

**GENERAL TERMS AND CONDITIONS**  
**DUTCH MARINE CONTRACTORS**

**1. DEFINITIONS**

In these general terms and conditions, the following must be defined as set out below:

- the Principal: the natural person or legal entity and/or the party issuing the order to DMC;
- DMC: Dutch Marine Contractors B.V. established in Amsterdam and/or the person or entity, in or outside The Netherlands, directly or indirectly affiliated with Dutch Marine Contractors B.V.;
- the Agreement and/or the Order: the contract for professional services between the Principal and DMC under the terms of which DMC undertakes to perform work and/or provide services for the Principal against a fee or a commission payable by the Principal (and/or by another agreed party) to DMC;
- the Party: DMC or the Principal;
- the Parties: DMC and the Principal jointly;
- the Personnel: the persons employed or made available by DMC, unless explicitly stated otherwise;
- the Terms: these general terms and conditions.

**2. APPLICABILITY**

- 2.1 These Terms are applicable to all offers, quotations, Orders and/or Agreements between DMC and the Principal in which DMC has referred to these Terms or to which DMC has declared these Terms applicable.
- 2.2 Third parties called in by or on behalf of DMC to execute the Agreement and Personnel can also invoke these Terms vis-à-vis the Principal.
- 2.3 Derogations from these Terms will be valid only if the Parties have agreed on these explicitly and in writing.

**3. THE FORMATION OF THE AGREEMENT**

- 3.1 Unless the Parties agree otherwise, and subject to the provisions of section 6:225(1) of the Dutch Civil Code, the Agreement will be formed by these Terms and the order confirmation by or on behalf of the Principal.
- 3.2 If the Order is issued orally or as long as DMC has not (yet) received the order confirmation, the Agreement will be deemed to have been concluded under the applicability of these Terms at the point at which DMC commences the execution of the Order at the Principal's request.
- 3.3 The Agreement will be concluded for an indefinite period, unless the content, nature or purport of the Order entails that it has been concluded for a definite period.

**4. THE EXECUTION OF THE AGREEMENT**

- 4.1 Any work performed by DMC will be executed according to its best insights and ability in conformity with the requirements of good workmanship. DMC will be required to use its reasonable efforts with the (proposed) services and the Agreement at all times, unless the Parties agree otherwise explicitly and in writing.
- 4.2 If the Principal has called in DMC as consultant or as intermediary/broker, DMC will advise the Principal to the best of its insights. The Principal will however always be and remain responsible for any action it takes with DMC's advice and any consequences arising there from, as well as for its compliance with third party contracts, concluded via DMC.
- 4.3 All dates, times, schedules and/or other periods agreed by DMC in connection with the execution of the Agreement will be estimates only, and will not be binding on DMC.
- 4.4 All orders will be accepted and executed by DMC only. The Parties hereby explicitly rule out the applicability of sections 7:404 and 7:407(2) of the Dutch Civil Code, even if it is their explicit or tacit intention that the Order will be executed by a specific person.
- 4.5 DMC will decide how the Order will be executed, but will take into account wishes indicated by the Principal in that connection, to the extent possible.
- 4.6 If certain or specific work has been agreed, DMC can only invoice the Principal for extra services if the Principal gave its prior permission for such extra services. If DMC is however required to undertake extra services on the basis of its duty of due care, statutory or otherwise, it is authorised to invoice the Principal for this work, even if the Principal had not given its prior and explicit permission for such extra works.
- 4.7 DMC will keep a file of the progress of the Order, including copies of all relevant documents; this file will be DMC's property.

**5. THE PRINCIPAL'S OBLIGATIONS**

- 5.1 The Principal warrants to be fully authorised to (1) enter into the Agreement and these Terms with DMC, as well as (2) to enter into the agreements with third parties through DMC's intervention. The Principal must ensure that all data and records which are necessary for the proper execution of the Order are made timely available to DMC.

- 5.2 The Principal must ensure that DMC is informed without delay of any facts and circumstances which could be relevant to the proper execution of the Order. The Principal guarantees not to commission DMC to mediate an agreement with a party subject to international sanctions.
- 5.3 The Principal is responsible for ensuring that the data and records made available to DMC are accurate, comprehensive and reliable, even if these are obtained from or via third parties. DMC is not liable towards the Principal and/or third parties for damage of any kind whatsoever as a result of DMC's use of any data provided by or on behalf of the Principal.
- 5.4 If work connected with the execution of the Agreement is performed on site of- or via the Principal, the Principal must ensure that DMC is provided, free of charge, with office space and any such other facilities which DMC deems necessary or useful to execute the Agreement and that these comply with all the relevant (statutory) requirements. These 'facilities' will be deemed to include the use of a computer, printer, internet, email, telephone, copying and scanning equipment.
- 5.5 The Principal must ensure that the working conditions on site referred to in clause 5.4, and specifically those connected with safety, comply with the required standards and local regulations and requirements.

