

## NJI CONSUMER CONDITIONS

General consumer conditions of contracting, delivery and payment of the Dutch Yacht-building Industry (NJI), a branch of the Koninklijke Metaalunie, registered in Nieuwegein. This text is valid from 1 October 2014 and has been deposited under number 177/2014 at the Utrecht court registry. Published by the Koninklijke Metaalunie, Box 2600, 3430 GA Nieuwegein.  
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### Article 1: Definitions

For the purposes of these general conditions, the following definitions shall apply:

- a. The entrepreneur: a member of the NJI;
- b. The consumer: any natural person who, not acting in the exercise of a profession or business, concludes a contract with the entrepreneur, as described under a;
- c. The work: the vessel, or the total of the works agreed between the consumer and the entrepreneur and the materials thereby delivered by the entrepreneur;
- d. Contract variations: extras and reductions in the agreed work requested by the consumer that lead to additional payment or deductions to the agreed contract amount;

### Article 2: Applicability

- 2.1 These terms and conditions shall apply to all offers made by members of the NJI, to all agreements for purchase and execution of work that they conclude with consumer and to all contracts (with the consumer) which arise from them, provided that the NJI member is the tenderer or the supplier.
- 2.2 All quotations are without obligation.
- 2.3 In the event of any conflict between these general conditions and the contract agreed between the entrepreneur and the consumer, the contract clauses shall take precedence.
- 2.4 These terms and conditions may be used exclusively by members of the NJI.

### Article 3: The quotation

- 3.1 The entrepreneur shall make a quotation that is expected to exceed €500 in writing or electronically unless circumstances of an urgent nature make this impossible.
- 3.2 The quotation shall contain a description of the materials to be supplied and the works to be executed which is sufficiently detailed to enable the consumer to assess the quotation.
- 3.3 The quotation shall mention the time or period within which the work can be commenced, and shall contain an indication of the duration of the work and a fixed or probable date for delivery or completion.
- 3.4 The quotation shall provide details of the price of materials and the pricing method that shall be employed for the execution of the works: fixed contract sum or a time and expense basis.
  - a. If a fixed contract sum approach is adopted, the parties shall agree a fixed sum for which the work shall be carried out;
  - b. If the work is to be charged on a time and expense basis, the entrepreneur shall provide accurate details of the price factors (including hourly rates and unit prices for materials). At the request of the consumer, the entrepreneur can give an indication of the expected costs of execution by mentioning a guide price, unless in its judgement this is not reasonably possible under the circumstances.
- 3.5 The drawings, technical descriptions, plans and calculations which form part of the quotation and which are prepared by the entrepreneur or on its instructions, shall remain the property of

the entrepreneur. They may not be given or shown to third parties without its permission. Nor may they be copied or otherwise duplicated with its permission. If no order is given, these documents must be returned to the entrepreneur within 14 days of request by the entrepreneur, at the risk and expense of the consumer.

- 3.6 If the consumer does not accept the quotation, the entrepreneur is entitled to invoice the costs incurred in preparing the quotation, on condition that it has notified the consumer in writing, immediately on or after the request for the quotation, of the existence of this obligation and of the extent of these costs. If the entrepreneur takes this course of action and if the consumer has met these costs, the drawings contained in the quotation shall become the property of the consumer, without prejudice to the intellectual property right of the entrepreneur.

#### **Article 4: Conclusion of the contract**

- 4.1 The contract is concluded by acceptance of the entrepreneur's quotation by the customer. Preferably, and where possible, the quotation shall be accepted in writing or electronically.
- 4.2 If the consumer accepts the quotation by electronic means, the entrepreneur shall confirm receipt of the consumer's order electronically. If the consumer accepts the quotation orally, the entrepreneur shall confirm the order preferably in writing or electronically.

