



# FAIRCHARTER 19

## The International YACHT-POOL Terms and Conditions

### I. Charter Price

The charter price includes the use of the yacht with all accessories according to the inventory list and the additionally accessories contracted by the charter customer, their natural wear and tear as well as costs for the repair of damage due to material fatigue, the care for the charter customer and the yacht during the charter period as well as expenses for general taxes and duties and fees at the start and finish berth as well as the proportionate costs for the liability and comprehensive insurance of the yacht.

Not included in the charter price are any fees for navigating in waters, areas or harbors, mooring fees outside the starting or finishing berth and fees for checking in or out as well as the costs for operating supplies such as diesel fuel or gasoline.

Costs for final cleaning, gas, petrol for the outboard motor, bed linen and towels may be included in the charter price. Otherwise these additional costs must be listed separately by the charter company and submitted to the charter customer in good time before the charter date.

### II. Obligations of the Charter Company

The charter company commits to the charter customer:

1. to hand over the charter yacht including complete accessories on the agreed date after full payment of the charter price in a seaworthy, proper age-appropriate care- and technical condition.

All prescribed maintenance intervals have been complied with and must also cover the entire charter period. Particular attention should be given to the maintenance of rescue equipment and safety-related equipment such as (if available / mandatory) life raft, life jackets, emergency signals, EPIRB, fire extinguishers and the gas cooker system as well as the completeness and updating of the nautical charts and navigational instruments.

2. to hand over the ship's papers to the charter customer containing all valid certificates, documents, lists, operating instructions of the yacht and other documents required for entering the contractually agreed maritime area. The contractually agreed exclusively to navigable sea area as well as possible temporal restrictions must be defined in these documents clearly and without contradiction. The charter company has to explicitly point out the specifics not obvious to the charter customer. All documents must be in English or in the local language of the charter customer.

3. to rectify damage or defects arising during the charter period or discovered hidden defects within the scope of the contract (see point V).

4. to reimburse downtime in accordance with the contract (see point V).

5. to be available to the charter customer during the charter period via telephone or radio at least during normal office hours.

### III. Obligations of the Charter customer

The charter customer has the following obligations to the charter company:

1. to name all crew members before charter start according to the charter company's instructions (creation of a crew list).

2. to keep the boat ready for check-out at the agreed place of return 1-2 hours before the time agreed with the charter company.

3. to not extend the agreed charter period without approval of the charter company.

4. to keep the yacht within the last 24 hours before the end of the charter in sufficient proximity to the return port, so that even in adverse circumstances (bad weather), the timely arrival is guaranteed. Weather conditions do not affect the duty of punctual return, unless there is a case of unpredictable force majeure. If a late return is foreseeable, the charter company must be informed immediately.

5. to notify the charter company immediately if the trip has to be completed at a location other than the agreed return location. In this case, it is up to the charter customer to take care of the boat or to provide sufficiently qualified persons to take care of it until the charter company can take over the ship. The charter only ends with the takeover of the yacht by the charter company. The charter customer must bear the additional costs incurred by the charter company due to the deviating return location, unless there is a case of unforeseeable force majeure or the charter company itself has requested the alternative return location or the charter company itself has caused this circumstance by culpable conduct (e.g. by hidden defects on the charter yacht).

6. to use the yacht and equipment carefully and in accordance with the rules of good seamanship.

7. to familiarize himself with the technical and all other facilities of the yacht before the start of the trip, observe the operating instructions on board and inform himself in detail about the nautical, geographic and technical characteristics of the area (tides, currents, changing water levels in strong winds, fall winds, nozzle effects, etc.).

8. to check the oil level of the engine and the bilges daily and check the sea cooling water circuit after starting the engine. Detected defects must be remedied immediately. Without sufficient oil or cooling, the engine may only be operated in the event of clear and present danger to the boat and / or crew to avoid damage. Other necessary maintenance measures during the charter period must be explained by the charter company to the charter customer at the handover and the charter customer must be given a prepared maintenance list.

