HISWA

HISWA STANDARD TERMS AND CONDITIONS FOR THE HIRE OF MOORING AND STORAGE PLACES
for vessels and related items

These are the HISWA General Terms and Conditions of the Hire and Rental of Mooring and Storage Places of the HISWA-RECRON. These conditions have been drawn up in consultation with the ANWB. The conditions are solely applicable to members of the HISWA-RECRON. The HISWA-RECRON will take action in the event of misuse thereof. The conditions have been filed with the registry of the Court of Amsterdam on the 5th of June under number 51/2020.

ARTICLE 1 – DEFINITIONS
The following definitions are applicable to these conditions:

a. *Proprietor*: a natural person or legal person who enters into a contract with a consumer for the hire of a moorage and/or storage space for a vessel and/or a part thereof, in exchange for the payment of a hire fee. This entrepreneur is paragraph of the HISWA-RECRON.
b. *Consumer*: a natural person who enters into a contract with an entrepreneur for the hire of a moorage and/or storage space for a vessel or a part thereof, in exchange for a hire fee. This consumer will not enter into the contract in a professional or business capacity, but in a private capacity.
c. *Transient user*: a natural person who enters into a contract for a limited number of days with an entrepreneur for the hire of a mooring for a vessel and/or a part thereof, in exchange for a hire fee. The definition of these conditions also includes transient users within the meaning of consumers.
d. *Parties*: the entrepreneur and the consumer or the transient user, as defined under a, b and c.
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. In these conditions, its definition is explicitly meant as a vessel designated for sports or leisure activities. This also includes the hull of a vessel, or a vessel under construction.
f. *Moorage and/or storage place*: an area, either on the quay or in the water, which the entrepreneur makes available to the consumer or transient user for placing a vessel and/or part of a vessel.
g. *Hire contract*: a contract with which the entrepreneur will be obliged to grant the use of a mooring and/or storage place to a consumer or transient user in return for payment.
h. *Annual rental*: the period of hire from 1 April in a specific year until 1 April the following year (unless agreed otherwise).
i. *Electronic*: per e-mail or website.
j. *Summer season*: period from 1 April until 1 October in a specific year.
k. *Winter season*: period from 1 October of a specific year until 1 April of the following year.
l. *Winter storage*: the (covered or non-covered) stay shore side of a vessel during the winter period, which lasts from at least 15 November of a specific year until 15 March of the following year. Included in the definition of the winter storage is the placing of the vessel shore side, the placing of the vessel in the winter storage, and powering the vessel into the water, unless something else has been agreed in writing.
m. *Harbour premises*: the harbour and the relevant (parking) terrains and buildings
n. *Harbour regulations*: rules with respect to housekeeping, behaviour and order within the harbour premises.
o. *Disputes Committee*: the Water Recreation Disputes Settlement Committee in The Hague.

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

ARTICLE 2 – APPLICABILITY OF THE CONTRACT AND THE CONDITIONS

1. These general conditions are applicable for every offer and every contract that the entrepreneur and consumer enter into for the rental/hire of moorage and/or storage spaces for vessels and their related items.
2. The hire contract is not only applicable to the mooring/storage space for the vessel, but also to the space

needed for parking not more than one dinghy or sail boat, provided these do not take up more room than the entrepreneur has hired out to the consumer.

3. If the hire contract is only entered into for one or several days, and the hire fee is charged per day, then the consumer must pay the hire fee immediately. The articles 5, 6 paragraphs 1, 7 and 8 of these conditions are not applicable in such instances.

ARTICLE 3 – OFFER / QUOTE

1. The entrepreneur will present their offer or quote verbally, in writing or electronically.
2. A verbal offer will be deemed void if it is 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 of writing. If period of validity is stated within the offer, then the entrepreneur is not allowed to rescind or change their offer within that period. If no time period is stated, then the entrepreneur is not allowed to rescind or change their offer up until and including 14 days after the date of writing.
4. The offer comprises a complete and accurate description of mooring or storage space that is to be hired, and will always mention the hire charge and the hire period, including the options for extension and termination.
5. With every offer, the entrepreneur will provide a copy of these general conditions to the consumer.

