

# General Terms of Charter

established on the base of General Terms of Business FAIRCharter 09 of Yachtpool  
considering the special conditions of Holiday Sailing j.d.o.o.

## I. Charter price

The charter price includes use of the yacht (plus accessories) by the charterer, natural wear and tear (e.g. damage due to material fatigue), support and duties, fees and taxes at the permanent mooring (exception: transit log, permit) and liability insurance and hull insurance for the yacht.

## II. Charteree's duties

The charteree is obliged towards the charterer

1. that he shall furnish the chartered yacht on the agreed date after full payment of the charter price in a seaworthy and adequate condition of technics and maintenance (note: maintenance dates, in particular, of the inflatable life raft, emergency signals)
2. that he shall furnish the onboard documentation (important: sea charts) that detail the ocean territory and sailing times permitted and covered by the insurance policies
3. that he shall reimburse down time if the charterer is no longer able to use the yacht due to a defect (in whole or in part). There shall be no reimbursement if the charteree is not responsible for the down time.
4. that he shall be available for the charterer during the charter period by telephone or radio at least during the usual office time.

## III. Sailing licences, certificates of qualification

The charterer warrants that he has the official recreational vessel licence which is demanded by the authorities or that he will be accompanied by a crew member as skipper who has the relevant certificate of qualification, and, moreover, that he or his skipper has all necessary navigational and nautical knowledge and experience in order to safely skipper the chartered yacht for the planned journey (route) in open waters under sail and/or motor taking responsibility for crew and materials into account. Moreover, the charterer agrees to treat the chartered yacht as his own property in accordance with the rules of good seamanship and to use it in compliance with the relevant statutory provisions and regulations of the regions in which the yacht is used.

Prior to handover of the chartered yacht, the charteree may verify the ability of the responsible skipper to skipper the boat. To this end, it may already demand proof of previous sailing experience prior to conclusion of the Agreement and request that it be presented with the sailing licences or certificates of qualification necessary for skippering the yacht in the agreed boat class and sailing area. In the event of obvious doubts concerning the qualification for safe skippering of the chartered yacht and crew, the charteree may appoint or arrange for a skipper for the charterer at the charterer's expense. Should this be impossible or should the charterer not agree thereto, the charteree may refuse to hand over the yacht; in this event, the charter price paid shall be reimbursed at the originally agreed charter price only in the event of a successful alternative charter. If an alternative charter is only possible at a lower price, the charteree shall be entitled to the relevant difference. Important: The charterer/skipper shall bear full responsibility therefor as well as for the crew, ship, equipment and inventory as against the charteree and insurer.

## IV. Performance disruptions (Charter Agreement)

### 1) Charterer's rights

- a) Should the charteree fail to furnish the chartered yacht no later than 4 hours following the contractually agreed time, the charterer may reduce the charter price on a pro rata basis for the down time per day commenced. The same shall also apply for necessary repairs, irrespective of the charteree's fault. The charterer may also, at his choice, rescind the Agreement against full reimbursement of payments made if more than 24 hours have elapsed since the agreed handover time; in the event of a charter period of at least 10 days, this deadline shall extend to 48 hours. The charteree may provide a reasonable substitute yacht that is objectively of the same level and that also meets the charterer's needs. Should it already be clear before commencement of the charter that the boat will not be available or may not be handed over at the time agreed, the charterer may rescind the Agreement even prior to commencement of the charter.
- b) Should the chartered yacht, its equipment or accessories deviate in a negative manner from the contractually agreed condition (defects), the charterer may always demand an adequate reduction of the charter price, but may rescind the Agreement only if, regarded objectively, the chartered yacht's seaworthiness is impaired or correct navigation using common navigational methods is made significantly more difficult and the risk to the safety of the boat and crew increase significantly as a result. The reduction of the charter price due to missing or damaged equipment or accessories will be calculated on basis of the percental relation of value compared to the purchasing price of the yacht and will be deducted from the weekly / daily charter price.
- c) Should the charteree not be responsible for the performance disruption, there shall be no further claims against the charteree with regard to indemnification of the charterer for consequential damage (e.g. travel / accommodation costs); however, the charteree hereby assigns to the charterer any compensatory damages claims against third parties. The charteree shall without undue delay notify the charterer of any such events and possible consequences in detail and in an appropriate manner. The charterer shall assert price reductions or rescind the Agreement by way of unilateral declaration to the charteree and provide relevant grounds therefor.

