



INTERNATIONAL MARINE CERTIFICATION INSTITUTE

General Terms and Conditions

Version date: 20 May 2022 ¹

1. Definitions

<i>Client</i>	any natural or legal person who purchases services from IMCI;
<i>Component</i>	means all products covered by Annex II of the RCD;
<i>Contract</i>	Separate document between IMCI and the Client in order to specify the object of assessment and more;
<i>Engine</i>	any spark or compression ignition, internal combustion propulsion engine used directly or indirectly for propulsion purposes;
<i>IMCI</i>	International Marine Certification Institute, Brussels, Belgium;
<i>IMCI (UK)</i>	registered trade name and acronym of the of the "International Marine Certification Society", 53 Rodney Street, Liverpool L1 9ER, United Kingdom, registered at the UK Companies House under number 12718057;
<i>Inspector</i>	any natural person conducting physical assessments of products or processes under the quality system of and authorised by IMCI;
<i>Laboratory</i>	Any laboratory which is either recognised by IMCI or is having its own accreditation covering the standards used for testing;
<i>Manufacturer</i>	any client who manufactures a product or has such a product designed or manufactured, and markets that product under his name or trademark;
<i>PCA</i>	means Post Construction Assessment;
<i>PWC</i>	personal watercraft which is a watercraft intended for sports and leisure purposes of less than 4 m in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;
<i>RCD</i>	Recreational Craft Directive 2013/53/EU;
<i>Recreational Craft</i>	any watercraft of any type, excluding personal watercraft, intended for sports and leisure purposes of hull length from 2,5 m to 24 m, regardless of the means of propulsion;
<i>Services</i>	assessment services, including deliverables, supplied by IMCI to the client as set out in the Contract;
<i>T&C</i>	these General Terms and Conditions;
<i>Watercraft</i>	any recreational craft or personal watercraft.

2. Purpose

The purpose of these T&C is to define the relationship between IMCI and a natural or legal person for the CE certification according to the RCD with regards to

- a. Design and construction of watercraft and components;
- b. Noise emissions of
 - i. recreational craft with stern drive propulsion engines without integral exhausts or inboard propulsion engine installations;
 - ii. recreational craft with stern drive propulsion engines without integral exhausts or with inboard propulsion engine installations which are subject to major craft conversion and subsequently placed on the market within five years following the conversion;
 - iii. personal watercraft and outboard propulsion engines and stern drive propulsion engines with integral exhausts intended for installation on recreational craft;
- c. Exhaust emissions of engines;
- d. PCA.

These T&C covers also the regular updates of certificates in Modules A1 and B.

3. Contract

These T&C apply to the separate Contract between the Client and IMCI to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

By signing the Contract, the Client fully accepts these T&C in their current version.

4. Supply of Services

IMCI shall

- a. supply the Services to the Client using reasonable care and skill and in accordance with the Contract in all material respects, save that IMCI may vary the methods, procedures, techniques, personnel and sources of information utilised in the provision of the Services at its discretion and will notify the Client of any such variation;
- b. use all reasonable endeavours to meet any performance dates specified the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services;
- c. reserves the right to amend the specification of the Services, if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and shall notify the Client in any such event.

IMCI makes no guarantee or warranty that any product(s) submitted for assessment as part of the Services will pass such assessment, even where IMCI has undertaken preparatory work.

Furthermore, due to variations in implementation and interpretation of legislation, the IMCI cannot offer any guarantee or warranty that certificates will be accepted by an international or national authority.

¹ Changes to the version of the TaC dated 18 June 2021 are marked

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5. Methods of assessment

The decision as to whether assessment will be carried out by means of tests, equivalent calculations or controls will depend upon the availability of verified data concerning the dimensions, structure, construction and layout of the object to be assessed, its type and its size. This will be determined by IMCI in consultation with the Client. The number of products, if more than one, representing the production of the Manufacturer on which one or more tests, equivalent calculations or controls are undertaken will depend on the form of production, the intended production numbers and the production materials. This will be determined by IMCI in consultation with the Manufacturer.

For Modules B, G and PCA, at least one (1) physical inspection of a specimen of the product is required. It is IMCI's discretion to do a physical inspection also for module A1.

It is likely that IMCI will require verification of supplied data and it may appoint an Inspector or a Laboratory under whose responsibility such shall be verified. The cost of verification will be borne by the Client in accordance with the level of IMCI fees.

Where physical tests are undertaken, these will be carried out

- a. under the supervision of, but not by, an Inspector appointed specifically for the task by IMCI. All tests will be undertaken at a venue and at times mutually agreed between the Client and IMCI.

The Client may cancel physical testing due to expected unfavourable weather conditions at any time up and until 24 hours prior to the programmed time without incurring any cancellation fee. However, costs arising from any travel bookings already made shall be borne by the client.

A decision as to whether or not to proceed will be taken jointly by the Client and IMCI. Subsequent to a decision to proceed the testing/test does not go ahead then the Client will be charged all costs occurred to that point, if any.

If capsizing recovery tests are conducted, the Client will be responsible for providing the test crew and a suitable manned powered support craft of not less than 5 metres hull length. With all other stability tests, a suitable dock/pontoon etc. will be necessary and people to represent the crew.

