

NJI TERMS AND CONDITIONS OF DELIVERY

General terms and conditions of contract, delivery and payment, issued by the NJI
(Nederlandse Jachtbouw Industrie)

[Dutch Yacht-Building Industry],

a Metaalunie trade group, having its registered business offices in Nieuwegein,
filed at the Registry of the District Court in Utrecht on 20/03/2003 under number 03/70

Issued by the NJI, PO 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 trade group, to all agreements they enter into and to all agreements that may be the result thereof and to other legal relationships with NJI members, in particular such as relate to purchase and sale, construction, alteration, repair or maintenance of vessels (and the relevant components). The provider/supplier shall be the NJI member utilising these terms and conditions. The latter shall be referred to as the contractor or seller. The other party shall be referred to as the customer or buyer.
- 1.2. These terms and conditions may only be used by members of Metaalunie's NJI trade group.
- 1.3. The standard terms and conditions of the customer shall not apply and are expressly rejected.

Article 2: Offers

- 2.1. All offers are made without engagement.
- 2.2. Should the customer provide the contractor with information, plans etc., the contractor shall be entitled to assume the accuracy thereof and shall base its offer thereon.
- 2.3. The prices specified in the offer are based on transfer of title after commencement of operations and test voyage (when so agreed) ex contractor's works, in accordance with Incoterms 2000. Prices shall be excluding sales tax and packaging, unless specified otherwise.
- 2.4. If its offer is not accepted, the contractor shall be entitled to charge the customer for all costs the former incurs for the submission of its offer.
- 2.5. The contractor shall be entitled, unless expressly agreed otherwise, to charge the customer for costs over and above the price connected with handling, assembly, sampling, removal, storage, transportation and destruction of materials, waste, residue and the like.

Article 3: Intellectual property rights

- 3.1. Unless agreed otherwise, the contractor shall retain the copyright and all industrial property rights to offers it issues and to designs, specifications, illustrations, plans, sketches, (pilot) models, software etc. that it provides.
- 3.2. The rights to the information specified under Paragraph 1 shall remain the property of the contractor, regardless of whether the customer is charged for the production thereof. The said information must not be reproduced, used or displayed to third parties without the express permission of the contractor. In the event of breach of this provision, the customer shall be obliged to pay the contractor a penalty of 10% of the purchase price value of the vessel, with a minimum of Euro 25,000. The said penalty may be claimed under law in addition to losses.
- 3.3. The customer must return on demand the information provided to it, as specified under Paragraph 1, within the period of time set by the contractor. In the event of breach of this provision, the customer shall be obliged to pay the contractor a penalty of Euro 1,000 per day. The said penalty may be claimed under law in addition to losses.

Article 4: Recommendations, designs and materials

- 4.1. The customer shall not be entitled to invoke rights to recommendations and information it has received from the contractor if the said recommendations and information are not directly related to the order.
- 4.2. The customer shall be responsible for the plans and calculations made by it or on behalf of it and for the functional suitability of materials prescribed by it or on behalf of it.
- 4.3. The customer shall indemnify the contractor against any third party claims with regard to the use of plans, calculations, samples, models and the like, provided by or on behalf of the customer.

- 4.4. The customer shall guarantee that the materials and components supplied by it or on behalf of it comply with the requirements specified in or arising from the Pleasure Craft Act, and other laws and regulations.

- 4.5. If the customer performs work itself, it shall be obliged to comply with the requirements specified in or arising from the Pleasure Craft Act, or other laws and directives. The customer must follow the contractor's instructions in this respect.

