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Myba memorandum of agreement

The MYBA Worldwide Yachting Association, established in 1984, is an international professional organization that aims to empower individuals in the superyacht industry through its mission of promoting high ethics standards, equality and diversity, environmental protection, knowledge sharing, and collaborative efforts. With a strong track record of excellence, the association's members contribute to various aspects of the industry. MYBA is renowned for creating respected contracts, including the MYBA Sales & Purchase Agreement (MoA) and the MYBA Charter Agreement, which are regularly updated to adapt to changing regulations and market demands. The organization also owns YACHTFOLIO, an online tool that revolutionized luxury yacht charter practices, and hosts the prestigious MYBA Charter Show, a key event in the B2B yachting calendar. Recently, MYBA has made significant amendments to its internationally recognized sale and purchase contract to address common issues and reflect industry-standard practices, particularly those influenced by the Covid-19 pandemic. These changes are expected to impact yacht sales worldwide, emphasizing the importance of understanding standard terms and recent updates for market participants. Force majeure event must last more than 30 days, giving a clear end date to the non-faulty party. This means that delays cannot continue indefinitely. The non-defaulting party must inform the other party within two days of an event triggering the force majeure provision. This is a common process in building contracts. The seller now guarantees no undischarged tax or VAT has been incurred until delivery date. However, some worry that this may put pressure on buyers to accept incomplete or poor evidence of prior tax positions. After completion and sale, buyers might face difficulties proving past tax positions to authorities or subsequent buyers. This new clause covers direct arrangements between sister entities, preventing parties from avoiding commission fees by using sister companies. The seller has the opportunity to fix post condition survey damage within 30 days after buyer approval. Previously, such repairs were not guaranteed. No sea trial or condition survey can occur until the deposit is received. The deposit must be "received" by the stakeholder, not just "paid." KYC due diligence requirements have been expanded upon and are now clearly outlined in schedules A and Addendum 1. Parties must meet these requirements in addition to the yacht's certificates and other relevant documents. Information on ultimate beneficial owners is now required to be provided. The stakeholder has more detailed obligations, including confirming KYC information within eight days or facing contract cancellation. The new amendments to the MYBA Memorandum of Agreement (MOA) aim to address some of the issues commonly encountered in yacht sales and purchases. For instance, they clarify the use of the Force Majeure provision and give buyers the right to rectify damage caused to the yacht after a condition survey. The changes also seek to alleviate the perceived imbalance in favor of sellers by introducing new obligations for stakeholders involved in larger superyacht transactions. In contrast to the Norwegian Sale Form (NSF), which can sometimes be used for these transactions, the MYBA MoA has traditionally been the preferred choice due to its provision for early signature before sea trials and condition surveys. However, this advantage may be eroded by the additional obligations placed on stakeholders and the tight initial time limit to satisfy KYC/due diligence. Despite this, it is likely that the 2021 amendments will further solidify the MYBA MoA as the leading yacht and superyacht sale/purchase contract. The updated version is now available in electronic format, making it more accessible to industry professionals. Inventory: Previously under Clause (16), parties could agree on inventory within 7 days of signature. Under the 2021 E-MOA, this needs to be agreed and attached at the time of signature. Commission Agreement: The 2008 MOA was silent on brokers' commission agreements. The 2021 E-MOA now refers to a separate confidential commission agreement between the seller and brokers at the time of MOA signing. Due Diligence / ‘KYC Documents’: The 2021 E-MOA sets out deadlines for parties to provide 'KYC documents', which must be approved by a certain timeframe. Deposit: This is no longer stated as 10% but will be agreed commercially. VAT status of the Yacht is now included in the seller's warranties under Clause (15). Seller’s Warranties: The seller's warranties have been expanded to include VAT status and warranty for charter vessels regarding claims related to charter commitments. Partial Loss: A clear procedure applies for partial loss, regardless of whether it's due to an event of force majeure or not. This sets out the basis upon which the contract will continue if the Yacht can be repaired within 30 days or will be cancelled otherwise. Clause (26): The deposit must have been received by the stakeholder prior to commencing the sea trial. Clause (27): The definition of a 'defect' has been clarified, including notice serving and elements required for valid notice to be served on the seller. A "Surveyor's Statement" is now mandatory for buyer's notices under Clause (27)(a). Cancellation: If the buyer rejects the Yacht, costs incurred during operational trials will be deducted from the buyer's deposit before it's returned. Assignment: The 2021 E-MOA clarifies that any nominee must meet the same conditions as the original parties. The new online version of the 2021 E-MOA has been launched, allowing established yacht brokers to access it in exchange for a fee. To use the platform, subscribers log in and input commercial details, which are then linked to a unique serial number. The creator can download drafts, share them as PDFs, and upload attachments. Despite being electronic, there's been slow uptake due to concerns about confidentiality. MYBA assures that data is encrypted, but will tackle online security going forward. The main barrier to access is currently limited to yacht brokers, with maritime lawyers awaiting board approval for equal rights.

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