## **6. PERSONNEL & MATERIALS ("Knock for Knock")**

- 6.1 The Principal is fully responsible, and, in the event of damage or injury, liable for all its owned or hired in materials, resources and/or personnel in connection with the execution of the Agreement and beyond. The Principal indemnifies DMC for any and all damage, loss and/or liabilities, regardless of DMC's negligence in this respect.
- 6.2 DMC is fully responsible, and, in the event of damage or injury, liable for all its owned or hired in materials and resources and all Personnel, in connection with the execution of the Agreement. DMC indemnifies the Principal for any and all damage, loss and/or liabilities, regardless of the Principal's negligence in this respect.
- 6.3 Except in case of DMC's gross negligence or wilful misconduct, the Principal will indemnify DMC for any and all damage, loss and/or liabilities resulting from pollution, regardless of DMC's negligence in that respect.

## **7. THIRD PARTIES**

- 7.1 If the Principal wishes to instruct third parties to execute the Order, it will do so only after having agreed on this with DMC. The provisions of the preceding sentence are applicable *mutatis mutandis* to DMC, barring situations in which, in DMC's reasonable opinion, its (statutory) duty of due care entails that it is compelled to call in a third party without the Principal's prior permission.
- 7.2 If DMC concludes agreements or arranges for these to be concluded with third parties in connection with the Order or pursuant to its (statutory) duty of due care, such agreements will be concluded on behalf of and for the account and risk of the Principal. In that event, DMC will be acting as the Principal's representative.
- 7.3 The Order will be executed only for the Principal. Third parties can derive no rights from the contents of the work performed.

## **8. CONFIDENTIALITY**

- 8.1 Subject to the Parties' statutory obligation to disclose information, and subject to the Parties' permission to disclose information, DMC and the Principal will observe confidentiality in connection with the existence and contents of the Order, the information provided by both Parties and the results of the services.
- 8.2 This clause is not applicable to information which was already in the public domain before the Agreement was concluded.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 DMC reserves all intellectual property rights in connection with the materials or services which it uses or has used and/or develops and/or has developed in connection with the execution of the Order and in connection with which it holds or can validate intellectual property rights. Any direct or indirect transfer of intellectual property rights of DMC under the Agreement is excluded.
- 9.2 Unless the Parties explicitly agree otherwise, the Principal guarantees that DMC can freely use the documents, data and information which it provides to DMC in connection with the Agreement without infringing on any copyrights. DMC is not liable towards the Principal and/or third parties for any damage resulting from the aforementioned use.

## **10. FEES & TAX**

- 10.1 When issuing an order to DMC, the Principal accepts that DMC will periodically review its rates, *inter alia* on the basis of developments in prices, wages and salaries. The Parties may agree on a fixed fee, a percentage or a commission in connection with the execution of the Agreement, in the absence of which DMC will invoice the Principal on the basis of the hours or parts of a day worked.

- 10.2 Unless the Parties agree otherwise, DMC's fee will not include travelling costs and other expenses incurred in connection with the Agreement and/or the expenses declared by third parties called in by DMC, whether paid as advance or otherwise.
- 10.3 All rates are exclusive of VAT and other taxes, levies and charges imposed by government agencies.
- 10.4 The Principal is liable and will indemnify DMC for all local and federal governmental levies (for instance but not limited to: levies, taxes and/or permits), and for all costs associated with the handling, declaration, claims or orders in that respect, within the scope of the Agreement. This clause is also applicable on all levies and/or taxes within the scope of the Agreement, for which DMC is held personally liable and which have to be paid in another country than the country where DMC is located. In this regard, DMC includes its Personnel and every natural person or legal entity acting on its behalf within the scope of the Agreement.
- 10.5 If DMC is asked by the Principal to mediate in the formation of a charterparty or a sale and purchase agreement between the Principal and a third party, DMC will charge a commission to the Principal or to the third party (as the case may be), in the form of a percentage of the charter rate respectively the purchase price and/or parts thereof. If the commission is payable under a separate commission agreement, the provisions thereof shall be deemed to be incorporated in this Agreement. If no specific commission has been agreed upon, a reasonable market-standard rate and/or percentage shall be observed. If commission is to be charged to the third party, and it fails to fulfil its obligations towards DMC in that respect, the Principal shall indemnify DMC for any damage and/or loss resulting therefrom.

