**CONTRACT FOR THE CONSTRUCTION OF A VESSEL**

The undersigned:

the private company [**name]** B.V., established at [**place**], registered at the Chamber of Commerce under number [**number]** and represented herein by its director [**name**],

hereinafter the “Contractor”

and

Mr/Ms [**name**] residing in [**place**] at [**street**], born on [**enter date of birth**].

**or:**

the private company [**name]** B.V., established at [**place**], registered at the Chamber of Commerce under number [**number]** and represented herein by its director [**name**],

hereinafter “the Principal”;

the Principal and Contractor are hereinafter jointly referred to as the “Parties”;

Whereas:

* The Principal wishes to instruct the Contractor to construct a [**enter vessel type**] and the Contractor wishes to accept this instruction;
* The Principal and the Contractor wish to enter into a number of agreements as to the construction of this vessel, and to record them in this contract;

they declare that they are agreed as follows:

**Article 1: Main characteristics of Vessel**

1. The Contractor shall build, on the instructions of the Principal, a [**description**], hereinafter ‘the Vessel’, with the following main characteristics:

|  |  |
| --- | --- |
| Vessel category: | ……………………………………………………………………………………………………………………… |
| Vessel type | ……………………………………………………………………………………………………………………… |
| Colour | ……………………………………………………………………………………………………………………… |
| Hull material | ……………………………………………………………………………………………………………………… |
| Equipment  | ……………………………………………………………………………………………………………………… |
| Design category | ……………………………………………………………………………………………………………………… |
| Length  | ……………………………………………………………………………………………………………………… |
| Width (metres) | ……………………………………………………………………………………………………………………… |
| Draught (metres) | ……………………………………………………………………………………………………………………… |
| Clearance (metres) | ……………………………………………………………………………………………………………………… |
| Engine (s)  | ……………………………………………………………………………………………………………………… |
| Engine output (kilowatt) | ……………………………………………………………………………………………………………………… |
| Equipped with the following accessories | ……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………… |
| Vessel intended for use for | ……………………………………………………………………………………………………………………… |
| Any constraints upon the Vessel  | ……………………………………………………………………………………………………………………… |

**Article 2: Specifications and drawings**

1. **[If the Contractor is responsible for the design of the vessel]:** The vessel shall be constructed and delivered in accordance with specifications and drawings drawn up by the Contractor.

**Or:**

**[If the Principal supplies the design]:** The vessel shall be constructed and delivered in accordance with specifications and drawings supplied by the Principal ([enclosed as Annex [**enter number**])

1. In this contract, "Construction" shall mean all works together.

**Article 3: Design and construction**

1. The vessel must meet the following requirements on delivery:
2. The requirements arising from the contractual specifications;
3. ...**complete**;
4. ...**complete**;
5. The provisions of paragraph 1 of this article do not affect the tolerances as included in the applicable general terms and conditions.

**Or: If you apply tolerances other than those set out in the NJI terms and conditions, list these tolerances below:**

1. The Parties agree the following tolerances: [**complete**].

**Article 4: Phases and schedule**

1. The Construction of the Vessel shall be phased as follows:
* Phase I: Drafting specifications and drawings (**please note: only where the Contractor is responsible**)
* Phase II: Drafting contractual specifications (**please note: only where the Contractor is responsible**)
* Phase III: Construction phase.
1. For the construction of the Vessel the Parties shall adhere to the following schedule:

|  |  |
| --- | --- |
| 1. **DRAFTING OF SPECIFICATIONS AND DRAWINGS**
 | **DATE/WEEK\* COMPLETED (approximate):** |
| Provisional specifications | **±** |
| Final specifications | **±** |
| Provisional design | **±** |
| Interim design evaluation  | **±** |
| Final design and final evaluation | **±** |
| 1. **DRAFTING OF CONTRACTUAL SPECIFICATIONS**
 | **±**  |
| Contractual specifications complete |  |
| 1. **CONSTRUCTION PHASE**
 |  |
| Start of construction  | **±** |
| First interim evaluation | **±** |
| Second interim evaluation | **±** |
| Vessel complete **OPTIONAL**: test sailing/final inspection  | **±** |
| Delivery | **±** |

1. The schedule contains no firm deadlines.
2. No subsequent phase shall be commenced by the Contractor before the Principal has approved the conclusion of the preceding phase.