### 2) Cancellation

Should the charterer rescind the charter agreement, the agreed cancellation costs shall be incurred. Should the charterer be unable to set out on the turn, he shall notify the charteree thereof in a binding manner without undue delay in writing or by fax, in which respect, the time of receipt of the notice by the charteree shall govern. Should there be an alternative charter at the same conditions, the charterer shall be reimbursed his payments made to such time less a processing fee of 10 % of the charter price, but maximum EUR 250. The charterer may provide a suitable substitute charterer who assumes the Agreement only with the agreement or written consent of the

charteree. In the event of an alternative charter at a reduced price or for a shorter period, the relevant difference plus the processing fee shall be due and payable. Should different handover and return ports or foreign ports be contractually agreed, the compensation shall be increased by 20 %, but maximum EUR 500, in a given case. The charteree may rescind the Agreement in the event of late settlement of the costs incurred and expressly reserves the right to assert additional compensatory damages claims for non-performance of the Agreement. In all other cases, the charteree shall be entitled to the contractually agreed charter price. Taking out of charter cancellation insurance is therefore expressly recommended.

### 3) Charteree's Rights:

Should the boat not be returned no later than 2 hours after the time contractually agreed therefor, the charteree may demand from the charterer additional payment. This payment shall amount 2 % of the weekly charter price per started hour after the contractually agreed return time plus 2 hours. The charterer shall warrant for punctual return. In this respect, he shall from the outset take into account local wind and weather conditions, include weather-related problems, in his plans and keep the yacht in sufficient proximity to the place of return. In the event of fault or unilateral actions, the charteree may demand compensatory damages. This shall not apply if timely return is not possible due to dangerous weather/sea conditions (sudden deterioration) within the meaning of a risk limitation. Should the charterer leave the chartered yacht at a location other than the agreed place of return, he shall bear the costs of return to water or land if he is at fault. The charteree shall be notified without undue delay in all cases. In all cases, the charterer may prove that no or lesser damage occurred.

## V. Cancellation

Should the charterer rescind the Charter Agreement, the following cancellation costs shall be incurred based on the charter price. For efforts, which are inapplicable because of the omission of the charter, no cancellation fee will be charged as for example for: cleaning, deposit fee, bedlinen, special equipment etc. The following cancellation cost applies:

- a) when cancelling until 90 days before start of charter: 40 % of the agreed charter price
- b) when cancelling from the 90<sup>th</sup> to the 61<sup>th</sup> day before start of charter: 60 % of the agreed charter price
- c) when cancelling within the last 60 days before start of charter: 100 % of the agreed charter price

Taking out of a travel / charter cancellation cost insurance policy is already expressly recommended at the time of signature of the Agreement.

## VI. Payment method

The payment of the charter price will be made in instalments (as agreed in the Charter Agreement). Should the agreed payments not be made in good time, the charteree may, following a fruitless warning, rescind the Charter Agreement and charter the yacht otherwise. The charterer shall provide compensation for any economic loss. The Agreement shall enter into effect if a signed copy of the Agreement is submitted to the charteree or the agent within 10 days of the date of issue. Upon full payment of the charter price to the charteree the charterer will receive the boarding pass as confirmation of payment.

## VII. Crew list

By no later than 4 weeks prior to commencement of the charter, the charterer shall notify the charteree of all travelling persons (crew) based on the foregoing list.

## VIII. Assumption of the chartered yacht

The charterer shall assume the yacht at his own responsibility. The charteree or its appointed representative shall furnish the charterer the chartered yacht ready for sailing and in an otherwise perfect condition, cleaned internally and externally, with attached gas canister (and reserve canister), with a full tank of petrol. The boat's condition, all technical functions (in particular sail, lights and motor) and the completeness of accessory and inventory shall be thoroughly inspected using an equipment list and a checklist by both Contracting Parties during the familiarisation procedure. The charteree warrants that the yacht and its equipment meet the requirements of the relevant statutes and regulations in the agreed charter shipping route. The seaworthiness of the chartered yacht and the equipment shall then be confirmed by the parties in a binding manner prior to handover by way of signature. After such time, no objections may successfully be made. This shall not apply if and to the extent that there were latent defects upon handover, even if the charteree is not at fault in this respect. The charterer may refuse to take possession of the yacht only if seaworthiness has been reduced to a significant degree, and not in the event of immaterial deviations or defects. If during handover there was no possibility to check the sails due to strong wind, the charterer is obliged to inform the charteree within 24 hours of leaving the harbour if there are any damages and to document those damages by means of photographs. After this period of time, no objections may successfully be made.

