

NJI TERMS OF DELIVERY

General 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 178/2014 at the Utrecht court registry. Published by the Koninklijke Metaalunie, Box 2600, 3430 GA Nieuwegein.

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Article 1: Applicability

- 1.1. These Terms and Conditions apply to all offers made by members of the NJI, all agreements they conclude and all agreements that may result therefrom, insofar as the NJI member is tenderer or supplier.
- 1.2. The NJI member using these conditions is referred to as the contractor. The other party is referred to as the client.
- 1.3. In the event of any conflict between the substance of the contract concluded between the contractor and the client and these conditions, the contract provisions will take precedence.
- 1.4. These terms and conditions may exclusively be used by members of the NJI.

Article 2: Quotations

- 2.1. All quotations are without obligation.
- 2.2. If the client provides the contractor with data, drawings and the like, the contractor may rely on their accuracy and completeness and will base its quotation on the same.
- 2.3. The prices mentioned in the quotation are based on delivery after commissioning and, if agreed, a sea trial. Prices exclude turnover tax and packaging.
- 2.4. If the client does not accept the contractor's quotation, the contractor is entitled to charge the client for all costs incurred preparing the offer.
- 2.5. **The contractor is entitled to charge to the client the costs of the environmental treatment,** collection, sampling, removal, storage, transport and destruction of materials, residues and similar in addition to the price mentioned in the quotation.

Article 3: Intellectual property rights

- 3.1. Unless otherwise agreed in writing, the contractor shall retain the copyright and all industrial property rights in the quotations, designs, plans, images, drawings, sketches, prototypes or models, software and the like provided by it.
- 3.2. The rights in the data referred to in paragraph 1 of this article will remain the property of the contractor irrespective of whether the costs of their production have been charged. These data may not be copied, used or shown to third parties without the contractor's prior express written consent. The client shall be liable to the contractor for an immediately payable penalty of 10% of the contract sum with a minimum of €25,000 for each breach of this provision. This penalty may be claimed in addition to any statutory damages.
- 3.3. On first demand, the client must return the data referred to in paragraph 1 of this Article within the time limit set by the contractor. Upon breach of this provision, the client will owe the contractor a penalty of €1,000 per day, immediately payable. This fine may be claimed in addition to any statutory damages.

Article 4: Advice and information provided

- 4.1. The client may derive no rights from advice or information it obtains from the contractor if this does not relate to the contract
- 4.2. If the client provides the contractor with data, drawings and the like, the contractor may rely on their accuracy and completeness in the performance of the contract.
- 4.3. The client shall indemnify the contractor against any third party claims relating to the use of the advice, drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the client
- 4.4. The client shall ensure that the materials and parts provided by him or on his behalf satisfy the requirements set out in or arising from the Law on pleasure boats and other laws and provisions.
- 4.5. If the client himself carries out works, he shall be obliged to satisfy the requirements set out in the Law on pleasure boats or other laws and directives, or which arise from them. The client shall follow the contractor's instructions in this respect.

Article 5: Delivery period / performance period

- 5.1. The delivery and/or performance period will be set by the contractor on an approximate basis.
- 5.2. In setting the delivery and/or performance period, the contractor will assume that it will be able to perform the contract under the conditions known to it at that time.
- 5.3. The delivery and/or performance period will only commence once agreement has been reached on all commercial and technical details, all necessary data, final and approved drawings and the like are in the contractor's possession, the agreed payment or instalment has been received and the necessary conditions for performance of the contract have been satisfied.
- 5.4.
 - a. In the event of circumstances that differ from those that were known to the contractor when it set the delivery and/or performance period, it may extend the delivery and/or performance period by such time as it needs to perform the contract under these circumstances. If the work cannot be incorporated into the contractor's schedule, it will be performed as soon as its schedule so permits.
 - b. In the event of any contract addition, the delivery and/or performance period will be extended by such time as the contractor needs to supply the materials and parts and to carry out the contract addition. If the contract addition cannot be incorporated into the contractor's schedule, the work will be performed as soon as its schedule so permits.
 - c. If the contractor suspends its obligations, the delivery and/or performance period will be extended by the duration of the suspension. If the continuation of the work cannot be incorporated into the contractor's schedule, the work will be performed as soon as its schedule so permits.
 - d. In the event of inclement weather, the delivery and/or performance period will be extended by the resulting delay.
- 5.5. The client is required to pay all costs incurred by the contractor as a result of delay affecting the delivery and/or performance period as referred to in Article 5.4.
- 5.6. If the delivery and/or performance period is exceeded, this will give rise to no entitlement to damages or termination.

