



## GENERAL TERMS AND CONDITIONS

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### 1. DEFINITIONS

The following definitions apply in these general terms and conditions:

- 1.1. **AV2014:** These general terms and conditions.
- 1.2. **NBJA:** Netherlands Society of Yacht Designers and Naval Architects, located in Haarlem and registered in the Commercial Register under number 40595051. The NBJA was established on 6 May 1966 and approved by Royal Decree No. 105 dated 21 February 1968.
- 1.3. **Yacht Designer or Naval Architect:** The natural person, professional partnership, commercial partnership or legal entity who has made it his business to offer the provision and performance of Work Activities (defined below).
- 1.4. **Client:** The person, including the natural person and/or his legal successor, the commercial partnership, professional partnership or legal entity that negotiates or enters into a contract with the Yacht Designer or Naval Architect for the provision of services or work activities offered by said Yacht Designer or Naval Architect.
- 1.5. **Contract:** The contract whereby the Yacht Designer or Naval Architect binds himself to the Client in respect of performing Work Activities (defined below) and/or the terms of Rights to Build (defined below) and/or the Contract and the general terms & conditions applicable to them. The contract only comes into effect in writing, for example per written contract, per email or by signed quotation.
- 1.6. **Vessel:** A sailing or motor yacht, company vessel, platform, houseboat or other floating or sailing object, or one or more parts thereof, designed by the Yacht Designer or Naval Architect in connection with the Contract. Under these general terms and conditions, a vessel (not capitalised) shall mean every conceivable vessel or part thereof. This difference is important, for example when the Yacht Designer or Naval Architect provides Supervision of the Construction of a vessel that he has not designed.
- 1.7. **Order:** The order to perform Work Activities as specified in the Contract and the applicable general terms and conditions.
- 1.8. **Work Activities:** All work activities that the Yacht Designer or Naval Architect performs for the Client in connection with the Contract. The contracted Work Activities may include:
  - a. the design of a new Vessel or a Variation (defined below) of a Vessel and in connection therewith, the manufacturing of drawings and other documents in the broadest sense of the word;
  - b. the preparation of Production Drawings;
  - c. the (arrangement of) testing, checking and/or certification of the Design/Vessel;
  - d. to invite tenders for the (arrangement of) construction of a (or part of a) vessel on behalf of the Client, including a Vessel.
  - e. to provide assistance during construction of a (or part of a) vessel on behalf of the Client, including a Vessel.
  - f. other work activities in so far as they are explicitly described in the Contract.
- 1.9. **Design:** A Vessel designed by the Yacht Designer or Naval Architect. The Design can consist of a Concept Design, a Preliminary Design and a Final Design (defined below). These designs are created in the Concept Design Phase, the Preliminary Design Phase and the Final Design Phase, respectively. The (detailed) Production Drawings and As-Built Drawings (both defined below) are not part of the Design.
- 1.10. **Variation:** A Design that is based on an existing Design but deviates on essential points.
- 1.11. **Design Drawings:** Drawings of the Vessel with a limited amount of detail in order to provide a general view of the nature and the general outline of the Vessel. These drawings are sufficiently detailed for a potential technical inspection. The Design Drawings may be used as the basis for producing the Production Drawings. Depending on the phase of the Work Activities, this may constitute Concept Design Drawings, Preliminary Design Drawings or Final Design Drawings (defined below).
- 1.12. **Production Drawings:** Drawings of the Vessel with a high level of detail, usually produced on the basis of the Design Drawings and/or other Vessel data. The Vessel can be produced on the basis of the Production Drawings. These drawings are also called Working Drawings. The Production Drawings are not part of the Design.
- 1.13. **Working Drawings:** Another name for Production Drawings.
- 1.14. **Concept Design:** A schematic plan of the Vessel, developed in the Concept Design that only provides general insight into the shape and/or lines, functions and sizes. These drawings can serve as a basis for the Preliminary Design.
- 1.15. **Concept Design Drawings:** Design Drawings produced during the Concept Design phase. These drawings describe the Concept Design.
- 1.16. **Preliminary Design:** A description of the Vessel by means of Preliminary Design Drawings and other documents based on the Concept Design, but with a greater level of detail. These may include, as far as applicable and agreed:
  - a. A general arrangement plan in which the layout and design are laid down. This general arrangement plan is based on preliminary design parameters and preliminary calculations with respect to functionality, speed, load capacity, weight, rigging, stability, durability and engine power;
  - b. Information with respect to the overall design of the structure for the provisional calculation of weight and centre of gravity, and a preliminary assessment of strength, stiffness and indicative construction cost.
  - c. A concise specification, possibly incorporated into the drawing(s), which is sufficiently detailed to enable a professional yard to make a cost estimation.
- 1.17. **Preliminary Design Drawings:** Design Drawings made during the Preliminary Design Phase, based on the Preliminary Design.
- 1.18. **Final Design:** The final description of the Vessel by means of Final Design Drawings and other descriptive documents. In addition to the Design Drawings, this may include, as far as applicable and agreed, drawings and documents relating to:
  - a. the general arrangement plan;
  - b. construction specifications;
  - c. the sail plan;
  - d. information relating to the 3D shape of the hull, appendages and superstructure;
  - e. the tank plan;
  - f. the general construction plan;

- g. the weight and centre of gravity calculations;
- h. the hydrostatic and stability calculations;
- i. the resistance and propulsion calculations;
- j. mast and rigging drawings;
- k. the deck plan;
- l. drawing of the engine room layout;
- m. drawing of the propulsion system;
- n. drawing of the fire prevention facilities;
- o. drawings of the keel and the rudder;
- p. drawing of the anchor system;
- q. windows and doors plan;
- r. navigation lighting plan;
- s. security plan;
- t. docking plan.

**1.19. Final Design Drawings:** Design Drawings made in the Final Design Phase, based on the Preliminary Design Drawings.

