

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 January 2023 and has been deposited under number 17/2023 at the Midden-Nederland court registry, Utrecht.
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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.
- c. The execution of a work: the contract under which the entrepreneur performs works against payment, possibly supplying goods.
- d. Purchase: the contract under which the entrepreneur exclusively delivers one or more goods against payment.
- e. Additional work: works and goods which the consumer wishes to add to the contractual works and which result in additional payment beyond the contractual price.
- f. Reduced work: work and goods which the consumer wishes to exclude from the contractual work and which lead to a reduction in the contractual price.

Article 2: Applicability

- 2.1 These conditions apply to all quotations made by the entrepreneur to the consumer and to all contracts it concludes with the consumer for the delivery of goods, the execution of works or any combination thereof.
- 2.2 In the event of any conflict between the substance of the contract concluded between the contractor and the consumer and these conditions, the contract provisions will take precedence.
- 2.3 Only members of the NJI may use these terms and conditions. If an entrepreneur is not a member of NJI at the time these conditions are declared applicable, they shall remain inapplicable.

Article 3: Quotation

- 3.1 The entrepreneur's quotation is non-binding. The entrepreneur has the right to withdraw its quotation up to two working days after receiving acceptance.
- 3.2 The entrepreneur shall make a quotation exceeding €500 in writing or by electronic means unless circumstances of an urgent nature make this impossible.
- 3.3 The quotation contains a description of the good(s) to be delivered, the works to be executed, or both. The quotation shall be sufficiently specific to enable the consumer to properly assess the offer.
- 3.4 Where works are to be executed, the quotation shall also mention the time or period within which the work can be commenced, an indication of the duration of the work and a fixed or probable date for delivery.
- 3.5 If works are to be executed, the quotation also indicates the price of materials and the method used to determine the price of the work, with a choice of 'fixed contract price' or 'time and expense':

- a. If a fixed contract price 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.

Article 4: Drawings, technical descriptions, designs and calculations

- 4.1 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 without its permission.
- 4.2 If no order is placed, the consumer must return the documents mentioned in the previous paragraph to the entrepreneur within 14 days of a request to that effect at the consumer's expense and risk.

Article 5: Acceptance of the quotation

- 5.1 The consumer shall accept the entrepreneur's quotation preferably, and where possible, in writing or by electronic means.
- 5.2 If the consumer accepts the quotation by electronic means, the entrepreneur shall confirm receipt of the consumer's order by electronic means. If the consumer accepts the quotation orally, the entrepreneur shall confirm the order in writing or by electronic means.

Article 6: Entrepreneur's obligations when executing work

- 6.1 The entrepreneur shall execute the work properly, thoroughly and in accordance with the contract provisions. The work shall be executed during the working hours customary for the entrepreneur, unless otherwise agreed.
- 6.2 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.

Article 7: Entrepreneur's obligation to warn

- 7.1 The entrepreneur will point out the following defects and errors to the consumer:
 - 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.
- 7.2 The obligation to warn referred to in the previous paragraph only applies if the defects and errors can reasonably be known to the entrepreneur, are relevant to the execution of the contract, become apparent to the entrepreneur before or during the execution of the contract and where the entrepreneur must be assumed to have expert knowledge of such defects and errors.

Article 8: Losses at the consumer's risk

- 8.1 The consumer shall bear the risk for any loss caused by:
 - 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; drawings and specifications.

8.2 The above in no way detracts from the entrepreneur's obligation to warn the consumer under Article 7.

Article 9: Consumer's obligations during the execution of works

- 9.1 The consumer shall give the entrepreneur the opportunity to conduct the work.
- 9.2 The consumer shall ensure that the entrepreneur receives in good time any approvals (such as permits and releases) and information necessary to carry out the work.
- 9.3 If so agreed between the parties, the consumer shall supply the connection facilities for energy, water and internet available to him and necessary for the work. The costs of electricity, gas and water shall be met by the consumer.
- 9.4 The consumer shall ensure that third party works or goods deliveries which are no 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.
- 9.5 If the commencement or the progress of the work is delayed by the circumstances described in paragraphs 1 to 4 of this Article, the consumer shall recompense the entrepreneur for the losses and costs incurred as a result, insofar as these circumstances can be ascribed to him.
- 9.6 The consumer guarantees that the materials and parts supplied or stipulated by him and the work he himself has carried out meet legal requirements, in particular the Pleasure Craft Law.

