

HISWA GENERAL TERMS AND CONDITIONS FOR SURVEYS

These General Terms and Conditions for surveys of the HISWA Association (Netherlands Association of Enterprises in Water Recreation) were drawn up in January 2002 in consultation with the Consumentenbond (Consumers' Association) and ANWB (the Road Users' Association) as part of the programme of the Coördinatiegroep Zelfreguleringsoverleg (Self-Regulation Coordination Group) of the Sociaal Economische Raad (Social Economic Council) and apply solely to members of the HISWA Surveyors' Section. Filed with the Registry of the District Court in Amsterdam on 9 September 2002 as number 209/2002. In order to actually achieve the desired exclusivity, HISWA will take action against abuse. Accordingly, members are asked to inform the HISWA office of any abuse encountered. The various texts are subject to copyright to reinforce the position.

ARTICLE 1 – DEFINITIONS

- a. *Standard survey*: an examination of the technical and/or structural condition of the vessel and its associated components and items of equipment, based on the standard inspection report.
- b. *Part survey*: an examination of the technical and/or structural condition of specific parts of the vessel as named in the contract, based on the contract and/or the standard inspection report.
- c. *Standard inspection report*: the inspection report prepared by the Surveyors Section of HISWA.
- d. *Principal*: a natural person not acting in a professional or business capacity (consumer).
- e. *Surveyor*: a natural person or legal entity being a member of the HISWA Surveyors Section whose work consists in performing examinations of the technical or other condition of a vessel at the time of his examination.
- f. *Final report*: the written record of the surveyor's findings resulting from the survey performed by him on behalf of the principal.
- g. *Arbitration board*: Geschillencommissie Waterrecreatie (the Water Recreation Arbitration Board) in The Hague.

ARTICLE 2 – APPLICABILITY

1. These General Terms and Conditions apply solely to agreements entered into between the principal and the surveyor, being a member of HISWA Surveyors Section, to the exclusion of any general terms and conditions put forward by the principal or a third party.
2. These conditions may have been translated from Dutch to another language.
In case of any differences between the texts resulting from such translation the Dutch text shall prevail.

ARTICLE 3 – THE AGREEMENT

1. A survey agreement is a contract in which the surveyor undertakes to the principal to perform, in return for payment and where possible on the basis of the standard inspection report, a pre-purchase survey of the technical and/or structural condition of the vessel and its associated components and equipment or to perform a part survey of the technical and/or structural condition of one or more of the vessel's components and/or equipment, all unless expressly agreed otherwise by the parties. The expert is obliged to use the standard test report unless the client specifically states otherwise in writing.
2. Unless agreed otherwise, the pre-purchase survey or other survey will deal only with those places in and parts of the vessel that are reasonably accessible and with all the components and items of equipment of the vessel that are present during the survey.
If required, the survey may for an additional fee be expanded to include destructive testing and/or a trial run.
3. The survey contract and all agreements entered into in connection with it should be recorded in writing wherever possible. Changes and/or additions made orally should be confirmed in writing as soon as possible.
4. In all cases, the survey contract shall include:
 - the nature, content and scope of the work to be performed by the surveyor;
 - the manner in which the surveyor's fee is determined; and
 - the period within which the surveyor's assignment is to be performed.
5. The surveyor has the right to charge for additional costs arising from changes to the work or to the work assignment or arising from interruptions to his work insofar as these result from causes that are not attributable to the surveyor.
The surveyor shall notify his principal immediately of any such additional costs.

ARTICLE 4 – SURVEYOR'S OBLIGATIONS

1. The surveyor shall perform the contract accepted by him to the best of his ability, conscientiously, without bias and in accordance with the rules of good professional conduct.
2. In all cases where the surveyor considers it necessary or where it has been agreed between the parties, the surveyor shall provide the principal with an interim report.
3. Unless agreed otherwise, the surveyor will report his findings to the principal in writing in the form of a final report no later than ten working days after the completion of his survey.
The surveyor's report shall also state the purpose of the survey.
4. The surveyor will not provide any information to third parties except with the express permission of the principal.
5. The surveyor will take out professional liability insurance in respect of his liability as referred to in article 5 of these conditions.
6. The surveyor's duties end with the submission of his final report.
7. The surveyor will retain such information relating to the contract as in his opinion is manifestly of sufficient importance

to be retained in a manner to be determined by him for a period of one year after the date on which the final report has been provided to the principal.