9. to diligently keep a written logbook (in paper) in which the usual nautical entries, records of weather reports, any damage to the yacht and equipment, groundings and other special incidents (rope in propeller, etc.) are recorded.

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10. to navigate with the help of the present, up-to-date nautical chart and to use electronic navigation aids only supportive.

11. if available, to keep a radio book and, if necessary, a customs and notation book conscientiously.

12. to immediately report any ground contact (even without visible damage) and, in the event of suspected damage to the charter yacht, immediately navigate to the nearest port and arrange for a survey by a diver, and after consultation with the charter company and at his direction, if necessary, craning or slipping.

13. to carry out damage-avoidance and damage-reduction obligations in the event of damage according to good seamanship and to fulfill reporting and cooperation obligations to participants, authorities and insurance companies. If he doesn't fulfill his duties, the charter customer is fully liable for the damage himself.

14. to observe special wind and weather conditions, to exercise special caution when navigating at night.

15. to only arrive in and leave ports under engine. To avoid running the engine when sailing, but under no circumstances to operate the engine when sailing with more than 10 degrees heeling.

16. to keep the battery voltage of all on-board batteries above 12 volts at all times, therefore to charge the batteries in good time via the engine, a generator or shore power connection, if necessary, consumers should be switched off. Bulk consumers such as anchor windlass or bow thruster may only be operated if the battery voltage is supported in parallel by the motor or a generator.

17. to only use harbors or moorings where secure entering, leaving and mooring can be ensured over the planned period.

18. to enter the charter yacht only with suitable, clean and non-marking boat shoes.

19. to provide towage assistance to others only in an emergency, to tow the charter yacht only in an emergency and to use own ropes and lines and then only to cleats, winches or the mast base (never with a bowline-knot), so that the towing can be solved even under tension and not to agree on towing and recovery costs, unless the helper otherwise would refuse to help.

20. to comply with the legal requirements of the countries of stay, to inquire about any necessary licenses or driving rights in advance.

21. to always duly clear inward and outward and to pay harbor and mooring fees accordingly.

22. to report theft of the yacht or its accessories immediately to the nearest police station.

**23. to report liability damages immediately to the nearest port authority and to keep a confirmation.**

24. not to pass on or sublet the charter yacht to third parties.

25. not to take on board more persons than permitted or agreed and thus named in the crew list.

26. to make no changes to the ship and equipment, unless this serves to ward off imminent damage or has been agreed in advance with the charter company.

27. not to carry animals, undeclared dutiable goods or dangerous goods or materials, not to participate in regattas or to use the yacht for commercial purposes (e.g., for training purposes, goods or passenger transport) without the prior written consent of the charter company.

28. not to leave the save and sheltered port or berth if a recognized or general weather forecast indicates that the wind speed in the sea area concerned is 7 Bft or more for the period planned for the next leg. Only if it is clearly to be feared that the previously protected harbor or berth is at risk of being threatened due to unexpected weather changes, the nearest protected harbor or berth is to be approached.

29. The contractually agreed sea area (see point II 2) may only be left with the express consent of the charter company. The charter company has the right to further limit this sea area in case of uncertain or unusual navigation conditions, in terms of space or time (for example, to pronounce a nocturnal navigation ban).

30. The charter customer or skipper is responsible for the management of the yacht and is liable to the charter company or insurer for damages resulting from the disregard of the required rules of conduct. Within the scope of this contract, the crew members are vicarious agents of the charter customer and / or skipper.

#### **IV. Driver's Licenses, Certificates of Competence**

The charter customer may either be the skipper of the chartered yacht or may designate a crew member of his choice as a skipper.

The skipper has to prove to the charter company the possession of the driving licenses and certificates of competency necessary to guide the yacht in the entire contractually stipulated sea area. Furthermore, the charter customer assures that the skipper has all necessary nautical, navigational and maritime knowledge and experience to safely manage the chartered yacht under sails and / or engine as specified in point III taking into account the responsibility for crew and material.

