

## **TERMS OF THE CHARTER – *Vital Spark of Portsmouth***

### **1 Charter Agreement and Booking Deposit**

- 1.1 The Owner shall let and the Charterer shall charter the Yacht for the Charter Fee. The Booking Deposit will be paid to the Owner on signing the Booking Form which, together with these Terms of the Charter, constitutes the Charter Agreement between the Charterer and the Owner. The balance of the Charter Fee and the Security Deposit shall be paid to the Owner in cleared funds at least 30 days before the start of the Charter Period.
- 1.2 The Terms of the Charter come into effect upon the signing of the Booking Form and remain in effect until the completion of the Charter Period as defined in Clause 12.3 hereof.

### **2 Security Deposit**

- 2.1 The Charterer shall pay the Security Deposit as security against the Yacht not being returned late and in a good, clean, tidy condition and towards any loss or damage to the Yacht, fouling of the propeller etc. which may occur during the Charter Period, this being the responsibility of the Charterer under Clause 5.1 hereof. Also against any loss or damage suffered by the Owner due to any breach of the Charter Agreement by the Charterer but without prejudice to any claim over and above the Security Deposit which the owners may have.
- 2.2 The balance of the Security Deposit will normally be returned to the Charterer within ten days of the end of the Charter Period unless deductions are necessary, when the value of these deductions may delay the return.

### **3 Delivery of Yacht**

- 3.1 Before the start of the Charter Period the Charterer shall have the opportunity to inspect the Yacht over a two hour period, in company with the Owner, for the purpose of ensuring that the Yacht and its equipment are in proper working order. Acceptance of the Yacht shall imply (prima facie) that the Yacht is in good order. The Owner may request that the Charterer and at least one member of his crew accompany the Owner for trials to establish the competence of the Charterer to handle the Yacht within the Cruising Limits.
- 3.2 If the Charterer fails to accept delivery of the Yacht within two hours of the start of the Charter Period and shall not have notified the Owner of his intention to accept delivery later during the Charter Period, then the Owner shall be at liberty to treat the Charter Agreement as terminated. Rights upon termination shall be as set out in Clause 7.1, 7.3.1 and 7.3.2 hereof.

### **4 Obligations of the Owner**

- 4.1 The Owner will use his best endeavours to hand over the Yacht to the Charterer at the start of the Charter Period in full commission, fully bunkered, in good condition with all items specified in the inventory and tools and equipment necessary for minor foreseeable repairs. For the avoidance of any doubt, 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. The safety and safe conduct of the Yacht shall remain the responsibility of the Charterer.
- 4.2 The Owner will use his best endeavours to deliver the Yacht to the Charterer at the agreed time and place. If for any reason the Yacht shall not be delivered, then subject to Clause 3.2 hereof, a pro rata refund shall be made to the Charterer for each 12 hours delay. The maximum pro rata refund for a charter booked for a period of less than 96 hours is 24 hours. If the delay shall exceed 48 hours, the Charter shall become null and void and the Owner shall return to the Charterer any Booking Deposit, 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.
- 4.3 Should the Yacht at handover not be fully bunkered, then the Owner shall agree with the Charterer the levels of usable fuel, gas and other similar stores.
- 4.4 The Owner will provide necessary documentation for the Yacht in accordance with the regulations for the time being in force under Customs and Excise or other Acts and any amending Statute, and to ensure that the Yacht is provided with the necessary Ship's Papers. Should the Charterer require additional personal documentation to sail overseas, it remains his responsibility to obtain these.
- 4.5 The Owner will refund necessary expenses incurred by the Charterer, against receipts relating to the replacement or repair of equipment failing only as a direct result or fair wear and tear. Expenditure over £100 must have prior agreement from the Owner.