The charteree has to provide proof with the ship's papers, that the yacht is covered by liability insurance and the premium has been paid.

## IX. Charterer's duties

The charterer shall have the following obligations towards the charteree:

1. all crew members must be designated by no later than 4 weeks prior to commencement of the charter (preparation of a crew list).
2. the boat must already be made available at the agreed place of return 1 to 2 hours before expiry of the Agreement for check out.
3. the agreed charter term shall not be unilaterally extended without consultation with the charteree.
4. the yacht shall be kept in sufficient proximity to the return port in the last 24 hours prior to conclusion of the charter in order to ensure timely arrival in the event of adverse conditions (poor weather, strong winds etc.). Storms shall not affect the duty to return the boat punctually, except in the case of force majeure. The charteree must be informed without undue delay in the event of foreseeable late return.
5. the charteree must be notified without undue delay if the turn must be ended at a location other than the return port. In this event, the charterer shall be responsible for caring for the boat or having it cared for by sufficiently qualified persons until the charteree is

able to take possession of the boat. The charter shall end only upon taking of possession, and the charterer shall bear any resultant costs.

6. the chartered yacht and equipment shall be treated with care and in accordance with the rules of due and proper seamanship.
7. the charterer shall familiarise himself prior to commencement of the turn with the technical and all other systems of the yacht, comply with the instructions located on board and inform himself on the particularities of the shipping route (currents, changed water levels in the event of strong winds, down winds, wind tunnel effects etc.)
8. perform rotational control and maintenance measures, particularly verifying the oil level and coolant level of the motor on a daily basis, check bilge on a daily basis and, where applicable, perform maintenance.
9. keep a log book in which the records on weather reports, all damage discovered on the yacht and equipment, groundings and other special events (ropes in the propeller etc.) must be entered
10. report any grounding immediately and, in the event of suspected damage to the chartered yacht, immediately head towards the next port and arrange for an examination by a diver and, following consultation with the charterer and at its instruction, arrange for craning or dry-dock.
11. pay attention to special wind and weather conditions, and to take particular care during night travel.
12. only to enter and leave port under motor, but to travel under motor only if and as long as necessary (and in no event under sail commencing with 10 or more degrees heeling!).
13. to come aboard the yacht only with appropriate, clean boating shoes whose colour does not rub off.
14. to give towing assistance only in an emergency, to have the chartered yacht towed only in an emergency and to use own ropes/lines, to attach lines only to clamps, winches or the foot of the mast, and not to make any agreements concerning towing and recovery costs, unless the assisting party otherwise refuses its aid.
15. to comply with the statutory provisions of countries in which the charterer stays, passes through or is a guest, and to enquire in advance concerning any necessary licenses or travel permits.
16. always to duly and properly pass the boat through port and customs authorities and duly pay any port charges incurred.
17. to notify the nearest police station without undue delay of any theft of the yacht or its accessories.
18. not to furnish or sub-lease the chartered yacht to third parties.
19. not to allow on board more persons than permitted or agreed (crew) or any animals.
20. not to make any modifications to the boat and equipment.
21. It is not allowed without written consent by the charterer:
  - to bring along any undeclared goods subject to custom duties or dangerous goods or substances.
  - to participate in regattas.
  - to exit from protected ports in the event of wind forces to constantly 7 Bft and higher.
  - to use the yacht for training purposes, transport for a fee, etc.
22. The charterer may restrict the shipping route in the event of unsafe/uncertain navigation conditions or prohibit night travel. The routes specified in the Agreement may be left only with the charterer's explicit consent. The charterer and the skipper and crew shall be responsible for sailing the yacht and shall be liable to the charterer or insurer for any damage resulting from abuse of the required rules of conduct. In the context of this Agreement, the crew members shall be deemed vicarious agents of the charterer/skipper.
23. If wind speed is higher than 25 knots the charterer has to obey to the orders of the charterer's personal on the charter base in regard of sailing out of the harbour or going in the harbour. If the charterer is not obeying these orders the charterer cannot hold the charterer or the insurer liable for any damages occurring thereof.
24. The battery is to be charged daily, either by the means of power from shore or by starting the engine in neutral mode (for example for the fridge).
25. The charterer is only allowed to take as many crew members in total, as states in the Charter Agreement and/or as are approved for the yacht.
26. The charterer commits himself to gather information at the charter base about imprecisions or errors in the nautical materials.

#### IMPORTANT NOTE: USE OF THE PLOTTER

We point out that the use of the plotter is only an additive tool for navigation. Basically the navigation has to be executed with the sea charts on board. This is also current case law in most countries. Misconduct in this regard can lead to legal liability for the skipper in charge.

