

## GENERAL TERMS AND CONDITIONS

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### 1. General

- 1.1. Sailing Perfection B.V. -also acting under the name of "Equiplite Europe" - ("**Sailing Perfection**") is a private company with limited liability (*besloten vennootschap*) established under Dutch law.
- 1.2. These General Terms and Conditions are applicable to any order (*opdracht*) including any subsequent, amended or additional assignment and/or to deliveries of Goods, materials, equipment, spare parts, units and other supplies.
- 1.3. These General Terms and Conditions apply to benefit any third party who, whether or not in the service of Sailing Perfection B.V., is involved in the implementation of any order or who is or may be liable in connection therewith.

## 2. Definitions

<b>Agreement</b>	any order accepted by Sailing Perfection from a Buyer for the delivery of Goods or the performance of Services
<b>Buyer</b>	the person or company identified as commissioning authority as well as the buyer of Goods
<b>Claims</b>	any and all claims, demands, suits, proceedings, actions, liabilities, damages, expenses and/or costs
<b>Goods</b>	the tangible and movable items to be supplied by Sailing Perfection hereunder as described in the order or any specification
<b>Parties</b>	as the context requires the parties to this Agreement and to any Contract, and their respective permitted successors and assigns, and "Party" shall mean one of them
<b>Services</b>	the services associated with the Goods to be furnished by Sailing Perfection as required by the offer.
<b>Work or Works</b>	the provision of Goods or Services in accordance with the terms of the offer.

## 3. Offers

- 3.1. The offers of Sailing Perfection are not binding and without obligation. Offers based on the information of the Buyer may be assumed to be correct.
- 3.2. The contents of folders, brochures, photographs, internet sites, CD ROMs, DVDs, USB sticks and other data carriers, provided by Sailing Perfection, are intended to provide an impression or a general picture and do not bind Sailing Perfection unless explicitly stated in the Agreement.
- 3.3. If the order for carrying out the work or supplying the Goods is not awarded to Sailing Perfection, Sailing Perfection is entitled to recover from the Buyer the costs of making drawings and specifications necessarily incurred in submitting his offer.

#### **4. Industrial and intellectual property**

- 4.1. Sailing Perfection retains all copyrights and other rights to intellectual or industrial property relating to designs, specifications, sketches, illustrations, drawings, models, software, offers, manuals and any other materials supplied by it.
- 4.2. The aforementioned documents shall remain the property of Sailing Perfection and shall not be copied, shown to third parties or used in other ways without the prior written permission from Sailing Perfection, regardless whether the Buyer has or has not paid for the documents or objects in question. Upon Sailing Perfection's first request the Buyer shall return these items and documents to Sailing Perfection within 5 days after such request. Any failure to do so shall cause the obligation for the Buyer to pay a penalty to Sailing Perfection amounting to EUR 500 for each day or part thereof during which the failure exists, without prejudice to the right of Sailing Perfection to be compensated for damage and/or loss including direct and consequential damage and/or loss.

#### **5. Agreements**

- 5.1. An Agreement will not become binding until it has been explicitly accepted by Sailing Perfection, (i) by means of a written confirmation by Sailing Perfection or (ii) by Sailing Perfection's actually carrying out the Agreement.
- 5.2. Unless an explicit power of attorney is shown by an employee of Sailing Perfection, solely the general manager of Sailing Perfection shall be authorized to enter into binding agreements for Sailing Perfection.
- 5.3. A reconstruction or repair Agreement shall only include work that could have been reasonably foreseen by Sailing Perfection. Should the extent of the work appear to be in excess of the extent foreseen, Sailing Perfection shall cease work and consult with the Buyer on what terms the work shall or shall not be continued. The Buyer shall notify Sailing Perfection of its decision within 5 days after such consultation. Sailing Perfection shall be entitled to at least a compensation for the work already carried out and any costs incurred in connection therewith.
- 5.4. Any changes to the work accepted, including changes because of a special order from the Buyer or caused by changes in the design or by the fact that information supplied is not in accordance with the actual construction of the work being carried out, or caused by the departure of estimated quantities, shall be considered over-run work if additional costs are caused by this. If costs are decreased by this, it shall be considered under-run work. Any changes to the work or to previous agreements shall have consequences which may extend to price, delivery time and other aspects, of which the Buyer shall be notified by Sailing Perfection.

