



## A Guide for Yacht Owners and Representatives using the ICOMIA Superyacht Refit Contract

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### What is the ICOMIA Superyacht Refit Contract?

If you are considering a refit of your large yacht, you will want to know you can trust your shipyard to deliver the best industry quality standards produced under the reassurance of a framework of best industry practices. Shipyards in the ICOMIA Superyacht Refit Group are a select group that follow a strict Code of Practice and utilise a specialised contract to bring peace of mind to the customer. The ICOMIA Superyacht Refit Group Standard Contract (widely known as the Refit Contract) is the industry standard, used by superyacht refit yards across the world. It covers all the essential issues that yacht owners and their insurers need to address when a refit is being planned and undertaken. It was developed with the detailed input of prominent international marine lawyers in conjunction with major yacht management companies, yacht insurers and the refit shipyards themselves and has since become the de facto refit contract within the superyacht industry. Using this internationally recognised standard framework contract speeds up the process of contract signing and brings certainty to refit agreements on a continual basis. The contract form has been regularly reviewed and revised and is now in its 7<sup>th</sup> Edition.

### How was the Refit Contract produced?

The ICOMIA Superyacht Refit Group was formed in Barcelona in 2009, with the purpose of providing an international platform to improve the quality and client perception of refits. The primary goals of the group have been to formulate best industry practice.

*"The efforts to make the contract the most all-encompassing and fair to all sides must be applauded. To have the intent of raising standards across refit/repair facilities should be recognised and we support the ICOMIA principles."*

**Willis Towers Watson**

### Benefits of using the ICOMIA Refit Contract

- **The Refit Contract means that there is an industry standard.** This means clients can expect yards to meet standard terms and conditions. This fast-tracks the process by preventing time consuming and potentially costly negotiations.
- **The Refit Contract provides a standardised way of working which is fair for all.** Refits can be costly and take a significant length of time, so it is important that any agreement made provides certainty and security for both client and yard, ensuring that high quality refits are undertaken under appropriate conditions, with suitable payment, insurance and redelivery processes followed by a proper warranty.
- **Wide-spread use of the contract allows clients to compare like-for-like,** making procurement a more straightforward process.

- **The Refit Contract allows clients to expect similar levels of service, backup and support from all Refit members**, as the Standard Contract is the accepted industry standard.

## **Who Uses the Refit Contract?**

The contract is used widely across the whole refit industry whilst essentially it is the only contract used by members of the ICOMIA Superyacht Refit Group. The Refit Group is an engaged group of yards with excellent working practices who are constantly striving to improve working, safety and environmental practices, this spirit of constant evolution has resulted in the current 7<sup>th</sup> edition of the Refit Contract. All members of the ICOMIA Superyacht Refit Group also conform to a Code of Practice, which ensures high quality Refits are undertaken at their shipyards. The Code of Practice predates the Refit Contract and covers aspects such as organisational transparency; use of fit-for-purpose, tested and certified materials and equipment; customer satisfaction, environmental compliance and insurance and warranty. Using a Refit Group Member to refit your yacht gives you certainty and peace of mind. To find the contact details for all Superyacht Refit Group Yards [click here](#).

The contract can be obtained for free, by downloading it from [www.superyacht-refit.org](http://www.superyacht-refit.org). Since the contract is freely available to download and use, the use of the ICOMIA Superyacht Refit Contract does not itself suggest that the contractor is associated in any way with the ICOMIA Superyacht Refit Group – although a member of the Superyacht Refit Group will state that they are a member on the cover page of the contract.

## **What is covered by the Refit Contract?**

The following explanatory notes are designed to provide some background information on the various parts of the contract.

### **Performance**

One of the key concepts is that the Refit Contract requires high quality refits or repairs to take place and gives the owner's team the opportunity to ensure that the shipyard corrects any works where this has not been the case either during or after the refit. All works must fulfil the requirements of the standard Refit Contract, as well as the quotation/technical specification which will form an integral part of any signed contract, as well as any applicable class or flag requirements, as advised to the contractor (unless otherwise instructed by the owner) and the contractor's quality control processes.

### **Oversight**

The Contract makes detailed provision for supervision of the works by the Owner's Representative or Captain and sets a clear description of each party's responsibilities with regard to communications, health and safety procedures, movements of the yacht, emergency powers and related matters.

### **Scope of The Contract**

The Contract includes provision for additional and emergent works. Setting up clear expectations of how this will be dealt with ahead of time gives peace of mind to both parties. The contractor should use reasonable endeavours to accommodate such works and the contract provides a simple template for recording agreed variations (Schedule IV – Variation Certificate).