## **5 Obligations of the Charterer**

- 5.1 The Charterer will return the Yacht at the end of the Charter Period in a clean, tidy and fully bunkered condition. In the event that the Charterer does not fulfil this obligation, compensation shall be assessed and the difference in value adjusted within the Security Deposit.
- 5.2 The Charterer will pay all running expenses during the Charter Period.
- 5.3 The Charterer will 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, as well as any loss or damage arising after the Charter Period but attributed to any act or default of the Charterer or any member of his party.
- 5.4 The Charterer will report by telephone, mobile phone or facsimile message to the Owner as soon as possible any event likely to give rise to a claim under the Insurance and any other accident, damage or failure of or to the Yacht, and to comply with any reasonable instructions given to the Charterer by the Owner or the Insurers. The Charterer shall use his best endeavours to obtain the approval of the Owner, and shall obtain a written estimate for any work likely to cost over £100 before putting any repairs in hand. A list of all defects and damage, whether rectified or not, shall be provided by the Charterer at the end of the Charter Period.
- 5.5 The Charterer will not lend, or sub-charter or otherwise part with control of the Yacht, and particularly to he undertakes to comply with National and International rules governing the exchange of skippers and/or crew.
- 5.6 The Charterer will not use the Yacht for any purpose other than private pleasure cruising for himself, his crew and his guests. He will not race the Yacht. He will not tow any dinghy but will lash it to the deck of the Yacht.
- 5.7 The Charterer will limit the number of his party to not more than the number of berths on the Yacht. To ensure that the names of all members of the party are included on the Booking Form, or otherwise notified to the Owner prior to the commencement of the Charter.
- 5.8 To remain within the Cruising Limits as defined in the Owner's Insurance Policy.
- 5.9 The Charterer will not permit any act which may render void the Owner's Policy of Insurance or result in the forfeiture of the Yacht.
- 5.10 If the Insurance Policy is rendered void or policy monies withheld in whole or in part, by reason of any act or default of the Charterer or member of his party, the Charterer hereby agrees to indemnify the Owner against any loss consequential upon such act or default.
- 5.11 The Charterer will be fully responsible for the safety and security of the Yacht at all times during the Charter Period. Unless the Yacht is moored or anchored in a protected harbour or marina, the Yacht shall not be left unattended and one competent crew member shall remain on board.
- 5.12 The Charterer will observe the laws of the Countries visited and all regulations of Customs, Harbour, Port or other Authorities to which the Yacht becomes subject. Should the Yacht be impounded or delayed due to the Charterer failing to observe these regulations, he shall become liable for any consequential costs.
- 5.13 At no time during the Charter Period will the Charterer allow any animals on board the Yacht.
- 5.14 The Charterer will ensure the Yacht is properly cleared by British Customs on leaving for and returning from abroad.
- 5.15 The Charterer will ensure that the details supplied on the Booking Form are complete and accurate.

## **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 £2m.
- 6.2 The Owner shall not be liable for any personal injury or any loss of or damage to the personal property of the Charterer or any member of his party or any other person invited aboard the Yacht by The Charterer during the Charter Period, nor from any consequential losses resulting from such incidents.
- 6.3 Should a major breakdown of gear or machinery 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 Charterer nor any member of his party caused or contributed to the breakdown.
- 6.4 The Charterer shall not be entitled to claim from the Owner any other compensation in respect of damage, breakdown, personal injury or of any consequential loss, however caused.
- 6.5 If the Yacht becomes 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 by reason of any act or default of the

Charterer or any member of his party, the Charter Agreement shall terminate and the Security Deposit, less any Insurance excess, shall be repaid to the Charterer.

- 6.6 The Charterer should not admit liability to any person for damage caused to the Yacht, to any third party or to any other Yacht but give only the Owner's name, address and telephone number and report details of the incident directly to the Owner.