- 5.5. Acceptance of these general terms and conditions by the Buyer shall cause that any previous conditions applied by Sailing Perfection, as well as any general conditions used by the Buyer, are excluded.

## **6. Delivery time**

- 6.1. All delivery times are without engagement, unless explicitly agreed otherwise in writing.
- 6.2. Should a specific delivery time have been explicitly agreed upon, this will only be established provided that Sailing Perfection can continue to work as foreseen when the offer was made and that the necessary materials are received in due time.

## **7. Force Majeure**

- 7.1. If an Agreement cannot be carried out by Sailing Perfection because of circumstances beyond the reasonable control of Sailing Perfection (including but not limited to measures by the government, fire, extreme weather conditions, accidents, damage to work, and if third parties fail to deliver Goods and/or services necessary), the Parties shall amend the Agreement in such a way that Sailing Perfection will be able to carry out the order. Sailing Perfection is entitled to terminate the Agreement in the event of a substantial change due to such force majeure.
- 7.2. In the situation meant in the previous article, Sailing Perfection is entitled to suspend performance of its obligations and shall not be considered to be in default while it is temporarily unable to meet its obligations.

## **8. Delivery of Goods and retention of title**

- 8.1. Delivery takes place by notification from Sailing Perfection to the Buyer, either orally or in writing, that the Goods have been handed over or installed.
- 8.2. All risks related to the Goods are for the account of the Buyer from the moment of delivery.
- 8.3. Minor defects which can be repaired within 30 days after delivery will not hinder the delivery. Should a component not be available at the time when the work is carried out, for reasons not attributable to Sailing Perfection, the work shall be deemed to be completed in absence of that component. Such defects, as well as the period for repairing or delivering these, shall be set down in writing between Sailing Perfection and the Buyer.
- 8.4. Unless explicitly agreed otherwise in writing between Sailing Perfection and the Buyer, the Goods shall remain the property of Sailing Perfection until the Buyer has fulfilled all its obligations towards Sailing Perfection existing at that time, in connection with the underlying Agreement, and in connection with other agreements between the Parties.

- 8.5. The right of ownership of any Goods shall transfer to the Buyer only if the Buyer has fulfilled all its obligations to Sailing Perfection existing at the time of delivery, in connection with this Agreement and any other agreements between the Parties.

## **9. Services**

- 9.1. The Services will have been performed by notification from Sailing Perfection to the Buyer either orally or in writing that the Services have been completed followed by:
- a. the oral or written approval by the Buyer of the work, which approval shall not be withheld on unreasonable arguments; or
  - b. the passing of two working days after the receipt by the Buyer of the notification of completion of the work, regardless whether the Buyer has or has not inspected the work; or
  - c. if the Buyer uses the work as completed by Sailing Perfection.
- 9.2. Sailing Perfection does not provide any guarantee in respect of the Services. Sailing Perfection may only be required to perform the work to the best of its abilities as a reasonably competent expert.

## **10. Guarantee concerning the Goods**

- 10.1. As from the delivery pursuant to article 8, Sailing Perfection shall not be liable for any damages or additional performance, except as far as pursuant to the guarantee terms set out in this article.
- 10.2. Sailing Perfection guarantees for a period of one year after the delivery, the soundness and good quality of the hardware of the Goods, excluding the looks and any turning parts. This guarantee will lapse if the Goods have been used in a way not in accordance with the description of use provided to the Buyer at the delivery.
- 10.3. Sailing Perfection shall repair all defects not visible at delivery and due to defects in Goods which become apparent within a period of one year after the delivery of the Goods, provided that such defect is notified to Sailing Perfection in writing within seven days after its discovery. In that event Sailing Perfection shall confirm such notification to the Buyer within seven days. In such event, Sailing Perfection shall pay all labour costs incurred as a consequence of these replacements of the Goods, while travel costs and costs of residence of employees or other agents instructed by Sailing Perfection, shall be paid by the Buyer. All costs and expenses to be incurred by the customer in moving the object to and keeping the object at the place of business of Sailing Perfection shall be for the account of the Buyer.