It is important that subcontracting is protected by the Refit Contract in the same way that all other works are, and the Contract encourages this equal treatment, with provisions regulating the use of the Owner's own contractors in more complex refit programmes.

The Contract contains "entire agreement" provisions which are intended to mean that the signed contract supersedes all previous agreements and understandings between the parties and requires that variations and changes are recorded in writing.

### **Redelivery (the date that the works are complete and accepted by the owner)**

It is important that a realistic redelivery date is agreed upon between all parties prior to the commencement of works. This will be stated on the cover page. There are commercially balanced clauses providing for permissible delay where the cause is not within the Contractor's control. The Contract also sets out fair conditions regarding cancellation and termination.

The Covid-19 pandemic has forcefully shown the potential impact of force majeure events on completion of works and redelivery. The cover page of the contract allows for a maximum period of force majeure delay to be pre-agreed at the time of signing, although this can always be extended with mutual consent.

The contract has not been varied to specifically address Covid-19 precautions because these will normally be dealt within the Contractor's own health and safety requirements and local legislation. The Contract addresses both of these issues already.

### **Price and Payment Terms**

It is important that clear price and payment terms are agreed upon. Clause 7 sets out standard terms. Amendments to this part of the contract should be considered carefully. A benefit of the widespread use of the Refit Contract is that clients can compare like-for-like in terms of price and payment terms.

### **Insurance and Limitation of Liability**

To reflect worldwide commercial practice it was determined that the Owner should maintain its own insurance on the yacht for both the yacht's own value and for third party liability throughout any refit and that the contractors should carry an agreed minimum level of insurance to respond to fault based claims. The contract sets limits on the maximum liability of both parties - though one must bear in mind that a yacht owner is frequently entitled to limit its liability under international convention, and so has additional legislative protection.

The contract schedules include templates for waivers (Schedule VI (to agree a limit on the liability of the Yard) and Schedule VII (to agree that damage caused by the Owner's own appointed Contractors shall not fall on the Yard's insurance nor shall the Yard be liable for any damages caused by the Owner's Contractors)) which the Owner should sign and also get signed by its insurers before the refit commences. The use of a standard templates helps to familiarise the insurance industry with the requirement for these waivers.

### **Warranty**

As well as ensuring the use of high-quality materials and workmanship, the contract provides a framework for the contractor to warrant the works against all defects due to defective materials and workmanship that arise during the warranty period. The owner also has a responsibility to ensure that defects are reported to the contractor within a sensible time period.

### **Disputes**

An important function of the Refit Contract is the avoidance of disputes. There is a procedure in case a dispute or claim relating to the Refit Contract cannot be resolved by the shipyard and the owner amicably. Technical disputes should be referred to a mutually acceptable technical expert whose opinion on the matter shall be final and binding. If there is no Technical Expert named on the Cover Page or either Party is unable to accept the appointment an expert shall be nominated by the body named on the Cover Page or, failing that, the Secretary General of ICOMIA. All other disputes should be determined in accordance with the specified dispute resolution process set out on the cover page.

### **Law and Jurisdiction**

On the assumption that it will often be agreed that the law of the country where the refit is being performed will govern the Refit Contract, the contract has been written in a neutral way. This provides the Parties with flexibility as to the choice of law. However, it was written mainly on the basis of and thus is entirely compatible with English law, that being the legal system most widely used in other shipping contracts.

## **Can I Make Changes to The Refit Contract?**

The Refit Contract is under constant review to ensure that it is appropriate for use. This means that the Contract rarely needs major changes to be made. Additionally, The Contract is written to uphold a standard across the industry, therefore, in order to maintain the integrity of the document the body cannot be altered. However, the Refit Contract does allow room for flexibility, and where appropriate, it is possible to make changes to contract terms and conditions by using schedules to formulate variances to specific terms although this is discouraged. Schedule I (Specific Contract Variations) should be used in lieu of an addendum to make any mutually accepted changes to the Contract. Schedule III (Special Conditions) should be used for particulars specific to each Yard, for example, Payment Terms, Owner's Contractors' Requirements, Confidentiality, and Data Protection.

## **When Should the Refit Contract Not be Used?**

The Refit Contract is intended for refits in purpose built refit facilities but is not necessarily inappropriate for works that go outside this scope. Marinas undertaking refits also do not apply, however advice can be found in our ['Guide for Large Yachts Carrying Out Maintenance Work in Marinas'](#).

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