**1.20. As-built Drawings:** drawings of the Vessel as it is eventually built (based on the Production Drawings)..

**1.21. Builder:** the shipyard, builder, metal construction company, woodworking company, etc. that is building the Vessel by order of the Client.

**1.22. Invitation to Tender:** the building of an object, usually a Vessel, by a shipyard. The Invitation to Tender usually includes making requests, assessing quotations, assisting in concluding contracts with a Builder and/or sub-contractors, if required, consultancy, and Supervision of the Construction (defined below).

**1.23. Completion Date:** the date the Builder informs the Client that the vessel or Vessel is ready and is lying in wait for the Sea Trial (defined below).

**1.24. Sea Trial:** one or more detailed tests and sea trials in the context of the Client's acceptance of that which is built by the Builder, in accordance with the agreed protocols between the Builder and the Client.

**1.25. Supervision of the Construction:** to provide supervision during construction of a Vessel or other vessel on behalf of the Client, and in a manner still to be agreed upon. The Supervision of the Construction can consist of:

- a. the provision of instructions when commencing construction;
- b. exchanging information with the Builder during the construction process;
- c. tracking the construction process and monitoring the implementation and progress of the construction process by means of carrying out as many visits to the Builder and/or suppliers as the Yacht Designer or Naval Architect believes is required;
- d. conducting meetings with the Builder and other parties involved in the construction and giving further instructions to the extent, in the opinion of the Yacht Designer or Naval Architect, this is required;
- e. carrying out checks and nautical manoeuvres during Sea Trials in connection with the acceptance of the vessel by the Client, as frequently and extensively as required in the opinion of the Yacht Designer or Naval Architect, as provided for by the predetermined acceptance protocol.

**1.26. Building Cost:** the total price of the constructed Vessel as it leaves the shipyard, exclusive of VAT, which the Client owes to the Builder for the construction thereof. The Fee of the Yacht

Designer or Naval Architect is not included in this price.

**1.27. Construction Contract:** the agreement between the Builder and the Client relating to the construction of the Vessel or any other vessel. The Yacht Designer or Naval Architect is not a party to this Contract. Usually, the following items are included in this contract:

- a. the construction, in conformity with the Preliminary Design (1.16.a , 1.16.b and 1.16 c);
- b. the scope of delivery as described in the specifications;
- c. the estimated delivery time;
- d. the amount that the Builder will charge the Client for the construction;
- e. the terms of payment;
- f. the general conditions of the shipyard.

**1.28. Right to Build:** The right of use to the design and/or design drawings and related documents to use for the construction of one or more Vessels. Each Right to Build states at least:

- a. the number of Vessels that may be built on the basis of the Design;
- b. if the right is exclusive or whether third parties may use the Design;
- c. the period during which the Design may be used;
- d. conditions attached to the right of use;
- e. the price for the right to use, per period and/or per (arrangement of) building of a Vessel.

**1.29. Series Construction:** The building of, or arranging the building of several Vessels to the same design.

**1.30. Right to Build a Series:** A Right to Build an agreed number of Vessels in a given period.

**1.31. Fee:** The amount that the Client owes the Yacht Designer or Naval Architect in connection with the execution of the Contract by the Yacht Designer or Naval Architect, for the expertise and creativity offered by the Yacht Designer or Naval Architect and the Work Activities performed or to be performed by the Yacht Designer or Naval Architect, as well as the provisions of the Contract concerning the Right to Build.

**1.32. Workday:** Every day that is not a Saturday, Sunday or official Dutch national holiday.

## 2. APPLICABILITY

**2.1. Applicable:** The AV2014 applies to all offers, contracts and other legal relations between the Yacht Designer or Naval Architect and the Client. The provisions of these general terms & conditions can be waived by the parties. Deviations from the AV2014 in the meaning of the preceding sentence shall apply only in so far as they are agreed in writing.

**2.2. Exclusion:** The applicability of general terms and conditions other than the AV2014 is expressly excluded.

**2.3. Nullification:** In case one or more provisions of these general terms and conditions become fully or partially invalid or are declared void at any stage, the remaining provisions of these terms and conditions will remain fully applicable.

**2.4. Priority Rule:** In the event that other general terms and conditions also apply to the offer, assignment and/or agreement, leading to contradictory stipulations, the relevant provisions of the AV2014 will take precedence over those of the other general terms & conditions.

**2.5. Translations:** The AV2014 written in the Dutch language shall prevail over the AV2014

translated into English, German, Spanish or any other language.

## 3. RELATIONSHIP BETWEEN CLIENT AND YACHT ARCHITECT AND/OR NAVAL ARCHITECT AND PROXY.

**3.1. Trust:** In the relationship with the Client, the Yacht Designer or Naval Architect acts as a confidant, providing advice about technical and aesthetic issues, protecting the interests of the Client to the best of his knowledge and abilities and realises these interest to his best endeavours.

**3.2. Proxy:** The Yacht Designer or Naval Architect acts as a representative of the Client in the execution of the Contract. Within the context of the Contract, this authorisation is unrestricted and unconditional until the time that the Contract ends or until the Client and Yacht Designer or Naval Architect otherwise agree in writing. The authorisation shall in any case reasonably allow the Yacht Designer or Naval Architect to carry out all transactions within the context of the Contract at his or her own discretion.

## 4. THE ORDER

**4.1 Size and components of the Order.** The Order includes one or more of the following Work Activities (a detailed description of these Work Activities is included in article 1 above):

- a. Designing a Design or a Variation;
- b. Drawing up a Concept Design;
- c. Drawing up a Preliminary Design;
- d. Drawing up a Final Design;
- e. Drawing up Production Drawings;
- f. Drawing up As-Built Drawings;
- g. Drafting contractual documents;
- h. (arrangement of) Testing and/or checking and/or certifying (parts of) a vessel, a Vessel including;
- i. assisting in and/or taking care of requesting and evaluating quotations;
- j. making, and/or providing assistance in the Invitation to Tender;
- k. providing Supervision of the Construction;
- l. providing advice;
- m. providing aid and assistance;
- n. providing expertise;
- o. acting on behalf of the Client to the extent that it is desirable to execute the Order at the discretion of the Yacht Designer or Naval Architect;
- p. other services in so far as they are expressly set out in the Contract.

