

TERMS AND CONDITIONS GAGLIOTTA EUROPE BV

ARTICLE 1 – APPLICABILITY

1. These terms and conditions relate to all offers and agreements, and all agreements which may ensue from them, entered into between Gagliotta Europe B.V. (for itself, or as an intermediary of the selling owner), hereinafter also to be referred to as 'Gagliotta' and another party, also to be known as the 'other party'.
2. The applicability of General Terms and Conditions of third parties, including those of the other party, are explicitly rejected and hereby excluded.
3. The applicability of the Vienna Sales Convention is hereby explicitly excluded.
4. The other party with which a contract has been entered into under these terms and conditions agrees to the applicability of these terms and conditions to subsequent agreements with Gagliotta.
5. In the event that these terms and conditions are translated from the Dutch language into a foreign language, and in the event of any discrepancies between the texts resulting from this translation, the Dutch text will take precedence.
6. The nullity of any provision in these terms and conditions shall not affect the validity of other provisions in these terms and conditions.

ARTICLE 2 – OFFERS AND AGREEMENTS

1. Orders placed by the other party must be submitted to Gagliotta by the other party on paper or by electronic mail.
2. A quotation offer and/or price offer following an order as referred to in paragraph 1 of this article 2 can, at most, be qualified as an invitation to make an offer. Quotations offers and/or price offers are free of obligation and are not binding on Gagliotta.
3. Gagliotta can only be bound by quotations, offers and/or price offers made by it if the other party accepts said quotations, offers and/or price offers without reservation, in writing or by electronic mail within the period set by Gagliotta or, if no such period has been set by Gagliotta, within 8 working days of the date of the quotation, offer and/or price offer.
4. If the quotation, offer and/or price offer is not accepted by the other party, Gagliotta is entitled to charge to the other party all costs which it has had to incur in making its quotation, offer and/or price offer.
5. The images, drawings and similar indications of size, weight, power, capacity and speeds given in catalogues are indicative and are not binding on the parties.
6. Gagliotta is entitled to change the design, the specifications or the nature of the goods to be delivered in the case of minor differences of measurement, if such changes are necessary for the realization of the agreement or if such changes are to the benefit of the realization of the technology.
7. Additional arrangements and/or undertakings made by employees of Gagliotta or other persons acting as representatives of Gagliotta will only be binding on Gagliotta if these arrangements and/or undertakings are confirmed in writing or by electronic mail by an officer of Gagliotta who is authorized to do so.

ARTICLE 3 – PRICES

1. All the prices listed are exclusive of turnover tax (BTW – Dutch VAT) and other levies imposed by the government, unless otherwise agreed in writing.
2. In the event that Gagliotta agrees a specific price with the other party, Gagliotta is nevertheless entitled to increase the price in the event of any changes to labor costs, national insurance or other state contributions, the cost prices of materials or land, import and export duties, which have an influence on the purchase price. If the price increase is more than 20%, the other party is entitled to terminate the agreement.
3. Any charging on to the other party of an increase in cost prices or other prices as referred to in paragraph 2 of this article 3 will be

accepted by the other party at all times if this increase has occurred as a result of a failure or delay attributable to the other party.

4. BTW and levies

Taxes, including BTW (Dutch VAT) and other levies relating to the delivery of the ship will be at the expense risk of the other party. If delivery is to take place exclusive of BTW, the other party will provide Gagliotta with all export and other documents (or copies thereof) necessary to be allowed to show where the ship is being delivered. The other party indemnifies Gagliotta against each and every third-party claim relating to the above-mentioned taxes and other levies.

ARTICLE 4 – PRODUCTS

1. Gagliotta sells new and used ships (for itself or as intermediary of the selling owner).
2. All new ships to be sold, or previously sold, by Gagliotta are built in accordance with European standards applicable in the country of manufacture, which may differ from standards applicable in other areas, such as in the United States and Canada, for example. Use of the ship outside the territorial waters of the European Union is at the risk of the other party.
3. All modifications to the ship which are necessary as a result of local regulations will be at the expense of the other party. Gagliotta also cannot guarantee the usability and soundness of materials and items of equipment the use or deployment of which is stipulated by the other party, or which have been fitted or supplied by the other party.
4. In the case of the sale of the ship, Gagliotta and the other party can agree that the other party part exchanges a used ship (hereinafter referred to as the 'part exchange good').

