

## GENERAL TERMS AND CONDITIONS FOR INTERMEDIARY SERVICES CONCERNING VESSELS

These are the General Terms and Conditions for Intermediary Services concerning Vessels applied by the association *HISWA Vereniging* (Netherlands Association of Business Owners in the Water Sports Industry) (hereinafter: Terms and Conditions). These Terms and Conditions were set up in consultation with the *Consumentenbond* (the Netherlands Consumers' Association) and the *ANWB* (the Netherlands Royal Dutch Touring Club) within the context of the *Coördinatiegroep Zelfregulering* (Self-Regulation Coordination Group) of the *SER* (the Netherlands Social and Economic Council). The Terms and Conditions apply exclusively to members of the Netherlands association *HISWA Vereniging*. *HISWA Vereniging* shall act against any misuse of these Terms and Conditions, which were filed with the Registry of the District Court of Amsterdam under file number 68/2018 on the 21<sup>st</sup> of June 2018.

### ARTICLE 1 - DEFINITIONS

The following definitions apply in these Terms and Conditions.

- a. Business Owner: an individual or a legal entity acting as an intermediary concluding an intermediary services contract with a consumer. This Business Owner is a member of *HISWA Vereniging*.
- b. Consumer: an individual acting as a client who concludes an intermediary services contract with a Business Owner. Consumers do not act in the name of their professions or businesses, but in their private capacities.
- c. Intermediary Services Agreement: an agreement to provide intermediary services for the purchase and/or sale of a vessel.
- d. Commission: the fee payable for the intermediary services provided for the purchase and/or sale of a vessel.
- e. Electronic/Electronically: via email or website.
- f. Consumer Complaints Board: the Consumer Complaints Board for Water Sports Activities (*Geschillencommissie Waterrecreatie*) in The Hague, the Netherlands.

All amounts given in these Terms and Conditions are including VAT.

### ARTICLE 2 - APPLICABILITY OF THESE TERMS AND CONDITIONS

1. These Terms and Conditions govern any agreement concerning the provision of intermediary services for the purchase and/or sale of vessels and for any other services the Business Owner is to provide in this context.
2. The Business Owner explicitly rejects any other general terms and conditions declared applicable by the Consumer.

### ARTICLE 3 - PROPOSAL/QUOTATION

1. A Business Owner shall submit his/its proposal verbally, electronically or in writing.
2. A verbal proposal expires if it is not immediately accepted, except if the Business Owner immediately states a term during which the proposal may be accepted.
3. A written or electronic proposal shall bear a date. If the proposal includes a validity period, the Business Owner is not permitted to modify or change this proposal within that period. If the proposal does not include a validity period, the Business Owner is not permitted to modify or change this proposal up to 14 days following the proposal date.
4. The Business Owner's proposal shall include:
  - a detailed and full description of the services to be provided by the Business Owner
  - the contract period
  - the commission and any additional charges
  - the date on which the services are to commence
5. The Business Owner shall provide the Consumer with a copy of these Terms and Conditions every time a proposal is submitted.

### ARTICLE 4 – AGREEMENT

1. An Intermediary Services Agreement is an agreement to perform services for which the Business Owner undertakes towards the Consumer, against payment of commission:
  - to act as an intermediary in concluding a purchase/sales contract between the Consumer and a third party
  - to assist in the usual finalisation of this purchase/sales contract.
2. The Intermediary Services Agreement is concluded the moment the parties agree on:
  - the asking price of the vessel
  - the commission level
  - the contract period
  - the way in which the agreement may be terminated, and
  - any other conditions applicable to the intermediary services.
3. The Intermediary Services Agreement and all agreements connected to it shall be laid down electronically or in writing where possible. In the event the parties verbally agree to modify or supplement an agreement, they shall confirm this promptly electronically or in writing.

