

Florida Yacht Brokers Association, Inc.

PURCHASE AND SALE AGREEMENT FOR BROKERAGE VESSEL

BUYER	VESSEL INFORMATION
Buyer's Name:	Vessel Name:
	Make:
SELLER	Model Year:
Seller's Name:	Length:
	<input type="checkbox"/> Doc or <input type="checkbox"/> Reg No.: Flag:
DATE OF AGREEMENT:	Hull No.:
Offer Date:	Engines:
ACCEPTANCE OF AGREEMENT	Listing Broker:
Offer Expiration Date:	Selling Broker:
ACCEPTANCE/REJECTION OF VESSEL BY BUYER	PURCHASE PRICE
Accept/Reject Date:	Purchase Price:
CLOSING	Less Deposit:
Closing Date:	Less Trade Allowance (see Addendum):
Delivery Location:	Balance:

1. **Agreement.** Buyer agrees to purchase, and Seller agrees to sell, all right, title and interest to and in the Vessel on the terms and conditions set forth in this Agreement. Capitalized words used below refer to the corresponding terms in the table above unless otherwise defined herein. Listing Broker and Selling Broker shall be referred to herein as the "Brokers." If there is a Trade Allowance, the terms and conditions of the trade-in will be governed by the attached Trade-In Vessel Addendum.

2. **Acceptance of Agreement; Deposit.** If either party fails to sign this Agreement and deliver it to the other party on or before the Offer Expiration Date, this Agreement will be ineffective. Within _____ business days (or three (3) business days if left blank) following Seller's execution of this Agreement, Buyer shall pay the Deposit to the Selling Broker's escrow account, as acknowledged below, as a deposit toward the Purchase Price to be held subject to the terms of this Agreement. Seller may refuse to permit Buyer to proceed with the trial run, survey and other inspections of the Vessel until the Deposit is in the Selling Broker's escrow account.

3. **Survey Option; Acceptance of Vessel; Conditions of Survey.** Buyer's obligation to purchase the Vessel is subject to Buyer's satisfaction, in Buyer's sole discretion, with a trial run and survey of the Vessel, if Buyer elects to have the Vessel inspected. In such event, (a) Buyer will select the surveyor and thereupon the surveyor, and not the Brokers, will be the sole party responsible for any errors or omissions with respect to the survey, notwithstanding that the Brokers may have provided information to and assisted Buyer with hiring the surveyor, (b) **Buyer shall complete the trial run and survey as soon as practicable**, (c) Seller shall pay all running expenses for, and assume the risks associated with, the trial run, and Buyer shall pay **all** costs of the survey, including associated costs, e.g., haul-out, dry dock, and subcontractors' charges, (d) Buyer and its surveyor will be solely responsible for determining the scope of the survey and the trial run to assess the Vessel's conformity with Buyer's requirements, and (e) Buyer must deliver written notice of rejection or acceptance of the Vessel to Seller or the Listing Broker on or before the Accept/Reject Date set forth above. **Whether or not Buyer has inspected the Vessel, Buyer will be deemed to have rejected the Vessel if he fails to give timely written notice of its acceptance.** Upon Buyer's acceptance of the Vessel, Seller will not make any use of the Vessel pending Closing except to move the Vessel to the Delivery Location. If Buyer rejects or is deemed to reject the Vessel, after all expenses incurred on Buyer's behalf have been paid, (i) the Selling Broker shall return the Deposit to Buyer, (ii) this Agreement will terminate, and (iii) the parties and the

Seller's Initials: _____

Buyer's Initials: _____

Brokers will be released from any further liability hereunder. The Brokers will not be responsible for the cost to correct any defects or deficiencies noted during the trial run and survey.

