



## **2009 BOAT AND YACHT CERTIFICATION AGREEMENT**

In consideration of the mutual promises and covenants herein contained, the following agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by and between the National Marine Manufacturers Association, Inc. a corporation organized under the laws of the State of Delaware and hereinafter referred to and described as 'NMMA', and:

\_\_\_\_\_  
Boat Manufacturer

\_\_\_\_\_  
Address, City, Zip Code, Phone

a manufacturer of boats, hereinafter referred to and described as the 'Manufacturer'. The purpose of this Agreement is to provide for the issuance by NMMA of certifications in the name of the Association for boats produced by the Manufacturer for the **2009** model year.

I. NMMA agrees:

- A. To inspect and certify that boats and yachts produced by the Manufacturer, with standard equipment, are designed to comply with the applicable standards as published in the NMMA Certification Handbook for this model year. The inspection reports used in evaluating certifications are hereby made a part of this agreement.
- B. To arrange for inspection of boats and yachts as provided for herein by a member of the staff of NMMA or an NMMA appointed independent inspector, within 20 days of the receipt of an application therefore. This 20-day limitation may be extended with the approval and consent of Manufacturer.
- C. To utilize the standards specified in the applicable current model year NMMA Certification Handbook.
- D. To vest in one of its committees, the NMMA Boat and Yacht Certification Committee, the authority to establish certification requirements and procedures under policies of the NMMA Board of Directors.

II. The Manufacturer agrees:

- A. That all models (except racing craft) marketed in the U.S.A. for non-commercial use after date of this agreement, will utilize certifications and will maintain, without exception, all specifications affecting this certification. The Manufacturer agrees to notify NMMA prior to making any change in specifications that could potentially change the NMMA inspection report for any model that could impact whether the model meets the standards found in the applicable NMMA Certification Handbook. In the event that such a change occurs, the Manufacturer agrees to notify NMMA promptly, and NMMA reserves the right to take appropriate measures to determine whether the specifications contained in its Certification Handbook continue to be met. NMMA's cost incurred in connection with additional inspections at the Manufacturers facilities, shall be borne by the Manufacturer according to the schedule attached hereto.
- B. To provide complete and accurate information for each model to be certified as required by NMMA or its inspectors with sole responsibility for the accuracy thereof. Failure to provide complete and accurate information as required by the NMMA or its inspectors shall be due cause for NMMA's termination of this agreement.
- C. To pay NMMA according to the attached certification program charges schedule (Schedule A).
- D. That any NMMA Certification labeling affixed to or provided with the manufacturers boats or yachts, will be procured in accordance with NMMA procedures, a copy of which is attached as Schedule B.
- E. To refrain from representing in any manner, directly or indirectly or by implication, in any trade or consumer advertising, publicity or other statements or written releases that such certification, (1) is exclusive to the Manufacturer, (2) implies or constitutes any NMMA product endorsement, (3) has any connotation as to quality control inspection, durability or any other characteristic of design or performance other than the factors for which the vessel has been certified; and (4) has any connotation that NMMA has inspected each individual vessel produced.
- F. To immediately cease to make any reference on boats, in advertising, publicity, or other releases, to such certification upon notification from NMMA.
- G. To utilize the services of qualified personnel responsible for compliance with certification requirements. NMMA reserves the right to require such personnel to enroll in NMMA correspondence courses or attend NMMA seminars where, in its judgement, such training is necessary to ensure compliance with current certification standards.
- H. To refrain from the unauthorized use of NMMA's registered service and certification marks, including NMMA and logo, "Certified NMMA," and "NMMA Certified." Unauthorized use of these marks is strictly prohibited.
- I. By signing and submitting this form to NMMA, our company acknowledges, agrees and consents to receipt of notices from NMMA and its affiliates by facsimile or electronically, using the contact information set forth on this form.

