



**HISWA**  
VERENIGING

## **HISWA GENERAL CONDITIONS FOR RENTING AND LETTING MOORINGS AND/OR CRADLES (FOR BOATS AND ACCESSORIES)**

The General Conditions for Renting and Letting Moorings and/or cradles of HISWA Association (Netherlands Association of Enterprises in Water Recreation) were drawn up in 1998 in consultation with the Consumentenbond (Consumers' Association) and the ANWB (Road Users' Association) as part of the programme of the Commissie voor Consumenten Aangelegenheden (Commission for Consumer Affairs) of the Sociaal Economische Raad (Social Economic Council).

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The HISWA Association will take action against misuse so that the desired exclusivity can be realized in practice. Members are therefore requested to inform the HISWA office whenever misuse is observed. To underpin the exclusivity, the various texts are protected by copyright.

### **ARTICLE 1 - DEFINITIONS**

The following definitions will be used in the General Conditions:

- a. The person (or entity) hiring out the mooring: the enterprise which, being a member of HISWA Association (Netherlands Association of Enterprises in Water Recreation) is in business to charge a fee for letting out (registered) facilities to third parties;
- b. The hirer: the person (or entity) which, not in the course of his profession or business (the consumer), pays a fee for the use of the (registered) facility belonging to a third party;
- c. Transient: A party that enters into a hire contract with the lessor relating to a berth, the rent being charged per day, and to which articles 3, 4 paragraph 1, and articles 5, 10 and 11 of these terms and conditions do not apply;
- d. The hire agreement: the agreement by which the person letting the facility charges the hirer or visitor a fee for providing him with a mooring or cradle;
- e. Guest: a third party who, not having an agreement, visits the port or is visiting someone who does have an agreement with the person letting out the mooring;
- f. Annual letting: the letting period from 1 April of a particular year to 1 April of the following year (unless there is a different arrangement);
- g. Summer season: the letting period from 1 April to 1 October of a particular year;
- h. Winter season: the period from 1 October of a particular year to 1 April of the following year;
- i. Laying-up: open or covered on-shore cradle for the winter season from at least 15 November of a particular year to 15 March of the following year;
- j. Port area: the port and ancillary (parking) areas and buildings;
- k. Port regulations: rules of conduct, housekeeping and good order;
- l. Board of arbitration: the Board of Arbitration Water Recreation in The Hague.

### **ARTICLE 2 - APPLICATIONS**

1. The General Conditions apply to agreements about hiring and letting moorings and/or cradles for boats and related ancillary articles.
2. The hiring and letting agreement also includes the area needed to moor one dinghy belonging to a boat or sailboard, provided it does not take up more space than the person letting out the mooring has provided for the hirer.
3. These conditions may be translated from Dutch into another language. In the case of discrepancy between the texts resulting from translation, the Dutch text will prevail.

### **ARTICLE 3 - PAYMENT OF RENTAL**

1. Fifty percent of the total rental is payable in advance and the remainder at the start of the rental period.
2. The hirer is liable for the total rental, even if he temporarily makes no use of the rented facilities.

### **ARTICLE 4 - CONDITIONS OF PAYMENT**

1. The rental must be paid within ten working days after receipt of the invoice at the premises of the person letting the mooring or by paying the amount into a bank account as instructed by this person.
2. The total rental amount must be paid by the first day of the agreed rental period.
3. A hirer who by the agreed due date has not paid the invoice sent to him shall be considered automatically to be in default. In such a case, the supplier shall be entitled to charge the client the legal interest plus 3% p.a. over and above of the amount owed. This interest shall be charged from the due date.

The above does not affect the provisions of article 12 paragraph 10 of these terms and conditions.

4. All extra judicial costs shall be borne by the hirer; the costs will be at least 15% of the outstanding amount, with a minimum of € 115,00 plus actual expenses, unless the hirer can prove that a lower minimum amount would have sufficed. The above is without prejudice to Article 12 item 10 of the General Conditions.

