

GENERAL TERMS AND CONDITIONS FOR THE RENTAL OF MOORINGS AND/OR STORAGE PLACES

for vessels and related articles

These are the General Terms and Conditions for the Rental of Moorings and/or Storage Places of the HISWA Association (Dutch Association of entrepreneurs in the Water Sports Industry). These General Terms and Conditions have been drawn up by the Self-Regulation Coordination Group of the Social and Economic Council of the Netherlands [SER] in consultation with the Consumers' Association and the ANWB. These terms and conditions are solely applicable to members of the HISWA Association. The HISWA Association will take action against any misuse. The conditions were filed with the registry of the District Court of Amsterdam on 21 June 2018 under number 67/2018.

ARTICLE 1 - DEFINITIONS

The following definitions are applicable to these conditions:

- a. *Entrepreneur*: a natural or legal person who enters into an agreement with a consumer for the rental of a mooring and/or storage place for a vessel and/or part thereof, against payment of rent. This entrepreneur is a member of the HISWA Association.
- b. *Consumer*: a natural person who enters into an agreement with an entrepreneur for the rental of a mooring and/or storage place for a vessel and/or part thereof, against payment of rent. This consumer will not enter into the agreement in a professional or business capacity, but in a private capacity.
- c. *Passer-by*: a natural person who, for a limited number of days, enters into an agreement with an entrepreneur for the rental of a mooring for a vessel and/or part thereof, against payment of rent. In these terms and conditions, a consumer is also understood to mean a passer-by.
- d. *Parties*: the entrepreneur and the consumer, as defined under a and b.
- e. *Vessel*: an object that is constructed to remain in water and to move within water, including the pieces of equipment that form part of it and the contents. These conditions explicitly refer to a vessel intended for sports or leisure activities. This also includes the hull of a vessel, or a vessel under construction.
- f. *Moorings and/or storage place*: a space on the shore or in the water made available by the entrepreneur to the consumer or passer-by for the placement of a vessel and/or part thereof.
- g. *Rental agreement*: an agreement by which the entrepreneur undertakes, against payment, to provide a mooring and/or storage place to a consumer or passer-by.
- h. *Annual rent*: rental period from 1 April in a given year to 1 April of the following year (unless agreed otherwise).
- i. *Electronic*: per e-mail or website.
- j. *Summer season*: period from 1 April to 1 October in a given year.
- k. *Winter season*: period from 1 October in a given year to 1 April of the following year.
- l. *Winter storage*: the lay-up (covered or uncovered) of a vessel during the winter period, which lasts at least from 15 November in a given year until 15 March of the following year. Winter storage also includes bringing the vessel ashore, placing the vessel in the winter storage and relaunching the vessel, unless otherwise agreed in writing.
- m. *Harbour site*: the harbour and the associated (parking) areas and buildings.
- n. *Harbour regulations*: rules for facilities, behaviour and order on the harbour site.
- o. *Disputes Committee*: the Disputes Committee for Water Recreation (*Geschillencommissie Waterrecreatie*) in The Hague.

All amounts mentioned in these general terms and conditions are inclusive of VAT.

ARTICLE 2 - APPLICABILITY OF THE AGREEMENT AND THE TERMS AND CONDITIONS

1. These general terms and conditions apply to every offer and every agreement that the entrepreneur and the consumer conclude for the lease/rental of moorings and/or storage places for vessels and related articles.
2. The rental agreement applies not only to the mooring/storage for the vessel, but also to the space required to accommodate a maximum of one dinghy or sailboard belonging to the vessel. This does not apply if, as a result, the space occupied is larger than the space that the entrepreneur has rented to the consumer.
3. If the rental agreement is only concluded for one or a few days and the rent is charged per day, the consumer must pay the rent immediately. In such cases, Articles 5, 6(1), 7 and 8 will not apply.

ARTICLE 3 - OFFER / QUOTE

1. The entrepreneur will present its offer or quote verbally, in writing or electronically.

2. A verbal offer will be considered void if not accepted with immediate effect, except in those instances when the entrepreneur has directly granted a period for accepting an offer.
3. Any offer made in writing or electronically must include the date. If a period of validity is stated within the offer, then the entrepreneur is not allowed to rescind or change its offer within that period. If no time period is stated, then the entrepreneur is not allowed to rescind or change its offer up until and including 14 days after the date.
4. The offer contains a complete and accurate description of the mooring or storage place to be rented and in any event states the rental price and the rental period, including the possibilities for extension and termination.
5. The entrepreneur must hand over a copy of these general terms and conditions to the consumer.

ARTICLE 4 - THE AGREEMENT

1. The agreement will be concluded as soon as the consumer accepts the offer from the entrepreneur. If the offer is accepted electronically, the entrepreneur will send an electronic confirmation to the consumer.
2. Every agreement should preferably be recorded either in writing or electronically.
3. If the agreement is in writing, a copy should be sent to the consumer by the entrepreneur.

