



HISWA
VERENIGING

HISWA GENERAL CONDITIONS FOR HIRING AND HIRING OUT PLEASURE CRAFT *

The General Conditions for Hiring and Hiring out pleasure craft from and by HISWA Association (Netherlands Association of Suppliers of Pleasure Craft) were drawn up in October 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.

CHAPTER I - DEFINITIONS

ARTICLE 1

The following definitions apply:

- a. The person (or entity) hiring out the craft: the enterprise, being a member of HISWA, who is in business to make goods available against payment to third parties;
- b. The hirer: the person (or entity) who, outside the context of his normal business or trade (i.e. the consumer), pays for the use of goods belonging to a third party.
- c. The hire contract: the contract by which the person (or entity) hiring out the craft undertakes to provide the hirer against payment with a craft without crew;
- d. The arbitration board: the Geschillencommissie Waterrecreatie in The Hague.

CHAPTER II - OBLIGATIONS OF THE PERSON HIRING OUT THE CRAFT

ARTICLE 2

1. At the start of the hire period the person hiring out the craft shall hand over the craft to the hirer. The person hiring out the craft shall ensure that the craft is in good condition, that it is suitable for the purpose for which it is to be used, and is equipped with safety gear suitable for the locality where it has been agreed to be used. The person hiring out the craft shall also see to it that the craft is properly insured.
2. Before the vessel is sailed in the sailing area agreed upon by the lessor and the hirer, the lessor is obliged to insure the vessel on behalf of the hirer against third-party liability, damage to the hull and theft.

CHAPTER III - OBLIGATIONS OF THE HIRER

ARTICLE 3

The hirer is obliged to check that the items indicated in the inventory that is to be given to the hirer by the lessor, and the safety equipment required on the vessel in the sailing area concerned, are present.

If the items on board do not correspond to the items indicated in the inventory, and if the safety equipment is incomplete or faulty, the hirer must inform the lessor of this before sailing.

ARTICLE 4

Before sailing, the parties must sign the list of defects to show that they are in agreement with it. The lessor shall give the hirer a copy of the signed list of defects.

ARTICLE 5

The hirer shall use the craft as in good seamanship and in accordance with the stated intention. The hirer shall not effect any alterations to the craft. The hirer shall not allow anyone else to use the craft unless written permission from the person hiring out the craft has been obtained.

ARTICLE 6

At the end of the hire period the hirer shall return the craft to the person hiring it out to him at the agreed time and place, and in the same condition in which he took possession of it.

* De volgende juridische beoordeling van dit document staat gepland vóór 1 juli aanstaande.

ARTICLE 7

Any costs directly connected with the use of the craft, such as harbour, bridge, lock, quay and laying-up fees, as well as fuel costs, are for the hirer's account.

ARTICLE 8

The hirer must obtain the permission of the person hiring it out before carrying out any repairs. The person hiring out the craft shall reimburse the hirer for any repairs on production of itemised invoices. Regular maintenance and repairs will be paid by the person hiring out the craft.

ARTICLE 9

1. The hirer shall report any damage, or circumstances which could lead to damage, to the person or company hiring out the craft as soon as possible.
2. If the hirer does not comply with item 1, the hirer may be held responsible for all damage and costs.

CHAPTER IV - LIABILITY

ARTICLE 10

1. During the time the hirer is in charge of the craft he is liable for damage and/or loss of the craft, in as far this is not covered by insurance. The hirer is not liable if he can demonstrate that the damage or loss was not caused by him or any of his passengers, or if he or his passengers cannot be blamed for it.
The term damage includes any consequential damage.
2. The hirer shall be fully liable for any (consequential) damage he causes which is not covered by the insurance mentioned in Article 2 if he should use the vessel in a sailing area not agreed between himself and the lessor.

CHAPTER V - DEFAULT AND NEGLIGENCE

ARTICLE 11

If the person hiring out the craft fails to carry out his duties in accordance with the agreement, the hirer may regard the agreement as terminated without legal intervention. In such an event the person hiring out the craft is obliged to return all sums of money already paid immediately. The hirer shall also have the right to claim compensation for any damages, unless the party hiring out the craft cannot be held responsible for the default.

The above does not apply if the party hiring out the craft offers an alternative which is reasonably acceptable to both parties.

ARTICLE 12

1. If the craft is returned to the stated location at a later time than had been agreed, the person hiring out the craft may claim a commensurate surcharge over and above the hire charge plus compensation for any consequential damage, unless the hirer cannot be held responsible for returning the vessel late.
2. If the hirer fails to return the craft in the same condition as he took possession of it, or if he has not complied with article 7 of the General Conditions, the party hiring out the craft has the right to restore the craft to the condition it was in when it was hired out, and charge the costs to the hirer.
This does not apply if such costs are covered by insurance.

ARTICLE 13

1. If the hirer fails to pay the agreed hiring fee or to fulfil his obligations under the hire contract, he will be deemed to be legally in default from the date the party hiring out the craft sent him written warning of his default. The party hiring out the craft may then, without legal intervention, terminate the hire agreement and repossess the craft forthwith.
2. In the case that the hirer is in default of payment, the lessor shall be entitled to charge the hirer the legal interest plus 3% p.a. over and above the amount owed. The above interest shall be charged from the due date. The above does not affect the provisions of article 16 paragraph 10 of these terms and conditions.
3. If one of the parties is forced to seek legal intervention in a dispute over the hire contract, the defaulting party or the party which is ruled against shall be liable for legal costs. Such extra judicial costs shall be 16% of the outstanding amount, but in any case not less than € 115,00 plus out-of-pocket expenses, unless the other party can show that lower minimum costs would have sufficed. The above is without prejudice to article 16 item 10 of the General Conditions.