The charter company is entitled to check the skipper's ability to navigate before handing over the charter yacht. For this purpose, he can demand proof of the previous experience of the skipper prior to the conclusion of the contract and can have the skipper show the licenses or driving licenses required to navigate the yacht in the agreed class and area of navigation. In the case of obvious inability to qualify for the safe management of the charter yacht and crew, the charter company may provide or arrange for the charter customer to hire a skipper at his cost. If this is not possible or if the charter customer does not agree with this, the charter company may refuse to hand over the yacht; In this case, the charter price paid will only be repaid on successful re-chartering at the originally agreed charter price. If further chartering is only possible at a lower price, the charter company is entitled to withhold the corresponding difference.

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## **V. Impairment of Performance (Charter Contract)**

### **1. Rights of the Charter customer:**

a) If the charter company does not make the charter yacht available at the latest 4 hours after the contractually agreed date and time, the charter customer is entitled to a proportional reduction in the charter price for the downtime per day started.

The same applies mutatis mutandis during the charter period in the event of damage or defects occurring independently of the fault of the charter company, unless these were caused culpably by the charter customer himself. The charter customer has to accept a restriction of use of the yacht of up to 4 h without refund for each damage event. A restriction of use exists from the time from which the charter customer is considerably restricted in the use of the yacht due to a defect and / or a repair. A reasonable change to the planned itinerary (to allow for repair) and / or repair during normal harbor dock times is not a use restriction.

The charter customer may also withdraw from the contract, subject to full refund of the payments made, if more than 24 hours have elapsed since the agreed delivery date; this period is extended to 48 hours for a charter period of at least 10 days.

The charter company is entitled to provide a reasonably acceptable replacement yacht, corresponding to the needs of the charter customer and objectively equivalent.

If it is already clear prior to the charter that the boat will not be available and can be handed over at the latest 4 hours after the contractually agreed date, the charter customer has the right to withdraw from the contract before the start of the charter with full refund of the payments made.

b) In the event of negative deviations of the charter yacht, its equipment or accessories from the contractually agreed condition (defects), the charter customer is entitled to a reasonable reduction of the charter price. To rescind he is only entitled if the charter yacht is thereby impaired in its seaworthiness or if navigating by using conventional navigation methods is significantly more difficult and thereby significantly increasing the risks to the safety of boat and crew.

The charter customer can only claim reduction and cancellation by a written declaration in writing to the charter company. The declaration must be made immediately upon notification of the defect and additionally in the check-out protocol and justified accordingly.

c) If the charter company is not responsible for the impairment of performance, there are no further claims of the charter customer against the charter company with regard to an exemption for consequential damages (e.g. travel / accommodation costs). In this case, however, the charter company assigns any claims for damages against third parties to the charter customer. The charter company must inform the charter customer comprehensively and immediately about such occurrences and the possible consequences.

### **2. Rights of the Charter Company:**

a) Delayed return: If the yacht is not returned within 2 hours after the time contractually agreed with the charter company by the fault of the charter customer, the charter

company may require the pro rata payment of the charter price per day started.

In addition, the charter company is entitled to demand compensation from the charter customer for any economic loss the delayed return incurs (such as the cost of additional personnel to be ordered or held or failure or partial cancellation of subsequent charter).

b) Different place of return: If the return of the yacht does not happen at the agreed place of return by the fault of the charter customer, the charter company can require compensation from the charter customer for all economic loss incurred thereby (e.g. the cost of taking over at another location or costs for the return of the yacht on water or on land).

c) Weather conditions do not affect the charter customer's duty to return the yacht in accordance with the contract, unless there is a case of unpredictable force majeure (see also point III.4). Both in the case of late return and if the place of return is different, the charter company has the obligation to minimize the financial loss and to provide the charter customer with proof that the required costs have actually been incurred. The charter customer can provide evidence that no or less damage has occurred.

## **VI. Cancellation Conditions**

If the charter customer withdraws from the charter contract, except for the reasons stated under subparagraphs V 1a) and 1b), the contractually agreed cancellation costs shall apply in relation to the pure charter price. For services, which are also omitted by the abolition of the charter, no cancellation costs will be charged, such as final cleaning, deposit, bed linen, special equipment.