Article 10: Guide price and contract variations

- 10.1 If the entrepreneur has given a guide price, this may be exceeded by a maximum of 10%, unless the entrepreneur has warned the consumer of an overspend as early as possible, so that the consumer still has the opportunity to reduce or simplify the works. The entrepreneur will cooperate in this within reason.
- 10.2 If the parties have agreed a contract price, the consumer can ask the entrepreneur for contract variations after the contract has been concluded.
- 10.3 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.
- 10.4 If the consumer requests additional works, 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.

- 10.5 The entrepreneur and the consumer shall agree in advance in writing on contract variations for a total amount exceeding 10% of the price of the works, unless there are urgent circumstances.
- 10.6 Despite the absence of written instructions, the consumer or the entrepreneur may claim settlement of any contract variations. In that event, proof of the instructions for contract variations lies with the party making the claim.

Article 11: Price changes

- 11.1 If the entrepreneur has agreed with the consumer on a delivery period of not more than 3 months and there is an increase in cost-determining factors after the conclusion of the contract, the entrepreneur has the right to increase the price. Should the entrepreneur increase the price, the consumer has the right to dissolve the contract, with no ensuing right to compensation for damages for the consumer.
- 11.2 If the entrepreneur has agreed with the consumer on a delivery period of more than 3 months and there is an increase in cost-determining factors after the conclusion of the contract, the entrepreneur has the right to increase the price. Should the entrepreneur increase the price, the consumer has no right to dissolve the contract.
- 11.3 The entrepreneur may pass on changes in taxes, excise duties and other government levies to the consumer.

Article 12: Delivery and transfer of risk on execution of the works

- 12.1 The work is delivered when the entrepreneur has notified the consumer that the work is complete and the latter has accepted the work.
- 12.2 The work is deemed to have been accepted when:
- at least 14 days have passed after the entrepreneur had notified the consumer, in writing or by electronic means, that the work is complete and the latter has failed 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 accepted;
 - the consumer does not approve the work on the grounds of non-substantial defects and/or non-functioning 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.
- 12.3 Acceptance takes place at the entrepreneur's yard. After acceptance, the work is at the consumer's risk.

Article 13: Delivery period and risk transfer upon purchase

- 13.1 The entrepreneur shall deliver the goods no later than 30 days after the conclusion of the contract. The parties may make alternative arrangements in this regard.
- 13.2 When the entrepreneur delivers the good or has it delivered to the consumer, the good is at the consumer's risk as soon as he or someone he has designated who is not the carrier has taken delivery.

13.3 Where the consumer has designated a carrier and the entrepreneur does not himself offer the choice of this carrier, the risk passes to the consumer once the carrier has received the good.

Article 14: Uncollected goods

14.1 The consumer is obliged, after the expiry of the delivery time or the execution period, to take delivery of the good or goods that are the subject of the contract at the place agreed.

14.2 The consumer must cooperate in all ways which can reasonably be required of him to enable the entrepreneur to deliver the goods.

14.3 Uncollected 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).

14.4 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 15: Completion file

The entrepreneur is not obliged to submit a completion file to the consumer for the work performed as provided for in the Building Quality Assurance Act (Wkb). The parties may make alternative arrangements in this regard.

Article 16: Force majeure

16.1 If fulfilment of an obligation under the contract is temporarily impossible for one of the parties for a reason beyond its control, that party has the right to suspend the performance of its obligations for that period.