ARTICLE 5 – DELIVERY

1. Delivery of new ships which do not qualify as registered goods takes place at the shipyard of the builder (in accordance with the appropriate provision in the Incoterms 2000 or any version thereof which subsequently comes into effect), unless otherwise agreed in writing. Delivery of used ships and other goods (which are not registered goods) takes place at the shipyard in Amsterdam (in accordance with the appropriate provision in the Incoterms 2000 or any version thereof which subsequently comes into effect), unless otherwise agreed in writing. Delivery of part exchange goods (which are not registered goods) by the other party to Gagliotta also takes place DDP in Amsterdam (in accordance with the appropriate provision in the Incoterms 2000 or any version thereof which subsequently comes into effect), unless otherwise agreed in writing.
2. The delivery of new or used ships or part exchange goods which are registered goods takes place by means of a notarial instrument drawn up for this purpose between the parties, followed by their registration in the appropriate public registers. The ship or part exchange good will be delivered in Amsterdam immediately after delivery.
3. Gagliotta offers the other party the opportunity to take a test sail of the ship and to inspect the ship before delivery. The other party must make use of this opportunity within 8 working days after notification by Gagliotta; if it does not do so, the ship will be deemed to have been inspected. At that point, the other party can no longer rely on the ship not having been delivered according to the agreements or displaying faults which could reasonably have been discovered during the test sail and/or inspection.
4. Any faults or any missing items which are discovered during the test sail and/or inspection by the other party must be specified and notified to Gagliotta in writing or by electronic mail no later than at the time of delivery. If this does not take place, the ship will be deemed to have been delivered without faults.
5. Gagliotta will notify the other party in good time as to where and when the ship will be made available to the other party. In the case of new ships to be delivered (which are not registered goods), delivery takes place on receipt of this message, and the

risk on the new ship to be delivered is transferred to the other party at the same time. As of that moment, all costs and expenses pertaining to the ship will also be at the expense of the other party. In the case of used ships and other goods (which are not registered goods) delivery takes place through receipt of this message.

6. After delivery or transfer to the other party as referred to in paragraphs 2 and 5 of this article 5, the other party must take receipt of the purchased ship or the good within a period of seven (7) working days (between 9 AM and 5 PM), unless the parties have agreed a different collection period, and to remove it from the sites of Gagliotta or those of the storers of Gagliotta.
7. In the event that the other party remains in default of collection of the ship or the good after delivery, the ship the goods will be stored at the expense and risk of the other party, including harbor dues and mooring costs and costs for maintenance of the ship or the good.
8. In the event that Gagliotta and the other party agreed with regard to the purchase of the ship that the other party will part exchange a part exchange good with Gagliotta, Gagliotta will acquire the full and unencumbered free title to the part exchange good after delivery of the part exchange good has taken place. In this context, part exchange or the sale of a part exchange good only takes place subject to the suspensive conditions that (i) the other party collects the ship it is purchasing from Gagliotta in accordance with paragraph 5 of this article 5, and (ii) the other party pays the full principal amount for the ship which the other party is purchasing from Gagliotta, along with additional interest and costs. Gagliotta is the only party permitted to invoke this condition. In the event that the other party continues to use the part exchange good while waiting for the ship to be delivered by Gagliotta, the costs of maintenance, mooring, repair, insurance, damage and loss, due to any cause whatsoever, relating to the part exchange object will be at the expense and risk of the other party.
9. Gagliotta will also have all the rights referred to in paragraph 8 of this article 5 in the event that the other party is declared bankrupt or applies for bankruptcy, is granted protection from its creditors or applies for such protection, in the event of full or partial cessation or transfer of the business of the other party or in the event of dissolution of the company or termination of the business activities of the other party, or in the event that the other party is the subject of a debt management scheme under the Debt Management (Natural Persons) Act, or applies for such a scheme.
10. In the event that Gagliotta sells a ship belonging to a third party on behalf of said third party to the other party, the purchase agreement is entered into subject to the suspensive condition that the third party in question transfers full and unencumbered free title to the ship to the other party.
11. In the event that the other party fails in compliance with its obligations to Gagliotta and the ship is registered, the other party is required to cooperate in the cancellation of this registration, and the costs of cancellation will be borne by the other party.
12. In the event that certain accessories are not present, this does not mean that the obligation to deliver has not been met, on condition that the missing accessories do not endanger the use of the ship and the manufacturer has the missing accessories installed as quickly as possible.

ARTICLE 6 – DELIVERY DATE

1. The agreed delivery date is not a strict deadline, unless explicitly otherwise agreed.
2. If the other party fails in compliance with its obligations to Gagliotta, the delivery date will be postponed, resulting in delays. The costs resulting from such a postponement of the delivery date will be borne by the other party.

