



HISWA
VERENIGING

HISWA GENERAL TERMS AND CONDITIONS FOR E-COMMERCE

governing agreements entered into over the Internet

These General Terms and Conditions of Contract, Sale and Delivery from the HISWA Association (*Dutch Association of Proprietors in the Water Sports Industry*) have been drawn up in consultation with the Consumers' Association (*Consumentenbond*) and Royal Dutch Touring Club ANWB ("ANWB") under the Self-Regulation Coordination Group of the Social Economic Council (SER). Deposited at the District Court Registry in Amsterdam on 15 November 2012 under number 95/2012.

HISWA Association will take action against any misuse, so it can effectively 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

The amounts stated in these General Terms and Conditions include VAT. The terms listed used in these General Terms and Conditions have the meaning assigned to them below:

- a. *Entrepreneur*: an individual who or legal entity that, as a member of HISWA Association, remotely offers products and/or services to Consumers on a commercial basis.
- b. *Consumer*: an individual not acting in the exercise of his or her profession or in the carrying on of a business entering into a Contract for Distance Selling with the Entrepreneur.
- c. *Contract for Distance Selling*: an agreement for which, within the framework of a system for selling products and/or services at a distance set up by the Entrepreneur, one or more Remote Communication Techniques are exclusively used for the entire process up to and including the conclusion of the contract.
- d. *Remote Communication Technique*: a tool that may be used for concluding an agreement without the need for the Consumer and the Entrepreneur to physically meet.
- e. *Cooling-off Period*: the period during which a Consumer may exercise its Right to Cancel.
- f. *Right to Cancel*: a Consumer's right to cancel the Contract for Distance Selling within the Cooling-off Period.
- g. *Day*: Calendar Day.
- h. *Continuing Performance Contract*: a Contract for Distance Selling relating to a series of products and/or services under which the obligation to deliver or purchase are spread in time.
- i. *Permanent Data Carrier*: any tool enabling a Consumer or Entrepreneur to store information personally addressed to him, her or it in such a manner as to allow future retrieval and unaltered reproduction of such information.
- j. *Disputes Committee*: the Water Recreation Disputes Settlement Committee in The Hague.

ARTICLE 2 - APPLICABILITY

1. These General Terms and Conditions govern all offers made by the Entrepreneur and each Contract for Distance Selling concluded between the Consumer and the Entrepreneur who or that is a member of HISWA Association.
2. These Terms and Conditions can be translated from Dutch into a foreign language. Should there be any differences in the texts as a result of the translation, the Dutch text prevails.
3. Prior to the conclusion of a Contract for Distance Selling, these General Terms and Conditions must be made available to the Consumer. Should this prove to be impossible within reason, the Consumer must be notified prior to the conclusion of the Contract for Distance Selling that the General Terms and Conditions may be inspected at the Entrepreneur's premises and that they must be sent to the Consumer upon request at no charge as soon as possible.

4. Notwithstanding the provisions of the preceding paragraph, if the Contract for Distance Selling is concluded by electronic means, these General Terms and Conditions may be made available to the Consumer by electronic means prior to the conclusion of the Contract for Distance Selling in such a manner as to allow easy storage by the Consumer on a Permanent Data Carrier.
5. Should the procedure set out in the preceding paragraph prove to be impossible within reason, the Consumer must be notified of the manner in which cognizance may be taken of the General Terms and Conditions prior to the conclusion of the Contract for Distance Selling. They must be sent to the Consumer upon request at no charge either by electronic means or otherwise.
6. In the event that other specific HISWA or other terms and conditions apply in addition to these General Terms and Conditions, the provisions of the third, fourth and fifth paragraphs apply accordingly. In the event of conflicting provisions, the Consumer always has the right to invoke the applicable provisions most favourable in his or her situation, unless such conflicting provisions are caused by translations.