## **11. PAYMENT**

- 11.1 The Principal must make payment within 14 days of the invoice date. Payment must be made in Euros (€) by transfer into a bank account designated by DMC. Objections to DMC's invoices will not suspend the Principal's payment obligations.
- 11.2 If it fails to arrange payment within the period referred to in clause 11.1, the Principal will be in default by the operation of law. In that event, the Principal will be required to pay statutory commercial interest, or at any rate statutory interest, over the outstanding sum as of the date on which the sum became payable until the date of payment. In addition, all the collection costs incurred after the Principal's default, both judicial and extra-judicial, will be for the Principal's account. The extra-judicial costs will be fixed at 15% of the principal sum plus interest, without prejudice to DMC's right to claim the actual extra-judicial costs if these exceed this sum. The judicial costs include all the costs incurred by DMC, even if these exceed the total sum fixed by the court.
- 11.3 If DMC believes that the Principal's financial position and/or payment pattern gives reason for doing so, DMC is authorised to require the Principal to pay an advance and/or to provide additional security in a manner to be decided by DMC. If the Principal fails to provide such security, DMC is authorised to immediately suspend its performance of the Order, without prejudice to its other rights, and DMC will be authorised to demand the immediate performance of any obligations which the Principal may have towards DMC on any grounds whatsoever.
- 11.4 In the event of a joint Order, the Principals (whether acting as consortium or as joint venture) will be jointly and severally bound to pay DMC all the sums payable pursuant to the Agreement.

## **12. THE SUSPENSION & TERMINATION OF THE AGREEMENT**

- 12.1 DMC will be authorised to suspend the execution of the Agreement at any time and without prior notice, if the Principal defaults in its execution of one or more of its obligations under the Agreement.
- 12.2 Any damage and other costs, including costs incurred by DMC, resulting from a suspension described in clause 12.1, will be for the Principal's account. In that event, DMC will remain fully entitled to the agreed fee.
- 12.3 The Parties may give notice of the termination of the Agreement, in the interim or otherwise, in writing, with immediate effect.
- 12.4 If the Principal terminates the Agreement, in the interim or otherwise, DMC will be entitled to compensation of damage and/or loss, including but not limited to loss of potentially-productive capacity, and any and all additional costs resulting from the Principal's (early) termination of the Agreement, unless the facts and circumstances which gave rise to the termination can be attributed to DMC in full.
- 12.5 If DMC has announced the termination of the Agreement, in the interim or otherwise, the Principal is entitled to DMC's co-operation in transferring the work to third parties, unless the facts and circumstances which gave rise to that termination can be attributed to the Principal in full. To the extent that the transfer of the work entails costs for DMC, these will be for the Principal's account.
- 12.6 If the Agreement is terminated, in the interim or otherwise, DMC will remain entitled to the payment of invoices for any work or services performed and/or for any costs incurred up until that date in connection with the Agreement at all times. DMC will provide the Principal with the preliminary results of the work performed up until that date, while reserving all its rights.
- 12.7 In the event of the termination of the Agreement, in the interim or otherwise, the Principal is obliged, at all times, to comply with any agreements (including but not limited to charter parties) with third parties which DMC had concluded by or on behalf of the Principal.

12.8 In the event of the termination of the Agreement, each of the Parties must provide the other Party with all the property, goods and documents in its possession and belonging to the other Party, without delay.

### **13. COMPLAINTS**

13.1 Without prejudice to the provisions of clause 11.1, the Principal is required to notify DMC of any complaints concerning the work performed and/or sums invoiced by DMC in writing within 14 days of discovering the matter of which it wishes to complain or, in the absence thereof, within 14 days of the execution of the Order.

13.2 If the Principal fails to lodge a complaint within the first period referred to in clause 13.1, all its rights and its claims against DMC, on any grounds whatsoever, in connection with the matter on which it is lodging the complaint or the period within which it could have lodged the complaint, will lapse and be cancelled.

### **14. THE WAIVER OF RIGHTS**

DMC's failure to immediately enforce a right or exercise a power will not prejudice or restrict its rights and powers under the Agreement or these Terms. The waiver of rights under any clause or the terms of the Agreement will only be effective if these are agreed in writing.

### **15. LIABILITY, INDEMNITY, FORCE MAJEURE & INSURANCE**

15.1 The Principal can only hold DMC liable for damage which the Principal suffers as a direct result of a breach of contract by DMC in its performance of the Agreement, with the exclusion of the provisions of section 7:407(2) of the Dutch Civil Code. The Parties hereby rule out liability for consequential- and/or indirect damage.

