

# Terms and Conditions of OBsailing Prestige Yacht Charters

## 1. CONTRACTUAL RELATIONSHIPS

(1) The contract for the charter of the yacht selected and all related matters such as handover and familiarisation ("the Charter Contract") is made with its Owner ("the Owner") acting through the owner's booking agent OBsailing Prestige Yacht Charters ("OBsailing Prestige Charters").

(2) The signatory named in the booking form ("the booking form") and designated there as the party leader ("the party leader") warrants that he/she is authorised to sign the booking form for and on behalf of the individuals therein named referred to hereafter collectively with the party leader as ("the party").

(3) (a) References to "the party" shall, unless stated otherwise be construed to be references both to the party collectively and to each member of the party individually.

(b) References to "the owner" "OBsailing" "the party" shall include their successors in title and permitted assigns.

(c) References to "agents of the owner" are references to OBsailing Prestige Yacht Charters or other appointed agents.

## 2. FORMATION OF CONTRACTS

(1) The charter contract for the yacht selected ("the yacht") between the Owner and the party shall be formed upon OBsailing receiving from the party (i) a properly completed booking form signed by the party leader accompanied by (ii) payment of the deposit in an agreed form together with (iii) details of the insurance requirements stipulated in clause 5 and confirmation of acceptance of charter and an invoice being despatched to the party leader by ordinary first class post by OBsailing.

(2) The terms of the charter are set forth in the booking form and these booking terms. No other terms shall apply to the charter contract unless agreed in writing between the Owner or its agents and the party. All representations and warranties expressed or implied to the party other than those expressly stated in written material provided to the party by OBsailing on the owners behalf are hereby excluded. In the event of any conflict between the terms set forth in these booking terms and any representations and warranties contained in any other written materials, the former shall prevail.

## 3. LIABILITY OF THE PARTY LEADER AND OF THE PARTY

(1) The party leader undertakes to the Owner and its agents and each of them to procure the full, proper and prompt performance by the party of the obligations of the party in the charter contract and in default of such performance to indemnify and keep indemnified the Owner and its agents against all loss, damage or expense of any nature whether direct or consequential arising from such default. This indemnity shall become enforceable against the party leader as primary obligator by the Owner and its agents (as the case may be) by immediate demand in writing.

(2) The liabilities of the party are joint and several.

(3) The party shall exercise all due skill and care in relation to the yacht and all stores, equipment, fuel and other items provided by the Owner or its agents and shall perform all of the obligations the party in the charter contract and (subject to (4) below) shall keep indemnified the Owner and its agents and each of them against all loss, damage, or expense of any nature whether direct or consequential suffered by them and each of them as a result of any failure to exercise such skill and care, including loss, damage or expense arising from claims by third parties against the Owner or its agents.

(4) The indemnity contained in (3) above shall be limited to the specified "security deposit" in respect of each and every occurrence of damage or loss to the yacht provided:

(a) the loss is suffered as a result of a risk adequately insured under the owner's hull insurance; and

(b) the party or any of them have not by any act or omission in any respect vitiated such insurance; and

**WARNING: BREACH OF ANY WARRANTIES CONDITIONS OR OTHER TERMS OF THE OWNERS HULL INSURANCE MAY RENDER THE PARTY FULLY LIABLE FOR LOSS OR DAMAGE TO THE YACHT.**

(c) the loss was not caused by a wilful act or omission or by recklessness by the party.

(5) The party will be liable for all loss, damage or expense (including without limitation inconvenience, incidental expenses, loss of charter fees, compensation paid to third parties) which are incurred or

suffered by the Owner or its agents if the yacht is returned by the party after its agreed date.

## 4. LIABILITY TO THE OWNER AND OF OBSAILING

Subject as expressly provided in these conditions and except where the party is a consumer (within the meaning of the Unfair Contract Terms Act 1977)

(1) Except in respect of personal injury or death the liability of the Owner or its agents to the party whether in contract or tort or however arising directly or indirectly in connection with the charter contract, shall so far as permitted by law be limited to £600 in respect of each and every occurrence of damage, loss or expense incurred or suffered by the party.

(2) Any court action brought by the party against the Owner or its agents arising directly or indirectly in relation to the charter contract (including tort) must be commenced within two years of the date of signing of the booking form by the party leader.