ARTICLE 5 - RENT

1. When concluding the agreement, the entrepreneur can agree a prepayment with the consumer:
 - a maximum of 50% of the rent when booking within 3 months before the start of the rental period;
 - a maximum of 25% of the rent if the booking is made more than 3 months before the start of the rental period.
2. If the consumer temporarily does not make use of the rented mooring or storage space, he or she will still owe the total rent.
3. If a vessel does not have to be launched after the period of winter storage, the consumer must pay a rent, to be determined and adjusted, for the space occupied. This rent is independent of the compensation that the consumer must pay for the relocation costs.

ARTICLE 6 - PAYMENT CONDITIONS

1. The consumer must pay the rent within 14 days of receipt of the invoice, but in any case on the commencement date of the agreed rental period. He or she can pay the rent at the entrepreneur's office or by transferring the money to a bank account stipulated by the entrepreneur.
2. If the consumer does not pay the invoice on time, he or she will be in default, without any notice being required from the entrepreneur. Nevertheless, after the payment date has passed, the entrepreneur will send one payment reminder to the consumer without extra costs. In that reminder, the entrepreneur will draw the consumer's attention to the default and will give him or her the opportunity to pay the invoice within 14 days. In the payment reminder, the entrepreneur will also state the extrajudicial costs that the consumer will owe in the event of payment not being received in time.
3. If the 14-day period as stated in paragraph 2 has lapsed, and the consumer still has not paid the invoice due, the entrepreneur will be authorised to demand payment of the amount owed, without having to declare the consumer to be in default. The entrepreneur may pass on any related extrajudicial costs to the consumer in a reasonable manner. The maximum amounts as defined in the Dutch Extrajudicial Collection Costs (Fees) Decree will apply. Subject to statutory amendments, these maximum amounts are set at:
 - 15% over the first € 2,500 of the amount due, with a minimum of € 40;
 - 10% over the next € 2,500 of the amount due;
 - 5% over the following € 5,000 of the amount due;
 - 1% over the next € 190,000 of the amount due;
 - 0.5% over the remainder, up to a maximum of € 6,775.

ARTICLE 7 - TERMINATION OF FIRST RENTAL AGREEMENT

The consumer can cancel the rental agreement before the first rental period begins. He or she must then inform the entrepreneur as soon as possible in writing or electronically. In that case, the consumer will owe the following costs:

- 25% of the agreed rent in the event of cancellation up to 3 months before the start of the rental period;
- 50% of the agreed rent in case of cancellation within 3 months to 2 weeks before the start of the rental period;
- the full agreed rent in the event of cancellation within 2 weeks before the start of the rental period.

ARTICLE 8 - TERMINATION, DURATION AND EXTENSION OF THE RENTAL PERIOD

1. The parties enter into the rental agreement for a period of 1 year. This year runs from 1 April to 1 April of the following year, unless the parties agree otherwise.
2. A rental agreement for one year or for a summer or winter season will be tacitly renewed for the same period at the end of that period. The same conditions continue to apply, unless the entrepreneur applies paragraph 3. This extension will not take effect if one of the parties terminates the agreement in writing or electronically at least 3 months before the start of the new rental period.
3. The entrepreneur can change the rent no later than 3 months before the start of the new rental period. In that case, the consumer has the right to terminate the rental agreement within 21 days of receiving this notice. He or she will not have this right if the entrepreneur changes the rent due to an increase in charges on its part that is the result of a change in taxes, levies etc. that also affect the consumer.

ARTICLE 9 - RIGHT OF RETENTION AND RIGHT OF SALE IN THE CASE OF NON-PAYMENT

1. If the consumer does not pay the rent on time, the entrepreneur can use the right of retention. The entrepreneur may retain the vessel until the consumer has paid the entire amount owed, including the costs that may result from the right of retention.
2. The entrepreneur's right of retention will lapse if:
 - a dispute has arisen within the meaning of Article 13 of these terms and conditions; or
 - the consumer has submitted the dispute to the Disputes Committee as referred to in Article 15 of these terms and conditions.
 - this committee has confirmed to the entrepreneur that the consumer has deposited the amount due with the committee.
 - In that case, the entrepreneur may no longer retain the vessel.
3. If the consumer has not paid the amount owed after having been sent a demand, the entrepreneur will have the right to sell and transfer the vessel, without having to revert to the courts for that purpose. It can do so only if all 3 of the following conditions are met:
 - a. The value of the vessel, including all materials and other associated items, may not amount to more than € 10,000.
 - b. The entrepreneur must have previously demanded the payment of the amount owed by registered letter, and subsequently, a period of at least 6 months must have passed in which the consumer has not paid and/or has not contested the claim in writing, stating the reasons.
 - c. Following the expiry of the stated period of 6 months, the entrepreneur must have issued the consumer with a new demand by a bailiff's writ to pay the amount owed within 21 days, after which the consumer has again failed to pay.
4. The right to sell the vessel will lapse if the consumer has submitted the dispute to the Disputes Committee and has deposited the amount due with this committee. This is the Disputes Committee as stated in Article 15 of these terms and conditions.
5. If the revenue from the sale of the vessel is higher than the amount owed by the consumer to the entrepreneur, the entrepreneur must pay this difference to the consumer.
6. If the vessel has been sold and is still registered in the name of the consumer, the consumer will be obliged to collaborate with the termination of this registration.

