



## AUCTION SALE TERMS

**Marina Name:** Marina Genova Aeroporto

**Berth Number:** W5

**Size/Dimensions of Berth:** 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 Genoa, 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 Assignor and Assignee.

**WHEREAS**, Al Menwar Berth Limited (hereinafter the "**Assignor**") 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* made between Marina Genova Aeroporto S.r.l. ("**MGA Srl**") and the Assignor dated 12 June 2014 a copy of which is attached hereto as Exhibit A redacted as to any names (the "**Mooring Agreement**") and with the remaining term of such right of use granted pursuant to the Mooring Agreement expiring on 12 June 2054 (the "**Right of Use**").

**WHEREAS**, for the purpose of finding an assignee to whom to transfer and assign the Mooring Agreement, the Assignor has listed and consigned the Berth for internet auction with Boathouse Auctions, Inc. ("**Auctioneer**") with such internet auction conducted, managed and operated by the Auctioneer. As part of participation in the auction, the Assignor and Assignee (as defined below) have agreed to these Auction Sale Terms (the "**Sale Terms**").

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

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

**Agreement.** 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 Assignor, and Assignee's Broker, if involved, representing the Assignee, shall be referred to herein as the "**Brokers**."

**Deposit, Escrow Funds and Assignee's Premium.** In addition to an Assignee's deposit of EUR €100,000 (ONE HUNDRED THOUSAND EUROS) (the "**Participation Fee**") submitted by the Assignee 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**") to JCo's client account, the Assignee shall also deposit with JCo such sufficient additional funds to bring the total deposit to ten percent (10%) of the Price ("**Additional Funds**" which together with the Participation Fee, the "**Escrow Funds**") and shall pay to Auctioneer, as its Assignee's Premium, an amount equal to eight percent (8%) of the total Price (the "**Assignee's Premium**"). The Assignee is aware and acknowledges that these funds (being the Escrow Funds and the Assignee's Premium) are non-refundable (save in the event of a default by the Assignor as set out below) and that the Additional Funds and Assignee's Premium shall be wired for receipt by JCo in its client account by no later than 5:00 p.m. ET on the second business day

after the conclusion of the auction. If the Assignee fails to wire the Additional Funds and/or the Assignee's Premium by this deadline, then the Assignee will be considered in default and will forfeit its Escrow Funds.

The Assignee 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 the Assignee and JCo. Or, should the Assignee 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 the Assignee and Assignor and wherein the Assignee, Assignor 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 Assignee's responsibility and (ii) the sole responsibility for payment of the Assignee's Premium to the Auctioneer and the fee of 1% of the Price referred to in the Mooring Agreement payable to MGA Srl upon closing of the assignment of the Mooring Agreement both rest with the Assignee and that the Assignor shall have no liability whatsoever for payment of the Assignee's Premium and/or payment of the aforesaid 1% 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 its client account, (b) JCo shall hold the Escrow Funds in escrow in its client account once the funds have cleared and (c) any other funds received by JCo from any party will be held in trust for that party, (d) the Listing Brokers or Assignee's Broker may receive any commission due to the Brokers upon successful completion of the assignment of the Mooring Agreement directly from JCo if JCo are engaged to close and record the assignment and transfer of the Mooring Agreement and the remaining term of the Right of Use to the Assignee 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 Assignor as appropriate and, in either case, upon successful completion of the transfer to the Assignee 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 Escrow 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 and/or herein. 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 Assignee (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, the Assignee 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. The Assignee 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 the Berth's physical condition. The Assignee 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 the Assignee waives all right to rescind or cancel these Sale Terms to the fullest extent allowed under applicable law. The Assignee acknowledges that the Right of Use is only a contractual right to use the Berth in accordance with and subject to the terms of the Mooring Agreement and that the transfer and assignment of the Mooring Agreement does not include or confer any ownership interest in the Berth 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 the Assignee and Assignor at the offices of the Notary in Genoa. Unless otherwise agreed, the Right of Use of the Berth will be assigned and transferred to the Assignee at the time of closing.

**Taxes.** The Assignee 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 Assignee of the Mooring Agreement and the Right of Use of the Berth including, but not limited to, all sales, registration and/or use taxes, excise duties, customs duties and any VAT or similar tax related to the assignment of the Mooring Agreement, payment of the Price and/or Assignee's Premium and/or any notarial fees and/or any land registry, documentation, closing and titling fees. Sales, registration and/or use taxes, excise duties, customs duties and/or notarial fees and/or land registry, documentation, closing and titling fees payable in connection with the assignment and transfer to the Assignee of the Mooring Agreement, if applicable, are the Assignee's responsibility, and the Assignee shall pay any such taxes, duties and/or fees due at closing of the assignment and transfer of the Mooring Agreement. The Assignee hereby indemnifies and holds harmless the Assignor, the Brokers and Auctioneer against and from any of the aforesaid taxes, fees and/or duties for which the Assignee is responsible.

