



Terms & Conditions 2005

These are the general terms of delivery for the acceptance and execution of commissions for the designing of yachts and commercial vessels, and for any related activities. They were drawn up and accepted by the Netherlands Society of Yacht Designers and Naval Architects (NBJA).

No rights can be derived from the application of this document by non-members of the NBJA. Neither the NBJA nor its Board can be held responsible or liable for the work or activities of individual members.

This English translation is provided as an information service only and should not be considered legally binding. In case of dispute, the original Dutch language version applies.

DEFINITIONS

For the purpose of these Terms and Conditions, the following expressions shall have the meaning assigned to them below.

1.1. **NBJA:**

The Dutch Society of Yacht Designers and Naval Architects, seated in Haarlem. This society was established on 6 May 1966 and was endorsed by Royal decree on 21 February 1968 (nr. 105).

1.2. **Designer:**

The natural person, limited partnership, firm or legal body that accepts the commission to carry out applicable services. In these Terms and Conditions, interior designers will also be grouped under the heading designer.

1.3. **Client:**

The natural person, firm, private limited company, limited partnership or other legal body for whom or on behalf of whom the designer is commissioned to provide services in the design field and/or implementation of that design or any related consultative work.

1.4. **Commission:**

The agreement whereby the designer is obliged to carry out the activities commissioned by the client.

1.5. **Vessel:**

Yachts, commercial craft and other ships.

1.6. **Design drawings:**

Drawings with a limited degree of detail indicating the general nature of the design and with sufficient information in the event of a technical examination. These must be suitable to serve as the foundation for detailed production drawings.

1.7. **Production Drawings:**

Detailed drawings and/or data for use in the production process, sometimes called work drawings. These drawings and the production preparation are not part of the design as described in article 1.8 below.

1.8. **The design:**

Consists of the following three parts:

1.8.1. Concept design: A schematic plan intended as a representation of and an insight into the project.

1.8.2. Preliminary design: At this stage, the design is expanded upon. This part of the commission consists of the following, where applicable:

- a. A general arrangement and profile plan giving the layout and the design. This is based upon the provisional lines plan and the provisional calculations with regard to weight, rigging, stability and engine capacity.
- b. Information related to the set-up of the construction.
- c. Abridged specifications possibly incorporated into the drawings; these should be sufficient for professional yards to give a quotation.

1.8.3. Final design: At this stage the design is definitively established in the form of design drawings, as defined in article 1.6 above. This part of the commission consists of the following, where applicable:

- a. The general arrangement and profile plan;
- b. The specifications;

- c. The lines plan
- d. The construction plan;
- e. The sails plan;
- f. Drawings of the keel and rudder;
- g. The deck plan;
- h. The engine room arrangement;
- i. Diagrams of important systems;
- j. The lay-out plan with the main joinery measurements;
- k. Other design drawings required for building the vessel;
- l. Calculations with regard to weight, rigging, stability and performance;
- m. The (carrying out of) tests to ensure the design meets legal requirements and those laid down in the specifications for the boat in question, unless expressly stated otherwise.

1.9. **Invitation to tender:**

On behalf of the client, carrying out activities related to the tendering of the project.

1.10. **As built drawings:**

Drawings of the vessel as finally built.

1.11. **Variant:**

A newly made (preliminary) design, including all essential changes made compared to the previous (preliminary) design.

1.12. **Building supervision:**

Monitoring the building and representing the client in all areas related to the construction process.

1.13. **Building cost:**

The cost price of the vessel as delivered by the yard, excluding VAT.

1.14. **Building contract:**

The agreement between the yard and client with regard to building the vessel, including:

- a. The construction, conforming to the preliminary design;
- b. Items to be delivered;
- c. The delivery time; and
- d. The building cost and payment terms.

1.15. **Series construction:**

The building of more than one vessel using the same design. Can be grouped into:

- 1.15.1.** Limited series (series) building rights: Between two and ten vessels per year.
- 1.15.2.** Extended series: Eleven or more vessels per year.