**Or:**

**Article 4: Indicative performance period**

1. The performance period for the works shall be approximately [**enter period**] after their commencement. This period shall exclude the periods during which the Contractor carries out no works due to complete or partial business closure [**enter these periods here:** …].

**Article 5: Price and payment**

1. The total price for the Construction of the Vessel is € [**enter**].

**Or:**

The guide price for the Construction of the Vessel is € [**enter**].

1. The guide price indicated may not be exceeded by more than [**enter percentage**]%.
2. Payment shall take place as follows:

|  |  |
| --- | --- |
| Advance: | € [**enter amount**]Payment on contract signature  |
| Phase I: | € [**enter amount**]Payment immediately after completion of Phase I, or at least before the commencement of Phase II. |
| Phase II: | € [**enter amount**]Payment immediately after completion of Phase II, or at least before the commencement of Phase III. |
| Phase III: | € [**enter amount**]Payment on delivery, but at the latest prior to departure of the Vessel.  |

**Or:**

1. Payment shall take place as follows:

Advance (to be paid on contract signature):

Second instalment (to be paid ...):

Third instalment (to be paid ...):

Etc.

1. Prices are **inclusive/exclusive\*** of VAT. Payment shall be made to the following bank account: IBAN [**enter**] in the name of [**...enter**].

**\* Delete as appropriate. For non-commercial customers you are obliged to quote prices inclusive of VAT**

**OPTIONAL: Article 6: Transfer of title and delivery of the Vessel under construction**

1. Title to the Vessel under construction shall be transferred in advance by the Contractor to the Principal. Delivery of the Vessel under construction shall take place in advance by means of the following declaration: As from the commencement of the actual construction of the Vessel, the Contractor shall hold the Vessel on behalf of the Principal.

**OPTIONAL: Article 7: Registration of the Vessel under construction**

1. If desired, the Principal may have the Vessel registered. The Principal must carry out this procedure itself and assume any associated costs. The Contractor shall cooperate in the registration, for example by drawing up - if necessary - an ‘under construction’ declaration without charge, or by granting access to Register Agency staff for prior inspection or the application of branding.

**OPTIONAL: Article 8: Financing proviso**

1. This contract may be terminated by the Principal if at the latest:
	1. On [**date**], the Principal has not received a binding offer of a mortgage loan from a recognised lending bank for the financing of the Construction for an amount of [**€ enter**], to be applied for by the Principal under the currently normal conditions and rates from a banking/mortgage institution established in the Netherlands. ‘Banking institution’ shall be understood to mean a bank or insurer as defined in article 1:1 of the Financial Supervision Act.
2. The Principal undertakes to take all reasonable steps to obtain such financing. If the Principal wishes to invoke termination, it must ensure that notice of such termination is received by the counterparty no later than the first working day after the date on which the relevant resolutory condition is established. This notice must be given in writing or in electronic form using habitual communication means and well documented. ‘Well documented’ shall mean that [**enter number**] rejection(s) from a recognised lending bank is or are submitted to the Contractor. Rejection notices shall mention at least the following:
	1. The name or names of the persons who made the application (or the person or persons on whose behalf the application was made);
	2. The income on the basis of which the application was submitted;
	3. The amount of the mortgage loan requested;
	4. The reason for the rejection.

**Article 9: Visiting and inspection during Construction**

1. The Principal is empowered to visit and inspect the Vessel during Construction. Visiting and inspection shall take place on working days during normal working hours (9.00-17.00) and exclusively after prior agreement with the Contractor. The Principal may not hinder the progress of the works.

