

## **HISWA GENERAL TERMS AND CONDITIONS FOR SAILING SCHOOLS, DIVING SCHOOLS AND FISHING COURSES**

These General Terms and Conditions for Sailing Schools, Diving Schools and Fishing Courses 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 Social Economic Council [SER]. The Terms and Conditions apply exclusively to members of HISWA Association. HISWA Association will take action against any misuse. The Terms and Conditions have been filed at the office of the district court in Amsterdam on the 21<sup>st</sup> of June under number 69/2018.

### **ARTICLE 1 – DEFINITIONS**

The following definitions are used in these Terms and Conditions:

- a. *Entrepreneur*: an individual or legal entity that, as a member of HISWA Association, enters into commercial contracts to give lessons or other forms of instruction, on board a vessel or otherwise.
- b. *Consumer*: an individual, not acting in the exercise of his profession or business but in a personal capacity, that enters into a contract with an entrepreneur that is a member of the HISWA Association to receive lessons or other forms of instruction, on board a vessel or otherwise.
- c. *Course member*: an individual, not acting in the exercise of his profession or business but in a personal capacity, that receives lessons or other forms of instruction, on board a vessel or otherwise.
- d. *Group*: a group whose members, not acting in the exercise of their profession or business but in a personal capacity, receive lessons or other forms of instruction, on board a vessel or otherwise. The group comprises private individuals and is represented by the consumer that has entered into the contract.
- e. *Vessel*: an object that is constructed to remain in water and to move in it, including the equipment and inventory that form part of it. In these Terms and Conditions the vessel is explicitly one that is intended for sports or leisure activities.
- f. *Contract*: a contract between the entrepreneur and the consumer, under which the entrepreneur undertakes, in return for payment, to give lessons or other forms of instruction to the consumer and to one or more persons for whom this has been agreed, on board a vessel or otherwise.
- g. *Electronic*: by e-mail or via a website.
- h. *Disputes Committee*: the Water Recreation Disputes Settlement Committee in The Hague.

All the amounts stated in these General Terms and Conditions are inclusive of VAT.

### **ARTICLE 2 – APPLICABILITY OF THESE TERMS AND CONDITIONS**

These General Terms and Conditions are applicable to every commission contract entered into between the entrepreneur and the consumer.

### **ARTICLE 3 - THE OFFER/QUOTATION**

1. The entrepreneur makes his offer or quotation verbally, in writing or by electronic means.
2. A verbal offer lapses if it is not accepted immediately, unless the entrepreneur has given a deadline for acceptance of the offer.
3. A written or electronic offer must be dated. If a term of validity is stated in the offer, the entrepreneur may not change or withdraw the offer within that period. If no term of validity is stated, the entrepreneur may not change or withdraw the offer within ten days after the date

of the offer.

4. In his offer the entrepreneur states in any event:
  - the nature, content and scope of the services he will provide
  - the cost of the course and any additional expenses
  - the date and time on which the instruction starts and ends.
5. The entrepreneur is to provide a copy of these General Terms and Conditions with each offer.

#### **ARTICLE 4 – THE CONTRACT**

1. A contract is formed once the consumer accepts the entrepreneur's offer. If the consumer accepts this offer by electronic means, the entrepreneur sends the consumer a confirmation by electronic means as well.
2. All contracts are recorded preferably in writing or by electronic means.
3. In the case of a written contract the entrepreneur must always give the consumer a copy.

#### **ARTICLE 5 – PRICE AND PRICE ALERATIONS**

1. The entrepreneur and the consumer agree in advance:
  - how much the consumer has to pay for course fees and any extra expenses
  - whether the entrepreneur is permitted to alter the price at random times and if so, under what conditions.
2. If the entrepreneur puts through a price change within three months after the conclusion of the contract, the agreed price remains the same.
3. If the entrepreneur raises the price more than three months after the conclusion of the contract, the consumer is allowed to cancel the contract, except if the contract states that the instruction will start more than three months after the conclusion of the contract.
4. The entrepreneur may always pass on the consumer any changes in taxation, excise duties and similar levies imposed by the government.

