

Nacra Sailing B.V. / Performance Sails B.V. / Nacra Sailing Americas, Inc. /
Nautical Sports Holding B.V.

GENERAL CONDITIONS OF CONTRACTS, SALES AND DELIVERIES

The General Conditions of Contracts, Sales and Deliveries of Nacra Sailing B.V. / Performance Sails B.V. / Nacra Sailing Americas, Inc. legally represented by Nautical Sports Holding B.V. were drawn up in 2011, based upon HISWA Association (Netherlands Association of Enterprises in Water Recreation [1998/2006 release] and adjusted where due needed.

1 - DEFINITIONS

- a. NSH: the seller/contractor, being Nacra Sailing B.V./Performance Sails B.V. /Nacra Americas, Inc. / Nautical Sports Holding BV; hereafter referred to as NSH.
- b. The buyer: the purchaser/principal (individual)
- c. The arbitrator: the Board of Arbitration Water Recreation in The Hague.

2 - APPLICATIONS

The General Conditions apply to all agreements with NSH related to buying and selling (excluding second hand purchases and sales), all agreements concerning contract work, all offers by NSH, and in particular to all contracts concerning the purchase, sale or building of new pleasure craft and hulls, including integral fixtures and fittings. The General Conditions also apply to any offer or agreement concerning alterations, finishing and internal fittings, repairs or maintenance to or of pleasure craft or parts thereof, as well as to any further agreements resulting from the above.

3 - OFFERS

1. A written offer shall be binding during the stated period or if no period is mentioned, for ten working days after receipt, unless there is a different provision or the credit worthiness of the buyer is questionable. If the buyer fails to accept an offer within the stated period, the offer will be withdrawn.
2. Any offer must include prices and delivery date. The offer must include specifications if relevant.
3. All designs, pictures, drawings, plans, specifications and other explanations and clarifications included with the offer for fitting out, refurbishment or repairs, remain the property of NSH. They are protected under the Copyright law and may not be passed on to a third party, unless this is essential for the repairs and maintenance to be carried out.
4. Except in the case of essential to repair and/or maintenance work as indicated in the previous paragraph, the buyer shall not publish or multiply such documents, nor show them to third parties without written permission.

4 - THE AGREEMENT

1. Any purchasing agreement or contract for work to be carried out costing more than € 2.500,00 (excluding VAT) and any subsequent agreements must be confirmed in writing.
2. Any subsequent agreements and/or amendments or promises made by the personnel or staff of NSH are binding as long as they have been confirmed in writing. If there is no written agreement or confirmation of an agreement or further arrangement, both parties are bound by such an agreement or further arrangement, as long as one of them can prove by means of other written documents that an agreement or further arrangement was actually made.
3. Without prejudice to clause 10 item 2 of the General Conditions NSH may charge extra costs if they are the result of changes in the work to be carried out or of interruptions, if they were caused by circumstances for which NSH was not responsible.
4. An agreement for refurbishment or repairs only extends to work NSH could have reasonably anticipated. If the extent of the work is greater than could have been foreseen, NSH must halt the work immediately and discuss with the buyer whether work should be continued and in which manner. NSH may in any case charge for work carried out to date and any related costs.
5. If supplementary agreements substantially affect the price, delivery date, dimensions, weight NSH must advise accordingly.
6. Request for cancellation of the purchase agreement should be made towards NSH in writing, stipulating the rationality of the cancellation. The Cancellation-fee of the agreement is equal to the payments according to the payment-schedule as mentioned on the order form and/or order confirmation.