Article 5: Delivery period

- 5.1. The approximate delivery period shall be laid down by the contractor.
- 5.2. The delivery period shall be set under the anticipation that the contractor is able to continue to work as foreseen at the time of the offer and that the materials required are delivered to it on time.
- 5.3. The delivery period shall commence when agreement has been reached about all the technical details, when all the required details, final plans etc. are in the contractor's possession, when the agreed (part) payment has been received and when the terms and conditions required for performance of the order have been met.
- 5.4.
 - a. Where circumstances arise other than those known to the contractor when setting the delivery period, the contractor shall be entitled to extend the delivery period by the time required to perform the order in view of the said circumstances. In the event that it proves impossible to fit the work into the contractor's schedule, the work shall be completed as soon as the contractor's schedule so allows.
 - b. In the event of additional work, the delivery period shall be extended by the time required to supply/have supplied the necessary materials and components and to perform the additional work. Where it proves impossible to fit the additional work into the contractor's schedule, the work shall be completed as soon as the schedule so allows.
 - c. In the event of suspension of obligations by the contractor, the delivery period shall be extended by the duration of the said suspension. Should it prove impossible to fit the continuation of the work into the contractor's schedule, the work shall be completed as soon as the schedule so allows.
 - d. In the event of weather conditions preventing work from being performed, the delivery period shall be extended by the delay caused by the said weather conditions.
- 5.5. When it is likely that the delivery period will be exceeded, the contractor shall notify the customer, specifying reasons and (if possible) indicating the extent by which the delivery period is likely to be exceeded.
- 5.6. Under no circumstances shall exceeding the agreed delivery period provide entitlement to losses, unless this is agreed in writing.

Article 6: Transfer of risk and trade-in

- 6.1. Upon purchase, transfer of title shall be performed after commencement of operations and test voyage (if this has been agreed) ex contractor's works, in accordance with Incoterms 2000; the risk for the items shall pass to the buyer at the point in time that the seller places the items at the buyer's disposal.
- 6.2. Notwithstanding the provisions of the previous Paragraph, the customer and contractor may agree on the contractor being responsible for transportation. In such an event, the risk of storage, loading, transportation and unloading shall continue to lie with the customer. The customer may take out insurance against the said risks.
- 6.3. Also in the event that the seller installs and/or assembles the items purchased, the risk for the items shall pass to the seller at the point in time that the buyer makes the items available to the seller in the seller's business premises or at another agreed location.
- 6.4. In the event of a trade-in upon the purchase or new construction of a vessel or hull, used vessel or other item when the buyer, in expectation of delivery of the new

item, continues to use the item to be traded in, the buyer shall retain the risk for the item for trade-in up to such point in time as it has placed the said item at the seller's disposal.

Article 7: Price change

- 7.1 If four months pass from the date on which the agreement was concluded and performance thereof has not yet been completed by the contractor, an increase in cost-determining factors may be passed on to the customer.
- 7.2 Payment of the price increase as specified in Paragraph 1 shall be performed at the same time as payment of the principal sum or the final instalment.
- 7.3 If commodities are delivered by the customer and the contractor is ready to use the said commodities, the contractor may charge a maximum of 20% of the market price of the commodities delivered.

Article 8: Impracticality of the order

- 8.1 The contractor shall be entitled to suspend performance of its obligations if temporarily prevented from performing the said obligations by circumstances beyond its control, which could not have been anticipated at the time of conclusion of the agreement.
- 8.2 Circumstances which could not have been anticipated by the contractor and which are beyond its control shall betaken to refer, *inter alia*, to when suppliers and/or subcontractors of the contractor do not fulfil their obligations or do not fulfil their obligations on time for reasons of weather, earthquakes, fire, loss or theft of equipment, loss of materials for processing, road-blocks, strikes or work stoppages and import restrictions or trade restrictions.
- 8.3 The contractor shall not be authorised to suspension if performance is permanently impossible or if temporary impossibility of performance has lasted for more than six months. The agreement can then be dissolved as regards that part of the obligations not performed. The contracting parties shall in this case not be entitled to compensation for the loss sustained or to be sustained as a consequence of the dissolution.
- 8.4 If the contractor has partially performed its obligation, it shall be entitled to a pro rata share of the agreed price by virtue of the work already performed and the costs incurred.

Article 9: Modifications to the work

- 9.1 Modifications to the work shall in any event lead to additional work or reductions in work in the event that:
- there is a modification in the design or specifications;
 - the information provided by the customer does not correspond to reality;
 - there is a deviation of more than 10% in the estimated quantities.
- 9.2 Additional work shall be charged on the basis of the value of the price-determining factors applicable at the point in time when the additional work is performed. Reductions in work shall be offset on the basis of the value of the price-determining factors applicable at the point in time of conclusion of the agreement.
- 9.3 If the balance of the reductions in work exceeds that of the additional work, the contractor may charge the customer 10% of the difference in the balances in the final settlement. This provision shall not apply for reductions in work brought about at the contractor's request.
- 9.4 If additional agreements have important consequences with regard to the price, delivery time, weight, engine power or speed, the contractor shall notify the customer thereof.
- 9.5 Only such work as the contractor should reasonably have foreseen shall constitute part of an alteration or repairs agreement. If the scope of the work turns out to be greater than foreseen, the contractor shall discontinue the work and discuss with the customer about whether or not to continue the said work and in what way. The customer shall notify the contractor of its decision within 14 days of the said discussion. The contractor shall at the very least be entitled to payment of work already performed and costs incurred.

