



## **2002 RULES & REGULATIONS OF THE DUTCH BOATMEN'S ASSOCIATION**

### **Article 1 - General definitions**

1. In these Rules and Regulations (R&R), boatmen's services are understood to include the mooring, unmooring and shifting of vessels, the supplying of crews (helmsmen included) to vessels for shifting and/or other purposes, the transfer or transport of persons (pilots included) and goods to/from vessels moored whether in midstream or not, the rendering of pilot services, providing assistance in applying (oil) screens, the leasing of vessels with a specialised crew for any type of activity and, in general, any assistance provided or to be provided to vessels, including everything pertinent to the abovementioned operations, actions and assistance.
2. In these R&R, the service provider is understood to be the legal entity or natural person which/who has been contracted to provide (a) boatmen's service(s), and the members, divisions and subordinates of such a legal entity, respectively the organization, i.e. legal entity, to which such a natural person belongs in any capacity whatsoever.
3. In these R&R, the word "principal" is understood to mean those who, with regard to the assignment and by virtue of Article 3, are joined with, and/or liable to, the service provider.

### **Article 2 - Applicability of the R&R and legal provisions**

1. These R&R are applicable to all legal relations between the service provider and the principal, both before and after the completion or (early) termination of the contract.
2. The applicability of general terms and conditions that may be brought to bear by the principal is explicitly rejected by reason of the R&R described herein.
3. The service provider is at all times entitled to appeal, or co-appeal, stipulations leading to elimination or restriction of liability (including expiration, etc.) which are encompassed in contracts between the principal and third parties, respectively between the service provider himself and third parties, as well as legal provisions regarding the above contracts (as long as these R&R do not explicitly deviate from those legal provisions).

### **Article 3 - Principal**

1. Those who, for third parties as their principal - whether or not explicitly on behalf of that principal - assign boatmen's services to the service provider, commit themselves, jointly and severally, to live up to all obligations arising from the contract with the service provider and accept, by the mere assignment of the contract to the service provider, their own liability of fulfilment towards the latter.
2. The full extent of the obligations of those who act on behalf of third parties is described in the previous paragraphs. In addition, however, their principal himself becomes and remains liable, jointly and severally, for the observance of all the obligations which arise from the contract with the service provider, even when his (the principal's) identity is not known until some time after the assignment of the contract to the service provider; this assignment is deemed with and, as a result of the contract, to be accepted for and on behalf of the principal.
3. Those who - in the sense of the first paragraph of this Article - act for third parties as their principal, guarantee - on the strength of, and in accordance with, the second paragraph - their authority to legally bind that principal; with and by the mere assignment they are further understood to let it be known that they have given the principal freedom to close a contract for him with the service provider in accordance with these R&R.

### **Article 4 - Tariffs; surcharges; advance payments; payments; late payments; collection charges; invoice disputes.**

1. For boatmen's services, provided or to be provided, the latest tariffs - unless modifications or modifying regulations are agreed upon - as filed with the clerk of the District Court in whose district the service provider is established or resides, will be applicable; those tariffs - if not explicitly stated otherwise - are deemed to be part of the relative R&R.
2. If, because of incurred (sea) damage or any other reason, vessels or other objects, pose increased risk or require extra efforts from the boatmen's services provided or to be provided, the tariffs will be increased by a surcharge



- whether or not by means of a special agreement.
3. The fees due the service provider as the result of the assignment pursuant to these R&R, are deemed to be due and payable at the time the assignment is granted. The service provider is entitled to demand advance payment either in the form of a general down payment for boatmen's services to be provided, or in the form of a down payment for (a) specific assignment(s), either in cash or through an invoice. As long as the principal has not complied with the request for advance payment, the service provider is entitled to defer the fulfilment of his obligation.
  4. Invoices from the service provider must be paid within a fortnight from the date of the invoice. Payments must be made as indicated by the service provider. Payments must be made in the agreed upon currency and without errors, discounts and/or delays.
  5. In case of late payment of any invoice all other monetary obligations by the principal become immediately due and payable, regardless of whether the service provider has already invoiced those obligations. The same applies to all liabilities of the principal - whether already invoiced or not - in case of the latter's bankruptcy, moratorium or any other inability to pay.
  6. In case of late payments the principal will (without being declared to be in default) owe interest at a rate equal to the discount rate of the European Central Bank plus 3.75%, with the annual legal interest rate as a minimum.
  7. The principal will be charged the extrajudicial collection charges in conformity with the collection rates of the Nederlandse Orde van Advocaten.
  8. Payments by or on behalf of the principal will be used to pay successively for: the extrajudicial collection charges owed, the judicial expenses, any interest due, and then, in order of age, the amounts owed, regardless of whether different instructions were received from the principal.
  9. The principal can only dispute the invoice in writing and within the time period allowed for payment. If such requirements are not met, the invoice is considered to be accepted by the principal and can no longer be contested.

