

HISWA GENERAL TERMS AND CONDITIONS FOR THE HIRE OF MOORING AND STORAGE PLACES

for vessels and related articles

These General Terms and Conditions for the Hire of Mooring and Storage Places of the HISWA Association (Dutch Association of Proprietors in the Water Sports Industry) have been drawn up in consultation with the Consumers' Association and the ANWB under the Self-Regulation Coordination Group of the Sociaal-Economische Raad (Social Economic Council). Deposited at the Court Registry in Amsterdam on 1 April 2011 under number 39/2011.

HISWA Association shall take action against any misuse, to be certain of achieving the required exclusivity. Members are therefore requested to inform the HISWA office if misuse is noticed. To enforce this, copyright has been established on the various texts.

ARTICLE 1 - DEFINITIONS

The prices stated in these General Terms and Conditions are inclusive of purchase tax (BTW) and in these conditions the following words mean:

- a. *Proprietor*: natural or legal person who, as a member of HISWA Association, draws up a contract relating to a vessel or part of a vessel.
- b. *Consumer*: natural person who does not act in a professional or business capacity and who enters into a contract relating to a vessel or part of a vessel.
- c. *Vessel*: an object that is constructed to remain in water and to move in it, including the pieces of equipment that form part of it and the contents. Also, the hull of a vessel being built.
- d. *Mooring and/or storage place*: a space the proprietor makes available to the consumer or transient user for placing a vessel and/or part of a vessel either on the quay or in the water.
- e. *Transient user*: a third party who concludes a hire agreement with the proprietor concerning a mooring place, for which the rental is charged per day and to which Articles 4, 5, paragraph 1, and Articles 6, 7 and 9, paragraph 6 of these Terms and Conditions do not apply.
- f. *Hire agreement*: the agreement in which the proprietor undertakes to grant use of a mooring and/or storage place to a consumer or transient user in return for payment
- g. *Electronic*: via e-mail or website.
- h. *Visitor*: a third party, not a contracting party, who is visiting either the harbour premises or the proprietor's contracting party.
- i. *Annual rental*: the period of hire from 1 April in a specific year up to 1 April in the following year (unless agreed otherwise).
- j. *Summer season*: the period from 1 April up to 1 October in a specific year
- k. *Winter season*: the period from 1 October in a specific year up to 1 April in the following year.
- l. *Winter storage*: the storage place, with or without a roof, available ashore during the winter period from at least 15 November in a specific year until 15 March in the following year; also includes lifting the vessel from the water via a slipway, placing the vessel in the winter storage as well as launching it, unless agreed otherwise in writing.
- m. *Harbour premises*: the harbour and the area, including car park and buildings that go with it.
- n. *Harbour regulations*: rules with respect to housekeeping, behaviour and order.

- o. *Disputes Committee*: Water Recreation Disputes Settlement Committee in The Hague.

ARTICLE 2 - THE APPLICABILITY

1. These Terms and Conditions apply to agreements for the hire of mooring and/or storage places for vessels and related articles.
2. The hire agreement also refers to the space necessary for parking not more than one dinghy or sail board, provided these do not take up more room than the proprietor has hired out to the consumer in question.
3. These Terms and Conditions can be translated from Dutch into a foreign language. Should there be any differences in the texts as a result of the translation, the Dutch text prevails.

ARTICLE 3 - THE CONTRACT

1. The contract is finalised when the consumer accepts the offer. If the assignment is granted electronically, the proprietor sends an electronic confirmation to the consumer.
2. The contracts are preferably recorded either in writing or electronically.
3. If the contract is in writing, a copy should be sent to the consumer.

ARTICLE 4 - LIABILITY TO PAY THE RENTAL

1. When a contract is drawn up, the proprietor can agree with the consumer a payment in advance of:
 - at least 50 per cent of the rental when a booking is made within three months of the date of commencement of the hire period;
 - at least 25 per cent of the rental when a booking is made more than three months before the date of commencement of the hire period.
2. The consumer owes the whole of the rental even if he temporarily does not make use of the rented items.
3. If a vessel does not need to be launched after the winter storage, a rental to be agreed on between the parties is payable for the space taken up. This applies without prejudice to the remuneration of any necessary transfer costs.