#### **X. Repossession of the chartered yacht**

The charterer shall hand over the chartered yacht to the charterer or its appointed representatives ready for sailing in a stowed condition according to the checklist, basically cleaned internally and externally, with attached gas canister (plus reserve canister) and with a full tank of petrol. The charterer may replace material that has been consumed and not replenished (e.g. fuel) at the charterer's expense and set a flat fee for the costs, and may arrange for cleaning at the charterer's expense, if agreed. Cleaning may be contractually agreed against a surcharge. The charterer shall bring the chartered yacht to the mooring in a timely manner (no less than 1 to 2 hours prior to the handover time) such that detailed checkout and cleaning is possible. Both parties shall jointly inspect the boat's condition and the completeness of the equipment. The charterer shall notify the charterer even in the event of suspicion of damage to the yacht and shall immediately report any lost, damaged or no longer functional equipment upon return. The charterer and charterer shall prepare a list of defects and losses and shall then use this and the checklist to prepare a protocol, which shall be binding upon execution by both parties. Should the charterer refuse to prepare an acceptance protocol, the yacht shall be deemed returned free and clear of defects. After this time, objections may no longer be successfully made; this shall not apply if and to the extent that there were latent defects upon repossession, for which the charterer is responsible as a result of wilful or grossly negligent conduct. In particular, the charterer may not retain the bond for damage subsequently discovered. The type, scope and level of damage that may and shall be rectified only at a later stage and, where applicable, following further use of the chartered yacht, shall be documented in detail and shall be binding to both parties.

#### **XI. Damage (to the chartered yacht)**

The charterer shall notify the charterer without undue delay of any consequential damage, conduct obligations, liability damage, collisions, accidents, disabling, operating breakdowns, seizure of the yacht or other events. In such a case the charterer has to obey to the instructions of the charterer. If the charterer does not inform the charterer or does not obey to his instructions in above mentioned cases, the charterer cannot hold the charterer or the insurance liable for those and subsequent damages. The charterer and the charterer must always be available for instructions and questions. Damage based on normal wear and tear or material fatigue may be rectified by the charterer up to an amount of EUR 150 without consultation and the relevant expenses shall be reimbursed by the charterer upon presentation of receipts. The charterer shall inform the charterer of expenses that exceed this amount (except in emergencies or in cases of impending danger), shall document and monitor such expenses and, if necessary, shall make the initial financial outlay. Exchanged parts shall be kept. The charterer shall undertake any and all actions that reduce the damage and its consequences (e.g. breakdown). Should damage be unable to be rectified onsite, the charterer may be obliged – following demand by the charterer – to return early (possibly 24 hours prior to transfer of possession) if this is justifiable and reasonable under the circumstances. Should the charterer be responsible for the damage, the charter price shall be reimbursed on a pro rata basis for each day commenced. Should the charterer not be responsible for the breakdown, any additional compensatory damages claims on the part of the charterer shall be excluded. The charterer/Skipper/Crew shall bear up to an amount equivalent to his bond the costs for rectification of defects or repair of material damage on the chartered yacht or equipment. Damage exceeding this amount shall be covered by the hull underwriter, unless the skipper and/or crew act wilfully or in gross negligence or breach the provisions of the Charter Agreement, and these have a causal connection with the damage event that occurred. This shall not apply to damage resulting from wear and tear (e.g. opening of seams on sails) or damage for which the skipper and his crew was not at fault.

#### **XII. Other liability of the charterer**

The charterer shall be liable for any and all damage culpably caused by him or his crew to third parties or the chartered yacht, its equipment or accessories, in particular, for damage attributable to incorrect use or defective maintenance (if and to the extent this is a duty of the charterer) of the generators on board. In the event of wilful or grossly negligent conduct, the charterer shall also be liable for claims asserted by the hull underwriter (recourse). If and to the extent that he is at fault, the charterer shall also be liable for any and all consequential and economic loss (e.g. in the event of seizure) according to the legal regulations of the country concerned. Should the charterer provide a professional skipper, he shall be responsible for sailing the yacht and shall be liable for damage caused by him, but not for damage (jointly) caused by the guests. In the event of wilful or grossly negligent conduct on the part of the charterer or his crew for which the charterer is made liable by a third party without being (jointly) at fault in any manner, the charterer shall indemnify the charterer against any and all consequences under private and criminal law, any and all costs and any legal prosecution, domestically and abroad. Where there is more than one charterer, these shall be jointly and severally liable. The charterer shall be fully liable for damage that has a causal connection with misrepresentations concerning his ability to sail the boat.