**Brokers.** The parties acknowledge that the Listing Brokers and Assignee's Broker (if any) are the only brokers involved in this transaction. If the Listing Brokers and the Assignee's Broker are the same brokerage firms, the parties' consent to the Brokers acting as a dual agent in this transaction, i.e., representing both the Assignee and the Assignor. If the Listing Brokers and the Assignee's Broker are different, the Listing Brokers will represent the Assignor only and owe no duties, fiduciary or otherwise, to the Assignee, and the Assignee's Broker will represent the Assignee only and owe no duties, fiduciary or otherwise, to the Assignor (though paid by the Assignor). 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. The Assignor shall be solely responsible for payment of commission due to the Brokers in connection with the successful assignment and transfer of the Mooring Agreement 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 Mooring Agreement to the Assignee and acknowledges that the Brokers are third-party beneficiaries to these Sale Terms.

**Execution of Documents.** The Assignee and Assignor 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 the Assignor to the Assignee, 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. The Assignor 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. The Assignor shall not be required to provide any document that is not reasonably necessary to transfer and assign the Mooring Agreement or is not customary in such transactions, or is unreasonably burdensome to obtain.

**Default by Assignee.** Notwithstanding anything herein to the contrary, if closing is not consummated due to the Assignee's non-performance, including, without limitation, the Assignee's failure to pay the balance of the 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, the Assignee shall pay a like amount to) the Assignor, 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 Assignee's Broker shall return to the Assignee any other funds received from the Assignee, and (iii) the parties will be relieved of all obligations under the Sale Terms. The Assignee and the Assignor agree that, in the event of the Assignee's default, the Escrow Funds will be divided thirty-three and a third percent (33.3%) to each the Assignor, Listing Brokers (in the same proportion as would have been receivable had the transaction successfully completed), and Auctioneer. The Assignee shall be responsible for the payment of any remaining Assignee's Premium to Auctioneer.

**Default by Assignor.** If the closing is not consummated due to the Assignor's non-performance, then the Escrow Funds, the Assignee's Premium and any other money paid or deposited by the Assignee pursuant to these Sale Terms will be returned to the Assignee upon demand or the Assignee will have the right of specific performance. The Assignor 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 the Assignor's default, the Assignor shall forthwith pay the Listing Brokers and Assignee's Brokers the same commission otherwise payable had the transaction closed, and pay the Auctioneer the 8% Assignee's Premium save in the event that the Assignee 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 Assignor and the Assignee 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 the Assignor and the Assignee. 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 or email and shall be effective upon delivery (with proof of delivery retained in case of service by courier). 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 assignment and transfer of the Mooring agreement and thereby 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 these Sale Terms 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.

**Conditions.** The Assignor and the Assignee 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 Assignee will be subject to and conditional on satisfaction of the following conditions (“Conditions”):

- (i) the written approval from and in the sole discretion of MGA Srl of the assignment and transfer to the Assignee of the Mooring Agreement and thereby of the remaining term of the Right of Use it being understood and accepted that such approval will be subject to MGA Srl receiving satisfactory KYC Documentation (as defined below) in its discretion in respect of the Assignee;
- (ii) entry into by the Assignor and the Assignee 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 MGA Srl (“**Notary**”) providing for the assignment and transfer from the Assignor to the Assignee of the Mooring Agreement with the Assignee substituting the Assignor under the Mooring Agreement and for the Assignee to pay to MGA Srl the fee in the amount of 1% of the Price referred to in the Mooring Agreement upon closing as aforesaid. For the avoidance of doubt, it is understood that ownership in the Berth or any other interest in real property will not be transferred to the Assignee but only the Mooring Agreement (and thereby the remaining term of the Right of Use granted pursuant and subject to the Mooring Agreement) will be assigned and transferred to the Assignee;
- (iii) receipt by the Assignor, Notary, MGA Srl, JCo (or alternate escrow agent as aforesaid) and Listing Brokers of all such documentation and information regarding the Assignee 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 (and, if required by any of the aforesaid, notarised and apostilled copies) of the passports and proof of residence of the Assignee (if a natural person) or the directors and ultimate beneficial owner(s) of the Assignee (“**KYC Documentation**”).

***By electronically agreeing to these Sale Terms, the Assignor and the Assignee each 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 Assignor and the Assignee. 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.***