ARTICLE 5 - CONDITIONS OF PAYMENT

1. Payment of the hire charges must be made within ten working days of receiving the invoice, but in any case not later than the date on which the agreed hire period begins, and should take place at the proprietor's office or by transfer to a bank account specified by the proprietor.

2. The consumer is in default once the payment date has passed. The proprietor sends a payment reminder once the date has passed and gives the consumer the opportunity to pay within 14 days of receiving this payment reminder.

If, after the date stated in the payment reminder, there is still no payment and the consumer is not able to plead circumstances beyond his control, the proprietor has the right to charge interest, once the payment date has passed. This interest is equal to the statutory interest plus 3% on an annual basis over the amount due.

3. If the consumer remains in default of paying the amount owing after the payment reminder has been sent, the proprietor also has the right to increase the amount referred to in paragraph 2, by adding the collection charges. Extrajudicial costs include all costs the proprietor has to charge for the services of lawyers, enforcement agents and anyone else he requires for the recovery of the amounts due.

The extrajudicial costs are determined as follows:

15% over the first € 2500 of the amount due;
10% over the next € 2500 of the amount due;
5% over the following € 5000 of the amount due;
1% over the following € 15,000 of the amount due.

4. Any complaints about invoices should be submitted to the proprietor, preferably in writing and adequately described and explained, within a reasonable period of receipt of the invoice in question.

ARTICLE 6 - CANCELLATION

1. If the *first* hire agreement is drawn up more than three months before commencement of the hire period, the consumer may cancel the agreement up to three months before commencement of the hire period. In that case, the consumer owes 25% of the agreed rental.
2. If cancellation takes place within a period of three months to two weeks before commencement of the hire period, the consumer owes 50% of the agreed rental.
3. If cancellation takes place within two weeks of commencement of the hire period, the consumer owes the whole of the agreed rental.
4. The cancellation referred to in the foregoing paragraphs should be made in writing or by e-mail.

ARTICLE 7 - DURATION AND EXTENSION OF HIRE

1. The hire agreement is made for a period of one year, always commencing on 1 April of a specific year up to 1 April of the following year, unless the parties have agreed otherwise.
2. Any hire agreement which applies for one year or for a summer or winter season is tacitly renewed under the same conditions - except for the provisions in paragraph 3 - and for the same period, unless the agreement is terminated by one of the parties either in writing or by e-mail no later than three months before the commencement of the new hire period.
3. The proprietor can change the rental no later than three months before the commencement of the new hire period. In that case, the consumer still has the right to cancel the hire agreement within fifteen working days of receiving the information.
The latter does not apply if the rental is changed as a result of increased financial burden on the part of the proprietor because of changes in taxes, levies and suchlike that also concern the consumer.

ARTICLE 8 - RIGHT OF RETENTION AND OF SALE

1. The proprietor is entitled to retain the vessel of a consumer who is in default until this consumer has paid in full the amount owing. The costs ensuing from this right of retention are also chargeable.
2. The proprietor's right of retention lapses if there is a dispute as referred to in Article 15, the consumer has brought this dispute before the Disputes Committee referred to in that article, and the consumer has furthermore sent a confirmation to the proprietor that he has deposited the amount owing with the Disputes Committee.
3. If the consumer, after receiving a letter of demand, still neglects to pay the amount due, and the value of the vessel and all materials and fittings intended for it amounts to no more than € 10,000, the proprietor has right of sale and delivery, without legal intervention, provided:
 - the proprietor has demanded payment from the consumer by registered letter and the consumer still has not paid the amount owing six months after the date of this registered letter, or has disputed the claim in writing, giving reasons, and
 - after the aforesaid period of six months has passed, the proprietor has served a writ on the consumer demanding that the consumer pay the amount owing within 15 working days, and payment has still not been made.
4. The right to sell lapses if the consumer has brought the dispute before the Disputes Committee as stated in Article 15 and has deposited the amount due with said committee.
5. The proprietor is subject to the obligation to pay to the consumer, if possible, any difference between the sales proceeds and the amount the consumer owes.
6. The consumer is obliged in all cases to agree to de-registration if the vessel is registered in his name.

