



HISWA
VERENIGING

HISWA GENERAL CONDITIONS FOR MEDIATION VESSELS

These General Conditions for Mediation of the HISWA Association (Netherlands Association of Enterprises in Water Recreation) were established in consultation with the consumers' organization and the ANWB (Royal Dutch Tourist Organization) within the framework of the Coördinatiegroep Zelfreguleringsoverleg (Coordination group self-regulation agreement) of the SER (Social Economical Council) and apply exclusively to members of the HISWA Association. The HISWA Association will take action against misuse of these conditions. Members are also requested to inform the HISWA Association when misuse is detected. As reinforcement, several texts have been copyrighted. Registered at the clerk of the districts court's office in Amsterdam on February 18th 2009 under the number 18/2009.

CHAPTER 1 - GENERAL

ARTICLE 1 – DEFINITIONS

- a. The intermediary: the entrepreneur who as member of the HISWA Association (professional association of the water sport industry) enters into a broker agreement with a consumer.
- b. The consumer/client: natural person who does not act out of professional purposes or for a company and who enters into a broker agreement with the intermediary.
- c. The broker agreement: the agreement about the commission of the provision of services. What is meant with provision of services: mediation with regard to purchase and sales.
- d. Commission: the honorarium which is payable for the mediation with regard to purchase or sales.
- e. The conciliation board: the conciliation board Waterrecreatie (Water recreation) in The Hague.

ARTICLE 2 - APPROPRIATENESS

With exclusion of the eventual general conditions of the client or a third party these conditions are exclusively applied if the intermediary is a member of the HISWA Association and also runs an office in the Netherlands and when he is also registered there in the relevant trade register. The intermediary dismisses the eventual by the client applied general conditions. These conditions only apply to the agreement between the client and the intermediary. These conditions are not effective with regard to third parties.

CHAPTER 2 – THE BROKER AGREEMENT

ARTICLE 3

1. A broker agreement is an assignment, to which the intermediary binds himself on payment of commission to work as a middleman on the realization of a purchase-sales agreement under the authority of and in the name of the client and a third party. In the broker agreement, there is no possibility of deviating from these conditions at the disadvantage of the client, who does not conduct business as a profession or for a company.
2. The broker agreement is effected when the parties have agreed on: the asking price, broker's commission, duration of the agreement, ways by which the agreement can be terminated and other conditions under which the mediation will be carried out.
3. The broker assignment and all other arrangements with reference to the broker assignment should be entered into in writing or electronically. Oral alterations and/or additions have to be confirmed in writing or electronically as soon as possible.
4. These conditions have been translated from Dutch into a foreign language. In the case of possible differences in the texts as a result of the translation, the Dutch text prevails over the other text.

ARTICLE 4

In the framework of the broker agreement the intermediary provides the following services:

- a. discussing and advising with regard to the realization of the intended agreement;
- b. the evaluation of the market value of the respective product, after that the asking price of the product will be determined after mutual consultation with the client;
- c. starting activities, in order to draw the attention of potential buyers to the concerning object;
- d. evaluation and advice concerning the legal, financial, fiscal, technical and other important aspects that are connected to the intended agreement with regard to the object;
- e. advising and negotiating with third parties on behalf of the client;
- f. the active promotion of the realization of an agreement between the client and a third party;
- g. counselling during the customary completion.

ARTICLE 5

In case the intermediary's counseling, during the completion of the agreement, involves more than the services that the intermediary, in the framework of this broker agreement, has put at the disposal of the client, the intermediary has to inform his client about that beforehand.

The client is bound to meet the costs resulting from the extra work if both parties have reached a written agreement on this beforehand.

ARTICLE 6

1. The broker agreement ends:
 - a. through cancellation,
 - b. when the agreed term has expired;
 - c. after the realization and fulfillment of the intended agreement between the client and a third party;
 - d. when the object becomes unplaceable as a consequence of amongst which the condition of the object, severe damage, total loss or the specific desired price fixing by the client of the object.

ARTICLE 7

1. In case the broker agreement concerns a task for purchase as well as sales, the intermediary, with regard to one and the same object, will not act as a and seller and purchaser in the capacity of the client.
2. If there is speech of a sales/purchase assignment the, to be agreed on, agreement can not be dependent on an expertise report set up by the respective intermediary.
3. The intermediary has to give notice of the name and address of the purchaser c.q. seller to his client as soon as the parties have reached an agreement on the price of the object and on the conditions under which the object has been sold.
4. If the client has stated that his data cannot be announced to the future purchaser c.q. seller, the intermediary commits himself to establishing the purchase/sale acts under his own name.