### ARTICLE 5 - SERVICES

Under the Intermediary Services Agreement, the Business Owner shall provide the following services:

- a. providing advice concerning and negotiating the intended contract of sale
- b. assessment of the market value of the vessel to be sold, after which the asking price is determined in consultation with the Consumer
- c. taking action to bring the vessel concerned under the attention of potential buyers
- d. assessment and advice concerning the legal, financial, fiscal, technical and other relevant aspects connected to the intended contract of sale
- e. conducting sales negotiations with third parties on behalf of the

- Consumer, including the provision of any related advice
- f. active enhancement of concluding the contract of sale between the Consumer and a third party
- g. assistance in the usual finalisation of the sale

### ARTICLE 6 - ADDITIONAL ACTIVITIES

1. If it turns out the Business Owner needs to perform more activities than laid down in the Intermediary Services Agreement concluded with the Consumer, the Business Owner shall notify the Consumer beforehand.
2. The Consumer shall bear the costs for these additional activities if the parties reached agreement on this in writing beforehand.

### ARTICLE 7 - END OF THE AGREEMENT

1. The Intermediary Services Agreement ends:
  - a. in the event the Business Owner has completed the services, or
  - b. the agreed period has expired, or
  - c. the Consumer withdraws the assignment, or
  - d. the Business Owner returns the assignment, or
  - e. either party terminates the Agreement, or
  - f. the vessel has become unmarketable, for example due to the vessel's poor state of repair, serious damage or total loss, or because the Consumer intends to change the vessel's price to a level impeding the sale.
2. The Consumer may withdraw an assignment at any time and without observing a notice period. The Business Owner is then entitled to reimbursement of any costs incurred and payment of a percentage of the commission agreed.
3. The Business Owner will have completed his services as soon as the intended contract of sale has been concluded between the parties concerned. If the services are completed, the Business Owner shall continue to be obliged to assist the Consumer in the usual finalisation of the Agreement. Does the contract of sale contain a clause with one or more resolutive or suspensive conditions? The the Intermediary Services Agreement shall not be completed until said condition(s) can no longer be invoked.
4. The Business Owner may return the assignment for compelling reasons. A compelling reason is in any case the state of repair referred to in paragraph 1(f) of the present article. Another compelling reason is a seriously disturbed relationship between the Business Owner and the Consumer. In the event the Business Owner returns the proposal, the Business Owner shall confirm this electronically or in writing.
5. The Business Owner or the Consumer may terminate the assignment if the other party is in breach of the performance of its obligations. This shall not apply if the breach does not justify termination because of its special nature or minor importance. If either party terminates the Agreement, this party shall preferably do so electronically or in writing.

### ARTICLE 8 - LIABILITY

If the Business Owner has a vessel in its custody, the Business Owner shall only be liable for any damage caused to or by the vessel and its parts or appurtenances if this damage is a direct consequence of a breach attributable to:

- the Business Owner
- any individual employed by the Business Owner, and/or
- any individual the Business Owner appointed for the provision of the services

### ARTICLE 9 - BUSINESS OWNER'S OBLIGATIONS

1. The Business Owner shall provide the services to the best of the Business Owner's ability with due regard for the Consumer's interests.
2. The Business Owner shall regularly update the Consumer about the progress made by the Business Owner.
3. The Business Owner is obliged to take out and maintain adequate insurance cover for any loss and/or damage arising from an attributable breach of contract or an unlawful act.
4. The Business Owner shall not accept more than one assignment for intermediary services for one and the same vessel. In the event the Business Owner received a previous assignment for intermediary services for a particular vessel, the Business Owner shall not accept a new assignment for this vessel until the previous assignment has been demonstrably terminated.
5. In the event of a purchase/sales assignment, conclusion of the purchase/sales contract must not be dependent on an assessor's report drawn up by the same Business Owner.
6. The Business Owner shall disclose the name and address of the buyer or seller to the Consumer as soon as the parties have reached agreement on the price of the vessel and conditions of sale.

7. In the event the Consumer does not want his details to be disclosed to the prospective buyer or seller, the Business Owner shall effect the purchase/sale under the Business Owner's name.