5 - WARRANTY

1. NSH guarantees that he will supply a pleasure craft, including fixtures and fittings as agreed, to the agreed specifications. NSH shall also ensure that whatever he supplies is suitable, under all circumstances, for normal use or any special use as agreed.
2. NSH guarantees that the work done by him or in his name shall comply with the contract and shall be done to a high level of workmanship and using good-quality material.
3. In compliance with the above, NSH guarantees that for a period of 24 months after delivery no defects shall become apparent or develop. For components supplied by third parties and fitted by NSH, the warranty conditions of these third parties shall apply, insofar as the relevant warranty information is given to the buyer.
4. Without prejudice to other rights he has under the law, the buyer is entitled to have any defect or replacement of faulty parts carried out free of charge and within reasonable time at NSH or at its Nacra dealer network, within the 24 months period.

After written approval of NSH of process and costs, the buyer may within the 24-months period charge NSH for any necessary repairs done by a third party outside the Nacra network, provided the costs are reasonable. To determine what would be reasonable costs, NSH's price level will be taken as maximum.

NSH must approve on the 3rd party contractor who shall carry out the necessary repairs and her pricing.

5. The following margins of error are acceptable under the contract: $\pm 5\%$ in all dimensions; $\pm 5\%$ weight, excluding materials whose nature creates more tolerances [e.g. Nylon spinnakers, composites]
6. NSH provides no warranty against (external) imperfections, resulting from the type and quality of the materials used, that do not detract from the soundness of the craft/sails.
7. NSH accepts no responsibility for defects which have occurred after delivery of the goods due to ordinary wear and tear, improper use or carelessness, or that are the result of alterations made by the buyer or third parties. Nor is NSH responsible for any damage resulting from the above defects.
8. Emergency repairs are not covered by the warranty.
9. The user and warranty manual describes in more detail the warranty terms and condition as these separate conditions prevail, see document on our website: User & Warranty Manual.

6 - DELIVERY TIME

1. By delivery time is meant the time between the date when the sales agreement is signed or the contract for refurbishment or repair is issued and the date of delivery ex yard or depot in The Netherlands.
2. The delivery time will be extended by the length of any delay caused by the buyer's shortcoming, despite timely warning, to pay NSH an advance when it is due, or by the buyer's shortcoming or negligence in fulfilling any other obligation. Any predictable extra costs resulting from such shortcoming or negligence will be charged to the buyer.
4. NSH is not in default until the delivery date has been exceeded through circumstances for which NSH is responsible.

7 - FORCE MAJEURE

1. By force majeure is meant any unforeseeable circumstance delaying or preventing the execution of the agreement in as far as such a circumstance cannot be avoided by NSH and cannot lawfully, or on the grounds of the agreement or social convention be ascribed to NSH.
2. Force majeure also covers delays caused by materials not being supplied on time, if the delay is not caused by circumstances NSH should or could have foreseen or prevented.
3. If force majeure causes NSH to delay the work, the buyer shall also be released from his obligations for the period in question.
4. If the agreement is cancelled through force majeure, NSH can claim compensation for the costs of building, installation, refurbishment or repairs, in as far as such costs were incurred before the agreement could be expected to be terminated by force majeure, and to the extent that the buyer benefits from the work already completed.

8 SHIPMENT & DELIVERY

1. All shipments will be made ExWorks NSH's warehouse unless otherwise specified. In the absence of specific instructions, Seller will select the carrier. Ownership of the goods passes to Buyer upon delivery thereof by Seller to the carrier, under the condition of complete payment; thereupon, Buyer shall be responsible for the goods. Transportation from the ExWorks point designated in this contract, handling and insurance are at the cost of Buyer. Goods held for Buyer, or stored for Buyer, shall be at the risk and expense of Buyer. Claims against NSH for shortages must be made within 10 days after arrival of shipment.

2. All delivery dates are approximate. NSH will do her utmost to complete works according to the delivery dates acknowledged by NSH. Delivery may be made in instalments. Default or delay by NSH in shipping or delivering the whole or any part or instalment of the goods or services under this contract shall not affect any other related shipment.

3. While NSH will do her utmost to adhere to any time stated for delivery, it shall not be liable for any loss or damage howsoever caused, by any delay in delivery, completion, or performance of any contract. Any time stated for delivery shall not be a term of any contract or representation.

