

Spirit of June Yacht Charters Terms and Conditions

1. CHARTER AND ADVANCE PAYMENT

1.1 The Operator shall let and the Charterer shall Charter the Boat on bareboat Charter for the Charter Period for the Charter Fee.

1.2 The Advance Payment shall be paid to the Operator on the signing of this Agreement. The Balance of the Charter Fee, and the Security Deposit, shall be paid to the Operator in cleared funds at least 28 days before the start of the Charter Period.

Following receipt by the Operator of the Advance Payment, the Operator shall not enter into any other Agreement for the Charter of the Boat for the same period.

2. SECURITY DEPOSIT

2.1 The Charterer shall pay the Security Deposit of £1000 to the Operator as security against the Boat not being returned in good condition and towards any loss of or damage to the Boat occurring during the Charter Period which is the responsibility of the Charterer under Clause 6.2 and against any loss or damage suffered by the Operator due to any breach of this Agreement by the Charterer but without prejudice to any claim over and above the Security Deposit which the Operator may have.

The Operator may retain and apply the Security Deposit in reduction or extinction of:

- (a) Any liability of the Charterer to the Operator howsoever the same may arise;
- (b) The cost of repairing any loss or damage to the Boat, her gear, equipment or furnishings for which the Charterer is responsible under Clause 6.2 and which is for any reason not recoverable under the Boat's own insurance, howsoever the same may arise; and/or
- (c) Any liability for the death or personal injury of, or the loss of or damage to the personal property of, any third party, provided that such retention shall be without prejudice to the right of the Operator to recover any unsatisfied balance of such liability or cost from the Charterer.

Save as aforesaid, the Security Deposit or any balance remaining shall be returned to the Charterer within 14 days after re-delivery of the Boat to the Operator or, in the case of dispute, upon the determination of that dispute.

3. INSPECTION AND SEA-TRIAL

3.1 Before the start of the Charter Period the Charterer shall have the opportunity to inspect the Boat in company with the Operator or his agent for the purpose of ensuring that the Boat and its equipment are in proper working order and further shall have the right to insist on a sea-trial of up to one hour's duration. Acceptance of the Boat shall imply (prima facie) that the Boat is in good order.

3.2 If, following inspection and/or sea-trial in accordance with Clause 3.1, the Charterer determines that the Boat is not reasonably fit for Charter he shall be at liberty to terminate this Agreement and shall be refunded all monies paid under this Agreement.

4. CHARTERER'S COMPETENCE

4.1 The Charterer warrants that he and his crew have the necessary experience and competence and medically fit to handle the Boat safely. The Charterer or one of their crew will hold a VHF Operators Licence.

4.2 The Operator or its agent shall have the right to accompany the Charterer for trials prior to delivery. In the event that the Operator is not satisfied as to the ability of the Charterer to safely handle the Boat the Operator shall be at liberty to:

Limit the cruising area

or

Allow the Charter to proceed, but as a Skipped Charter. A suitably qualified skipper will be provided by the Operator. (The Charterer will be responsible for any fees payable to the Skipper)

or

Terminate this Agreement as if the Charterer had given notice of withdrawal at this time and the provisions of Clause 8.3 shall apply.

4.3 If the Charterer shall fail to accept delivery of the Boat within 48 hours from the start of the Charter Period and shall not have notified the Operator of his intention to accept delivery later during the Charter Period, then the Operator shall be at liberty to treat this Agreement as terminated. The Operator's rights upon termination are set out in Clause 8.1.

5. OBLIGATIONS OF THE OPERATOR

The OPERATOR hereby UNDERTAKES as follows:

5.1 To hand over the Boat to the Charterer at the start of the Charter Period in good and seaworthy condition in compliance with the MCA's Code of Practice for the Safety of Small Commercial Motor or Sailing Vessels and with all the necessary gear and equipment, including any items specified in the inventory. If the Operator is in default of this provision the Charterer shall be at liberty to terminate this Agreement and shall be refunded all monies paid under this Agreement.

5.2 The Operator does not warrant the fitness of the Boat for any particular purpose within the Cruising Limits.

5.3 To deliver the Boat to the Charterer at the agreed time and place but in default his liability shall be limited to a pro-rata return of the Charter Fee for each period of 12 hours for which delivery is delayed. If such delay exceeds 25% of the Charter Period, the Charterer shall be at liberty to treat the Charter as cancelled.

The Operator shall thereupon return both the charter fee and advance payment without further liability.

6. OBLIGATIONS OF THE CHARTERER

6.1 To accept the yacht at, or within 4 hours of the agreed time and place, any subsequent boarding shall be at the convenience of The Company who reserve the right to charge for any additional costs incurred. Under these circumstances, no pro-rata refund for lost charter time will be considered.

6.2 To pay for all running expenses during the Charter Period including the cost of food, water, fuel, harbour dues, port dues, pilotage, victuals and provisions for himself and his party and the cost of Charts (if not supplied).

6.3 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 the Boat, to any gear equipment or furnishings belonging to the Boat caused during the Charter Period as well as any loss or damage arising after the Charter Period but prior to re-delivery under Clause 9 which is not recoverable under the Insurance effected by the Operator.

6.4 In the event of damage to or failure of the Boat or any incident involving a third party, the Charterer shall at the earliest opportunity (and in any case within 12 hours) report such occurrence to the Operator or its local agent and shall comply with any reasonable instructions given.

6.5 Not to lend, sub-Charter or otherwise part with control of the Boat.

6.6 Not to take the Boat outside the Cruising Limits.

6.7 The Charterer shall not use the Boat for any purpose other than private pleasure cruising for himself, his crew and guests, nor race the Boat without the prior written consent of the Operator.

6.8 The Charterer shall limit the number of persons in his party to not more than the number of places stated on the Boat's MCA Certificate.

