



**HISWA**  
VERENIGING

## **HISWA GENERAL CONDITIONS CONCERNING YACHT BROKERS**

The General Conditions concerning yacht brokers of the HISWA Association (Netherlands Association of Enterprises in Water Recreation) were drawn up in March 1999 in consultation with the Consumentenbond (Consumers' Association) and the ANWB (Road Users' Association) as part of the programme of the Coördinatiegroep Zelfreguleringsoverleg (Self-Regulation Coordination Group) of the Sociaal Economische Raad (Social Economic Council).

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### CHAPTER I -APPLICATION

#### **ARTICLE 1**

Exclusive of any general conditions pertaining to the principal or a third party, these conditions apply only if the yacht broker is a member of the HISWA Association, Yacht Brokers' Section, and is registered in the Kingdom of the Netherlands with an entry in the appropriate trade register. The yacht broker specifically rejects any general conditions which the principal may wish to apply.

### CHAPTER II -BROKERAGE AGREEMENT

#### **ARTICLE 2**

1. A brokerage agreement embodies an assignment whereby the yacht broker undertakes to act as broker on behalf of the principal for an agreed fee, and to draw up and sign the proposed contract with a third party for and on behalf of the principal. The brokerage agreement shall not deviate from these General Conditions, so as to be to the disadvantage of the principal if he is not acting in the course of his trade or business.
2. These conditions may be translated from Dutch into another language. In the case of discrepancy between the texts resulting from translation, the Dutch text will prevail.

#### **ARTICLE 3**

Under the brokerage agreement the yacht broker offers the following services:

- discussion of and advice in drawing up the proposed contract;
- assessment of the market value of the object under consideration;
- assessment of and advice regarding the legal, financial, fiscal, technical and other relevant aspects related to the proposed contract;
- advice about third parties and discussions with third parties on behalf of the principal;
- positive action to achieve an agreement between the principal and a third party;
- assistance during the completion of the contract.

#### **ARTICLE 4**

Should the assistance required from the broker for fulfilment of the contract involve the provision of services in addition to those made available under the brokerage agreement, he should notify the principal in advance. The principal is obliged to pay for any additional services regarding which prior agreement has been reached.

#### **ARTICLE 5**

1. The brokerage agreement will terminate under the following circumstances:
  - a. if cancelled by either party;
  - b. on expiry of its agreed term;
  - c. on fulfilment of the proposed contract between the principal and a third party with the broker's assistant, if closed;
  - d. if the object becomes non-negotiable because of the state it has fallen into, severe damage, total loss or if the principal demands re-negotiation of the object's price.
2. The brokerage agreement may be cancelled only upon written notice.

#### **ARTICLE 6**

1. If the brokerage agreement concerns the sale or purchase of a craft, the yacht broker cannot act for both the seller and the buyer in his capacity as principal, if negotiations concern one and the same object;

2. If the yacht broker has been asked to sell or purchase a craft, the contract cannot be conditional on an expert report written by the same broker.
3. The yacht broker must advise the principal in writing of the name and address of the purchaser as soon as the parties have agreed on the price of the object and the conditions of sale.

#### CHAPTER III -LIABILITY

##### **ARTICLE 7**

If the yacht broker has charge of a craft, he is liable only for any damage to or caused by the object, its parts or equipment, due to a circumstance for which he and/or his staff can be held responsible.

##### **ARTICLE 8**

The yacht broker is not responsible for the condition, equipment or description (specification) of the object unless he knew or, given his expertise, should have known that the principal provided incorrect information regarding the object, or unless he, given his expertise, withheld or misrepresented information about the object's characteristics, which was of material significance to the purchaser in relation to closure of the contract.

##### **ARTICLE 9**

The principal guarantees the accuracy of his description, the information he has provided about the object and -if there is question of a sale -his competence to sell the object.  
The principal indemnifies the yacht broker against third party claims.

##### **ARTICLE 10**

The obligation of the yacht broker to ascertain the accuracy of the information provided by the principal is confined to any securities or other third party rights attached to the object, in as far as these are disclosed in the records of boats registered in The Netherlands.