#### ARTICLE 10 - CONSUMER'S OBLIGATIONS

1. The Consumer shall keep the vessel prepared and available for an inspection and/or trial trip.
2. The Consumer shall, to the best of his ability, provide the Business Owner with all information the Business Owner requires to perform the services.
3. The Consumer warrants that he is entitled to sell the vessel. The Consumer indemnifies the Business Owner for any related third-party claims.
4. The Consumer shall provide the Business Owner with all ship's papers.
5. In the event the Consumer intends to sell a vessel originating from a foreign country, he shall submit, no later than at the actual transfer of title to the vessel, a certificate of non-registration or deregistration issued by the relevant shipping register.
6. The slipway costs and surveyor's fees shall be payable by the party which ordered the related activities unless the parties agreed otherwise.
7. The Consumer shall have an adequate hull insurance and liability insurance for the vessel and shall maintain these until the transfer of title

#### ARTICLE 11 - TERMS OF PAYMENT

1. Commission shall be payable by the Consumer to the Business Owner as soon as the Consumer and a third party have reached agreement on purchase/sale of the vessel. This shall not apply in the event a resolutive condition included in the intended contract of sale becomes effective. The commission shall be due and payable on the date of transfer of title given in the original contract of sale.
2. In the event a concluded agreement is not performed, the Business Owner shall be entitled to receive the full commission. This does not apply if the Consumer demonstrates that non-performance of the contract cannot be attributed to the Consumer, in which case the Consumer shall pay the Business Owner not the set commission but the costs reasonably incurred. These costs shall amount not exceed 80% of the commission agreed.
3. In the event the Consumer and the third party agree different arrangements concerning the contract of sale or terminate all or part of the contract, the Business Owner shall continue to be entitled to the original commission.
4. The Business Owner shall make arrangements with the Consumer about the way in which moneys concerning the purchase/sale of the vessel will flow. The Business Owner shall confirm these arrangements to the Consumer in writing.
5. The Business Owner may set off the amounts payable to the Business Owner under the Intermediary Services Agreement and other costs in connection with the agreement against the amounts temporarily held by the Business Owner by reason of the purchase/sale.

#### ARTICLE 12 - ESTABLISHMENT OF INTERMEDIARY SERVICES

1. In the event the purchase/sales contract referred to in article 4(1) is concluded with the period of the Intermediary Services Agreement, the contract is assumed to have been concluded as a result of the Business Owner's intermediary services. This does not apply if the Consumer demonstrates the contract was concluded without any intermediary services provided by the Business Owner.
2. Was the Business Owner's assignment terminated without a contract of sale having been concluded? Then the Consumer does not have to pay commission. The Consumer does have to pay commission if the Consumer, within 12 months of termination of the Intermediary Services Agreement:
  - concludes the purchase/sales contract with the prospective party found through the Business Owner's services, or
  - makes the vessel available to the prospective party on a long term.The 'prospective party' is the party informed directly by the Business Owner during the period of the Intermediary Services Agreement about the vessel's availability for purchase or sale.

In the event either situation applies, full commission shall be payable by the Consumer to the Business Owner on the most recently applicable asking price they had agreed in writing.

#### ARTICLE 13 - COSTS IN THE EVENT OF PREMATURE TERMINATION OF THE AGREEMENT

1. Was a situation referred to in article 7(1) a cause for termination of the Intermediary Services Agreement? Then the costs reasonably incurred by the Business Owner shall be payable by the Consumer to the Business Owner. Fixed percentages apply to these costs, depending on the date on which the Intermediary Services Agreement was terminated:
  - a. In the event the agreement was terminated up to 2 months following the commencement date, the costs will amount 15% of commission agreed, calculated over the most recently applicable asking prices laid down in writing.
  - b. In the event the agreement was terminated between 2 and 4 months following the commencement date, the costs will amount 30% of commission agreed, calculated over the most recently applicable asking prices laid down in writing.
  - c. In the event the agreement was terminated between 4 and 9 months following the commencement date, the costs will amount 50% of

commission agreed, calculated over the most recently applicable asking prices laid down in writing.