**Article 10: Conclusion of final phase and delivery**

1. *The final phase may conclude with a sea trial, a final inspection by an external expert or by another method. Enter here the manner in which you intend to conclude the final phase with the contractor and what arrangements will be made. You may also have a declaration of delivery and acceptance by the principal signed to conclude the final phase.*
2. The Vessel shall be delivered to the following address: [**enter**]
3. Unless the Parties to this contract are agreed that the Vessel under construction is to be transferred to the Principal in advance, title shall be transferred on delivery. The method of delivery is governed by the applicable general conditions.
4. The Principal shall be responsible for ensuring transport of the Vessel (either by water or by road) to a location other than the address in paragraph 1.

**Article 11: Works on the Vessel by third parties**

The Principal may not carry out works to the Vessel, or have such works carried out by third parties, without the Contractor’s consent.

**Article 12: Confidentiality and documents to be provided**

1. All information, of whatsoever nature and in whatsoever form, provided to the Contractor by or on behalf of the Principal, shall remain confidential until the Vessel is delivered and shall not be used by the Contractor for any purpose other than the performance of the contract. The Contractor shall not publicise or reproduce this information.
2. On delivery of the Vessel the Contractor shall supply the following documents\*:
* Specifications;
* Drawings;
* Technical description;
* Calculations;
* Test results;
* Etc.
* Any other documentation and information drawn up or prepared in the course of the design and Construction of the Vessel.

**\* Delete those items that are not to be supplied.**

**Article 13: Insurance of the Vessel**

1. Until the date of delivery of the new-build Vessel or hull, the Contractor shall, acting as policy holder but also on behalf of the Principal 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 total contract price. Insurance benefits shall be paid to the Contractor who shall be the beneficiary under the insurance contract.
2. For the purposes of paragraph 1 of this insurance article, the Contractor shall charge the Principal the following: (**enter percentage**)% of the final value (the final value is [**enter the final value and how this is determined**]). These costs must be met by the Principal in the advance payment.
3. The Principal hereby undertakes to both the contractor 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 Contractor has made a similar claim to that insurer on the same grounds.
4. The Contractor 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 Principal, and shall remit the remainder to the Principal.
5. In the event that the Vessel is declared a total loss by the insurer, the contract shall be automatically cancelled. The Contractor shall then have the right set out in paragraph 3 of this article.

**Article 14: Termination of the contract**

1. If the Principal wishes to terminate the agreement without any fault on the part of the Contractor, and the Contractor agrees to this, the agreement will be terminated only by mutual consent. In that event, the Contractor is entitled to compensation for all financial damages, such as any loss suffered, lost earnings and costs incurred.

**Article 15: Transfer of rights**

The Principal may not transfer the rights under this contract to third parties, either wholly or in part, without the written consent of the Contractor.

**OPTIONAL [include if the Contractor is responsible for the design of the vessel. NOTE: any limitation of liability may void in the case of non-commercial customers!]:**