#### CHAPTER IV -OBLIGATIONS OF THE PRINCIPAL

##### **ARTICLE 11**

The principal must ensure at his own expense that the craft is ready and available for inspection and/or a trial cruise. Slipway and professional fees are payable by whoever gives the order for them, unless there is an alternative agreement.

##### **ARTICLE 12**

The principal must maintain proper hull and third party insurance cover for the craft.

#### CHAPTER V -CLAIMS

##### **ARTICLE 13**

Any complaint about the fulfilment of the brokerage agreement should preferably be sent in the form of a clear and detailed written statement to the yacht broker within a reasonable period following the date on which the principal becomes aware of, or may reasonably be expected to have become aware of, the matter in question. The principal is liable for the financial consequences of any failure on his part to make a claim in good time.

#### CHAPTER VI -CONDITIONS OF PAYMENT

##### **ARTICLE 14**

1. The yacht broker's fee is due as soon as the principal and a third party have come to an initial agreement about the sale, unless the proposed agreement contains a condition to the contrary. Any subsequent alternative agreements between the principal and a third party, or the cancellation of (part of) the agreement will not affect the yacht broker's fee in any way.
2. The yacht broker will accept money from a sale or purchase on behalf of the principal. He will keep such money for the principal in a separate account. The yacht broker may deduct his fee, as specified in the brokerage agreement, from the amount he is holding.

##### **ARTICLE 15**

1. If the proposed contract is concluded during the course of the brokerage agreement, the former will be deemed to have come about through the mediation of the yacht broker, unless the principal can show that the proposed contract was signed without the yacht broker's mediation.
2. If the principal is able to prove that the proposed contract was concluded during the course of the brokerage agreement but without the yacht broker's mediation, 50% of the fee based on the latest confirmed asking price shall be paid to the yacht broker. Unless there is sufficient proof, the principal shall pay the yacht broker the full fee based on the asking price.
3. If the principal succeeds in closing the proposed contract within nine months after the end of his agreement with the yacht broker, with a prospective buyer who had personally been advised by the yacht broker that the craft was for sale, or if the principal allows the said client long-term use of the craft within the nine-month

period, the principal must nevertheless pay the yacht broker the full fee based on the latest asking price as confirmed in the written agreement.

4. Clause 3 does not apply if the brokerage agreement has been cancelled for valid reasons, or has expired, and if the principal has entered into a similar brokerage agreement with another yacht broker who is also a member of HISWA section Yacht Brokers.

#### **ARTICLE 16**

1. If the principal makes fulfilment of the brokerage agreement impossible by any reasonable standards, or terminates (cancels) the brokerage agreement, or if the principal gives a third party long-term use of the object of the brokerage agreement during the term of the brokerage agreement, he will be liable to compensate the yacht broker the expenses that the latter has incurred in fulfilment of his side of the agreement.
2. If the brokerage agreement comes to an end for one of the reasons given in Article 5, clause 1, sub clause d, the principal must reimburse the yacht broker for any reasonable expenses incurred.
3. The expenses referred to in clause 1 of this article are fixed at:  
15% of the agreed brokerage fee in the event of termination (cancellation) within two months of the start of the brokerage agreement;  
30% of the agreed brokerage fee in the event of termination (cancellation) within four months of the start of the brokerage agreement, but more than two months after the start of the brokerage agreement;  
50% of the agreed brokerage fee in the event of termination (cancellation) more than four months after the start of the brokerage agreement.

#### **CHAPTER VII -DEFAULT, RIGHT OF LIEN**

##### **ARTICLE 17**

1. If the fee or any costs payable in accordance with one or more of these articles is or are not paid to him in time, the yacht broker may charge the principal interest at a rate equal to the legally specified rate plus 3% per year on the amount owing to him, calculated from the date on which the sum or sums in question became due.
2. If one of the parties is forced to take legal advice concerning a dispute arising from the brokerage agreement, the defaulting party, or the party who is ruled against shall (also) be liable for legal costs. Costs will be set at 15% of the outstanding amount, with a minimum of € 115,00 plus real costs, unless the other party can prove that a lower minimum amount would have sufficed. The above is without prejudice to Article 19, clause 10, of these General Conditions.