If the charter customer can not start the trip, he must immediately notify the charter company in writing, whereby the time of the corresponding access of the charter company is relevant. If a replacement charter succeeds under the same conditions, the charter customer will get back the payments made so far, minus a handling fee of € 150.-. The charter customer can only provide a suitable replacement charter customer with the agreement and written consent of the charter company, who will take over the contract. In the case of a replacement charter for discounts or for a shorter period of time, the respective difference plus the handling fee shall be charged to the charter customer. If different delivery and return ports or foreign ports have been contractually agreed, the compensation will increase by 20% each. The charter company can withdraw from the contract if the costs incurred are not paid on time and expressly reserves the right to assert further claims for damages due to non-fulfillment of the contract. In all other cases, the charter company is entitled to the contractually agreed charter price.

**The conclusion of a charter cancellation insurance, with special coverage of charter-typical risks (skipper's drop out leads to the cancellation of the entire trip) is therefore strongly recommended.**

## **VII. Terms of Payment**

The payment of the charter price is made as agreed in the contract in partial payments or as a total payment.

If the agreed payments are not made on time, the charter company is entitled after fruitless reminder to withdraw from the charter contract and to charter the yacht otherwise.

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The charter customer has to replace loss amounts. The contract becomes valid when charter customer and charter company exchange concordant declarations of intent in written or in electronic communication.

The full payment of the charter fee to the charter company and the contractual provision of the chartered yacht are confirmed to the charter customer by sending a "boarding pass". Only the "boarding pass" issued by the charter company is valid. The charter customer is obliged to check the "boarding pass".

#### **VIII. Takeover of the Charter Yacht**

The take-over of the chartered yacht can only be done by presenting the submitted "boarding pass". The charter customer takes over the yacht at his own responsibility. The charter company or its representative hands over the charter yacht ready for sailing and otherwise in perfect condition to the charter customer, cleaned inside and outside, with connected gas bottle and reserve bottle and full fuel tank. The state of the vessel, all technical functions (especially sails, lights and engines) and the completeness of accessories and inventory are thoroughly checked by means of a list of equipment and a checklist by both contractors as part of a briefing. The charter company guarantees that the yacht and its equipment meet the requirements of the laws and regulations applicable in the agreed charter area.

During the check of the navigational equipment and the nautical auxiliary material such as sea maps, manuals, compass, map plotter, echo-sounder, log, radio direction finder, the charter company will inform the charter customer and point out, that despite careful and conscientious maintenance and control, malfunctions, inaccuracies and changes may still occur. He will also instruct the charter customer on its cooperative duty to regularly check navigation devices and nautical auxiliary material during the charter period. For the reliability and accuracy of electronic navigation aids, the charter company can not take responsibility.

The seaworthiness of the charter yacht and its equipment is subsequently confirmed by both parties before being handed over by signing a report. After this time, objections can no longer be made successfully. This does not apply if and to the extent that there were hidden defects at the time of delivery, even if the charter company is not at fault here. The charter customer may only refuse a takeover of the yacht, if the seaworthiness is significantly reduced, not with only insignificant deviations or defects. The right of the charter customer to a reduction (see paragraph V 1) remains unaffected.

When taking over the yacht with the ship's papers (see paragraph II 2), the charter company must provide proof that the yacht is under liability insurance and comprehensive insurance in accordance with the charter contract and that the premium has been paid.

#### **IX. Return of the Charter Yacht**

The charter customer returns the charter yacht to the charter company or his representative ready for sailing in a state stowed according to the checklist, cleaned inside and outside (swept clean with empty waste-tanks and without rubbish - unless otherwise agreed), with connected gas bottle and reserve bottle and full fuel tank. The charter company is entitled to replace used and not replenished

material (such as fuel) at the charter customer's expense and to calculate the costs for it at a flat rate.

The charter company is entitled to have the insufficient cleaning carried out at the charter customer's expense, unless it has been contractually agreed that the charter company must carry out the cleaning.