4. **Closing.** The Closing of the transaction contemplated under this Agreement will occur on or before the Closing Date at the Delivery Location. "Closing" is defined herein as the transfer of ownership of the Vessel. Ownership shall transfer when: (a) all funds due from Buyer have been received by Seller pursuant to the terms of this Agreement, (b) the Vessel is delivered to Buyer, and (c) all other requirements for Closing as set forth in Paragraph 6 have been complied with. Closing may be facilitated by overnight courier or electronic means. Seller shall deliver the Vessel to Buyer at the Delivery Location, together with all gear, machinery, equipment, furnishings, fuel and other consumables (except any consumed during the trial run and any voyage to the Delivery Location), and all other tenders, toys, articles and appurtenances on board the Vessel as of the Date of this Agreement, **except** for items described in any written exclusion list (the "Exclusion List") (i) attached to this Agreement, (ii) delivered to Buyer within five (5) days after this Agreement is fully executed (but in no event later than the Accept/Reject Date), or (iii) included in any listing specification for the Vessel delivered to Buyer. Buyer will be deemed to have accepted the Exclusion List if he accepts the Vessel. On or before the Closing Date, Seller shall deliver to the Selling Broker all documents necessary to transfer title to the Vessel (and all other items hereby required to be delivered) to Buyer. At Closing, Buyer shall pay the Balance to Seller (subject to Paragraph 6) and/or to the Selling Broker for onward transfer to Seller by wire transfer. Any funds Seller owes to (a) the Brokers for storage, insurance, repairs and/or other items, or (b) the holder of any other Encumbrance, will be deducted from the amount due Seller prior to disbursement of funds to Seller.

5. **Brokers.** The parties acknowledge that the Selling Broker and Listing Broker are the only brokers that procured this Agreement. If the Listing Broker and the Selling Broker are the same brokerage, the parties consent to that Broker acting as a dual-agent in this transaction, i.e., representing both Buyer and Seller, and the Broker may disclose to both parties facts known to the Broker materially affecting the Vessel's value or desirability; provided, however, that the Broker shall not, without Seller's consent, disclose to Buyer that Seller is willing to sell the Vessel for an amount less than the asking price or, without Buyer's consent, disclose to Seller that Buyer is willing to pay a price greater than the offering price. If the Listing Broker and the Selling Broker are different, the Listing Broker will represent Seller only and owe no duties, fiduciary or otherwise, to Buyer, and the Selling Broker will represent Buyer only and owe no duties, fiduciary or otherwise, to Seller (though paid by Seller). The Brokers are obligated to perform only the duties expressly set forth herein and no implied duties or obligations may be read into this Agreement. Seller shall be solely responsible for payment of commissions due to the Brokers in connection with the sale of the Vessel as set forth herein. Each party represents and warrants to the other that he has not employed or dealt with any other broker, agent or finder in carrying out the negotiations relating to the sale of the Vessel to Buyer and acknowledges that the Brokers are third-party beneficiaries to this Agreement.

6. **Seller's Representations; Requirements for Closing.** Seller represents and warrants that: he will transfer to Buyer good and marketable title to the Vessel, free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due to any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "Encumbrances"). At or before Closing, Seller shall deliver to Buyer (i) satisfactory evidence of title, (ii) proof of payment or removal of all Encumbrances, (iii) a guaranty and indemnification from Seller guaranteeing Seller's representations and warranties in this Paragraph 6, (iv) if Seller is a legal entity, a personal guaranty and indemnification from Seller's beneficial owner(s) guaranteeing Seller's representations and warranties in this Paragraph 6, and (v) any other documents necessary for transfer of good and marketable title to Buyer. Seller shall pay any cost associated with, and shall cooperate fully to obtain, any authorization for sale required from any governing authority. Any party which is a legal entity will provide to the other prior to Closing (x) proof that it is in good standing under the laws of the State or other jurisdiction under which the entity has been formed, (y) a consent action or resolution demonstrating the entity's duly authorized decision to purchase or sell the Vessel, and (z) a power of attorney demonstrating the authority of the individual delivering or accepting the Vessel and/or executing this Agreement and/or purchase and sales documents.

7. **Risk of Loss; Force Majeure.** Seller will bear the risk of loss of or damage to the Vessel prior to Closing. If the Vessel is damaged subsequent to Buyer's acceptance and the necessary repairs will cost less than five percent (5%) of the Purchase Price and require fewer than thirty (30) days to complete, then (a) Seller must repair the damage prior to Closing in accordance with sound marine practices to the standard of the Vessel immediately prior to the damage and Buyer may inspect such repair, (b) Buyer must pay the Balance and take delivery of the Vessel as repaired, and (c) the Closing Date will be extended by the length of the repair period. If the Vessel is damaged to a greater extent subsequent to Buyer's acceptance, either party may terminate this Agreement with the same consequences as if Buyer had rejected the Vessel. Either party's obligation to perform will be suspended to the extent required to accommodate unforeseeable events beyond that party's reasonable control ("*Force Majeure* Events"), including, without limitation, acts of God, acts of terrorism, strikes, lockouts, riots, acts of war, fire, communication line failures, computer viruses, power failures, accidents, tropical storms, hurricanes, earthquakes, or other natural disasters. If a *Force Majeure* Event occurs, the time periods referred to in this Agreement, including, without limitation, the Closing Date, will be deemed extended by the time necessary to

permit the affected party to perform in accordance with this Agreement; provided, however, if the *Force Majeure Event* delays the Closing Date for a period of at least thirty (30) days, either party may terminate this Agreement with the same consequences as if Buyer had rejected the Vessel.

