

## **HISWA GENERAL TERMS AND CONDITIONS OF CONTRACTING WORK, SALES AND DELIVERIES**

### *Business-to-Business*

These General Terms and Conditions of Contracting Work, Sales and Deliveries Business-to-Business have been drawn up by HISWA Association (Dutch Association of Suppliers in the Water Sports Industry).

#### **ARTICLE 1 - DEFINITIONS**

The prices stated in these General Terms and Conditions are exclusive of purchase tax (BTW) and in these conditions the following words mean:

- a. *Supplier*: seller/contractor, member of HISWA Association (Dutch Association of Suppliers in the Water Sports Industry).
- b. *Customer*: buyer/client who acts in a professional or business capacity.
- c. *Vessel*: an object that is constructed to remain in water and to move in it, including the pieces of equipment that form part of it and the contents. Also, the hull of a vessel being built.
- d. *Open book contract with fixed profit*: contract in which a price is paid for the actual costs involved in implementing the work, plus a surcharge for general costs and profit.
- e. *Electronic*: by e-mail or website.

#### **ARTICLE 2 - APPLICABILITY**

1. These General Terms and Conditions apply to every offer and to each contract of purchase, sales, construction, preservation, completion work, installation of fittings, repair or maintenance of vessels or parts of vessels, as well as of all other contracts resulting from these, as drawn up between the Supplier and Customer.
2. These Terms and Conditions can be translated from Dutch into a foreign language. Should there be any differences in the texts as a result of the translation, the Dutch text prevails.

#### **ARTICLE 3 - THE OFFER/THE QUOTATION**

1. The Supplier makes the offer orally, in writing or in electronic form.
2. An oral offer must be accepted immediately, otherwise it will lapse, unless a period has been defined for acceptance.
3. The written or electronic offer is dated and is irrevocable during the acceptance period or, if a period has not been defined, for ten working days after the offer date.
4. The offer contains a complete and accurate description of the items to be supplied and/or the work to be carried out, including a statement of:
  - prices, measurements, weight and delivery date and, if relevant, engine power and speed;
  - variable or fixed price/contract price or open book contract with fixed profit with or without a recommended price;
  - designs, images, drawings, sketches and/or specifications in so far as these are required for the proposal;
  - for installing fitted structures and renovations when directly related to the purchase, the separate price (contract price) and the time required for installing fittings and for renovating.
5. The offer states when the work will begin and gives an indication of the time of delivery.

6. All designs, images, drawings, sketches, specifications, calculations and other instructions and clarifications supplied together with the offer for installing fittings or for renovation or for repair remain the property of, or continue to be held by, the person supplying them. They are protected under the Copyright Act (Auteurswet) and may not be given to third parties unless this is necessary for carrying out restoration, repair and/or maintenance work.
7. The offer is accompanied by a copy of these General Terms and Conditions.

#### **ARTICLE 4 - THE CONTRACT**

1. The contract is finalised when the Customer accepts the offer. If the assignment is granted electronically, the Supplier sends an electronic confirmation to the Customer.
2. The contracts are preferably recorded either in writing or electronically.
3. If the contract is in writing, a copy should be sent to the Customer.
4. A contract regarding renovation or repair is related solely to the work activities that the Supplier can reasonably have expected.

#### **ARTICLE 5 - THE PRICE AND PRICE ALTERATIONS**

1. Unless nothing else has been specifically agreed, there is a fixed sales price or a fixed contract price and the following provisions are applicable:
  - a. In the event of the Customer desiring additions or changes in the agreed work, the Supplier can only claim a price increase if he has given timely notice of the price rise to the Customer, unless the Customer could reasonably be expected to understand this.
  - b. The Supplier can, at any time, incorporate changes to taxes, excise duties and other such government levies in both the agreed fixed and variable prices.
  - c. The Supplier has the right to charge any extra costs that arise from changes in the work or an interruption in the work activities, if they are caused by circumstances not attributable to the Supplier and which could not have been foreseen by the Supplier when the price was agreed.
  - d. If the circumstances are as described in this paragraph under c, and also if the extent of the work turns out to be greater than foreseen, the Supplier should immediately suspend work and discuss together with the Customer whether or not to continue with the work and how to do so. The Supplier is, in any case, entitled to payment for work already carried out and to cover any costs related to this work.
  - e. If supplementary contracts have a particularly significant influence on the price, the delivery time, the measurements, weight and, if relevant, the engine power and speed, the Supplier should submit a notification of these facts.