(3) Notwithstanding anything else contained in this agreement, neither the Owner or its agents shall be liable to the party whether in contract or tort or otherwise arising (i) for any indirect, incidental special or consequential loss or damage in connection with or arising out of the charter of the yacht or any related matters of (ii) for any failure on the part of the Owner or its agents to perform any of the obligations either express, or implied. Where performance is prevented or impeded by circumstances beyond their reasonable control ("force majeure") including without limitation storms, earthquakes, acts of government or officials (whether lawful or otherwise), industrial disputes, mechanical breakdowns, wars or civil disorder.

(4) If as a result of force majeure, it becomes necessary in the Owners reasonable opinion for the Owner to cancel a charter, refunds will be made subject to the deduction of all the reasonable expenses of the Owner or its agents. No other recompense will be made.

(5) The Owner or its agents may at any time on reasonable grounds (e.g. unavailability of yacht) alter the timings of commencement or termination of a charter or make available a different vessel. In these circumstances refunds up to 95% of the price of the charter contract will be made at reasonable discretion of the Owner or its agents.

(6) The Owner and its agents are not agents for any other services unless expressly stated in writing. The Owner and its agents are not liable therefore for any loss, damage, injury, delays or inconvenience incurred or suffered by the party in relation to the foregoing.

(7) The parties shall be responsible for the safety and security of all items of personal property on board the Yacht. It shall be the party's obligation to ensure that such items of personal property are adequately covered by insurance against all the usual risk.

(8) All written material provided for the party has been prepared with care and the Owner or its agents shall not be liable for errors or omissions in such material where these were made in good faith and have resulted from changes in circumstances between the date on which such materials were prepared and the commencement of the charter.

## 5. INSURANCES

Charter costs include the benefit of the Owner's hull insurance and a copy of the relevant policy will be supplied on request.

It is advisable that all members of the party should take out suitable holiday insurance and a copy provided to OBsailing not later than 6 weeks before the start of the charter.

### 6.

(1) The party warrants that details of previous experience and certification contained in the sailing experience form ("the sailing experience form") are correct in every material respect and agrees to indemnify and hold harmless the Owner and its agents against all damage, loss or expense suffered by them and each of them in reliance on this warranty.

(2) The party leader must designate on the booking form the person who will act as "Skipper". The party must ensure that the Skipper:

(a) has sufficient sailing experience to handle a yacht of the size and type chartered and is assisted by one other member of the party as crew. If in the judgement of OBsailing the charterer is not competent to operate the yacht OBsailing reserves the right to

require the charterer to take a skipper at the charterer's expense (otherwise the Owner reserves the right to cancel the charter);  
**(b)** will not accept a tow before agreeing the fee;  
**(c)** will return the yacht to its berth and vacate the yacht on the last day at the times set. There will be a penalty charge for late return.  
**Compliance with this provision is an absolute condition of the charter.**

#### **WARNING: BREACH OF THIS WARRANTY MAY INVALIDATE OWNERS HULL INSURANCE**

#### **7. TESTING OF EQUIPMENT**

The party undertakes that they will on immediate embarkation of the yacht, test as far as is reasonably practicable, all of the equipment listed on the yacht's inventory and agree that the Owner and its agents shall not be liable to them for any loss or damage which they and each of them may suffer, which would not have occurred had the foregoing undertaking been properly performed.

#### **8. REPORTING**

The party shall promptly report to the local base managing operator any damages, breakages, breakdowns, injury or loss incurred or suffered by the party, the yacht or equipment supplied, or by third parties to their persons or property during the course of the charter. Reports shall give accurate and sufficient details of the relevant circumstances, including time, consequences, and names and addresses of individuals involved including any witnesses. Failure to receive timely and inadequate reports may invalidate insurance cover of the Owner and its agents.

#### **9. PAYMENTS**

A non-refundable deposit of 30% of the total price of charter is payable by the party on submission of the booking form, the balance of the price of the charter is payable not later than 6 weeks before the start of the charter. The Owner reserves the right to cancel the booking and forfeit the deposit without notice to the party if the balance is not received by the due date.

#### **10. CANCELLATIONS OR VARIATION BY THE PARTY**

In the event of any cancellation being necessary, the party leader must notify OBsailing immediately in writing. If a cancellation is received more than 6 weeks before the charter start date then the party will forfeit the charter fee deposit. If a cancellation is received within 6 weeks of the start date of the charter the party will forfeit the total charter fees due and all optional extra payments due.

