

## **HISWA GENERAL TERMS AND CONDITIONS FOR THE HIRE OF VESSELS**

These General Terms and Conditions for Hiring Vessels of 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 Social Economic Council [SER]. The Terms and Conditions apply exclusively to members of HISWA Association. HISWA Association will take action against any misuse. The Terms and Conditions were filed at the office of the district court in Amsterdam on the 21<sup>st</sup> of June 2018 under number 66/2018.

### **ARTICLE 1 – DEFINITIONS**

The following definitions are used in these Terms and Conditions:

- a. *Entrepreneur*: an individual or legal entity that, as a member of HISWA Association, enters into a contract with a consumer to make a vessel in return for payment of a hire charge.
- b. *Consumer*: an individual, not acting in the exercise of his profession or business but in a personal capacity, who enters into a contract with an entrepreneur for the use of a vessel in return for payment of a hire charge.
- c. *Parties*: the entrepreneur and the consumer, as described in a. and b.
- d. *Vessel*: an object that is constructed to remain in water and to move in it, including the equipment and inventory that form part of it. In these Terms and Conditions the vessel is explicitly one that is intended for sports or leisure activities.
- e. *Open sailing boat and motor boat*: vessel without cabin accommodation.
- f. *Hire contract*: a contract under which the entrepreneur undertakes to give the consumer the use of a vessel without crew in return for payment.
- g. *Electronic*: by e-mail or via a website.
- h. *Inventory list*: list of objects belonging to the vessel.
- i. *List of defects*: list drawn up by the parties before sailing to record the condition of the vessel and, in particular, the presence of any damage.
- j. *Disputes Committee*: the Water Recreation Disputes Settlement Committee in The Hague.

All the amounts stated in these General Terms and Conditions are inclusive of VAT.

### **ARTICLE 2 – APPLICABILITY OF THESE TERMS AND CONDITIONS**

These General Terms and Conditions are applicable to every offer and every contract that the entrepreneur and the consumer enter into for the hire of vessels.

### **ARTICLE 3 – THE OFFER/QUOTATION**

1. The entrepreneur makes his offer or quotation verbally, in writing or by electronic means.
2. A verbal offer lapses if it is not accepted immediately, unless the entrepreneur has given a deadline for acceptance of the offer.
3. A written or electronic offer must be dated. If a term of validity is stated in the offer, the entrepreneur may not change or withdraw the offer within that period. If no term of validity is stated, the entrepreneur may not change or withdraw the offer within 14 days after the date of the offer.
4. The offer consists of a full and accurate description of the vessel to be supplied for hire and states in any event:
  - the period of hire and the harbour of arrival/departure
  - the hire charge and any additional expenses and method of payment
  - the amount of the insurance excess
  - the amount and means of security
  - the cancellation terms.
5. The entrepreneur is to provide a copy of these General Terms and Conditions with each offer.

## **ARTICLE 4 – THE CONTRACT**

1. A contract is formed once the consumer accepts the entrepreneur's offer. If the consumer accepts this offer by electronic means, the entrepreneur sends the consumer a confirmation by electronic means as well.
2. All contracts are recorded preferably in writing or by electronic means.
3. In the case of a written contract the entrepreneur must always give the consumer a copy.

## **ARTICLE 5 – THE PRICE AND PRICE ALTERATIONS**

1. The entrepreneur and the consumer agree in advance:
  - what hire charges and, if applicable, what extra costs the consumer has to pay and
  - whether the entrepreneur is permitted to alter the price at random times and if so, under what conditions.
2. The entrepreneur may always pass on the consumer any changes in taxation, excise duties and similar levies imposed by the government.

