

# BROKERAGE DEED



## AUTHORITY TO SELL – CENTRAL AGENCY

### NOTE

### DATE

- This is a legally binding deed between the Seller of the vessel described herein and the Brokerage.
- Under this deed the Seller appoints the Brokerage as agent to sell the Seller's Vessel.
- This deed must be completed and a signed copy given to the Seller before the Brokerage lists or sells the Seller's Vessel.
- When performing this service, the Brokerage and their sales staff complies with the BIA Code of Practice. For more information please contact the Boating Industry Association on (02) 9438 2077 or visit [www.bia.org.au](http://www.bia.org.au).

### SECTION – A BROKERAGE DETAILS

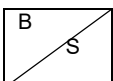
To be completed by the broker	<b>Brokerage:</b>	YACHTSHARE PTY LTD		<b>ABN:</b>	81611963672
	<b>BIA Membership No.</b>	4507	<b>Second Hand Dealers No.</b>	4191415	
	<b>Address:</b>	578 Royal Esp			
		<b>Suburb: Manly</b>		<b>State: QLD</b>	<b>Postcode: 4179</b>
	<b>Phone:</b>		<b>Fax:</b>		
	<b>Mobile:</b>	0410696578	<b>Email:</b>	anton@yachtshare.com.au	

### SECTION – B SELLERS DETAILS

	<b>Name:</b>				
	<b>Address:</b>				
		<b>Suburb:</b>	<b>State:</b>	<b>Postcode:</b>	
	<b>Phone:</b>		<b>Mobile:</b>		
	<b>Fax:</b>		<b>Email:</b>		
	<b>ABN:</b>		<b>Registered for GST:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
	<b>D.O.B:</b>		<b>Driver's Licence No.:</b>	<b>Passport No.:</b>	

### SECTION – C VESSEL DETAILS

It is highly recommended that a completed Vessel condition statement signed by the Seller is attached to this Appointment	<b>Name of Vessel:</b>				
	<b>Make / Model:</b>				
	<b>HIN / Hull Number:</b>				
	<b>Registration No.:</b>		<b>Registration Certificate:</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	<b>Engine Make:</b>				
	<b>Engine Number(s):</b>				
	<b>Vessel Location:</b>	RQYS			
	<b>Access Instructions:</b>	MANAGED BY YACHTSHARE			
	<b>Condition:</b>	<input type="checkbox"/>	Vessel condition statement is attached in <b>Schedule 1</b>		
<b>Specification:</b>	<input type="checkbox"/>	Vessel specifications and a description of the items included in the sale are attached in <b>Schedule 2</b>			



**SECTION – D ENCUMBRANCES**

If 'Yes' has been indicated, please provide details regarding these interests	Is this vessel subject to any encumbrances and adverse interests? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**SECTION – E AUTHORISATION TO INCUR COSTS TO PREPARE THE VESSEL FOR SALE**

	I hereby authorise the Brokerage to coordinate the marketing and other costs for preparing the vessel for sale on behalf of the Seller. Any marketing or other costs authorised by the Seller will be undertaken at the Seller's expense.		
	<b>Marketing requirements</b>	<b>When payable</b>	<b>Authorised Cost</b>
	AS PER YACHTSHARE SYNDICATE AGREEMENTS		\$ NA
			\$
			\$
	<b>Other Costs</b>	<b>When payable</b>	<b>Estimated Cost</b>
			\$
			\$
			\$

**SECTION – F CENTRAL AGENCY**

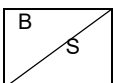
If no option selected the Rollover will not apply  Any additional conditions or restrictions e.g. when/ how the Vessel will be listed & other Seller directions	<ul style="list-style-type: none"> <li>• Seller appoints the Brokerage as the exclusive agent for the Term to sell the Vessel and must not appoint any other agents or attempt to sell the Vessel privately during the Term.</li> <li>• The Seller must revoke in writing any pre-existing agency agreement in respect of the marketing and sale of the Vessel.</li> <li>• The Brokerage is entitled to the Commission if the Vessel is sold during the Term whether the Brokerage or another party was the Cause of Sale (including if another agent of the Seller sells the Vessel).</li> <li>• If any party sells the Vessel within 12 months after the expiry of Term and the Brokerage was the Cause of Sale the Brokerage will be entitled to the Commission.</li> <li>• This appointment as Central Agency will end at the expiry of the Term.</li> </ul>		
	<b>Term:</b>	3 months	<b>Commencing:</b>
	<b>Rollover:</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> After the Term the Appointment will continue on a month-to-month basis.	
	<input type="checkbox"/> <b>Additional conditions of service:</b>		
	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul>		

