

# GENERAL CONDITIONS WIJMA MARINE CONSULTANTS

## article 1 General

1. The present terms and conditions shall apply to each and every offer, tender and agreement between Wijma Marine Consultants, hereinafter called "user" and a client, to which user has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
2. The present terms and conditions shall also apply to all agreements with user, the execution of which calls for the services of third parties.
3. The applicability of client's possible purchase or other conditions is explicitly rejected.
4. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, user and client shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be offered as far as possible.

## article 2 Offers and tenders

1. All offers shall be free of obligation unless the offer contains an acceptance term. They shall be valid for a period of 30 days, unless indicated otherwise.
2. It shall not be possible to bind user to his offers and tenders if the client should have understood in accordance with the requirements of reasonableness and fairness that the offer or tender, or part thereof, obviously contains a mistake or an error in writing.
3. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including travel, shipment and administration costs, unless user indicates otherwise.
4. If the acceptance deviates (on secondary items) from the offer given, user shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless user indicates otherwise.
5. A compound quotation shall not oblige user to execute part of the assignment against a corresponding part of the given quotation. Offers and tenders shall not apply automatically to future assignments.

## article 3 Fee

1. Parties can agree upon a fixed fee the moment the agreement is concluded.
2. If no fixed fee has been agreed upon, the fee shall be determined on the basis of the number of hours actually spent on the work. The fee shall be calculated in accordance with user's usual hourly rates, valid for the period in which the work is being done, unless a deviating hourly rate has been agreed upon.
3. The fee and a possible cost estimate shall be exclusive of VAT.
4. Additional work: If, during the execution of the work, it appears that the originally agreed or expected amount of work was insufficiently estimated at the conclusion of the agreement, and this cannot be attributed to the user, the user cannot reasonably be expected to continue the project for the originally agreed fee. In that case, the user will inform the client of his intention to increase the fee or rate. The User shall state the exact amount of increase of the date on which the increase will take effect.
5. For assignments with a duration exceeding one month, the costs due will be charged periodically.
6. The user is entitled to pass on price increases if, between the time of offer and delivery, the rates with regard to, for example, wages or materials have risen.
7. If the user agrees a fixed fee or hourly rate with a client, the user is nevertheless entitled to increase this fee or rate within three months of the conclusion of the agreement. In that case the client is entitled to dissolve the agreement.

## article 4 Payment

1. Payment must be made within 14 days from the date of invoice, in a way to be indicated by user and in the currency in which the statement of expenses was drawn up. Contestation of the amount of the statements of expenses shall not suspend the fulfillment of the payment obligation.
2. With respect to assignments with a duration exceeding one month, the costs owed shall be charged periodically.
3. If client fails to fulfil his payment obligation within the term of 14 days, then client shall be in default by operation of law. In that event, client shall owe legal interest per month (calculated on the principal sum due) in accordance with art. 6:119 BW and 6:119a BW jo. 6:120 BW. The interest on the amount due and payable shall be calculated as from the day the client is in default until the moment he has paid the amount in full.
4. User shall be entitled to have the payments made by the client, go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the client designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.
5. In the event of bankruptcy, death, legal actions, exceeding the term of payment, change of business activities, user reserves the right to consider the agreement dissolved and demand the outstanding amount in full without judicial intervention.
6. Judicial and extra-judicial costs shall be for the account of the client.

## article 5 Duration of the Contract; Term of Execution, Execution of the Agreement

1. The agreement between user and a client shall be entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or if parties have explicitly agreed otherwise in writing.
2. If a term has been agreed to complete certain work within the term of the agreement, then this term shall never be a term to be observed on penalty of forfeiture of rights. If the term of execution is exceeded, the client must consequently declare user in default in writing. User shall be given a reasonable term to complete the certain work within the agreement.
3. User shall execute the agreement to the best of his knowledge and ability.
4. If and in so far required for the proper execution of the agreement, user shall have the right to have certain work done by third parties. The applicability of art. 7:404, 7:407 lid 2 and 7:409 BW is excluded.
5. If user or third parties engaged by user within the scope of the assignment do work at client's site or at a site designated by client, client shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.
6. The user is entitled to execute the order in stages and to invoice accordingly.
7. If parties have agreed that the agreement will be executed in stages, user can suspend the execution of the parts belonging to a following stage until the client has approved in writing the results of the stage prior to it.
8. The client shall see to it that user shall be provided in due time with all data which user has said to be necessary or which the client must in all reasonableness understand to be necessary to the execution of the agreement. If user has not been provided in due time with the data necessary to the execution of the agreement, user shall have the right to suspend the execution of the agreement and / or to charge the client for the additional costs resulting from the delay at the generally accepted rates.
9. If it is shown during the execution of the agreement that the work to be done needs to be changed and supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations. Should the change or supplement to the agreement have any financial and / or qualitative consequences, user shall inform client thereof in advance. If a fixed fee has been agreed upon then user shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fee. If parties agree that the agreement needs to be changed or supplemented, this decision may influence the time of completion of the execution. User shall inform the client thereof as soon as possible.