ARTICLE 4 - CONTRACT

1. The contract is finalised as soon as the consumer accepts the offer of the entrepreneur. If the assignment is granted electronically, the entrepreneur will send an electronic confirmation to the consumer.
2. Each contract is preferably recorded either in writing or electronically.
3. If the contract is in writing, the entrepreneur must always send a copy to the consumer.

ARTICLE 5 – HIRE CHARGE

1. When entering into the contract, the entrepreneur can agree on a deposit with the consumer which amounts to:
   - a maximum of 50% of the hire charge for bookings within 3 months prior to the commencement of the hire period;
   - a maximum of 25% of the hire charge for bookings longer than 3 months prior to the commencement of the hire period.
2. If the consumer does not make use of the hired mooring or storage space temporarily, they will still owe the entire hire charge.
3. If a vessel does not have to be launched in the water following the period of the winter storage, then the consumer must pay an amended hire charge for the utilised space, at a rate to be determined. This hire charge is a separate matter to the remuneration that the consumer must pay for the necessary transfer costs.

ARTICLE 6 - CONDITIONS OF PAYMENT

1. The consumer must pay the hire charge within 14 days of the receipt of the invoice, but at least on the commencement date of the agreed hire period. He can pay the hire charge at the office of the entrepreneur by transferring the money to a bank account that has been determined by the entrepreneur.
2. If the consumer does not pay in time, they will be in default, without notice of default being required by the entrepreneur to this effect. The entrepreneur will nevertheless send a payment reminder to the consumer without cost after the ultimate payment date has passed. This will inform the consumer of their default, and will grant the consumer the opportunity to pay within 14 days of the reminder. In the payment reminder, the entrepreneur will also mention the extrajudicial collection costs owed by the consumer in the event of timely payment not being forthcoming.
3. If the 14-day period mentioned in paragraph 2 has expired and the consumer has not yet paid, then the entrepreneur is authorised to demand payment of the amount owed, without the requirement of serving notice of default to the consumer. The entrepreneur is permitted to charge the related extrajudicial collection costs to the consumer in a reasonable manner. For these matters, maximum amounts apply, which are mentioned in the Dutch extrajudicial collection costs decree. These maximum amounts are set at the following figures, and are subject to changes of legal amendments:
   - 15% over the first € 2500,-, with a minimum of € 40,-
   - 10% over the next € 2500,-;
   - 5% over the next € 5000,-;

- 1% over the next € 190,000,-;
- 0.5% over the remainder, with a maximum of € 6775,-.

ARTICLE 7 – CANCELLATION OF FIRST HIRE CONTRACT

The consumer is able to cancel the hire contract prior to the start of the first hire period. They must let the entrepreneur know either in writing or electronically as soon as possible. In this case, the consumer will owe the following costs:

- 25% of the agreed hire charge for cancellations up to 3 months before the commencement of the hire period;
- 50% of the agreed hire charge for cancellations within 3 months to 2 weeks before the commencement of the hire period;
- the fully agreed hire charge for cancellations within 2 weeks before the commencement of the hire period.

ARTICLE 8 – CANCELLATION, DURATION AND EXTENSION OF HIRE

1. The parties enter into the hire contract for a period of 1 year. This year will run from 1 April to 1 April of the following year, unless the parties agree otherwise.
2. A hire contract for one year or for a summer or winter season will be tacitly renewed at the end of that period for the same period. The same conditions will thereby apply, unless the entrepreneur applies paragraph 3. This extension will not take place if one of the parties cancel the contract at least 3 months before the commencement of the new hire period in writing or electronically.
3. The entrepreneur can change the hire charge up to 3 months before the commencement of the new hire period. In that case, the consumer has the right to cancel the hire contract within 21 days after receipt of this notification. They do not have this right if the entrepreneur changes the hire charge due to an additional burden on their side, which is the result of a change in taxes, duties and matters of that nature, which also concern the consumer.

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

1. If the consumer does not pay the hire charge on time, the entrepreneur has the right to utilise the right of retention. This entails that the entrepreneur is entitled to retain the vessel, until such times as the consumer has paid the amount owed in full, including the costs emanating from the right of retention.
2. The right of retention of the entrepreneur will be forfeited if:
   a. there is a dispute as mentioned in article 13 of these conditions; and
   b. the consumer has reported the dispute to the Disputes Committee as mentioned in article 15 of these conditions; and
   c. this committee has confirmed with the entrepreneur that the consumer has deposited the amount owing with the Disputes Committee.