**SECTION – G COMMISSION**

Specify the amount of Commission or the method of calculating the Commission (e.g. % of the Sale Price)	The Seller and the Brokerage agree that the following commission will apply under this appointment (plus GST if applicable) for the service to be performed by the Brokerage:		
	10% of Sale Price		
	Yes <input checked="" type="checkbox"/> No: <input type="checkbox"/>	If a contract of sale is terminated prior to completion and the Seller is entitled to the deposit, the parties agree that the Commission will not exceed 50% of the deposit.	

**SECTION – H LIST PRICE**

The List Price is Inclusive of GST	\$	(inclusive of GST)	<b>GST Supply:</b>	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
	<b>List price revision</b>	<b>Date</b>	<b>Authorised by</b>	
	\$			
	\$			
	\$			
	\$			
	\$			



**SECTION – I SCHEDULES AND ATTACHMENTS**

List any additional schedules and attachments

SALE PROCESS AS PER YACHTSHARE PURCHASE AGREEMENT

**SECTION – J SIGNATURES**

Sellers are advised to seek their own legal advice prior to signing this form

All parties are to sign and retain a copy of this Brokerage Deed

Attach a further signing page as a schedule if required

The Seller agrees and acknowledges:

- I understand that this is a binding deed for the appointment of the Brokerage as Agent.
- I have read and understand the terms of this appointment.
- I understand that the Brokerage may register an interest in this vessel on the Personal Property Securities Register if any funds that are agreed to be reimbursed to the Brokerage for Berthing, Advertising or Repairs are not paid by me when due.
- I have fully disclosed to the Brokerage a true and accurate description of the vessel, its condition and encumbrances which will be used by the Brokerage to make representations on my behalf and indemnify the Brokerage to this effect.

Seller's Name:

Signature:

Date:

Seller's Name:

Signature:

Date:

Witness's Name:

Signature:

Date:

Brokerage:

Signature:

Date:

Witness's Name:

Signature:

Date:

**Section – K****Director / Personal Guarantee**

If the Seller of the vessel is a company, then it is recommended that two individuals provide a personal guarantee (e.g. company director/s and/or secretary)

In consideration of the Brokerage discharging its obligations to the Seller under this Appointment, I/we hereby undertake & agree to guarantee the performance of the Seller's obligations under this appointment and to indemnify the Brokerage in respect of any failure by the Seller to pay or reimburse the Brokerage any and all Commissions, Authorised Costs other amounts which the Brokerage has incurred or is entitled to as a consequence of the Brokerage discharging its obligations under this Appointment. If the Seller defaults in the payment of any monies under this appointment I/we will pay on demand all monies which are owed to the Brokerage pursuant to this appointment and all interest, losses, damages, costs and expenses incurred by the Agent as a result of the Seller's default without set-off or counterclaim:

Guarantor Name:

NA

Signature:

Date:

Witness Name:

Witness Signature:

Date:

Guarantor Name:

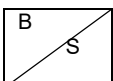
Signature:

Date:

Witness's Name:

Signature:

Date:



# BROKERAGE STANDARD TERMS AND CONDITIONS

## 1. DEFINITIONS

The following terms will have the following meanings in this Appointment:

**Appointment** means the agreement between the Seller and Brokerage as constituted and comprising those parts as specified in clause 2.

**Authorised Costs** means any costs or charges that the Seller authorises the Brokerage to incur on its behalf under this Appointment including those specified at Section E.

**Authority to Sell** means the Boating Industry Association's 'Marine Broker's Authority to Sell' signed by the Brokerage, the Seller and (if applicable) the Guarantors.

**Brokerage** means the party identified in Section A.

**Cause of Sale** without limiting the general meaning of the term at law, means that the Brokerage contributed in some way to the sale of the vessel due to its actions undertaken during the Term or any Rollover period in connection with this Appointment including (without limitation):

- (a) the buyer was introduced to the Seller or became aware of the Vessel or that the Vessel was for sale due to the actions of the Brokerage (e.g. as a result of the marketing of the Vessel, inspections or trials) this includes where an original contact was with a related entity or close relative of the buyer (e.g. the buyer is the spouse, child or parent of a party introduced to the Vessel or Seller by the Brokerage or the Buyer is a company and the Brokerage introduced a director or shareholder of that company to the Vessel or Seller);
- (b) the Brokerage was involved in or facilitated negotiations between the Seller and buyer even if the final agreement to sell the Vessel is on different terms than were contemplated during the Brokerage's involvement and whether or not such differences are significant or material in nature including differences relating to the price or other conditions such as finance or inclusions; and/or
- (c) the buyer and Seller were previously known to each other but the Brokerage's actions are what lead to the parties entering into an agreement for the sale and purchase of the Vessel.