III. It is further agreed:

- A. That this Agreement may be terminated by either party on the giving of at least thirty (30) days written notice provided, however, that the provisions of Paragraphs III (C) and V below shall survive such termination.
- B. That any Manufacturer who believes an error has been made in the inspection of its boats may request that a reinspection be made by NMMA as outlined in Paragraph IV. NMMA shall notify the Manufacturer immediately as to the results of the inspection so that the Manufacturer may request such a review.
- C. That if at any time NMMA shall ascertain that the certifications issued by it are being misused by the Manufacturer, such use by the manufacturer shall cease immediately upon notification by NMMA to the Manufacturer that determination of misuse has been made. Such misuse includes, but shall not be limited to, the misrepresentation of specifications in applying for a certification, (as discussed in Paragraph V (A) below) changes in specification resulting in non-compliance and the use of the certificates on models not approved for certification.

IV. Reinspection of Models:

- A. Reinspection visits without charge will be scheduled by NMMA with short notice to the Manufacturer. If a reinspection determines that a discrepancy exists that affects certification, the Manufacturer shall immediately take such action, as NMMA deems necessary to correct the discrepancy including, if deemed necessary by NMMA, modification of all boats or yachts that may have been produced with such discrepancy.
- B. A special reinspection may be requested by any Manufacturer.
  - 1) If requested by the Manufacturer of the boat or yacht, the same procedure will be utilized as in selecting a new or previously uninspected model.
  - 2) If requested by any of the other participating Manufacturers, the model shall be selected at random from the Manufacturer's production stock by the inspector for the inspection.
- C. The cost of a special reinspection shall be billed according to Schedule A and shall include the travel expenses of the inspector and a member of the staff of NMMA, and shall be borne by the Manufacturer requesting the reinspection, unless the reinspection determines that a discrepancy exists, in which case the entire cost shall be borne by the Manufacturer reinspected.

V. Representations and Covenants:

- A. The Manufacturer represents, warrants, and covenants to NMMA that all information and specifications provided to NMMA, or its inspectors, for purposes of obtaining or maintaining certification shall be complete and accurate representations respecting production models, and that no change in any models specifications will be made without notifying NMMA in writing 30 days before the change is made.
- B. The Manufacturer shall indemnify and hold NMMA, its members, affiliates, officers, directors and agents (including, without limitation, NMMA's inspectors) harmless from any and all judgements, fines, penalties, other liabilities and costs (including NMMA's attorneys fees) arising from or alleged to arise from the certification of any model certified pursuant to this Agreement, including without limitation, liabilities arising from breach of the warranty provided in Paragraph V. A.
- C. The Manufacturer agrees that all disputes arising directly or indirectly out of or relating to this agreement may be dealt with and adjudicated in the state courts of the State of Illinois, county of Cook, or the United States District Court for the Northern District of Illinois. The Manufacturer for that purpose expressly and irrevocably submits itself to the jurisdiction of such courts for the purpose of the adjudication of all disputes referred to above.

VI. NMMA Certification Procedures and Policies:

- A. NMMA Certification procedures and policies, as amended from time to time, are hereby made a part of this Agreement. Manufacturer shall have the right to appeal any action taken by NMMA or its inspectors to the NMMA Boat and Yacht Certification Committee and the Board of Directors as provided in such policy, and to appear before such Committee and present such evidence or contentions as shall be relevant to such appeal.
- B. The Manufacturer acknowledges participation in the NMMA Boat and Yacht Certification Program is a requirement for membership in NMMA. Manufacturers who are not members of NMMA recognize that participation in the NMMA Boat Certification program is voluntary and that the manufacturer is under no obligation to NMMA to obtain certification or to employ NMMA design criteria, specifications or Type Accepted equipment, except and to the extent otherwise required by law.