## **ARTICLE 6 – CONDITIONS OF PAYMENT**

1. The consumer must pay the hire charges within 14 days after receipt of the invoice, but in any case on the date on which the agreed hire period begins. He can pay at the entrepreneur's office or by transfer to a bank account specified by the entrepreneur.
2. If the consumer fails to pay on time, he is in default without the entrepreneur having to send him notice of default. Nevertheless, after the payment date has passed the entrepreneur will send one more payment reminder to the consumer, at no charge, in which the entrepreneur draws the attention of the consumer to his default and gives him the opportunity to pay the account within 14 days. In the payment reminder the entrepreneur also mentions the extrajudicial collection costs for which the consumer will be liable in the event of late payment.
3. If the 14-day period referred to in clause 1 has elapsed and the consumer has not yet paid his account, the entrepreneur is authorized to demand payment of the amount due, without the need to serve notice of default on the consumer. The entrepreneur is permitted to charge the associated extrajudicial collection costs in all reasonableness to the consumer. Maximum amounts are applicable, as provided for in the Dutch Extrajudicial Collection Costs (Fees) Decree. Subject to legislative changes, these maximum amounts are:
  - 15% on the first €2,500, with a minimum of €40
  - 10% on the next €2,500
  - 5% on the next €5,000
  - 1% on the next €190,000
  - 0.5% on the remainder, with a maximum of €6,775.

## **ARTICLE 7 – CANCELLATION**

1. If the consumer wishes to cancel the hire contract, he must inform the entrepreneur as soon as possible in writing or by electronic means. If the consumer cancels, the entrepreneur can claim fixed compensation amounting to:
  - 15% of the agreed hire charges in the event of cancellation at least three months before the commencement of the hire period
  - 50% of the agreed hire charges in the event of cancellation at least two months before the commencement of the hire period
  - 75% of the agreed hire charges in the event of cancellation at least one month before the commencement of the hire period
  - 100% of the agreed hire charges in the event of cancellation within one month of the commencement of the hire period or on the date of commencement of the hire period.All the aforementioned compensation amounts are subject to a minimum of €65.
2. If the consumer cancels a hire contract under which the hire charge is €250 or less, other compensation amounts apply than those referred to in clause 1. In these cases the entrepreneur can claim fixed compensation amounting to:
  - 10% of the agreed hire charges in the event of cancellation at least one week before the commencement of the hire period
  - 50% of the agreed hire charges in the event of cancellation at least two days before the commencement of the hire period
  - 100% of the agreed hire charges in the event of cancellation within two days before the

commencement of the hire period

3. The entrepreneur may cancel a hire contract pertaining to open sailing and/or motor boats for which the period is not more than two days. If he does not inform the consumer of this in writing in good time, the entrepreneur is obliged to pay the consumer 25% of the amount due in hire charges.
4. If the consumer cancels a hire contract, he can ask the entrepreneur to allow another person to take over the contract. If the entrepreneur agrees, the consumer has to pay amendment charges amounting to 10% of the agreed hire charges with a minimum of €45.50 and a maximum of €113.50.

#### **ARTICLE 8 - THE ENTREPRENEUR'S OBLIGATIONS**

1. The entrepreneur makes the vessel available to the consumer at the start of the hire period. The entrepreneur ensures the vessel is in good condition, that it can serve the purpose for which it is intended, and that it is fitted with reliable safety equipment that is suitable for the agreed sailing area.
2. The entrepreneur is obliged to insure the vessel adequately on behalf of the consumer against third-party liability, hull damage and theft. This insurance applies only to the use of vessel in the sailing area agreed on between the entrepreneur and the consumer. The insurance includes a reasonable excess that is in line with the value of the vessel.
3. Before the consumer departs in the vessel the parties record the condition of the vessel in a list of defects that is then signed by both parties. The entrepreneur gives the consumer a copy of the signed list of defects.
4. The entrepreneur gives the consumer a copy of the inventory list before the consumer departs in the vessel.
5. At the end of the hire period the entrepreneur receives the vessel at the agreed place and time, unless otherwise agreed with the consumer.
6. The entrepreneur ensures that the required telephone numbers, including emergency numbers, are available on board the vessel.