#### **Article 5: Entrepreneur's obligations**

- 5.1 The entrepreneur shall execute the work properly, thoroughly and in accordance with the contract provisions. The work shall be carried out within normal working hours, unless otherwise agreed.
- 5.2 In executing the work, the entrepreneur shall take account of the statutory provisions that are or will be in force when the work is carried out.
- 5.3 The entrepreneur shall inform the consumer, where it can be reasonably expected to be aware of the same and where relevant to the work, of:
- a. errors in the work undertaken;
  - b. errors in the working methods and constructions demanded by the consumer;
  - c. defects in the movable or immovable property to which the work is carried out;
  - d. defects in or unsuitability of materials or tools made available by the consumer;
  - e. errors in the information provided by or on behalf of the consumer;
  - f. all the foregoing insofar as they become apparent to the entrepreneur before or during the execution of the work, and where the entrepreneur can be assumed to be an expert in the matter.

#### **Article 6: Consumer's obligations**

- 6.1 The consumer shall give the entrepreneur the opportunity to conduct the work.
- 6.2 The consumer shall ensure that the entrepreneur receives in a timely manner the approvals (such as permits and releases) and information necessary to carry out the work.
- 6.3 If so agreed between the parties, the consumer shall provide the use of the energy and water connectivity options at his disposal. The costs of electricity, gas and water shall be met by the consumer.
- 6.4 The consumer shall ensure that third party works or deliveries which are not part of the entrepreneur's work shall be carried out in such a way and at such a time as to cause no delay to the work of the entrepreneur. Should a delay nevertheless arise, the consumer shall promptly notify the entrepreneur thereof.
- 6.5 If the commencement or the progress of the work is delayed by the circumstances described in the previous paragraph, the consumer shall recompense the entrepreneur for the losses and costs incurred as a result, if these circumstances can be ascribed to him.
- 6.6 The consumer shall bear the risk for any loss caused by:
- errors in the work undertaken;
  - errors in the working methods and constructions demanded by the consumer;
  - defects in the movable or immovable property to which the work is carried out;
  - defects in materials or tools made available by the consumer;

- errors in the information provided by or on behalf of the consumer;

### **Article 7: Contract variations**

- 7.1 Where pricing has used the fixed contract sum method described in Article 3 paragraph 5, the consumer may request contract variations after the agreement has been concluded. If the entrepreneur accepts the contract variations, it may extend the presumed date of completion or delivery as described in Article 3.4 by the time necessary to obtain the materials and parts and to carry out this work.
- 7.2 In the event of additional work requested by the consumer, the entrepreneur may only claim an increased price if he informs the consumer promptly of the raised price, unless the consumer should have understood this already.
- 7.3 Contract variations totalling more than 10% more than the price of the work shall be agreed in advance in writing, except under urgent circumstances.
- 7.4 The absence of written instructions shall not impede the claims of the entrepreneur and consumer respectively for adjustments for extras or reductions. In that event, proof of the instructions lies with the party making the claim.

### **Article 8: Completion or delivery of the work**

- 8.1 The work is delivered when the entrepreneur has notified the consumer that the work is complete and the latter has accepted the work.
- 8.2 The work is deemed to have been delivered when:
  - at least 14 days have passed after the entrepreneur had notified the consumer, in writing or electronically, that the work is complete and the latter has omitted to accept the work within that period, unless within that period the consumer has rejected the work with written justification;
  - the consumer takes the work (back) into use, it being understood that when a part of the work is taken into use that part shall be regarded as delivered;
  - the consumer does not approve the work on the grounds of small defects or missing parts which may be repaired or supplied within 30 days and which do not prevent the work from being taken into use. The entrepreneur is bound to repair the defects or deliver the parts as quickly as possible.

### **Article 9: Impracticability of the instructions**

- 9.1 If the execution of the work is temporarily impossible for one of the parties for a reason outside its control, this party has the right to suspend the performance of its obligations for that period.
- 9.2 If the execution of the work is permanently impossible for one of the parties for a reason outside its control, this party is entitled to terminate the execution of the work against payment to the other party of its reasonably incurred costs.