CHAPTER 3 - LIABILITY

ARTICLE 8

If the intermediary has an object at his disposal, he alone is liable for the damage to or of the object, parts or accessories of the object. If the damage is a direct result of a shortcoming which can be contributed to him or to individuals in his service and/or to individuals who have been assigned by him with regard to the realization of the assignment.

CHAPTER 4 - OBLIGATIONS OF THE INTERMEDIARY

ARTICLE 9

1. The intermediary carries out the by him accepted assigned to the best of his knowledge and capacity with due regard for the interests of the client.
2. The intermediary will regularly inform the client about the progresses.
3. The intermediary is obliged to adequately insure and maintain the insurance of his liability for the damage that results from an accountable shortcoming or from a wrongful act.

CHAPTER 5 - OBLIGATIONS OF THE CLIENT

ARTICLE 10

1. The client has to put the object at disposal for a testing and/or trial run at his own expenses.
2. The client has to provide the intermediary, to the best of his knowledge and capacity, with the information that the intermediary needs to execute the assignment.
3. The client vouches for his competence to sell the object. The client protects the intermediary, with respect to this, from claims of third parties.
4. The client provides the needed documents, which are necessary for an undisturbed use of the object.
5. With regard to vessels that originate from abroad, the client has to, preceding the or still not later than at the legal delivery of the vessel, give a statement by handing in the respective register book of non-registration or deregistration.
6. The slipway and expertise costs are at the expense of the person who has given permission for these respective works, unless otherwise agreed.
7. The client has to have and has to look after and upkeep a sound hull insurance and liability insurance for the object.

CHAPTER 6 - TERMS OF PAYMENT

ARTICLE 11

1. The commission to which the intermediary is entitled to is owned as soon as a consensus ad idem about the agreement is established between the client and a third party, unless a in the intended agreement included resolutive condition is put into operation.
2. If the third party does not comply with the agreement, the half of the down payment will be given to the intermediary and the other half to the client. If the half of the down payment is less than the commission, then the liability of paying the surplus will be cancelled.
3. The commission is claimable at the time of delivery. If the client does not comply with the agreed date of the supply obligation, the commission is claimable on the agreed date of delivery.
4. Deviating agreements that were agreed on afterwards between the client and a third party or a (partially) dissolution of the agreement does not imply a loss on the claim to commission.
5. For receiving the purchase sum the intermediary has to, if he disposes of a Stichting Derdengelden (third party's account), use this Stichting Derdengeldenrekening (third party's account). In that case the intermediary will receive the commissions of the client.
6. If the intermediary does not dispose of a sound Stichting Derdengelden (third party's account), then the intermediary has to report this to his client in written form. The intermediary makes, together with the

client, agreements on the method of arranging the flows of money and the intermediary confirms this to his client in written form. The intermediary is, commercial as well as personal, liable for the compliance of these agreements

7. The intermediary has the right to settle the means that belong to him on the basis of the broker agreement and other costs related to this broker agreement with the financial resources that were appointed to him.

ARTICLE 12

1. If the broker agreement as referred to in article 3 section 1, is established, it is considered that this agreement has been established through mediation of the intermediary, unless the client can prove that this agreement has been established without any mediation from the intermediary.
2. When the client, within nine months after the conclusion of his assignment, still enters into the at that time intended agreement with the interested party, who initially in the framework of this broker agreement with the intermediary directly with regard to the availability of the respective vessel has been for this acquainted with this transaction, as well when the client, within a term of nine months, gives the object permanently into use to the above-mentioned interested party, the client still owns the full commission of the asking price which was last agreed on in written form to the intermediary.

ARTICLE 13

1. When the broker agreement is terminated as a cause of what is mentioned in article 6 section 1 under 'a' and 'd', the client owns the intermediary the reasonable costs that were made by the intermediary.
2. The reasonable made costs in section 1 of this article are based on:
 - a. 15 % of the agreed commission calculated on the last stated asking price in written form, for a termination (cancellation) up to and including the two months after the commencement of the broker agreement.
 - b. 30 % of the agreed commission calculated on the last stated asking price in written form, for a termination (cancellation) longer than two months, but not longer than four months after the commencement of the broker agreement.
 - c. 50% of the agreed commission calculated on the last stated asking price in written form, for a termination (cancellation) longer than four months after the commencement of the broker agreement.

CHAPTER 7 – BEING IN DEFAULT, RIGHT OF LIEN AND RIGHT OF PLEDGE

ARTICLE 14

1. In case of a non-timely payment of the commission or the payable costs, in accordance with one or more of these conditions, the intermediary has the right to charge a legal interest plus 3% on yearly basis of the payable amount to the client. This interest is calculated starting from the maturity date.
2. If one of the parties is forced to ask for legal aid with regard to the dispute in connection to the broker agreement, the party that is in default as well as the party that has been put in the wrong is also bound to the non-legal expenses resulting from the legal aid. These non-legal expenses are 15% of the payable sum with a minimum of € 115.00 and increased by the actual paid advances, unless the opposing party proves that this would have been sufficient with a lower amount. These without prejudice to the provisions in article 17 section 13 of these conditions.

