

## General Terms of Business

# FAIRCharter 09

### I. Charter price

The charter price includes use of the yacht (plus accessories) by the Charteree, 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. Charterer's duties

The Charterer undertakes towards the Charteree

1. that it shall furnish the chartered yacht on the agreed date following full payment of the charter price in a seaworthy and adequate condition of the technics and maintenance (note: maintenance data, in particular, the inflatable life raft, emergency signals)
2. that it shall furnish the onboard documentation (important: updated sea charts) that detail the ocean territory and sailing times permitted and covered by the insurance policies
3. that it shall reimburse down time if the Charteree 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 himself responsible for the down time (e.g. due to damage caused by him).
4. that it shall be available for the Charteree during the charter period by telephone or radio at least during the usual office time.

The manual for the charter-yacht has to be on board in English or in the language of the charteree.

### III. Sailing licences, certificates of qualification

The Charteree warrants that he has the official recreational vessel licence 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 Charteree 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 Charterer 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 patent doubts concerning the qualification for safe skippering of the chartered yacht and crew, the Charterer may appoint or arrange for a skipper for the Charteree at the Charteree's expense. Should this be impossible or should the Charteree not agree thereto, the Charterer 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 Charterer shall be entitled to the relevant difference.

**Important: The Charteree/skipper shall bear full responsibility therefor as well as for the crew, ship, equipment and inventory as against the Charterer and insurer.**

### IV. Performance disruptions (Charter Agreement)

#### 1) Charteree's rights

a) Should the Charterer fail to furnish the chartered yacht no later than 4 hours following the contractually agreed time, the Charteree 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 Charterer's fault. The Charteree 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 Charterer may provide a reasonable substitute yacht that is objectively of the same level and that also meets the Charteree'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 Charteree 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 Charteree 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 navigation methods is made significantly more difficult and the risks to the safety of the boat and crew increase significantly as a result.

c) Should the Charterer not be responsible for the performance disruption, there shall be no further claims against the Charterer with regard to indemnification of the Charteree for consequential damage (e.g. travel/accommodation costs); however, the Charterer hereby assigns to the Charteree any compensatory damages claims against third parties. The Charterer shall without undue delay notify the Charteree of any such events and possible consequences in detail and in an appropriate manner. The Charteree shall assert price reductions or rescind the Agreement by way of unilateral declaration to the Charterer and provide relevant grounds therefor.

2) Cancellation Should the Charteree rescind the charter agreement, the agreed cancellation costs shall be incurred. Should the Charteree be unable to set out on the turn, he shall notify the Charterer 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 Charterer shall govern. Should there be an alternative charter at the same conditions, the Charteree shall be reimbursed his payments made to such time less a processing fee of EUR 150. The Charteree may provide a suitable substitute charterer who assumes the Agreement only with the agreement or written consent of the Charterer. 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% in a given case. The Charterer 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 Charterer shall be entitled to the contractually agreed charter price. Taking out of charter cancellation insurance is therefore expressly recommended.

3) Charterer's Rights: Should the boat not be returned no later than 2 hours after the time contractually agreed therefor, the Charterer may demand from the Charteree pro rata ongoing payment of the charter price for each day begun. The Charteree 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 Charterer 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 Charteree 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 Charterer shall be notified without undue delay in all cases. In all cases, the Charteree may prove that no or lesser damage occurred.

## V. Cancellation

Should the Charteree 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, bed-linen, special equipment etc.

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

## VI. Payment method

Should the agreed payments not be made in good time, the Charterer may, following a fruitless warning, rescind the Charter Agreement and charter the yacht otherwise. The Charteree shall provide compensation for any economic loss. **The Agreement shall enter into effect if a signed copy of the Agreement is submitted to the Charterer or the agent within 10 days of the date of issue.**

## VII. Crew-list

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

## VIII. Assumption of the chartered yacht

The Charteree shall assume the yacht at his own responsibility. The Charterer or its appointed representative shall furnish the Charteree 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 with a full replacement fuel canister. 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 Charterer 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 Charterer is not at fault in this respect. The Charteree 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.

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

## IX. Charteree's duties

The Charteree shall have the following obligations towards the Charterer:

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 1-2 hours before expiry of the Agreement for check out.
3. the agreed charter term shall not be unilaterally extended without consultation with the Charterer.
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 Charterer must be informed without undue delay in the event of foreseeable late return.
5. the Charterer must be notified without undue delay if the turn must be ended at a location other than the return port. In this event, the Charteree shall be responsible for caring for the boat or having it cared for by sufficiently qualified persons until the Charterer is able to take possession of the boat. The charter shall end only upon taking of possession, and the Charteree 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 Charteree 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. if and to the extent present, conscientiously keep a radio book and, where applicable, a customs and an inventory, departure and arrivals log.
11. 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.
12. pay attention to special wind and weather conditions, and to take particular care during night travel.
13. 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 degrees heeling!).
14. to come aboard the yacht only with appropriate, clean boating shoes whose colour does not rub off.



15. 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 (belegen) 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.

16. to comply with the statutory provisions of countries in which the Charteree stays, passes through or is a guest, and to enquire in advance concerning any necessary licenses or travel permits

17. always to duly and properly pass the boat through port and customs authorities and duly pay any port charges incurred.

18. to notify the nearest police station without undue delay of any theft of the yacht or its accessories

19. not to furnish or sub-lease the chartered yacht to third parties.

20. not to allow on board more persons than permitted or agreed (crew) or any animals

21. not to make any modifications to the boat and equipment.

22. 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.

23. 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 express consent. The Charteree 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 Charteree/skipper.

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

The Charteree shall hand over the chartered yacht to the Charterer or its appointed representatives ready for sailing in a stowed condition according to the checklist, cleaned internally and externally, with attached gas canister (plus reserve canister) and with a full tank of petrol (plus replacement fuel canister). The Charterer may replace material that has been consumed and not replenished (e.g. fuel) at the Charteree's expense and set a flat fee for the costs, and may arrange for cleaning at the Charteree's expense, if agreed. Cleaning may be contractually agreed against a surcharge. The Charteree shall bring the chartered yacht to the mooring in a timely manner (no less than 1-2 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 Charteree 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 Charteree 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 Charteree 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 Charteree 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. The Charteree 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 Charteree up to an amount of EUR 150 without consultation and the relevant expenses shall be reimbursed by the Charterer upon presentation of receipts. The Charteree 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 Charteree 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 Charteree 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 Charteree shall be excluded.

The Charteree/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 Charteree**

The Charteree 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 Charteree) of the generators on board. In the event of wilful or grossly negligent conduct, the Charteree shall also be liable for claims asserted by the hull underwriter (recourse). If and to the extent that he is at fault, the Charteree 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 Charteree or his crew for which the Charterer is made liable by a third party without being (jointly) at fault in any manner, the Charteree 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 Charteree, these shall be jointly and severally liable. The Charteree 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 Charteree 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 Charteree 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.

### **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 Charteree 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 Charteree 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 Charteree 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 and theft, 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.

### **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 Charteree 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 Charteree 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 Charteree 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 Charteree. In this Agreement and in any future contractual modifications and unilateral declarations by the Charteree 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 Charteree and Charterer declare in agreement with the agent that any further agreement executed onsite between the Charterer and Charteree 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 be void, invalid or of no legal effect, the validity of the remainder of the Agreement shall remain unaffected thereby.