- d. In the event the agreement was terminated more than 9 months following the commencement date, the costs will amount 80% of commission agreed, calculated over the most recently applicable asking prices laid down in writing.
2. The Consumer shall pay the fixed fee referred to in paragraph 1 unless the Consumer or Business Owner can demonstrate that the actual costs are considerably more or less. In that case, the Consumer shall reimburse the actual costs incurred. Costs shall also include the loss suffered and the lost profit incurred by the Business Owner.

#### ARTICLE 14 - OVERDUE PAYMENT

1. In the event of the Consumer's overdue payment, the Consumer shall be in default without any notice of default from the Business Owner being required. After expiry of the payment term, the Business Owner shall nevertheless send the Consumer one free-of-charge payment reminder, in which the Business Owner shall point out the default to the Consumer and gives the Consumer the opportunity to pay the invoice within 14 days. The Business Owner shall also state in the payment reminder that the Consumer is to pay extrajudicial collection costs in case of the Consumer's overdue payment.
2. In the event the 14-day term referred to in paragraph 1 has expired and the Consumer still has not paid, the Business Owner is entitled to demand payment without any further notice of default to the Consumer being required. The related extrajudicial costs may reasonably be charged to the Consumer by the Business Owner, for which maximum amounts apply in the Payment of Extrajudicial Collection Costs Decree [*Besluit vergoeding buitengerechtelijke incassokosten*]. Subject to any statutory changes, these maximum amounts are:
  - 15% of the first EUR 2,500 at a minimum of EUR 40
  - 10% of the next EUR 2,500
  - 5% of the next EUR 5,000
  - 1% of the next EUR 190,000
  - 0.5% of the remaining amount, at a maximum of EUR 6,775.

#### ARTICLE 15 - RIGHT OF RETENTION

1. In the event the Consumer fails to meet his payment obligations, the Business Owner may invoke the right of retention. This means the vessel to which the Intermediary Services Agreement applies can be kept in the Business Owner's custody until the Consumer's payment of the full amount due, including the costs arising from the right of retention.
2. In the event the Consumer fails to meet his payment obligations fully or adequately, the Business Owner may invoke the right of retention to the extent justified by the Consumer's failure.
3. The Business Owner's right of retention shall lapse upon:
  - the Consumer's filing of the dispute with the Consumer Complaints Board referred to in article 17 of the Terms and Conditions, and
  - said Board's confirmation to the Business Owner that the Consumer has deposited the amount due.

#### ARTICLE 16 - COMPLAINTS

1. In the event the Consumer has any complaints about the performance of the Agreement, the Consumer shall notify the Business Owner electronically or by letter within a reasonable period (at the appropriate time). The Consumer shall give a sufficient description and explanation of the complaint(s).
2. In the event the Consumer has any complaint about the invoice, the Consumer shall notify the Business Owner preferably by letter within a reasonable period (at the appropriate time) following receipt of the invoice. The Consumer shall give a sufficient description and explanation of the complaints in this letter.
3. In the event the Consumer fails to submit a complaint within the specified time, the Consumer may forfeit any ensuing rights. The Consumer shall retain the ensuing rights in case an overdue complaint cannot reasonably be attributed to the Consumer.
4. In the event the Consumer and Business Owner fail to solve the complaint by mutual agreement, a dispute does exist.

#### ARTICLE 17 - DISPUTE SETTLEMENT RULES

1. In the event of a dispute between the Consumer and the Business Owner, either party may submit this dispute to the Consumer Complaints Board for Water Sports Activities (*Geschillencommissie Waterrecreatie*), Bordewijklaan 46, Postbus 90600, 2509 LP The Hague, the Netherlands ([www.sgc.nl](http://www.sgc.nl)). The following conditions shall apply:
  - a. The dispute concerns the conclusion or performance of an agreement between the Business Owner and the Consumer.
  - b. The agreement concerns services or matters which the Business Owner has provided or is to provide to the Consumer.
  - c. The agreement is subject to these General Terms and Conditions.
2. The Consumer Complaints Board will not handle a dispute unless:
  - a. the Consumer first submitted his complaint to the Business Owner
  - b. the Business Owner and the Consumer have not jointly reached a solution
  - c. the dispute was filed with the Consumer Complaints Board within 12 months following the date on which the Consumer submitted his complaint to the Business Owner
  - d. the dispute was filed with the Consumer Complaints Board as a letter or in an other format defined by this Board.
3. In principle, the Consumer Complaints Board only handles any dispute at a financial interest not exceeding EUR 14,000. In the event of a dispute