ARTICLE 5 – SURVEYOR’S LIABILITY

1. The surveyor guarantees that his survey satisfies reasonable requirements of thoroughness and reliability. If the surveyor considers that the principal’s requirements cannot be realized he is obliged to advise the latter accordingly.
2. The surveyor is liable for damage to the vessel that is the direct result of any shortcoming attributable to him, to persons employed by him, or to persons brought in by him for the performance of the work commissioned by the principal and accepted by him.
3. The surveyor’s potential liability is limited to the amount paid out under his professional liability insurance in the case in question plus the amount of his insurance excess. In this context, concurrent contracts count as a single case.
4. The surveyor will permit the principal to inspect his professional liability insurance policy on request.
5. The surveyor is not liable for work not carried out where he was not reasonably required to perform that work in the context of his contract.
6. The surveyor is not liable for loss resulting from incorrect and/or incomplete information provided by the principal and/or his family or friends.
7. The surveyor is not liable for loss resulting from improper use of the survey report.
8. All claims against the surveyor become time-barred one year after the submission of the report to the principal.

ARTICLE 6 – EXPERTS

1. If and insofar as the surveyor considers it necessary for the proper conduct of the survey, he may be assisted by one or more experts.
2. The experts shall be appointed by the surveyor only after consultation with the principal and with the principal’s written consent. The costs of the experts will be payable by the principal.
3. Where experts are appointed, the surveyor is responsible for ensuring that those experts observe the duty of confidentiality referred to in article 4(4).

ARTICLE 7 – PRINCIPAL’S RIGHTS AND OBLIGATIONS

1. The principal will supply the surveyor in good time with all the information necessary for the proper performance of the contract.
2. The principal will prepare the vessel for the inspection and/or test run at his own expense.
3. The principal must ensure that the contract can be performed under such conditions as are reasonably required by the nature of the contract.
4. The principal is obliged to have the vessel to be inspected insured against all risks usually covered by the Nederlandse Beurascapopolis or an equivalent policy. The obligation specified in this paragraph only applies if the principal is also the vessel’s owner at the time of the contract.
5. The principal is liable to the surveyor for any loss resulting from a shortcoming attributable to the principal and/or his family or friends.

ARTICLE 8 – PAYMENT TERMS

1. Payments (in full or in instalments) shall be made at the surveyor’s choice either in cash or by transfer to a bank account or giro account to be specified by the surveyor.
2. If the principal fails to pay the due amount in full on the agreed due date or (where no due date has been agreed) within ten working days after having been declared in default of payment by the surveyor he will be deemed to be in default by operation of law. In that case, the surveyor will be entitled to charge the principal interest at the statutory rate plus 3% on an annual basis on the due amount with effect from the due date.
3. If one of the parties is forced to call in legal assistance in a dispute relating to the survey contract, the party in default or the party found to be in the wrong will also be liable to pay all the costs reasonably incurred by the other party, with a minimum of € 115.00. The above is without prejudice to article 11 paragraph 11 of these conditions.
4. If the performance of the contract is delayed at the principal’s request or as a result of the principal’s failure either to comply or comply promptly with his obligations or to enable the surveyor to perform or perform promptly the work required of him, the surveyor may claim payment or part payment of his fee at the time or times at which that payment or part payment would have fallen due had the agreement been performed normally.

ARTICLE 9 – COMPLAINTS

1. Complaints on the performance of the survey must be brought to the surveyor’s attention in writing with an appropriate description and explanation within a reasonable time after the principal has become aware of the complaint or could reasonably have become aware of it.
2. Queries on invoices must be submitted in writing with an appropriate explanation within ten working days after receipt

of the invoice in question.