4.2 The Yacht Designer or Naval Architect is authorised to engage third parties for the purpose of carrying out Work Activities.

## 5. OFFER, CONTRACT, DELIVERY

**5.1. Offer without obligation:** Each offer is provided without obligation unless a deadline for acceptance of the Offer is included.

**5.2. Withdrawal:** An offer made without obligation may be withdrawn up to three days after acceptance without the party that made the offer being held liable for any compensation to the other party. The Client may also withdraw such an acceptance within three days after accepting the offer without being held liable for any compensation.

**5.3. Realisation of the Contract:** The order shall be deemed as final and come into effect when:

- a. The offer made by the Yacht Designer or Naval Architect is accepted by the Client

and the deadline for withdrawal has expired;

- b. The offer has been provided by the Yacht Designer or Naval Architect and the Client has confirmed that the acceptance is irrevocable and has requested the Work Activities to begin;
- c. The offer has been provided by the Yacht Designer or Naval Architect and, with the knowledge of the Client, Work Activities have commenced without the Client immediately submitting any objection in writing;
- d. The Client has requested the assistance or advice from the Yacht Designer or Naval Architect and the Yacht Designer or Naval Architect affirms its commitment to provide the requested assistance or advice to the Client and the delivery of the requested assistance or advice is done without the Client making any immediate objection.

**5.4. Providing Security:** At the first request of the Yacht Designer or Naval Architect, the Client shall provide security in respect of the timely discharging of its obligations under the Contract.

**5.5. Delivery Time:** An agreed delivery time is only offered as an indication and is not a deadline unless this is specifically agreed.

**5.6. Delivery time in the event that the Order is amended:** If amendments are agreed upon during the execution of the Contract, the originally agreed delivery time will automatically expire.

**5.7. Exceeding the Delivery Time:** In the event that an agreed delivery time is exceeded, the Yacht Designer or Naval Architect shall never be liable for damages to Client, unless the exceeding of the deadline is due to intent or deliberate recklessness by the Yacht Designer or Naval Architect.

In the event that the Yacht Designer or Naval Architect expects the Delivery time to be exceeded, he needs to notify the Client and state the reasons.

**5.8. Failure due to late delivery:** The delivery times specified by the Yacht Designer or Naval Architect are in principle only an indication of delivery times and they are not deadlines. These indicative delivery times may be repeatedly increased by the Yacht Designer or Naval Architect by 10% of the original delivery time, a minimum of one week shall apply. The Yacht Designer or Naval Architect shall never be in default of a non-strict deadline. The Yacht Designer or Naval Architect and Client may agree in writing that certain deadlines are strict deadlines. The Yacht Designer or Naval Architect shall then not be in default of an agreed deadline unless an agreed deadline is exceeded by more than 20% due to causes entirely attributable to the Yacht Designer or Naval Architect and the legal conditions for default have been fully satisfied.

## 6. THE RIGHT TO BUILD

**6.1. Single Right to Build:** When the Order issued by the Client also includes the production of a Final Design, and when this Final Design is delivered by the Yacht Designer or Naval Architect and the agreed price is paid by the Client, the Client is then automatically entitled to use the Design Drawings for (the arrangement of) a single Vessel to be built in accordance with the Design.

**6.2. General Right to Build a Series:** The parties may agree that the Client has the right to use the Design for the construction of a still to be determined number (greater than one) of Vessels. This Right to Build a Series will include a deadline within which the Construction of a Series should be completed. After that period the Right to Build a Series expires regardless of whether the targeted number of vessels has been built.

**6.3. Commencement of the Right to Build a Series:** Client only acquires the right to the Design for the construction of more than one Vessel, after the parties have expressly agreed upon this in writing and the Client has fulfilled its obligations to the Yacht Designer or Naval Architect.

**6.4. Continuation of the Right to Build a Series:** After the completion of a Vessel on the basis of an obtained Right to Build a Series, if the Client wishes to proceed with the construction of another Vessel in the same series, he has the right to do so from the moment he has fully complied with all his obligations to the Yacht Designer or Naval Architect.

**6.5. Exclusive Right to Build (a series):** The parties may agree that the Client has the sole right to use the Design for the construction of one or more Vessels, thereby excluding third parties. This Exclusivity expires immediately when the Client is in default to the Yacht Designer or Naval Architect.

**6.6. Personal Right:** The user-rights mentioned in this article are personal rights and shall only be granted to the Client. The license is not tied to a mould and/or a computer file, an image or any other medium for holding information. The right to use the Design or part thereof is not transferable to third parties.

**6.7. Lapse of exclusive Right to Build due to a stop in construction:** If within one year of obtaining the exclusive Right to Build, the (arrangement of) construction of a Vessel is interrupted or halted, the Yacht Designer or Naval Architect may request in writing that the Client commences or continues construction. If the Client does not fulfil this written request within one year, all his rights to use the Design to (arrange for the) build, or parts thereof, or (arrange someone to) complete the construction of that type of Vessel will lapse.

**6.8. Execution of/amendments to the Design:** The Right to Build may only be used to (arrange for the) build of one (or more) Vessel(s) that conform to the Design drawings and other documents made available by the Yacht Designer or Naval Architect. The Client is not permitted to make Amendments or arrange for Amendments to be made to the Design or to depart from the Design in the construction of the Vessel.