If one person cancels he/she will not be refunded his/her share if the other members of the party continue with the charter. Claims may be made under your travel insurance if the cancellation falls within the terms of the insurance.

If the party wish to make changes to the charter booking or optional extras reserved after our confirmation has been received, OBsailing will do all it can to make the necessary arrangements. However, OBsailing reserves the right to make reasonable charges and pass on any extra expenses they have incurred due to the effect of these changes.

#### **11. CANCELLATION OR VARIATION BY OBSAILING AND /OR THE AGENT**

OBsailing will take reasonable steps to provide contracted facilities but if circumstances arise and an acceptable alternative cannot be provided the Owner and / or the agents may find it necessary to cancel the charter and / or the optional extras before departure. In this case, the Owner and / or the agents will return in full all monies paid by the party to the Owner and/or the agent. The Owner and the agent will then be under no further obligation or liability.

#### **13. YACHT SPECIFICATION, YACHT INVENTORY ITEMS AND OPTIONAL EXTRAS**

In the unlikely event that any piece of equipment as included in the yacht specification, yacht inventory and / or optional extras is not available or serviceable during the charter period the Owner, OBsailing reserves the right to supply the closest substitute available.

#### **13. REFUNDS FOR REPAIRS AND / OR LOSS OF SAILING TIME**

**(1)** In the unlikely event of the failure of an engine or an important piece of equipment, the party must contact the local managing agent at the earliest practicable moment by telephone or other means for advice. For repairs to be carried out by persons or companies other than the Owner or the local managing agent, the party must **(a)** receive authorisation from the Owner or local managing agent **(b)** pay no more than the amount authorised by the Owner or local managing agent, **(c)** collect and hand to the local managing agent pertinent receipts. At the end of the charter the party will be refunded for the aforementioned repairs, which are not caused by acts, omissions or neglect of the party.

**(2)** If any repair or failure should delay the party's ability to sail or stay on board for more than 36 hours the Owner and / or the local managing agent shall organise and pay for Hotel accommodation or provide a suitable alternative yacht or refund the proportion of the charter not used from the time of notification.

#### **14. SECURITY DEPOSIT**

Immediately prior to boarding the yacht the party must pay to the Owner's agents the defined security deposit payable in cash, cheque or debit card. The Owner or its agents incurred as a result of any breach of the charter contract or any wrongful act by the party will use this to defray any losses. To the extent the security deposit is unused, the deposit or any balance thereof will be returned as soon as practicable after the charter is completed. For the avoidance of doubt the amount of the security deposit shall not operate as a limit on any liability of the party.

#### **15. PROHIBITED ACTIVITIES**

The yacht shall not be used in a manner which is dangerous or potentially dangerous or which causes distress or annoyance to any person or to their property.

The yacht and the party must not breach any local by-laws as stated in the Lake Windermere Users Guide.

The yacht must not be used for any form of racing or be used for corporate events without the written permission of the Owner or its agent.

#### **16. COMPLAINTS**

Any complaints that any member of the party has regarding the charter of the yacht must be made to the Owner or its agents as soon as possible and must be confirmed in writing with 28 days.

#### **17. HEALTH AND SAFETY**

The party must promptly and fully comply with all instructions given by the Owner or its agents, which, in their reasonable opinion, are given for protection of the health and safety of the party, or the safety of the yacht.

#### **18. TERMINATION**

The Owner or its agents on the Owner's behalf may with immediate effect terminate the charter contract if the party commits any material breach of the charter contract, including without limitation; **(a)** if payment of the balance of the total price of the charter or the payment of the security deposit is not received as provided in clause **9** and **14** or **(b)** if any of the prohibited activities described in clause **15** are committed.

#### **19. ASSIGNMENT**

The Owner may transfer all its rights and obligations under the charter contract to any new Owner of the yacht and save for any antecedent breaches of contract or torts, the Owner shall be relieved of all liability to the party thereafter.

#### **20. GOVERNMENT LAW**

The interpretation of the charter contract shall be governed by the construed in accordance with English law and any dispute between the party and the Owner or its agents, relating thereto whether directly or indirectly shall be subject to the non-exclusive jurisdiction of the English courts.

**Sailing holidays as with other activity-based holidays contain an element of risk. The Skipper has the primary responsibility for the safety of the crew and the Yacht at all times.**