



## TERMS OF USE

WATERMANLIVE Fleet risk management and online surveying system is designed especially for management of vessel related surveys, issues, jobs, damages, warranties, insurance policies and regulation compliance and sales of yachts, vessels and related products in the large yacht market and marine industry. These terms of use are intended to explain our obligations as a service provider and your obligations as a customer. Please read them carefully.

These Terms are binding on any use of the Software and our Services and apply to you from the time that WATERMANLIVE provides you with access to our vessel management solution, surveying tools or sales listing pages.

The WATERMANLIVE application will evolve over time based on client feedback and market requirements. WATERMANLIVE therefore reserves the right to change these terms at any time, effective upon the posting of modified terms on our website. WATERMANLIVE will make every effort to communicate these changes to you via email or notification via the website. It is likely the terms of use will change over time. It is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Website.

These Terms were last updated on 27<sup>th</sup> of March 2011.

## DEFINITIONS

**"Access Fee"** means the monthly or yearly fee (excluding any taxes and duties) payable by you in accordance with the fee schedule set out on in your contract agreement. WATERMANLIVE reserves the right to amend this fee at contract renewal.

**"Contract Agreement"** means the agreement signed between you and WATERMANLIVE for Access to the software.

**"Minimum Agreed Sales Price"** means the minimum sales price Watermanlive is allowed to publish in relation to the sale of your vessel or other property

**"Commission"** means the percentage of a fee related to a sales price.

**"Confidential Information"** includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software but does not include information which is, or becomes, publicly available other than through unauthorized disclosure by the other party.

**"Data"** means any data inputted by you into WATERMANLIVE.

**"Intellectual Property Right"** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

**"Software"** means the software available (as may be changed or updated from time to time by WATERMANLIVE) via the Website.

**"Website"** means the Internet site at the domain <http://watermanlive.com>

**"You"** means you and includes your employees, consultants, representatives and agents.

**"USERS"** means WATERMANLIVE users which have been granted access in accordance with the contract agreement.



## **USE OF WATERMANLIVE OWNERSCLUB**

WATERMANLIVE provides assistance in the sale of your property, a yacht, a ship, a berth or any related product which may be accepted as an official listing in the **Watermanlive Ownersclub**.

Users of the **Watermanlive Ownersclub** automatically become 'members' as soon as they list a sellable product.

### **Obligation for Pre Sales Survey**

Every property listed on the Watermanlive Owners club will be surveyed by one of our qualified marine surveyors. The purpose of the pre sales survey is to identify the general condition of the property, its shortcomings and eventual defects and the status of its title and compliance to statutory and national regulations. This information will be entered into the Watermanlive database. The information or part of it will be made available for visitors to the Public website and database. The pre-sales survey is a payable service and cost 1500 euros plus expenses for travel and lodging if they are made for all properties located in marina's or shipyards between Marseille, France and Genoa, Italy. For properties outside of this area a quotation will be provide by Watermanlive . The Pre Sales Survey is a condition to be able to list your property on Watermanlive.

### **Payment obligations in case of a successful sale**

If your property is sold or traded in through Watermanlive or with the help of Watermanlive employees or through a related company, the commission due will be invoiced to you .Payment of the commission is due at same day the transaction to sell the listed property is completed. The commission is fixed at 1% on the gross sales price. Any and all fees due for extra services not included in the 1% fixed commission fee will be invoiced separately and in addition to the 1% commission. All fees are due at the day of completion of the transaction. Waterman Marine Group shall be entitled to recover all additional fees, such as legal costs and expenses if the Seller fails to pay the fees due on the completion date and Waterman Marine Group is obliged to take legal steps to recover its fees.

### **Reduced rates for Watermanlive Owners Club Members**

Owners Club members benefit from a reduced hourly rate of Euros100,- per hour for extra services and general consultancy work. The normal fee is Euro 150,- per hour.Waterman Marine Group reserves the right to change these rates. If changes are made, all clients will be notified at least 30 days before the new rates will apply.

### **Authorization to publish data related to your property**

When listing your property in the Watermanlive Ownersclub you automatically authorize Waterman Marine Group to publish all related information of your property to registered users,this includes all defects, non compliance matters and other information that is recorded in the Watermanlive databases. Non registered users will only be able to see general information and photos. General information and photos will also be used for print materials, brochures and online marketing on third party websites.

### **Obligation to keep Watermanlive informed about changes**

It is the Sellers responsibility to keep the Waterman Marine Group informed about changes in location of the vessel, its crew and any major repairs, modifications or upgrades that may effects the condition and value of the vessel.

