

Exeter City Council Terms and Conditions for the Sale of Boats

Parties

1.1 Exeter City Council whose registered office is at Civic Centre, Paris Street, Exeter, EX1 1JN (**Seller**)

1.2 The Buyer whose details are set out in the Purchase Form (**Buyer**)

2. Interpretation

2.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. **Collection Date:** the date set out in the Purchase Form.

Collection Location: the address for collection set out in the Purchase Form.

Boat: the Boat, details are set out in the Purchase Form. **Payment Date:** the date for payment of the Price set out in the Purchase Form.

Price: the price for the Boat as set out in the Purchase Form. This excludes amounts in respect of VAT, which the Buyer shall additionally be liable to pay the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice.

Purchase Form: means the purchase form attached to this agreement.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

2.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes emails.

3. Boat sold as seen

3.1 The details of the Boat in the Purchase Form are given only for the purposes of identifying the Boat and do not make this agreement a sale by description.

3.2 The Boat is sold "as seen". The Seller makes no representations and gives no warranties as to the quality, condition, state or description of the Boat, or its fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to the Boat are excluded to the fullest extent permitted by law.

4. Right to inspect Boat

The Buyer acknowledges that, before the date of this agreement:

- (a) the Seller has given the Buyer a reasonable opportunity to inspect the Boat; and
- (b) the Buyer has satisfied itself as to the quality and condition of the Boat.

5. Price and payment

5.1 The Buyer shall pay the Price on the Payment Date set out in the Purchase Form. Payment shall be made by way of cheque, debit card payment or bank transfer to the bank account nominated in writing by the Seller.

5.2 The Seller shall, on request of the Buyer issue the Buyer with an invoice for the Price plus VAT at the prevailing rate (if applicable) on signature of this agreement. The Seller shall ensure that the invoice includes the date of the sale, the invoice number, the Seller's VAT registration number.

5.3 If a party fails to make any payment due to the other under the agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank PLC's base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

5.4 The time for payment is of the essence. Payment will only be effected when the Seller receives the Price in cleared funds.

6. Collection – Upon receipt of Payment from the Seller

6.1 The Buyer shall collect the Boat from the Collection Location on the Collection Date during the Seller's usual business hours.

6.2 If the Buyer fails to collect the Boat when due the Seller may charge reasonable costs of storage from the Collection Date until collection is completed.

6.3 The Collection Date is approximate only, and the time of Collection is not of the essence. The Seller shall not be liable for any delay in collection of the Boat that is caused by:

- (a) events, circumstances or causes beyond its reasonable control; or

(b) the Buyer's failure to provide the Seller with adequate instructions that are relevant to the sale of the Boat .

6.4 The Buyer shall incur the costs, if any, of removing the Boat from the Collection Location. This includes any costs to crane out the Boat and for any transport of the Boat

6.5 Collection is completed upon the Buyer taking control of the Boat.

6.6 The Buyer shall sign the Purchase Form prior to collection of the Boat. For the avoidance of doubt the Purchase Form shall be deemed an acknowledgement of receipt.

7. Title and risk

7.1 The risk of damage to or loss of the Boat shall pass to the Buyer on completion of this agreement.

7.2 The title to the Boat shall pass to the Buyer only on payment in full (in cash or cleared funds) of the Price.

7.3 Until title to the Boat has passed to the Buyer, the Buyer shall:

- (a) store the Boat separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not remove, deface or obscure any identifying mark on or relating to the Boat ;
- (c) maintain the Boat in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and

7.4 The Seller may recover Boat in which title has not passed to the Buyer. The Buyer irrevocably licenses the Seller, its officers, employees and agents, to enter any premises of the Buyer (including with vehicles), in order to satisfy itself that the Buyer is complying with the obligations in clause 6.3 and to recover any Boat in which property has not passed to the Buyer.

8. Limitation of liability

8.1 Nothing in this agreement shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

8.2 Subject to clause 7.1:

- (a) the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the agreement; and
- (b) the Seller's total liability to the Buyer for all other losses arising under or in connection with the agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Price.

9. General

9.1 Force majeure. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

9.2 Entire agreement (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

9.3 Variation. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.4 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right or remedy.

9.5 Severance. If any provision or part-provision of the agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

9.6 Notices (a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, email. (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 8.6 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission. (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

9.7 Third party rights No one other than a party to this agreement shall have any right to enforce any of its terms.

9.8 Governing law This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

9.9 Jurisdiction Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.