2. If the parties have agreed on a variable purchase price or variable contract price, the following provisions are applicable:
  - a. At the request of either party, each increase or decrease in price will, if this affects the purchase price or the contract price, be passed on if the increase or decrease takes place more than three months after entering into the contract and there has been no delivery, or if the intended work has not been carried out or not yet completely carried out. However, the Supplier shall not pass on the price changes if the order was placed before the price increase could affect the purchase price or contract price.  
An increase or decrease in price is understood to include a change in the currency exchange rate that applied when the supplied materials or goods were paid in relation to the currency exchange rate underlying the purchase price or contract price.
  - b. Each increase or decrease in salary or other conditions of work in the collective wage agreement or binding pay regulations as applied by the Supplier, and any increase or decrease in social premiums that occur, can be passed on by the Supplier if these changes affect the contract price and if they take place more than three months after entering into the contract.
  - c. If as a result of increasing prices as described in this paragraph, the purchase price or contract price rises by more than 15%, the Customer has the right to terminate the contract.
3. If the parties have agreed to a recommended price and the work can be carried out according to the description applying to it, the price increase or decrease may amount to no more than 10%.

#### **ARTICLE 6 - DELIVERY TIME/DELIVERY**

1. Delivery time is understood to mean the period between, on the one hand, the date on which the purchase contract is drawn up or alternatively the assignment to build, renovate, complete construction work or install fittings is given and, on the other hand, the agreed date of delivery ex works or depot in the Netherlands.
2. The Supplier is required to inform the Customer in writing, with a statement of the reasons, as soon as it is expected that the delivery time will be overrun and, if possible, to indicate the extent of the overrun.
3. The delivery time is extended by any delayed period that is a reasonably foreseeable consequence of omissions on the part of the Customer. An omission is here understood to mean that the Customer fails to comply with a commitment to the Supplier with regard to the vessel. This is certainly the case if the Customer, despite timely notice, does not pay the debt owing to the Supplier on time. In addition, any costs that arise from omissions that are foreseeable and an expected consequence of the empirical rules will also be at the expense of the Customer.
4. The Supplier is in default only if the delivery period overruns by more than 15% as a result of causes attributable to the Supplier. If this period is overrun, the Customer has right of suspension or termination as laid down in Article 17.
5. The delivery takes place ex-works in the Netherlands. However, if a trial run takes place prior to delivery, the delivery is made to the place agreed on for the trial run.
6. The Supplier shall, prior to delivery of the vessel or other items to be delivered, offer the Customer the opportunity to inspect (or arrange inspection of) the vessel or other items referred to.

In the event of repairs, renovations, installation of fittings, completion work or maintenance work, the Supplier shall offer the Customer the opportunity to inspect (or arrange inspection of) the work carried out.

If a trial run (prior to delivery) has been agreed, the Supplier shall offer the Customer the opportunity to take this trial run either before delivery or completion.

7. The Customer must make use of the opportunity to make an inspection and/or trial run within twenty working days of receiving the Supplier's notification.  
If the Customer does not make use of the opportunity offered him within this period of twenty working days, the vessel or the item is deemed to have been delivered, unless a situation of 'circumstances beyond the Customer's control' arises.
8. If delivery has taken place or is deemed to have taken place as described in paragraph 7, the risk regarding the delivered item is transferred to the Customer.
9. If the Customer fails to take delivery of the vessel or other items, they are stored, at the cost and risk of the Customer.

#### **ARTICLE 7 - PARTS TO BE REPLACED AND TRADE-IN**

1. The parts to be replaced will be made available to the Customer after the assignment has been carried out if the Customer explicitly requested this when giving instructions for maintenance or repair. This does not apply to parts which have to be set apart due to guarantee claims; in that case, the parts will only be made available once the guarantee claims have been processed.  
In all other cases, the parts to be replaced become the property of the Supplier, without the Customer being able to claim payment of any kind regarding this matter.
2. If the Customer, on purchasing a vessel or newly built vessel or another item, has agreed that he shall trade in a used vessel or other item, the traded-in vessel or other item only becomes the property of the Supplier after delivery has actually taken place. If the Customer continues to use the vessel or the item to be traded in while waiting for the delivery of the new vessel or item, any damage or loss, whatever the cause, is at the expense and risk of the Customer.

