

CHARTER CONTRACT

The charter contract will be concluded between the charter company on behalf of the owner, and the charterer or the charterer through the intermediary agency.

1. Payment and cancellation clause

- 1.1 Unless otherwise stated in the charter contract, payment of the first installment is due within 14 days of the conclusion of the contract. The balance is due six weeks before the commencement of charter. Payment must be received before the dead-lines indicated.
- 1.2 In emergencies, according to the consumer protection law, the charter company may withdraw from the contract within 7 days of conclusion of the charter contract. In such a case the charter company undertakes to repay to the charterer without delay any monies already paid (if need be, through the agent).
- 1.3 In the case that the balance has not been paid to Phoenix Yacht Management GmbH's account 2 days before the charter starts, the Charterer must pay the balance at the base before the yacht can be taken over. If a double payment results the re-imbusement will be made as quickly as possible. All bank fees will be borne by the Charterer. In the case that the charterer does not pay the balance, the base manager is instructed not to hand the boat over.
- 1.4 The yacht is covered by third party and hull damage insurance with an excess of between € 1,100 and €2,100 which is to be paid as a deposit before the start of the charter at the base by Visa or Master card. In the case that the yacht is returned without damage the deposit will be refunded in full on return to the base. The insurance conditions will constitute a part of this contract and can be written in full upon request.
- 1.5 Damage through gross negligence, intention and damage which is caused by the Charterer and is not covered by insurance, are to be borne by the Charterer. This also applies to consequential losses.
- 1.6 If the Charterer is unable to accept the charter, he must inform the charter company immediately. If a replacement charter is concluded at the same terms, the charterer shall be repaid any monies he has already paid, less any handling costs which have arisen, but which shall be not less than 20% of the charter price. If no replacement charter is available at the same terms, the charter company may claim the full charter price. The charterer is strongly advised to take out cruise cancellation costs insurance. The charter company or the agent will be pleased to send a quotation for such insurance, further information can also be found on the Phoenix Yachting web site.

2. Obligations of the charter company

- 2.1 The booked yacht will be handed over to the Charterer in a clean, ready to sail, seaworthy condition with a full diesel tank.
- 2.2 In the case that the booked yacht cannot be handed over on the date agreed in the charter agreement, (i.e. due to damage, unworthiness for sea due to an accident by the previous Charterer etc.) the charter company may provide a replacement yacht of the same value. The Charterer has the right to make warranty claims as long as the replacement yacht is defective.

3. The charterer warrants and undertakes the following:

- 3.1 To provide the base with a copy of his passport and a copy of his skipper's licence before the charter starts.
- 3.2 To observe the principles of good seamanship.
- 3.3 To possess a good command of seamanship and sufficient experience in the command of a yacht or to appoint a responsible skipper with such capabilities. If the charterer or his skipper does not possess the necessary licence or certificate of competence to skipper a yacht of the agreed class, the charter company reserves the right to refuse to hand over the yacht, retaining the charter price, or to appoint a skipper in the name of and for the account of the charterer.
- 3.4 To observe the laws of any country he might visit and to report the arrival and departure of the yacht to the harbour master.
- 3.5 Not to use the yacht for the purposes of business or trade, not to take on board any persons not being a member of his immediate group, not to hand over or hire the yacht to a third party without the written consent of the charter company and not to transport any hazardous goods or materials.
- 3.6 Not to leave the maritime region of the charter company without the prior written consent of the charter company.
- 3.7 Not to make any changes to the yacht or its equipment.
- 3.8 To handle the yacht and its equipment with care, to maintain the log book in a simple form, prior to the commencement of charter to inform himself in detail about the area to be travelled, e.g. currents, and sea level changes during strong winds etc.
- 3.9 Not to leave the protective harbour if winds over 7 on the Beaufort scale are forecast.
- 3.10 To return the yacht in proper working order, in an orderly condition with all equipment properly stowed and an empty holding tank and a full fuel tank; failure to do this will mean that the cost of filling the tanks and stowing equipment will be deducted from the deposit.
- 3.11 To inform the charter company immediately by phone or telegraph in the event of damage, collision, accidents or other unusual events. To prepare a written account in the event of damage to the yacht or injury to persons, and to have this countersigned by the harbour-master or doctor.
- 3.12 Always to have the yacht towed by its own line in the event of damage or similar events, and to make no agreement about towing or salvage without previous consent from the Base Manager.
- 3.13 To check the condition of the yacht and check that all its equipment and items listed on the inventory are complete, both on taking over and returning the boat (the check list), and to confirm this by means of a signature.
- 3.14 To report complaints concerning the yacht without delay to the yacht's base and to note these in the delivery or return documents. Claims notified at a later date cannot be accepted.

