

NJI CONDITIONS

General contracting, delivery and payment conditions of the Metaal Unie association Nederlandse Jachtbouw Industrie This text is applicable from 30 march 2010 and is lodged under number 73/2010 at the Registry of the District Court of Utrecht.

This is a publication of the Metaal Unie, P.O. box 2600, 3430 GA Nieuwegein.
© Metaalunie

Article 1: Applicability

- 1.1. These conditions are applicable to all tenders made by NJI members, to all contracts which they conclude and to all contracts which may be the consequence thereof and other legal relationships with NJI members, in particular those relating to the sale and purchase, construction, repair or maintenance of vessels (and their associated parts) and to all further contracts which may be the consequence thereof.
- 1.2. The provider/contractor is the NJI member using these conditions. He shall be referred to as the contractor or seller. The counterparty shall be referred to as principal or purchaser.
- 1.3. The consumer is a natural person not acting in the exercise of any profession or business.
- 1.4. In the event of conflict between the contract concluded between the contractor and the principal and these general condition, the provisions of the contract shall prevail.
- 1.5. These conditions may exclusively be used by members of the Metaal Unie association NJI.

Article 2: Offers

- 2.1. All offers shall be without obligation
- 2.2. Should the principal provide data, drawings etc. to the provider, the contractor may assume that these are accurate and shall base his offer thereon.
- 2.3. The prices cited in the offer are based on delivery after commissioning and trial - where agreed - from the contractor's yard, 'ex-works' in compliance with Incoterms 2000. Prices exclude purchase tax and packaging unless otherwise stated..
- 2.4. If his offer is not accepted, the contractor shall be entitled to invoice the principal for all costs incurred in preparing the offer.
- 2.5. The contractor shall be entitled, unless otherwise expressly agreed, to invoice the principal for costs related to environmental treatment, collection, sampling, removal, storage, transport and break-up of materials, residues and similar, in addition to the price.

Article 3: Industrial and intellectual property rights

- 3.1. Unless otherwise agreed in writing, the contractor shall retain the copyright and all industrial property rights to his tenders, designs, plans, illustrations, drawings, sketches, prototypes and models, software etc.
- 3.2. The rights to the items listed under paragraph 1 shall remain the property of the contractor regardless of whether the costs of preparation thereof are invoiced to the principal. These items may not be copied, used or shown to third parties without the express prior consent of the contractor. In the event of infringement of this provision the principal shall be liable to pay the contractor a fine in the sum of 10% of the purchase price of the vessel with a minimum of €25,000. This penalty may be claimed in addition to statutory damages.
- 3.3. The principal shall return the items under paragraph 1 at the contractor's first request and within the time stipulated by him. In the event of infringement of this provision the principal shall be liable to pay the contractor a fine in the sum of €1,000 per day. This penalty can be claimed in addition to statutory damages.

Article 4: Advice, designs and materials

- 4.1. The principal may acquire not rights to the advice and information which he receives from the contractor if the same have no direct relationship to the commission.
- 4.2. The principal shall be responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials specified by him.
- 4.3. The principal shall indemnify the contractor against third party claims arising from the use of drawings, calculations, samples, models and similar supplied by or on behalf of the principal.
- 4.4. The principal shall ensure that the materials and parts delivered by him or on his behalf satisfy the requirements stated in or arising from the Pleasure Craft Law and other laws and regulations.
- 4.5. Should the principal himself carry out works, the principal shall satisfy the requirements stated in or arising from the Pleasure Craft Law and other laws and directives. The principal shall follow the instructions of the contractor in this respect.

