



## **GENERAL TERMS AND CONDITIONS OF E & P SUPERYACHTWEAR B.V.**

FILED WITH THE CHAMBER OF COMMERCE IN UTRECHT, NETHERLANDS

### **ARTICLE 1. DEFINITIONS**

In these General Conditions, the following definitions apply:

1. 'General Conditions' mean these general terms and conditions of E&P Superyachtwear B.V.
2. 'E&P' means E&P Superyachtwear B.V. in the Netherlands
3. 'The Customer' means the party with whom E&P is contracting with.
4. 'Offer' means all oral or written offers of E&P to enter into a contract with him.
5. 'Agreement' means any agreement between E&P and the Customer, any amendment to or addition to this as well as all (legal) actions for the preparation and/or execution of that agreement.
6. 'Goods' means all material objects the contract between E&P and the Customer refers to, and as the occasion arises, also works or services to be carried out or rendered by E&P.
7. 'Delivery' means the delivery of Goods.

### **ARTICLE 2. APPLICABILITY**

1. These General Conditions apply to all legal relationships between E&P and the Customer including Offers and Agreements.
2. By accepting an offer made by E&P, the Customer also accepts the applicability of these General Conditions. The applicability of the Customer's standard terms is explicitly rejected by E&P.
3. Deviations from and/or additions to these General Conditions will only be valid if and insofar as E&P has accepted them explicitly in writing. An agreed deviation or addition will only relate to the delivery for which this has been agreed.

### **ARTICLE 3. OFFERS/ESTABLISHMENT OF AGREEMENTS**

1. All offers of E&P are free of commitments and can be revoked by E&P at any moment, also if these offers contain a term of acceptance.
2. Offers can only be accepted in writing; E&P has nevertheless the right to accept an oral acceptance form the Customer as if it were made in writing.
3. If the Customer accepts an offer, E&P has nevertheless the right to revoke the offer within 8 days after the receipt of Customer's acceptance thereof, in which case no agreement has been established between the parties.

4. Oral offers, arrangements and stipulations are binding upon E&P only after and as far as they have been confirmed in writing by E&P management or by E&P agents authorised for this matter.

#### **ARTICLE 4. COMMUNICATIONS**

1. Unless stipulated otherwise, any communication by the Customer regarding the (execution of) an Agreement must be done in writing.
2. Demands for compliance and/or notices of default from the Customer to E&P must be made in writing, must be sent to E&P by registered mail and must clearly indicate what is demanded from E&P and within which term.
3. If the Customer objects to the cancellation of the agreement by E&P, this objection must be made in writing, must be sent to E&P by registered mail and must clearly indicate on which grounds the objection is based upon.

#### **ARTICLE 5. PRICES**

1. The Goods delivered to the Customer will be charged at E&P's rates applicable on the Delivery date. All prices agreed upon are exclusive of taxes and levies due as they are applicable during the Delivery unless explicitly stated otherwise. Insofar as is not agreed otherwise, the transport, forwarding and/or postage and costs in connection with the insurance of the Goods will be at the Customer's expense.
2. All prices offered by E&P are based on the price-determining factors known at the moment the offer is made.
3. In case price-determining factors (such as – but not limited to - procurement prices, prices for raw materials, wages, exchange rates) for ordered goods raise, E&P has the right to raise the agreed prices for ordered but not yet delivered and/or paid goods or services accordingly as from four month after the date of the Agreement.

#### **ARTICLE 6. MOMENT OF DELIVERY**

1. Delivery periods given and/or agreed upon will never be regarded as deadlines. In the event of overdue delivery, E&P will only be in default after having received a written notice of default whereby a further and reasonable period for delivery has been given of at least thirty days during which the Customer is fully obliged to accept delivery.
2. Should delivery is not possible within the period mentioned in the notice of default, E&P will consult with the Customer concerning the fulfilment or the dissolution of the Agreement. In such situation, the Customer will only be entitled to compensation for damages if this has been agreed in writing in advance. The amount of the compensation will never exceed that part of the invoice amount relating to the Goods not, not punctually, not correctly or not fully delivered.

#### **ARTICLE 7. DELIVERY COSTS/TRANSFER OF RISK/ASSURANCE**

1. Unless agreed in writing otherwise, delivery will take place Ex Work / ex Depot in accordance with the ICC Incoterms ®2010.