   In that case, the entrepreneur may not retain the vessel for longer.
3. If the consumer, after receiving a letter of demand, still neglects to pay the amount due, then the entrepreneur has the right to of sale and delivery of the vessel, without having to go to court to enforce this. They may only do so if all 3 of the following conditions are met:
   a. The value of the vessel, including related all materials and fittings, may not amount to more than the sum of € 10,000.
   b. The entrepreneur must have already demanded payment from the consumer by registered letter to pay the amount owed, and a minimum of six months must have passed afterwards, within which the consumer has not paid and/or or has not disputed the claim with an accompanying reason in writing.
   c. After the aforesaid period of six months has passed, the entrepreneur must have again served the consumer with a writ demanding that the consumer pay the amount owing within 21 days, whereafter payment has still not been forthcoming by the consumer.
4. The right to sell the vessel will be forfeited if the consumer has reported the dispute to the Disputes Committee and has deposited the amount owed with the aforementioned Disputes Committee. The Disputes Committee meant by this definition is the one mentioned in article 15 of these conditions.
5. If the proceeds from the sale of the vessel are higher than the amount that the consumer owed the entrepreneur, then the entrepreneur must pay this difference to the consumer.
6. If the vessel has been sold, and is still registered under the name of the consumer, then the consumer is obliged to cooperate with the termination of this registration under the consumer‘s name.

ARTICLE 10 - 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 entrepreneur.
2. The consumer is obliged to keep their vessel in a good state of repair.
3. In the event of any differences between the text of these general terms and conditions and that of the harbour regulations, these general terms and conditions prevail.
4. On the harbour premises, if the consumer wishes to carry out any work to his vessel, which does not concern daily maintenance, then this may only be carried out by the consumer with the permission of the entrepreneur. That permission is also required for all work by third parties, except if it concerns guarantee-related work by or on behalf of the supplier. In the event of the latter, the entrepreneur, if having received notice of this work, must permit these third parties to carry out their work on site.
5. Loaning or subletting the hired moorage and/or storage space is not permitted.
6. The consumer is forbidden to use either the vessel moored in the harbour or its mooring place for commercial activity. The consumer is also forbidden to place any signs, announcements, and directions etc., which are oriented towards a commercial activity. In addition, the consumer is also forbidden to offer 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 of use of the mooring and/or storage place. The entrepreneur 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 11 - SPECIAL RIGHTS AND OBLIGATIONS OF THE PROPRIETOR

1. The entrepreneur is obliged to ensure that proper conduct and supervision is maintained at the harbour premises and on the vessels.
2. If there is an imminent risk of damage, or if safety is being threatened, the entrepreneur is entitled to take the necessary measures. In emergency situations, the entrepreneur is permitted do this without prior warning. In all other instances, he may only do this if he has previously warned the consumer and the consumer has not responded to the warning within a reasonable time.
3. The entrepreneur is entitled to hire out a mooring place if the consumer's right to hire is not infringed in any way as a result.

ARTICLE 12 - LIABILITY AND RISK

1. The entrepreneur is only liable to the consumer for damage to the vessel or other property if this damage results from a shortcoming that can be attributed to the entrepreneur, to persons in his service, or to persons engaged by him to carry out work. This includes both those persons who are in the employ of the entrepreneur, and those persons enlisted by the entrepreneur to carry out work.
2. With regard to the mutual duties, liability and risk, the parties will conform on both sides with the statutory provisions related to the hire contract. This will apply regardless of the qualification of the contract and in as far as no provision has been included in these conditions that deviates from the statutory provisions.
3. The consumer must ensure that their vessel(s) are sufficiently insured. The entrepreneur will not insure the vessels. If the consumer does not adequately insure their vessel(s) to cover hull damage, it is at the consumer's own risk.
4. The consumer is solely liable to the entrepreneur for any damage that is caused by a shortcoming ascribable to the consumer, to members of the consumer's family, to members of their personnel or to anyone the consumer have invited.

ARTICLE 13 – COMPLAINTS

1. If the consumer has any complaints regarding the implementation of the contract, then this should be made known to the entrepreneur either in written or electronic form. This must be done within a competent (suitable) timeframe after the consumer has ascertained the shortcoming or had been able to notice this. The consumer must describe and explain the complaints in an adequate 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 a competent (suitable) timeframe after they have received the invoice concerned. They must describe and explain the complaints in writing in an adequate manner.
3. If the consumer does not submit their complaint in time, then this can lead to the consumer losing their rights regarding this matter. If the fact that they have not submitted their complaint in time cannot reasonably be attributed to the consumer, then their rights will be retained.