Article 10: Performance of the work

- 10.1 The contractor shall provide the customer with a reasonable opportunity to inspect the work during normal working hours. If the customer has this inspection performed by a third party (to be appointed by mutual agreement), the former shall notify the contractor thereof in writing, stating the name and qualifications of the said third party.
- 10.2 The customer shall be responsible for all losses caused by loss, theft, fire or deterioration of equipment, materials and other items belonging to the contractor to be found at the location where the work is performed.

- 10.3 Should the customer not perform its obligations as described in the Paragraphs above and delay is caused in the performance of the work, the work shall be completed as soon as the contractor's schedule so allows. The customer shall also be liable for all resulting losses incurred by the contractor.

Article 11: Completion of the work

- 11.1 The work shall be considered as completed when:
- the customer approves the work / vessel;
 - the work / vessel is brought into use by the customer. If the customer brings part of the work /vessel into use, then the said part shall be considered as having been completed;
 - the contractor has provided the customer with the opportunity to inspect / have inspected the work or the vessel and the customer has not made use of the said opportunity within 14 days of having been notified of the possibility to perform an inspection.
 - the customer does not approve the work due to minor defects or missing components which can be manufactured or subsequently delivered within 30 days and which do not prevent bringing the work into use.
- 11.2 Should the customer not approve the work, it shall be obliged to notify the contractor thereof in writing, stating reasons.
- 11.3 Should the customer not approve the work / vessel, it shall provide the contractor with the opportunity to re-complete the work. The provisions of this Article shall then apply once again.

Article 12: Items not taken up

If items are not taken up after expiry of the delivery period, the said items shall remain at the disposal of the customer. Items not taken up shall be stored, moored or salvaged at the expense and risk of the customer. Once the items have been detained for 3 months, the contractor shall, following written notice of default, be entitled to sell / have sold for and on behalf of the customer, provided the proceeds are paid out to the customer, deducting the claims due to the contractor, including storage costs.

Article 13: Liability

- 13.1 The contractor shall be liable for losses sustained by the customer which are the direct and exclusive consequence of a failure for which the contractor is responsible. However, only losses for which the contractor is insured, or should in all reasonableness be insured, shall be eligible for compensation.
- 13.2 The following shall not be eligible for compensation:
- direct trading loss, including for example loss or damage due to business standstills and loss of profit;
 - related loss - related loss shall be taken to refer, *inter alia*, to loss caused by or during the performance of the work undertaken to items worked on or items located in the vicinity of the place where the work is being performed;
 - loss caused through the intent or deliberate recklessness of auxiliaries.
- 13.3 The customer shall indemnify the contractor against all third-party product liability claims caused by a defect in a product supplied by the customer to a third-party and (partly) consisting of products and/or materials supplied by the contractor.

Article 14: Warranty

- 14.1 The warranty period for a new vessel or hull shall be 12 months from completion. For repairs and maintenance a warranty period of 3 months from completion of the work shall apply. Emergency repairs shall not be covered by any form of warranty.
- 14.2 The contractor shall guarantee that it is supplying a vessel or hull that complies with the agreement concluded. This shall also apply for the relevant items of equipment and fixtures and fittings. The contractor shall also guarantee that the vessel or hull has all the properties which might reasonably be required for normal use, unless a different use has been expressly agreed. The warranty shall not include items supplied or prescribed by the customer.
- 14.3 The contractor shall guarantee that preserving-related work is performed according to the requirements of good craftsmanship. No warranty shall be provided in the following cases:
- according to the principles of good craftsmanship, further preliminary and/or follow-up treatment was required and this has been made known, but no order has been issued for this;
 - the preliminary treatment was not performed by the contractor;
 - the material for preserving is in such a condition that it is impossible to put right the defects present, including corrosion, roughness, colour differences, finish, etc, within the terms of the agreement concluded in this respect.
 - the preserving is damaged by the customer or third parties.
- 14.4 With regard to both the items supplied and the work performed by third parties, the warranty obligations of the supplier(s) shall apply (in extent and duration), if the customer and contractor have so agreed expressly in writing. If the customer has had the opportunity to inspect the contents of the manufacturer's warranty, the latter shall take the place of the warranty under the terms of this Article.