#### **ARTICLE 5 - CANCELLATION**

1. If the first hire contract was made more than three months before commencement of the hire period, the hirer may cancel the contract up to a date three months before commencement of the hire period. In this case the hirer shall owe 25% of the agreed hire price.
2. If the hire agreement is cancelled between three months and two weeks before the hire period commences, the hirer is liable for 50% of the agreed hire price.
3. If the agreement is cancelled between three months and two weeks before the hire period, the hirer is liable for the full hire price.
4. The cancellation mentioned in the preceding paragraphs should (preferably) take place in writing.
5. In the case of cancellation after commencement of the agreed hire period or after the tacit renewal as mentioned in article 10 paragraph 2 of these conditions, then the provisions of article 10 of these conditions shall apply.

#### **ARTICLE 6 - RIGHT OF RETENTION AND SELLING RIGHTS**

1. The person letting the mooring may retain the craft of the hirer if he is in default until the latter has paid the outstanding amount in full, including any costs resulting from the right of retention. The person letting the mooring loses the right of retention if there is a dispute as indicated in Article 12 and the hirer has referred the dispute to the Board of Arbitration mentioned in said article and has confirmed to the person letting the mooring that he has deposited the outstanding amount with the Board of Arbitration.
2. If the hirer receives a demand from the person letting the mooring by registered mail for payment and fails to pay the hire price within six months after the postmark date, and the hire period has meanwhile run out, the hirer will be deemed to have abandoned the craft. The person letting the mooring may then sell the craft and recoup the entire amount owed by the defaulting hirer out of the proceeds of the sale. The person letting the mooring must, however, pay the difference between the proceeds and the amount owed by the hirer, to the hirer within eight days after receiving the proceeds of the sale.
3. The person letting the mooring cannot exercise his selling rights until the above mentioned term of six months has elapsed and he has again demanded the hirer by means of a writ to pay the outstanding amount within fifteen working days.

#### **ARTICLE 7 - SPECIAL RIGHTS AND OBLIGATIONS OF THE HIRER AND THE PERSON LETTING THE MOORING**

1. The hirer must comply with the port regulations and with the instructions contained in the hire agreement of or on behalf of the person letting the mooring.
2. It is the responsibility of the person letting the mooring to ensure that proper conduct is maintained in the port area and on the boats.
3. If there is any risk of damage or to general safety, the person letting the mooring may take the necessary measures at the expense of the hirer. In an emergency the person letting the mooring may do so without prior notice; in all other cases he may proceed if the hirer fails to act within reasonable time after receiving a warning.
4. In the port area activities which are not related to daily maintenance may only be carried out by the hirer with permission of the person letting the mooring.  
The latter must, after due notice, allow third parties to carry out work on site if such work is related to the supplier's guarantee.  
For all other work by third parties permission must be obtained from the person letting the mooring.
5. The rented space may not be sublet or lent out to others.
6. The hirer may not use the craft moored in the port or its berth for commercial activities. This includes erecting signs, notices, indications etc. in the port or on the craft. Nor may the craft be offered for sale in the port.
7. The person letting the mooring may let out a vacant mooring, provided the hirer and his hiring rights are not affected in any way.
8. The hirer must insure his craft and tackle against third party liability while he uses the mooring. The person letting the mooring may demand to see the hirer's insurance certificate.

#### **ARTICLE 8 - LIABILITY**

1. The person letting the mooring is liable for any damage to the hirer's property or properties if it is the result of a shortcoming on the part of himself, his staff or subcontractors.
2. The hirer is liable for any damage to the person letting the mooring, if it is the result of a shortcoming on the part of the hirer, his family, staff or guests.

#### **ARTICLE 9 - DEFAULT AND NEGLIGENCE**

1. Complaints relating to implementation of the hire contract should be brought the attention of the other party, preferably in writing and clearly described and explained, within a reasonable period.

2. Without prejudice to the parties' right to insist on the fulfilment of the agreement, any actual default or negligence on the part of the hirer or person letting out the mooring in their obligations, gives the other party the right to cancel the hire agreement forthwith without legal intervention.  
If the hire agreement is cancelled after an actual default or negligence, a demand for compensation and payment of all claims, including any which may not be immediately due, may be put forward.