ARTICLE 3 - THE OFFER

1. If the offer has a limited period of validity or is made subject to specific conditions, it must expressly state that fact.
2. The offer must accurately and completely specify the products and/or services offered. The specification provided must be sufficiently detailed to allow the Consumer to properly assess the offer. If the Entrepreneur uses images, they must give a true picture of the products and/or services offered. Manifest mistakes or errors in the offer do not bind the Entrepreneur.
3. Each offer must contain information sufficient to allow the Consumer to understand the rights and obligations attached to his or her acceptance of the offer, specifically:
 - the price, including taxes;
 - any delivery costs;
 - how the agreement's formation takes place and what acts it requires;
 - whether he or she has a Right to Cancel;
 - how payment, delivery or the agreement's execution takes place;
 - any period for accepting the offer or a period during which the price offered is valid;
 - the rates charged for remote communications if the costs for using the Remote Communication Technique are charged on a basis other than the basic rate;
 - how the Consumer may inspect the agreement in the event that is filed following its formation;

- how the Consumer may be informed of any acts not intended by him or her prior to the conclusion of the agreement and how he or she may remedy them prior to the agreement's formation;
- any languages other than Dutch in which the agreement may be concluded;
- any codes of conduct to which the Entrepreneur has subscribed and how the Consumer may consult such codes by electronic means; and
- the minimum term of the Distance Contract if it concerns continuous or periodic delivery of products or services.

ARTICLE 4 - THE AGREEMENT

1. Subject to the provisions of paragraph 4, the agreement is formed upon the Consumer's acceptance of the offer and his or her compliance with the relevant terms and conditions.
2. If the Consumer accepts the offer by electronic means, the Entrepreneur must immediately confirm by electronic means receipt of acceptance of the offer. As long as receipt of acceptance has not been confirmed, the Consumer has the right to cancel the agreement.
3. If the Agreement is formed by electronic means, the Entrepreneur must take appropriate technical and organizational means to secure electronic data transmission and provide for a secure web environment. If the Consumer is able to make electronic payments, the Entrepreneur must take appropriate security measures for that purpose.
4. Subject to statutory restrictions, the Entrepreneur may make inquiries into whether the Consumer is able to meet his or her payment obligations and into all facts and aspects relevant to the responsible conclusion of the Contract for Distance Selling. If the Entrepreneur, based on its inquiries, has good grounds for not entering into the agreement, it has the right to refuse an order or request or to impose special conditions, stating those grounds.
5. The Entrepreneur must make the following information available to the Consumer, together with the product or service, either in writing or in such a manner as to allow storage and subsequent access by the Consumer on a Permanent Data Carrier:
 - a. the street address of the Entrepreneur's office that the Consumer may visit to submit any complaints he or she may have;
 - b. the conditions subject to which and the manner in which the Consumer may exercise the Right to Cancel or a clear notification stating that there is no Right to Cancel;
 - c. information on the Consumer's entitlement to service after making the purchase and on any warranties;
 - d. the information listed in Article 3, paragraph 3 of these Terms and Conditions, unless the Entrepreneur made such information available prior to the execution of the agreement; and
 - e. the conditions governing termination of the agreement if its term exceeds one year or is indefinite.
6. If the Entrepreneur has committed to delivering a series of products or services, the provisions of the preceding paragraph only apply to the first delivery.

ARTICLE 5 - THE RIGHT TO CANCEL

In the event of the delivery of products

1. The Consumer has the right to cancel the agreement without stating any reasons for a period of at least 14 Days following the purchase. This period commences on the Day following receipt of the product by or on behalf of the Consumer.
2. During this period, the Consumer must handle the product and its packaging with due care. He or she must unpack the product only to the extent needed to assess whether he or she wishes to keep it. If the Consumer exercises his or her Right to Cancel, he or she must return to the Entrepreneur the product and all its accessories in its original state and packaging to the extent possible, in accordance with clear and reasonable instructions provided by the Entrepreneur.