#### **XIII. Charterer's liability**

The charterer shall itself be liable under the Charter Agreement for loss or damage to the property of the charterer or the crew or for accidents only if it has acted wilfully or negligently, but not for sovereign decrees, force majeure etc. The charterer shall be liable for damage caused by imprecision, changes or errors in the nautical materials provided such as sea charts, handbooks, compass, radio direction finders etc. only if it has not expressly notified the charterer or responsible skipper upon transfer of possession of the yacht of this possibility and of his joint duty to inspect same. However, compensatory damages claims based on liability for damage based upon injury to life, limb or health due to a wilful or negligent breach of duty and for other damage based on a wilful or grossly negligent breach of duty by the charterer shall remain unaffected by any and all agreements.

#### **IMPORTANT NOTE: LOSS OF PERSONAL PROPERTY**

The charterer is not liable for any lost, damaged or left behind property of the charterer or his crew.

#### **XIV. Insurance (chartered yacht)**

Hull insurance is in place for the chartered yacht for property damage to the boat and equipment and flat liability insurance without any excess for personal injury and property damage. The amount covered of the liability is minimum one million Euro. Personal injury as a result of accidents on board, damage to items brought onto the boat by the skipper and crew and damage caused by wilful or grossly negligent conduct shall not be covered by such insurance, meaning that, generally speaking, the charterer rather than the charterer shall be liable therefor in the event of fault. Taking out of hull insurance shall not result in any liability indemnity of the charterer by the charterer for damage that the insurer does not assume due to wilful conduct, gross negligence or abuse of the provisions of the Charter Agreement (e.g. deviating from the agreed shipping route) or with respect to which the hull underwriter may itself claim damages. The chartering shall take place according to the legal provisions in place in the charter shipping route.

#### **XV. Bond (provisions, particularities)**

Unless agreed otherwise, the charterer shall deposit upon transfer of possession onsite a bond pursuant to the charter-contract. The bond shall be deposited in cash or by credit card. He shall be liable for damages per charter-cruise up to a maximum equivalent to this amount exclusively for property damage to the chartered yacht and its accessories, lost equipment and theft for which he or his crew have been found to be at fault; this shall not apply to any decrease in value as a result of normal wear and tear. In the event of force majeure, this shall apply only if and to the extent that the risk has been culpably increased (e.g. going out during a storm warning). The bond shall be payable in cash or by credit card upon transfer of possession of the yacht or in advance by electronic transfer and shall be due for immediate reimbursement upon repossession of the yacht if the charter has taken place without any damage. If repairs may or should be performed only at a later time and if it is foreseeable based on the assessment of the level of the damage that the expense will be less than half of the amount deposited, then at least half shall be immediately due for reimbursement. The charterer knows that his credit card can be charged with additional expenses by the credit card company if damages are paid by credit card. Those additional expenses are at the expense of the charterer.

#### **XVI. Other agreements, miscellaneous, notices**

1) Price list, deviations, modifications

In the event of doubt or uncertainties, the prices pursuant to the respective applicable price list of the charterer shall apply. In the event that taxes, fees or duties included in the charter price are increased or reduced by operation of law without the parties having any influence thereon, the charterer and the charterer hereby declare that they agree to a corresponding adjustment of the Agreement.

2) Differing charter agreements/second agreements to be executed onsite

Due to the provisions applicable in the charterer's country, it may be that the charterer must have a charter agreement on board drafted in the language of the guest country.

3) Legal categorisation / liability of the parties (agent/charterer/organiser):

Should the Charter Agreement be concluded via a charter agency, such charter agency shall act as agent between the charterer and charterer. The brokering agency shall be liable only in the context of the duties and responsibility of an agent under the contractual relationship in place with the charterer. In this Agreement and in any future contractual modifications and unilateral declarations by the charterer to the charterer, the agent shall act as authorised representative in the name and for the account of the respective charterer and shall be authorised to collect receivables.

#### **XVII. Final provisions (applicable law, severability etc.)**

The charterer and charterer declare in agreement with the agent that any further agreement executed onsite between the charterer and charterer shall have no effect for or against the agent as far as its responsibility in relation to specific use of the chartered yacht is concerned.

Oral commitments or ancillary agreements shall be applicable for both parties only following written confirmation.

Should individual provisions of this Agreement resp. these General Terms be void, invalid or of no legal effect, the validity of the remainder of the Agreement shall remain unaffected thereby.