1.16. **Building rights:**

The right to execute the design or have it executed, divided into:

- 1.16.1.** Building rights: The right to execute the design once;
- 1.16.2.** Series building rights: The right to execute the design or have it executed more than once;
- 1.16.3.** Exclusive (series) building rights: The exclusive right to execute the design or have it executed once (in series).

1.17. **Remuneration:**

The amount to be paid to the designer for the expertise, creativity and activities of the designer and his employees, and where applicable, to other people and/or companies brought in

to carry out the commission conforming to these Terms and Conditions.

1.18. **Recommended tariff:**

The fee recommended for a specific type of design, expressed as a percentage of the building cost. The following can be distinguished:

- a. A fee for alterations and for special projects;
- b. A fee for regular yachts and special commercial craft;
- c. A fee for regular commercial craft;
- d. A fee for series construction in an extended series.

TERMS AND CONDITIONS

2. RELEVANCE

2.1. **Relevance:**

These Terms and Conditions apply to each offer from and agreement with the designer, as well as to each commission by the client for which the designer has declared that these Terms and Conditions apply; presuming that the parties have not explicitly deviated from these Terms and Conditions. Any deviation should be made clear in the offer or commission.

2.2. **Exclusion:**

The client accepts the application of these Terms and Conditions with the exclusion of any general conditions exercised by the client.

2.3. **Precedence:**

In cases (such as an offer, commission or agreement) where other general conditions apply that may come into conflict with these Terms and Conditions, then these Terms and Conditions take precedence.

3. RELATIONSHIP BETWEEN CLIENT AND DESIGNER.

3.1. **Confidentiality:**

The designer should serve as the client's confidential trustee, advising on technical and aesthetic issues, looking after the client's interests to the best of his ability, and ensuring that the client's requirements are realised as fully as possible.

3.2. **Authorization:**

Unless explicitly agreed otherwise in writing, the designer will act as the client's authorized trustee, responsible for carrying out and completing the commission while observing the agreements made with the client and these Terms and Conditions.

4. THE COMMISSION

4.1. **The commission:**

The designer's commission will include one or more of the following items:

- a. Making a concept design;
- b. Making a preliminary design;
- c. Assisting in or taking care of the request for and assessment of quotations;
- d. Putting the building out to tender;
- e. Making the final design;
- f. Making the production drawings;
- g. Supervising the building;

- h. Giving advice;
- i. Providing assistance and support;
- j. Carrying out an expert's report;
- k. Other services.

4.2. Scope of the commission:

4.2.1. The commission for a concept design includes making a schematic plan as detailed in article 1.8.1.

4.2.2. The commission for making a preliminary design includes the activities detailed in article 1.8.2.

4.2.3. The commission for making a final design includes the activities detailed in article 1.8.3.

4.3. Scope of a commission for tendering:

This commission involves assisting in and/or carrying out activities related to:

- a. Requesting quotations for the building of the vessel;
- b. Assessing these quotations;
- c. Tendering out the building.

4.4. Scope of an additional commission to make production drawings:

This involves making the production drawings specified in this commission (see article 1.7.).

4.5. Scope of a commission for building supervision:

4.5.1. In general, a commission for building supervision consists of the following activities, unless otherwise agreed:

- a. providing the yard with instructions for starting construction;
- b. making as many visits as deemed necessary by the designer to the yard to maintain a general overview of the execution and progress of the project;
- c. carrying out the tests and manoeuvres deemed necessary by the designer during the technical sea trials.

4.5.2. A Commission for building supervision gives the designer the authority detailed in article 7.1.

4.6. Recording of a commission:

4.6.1. Offer: Every offer is entirely without engagement. This also applies if a term for acceptance is mentioned. The offer can be revoked, except when the reverse was explicitly agreed.

4.6.2. Realization: the commission is deemed to be realised as soon as:

- a. the client has called in the support or advice of the designer and the designer has made it clear to the client before the start of his activities for the client that is regarded and accepted as a commission and the revocation periods mentioned in article 4.6.3. have passed, or before that, at the moment the designer has commenced carrying out the commission at the client's request.
- b.

