



HISWA
VERENIGING

HISWA GENERAL TERMS AND CONDITIONS FOR SURVEY AND APPRAISAL

These General Terms and Conditions for Survey and appraisal of HISWA Association (Dutch Association of Entrepreneurs 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 Sociaal-Economische Raad (Social Economic Council). Deposited at the Court Registry in Amsterdam on 15 November 2012 under number 96/2012. HISWA Association shall take action against any misuse, so it can also genuinely achieve the desired exclusivity. Members are therefore requested to inform the HISWA office if misuse is noticed. To enforce this, copyright has been established on the various texts.

ARTICLE 1 - DEFINITIONS

- a. *Entrepreneur* : an individual who or legal entity that is a member of HISWA Association and whose work consists of investigating the (technical) state in which a vessel is during its, his or her investigation and/or establishing the vessel's value(s), based on a more detailed investigation.
- b. *Consumer*: natural person who does not act in a professional or business capacity and who enters into a contract relating to a vessel or part of a vessel.
- c. *Vessel*: an object that is constructed to remain in water and to move in it, including the pieces of equipment that form part of it and the contents. Also, the hull of a vessel being built.
- d. *Standard Survey*: an investigation, based on the HISWA Standard Inspection Report, into the technical and/or structural state of the vessel and the related parts and accessories.
- e. *Partial Survey*: an investigation, based on the instructions and/or the Standard Inspection Report, into the technical and/or structural state of the specific parts of the vessel referred to in the instructions.
- f. *Standard Appraisal*: an investigation, based on the HISWA Standard Appraisal Report, aimed at establishing a vessel's value.
- g. *Partial Appraisal*: an investigation, based on the HISWA Standard Appraisal Report, aimed at establishing the value of the specific parts of a vessel referred to in the instructions.
- h. *Standard Inspection Report*: the inspection report prepared by HISWA Association.
- i. *Standard Appraisal Report*: the appraisal report prepared by HISWA Association.
- j. *Final Report*: the Entrepreneur's written findings from the investigation the Entrepreneur has performed on the Consumer's instructions.
- k. *Disputes Committee*: Water Recreation Disputes Settlement Committee in The Hague.

ARTICLE 2 – APPLICABILITY

1. These General Terms and Conditions govern all contracts for services concluded between the Entrepreneur and the Consumer under which the Entrepreneur performs an investigation or appraisal of a vessel or part thereof.
2. These Terms and Conditions can be translated from Dutch into a foreign language.
3. Should there be any differences in the texts as a result of the translation, the Dutch text prevails.

ARTICLE 3 - THE OFFER/THE QUOTATION

1. The Entrepreneur makes the offer orally, in writing or in an electronic form.
2. An oral offer must be accepted immediately, otherwise it will lapse, unless a period has been defined for acceptance.
3. The written or electronic offer is dated and is irrevocable during the acceptance period or, if a period has not been defined, for ten working days after the offer date. The offer must contain a complete and accurate description of the work to be performed, stating as a minimum:
 - the nature, substance and scope of the work to be performed by the Entrepreneur ;
 - the manner in which the Entrepreneur's fees are established; and
 - the timeframe in which the Entrepreneur performs the services.
4. A copy of these General Terms and Conditions accompanies the offer.

ARTICLE 4 - THE CONTRACT

1. A Survey contract is a contract for services under which the Entrepreneur undertakes towards the Consumer to perform a Standard Survey or a Partial Survey for payment. Where possible, the investigation will be performed based on the Standard Inspection Report, unless expressly agreed otherwise by the parties to the contract.
2. An appraisal contract is a contract for services under which the Entrepreneur undertakes towards the Consumer to perform a Standard Appraisal or a Partial Appraisal for payment. Where possible, the investigation will be performed based on the Standard Appraisal Report.
3. The Survey and/or appraisal will be limited to the vessel's locations and parts that are accessible within reason and to all parts and accessories that are present during the Survey, unless agreed otherwise.

4. The inspection may be supplemented, if desired, by destructive inspection and/or a trial trip for an additional fee.
5. The contract is finalized when the consumer accepts the offer. If the assignment is granted electronically, the Entrepreneur sends an electronic confirmation to the consumer.
6. The contract must be laid down in writing or by digital means. Absence of a contract laid down in writing or by digital means will, however, not make the contract null and void.
7. If the contract is in writing, a copy should be sent to the consumer.
8. The Entrepreneur will have the right to recharge additional costs resulting from changes in the work or the work instructions or from interruptions in the Entrepreneur's work to the extent they result from causes that can be attributed to the Consumer.
9. If such additional costs are recharged, the Entrepreneur will immediately notify the Consumer.