ARTICLE 7 – PAYMENT

1. Unless explicitly otherwise agreed, payment of the purchase price will take place without discharge or settlement in accordance with the payment schedule included in the agreement or attached to

the agreement. The final instalment must be paid before delivery of the ship. All payments take place by transfer to a bank account to be specified by Gagliotta.

2. If Gagliotta requests it, the other party must provide proof of financial solvency. If the other party does not comply with these obligations, Gagliotta is entitled to suspend its obligations under the agreement.
3. In the event of late payment of the purchase amount or any instalment thereof, Gagliotta will be entitled to request collateral from the other party for the purchase amount or the remaining amount thereof, in the form of a bank guarantee or surety commonly used in business. In the event of late payment, or until such a time as the other party provides collateral in accordance with paragraph 3 of this article 7, Gagliotta will be entitled to suspend its obligations and the construction and/or delivery of the ship or the good without further notification to this effect to the other party. The indicative delivery date will then automatically be postponed for the length of the delay.
4. In the event that Gagliotta has sold on the part exchange good to be part exchanged, whether or not in the name of the other party, before the ship sold to the other party by Gagliotta has been delivered to the other party, Gagliotta will be entitled to retain all or part of the proceeds from this part exchange good, and to set it off against any due payments from the other party. In the event that the part exchange good is not sold on by Gagliotta before delivery of the ship purchased by the other party, the agreed value of the part exchange good will be set off against the final payment instalment for the ship purchased by the other party, unless the parties have agreed otherwise in writing.
5. In the event that the other party does not pay the amount owed to Gagliotta within the agreed payment period, or (if no payment period has been agreed) within 8 working days after the other party has been served notice of default by Gagliotta, the other party will be in default ipso jure. As of the moment that the other party is in default, interest of 1% per month will be owed on the payable amount, in which respect part of a month will be deemed a whole month for the purpose of calculating the interest.
6. In the event that the other party is in default or has failed to comply with its obligations to Gagliotta, all reasonable costs incurred in and out of court in enforcing compliance will be borne by the other party, which costs are set at 15% of the payable amount, with a minimum of €1500.

ARTICLE 8 – RETENTION OF TITLE

1. The ship or good delivered by Gagliotta to the other party – inasmuch as said ship or good is not a registered good – will remain the property of Gagliotta or will remain the property of the owner for whom Gagliotta has brokered the sale, until the other party has paid the principal amount, along with any interest and costs, owed under the agreement to Gagliotta.
2. Until such a time as the amount owed has been paid to Gagliotta, the other party is not Gagliotta to dispose of the goods, or to pledge them or establish any other restricted right or other right on them.
3. If the other party fails in compliance with its obligations, or there is a well-founded fear that it will do so, Gagliotta will be entitled to remove the ship or good to which the above-mentioned retention of title applies from the other party or from third parties which are holding the ship or good on behalf of the other party, or have it removed. The other party is required to provide full cooperation in this, subject to a penalty of 20% of the amount owed by it, without prejudice to the right of Gagliotta to also claim additional or substitute compensation for loss.

ARTICLE 9 – FORCE MAJEURE

1. Gagliotta cannot be held liable for a breach of contract if this breach of contract cannot be attributed to Gagliotta according to the law, by virtue of a legal act or according to generally accepted standards. A breach of contract cannot, in any event, be attributed to Gagliotta in the event of, inter alia, fire in the yards of Gagliotta

or in the yards of the storer of Gagliotta, war, civil war, terrorist acts (inside or outside the Netherlands), riots, epidemics, traffic disruptions, labor strikes, disasters at sea of any nature, piracy, sabotage, terrorism, storms, cyclones, lightning damage, earthquakes, tsunamis, inclement weather, loss or damage during transportation, unforeseeable regulations implemented by bodies, including government bodies, shortage of materials or machinery, delays to the delivery of materials, tools or machines, unforeseeable work interruptions at a shipyard, at suppliers or at other third parties on which Gagliotta is dependent and similar other cases which are out of the control of Gagliotta, resulting in delays to the delivery or which make delivery impossible.

- During the force majeure, the delivery and other obligations of Gagliotta are suspended. Gagliotta will also be entitled to rely on force majeure in the event that the circumstance hindering (further) compliance occurs after Gagliotta should have met its obligations.