##### **ARTICLE 18**

1. The yacht broker may retain possession of the object of the brokerage agreement until the principal has paid the amount he owes in full -including any costs resulting from the right of lien -unless the purchaser has paid the purchase price into the account referred to in Article 14, clause 2.
2. The yacht broker holds the lien on the object of the brokerage agreement, wherever it may be located or moored, for any outstanding amounts the principal may owe him, unless the buyer has paid the purchase price into the account referred to in Article 14, clause 2.
3. The yacht broker loses the rights of possession and lien as soon as the principal refers the dispute to the Board of Arbitration, as referred to in Article 19 of these General Conditions, and the Arbitration Board has confirmed that the amount owed by the principal to the yacht broker has been deposited with the board.

#### **CHAPTER VIII -DISPUTES: THE BOARD OF ARBITRATION AND REGULAR JURISDICTION**

##### **ARTICLE 19**

1. All disputes relating to the brokerage agreement are subject to Dutch law. Only Dutch courts of law or the Board of Arbitration are competent to deal with such disputes.
2. Both the principal and the yacht broker are entitled to refer disputes relating to the contents or execution of a brokerage agreement covered by these General Conditions to the Board of Arbitration (Geschillencommissie Waterrecreatie, Postbox 90600, 2509 LP The Hague, The Netherlands).
3. The Board of Arbitration will only deal with a dispute if the principal has advised the yacht broker of his complaint within the required period.
4. The principal must refer the dispute in writing to the Board of Arbitration within three months of making his complaint known to the yacht broker, stating the names and addresses of the principal and the yacht broker and clearly describing the nature of the dispute and his claim. Once the dispute has gone before the Board of Arbitration, the yacht broker is bound by its decision and cannot refer the case to an ordinary court of law.
5. The Board of Arbitration is not authorised to arbitrate in cases concerned merely with non-payment of an invoice where no material complaint is involved. If the principal fails to pay an invoice in time, the yacht broker may take the case to an ordinary court, provided the yacht broker has allowed the principal a month from the date when the warning was issued, to take the dispute to the Board of Arbitration.
6. If the yacht broker takes a dispute to the Board of Arbitration, the Board will not consider the case unless the principal has indicated in writing within one month that he will abide by the Arbitration Board's decision and has deposited any outstanding amount with the Board of Arbitration.

7. If the principal takes a dispute to the Board of Arbitration, the Board will not consider the case unless the principal has deposited any amount owing to the yacht broker with the Board of Arbitration, paying it into the bank account indicated by the Board. Should the principal fail to deposit the money in time, the assumption will be that he will not abide by the Board's decision.
8. The ruling of the Arbitration Board constitutes binding advice. HISWA guarantees that the advice given by the Board of Arbitration will be carried out. The guarantee covers amounts up to € 14.000,00. In the case of bankruptcy, suspension of payment or the termination of the yacht broker's business, the guarantee will only be valid if the principal took the dispute to the Board of Arbitration before any of the above situations arose. The guarantee is not valid if the yacht broker refers the matter of the binding advice to a court of law within two months of receiving it and if the court overrules the advice without granting leave of appeal. The Arbitration Board cannot consider cases where the disputed sum exceeds € 14.000,00 including value added tax.
9. A fee will be charged for arbitration.
10. If a dispute is referred to the Board of Arbitration, article 17, clause 2, shall not apply.
11. The way in which disputes are settled is further described in the Procedural Regulations of the Board of Arbitration Water Recreation.

## CHAPTER IX -EXCEPTIONS AND AMENDMENTS

### **ARTICLE 20 -EXCEPTIONS**

Incidental exceptions and additions to these General Conditions must be confirmed in writing.

### **ARTICLE 21 -AMENDMENTS**

HISWA Association will not amend these General Conditions without prior discussion with the Consumentenbond (Consumer Association) and the ANWB (Road Users' Association). Such amendments will come into effect two months after they have been published by the said organisations, which have undertaken to publish amendments in their journals as soon as practicable following formulation.

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