

YACHT PURCHASE THROUGH BERTHON INTERNATIONAL

You have now seen the yacht which fits your needs best. What happens next? Read on:

If you wish to proceed further, the next step is to ask us to make an offer to the vendor for the yacht on your behalf. We would recommend that such an offer should be made subject to a survey and/or sea trial and also subject to contract. In certain circumstances, it may be sensible to make an offer on an 'as is, where is' basis, but we must point out to you, that to do so does incur an element of risk which you must understand. The purchase of a yacht is a commitment and a professional surveyor's report is the best way for you to establish the yacht's structural integrity and her ability to go to sea in safety. If there are other conditions relating to your offer in terms of a longer date to completion or any other deviations from normal practice you should highlight these when you make the offer and not later on to avoid confusion.

We will ask you to provide the information that we need to meet our KYC (Know Your Client) requirements. We will ask for a copy of your passport, utilities bill dated within the last three months, confirm that you control the account from which the purchase funds will be sent and to provide details of the source of funds for the purchase. A short, professional biography is also helpful. If you are buying via a company, we will request normal due diligence paperwork for the company and for yourself, and any other beneficial owners.

The majority of owners do not buy and sell in the course of a business, and therefore no statutory warranties apply. It is up to you as the purchaser to satisfy yourself of the structural integrity and suitability of the yacht for your purposes. The surveyor is, therefore, crucial in the transaction so that you can be absolutely clear of what you are buying. You should select a surveyor who carries Professional Indemnity Insurance, and who is properly qualified to ensure that you receive the best possible advice, and that if a mistake occurs, their insurance will cover any negligence for which they may be liable. As the broker, we are remunerated by the vendor, although we have a very clear *duty of care* to the purchaser. It is not our practice to recommend a surveyor, although we would be happy to supply a list of qualified surveyors from which you may make a choice. It may be that you already know of a surveyor who would act for you. Your chosen surveyor will be working for you, so you should feel free to talk to him or her about any particular areas of concern to you, if you have any, and about the plans that you have for the yacht.

When an agreement has been reached between a purchaser and a vendor, it is our responsibility to prepare a Berthon Sale and Purchase Agreement, which will then be signed by both parties. Once both purchaser and vendor have signed, the deposit (10% of the agreed figure) is paid to us which we hold as Stakeholders in our client account. At that point, we will exchange and a binding contract will exist.

This deposit is returnable under the terms of the Agreement if the yacht proves to be unsatisfactory on sea trial, on survey, or if any of the conditions of the contract are not fulfilled by the vendor. Please ask us for further clarity on this, depending on the contract used. Please be aware that if you agree to purchase a yacht 'as is, where is', you will sign an Unconditional Sale & Purchase Agreement, where the 10% deposit is not refundable, and no other stipulations apply except where the conditions of the contract are not fulfilled by the vendor.

The vendor may stipulate that the MYBA Memorandum Of Agreement (MOA) is used. This agreement is widely used internationally. Alternatively, the YBBA contract is often used in the USA. Both these contracts have their own nuances and you should read them carefully. On the MYBA MOA, it is only possible to reject the yacht 24 hours after sea trial, if you do not do so, rejection on survey relies on the Surveyor confirming that the yacht is not seaworthy or structurally sound. The YBBA contract allows for rejection automatically rather than acceptance on agreed time clauses so you can find yourself out of contract unless you act. Both are widely used and respected agreements.

Once you have signed the contract and the deposit payment has been made, to comply with the conditional contract, a survey/sea trial is carried out. The cost of survey and lift out and any ancillary costs are the responsibility of the purchaser. If survey/sea trial reveals defects unknown to you, you have the option of renegotiating the price, requesting the owner to make

good such defects or rejecting the yacht. Assuming a fair compromise can be reached, the sale will then be completed. If not, your deposit will be returned less any direct costs of survey, sea trial and reinstatement. It is your responsibility to re-instate the yacht to the condition and position in which you found her, and to supply the owner with a copy of the survey report.

If there has been renegotiation after the survey/sea trial and you reach an agreement, or where there are no problems with the survey/sea trial, under the terms of the Agreement you have to proceed to purchase. At this stage, your deposit is non-refundable and is forfeit if you fail to complete. The time allowance from acceptance to completion is generally 7 days. If you require a deviation from this, it should be agreed at contract stage, when any alteration to standard terms and conditions that are acceptable to both purchaser and vendor may be agreed and incorporated into the contract.

Berthon will obtain for you the yacht's registration papers and other title documents as well as documents relating to the VAT status of the yacht and RCD compliance, if appropriate. We will carry out reasonable checks to ensure that the vendor has clear title to the yacht. This includes running a transcript on whatever flag the yacht is registered under as appropriate and carrying out the necessary vendor due diligence, including company due diligence when a company is transacting the yacht. We prepare the Bill of Sale for signature and execution by the vendor. On completion, the balance of the purchase price becomes payable to Berthon International as Stakeholders for both parties and the yacht is then handed over, together with the signed Bill of Sale and any other relevant documents. These are sometimes detailed in a Protocol of Delivery and Acceptance, and are always listed in the Sale and Purchase Agreement.

It is important that you consider the insurance of the yacht early in the purchase procedure. You should be aware that from completion, you must insure the yacht to a minimum of third party cover; you therefore need to organise this prior to the completion date. If you would like guidance on this, please do let us know.

At Berthon it is our aim to make yacht purchase a pleasant experience. We will guide you through the various pitfalls and are always on hand to give you advice. If you have any other queries, please do not hesitate to ask us to try and answer them for you. As one of Europe's most established and international brokerage houses and with active offices in the UK, Scandinavia, Spain and the USA, we have unrivalled experience in this field. Our international reach gives you access to the local knowledge in all the major yachting centres which makes an overseas purchase much more straight forward. It costs no more to use the services of the most experienced yacht broker.

USEFUL TOOLS & RESOURCES

VAT / Customs – Sailing in Calm or Troubled Waters - Berthon International - a useful article featured in the Berthon Market Report, written by the PKF Francis Clark, Indirect Tax Marine Team.

<https://helloschengen.com> – a helpful tool for those travelling to the EU under the Schengen Visa and to assist in calculating the 90/180 days rule.