4.6.3. Possibility for revocation:

4.6.3.1. The designer can revoke his accepted offer within three business days without any liabilities.

4.6.3.2. The client can revoke his acceptance of the offer within three business days of the acceptance without any liabilities.

4.7. Required extra work:

If the designer deems it necessary that some of the activities of a consecutive nature be carried out before their due order, the designer must inform the client of the consequences thereof.

4.8. Time of delivery:

4.8.1. An agreed time of delivery is not a deadline, unless explicitly agreed otherwise.

4.8.2. As soon as the designer foresees a delay of the time of delivery, he must inform the client accordingly, such as in writing and stating the reasons of the delay.

4.8.3. The designer is not deemed to be in default until the moment the time of delivery has been exceeded by more than 20% as a consequence of causes attributable solely to the designer.

5. BUILDING RIGHTS

5.1. Obtaining the building rights:

The client obtains the building rights according to article 1.16.1. by payment of the fees due as specified in article 4.2.3., unless agreed otherwise.

5.2. Obtaining the series building rights:

The series building rights as mentioned in article 1.16.2. must be agreed explicitly between the parties.

5.3. Exclusive (series) building rights:

5.3.1. The exclusive (series) building rights must be agreed explicitly between the parties. They are extended to a natural person or a corporate body. It is not attached to a mould and/or a computer file, an image carrier or other data carriers.

5.3.2. In general, exclusive series building rights can only be extended if the client commits to building a certain number of vessels within a certain period, and/or paying the fees for the number of vessels in question.

5.3.3. The exclusive series building rights are only effective after payment of the fees due as detailed in articles 4.2.3., 10.1.3. and 12.1.3., or in articles 4.2.3., 10.1.4. and 12.1.4.

5.3.4. If series construction under exclusive series building rights is stopped or not commenced, the designer may request the client in writing to commence or continue building. If the client has not commenced or continued building within a year after this written request, and/or has not paid the fee for this series building, all the client's rights to building the relative type of vessel or having those built are cancelled.

5.4. Execution:

5.4.1. The design may only be carried out according to the drawings, calculations and specifications provided by the designer for this purpose. The client and/or the builder are not allowed to make alterations nor have alterations made to it.

5.4.2. If the builder deems a different type of construction or execution necessary or desirable, he must consult with the designer prior to carrying these out.

6. RESPONSIBILITY OF THE DESIGNER

6.1. Complying with requirements:

The designer is responsible for ensuring his design complies with reasonable requirements of quality and functionality, and with other requirements that the client can prove to have submitted to the designer in the period between giving the commission and the completion of the preliminary design, including the specifications.

6.2. Informing the client:

If the designer is of the opinion that the requirements referred to in article 6.1. cannot be realised in the design, he must inform the client in a timely manner.

6.3. Correct execution:

The designer is responsible for the correct execution of the calculations and drawings for the design. He is not responsible for the correct execution of the design by the yard.

6.4. Aesthetic appreciation:

The aesthetic appreciation of the design is not a factor in determining if the designer has fulfilled his commission.

7. LICENCE AND RIGHTS GRANTED TO THE DESIGNER

7.1. License for building supervision:

7.1.1. An assignment to supervise building grants the designer the license to order the builder to deviate from the specifications and drawings. Prior consent of the client for latter is not required. However, this only applies to deviations which can be classed as changes of the construction regulations or aesthetically desirable changes in parts of the design, under the condition that:

- a. these changes remain within the scope of the building commission;
- b. the practical functionality of the vessel for the client's intentions is not compromised;
- c. the agreed building cost and delivery time are not exceeded due to changes.

7.1.2. The designer to whom the building supervision is commissioned is exclusively authorized to judge if the work has progressed to such an extent that, considering the situation on the day of survey, the builder has a right to payment of the partial of entire building cost, in the manner stipulated in the building contract.