#### **Article 5 - Financial Security**

1. Before, as well as during and after the completion of the assignment, security can be requested - and, if already provided, additional security can be demanded – in payment of the sum owed by the principal to the service provider under these R&R.
2. As long as the principal has not complied with the above, the service provider is entitled to postpone fulfilment of his obligations.
3. If the principal has not complied with a demand, as defined in the first paragraph of this Article, in writing and within a fortnight after such a claim has been made, his financial obligations to the service provider become immediately due and payable, regardless of whether or not the invoice has already been issued.

#### **Article 6 - Timing of operations**

- 1A) In principle the boatmen's services are performed in order based on the date of assignment; however, the service provider is entitled to carry out such assignments in a different order if and when he deems that the circumstances justify such a decision.
- 1B) The service provider can – on the basis of what is set forth in Article 8 – claim force majeure when the progress of the job is slowed down as a result of the situation described in paragraph 1A above.
2. If the vessel in question is not there at the agreed-upon time, or is not ready, or is not seaworthy, or, in the experts' view, not properly prepared for sea duty, or if the ship in question does not arrive at all, or will not arrive, or if the principal in any other way slows down, or hinders, or does not permit the execution (by whatever cause) of the boatmen's services, the principal – by virtue of a single such act – will be in default and obligated to compensate the service provider for this matter in accordance with the latest tariffs.



### **Article 7 - Carrying out operations and services**

1. The service provider pledges to ensure that the destination is reached on time and safely, without however binding himself to any guarantees.
2. The service provider is not obliged to perform the boatmen's services if and when and where these, in the opinion of either the harbourmaster or the service provider himself, the weather conditions or other circumstances, would involve too much risk or would be otherwise inadvisable.
3. The service provider always decides entirely by himself on the personnel and materiel to be used to carry out his boatmen's services.
4. The execution of the boatmen's services begins when the selected personnel and/or materiel depart to carry out the assignment, and ends when the selected personnel and/or materiel return to their point of departure or when they - for whatever purpose, whether or not awaiting (the execution of) a subsequent assignment - have reached another mooring (berth), or pass a point that is half the geographical distance to the place where the next assignment will be carried out immediately afterwards.

### **Article 8 - Liability**

1. The service provider is never responsible for damages unless if and when the damages suffered were caused by him intentionally or by his own gross culpability. For the purpose of this stipulation, culpability and intent by the service provider are to be understood as culpability and intent by his subsidiaries and of leading officials associated with the service provider.
2. The service provider is never liable for damages caused by intent or culpability on the part of his employees and/or subordinates and of third parties and their subordinates employed by him.
3. The service provider is entitled to invoke force majeure in the case that the execution, totally or partially, whether or not temporarily, is being prevented or hampered by circumstances beyond his control, including, but not limited to, government controls, fire, accidents, inclement weather, business-labour disturbances and strikes. If the aforementioned circumstances do occur, the service provider may invoke force majeure with regard to all activities whose execution is being hampered or prevented, regardless of the circumstances pertinent to those activities. The service provider is also entitled to invoke force majeure when delays have occurred as a result of the fact that the service provider gives, within reason, priority to other activities when such priority is required.
4. Except in case of malicious intent on the part of the service provider, the service provider is never liable for industrial, consequential or indirect damages, such as, but not limited to, loss of profit, time delays, the losing or breaking of a charter or any other agreement, the foregoing or losing of a cargo offer, and the incurring of contractual fines or damage compensation.
5. The principal is liable, vis-à-vis the service provider, for all damages which have been caused by the principal's vessel or other matters by the principal, by his crew, by third parties hired by him, or by his employees, and which have been inflicted upon the personnel and/or materiel committed by the service provider.
6. If, and in as far as, the clauses in paragraphs 2 – 5, would be, for any reason whatsoever, inapplicable or without effect, and the service provider is held responsible for payment of damages, this payment shall never be greater than the amount of the invoice for the corresponding boatmen's service which caused, or led to the damage.

### **Article 9 - Third-party stipulations**

The clauses contained in these R&R concerning exclusion of and limited liability as well as concerning indemnity of the service provider and expiration of the right to claims, apply, as well as to what is defined in Article 8 under paragraph (5), also to and for the benefit of subordinates, members, bodies, i.e. (professional or trade) organizations of the service provider and also on behalf of third parties, no matter how engaged by him, as well as their subordinates.

### **Article 10 - Indemnity**

The principal indemnifies the service provider against claims by third parties in case of loss (death, injury and material loss included) for which he would not have been liable towards the latter, if these third parties would



have been principal themselves.

**Article 11 - Expiration of the right of legal action**

Any right of action against the service provider will expire twelve months after the event that caused the action.

**Article 12 - Applicable legislation and jurisdiction**

All assignments given to or accepted by the service provider are subject to Dutch law.

At first resort the appropriate Judge in Rotterdam will adjudicate all disputes, without prejudice of the service provider's right to file claims under the jurisdiction of the Judge in the principal's place of residence.

**Article 13 - Final provisions**

These R&R, which are filed with the District Courts in Amsterdam, Dordrecht, Groningen, Haarlem, Middelburg and Rotterdam, will go into effect as of 1st January 2002, and can be quoted as the "N.B.C. 2002".

Their Dutch text is decisive.

On request they (the R&R) will be forwarded immediately to interested parties for perusal; this is also true for the tariffs mentioned in Article 4, paragraph 1.

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