### **Article 10: Uncollected goods**

- 10.1 The consumer is obliged, after the expiry of the delivery time and/or the execution period, to take delivery of the good or goods that are the subject of the contract at the agreed place.
- 10.2 The consumer must cooperate in all ways which can reasonably be required of him to enable the entrepreneur to deliver the goods.
- 10.3 Undelivered goods shall be stored, parked or disposed of at the expense and risk of the consumer. Three months after making available these goods, the entrepreneur has the right to sell them after written notice for and on behalf of the consumer. The entrepreneur must remit the proceeds of the sale to the consumer, after deduction of any claims due to it, including storage costs (Article 6:90 of the Civil Code).
- 10.4 In the event of infringement of paragraphs 1 or 2 of the present article, the consumer shall pay the entrepreneur a penalty of €250 per day to a maximum of €25,000. This penalty may be claimed in addition to any statutory damages.

### **Article 11: Insurance on new construction**

- 11.1 Until the date of delivery of the new-build vessel or hull, the entrepreneur shall, acting as policy holder but also on behalf of the consumer as the insured, insure this vessel or hull and the necessary materials and installations for the value represented by these goods, and as a maximum for the full sum of the agreed sale or contract price. Insurance benefits shall be paid to the contractor who shall be the beneficiary under the insurance contract. The insurance premium and insurance tax shall be borne - unless otherwise agreed - by the consumer.
- 11.2 The consumer hereby undertakes to both the entrepreneur and the insurer with whom this insurance policy has been concluded to make no claim for payment by the insurer if and to the extent that the entrepreneur has made a similar claim to that insurer on the same grounds.
- 11.3 The entrepreneur shall in the first instance apply the insurance payments to repairing the damage in respect of which the payment was made. The contractor may offset any surplus amount against any claims it may already have under this contract against the consumer, and shall remit the remainder to the consumer.
- 11.4 In the event that the vessel or hull is declared a total loss by the insurer, the contract shall be automatically cancelled. The entrepreneur shall then have the right set out in the second sentence of article 16.3.

#### **Article 12: Payment**

- 12.1 Payment shall be made at the place of the entrepreneur's registered offices or into an account indicated by it.
- 12.2 The parties may agree to payment by instalments. If payment by instalments is agreed and the entrepreneur fails to meet its obligations for continued provision / execution of the work, the consumer has the authority to suspend these instalments.
- 12.3 On sale the entrepreneur has the right to require the consumer to make an advance payment of up to 50% of the price.

#### **Article 13: Final account**

- 13.1 The entrepreneur shall submit a final account to the consumer within a reasonable time of delivery or completion.
- 13.2 Where the fixed contract sum pricing method has been adopted, the final account shall contain a clear description of the original instructions and any contract variations requested.
- 13.3 Where a time and expense basis has been applied, the final account shall contain a specification of the materials used and their cost, the hours worked and hourly rates and the remaining costs. If the entrepreneur has given a guide price, this guide price may be exceeded by no more than 10%, excluding additional work, unless the entrepreneur has warned the consumer in good time that the guide price will be exceeded by a greater amount.
- 13.4 Unless payment is in cash, payment of the final account shall take place within fourteen days of the invoice date.

#### **Article 14: Late payment**

- 14.1 Should the consumer not make payment on time, he shall be assumed without further notice to be in default.
- 14.2 The entrepreneur can charge interest on the late payment from the expiry of the payment period until the date on which the overdue sum is received. This interest rate is equal to the statutory rate as set out in Article 6: 119 of the Civil Code.
- 14.3 If the consumer remains in default with respect to an instalment under Article 12, the entrepreneur shall be entitled to stop the work, provided that it has demanded payment of the consumer in writing or electronically. This last provision is without prejudice to the entrepreneur's right to the payment of costs, damages and interest.

## **Article 15: Obligations in the event of complaint**

- 15.1 The consumer may not appeal against any default in performance if he has not made a complaint to the entrepreneur in writing within a reasonable period of time after he has detected the default or might reasonably have been expected to detect it.
- 15.2 The consumer must submit any complaint about the invoice amount in writing to the entrepreneur within the payment period, on pain of forfeiture of all rights. If the payment period is longer than thirty days, the consumer must submit a written complaint within thirty days of the invoice date.

