

## DUTCH BOATMEN'S TERMS AND CONDITIONS 2017

### Article 1 Definitions

- 1.1 These terms: mooring and unmooring of ships and all other services offered by the Services Contractor – both in return for payment and free of charge.
- 1.2 Services Contractor: the provider of Services.
- 1.3 Client: the (intended) other party of the Services Contractor.

### Article 2 General terms and conditions

- 2.1 These terms and conditions shall apply to all legal relationships between the Services Contractor and the Client, under an agreement or otherwise. The Client is considered to agree that these terms and conditions shall also apply to all future obligations undertaken with the Services Contractor, for whatever reason.
- 2.2 If a (part of a) clause in these terms and conditions is not applicable or is voidable, this will not affect the applicability of the remaining clauses.
- 2.3 The Client relinquishes the applicability of any other general terms and conditions, including the general terms and conditions used by the Client. The Services Contractor expressly rejects the applicability of any and all other general terms and conditions.
- 2.4 Any assignment given by the Client to the Services Contractor is considered to be irrevocable. Any offer made by the Services Contractor is subject to confirmation and does not have a binding effect for the Services Contractor. The Services Contractor is not bound by any oral promises.
- 2.5 The headings of the various articles in these terms and conditions are not relevant to the interpretation of the clauses incorporated in these terms and conditions.

### Article 3 Client

- 3.1 A third party which on behalf of a Client gives an assignment to render services assumes by that to be jointly and severally liable for the performance of any and all obligations towards the Services Contractor.
- 3.2 The owner of the ship for whom Services have been rendered or should have been rendered is jointly and severally liable for the performance of any and all obligations of the Client towards the Services Contractor.

### Article 4 Rates and payment

- 4.1 The rates for Services will be established by the Services Contractor and will be sent to the Client at his request.
- 4.2 The provision of Services starts at the very first time that the Services Contractor begins his preparatory work for performing Services and ends at the time that either (a) the Services Contractor has rendered all the Services, including the return journey of persons and material, if any, to the original place of departure, or (b) when the Services Contractor let it be known that the Services have been performed or that the Services cannot or can no longer be performed.
- 4.3 In addition to payment of the applicable rate by the Client to the Services Contractor, the Services Contractor is also entitled to payment by the Client of the costs incurred and/or salvage charges and/or a contribution in general average.
- 4.4 Payment by the Client is each time immediately due at the moment the assignment is given to the Services Contractor.
- 4.5 The Client is obliged to make objections to the level of the invoiced amount in writing within 14 days of invoicing by the Services Contractor, in the absence of which the right to make objections to the level of the invoiced amount will lapse and as a consequence thereof the invoiced amount will be fixed with binding effect between all the parties involved.
- 4.6 The Client or any other party referred to in article 3 of these terms and conditions is not entitled to any setoff and/or suspension of his obligations and/or termination of any contract.
- 4.7 The Services Contractor is in any case entitled to suspend all his obligations towards the Client until the Client has complied with any and all obligations towards the Services Contractor, of whatever nature.
- 4.8 In case of overdue payment, the statutory interest rate (article 6:119a of the Dutch Civil Code) and extrajudicial collection costs, which are set at 15% of the principal sum, will be payable by the Client, without notice of default.

### Article 5 Performance of Services

- 5.1 The Services Contractor is entitled to subcontract Services, in whole or in part, to third parties.
- 5.2 The Services Contractor decides, at his own discretion, the date and the manner in which the Services will be performed. The date designated by the Services Contractor and the duration of the performance of the agreed Services is for information purposes only and no rights can be derived from it.
- 5.3 The Services Contractor makes all the information and documents available, free of Charge, which the Services Contractor considers necessary for the performance of the agreed Services. The Client warrants that the information and documents provided by the Client and/or third parties for rendering the agreed Services is correct. The Services Contractor is not obliged to verify the

correctness of the information and documents provided - including but not limited to bills of lading and import and export documents.