- 10.4. The obligation to replace the Goods is limited to the defective part and shall not extend to any consequential damages.
- 10.5. At its own discretion, Sailing Perfection may allow the Buyer to have the repair work executed at another place of business. If so, Sailing Perfection's liability shall be limited to the amount of costs and expenses that Sailing Perfection would have incurred in executing the repair work at its own place of business within the guarantee period.
- 10.6. The guarantee period for replacement orders shall be three months.
- 10.7. All guarantee obligations lapse as soon as the Buyer fails to perform any obligation pursuant to this Agreement.
- 10.8. In no event will the guarantee be applicable to objects supplied or prescribed by the Buyer, while any damage caused by such objects shall be for the account of the Buyer, excluding any guarantee.
- 10.9. In no event will the guarantee be applicable to any faults, damage or defects in the equipment which are caused by incorrect or careless use of the equipment or by failure to duly carry out proper maintenance of the equipment in accordance with the manuals and orders supplied by Sailing Perfection.
- 10.10. Any work performed, including its inspection, based on unjustified guarantee claims by the Buyer shall be for the account of the Buyer.

## **11. Liability and indemnification**

- 11.1. The fulfilment of the guarantee obligations described in article 10 shall constitute Sailing Perfection's sole liability. In no event shall Sailing Perfection be liable for damage, except in so far as damage has been caused intentionally or due to gross negligence of Sailing Perfection and/or its leading personnel. However, the liability of Sailing Perfection for loss of profit, consequential and/or indirect damages (whether or not sustained by the Buyer or by any third parties), shall be excluded at all times. Consequential and/or indirect damages are also taken to include - but not limited thereto - the underperformance during matches or the loss of income under charter agreements.
- 11.2. Sailing Perfection will never be liable for damage resulting from differences in weight, length or size, insofar as:
  - a. the weight of the product differs not more than 10% from the weight specified by Sailing Perfection,
  - b. the length of the DSK (the throat) differs not more than 10% from the length specified by Sailing Perfection, and

- c. the size of a product (symmetrical) differs not more than 4% from the size specified by Sailing Perfection.
- 11.3. In any event Sailing Perfection excludes any liability for damage insofar as the amount of such damage exceeds the invoice amount in this respect.
- 11.4. Sailing Perfection does not accept any liability for Services, including but not limited to that, the instalment (assembly) of Goods, the placing of masts etcetera and the drawing up of deck hardware list.
- 11.5. Any claim against Sailing Perfection except claims that have been expressly acknowledged in writing by Sailing Perfection will expire by the lapse of twelve months after the rising of such claim.
- 11.6. Stipulations which limit, exclude or determine the liability towards Sailing Perfection in connection with Goods or Services supplied by Sailing Perfection's suppliers or subcontractors can also be asserted against the Buyer by Sailing Perfection.
- 11.7. The Buyer shall hold harmless and indemnify Sailing Perfections and other people instructed for each claim by third parties in connection with the performance by Sailing Perfection of the Agreement, to the extent that Sailing Perfection is not liable towards the Buyer under the provisions of the Agreement.

## **12. Payment**

- 12.1. Payment must take place:
  - a. for standard range Goods: within 30 days after the invoice date or the date of delivery (which ever date is sooner);
  - b. for custom range Goods: before shipment.

Sailing Perfection shall be entitled at all times to demand full or partial payment in advance and/or a guarantee of payment, irrespective whether a credit period has been agreed upon.

