# AUCTION SALE TERMS

**Marina Name:** Marina Genova Aeroporto
**Berth Number:** W5
**Size/Dimensions:** 125 meters by 25 meters, together with 10 uncovered parking spaces numbers W6, W7, W8, G122, G124, G126, G128, G130, G132, G134 and 5 garages numbers 31, 32, 33, 34 and 35 (also identified with codes B5, B6, B7, B8, and B9) (together the "**Berth**")
**Location/Address of Berth:** Via Pionieri e Aviatori d'Italia 203,16154 Genova, Italy
**Closing Location**: at the offices of the Notary (as defined below) in Genoa, Italy
**Closing Date**: within thirty (30) calendar days following the conclusion of the Auction or such later date as agreed in writing between Seller and Buyer

WHEREAS, the Seller, Al Menwar Berth Limited (hereinafter "**Seller**") has been granted the right of use of the above listed Berth pursuant and subject to the terms and condition of the *Agreement for the Use of a Mooring, Together with a Right to Use Garages and Parking Spaces* (the "**Mooring Agreement**") made between Marina Genova Aeroporto S.r.l. ("**MGA Srl**") and the Seller dated 12 June 2014 a copy of which is attached hereto as Exhibit A redacted as to any names (the "**Right of Use**").

WHEREAS, the Seller has consigned the remaining term of the Right of Use to Boathouse Auctions, Inc. ("**Auctioneer**") for the purposes of engaging in an internet auction conducted, managed, and operated by Auctioneer. As part of participation in the auction, Seller and Buyer (as defined below) have agreed to these Auction Sale Terms (the *"***Sale Terms***"*).

WHEREAS, Buyer was the successful bidder in the auction (the "**Buyer**"), and is hereby obligated to purchase the remaining term of the Right of Use of the Berth by means of an assignment and transfer to the Buyer of the Mooring Agreement on the terms of these Sale Terms and at the highest successful bid price placed by Buyer (hereinafter "**Purchase Price**").

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree to the following Sale Terms:

**<u>Agreement</u>**. The "***Effective Date***" of the Sale Terms is the last date on which it has been electronically agreed to by both parties. Listing Brokers (being Inwards Monaco Sarl and Nigel Burgess SAM), representing the Seller, and Buying Broker, if involved, representing the Buyer, shall be referred to herein as the "**Brokers**."

**<u>Deposit, Escrow Funds and Buyer's Premium</u>**. In addition to Buyer's deposit of EUR €100,000 (ONE HUNDRED THOUSAND EUROS) (the "**Participation Fee**") submitted prior to and as a condition to participating in the auction to Jaffa & Jaffa Limited, trading as Jaffa & Co, a regulated English law firm ("**JCo**"), Buyer shall deposit with JCo such sufficient additional funds to bring the total deposit to ten percent (10%) of the Purchase Price ("**Additional Funds**" which together with the Participation Fee, the "**Escrow Funds**") and shall pay to Auctioneer, as its Buyer's Premium, an amount equal to eight percent (8%) of the total Purchase Price of the remaining term of the Right of Use of the Berth (the "**Buyer's Premium**"). Buyer is aware and acknowledges that these funds (being the Escrow Funds and the Buyer's Premium) are non-refundable (save in the event of a default by Seller as set out below) and that the Additional Funds and

Buyer's Premium shall be wired for receipt no later than 5:00 p.m. ET on the second business day after the conclusion of the auction. If Buyer fails to wire the Additional Funds and/or the Buyer's Premium by this deadline, then Buyer will be considered in default and will forfeit its Escrow Funds. Buyer may, but is not required to, use JCo to "close" and record the assignment and transfer of the Mooring Agreement and thereby the remaining term of the Right of Use in which case those services will be quoted and agreed to by and between Buyer and JCo. Or, should the Buyer elect to use an alternate closing agent (including the Notary, as defined below), then JCo will, upon receipt of appropriate wiring instructions, signed by both Buyer and Seller, and wherein the Buyer, Seller and new closing agent (to the extent such new closing agent is prepared to do so) acknowledge that the Escrow Funds are non-refundable, transfer the Escrow Funds to the agreed upon alternate closing agent subject to prior receipt by such closing agent of any required KYC Documentation (as set out below). For the avoidance of doubt, it is hereby understood and agreed that (i) the fees of any closing agent (whether JCo, the Notary or other closing or escrow agent) shall be the Buyer's responsibility and (ii) the sole responsibility for payment of the Buyer's Premium to the Auctioneer and the fee of 1% of the Purchase Price referred to in the Mooring Agreement payable to MGA Srl upon closing both rest with Buyer and that Seller shall have no liability whatsoever for payment of the Buyer's Premium and/or payment of the aforesaid fee to MGA Srl.