ARTICLE 10 – LIABILITY

- Each and every liability of Gagliotta for damage or loss suffered by the other party is excluded, irrespective of the grounds on which any action is brought, either due to a breach of contract (attributable or not), or due to an unlawful act on the part of Gagliotta or its subordinates, or otherwise, except in cases of intent or willful recklessness on the part of the managerial staff of Gagliotta.
- In cases in which Gagliotta cannot invoke the provision in paragraph 1, Gagliotta cannot be held liable in any event:
 - for damage or loss resulting from incorrect or incomplete information or advice provided before the agreement came into being;
 - if the other party has failed to comply with its responsibilities or has provided incorrect, inadequate or incomplete information or materials;
 - for damage, loss and/or costs caused by or through the builder of the ship; – for loss of profits and other indirect loss, including loss resulting from lost profits, missed savings, loss of data or missed charter/rental income;
 - for damage or loss resulting from non-use of the ship;
 - for crew costs;
 - for costs for legal or other expert assistance;
- In such cases in which invocation of paragraphs 1 and/or 2 of this article 10 is not permitted, the total liability of Gagliotta cannot, in any event, exceed an amount equal to the lowest of the following two amounts: €22,500 or an amount equal to 5% of the total agreed price (exclusive of turnover tax).
- The maximum liability of Gagliotta for the ship or good delivered to the other party is at all times the liability which the supplier of Gagliotta has vis-à-vis Gagliotta in the context of the ship or good in question.
- Gagliotta cannot be held liable in any way for:
 - accessories supplied and/or fitted by the other party, nor for damage or loss caused by these accessories.
 - any damage or loss resulting from the fact that the ship is constructed in accordance with European standards applicable in the country of manufacture, and not necessarily in accordance with the regulations applicable in territorial waters of other countries, in particular regulations applicable to ships sailing in the territorial waters of the United States and/or Canada.

ARTICLE 11 – COMPLAINTS

- Complaints about the realization of the agreement must be submitted to Gagliotta in writing or by electronic mail within 8 days after the other party discovered the faults or could have discovered them. After this period, any claim against Gagliotta regarding the faults in question shall lapse.
- Supplementary to paragraph 1 of this article 11, the other party will immediately contact Gagliotta on discovery of a failure or fault. If the other party fails to do so, each and every claim against Gagliotta in the context of the faults in question will lapse.

ARTICLE 12 – GUARANTEE

- Inasmuch as the other party is purchasing a new ship, the factory guarantee provided by the manufacturer for the ship will be applicable. Gagliotta will provide the factory guarantee to the other party if the guarantee period for the ship has not yet passed at the time the purchase agreement with the other party comes into being.
- The guarantee period will remain applicable for the same period as is stated in the factory guarantee.
- The obligations arising from the factory guarantee only apply to replacement and/or repair of components of the ship which are deemed faulty by the aftersales service of the manufacturer. The labor costs for the replacement or repair of the faulty material will be borne by the manufacturer. The transportation and material costs and the travel and other expenses of any technical staff will be borne by the other party. If it is necessary to relocate the ship for work under the guarantee, the other party must cooperate in this. In the event that the ship must be taken to a different port for repairs, the transportation costs will be borne by the other party. In the event that the ship must be repaired at a shipyard, the shipyard costs for cranes and storage will also be borne by the other party.
- Components which are replaced or repaired during the guarantee period will only be subject to the remaining guarantee period under the original guarantee.
- If the guarantee is transferred to a subsequent other party, this will only be for the remaining period of the original guarantee.
- The following are excluded from the factory guarantee and/or the factory guarantee will lapse in the event of:
 - Defects in engines, generators, drives, batteries, electronic instruments and all equipment and other machines and goods which were not fitted by the manufacturer. Engines, generators and electronic instruments are covered by the guarantee of the appropriate supplier.
 - Accessories supplied by the other party, which are not fitted by the manufacturer.
 - emergency repairs.
 - color difference on the ship and deterioration of the anti-fouling layer applied to the ship, as a result of exposure to UV radiation.
 - faults which occur in or which are or could be wholly or partially the direct or indirect consequence of: Normal wear and tear, the non-use of the ship, certain climatological or atmospheric conditions (frost/ extreme heat), explosions, fire, storms, earthquakes, tsunamis, volcanic eruptions, transport problems, fungus, insects, parasites, deterioration of paintwork and/or upholstery and/or metal surfaces as a result of climatological factors, use in racing or comparable events, rental without the usual crew or owner, towing other vessels, and resulting from any modifications made to the ship by the other party or by third parties.
 - use of the ship contrary to the technical manual of the manufacturer, or inexpert or incorrect use or maintenance of the ship, or any other lack of care.
 - external and other flaws arising from the nature and quantity of the materials used.
 - damage to the anti-fouling layer.
 - cleaning the surface of the ship using products which the manufacturer does not advise and which could damage the gel coat and the paint.
 - cleaning the surface of the ship using electric domestic steam machines/appliances, hot water machines/appliances.
- In the event that the other party does not comply with any obligation arising from the agreement entered into with Gagliotta, or does not comply properly or promptly, Gagliotta will not be bound by any guarantee relating to this agreement.
- The costs which the other party must pay for the repairs to the ship or the good in accordance with paragraph 3 of this article 12 must be paid by the other party in advance. If these costs are nevertheless reimbursed by the manufacturer, the costs will be reimbursed to the other party.