**6.9. Amendments to the Design through consultation:** If the Client deems a different construction or execution to be desirable or necessary, he is to consult the Yacht Designer or Naval Architect on the matter. Similar deviations from the Design may only be implemented after the Yacht Designer or Naval Architect has agreed to the deviations in writing and the Client has fulfilled all his/her obligations towards the Yacht Designer or Naval Architect.

## 7. RESPONSIBILITIES OF THE YACHT DESIGNER AND/OR NAVAL ARCHITECT

**7.1. Meeting requirements:** The Yacht Designer or Naval Architect is responsible for ensuring that his/her design meets reasonable requirements of reliability and usability in connection with the purpose for which the Client wishes to use the Vessel and to the extent that this purpose was demonstrably known to the Yacht Designer and/or Naval Architect at the time of entering into the Contract.

**7.2. Correct execution:** The Yacht Designer or Naval Architect is responsible for the correct execution of the calculations and drawings for the Design.

**7.3. Obligation for Best Effort:** In so far as Supervision of the Construction is agreed, this refers only to a best effort obligation by the Yacht Designer or Naval Architect. The Yacht Designer or Naval Architect is not responsible for the manner in which the Builder constructs the vessel (or Vessel) and the extent to which he complies with the Design.

**7.4. Aesthetic appreciation:** The aesthetic appreciation of the Design is no grounds for assessing whether the Yacht Designer or Naval Architect fulfilled his obligations towards the Client.

## 8. ADDITIONAL REQUIREMENTS

**8.1. Additional requirements:** The Yacht Designer or Naval Architect will, after entering into the Contract, also take into account additional requirements, insofar as it can be demonstrated that these requirements became known to him before completing the Preliminary Design and that he/she did not promptly object to these requirements in writing. The Yacht Designer or Naval Architect may in turn impose additional requirements in order to process the additional requirements into the Design.

**8.2. Informing the Client:** If the Yacht Designer or Naval Architect believes that the additional requirements referred to in this article may not be achieved within the Design, he is obligated to inform the Client of this fact within a reasonable time after he became aware that the requirements were not feasible.

**8.3. Unachievable additional requirements:** In case the Yacht Designer or Naval Architect believes that the additional requirements may not be reasonable within the agreed framework of the Order, or if the parties cannot agree on the conditions under which the additional requirements can reasonably be achieved, the Client does not have the right to terminate or dissolve the Contract.

## 9. POWERS AND DUTIES OF THE YACHT DESIGNER OR NAVAL ARCHITECT

**9.1. Amendment to the Order:** The Yacht Designer or Naval Architect is authorised to deliver a Design that is different from what was agreed in the event that the changes are required in order to comply with applicable (legal) regulations or, in the case the changes are minimal, when he/she believes that these represent an improvement.

**9.2. Advice during the Supervision of the Construction:** If the Contract includes Supervision of the Construction then the Yacht Designer or Naval Architect, in accordance with the provisions of 9.3, has the right under the power of proxy granted to him pursuant to 3.2 and without any further approval from the Client being required, to advise the Builder about deviations from the Design.

**9.3. Conditions to recommend deviating from the Design:** The right to recommend a deviation from the Design referred to in the preceding paragraph shall be limited to changes in construction requirements or changes that in the opinion of the Yacht Designer or Naval Architect are necessary in connection with safety and/or suitability.

The Yacht Designer or Naval Architect is responsible for ensuring that these deviations remain within the framework of the Construction Order and, using his own discretion, ensuring that the practical usefulness of the vessel, a Vessel included, does not suffer with respect to its intended purpose, and that the agreed Building Cost and delivery time are not exceeded.

**9.4. Assessment of construction progress:** The Yacht Designer or Naval Architect who is ordered to carry out the Supervision of the Construction is authorised - to the exclusion of others - to assess whether the work has progressed sufficiently, given the situation on the day of inspection, for the Builder to be entitled to receive payment of (a part of) the Building Cost in accordance with the provisions of the Construction Contract.

**9.5. Premature termination:** In the following cases, the Yacht Designer or Naval Architect, without prejudice to its right to claim, is in any case authorised to effect immediate termination of the Contract:

- a. If the Yacht Designer or Naval Architect becomes aware of circumstances that in the opinion of the Yacht Designer or Naval Architect constitute sufficient reason to fear that the Client will not fulfil his obligations to the Yacht Designer or Naval Architect;
- b. If the Yacht Designer or Naval Architect upon entering into the Contract or Naval Architect upon entering into the Contract or Naval Architect upon entering into the Contract has requested security before fulfilling his obligations and the Client does not comply with the request within two weeks of said request.

A termination of the Contract under the provisions of a. or b. of this article, regardless of the manner in which the contract comes to an end, does not remove the obligation for the Client to pay for any damages that the Yacht Designer or Naval Architect may suffer.

## 9.6. Termination in the event of death

**9.6.1. Natural person:** In the event that the heirs or successors of the Yacht Designer or Naval Architect and the Client are natural persons, the Client shall have the right to terminate the Contract without being liable to pay compensation for potential damage suffered by the other party due to the premature termination of the Contract.

**9.6.2. Company limited by shares:** The right to prematurely terminate the Contract as provided for in 9.6.1., applies to the Client as well as the Yacht Designer or Naval Architect in so far as when the director is the sole proprietor, possessing at least 5% of the shares in the company, dies. In that case the party terminating the Contract is not liable to pay compensation for damages suffered by the other party due to the premature termination of the Contract.

**9.6.3. VOF and professional partnership:** The right to prematurely terminate the Contract as provided for in 9.6.1., without obligation towards the other party to pay compensation, applies to the Client as well as to the Yacht Designer or Naval Architect in so far as they are a business partnership or professional partnership and the work is carried out for the most part by one of the partners, and that partner dies (the sole proprietor).

## 10. (INTELLECTUAL) PROPERTY

**10.1. Calculations:** The results of the calculations are used in the Design. These calculations are not a separate part of the documentation delivered to the Client.