### **Obligation to inform Captain and other companies selling the vessel.**

It is the Sellers responsibility to inform the Captain of the vessel, the crew and all other parties who have an agreement with the Seller to market and sell the vessel that the vessel is listed with the Watermanlive Ownersclub. The captain and crew shall give the best possible assistance to Waterman Marine Group employees and any potential buyer that is represented through Watermanlive.Ownersclub.



### **Minimum purchase price and asking price**

The minimum agreed sales price and the agreed Asking Price will be communicated to the Seller by email. The Seller needs to confirm by return email that the Seller agrees with these prices. The Seller may notify Watermanlive if he/she wants to change the published price at any time. Changes will be discussed and Watermanlive will advice on the requested changes. If no notification by email is received by Watermanlive from the Seller, the first agreed published asking price will be used.

### **Cancellation of the agreement to sell.**

The Seller may cancel the agreement to sell the listed property with a simple written notice 30 days prior to the cancelation date; this notice may be an email, fax or letter. In case of cancellation of the agreement to sell, Watermanlive will send to Seller a list with names of potential buyers for the listed property to be signed by the Seller. In case the Seller completes a transaction and sells the listed property to any of the clients on the provided list in the 18 months following the cancelation date, the agreed 1% commission fee is due and to be paid to Watermanlive.

### **Use of Watermanlive management software**

Use of the Watermanlive software for the management of your property is free for Owners Club members. Waterman Marine Group reserves the right to make only certain parts of the online management system available to Owners Club members and may make changes to the right of use without further notice.

## **USE OF SOFTWARE**

WATERMANLIVE grants you the right to access and use the Software via the Website. This right is non-exclusive and non-transferable and limited by these Terms.

## **YOUR OBLIGATIONS**

### **Payment obligations use of software:**

An invoice for the Access Fee will be issued after your agreed free trial period. All invoices will include the Access Fee for the period in advance of use. WATERMANLIVE will continue invoicing you until this Agreement is terminated in accordance with your Contract Agreement. Members of Watermanlive Owners club and Buyers Club are excluded from these payment obligations. Special conditions for members and reduced fees apply.

All WATERMANLIVE invoices will be sent to you by email and are payable within 10 days of the invoice date. You are responsible for payment of all taxes and duties that may be applicable in addition to the Access Fee.

### **General obligations:**

You must only use the Software and Website for your own lawful internal business purposes, in accordance with these Terms and any notice sent by WATERMANLIVE or condition posted on the Website.

### **Access conditions:**

You will ensure that all usernames and passwords required to access the Software are kept secure and confidential. You will immediately notify WATERMANLIVE of any unauthorized use of your passwords or any other breach of security so WATERMANLIVE can take necessary action.

**As a condition of these Terms, when accessing and using the Software, you must:**



1. not attempt to undermine the security or integrity of WATERMANLIVE's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
2. not use, or misuse, the Software in any way which may impair the functionality of the Software or Website, or impair the ability of any other user to use the Software or Website;
3. not attempt to gain unauthorized access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software is hosted;
4. not transmit, or input into the Software, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the right to use); and
5. not modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Software or the Website except as is strictly necessary to use either of them for normal operation.

#### **Communication Conditions:**

As a condition of these Terms, if you use any communication tools available through the Website (such as any forum, chat room or message centre), you agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Software including (but not limited to): offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in violation of any law (including material that is protected by copyright or trade secrets which you do not have the right to use).

When you make any communication on the Website, you represent that you own the content of the communication. WATERMANLIVE is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Software. As with any other web-based forum, you must exercise caution when using the communication tools available on the Website. However, WATERMANLIVE does reserve the right to remove any communication at any time in its sole discretion.

#### **Indemnity**

You indemnify WATERMANLIVE against all claims, costs, damage and loss arising from your breach of any of these terms or any obligation you may have to WATERMANLIVE, including (but not limited to) any costs relating to the recovery of any Access Fees that have not been paid by you.

## **CONFIDENTIALITY AND PRIVACY**

#### **Confidentiality:**

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
2. Each party's obligations under this clause will survive termination of these Terms.
3. The provisions of clauses 1 and 2 above shall not apply to any information which:
  1. is or becomes public knowledge other than by a breach of this clause;
  2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  3. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  4. is independently developed without access to the Confidential Information.

#### **Privacy:**

WATERMANLIVE maintains a privacy policy that sets out the parties' obligations in respect of data. You should read that policy at [www.watermanlive.com](http://www.watermanlive.com) since you will be taken to have accepted it when you accept these Terms



## INTELLECTUAL PROPERTY

### General:

Title to, and all Intellectual Property Rights in the Software, the Website and any documentation relating to the Software remain the property of WATERMANLIVE (or its licensors).

