

## **SUMMARISED VERSION FOR THE RETAIL TRADE**

### *of the HISWA General Terms and Conditions of Contracting Work, Sales and Deliveries*

To all of our purchase and sales contracts apply the General Terms and Conditions of Contracting Work, Sales and Deliveries of HISWA Association (Dutch Association of Proprietors in the Water Sports Industry). Deposited at the Court Registry in Amsterdam on 1 April 2011 under number 40/2011.

The most important stipulations for the retail trade are listed below (with adjusted references). The full text of the terms and conditions will be given to you at your first request. They can also be found on [www.hiswa.nl](http://www.hiswa.nl).

#### **ARTICLE 1 - DEFINITIONS**

In these conditions the following words mean:

- a. *Proprietor*: natural or legal person who, as a member of HISWA Association, draws up a contract relating to a vessel or part of a vessel.
- 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.

#### **ARTICLE 2 - APPLICABILITY**

1. These General Terms and Conditions apply to every offer and to each contract of purchase, sales, construction, preservation, completion work, installation of fittings, repair or maintenance of vessels or parts of vessels, as well as of all other contracts resulting from these, as drawn up between the proprietor and consumer.

#### **ARTICLE 3 - THE OFFER**

1. The proprietor makes the offer orally, in writing or in 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.

#### **ARTICLE 4 - THE CONTRACT**

1. The contract is finalised when the consumer accepts the offer. If the assignment is granted electronically, the proprietor sends an electronic confirmation to the consumer.
2. The contracts are preferably recorded either in writing or electronically.
3. If the contract is in writing, a copy should be sent to the consumer.

#### **ARTICLE 5 - DELIVERY TIME/DELIVERY**

1. Delivery time is understood to mean the period between, on the one hand, the date on which the purchase contract is drawn up or alternatively the assignment to build, renovate, complete construction work or install fittings is given and, on the other hand, the agreed date of delivery ex works or depot in the Netherlands.
2. The proprietor is required to inform the consumer in writing, with a statement of the reasons, as soon as it is expected that the delivery time will be overrun and, if possible, to indicate the extent of the overrun.
3. The delivery time is extended by any delayed period that is a reasonably foreseeable consequence of omissions on the part of the consumer. An omission is here understood to mean that the consumer fails to comply with a commitment to the proprietor with regard to the vessel. This is certainly the case if the consumer, despite timely notice, does not pay the debt owing to the proprietor on time. In addition, any costs that arise from omissions that are foreseeable and an expected consequence of the

empirical rules will also be at the expense of the consumer.

4. The proprietor is in default only if the delivery period overruns by more than 15% as a result of causes attributable to the proprietor. If this period is overrun, the consumer has right of suspension or termination as laid down in Article 12.
5. The delivery takes place ex-works in the Netherlands. However, if a trial run takes place prior to delivery, the delivery is made to the place agreed on for the trial run.
6. If the consumer fails to take delivery of the vessel or other items, they are stored, at the cost and risk of the consumer.

#### **ARTICLE 6 - CONFORMITY**

1. The proprietor vouches for the delivered item conforming to the agreement (conformity). The proprietor furthermore ensures that, taking all circumstances into account, the item possesses the properties that shall be necessary for normal use, as well as for special use, if that has been agreed.
2. The proprietor is not responsible for defects which arise after delivery and which appear to have been caused by normal wear and tear, inexpert use or lack of care, or that are the result of alterations that the consumer or third parties have made to the item that was delivered. Neither is the proprietor responsible for damage that results from the aforementioned.

#### **ARTICLE 7 - GUARANTEE**

1. The guarantee described in this Article ensures the legal rights of the consumer remain unimpaired.
2. The guarantee concerns restoration, at the boatyard of the proprietor, of defects that were not noticeable at the time of purchase/delivery, as well as the restoration of defects that have arisen from normal usage during the guarantee period.
3. Article 6, paragraph 2 apply by analogy.
4. Unless the consumer has explicitly stated in writing his wish to abandon the guarantee, the duration of the guarantee period is for new vessels, also including new parts/fittings, at least twelve months after purchase.