Article 6: Transfer of risk

- 6.1. Delivery will be made ex works, contractor's place of establishment, in accordance with the Incoterms 2010. The risk attached to the good is transferred at the moment when

the contractor makes it available to the client after commissioning and, if agreed, a sea trial.

- 6.2. Notwithstanding the provisions in paragraph 1 of this article, the client and contractor may agree that the contractor will arrange for transport. In that event, the risk of storage, loading, transport and unloading will be borne by the client. The client may insure itself against these risks.
- 6.3. In the event that a vessel or other good is exchanged and the client retains the good to be exchanged pending delivery of the new good, the risk attached to the good to be exchanged remains with the client until it has placed it in the possession of the contractor. If the client cannot deliver the good to be exchanged in the condition that it was in when the agreement was concluded, the contractor may terminate the agreement. This clause is without prejudice to the contractor's remaining statutory rights.

Article 7: Price change

- 7.1. The contractor may pass on to the client any increase in costing factors occurring after conclusion of the agreement.
- 7.2. The client will be obliged to pay the price increase referred to in paragraph 1 of this article at any of the following times, at the discretion of the contractor:
 - a. when the price increase occurs;
 - b. at the same time as payment of the principal sum;
 - c. on the next agreed payment deadline.
- 7.3. If goods are delivered by the client and the contractor is prepared to use them, the contractor may account for a maximum of 20% of the market price of the goods delivered.

Article 8: Force majeure

- 8.1. The contractor is entitled to suspend performance of its obligations if it is temporarily prevented from performing its contractual obligations to the client due to force majeure.
- 8.2. Force majeure shall include the failure by suppliers, the contractor's subcontractors or transport companies engaged by the contractor to perform their obligations or to perform them in good time, weather conditions, earthquakes, fire, power failure, loss, theft or destruction of tools or materials, road blocks, strikes or work stoppages and import or trade restrictions.
- 8.3. If the contractor's temporary inability to meet its obligations lasts for more than six months, it will no longer be entitled to suspend performance. On expiry of this deadline, the client and the contractor may terminate the agreement with immediate effect, but only in respect of that part of the obligations that has not yet been performed.
- 8.4. In the event of force majeure where performance is or becomes permanently impossible, both parties are entitled to terminate the agreement with immediate effect for that part of the obligations that has not yet been performed.
- 8.5. The parties will not be entitled to compensation for losses that are or will be suffered as a result of suspension or termination under this article.

Article 9: Changes to the work

- 9.1. Changes to the work will result in contract variations if:
 - a. the design, specifications or plan are changed;
 - b. the information provided by the client is not factually accurate;
 - c. quantities diverge by more than 10% from the estimates.
- 9.2. Contract additions will be charged on the basis of the pricing factors applicable at the time the contract addition is performed.

Contract reductions will be calculated on the basis of the pricing factors applicable at the time the agreement was concluded.

- 9.3. The client shall pay the price of the contract addition as referred to in paragraph 1 of this article at one of the moments below, at the contractor's discretion:
- when the contract addition arises;
 - at the same time as payment of the principal sum;
 - on the next agreed payment deadline.
- 9.4. If the sum of the contract reduction exceeds that of the contract addition, the contractor may charge the client 10% of the difference in the final account. This provision does not apply to contract reductions that result from a request by the contractor.

Article 10: Delivery of the work

- 10.1. The work/vessel shall be deemed to be delivered in the following cases:
- if the client has approved the work/vessel;
 - if the client has taken the work/vessel into use. If the client takes a part of the work/vessel into use that part shall be deemed to be delivered;
 - if the contractor has notified the client in writing that the work/vessel is complete and the client fails to inform the contractor in writing within 14 days of this notice whether the work/vessel is approved;
 - if the client does not approve the work/vessel 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/vessel from being taken into use.
- 10.2. If the client does not approve the work/vessel, he is obliged to so inform the contractor in writing, stating the reasons. The client must provide the contractor with the opportunity to complete the work subsequently. The provisions of this article shall then apply once more.
- 10.3. The client shall indemnify the contractor against any third party claims for damage to non-completed parts of the work/vessel caused by the use of the already completed parts of the work/vessel.