ARTICLE 9 - SPECIAL RIGHTS AND OBLIGATIONS OF THE CONSUMER

1. The consumer must comply with the harbour regulations and the instructions concerning the hire agreement drawn up by or on behalf of the proprietor.
2. The consumer is obliged to keep his vessel in a good state of repair.
3. In the event of any differences between the text of these Terms and Conditions and that of the harbour regulations, these General Terms and Conditions prevail.
4. On the harbour premises, any work not concerning daily maintenance may only be carried out by the consumer with the permission of the proprietor. The proprietor must allow third parties to carry out work if he has received notice of this work and it is related to the guarantee from or on behalf of the supplier. For all other work carried out by third parties, permission is required from the proprietor.
5. Subleasing or loan of that which is being hired is not permitted.
6. The consumer is forbidden to use either the vessel moored in the harbour or the mooring place for commercial activity. The latter is understood to include placing signs, announcements, notices etc to that effect in the harbour and/or on the vessel, as well as offering the vessel for sale in the harbour.
7. The consumer is required to insure his vessel and fittings to cover third-party liability during the period he makes use of the mooring and/or storage place. The proprietor is entitled to inspect the relevant policy taken out by the hirer.

8. The consumer is also advised to insure his vessel and fittings to cover hull damage.

ARTICLE 10 - SPECIAL RIGHTS AND OBLIGATIONS OF THE PROPRIETOR

1. The proprietor is obliged to monitor affairs at the harbour premises and on the vessels sufficiently well to ensure everything runs smoothly.
2. If there is an imminent risk of damage or if safety is being threatened, the proprietor is entitled to take the necessary measures, the costs of which are payable by the consumer. In emergency situations, the proprietor is permitted to do this without giving warning; in all other cases, if the consumer has not responded to the warning within a reasonable time.
3. The proprietor is entitled to hire out a mooring place that becomes available, provided the consumer's right to hire is not infringed as a result.

ARTICLE 11 - LIABILITY AND RISK

1. The proprietor grants the consumer the possibility of placing his vessel and/or related articles at the proprietor's premises. The proprietor is only liable to the consumer for damage to the vessel or other items if this damage results from a shortcoming that can be attributed to the proprietor, to persons in his service, or to persons engaged by him to carry out work.
2. With regard to the mutual duties, liability and risk, the parties conform on both sides - to the extent that these Terms and Conditions do not contain any varying provisions - to the statutory provisions in Book 7, Title 4 of the Civil Code, these provisions having regard to the hire agreement. This applies regardless of the character of the agreement.
3. The vessels are not (will not be) insured by the proprietor. The consumer is required to provide for adequate insurance himself. If the consumer does not adequately insure the vessel to cover hull damage, it is at the consumer's own risk.
4. The consumer is liable to the proprietor for any damage that is caused by a shortcoming ascribable to the consumer, to members of his family, to members of his personnel or to anyone he has invited.

ARTICLE 12 - COMPLAINTS

1. Complaints regarding the implementation of the contract should be made known to the proprietor in written or electronic form and should be described and explained adequately, within a reasonable period, once the consumer has noticed or should have noticed the defects.
2. Not submitting the complaint in time can lead to the consumer losing his right regarding the matter, unless it is unreasonable to blame this lateness on the consumer.
3. If it becomes clear that the complaint cannot be resolved in joint consultation, a dispute situation has arisen.

