

## **DUTCH BOATMEN'S TERMS AND CONDITIONS 2023**

### **Article 1 Definitions**

- 1.1. Services: 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) counterparty of the Services Contractor.

### **Article 2 General terms and conditions**

- 2.1. These terms and conditions are applicable to the entire legal relationship between Services Contractor and Client, including future obligations.
- 2.2. Client relinquishes the application of all other general terms and conditions, including the ones applied by Client.
- 2.3. Any assignment given by the Client to the Services Contractor is considered to be irrevocable. Any offer made by the Services Contractor is without obligation and non-binding. The Services Contractor is not bound by verbal commitments.

### **Article 3 Client**

- 3.1. A third party who, on behalf of a Client, renders assignment to render services, therewith assumes joint and several liability for the performance of any and all obligations of the Client vis-à-vis the Services Contractor.
- 3.2. The owner of the ship for which 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 Services Contractor and will be sent to the Client at their request.
- 4.2. The rendering of Services commences at the moment the Services Contractor begins their preparatory work for performing Services. Services ends at the moment they have been fulfilled, including the return voyage of persons and material, if any, to the original place of departure, or when the Services Contractor let it be known 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 costs incurred, including salvage remuneration or contributions to general average.

- 4.4. Payment by the Client is each time immediately due at the moment Services have been rendered to the Service Contractor.
- 4.5. The Client is obliged to make objections to the invoiced amount in writing within fourteen days of invoicing by the Services Contractor, in the absence of which the invoiced amount is fixed between all parties involved and the right to object against the invoiced amount has been extinguished.
- 4.6. Client nor parties mentioned in article 3 of these conditions are entitled to any right to set-off and/or suspend their obligations and/or terminate of any contract.
- 4.7. The Services Contractor is entitled to suspend any obligation towards Client for as long as Client has not complied to their obligations vis-à-vis Services Contractor in full. Services Contracts, at their discretion, are entitled to the same or to be fully liberated from the performance of any and all obligations vis-à-vis the Client if: Client is declared to be in a state of insolvency; a petition has been filed to have the Client declared insolvent or to establish (preliminary) suspension of payment proceedings or if Client for any other reason will no longer be legally competent or capable to have access to their estate or parts thereof; force majeure as defined in article 7 of these conditions has set in or if the ship to which Services are pertaining is arrested or is under threat to be arrested.
- 4.8. In case of overdue payment the Client, without having to be rendered in default, will owe to Services Contractor, besides statutory interest, rate also extrajudicial collection costs set at minimally 15% of the principal amount.

#### **Article 5            Performance of Services**

- 5.1. The Services Contractor is entitled to subcontract the performance of Services, in whole or in part, to third parties.
- 5.2. The Services Contractor decides, at their own discretion, on the manner in which the Services will be performed and the timing thereof, which are indicative, and as such Client cannot derive any rights therefrom. The Client warrants that the Services Contractor is given all opportunity to provide Services as such, by want the Services Contractor is no longer obliged to perform on the contract, which does not affect their right to be paid in full.
- 5.3. The Services Contractor is not obliged to render any of the Services and may discontinue the performance of all Services at any moment if there is, in their opinion, danger to persons, goods or the environment.
- 5.4. Client will make, free of charge and immediately, available to Services Contractor all information and documentation, including waybills and documentation seeing to imports and exports, which the Services Contractor considers to be necessary for the performance of the agreed Services and the Client guarantees the accuracy thereof.

#### **Article 6            Liability**

- 6.1. The Services Contractor will perform all Services at the risk and expense of the Client under exclusion of all liability, insofar such is allowed for, pursuant to mandatory law. If not, their liability will still be limited to the amounts due to them seeing to the agreed Services in relation to which the liability has arisen, to a maximum of € 10.000, in words: ten thousand euro's.

- 6.2. In the case of carriage of goods or persons as meant in Book 8 Civil Code, the liability of the Services Contractor, cases of wilful intent or wilful recklessness exempted, is at any rate limited to the amounts regarding the limitation of liability as specified by or pursuant of Book 8 Civil Code.
- 6.3. In case of renting and leasing or usage of equipment, the liability of the Services Contractor for a defect, existence and scope of which are to be evidenced by Client, is excluded and limited as stated in the second sentence of sub 1 of this article, unless the defect was incurred by a cause that cannot be attributed to Services Contractor, in which case the first sentence of sub 1 of this article applies.
- 6.4. The Client will be liable to the Services Contractor for any and all damages and will indemnify the Services Contractor for any and all damages incurred in whatever way in connection with the Services. Damages within the meaning of this clause encompass and are not limited to damage to goods, damages caused by death or injury and environmental damage, as well as all costs incurred for the defence against any claim whatsoever.
- 6.5. Client guarantees that the Services Contractor will be able to rely on all clauses that exclude or limit liability, including those of prescription and termination of actions, which are incorporated in any agreement concluded between the Client and third parties.
- 6.6. Any right of action against the Services Contractor will expire if legal proceedings have not been brought within twelve months after the alleged event causing damages has commenced, and before the competent court 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 on this, while stating the cause, the nature, the expected duration of the force majeure and the consequences thereof to the performance of Services.
- 7.2. It is understood that force majeure encompasses at the least any event outside the scope of influence of Services Contractor that makes it impossible to fulfil an obligation to the Client, also in case the event was foreseeable.
- 7.3. In the event of force majeure there will be no refund for advance payments settled by Client.

#### **Article 8 Third-party clause**

Members and employees of the Services Contractor, companies affiliated or associated to Services Contractor and third parties engaged, directly or indirectly, by the Services Contractor as well as their employees can invoke any and all stipulations incorporated in 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. The entire legal relationship between the Services Contractor and the Client is subject to Dutch law.
- 9.2. In case of disputes, exclusive jurisdiction rests with the Rotterdam court. Derogating from the previous sentence, the Services Contractor is entitled to bring legal proceedings before any other court of law.

**Article 10      Final stipulation**

These terms and conditions may be cited as: “NBC 2023” and will replace the Nederlandse Bootlieden Conditioes 2017 (the Dutch Boatmen’s terms and conditions 2017) as from 3 January 2023. The Dutch wording of these terms and conditions is leading.