#### **ARTICLE 6 - CONDITIONS OF PAYMENT**

1. The consumer must pay the course fees within 14 days after receipt of the invoice, but in any case on the date on which the course begins. He can pay at the entrepreneur's office or by transfer to a bank account specified by the entrepreneur.
2. If the consumer fails to pay on time, he is in default without the entrepreneur having to send him notice of default. Nevertheless, after the payment date has passed the entrepreneur will send one more payment reminder to the consumer, at no charge, in which the entrepreneur draws the attention of the consumer to his default and gives him the opportunity to pay the account within 14 days. In the payment reminder the entrepreneur also mentions the extrajudicial collection costs for which the consumer will be liable in the event of late payment.
3. If the 14-day period referred to in clause 2 has elapsed and the consumer has not yet paid his account, the entrepreneur is authorized to demand payment of the amount due, without the need to serve notice of default on the consumer. The entrepreneur is permitted to charge the associated extrajudicial collection costs in all reasonableness to the consumer. Maximum amounts are applicable, as provided for in the Dutch Extrajudicial Collection Costs (Fees) Decree. Subject to legislative changes, these maximum amounts are:
  - 15% on the first €2,500, with a minimum of €40
  - 10% on the next €2,500
  - 5% on the next €5,000
  - 1% on the next €190,000
  - 0.5% on the remainder, with a maximum of €6,775.

#### **ARTICLE 7 – CANCELLATION**

1. If the consumer wishes to cancel the hire contract, he must inform the entrepreneur as soon as possible in writing or by electronic means.
2. If the consumer cancels, the entrepreneur can claim fixed compensation amounting to:
  - 15% of the agreed course fees in the event of cancellation up to three months before the

commencement of the course

- 50% of the agreed course fees in the event of cancellation up to two months before the commencement of the course
- 75% of the agreed course fees in the event of cancellation up to one month before the commencement of the course
- 100% of the agreed course fees in the event of cancellation within one month before the commencement of the course or on the date of commencement of the course.

All the aforementioned compensation amounts are subject to a minimum of €75.

3. If a group of ten or more course members cancels, other compensation amounts apply than those referred to in clause 2. In these cases the entrepreneur can claim fixed compensation amounting to:
  - 25% of the agreed course fees in the event of cancellation up to six months before the commencement of the course
  - 50% of the agreed course fees in the event of cancellation up to four months before the commencement of the course
  - 75% of the agreed course fees in the event of cancellation up to two months before the commencement of the course
  - 100% of the agreed course fees in the event of cancellation up to one month before the commencement of the course.
4. If the consumer cancels the contract, he has to pay the cancellation costs provided for in clauses 2 and 3. If the consumer or the entrepreneur is able to demonstrate that the actual damage is considerably higher or lower than the cancellation costs provided for in clauses 2 or 3, the consumer has to refund the actual loss. Damage is taken to mean the loss or lost profits actually suffered by the entrepreneur.
5. If the consumer cancels the contract, he can ask the entrepreneur whether another person may take over the contract via a 'subrogation'. If the entrepreneur agrees to this, he has the right to charge administration costs.

## **ARTICLE 8 - THE ENTREPRENEUR'S RIGHTS AND OBLIGATIONS**

1. The entrepreneur will give the instruction, or arrange for it to be given, to the course member(s) in a professional manner.
2. The entrepreneur warrants that the accommodation offered is safe and meets all the requirements.
3. If material of the entrepreneur is used in the instruction, the entrepreneur warrants that this material:
  - is in good condition and
  - is fit for purpose and
  - meets the safety requirements applicable to the agreed use.
4. If the entrepreneur uses his own material in the instruction, he is obliged to insure that material against legal liability, damage and theft. The coverage of the insurance must be valid in the area where the instruction is given.
5. If the entrepreneur is obliged on the basis of the contract to provide accommodation, he does so for the agreed period.
6. The costs relating directly to the normal use of the van het vessel are for the account of the entrepreneur. They include harbour, bridge, quay, lock and mooring charges and fuel costs.
7. If the consumer decides the location where the instruction is given, the costs relating to the location are for the account of the consumer, including fees and rental charges.
8. The entrepreneur advises the consumer emphatically not to bring any valuables and refers the consumer to the limitation of liability described in in Article 10 clause 2 of these Terms and Conditions.
9. The entrepreneur has the right to replace a course of instruction on or in the water with on-shore instruction if the weather conditions in combination with the level of knowledge of the course members make this necessary.
10. The entrepreneur refers the consumer to the obligations set out in Article 9 clauses 5 and 6.