**10.2. Ownership of original/copies of drawings, documents, etc.:** The Yacht Designer or Naval Architect will always retain ownership of all the originals and copies of sketches, drawings, calculations, estimates, specifications, budget estimates, reports, computer files, image media and any other media for holding information, as well as models and maquettes created for and by the Yacht Designer or Naval Architect in the context of the Order regardless of whether they were made on behalf of the Client or third parties.

**10.3. Intellectual property rights:** Intellectual property rights as provided for in Copyright Law, including in any case de auteurswet 1912 (Copyright Act 1912) and/or the exclusive right to a design under the Eenvormige Beneluxwet, inzake Tekeningen en Modellen (Uniform Benelux Act on Designs and Models), in relation to the design, production drawings, sketches, photographs and other images of the Design or part thereof, the models and construction moulds, as well as all model, computer files, image media, or other media for holding information that form a part of the Design or representation thereof, are to the exclusion of all others applicable and owned by the Yacht Designer or Naval Architect.

**10.4. Use or provision:** The use or provision of the images, media, models, etc., mentioned in the previous paragraph, is only permitted with prior written permission from the Yacht Designer or

Naval Architect. In no event will such use or provision cause the ownership or intellectual property rights to be transferred to any third party. The Client is obligated to make this known to a third party when allowed, in writing, by the Yacht Designer or Naval Architect to provide such images, media, models, etc.

**10.5. Other use of the Design:** Unless otherwise agreed, the Yacht Designer or Naval Architect is free to use the Design or parts thereof on behalf of other clients. This is understood to mean in any case the Intellectual Property rights to (make arrangements to) use the Design and/or transfer or change the Design at its discretion for the construction of one or more vessels.

**10.6. Protection of the Design:** The Client may only make changes to the Design, the Design Drawings, the Production Drawings or the specifications of the Vessel after written permission has been obtained from the Yacht Designer or Naval Architect.

## 11. CONFIDENTIALITY

**11.1.** The Client is obligated to maintain absolute confidentiality of all designs, calculations, computer files, Production Drawings, Design Drawings, sketches, models, and all other representations of the design, or parts thereof, that he has in his possession or of which he has knowledge that the Yacht Designer or Naval Architect has supplied to him in connection with the Order.

**11.2.** In so far as the exchange of information is necessary in order to carry out repairs or maintenance work, the requirement to maintain confidentiality as described in the previous paragraph remains and the Client shall not pass information to third parties unless he has notified the Yacht Designer or Naval Architect. In no event shall the Client share more information than is strictly necessary for the repair or maintenance work to be carried out to the Vessel.

**11.3.** In no event is the Client permitted to share the confidential information referred to in the preceding paragraphs of this article with third parties that intend to use the information for their own purposes or for the benefit of others.

**11.4. Promotion:** The Yacht Designer or Naval Architect has the right to make images, or arrange to have images made, of the exterior and interior of the Vessel. The Yacht Designer or Naval Architect has the right to modify, reproduce, and publish these images as well as the general plan for promotional purposes in the broadest sense of the word.

**11.5. Brand Name:** The Yacht Designer or Naval Architect has the right to place his name, logo or brand name on the physical result of his Design, in the understanding that this is done in all reasonableness, without damaging the appearance or the use of the Vessel.

**11.6. Removal of the name due to infringement:** Without prejudice to any other rights concerning infringement of copyright, the Client is obligated to remove the name, the logo or brand name of the Yacht Designer or Naval Architect at the first request of the Yacht Designer or Naval Architect.

**11.7. Honours and Awards:** All honours, awards and suchlike associated with the Design or with the execution of the Design because of the qualities thereof, become the ownership of the Yacht Designer or Naval Architect at the time they are received.

## 12. LEGAL LIABILITY OF THE YACHT DESIGNER OR NAVAL ARCHITECT

**12.1. Limitation of legal liability for damage:** The Yacht Designer or Naval Architect is only legally liable for damage suffered by the Client arising out of an attributable breach of contract by the Yacht Designer or Naval Architect in the fulfilment of his obligations or due to any wrongdoing or an illegal act by the Yacht Designer or Naval Architect.

**12.2.** The Yacht Designer or Naval Architect has the right to limit or remedy the damage at own expense.

**12.3.** The Yacht Designer or Naval Architect is not liable for damages caused by intent or gross negligence of employees or third parties not managed by him in the execution of the order.

**12.4.** The Yacht Designer or Naval Architect is not liable for damage consisting of or resulting from defects in relation to the capacity and the quality and/or the suitability of materials and other items when these are specified or supplied by the Client.

**12.5.** The Yacht Designer or Naval Architect is not liable for damage after the delivery of the vessel, including a Vessel, that arose as a result of inappropriately qualified use, insufficient use, lack of care, and/or normal wear and tear or is caused by modifications made to the Vessel or vessel by the user or a third party.

**12.6.** The Yacht Designer or Naval Architect is not liable for damage that the Client suffers as a result of acts or omissions of the Builder or suppliers in violation of the drawings, specifications and/or other conditions unless he is attributable for the failure to exercise control.

**12.7. Errors in the Vessel/components supplied by third parties:** The Yacht Designer or Naval Architect shall not be liable for errors related to components of the vessel not designed by himself or not designed or constructed under his supervision. Nor is he liable if the legal liability in the contract documents or the contractor's contract or delivery is transferred to the Builder.

**12.8. Legal liability for technical fitting:** The Yacht Designer or Naval Architect only bears responsibility for the technical fit of components in the vessel that are designed and manufactured by third parties in so far as the Yacht Designer or Naval Architect has explicitly indicated that these components are part of the design.

**12.9. Legal liability for third party components:** The Yacht Designer or Naval Architect is in no way responsible for the operation, performance or results, etc. of any fitted components from third parties. Nor is the Yacht Designer or Naval Architect responsible for the operation, performance or results, etc. of any fitted components from third parties in conjunction with (other components of) the Vessel.