4. In the event of NSH being unable to supply or deliver goods ordered it undertakes to refund any money paid in respect of such good, but shall not otherwise be under any liability whatsoever. NSH shall not in any event be liable for consequential damage or loss.

5. The products shall be at the Buyer's risk immediately on collection from NSH or on delivery to the Buyer or on delivery to the Buyer's Carrier. The Buyer shall insure the Goods sufficiently against the usual risk. The Company shall not be liable in any way whatsoever for any breakage or damage to or loss of the Goods after NSH has made delivery to the Buyer.

6. Replacement-parts will be transported to the buyer on request. This does not apply to warranty-claims. In warranty cases the replacement parts will be made available after all claims under the warranty have been dealt with. In all case of replacement, the replaced parts will become the property of NSH.

7. If a buyer, when buying or ordering a new boat to be built, agrees to trade in a used boat or other goods, the latter will not become the property of NSH until it has actually been delivered. If the buyer continues to use the boat or goods which are to be traded in, whilst waiting for delivery of the new boat or goods, any damage or loss, howsoever sustained, will be for the account and at the risk of the buyer. All related costs for maintenance and repair are for the buyer's account.

8. If the buyer fails in his obligations while the object of the agreement has been registered, the buyer is obliged to co-operate in getting it removed from the register.

9 - CLAIMS

Complaints relating to implementation of the contract should be brought to the attention of NSH, in writing and clearly described and illustrated, within a reasonable period of the buyers having discovered the deficiencies or his having been able to discover them. The consequences of late complaints shall be for account of the buyer.

10 - PRICES AND CONTRACT SUM

1. All prices and contract sums are quoted net cash at the agreed place for delivery.
2. Each price increase or decrease, in as far as it affects the purchase or contract price, will at the request of the claimant be passed on if it occurs after more than three months after the agreement was signed and no delivery has yet taken place, or the projected work has not yet been completed. However, NSH will not pass on any price increase if it would not have affected the purchase or contract price had the materials in question been ordered in time. The term price increases and decreases include any changes in the rate of exchange for the currency the materials or goods are supplied in, in relation to the rate of exchange current at the time the purchase or contract price was fixed. If as a result of a price increase as mentioned in this item as well as in items 3 and 4 of this clause, the purchase or contract sum increases by more than 15%, the buyer has the right to cancel the purchase agreement, or to turn down the agreement altogether.
3. Notwithstanding the above, any increase or decrease in wages and other labor conditions in force with the CAO, or binding wages agreement applied by NSH, and any increases or decreases in social security contributions, are passed on in as far as they affect the contract price and have come into force more than three months after the agreement was signed.
4. The purchase price is for the specific quantity and /or work stated and includes the appropriate value added tax (VAT) in force at the time of the agreement. VAT % is depending on customer type, delivery location and applicable Tax-legislation. The purchase price does not include any charges for transportation, insurance, special packaging, or marking. If any charges can be avoided by observing certain regulations, both parties have the obligation towards one-another to take the necessary action to avoid those charges.

11 - PAYMENT

1. Unless otherwise agreed in writing, all payments are due as described on order form and order confirmation. All payments shall be made by crediting the bank account specified by NSH or in cash at the offices of NSH.
2. If the buyer does not pay the amount owed by the agreed due date, he shall be deemed automatically to be in default. Also, NSH shall be entitled to charge legal interest plus 3% p.a. over and above the amount owed. This interest shall be calculated and charged pro rata parte from the due date.
4. Should one of the parties need to take legal advice concerning a dispute about an agreement which is subject to these conditions, the defaulting party or the party which is ruled against, will (also) be liable for legal costs.
5. If completion of the agreement is delayed at the request of the buyer or because the buyer fails to honor his obligations on time, or prevents NSH from carrying out his work on time, Buyer is not relieved from his obligation, to respect the payment schedule as described in the order form and order confirmation.
6. Complaints relating to invoices should be submitted to NSHI in writing and clearly described and illustrated, within 10 working days of receipt of the invoice concerned.