2. Should the delivery be ex-depot or ex-works, the Goods to be delivered will be at the expense and risk of the Customer from the moment they leave E&P's depot (or – if applicable – the depot of a third party instructed by E&P / the manufacturer).
3. In the event a delivery carriage paid is agreed upon, the manner of transport will be determined by E&P. The Customer is obliged to take receipt of the Goods at the agreed delivery location and to unload immediately. The Goods to be delivered will be at the expense and risk of the Customer from the moment of unloading.
4. If E&P, whether or not on the Customer's instructions, organizes the transport of the Goods, E&P will be free to choose the packaging, carrier, the route to be followed and any goods-in-transit insurance.
5. From the moment that the Goods are at the expense and risk of the Customer, the Customer will take care to sufficiently insure the Goods against all possible risks such as - but not limited to - loss, theft, damage and/or the destruction of the goods.
6. E&P will at all times be entitled to deliver ordered Goods in several portions in which case the stipulations made between the parties concerning such sales will be applicable to each individual delivery.
7. Directly following the handover of the Goods to the Customer, the Customer is obliged to examine whether the delivered items comply with the Agreement. Should this not be the case, the Customer will no longer be able to invoke this if the Customer has not notified E&P thereof in writing, setting out the reasons, within 5 working days after the date of Delivery (and in any event 5 working days after the Customer could reasonably discover such non-compliance).
8. Changes in technical insights in the sector and/or in government regulations will be at the Customer's risk.
9. Returns will only be accepted after prior written approval by E&P.
10. If at the Customer's request the date of the actual delivery is postponed, the risk of the Goods will nevertheless pass to the Customer from the moment at which these Goods have been identified in E&P's accounts and/or depot as 'the Customer's goods'. From that moment onwards E&P will be entitled to invoice the Customer for the Goods in the agreed invoice-scheme. The additional storage and insurance costs will be at the Customer's expense.

#### **ARTICLE 8. RETENTION OF TITLE**

1. E&P reserves the title to the Goods until it has received full payment for:
  - a. the performances due from the Customer for all Goods supplied or to be supplied by E&P; and
  - b. all E&P's claims on the Customer following the Customer's non-compliance under any Agreement with E&P.
2. If the retention of title is invoked, the Customer will not be entitled to reimbursement for the storage costs, neither will he himself be able to rely on a retention of title in this respect.
3. If the Customer is in default regarding this payment obligations or if E&P at its discretion has good reasons to fear that the Customer will not fulfil his obligations, E&P will be entitled to take back the items it owns (or have them taken back) from the location where they are situated. The Customer grants E&P now for then an irrevocable authorization to access (or have accessed) the spaces used at or for the Customer.
4. If and insofar as this is necessary, the Customer is only entitled to resell or use the Goods supplied under retention of title if this is in connection with the normal course of his business operations. In the event of a sale, the Customer will be obliged to deliver these Goods also - and only - under the present retention of title and in accordance with the provisions in this clause. The Customer is not entitled to pledge the Goods supplied under retention of title to any third parties or to furnish these Goods as a security in the broadest sense of the word to any third parties.
5. The Customer is obliged to retain the items supplied under retention of title with care and as the recognizable property of E&P.

#### **ARTICLE 9. CUSTOMIZING ITEMS**

1. For most goods, the Customer may submit a request to customize it by adding (combinations of) letters, spaces, drawings, logo's and/or numbers to the ordered Goods. E&P reserves the right in its sole discretion to decline the Customers design for customizing the Goods, for example because it contains a trademark belonging to third party, or the names of sports teams, athletes or celebrities that the Customers or E&P do not have the right to use, or because it contains material that E&P considers to be inappropriate.
2. The design for customizing items (including the color combination etc.) shall be created by the Customer. The Customer guarantees that it is authorized to use the design. E&P has no obligation to review or decline the Customer's design for personalization of items. All liability regarding the design is for the account of the Customer.

#### **ARTICLE 10. WARRANTY**

1. In case the delivered Goods do not comply with the Agreement, the Customer will notify E&P thereof taking into account the provisions of article 7 paragraph [7] of the General Conditions. In case the Customer's claim for non-compliance proves to be correct according to E&P (deciding in its sole discretion), E&P is free to choose between the following options (without being liable for payment of any compensation for damages towards the Customer):
  - a. The Customer may return the non-complying products and E&P refunds the purchase price for the returned products (after receipt thereof by E&P); or
  - b. E&P replaces the non-complying product; or
  - c. E&P repairs the defect.
2. Customized items can not be returned nor refunded.
3. Slight aberrations in size, number and/or a slight difference in colour can not be considered to be a non-complying Product.

#### **ARTICLE 11. LIABILITY**

1. E&P's liability towards the Customer for reimbursement of damages for tort and/or non-compliance under any agreement is limited to all direct material losses suffered by the Customer. E&P is not liable for other sorts of damages, such as (but not limited to) loss of profit or turnover, indirect damages, immaterial damages, consequential damages and/or damages suffered by third parties.
2. In case of liability, E&P is not obliged to reimburse to Customer a higher amount of damages than E&P can recover from its insurers in respect of the damages for which it is held liable, to be increased by the excess (own risk) under this insurance. If the insurers refuse to pay the loss or if the damage is not covered by any insurance policy, E&P's liability towards Customer will be limited to (1x) the net invoice value of the delivery from which the liability occurs, but in any event up to a maximum of € 10,000.
3. E&P stipulates all statutory and contractual defences which it can invoke to defend its own liability towards the Customer also for the benefit of its servants, the non-servants for whose actions E&P would by law be liable and E&P's suppliers.