- 12.2. The Buyer shall submit any objections against an invoice in writing to Sailing Perfection within ten days after the invoice date. In the absence of such objections the charged amount shall be deemed to have been accepted by the Buyer as a binding amount.
- 12.3. The Buyer shall not be entitled to set off and/or compensate (*verrekenen*) any amount due by Sailing Perfection with an amount due to Sailing Perfection, nor shall the Buyer be entitled to suspend payments in view of other obligations of Sailing Perfection being due.
- 12.4. If any payment has not been made within the appropriate payment term, all remaining claims by Sailing Perfection against the Buyer will become immediately payable, while

the Buyer will be immediately in default without prior notice of default with respect to all claims. For the entire default period, the Buyer shall owe to Sailing Perfection the Dutch statutory interest (*handelsrente*).

- 12.5. If the Buyer is in default with respect to one or more payments, Sailing Perfection is entitled to immediately claim out-of-court expenses, which shall be deemed to amount to not less than 25% of the respective payments being due, to be increased by the Dutch statutory interests (*handelsrente*) from the date on which the Buyer is in default to make the connected main payment(s).
- 12.6. As long as the Buyer has not performed all obligations that are due or that will become due to Sailing Perfection, Sailing Perfection will be entitled to retain the goods supplied by the Buyer (including documents). The Buyer shall compensate Sailing Perfection for the costs made in connection with the retention of the afore-mentioned goods.

### **13. Termination**

- 13.1. If one or more of the following situations are at stake, Sailing Perfection is entitled to suspend its performance under the Agreement, or to terminate the Agreement in whole or in part by means of a written statement and without prior notice of default, without prejudice to any rights to which Sailing Perfection is entitled with respect tot compensation for costs, damage and interest:
  - a. if the Buyer is in default as to one or more of its obligations towards Sailing Perfection;
  - b. if the Buyer is declared bankrupt or its bankruptcy has been requested;
  - c. if a (temporary) moratorium for the Buyer has been requested;
  - d. if the Buyer proceeds to liquidate its business;
  - e. if one or more assets of the Buyer are attached;
  - f. if Sailing Perfection may reasonably doubt whether the Buyer will be able to fulfil all of its obligations towards Sailing Perfection.
- 13.2. The Buyer is entitled to terminate the Agreement solely in the event that the performance by Sailing Perfection under the Agreement is impossible and will remain impossible for the reasons meant in article 7.1, and in such case only after all outstanding payments to Sailing Perfection have been made by the Buyer, whether or not due.
- 13.3. If the Agreement is terminated pursuant to article 13.1 before the agreed work is finished, Sailing Perfection shall be entitled to payment of the full agreed price for the agreed work, less any savings arising directly from the termination. If the Agreement ends by termination by the Buyer pursuant to article 13.1, Sailing Perfection shall be



entitled to full payment of such part of the agreed price which is in proportion to the part of the work already done.

**14. Insurance**

- 14.1. Sailing Perfection will cover its liability risk by insurance for the duration of the work or repair. Such insurance shall cover the risk usually insured in the Netherlands, excluding more risk and terrorism risk.

**15. No assignment**

- 15.1. Unless agreed upon in writing, the Buyer cannot assign any of its rights against Sailing Perfection under the Agreement to a third party.

**16. Severability**

- 16.1. If a provision of the Agreement is or becomes invalid or non-binding, the Parties shall remain bound to the remaining provisions. In that event, Sailing Perfection and the Buyer shall replace the invalid or non-binding provision by a provision that is valid and binding and that has, to the greatest extent possible, a similar effect as the invalid or non-binding provision, even the contents and purpose of the Agreement.

**17. Dispute resolution**

- 17.1. Any dispute arising out of or in connection with any Agreement entered into by Sailing Perfection and Buyer shall be submitted exclusively to the competent court in Leeuwarden, the Netherlands.
- 17.2. The Agreement is governed by and shall be construed in accordance with the laws of the Netherlands.
- 17.3. The legal relationship between Sailing Perfection and any Buyer arising from the Agreement shall be exclusively governed by Dutch law.