#### **ARTICLE 8 - CONFORMITY**

1. The Supplier vouches for the delivered item conforming to the agreement (conformity). The Supplier furthermore ensures that, taking all circumstances into account, the item possesses the properties that shall be necessary for normal use, as well as for special use, if that has been agreed.
2. The Supplier vouches for the work to be carried out by him, that it conforms to the contract, and that it is carried out to a high standard, making use of sound material.
3. Unless otherwise agreed because of specific demands, the following deviations are possible during implementation of the contract:
  - ± 1% length of the stem and stern;
  - ± 1% over the whole width;
  - ± 1% depth;
  - ± 5% draught;
  - ± 2% headroom under the beams;
  - ± 1% maximum height above water surface;
  - ± 10% weight;
  - ± 5% engine power and
  - ± 10% speed (when equipment is standard).
4. The Supplier is not responsible for defects in the design of the vessel if this design was not supplied by himself.

Neither can the Supplier vouch for the usability and soundness of materials and pieces of equipment for which the application has been prescribed by the Customer or supplied by him.

If the Supplier knows about or could know about imperfections in design or materials, as referred to in this paragraph, then the Supplier should inform the Customer about this matter.

5. The Supplier is not responsible for defects which arise after delivery and which appear to have been caused by normal wear and tear, inexpert use or lack of care, or that are the result of alterations that the Customer or third parties have made to the item that was delivered. Neither is the Supplier responsible for damage that results from the aforementioned.

#### **ARTICLE 9 - GUARANTEE**

1. The guarantee described in this Article ensures the legal rights of the Customer remain unimpaired.
2. The guarantee concerns restoration, at the boatyard of the Supplier, of defects that were not noticeable at the time of purchase/delivery, as well as the restoration of defects that have arisen from normal usage during the guarantee period.
3. Article 8, paragraph 4 and 5 apply by analogy.
4. The Customer should consult the Supplier with regard to implementation of the guarantee.
5. The Customer can, at the Supplier's expense, have essential restoration carried out by a third party, assuming the costs of doing this are reasonable. When determining reasonableness, the price levels of the Supplier are relevant.

The third party that is able to carry out essential restoration is chosen by the Supplier in consultation with the Customer. Restoration carried out by a third party is only possible:

- a. if the Supplier is not able or willing to restore the defect at his own boatyard, or is unable to do that in time, or
  - b. if there is a disparity between the essential costs of transporting the vessel to the Supplier's boatyard and the costs of restoration at that boatyard, or
  - c. if the Customer's circumstances dictate that he cannot be expected to allow restoration to be carried out at the Supplier's boatyard.
6. The claims to a guarantee lapse if:
    - a. the Customer does not inform the Supplier about defects as soon as possible after noticing them;
    - b. the Supplier is not given the opportunity to restore the defects at a later date;
    - c. third parties have, without the Supplier's prior knowledge or permission, carried out work which is related to the work carried out by the Supplier and on which a claim is to be made under the guarantee.
  7. Unless the Customer has explicitly stated in writing his wish to abandon the guarantee, the duration of the guarantee period is for:
    - a. new vessels, also including new parts/fittings, at least twelve months after purchase;
    - b. repair and maintenance work taken on by the Supplier or contracted out, including the materials used to do this, at least three months.

This guarantee does not apply to emergency repairs. The guarantee includes carrying out, at a later date and in the correct manner, the assignment that was either not done or not done well at the boatyard/company of the Supplier. The guarantee period commences at the moment the vessel is again made available to the Customer.

8. Guarantee periods of six months or less are extended by a period equivalent to the period when the vessel is not in use because of winter storage.

#### **ARTICLE 10 - PAYMENT**

1. Payment takes place in cash at the time of purchase or delivery unless otherwise agreed. Making a cash payment also includes transferring the amount due, at the moment of purchase or delivery, to the bank or giro account indicated by the Supplier, or by paying with any form of electronic payment recognised by banks.
2. If payment in instalments has been agreed, the Customer should pay according to the instalments and percentages as laid down in the contract.

#### **ARTICLE 11 - OVERDUE PAYMENT**

1. The Customer is in default once the payment date has passed. The Supplier sends a payment reminder once the date has passed and gives the Customer the chance to pay within fourteen days of receiving this payment reminder.

If, after the date stated in the payment reminder, there is still no payment and the Customer is not able to plead circumstances beyond his control, the Supplier has the right to charge interest, once the payment date has passed. This interest is equal to the statutory commercial interest plus 3% on an annual basis over the amount due.