ARTICLE 5 - THE ENTREPRENEUR'S OBLIGATIONS

1. The Entrepreneur will perform the contract for services which the Entrepreneur has accepted to the best of the Entrepreneur's ability and knowledge, meticulously, unprejudiced and in accordance with high standards.
2. The Entrepreneur will issue an interim report to the Consumer whenever the Entrepreneur deems such necessary or when the parties to the contract have agreed as such.
3. The Entrepreneur will report its, his or her findings to the Consumer in writing in the form of a Final Report within 10 business days from the date of completion of the Survey or appraisal, unless agreed otherwise. The Entrepreneur's report will also state the objective of the Survey or appraisal.
4. The Entrepreneur will refrain from providing data to third parties, unless the Consumer has granted his or her express consent.
5. With respect to the Entrepreneur's liability as referred to in Article 7 of the present General Terms and Conditions, the Entrepreneur will take out professional indemnity insurance.
6. The Entrepreneur's work will be deemed to be completed upon submission of the Entrepreneur's report or Final Report.
7. The Entrepreneur will retain the information relating to the services the importance of which, in the Entrepreneur's judgment, warrant such, in a manner to be decided by the Entrepreneur, during a period of two years from the date on which the report or Final Report is submitted to the Consumer.

ARTICLE 6 - THE CONSUMER'S OBLIGATIONS

1. The Consumer will, in a timely fashion, provide the Entrepreneur with any and all information needed for the proper performance of the services.
2. The Consumer will prepare the vessel for Survey, appraisal and/or a trial trip at his or her own expenses.
3. The Consumer must ensure that the services can be performed under such conditions as reasonably warranted by the nature of the services.
4. The Consumer is obliged to take out insurance cover for the vessel to be inspected or appraised against all risks usually covered by the Dutch bourse hull policy or an equivalent policy. This obligation applies only if the Consumer is also the vessel's owner when the services are performed.

ARTICLE 7 - LIABILITY

1. The Entrepreneur warrants that the inspection satisfies all reasonable requirements with respect to solidity and reliability. If the Entrepreneur should consider the Consumer's demands impossible to realize, the Entrepreneur is obliged to point this out to the Consumer.
2. The Entrepreneur will be liable for any and all damage to the vessel directly caused by a failure that can be attributed to the Entrepreneur or to any individual employed and/or appointed by the Entrepreneur for purposes of performing the work ordered by the Consumer and accepted by the Entrepreneur.
3. If and to the extent the Entrepreneur is obliged under the present General Terms and Conditions to pay damages, the Entrepreneur's

liability will be limited to the maximum risk to be insured under the professional indemnity in the industry. If the total damage caused to property exceeds that amount, the Entrepreneur will not be obliged to pay any damages in excess of that amount.

4. The above provision with respect to liability does not apply to damage caused by death or injury and/or to damage resulting from the Entrepreneur's wilful misconduct or gross negligence.
5. The Entrepreneur will not be liable for not having performed any specific work to the extent that the Entrepreneur did not need to perform that work, within reason, within the context of the contract for services.
6. The Entrepreneur cannot be held liable for damage caused by incorrect and/or incomplete information provided by or on behalf of the Consumer, unless such information was incorrect and/or incomplete to such an extent that the Entrepreneur should have noticed this based on its, his or her expertise.
7. The Entrepreneur cannot be held liable for damage caused by the unlawful use by third parties of the Survey report.
8. The Consumer will be liable towards the Entrepreneur for damage caused by an attributable failure of him/herself or of individuals under his/her responsibility.
9. All claims submitted to the Entrepreneur will be precluded by the lapse of time two years after the date on which the report is submitted to the Consumer.

ARTICLE 8 - CONDITIONS OF PAYMENT

Payment must be effected by transferring the amount due to a bank account to be designated by the Entrepreneur within ten business days of receipt of the invoice or, at the Entrepreneur's option, in cash at the inspection site.