## **7 Termination of the Charter Agreement**

- 7.1 If the Charterer fails to comply with any provision of this Agreement, the Owner may forthwith terminate the Agreement and take possession of the Yacht. Such action is without prejudice to the rights of the Owner to recover any unpaid part of the Charter Fee and damages in respect of any breach of the Agreement by the Charterer.
- 7.2 If the Charterer gives written notice two calendar months before the start of the Charter 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 to the Charterer), but the Booking Deposit shall be forfeit unless the Owner re-charter the Yacht for the Charter Period.
- 7.3 If the Charterer gives notice to the owners within two calendar months before the start of the Charter Period that the Yacht will not be required, then the following provisions apply:
- 7.3.1 If the Owner is unable to re-charter the Yacht, then the Charterer remains fully liable for all payments due under this agreement.
- 7.3.2 If the Owner are able to re-charter the Yacht, then the Charterer's liability shall be limited to 50% of the Booking Deposit.
- 7.4 The Owner may terminate the Agreement at any time upon repayment to the Charterer of all sums already paid at that date.

## **8 Return of the Yacht**

- 8.1 The Charterer shall return the Yacht at the end of the Charter Period free of any indebtedness, at the Yacht's base or other mutually agreed place and notified to the Owner.
- 8.2 If the Charterer fails to return the Yacht at the agreed time and place, he shall be liable to pay any costs incurred in returning it to the agreed place and to pay the Owner the daily rate for every day or part of a day by which the return is delayed. If by prior agreement of the Owner, or the delay being caused by a peril covered by the Terms hereof or by such damage to, or failure of, the Yacht as may have been reported to the Owner under Clause 5.4 hereof, these costs will be waived.

## **9 Settlement of Disputes**

- 9.1 In the event of any dispute arising out of the Charter Agreement, such shall be referred to a Sole Arbitrator whose decision shall be final. If the Owner or Charterer are unable to agree on the nomination of an Arbitrator then one shall be nominated by the Chairman of the Council of the Royal Yachting Association.
- 9.2 This Agreement shall be governed by English Law.

## **10 Salvage**

- 10.1 The Charterer shall only Salvage or tow another vessel if the saving of life is involved and prior written agreement obtained from the vessel to be towed. The proceeds of any Salvage Operation shall become the property of the Owner but a reward shall be payable by the Owner to the Charterer.
- 10.2 The Charterer shall not accept a tow or help without the prior agreement of the Owner, unless:
- 10.2.1 Life is in danger and it is agreed in writing by the Skipper of the helping vessel that no Salvage Claim will be made.
- 10.2.2 The Charterer takes full responsibility for the settlement of any Salvage claim and compensation to the Owner for any consequential loss.

## **11 Acceptance of the Terms of the Charter**

- 11.1 The Skipper's (Charterer's) signature on the Booking Form brings the Charter Agreement into immediate effect and signifies his full acceptance of these Terms of the Charter.

- 11.2 The Charterer also accepts full responsibility for the actions of any other party whom he allows onto the Yacht or whom he allows to participate in the operation of the Yacht be it from on board the Yacht or on board any other Yacht or from shore.
- 11.3 No Charter Booking can be confirmed until a signed Booking Form and Booking Deposit are received and acknowledged by the Owner. The Owner reserve the right to confirm bookings on a first come first served basis.

## **12 Definitions**

- 12.1 The Owner comprises the Legal Owners of the Yacht or their nominated Agent.
- 12.2 The Charterer is the person signing the Booking Form as Skipper.
- 12.3 The Charter Period is the period between Handover and the proper return of the Yacht, under Clauses 5.1, 8.1 and 8.2.
- 12.4 The Charter Agreement (the Agreement) comprises a signed Booking Form and the 'Terms of the Charter'.
- 12.5 For the purposes of this Agreement, Peril shall be any situation where the undertaking of a passage will put the safety of the Yacht and/or the crew into excessive danger.

## **13 General**

- 13.1 The Charterer shall not be entitled in any circumstances whatsoever to assign the benefit of the Charter Agreement to any third party and shall remain liable notwithstanding any purported assignment made by the Charterer.
- 13.2 No action taken by the Owner or his Agent or any failure to act or time allowed to the Charterer or any failure of the Owner to insist upon and enforce his strict legal right, shall constitute a waiver of any of the provisions of this Agreement which shall remain in full force and effect.

### **Yacht Owner**

Peter J Manly  
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