7.2. Relinquishing the assignment:

7.2.1. In the following cases, the designer is always entitled to relinquish the assignment or at least to commence the cancellation of the contract, without impediment to the designer's rights to compensation:

- a. if the designer is informed of circumstances after accepting the commission, which give good reason to presume the client may not be able to fulfill his obligations;
- b. if the designer requested a security for fulfilling the client's obligations on acceptance of the commission and the client partly or entirely fails to deliver this security.

7.2.2. if circumstances arise involving persons and/or material used by the designer for the execution of the assignment, or generally be used by the designer, and are of such a nature that carrying out the commission would be impossible, or so objectionable or disproportionately expensive that complying with the commission cannot reasonably be demanded, the

designer is entitled to relinquish the commission or at least to cancel the agreement.

7.2.3. In case the designer should decease, his heirs or successors, as well as the client, have the right to end the commission prematurely for this reason.

7.3. Calculations:

The results of the calculations made will be used to produce the design; the calculations are not submitted.

7.4. Proprietary rights and copyrights:

7.4.1. All originals and copies of sketches, drawings, calculations, forecasts, specifications, estimates, reports, computer files, image carriers and other data carriers and models remain the property of the designer, irrespective of the fact that they have been submitted to the client or to third parties.

7.4.2. In compliance with the (Dutch) Authors Act of 1912, the copyright and/or the exclusive right to a drawing or model, in compliance with the Uniform Benelux Act for Drawings and Models relating to designs, production drawings, sketches, photographs and all other images of the design or a part thereof, the models and building moulds as well as all objects, computer files, image carriers or other data carriers forming an image or picture of the design or part of the design, remain the exclusive property of the designer.

7.4.3. Using or transferring the above-mentioned images, data carriers or moulds is only allowed with the prior written permission of the designer.

7.4.4. If the client has at his disposal a computer file, an image carrier or a different data carrier registering the design or part of the design, or a mould manufactured for the production of the vessel or parts of it, he is held to utmost confidentiality concerning this information.

7.5. Other rights:

7.5.1. The designer is entitled to deliver a design that deviates from what was agreed if it concerns alterations required to comply with applicable legal or non-legal regulations, or if it concerns minor alterations portending improvements.

7.5.2. The designer is entitled to carry out his designs himself, or have them carried out by or for others than the original client, as long as the reverse has not been agreed.

7.5.3. The designer has the right to make images of the vessel's interior and exterior, to have those images made, and to copy and publish those images.

7.6. Name and logo:

7.6.1. The designer has the right to provide the material realisation of his design with his name or logo, unless this damages the exterior or the use of the vessel.

7.6.2. Without affecting his other rights with regard to breach of copyright, the designer may demand for his name or logo on the vessel to be removed if the vessel's character or quality has been changed by alterations applied without his approval.

7.7. Prizes and awards:

Prizes, awards, etc. given to the designer for his role in the design or its execution remain property of the designer.

8. LIABILITIES ASSUMED BY THE DESIGNER

8.1. Damage liability:

8.1.1. The designer only accepts liability for damage sustained by the client that is caused by an accountable fault of the designer in complying with the agreement or by an unlawful act.

8.1.2. The designer is entitled to limit or repair the damage at his own expense.

8.1.3. The designer does not accept liability for damages caused by malice and gross misconduct of non-supervising subordinates and other persons employed in the execution of the commission.

8.1.4. The designer is not liable for damages consisting of or caused by faults relating to the function and quality and/or the suitability of the materials as well as other items that have been prescribed for use or that are provided by the client.

8.1.5. The designer is not liable for damage developed after the delivery of the vessel caused by expert use, lack of care and/or normal wear and tear, as well as damage caused by alterations to the vessel by the user or third parties.

8.1.6. The designer is not liable for damage the client sustains as a consequence of activities or negligence of builders or suppliers that do not comply with the drawings, the specifications and/or other conditions, unless the designer is culpable of any accountable faults in the sense of article 8.1.1. relating to agreed supervision.