#### **ARTICLE 9 - THE CONSUMER'S OBLIGATIONS**

1. The consumer needs to have adequate sailing skills. If the consumer does not have the relevant CWO diploma (issued by the Committee for Water Sports Training), or an equivalent diploma at the discretion of the entrepreneur, the consumer must be at least 18 years old. This age limit of 18 does not apply to open sailing boats or motor boats.
2. The consumer has to ensure that the crew required for the voyage refrains from excessive use of alcohol and/or drugs during the voyage.
3. The consumer has to comply with the entrepreneur's instructions with regard to the maintenance of the vessel and to the preservation of the entrepreneur's rights. This includes prohibiting departure from or return to the marina, and an order to sail immediately to a mooring designated by the entrepreneur because of poor weather conditions and/or excessive use of alcohol and/or drugs.
4. Before departing in the vessel the consumer gets an inventory list from the entrepreneur. The consumer is obliged to check whether the inventory on this list is present on board the vessel. He also has to check whether the vessel is equipped with safety equipment suitable for the sailing area in question.
5. If the inventory on board does not correspond with the inventory stated in the inventory list, or if the safety equipment is incomplete or defective, the consumer must inform the entrepreneur of this prior to departure. This does not affect the entrepreneur's obligation on the grounds of Article 8 clause 1.
6. Before departing in the vessel the consumer has to sign the list of defects to signify that it is correct.
7. The consumer is to use the vessel with due care and as a good skipper and in accordance with the intended purpose. The consumer may not alter the vessel in any way or put the vessel at anyone else's disposal without the written permission of the entrepreneur.
8. At the end of the hire period, the consumer hands over the vessel to the entrepreneur at the agreed time and place and in the same state in which he received it.
9. The costs directly related to the use of the vessel, such as fees for harbours, bridges, quays, locks and mooring, and the fuel costs, are for the consumer's account.
10. The consumer requires the entrepreneur's permission before repairs are carried out. The entrepreneur repays the costs of the repairs to the consumer if specified invoices are submitted.
11. The costs of normal maintenance and repair of defects are at the expense of the entrepreneur.
12. The consumer must inform the entrepreneur as soon as possible of damage of any sort, and of any

facts and/or circumstances which could reasonably lead to damage.

#### **ARTICLE 10 – LIABILITY**

1. The consumer is liable for damage and/or loss of the vessel in the period in which he has hired the vessel. That applies only to damage and/or loss that is not covered by the insurance. The consumer is not liable if he can demonstrate that the damage and/or loss has not been caused by him or by one his party, or cannot be attributed to him or one of his party. The term damage also refers to consequential loss.
2. The consumer is always liable for damage or consequential loss that he has caused, if:
  - he has knowingly used the vessel outside the sailing area agreed with the entrepreneur and/or
  - he knowingly fails to comply with the entrepreneur's instructions for preserving the entrepreneur's rights.This liability is limited to an amount of €500 plus the excess and applies regardless of the vessel insurance.
3. The entrepreneur is not liable for damage to property or for any personal injury/accident unless the damage and/or that injury/accident is a direct consequence of a defect in the hired vessel.

#### **ARTICLE 11 – NON-COMPLIANCE WITH THE CONTRACT**

1. If the entrepreneur does not comply with his obligations in respect of the hire contract, the consumer can terminate the hire contract without judicial intervention. The entrepreneur must in that case immediately pay back everything that the consumer already paid.
2. The consumer is can also claim compensation for any damage he has suffered, unless the fault cannot be attributed to the entrepreneur.
3. The above-mentioned does not apply if the entrepreneur offers an alternative that is reasonable for both parties.
4. If the consumer returns the vessel at a later time than was agreed and/or at a place other than the agreed place, the entrepreneur is entitled to increase the hire charges proportionally and to receive payment for further damage or consequential loss. This right is inapplicable if the late return of the vessel and/or the different return location cannot be attributed to the consumer.
5. If the consumer does not return the vessel in the same state as when he received it, or if he has not acted in accordance with Article 9 of these Terms and Conditions, the entrepreneur is entitled to restore the vessel to such state, at the consumer's expense. The consumer does not have to pay the remediation costs to the extent that they are covered by the insurance, or in a situation such as that referred to in Article 10 clause 2.

#### **ARTICLE 12 – COMPLAINTS**

1. If the consumer has any complaints about the implementation of the contract, he has to notify the entrepreneur of them in writing or by electronic means within a reasonable (appropriate) time after he has or could have identified the faults, giving a full and detailed description of the complaints.
2. If the consumer has any complaints about an invoice, he must notify the entrepreneur of them, preferably by letter or by electronic means within an appropriate time after he has received the invoice, giving a full and detailed description of the complaints.
3. If the consumer does not submit the complaint punctually, he risks losing his rights in that respect. If the consumer cannot reasonably be blamed for his failure to submit the complaint punctually, he retains his rights.
4. If it is clear that the complaint cannot be settled amicably, a dispute exists.