#### **ARTICLE 10 - DURATION AND EXTENSION OF THE HIRE CONTRACT**

1. The hire contract is valid for one year, i.e. from 1 April of a particular year until 1 April of the following year, unless the parties have a different arrangement.
2. A hire agreement valid for one year or for the summer or winter season is deemed to be subject to the same conditions - taking into account item 3 - and for the same length of time, unless the agreement is cancelled in writing by one of the parties not less than three months prior to the new hire period.
3. The person letting the mooring may revise the hire price up to three months before the start of the new hire period. The hirer may, in that case, cancel the agreement within 15 working days after receiving notice. The latter does not apply if the hire price is revised because the overheads of the person letting the mooring have increased due to higher taxes or charges etc. which also affect the hirer. Nor does it apply if the hire price is revised due to government price controls.

#### **ARTICLE 11 - WINTER STORAGE**

1. Winter storage also includes use of the slipway, putting the craft in its cradle and launching, unless there is an alternative written agreement.
2. If a craft does not need launching after the winter, a hire price yet to be agreed by the parties will be charged for the occupied space. This is without prejudice to the charge for moving the craft if necessary.

#### **ARTICLE 12 - DISPUTES: THE BOARD OF ARBITRATION AND REGULAR JURISDICTION**

1. All disputes concerning the hire agreement are subject to Netherlands law. Disputes must be referred to a Dutch court of law or to the Board of Arbitration indicated below.
2. Any dispute between the hirer and person letting the mooring about the contents or execution of the hire agreement to which the General Conditions apply, may be referred, either by the hirer or the person letting the mooring, to the Board of Arbitration Water Recreation, P.O. Box 90600, 2509 LP The Hague, The Netherlands.
3. The Board of Arbitration will only consider a dispute if the person letting the mooring has given the hirer sufficient notice of his complaint.
4. The hirer must refer the dispute to the Board of Arbitration within three months after advising the person letting the mooring of his complaint, giving the names and addresses of both parties, and stating clearly what the dispute is about and the nature of the claim.  
If the hirer has referred the dispute to the Board of Arbitration, the person letting the mooring is bound by this decision and can no longer take the case to an ordinary court of law.
5. The Board of Arbitration is not authorised to settle disputes concerning simple non-payment of invoices if no material damage is involved.  
If the hirer fails to pay an invoice on time, the person letting the mooring may refer the case to a regular court of law, provided he has allowed the hirer, before initiating procedures, one month from the date of receiving a reminder, to refer the dispute to the Board of Arbitration.
6. If the person letting the mooring refers a dispute to the Board of Arbitration, the Board will not consider the dispute until the hirer has had a month to send a written declaration that he will abide by the decision of the Board of Arbitration and has deposited any outstanding amounts with the Board of Arbitration.
7. If the hirer refers a dispute to the Board of Arbitration, The Board will not consider the dispute until the hirer has deposited any amounts he owes to the person letting the mooring with the Board of Arbitration, paying it within one month into an account indicated by the Board of Arbitration.  
If the hirer fails to pay the amount on time, he will be assumed not to accept the decision of the Board of Arbitration.
8. The decision of the Board of Arbitration constitutes binding advice. The hirer has HISWA's guarantee that the binding advice of the Board of Arbitration will be carried out. The guarantee covers amounts up to € 14.000,00 inclusive of value added tax per binding advice.  
In the case of bankruptcy, suspension of payment or the cessation of the owner's business, the guarantee is valid only if the hirer referred the case to the Board of Arbitration before such a situation arose. The guarantee is not valid if the owner refers the binding advice within two months to a regular court of justice, and the court rules that the advice of the Board of Arbitration shall not be binding.  
The Board of Arbitration will only consider disputes if the amount involved does not exceed € 14.000,00 inclusive of value added tax.
9. A fee will be charged for settling disputes.
10. If a dispute is referred to the Board of Arbitration, articles 4 items 3 and 4 do not apply.
11. For settling disputes we refer to the Regulations of the Board of Arbitration Water Recreation (Reglement Geschillencommissie Waterrecreatie).

#### **ARTICLE 13 - EXCEPTIONS TO THE GENERAL CONDITIONS**

Incidental exceptions and additions to the General Conditions must be confirmed in writing.

**ARTICLE 14 - AMENDMENTS OF THE GENERAL CONDITIONS**

HISWA Association will not amend the General Conditions without prior discussion with Consumentenbond (Consumer Association) and the ANWB (Road Users' Association). Such amendments will not be implemented until two months after they have been published by the relevant organisations which have undertaken to publish the amendments in their periodicals as soon as they have been confirmed.

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