



## **ZUCKER & PARTNER**

Surveyors and Consultants for Yachts

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

### **General Terms and Conditions**

#### **Yacht Surveys**



### **§ 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 Order**

a) **Acceptance of order**, and any agreements, assurances and/or ancillary agreements made or given verbally, by telephone, electronically or by vicarious agents of the Supplier, shall only be valid in the case of new clients or initial orders if the Supplier has confirmed them to the Client in writing.

The Client must sign and return a written confirmation of order issued by the Supplier should the Supplier so require.

b) The **subject of the order** shall be the provision of every kind of survey connected with shipping and yachting, including any functional tests and trials carried out. These shall, depending on incidents, in particular include the verification of facts, particularly of faults, damage symptoms and amounts of loss, the investigation of causes, valuations, checks, certifications etc.

c) The **assignment of duties** and **purpose** of the survey shall be established in writing on issue of order, should the Supplier so require.

### **§ 3 Execution of order**

a) The Supplier shall perform its services **to the best of its knowledge and belief**. The expert can ensure a **certain result, as desired by the Client**, only within the framework of his professional knowledge and the recognised rules of science, technology and experience.

b) The Supplier performs its survey 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.

c) In addition, in order to carry out the order, 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.



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

e) The Supplier shall supply the Client with **three copies** of its survey, unless other agreements have been made. The Client may require further copies; the Supplier will charge for these separately. The making of multiple copies by the Client shall be contractually excluded.

f) Following completion of order and payment of the agreed fee, the Supplier must **return** without solicitation all **documents** which the Client has handed over to it to carry out the order.

#### **§ 4 Duties of the Client**

a) 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 drawing up the survey, without making a special request.

b) The Client shall refrain from all measures which might **falsify** the actual conclusions underlying the survey and its results, except insofar as they are necessary to avert or reduce damage.

c) The survey may only be used for the **purpose** envisaged upon issue of order. Any use over and above this, particularly any publication (even part publication) of the survey, any public reference to the survey or parts thereof, any transmission of the survey to third parties unconnected with its purpose, and any use of the survey for purposes of advertising of any kind, etc. shall require the prior written agreement of the Supplier.

d) **Abridgements, supplements** and/or other **alterations** to the survey, whether of a textual, graphic or photographic kind, shall require prior, express, written permission by the Supplier.

#### **§ 5 Copyright**

The survey and all work connected with it shall be the **intellectual property** of the Supplier. Insofar as its performances are eligible for copyright, the Supplier shall keep the unrestricted **copyright** therein even after the survey has been handed over and the order completed.



### **§ 6 Completion of survey**

Should a **completion deadline** have been agreed for the survey, this shall apply only as an estimated target. Delay in cooperation by the Client or other third parties and late credit of advance payments (Section 7 d) will lengthen the preparation time accordingly.

### **§ 7 Fees**

a) The Supplier is entitled to receive **remuneration**. The rate of this is based on the written agreement. Insofar as an hourly / daily 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 surveys 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.

### **§ 8 Due date of payment**

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.

### **§ 9 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 to draw up the survey.

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**.



### **§ 10 Guarantee**

a) Should the survey not be free from **material deficiencies** as defined in Section 633 of the Civil Code, apart from a claim under Section 634 No. 4 of the Civil Code, the Client can initially only require **subsequent performance** free of charge as set out in Section 635 of the Civil Code. The Supplier may rectify the deficiency in the survey or supply a new survey, as it may decide. Should subsequent performance not be made within a reasonable time, or should such subsequent performance fail, the Client may reduce the fee (Section 638 of the Civil Code) or withdraw from contract (Sections 636 and 323 of the Civil Code), as it may decide.

b) The Client must notify the Supplier in writing of obvious deficiencies in the survey within two weeks following handover of survey. Should the Client fail to fulfil this **duty of notification**, all claims to subsequent performance, withdrawal or reduction of fee shall expire.

c) Should deficiencies have been **fraudulently concealed**, or should a **guarantee** have been undertaken for the quality of the survey (Section 639 of the Civil Code), by the Supplier, further claims on the part of the Client shall not be affected thereby.

d) Claims for deficiencies shall **lapse** one year following the statutory beginning of the limitation period (Sections 634a Paragraph 2 and 640 of the Civil Code), unless malice or gross negligence are involved.

### **§ 11 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 shall be liable for damages – irrespective of the legal grounds – if it or its vicarious agents have caused the damage deliberately or in gross negligence through a **deficient survey**. Liability for slight negligence is hereby excluded. This shall also apply to damage which the Supplier has caused in the preparation of its survey, and to damage which has occurred following subsequent performance.

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 fraudulently 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 pecuniary 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 and / or discrepancies preferentially against the originator thereof (e.g. the constructing or repairing shipyard) / previous owner of the yacht.

#### **§ 12 Assignment, offsetting, right 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 insofar as this right of retention does not rest on the contractual relations governing the same survey.

#### **§ 13 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.

#### **§ 14 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.



**§ 15 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.