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature - NMMA

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature - Manufacturer

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Note: Please print/type in the manufacturer's officers name and title)



## SCHEDULE A

### NMMA Boat and Yacht Certification Program Charges Model Year 2009

#### **Boat and Yacht Certification for NMMA Members**

Certification Program Fee (per facility)	\$150.00 per hour (minimum 4 hours)  Plus inspector's travel costs *THIS IS BILLED AFTER THE INSPECTION VISIT.
Agreement Processing Fee	\$200 Per Manufacturer (if entire line is either less then 26 feet OR greater than 26 feet)  \$300 Per Manufacturers (if entire line includes craft both under and over 26 feet)

#### **Boat and Yacht Certification for Non-NMMA Members**

Certification Program Fee (per facility)	\$300.00 per hour (minimum 4 hours) *THIS \$1200.00 IS BILLED UP FRONT.  Plus inspector's travel costs *THIS IS BILLED AFTER THE INSPECTION VISIT.
Agreement Processing Fee	NMMA certification dues will be determined by the below chart and based on annual revenues. These rates will be billed up front.

#### **Certification Program Fee (per facility)**

**\$1,300.00**  
**\$1,600.00**  
**\$1,800.00**  
**\$2,800.00**  
**\$3,800.00**  
**\$5,300.00**  
**\$8,300.00**  
**\$12,300.00**  
**\$15,300.00**  
**\$21,300.00**

#### **Based on annual revenues of the company**

**Under \$2.5 million**  
**\$2.5 -\$5 million**  
**\$5-10 million**  
**\$10-15 million**  
**\$15-20 million**  
**\$20-30 million**  
**\$30-40 million**  
**\$40-50 million**  
**\$50-65 million**  
**\$65-100 million**



## **SCHEDULE B**

This schedule is to provide the guidelines that apply to the use of certification labels that are issued by NMMA in connection with its certification programs. NMMA issues certification labels directly to manufacturers as a part of these programs. This schedule sets forth the guidelines that apply to the use of those labels while in the manufacturer's possession.

1. Most importantly, NMMA Certification labels must be placed only on boats that meet certification requirements of NMMA. The Certification Agreement with NMMA provides that NMMA labels are to be placed only on boats that meet these requirements. Placing these labels on boats that do not meet these requirements or on any other product or item is a violation of the Agreement. Please review the Agreement for details.
2. Certification labels can be ordered by following the instructions issued by the NMMA Fulfillment Department. When procuring labels, please make sure the most recent label price list is used as well as the current master model listing model number.
3. Certification labels should be ordered only in amounts needed for the current model year. The NMMA reserves the right to refuse to issue certification labels in excess of a manufacturer's current model year needs. At the end of the model year, excess capacity labels should be destroyed.
4. Certification labels cannot be reproduced under any circumstances. The labels include trademarks registered to NMMA and cannot be used or reproduced without prior written approval from NMMA. Labels can be procured only by placing an order with NMMA. You may not obtain additional labels through reproduction of labels in your possession.
5. The proper use of certification labels is the responsibility of the manufacturer. Appropriate measures shall be made to ensure that certification labels are used only for their intended purpose. Measures shall also be made to ensure that labels are never placed on boats that do not meet NMMA certification requirements, or on other marine products; never provide labels to other manufacturers or to any other individual or entity.
6. NMMA labels and plates are printed in accordance with 33CFR183 and ABYC S-7, and incorporate materials rated for marine use using strict material and performance specifications.
7. If you become aware of a situation where NMMA certification labels have been improperly used, please contact NMMA directly.
8. Manufacturers of Inflatable boats have the option to print the logo directly on the boat with the capacity information. To do so, the manufacturer must pay NMMA a licensing fee of \$0.10 per unit, payable to NMMA quarterly by the 30<sup>th</sup> day of the month following the close of each calendar quarter. NMMA must be notified in writing by any inflatable manufacturer wishing to exercise this option. NMMA will provide express written permission granting such licensing right upon receipt and review of the manufacturer's request.

Adherence to this schedule is necessary to ensure that only those boats that meet NMMA requirements are provided with certification labels. Please be aware that NMMA reserves the right to modify these guidelines or to implement new guidelines within its sole discretion. Additional guidelines may be provided to you from time to time. Questions concerning these guidelines can be directed to NMMA at 312.946.6200.