**Central Agency** is the type of agency described as such at Section F.

**Commission** means the commission to be paid by the Seller to the Brokerage under the terms of this Appointment calculated in the manner specified by the parties in Section G.

**Encumbrances** means any encumbrances, mortgages and charges including those specified in Section D.

**Guarantors** means the parties specified in Section K

**List Price** means the price specified (or varied) in Section H at which the Vessel will be marketed at for sale and is the minimum Sale Price that the Brokerage is authorised to sell the Vessel for.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and for the purposes of clause 10 terms have the meaning given to them by the PPSA and, without limiting the meaning in the PPSA, this Appointment.

**Term** means the term of this Appointment specified in Section F. If not specified in Section F, the Term will commence on the date that the last party signed this Appointment. If no term has been specified the Term will be deemed to be on a month-to-month basis.

**Relevant Person** for the purposes of clause 5(c) any person (including without limitation the Seller, Brokerage or another person);

**Sale Price** means the price that is paid for the Vessel at completion of any sale exclusive of GST and of any adjustments to the price that may have been agreed by the parties in connection with that sale at any time (whether in an offer, agreement or later variation).

**Section** means a numbered section of the Authority to Sell.

**Seller** means the party identified in Section B.

**Vessel** means the watercraft identified in Section C.

## 2. PARTS OF THIS APPOINTMENT

This appointment is constituted as a deed and is comprised of the Authority to Sell, these Brokerage Terms and Conditions, Schedules 1 & 2 referred to in Section C and any schedule or attachment listed in Section I.

## 3. APPOINTMENT OF AGENT

- (a) The Seller appoints the Brokerage as its agent on a Central Agency basis as specified in Section F, to market and sell the Vessel on the terms and conditions set out in this Appointment and in consideration of the Commission the Brokerage accepts this Appointment.
- (b) The Brokerage must market the Vessel for not less than the List Price (as varied in writing under Section H).
- (c) The Seller authorises the Brokerage to undertake the marketing, works and other costs set out in Section E on behalf of the Seller.
- (d) The Brokerage will inform the Seller of all written or other offers or expressions of interest received by the Broker for the purchase of the Vessel.
- (e) The Seller and Brokerage agree to each comply with the additional conditions of service specified in Section F (if any).

(f) If the 'rollover' option has been selected at Section F, then at the end of the Term this Appointment (on the basis of the nominated agency) will continue as a month to month basis.

(g) Notice of termination or variation does not affect the rights of the Brokerage until the expiration of the notice period. The Seller shall settle, in full, any outstanding fees and charges at the time (or before if requested) of the expiration of the appointment.

## 4. TERMINATION

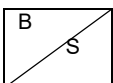
- (a) The Seller may terminate this Appointment at any time by giving thirty (30) days written notice to the Brokerage.
- (b) The Brokerage may give the Seller written notice immediately terminating this Appointment if the Seller breaches the terms of this Appointment, requires the Brokerage to act unlawfully or unethically, provides instructions that are inadequate, deliberately false or misleading, fails to pay a tax invoice issued by the Brokerage in the time required (whether issued under this Appointment or otherwise).
- (c) If this Appointment is terminated the Brokerage is entitled to the Authorised Costs incurred by the Brokerage in connection with this Appointment.

## 5. COMMISSION AND AUTHORISED COSTS

- (a) The Seller agrees to pay or reimburse the Brokerage for the Authorised Costs as and when invoiced by the Brokerage.
- (b) The Seller and Brokerage agree that the Commission will be calculated and charged in accordance with the manner identified in Section G.
- (c) Where an agreement is entered into for the sale of the Vessel (whether within the Term or after the Term) where the Relevant Person is the Cause of Sale as a result of things done during the Term, the Seller agrees to pay the Commission to the Brokerage in the following circumstances:
  - (i) on completion of the sale; or
  - (ii) the agreement for the sale of the Vessel is terminated due to the default of the Seller; or
  - (iii) the agreement for the sale of the Vessel is terminated by mutual agreement of the Seller and the buyer; or
  - (iv) the agreement for the sale of the Vessel is not completed and the Seller is entitled to the deposit under that agreement.
- (d) The Seller authorises the Brokerage as deposit holder to pay the Commission and any outstanding Authorised Costs to the Brokerage immediately on the entitlement to the Commission arising under the terms of this Appointment and discharges the Brokerage from any duty to account to the Seller for that part of the deposit released to the Brokerage pursuant to this clause.