## **ARTICLE 9 - RIGHTS AND OBLIGATIONS OF THE CONSUMER**

1. If the entrepreneur uses material of the consumer for the instruction, the consumer must make sure that the material is insured against legal liability, damage and theft. The coverage of the insurance must be valid in the area where the instruction is given. This stipulation does not apply if the entrepreneur and consumer agree otherwise.
2. In the case of a group of course members, the consumer must give a list of all the course members to the entrepreneur no later than on the day of arrival.
3. If material that the entrepreneur has provided is used, at the request of the consumer for a purpose other than the agreed purpose, the extra costs involved are for the account of the consumer. This applies only if the entrepreneur is notified the consumer accordingly in good time.
4. If the consumer wishes to use his own material for the instruction, he must make sure that it is safe and fit for purpose.
5. The consumer must make sure that the course member(s) has/have liability insurance that offers adequate coverage for the agreed activities.
6. The consumer is obliged to fill in his own medical statement truthfully and to have any other required medical checkups performed before the course of instruction begins.
7. If the entrepreneur feels that the course of instruction ought not to go ahead because the consumer is not sufficiently well prepared, he can order the consumer to stop. In that case the consumer must comply immediately.
8. The consumer refers the group to the provisions in these Terms and Conditions that are applicable to them.

## **ARTICLE 10 – LIABILITY**

1. The entrepreneur is liable for damage caused directly by a shortcoming that is attributable:
  - to himself and/or
  - to people employed by him and/or
  - to people he has appointed to carry out the work that he has agreed with the consumer.
2. The liability of the entrepreneur for damage to or loss of baggage is limited to an amount of €1,000 per course member. The entrepreneur is not liable for consequential damage arising from the loss of or damage to baggage.
3. The consumer is fully liable for damage caused directly by a shortcoming that is attributable:
  - to himself and/or
  - to his underage children and/or
  - to the group he represents.

## **ARTICLE 11 – COMPLAINTS**

1. If the consumer has any complaints about the implementation of the contract, he must notify the entrepreneur of them in writing or by electronic means within a reasonable (appropriate) time after he has or could have identified the faults, giving a full and detailed description of the complaints.
2. If the consumer has any complaints about an invoice, he must notify the entrepreneur of them, preferably by letter or by electronic means within a reasonable (appropriate) time after he has received the invoice, giving a full and detailed description of the complaints.
3. If the consumer does not submit the complaint punctually, he risks losing his right to remediation or compensation. If the consumer cannot reasonably be blamed for his failure to submit the complaint punctually, he retains his rights.
4. If it is clear that the complaint cannot be settled amicably, a dispute exists

## **ARTICLE 12 – TERMINATION OF THE CONTRACT**

1. If one of the parties fails to meet its obligations under this contract, thereby giving rise to actual non-performance or an imputable shortcoming, the other party is authorized to terminate the contract immediately without judicial intervention. He can also elect to demand fulfilment of the obligations, but in that case he cannot terminate the contract.
2. If the contract is terminated because of actual non-performance or an imputable shortcoming, the aggrieved party may claim compensation for any damage and for payment

of all debts, including debts that are not immediately due and payable.