Article 5: Delivery time

- 5.1. The delivery time shall be established by the contractor on the basis of an estimate.
- 5.2. The delivery time shall be fixed in the expectation that the contractor will be able to work as expected at the time of the offer, and that the necessary materials will be delivered to him in due time.
- 5.3. The delivery time shall be agreed when agreement has been reached over all technical details, when all the necessary information, definitively approved drawings etc. are in the contractor's possession, the agreed (instalment) payment has been received and the necessary conditions for execution of the commission have been satisfied.
- 5.4.
 - a. In the event of circumstances other than those of which the contractor was aware when he fixed the delivery time, or if the contractor observes hidden defects, the contractor may extend the delivery time by the time necessary to fulfil the commission under these circumstances. If the works cannot be fitted into the contractor's schedule, they shall be completed when his schedule so permits.
 - b. In the event of additional work the delivery time shall be extended by the time necessary for the delivery of materials and parts and for the completion of such additional work. If the additional work cannot be fitted into the contractor's schedule, they shall be completed when his schedule so permits.
 - c. In the event of the suspension of his obligations by the contractor, the delivery time shall be extended by the duration of this suspension. If the continuation of the works cannot be fitted into the contractor's schedule, they shall be completed when his schedule so permits.
 - d. In the event that the work is halted due to weather conditions, the delivery time shall be extended by the period of this delay.
- 5.5. If the delivery time is expected to be exceeded, the contractor shall notify the principal of the reasons thereof and shall, if possible, indicate the probable length of such delay.

- 5.6. Under no circumstances shall an exceeded delivery time give rise to any right to damages, unless so agreed in writing.

Article 6: Transfer of risk and exchange

- 6.1. Delivery shall take place after commissioning - if so agreed - from the contractor's yard, 'ex-works' as defined in Incoterms 2000; the risk shall be transferred at the time that the contractor makes the vessel available to the principal.
- 6.2. If on purchase or new construction of a craft or vessel a used vessel or other item is exchanged and the principal continues to make use of this item while awaiting the delivery of the new item, the item for exchange shall remain at the principal's risk until the time that it is in the possession of the contractor.

Article 7: Price amendment

- 7.1. An increase in factors which determine the cost price arising after the conclusion of the contract may be through-invoiced by the contractor to the principal if the performance of the contract is not complete at the time of the increase.
- 7.2. In the event that the principal is a consumer, he shall be entitled to dissolve the contract if the price rises within three months of the conclusion of the contract, except in the case of price amendments arising from changes in the law, e.g. VAT changes.
- 7.3. The payment of price increases under paragraph 1 shall take place at the same time as the payment of the total sum or at the first subsequent payment date.
- 7.4. If goods are supplied by the principal and the contractor is prepared to use them, the contractor may charge for a maximum of 20% of the market price of the goods supplied.

Article 8: Impracticability of the contract

- 8.1. If the contractor cannot comply with the contract as a consequence of circumstances of which the contractor was unaware at the time the contract was concluded, the contractor may:
- a. require the contract to be amended so that it may be performed. Should this substantially amend the obligations, the principal shall be entitled to dissolve the contract subject to the provisions of Article 8.4;
 - b. suspend fulfilment of his obligations should he be temporarily prevented from meeting those obligations by circumstances which could not be anticipated when the contract was concluded and which fall outside his sphere of influence;
- 8.2. Circumstances which could not be anticipated when the contract was concluded and which fall outside his sphere of influence shall include the circumstance that the contractor's suppliers and/or subcontractors fail to meet their obligations or fail to meet them in due time, the weather, earthquake, fire, pandemic, epidemic, loss or theft of tools, loss of materials to be used, road blocks, strikes or walkouts and import or trade restrictions.
- 8.3. The contractor is no longer entitled to suspension if performance of the contract remains impossible or if a temporary impossibility has lasted more than six months. Only after the end of this period can the contract be dissolved in respect of that part of the obligations which remain unfulfilled. In this event the parties have no right to compensation for any existing or future loss as a result of the dissolution.
- 8.4. If the contractor has partially met his obligations, he shall be entitled to a proportional part of the agreed price for work completed and costs incurred.

Article 9: Changes to the work

- 9.1. Changes to the work result in additional or reduced work where:
- a. there is a change to the design or plan;
 - b. the information supplied by the principal does not correspond with the reality;
 - c. approximations deviate by more than 10%.
- 9.2. Additional work is charged on the basis of the value of the price-determining factors which applies at the time that the additional work is carried out. Reduced work is adjusted on the basis of the value of the price-

determining factors which applies at the time of the conclusion of the contract.