8.2. Other liabilities:

8.2.1. The designer is not liable for mistakes involving parts of the vessel not designed by him, not designed under his responsibility, or not executed under his supervision. Neither is he liable for parts of the vessel if the liability has been

transferred to the yard or to a supplier by specifications or by agreement of contracting or delivery.

8.2.2.

The designer is liable for technically fitting the parts of the vessel that are designed and manufactured by third parties if the designer deems those parts to be sound; however, he is not responsible for their functioning or the results expected of such parts.

8.2.3. The designer always draws up cost estimates to the best of his ability, but free of engagement. He is not liable if the vessel or any part of it cannot be realised for the estimated price.

8.2.4. The liability of the designer is limited to half of the due fee.

8.2.5. The designer is not liable if his design complies with the following conditions:

- a. it was realised according to the commission obtained;
- b. it complies with the European Guidelines for Pleasure Craft, and/or to the regulations of a certified classification agency relative to the type of vessel concerned.

8.3. Termination of liability:

8.3.1. The liability of the designer ends after a successful technical sea trial.

8.3.2. Any claims on the designer, except for those recognised by him in writing, lapse twelve months after the date on which they were made.

9. RIGHTS AND OBLIGATIONS OF THE CLIENT.

9.1. Protection of the design:

9.1.1. The client is not allowed to make any changes to the design and production drawings, the specifications or the vessels themselves – at least as far as the design is concerned – without prior permission of the designer.

9.1.2. The client, respectively his heir, has the obligation to keep completely confidential all design and production drawings, sketches, models and all other images of the design provided to him by the designer in connection with the commission. The client is explicitly not allowed to show or provide those to third parties that could make use of those for themselves or others.

9.2. Examination and claims:

9.2.1. The client should examine the vessel upon delivery after the sea trial. The client must check that the vessel complies with his commission.

9.2.2. If visible faults or defects are detected for which the designer is liable as a consequence of the commission, the client must report this in writing to the designer upon delivery.

9.2.3. Non-visible faults or defects for which the designer is liable as a consequence of the commission must be reported in writing to the designer within ten days of discovery, and at the latest six months after the sea trial or delivery.

9.3. Publicity:

9.3.1. Concerning a commission for series building, the client is entitled to publish the general plan and photographs of the vessel designed for advertising and promotion purposes. The client may publish other drawings of the design only with the written permission of the designer.

9.3.2. In all other cases, the builder or the client may only publish drawings or photographs of the vessel designed with the prior written permission of the designer.

9.3.3. When publishing drawings, photographs or descriptions of the vessel designed, the client and builder must:

- a. Name the designer of the vessel;
- b. State the copyright of the designer;
- c. Send the designer a copy of the publications or a copy thereof.

9.4. Termination of the assignment:

9.4.1. If the client terminates the commission (in writing) for reasons other than a default of the designer in complying with the agreement, the client can revoke a commission for a design under the condition that he pays the following to the designer:

- a. the fee the designer would be due at completion of the relevant part of the assignment, as detailed in article 10.3.1.
- b. any expenses incurred or advance payments made by the designer;
- c. the expenses and advances resulting from any contracts the designer has already agreed for the completion of the commission.

9.4.2. If the client should decrease, the commission is not cancelled for that reason.

REMUNERATION

10. FEE STIPULATIONS

10.1. The design fee:

10.1.1. The fee for a design can be calculated from the building cost as referred to in articles 1.13 and 10.2., in accordance with a recommended tariff as referred to in article 1.18., for a single execution of the design when the building cost is expected to exceed the sum of € 50.000,00, unless one of the following applies:

10.1.2. With regard to article 1.8., the design fee for a second execution, identical to the first, is 50% of the design fee current at the time of the first execution.

10.1.3. The design fee payable for a limited series is calculated as follows:

* for the first execution – 100% of the design fee, in compliance with article 10.1.;

* for the second execution – 50% of the design fee payable for the first execution;

* for each subsequent execution – 10% less than the previous execution, provided that the payable design fee amounts to a minimum of 20% of the full design fee.