In the event of the provision of services

3. The Consumer has the right to cancel the agreement without stating any reasons for a period of at least 14 Days from the Day on which the agreement is entered into.
4. To exercise his or her Right to Cancel, the Consumer must act in accordance with clear and reasonable instructions provided by the Entrepreneur at the time of the offer and/or upon provision of the service at the latest.

ARTICLE 6 - COSTS INCURRED UPON CANCELLATION

1. If the Consumer exercises his or her Right to Cancel, only the costs of returning the product, at most, are for his or her expense.
2. The Entrepreneur must repay any other amounts paid by the Consumer as soon as possible, but not later than 30 Days following the product's return or the agreement's cancellation.

ARTICLE 7 - EXCLUSION OF THE RIGHT TO CANCEL

1. The Entrepreneur may exclude the Consumer's Right to Cancel to the extent provided for in paragraphs 2 and 3. Such exclusion is valid only if the Entrepreneur has clearly stipulated it in the offer or has, at least, allowed a sufficient amount of time prior to entering into the agreement.
2. With respect to products, the Right to Cancel may only be excluded:
 - a. if they have been produced by the Entrepreneur in accordance with the Consumer's specifications;
 - b. if they are of a manifestly personal nature;
 - c. if they cannot be returned because of their nature;
 - d. if they are perishable or subject to rapid obsolescence;
 - e. if their price is linked to fluctuations in the financial market that are outside the Entrepreneur's control;
 - f. if they are individual copies of newspapers or magazines; or
 - g. if they are audio or video recordings or computer software whose seal the Consumer has broken.
3. With respect to services, the Right to Cancel may only be excluded:
 - a. if they concern accommodation, transportation, restaurant or leisure services to be performed on a specified date or during a specified period; or
 - b. if their provision has commenced before the Cooling-off Period has expired with the express consent of the Consumer.

ARTICLE 8 - THE PRICE

1. During the period of validity stated in the offer, the prices of the products and/or services offered may not be increased, unless such increases are caused by changes in taxation, excise duties and the like imposed by the government.
2. Notwithstanding the provisions of the preceding paragraph, the Entrepreneur may offer products or services whose prices are linked to fluctuations on the financial market that are outside of the Entrepreneur's control, stating variable prices. The fact that prices are linked to fluctuations and the fact that any prices stated are indicative prices only must be stated in the offer.
3. Prices may be increased within three months of the agreement's formation only if such price increases are caused by statutory regulations or provisions.
4. Prices may be increased after three months of the agreement's formation only if the Entrepreneur has stipulated that right and:
 - a. if such price increases are caused by statutory regulations or provisions; or
 - b. if the Consumer has the right to cancel the agreement with effect from the date on which such price increase takes effect.
5. Prices stated in the offer of products or services include any applicable VAT.

ARTICLE 9 - CONFORMITY AND WARRANTY

1. The Entrepreneur warrants that the products and/or services are in accordance with the agreement, the specifications stated in the offer, reasonable requirements of soundness and/or possibilities for use, as well as any statutory provisions and/or government regulations in force on the date of the agreement's formation.
2. A warranty provided by the Entrepreneur, a manufacturer or an importer in no way whatsoever limits the Consumer's statutory rights in respect of default that he or she may enforce towards the Entrepreneur.