#### **ARTICLE 13 – SETTLEMENT OF DISPUTES**

1. If the consumer and the entrepreneur have a dispute, each of them may submit the dispute to the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, Postbus 90600, 2509 LP The Hague ([www.sgc.nl](http://www.sgc.nl)). The following conditions apply in that case:
  - a. The dispute relates to the formation or execution of a contract between the entrepreneur and the consumer.
  - b. The contract relates to services or goods that the entrepreneur is going to deliver or has delivered to the consumer.
  - c. These General Terms and Conditions are applicable to the contract.
2. The Disputes Committee hears a dispute only if:
  - a. the consumer has first submitted his complaint to the entrepreneur
  - b. the entrepreneur and the consumer have not been able to reach an amicable solution
  - c. the dispute has been submitted to the Disputes Committee within 12 months after the consumer has submitted his complaint to the entrepreneur
  - d. the dispute has been submitted to the Committee in the form of a letter or in another form determined by the Committee.
3. In principle, the Disputes Committee hears only disputes that have a financial interest of up to €14,000. If a dispute has a financial interest of more than €14,000, the Committee can hear it only if both parties consent to this explicitly.
4. If a consumer submits a dispute to the Disputes Committee, the entrepreneur is obliged to accept the fact. If the entrepreneur wishes to submit a dispute to the Disputes Committee, he must ask the consumer to notify him within five weeks as to whether the consumer consents to this. To that end, the entrepreneur must state that if the consumer does not respond within those five weeks, the entrepreneur may start legal proceedings.
5. When hearing the dispute and making its award the Disputes Committee follows the rules and regulations applicable to the Committee. These rules and regulations will be sent to the consumer and/or the entrepreneur on request. The Disputes Committee makes its awards in the form of a binding opinion. A fee is due for a dispute to be heard.
6. Only the court and the aforementioned Disputes Committee are competent to take cognizance of disputes between the entrepreneur and the consumer.

#### **ARTICLE 14 - COMPLIANCE GUARANTEE**

1. HISWA Association warrants that its members will comply with the binding opinions of the Disputes Committee. This does not apply if a member decides within two months after the opinion has been sent to submit it to the court for a review. If the opinion is maintained after the court review and if the ruling to that effect is irrevocable, the guarantee applies once again.
2. For each binding opinion HISWA Association pays a maximum of €10,000 to the consumer. This applies also if in accordance with the binding opinion the consumer is to get more than €10,000 from the entrepreneur. In that case the consumer receives €10,000 from HISWA Association, and HISWA Association is obliged to make every effort to ensure that the entrepreneur pays the rest.
3. To be eligible for this guarantee the consumer must ask HISWA Association in writing for it. He also has to transfer to HISWA Association the claim he has against the entrepreneur. If the claim is greater than €10,000, the consumer has to transfer, in principle, only that part of the claim that is under €10,000. But if the consumer so wishes, he can also transfer that part of the claim that is in excess of €10,000. HISWA Association will then claim payment thereof from the entrepreneur in its own name and for its own expense. Should HISWA Association succeed, it will pay out the amount to the consumer.
4. HISWA Association does not issue a compliance guarantee if any of the following situations exists before the consumer has completed the formal intake requirements for the dispute to be heard by the Disputes Committee:
  - a. The entrepreneur has been granted a moratorium on payments.
  - b. The entrepreneur has been declared bankrupt.

c. The business activities of the entrepreneur have effectively been terminated.

The determining factor for this situation is the date on which the cessation of operations has been entered in the trade register, or an earlier date if HISWA Association can demonstrate that the business operations actually terminated earlier.

The formal intake requirements are taken to mean the actions that the consumer takes to get the dispute heard by the Disputes Committee. These include paying the amount of the complaint, sending in a completed and signed questionnaire, and making a deposit payment if applicable.

#### **ARTICLE 15 – APPLICABLE LAW**

All disputes arising from this contract are governed by Dutch law, unless another national law is applicable on the grounds of mandatory rules.

#### **ARTICLE 16 - DEVIATIONS FROM THE TERMS AND CONDITIONS**

Additions to or deviations from these Terms and Conditions are permitted only if they are not to the detriment of the consumer and have been documented in writing or by electronic means in such a way that it is easy for the consumer to store them.

#### **ARTICLE 17 - AMENDMENTS**

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