10.1.4. The design fee for building an extended series of yachts will be payable for each hull built, in accordance with the recommended tariff as stated in article 1.18 (d).

10.1.5. In addition to the above mentioned method, which is based upon a percentage of the total building costs, the design fee can be determined in the following ways:

- a. Based upon the time spent on realising the commission;
- b. Based upon a fixed amount, agreed upon by the parties beforehand and in writing;
- c. Based upon any other criterion agreed upon by both parties.

10.2. Building cost and design fee stipulations:

10.2.1. The building cost, representing the cost price of the vessel as delivered by the yard, excluding VAT, includes the following:

- a. The contract price quoted by the shipyard (without deducting possible trade-ins and excluding possible guarantee terms);
- b. The value of materials and/or parts for the vessel to be supplied by the client, or in his name, including the costs of their fitting as well as the wages of the workers employed by the client;
- c. The value of old or refurbished materials used, calculated as new materials, including the cost of their fitting.
- d. The cost of all technical equipment on board, including the installation and connection costs.

10.2.2. In the event of the commissioned design not being executed, and in the absence of the afore-mentioned particulars, the building cost is determined conclusively by the designer's estimate.

10.2.3. The building cost estimated by the designer is retained as a guideline for determining the design fee. The final design fee is calculated over the actual building cost of the vessel, in conformity with article 10.2.1.

10.2.4. In the event of an increase in building cost due to subsequent requirements set by the client, the design fee will be raised in an equitable manner and in accordance with the additional work this entails for the designer.

10.2.5. In the event that the building cost differs from the estimated building cost by more than 10% during the construction of the first three vessels, as covered by article

10.1.3. and/or article **10.1.4.**, then the previously determined design fee will be amended and conclusively determined on the basis of the data obtained.

10.3. Subdivision of the design fee

10.3.1. The following subdivision in percentages applies as guideline for the remuneration of a design, in accordance with the segmentation in article 1.8.:

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|---------------------------|-----|
| a. the concept design | 15% |
| b. the preliminary design | 25% |
| c. final design | 60% |

10.3.2. The client cannot derive a right to reduction of the remuneration in the event a vessel has been built according to the plans of the designer, and part of the work mentioned in article 10.3.1. has become superfluous and therefore has not been executed.

10.4. Deviations from the normal design fee:

10.4.1. Should the client request more than two variations of the concept design during the building preparations, a third of the percentage for the concept design, as stated in article 10.3.1. (a) can be charged for each subsequent version.

10.4.2. Should the client desire exclusive building rights, then the design fee (with regard to article 1.8) will be higher than stipulated in article 10.1. It shall be determined by mutual agreement, subject to the expected production.

10.4.3. The design fee for the designer can be determined by an agreement, concluded between the parties, if the building cost for one-off design remains under €50,000.

10.4.4. If a recommended tariff, as referred to in article 1.18 (b) applies to part of a design for a yacht at a different tariff, as referred to in articles 1.18 (a), or in articles 1.18 (b) and 1.18 (c) for commercial vessels, applies to another part of the design, the fee for each part will be calculated from the building cost for that part and the corresponding percentage.

10.4.5. The fee for alterations and repairs will be determined by a tariff as stated in article 1.18 (a). The cost of the alterations and repairs is used as the basis for the fee.

10.4.6. When a commission for a design is not covered by these Terms and Conditions, the design fee is determined by mutual agreement and in equitable fashion based upon this document.

10.4.7. If the designer resigns from his commission due to the circumstances stated in articles 7.2.1. or 7.2.2., he has the right to a remuneration for the services rendered and (advance) expenses incurred in the performance of his duties as designer in addition to the expenses and costs ensuing from any obligations already assumed in his capacity as designer for the further execution of the commission.

10.5. Remuneration for additional design work and building supervision:

10.5.1. The fee for the following additional design work is determined separately, in consultation with the client and will be proportionate to the work it involves for the designer and his staff:

- a. The compilation by the designer of exceptional information, necessary for creating the design, insofar as it is not provided by the client.
- b. The creation of entirely or partially new drawings, calculations, specifications or a budget should the client desire fundamental changes in a task that was already concluded.
- c. Other design activities, beyond the scope of ordinary design work.