ARTICLE 10 - SPECIAL RIGHTS AND OBLIGATIONS THE CONSUMER

1. The consumer must comply with the harbour regulations and the instructions in the rental agreement from or on behalf of the entrepreneur.

2. The consumer will be obliged to keep his or her vessel in a good state of repair.
3. If there are differences between these general terms and conditions and the harbour regulations, these general terms and conditions will prevail.
4. If the consumer wishes to carry out work on his or her vessel on the harbour site that is not part of day-to-day maintenance, he or she will require permission from the entrepreneur to do so. This permission is also required for all work performed by third parties, except in the case of guarantee work performed by or on behalf of the supplier. In the latter case, the entrepreneur must, after notification, allow these third parties to carry out their work on site.
5. It is not permitted to sublet or lend the rented mooring and/or storage space.
6. The consumer is prohibited from using the vessel moored in the harbour or the berth for commercial activities. Nor may he or she place signs, notices, indications, etc., in the harbour and/or on the vessel, which are aimed at a commercial activity. In addition, it is forbidden to offer the vessel for sale in the harbour.
7. The consumer will be obliged to insure his or her vessel and its accessories against third-party liability during the period that he or she uses the mooring and/or storage place. The entrepreneur has the right to inspect the relevant policy of the renter.
8. The consumer is advised to also insure his or her vessel and its accessories against hull damage.

ARTICLE 11 - SPECIAL RIGHTS AND OBLIGATIONS OF THE ENTREPRENEUR

1. The entrepreneur is obliged to exercise proper supervision in order to maintain the orderly, safe and secure situation on the harbour site and on the vessels.
2. If there is a risk of damage or to safety, the entrepreneur has the right to take the necessary precautions at the expense of the consumer. In urgent cases, the entrepreneur may do so without warning. In all other cases, it may do so only if it has warned the consumer and the consumer has not responded within a reasonable time.
3. The entrepreneur may rent out a vacant mooring if this in no way interferes with the consumer's rental rights.

ARTICLE 12 - LIABILITY AND RISK

1. The entrepreneur will only be liable to the consumer for any damage caused to the vessel or other stored items if this damage results from a shortcoming that can be attributed to the entrepreneur or to persons engaged by it to carry out work. This includes both those who are employed by the entrepreneur, as well as those persons engaged by the entrepreneur to carry out work.
2. As far as mutual obligations, liability and risk are concerned, the parties mutually comply with the statutory provisions relating to the rental agreement. This applies regardless of the qualification of the agreement and to the extent that these terms and conditions do not contain a provision that deviates from the statutory provisions.
3. The consumer is responsible for ensuring that his or her vessel (or vessels) are properly insured. The entrepreneur does not insure the vessels. If the consumer does not properly insure his or her vessels against hull damage, the damage is at his or her own risk.
4. The consumer will be liable to the entrepreneur only for damage resulting from a shortcoming attributable to the consumer, his or her family members or other persons invited by the consumer.

ARTICLE 13 - COMPLAINTS

1. If the consumer has complaints regarding the implementation of the agreement, he or she must communicate them to the entrepreneur in written or electronic form. This must be done within an adequate (suitable) timeframe after having discovered or after he or she should have discovered the shortcoming. The consumer must describe and explain the complaints in a proper manner.
2. If the consumer has a complaint regarding an invoice, it must preferably be reported in writing to the entrepreneur. This must be done within an adequate (suitable) timeframe after having received the invoice in question. The consumer must describe and explain the complaints in writing in a proper manner.
3. If the consumer does not submit his or her complaint on time, this may result in the consumer losing his or her rights regarding this matter. If the fact that he or she has not submitted his or her complaint on time cannot reasonably be attributed to the consumer, then his or her rights will be retained.

4. If it becomes clear that the complaint cannot be resolved in mutual consultation, this may be regarded as a dispute.

ARTICLE 14 - DISSOLUTION OF THE AGREEMENT

If one of the parties fails to fulfil its obligations under this agreement and there is a material breach of contract or attributable failure, the other party will be entitled to dissolve the rental agreement immediately, without recourse to the courts. This will not prejudice the right of this party to demand compliance with the obligations. In the event of dissolution of the rental agreement on account of a material breach of contract or an attributable failure, a claim may be made for compensation for any damage and for payment of all claims, including those that are not immediately due and payable.

