessel is insured against usual marine perils and third party risks and will remain insured until completion of a sale and such insurance shall cover all viewing and sale arrangements, including slipping for survey, and sea trials. Further, unless otherwise specifically agreed the Owner shall also be responsible for all cleaning, maintenance, berthing, storage and security of the Vessel pending sale.
- 7.2 The Broker undertakes to maintain professional indemnity cover for himself, his employees and agents in respect of their prospective liability in respect of any breach of this agreement or any other act, omission or breach of duty giving rise to loss.

8 Access To View And Key To Be Available

- 8.1 The Owner will give written instructions to the relevant mooring or marina operator to permit the Broker to access the Vessel at any time and shall make keys available for this purpose. Where appropriate these instructions may be given in the Broker's standard form.

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9 Submission Of Offers

- 9.1 The Broker undertakes 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.

10 Minimum Period And Termination By Notice.

- 10.1 This Agreement shall be for a minimum period of 6 months (unless the Vessel is sold or the Agreement is terminated or frustrated)
- 10.2 If the Vessel shall remain unsold 5 months after the date of this Agreement either party may terminate this agreement by giving 30 days' notice in writing to the other
- 10.3 Termination of this Agreement shall not affect the Broker's right to be paid commission in the event of a sale to a purchaser who was introduced by the Broker or with whom the Broker conducted negotiations during the currency of this Agreement in accordance with Clause 3.1.

11 Termination On Insolvency Of Either Party

- 11.1 This Agreement shall terminate automatically if either party becomes insolvent or undergoes any formal insolvency process or compounds with his/its creditors.

12 Interpretation

- 12.1 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.
- 12.2 Unless this Agreement has clearly been marked "Central or Sole Listing Agreement" at the front page and initialled by both parties the agency hereby created shall be non-exclusive and the Owner shall have the right to appoint other Brokers in respect of the Vessel (subject to the terms of Clause 6) or to sell it privately. However where the Agreement has been expressed to be a "Central or Sole Listing Agreement" any sale or disposal of the Vessel during the currency of the Agreement shall give rise to a right for the Broker to receive commission on the sale, whether or not the purchaser was introduced by the Broker. The minimum term of a "Central or Sole Listing Agreement" shall be 90 days and may be terminated thereafter on written notice. The Broker shall be entitled to commission on any sale made within 12 months of the termination of a "Central or Sole Listing Agreement" to a person introduced to the Vessel by the Broker during the period of the "Central or Sole Listing Agreement".

13 Law And Jurisdiction

- 13.1 This Agreement is subject to and governed by the law of England and Wales and any dispute arising shall be referred to the jurisdiction of the English High Court.

SIGNATURE OF OWNER (Authorised Signatory in case of a company)

DATE:

FOR BIRCHELL MARINE