15.2 If the Principal instructed DMC as consultant or as broker and if the Principal and/or third parties suffer damage as a result of an advice or an intervention by DMC, the latter can never be held liable for such damage and the Principal must indemnify DMC against this damage in full at all times. Damage in this respect includes (but is not limited to) costs for legal proceedings lodged against DMC.

15.3 Barring an intentional act or gross negligence, DMC's liability towards the Principal, under- or in connection with the Agreement, is at all times limited to the sum paid out by its liability insurer in that case. If and to the extent that no payment is made under the aforementioned insurance for any reason whatsoever, or if no such insurance was taken out, DMC's liability is limited to the fee for which DMC has invoiced the Principal to date, with a maximum of EUR 30,000. DMC is not liable and the Principal will indemnify DMC for any loss or damage exceeding the sum referred to in this clause 15.3 or for any loss or damage on any other grounds.

15.4 Barring an intentional act or gross negligence, DMC is not liable, and the Principal must indemnify DMC against any damage or loss of any kind resulting from defaults or wrongful acts committed by third parties called in by DMC for or on behalf of the Principal or otherwise in connection with the Agreement or the execution thereof.

15.5 Barring an intentional act or gross negligence, DMC is not liable, and the Principal must indemnify DMC against any damage or loss of any kind which is caused to third parties in connection with the Agreement or the execution thereof.

15.6 The Principal hereby indemnifies DMC against and in connection with any damage, loss, claims or proceedings lodged against DMC in connection with any events, damage, loss, costs and/or fines or penalties for which the Principal or a third party is liable.

15.7 The Principal hereby indemnifies DMC against and in connection with any damage, loss, claims or proceedings lodged against DMC in connection with any events, damage, loss, costs and/or fines or penalties in connection with that which is provided for in clauses 4.2, 5.2, 5.3, 6.1, 6.3, 9.2, 10.4, 10.5 and 12.7.

15.8 A default of a Party in its performance under the Agreement cannot be held against it in case of force majeure or in case of a situation beyond control of such Party, preventing it from fulfilling its obligations under the Agreement or in which situation performance of such Party cannot be reasonably expected anymore. These circumstances include, amongst others, default of suppliers or third parties, national electricity interruptions, computer virus, adverse weather conditions and pandemics.

15.9 The Principal will take out adequate insurance to cover its liabilities and indemnities referred to in these Terms. The Principal must ensure that DMC, upon its request, will be co-insured under the terms of such insurance policy. If DMC so requests, the Principal will provide it with copies of the aforementioned policy or policies. The insured under such a policy can act as third parties towards each other under such a policy, whereby the Parties must stipulate that the insurers will waive any right to make any recovery against DMC. If DMC needs to take out additional insurance coverage compared to her usual, ordinary coverage, the costs associated therewith are for the account of the Principal.

### **16. THE EXPIRY OF CLAIMS**

Without prejudice to the provisions of clause 13.3, any claims and/or rights of claim the Principal may have against DMC on any grounds whatsoever in connection with the Agreement, these Terms or on any other grounds, will lapse and be cancelled if such a claim has not been lodged before the court with jurisdiction, within one year of the event which gave rise to that claim.

**17. THE ASSIGNMENT OF THE AGREEMENT**

The Principal may not transfer or assign the Agreement or parts thereof to third parties, unless DMC consents thereto explicitly. If DMC consents to such a transfer, the Principal will remain liable towards DMC in addition to that third party for the obligations under the Agreement and these Terms at all times, unless the Parties explicitly agree otherwise.

**18. APPLICABLE LAW & JURISDICTION**

The Agreement, these Terms and the other legal relationship(s) between DMC and the Principal are subject to the laws of the Netherlands. The District Court of Rotterdam has exclusive jurisdiction with regard to any disputes between DMC and the Principal, unless the Parties explicitly stipulate otherwise after the dispute has arisen.

**19. FINAL PROVISIONS**

- 19.1 If it appears to be impossible to invoke any provision of the Agreement and/or these Terms, the content and purport of that provision must at any rate be interpreted in such a way that it can be invoked as closely as possible, without prejudice to the validity of the remaining provisions of the Agreement and these Terms.
- 19.2 Applicability of any general terms and conditions of the Principal is hereby excluded. These Terms will be deemed to be the first terms and conditions to be invoked in the sense of section 6:225(3) of the Dutch Civil Code.
- 19.3 These Terms have been drawn up in the Dutch and English language. In the event of any conflict in the interpretation of these Terms, the Dutch text will prevail.
- 19.4 These Terms have been filed with the Clerk of the District Court of Amsterdam, under reference number .....

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