## 6. BROKERAGE'S RIGHTS UNDER THIS APPOINTMENT

- (a) Under this appointment, unless otherwise specified, the Brokerage is granted the following rights by the Seller:
  - (i) the right to take reasonable steps to find out or verify any material information in relation to the Vessel including (without limitation) with respect to ownership, description, registration and Encumbrances required in order to prudently discharge the Brokerage's obligations under this appointment and the Seller will do all things reasonable necessary to allow the Brokerage to verify such information including by providing further information or documents;
  - (ii) the right of access to the Vessel including the right to access to place of storage or mooring of the Vessel;
  - (iii) the right to lawfully operate the Vessel and equipment for the purpose of demonstrating it to potential buyers, for the purpose of carrying out inspections and/or authorised repairs and pre-sale works without the liability for damage, mechanical or other failure whatsoever (the Brokerage will at all times exercise due care and diligence, competence and attention while the Vessel is under the Brokerage's care, custody and control);
  - (iv) the right to appoint a sub-agent to carry out part or all of the Brokerage's obligations under this Appointment; and
  - (v) the right to refuse to continue to act and/or terminate this Appointment if the Seller does not provide sufficient funds to the Brokerage in support of the Brokerage exercising its obligations under this Appointment.
- (b) Under this appointment, unless otherwise specified, the Brokerage is not responsible or liable for:
  - (i) arranging any inspections, works or other undertakings such as lifting, sea trials, mechanical assessments, etc. that are undertaken as part of a sale process and such matters shall be between the Seller and/or buyer and the relevant service provider. While the Brokerage may act as facilitator, the service providers will at all times be contracted by the Seller



or buyer and will have no commercial relationship with the Brokerage;

- (ii) any assistance that the Brokerage may provide to arrange or permit efficient completion of any sale (such assistance will at all times be on behalf of the Seller and/or buyer); or
- (iii) any damages or other equipment failure to the Vessel while the Vessel is under the control of the Brokerage, provided that the damage is not caused by negligence, deliberate acts or omissions by the Brokerage.

- (c) Nothing in this appointment shall give rise to a bailment or tenancy. Storage and mooring of the Vessel is the responsibility of the Seller. Where the Vessel is to be moored or stored by the Brokerage a separate agreement will be entered into by the Seller and Brokerage.

## 7. SELLER WARRANTIES

The Seller warrants that:

- (a) it is the legal owner of the Vessel and associated equipment described in the appointment;
- (b) it has unfettered power and capacity to appoint the Brokerage as its agent to sell the Vessel described in this appointment;
- (c) any and all Encumbrances on the Vessel and equipment described in this appointment are fully declared to the Brokerage in writing under this appointment;
- (d) the Vessel is insured for its full market value and will be fully operational whilst the Vessel is under the care, custody and control of the Brokerage;
- (e) any and all actions (if any) including unsatisfied judgments that affect the sale of the Vessel under this appointment have been declared to the Brokerage in writing; and
- (f) the description of the Vessel, the stated condition of the Vessel, and any other details provided under this appointment is complete and accurate and identifies all material matters relating to the Vessel including known defects, non-compliance issues or other limitations which the Brokerage may require in order to market and sell the Vessel.

## 8. INSURANCE

- (a) During the Term the Seller must insure, and keep the Vessel and its equipment and personal property stored on the Vessel insured, against loss or damage and for public risk with an insurer that is authorised to provide such insurance in Australia. The Seller shall on demand produce to the Brokerage a certificate of currency of the insurance. The Seller shall not for itself, its servants, its representatives or its agents do, or fail to do, any act or thing which might invalidate or prejudice any such insurance.
- (b) The Brokerage must ensure that the Vessel is properly secured and reasonably protected from damage. While the Vessel is in the Brokerage's care, custody and control, the Brokerage will not remove any personal property, equipment, parts or accessories from the Vessel without first obtaining the Seller's authorisation.

