

**FORTABAT YACHT DESIGN – Naval Architecture**  
**Terms and Conditions for Survey, Design and Consultancy**

These general terms of agreement are intended to be used for assignments within the professional field of Naval Architecture, Yacht Design, Ship Survey, Marine Engineering and Consultancy.

**Client & Consultant Relationship**

- 1) The Consultant will perform its work with the Clients interests in mind.
- 2) The Consultant shall undertake the assignment without undue influence from suppliers and others, who might have an effect on his objectivity and also otherwise observe sound professional practice.
- 3) The Client shall, at the request of the Consultant, provide the expected information required, for the Consultant to perform the assignment in an acceptable fashion.
- 4) The Consultant shall, if requested by the Client, preserve the confidentiality of the assignment, the business activities of the Client, the result of the assignment and any other circumstances.
- 5) The consultant is permitted to communicate with suppliers and subcontractors as required to complete the assignment, and request their confidentially but is not liable for their conduct.

**The Assignment**

- 1) The scope of the assignment is defined in a design offer agreed between the parties, which is to be prepared and discussed before the assignment commences. The budget shall show the estimated remuneration of the assignment.
- 2) The project may only be altered after consultation with the other party. Unless otherwise agreed, the Client is responsible for the co-ordination of his own work, the work of the Consultant, and those of any other parties under contract with the Client. This, however, does not limit the Consultants obligation to acquire the information required for his own work.
- 3) The Consultant may not appoint a sub-contractor without the Client's consent, unless it is a matter of routine work or work of little importance.
- 4) The Consultant shall obtain the Client's consent before passing on documents to a third party for the execution of the project to which the assignment refers.
- 5) The Consultant shall notify the Client, without delay, of the need of work and new or changed instructions not included in the assignment.
- 6) If the Client is contemplating to deviate, in substantial respect, from the Consultant's design, before the project has been executed, the Consultant has the right to express his opinion and is not held responsible for changes made without his consent.
- 7) The Consultant must draw up a proposal of the time schedule which shall, after agreement, apply for the assignment and must be followed. However he is entitled to a delay if it is due to circumstances not caused by him. The delay must be communicated to the Client.
- 8) If the Client requires a modification in the time schedule (acceleration or suspension), the Consultant is entitled to a compensation for the additional costs that may arise.
- 9) Unless otherwise agreed, the assignment is completed once the result of the assignment has been presented in a way agreed in the design offer.

**Rights**

- 1) The Consultant has full ownership of the intellectual property rights, including but not limited to copyright and design rights in the design concepts and any other inventions or works once the assignment is completed. The Client and/or any third party does not have permission to create repeat builds of the completed project without the consent of the Consultant and upon a fee being paid.
- 2) If the value of the right to an invention received by the Client, clearly exceeds the Consultant's fee, the Consultant shall receive additional payment to the fee.
- 3) The Client has the right to use the product of the assignment for the agreed purpose. Further use of documents or media files produced within the scope of the assignment is subject to the Consultants consent.
- 4) If after the assignment is complete, someone wishes to make alterations or amends, he may, without the Consultants consent and without paying compensation. To the extent required by sound practice, the Consultants interests shall be taken into account and his name given.
- 5) The Client shall protect the result of the assignment from undue copying and circulation and state the name of the Consultant when the result of the assignment is presented.
- 6) The Client may not transfer any rights to the product of the project, unless the Consultant has received the full agreed payment.
- 7) In the absents of separate confidentiality agreements, the consultant may use images and information from his assignments in his own publicity

### **Ownership**

- 1) The Consultant is the owner of any intellectual property rights which subsist in the drawings, calculations, and specifications (etc...) which have been produced by him. The Consultant also retains ownership of the original documents, computer files and electronic configurations from which the documents have been produced.
- 2) The Consultant has the right to make use of design material provided that the Consultant does not make a direct copy and informs the Client.
- 3) The Consultant shall keep original, and/or copies of the documents after the assignment has been complete, for at least 5 years.
- 4) If the Client so requires, the Consultant will supply the Client with a copy of these documents kept on file for a reasonable fee to be determined by the Consultant.
- 5) Any rights in models and other demonstration material specifically ordered and paid for by the Client shall vest in the Client.
- 6) The ownership of the physical documents and media files submitted by the Consultant passes to the Client once the full payment, according to the agreement, is paid.

### **Liability**

- 1) The Consultant is responsible for damage caused to the Client due to errors, negligent performance or omission.
- 2) The Consultant is not responsible for damage from utilisation of materials, constructions or working practices where a waiver of responsibility or a waiver of subrogation exists.
- 3) Claims must be declared without undue delay and no later than one year after the Consultant has completed the assignment. Any claims must be specified in writing. Any fault discovered during production must be claimed immediately and before works of correction have been started.
- 4) The Consultant is not liable for any faults due to software errors in this trade's acknowledged, common data programs.
- 5) The Consultants liability shall not exceed €250,000 for each occurrence and in total €250,000 for each account year.

### **Settlement**

- 1) The remuneration to the Consultant consists of a prearranged fee which is paid on the basis of time spent or on another agreed basis.
- 2) If the scope of the assignment is modified, or additional assignments are required, then the remuneration shall be modified upon notification. Modifications to the time schedule may have to be made in such circumstances.
- 3) If so agreed, expenses and supplementary costs shall be payable for instruments, field equipment and laboratory tests, copying and/or printing, model making, travelling and subsistence expenses and other expenditures as specified in the agreement.
- 4) No compensation will be paid for the Consultant's rectifying of errors in the document which have been drawn up or provided by the Consultant. However, if the error has been caused by incorrect information given by the Client, authorities, or someone engaged by the Client, the cost or rectifying shall be compensated by an agreed amount.
- 5) The payment shall be made in accordance with the agreed plan of payment and on submission of an invoice.
- 6) Unless otherwise agreed, the invoice shall specify the nature and scope of the work carried out. Unless otherwise agreed, the invoice shall be paid within 15 days of its receipt. If the parties disagree about a part of the invoice amount, the undisputed amount shall be paid with the time specified.
- 7) Unless otherwise agreed, the payments shall be made by Swift transfer to the Bank account indicated on the invoices.
- 8) In the event of late payment interest is payable at the rate 3% per month with a maximum of 20% per year.
- 9) If a party has strong reasons to believe that the other party will not fulfil part of his obligations, the party may suspend the performance of his own duties. The party must inform the other party immediately. If the party provides an acceptable surety of the fulfilment of his obligations, the other party shall no longer have the right to suspend his performance and must resume performance of its obligations under the contract.
- 10) Should the Client wish to extend his decision making period thereby delaying its authorization to start the following phase, and/or delaying payment for delivered work, the Consultant has the right to stop the work until the decision or payment has been made. However such interruption shall invalidate the delivery times and overall planning and a compensation fee will have to be paid by the Client.

### **Termination and Cancellation**

- 1) The starting of any phase of the design is considered an agreement to complete it. The Client may terminate the assignment at any time. However the Client will be liable to pay the Consultant's fee relating to the design work which started at that juncture.
- 2) The Consultant has the right to terminate its assignment if the Client does not fulfil his obligations. The Consultant shall give reasonable notice of 7 days of its intention to terminate the assignment.
- 3) Unless agreed otherwise, the French laws shall govern the interpretation and enforcement of the agreement. The competent jurisdiction and court will be the one in which the Consultant has his office or where is design work has been performed.