16.2 If fulfilment of an obligation under the contract is permanently impossible for one of the parties for a reason outside its control, that party is entitled to terminate the execution of the work against reasonable compensation for the costs incurred by the other party.

Article 17: Insurance on new construction

17.1 Unless the parties agree otherwise, the entrepreneur shall, until the acceptance date of the new-build vessel or hull, 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 at 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.

17.2 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 on that insurer on the same grounds.

- 17.3 The entrepreneur shall in the first instance apply the insurance payments to repairing the damage in respect of which the payment was made. The entrepreneur may offset any surplus amount against any claims it may still have under this contract against the consumer, and shall remit the remainder to the consumer.
- 17.4 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 paragraph 3 of this Article.

Article 18: Payment

- 18.1 Payment shall be made at the entrepreneur's registered offices or into an account indicated by the entrepreneur.
- 18.2 Payment due from the consumer to the entrepreneur shall take place at the latest upon acceptance/delivery, but before departure/transport.
- 18.3 The parties may agree to payment by instalments. If payment by instalments is agreed and the entrepreneur fails to meet its obligations for the continued provision / execution of the work, the consumer is entitled to suspend these instalments.
- 18.4 For purchases, the entrepreneur has the right to require the consumer to make an advance payment of up to 50% of the price.

Article 19: Final account on execution of works

- 19.1 No later than upon acceptance, the entrepreneur shall submit the final account to the consumer.
- 19.2 Where the parties have adopted a fixed contract sum pricing method, the final account shall contain a clear description of the original instructions and any contract variations requested.
- 19.3 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, hourly rates and miscellaneous 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.

Article 20: Late payment

- 20.1 Should the consumer not make payment on time, he shall be assumed to be in default without further notice.
- 20.2 If payment is not made by the due date, the entrepreneur may charge interest 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 Dutch Civil Code.
- 20.3 After the expiry of the payment term, the entrepreneur shall send the consumer a cost-free reminder. This payment reminder shall state that the consumer still has an opportunity to pay within fourteen days from the day after the payment reminder has been delivered and the amount of the collection costs the consumer will owe if (full) payment is not made within that period. The extent of the collection costs shall be in accordance with the "Decree on Collection Costs".

Article 21: Suspension

If the consumer fails to meet his obligations, the entrepreneur is entitled to suspend an equivalent part of its corresponding obligations. The entrepreneur may only do so after issuing a demand, in writing by electronic means, requiring the consumer to meet his obligations. This provision is without prejudice to the entrepreneur's right to the payment of costs, damages and interest.

Article 22: Intellectual property rights

- 22.1 The entrepreneur shall be designated as the creator, designer or inventor, respectively, of the works, models or inventions created under the contract. Therefore, the entrepreneur has the exclusive right to apply for registration of a patent, trademark or design.
- 22.2 The entrepreneur transfers no intellectual property rights to the consumer when performing the contract.
- 22.3 When the good to be delivered by the entrepreneur includes computer software, the source code is not transferred to the consumer. The consumer acquires a non-exclusive, worldwide and perpetual user licence to the computer software solely for the purpose of normal use and proper operation of the good. The consumer may neither transfer the licence nor grant a sub-licence. Should the consumer sell the good to a third party, the licence automatically passes to the acquirer.

Article 23: Obligations in the event of complaint

- 23.1 The consumer shall report any defects to the entrepreneur within an appropriate time after he has discovered, or reasonably should have discovered, such defects. For purchases, notification must be given within a reasonable time of discovery, with notification within two months of discovery being considered timely.
- 23.2 The notification referred to in the first paragraph shall preferably be issued in writing or by electronic means.