Article 11: Liability

- 11.1. In the event of a culpable shortcoming, the contractor shall still be obliged to perform its contractual obligations.
- 11.2. The contractor's obligation to pay damages, irrespective of the legal basis, is limited to losses for which the contractor is insured under an insurance policy taken out by it or on its behalf, but will never exceed the amount paid out under this insurance in the case in question.
- 11.3. If, for any reason whatsoever, the contractor cannot invoke the limitation in paragraph 2 of this article, the obligation to pay damages will be limited to a maximum of 15% of the total contract sum (excluding VAT). If the contract consists of parts or partial deliveries, the obligation to pay damages is limited to a maximum of 15% (excluding VAT) of the contract sum for that part or that partial delivery.
- 11.4. The following do not qualify for compensation:
- consequential loss, including losses due to stoppage, production loss, lost earnings, transport costs and travel and accommodation expenses. The client may insure itself against this loss if possible;
 - damage to goods in or under its care, custody or control, including losses occurring through or during the execution of the work to goods undergoing work or goods found in the vicinity of the work site. The client may insure itself against this loss if it chooses;
 - damage caused by intent or the deliberate recklessness of agents or non-management employees of the contractor.

- 11.5. The contractor is not liable for damage to material provided by or on behalf of the client as a result of improper processing.
- 11.6. The client shall indemnify the contractor against all third-party claims on account of product liability as a result of a defect in a product supplied by the client to a third party and consisting entirely or partially of products and/or materials supplied by the contractor. The client shall compensate all losses suffered by the contractor in this respect, including full legal defence costs.

Article 12: Warranty and other claims

- 12.1. For a new vessel or hull, the warranty period is 12 months from the date of delivery. For maintenance or repair works, a warranty period of 3 months from the date of delivery applies. Emergency repairs are not covered by either form of warranty. If a different warranty period is agreed, the remaining paragraphs of this article shall nevertheless apply.
- 12.2. If the agreed task was not properly performed, the contractor will have the choice of properly executing it or crediting the client for a proportional part of the invoice. If the contractor chooses to properly execute the task, it may itself determine the manner and time of execution. If the agreed task consisted (entirely or partially) of the processing of material provided by the client, the client must provide new material at its own risk and expense.
- 12.3. Parts or materials that are repaired or replaced by the contractor must be sent to it by the client
- 12.4. The client shall bear the expense of:
- a. all transport or delivery costs;
 - b. costs of disassembly and assembly;
 - c. travel and accommodation expenses.
- 12.5. The client must in all cases offer the contractor the opportunity to remedy any defect or to execute the operation again.
- 12.6. The client may only invoke the warranty once it has satisfied all its obligations to the contractor
- 12.7. 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.

- 12.8. a. 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 are given;
 - the pre-treatment has not been carried out or approved by the contractor;
 - 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 client or by third parties.

- b. No warranty shall be given if defects are the consequence of:
 - normal wear and tear;
 - injudicious use;
 - a failure to maintain or improper maintenance;
 - physical properties and natural functioning of materials/natural products;
 - installation, assembly, alteration or repair by the client or by third parties;
 - -defects in or unsuitability of goods supplied or prescribed by the client;
 - -defects in or unsuitability of goods or auxiliary materials used by the client;
- c. 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.

12.9. The provisions of paragraphs 2 to 8 of this article shall accordingly apply to any claims by the client based on breach of contract, non-conformity or on any other basis.

12.10. The client may not assign any rights under this article.

Article 13: Obligations in the event of complaint

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

Article 14: Uncollected goods

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

Article 15: Insurance on new construction

- 15.1. 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 client 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 client.
- 15.2. The client 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.