## article 6 Suspension and dissolution and cancellation of the agreement

1. The User and the Client are entitled to suspend the fulfillment of the obligations or to dissolve the agreement in the following cases: a) if one of the parties does not, not fully or not timely fulfill the obligations under the agreement, or b) if after the conclusion of the agreement, the party that is to perform first has become aware of circumstances that give good reason to fear that the other party will not fulfill its obligations, or c) if one of the parties to the conclusion of the agreement has been requested to provide security fulfill his obligations under the agreement and this security is not provided or is insufficient, or d) if the delay on the part of one of the parties means that it can no longer be expected from the other party that he will perform the agreement under the originally agreed conditions to comply. Suspension and dissolution are only permitted insofar as the shortcoming justifies it.
2. Both parties shall furthermore be authorised to dissolve the agreement if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance

with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

3. If the agreement is dissolved, the user's claims against the client shall be forthwith due and payable. If user suspends fulfillment of his obligations, he shall retain his rights under the law and the agreement.
4. If the agreement is dissolved by user the clients shall not claim any costs for damages as a result of this, except in the case of intent or deliberate recklessness.
5. Both parties shall be entitled to cancel the assignment at all times in writing
6. If the agreement is dissolved prematurely by user, user shall see to it in conjunction with client that the work still to be done be transferred to third parties, unless the termination is based on facts and circumstances which can be attributed to client. If the transfer of the work still to be done entails extra costs for user, said costs shall be charged to client.

## article 7 Force Majeure

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company shall also be understood to be a circumstance of force majeure.
3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
5. Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to submit a separate statement of expenses of the part already fulfilled or still to be fulfilled respectively. The client shall be held to pay this statement of expenses as if it were a separate agreement.

## article 8 Liability

1. The applicant shall not hold the user, or anyone that performs actions on behalf of the user, responsible for any damages or claims as a result of the performed services or outcome of consultancy. The user is authorized by the client to accept any liability limitations form third parties on behalf of the client.
2. User is insured against legal liability. This liability is limited to what is regulated in this article.
3. User shall not be liable for damage of whatever nature, caused by the fact that user worked on the basis of incorrect and / or incomplete data provided by the client.
4. De aansprakelijkheid van Gebruiker jegens opdrachtgevers en derden voor schade, voortvloeiende uit of verband houdende met de uitvoering van een overeenkomst, is beperkt tot maximaal de factuurwaarde van de order, althans tot dat gedeelte van de order waarop de aansprakelijkheid betrekking heeft. Is beperkt het bedrag dat in het desbetreffende geval uit hoofde van de door Gebruiker gesloten beroepsaansprakelijkheids- verzekering(en) wordt uitbetaald, vermeerderd met het bedrag van het eigen risico dat volgens de polisvoorwaarden niet ten laste van de verzekeraars is. Informatie over de beroepsaansprakelijkheidsverzekering wordt op verzoek toegezonden.
5. The liability of the User is in any case always limited to the amount paid out by his insurer, where appropriate, with a maximum of € 125.000,-.
6. The liability of user User shall not be liable for damage Should user be liable by law, then said liability shall be limited to the stipulations of the present condition.
7. User is exclusively liable for direct damages within the scope of the agreement.
8. Direct damage shall be understood to be exclusively: the reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user; the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions; the reasonable costs incurred to prevent or limit the damage, in so far client demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.
9. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.
10. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user.

## article 9 Secrecy

1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information, with reference to the 'Privacy statement.'
2. If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

## article 10 Intellectual Property and Copyrights

1. All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until client has fulfilled all of his obligations under all agreements concluded with user.
2. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
3. All documents, such as reports, advice, agreements, designs, sketches, drawings, software, etc., provided by user, shall be destined to be used by client exclusively and must not be reproduced, made public or brought to the notice of third parties by client without prior consent from user, unless the nature of the documents provided dictates otherwise.
4. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.
5. Design tools, templates, calculation methods, checklists etc. is only for internal use and will not be made available for the client.

## article 11 Safeguarding

1. The client shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the client, which shall be used for and during the execution of the agreement.

## article 12 Applicable Law and disputes

1. Dutch law shall apply to each and every agreement between user and the client. The Vienna Sales Convention shall be explicitly excluded.
2. The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
3. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

## article 13 Changes to the Terms and Conditions, interpretation and their Location

1. The present terms and conditions have been filed at the office of the Chamber of Commerce Noord-West Holland in Alkmaar and can be consulted on the website of Wijma Marine Consultants [www.marineconsultants.nl](http://www.marineconsultants.nl) at any time.
2. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.
3. The Dutch version of these general terms and conditions prevails at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.