6.9 Not knowingly or recklessly to permit to be done or to do or fail to do any act which may render void the Operator's policy of insurance or result in the forfeiture of the Boat.

6.10 If the insurance policy of the Boat shall be rendered void or the policy monies withheld in whole or in part by reason of any act or default of the Charterer or any member of his party, the Charterer hereby agrees to indemnify the Operator against any loss consequent upon such act or default.

6.11 To be fully responsible for the safety and security of the Boat at all times during the Charter Period unless the Boat is moored or anchored in a harbour, marina or similar location.

6.12 The Charterer shall not allow the Boat to dry out or be stranded and shall ensure that the Boat is moored only at a secure and well maintained mooring point. The Charterer shall not anchor the Boat in a place where anchoring is restricted or that is not suitable for anchoring such a Boat.

6.13 To observe all regulations of Customs, Port, Harbour or other Authorities to which the Boat becomes subject.

6.14 At no time during the Charter Period to allow any animals on board the Boat.

6.15 The Charterer's obligations under this Agreement shall continue until re-delivery.

7. INSURANCE AND LIABILITIES

7.1 The Operator shall insure the Boat for full market value against fire and all the usual marine and collision risks with protection and indemnity cover of at least £2m subject to a policy deductible no greater than the Security Deposit. The Operator will provide for the Charterer on request a copy of the policy or certificate and shall ensure that the Charterer is covered under the policy or certificate.

7.2 The Operator shall not be liable for any personal injury, or any loss of, or damage to, the personal property of the Charterer or any other member of his party, or any other person invited aboard the Boat by the Charterer during the Charter Period unless caused by negligence or wilful default on the part of the Operator.

7.3 The Charterer shall report to the Operator (and, where applicable, to the insurers) 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 Boat and to comply with any reasonable instructions given to the Charterer by the Operator or the insurers.

The Charterer should note that the Boat's underwater sections will be examined with a camera to inspect for damage at the end of each charter.

7.4 If during the period of charter the Charterer is prevented from using the Yacht through reason of breakdown of machinery or gear or by damage to the Yacht which is not due wholly or in part to the Charterer, his servants or agents or any member of the charter party's negligence, act or omission then a pro-rata return of the Charter Fee shall be paid to the Charterer for any period that the Yacht is unfit for use. Engine breakdown and failure of electronic navigational aids are not considered to make the Boat unusable under the terms of this agreement.

7.5 Notwithstanding anything in this Agreement the Charterer shall not be entitled to claim from the Operator any other compensation in respect of damage or breakdown or of any consequential loss however caused.

7.6 If the Boat shall become an actual or constructive total loss during the Charter Period then this Agreement shall terminate and, provided that the insurance of the Boat has not been rendered void or the policy monies withheld in whole or in part by reason of any act or default of the Charterer or any member of his party, a pro-rata proportion of the Charter Fee shall be repaid to the Charterer.

8. TERMINATION OF AGREEMENT

8.1 If any payment due under this Agreement is not made on or by the appointed day, or if the Charterer fails to comply with any other provision in this Agreement, the Operator may forthwith terminate this Agreement and resume possession of the Boat, but without prejudice to the right of the Operator to recover any unpaid part of the Charter Fee and damages in respect of any breach of this Agreement by the Charterer.

8.2 If the Charterer gives written notice to the Operator more than two calendar months before the start of the Charter Period that the Boat will not be required, the advance payment shall be forfeit but no liability for the Balance of the Charter Fee will remain.

8.3 If the notice in writing of cancellation is received less than two months in advance of the start of the period of charter, the Charterer will be liable for the full balance of the charter fee, but shall be entitled to find a replacement Charterer who is acceptable to the Operator.

It is therefore strongly recommended that the Charterer cover themselves with adequate travel/cancellation insurance.

9. RE-DELIVERY OF THE BOAT

9.1 The Charterer will re-deliver the Boat to the Operator free of indebtedness at the end of the Charter Period in as good, clean and tidy condition as when delivered to the Charterer (fair wear and tear excepted) and with her inventory complete, at the Boat's base or other place to be agreed between the Parties.

9.2 If the Charterer shall fail to re-deliver the Boat at the time and place agreed, he shall be liable to pay to the Operator a sum equal to twice the pro rata daily charter fee.

9.3 The Charterers obligation under this agreement shall continue in force until eventual re-delivery.

9.4 Failure to return the Boat in a clean and tidy condition will incur a charge dependent on the time taken by the Operator to clean the Boat based on an hourly rate of £25.

10. DISPUTE RESOLUTION

10.1 Disputes may, when they cannot be resolved by negotiation, with the written agreement of the Parties, be submitted to mediation.

10.2 Nothing in this Clause shall affect the rights of the Parties to submit any dispute to the Courts of Scotland.

10.3 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

11. LAW

11.1 This Agreement shall be governed by the law of Scotland and the Parties agree to submit to the jurisdiction of the courts of those countries.

12. NOTICES

12.1 Any notice to the Operator or Charterer under this agreement shall be in writing and shall be sufficiently served if delivered to him personally, faxed, or posted to the address set out in this Agreement. Any notice posted shall be deemed to have been received two days after the time of posting, and any notice delivered personally or by fax shall be deemed to have been received from the time of delivery.

13. MARGINAL NOTES

13.1 The construction of this Agreement is not to be affected by any marginal notes.

14. ENTIRE AGREEMENT

14.1 This Agreement together with any schedule and/or inventory signed by both Operator and Charterer forms the entire Agreement between the Parties unless otherwise specifically agreed in writing between them.

15. THIRD PARTY RIGHTS

15.1 For the purpose of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not and is not intended to give any rights to enforce any of its provisions, to any person who is not a Party to it.