- 9.3. If the balance of the reduced work exceeds that of the additional works the contractor may charge the principal 10% of the difference in the final account. This provision does not apply to reduced work resulting from a request from the contractor.
- 9.4. Where additional contracts have significant consequences on price, delivery time, weight, motor power or speed, the contractor shall inform the principal thereof.
- 9.5. Only the works which the contractor could reasonably have foreseen form part of a construction or repair contract. Should the extent of the works appear greater than foreseen, the contractor shall suspend the work and consult with the principal on whether to continue are, if so, in what way. The principal should notify the contractor of his decision within 14 days of such consultations. The contractor shall be at least entitled to payment for the already completed work and the costs incurred.

Article 10: Delivery of the work

- 10.1. The work shall be deemed to have been delivered if:
 - a. the principal has approved the work / vessel;
 - b. the work / vessel has been taken into use by principal or removed without express consent. If the principal takes a part of the work /vessel into use that part is deemed to have been delivered;
 - c. the principal is given the opportunity by the contractor to inspect the work or vessel and does not make use of this opportunity for inspection within 14 days after notification thereof.
 - d. the principal does not approve the work on the grounds of small defects or missing parts which could be repaired or supplied within 30 days and which do not prevent the commissioning of the work.
- 10.2. Should the principal fail to approve the work, he shall immediately inform the contractor in writing of the reasons thereof.
- 10.3. Should the principal fail to approve the work / vessel, he shall give the contractor the opportunity to deliver the work again. The provisions of this article shall again apply.

Article 11: Exchange

If on purchase or new construction of a ship or vessel a used ship or other item is exchanged and the principal continues to make use of this exchanged or to be exchanged item while awaiting the delivery of the new item, the item for exchange shall only become the property of the contractor when it is actually made available to him.

During this period of use all costs including maintenance, decrease in value and any damage, from whatsoever cause (including loss) shall be borne by the principal.

Article 12: Liability

- 12.1. The contractor shall be liable for losses incurred by the principal which is directly and exclusively the consequence of a fault on the part of the contractor. However, compensation will only be considered for losses against which the owner is or could reasonably be expected to be insured.
- 12.2. No compensation shall be payable for:
 - a. business loss/consequential loss including business interruption, port charges, substitute vessel; loss of revenue and other expenditure whatsoever the cause. The principal should insure himself against such losses if required;
 - b. damage caused by or during the performance of the work to objects on which work is carried out, or to objects which are in the vicinity of the work site. The principal should insure himself against such losses if required;
 - c. losses caused by intent or gross negligence on the part of assistants or non-management employees of the contractor.

- 12.3. The contractor is not liable for damages to materials provided by or on behalf of the principal that result from improper processing. At the principal's request, the contractor will repeat the process, using materials provided by the principal and at the principal's expense.
- 12.4. The principal shall indemnify the contractor against all third party claims for product liability stemming from defects in products provided by the principal to third parties that consisted of or included products and/or materials provided by the contractor.
- 12.5. In the event that the principal is a consumer, the contractor shall be liable for loss arising from any shortcomings on the part of the contractor, in compliance with the provisions of the Civil Code.

Article 13: Guarantee and conformity

- 13.1. A new craft or vessel shall be guaranteed for a period of twelve months after delivery. Maintenance and/or repair works shall be guaranteed for three months after completion of the works. Emergency repairs fall outside any form of guarantee.

The remaining provisions are also applicable after expiry of the guarantee (conformity).