3. The consequences of any failure to submit complaints or queries on time are for the principal's account.

ARTICLE 10 – TERMINATION, SUSPENSION AND DISSOLUTION

1. The principal has the right to terminate the agreement at all times provided that he pays the expenses incurred by the surveyor up to that point.
2. If either party fails to comply with its obligations, the other party has the right to suspend performance of its corresponding obligation.
In case of partial or inappropriate performance, the right to suspend performance only applies insofar as it is justified by the shortcoming.
3. If either party fails to comply with its obligations under the agreement, the other party has the right to dissolve the agreement unless the shortcoming does not justify dissolution in view of its particular nature or minor importance.
4. The surveyor may discontinue his work with immediate effect and dissolve the agreement without retrospective force if the principal is declared bankrupt, assigns his estate, applies for suspension of payment or has his debt rescheduled, if the principal's assets or any part of them are attached, or if the principal dies or is placed under guardianship.
In the above cases the surveyor will remain entitled to payment of his costs with interest and payment of any loss suffered by him.

ARTICLE 11 – DISPUTES: ARBITRATION BOARD AND THE USUAL COURTS

1. All disputes relating to the agreement are subject to Dutch law. Only Dutch courts of law or the Arbitration Board referred to below are competent to deal with such disputes.
2. Disputes between the principal and the surveyor on the conclusion or performance of the agreement to which these General Conditions apply may be submitted by either party to the Arbitration Board: Geschillencommissie Waterrecreatie, Postbox 90600, 2509 LP The Hague, The Netherlands.
3. The Arbitration Board will only deal with a dispute if the principal has first advised the surveyor of his complaint within the required period.
4. The principal must refer the dispute in writing to the Arbitration Board within three months of making his complaint known to the surveyor, stating the names and addresses of the principal and the surveyor and clearly describing the nature of the dispute and his claim.
Once the principal has referred the dispute to the Arbitration Board, the surveyor is bound by that choice and cannot refer the matter to an ordinary court of law.
5. If the principal takes a dispute to the Arbitration Board, the Board will not consider the case until the principal has deposited any amount still owing to the surveyor with the Arbitration Board. The principal must pay the amount in question into an account specified by the Arbitration Board within one month after referring the dispute to the Board. If the principal fails to pay in the money in time, it is assumed that he is not prepared to abide by the Board's decision.
6. If the surveyor takes a dispute to the Arbitration Board, the Board will only deal with the dispute if the principal has stated in writing, within one month after the date on which the surveyor has submitted the dispute in question to the Board, that he will abide by the Arbitration Board's decision and has deposited any outstanding amount owed to the surveyor with the Arbitration Board.
7. The Arbitration Board is not competent to deal with disputes relating solely to non-payment of an invoice where there is no underlying material complaint.
If the principal fails to pay an invoice in time, the surveyor may take the case to an ordinary court, provided that before commencing proceedings he has allowed the principal a month from the date when the warning was issued to take the dispute to the Arbitration Board.
8. The Arbitration Board delivers its judgment as a binding third-party ruling.
9. HISWA provides a guarantee to the principal that the ruling delivered by the Arbitration Board will be complied with. That guarantee applies up to a maximum of € 14.000,00 (including value added tax) per binding third-party ruling. In case of bankruptcy, suspension of payment or the discontinuation of the surveyor's business, the above guarantee will apply only if the principal took the dispute to the Arbitration Board before the situation in question arose. The guarantee does not apply if the surveyor refers the matter of the binding ruling to a court of law for review within two months of receiving it and if the court's judgment declaring the ruling to be non-binding has become final and conclusive.
The Arbitration Board will only consider cases where the sum at issue is no more than € 14.000,00 including value added tax.
10. A fee is payable for arbitration of a dispute.
11. Where a dispute is referred to the Arbitration Board, article 8(3) is not applicable.
12. Further details of the procedure are given in the Board's Rules (Reglement Geschillencommissie Waterrecreatie).

ARTICLE 12 – VARIATIONS TO THE TERMS AND CONDITIONS

Individual variations to these General Terms and Conditions, including additions or extensions, must be recorded in writing by the parties. Where no such written record exists, the parties may bring proof of variations by all lawful means.

ARTICLE 13 – CHANGES TO THE TERMS AND CONDITIONS

HISWA will not change these General Terms and Conditions without first consulting the Consumentenbond and ANWB.

The changes will be published by the organizations in question, which undertake to publish the changes in their periodicals as soon as they have been agreed and filed with the Registry of the District Court in Amsterdam.

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