10.5.2. In principle, the fee for building supervision is invoiced per hour worked, in consultation with the client and proportionate to:

- a. the work to be performed by the designer and his staff.
- b. the distance and the transport connections to the shipyard.

10.6. Remuneration for other services:

For the activities mentioned in articles 4.1. (h to k inclusive), the designer is due a fee calculated on the basis of the duration of the work and the importance of the commission.

10.7. Remuneration of consultants:

Consultants for special technical installations, for the interior of the vessel or for special parts of the design, will be appointed by the client in consultation with the designer. The fee for these consultants is payable by the client.

10.8. Value Added Tax (VAT):

Every remuneration or payment deriving from these Terms and Conditions is subject to being increased by VAT, as described by law.

11. SUPPLEMENTARY CHARGES.

11.1. Reimbursement of expenses:

The following expenses are chargeable to the client:

- a. Travel and accommodation expenses incurred by the designer and his staff for the purpose of fulfilling the commission;
- b. Expenses incurred in duplicating the drawings, specifications, enclosures and other documents;
- c. Expenses incurred in drawing up contracts and translations;
- d. Expenses incurred in inspecting and/or testing the materials, insofar as this cannot take place at the shipyard or at the installer's premises;
- e. Expenses incurred in model testing;
- f. Expenses incurred with the classification agencies;
- g. Expenses incurred in models and photography requested by the client;
- h. Expenses incurred in advertisements, postage, stamps, telephone, fax, telegraph, telex, registration etc.;
- i. Expenses incurred in legal matters and arbitration proceedings against a third party.

11.3. Failure to fulfill an obligation:

In the event the client is default or in breach of contract, then all reasonable outlays to obtain payment will be settled amicably at the client's expense. In any event, the client is obliged to pay the following:

| | |
|--|-----|
| * For the first €3,000 of the no fulfilled obligations | 15% |
| * For a higher sum up to €6,000 | 10% |
| * For a higher sum up to €15,000 | 8% |
| * For a higher sum up to €60,000 | 5% |
| * Above the sum | 3% |

If the designer can prove to have incurred higher expenses that were reasonably necessary, these will also qualify for reimbursement.

11.3. Charges for legal or other assistance should:

a. the designer and the client conduct a judicial, arbitration or any other procedure with reference to an agreement that is subject to these Terms and Conditions, and

b. the client be found to be at fault, fully or to a significant degree, in an arbitral award, judicial decision or any other judgment which has become final and conclusive, then the client is obliged to pay the designer the costs of legal assistance incurred by the designer in every instance, excepting when the client demonstrates that the cost is unreasonably high.

12. COLLECTION OF FEES

12.1. The design fee:

Unless otherwise agreed with the client, the design fee is to be paid as follows:

12.1.1. For designs included in article 10.1.1.:

- a. In case of partial commissions, such as a commission exclusively for the execution of a concept design in conformity with article 1.8.1. and/or for a preliminary design in conformity with article 1.8.2., the design fee is to be collected in two equal installments, the first of which is due at the time of the commissioning and the last upon completion.
- b. When the commission is for a (complete) design in conformity with article 1.8., the design fee is to be collected in three or more equal installments, the first of which must be paid upon commissioning and the last upon completion.

12.1.2. For designs included in article 10.1.2.: upon delivery of drawings.

12.1.3. For designs included in article 10.1.3.

- a. A third part of the outstanding fee for the first vessel upon commissioning, a third part upon the keel laying of the first vessel built according to this design, and a third part after the successful sea trial of said first vessel;
- b. For each successive vessel built according to this design: when the hull is finished or upon leaving the shipyard.

12.1.4. For designs included in article 10.1.4.

- a. The fee for the first ten vessels: upon commissioning the design;
- b. The fee for the second ten vessels; when the design is sufficiently ready to start building the moulds or the hulls;
- c. The fee for the 21st vessel to be built according to the design, and subsequent ones; when the hull is ready upon leaving the shipyard.