- b. by a Laboratory in its facilities eventually under the supervision of, but not by, an Inspector. The Laboratory has to be appointed specifically for the task by the IMCI. All tests will be undertaken at a venue and at times mutually agreed between the Client, the Laboratory, and IMCI. The payment of the laboratory is handled directly between the client and the laboratory without the involvement of IMCI.

The cost of the supervision by an Inspector will be borne by the Client in accordance with the level of IMCI fees.

Where calculations and/or controls are carried out, these will be undertaken by IMCI Head Office or by the Inspector upon submission of the appropriate documentation by the Client. The cost of the work undertaken will be borne by the Client in accordance with the level of IMCI fees.

6. Non-disclosure Statement

As a routine course during an inspection, photographs may be taken by IMCI Inspector performing the inspection.

IMCI and its Inspector agree to treat all non-public information obtained from photographs taken during the inspection process or other documentation as confidential and agree not to release or discuss any such information with other parties unless prior consent of the Client has been obtained or unless otherwise required to disclose this information by operation of law.

As is our usual practice, these photographs or documentation may contain information that is privileged, confidential, and exempt from disclosure. They are intended for the use of IMCI only, and may be utilised as a tool for proof of compliance/non-compliance for specific items required by Standards and/or Legislation.

Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the other party, except that each party may disclose the other party's confidential information:

- a. to its staff, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or national accreditation body. The client will be notified about the information provided.

Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

The client consents to IMCI sharing project information with IMCI (UK) in the United Kingdom if IMCI considers it necessary to perform its obligations.

Unless agreed otherwise by the parties, IMCI shall be entitled to include references to the Services and the fact that it has supplied them to the Client in its promotional materials.

7. Data protection and processing

To the extent that either party processes personal data in connection with the Services, IMCI and the Client will comply with all applicable legal requirements of the REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). It is expressly noted that in the case of a certification process for the one and the same product in which both a CE mark by IMCI and a UKCA mark by IMCI (UK) shall be awarded, IMCI and IMCI (UK) will exchange data of not only the product but also its manufacturer and its representative(s). The exchange of data remains strictly limited to this.

8. Representations and Covenants

A Manufacturer represents, warrants, and covenants to IMCI that all information and specifications provided to IMCI or its Inspector for purposes of obtaining or maintaining certification shall be complete and accurate representations respecting production model(s), and that no change in any models' specifications will be made without notifying IMCI in writing 30 days before the change is made.

The Client shall indemnify and hold IMCI, its Affiliates, Agents, Directors, Inspectors, Members, and Officers, including without limitation, harmless from any and all judgements, fines, penalties, other liabilities and costs including IMCI's attorney fees arising from or alleged to arise from the certification of any model certified pursuant to these T&C, including without limitation, liability arising from breach of the warranty provided on top of this paragraph.

9. Maintaining and extending certificates and updates

All certificates are valid for the model year(s) shown on the certificate. They must be updated (except G, F, and PCA) when the production steps into another model year as demonstrated by the WIN of the watercraft.

Should the standards applied have changed during the last model year, IMCI will ask for proof of compliance with the change, if necessary. The provision of such proof is a prerequisite for the issue of the successor certificate.



10. Suspending and withdrawing certificates

IMCI may suspend, withdraw or deny certification, when it deems that the client has not or is not meeting his responsibilities. The Client may appeal before IMCI and its Advisory Board. The Appeal Form can be found on IMCI website.

11. Complaints

IMCI requires the Manufacturer to

- a. keep a record of all complaints made known to him relating to a product's compliance with requirements of the relevant standard and to make these records available to IMCI when re-requested;
- b. take appropriate action with respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification;
- c. document the actions taken.

12. Clients

IMCI requires that the Client:

- a. has not lodged his application with any other Notified or Approved Body;
- b. makes all necessary arrangements for the conduct of the evaluation and surveillance (if required), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and his subcontractors, investigation of complaints or the participation of observers (if applicable);
- c. makes claims regarding certification only in respect of the scope for which certification has been granted;
- d. does not use his product certification in such a manner as to bring IMCI into disrepute and does not make any statement regarding its product certification which IMCI may consider misleading or unauthorised;
- e. discontinues its use of all advertising matter that contains any reference thereto;
- f. will return all certification documents and take any other required measure upon suspension, withdrawal, or termination of certification;
- g. uses certification only to indicate that products are certified as being in conformity with specified standards;
- h. endeavours to ensure that no certificate or report nor any part thereof is used in a misleading manner;
- i. refers to its product certification by IMCI in communication media such as documents, brochures or advertising;
- j. shall inform IMCI of all modifications to the approved product which must receive additional approval where such changes may affect the conformity with the essential requirements or the prescribed conditions for use of the product. This additional approval may be given in the form of an addition to or an update of the original certificate;
- k. continues to fulfil the product requirements for the certified product, if the certification applies to on-going production;
- l. if providing copies of the certification documents to others, the documents shall be reproduced in their entirety;
- m. is aware that the assessment of his product(s) is performed on the basic assumption that all parties involved (designer, builder/yard, manufacturer, design-owner, sub-contractor, owner, etc.) fulfil their individual obligations. The assessment is not performed in substitution of other parties' role or obligations. Nothing contained in IMCI services, certificate, report or document issued in connection with or pursuant to the requirements, shall relieve any designer, engineer, builder, manufacturer, yard, seller, owner, operator or other parties from any obligations or consequences of default whatsoever. In particular, compliance with the requirements does not imply acceptance or commissioning of a craft.
- n. pays the required total amount of fees regardless the outcome of the evaluation of his product;
- o. is aware that in the case of Remote Inspection, should any concerns arise regarding the quality of the procedure, the Remote Inspection can be aborted. In this case, an on-site inspection by the Inspector shall be carried out at a later stage;
- p. the accreditation symbol of the Accreditation Authority (BELAC) may not be applied to products and packaging. However, reference to the accreditation of IMCI by BELAC may be made on related documents;
- q. the logo of IMCI shall only be used with the explicit written permission of IMCI;
- r. provide IMCI, with access to the Client's premises, office accommodation and other facilities as reasonably required by IMCI;
- s. provide IMCI with such information and materials as IMCI may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- t. comply with all applicable laws, including health and safety laws;
- u. keep the property of IMCI at the Client's premise(s) in safe custody at its own risk, maintain IMCI's property in good condition until returned to IMCI and not dispose of or use IMCI's property;
- v. declares that he is not among the persons and entities against whom the EU has adopted restrictive measures with regard to the territorial integrity of Ukraine (see Official Journal of the EU).

IMCI requires that the Manufacturer:

- a. keeps a record of all complaints made known to him relating to compliance with certification requirements and makes these records available to IMCI when requested and takes appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with the requirements for certification and documents the actions taken;
- b. ensures that if his company is part of a holding or other higher-level grouping of companies, he is authorised to carry out certification;
- c. obtain and maintain all necessary licences, permissions, visas, permits and consents which may be required for the Services before the date on which the Services are to start;
- d. informs IMCI, without delay, of proposed changes that may affect its ability to conform to the certification requirements including:
 - i. Bankruptcy;
 - ii. Legal, commercial, organisational status or ownership;
 - iii. Modifications to the production methods;
 - iv. Alterations to the product;
 - v. Contact addresses of both technical and clerical staff;
 - vi. Production site(s).



- e. declares that he is not among the persons and entities against whom the EU has adopted restrictive measures with regard to the territorial integrity of Ukraine (see Official Journal of the EU).

13. Delay

If the IMCI's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation:

- a. without limiting or affecting any other right or remedy available to it, the IMCI shall have the right to suspend performance of the Services until the Client remedies the Client's failure, and to rely on the Client's failure to relieve it from the performance of any of its obligations in each case to the extent the Client's failure prevents or delays the IMCI's performance of any of its obligations;
- b. the IMCI shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the IMCI's failure or delay to perform any of its obligations as set out in this clause; and
- c. the Client shall reimburse the IMCI on written demand for any costs or losses sustained or incurred by the IMCI arising directly or indirectly from the Client's failure.

14. Audit

IMCI-Inspectors and IMCI are regularly audited by their Notifying Authorities. The Client hereby gives an explicit consent that he has no objection to this being done during an inspection of his object at his premises. The auditor of the Notifying Authority is hereby granted access, if required.

15. Fees

IMCI demands fees for its services. A down payment may be required by IMCI payable to IMCI account before inspection work is started.

16. Terms of Payment

The Client shall pay each invoice submitted by IMCI in full and in cleared funds to a bank account nominated by IMCI within 30 days of the date of the invoice or in accordance with any credit terms agreed by the IMCI and confirmed in advance in writing to the Client.

The services of IMCI, whether completed or not, involve, for the part carried out, the payment of fee upon receipt of the invoice and the reimbursement of the expenses incurred. Overdue amounts are increased after 30 days as of right by interest in accordance with the applicable legislation. All costs of collection agency, attorney and court shall be borne by the client.

If any taxable supply for VAT purposes is made under the Contract by IMCI to the Client, the Client shall, on receipt of a valid VAT invoice from IMCI, pay to IMCI such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

All amounts payable by the Client under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

17. Limitation of Liability

Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation and breach of the terms.

Subject to the first paragraph of this clause, IMCI's total liability to the Customer may not exceed 100,000 EUR. IMCI's total liability shall include liability in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Contract.

Excluded is loss of or damage to direct, indirect or sequential of

- a. profit, sales or business;
- b. contracts and/or agreements;
- c. anticipated savings;
- d. use or corruption of software;
- e. information or data;
- f. goodwill.

This entire clause shall survive the termination of the contract

18. Termination

Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a. the other party commits an essential breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten days of that party being notified in writing to do so;
- b. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

19. Legal Start of Validity of Certificates

Certificates remain invalid and are not published by IMCI until the complete payment is made.



20. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

21. Governing law and jurisdiction.

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the Belgian law. Each party irrevocably agrees that the Belgian courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

----- end of general terms and conditions -----