## **Article 16: Conformity of the work with the contract and warranties**

- 16.1 The entrepreneur shall ensure that the work delivered is in conformity with the contract. The entrepreneur shall also ensure that the work has all those qualities which, considering all the circumstances, are necessary for normal use and for a special use where this has been agreed.
- 16.2 Should any divergence from what has been agreed become evident within six months of delivery, it will be assumed that the work did not comply with the contract on delivery. In this event the entrepreneur shall remedy the defect without charge, unless it can demonstrate that the work did comply with the contract at the time of the contract, without prejudice to the fact that the entrepreneur may remain liable in law for any defects in the work after these periods.
- 16.3 The warranty mentioned in paragraph 2 shall expire if:
- defects in the work are not reported to the entrepreneur in writing within a reasonable period of time after they are detected or might reasonably have been expected to be detected;
  - defects are the consequence of normal wear and tear;
  - physical properties and natural functioning of materials/natural products;
  - defects are caused by faulty, improper use or neglect by the consumer or his successor in title, or by an external cause;
  - defects are not a consequence of the work;
  - defects are the consequence of a failure to maintain or improper maintenance;
  - faults are the consequence of the installation, assembly, alteration or repair by the consumer or by third parties without the prior written consent of the entrepreneur;
  - the consumer has failed to meet his payment obligations.
- 16.4 There shall be no warranty on preservation works carried out in the following cases:
- further pre- or post-treatment in accordance with good professional practice was necessary and was made known, but for which no instructions were given;
  - the pre-treatment has not been carried out or approved by the entrepreneur;
  - the material for preservation is in such a condition that it is not possible to repair the defects, including corrosion, irregularities, colour differences, gloss, etc., within the terms of the contract concluded for the work;
  - the preservation work is damaged by the consumer or by third parties.
- 16.5 No warranty shall be given on:
- delivered goods which were not new at the time of delivery;
  - the testing and repair of the principal's goods;
  - parts for which a factory guarantee is provided;
  - goods supplied or prescribed by the principal.
- 16.6 Unless otherwise agreed in writing, the following tolerances are allowed in new constructions:
- 2% length over the stern;
  - 2% width over the midship section;
  - 10% draught;
  - 2% headroom;
  - 2% maximum vertical clearance of fixed parts;
  - 10% weight;
  - 10% speed calculated with standard equipment and draught in accordance with the standard waterline construction.

These definitions are in accordance with the harmonised ISO standard '8666 – Small Craft – Principal Data', dated November 2002.

16.7 The consumer may assign no rights under this article.

#### **Article 17: Sureties**

17.1 After delivery the entrepreneur shall remain the owner of the goods for as long as the consumer:

- fails or shall fail to comply with his obligations under this or other contracts;
- fails or shall fail to pay for works carried out or to be carried out under such contracts;
- has not satisfied claims resulting from a failure to comply with these contracts, such as damages, penalties, interest and costs.

17.2 While title to the goods is reserved, the consumer may not alienate or encumber them.

17.3 After the entrepreneur has invoked its reservation of title, it may recall the goods. The consumer shall offer all assistance.

17.4 The entrepreneur has a right of lien and a right of pledge on all the goods which it has or will obtain, on any account whatsoever, and for all the claims that it has or may have against the consumer, in respect of any person that requires delivery thereof.

17.5 By way of exception to the provisions of the preceding paragraphs of this article, the entrepreneur shall endeavour to work on the registration of a vessel, if this is expressly requested in writing by the consumer, inter alia subject to the condition that adequate security has been provided for payment of the sum due from the consumer, and hence at the entrepreneur's discretion.

17.6 Should the consumer fail to meet his obligations and the vessel or hull has already been registered, he shall be required to cooperate fully in the cancellation of this registration. Any costs incurred shall be borne by the consumer. The provisions of Article 10 shall accordingly apply.

#### **Article 18: Applicable law and competent court**

18.1 Dutch law shall apply.

18.2 Only the Dutch civil court in the place of residence of the consumer shall be competent to hear any disputes, unless this conflicts with mandatory law.

18.3 The parties may agree to another form of dispute resolutions such as arbitration or mediation.