Both parties jointly review the boats condition and the completeness of the equipment. Already in case of suspected damage to the yacht, the charter customer must notify the charter company and immediately report lost, damaged or no longer functional equipment upon return. Both, the charter customer and the charter company, create a list of shortcomings and losses and then use this and the checklist to set up a protocol which is binding after being signed by both parties.

If the charter company refuses to write down an acceptance report or if it does not carry out the return procedure within 2 hours after the agreed return date, the yacht is deemed to have been handed over without defects. After this time, objections can no longer be successfully asserted. In particular, the Charter Operator is not entitled to withhold the deposit for subsequently determined damages.

This does not apply if and to the extent that there were hidden defects upon return, the existence of which the charter customer is responsible for as a result of intentional or grossly negligent acts or if the Charterer refuses to sign a correct acceptance record.

The sort, extent and amount of damage, which only can be repaired at a later date and possibly after further use of the charter yacht, must be documented in detail and binding on both parties.

#### **X. Damage**

Damage of any kind and their consequences, collisions, accidents, no maneuverability, breakdowns, confiscation of the yacht or other special occurrences must be reported by the charter customer to the charter company immediately. The charter customer must be reachable in case of damage for instructions or questions by radio or telephone.

Damages based on normal wear or material fatigue can be remedied by the charter customer up to an amount of € 150.- without consultation and will be refunded on receipt to the charter customer from the charter company. For expenses exceeding this amount and except for cases of emergency or in case of imminent danger, the Charterer shall inform the Charter Operator and shall commission, document and supervise the repair work in consultation with the Charter Operator and, if necessary, financially make advance payments

Replaced parts must be kept. The charter customer has to do everything that reduces the damage and its consequences (e.g. failure of the yacht).

If damage can not be remedied at the current berth, the charter customer is obliged, at the request of the charter company, to resort to another reasonable port or berth to carry out the repair or to return to the contractually agreed place of return of the yacht earlier (preferably 24 hours before delivery), if this is acceptable and reasonable according to the circumstances.

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The right of the charter customer to a reduction (see paragraph V 1) remains unaffected.

#### **XI. Liability of the Charter customer**

The charter customer is liable for all damage caused by himself or his crew to third parties and the charter yacht, their equipment or accessories, especially for such damages due to incorrect operation or poor maintenance (insofar this is task of the charter customer) of the respective aggregates on board.

In case of force majeure, the charter customer shall only be liable if and insofar as the risk was culpably increased by the skipper and / or crew (for example, leaving the port in the event of a storm warning).

Costs for the repair of property damage to the chartered yacht or equipment culpably caused by the charter customer or the crew shall only be borne by the charter customer up to the amount of his deposit (see XIV).

In the case of intent or gross negligence, he is also liable for claims by the hull insurer (recourse).

If and to the extent that he is at fault, the charter customer shall also be liable for all consequential and default losses (for example, in case of seizure), pursuant to the legal regulations of the respective country.

In the latter two cases, the liability of the charter customer is not limited to the amount of the deposit and may even exceed the value of the charter yacht due to additional costs.

**Therefore, the conclusion of a skipper liability insurance covering this risk is strongly recommended.**

The charter customer shall not be liable for any impairment caused by ordinary wear or tear (such as detaching seams on sails) or damage for which the charter customer and his crew are not at fault.

If the charter company provides a professional skipper, he is responsible for the yacht's navigation and is liable for damage caused solely by him, but not for damage caused by the charter customer and / or the crew.

For intentional or grossly negligent conduct of the charter customer or his crew, for which the charter company is held liable by third parties, without any form of even (co) fault of the charter company, the charter customer keeps the charter company, free of all costs and legal proceedings of all private and criminal consequences at home and abroad. Several charter customers are jointly and severally liable.

The charter customer is fully liable for any damage that is causally related to knowingly false information about the ability to navigate.

#### **XII. Liability of the Charter Company**

Based on the charter contract, the charter company is liable for loss or damage to the property of the charter customer or the crew, as well as for accidents, only if the charter company acted in gross negligence or willful misconduct but never in case of acts by a higher authority or force majeure.