- 13.2. The contractor undertakes to supply a craft or vessel as agreed in the contract. This also applies for the associated equipment and inventory. The contractor additionally guarantees that the vessel or craft possesses the characteristics reasonably required for normal use, unless another use is expressly agreed. Items supplied or required by the principal are excluded from the guarantee.
- 13.3. The contractor guarantees that works in relation to preservation are carried out in accordance with the requirements of good practice. No guarantee is given under the following circumstances:
 - a. preliminary or follow-up treatment was necessary as a matter of good practice, and no order for such work was received although the necessity had been made known;
 - b. the preliminary treatment was not carried out or approved by the contractor;
 - c. the material to be preserved is in such a condition that it is not possible to remedy the defects, including corrosion, irregularities, colour differences, gloss etc. within the scope of the contract.
 - d. the preservation work is damaged by the principal or third parties.
- 13.4. In respect of items supplied and works carried out by third parties, the extent and duration of those suppliers' guarantees shall apply where the contractor and principal expressly so agree. If the principal has had an opportunity to become acquainted with the contents of the factory guarantee this shall replace the guarantee under this article. The contractor shall discharge his obligations under the guarantee by transferring any liability to the supplier(s).
- 13.5. If it appears that the delivery, repair or maintenance works are unsatisfactory, the contractor may elect to:
 - replace the unsatisfactory part(s);
 - repair the unsatisfactory item;
 - credit the principal for a proportional part of the invoice.The contractor is thereby free to choose the location at which the repairs will take place, and to call in an independent expert within a reasonable time. Travel, accommodation and transport costs shall be met by the principal. The principal may only have necessary repairs carried out by a third party with the written consent of the contractor. In this event the contractor shall pay the principal's costs, up to a maximum of the sum which the contractor would have incurred had the repair taken place at his own site.
- 13.6. Unless expressly otherwise agreed, the following tolerances shall apply to new construction:
 - 2% length overall;
 - 2% beam amidships;
 - 10% draught;

2% headroom;
2% maximum vertical clearance of fixed parts;
10% weight;
10% speed calculated with standard equipment + draught in accordance with standard construction waterline.

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

- 13.7. a. No guarantee is given when defects are the result of:
- normal wear and tear;
 - improper use;
 - lack of proper maintenance;
 - physical properties and natural functioning of materials/natural products;
 - fitting, assembly, alterations or repairs by the principal or by third parties.
- b. No guarantee is given for delivered items that were not new on delivery or which are supplied by the principal.
- 13.8. The principal shall at all times offer the contractor the opportunity and a reasonable time in which to repair any defect.
- 13.9. The guarantee shall only be valid if the principal has satisfied all his obligations, financial and other, towards the contractor, or has provided sufficient assurances thereof.
- 13.10. Where the principal has improperly claimed under the guarantee, travel and accommodation expenses and works carried out, including investigatory works, shall be charged at the standard rates applied by the contractor at the time of execution, and will be subject to the present conditions.

Article 14: Claims or Complaints

- 14.1. The principal may not invoke defects in the product or service if during the guarantee period he fails to submit a written claim to the contractor within fourteen days after the defect was detected or could reasonably have been detected, stating the nature of the defect and when and how it was discovered.
- 14.2. Complaints relating to invoices must be submitted in writing within 14 days of receipt of the invoice.
- 14.3. The principal shall lose all rights and authority that he may have acquired on the grounds that the service corresponds to the contract, if he does not make any claim within the aforementioned deadlines and/or he does not offer the contractor the opportunity to rectify the defects.

Article 15: Uncollected goods

When items are not collected after the delivery deadline has passed, these items shall remain available to the principal. Any uncollected goods shall be stored on the principal's account and risk. The contractor may, 3 months after the items are made available and after written notice, sell the items for and on behalf of the principal with an obligation to remit the proceeds to the principal after deduction of claims due to the contractor, storage costs included (Article 6:90 CC).

Article 16: Insurance on new construction

- 16.1. On the date of delivery of the newly built vessel or hull the contractor shall, acting either as the insured or on behalf of the principal as the insured, insure this vessel or hull and the materials and installations required for it for the value that these items represent and at most for the full value of the agreed purchase or acquisition 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 principal.
- 16.2. The principal hereby undertakes to both the contractor and to the insurer with whom the aforementioned 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.

- 16.3. The contractor shall in the first instance apply insurance benefits to repairing the damage for which the payment was made. The contractor may offset any excess amount against any claims he may already have under this contract against the principal and he shall pay the remainder to the principal.
- 16.4. In the event that the vessel or hull is declared a total loss by the insurer, the contract shall be automatically discharged. The contractor shall then have the right set out in the second sentence of article 16.3.