**Escrow Funds**. The parties acknowledge that (a) JCo will not be responsible for the Escrow Funds until the funds have cleared into the its client account, (b) JCo shall hold the Escrow Funds in escrow once the funds have cleared and any other funds received by JCo from any party will be held in trust for that party, (c) the Listing Brokers or Buying Broker may receive any commission due to the Brokers from the sale directly from JCo if JCo are engaged to close and record the assignment and transfer of the Mooring Agreement and the remining term of the Right of Use to the Buyer or, if JCo are not so used, any commission due to the Brokers may be paid by the alternate closing agent (subject to the agreement of such alternate closing agent) or the Seller as appropriate and, in either case, upon successful completion of the transfer to the Buyer of the Mooring Agreement and the remaining term of the Right of Use as aforesaid.

**Duties of JCo**. It is understood and agreed that the duties of JCo are purely ministerial in nature. It is further agreed that:

JCo acts only as a depository and is not a party to or bound by any agreement or undertaking other than the ones described herein and/or in the Auctioneer's escrow agreement (the "**Escrow Agreement**") unless the agreement is in writing and signed by JCo. The parties hereto specifically acknowledge and agree that if the terms and conditions of the Escrow Agreement are in conflict with the terms and conditions of any other agreement between all of the parties, the terms and conditions set forth therein shall prevail.

JCo may conclusively rely on and shall be protected in acting on any statement, authorization, notice, request, consent, order, or other document (including email) believed by it to be genuine and to have been signed or given by the proper party. JCo shall have no duty or liability to verify any such statement, authorization, notice, request, consent, order, or other document, and its sole responsibility shall be to act only as expressly set forth in the Escrow Agreement. Upon the disbursement of the final payment in accordance with the Escrow Agreement, JCo shall have no further responsibility or liability with respect to the final payment so disbursed, and the Escrow Agreement shall terminate. Except in cases of JCo's gross negligence, fraud or willful misconduct, the Buyer (and Auctioneer as set out in the Escrow Agreement) hereby agrees to indemnify JCo and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature which JCo may incur or with which it may be threatened by reason of JCo's actions as escrow agent under the Escrow Agreement. JCo shall not be liable or responsible to any person for any consequential, punitive or special loss or damage (however caused) even if JCo is aware of the possibility of such loss or damage except to the extent resulting from JCo's gross negligence, fraud or willful misconduct.

If any parties, including JCo, disagree about the interpretation of the Escrow Agreement, or about the rights and obligations or the propriety of any action contemplated by JCo under the Escrow Agreement, or if JCo receives any conflicting demands or claims regarding any monies, instruments or documents delivered to JCo, JCo may, but shall not be required to, file an action in interpleader to resolve the controversy.

JCo shall not be liable or responsible to any person for any delay or failure by JCo's bankers, and of its correspondents or anyone else in receiving or executing any instructions given by JCo to them, any error in implementing such instructions or the default of such bankers, any of its correspondents or anyone else.

**Acceptance of Berth.** To the fullest extent permitted by applicable law, Buyer accepts the Mooring Agreement and the remaining term of the Right of Use thereunder and/or the Berth (including, for the avoidance of doubt, the garages and the parking spaces listed above) in its "AS IS, WHERE IS, WITH ALL FAULTS" condition and subject to the terms and conditions of the Mooring Agreement at the time of the auction. Buyer acknowledges that it has had the opportunity to conduct all due diligence and investigation of the Mooring Agreement, Right of Use and Berth including but not limited to title, leasehold agreement, and physical condition. Buyer acknowledges and confirms that this transaction is not subject to any financing contingency or any other contingency, survey or due diligence or inspection rights and that Buyer waives all right to rescind or cancel the Agreement to the fullest extent allowed under applicable law. The Buyer acknowledges that the Right of Use is only a contractual right to use the Berth in accordance with the Mooring Agreement and does not include any lease or other interest in real property.

**Closing, Delivery and Possession**. The closing of the assignment and transfer of the Mooring Agreement will occur within 30 (thirty days) of the close of the auction or such later date as agreed in writing between Seller and Buyer at the offices of the Notary in Genoa. Unless otherwise agreed, the Right of Use of the Berth will be transferred to the Buyer at the time of closing.