## 9. INDEMNITY

The Seller will be liable for and indemnifies the Brokerage (and its directors, officers, agents and employees) from and against any and all costs, losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis) and damages including but not limited to any injury or death of any person or any loss, damage or destruction of property belonging to the Seller, the Brokerage or others, arising from or in connection with any action or inaction of the Seller or any person acting for or on behalf of the Seller (other than the Brokerage) arising out of or in connection with the Vessel of this Appointment.

## 10. PPSR

- (a) The Seller hereby charges in favour of the Brokerage the Vessel (including its fittings and contents) with the payment to the Brokerage of all monies secured by this Appointment. Such security interest shall be a non-circulating and specific security interest on all of the abovementioned personal property. The Seller agrees that its execution of this Appointment constitute a security deed for the purposes of the PPSA
- (b) The Seller and the Brokerage agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by the Appointment.
- (c) The Seller hereby waives its rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA as well as its rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.
- (d) The Seller irrevocably appoints the Brokerage as the Seller's attorney to sign any document required to transfer ownership of the

Vessel on the sale of such Vessel arising from any default hereunder and to execute any document required under the PPSA, *Corporations Act 2001* (Cth) and/or any applicable ASIC Form and/or any applicable registration transfer or other applicable form and/or any documents relating to any Encumbrance.

## 11. PRIVACY

- (a) The Seller consents to the Brokerage collecting, using and disclosing personal and sensitive information about the Seller (as defined in the *Privacy Act 1988* (Cth)), for the purposes set out in the Brokerage's privacy policy or this Appointment. The Brokerage will provide the Seller with a copy of its Privacy Policy on request or the Seller may obtain same from the Brokerage's website.
- (b) The Seller agrees that the Brokerage may obtain and retain credit reporting information about it from a credit reporting body. The Seller agrees that the Brokerage may give information about it to a credit reporting body for the purposes of obtaining credit reporting information about the Seller and to allow the credit reporting body to maintain its credit information file regarding the Seller. The Seller agrees that the Brokerage may exchange and retain information about it with any credit providers named in a credit report for the purposes of this Appointment, to notify other credit providers of a default by you, to exchange information with other credit providers as to the status of your credit account where you are in default with other credit providers, and to assess your credit worthiness.

## 12. MISCELLANEOUS

- (a) The laws of the State in which the Vessel is located govern this Appointment and each party unconditionally submits to the jurisdiction of the Courts and tribunals having jurisdiction in that State.
- (b) Unless otherwise expressly stated all amounts stated to be payable under this Agreement are exclusive of GST. If GST is imposed on any supply made by a party under or in accordance with this Appointment, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply on receiving a valid tax invoice.
- (c) All accounts and/or invoices rendered by the Brokerage to the Seller are on the basis of "errors and omissions excepted" and may be amended subsequently notwithstanding any error or omission and the parties hereto shall be responsible to pay or be credited such properly amended account and/or invoices.
- (d) The Brokerage will be entitled to impose interest on any overdue amounts payable to the Brokerage under this Appointment at the standard contract default rate (or equivalent) published by the law society of the State mentioned in clause 12(a).
- (e) This Appointment comprises the entire agreement between the Seller, Brokerage and Guarantors. Unless otherwise annexed hereto, no other covenants, agreements, conditions or restrictions will be implied or held to arise between the parties by reason of any promise, representation or undertaking by either party (except to the extent of the rights of the Seller under the Australian Consumer Law).
- (f) This Appointment and any rights or obligations under it are not transferrable without the prior written consent of the other party.
- (g) The time for a party to comply with an obligation under this Appointment shall be of the essence.
- (h) The parties herein shall co-operate with each other to achieve the commercial efficacy intended by this Appointment and shall act in good faith and honestly in the advancement of the commercial purposes of this Appointment.
- (i) This Deed may be signed by identical counterparts (which may be a physical or electronic copy) and each counterpart will be deemed to be an original and together they constitute one document once the counterparts have been exchanged (including by sending electronic or facsimile transmission) by the parties.
- (j) All written communications under this Appointment must be given to the email address or facsimile number provided in Sections A and B.
- (k) Indemnities given by a party, and rights accrued to a party (including rights to Commission or Authorised Costs), up to the expiry, termination or replacement of this Appointment survive the expiry, termination or replacement of this Appointment. It is not necessary for the Brokerage to incur Cost or make payment before enforcing a right of indemnity under this Appointment.
- (l) If part of this Appointment is unenforceable, illegal or void then it may be severed and the rest of this Appointment shall remain in force with any necessary interpretive amendments being made.

