



HISWA
VERENIGING

HISWA GENERAL TERMS AND CONDITIONS FOR HIRING VESSELS including the hire of open sailing/motor boats for a maximum of 2 days

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 Sociaal-Economische Raad (Social Economic Council). Deposited at the Court Registry in Amsterdam on 1 April 2011 under number 41/2011. HISWA Association shall take action against any misuse, so it can also genuinely achieve the required exclusivity. Members are therefore requested to inform the HISWA office if misuse is noticed. To enforce this, copyright has been established on the various texts.

ARTICLE 1 - DEFINITIONS

The prices stated in these General Terms and Conditions are inclusive of purchase tax (BTW) and in these conditions the following words mean:

- Proprietor:** natural or legal person who, as a member of HISWA Association, draws up a contract relating to a vessel or part of a vessel.
- Consumer:** natural person who does not act in a professional or business capacity and who enters into a contract relating to a vessel or part of a vessel.
- Vessel:** an object that is constructed to remain in water and to move in it, including the pieces of equipment that form part of it and the contents. Also, the hull of a vessel being built.
- Open sailing and motor boat:** vessel without cabin accommodation.
- Hire agreement:** the contract by which the proprietor undertakes to give the consumer the use of a vessel without crew in return for payment.
- Electronic:** per e-mail or website.
- Inventory:** list of objects that go together with the vessel.
- List of conditions:** list drawn up by the parties before sailing to record the condition of the vessel and, in particular, the presence of any damage.
- Disputes Committee:** Water Recreation Disputes Settlement Committee in The Hague.

ARTICLE 2 - APPLICABILITY

- These General Terms and Conditions are applicable to all vessel hire contracts concluded between the proprietor and the consumer.
- These Terms and Conditions can be translated from Dutch into a foreign language. Should there be any differences in the texts as a result of the translation, the Dutch text prevails.

ARTICLE 3 - THE OFFER/THE QUOTATION

- The proprietor makes the offer orally, in writing or in an electronic form.
- An oral offer must be accepted immediately, otherwise it will lapse, unless a period has been defined for acceptance.
- The written or electronic offer is dated and is irrevocable during the acceptance period or, if a period has not been defined, for ten working days after the offer date.
- 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 from which the vessel sets off and at which it arrives;
 - the hire charges with any additional costs and the method of payment.
- A copy of these General Terms and Conditions accompanies the offer.

ARTICLE 4 - THE CONTRACT

- The contract is finalised when the consumer accepts the offer. If the assignment is granted electronically, the proprietor sends an electronic confirmation to the consumer.
- The contracts are preferably recorded either in writing or electronically.
- If the contract is in writing, a copy should be sent to the consumer.

ARTICLE 5 - THE PRICE AND PRICE ALTERATIONS

- The hire price and any extra costs the consumer is required to pay are agreed beforehand, as is any entitlement to make an interim price alteration.
- Alterations in taxes, excise duties and other such government levies can be passed on by the proprietor at any time.

ARTICLE 6 - CONDITIONS OF PAYMENT

- Payment of the hire charges must be made within ten working days of receiving the invoice, but in any case on the date on which the agreed hire period begins, and should take place at the proprietor's office or by transfer to a bank account specified by the proprietor.
- The consumer is in default once the payment date has passed. The proprietor sends a payment reminder once the date has passed and gives the consumer the chance to pay within fourteen days of receiving this payment reminder. If, after the date stated in the payment reminder, there is still no payment and the consumer is not able to plead circumstances beyond his control, the proprietor has the right to charge interest, once the payment date has passed. This interest is equal to the statutory interest plus 3% on an annual basis over the amount due.
- If the consumer remains in default of paying the amount owing after the payment reminder has been sent, the proprietor also has the right to increase the amount referred to in paragraph 2 by adding the collection charges. Extrajudicial costs include all costs the proprietor has to charge for the services of lawyers, enforcement agents and anyone else he requires for the recovery of the amount due. The extrajudicial costs are determined as follows:
 - 15% over the first € 2500 of the amount due;
 - 10% over the next € 2500 of the amount due;
 - 5% over the following € 5000 of the amount due;
 - 1% over the following € 15,000 of the amount due.
- Any complaints about invoices should be submitted by the proprietor, preferably in writing and adequately described and explained, within a reasonable period after the receipt of the invoice in question.