9. The guarantee will lapse in the event that the other party carries out work on the ship, or has such work carried out, before approval for such work has been obtained from Gagliotta and the shipyard.
10. All goods other than the ship are subject to the guarantee terms and conditions of the manufacturer of the goods in question, as far as applicable.

ARTICLE 13 – SCHEDULED MAINTENANCE

1. The other party is required to notify Gagliotta after the first 30 - 50 sailing hours and to make the ship available to Gagliotta for a maintenance inspection at a location to be determined by Gagliotta, solely for the period which is needed by Gagliotta to carry out a full inspection of the ship and to remedy any faults discovered. Faults discovered which are covered by the guarantee will be with repaired at the expense of the manufacturer, with due observance of the provisions in article 12 of these General Terms and Conditions. In the event that the other party wishes to make additional modifications to the ship, the costs for these will be borne by the other party.
2. If the other party does not have the maintenance inspection carried out, all claims under the guarantee referred to above will lapse.

ARTICLE 14 – MOORING

If the other party wishes to have a mooring for the ship, Gagliotta will work to help the other party find such a mooring. Gagliotta is not required to achieve any result in the matter and can at no time be deemed to have guaranteed acquisition of a mooring. The other party accepts that acquisition of a mooring is not a condition for entering into any purchase or other agreement with Gagliotta.

ARTICLE 15 – DEFAULT/ TERMINATION

1. If the other party does not comply with its payment and/or other obligations arising from the agreement all these General Terms and Conditions, the other party will be liable to pay Gagliotta an immediately payable penalty of 25% of the sale price, which penalty is not subject to any moderation or compensation, without the requirement of a notice of default. The above shall not affect the right of Gagliotta to claim from the other party the loss actually suffered as a result of the default in addition to the penalty referred to above.
2. In the event of a default on the part of the other party as referred to in paragraph 1 of this article 15, Gagliotta will be entitled to choose between demanding fulfilment of the agreement and declaring the agreement terminated, without judicial intervention. In the latter case, the other party will owe the penalty described in paragraph 1 of this article 15 and will also be required to reimburse the loss resulting from the default.
3. Gagliotta can declare the agreement terminated, without the requirement of notice of default and without judicial intervention, in the event that the other party is placed under guardianship, in the event of bankruptcy of the other party, or an application for bankruptcy, or that the other party is granted protection from its creditors, or applies for such protection, in the event of full or partial cessation or transfer of the business of the other party or in the event of termination of the company or cessation of the business activities of the other party, or in the event that a debt management scheme is applicable to the other party in accordance with the Debt Management (Natural Persons) Act, or an application for such a scheme by the other party.
4. If the agreement is terminated, Gagliotta is authorized to take possession of the ship or the good and all materials and appurtenances intended for them, to sell them privately, and to deduct the proceeds from the outstanding claim against the other party.

ARTICLE 16 – TRANSFER

The agreement cannot be transferred to third parties without the written permission of Gagliotta.

ARTICLE 17 – SETTLEMENT OF DISPUTES

1. Each agreement between Gagliotta and the other party is subject exclusively to the laws of the Netherlands.
2. Any disputes which arise between the other party and Gagliotta, including disputes relating to the interpretation of these terms and conditions, will be put exclusively before the competent judicial body in Amsterdam.

ARTICLE 18 – AMENDMENT OF THESE TERMS AND CONDITIONS

1. Gagliotta is authorized to make amendments to these Terms and Conditions. These amendments will come into force at the stated time of entry into force. Gagliotta will send the amended terms and conditions to the other party in good time.
2. In the event that no time of entry into force has been stated, amendments come into force vis-à-vis the other party as soon as it has been notified of the amendment.