8. **Default.** *Notwithstanding anything herein to the contrary, if the Deposit is not paid when due* or Closing is not consummated due to Buyer's non-performance, including, without limitation, failure to pay the Balance or execute all documents necessary for completion of the purchase by the Closing Date, the Deposit shall be retained by (or if the Deposit was not paid, Buyer shall pay a like amount to) the Seller and the Brokers as liquidated and agreed damages, as consideration for the execution of this Agreement, in full settlement of all claims between the parties, the Selling Broker shall return to Buyer any other funds received from Buyer, and the parties will be relieved of all obligations under this Agreement. Buyer and Seller agree that the Deposit will be applied first to payment of any unpaid costs or expenses that Buyer or Broker incurred against the Vessel and then divided fifty percent (50%) to the Seller and fifty percent (50%) to the Brokers, which the Brokers shall divide in the same proportions as the commission would have been divided had a sale been consummated. If the Closing is not consummated due to Seller's non-performance, the Deposit, and any other money paid or deposited by Buyer, pursuant to this Agreement will be returned to Buyer upon demand or Buyer will have the right of specific performance. Seller agrees that specific performance is reasonable in light of the uniqueness of the Vessel, difficulty of proof of loss, and the inconvenience or impossibility of otherwise obtaining an adequate remedy. On Seller's default, Seller shall forthwith pay the Brokers the same commission otherwise payable had the transaction closed.

9. **Sales and Use Taxes.** Sales or use taxes, if applicable, payable on Buyer's purchase of the Vessel, are Buyer's responsibility, and Buyer shall pay the taxes due to the Selling Broker at Closing. Buyer hereby indemnifies and holds harmless Seller and the Brokers against and from any sales or use taxes for which Buyer is responsible.

10. **REPRESENTATIONS AND WARRANTIES.** SELLER AND THE BROKERS BELIEVE THAT ANY INFORMATION ANY OF THEM HAS PROVIDED ON THE VESSEL IS GOOD AND CORRECT AND OFFER THE INFORMATION IN GOOD FAITH, BUT DO NOT AND CANNOT GUARANTEE THE ACCURACY OF THE INFORMATION. BUYER WARRANTS AND REPRESENTS, AS OF THE TIME OF CLOSING, THAT HE (A) WILL HAVE FULLY INSPECTED AND MADE A TRIAL RUN OF THE VESSEL (OR HAVE VOLUNTARILY WAIVED THESE RIGHTS) AND (B) IS NOT RELYING ON ANY ADVERTISEMENTS, PROMISES, DESCRIPTIONS, AFFIRMATIONS, OR REPRESENTATIONS (WHETHER ORAL OR WRITTEN, PRIOR TO OR CONTEMPORANEOUS WITH THIS AGREEMENT) PROVIDED BY THE SELLER OR BROKERS. UPON CLOSING, BUYER WILL HAVE ACCEPTED THE VESSEL IN ITS "AS IS" CONDITION. SELLER AND THE BROKERS HAVE GIVEN NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AND MAKE NO REPRESENTATION AS TO THE CONDITION OF THE VESSEL, ITS FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY, **ALL OF WHICH ARE DISCLAIMED.**

11. **Financing.** Buyer's obligations are not contingent upon Buyer's obtaining financing. Buyer represents that he will arrange financing, if necessary. Buyer acknowledges that the Brokers have made no representations or warranties with respect to Buyer's ability to obtain financing, Buyer's qualifications to obtain any type of mortgage on the Vessel, or Buyer's ability to document or register the Vessel in any jurisdiction.

12. **Counterparts.** The parties may sign this Agreement in any number of identical counterparts, each of which will be deemed an original (including signatures evidenced via facsimile or electronic mail) with the same effect as if the signatures were upon the same instrument.

