

## **TERMS OF BUSINESS**

DEVOTI SAILING

FIRST EDITION

THESE TERMS OF BUSINESS APPLY TO ALL WORK UNDERTAKEN AND FACILITIES OR GOODS SUPPLIED ON OR AFTER 1<sup>ST</sup> MAY 2007

### **1. LIABILITY**

A. We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us or latent defects); this includes loss or damage to vessels, gear, equipment or other goods left with us for repair or storage, and harm to persons entering the premises and/or using facilities or equipment; customers should ensure that their own personal and property insurance covers such risks.

B. Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels. Any vessel, gear, equipment or other goods are left with us at the customer's own risk; the customer should maintain adequate insurance which should also cover third party liability of at least 1,000,000 EUR.

### **2. PRICES AND ESTIMATES**

A. In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided.

B. When we give an estimate or indication of price - in writing or orally - we will exercise skill and judgment in doing so. Such estimates are subject always to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any additional repairs or work found necessary to the vessel and/or gear or equipment during the work nor the cost of any extensions to the work comprised in the estimate.

C. We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefore and will only proceed with the work with the approval of the customer. In those circumstances the customer's liability for any work already completed or goods already supplied or to be supplied shall be unaffected.

### **3. DELAYS**

The time for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our willful acts or omissions or from our negligence.

### **4. VESSEL MOVEMENTS**

We reserve the right to move any vessel, gear, equipment or other goods at our discretion for reasons of safety or good management.

## **5. PAYMENT CONDITIONS, DEPOSIT AND CANCELLATION POLICY**

A. Unless otherwise agreed in writing the price of all work, goods and services shall be due immediately on invoice date.

B. We require the advance payment of the deposit within 7 days after receipt of the proforma invoice issued by us. The amount of deposit is as follows:

1. For purchase of Melges 24 class vessel we require 15,000 EUR;
2. For purchase of Finn class vessel we require 4,000 EUR;
3. For purchase of both Melges 24 and Finn class vessel we require (in addition to payment under subsections 1. and 2.) a payment of full costs of all the accessories and spare parts purchased by us from the external providers.

C. In the event of cancellation of the purchase, we will refund the deposit as follows:

1. For cancellations not less than 60 days before the approximate delivery of the boat stated in this proforma invoice (hereinafter only 'approximate delivery'), we will refund 70% of the deposit;
2. For cancellations less than 60 days before the approximate delivery, we will refund 0% of the deposit (i.e. the deposit forfeits in order to cover the costs incurred by us);
3. For cancellations at any time after the payment of the deposit (i.e. this obligation exists independently and thus in addition to the deductions under subsections 1. and 2.) of this paragraph), customer undertakes to pay the full costs of all the accessories and spare parts purchased by us from the external providers. In case of cancellations not less than 60 days before the approximate delivery, we are entitled to deduct the full costs of all the accessories and spare parts purchased from the external providers directly from the rest of the deposit. In case when the deposit does not suffice to cover these costs (i.e. always under subsection 2. and possibly also under subsection 1. of this paragraph), we will issue a special invoice which is due in 15 days from its delivery.

D. Pending receipt of payment in full without set off or deduction we reserve the right to charge interest on any sums outstanding after 30 days at 0.05% per day.

E. We have the right to keep hold of a vessel, its gear and equipment and any other goods on which we have worked or in respect of which we have provided services pending payment in full or all sums due to us in respect of the provision of any such work or services. During any such period of retention we reserve the right to continue to charge for storage, hard standing and berthing at our usual commercial rates.

## **6. GUARANTEE**

A. Nothing in these terms affects the statutory rights of any customer who contracts with us as a consumer.

B. Upon delivery of our vessels, gear, equipment or other goods, a customer is obliged to inspect it and notify to us any defects as follows:

1. "Category A defects" mean visible defects such as missing or damaged parts. A customer must notify us "Category A defects" within 7 days from the delivery.
2. "Category B defects" mean specific non-visible defects such as keel vibration. A customer must notify us "Category A defects" within 30 days from the delivery.

Failure to notify us within prescribed time limits means that the right to claim defects ceases to exist.

BC. We guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. We shall be liable under this guarantee only for defects appearing during this 12-month period which must be notified to us in writing within 7 days after their first occurrence. Failure to notify us within this period means that the right to claim defects ceases to exist.