ARTICLE 10 - DELIVERY AND EXECUTION

1. The Entrepreneur must exercise the greatest possible care in taking receipt of and handling orders for products and in assessing requests for the provision of services.
2. Unless agreed otherwise, the place of delivery is deemed to be the address the Consumer has provided to the Entrepreneur.
3. Subject to the relevant provisions of Article 3 of these General Terms and Conditions, the Entrepreneur must execute accepted orders expeditiously, but within 30 Days at most, unless a longer delivery period has been agreed. If delivery is delayed or if an order cannot be executed or can only be executed in part, the Consumer must be notified not later than one month of the date of the order. In that event, the Consumer has the right to cancel the agreement at no charge and is entitled to damages where applicable.
4. In the event of cancellation in accordance with the provisions of the preceding paragraph, the Entrepreneur must repay any amount paid by the Consumer as soon as possible, but within 30 Days of the date of cancellation at the latest.
5. If delivery of an ordered product proves to be impossible, the Entrepreneur must make an effort to make a replacement product available. The Consumer must be notified, in clear and understandable terms, upon delivery at the latest, that a replacement product is delivered. The Right to Cancel cannot be excluded in the event that a replacement product is delivered. The costs of returning the product are at the Entrepreneur's expense.
6. Unless expressly agreed otherwise, the risk of products being damaged and/or lost is borne by the Entrepreneur until delivery to the Consumer takes place.

ARTICLE 11 - CONTINUING PERFORMANCE CONTRACTS: TERMINATION, RENEWAL AND DURATION

Termination

1. The Consumer may at all times terminate an agreement entered into for an indefinite period for the periodic delivery of products (including electricity) or for the provision of services, subject to a termination procedure agreed for that purpose and a notice period of one month at most.
2. The Consumer may at all times terminate an agreement entered into for a fixed period for the periodic delivery of products (including electricity) or for the provision of services with effect from the end of such fixed period, subject to a termination procedure agreed for that purpose and a notice period of one month at most.
3. The Consumer may terminate the agreements referred to in the preceding paragraphs:
 - at all times, without any restriction in terms of the time or period of termination;
 - in the same manner as he or she entered into the agreement, at a minimum;
 - subject to the notice period the Entrepreneur has stipulated as his own.

Renewal

4. An agreement entered into for a fixed period for the periodic delivery of products (including electricity) or for the provision of services may not be tacitly renewed or renewed for a fixed period.

5. Notwithstanding the provisions of the preceding paragraph, an agreement entered into for a fixed period for the periodic delivery of newspapers, news magazines, weekly magazines and other magazines may be tacitly renewed for a fixed period not exceeding three months if the Consumer is granted the right to terminate the agreement thus renewed subject to a notice period of one month at most.
6. An agreement entered into for a fixed period for the periodic delivery of products or services may be tacitly renewed for an indefinite period only if the is granted the right to terminate the agreement subject to a notice period not exceeding one month, or not exceeding three months if the agreement is for the regular delivery, but less frequently than once a month, of newspapers, news magazines, weekly magazines and other magazines.
7. An agreement for a fixed period for the periodic delivery of newspapers, news magazines, weekly magazines and other magazines for introductory purposes (trial subscriptions) may not be tacitly renewed and must end automatically once the trial or introductory period has expired.

Duration

8. If an agreement's duration exceeds one year, the Consumer may, after one year, terminate the agreement at all times subject to a notice period of one month at most unless premature termination is at odds with the principle of reasonableness and fairness.
9. The provisions laid down in this Article do not apply to leases and, in particular, to leases of mooring places for vessels.

ARTICLE 12 - PAYMENT

1. To the extent not otherwise agreed, any and all amounts due by the Consumer must be paid within 14 Days of the commencement of the Cooling-off Period referred to in Article 5, paragraph 1. In the event of an agreement for the provision of a service, that period commences as soon as the Consumer has received a confirmation of the agreement.
2. In the event of a sale of a product to a Consumer, general terms and conditions may never stipulate a down payment in excess of 50%. If a down payment has been stipulated, the Consumer cannot enforce any right as to the execution of the relevant order or service(s) as long as the stipulated down payment has not been made.
3. The Consumer is under the obligation to notify the Entrepreneur of any inaccuracies in the payment data provided or stated without delay.
4. In the event of the Consumer's failure to make payment, the Entrepreneur has the right, subject to statutory restrictions, to charge to the Consumer any costs reasonably incurred and notified to the Consumer in advance.