ARTICLE 15 - DISPUTE SETTLEMENT RULES

1. If the consumer and the entrepreneur have a dispute, then each one can submit this dispute to the Disputes Committee for Water Recreation, Bordewijklaan 46, PO Box 90600, NL-2509 LP The Hague (www.sgc.nl). This is subject to the following conditions:
 - a. The dispute concerns the conclusion or implementation of an agreement between the entrepreneur and the consumer.
 - b. The agreement concerns services or items that the entrepreneur will be supplying or has supplied to the consumer.
 - c. The agreement is subject to these general terms and conditions.
2. The Disputes Committee will deal with a dispute only if:
 - a. the consumer has first submitted his or her complaint to the entrepreneur;
 - b. the entrepreneur and the consumer cannot arrive at mutual agreement;
 - c. the dispute has been submitted to the Disputes Committee within 12 months after the consumer has submitted his or her complaint to the entrepreneur;
 - d. the dispute has been submitted to the Disputes Committee in the form of a letter or another form determined by the committee.
3. The Disputes Committee will in principle only deal with disputes with a financial interest involving a maximum amount of € 14,000. If a dispute involves a financial interest that is more than € 14,000, the dispute may be handled by the Disputes Committee only if both parties explicitly agree to such.
4. If a consumer submits a dispute to the Disputes Committee, then the entrepreneur is obliged to accept such. If the entrepreneur wishes to submit a dispute to the Disputes Committee, the entrepreneur must ask the consumer to let it know within five weeks whether he or she agrees. In doing so, the entrepreneur must let it be known that, if the consumer does not reply within five weeks, it may then start court proceedings.
5. When handling the dispute and pronouncing judgment, the Disputes Committee will adhere to the regulations applicable to that committee. These regulations can be sent to the consumer and/or the entrepreneur if required. The decisions of the Disputes Committee are binding. A fee is payable for the hearing of a dispute.
6. A court and the above Disputes Committee are the sole authorised parties permitted to take cognisance of disputes between the entrepreneur and the consumer.

ARTICLE 16 - PERFORMANCE GUARANTEE

1. The HISWA Association guarantees that its members will comply with the binding decisions of the Disputes Committee. This will not apply if a member decides to submit the binding decision to the court for review within two months of the decision being issued. This guarantee will be restored if the binding decision is upheld after a review by the court and if the ruling from which this is evident is not open to appeal.
2. The HISWA Association will pay a maximum of € 10,000 to the consumer per binding decision. This also applies if, according to the binding decision, the consumer is entitled to more than € 10,000 from the entrepreneur. In that case, the consumer will receive € 10,000 from the HISWA Association and the HISWA Association has a best-efforts obligation to ensure that the entrepreneur pays the rest.
3. In order to be eligible for this guarantee, the consumer must apply for this in writing to the HISWA Association. The claim he or she has against the entrepreneur must also be transferred to the HISWA Association. If the amount claimed from the entrepreneur is more than € 10,000, then in principle, the consumer will only need to transfer that part of the claim under € 10,000. However, the consumer may transfer his or her part of the claim that is in excess of € 10,000, if desired. The HISWA Association will then claim payment from the

entrepreneur under its own name and at its own cost. If the HISWA Association is successful in doing so, then it will pay out this amount to the consumer.

4. The HISWA Association will not issue a performance guarantee if – before the consumer complies with the formal intake requirements relating to the handling of the dispute by the Disputes Committee – one of the following situations occurs:
 - a. The entrepreneur has been granted a suspension of payments.
 - b. The entrepreneur has been declared bankrupt.
 - c. The business activities of the entrepreneur have effectively been terminated.

The determining factor for this situation is the date upon which cessation of business operations was entered in the Commercial Register or an earlier date for which the HISWA Association can make a plausible case for demonstrating that the business activities were effectively terminated.

Included under the formal intake requirements are the actions the consumer must take to have the dispute dealt with by the Disputes Committee. This includes the payment of the complaint-filing fee, submitting a completed and signed questionnaire and a possible deposit.

ARTICLE 17 - CHOICE OF LAW

All disputes relating to this agreement will be governed by Dutch law, unless the law of another country is applicable on grounds of mandatory rules.

ARTICLE 18 - DEVIATIONS FROM THE TERMS AND CONDITIONS

Supplements or deviations from these terms and conditions are possible only if these are not to the detriment of the consumer, and if these have been recorded in writing or electronically in such a way that the consumer can easily save them.

ARTICLE 19 - AMENDMENTS

If the HISWA Association amends these general terms and conditions, this will be in consultation with ANWB and the Consumers' Association at all times.