- at a financial interest exceeding EUR 14,000, the Board can only handle this dispute if both parties explicitly agree to this.
4. In the event a Consumer files a dispute with the Consumer Complaints Board, the Business Owner is obliged to accept this. In the event the Business Owner intends to file a dispute with the Consumer Complaints Board, the Business Owner shall request the Consumer's agreement within 5 weeks and notify the Consumer that, if the Consumer fails to respond within these 5 weeks, the Business Owner may commence legal proceedings.
  5. In the handling and settlement of the dispute, the Consumer Complaints Board shall apply the regulations applicable to this Board. A copy of these regulations shall be sent to the Consumer and/or Business Owner on request. The settlements of the Consumer Complaints Board are binding opinions. Disputes are handled against payment of a fee.
  6. The court and the Consumer Complaints Board have the exclusive right to examine disputes between the Business Owner and the Consumer.

#### **ARTICLE 18 - PERFORMANCE BOND**

1. *HISWA Vereniging* guarantees that its members shall comply with the binding opinions of the Consumer Complaints Board. This does not apply if a member decides to file an opinion with a Court for review within 2 months following the date on which the opinion was sent. In the event the Court decides to uphold the opinion after review while the resulting judgment is irrevocable, the guarantee shall recommence.
2. The payment made by *HISWA Vereniging* to the Consumer shall not exceed EUR 10,000 per binding opinion. This also applies if, according to the binding opinion, the Consumer is entitled to receive more than EUR 10,000 from the Business Owner. In that case, the Consumer shall receive EUR 10,000 from *HISWA Vereniging*, and *HISWA Vereniging* has a best-efforts obligation to ensure the Business Owner shall pay the remaining amount.
3. To invoke this guarantee, the Consumer shall submit a written request to that purpose with *HISWA Vereniging*. The Consumer shall furthermore transfer the claim on the Business Owner to *HISWA Vereniging*. In the event the claim exceeds EUR 10,000, the Consumer essentially needs to transfer only the claim amount up to EUR 10,000. The Consumer may nevertheless transfer the claim amount in excess of EUR 10,000, in

which case *HISWA Vereniging* shall claim payment in its own name and at its own expense. If *HISWA Vereniging* succeeds, it shall pay the amount to the Consumer.

4. *HISWA Vereniging* does not provide a performance bond in the event any of the following situations apply and before the Consumer has complied with the formal acceptance requirements for the Consumer Complaints Board's handling of the dispute:
  - a. The Business Owner has been granted a suspension of payment
  - b. The Business Owner has been declared bankrupt/put into liquidation
  - c. The Business Owner's business operations have effectively been terminated

The determining factor is the date on which the business continuation was entered in the Trade Register, or an earlier date which *HISWA Vereniging* can demonstrate convincingly as the date on which the business operations were in effectively terminated.

The 'formal acceptance requirements' are understood to mean those actions the Consumer needs to carry out to ensure the Consumer Complaints Board's handling of the dispute. This includes payment of a complaint-filing fee, the submission of a filled-in and signed questionnaire, and any deposit.

#### **ARTICLE 19 - CHOICE OF LAW**

All disputes under this Agreement are governed by the laws of the Netherlands unless any mandatory provision stipulates the applicability of any other national law.

#### **ARTICLE 20 - DEROGATION FROM THE TERMS AND CONDITIONS**

Supplements to or derogations from these Terms and Conditions are permitted only if they are not to the Consumer's disadvantage and if they have been laid down in a written or electronic manner which facilitates easy filing by the Consumer.

#### **ARTICLE 21 - COMPLAINTS**

Any amendments by *HISWA Vereniging* to these Terms and Conditions shall be made in consultation with the *ANWB* and the *Consumentenbond*.