Article 24: Compliance and warranty

- 24.1 The entrepreneur shall deliver a good that complies with the contract provisions. The good must also:
 - a. be suitable for the purposes for which goods of the same type are normally used.
 - b. if applicable: correspond to a sample or model that the entrepreneur has made available to the consumer before purchase.
 - c. be delivered with the accessories that the consumer may reasonably expect.
 - d. be present in the quantity and possess the characteristics that are normal for the same type of goods and which the consumer can reasonably expect given the nature of the good.unless the parties have lawfully agreed that the good shall diverge from the requirements of points a to d above.
- 24.2 Should any divergence from what has been agreed become evident within one year of acceptance (as referred to in Article 12 of these conditions) or delivery (as referred to in Article 13), it will be assumed that the good did not comply with the contract on acceptance or delivery. In this event the entrepreneur shall remedy the defect without charge, unless it can demonstrate that the goods did comply with the contract at the time of acceptance or delivery.
- 24.3 The guarantee mentioned in paragraph 2 shall expire if:
 - a. defects are the consequence of normal wear and tear;

- b. defects are the consequence of the physical properties and natural functioning of materials and natural products, including corrosion and weathering;
 - c. defects are caused by a fault, improper use or neglect by the consumer or his successor in title, or by an external cause;
 - d. defects that are the consequence of a failure to maintain or improper maintenance;
 - e. defects that 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.
- 24.4 No warranty shall be given on preservation works carried out in the following cases:
- a. further pre- or post-treatment in accordance with good professional practice was necessary and was made known, but for which no instructions are given;
 - b. the pre-treatment has not been carried out or approved by the entrepreneur;
 - c. 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;
 - d. the preservation work is damaged by the consumer or by third parties.
- 24.5 No warranty shall be given on:
- a. the testing and repair of the consumer's goods;
 - b. materials and parts supplied or prescribed by the consumer;
 - c. works carried out by the entrepreneur on behalf of the consumer using goods that the latter has provided.
- 24.6 Unless otherwise agreed in writing, the following tolerances are allowed in new constructions:
- 2% length over the stern;
 - 2% maximum width;
 - 10% draught;
 - 2% height;
 - 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 2020.

Article 25: Sureties

- 25.1 The entrepreneur shall remain the owner of the goods for as long as the consumer:
- a. has not fulfilled its obligations arising under any contract with the entrepreneur;
 - b. has not satisfied claims resulting from a failure to comply with these contracts, such as damages, penalties, interest and costs.
- 25.2 While title to the goods is reserved, the consumer may not alienate or encumber them. This clause has effect under the law of property.
- 25.3 After the entrepreneur has invoked its reservation of title, it may recall the goods. The consumer shall offer all assistance.
- 25.4 The entrepreneur has a right of retention 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 requiring release thereof.

- 25.5 By way of exception to the provisions of the preceding paragraphs of this Article, the entrepreneur shall collaborate on the registration of a vessel, if this is requested in writing by the consumer, subject to the condition that adequate alternative security has been provided for payment of the sum due from the consumer, at the entrepreneur's discretion.
- 25.6 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 associated costs incurred shall be borne by the consumer.

Article 26: Termination or cancellation of the contract

The consumer is not empowered to terminate or cancel the contract unless the entrepreneur agrees. If it agrees, it may attach conditions, such as the reimbursement of already incurred costs, working hours and profit that the entrepreneur might have expected to incur had the contract been performed in full.

Article 27: Applicable law and competent court

- 27.1 Dutch law shall apply to the contract.
- 27.2 Disputes shall be brought exclusively before the Dutch court competent under Dutch law.

Article 28: Applicable law and competent court

- 28.1 Dutch law applies.
- 28.2 The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation that may be excluded.
- 28.3 The Dutch civil court with jurisdiction in the Contractor's place of business is authorised to take cognisance of any disputes. The Contractor may deviate from this rule governing jurisdiction and rely on the statutory rules governing jurisdiction instead.

These Terms and Conditions constitute a comprehensive translation of the Dutch version of the Terms and Conditions of the Metaalunie as filed with the Registry of the Court of Rotterdam and 1 January 2019. The Dutch version will prevail in the explanation and interpretation of this text.