### Data:

Title to, and all Intellectual Property Rights in, the Data remain your property. You must maintain copies of all Data inputted into the Software. WATERMANLIVE adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. WATERMANLIVE expressly excludes liability for any loss of Data no matter how caused.

## WARRANTIES AND ACKNOWLEDGEMENTS

### Acknowledgement:

You acknowledge that:

1. You are authorized to use the Software and the Website and to access the information that you access using the Software and the Website (whether that information is your own or that of anyone else).
2. If you are using the Software and accessing the Website on behalf of or for the benefit of an organization (whether a body corporate or not) then WATERMANLIVE will assume that you have the right to do so and that organization will be liable for your actions or omissions (including any breach of these Terms).
3. The provision of, access to, and use of, the Software is on an "as is, where is" basis and at your own risk.
4. WATERMANLIVE does not warrant that the use of the Software will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Software, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Software. WATERMANLIVE is not in any way responsible for any such interference or prevention of your access or use of the Software.
5. WATERMANLIVE is not your classification society nor flag administration and does not in any way replacing your obligation to comply to their respective requirements.nb
6. It is your sole responsibility to determine that the Software meets the needs of your operations.

### No warranties:

WATERMANLIVE gives no warranty about the Software. Without limiting the foregoing, WATERMANLIVE does not warrant that the Software will meet your requirements or that it will be suitable for your purposes. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and no infringement.

### Consumer guarantees:

You warrant and represent that you are acquiring the right to access and use the Software and agreeing to these Terms for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Software, the website or these Terms.

### Limitation Of Liability

1. To the maximum extent permitted by law, WATERMANLIVE excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software.
2. If you suffer loss or damage as a result of WATERMANLIVE's negligence or failure to comply with these Terms, and claim by You against WATERMANLIVE arising from WATERMANLIVE's negligence or failure will be limited in



respect of any one incident, or series of connected incidents to the access fees paid by you in the previous 12 months.

3. If you are not satisfied with the Software, your sole and exclusive remedy is to terminate these Terms in accordance with our termination policy below.

## TERMINATION

### Thirty day return policy

Within thirty days of being granted access to the Software by WATERMANLIVE for the first time, you may terminate these Terms (and no Access Fee will be payable) by serving notice on WATERMANLIVE within those 30 days.

### No-fault termination:

These Terms will continue for the period covered by the Contract Agreement. These Terms will automatically continue for the same period unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant contract period.

### Breach:

If you:

1. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of your obligations, confidentiality or any payment more than 30 days overdue); or
3. the paying subscriber goes into liquidation or has a receiver or manager appointed of any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction,

### WATERMANLIVE may take any or all of the following actions, at its entire discretion:

1. Terminate these Terms and your use of the Software and the Website;
2. Suspend for any definite or indefinite period of time, your use of the Software and the Website;

### Accrued Rights:

Termination of these Terms is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement you will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination;
2. Immediately cease to use the Software and the Website.
3. Expiry or termination: The terms specified regarding intellectual property and confidentiality survive the expiry or termination of these Terms.

## HELP DESK

### Technical Problems:

In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting WATERMANLIVE. If you still need technical help, please check the support provided online by WATERMANLIVE or failing that email us at [support@watermanlive.com](mailto:support@watermanlive.com).

### Service availability:

Whilst WATERMANLIVE intends that the Software should be available 24 hours a day, seven days a week, it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place. If for any reason WATERMANLIVE have to interrupt the Software for longer periods than WATERMANLIVE would normally expect, we will use reasonable endeavors to publish in advance details of such activity on the Website.



## GENERAL

### **Entire agreement:**

These Terms, together with the WATERMANLIVE Privacy Policy and the terms of any other notices or instructions given to you under these terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between you and WATERMANLIVE relating to the Software and the other matters dealt with in these Terms.

### **Waiver:**

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

### **Delays:**

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

### **No Assignment:**

You may not assign or transfer any rights to any other person without WATERMANLIVE's prior written consent.

### **Governing law and jurisdiction:**

The laws of France & the EU govern these Terms and you hereby submit to the exclusive jurisdiction of the courts of France and the EU for all disputes arising out of or in connection with these Terms, without reference to any conflicts of laws.

### **Severability:**

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

### **Notices:**

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to WATERMANLIVE must be sent to [info@watermanlive.com](mailto:info@watermanlive.com) or to any other email address notified by email to you by WATERMANLIVE. Notices to you will be sent to the email address which you provided when setting up your access to the Software.

### **Rights of Third Parties:**

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

By using Watermanlive, listing a property or making use of other services from Waterman Marine Group companies you automatically agree on these terms of use.

Waterman Marine Group.