



ZUCKER & PARTNER

Surveyors and Consultants for Yachts

Surveys, Consultancy, Supervision and Management for
Damages, Repair, New Construction and Operating

General Terms and Conditions

Yacht Project Management / Yacht Construction Supervision



§ 1 Scope

The legal relationship between the company Stefan ZUCKER & PARTNER GmbH (hereunder referred as the Supplier) and its client (hereunder referred as the Client) is determined according to the following contractual conditions. Any terms and conditions of the Client that might vary from these shall only be incorporated into the contract when they are agreed in writing by the Supplier.

§ 2 Contract

a) Acceptance of the order as well as agreements, assurances and / or collateral agreements made verbally, by telephone, electronically or through agents of the Supplier are only valid when confirmed in writing by the Supplier directly to the Client.

b) The contract concerns the construction supervision and / or project management in relation to shipping and yachting including functional testing and trials that may be undertaken with the aim of identifying at an early stage qualitative faults / deviations from the construction specification and associated drawings so that they can be corrected by the shipyard prior to delivery, checking and documenting the progress of the construction and the stages reached in the construction (so-called 'milestones'), checking the function and warranted characteristics of the ship and in the case of project management coordinating enquiries, necessary decisions and change orders between the owner and shipyard. The parties make clear that construction supervision is understood as the task of the Supplier in terms of providing documentation, advice and recommendation and that the Supplier has no official authority to issue directives with respect to the shipyard and / or supervisory capacity over the shipyard employees and also that these functions shall not form part of the contract.

§ 3 Execution of the contract

a) The Supplier performs its tasks with its own staff as well as sub-contractors. The contracting of external experts from the same and other specialist fields shall be undertaken by the Supplier provided this is necessary for the proper and timely completion of the contract.

b) In addition, in order to perform the contract, the Supplier has the right to undertake or commission at the cost of the Client the necessary and customary inspections, trials and procedures at its duty-bound discretion, gather information, carry out investigations, undertake travel and visits as well as prepare or commission photographs and drawings without this necessitating separate agreement of the Client.



c) The Client authorises the Supplier to obtain information from concerned persons, authorities and third parties as necessary for the contractual task and to carry out investigations. If necessary, the Client must issue the Supplier with a special authority for this purpose.

§ 4 Duties of the Client

The Client must ensure that the Supplier receives at no extra cost and in a timely manner all the documentation, (e.g. ship's papers, invoices, drawings, calculations, written correspondence, photographs, exhibits etc.) and information necessary to execute the contract. The Supplier must be informed promptly of all processes and circumstances that may clearly be important for execution of the contract, without making a special request.

§ 5 Fees

a) The Supplier is entitled to receive remuneration. The rate of this is based on the written agreement. In so far as a daily / hourly rate is agreed, the Client confirms acceptance of the Supplier's time schedule. Where no written agreement is made, the reimbursement is based on the Supplier's current cost rates.

b) In addition, ancillary costs shall be calculated on a basis customary in the market.

c) If applicable, the respectively current value added tax must be added to the fee.

d) Where the net value of the fee is (potentially) greater than € 5,000 and / or in the case of contracts with high expenses for travel costs, special investigations etc., the Supplier reserves the right after the order has been placed, to request a reasonable advance payment / payment on account for remuneration, ancillary costs and expenses.

§ 6 Payment date

a) The agreed fee becomes due upon receipt of the invoice. The Client is automatically in default 14 days after date of invoice without requiring another separate reminder.

b) In case of delay in payment the Supplier is entitled – notwithstanding evidence of any claim in excess of this – to default interest of 10 % p.a.

§ 7 Cancellation

a) The Client and the Supplier can cancel the contract at any time in writing for good reason. The cancellation takes effect upon receipt by the other party to the contract.



b) Good reasons that give the Supplier the right to cancellation are in particular:

Refusal on the part of the Client to cooperate as required, attempt by the Client to exert improper and corrupt influence on the Supplier, delay of Client in making advanced payments, deteriorating credit-worthiness of the Client, unexpected circumstances which could not be foreseen by the Supplier before entering into the contract, that the Supplier lacks the necessary specialist expertise for the construction supervision / project management.

c) In case of cancellation the Supplier reserves the right to receive the fee agreed in the contract, although the Supplier must allow for expenditures not incurred.

§ 8 Liability

All work is carried out to the best of our knowledge and with all due care. Nevertheless, our liability shall be limited as follows:

a) The Supplier is liable for damages – on whatever legal grounds – when it or its agents have caused the damages through insufficient construction supervision / inadequate project management deliberately or through gross negligence. Liability for slight negligence is excluded. This also applies to damages caused by the Supplier in preparing its tasks.

b) The liability for gross negligence is limited to the claim typical for this kind of contract that is reasonably foreseeable where this involves the breach of essential contractual obligations. This limitation of liability is not applicable in case of claims involving loss of life, personal injury or health; furthermore it does not apply when the Supplier has maliciously concealed the defect.

c) Where the Supplier has caused damage to property through gross negligence and is responsible for this, the liability is limited to the amount equalling the Supplier's claim for cover with respect to its professional indemnity (limits of indemnity for financial losses: € 1 million, for personal damages: € 1.5 million as well as damages to property: € 0.5 million).

d) No liability shall be accepted for consequences arising from any undiscovered or undocumented or insufficiently documented facts, defects, damage or similar factors, nor for any disparities from values and / or costs already estimated. In particular, the Supplier assumes no liability for defects or deficiencies in the work not related to its construction



supervision / project management. This shall apply particularly to deficiencies and defects caused in the absence of the Supplier.

e) Any liability arising from compliance with design specifications is excluded.

f) In every case the Client shall pursue any claims preferentially against the originator thereof (e.g. the constructing or repairing shipyard) / previous owner of the yacht.

§ 9 Assignment, offsetting, rights of retention

Assignment of possible claims against the Supplier to third parties is excluded just as is the offsetting against the fee claims of the Supplier with counter claims of the Client, unless the Client's counter claim is unchallenged by the Supplier or is judicially determined through a legally binding entitlement. In the same way a right of retention on the part of the Client is excluded with respect to fee demands from the Supplier in so far as this right of retention does not arise from the same contractual relationship.

§ 10 No contract with protective effects with respect to a third party

The parties make clear that the contract does not protect third parties under section 311 subsection 3 of the German Civil Code (BGB), particularly not in respect to banks, insurance companies, insured persons, authorities, shipyards, brokers, parties to / persons interested in a purchase, leasing, charter or rental contract etc. Notwithstanding, should such a third party make claims against the Supplier, the Client indemnifies the Supplier from these claims.

§ 11 Severability clause

Where any individual clauses of these general terms and conditions are invalid, the validity of the remaining conditions is not affected. In this case a provision is deemed as agreed that most closely represents the intention of the parties at the time the contract was agreed.

§ 12 Place of fulfilment, court of jurisdiction, applicable law

a) Where the Client is a businessman, is a legal person under public law or is a special fund in the terms of public law or the Client does not have a general national court of jurisdiction, the parties agree to make Hamburg the court of jurisdiction for all possible disputes arising from this contract.

b) The law of the Federal Republic of Germany applies exclusively to this contract.