

**Northeast Michigan Marine Surveys
Terms and Conditions for Survey**

Surveyor and Client agree as follows:

This contract is between Phil Brown, Northeast Michigan Marine Surveys and Client only, and the parties intend to exclude any third-party beneficiaries. Client requests Northeast Michigan Marine Surveys (NMMS) to undertake a marine survey (the Work) of the vessel designated on the Request to Survey form. Client agrees to use the utmost good faith in disclosing to NMMS and Phil Brown all he/she has learned about the vessel's condition, in providing information sought by NMMS or Phil Brown, and in completing the Request to Survey form.

The Work is a visual examination of the visible exterior surfaces of accessible components in each of the vessel's systems, including electrical wiring, connections, and devices; engine(s); transmissions(s); and generator(s). The breadth, depth and detail of these observations shall be at Phil Brown's complete and sole discretion and does not include design defects. The Work will be completed and a survey report prepared using American Boat and Yacht Council (ABYC, 2010-11 ed) standards, National Fire Protection Association (NFPA 10, 2002 ed and NFPA 302, 2004 ed) standards, Code of Federal Regulations (CFR), and federal statutes (USC) only as guidelines, and complete adherence is not expected or guaranteed. Electronics, engine(s), generator(s) and equipment will be inspected visually and will be powered up only by the owner or his agent. But assessment of the internal condition and proper operation of these components is not included, and a full-scale AC/DC electrical analysis or a full-scale technical engine and generator evaluation is not part of the Work. Tanks are inspected visually from the exterior but are not tested by pressurization or filling to capacity. For such services, Client should hire marine specialists. Stays, shrouds, spreaders, masts, sails, and other equipment of sailboats with stepped standing rigging will not be inspected higher than eye level.

Client should confirm functionality with the owner of all electronics and all non-essential equipment, such as refrigerators, stoves, freezers, ice makers, dish washers, trash compactors, disposals, clothes washer/dryer, central vacuums, heaters/air conditioners, auto pilots, sonar, computers, faxes, TVs, VCRs, CD players, stereos, cell phones, Sat phones, auto-pilots, fishing gear, accuracy of gauges, operation of davits or hydraulic lifts, and general condition of furnishings, cabinets and fabrics. Operational condition of the above items are not part of the Work and, except as specifically noted otherwise in the survey report, will be checked for power-on only. Conditions, problems and latent defects which are not open to view without the removal of decking, panels, coatings, joinery, sails, gear or personal effects are beyond the scope of the Work, unless noted in the Request for Survey. Statements of condition are opinion only, and Surveyor does not guarantee that defects, damage, failure, or structural faults do not exist, even if no evidence of them is found, because such problems can easily be undetectable behind solid surfaces.

Surveyor will record the results of the survey in a non-transferable, written report that is prepared for client only. NMMS will furnish a copy for Client's personal, private and non-commercial use, i.e., purchasing and lending decisions and insurance underwriting. The report is confidential and no part thereof will be quoted, reproduced, photocopied, released or revealed by Client or Surveyor to any third party for any purpose other than expressly permitted in this paragraph. Phil Brown shall hold the copyright for this report. Client shall not to sell it, use it as a "seller's survey," use it to facilitate a subsequent sale of the boat or other commercial transaction, or otherwise publish it. The report is not a "work for hire" under copyright law. NMMS and Phil Brown will provide serious safety findings to the boat owner and other relevant portions of the report will be released to the owner at Client's request. The survey report represents the full and complete findings, other verbal statements, opinions and representations notwithstanding.

Client agrees to (1) obtain the owner's approval for the survey and sea trial, (2) engage a competent pilot for the sea trial, and (3) arrange for competent transport and launch for the sea trial at a mutually agreed place and time. If the Sea Trial box on the Request for Survey form is not checked, Client voluntarily waives the sea trial and releases NMMS and Phil Brown from responsibility for not conducting it.

The harsh marine environment and the vagaries of use and maintenance make any findings, opinions or recommendations or lack thereof, speculative, obsolete and without effect after a period of 180 days from the date the Work is completed. Client specifically agrees not to rely upon the findings, opinions and recommendations beyond that date. Moreover, NMMS and Phil Brown, in performing and in reporting the results of the survey, anticipate and rely upon Client to use, and to require all operators to use, competent and prudent seamanship and maintenance practices.

All disputes, claims or grievances against Phil Brown or NMMS arising out of the Work, the survey report, or this agreement shall be resolved by arbitration rather than litigation and shall be decided pursuant to the law of the State of Michigan. Such arbitration shall preclude the parties from first litigating the dispute, claim or grievance in the courts. However, the arbitrator's decision shall not be final and binding, and a judgment of the 53rd Circuit Court in Presque Isle County, Rogers City, MI may be rendered on any decision pursuant to such arbitration. The Commercial Arbitration rules of the American Arbitration Association shall apply to the arbitration proceeding. In the event litigation of any kind is filed against Phil Brown or Northeast Michigan Marine Surveys arising out of the Work, the survey report, this agreement, or the arbitration, proper venue shall lie only in the above named Circuit Court.

WAIVERS, EXCLUSION OF WARRANTIES & LIMITATION OF LIABILITY: NMMS AND PHIL BROWN MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, NOR WARRANTY OF WORKMANLIKE PERFORMANCE UNDER CONTRACT OR TORT LAW, WITH RESPECT TO THE WORK AND PREPARING THE SURVEY REPORT. NMMS AND PHIL BROWN SHALL NOT BE LIABLE BY CONTRACT OR IN TORT, EXCEPT FOR THEIR OWN GROSS NEGLIGENCE, FOR ECONOMIC LOSS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES TO PROPERTY OR PERSON ARISING FROM THE WORK; THE SURVEY REPORT; OR DEFECTS, DAMAGE, FAILURE, OR STRUCTURAL FAULTS OF THE VESSEL, AND CLIENT SPECIFICALLY RELEASES AND SAVES THEM HARMLESS FROM ANY SUCH LOSS OR CLAIM OF ANY KIND WHATSOEVER FOR DAMAGES TO PROPERTY OR PERSON ARISING FROM THE WORK, WAIVER OF SEA TRIAL, OR DEFECTS, DAMAGE, FAILURE, OR STRUCTURAL FAULTS OF THE VESSEL, OR USE OR RELIANCE OF ANY THIRD PARTY OR PARTIES ON THE SURVEY REPORT, ITS CONTENT, OR ITS FINDINGS. CLIENT RELEASES NMMS AND PHIL BROWN FROM ANY LOSS WHATSOEVER SUSTAINED IN EXCESS OF ACTUAL DAMAGES OVER \$1000.00. ANY ACTION TO RECOVER TORT, CONTRACT OR OTHER DAMAGES MUST BE COMMENCED WITHIN 180 DAYS OF THE DATE THE WORK IS COMPLETED. THE PARTIES WAIVE ALL CLAIMS AGAINST ONE ANOTHER COVERED BY INSURANCE AND CLIENT WAIVES ALL SUBROGATION RIGHTS.

Signatories specifically promise agency and authority to bind and oblige all other parties in interest by the signature below.

Client or Agent _____ Date _____ Surveyor _____ Date _____