13. **Binding Effect; Contemporaneous Contracts; Future Sales.** This Agreement is binding on all parties, their heirs, personal representatives and/or assigns. Seller shall not sell the Vessel or enter into any contract for the sale of the Vessel while this Agreement is in effect. If a sale is not consummated in accordance with the terms of this Agreement, and Buyer and Seller enter into a contract between themselves, either directly or through an entity under a party's ownership or control, within two years after this Agreement is terminated for the sale of the Vessel, Seller agrees to pay the Brokers an amount identical to the commission the Brokers would have received had the transaction contemplated under this Agreement closed.

14. **Escrowed Funds.** The parties acknowledge that (a) the Selling Broker will not be responsible for the Deposit until the funds have cleared into the Selling Broker's account, (b) the Selling Broker shall hold the Deposit as an escrow agent once the funds have cleared and any other funds received by either Broker from any party will be held in trust for that party, (c) the Selling Broker may retain the commission due the Brokers prior to disbursement of the Deposit or Balance to Seller, and (d) in any dispute involving any funds held by the Brokers, Buyer and Seller will indemnify the Brokers for legal fees and costs relating in any way to the dispute, including those incurred in any appeals (which obligation is secured by a lien on the escrowed funds) and those relating to its claim for a commission, except as to a Broker found, in a final non-appealable judgment, to have engaged in willful misconduct or acted with gross negligence.

15. **Additional Terms.**

16. **Miscellaneous.** This Agreement, including its exhibits and schedules, is the **entire agreement** between the parties pertaining to the subject matter hereof and **supersedes** all prior and contemporaneous negotiations, agreements, representations, warranties, and understandings pertaining thereto, be they in writing, oral, or otherwise. Absent the intentional wrongdoing or gross negligence of a Broker, Buyer and Seller hereby jointly and severally indemnify and hold the Brokers harmless against and from any and all third party claims, demands, causes of action, losses, liabilities, damages and judgments, arising in connection with the Brokers' undertaking pursuant to the terms and conditions of this Agreement. If a Broker becomes a party to any litigation involving this Agreement, the Broker shall be reimbursed for its costs and attorney's fees, at all pretrial, trial and appellate levels, by the party or parties found to have breached this Agreement. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorney's fees and costs for all pretrial, trial and appellate proceedings. If any term, condition, or provision of this Agreement is held to be unenforceable for any reason, it shall, if possible, be interpreted to achieve the intent of the parties to this Agreement to the extent possible rather than avoided. In any event, all other terms, conditions and provisions of this Agreement shall be deemed valid and enforceable. There are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. This Agreement may not be amended or modified, except in writing, signed by both parties. Notice and delivery given by or to the attorney or Broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by personal delivery, overnight courier, facsimile, or electronic media, and shall be effective upon delivery with proof of delivery retained. Buyer may assign this Agreement to any member(s) of Buyer's immediate family or any entity owned or controlled by Buyer and/or any member(s) of his immediate family; otherwise, neither party may assign this Agreement without the other party's consent, which consent shall not be unreasonably withheld. No claim or right arising out of this Agreement can be waived or discharged by one party, in whole or in part, unless in writing, nor shall any waiver be applicable except in the specific instance for which it is given. Paragraph headings are informational and included only for convenience. Any proceeding relating to this Agreement will be brought in the courts of the State of Florida, in the county of the main office of the Selling Broker, or if the Selling Broker has no office in the State of Florida, in the court of applicable jurisdiction within or including _____ County, Florida (Broward, if no other county is indicated) and each of the parties irrevocably submits to the exclusive jurisdiction of each such court, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding relating to this Agreement in any other court. This Agreement will be governed by and interpreted exclusively under the laws of the State of Florida, without regard to conflicts-of-laws principles that would require the application of any other law. ***The parties, having been advised to consult legal counsel with respect to this Agreement, hereby waive trial by jury with respect to any claim relating to this Agreement, whether against each other or against a Broker as a third party beneficiary.***

SELLER:

BUYER:

Print: _____
Title: _____
Date: _____

Print: _____
Title: _____
Date: _____

SELLING BROKER

**Acknowledgment of Receipt of Deposit:
(Subject to clearance of funds)**

Amount: _____
Print: _____
Title: _____
Date: _____

Seller's Initials: _____

Buyer's Initials: _____