ARTICLE 13 - COMPLAINTS PROCEDURE

1. The Entrepreneur must have a complaints procedure in place that it has sufficiently disclosed. It must handle any complaints in accordance with that procedure.
2. Following the Consumer's discovery of faults, complaints about the agreement's execution must be submitted to the Entrepreneur expeditiously, completely and clearly described.
3. 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.
4. The Entrepreneur must respond to a complaint within a period of 14 Days from the date of receipt. If it can be foreseen that a complaint warrants a longer handling period, the Entrepreneur must, within the 14-Day period, send a notification of receipt, stating when the Consumer may expect a more detailed response.
5. Any complaint incapable of being solved in mutual consultation results in a dispute governed by the dispute settlement procedure.

ARTICLE 14 - DISPUTES

1. Any and all agreements between the Entrepreneur and the Consumer to which these General Terms and Conditions apply are exclusively governed by Dutch law.
 2. Disputes between the Consumer and the Entrepreneur regarding the preparation or execution of contracts regarding services and items delivered or to be delivered by the 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, P.O. Box 90600, 2509 LP The Hague, the Netherlands (www.sgc.nl).
 3. The Disputes Settlement Committee mediates in a dispute only if the Consumer has first submitted his complaint to the Entrepreneur.
 4. The Disputes Settlement Committee mediates in a dispute only if the dispute involves a sum of not more than €14,000.
 5. Disputes involving financial interests greater than €14,000 may only be handled by the Committee if both parties explicitly concur.
 6. 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.
 7. If the Consumer decides to bring a dispute before the Disputes Settlement Committee, the Entrepreneur is bound to that decision. If the Entrepreneur decides to bring a dispute before the Disputes Settlement Committee, he is required to ask the Consumer to declare within five weeks whether he or she concurs. The Entrepreneur is also required to announce that he or she will deem himself free to bring the dispute before the court once the aforementioned period has expired.
 8. The Disputes Settlement Committee renders its decision with due regard for the terms of the regulation that apply to the Committee. The decision of the Disputes Settlement Committee is rendered in accordance with that regulation by way of a binding opinion. The regulation is sent upon request. A fee is payable for hearing a dispute.
 9. Only a court of law or the above-mentioned Disputes Settlement Committee is authorised to take cognisance of disputes.
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 or she claims from the Entrepreneur is transferred to HISWA Association. If the amount claimed from the Entrepreneur exceeds €10,000, the Consumer is invited to transfer the excess of his or her payment claim to HISWA Association, whereupon HISWA Association will request this to be paid under its own name and at its own expense in settlement to the Consumer.
 3. HISWA Association does not provide 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 payment of a deposit where applicable), one of the following situations applies:
 - the member has been granted a moratorium;
 - the member has been declared bankrupt; or
 - the business operations have effectively been terminated.The date on which termination of business operations is entered into the Trade Register is the determining factor or such earlier date as for which HISWA Association can make a plausible case demonstrating that business operations were effectively terminated.

ARTICLE 16 - PROVISIONS DEVIATING FROM THESE TERMS AND CONDITIONS

Individual provisions deviating from these General Terms and Conditions, including additions and supplements, must be laid down in writing.

ARTICLE 17 - AMENDMENTS

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

ARTICLE 15 - GUARANTEE OF COMPLIANCE/ PERFORMANCE BOND

1. HISWA Association guarantees that its members will comply with binding opinions, unless a member decides to submit the binding opinion to a court of law for review within two months of the opinion being issued. This guarantee is restored if the binding opinion is upheld after review by the court of law and the court decision evidencing such has become definitive and is not open to appeal. An amount of up to €10,000 for each binding opinion is paid to the Consumer by HISWA Association. In the event of amounts in excess of €10,000 for each binding opinion, the Consumer receives an amount of €10,000. For larger sums, HISWA Association is obliged to make strenuous efforts to ensure that the member complies with the binding opinion.