12.2. Fee for building supervision:

This is to be collected in proportion to the work progress so that at least 90% of the outstanding fee for building supervision is paid before the technical sea trial.

12.3. Fee for other activities:

This is to be collected proportionally to the work progress.

12.4. Expenses and disbursements:

The expenses and advances made by the designer, in conformity with 11.1., are to be collected immediately.

12.5. Delays:

In the event that the fulfillment of a commission accepted by the designer is delayed due to circumstances which cannot reasonably be attributed to him, the client is obliged to pay the designer the costs and damages arising from the obligations assumed by the designer for the fulfillment of the commission. For his part, the designer must limit these costs and damages as much as possible. Should such a delay last longer than two months, the designer is entitled to claim the fee for the work already carried out, notwithstanding the provisions of article 12.1.

12.6. Payment:

12.6.1. Payment by the client should be made within 30 days to the invoice being presented. By exceeding the payment term,

the client is immediately and always deemed in breach of contract and is then obliged to pay the designer interest, from the due date until the date on which payment is made in full, at the statutory interest rate plus 3%.

12.6.2. Payments made by the client go to:

- a. in the first place, settling all costs and interests that are due;
- b. in second place, settling due and payable invoices that have been outstanding for the longest period of time, even when the client states that the payment pertains to an invoice with a later date.

12.6.3. The client renounces all rights to the adjustment of amounts owed by either party. Warranty agreements do not suspend the client's obligation to settle his liabilities.

12.7. Payment of fees for series building:

In the case of series building, the designer is entitled to have the payment of the fee, owed by the builder of the series, assessed by an independent expert.

12.8. Special circumstances:

Should the client go into a winding-up, bankruptcy, moratorium on payments or a guardianship, the obligations of the client will be immediately due and payable.

MISCELLANEOUS

13. DISPUTES

13.1. Applicable Legislation:

Dutch law applies to all agreements between the client and the designer.

13.2. Settlement of disputes:

13.2.1. All disputes – including those that are considered as such by only one of the parties – that arise between the client and the designer of their legal successors or assignees with regard to the commission of related agreements, will, to the exclusion of a regular judge, be settled by arbitration in accordance with the regulations of the TAMARA (Transport and Maritime Arbitration) foundation.

13.2.2. In case a definitive legal judgment partly or entirely nullifies the ruling of the arbitration board, each of the parties has the right to have the dispute – insofar as it has remained unsolved- resubmitted for arbitration in accordance with this paragraph. This right expires if the case is not brought before the above-mentioned Foundation three months after the definitive judgment. Any party involved in the annulled arbitration ruling as arbiter or clerk shall not take part in the new arbitration case.

13.3. End-user clients:

Should the client be the end-user, or should the staff of his company or office consist of three or less members (including the client himself), he is entitled to elect to settle the dispute in a civil court of competent jurisdiction in accordance with the law or the applicable international treaty, provided he does so within a month of the designer having invoked this provision in writing.

14. FINAL CLAUSES

14.1. Modification:

14.1.1. The members' meeting of the NBJA is entitled to alter the prevailing Terms and Conditions should circumstances dictate.

14.1.2. An alteration will be legally binding to both the client and the designer on commissions ordered at least seven days after the registering of said alteration at the Office of the District Court in Haarlem.

14.2. Deviations:

The client and the designer may deviate from the stipulations of these Terms and Conditions by mutual consent.

14.3 Designation:

These Terms and Conditions can be referred to as "Terms and Conditions 2005 of the Netherlands Society of Yacht Designers and Naval Architects" or simply as "T and C 2005 NBJA".

FILED AT THE OFFICE OF THE DISTRICT COURT IN HAARLEM D.D. 21 FEBRUARY 1968.

AMENDED AND REGISTERED AT THE OFFICE OF THE DISTRICT COURT IN HAAREM D.D. 25 MAY 2005.

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