4. Repairs, engines and monitoring of the bilges:

- 4.1 In the case of damage, that can be repaired with material on board, or other events during the charter, the captain is required to limit the damage. Small repairs costing up to € 500 will be reimbursed by the charter company on presentation of invoices. 4.2 The charterer must check the level of the oil, the cooling water and the bilges each day. The charterer must check the cooling water flow continuously during the charter. Damage due to the motor running dry are not insured under any circumstances, and is for the account of the charterer. The motor must not be used when heeling under sail at over 100 as in such a case oil or water supplies to the engine do not function.

5. Cancellation by the charterer or reduction of the charter price in the event of late delivery or defects:

- 5.1 If the charter company fails to provide the yacht, or at least an equivalent replacement yacht at the time agreed in the charter agreement, the charterer may withdraw from this charter agreement at the earliest of 24 hours after from the commencement of the charter, and receive full reimbursement of all payments made under this charter agreement. If the charter period is two or more weeks, the minimum time before which the charterer can withdraw is increased by 24 hours per additional week.
- 5.2 All other claims for compensation by the charterer are excluded, except in the case of intent and gross negligence by the charter company. If the charterer does not withdraw from the charter agreement, he may claim for reimbursement of the charter price proportional to the amount of time for which the charter company failed to hand over the yacht.
- 5.3 Damage to the yacht and its equipment which does not jeopardise its sea-worthiness and which allows the yacht to continue to be used in a reasonable manner shall not be grounds for withdrawal. A reduction in the charter price in such a case is also excluded.

6. Charter company's liability

- 6.1 The charter company shall only be liable towards the charterer and his crew for loss or damage arising from intent or gross negligence on the part of the charter company up to the amount of the contractual charter price.
- 6.2 The charter company shall not be liable for loss or damage caused by inaccuracies, amendments, mistakes and defects in the ancillary nautical equipment provided, e.g. marine charts, handbooks, compass, radio direction finding equipment etc.
- 6.3 Claims by the charterer due to the inability of the yacht for use resulting from damage or total loss caused by the charterer or a third party during the charter shall be excluded.

7. Agency's liability

The agency is only liable as an intermediary for intentional or grossly negligent breach of duty in the performance of its services as an intermediary.

8. Charterer's liability

- 8.1 The Charterer indemnifies the Charter Company against the Charterers actions and failure to act which make the Charter Company liable to third parties, against consequences of all private and criminal prosecution and against all resulting legal costs in the country of delivery and abroad. The charterer accepts the yacht is his own responsibility.
- 8.2 If the charterer leaves the yacht at any place other than the agreed location for any reason whatsoever, the charterer shall bear the costs for the return of the yacht by water or by land. If the return of the yacht extends beyond the time period of the charter, the yacht shall be deemed to be returned by the client at the time of its arrival in the agreed harbour.
- 8.3 Late return of the yacht and non-usability of the yacht caused by the charterer shall be grounds for claims for compensation by the charter company.
- 8.4 Attention is drawn to the fact that conclusion of hull insurance by the charter company does not mean that the charterer is not liable for loss or damage not covered by such insurance, or for loss or damage for which the insurance expressly reserved the right of recourse to the charterer. This applies particularly to damage caused by gross negligence, intent or failure to observe the conditions of the charter agreement, and for any consequential loss or damage.
- 8.5 The conditions of the insurance, which we will gladly provide on request and which are available on our web site, are an integral part of this contract. The deductible excess for each loss is to be borne by the charterer and may differ from the deposit paid. The full deposit will be repaid without delay on the return of the yacht and equipment without damage. Loss and damage will be set off against the deposit. Loss and damage not covered by the deposit or the insurance shall be paid without delay by the charterer.
- 8.6 Conclusion of an extended "Skipper's liability insurance" (which covers crew's liability amongst themselves and recovery of losses to the chartered yacht in the event of substantiated gross negligence) is strongly advised. The charter company and agency will be pleased to send all necessary documentation, also available on the Phoenix Yachting web site.

9. Miscellaneous/additional agreements/ information / Safeguard clause

- 9.1 The charter period may only be extended with the agreement of the charter company. If there should be obvious errors in the invoicing of the charter price and the extras, the charter company and the charterer have the right and the obligation to correct the charter price in line with the valid price list. This does not affect the legality of this contract.
- 9.2 Oral undertakings and subsidiary agreements are only valid after written confirmation by the charter company. This applies also to any waiver of the requirement for written form. All care is taken in the preparation of information, but information is given without guarantee.
- 9.3 The invalidity of individual provisions shall not affect the validity of the remaining provisions of the charter agreement. The parties agree to replace invalid provisions by valid provisions most closely approaching the invalid provisions.

10. Place of jurisdiction, applicable law

All claims relating to the relationship between charterer and agency shall be subject to the law applicable to the registered office of the Charter Company.