#### **ARTICLE 8 - PAYMENT**

1. Payment takes place in cash at the time of purchase or delivery unless otherwise agreed. Making a cash payment also includes transferring the amount due, at the moment of purchase or delivery, to the bank or giro account indicated by the proprietor, or by paying with any form of electronic payment recognised by banks.
2. If payment in instalments has been agreed, the consumer should pay according to the instalments and percentages as laid down in the contract.
3. At the time of purchase, the proprietor and consumer can agree on a payment in advance of not more than 50% of the price.

## **ARTICLE 9 - OVERDUE PAYMENT**

1. The consumer is in default once the payment date has passed. The proprietor 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.

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 proprietor 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.

2. If the consumer remains in default of payment after the payment reminder has been sent, the proprietor also has the right to increase the amount due by adding collection charges. Extrajudicial costs include all the costs that the proprietor has to charge for the services of lawyers, enforcement agents and anyone he requires for the recovery of the amount due.

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.

3. Any complaints about invoices should be submitted to the proprietor, preferably in writing and adequately described and explained, within a reasonable period after the receipt of the invoice in question.

## **ARTICLE 10 - SECURITY RIGHTS**

1. The vessel and/or parts as described in the purchase contract (including all the materials and accessories intended for the vessel) are deemed to be delivered to the consumer at the moment the parties have reached agreement and the consumer has made a down payment.
2. Delivery takes place under retention of title, that is to say, the items delivered remain the property of the proprietor for as long as the consumer has not met all the payment obligations agreed to in the sales/purchase contract (including the insurance costs referred to in paragraph 4).
3. The risk attached to the item sold is transferred at the moment of delivery.
4. The proprietor is obliged to insure the vessel (for use by the consumer) against third-party liability, hull damage and theft from the moment of delivery as stated in paragraph 1 to the moment at which the consumer pays the complete purchase price. The consumer pays the cost of this insurance.
5. The consumer is not entitled to use the items supplied before the referred to transfer of ownership, other than for purposes of dealing with the purchase/sale contract, and is not entitled to sell the items supplied or to dispose of them in any way until the proprietor has received full payment.

6. The proprietor, prior to the referred to transfer of ownership, always has access to the items that are his property, wherever they may be located.
7. As soon as the consumer neglects to meet one or more of his obligations to the proprietor, all claims on the consumer can be made immediately and in full, and the proprietor is entitled, subject to the provisions in Article 9 and without judicial intervention, to exercise his rights regarding his property in order to claim back his property. In the latter case, the proprietor is obliged to return the part of the purchase price already paid by the consumer, after deducting expenses.

## **ARTICLE 11- DEFERRAL AND TERMINATION**

1. If one of the parties does not comply with their obligation, the other party is entitled to defer their compliance with the associated obligation. In the event of partial or inadequate compliance, deferral is only permitted where the breach justifies that.
2. If one of the parties does not comply with their obligations regarding the contract, the other party is entitled to terminate the contract, unless the breach is not justifiable due to the particular nature or minor significance of the breach. Should the need arise, the consumer is obliged to agree to deregistration, if the vessel is registered in his name.

## **ARTICLE 12 - COMPLAINTS**

1. Complaints regarding the implementation of the contract should be made known to the proprietor 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 13 - DISPUTES: DISPUTES SETTLEMENT COMMITTEE AND JUDGE**

1. Disputes between consumer and proprietor regarding the preparation or execution of contracts regarding services and items delivered or to be delivered by this proprietor, and to which these Terms and Conditions apply, can be brought by either the consumer or the proprietor before the Water Recreation Disputes Settlement Committee, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague ([www.sgc.nl](http://www.sgc.nl)).
2. The Disputes Settlement Committee mediates in a dispute only if the consumer has first submitted his complaint to the proprietor.