The charter company is liable for damages caused by inaccuracies, alterations or errors in the provided nautical material (such as charts, manuals, compass, radio direction finder, etc.) only if it does not explicitly inform the charter customer or responsible skipper of the yacht about the possibility of errors or deviations.

However, claims for damages resulting from injury to life, body or health based on an intentional or negligent breach of duty and for other damages based on a willful or grossly negligent breach of duty by the charter company shall remain unaffected by all agreements.

#### **XIII. Insurance of the Charter Yacht**

The charter yacht is covered by a comprehensive insurance for property damage to ship and equipment. In addition, a boats liability insurance (without deductible) with a lump sum for personal injury and property damage is existent. The coverage of the boat's liability insurance is at least one million euros or dollars, depending on the currency of the policy.

Personal injuries caused by accidents on board, damage to the goods carried by the charter customer and the crew, as well as intentional or grossly negligent damage are not covered by the comprehensive insurance, so that in principle not the charter-company, but the responsible person (cost-by-cause) is liable for the fault.

The existence of a comprehensive insurance means no indemnity of the charter customer by the charter company for damage that the comprehensive insurance company does not cover, because it is based intent, gross negligence or disregard of the provisions of the charter contract (for example, navigating outside the agreed area) or in respect of which the hull insurer can take recourse

#### **XIV. Deposit**

The charter customer pays - unless otherwise agreed - a deposit in accordance with the charter contract. The deposit must be paid at the latest when the yacht is handed over in cash, by credit card or in advance by bank transfer.

Per charter cruise, the charter customer is liable up to this amount, for damages to the chartered yacht and its accessories, lost equipment and theft, if the loss was caused by the charter customer or the crew.

The deposit is immediately due for repayment on the return of the yacht and damage-free course of the charter. This does not apply if the charter customer denies to sign a correct protocol of return or if otherwise agreed.

If a possible repair can or should only be made at a later date and if it can be foreseen that the expenses will amount to less than half of the deposit, then at least the half of the deposit is due for repayment immediately.

#### **XV. Further Agreements, Generals, References**

##### **1) Legal Classification / Liability of parties (Charter Agency / Charter Company / Charter customer):**

If the charter contract is concluded via a charter agency, it acts as an intermediary between the charter customer and the charter company. A liability of the mediating agency takes place exclusively within the scope of the tasks and responsibility of a mediator from the contractual relationship existing with the charter customer.

Concerning this contract, as well as in any future contract amendments and unilateral declarations of the charter customer to the charter company the agent acts as authorized representative on behalf and on account of the charter company and is entitled to collect payments.

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**2) Price List, Deviations, Modifications**

If there are any doubts or ambiguities, the prices apply in accordance with the current price list of the charter company. In the event that taxes, fees or charges, which are included in the charter price by law, increase or decrease, without the parties having any influence, charter company and charter customer agree on a corresponding adjustment of the contract.

**3) Deviating Charter Contracts / Secondary Contracts to be signed on spot**

Due to regulations in the country of the charter company, the charter customer may need to have a charter contract on board, which is written in the language of the host country.

If the national secondary agreement deviates in content from this contract and its "International T & C of the YACHT-POOL FairCharter-Contract", it is agreed between the charter company and the charter customer that only this contract applies between them according to its "International T & C of the YACHT-POOL FairCharter-Contract".

Charter customer and charter company, in agreement with the agent (charter agency), declare that a national secondary contract signed between charter company and charter customer has no effect on and against the agent.

**4) GPS-Tracking of the Charter Yacht**

The charter customer agrees that the boat's location and other data of the ship can be recorded by means of electronic systems ("tracking") and transmitted to the base, the charter company and in the event of damage to the insurer. Furthermore the privacy policy of the charter company applies.

**XVI. Concluding Provisions (applicable law, severability clause)**

The chartering takes place according to the legislation existing in the charter area.

Verbal promises or side agreements are only valid for both parties after written confirmation.

Should any provision of this contract be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. Instead of the invalid provision, a provision shall be deemed to have been agreed which comes closest to the economic purpose of the parties. The same applies in the case of a contractual gap.