ARTICLE 7 - CANCELLATION

- If the consumer wishes to cancel the hire agreement, he must inform the proprietor as soon as possible in writing or electronically. In the event of cancellation, the consumer is obliged to pay the proprietor a 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, cancellation on the date of commencement of the hire period, all aforementioned compensation amounts with a minimum of € 68.
- Contrary to the provisions of the previous paragraph, if a consumer cancels a hire agreement in which the hire costs are less than or equal to € 250, a fixed compensation is payable, amounting to:
 - 0% of the agreed hire charges in the event of cancellation at least one week before commencement of the hire period;
 - 50% of the agreed hire charges in the event of cancellation at least two days before commencement of the hire period;
 - 100% of the agreed hire charges in the event of cancellation within two days of commencement of the hire period.
- The proprietor may cancel a hire agreement pertaining to open sailing and/or motor boats for which the period is not more than two days. If the hire company does not inform the consumer in writing in good time, the proprietor is required to pay the consumer 25% of the amount due in hire charges.
- If the consumer cancels, he can ask the proprietor to accept substitution by a third party. If the aforementioned third party is acceptable to the proprietor, the consumer has to pay only 10% of the agreed hire charges with a minimum of € 45.50 and a maximum of € 113.50.

ARTICLE 8 - THE PROPRIETOR'S OBLIGATIONS

- At the start of the hire period, the proprietor makes the vessel available to the consumer. The proprietor ensures the vessel is in good condition, that it can serve the purpose it is intended for, and that it is fitted with reliable safety equipment that is suitable for the sailing area agreed on.
- The proprietor is required to insure the vessel for use by the consumer so that there is adequate cover for third-party liability, hull damage and theft when sailing in the area agreed to by both proprietor and consumer.
- In the event of bad weather (wind force 5 Bft or more) and/or excessive use of alcohol and/or drugs, the proprietor can forbid the consumer to depart or order the consumer to return to the marina or to sail without delay to a mooring point specified by the proprietor.
- Before the consumer departs in the vessel, the proprietor is required to sign the list of conditions as correct. The proprietor makes a copy of the signed list of conditions and gives this to the consumer.
- The proprietor provides the consumer with an inventory before the latter departs in the vessel.

ARTICLE 9 - THE CONSUMER'S OBLIGATIONS

- The consumer should possess 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, which should be evaluated by the proprietor, then the consumer should be aged at least 18 years. This age limit of 18 years does not apply to open sailing and/or motor boats.
- The consumer is required to check the inventory, as stated on the inventory list given to the consumer by the proprietor and also to check the presence in the vessel of safety equipment suitable for the sailing area in question.
- Before departing in the vessel, the consumer is required to sign the list of conditions as correct.
- If the inventory present on board does not correspond with the inventory as stated in the inventory list, or if the safety equipment is incomplete or defective, the consumer should inform the proprietor of this prior to departure.

- The consumer uses the vessel with due care and diligence, in the manner of a good captain and in accordance with the intended purpose. The consumer may not alter the vessel in any way. The consumer may not put the vessel at anyone else's disposal without the written permission of the proprietor.
- At the end of the hire period, the consumer transfers the vessel to the proprietor at the agreed time and place and in the same state in which he received it.
- The costs directly related to the use of the vessel, such as fees for harbours, bridges, quays, locks and for mooring, and the costs of fuel are paid for by the consumer.
- The consumer requires permission from the proprietor for repairs to be carried out. The proprietor repays the costs of the repairs to the consumer if specified invoices are submitted.
- The costs of normal maintenance and repair of defects are at the expense of the proprietor.
- The consumer must inform the proprietor as soon as possible of any damage of any sort or, as the case may be, of the facts and/or circumstances which could reasonably lead to damage.
- The consumer must follow the proprietor's instructions to safeguard the vessel and to preserve the rights of the proprietor.

ARTICLE 10 - LIABILITY

- The consumer is responsible for any damage to and/or loss of the vessel that is not covered by insurance and which arises during the time that he has possession of the vessel. The consumer is not responsible 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.
- The consumer is fully responsible for any damage or consequential loss which is caused by him and which is not covered by insurance on the grounds of the insurance referred to in Article 8, in the event that he uses the vessel in a sailing area not agreed upon by both him and proprietor.
- The consumer is fully responsible for any damage and costs, where these are not covered by insurance on grounds of the insurance referred to in Article 8, and which are the result of not following the instructions issued by the proprietor in order to safeguard the vessel and preserve the rights of the proprietor as referred to in Article 9, paragraph 10.
- The proprietor is not responsible for damage to items or for any personal injury/accident unless the damage and/or that injury/accident is a direct consequence of a defect in the vessel that the proprietor has made available.