**Taxes.** The Buyer shall pay all closing costs including, without limitation, the fees of any closing or escrow agent) and taxes related to the assignment and transfer to the Buyer of the Mooring Agreement and the Right of Use of the Berth including, but not limited to, all sales and use taxes, excise, customs and any VAT or similar tax related to the payment of the Purchase Price and/or Buyer's Premium and/or any notarial fees and/or any land registry, documentation, closing and titling fees. Sales or use taxes, customs duties and/or notarial, land registry, documentation, closing and/or titling fees payable in connection with the assignment and transfer to the Buyer of the Mooring Agreement and the remaining term of the Right of Use of the Berth, if applicable, are Buyer's responsibility, and Buyer shall pay such taxes, customs duties and/or fees due at Closing. Buyer hereby indemnifies and holds harmless Seller, the Brokers, and Auctioneer against and from any sales or use taxes and customs duties for which Buyer is responsible.

**Brokers**. The parties acknowledge that the Listing Brokers and Buying Broker are the only brokers that procured these Sale Terms. If the Listing Brokers and the Buying Broker are the same brokerage, the parties' consent to Brokers acting as a dual agent in this transaction, i.e., representing both Buyer and Seller. If the Listing Brokers and the Buying Broker are different, the Listing Brokers will represent Seller only and owe no duties, fiduciary or otherwise, to Buyer, and the Buying Broker will represent Buyer only and owe no duties, fiduciary or otherwise, to Seller (though paid by Seller). The Brokers are obligated to perform only the duties expressly set forth herein and no implied duties or obligations may be read into these Sale Terms. Seller shall be solely responsible for payment of commission due to the Brokers in connection with the successful assignment and transfer of the Right of Use as set forth herein. Each party represents and warrants to the other that they have not employed or dealt with any other broker, agent, or finder in carrying out the negotiations relating to the assignment and transfer of the Right of Use to Buyer and acknowledges that the Brokers are third-party beneficiaries to these Sale Terms.

**Execution of Documents**. Seller and Buyer shall execute and deliver all documents reasonably necessary to assign and transfer the Mooring Agreement and thereby the remaining term of the Right of Use from Seller to Buyer, including a Notarial Transfer Deed subject to Italian law executed in front the Notary (as defined below) in terms customary for a transaction of this nature. Seller represents and warrants that it will transfer the remaining term of the Right of Use free and clear of all liens, claims and encumbrances save as provided in the Mooring Agreement. Seller shall not be required to provide any document that is not reasonably necessary to transfer the assignment and remining term of the Mooring Agreement and Right of Use or is not customary in such transactions, or unreasonably burdensome to obtain.

**Default by Buyer**. Notwithstanding anything herein to the contrary, if closing is not consummated due to Buyer's non-performance, including, without limitation, Buyer's failure to pay the balance of the Purchase Price (the "***Balance***") or the Escrow Funds, failure to satisfy Know Your Customer (KYC) requirements, or failure to execute all documents necessary for completion of the assignment and transfer by way of a Notarial Transfer Deed as aforesaid by the Closing Date, then: (i) the Escrow Funds shall be forfeited and retained by (or if the Escrow Funds were not paid, Buyer shall pay a like amount to) Seller, Listing Brokers, and Auctioneer as liquidated and agreed damages, as consideration for the execution of these Sale Terms, in full settlement of all claims between the parties, (ii) the Buying Broker shall return to Buyer any other funds received from Buyer, and (iii) the parties will be relieved of all obligations under the Sale Terms. Buyer and Seller agree that, in the event of the Buyer's default, the Escrow Funds will be divided thirty-three and a third percent (33.3%) to each the Seller, Listing Brokers (in the same proportion as would have been receivable had the transaction successfully completed), and Auctioneer. Buyer shall be responsible for the payment of any remaining Buyer's Premium to Auctioneer.

**Default by Seller.** If the closing is not consummated due to Seller's non-performance, then the Escrow Funds, the Buyer's Premium and any other money paid or deposited by Buyer pursuant to these Sale Terms will be returned to Buyer upon demand or Buyer will have the right of specific performance. Seller agrees that specific performance is reasonable in light of the uniqueness of the Berth, difficulty of ascertaining damages, and the inconvenience or impossibility of otherwise obtaining an adequate remedy. On Seller's default, Seller shall forthwith pay the Listing Brokers and Buying Brokers the same commission otherwise payable had the transaction closed, and pay Auctioneer the 8% Buyer's Premium save in the event that the Buyer has claimed specific performance as aforesaid.