**12.10. Legal liability for price estimates:** The price estimates of the Yacht Designer or Naval Architect are always calculated to the best of his ability, but are provided without obligation. The Yacht Designer or Naval Architect is not liable if it appears that the Vessel or any part of it cannot be established within the estimated price.

**12.11. Legal liability and legal provisions:** In no event shall the Yacht Designer or Naval Architect be liable if the design meets the following conditions:

- a. it is executed in accordance with the received Order, and
- b. it meets the European Recreational Craft Directive and/or the appropriately accredited requirements of a vessel classification society for the relevant type of vessel, to the extent that these guidelines and/or regulations on their own relate to the shortcoming.

**12.12. Restriction of the size of the legal liability:** The legal liability of the Yacht Designer or Naval Architect is in all cases limited to the agreed Fee. The legal liability of the Yacht Designer or Naval Architect is also limited to the amount that the insurer has paid for the case.

**12.13. Expiry 12 months after defect is known:** Any claim against the Yacht Designer or Naval Architect, except those expressly acknowledged in writing by the Yacht Designer or Naval Architect, shall be void by the mere lapse of

twelve months after the Client has established, or in all fairness should have established, that a defect exists, without prejudice to article 13.

**12.14. Expiry due to non/insufficient use of the Vessel:** Claims against the Yacht Designer or Naval Architect that are not communicated to the Yacht Designer or Naval Architect within twelve months after delivery, in the event that the Client's vessel is not used on a monthly basis and for the purpose intended by the Client, will lapse after the expiry of twelve months after the Vessel is delivered to the Client, without prejudice to article 13.

### 13. RIGHTS AND OBLIGATIONS OF CLIENT

**13.1. Inspection/Sea Trial within 4 weeks of the Completion Date:** As part of the delivery, the Client, the Builder and, in so far as they have an interest, suppliers shall organise a Sea Trial and invite the Yacht Designer or Naval Architect to take part. This Sea Trial will take place no later than four weeks after the Completion Date, weather permitting. During the Sea Trial, the Client shall extensively and professionally test the Vessel in order to assess that the Yacht Designer or Naval Architect has duly delivered.

**13.2. Reporting deficiencies:** Client must make the Yacht Designer or Naval Architect aware of any attributable deficiencies, under penalty of forfeiture of a right thereon, within four weeks of the Completion Date and provide him a reasonable recovery period. In determining the reasonable period, this will include any associated recovery time required by the Builder and in observance of his schedule.

**13.3. Reporting of defects that are not visible:** The Client is liable, under penalty of forfeiture of a right based thereon, to report any defects in writing to the Yacht Designer or Naval Architect for which the Yacht Designer or Naval Architect is liable under the Contract:

- a. within two weeks after the Client has become aware or could have become aware thereof;
- b. in any case, not after the expiration of twelve months after the Completion Date;
- c. in case the Vessel is physically delivered to Client, not later than twelve months after delivery.

**13.4. Detailed reporting:** A reported deficiency as referred to in 13.2 and 13.3 will only be considered as such if the notification thereof has been received in writing and is sufficiently detailed and substantiated such that the yacht Designer or Naval Architect, in all reasonableness can understand the nature of the defect.

**13.5. Delivery by the Yacht Designer or Naval Architect:** That delivered by the Yacht Designer or Naval Architect according to the Order must be treated as having been delivered without attributable deficiencies in the following situations:

- a. The Client has not reported any deficiencies attributable to the Yacht Designer or Naval Architect within four weeks after the Completion Date.
- b. The Client has stated to the Yacht Designer or Naval Architect that there are no shortcomings that are attributable to him or that the Vessel complies with the Order;
- c. When the deficiencies that are reported to the Yacht Designer or Naval Architect are remedied within four weeks after the Completion Date as referred to in 13.4 above.
- d. In the event the Contract only concerns Work Activities associated with the provision of advice, of performing a calculation or of some other limited task, and when the Client does not report on any

attributable deficiency to the Yacht Designer or Naval Architect within four days of delivery, or when the Yacht Designer or Naval Architect has remedied all reported deficiencies attributable to him.

### 14. PUBLICITY

**14.1. Publicity for advertising purposes on behalf of Client:** When ordering the Construction of a Series, the Client has the right to use the general plan and photographs of the designed Vessel for advertising and publicity purposes. Other drawings of the Design may only be published by the Client with written permission from the Yacht Designer or Naval Architect.

**14.2. Publicity in other cases:** In all other cases, the Client may only publicise drawings or photographs of the designed Vessel with written permission from the Yacht Designer or Naval Architect.

**14.3.** Client shall upon publication of drawings, pictures or descriptions of the designed Vessel:

- a. ensure the name of the Yacht Designer or Naval Architect is clearly mentioned and identifiable;
- b. ensure the copyright of the Yacht Designer or Naval Architect is clearly stated and identifiable;
- c. ensure the Yacht Designer or Naval Architect receives a good quality example or copy of the publication.

### 15. TERMINATION OF ORDER

**15.1. Terms and Conditions:** If the Order is terminated by the Client for any other reason than the default of the Yacht Designer or Naval Architect in respect of its obligations to the Client, the Client must fulfil the following conditions:

- a. The Contract is legally terminated in writing and such termination is received by the Yacht Designer or Naval Architect, and
- b. The Client has paid the fee for which the Yacht Designer or Naval Architect would be entitled to if he would complete the part of the Contract that he was working on at that time, and
- c. The Client has already paid the costs to the Yacht Designer or Naval Architect that the Yacht Designer or Naval Architect has incurred or are necessary to be incurred;

**15.2. Moment:** If the Client has terminated the contract as described in the preceding paragraph, and the notification for the termination is received by the Yacht Designer or Naval Architect before the obligations mentioned in the previous paragraph are met, termination of the Contract shall not take effect until after those obligations are met.