4. E&P is not liable for delays, the non- or incorrect delivery as a direct or indirect consequence of force majeure. Force majeure includes any circumstance beyond the power and fault of E&P, which prevents the normal execution of the agreement or aggravates it to such an extent that E&P cannot reasonably be required to perform it, such as (for instance) the circumstances of war, civil commotion, strike or exclusion, fire, flood, illness, government measures including import and export measures, ice or weather conditions, accidents in connection with atomic power, disruption in the supply or provision of raw materials and additives, energy or operational requirements including (whether or not imputable) shortcomings on the part of third parties engaged by E&P, including suppliers, faults in or damage to means of production, transport obstructions, contamination or risk of infection or interruption of operations. It is specifically agreed that non-delivery by E&P of certain goods (certain labels and/or goods from certain manufacturers), that were ordered by the customer but that cannot be acquired by E&P anymore because these goods are sold out and/or because the manufacturer has stopped the production of such goods, is considered to be a force majeure situation as well.
5. In the event of force majeure the parties will without prejudice to any other rights they have and without the parties being obliged to pay each other any compensation, be entitled to dissolve the agreement with respect to the part not yet executed after the situation of force majeure has lasted for 2 months.

#### **ARTICLE 12. INDEMNIFICATION**

1. The Customer indemnifies E&P, as far as the law permits it, for any and all claims of third parties regarding the compliance, delivery, quality and/or product-liability of the products sold and delivered by E&P to the Customer under any Agreement.
2. The Customer will take for an adequate liability insurance against (1) operational risks and/or (2) product liability risks.
3. In case of third party claims as set out in paragraph 1 of this article, the Customer is obliged to do everything to limit the damage.
4. E&P stipulates all statutory and contractual defences which it can invoke in accordance with this article to defend its own liability towards the Customer and third parties also for the benefit of its servants, the non-servants for whose actions E&P would by law be liable and E&P's suppliers.

#### **ARTICLE 13. PAYMENTS**

1. All payments due by the Customer must be received by E&P in cash or by transfer to one of his (whether or not indicated) accounts within 14 days after the invoice date. If the Customer fails to do so, it is automatically in default. In the event of a default, all the Customer's payment obligations will be immediately due and payable and the Customer will be obliged to reimburse E&P with interest for overdue payment over the amounts due which is equal to 1% per month.

2. Payment should effectively take place in the agreed currency and without set-off, discount or suspension. E&P is entitled to set-off amounts which it can claim at any time from the Customer against amounts which E&P (or one of its associated companies) owes or will owe to the Customer.
3. The Customer can only object to the invoice in writing within 8 days after the Invoice date. After that date the Customer is regarded as having agreed with the respective invoice.
4. Payments by or on behalf the Customer serve successively to pay the extrajudicial debt collecting costs due by the Customer, the court costs, the interests due and after this in chronological order the outstanding principal sums without regard to the Customer's indications to the contrary.

#### **ARTICLE 14. COSTS**

1. The Customer is obliged to pay all (extra) judicial costs E&P has to make in connection with the fact that the Customer fails to fulfil its obligations on time and adequately.
2. The extra judicial costs shall, as a minimum, correspond to the scheme as set out in the Dutch '*Besluit Vergoeding van Buitengerechtelijke Incassokosten*' with a minimum charge of €1,000.=.

#### **ARTICLE 15. SUSPENSION**

1. If the Customer is in default with the correct and/or timely fulfilment of one or more of its obligations, or in case E&P has good grounds to fear non-compliance by the Customer of its payment obligations:
  - a. The obligations of E&P to fulfil his own obligations are automatically and immediately suspended until the Customer has completely paid the sum it was claimably due;
  - b. E&P can demand the Customer to provide E&P with a full payment upfront or sufficient security from the Customer, for example in the form of a bank security issued by a Dutch banking firm with a good reputation, regarding the Customer's remaining obligations.
2. If the Customer does not promptly comply with E&P's demands under paragraph 1 of this article, E&P shall any time be entitled to annul the contract with the Customer without incurring an obligation to pay damages. In this case, the Customer undertakes to compensate E&P for any damage caused by annulment.
3. The Customer is not allowed to postpone its obligations towards E&P.

#### **ARTICLE 16. DEDUCTION**

1. The Customer is never authorized to deduct an obligation, whether or not claimable, from an obligation of E&P.

#### **ARTICLE 17. CONVERSION**

1. If a stipulation from these General Conditions is void, this stipulation is automatically (legally) replaced by a valid stipulation which answers as much as possible to the intent of the void stipulation. The parties are obliged to discuss reasonably about the text of this new stipulation. In that case the other stipulations in general conditions keep their validity as much as possible.

#### **ARTICLE 18. DISSOLUTION OF RIGHTS**

1. The Customer must make its right from the agreement valid within one year after they have been established, by instituting proceedings, in failure of which its rights automatically expire.
2. The above-mentioned stipulations do not alter other stipulations from these general conditions based on which one or more rights of the Customer have expired earlier.

#### **ARTICLE 19. APPLICABLE LAW AND DISPUTES**

1. All legal relations between E&P and the Customer are governed by Dutch law.
2. All disputes, including summary proceedings, connected to and/or resulting from these general conditions and/or agreements to which these conditions are applicable, will exclusive of any other judge, be tried by the competent judge in Haarlem, The Netherlands. E&P, however, maintains the right to commence an action with the judge who would be competent according to the law.