Article 17: Payment

- 17.1. Payment shall be made at the place of the contractor's registered offices or into an account nominated by the contractor.
- 17.2. Unless otherwise agreed payment shall be made as follows:
- a. 10 % of the agreed price at the time of order
 - 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 completion before removal.
 - b. in all remaining cases within 14 days of the invoice date, but before removal/shipment.
- 17.3. Notwithstanding the agreed payment conditions, the principal shall provide, at the contractor's request, such security for payment as the latter deems satisfactory. Failure by the principal to provide such security for payment within the period specified will constitute immediate default. In that event the contractor shall have the right to terminate the contract and to claim damages from the principal.
- 17.4. The principal's right to offset any claims on the contractor is excluded, except in the event of the contractor's insolvency.
- 17.5. Immediate payment in full can be required when:
- a. if a payment date is exceeded;
 - b. the principal is declared insolvent or asks for suspension of payments;
 - c. the principal's assets or claims are seized;
 - d. the principal (company) is dissolved or put into liquidation;
 - e. the principal (natural person) is placed under legal restraints or dies.
- 17.6. Should payment not be made by the agreed payment date, the principal shall as of right be liable to pay interest to the contractor. The interest rate shall be 10% per year or equal to the statutory interest rate if that is higher. For interest calculation purposes, an incomplete month shall be treated as a full month.
- 17.7. Should payment not be made by the agreed payment date, the principal shall be liable to pay the contractor for costs incurred with a minimum of € 75,-. Costs are calculated on the basis of the following table:
- | | |
|------------------------------------|-----|
| for the first € 3,000 = | 15% |
| for the remainder up to € 6,000 = | 10% |
| for the remainder up to € 15,000 = | 8% |
| for the remainder up to € 60,000 = | 5% |
| for the remainder above € 60,000 = | 3% |
- Should the costs actually incurred, excluding court costs, be higher than those calculated as above, the costs actually incurred shall be payable.
- 17.8. In the event of legal proceedings where the contractor is found to be in the right the principal shall be liable for all costs of these proceedings.

Article 18: Reservation of title

- 18.1. After delivery the contractor shall retain title over the items supplied in the event that the principal:

- a. fails or will fail to comply with his obligations under this contract or other contracts of the same kind;
 - b. fails or will fail to pay for works carried out or to be carried out under such contracts;
 - c. has not satisfied claims resulting from a failure to perform the above contracts, such as damages, penalties, interest and costs.
- 18.2. While reservation of title holds over items supplied, the principal may not encumber them.
- 18.3. After the contractor has invoked reservation of title he may recall the items supplied. The principal shall grant the contractor access to the place where these items are located.
- 18.4. The contractor has the right to retain the whole vessel or hull, including equipment, inventory and miscellaneous accessories, until the settlement of all costs that he incurred in the execution of the commission, unless the principal has provided adequate security for these costs. The contractor shall likewise have this right of retention on the basis of earlier contracts for which payment is still due from the principal.
- 18.5. By way of exception to the provisions of the preceding clauses of this article the contractor shall endeavour to work on the registration of a vessel, if this is expressly requested in writing by the principal, inter alia subject to, but not limited to, the prerequisite that adequate security has been provided for payment of the sum due from the principal, thus at the discretion of the contractor.
- 18.6. Should the principal 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 principal. The provisions of article 15 are correspondingly applicable.

Article 19: Termination

Should the principal wish to terminate the contract without any fault on the part of the contractor and the contractor agrees, then the contract shall be dissolved by mutual agreement. In such an event the contractor shall be entitled to compensation for any material losses such as losses suffered, profits foregone and costs incurred.

Article 20: Applicable law and disputes

- 21.1. Dutch law shall apply to all contracts.
- 21.2. Neither the Vienna Convention (CISG) or any other international regulation from which exemption is permissible shall be applicable.
- 21.3. Only the Dutch civil judge sitting in the place of the contractor's registered offices shall hear any disputes, unless this should be in conflict with mandatory law. The contractor may depart from these rules of jurisdiction and apply the statutory rules of jurisdiction.
- 21.4. The parties may agree to adopt another form of dispute resolution such as arbitration or mediation.