ARTICLE 11 - NONCOMPLIANCE WITH THE CONTRACT

- If the proprietor does not comply with his obligations in respect of the hire agreement, the consumer can deem the hire agreement to be terminated, without judicial intervention. The proprietor must, in that case, immediately pay back all that has already been paid.
- The consumer is also entitled to remuneration as a result of any damage he has suffered, unless the shortcomings cannot be attributed to the proprietor.
- The above-mentioned does not apply if the proprietor offers an alternative that is reasonable for both parties.
- If the vessel is handed over at the agreed place but at a later time than was agreed, the proprietor is entitled to increase the hire charges proportionally and to receive payment for further damage or consequential loss, unless the late return cannot be attributed to consumer.
- If the vessel, when handed over by the consumer, is not 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 proprietor is entitled to restore the vessel to the state it was in at the commencement of the hire period, the costs being for the consumer. This does not apply if the referred to costs are covered by the insurance.

ARTICLE 12 - COMPLAINTS

- Complaints regarding the implementation of the contract should be made known to the proprietor in written or electronic form and should be described and explained adequately, within a reasonable period, once the consumer has noticed or should have noticed the defects.
- Not submitting the complaint on time can lead to the consumer losing his right regarding the matter, unless it is unreasonable to blame this lateness on the consumer.
- If it becomes clear that the complaint cannot be resolved by mutual consultation, a dispute situation has arisen.

ARTICLE 13 - DISPUTE SETTLEMENT RULES

- Disputes between consumer and proprietor regarding the preparation or execution of contracts regarding services and items delivered or to be delivered by this proprietor, and to which these Terms and Conditions apply, can be brought by either the consumer or the proprietor before the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl).
- The Disputes Settlement Committee mediates in a dispute only if the consumer has first submitted his complaint to the proprietor.
- The Disputes Settlement Committee mediates in a dispute only if the dispute involves a sum of not more than € 14,000.
- Disputes involving financial interests greater than € 14,000 may only be handled by the Committee if both parties explicitly agree to do so.
- Once the complaint has been submitted to the proprietor, the dispute should be submitted to the Disputes Settlement Committee no more than three months later.
- If a consumer brings a dispute before the Disputes Settlement Committee, the proprietor is bound to this decision. If the proprietor brings a dispute before the Disputes Settlement Committee, he is required to ask the consumer to declare within five weeks whether he agrees to this. The proprietor is also required to announce that he will deem himself free to bring the dispute before the court, once the aforementioned period has ended.
- The Disputes Settlement Committee pronounces its judgment with due regard for the terms of the regulation that apply to the Committee. The decision of the Disputes Settlement Committee is made in accordance with that regulation by way of a binding decision. The regulation is sent if required. A fee is payable for hearing a dispute.
- Only a court or the above-mentioned Disputes Settlement Committee is authorised to take cognisance of disputes.

ARTICLE 14 - GUARANTEE OF COMPLIANCE/PERFORMANCE BOND

- HISWA Association guarantees that its members will comply with binding decisions, unless a member decides to submit the binding decision to the court for review within two months of the decision being issued. This guarantee is restored if the binding decision is upheld after review by the court and the ruling that demonstrates this has become definitive and is not open to appeal. An amount of up to €10,000 maximum for each binding decision is paid to the consumer by the HISWA Association. In the case of amounts greater than € 10,000 for each binding decision, the consumer receives an amount of € 10,000. For larger sums, the HISWA Association is obliged to make strenuous efforts to ensure that the member complies with the binding decision.
- Application of this guarantee demands that the consumer makes a claim to that effect in writing to HISWA Association and that the amount he claims from the proprietor is transferred to HISWA Association. If the amount claimed from the proprietor is more than € 10,000, the consumer is invited to transfer his payment claim, where this totals more than € 10,000, to HISWA Association, whereupon HISWA Association will request this to be paid under its own name and at its own cost in settlement to the consumer.
- HISWA Association does not supply a performance bond if, before the consumer complies with the specific intake requirements relating to the handling of the dispute (payment of complainant fees, return of completed and signed questionnaire, and a deposit of an amount of money where applicable), one of the following situations holds:
 - the member has been granted a moratorium;
 - the member has been declared bankrupt;
 - the company activities have effectively been terminated.The date on which cessation of company operations is entered into the Trade Register is the determining factor, or an earlier date for which HISWA Association can make a plausible case for demonstrating that company activities were effectively terminated.

ARTICLE 15 - DEVIATION FROM THE CONDITIONS

Individual deviations from these General Terms and Conditions, including supplements or additions, are required to be recorded in writing or in electronic form after agreement by both proprietor and consumer.

ARTICLE 16 - AMENDMENTS

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

ARTICLE 17 - APPLICABLE LAW

Dutch law is applicable in all disputes relating to this contract, unless another national law is applicable on grounds of mandatory rules.