#### **ARTICLE 13 - SETTLEMENT OF DISPUTES**

1. If the consumer and the entrepreneur have a dispute, each of them may submit the dispute to the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, Postbus 90600, 2509 LP Den Haag ([www.sgc.nl](http://www.sgc.nl)). The following conditions apply in that case:
  - a. The dispute relates to the formation or execution of a contract between the entrepreneur and the consumer.
  - b. The contract relates to services or goods that the entrepreneur is going to deliver or has delivered to the consumer.
  - c. These General Terms and Conditions are applicable to the contract.
2. The Disputes Committee hears a dispute only if:
  - a. the consumer has first submitted his complaint to the entrepreneur

- b. the entrepreneur and the consumer have not been able to reach an amicable solution
  - c. the dispute has been submitted to the Disputes Committee within 12 months after the consumer has submitted his complaint to the entrepreneur
  - d. the dispute has been submitted to the Committee in the form of a letter or in another form determined by the Committee.
3. In principle, the Disputes Committee hears only disputes that have a financial interest of up to €14,000. If a dispute has a financial interest of more than €14,000, the Committee can hear it only if both parties consent to this explicitly.
  4. If a consumer submits a dispute to the Disputes Committee, the entrepreneur is obliged to accept the fact. If the entrepreneur wishes to submit a dispute to the Disputes Committee, he must ask the consumer to notify him within five weeks as to whether the consumer consents to this. To that end, the entrepreneur must state that if the consumer does not respond within those five weeks, the entrepreneur may start legal proceedings.
  5. When hearing the dispute and making its award the Disputes Committee follows the rules and regulations applicable to the Committee. These rules and regulations will be sent to the consumer and/or the entrepreneur on request. The Disputes Committee makes its awards in the form of a binding opinion. A fee is due for a dispute to be heard. Only the court and the aforementioned Disputes Committee are competent to take cognizance of disputes between the entrepreneur and the consumer.

#### **ARTICLE 14 – COMPLIANCE GUARANTEE**

1. HISWA Association warrants that its members will comply with the binding opinions of the Disputes Committee. This does not apply if a member decides within two months after the opinion has been sent to submit it to the court for a review. If the opinion is maintained after the court review and if the ruling to that effect is irrevocable, the guarantee applies once again.
2. For each binding opinion HISWA Association pays a maximum of €10,000 to the consumer. This applies also if in accordance with the binding opinion the consumer is to get more than €10,000 from the entrepreneur. In that case the consumer receives €10,000 from HISWA Association, and HISWA Association is obliged to make every effort to ensure that the entrepreneur pays the rest.
3. To be eligible for this guarantee the consumer must ask HISWA Association in writing for it. He also has to transfer to HISWA Association the claim he has against the entrepreneur. If the claim is greater than €10,000, the consumer has to transfer, in principle, only that part of the claim that is under €10,000. But if the consumer so wishes, he can also transfer that part of the claim that is in excess of €10,000. HISWA Association will then claim payment thereof from the entrepreneur in its own name and for its own expense. Should HISWA Association succeed, it will pay out the amount to the consumer.
4. HISWA Association does not issue a compliance guarantee if any of the following situations exists before the consumer has completed the formal intake requirements for the dispute to be heard by the Disputes Committee:
  - a. The entrepreneur has been granted a moratorium on 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 on which the cessation of operations has been entered in the trade register, or an earlier date if HISWA Association can demonstrate that the business operations actually terminated earlier.

The formal intake requirements are taken to mean the actions that the consumer takes to get the dispute heard by the Disputes Committee. These include paying the amount of the complaint, sending in a completed and signed questionnaire, and making a deposit payment if applicable.

#### **ARTICLE 15 - DEVIATIONS FROM THE TERMS AND CONDITIONS**

Additions to or deviations from these General Terms and Conditions are permitted only if they are not to the detriment of the consumer and have been documented in writing or in such a way that it is easy for the consumer to store them in an accessible manner on a durable data carrier.

**ARTICLE 16 - AMENDMENTS**

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

**ARTICLE 17 - APPLICABLE LAW**

All disputes arising from this contract are governed by Dutch law, unless another national law is applicable on the grounds of mandatory rules.