**15.3. Death:** The Contract will not be terminated in the event of the death of the Client.

**15.4. Surviving provisions:** In the event the Contract is terminated, all provisions relating to confidentiality (Article 11) and intellectual property rights (Article 10) shall be fully maintained.

### 16. PRICE

**16.1.** The Yacht Designer or Naval Architect, with due observance of the provisions of the following paragraph, has the right to a payment of:

- a. A Fee for the Work Activities performed by him, Supervision of the Construction, and for any other hours completed on behalf of Client;
- b. Royalties for the use of the Design;
- c. Reimbursement for expenses incurred by him.

**16.2.** The price shall be in euros, excluding VAT.

### 17. CALCULATING FEES, DEADLINES

**17.1. Fixed price, hours worked and/or %Building Cost:** The fee may be calculated on the basis of the number of hours worked and/or, depending on the size of the Building Cost, and/or depending on the agreements that the parties have made. The Parties may also agree on a fixed amount in the event that it is easy to estimate the required Work Activities in advance.

**17.2. Fee depending on the number of hours worked:** If the parties have agreed that the Fee will be calculated in proportion to the number of hours worked, the parties shall adopt a standard hourly rate for the different types of work activities. The Yacht Designer or Naval Architect has the right to increase the hourly rate as from the first day of the year in line with the consumer price index.

**17.3. Preliminary Fee:** The Yacht Designer or Naval Architect will make a preliminary estimate of the Fee upon entering into the Contract, on which he will rely upon to claim the various instalments. After all work activities have been completed, the Yacht Designer or Naval Architect will make a final calculation. In the final calculation, if more hours are calculated than have already been charged, the Yacht Designer or Naval Architect will charge for that part which has not yet been charged in the final invoice.

**17.4. Fee for amendments/more work:** In so far as the Order has been extended, this is due to amendments or additional work, the Yacht Designer or Naval Architect will charge for the associated hours separately at the time that those work activities have been completed or, at his own choice, will clearly identify this in the final invoice..

**17.5. Fee depending upon the Building Cost:** If the parties agree that the Fee will be calculated depending on the Building Cost, the different instalment amounts will be calculated depending on the Building Cost previously estimated by the Yacht Designer or Naval Architect to the extent that the final Building Cost is not known. At the moment the final building cost is known, the Yacht Designer or Naval Architect will make a final calculation and the difference between the amount already paid and that which the Yacht Designer or Naval Architect is entitled to by virtue of calculating the final Building Cost will be included in the final invoice. If the Building Cost that was previously estimated during the work activities should, in the opinion of the Yacht Designer or Naval Architect, be reviewed, the instalments will also be reviewed and deducted.

**17.6. Calculation of Building Cost:** Building Cost is understood to mean the total Building Cost as charged by the Builder to the Client for the construction of the Vessel or vessel, including the supply of goods and services by any third parties.

**17.7. Payment of the Fee in instalments:** The Fee payable shall be charged in instalments according to the agreements that the parties came to upon entering into the contract. In any case, the Yacht Designer or Naval Architect shall be entitled to payment of instalments after completion of:

- a. Concept Design;
- b. Preliminary Design;
- c. Final Design;
- d. Production Drawings;
- e. As-built Drawings;
- f. For each designed variation;

Furthermore, the Yacht Designer or Naval Architect is entitled to charge for the hours worked by him during Supervision of the Construction and the sea trial, at the end of each Monday,

**17.8. Fees payable for premature termination of the Contract:** In the event the Contract is

terminated prematurely, the Fee is payable by the Client up to the date of termination of the Contract on the basis of actual costs incurred. If the Contract is terminated at the initiative of the Client then 20% of the Fee for the Work Activities that the Yacht Designer or Naval Architect does not need to perform will be due.

**17.9. Suspension of Work Activities:** If an instalment is not paid by the Client, the Yacht Designer or Naval Architect has the right to immediately suspend all Work Activities until the time when the Client has fulfilled all obligations towards him. All additional costs and damages caused by this will be borne by the Client. It may happen that at the time that the Client has fulfilled its obligations, the Work Activities cannot be immediately resumed by the Yacht Designer or Naval Architect, for example, available capacity is now deployed on another project and cannot be immediately made available once again. In that case, the Yacht Designer or Naval Architect is to resume the Work Activities at the earliest possible moment that in all fairness he can make the required capacity available again. If an earlier resumption of the Work Activities brings additional charges, they shall be reimbursed by the Client to the Yacht Designer or Naval Architect.

## 18. CALCULATION OF ROYALTIES AND PAYMENT

**18.1.** Client can only receive user rights to drawings when, in the opinion of the Yacht Designer or Naval Architect, they are fully completed. In the event that the Final Design Drawings and the related Production Drawings are used, the Client will owe Royalties to the Yacht Designer or Naval Architect.

**18.2. Royalties for the construction of the first Vessel:** In the event that the Work Activities belong to the design of a Vessel, the Royalties associated with the construction of the first Vessel to that design will be included in the last instalment of the Fee.

**18.3. Royalties for the construction of more than 1 Vessel:** When using the Design for the construction of more than 1 Vessel, royalties are payable for each Vessel that is to be built.

**18.4. Royalties for an existing Design:** If the parties agree that the Client may use an existing design for the construction of one or more Vessels, the Client must pay royalties to the Yacht Designer or Naval Architect in accordance with the agreements made by the parties.

**18.5. Payment/start of rights to use the Design:** Client obtains the user rights to the Design (and associated Design Drawings and Production Drawings) from the day following the day on which the royalties are received by the Yacht Designer or Naval Architect and all other obligations arising from the Contract for the Yacht Designer or Naval Architect are fulfilled.

## 19. COSTS

**19.1. Reimbursement for costs and storage:** All costs incurred in connection with the execution of the Contract by the Yacht Designer or Naval Architect for agreed storage will be passed on to the Client.