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

ARTICLE 14 - TERMINATION OF CONTRACT

If one of the parties do not fulfil their obligations in this contract, and if, in doing so, this has resulted in a fundamental breach of contract or attributable failure, then the other party is authorised to terminate the hire agreement immediately, without judicial intervention. This will not detract from the right of this party to claim the fulfilment of obligations. In the event of termination of the hire agreement as a result of a fundamental breach of contract or attributable failure, it will be possible to claim compensation for any damage and payment of all outstanding amounts, including those not immediately due.

ARTICLE 15 - DISPUTE SETTLEMENT RULES

1. If the consumer and the entrepreneur have a dispute, then each one can put this dispute before the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl). The following conditions will apply thereto:
   a. The dispute concerns the preparation or execution of a contract between the entrepreneur and the consumer.
   b. The contract concerns services or items that the entrepreneur will be supplying to the consumer or has supplied to the consumer.
   c. These general conditions are applicable to the contract.
2. The Disputes Committee will only mediate in a dispute in the following instances:
   a. if the consumer has first submitted their complaint to the entrepreneur;
   b. the entrepreneur and the consumer cannot arrive at a mutual agreement;
   c. the dispute has been put before the Disputes Committee within 12 months after the consumer has submitted their complaint to the entrepreneur;
   d. the dispute has been put before the Disputes Committee in the form of a letter or another form as defined by the committee.
3. The Disputes Committee will in principle only become involved in disputes with a financial interest amounting to a maximum amount of € 14,000. If a dispute involves a financial interest that is greater than € 14,000, then the dispute may only be handled by the Disputes Committee if both parties explicitly agree to this.
4. If a consumer puts a dispute before the Disputes Committee, then the entrepreneur is obliged to accept. If the entrepreneur wishes to put forward a dispute to the Disputes Committee, then they must ask the consumer to notify them within 5 weeks if they are in agreement. In doing so, the entrepreneur must announce that he - if the consumer does not reply within five weeks – may then start court proceedings.
5. When handling the dispute and pronouncing judgment, the Disputes Committee will adhere to the regulation applicable for the committee. This regulation 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 judge or the previously mentioned Disputes Committee are the sole authorised parties permitted to take cognizance of disputes between the entrepreneur and the consumer.

ARTICLE 16 –COMPLIANCE GUARANTEE

1. The HISWA-RECRON 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 that demonstrates this has become definitive and is not open to appeal.
2. The HISWA-RECRON will pay a maximum of € 10,000 to the consumer per binding decision. This will also be applicable if the consumer is owed in excess of € 10,000 by the entrepreneur according to the binding decision, in which case the consumer will receive € 10,000 from the HISWA-RECRON and the HISWA-RECRON is obliged to make strenuous efforts to ensure that that the entrepreneur will pay the rest.
3. In order to be able to be eligible for this guarantee, the consumer must put this in writing to the HISWA-RECRON. The amount claimed from the entrepreneur must also be transferred to the HISWA-RECRON. 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 their part of the claim that is over € 10,000 if they wish to do so. The HISWA-RECRON will then claim payment from the entrepreneur under its own name and at its own cost. If the HISWA-RECRON is successful in doing so, then it

will pay out this amount to the consumer.

4. The HISWA-RECRON will not supply a compliance 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 moratorium.
   b. The entrepreneur has been declared bankrupt.
   c. The company activities of the entrepreneur have effectively been terminated.

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

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

ARTICLE 17 – CHOICE OF LAW
Dutch law is applicable to all disputes related to this contract, unless another national law is applicable on grounds of mandatory rules.

ARTICLE 18 - DEVIATIONS FROM THE TERMS AND CONDITIONS
Supplements or additions to these General Terms and Conditions are only possible if these are not to the detriment of the consumer, and if these have been defined in writing or electronically to such an extent that the consumer can easily store them.

ARTICLE 19 - AMENDMENTS
If the HISWA-RECRON amends these Standard Terms and Conditions, then this will at all times be in consultation with ANWB.