**Article 16: Liability for design works**

1. The liability conditions in this article shall only apply to Phases I and II of Construction. They shall not apply to the other Construction phases and works. These shall be governed by the liability clauses in the applicable general conditions.
2. In the event of a culpable shortcoming, the Contractor shall still be obliged to perform its contractual obligations. ‘Culpable shortcoming’ in these conditions shall be understood to mean: any shortcoming which a good and careful consultant, with the required professional knowledge and means, could and should have avoided under the circumstances and when acting with normal vigilance.
3. The following do not qualify for compensation:
* consequential loss, including standstill, production loss, fines, loss of earnings, depreciation of products and sums that should have been included in the execution costs if the contract were properly conducted from the outset. The Principal should insure itself against such losses if possible;
* damage caused by intent or the deliberate recklessness of agents or non-management employees of the Contractor.
1. The Contractor may, in consultation with Principal, remedy shortcomings for which it is liable at its own expense, or to limit or eliminate any damage arising from such shortcomings.
2. Should the Contractor make use of a third party in the performance of the contract, the Contractor shall be liable for shortcomings of this third party in the same way as for its own shortcomings, without prejudice to the provisions of paragraph 3 of this article, unless this party has been prescribed by the Principal.
3. In the event of non-, late or defective performance by a prescribed party as referred to in the previous paragraph of this article, and if the Contractor has done everything reasonably necessary to obtain compliance and/or compensation, the Principal shall reimburse the Contractor for the additional costs or expenses incurred, insofar as these costs have not been reimbursed by this party. The Contractor shall, at the first request of Principal, cede its claim on this party to the Principal up to the amount that Principal has paid to Contractor.
4. For the recompense of damages other than those mentioned in this article, the Contractor shall only be liable if and to the extent that the shortcoming can be ascribed to intent or gross negligence on its part.
5. Without prejudice to the preceding paragraphs, in the case of contracts for the execution of an object, the Contractor shall only be liable for damage which is not covered by a customary all-risks insurance policy, assembly insurance policy or other equivalent insurance policy or policies. The Principal shall ensure that such an insurance policy is concluded.
6. If and to the extent that the Principal has insured any risk related to this contract, it shall be obliged to claim any damage under such insurance and to indemnify the Contractor against any recourse by the insurer.
7. The damages to be compensated by the Contractor are limited to an amount equal to the total contract sum to which the Contractor is entitled for the Construction, with a maximum of €1,000,000.
8. By way of derogation from the previous paragraph, the damages to be compensated shall be a maximum of €75,000 if the Principal is a non-commercial customer and the total contract sum is lower than €75,000.
9. All Contractor's liability shall lapse five years from the day on which this contract is ended by completion or cancellation.
10. A legal claim for an attributable shortcoming is inadmissible if the Principal fails to give the Contractor written notice of default, stating the reasons, with due haste after it has discovered, or reasonably should have discovered, the shortcoming.
11. A legal claim for an attributable shortcoming shall expire after the passage of two years from the date of written notice of default.
12. A legal claim for an attributable shortcoming is inadmissible if it is entered more than five years from the day on which this contract is ended by completion or cancellation.
13. For the purposes of paragraphs 12 and 15 of this article, the day on which this contract is ended shall be the day on which the Principal sends the Contractor written notification that the contract has ended. The invoice for the last payment instalment due in respect of the contract shall be regarded as such notification.

**Article 17: General conditions**

1. The NJI Consumer conditions of 1 October 2014 shall apply to this contract. These conditions are filed at the Court Registry of the Court of Utrecht under number 177/2014.
2. A copy of the NJI Consumer conditions is enclosed as an annex to this contract.

**Or:**

1. The NJI Delivery conditions of 1 October 2014 shall apply to this contract. These conditions are filed at the Court Registry of the Court of Utrecht under number 178/2014.
2. A copy of the NJI Delivery conditions is enclosed as an annex to this contract.

**NOTE: As a general principle: Use the NJI delivery conditions for B2B, and the NJI Consumer conditions for B2C It is also possible to use the NJI delivery conditions for B2C, but a court will in that event regard their content much more critically, such that you might ultimately be unable to rely on them. This risk is real.**

**Article 18: Ranking of the contract documents**

1. In the event of conflict between the contract documents, the following ranking shall apply:
	1. This contract;
	2. The contractual specifications;
	3. Other documents containing specifications, drawings or other requirements that the Vessel must satisfy.
	4. NJI Delivery/Consumer conditions\*

**\* Delete as appropriate**

**Article 19: Applicable law and competent court**

1. Dutch law shall apply.
2. The Dutch civil court competent at the registered office address of the Contractor shall rule on disputes. The Contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.

Agreed and signed in duplicate on [**date**] at [**location**]

|  |  |
| --- | --- |
| (On behalf of) the Principal | On behalf of the Contractor |
| *Signature* | *Signature*  |
| (Name:) | Name: |
| (Position:) | Position: |

Annexes : 1. [**enter**]

 : 2. [**enter**]

 : 3. [**enter**]

: 3. NJI CONSUMER CONDITIONS **or** NJI DELIVERY CONDITIONS