**19.2. Time to charge:** The Costs will be billed at the time they occur. Costs incurred during or after the Work Activities occurred but have not yet been passed on, will be included in the final invoice. If the final invoice has already been sent, these costs will be charged separately.

**19.3. Types of costs:** Costs passed on is understood to mean but is not limited to, the costs associated with hiring a third party, the use of materials, travel and accommodation, translation, reproduction, testing, certification, model tests, inspections, tests, office expenses, legal assistance in association with disputes with third parties, etc.

## 20. OTHER COSTS

**20.1. Collection costs, legal costs and extrajudicial costs:** If the Client fails or neglects to fulfil any of his/her obligations, all costs incurred in obtaining payment will be at the cost of the Client in accordance with the related legal provisions.

**20.2. Costs due to delay:** If the performance of the Work Activities is delayed by circumstances hereinafter called: "Standstill" other than those which can be attributed to the Yacht Designer or Naval Architect, the Client is obligated to reimburse the Yacht Designer or Naval Architect for the following costs hereinafter called: "Costs due to delay":

- a. the costs resulting from those commitments made by the Yacht Designer or Naval Architect in connection with the Contract that cannot be suspended, modified, interrupted or terminated during the Stand-still;
- b. the costs resulting from the suspension, interruption, modification or termination of the obligations to the extent that is feasible at the sole discretion of the Yacht Designer or Naval Architect;
- c. the costs, including labour costs, that are related to the execution of work activities scheduled by the Yacht Designer or Naval Architect for employees or hired workers during the period of Standstill that cannot be deployed in another profitable manner on another project at the sole discretion of the Yacht Designer or Naval Architect;
- d. the additional costs that the yacht Designer or Naval Architect must incur at the end of the period of Standstill, in connection with the continuation of the Work Activities;

**20.3.** If the period of Standstill continues for a period longer than two months, the Client is also obligated to settle a proportionate share of the agreed Fee to the Yacht Designer or Naval Architect corresponding to the work already carried out.

**20.4.** The Yacht Designer or Naval Architect shall not resume any Work Activities after a period of Standstill until all costs due to the delay are reimbursed to him.

In no event shall the Yacht Designer or Naval Architect be liable for any damage related to the Standstill.

## 21. PAYMENT, DEDUCTIONS AND DEBTS DUE PAYABLE

**21.1.** Unless otherwise agreed, the term of payment is four weeks after receipt of the invoice. Invoices can be sent by post, fax or e-mail. Parties will therefore need to agree which address, fax number and/or email address the Yacht Designer or Naval Architect should use.

**21.2. Late payment:** When the term of payment is exceeded the Client is always immediately in default and is then liable until full payment is made to the Yacht Designer or Naval Architect of the full amount plus statutory interest of 3% from the due date...

**21.3. Redemption of previous claims:** Payments made by the Client shall always serve first to pay for all interest and costs, in the second place to pay for the longest outstanding claims, even if the Client states that the payment relates to a later invoice.

**21.4. Deduction:** The Client waives any right to deduction from any amounts owed. Warranty claims do not suspend the Client's payment obligations.

**21.5. Settlement fees for Construction of a Series:** In the case of Construction of a Series, the Yacht Designer or Naval Architect is entitled to employ an independent expert to check the payment of the payable fee.

**21.6. Special circumstances:** In case of liquidation, bankruptcy, suspension of payment or the

entering into receivership of the Client, the Client's obligations shall immediately be due and payable.

## 22. DISPUTES

**22.1. Applicable law:** This Contract and all other legal relationships between the Client and the Yacht Designer or Naval Architect are governed by Dutch law.

**22.2. Competent court:** The court in the district where the Yacht Designer or Naval Architect is located and/or office is registered shall have jurisdiction over the settlement of a dispute.

**22.3. Validity of a dispute:** There will be a dispute if it is seen as such by one of the parties, and this has brought to the attention of the other party..

**22.4. Settlement:** All disputes arising from or related to the Contract in the broadest sense of the word, including disputes concerning the existence and validity, shall be settled by the competent Dutch court or through arbitration at the discretion of the Yacht Designer or Naval Architect.

**22.5.** In the event that a dispute is settled by arbitration, the arbitration shall be conducted in accordance with the Arbitration Rules of the Transport And Maritime Arbitration Foundation (TAMARA arbitration, <https://www.tamara-arbitration.nl/>).

**22.6.** If a final judgement that has been made by a court wholly or in part declares a decision by the arbitration board fully or partially invalid, each party has the right to dispute in accordance with this article in so far as the dispute remains unsettled. The claim expires, if that named in article 22.5 is brought before the Foundation more than three months after the court judgment. The person who cooperated in the annulled decision as arbitrator or secretary must not take part in the new arbitration.

## 23. FINAL CLAUSES

**23.1. Headings above the provisions:** The headings above the provisions in these general terms and conditions have been added for convenience only and are self-standing; and they play no role in the interpretation of the provisions of the AV2014.

**23.2. Amendment clause:** The Yacht Designer or Naval Architect is free to modify these general terms & conditions annually. The amended version of these terms and conditions shall apply to all legal relationships between the Client and the Yacht Designer or Naval Architect from the day that the modified version is received by the Client and he has not immediately made a written objection against them.

**23.3. Communications:** All communications – including offers and acceptances – must be made in writing by one party to the other party. In writing is understood to mean in any case, by mail, fax or email.

**23.4. Invalidity:** In the event that a part of the Contract and these general terms & conditions become partially invalid or non-binding, the parties remain bound to the remaining parts. Parties will replace the invalid or ineffective part by provisions that are valid and binding and have legal effect, having regard to the fact that the contents and purpose of the Contract or the general terms & conditions, as far as possible, correspond with that of the invalid or non-binding portion.

**23.5. Filing:** These general terms and conditions were filed with the Noord-Holland Court Registrar located in Haarlem under number 04/2014 on 1 April 2014.