ARTICLE 13 - TERMINATION OF CONTRACT

Without prejudicing the right to claim specific performance, a fundamental breach of contract or attributable failure on the part of the consumer or of the proprietor in complying with one of their commitments, entitles either the proprietor or the consumer, as the case may be, to terminate the hire agreement immediately without judicial intervention. In the event of termination of the hire agreement as a result of a fundamental breach of contract or attributable failure, it is possible to claim compensation for any damage

and payment of all debts, including those not immediately due.

ARTICLE 14 - APPLICABLE LAW

Dutch law is applicable in all disputes relating to this contract, unless another national law is applicable on grounds of mandatory rules.

ARTICLE 15 - DISPUTE SETTLEMENT RULES

1. Disputes between consumer and proprietor regarding the preparation or execution of contracts regarding services and items delivered or to be delivered by this proprietor, and to which these Terms and Conditions apply, can be brought by either the consumer or the proprietor before the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl).
2. The Disputes Committee mediates in a dispute only if the consumer has first submitted his complaint to the proprietor.
3. The Disputes Committee mediates in a dispute only if the dispute involves a sum of not more than € 14,000.
4. Disputes involving financial interests greater than € 14,000 may only be handled by the Committee if both parties explicitly agree to this.
5. Once the complaint has been submitted to the proprietor, the dispute should be submitted to the Disputes Committee no more than three months later.
6. If a consumer brings a dispute before the Disputes Committee, the proprietor is bound to this decision. If the proprietor brings a dispute before the Disputes Committee, he is required to ask the consumer to declare within five weeks whether he agrees to this. The proprietor is also required to announce that he will deem himself free to bring the dispute before the court, once the aforementioned period has ended.
7. The Disputes Committee pronounces its judgment with due regard for the provisions of the regulation that applies to the Committee. The decision of the Disputes Committee is made in accordance with that regulation by way of a binding decision. The regulation is sent if required. A fee is payable for hearing a dispute.
8. Only a court or the above-mentioned Disputes Committee is authorised to take cognizance of disputes.

ARTICLE 16 - GUARANTEE OF COMPLIANCE/ PERFORMANCE BOND

1. HISWA Association guarantees that its members will comply with binding decisions, unless a member decides to submit the binding decision to the court for review within two months of the decision being issued. This guarantee is restored if the binding decision is upheld after review by the court and if the ruling that demonstrates this has become definitive and is not open to appeal. An amount of up to €10,000 maximum for each binding decision is paid to the consumer by HISWA Association. In the case of amounts greater than € 10,000 for each binding decision, the consumer receives an amount of € 10,000. For larger sums, HISWA Association is obliged to make strenuous efforts to ensure that the member complies with the binding decision.
2. Application of this guarantee demands that the consumer makes a claim to that effect in writing to HISWA Association and that the amount he claims from the proprietor is transferred to HISWA Association. If the amount claimed from the proprietor is more than € 10,000, the consumer is invited to transfer his payment claim, where this totals more than € 10,000, to

HISWA Association, whereupon HISWA Association will request this to be paid under its own name and at its own cost in settlement to the consumer.

3. HISWA Association does not supply a performance bond if, before the consumer complies with the specific intake requirements relating to the handling of the dispute (payment of complaint-filing fees, return of completed and signed questionnaire, and a deposit of an amount of money where applicable), one of the following situations holds:
 - the member has been granted a moratorium;
 - the member has been declared bankrupt;
 - the company activities have effectively been terminated.

The date on which cessation of company operations is entered into the Trade Register is the determining factor, or an earlier date for which HISWA Association can make a plausible case for demonstrating that company activities were effectively terminated.

ARTICLE 17 - DEVIATIONS FROM THE TERMS AND CONDITIONS

Individual deviations, including supplements or additions, to these Terms and Conditions are recorded in writing.

ARTICLE 18 - AMENDMENTS

HISWA Association shall only amend these General Terms and Conditions in consultation with ANWB and the Consumers' Association.