CD. On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other specialist contractors to do so. Any remedial work which is put in hand by the customer other than through ourselves in accordance with the terms of this guarantee may invalidate this guarantee in respect of such defects if we are not advised beforehand and given the opportunity to inspect and agree such work and its cost.

DE. Where we supply goods or services to a customer in the course of his business:

- 1.No such goods or services shall carry any express or implied term as to quality or fitness for any particular purpose unless prior to the supply the customer has sufficiently explained the purpose for which it is required and made it clear the he is relying on our skill and judgment.
- 2.No proprietary article specified by name, size or type by a business customer shall carry any such express or implied term but we will assign to the customer any rights we may have against the manufacturer or importer of that article.
- 3.In no event do we accept liability to a business customer for consequential damage beyond replacement of any faulty or unsuitable article supplied by us.

F. Any notification of defects, the right to claim of defects, and other communication with us related to the guarantee provided by us shall be conducted exclusively in English unless explicitly agreed otherwise. Failure to notify us in English means that the right to claim defects ceases to exist.

## **7. QUALITY STANDARDS**

We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

## **8. ACCESS TO PREMISES/WORK ON THE VESSEL**

A. Subject to paragraph B of this Clause no work shall be done on the vessel, gear, equipment or other goods while on our premises without our prior written consent other than minor running repairs or minor maintenance of a routine nature by the customer, his regular crew or members of his family not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with our schedule of work, nor involving access to prohibited areas.

B. Prior written consent will not be unreasonably withheld where:

- 1.The work is of a type for which we would normally employ a specialist sub-contractor; or
- 2.The work is being carried out under warranty by the manufacturer and/or supplier of the

vessel or any part of the equipment to which the warranty relates.

C. Notwithstanding the foregoing, during periods of work by us on the vessel, neither the customer nor his invitees shall have access to the vessel without our prior consent, which consent shall not be unreasonably withheld. In the event of such access being permitted, it will be at the customer's own risk.

## **9. RIGHT OF SALE**

A. Where we accept vessels, gear, equipment or other goods for repair, refit, maintenance or storage we do so subject to the provisions of the Czech Commercial Code (“Obchodní zákoník“), the Act No. 513/1991 Coll. as amended. The Commercial Code confers a right of sale on us in circumstances where the customer fails to collect or accept redelivery of the goods (which includes a vessel and/or any other property). For the purpose of the Commercial Code it is recorded that:

1. Goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorized agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
2. Our obligation as custodian of goods accepted for storage ends on our notice to the customer of termination of that obligation;
3. The place for delivery and collection of goods shall be at our premises unless agreed otherwise.

B. In certain other circumstances we may be entitled to have vessels or goods sold through the Court for non-payment of invoices.

## **10. SUB-CONTRACTING**

We may sub-contract all or part of the work entrusted to us by the customer, on terms that any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in these Terms of Business.

## **11. ANCILLARY PROVISIONS**

A. If any provision of these Terms of Business is deemed for any reason to be invalid, void or deleted, the Terms of Business shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, we and the customer shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision.

A. Notices to a customer shall be deemed to have been sufficiently served if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address.

B. These terms are subject to Czech Law, in particular to the Commercial Code („Obchodní zákoník“), Act No. 513/1991 Coll. as amended. Vienna Convention on the Sale of Goods shall not apply to this Agreement.

C. Any dispute, controversy or claim arising under, out, of or relating to these terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or

termination, as well as non-contractual claims, shall be exclusively referred to and finally determined in arbitration proceedings under the rules of Arbitration Court Attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic by one arbitrator chosen by us from the list of arbitrators of the abovementioned court. Arbitration proceedings shall take place in Prague. Arbitration proceedings shall be based only on written documents, without oral pleadings. Both the parties to the arbitration proceedings undertake to fulfill mutually the arbitration award voluntarily and without any delay.

D. Any dispute, controversy or claim arising under, out, of or relating to these terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be exclusively referred to and finally determined in arbitration proceedings under the rules of Arbitration Court Attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic by one arbitrator chosen by us from the list of arbitrators of the abovementioned court. Arbitration proceedings shall take place in Prague. Arbitration proceedings shall be based only on written documents, without oral pleadings. Both the parties to the arbitration proceedings undertake to fulfill mutually the arbitration award voluntarily and without any delay.

E. Any communication with us, including notifications, claims and complaints, shall be conducted exclusively in English unless explicitly agreed otherwise. Communication in other languages shall not have any legal effects.