ARTICLE 15

1. The intermediary has to right to keep the object of the broker agreement to himself until the client has paid the payable sum, including the from this lien resulting costs, unless the buyer has deposited the purchase sum on the in article 11 section 5 mentioned Derdengeldenrekening (third parties' account). By a partially or inadequate fulfillment, the suspension of the delivery of the object is only granted, for as far as the failing justifies it.
2. The intermediary has a possessory pledge on the mediation object at all times, wherever it is located or moored, for every unpaid part of what the client owns him, unless the buyer has deposited the purchase sum on the in article 11 section 5 referred to Derdengeldenrekening (third parties' account).
3. The intermediary's rights of lien and rights of pledge expire, when the client brings the dispute before the conciliation board mentioned in article 17 of these conditions and when this board has confirmed to the intermediary that the payable sum has been deposited by the client.

CHAPTER 8 – COMPLAINTS

ARTICLE 16

Complaints about the execution of the broker agreement should preferably be described and explained in a clear way and in written form and presented to the intermediary, within an appropriate timeframe after the client has detected or has been able to detect. The consequences of a non-timely claim will be at the expense of the client.

CHAPTER 9 - DISPUTES: THE CONCILIATION BOARD AND THE REGULAR JUDGE

ARTICLE 17

1. To all disputes with regard to the broker agreement the Dutch law applies. Only a Dutch court of justice hereafter referred to as the conciliation board has the authority to cognizance of these disputes.
2. Disputes between the client and the intermediary about the realization or execution of the broker agreement to which these conditions apply can be brought before the conciliation board (conciliation board Waterrecreatie, Postbus 90600, 2509 LP 's-Gravenhage) by the client as well as by the intermediary
3. A dispute will only be attended to if the client has presented his complaint within an appropriate timeframe to the intermediary.
4. The client has to bring the dispute before the conciliation board, mentioning names and addresses of the client and intermediary and a clear description of the dispute and the claim not later than three months after he has presented his complaint in writing to the intermediary. When the client has brought the dispute before the conciliation board, the intermediary is bound to the decision and cannot appeal to a regular judge for this matter.
5. The conciliation board does not have the authority to attend to disputes that solely concern the non-payment of the invoice and to which no material complaint underlies.
6. If the client does not timely pay his invoice, the intermediary has the authority to commence a procedure before a regular judge, providing that the intermediary, before commencing this procedure, has given the client a term of one month after receipt of the summons to present this dispute to the conciliation board.
7. If the intermediary brings a dispute before the conciliation board, the conciliation board will only attend to this dispute, after the client has declared in written form within one month that he will submit to the verdict and will pay the eventual due (unpaid) sum in depositary to the conciliation board.
8. If the client brings a dispute before the conciliation board, the conciliation board will only attend to this dispute, after the client has paid the intermediary's eventual due sum in depositary to the conciliation board. The client has to deposit this sum within one month on an account which will be indicated by the conciliation board. If the client has not timely deposited the indicated sum, it is assumed that the client does not want to submit to the verdict of the conciliation board.
9. The conciliation board gives a binding verdict. The HISWA Association stands surety with respect to the client for the fulfilment of the advice given by the conciliation board. For this surety applies a maximum of € 14.000.00 per binding advice.
10. In case of bankruptcy, moratorium of payment or business termination of the intermediary the surety of payment only applies if the client has brought the dispute before the conciliation board before there is speech of a similar situation. Above-mentioned surety does not apply if the intermediary has presented the binding advice within two months after sending for review to a judge and the verdict in which the judge declares the binding advice non-binding has the effect of a final judgment.
11. The conciliation board will only attend to a dispute if an amount of not more than € 14.000.00 (inclusive VAT) is involved.
12. For attending a dispute a compensation is payable.
13. In case a dispute is brought before the conciliation board, article 14 section 2 does not apply.
14. For attending disputes we refer to the Regulations of the conciliation board Waterrecreatie.

CHAPTER 10 – DEVIATION AND ALTERATION

ARTICLE 18 - ADDITIONS

Individual deviations from these general conditions, including the individual additions, should be established in writing or electronically between the entrepreneur and the consumer and may not be at a disadvantage of the consumer.

ARTICLE 19 - ALTERATIONS

HISWA Association will only alter these general conditions in consultation with the ANWB (Royal Dutch Tourist Organization) and the consumers' organization.