- The contractor shall be acquitted in this respect of its guarantee obligation through transfer of any claim against the supplier(s).
- 14.5 Should it transpire that the delivery, repairs or maintenance work are defective, the contractor shall be entitled to:
- replacement of the defective component(s);
 - repair of the defective item;
 - credit from the customer for a pro rata share of the bill.
- Repair work shall be performed in the contractor's yard and shall be completed within a reasonable length of time. Travel expenses, accommodation expenses and transport expenses shall be borne by the customer.
- The customer may only allow a third party to perform essential repairs having obtained written permission from the contractor. The contractor shall, in such an event, repay the costs to the customer, up to a maximum of the amount that it would have cost the contractor to perform the repairs in its own yard.
- 14.6 Unless expressly agreed otherwise, the following tolerances shall apply for new construction:
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| 2% | length over stern; |
| 2% | width over the midship section; |
| 10% | draught; |
| 2% | headroom; |
| 2% | maximum vertical clearance of the fixed parts; |
| 10% | weight; |
| 10% | speed calculated with standard equipment and a draught in line with the Plimsoll line. |
- The above definitions comply with the harmonised ISO standard '8666 – Small Craft – Principal Data', as laid down in November 2002
- 14.7
- a. No guarantee shall be provided for defects caused by:
 - normal wear and tear;
 - improper use;
 - non-performance or incorrect performance of maintenance;
 - installation, assembly, alteration or repair by the customer or by third parties.
 - b. No guarantee shall be provided for items delivered which were not new at the time of delivery.
- 14.8 The customer must at all times allow the contractor the opportunity and a reasonable period of time to rectify any defect.
- 14.9 The warranty shall only apply if the customer has complied with all its obligations towards the contractor (both financial and otherwise), or has provided sufficient security for the said obligations.
- 14.10 Work, including inspection work, performed after wrongful warranty claims by the customer, shall be charged to the customer at the standard tariffs applied by the contractor at the time of performance and the present terms and conditions shall apply for the performance thereof.

Article 15: Claims

With regard to claims relating to invoices or a defect in performance, the customer shall lose its entitlement to issue a warranty claim if it has not submitted a claim to the contractor in writing within 14 days of receiving the invoice or of when it discovered the defect or ought in all reasonableness to have discovered the defect.

Article 16: Insurance for new construction

- 16.1 Up to the date of completion of the newly constructed vessel or hull, the contractor shall, as the policy-holder, but also on behalf of the customer as the insured, take out insurance for the said vessel or hull and the required materials and fittings for the value represented by these items and up to a maximum of the full sum of the agreed purchase price or contract price. Insurance proceeds shall be paid out to the contractor who is to be the beneficiary under the terms of the contract of insurance. The insurance premium and premium tax shall be charged to the customer (unless agreed otherwise).
- 16.2 The customer hereby undertakes towards both the contractor and the insurer with whom the aforementioned insurance policy is to be placed, not to submit/have submitted a claim for payment from the insurer if and to the extent that the contractor makes similar claims towards the insurer with respect to the same incident.
- 16.3 The contractor shall use the insurance proceeds first and foremost for repairing the damage for which the payment has been made. The contractor shall be entitled to offset any surplus with what it is still entitled to claim from the customer under the terms of this agreement and shall pay out the balance to the customer.

- 16.4 If the insurer declares the vessel or hull a total loss, the agreement shall be dissolved *ipso jure*. The contractor shall then be entitled to make use of the right specified in the second sentence of Article 16 Paragraph 3.