12 - DEFERMENT AND RESCISSION

1. If one of the parties fails to carry out his obligations, the other party may defer his own activities. If the performance of one of the parties is merely incomplete or unsatisfactory, deferment by the other party is permissible only in relation to the extent of the default.
2. If one of the parties fails to honor his obligations, the other party may rescind the agreement, unless the failure is due to exceptional circumstances or so trivial that it does not justify rescission.
3. The cost for cancellation of an order is equal to the advance payments.

13 - RIGHTS OF OWNERSHIP

1. Goods sold by NSH do not become the property of the buyer until the selling price and any other amounts related to the transaction are paid in full to NSH.

14 – TRANSPORT

1. All goods are delivered Exworks at NSI, Scheveningen, The Netherlands.
2. Transportations of goods can be arranged by NSI at risk and expense of the buyer.

15 - LIABILITY

1. NSH is liable for damage affecting the buyer, resulting from negligence on the part of NSH, his staff or personnel for the work assigned by the buyer.
2. In no event this liability will exceed the purchase price of the goods or service.
3. The buyer is liable for damage affecting NSH, resulting from negligence on the part of the buyer or his dependents.

16 - DISPUTES: BOARD OF ARBITRATION AND REGULAR COURTS OF LAW

1. All disputes relating to the agreement are subject to Netherlands law. Only a Dutch court of law and the board of arbitration named hereafter are competent to deal with such disputes.
2. Any dispute between the buyer and NSH about the contents or the execution of the agreement, may be referred to the Board of Arbitration Water Recreation, P.O. Box 90600, 2509 LP The Hague, The Netherlands.
3. The Board of Arbitration will only consider a dispute after the buyer has advised NSH of his complaint within the set period.
4. The buyer must refer the dispute in writing to the Board of Arbitration within three months after he advised NSH of his complaint, together with the names and addresses of the buyer and NSH and a clear statement regarding the dispute and his claim. If the buyer has referred a dispute to the Board of Arbitration, NSH is bound by this choice and can no longer appeal to a regular court of law.
5. The Board of Arbitration is not competent to consider a dispute concerning merely the non-payment of an invoice if no material claim is involved. If the buyer fails to pay an invoice on time, NSH may bring procedures in an ordinary court of law, providing NSH has allowed the buyer one month after receiving the demand to refer the dispute to the Board of Arbitration.
6. If NSH refers a dispute to the Board of Arbitration, the Board will proceed only after the buyer has been allowed one month to declare in writing that he will abide by the Board's decision and has deposited any outstanding amounts with the Board of Arbitration.

7. If the buyer refers a dispute to the Board of Arbitration, the Board will proceed only after the buyer has deposited any outstanding amount owed to NSH with the Board of Arbitration. The buyer is allowed one month to pay the amount into an account indicated by the Board of Arbitration. Should the buyer fail to deposit the amount on time, he will be deemed not to accept the decision of the Arbitration Board.

8. The Arbitration Board's decision is regarded as binding advice. The Board of Arbitration does not deal with disputes about amounts exceeding € 14.000,00 including value added tax.

9. A charge will be made for arbitration of disputes.

10. If a dispute is referred to the Board of Arbitration, items 3 and 4 of clause 11 do not apply.

11. For the consideration of disputes the regulations concerning the Board of Arbitration Water Recreation apply.

17 - EXCEPTIONS TO THE GENERAL CONDITIONS

Individual exceptions, including additions and extensions to the General Conditions, must be confirmed in writing.

For goods or services purchased via the web shop additional conditions are applicable. These additional conditions prevail.

For goods or services purchased from Nacra Sailing Americas Inc. additional local conditions are applicable. These additional local conditions prevail.