2. If the Customer remains in default of payment after the payment reminder has been sent, the Supplier also has the right to increase the amount due by adding collection charges. Extrajudicial costs include all the costs that the Supplier has to charge for the services of lawyers, enforcement agents and anyone he requires for the recovery of the amount due.

The extrajudicial costs are determined as follows:

15% over the first € 2500 of the amount due;

10% over the next € 2500 of the amount due;

5% over the following € 5000 of the amount due;

1% over the following € 15,000 of the amount due.

3. Any complaints about invoices should be submitted to the Supplier, preferably in writing and adequately described and explained, within a reasonable period after the receipt of the invoice in question.

#### **ARTICLE 12 - SECURITY RIGHTS DURING REPAIR AND MAINTENANCE**

1. If payment is not made on time, the Supplier has the right to retain the vessel in question together with all the equipment, inventory and other accessories that belong to it until the Customer has paid the whole of the amount due, including the costs involved in right of retention, unless the breach does not justify this retention.

2. If the Customer, after receiving the letter of demand, still neglects to pay the amount due, the Supplier has right of sale and delivery, without legal intervention, provided:

- the Supplier has demanded payment from the Customer by registered letter and the Customer still has not paid the amount owing six months after the date of this registered letter or has disputed the claim in writing, giving reasons, and
- after the aforesaid period of six months has passed, the Supplier has served a writ on the Customer demanding that the Customer pay the amount owing within 15 working days, and payment has still not been made.

3. The Supplier is subject to the obligation to pay to the Customer, if possible, any differences between the sales proceeds and the amount the Customer owes.
4. The Customer is obliged in all cases to agree to deregistration if the vessel is registered in his name.

## **ARTICLE 13 - SECURITY RIGHTS WHEN ACCEPTING WORK**

1. A vessel under construction and/or a new vessel as described in the purchase agreement (including all materials and accessories intended for the vessel) are the property of the Customer at the moment these items arrive at the boatyard or elsewhere when in the custody of the Supplier. The condition for this transfer of ownership is that the items in question are legally transferred to the Supplier by a third party.
2. The Supplier always has a pledge (including the right to summary execution) on the aforesaid items, as well as on the insurance monies, in order to pay for damages, for each unpaid part of the purchase or contract price if this is still due and also for every loss or damage suffered or to be suffered by him, if the Customer violates the contract.
3. The Supplier is required, in cases in which his subcontractor has invoked retention of title, to inform the Customer about this, as well as about the moment when the Supplier complies with the subcontractor's conditions, and the items stated in paragraph 1 are legally transferred into the possession of the Customer.
4. The Customer has the right during the period that his property has not been legally transferred because the subcontractor invoked retention of title, to defer future payment obligations.
5. The Customer has the right to require the Supplier (or someone representing him) to earmark those items that belong to him, in order to protect what he has agreed and in order to identify his property. A confirmation sent by the Supplier to the Customer that the referred to items have arrived means that the Supplier holds these items in keeping for the Customer (if necessary, separately).
6. Without prejudicing the Supplier's pledge, a termination of the acceptance contract does not lead to the lapse of the Customer's aforesaid rights to ownership before termination has been settled.

## **ARTICLE 14 - SECURITY RIGHTS WHEN SELLING NEW AND USED VESSELS**

1. The vessel and/or parts as described in the purchase contract (including all the materials and accessories intended for the vessel) are deemed to be delivered to the Customer at the moment the parties have reached agreement and the Customer has made a down payment.
2. Delivery takes place under retention of title, that is to say, the items delivered remain the property of the Supplier for as long as the Customer has not met all the payment obligations agreed to in the sales/purchase contract (including the insurance costs referred to in paragraph 4).
3. The risk attached to the item sold is transferred at the moment of delivery.
4. The Supplier is obliged to insure the vessel (for use by the Customer) against third-party liability, hull damage and theft from the moment of delivery as stated in paragraph 1 to the moment at which the Customer pays the complete purchase price. The Customer pays the cost of this insurance.
5. The Customer is not entitled to use the items supplied before the referred to transfer of ownership, other than for purposes of dealing with the purchase/sale contract, and is not entitled to sell the items supplied or to dispose of them in any way until the Supplier has received full payment.