ARTICLE 9 - OVERDUE PAYMENT

1. The consumer is in default once the payment date has passed. The Entrepreneur sends a payment reminder once the date has passed and gives the consumer the chance to pay within fourteen days of receiving this payment reminder.
2. If, after the date stated in the payment reminder, there is still no payment and the consumer is not able to plead circumstances beyond his control, the Entrepreneur has the right to charge interest, once the payment date has passed. This interest is equal to the statutory interest plus 3% on an annual basis over the amount due.
3. If the consumer remains in default of payment after the payment reminder has been sent, the Entrepreneur also has the right to increase the amount due by adding collection charges including judicial- and extrajudicial costs.
4. Extrajudicial costs include all the costs that the Entrepreneur has to charge for the services of lawyers, enforcement agents and anyone he requires for the recovery of the amount due.
5. The extrajudicial costs are determined as follows:
15% over the first € 2500 of the amount due;
10% over the next € 2500 of the amount due;
5% over the following € 5000 of the amount due;
1% over the following € 15,000 of the amount due.
6. Any complaints about invoices should be submitted to the Entrepreneur, preferably in writing and adequately described and explained, within a reasonable period after the receipt of the invoice in question.

10 TERMINATION

1. The Consumer may at all times terminate the contract, subject to reimbursement of the costs the Entrepreneur has incurred until then.
2. If either party should fail to perform its obligations, the other party will have the right to suspend performance of the corresponding obligation. In the event of partial or improper performance, suspension will be permitted only to the extent justified by the failure.
3. If either party should fail to perform its obligations under the contract, the other party will have the right to terminate the contract, unless the failure does not justify termination on account of its special nature or minor significance.
4. The Entrepreneur will have the right to discontinue the work with immediate effect and terminate the contract if the Consumer has been declared bankrupt, assigns his or her estate, files a petition for suspension of payment, a debt management arrangement applies, all or part of the Consumer's property has been attached or seized or the Consumer deceases or is placed under guardianship. In those cases, the Entrepreneur will remain entitled to reimbursement of costs incurred, interest and any damage or loss sustained.

ARTICLE 11 - COMPLAINTS

1. Complaints regarding the implementation of the contract should be made known to the Entrepreneur in written or electronic form and should be described and explained adequately, within a reasonable period, once the consumer has noticed or should have noticed the defects.
2. Not submitting the complaint on time can lead to the consumer losing his right regarding the matter, unless it is unreasonable to blame this lateness on the consumer.
3. If it becomes clear that the complaint cannot be resolved by mutual consultation, a dispute situation has arisen.

ARTICLE 12 - DISPUTE SETTLEMENT RULES

1. Disputes between consumer and Entrepreneur regarding the preparation or execution of contracts regarding services and items delivered or to be delivered by this Entrepreneur, and to which these Terms and Conditions apply, can be brought by either the consumer or the Entrepreneur before the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl).
2. The Disputes Settlement Committee mediates in a dispute only if the consumer has first submitted his complaint to the Entrepreneur.
3. The Disputes Settlement Committee mediates in a dispute only if the dispute involves a sum of not more than € 14,000.
4. Disputes involving financial interests greater than € 14,000 may only be handled by the Committee if both parties explicitly agree to do so.
5. Once the complaint has been submitted to the Entrepreneur, the dispute should be submitted to the Disputes Settlement Committee no more than three months later.
6. If a consumer brings a dispute before the Disputes Settlement Committee, the Entrepreneur is bound to this decision. If the Entrepreneur brings a dispute before the Disputes Settlement Committee, he is required to ask the consumer to declare within five weeks whether he agrees to this. The Entrepreneur is also required to announce that he will deem himself free to bring the dispute before the court, once the aforementioned period has ended.
7. The Disputes Settlement Committee pronounces its judgment with due regard for the terms of the regulation that apply to the Committee. The decision of the Disputes Settlement Committee is made in accordance with that regulation by way of a binding decision. The regulation is sent if required. A fee is payable for hearing a dispute.
8. Only a court or the above-mentioned Disputes Settlement Committee is authorised to take cognisance of disputes.