**Miscellaneous**. These Sale Terms, including its exhibits and schedules (if any), together with any separate escrow agreement with JCo or an alternate closing agent, are the ***entire agreement*** between the Seller and Buyer pertaining to the subject matter hereof and ***supersede*** all prior and contemporaneous negotiations, agreements, representations, warranties, and understandings pertaining thereto, be they in writing, oral, or otherwise. If any party becomes a party to any litigation involving these Sale Terms, they shall be reimbursed for their reasonable costs and attorney's fees, at all pretrial, trial and appellate levels, by the party or parties found to have breached these Sale Terms. If any term, condition, or provision of these Sale Terms is held to be unenforceable for any reason, the Sale Terms shall be interpreted to fully achieve the intent of the parties to these Sale Terms. In any event, all other terms, conditions and provisions of these Sale Terms shall be deemed valid and enforceable. There are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. These Sale Terms may not be amended or modified, except in writing signed by Buyer and Seller. Notice and delivery given by or to the agent, attorney or Brokers representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by personal delivery, courier, email or other electronic means, and shall be effective upon delivery with proof of delivery retained. Neither party may assign the Sale Terms without the other party's consent, which consent shall not be unreasonably withheld. No claim or right arising out of these Sale Terms can be waived or discharged by one party, in whole or in part, unless in writing, nor shall any waiver be applicable except in the specific instance for which it is given. Paragraph headings are informational and included only for convenience. For the purpose of these Sale Terms "business day" means a day when banks are open for business in London (UK).

**Governing Law and Dispute Resolution**. These Sale Terms has been entered into and shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of law principles. Any and all disputes involving these Sale Terms, the auction or the purchase and sale of the remaining term of the Right of Use of the Berth, shall be referred exclusively to a binding arbitration before the International Yacht Arbitration Council (***"IYAC"***), which proceedings shall be conducted in Fort Lauderdale, Florida, unless otherwise agreed and shall constitute the sole and exclusive forum for the resolution and settlement of any dispute between any parties. The arbitration proceedings shall be conducted in accordance with the Rules of Procedure of the IYAC. An action may be brought in any court of competent jurisdiction to enforce any arbitral award or compel arbitration. The parties irrevocably submit to the exclusive jurisdiction of such court or arbitral forum, waive any objection they now or hereafter may have to venue or convenience of forum, agree that all claims relating to the proceeding will be decided only in such court or arbitral forum and, further, not to bring any claim relating to this Agreement in any other court or arbitral forum. THE PARTIES UNDERSTAND AND AGREE THAT, ABSENT THIS AGREEMENT, THEY WOULD HAVE THE RIGHT TO SUE EACH OTHER IN COURT, AND THE RIGHT TO A JURY TRIAL, BUT THEY GIVE UP THOSE RIGHTS VOLUNTARILY AND AGREE TO RESOLVE ANY AND ALL GRIEVANCES BY ARBITRATION IN ACCORDANCE WITH THIS SECTION.

**<u>Conditions</u>**. Seller and Buyer each hereby acknowledges and agrees that any assignment and transfer of the Mooring Agreement and the remaining term of the Right of Use thereunder to the Buyer will be subject to and conditional on ("**Conditions**"):

(i) the written approval from and in the sole discretion of Marina Genova Aeroporto Srl of the assignment and transfer to Buyer of the Mooring Agreement and thereby of the remaining term of the Right of Use;

(ii) entry into by Buyer and Seller of a notarial assignment and transfer deed subject to Italian law ("**Notarial Transfer Deed**") executed in front of a notary in Genoa, Italy, being the notary generally used by Marina Genova Aeroporto Srl ("**Notary**") providing for the assignment and transfer from Seller to Buyer of the Mooring Agreement with the Buyer substituting the Seller under the Mooring Agreement and for the Buyer to pay to MGA Srl the fee in the amount of 1% of the Purchase Price referred to in the Mooring Agreement upon closing as aforesaid. For the avoidance of doubt, it is understood that ownership in the Marina Berth or any other interest in real property will not be transferred to the Buyer but only the remaining term of the Right of Use granted pursuant and subject to the Mooring Agreement;

(iii) receipt by Seller, Notary and Listing Brokers of all such documentation and information regarding the Buyer as may reasonably be required to enable each of them to comply with applicable anti-money laundering regulations and sanctions checks (including but not limited to certified copies of the passports and proof or residence of the Buyer (if a natural person) directors and ultimate beneficial owner(s) of the Buyer ("**KYC Documentation**").

***By electronically agreeing to these Sale Terms, the Seller and Buyer acknowledges that they have carefully read, understand, and agree to be bound by the terms and conditions of these Sale Terms, including the Auctioneer's Terms of Service, the Escrow Agreement, any related documents, exhibits and addenda, all of which form these Sale Terms between the Seller and the Buyer. Both parties acknowledge that they have been given the opportunity to seek legal advice and to have these Sale Terms reviewed by an independent attorney of their choice.***

**Exhibit A – Mooring Agreement**

**[ redacted version ]**