CHAPTER VI - CANCELLATION AND CLAIMS

ARTICLE 14

1. If the hirer wishes to cancel the hire contract, he must inform the lessor of this in writing as soon as possible. In the case of cancellation, the hirer shall owe the lessor a fixed indemnification of
 - 15% of the agreed hire price in the case of cancellation not less than three months before commencement of the hire period;
 - 50% of the agreed hire price in the case of cancellation not less than two months before commencement of the hire period;

- 75% of the agreed hire price in the case of cancellation not less than one month before commencement of the hire period;
 - 100% of the agreed hire price in the case of cancellation less than one month before commencement of the hire period or on the starting of date of the hire period, all the above indemnification charges being not less than € 68,00.
2. In the case of cancellation by the hirer, he may request the lessor's consent that a third party take his place. In the case that the above-mentioned third party be acceptable to the lessor, then the hirer shall owe only 10% of the agreed hire price, the amount owed being subject to minimum and maximum limits of € 45,00 and € 115,00 respectively.

ARTICLE 15

Complaints relating to implementation of the hire contract should be brought to the attention of the lessor, preferably in writing and clearly described and illustrated, within a reasonable period of the hirer's having discovered the deficiency or his having been able to discover it. The consequences of late complaints shall be for account of the hirer.

CHAPTER VII - DISPUTES: THE ARBITRATION BOARD AND REGULAR COURTS OF LAW

ARTICLE 16

1. All disputes concerning the hire agreement are subject to Netherlands law. Only a Dutch court of law and the arbitration board named hereafter are competent to deal with such disputes.
2. Both the hirer and person hiring out the craft may refer disputes about the contents or implementation of the hire agreement, to which the General Conditions apply, to the Geschillencommissie Waterrecreatie, Post Box 90600, 2509 LP The Hague, The Netherlands.
3. The Arbitration Board will only consider a dispute if the hirer has notified the person hiring out the craft of his complaint within the set period.
4. The hirer must refer any dispute to the Arbitration Board in writing within three months after making his complaint to the person hiring out the craft, and include the names and addresses of the hirer and person hiring out the craft as well as a clear statement of the nature of the disagreement and the claim.
If the hirer appeals to the Arbitration Board about a disagreement, the person hiring out the craft shall be bound by its decision and can no longer appeal to a regular court of law.
5. The Arbitration Board is not competent to deal with a dispute concerning the simple non-payment of an invoice if no material complaint is involved.
If the hirer fails to pay his invoice on time, the person hiring out the craft may bring procedures in an ordinary court of law, provided the person hiring out the craft has allowed the hirer one month from the date of notification in which to pay, during which period the hirer has the opportunity to bring the case before the Arbitration Board.
6. If the person hiring out the craft refers a dispute to the Arbitration Board, the Board will proceed only after the hirer has been allowed one month to give a written undertaking that he will abide by the decision of the Arbitration Board and has deposited any outstanding amount he owes to the person hiring out the craft with the Board of Arbitration.
7. If the hirer brings a dispute before the Arbitration Board, the Board will proceed only after the hirer has deposited any outstanding amount owed to the person hiring out the craft with the Board of Arbitration. The hirer must pay this amount within a month into an account as specified by the Arbitration Board. Should the hirer fail to deposit the amount in time, he will be deemed not to accept the decision of the Arbitration Board.
8. The Arbitration Board's decision is regarded as binding advice. HISWA will act as guarantor to the hirer to ensure the Arbitration Board's binding advice is implemented. The guarantee will be valid up to a maximum of € 14.000,00 including BTW (value added tax).
In the case of bankruptcy, delayed payment or cessation of the business of the person hiring out the craft, the guarantee will be valid only if the hirer has brought the dispute before the Arbitration Board before one of the above situations arose. The guarantee does not apply if, the person hiring out the craft having referred the binding advice to a court of justice within two months after it was issued, the court rules that the Arbitration Board's advice is not binding.
The Arbitration Board does not consider disputes about amounts exceeding € 14.000,00 including BTW.
9. A charge will be made for arbitration of disputes.
10. If a dispute is referred to the Arbitration Board, items 2 and 3 of article 11 do not apply.
11. For the consideration of disputes the regulations concerning the Arbitration Board for Water Recreation (Reglement Geschillencommissie Waterrecreatie) apply.

CHAPTER VIII - EXCEPTIONS AND AMENDMENTS TO THE GENERAL CONDITIONS

ARTICLE 17

Individual exceptions, including amendments and additions to the General Conditions must be confirmed in writing.

ARTICLE 18

HISWA Association will amend the General Conditions only after consultation with the Consumentenbond and the ANWB. Amendments will not be implemented until two months after they have been published by the various organisations which undertake to publish them in their periodicals as soon as they have been ratified.

ARTICLE 19

The General Conditions may be translated from Dutch into another language. If there are discrepancies between different texts as the result of translation, the Dutch text will prevail.

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