ARTICLE 13 - GUARANTEE OF COMPLIANCE

1. HISWA Association guarantees that its members will comply with binding decisions, unless a member decides to submit the binding decision to the court for review within two months of the decision being issued. This guarantee is restored if the binding decision is upheld after review by the court and the ruling that demonstrates this has become definitive and is not open to appeal. An amount of up to € 10,000 maximum for each binding decision is paid to the consumer by the HISWA Association. In the case of amounts greater than € 10,000 for each binding decision, the consumer receives an amount of € 10,000. For larger sums, the HISWA Association is obliged to make strenuous efforts to ensure that the member complies with the binding decision.
2. Application of this guarantee demands that the consumer makes a claim to that effect in writing to HISWA Association and that the amount he claims from the Entrepreneur is transferred to HISWA Association. If the amount claimed from the Entrepreneur is more than € 10,000, the consumer is invited to transfer his payment claim, where this totals more than € 10,000, to HISWA Association, whereupon HISWA Association will request this to be paid under its own name and at its own cost in settlement to the consumer.
3. HISWA Association does not supply a performance bond if, before the consumer complies with the specific intake requirements relating to the handling of the dispute (payment of complaint-filing fees, return of completed and signed questionnaire, and a deposit of an amount of money where applicable), one of the following situations holds:
 - the member has been granted a moratorium;
 - the member has been declared bankrupt;
 - the company activities have effectively been terminated.The date on which cessation of company operations is entered into the Trade Register is the determining factor or an earlier date, for which HISWA Association can make a plausible case for demonstrating that company activities were effectively terminated.

ARTICLE 14 - APPLICABLE LAW

Dutch law is applicable in all disputes relating to this contract, unless another national law is applicable on grounds of mandatory rules.

ARTICLE 15 - DEVIATION FROM THE CONDITIONS

Individual deviations from these General Terms and Conditions, including supplements or additions, are required to be recorded in writing or in electronic form after agreement by both Entrepreneur and consumer.

ARTICLE 16 - AMENDMENTS

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

HISWA Information sheet for the purchase/sale appraisal and/or valuation

This information and the HISWA General Terms and Conditions can also be found on www.hiswa-experts.nl

The inspection work is done according to the internal HISWA appraisal and valuation manual.

The purchase/sale appraisal consists of the following inspections and are listed according to subject in the HISWA Purchase Appraisal Report:

- Hull under the water line, keel, rudder blade, propeller shaft, propeller (material thickness measurement/osmosis study/moisture measurement)
- Hull above the water line
- Deck, superstructure and cockpit
- Rigging
- Hull interior (constructions)
- Interior
- Technical machinery
- Gas machinery
- Electrical machinery
- Equipment
- Steering system
- Mechanical propulsion system (engine and power system)
- Trial run using engine
- Safety and life-saving equipment

General information:

- The inspection is a random indication; the appraiser cannot ensure that, despite his sound inspection, the vessel can have (hidden) defects that were not or could not be discovered by the appraiser during inspection.
- During his inspection, the appraiser will limit his study to those parts of the vessel included in the agreed-upon assignment.
- Parts not directly related to the vessel do not fall within the appraisal inspection.
- If the appraiser lists an amount for repairs, this is only an indication; no rights can be derived from this.
- The report made by the appraiser may be used only for the purpose stated in advance, may be used only by the customer and is thus not transferrable to third parties.
- The appraisal inspection is not an inspection in accordance with the CE marking.
- The appraiser will not investigate places that are not or are not easily accessible or that involve destruction and/or disassembly.
- Any measurements (moisture measurements/material thickness measurements (ultrasound)/temperature measurements) are done at random and are indicative. Sails and deck sails will only be visually appraised in the limited space of the vessel and/or when furled.
- Sailing the vessel is not part of a standard purchase appraisal, unless otherwise agreed.
- The mast and stays will be visually inspected from the deck up to eye level.
- There will be no check of leakage by means of hosing down or dousing.
- Electrical equipment will be visually appraised on its functioning and not on its dimensions.
- Equipment and metres will be appraised on their working without a check on correct instructions.
- Tanks will not be emptied and/or filled and internally inspected.
- Investigations of the working of the gas ovens, gas refrigerators, TV/video/washing machines are not a standard part of the inspection.
- The propulsion system and steering system will be evaluated visually and functionally during a trial sail. The inside of the engine, reverse gear and steering machinery will not be inspected. The purpose of the trial sail is to provide insight into the performance of the driving machinery and steering machinery.
- The purchase appraisal is limited to the parts that are present during the inspection.
- Inspections carried out on land are done on reservation of any eventual leaks found when the vessel is in the water.