6. The Supplier, prior to the referred to transfer of ownership, always has access to the items that are his property, wherever they may be located.
7. As soon as the Customer neglects to meet one or more of his obligations to the Supplier, all claims on the Customer can be made immediately and in full, and the Supplier is entitled, subject to the provisions in Article 11 and without judicial intervention, to exercise his rights regarding his property in order to claim back his property. In the latter case, the Supplier is obliged to return the part of the purchase price already paid by the Customer, after deducting expenses.

## **ARTICLE 15 - LIABILITY**

1. The Supplier is liable for any damage to the Customer as a result of omissions that can be ascribed to the Supplier, or to people he employs, or to people appointed by him to carry out the work assigned to him by the Customer.
2. The Customer is liable for any claims with respect to the Supplier if the damage can be ascribed to a shortcoming on the part of the Customer or those associated with him.

## **ARTICLE 16 - CIRCUMSTANCES BEYOND ONE'S CONTROL**

1. 'Circumstances beyond one's control' is understood to mean every unforeseeable circumstance which delays or prevents the implementation of the contract, in so far as the Supplier is not able to avoid this circumstance, and is not required to bear the costs, according to the law, the contract or to generally accepted views.
2. 'Circumstances beyond one's control' is also understood to mean a delay caused by materials not being supplied on time, if the delay is not attributable to circumstances that the Supplier could or should have been able to foresee or avoid.
3. If the situation or circumstance beyond one's control results in the Supplier deferring work, the Customer is also relieved of his obligations for that period.
4. After terminating the contract on grounds of circumstances beyond one's control, the Supplier is entitled to the reimbursement of any costs incurred by him for reason of repair, construction, renovation, installation or completion work, assuming the costs were incurred before it could be expected that these circumstances would lead to termination of the contract and in so far as the Customer has profited from the work done.
5. The Supplier cannot claim circumstances beyond his control if this situation arises after the agreed delivery period has overrun by 15% and is caused by his own actions or by circumstances he is responsible for.

## **ARTICLE 17- DEFERRAL AND TERMINATION**

1. If one of the parties does not comply with their obligation, the other party is entitled to defer their compliance with the associated obligation. In the event of partial or inadequate compliance, deferral is only permitted where the breach justifies that.
2. If one of the parties does not comply with their obligations regarding the contract, the other party is entitled to terminate the contract, unless the breach is not justifiable due to the particular nature or minor significance of the breach. Should the need arise, the Customer is obliged to agree to deregistration, if the vessel is registered in his name.

#### **ARTICLE 18 - INSURANCE FOR NEW CONSTRUCTIONS, FOR RENOVATIONS AND FOR COMPLETION OF WORK**

1. The Supplier is required to take out adequate insurance for the vessel being built and for the materials intended for new constructions or renovations, pieces of equipment and other accessories in order to cover the time the vessel is at the boatyard as well as during the inspection and trial run up until delivery, the insurance being in his name and against all risks that a Dutch Bourse Hull Insurance policy for construction work, or an equivalent policy, covers.
2. The Supplier transfers his entitlement to receiving insurance monies to the Customer, the amount payable being equal to the down payment already made by the Customer. The Supplier informs the insurance company that this has occurred.  
Furthermore, the Supplier is required to warn the Customer if expiry of the insurance contract is imminent. The Customer is at all times entitled to defer his payments if the Supplier has not been able to demonstrate his compliance with the aforementioned obligations.
3. The insurance monies to be paid out as the result of a claim shall be utilised for repairing the damage in a manner and at a cost agreed on by both parties.
4. The provision in the previous paragraph does not apply if the vessel is declared 'total loss'. In that case, the contract is deemed to be terminated.

#### **ARTICLE 19 - COMPLAINTS**

1. Complaints regarding the implementation of the contract should be made known to the Supplier in written or electronic form and should be described and explained adequately, within a reasonable period, once the Customer has noticed or should have noticed the defects.
2. Not submitting the complaint on time can lead to the Customer losing his right regarding the matter, unless it is unreasonable to blame this lateness on the Customer.
3. If it becomes clear that the complaint cannot be resolved by mutual consultation, a dispute situation has arisen.

#### **ARTICLE 20 - DISPUTES**

Dutch law is applicable in all disputes relating to this contract. Only a Dutch Court is competent to take cognizance of these disputes.

#### **ARTICLE 21 - DEVIATION FROM THE CONDITIONS**

Individual deviations from these General Terms and Conditions, including supplements or additions, are required to be recorded in writing or in electronic form after agreement by both Supplier and Customer.