Article 17: Payment

- 17.1 Payment shall be made at the contractor's place of business or into an account designated by the contractor.
- 17.2 Unless otherwise agreed, payment shall be made as follows:
- a. 10% of the agreed price upon commissioning the order
 - 20% of the agreed price after 20% of the building time
 - 20% of the agreed price after 40% of the building time
 - 20% of the agreed price after 60% of the building time
 - 20% of the agreed price after 80% of the building time
 - 10% of the agreed price upon completion before departure.
 - b. in all other cases within 30 days of the billing date.
- 17.3 Notwithstanding the agreed terms and conditions of payment, the customer shall be obliged to provide, at the contractor's request, sufficient security for payment in the opinion of the latter. Should the customer not comply with this requirement within the time limit set, it shall immediately be considered in default. In such a case, the contractor shall be entitled to dissolve the agreement and to recover its losses from the customer.
- 17.4 The customer shall not be entitled to offset its claims from the contractor, unless the contractor goes bankrupt.
- 17.5 The full action for payment shall be payable on demand if:
- a. a payment deadline is exceeded;
 - b. the customer goes into bankruptcy or applies for a moratorium on payments;
 - c. items or claims belonging to the customer are seized;
 - d. the customer (company) is dissolved or wound up;
 - e. the customer (natural person) is placed under guardianship or dies.
- 17.6 Should payment not have been made within the agreed term of payment, the customer shall owe immediate interest to the contractor. The interest shall be 10% per annum, but shall be equal to the statutory rate of interest where this is higher than 10% per annum. Part of a month will count as a whole month when calculating the interest due.
- 17.7 Should payment not have been made within the agreed term of payment, the customer shall owe the contractor all extrajudicial costs, starting from a minimum of 50 Euros.

The costs are calculated on the basis of the following table:

on the first 3,000 Euros	15%
on the excess up to 6,000 Euros	10%
on the excess up to 15,000 Euros	8%
on the excess up to 60,000 Euros	5%
on the excess over 60,000 Euros	3%

If the extrajudicial costs actually incurred are higher than using the above calculation, the costs actually incurred are due.

- 17.8 In the event of it being found in favour of the contractor in judicial proceedings, all the costs incurred by the latter in connection with the said proceedings shall be charged to the customer.

Article 18: Retention of title and security right

- 18.1 Following delivery the contractor shall retain the title to the items delivered should the customer:
- a. fail or be set to fail to discharge its obligations under the terms of the present agreement or other similar agreements;
 - b. not have paid or be set not to pay for work performed or to be performed under the terms of such agreements;
 - c. not have satisfied claims arising from non-performance of the aforementioned agreements, such as losses, penalty, interest and costs.
- 18.2 Where a retention of title exists on items delivered, the customer may not encumber the said items outside the context of its normal activities.
- 18.3 After invoking its retention of title, the contractor may take back the items delivered. The customer shall allow the contractor to enter the place where the said items are located.
- 18.4 In all cases, the materials and accessories intended for the performance of the work shall be under the customer's joint-ownership if to be found in the contractor's yard and if the proportionate value has been paid by the customer on the total purchase price or contract price. If what is due to the contractor is not satisfied in full, the contractor shall at all times, notwithstanding its other rights, retain the right of pledge thereon, as well as on the insurance proceeds for compensation of losses.

- 18.5 The contractor shall be entitled to retain the entire vessel or hull, including equipment, fixtures and fittings and other accessories, until such time as the customer has paid the total amount owed, including interest and costs.
- 18.6 By way of an exception to the provisions of the previous Paragraphs of the present Article, the contractor shall attempt to assist with the registration of a vessel if the customer expressly so requests in writing, *inter alia* under the condition, but not restricted to the condition, that a sufficient alternative security should be provided, at the discretion of the contractor, for payment of the sum owed by the customer.
- 18.7 If the customer does not complete its obligations and the vessel or hull is already registered, the former shall be obliged to provide all assistance for the cancellation of the said registration. Any costs related to this shall be borne by the customer. The provisions of Article 12 shall apply *mutatis mutandis*.

Article 19: Dissolution

Should the customer wish to dissolve the agreement despite there not having been a breach of contract on the part of the contractor, and provided the contractor approves, the agreement shall be dissolved by mutual consent. In such an event, the contractor shall be entitled to compensation for all financial detriment, such as losses sustained, loss of profits and costs incurred.

Article 20: Applicable law and jurisdiction clause

- 20.1 Dutch law shall apply.
- 20.2 The Vienna Convention on Contracts for the International Sale of Goods (C.I.S.G.) shall not apply and neither shall any other international ruling exclusion of which is permissible.
- 20.3 Only the civil court that has jurisdiction in the place of establishment of the contractor may take cognisance of disputes, unless this would be contrary to the express requirements of mandatory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules governing jurisdiction.
- 20.4 The contracting parties may agree on another form of dispute resolution, such as arbitration or mediation.