- 5.4 The Client guarantees that the Services Contractor will be given the opportunity to perform the agreed Services at the time and date that the Services Contractor wishes to do so, in the absence of which the Services Contractor will no longer be obliged to perform the agreed Services, without prejudice to the Services Contractor's right to payment in full.
- 5.5 The Services Contractor is not obliged to render any agreed Services and may discontinue the performance of all Services at any point in time if this in the opinion of the Services Contractor – for whatever reason – constitutes a danger for persons, goods or the environment.
- 5.6 In addition to article 4.7 of these terms and conditions, the Services Contractor is not obliged to render the agreed Services and may discontinue these Services if the Client is declared bankrupt; has filed a petition for bankruptcy; has applied for a (provisional) moratorium; or otherwise loses power of disposition or contractual capacity in respect of his assets or parts thereof; and also when arrest is levied on the ship or when the ship is sold by auction to which the agreed Services refer.

### Article 6 Liability

- 6.1 The Services Contractor performs agreed Services at the risk and expense of the Client. Any liability of the Services Contractor is excluded, unless such is not permitted pursuant to mandatory law; in that case the liability of the Services Contractor is still limited to the invoiced amount or the amount to be invoiced for the agreed Services in respect of which the liability has arisen, with a maximum of € 10.000. In the case of the carriage of passengers or goods as referred to in paragraph 8 of the Netherlands Civil Code, the liability of the Services Contractor is limited to the amounts regarding the limitation of liability as specified by or pursuant paragraph 8 of the Netherlands Civil Code.
- 6.2 The Client will be liable to the Services Contractor for any damage and/or loss and the Client will indemnify the Services Contractor for any damage and/or loss caused in any way in connection with the Services. Damage and/or loss within the meaning of this clause extends to, but is expressly not limited to, damage to goods, loss caused by death or injury and environmental damage, as well as all costs incurred for the (legal) defence against any claim whatsoever.
- 6.3 The Client guarantees that the Services Contractor will be able to rely on all clauses pertaining to exclusion or limitation of liability (including those of prescription and termination) which are incorporated in any agreement concluded between the Client and third parties.
- 6.4 Any right of action against the Services Contractor will lapse if legal proceedings have not been brought before the court of competent jurisdiction in accordance with article 9 of these terms and conditions.

### Article 7 Force majeure

- 7.1 In the event of force majeure the Services Contractor will inform the Contractor and will announce the cause, the nature, the expected time of the force majeure and the result it will have due to carrying out the ordered job.
- 7.2 In the event of force majeure the Services Contractor is not obliged to render any agreed Services and may discontinue the performance of all Services at any point in time if this in the opinion of the Services Contractor – for whatever reason – constitutes a danger for persons, goods or the environment, and the Services Contractor is not too be claimed for any costs what so ever.
- 7.3 Shortcomings/failures in the performance of the agreement in the event of force majeure cannot be imputed to Services Contractor and give Client no right to discontinue or stop the agreement of the job or to claim the Services Contractor.
- 7.4 There will be no refund of payment from Client by payments that have been paid in advance.

### Article 8 Third-party clause

- 8.1 Members and employees of the Services Contractor, its affiliated or associated companies, and third parties engaged, directly or indirectly, by the Services Contractor and the employees of these third parties are able to rely on any and all stipulations incorporated in these terms and conditions, including but not limited to the stipulations in article 8 (applicable law and jurisdiction) of these terms and conditions. The heirs of all the persons referred to in this article are also able to rely on this stipulation.

### Article 9 Applicable law and jurisdiction

- 9.1 Dutch law applies without exception to any and all legal relationships between the Services Contractor and the Client.
- 9.2 Any dispute arising - for whatever reason – between the Services Contractor and the Client will be resolved exclusively by the District Court in Rotterdam. Contrary to the preceding stipulation, the Services Contractor is entitled to bring legal proceedings before any other court of law.

### Article 10 Final stipulation

- 10.1 These terms and conditions may be cited as: "NBC 2017" and will replace the *Nederlandse Bootlieden Condities 2012* (the Dutch Boatmen's terms and conditions) as from 1 July 2017. The Dutch text of these terms and conditions will be the guiding text.