- 15.3. 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 client, and shall remit the remainder to the client.
- 15.4. In the event that the vessel or hull 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 16: Payment

- 16.1. Payment shall be made at the place of the contractor's registered offices or into an account indicated by it.
- 16.2. Unless otherwise agreed, payment shall be effected as follows:
- a. 10% of the agreed price upon instruction
20% of the agreed price on completion of 20% of the works
20% of the agreed price on completion of 40% of the works
20% of the agreed price on completion of 60% of the works
20% of the agreed price on completion of 80% of the works
10% of the agreed price on delivery for sailing/transport.
 - b. in all other cases, within 14 days of the invoice date, but in any event before sailing/transport.
- 16.3. If the client fails to meet its payment obligation, instead of paying the sum of money agreed it will be obliged to comply with any request by the contractor for payment in kind.
- 16.4. The right of the client to set off or suspend amounts it is owed by the contractor is excluded, save in the event of the contractor's bankruptcy or statutory debt rescheduling.
- 16.5. Irrespective of whether the contractor has fully executed the agreed task, everything that is or will be owed to it by the client under the agreement is immediately due and payable if:
- a. a payment deadline has been exceeded;
 - b. an application in bankruptcy or for suspension of payments is made by the client;
 - c. an attachment is levied on the client's goods or claims;
 - d. the client (if a company) is dissolved or wound up;
 - e. the client (if a natural person) applies for statutory debt rescheduling, is placed under guardianship or dies.
- 16.6. If payment is not made within the agreed payment deadline, interest will immediately be due to the contractor. The interest rate is 12% per annum, but is equal to the statutory interest rate if higher. When calculating interest, part of a month is regarded as a whole month.
- 16.7. The contractor is authorised to offset its claims on the client with amounts owed by the client to companies affiliated with the contractor. In addition, the contractor may offset amounts owed to it by the client with liabilities owed to the client by companies affiliated with the contractor. The contractor is also authorised to offset its debts to the client with amounts owed to the contractor by companies affiliated with the client. Affiliated companies are companies belonging to the same group, within the meaning of Article 2:24b of the Civil Code, and participating interests within the meaning of Article 2:24c of the Civil Code.
- 16.8. If payment is not made within the agreed payment deadline, the client will owe the contractor all extrajudicial costs, with a minimum of € 75.
These costs shall be calculated on the basis of the following table (principal sum plus interest):

on the first €3,000,-	15%
on any additional amount up to €6,000, -	10%
on any additional amount up to €15.000,-	8%
on any additional amount up to €60,000,-	5%
on any additional amount up to €60,000,-	3%

The extrajudicial costs actually incurred will be owed if these are higher than they would be according to the above calculation.

- 16.9. If judgment is given in favour of the contractor in legal proceedings, all costs incurred in relation to these proceedings will be borne by the client.

Article 17: Sureties

- 17.1. Irrespective of the agreed payment conditions, upon the first demand of the contractor the client shall provide such security for payment as the contractor deems sufficient. If the client does not comply with this demand within the period set, it will immediately be in default. In that event, the contractor is entitled to terminate the agreement and to recover its loss from the client.
- 17.2. The contractor shall remain the owner of the delivered goods for as long as the client:
- fails or shall fail to comply with his obligations under this or other contracts;
 - has not satisfied claims resulting from a failure to comply with these contracts, such as damages, penalties, interest and costs.
- 17.3. While title to the goods is reserved, the client may not alienate or encumber them outside its normal business operation.
- 17.4. After the contractor has invoked its reservation of title, it may recall the goods. The client shall offer all assistance.
- 17.5. The contractor 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 client, in respect of any person that requires delivery thereof.
- 17.6. If, after the goods have been delivered to the client by the contractor in accordance with the contract, the client has met its obligations, the retention of title will be revived on these goods if the client fails to meet its obligations under any contract subsequently concluded.
- 17.7. By way of exception to the provisions of the preceding paragraphs of this article, the contractor shall endeavour to work on the registration of a vessel, if this is expressly requested in writing by the client, inter alia subject to the condition that adequate security has been provided for payment of the sum due from the client, and hence at the contractor's discretion.
- 17.8. Should the client 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 client. The provisions of Article 14 shall accordingly apply.

Article 18: Termination of the contract

If the client 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 by mutual consent. In that event, the contractor is entitled to compensation for any financial damages, such as any loss suffered, lost earnings and costs incurred.

Article 19: Applicable law and competent court

- 19.1. Dutch law shall apply.

- 19.2. The Vienna Sales Convention (CISG) shall not apply, nor shall any other international regulation the exclusion of which is permitted
- 19.3. Only the Dutch civil court in the place of the contractor's registered office shall be competent to hear any disputes, unless this conflicts with mandatory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.