



**GENERAL TERMS AND CONDITIONS
FOR
THE LEASE OF PROPERTY
IN THE PORT AREA FOR 2009**

These General Terms and Conditions for the Lease of Property in the Port Area for 2009 have been laid down by the Municipal Executive of Amsterdam during the meeting held on 3 February 2009, and have been made public on 6 February 2009, under number 18, and filed at the Registry of the District Court in Amsterdam.

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0. Definitions

Port of Amsterdam management area: the port and the port area for whose development and management the Port of Amsterdam is responsible.

intended use: the permitted occupancy of the leased property as specified in the special terms and conditions.

special terms and conditions: the provisions applicable to, in addition to, supplementary to or contrary to the general terms and conditions referred to in the lease.

leased property: the property allocated under a lease located within the Port of Amsterdam management area.

City: the legal entity under public law, City of Amsterdam, also referred to as the Port of Amsterdam.

Port of Amsterdam: the City company responsible for the development and management within the Port of Amsterdam management area.

lessee: the natural person or legal entity referred to as the lessee in the lease.

lease: the agreement entered into between the Port of Amsterdam and the lessee for the lease/rent of the leased property to which these terms and conditions apply.

rent: the sum of money payable annually by the lessee in exchange for the use of the leased property.

zero measurement report: the report on the quality of the land and the groundwater on, in or in the immediate vicinity of the leased property, compiled following the soil survey as referred to in Article 9, which report presents the zero situation at the commencement of the lease.

property: the land including the groundwater or the land including the groundwater with the structures and/or a water parcel present on, in and/or above the leased property, and which are part of the leased property.

structures: buildings, works, plantings, whether or not located at the property or in the adjacent water parcel, including, but not restricted to quays, jetties, paving, sewerage, installations, infrastructure (underground and aboveground), bank protection and boundary partitions allocated under a lease.

parties: the City and the lessee.

contamination: contamination of the property and/or the soil and/or the surface water and/or other types of environmental contamination.

water parcel: the harbour floor and the water column above it.

1. Operation

- 1.1 These general terms and conditions apply to a lease for:
- undeveloped land; and/or
 - land with structures to which Article 7:230a of the Dutch Civil Code applies; and/or
 - a water parcel.
- 1.2 These general terms and conditions do not apply to the rental of residential property within the meaning of Article 7:232 of the Dutch Civil Code and/or industrial property within the meaning of Article 7:290 of the Dutch Civil Code.

2. Defects

- 2.1 Contrary to Article 7:204 of the Dutch Civil Code, in these general terms and conditions a defect is exclusively defined as a condition or attribute of the leased property of which the creation or existence can be attributed to the Port of Amsterdam and which results in the leased property not giving the lessee the enjoyment it might have expected when entering into the lease.
- 2.2 The following are not regarded as defects:
- the refusal and/or withdrawal of dispensations and/or permits as referred to in Article 15 and having to implement and then the continued presence as a consequence of the law or regulations of changes and/or provisions in, on or at the leased property, which result in the leased property not giving the lessee the enjoyment it might have expected when entering into the lease;
 - existing and newly established or agreed restricted real rights, qualitative obligations and/or requirements imposed or to be imposed by the government and on behalf of the public utility companies, which result in the leased property not giving the lessee the enjoyment it might have expected when entering into the lease;
 - the installation and presence of works as referred to in Article 13.1, mooring facilities as referred to in Article 13.2 and/or port lighting as referred to in Article 13.7.2, which result in the leased property not

- giving the lessee the enjoyment it might have expected when entering into the lease;
- all circumstances relating to changes or additions to the leased property acquired by the lessee from a predecessor or implemented by the lessee itself, which directly or indirectly result in the leased property not giving the lessee the enjoyment it might have expected when entering into the lease.

2.3 In the event of a defect, the Port of Amsterdam is not obliged to repair and is not liable for damage resulting from the presence of that defect and the lessee does not have any claim to a reduction in rent unless the defect was already present when the lease was entered into and was known or should have been known to the Port of Amsterdam, or unless the defect came about as a consequence of serious fault or gross negligence (*grove schuld of ernstige nalatigheid*) on the part of the Port of Amsterdam.

3. Payments

3.1 The rent is payable as of the date on which the lease commences.

3.2 An amount payable by the lessee will be rounded off arithmetically to two decimal places.

3.3 The rent must be paid in advance without any discount, deduction, offsetting or suspension in two equal six-monthly instalments on 2 January and 1 July of each year by means of a transfer to one of the accounts of the Port of Amsterdam in Amsterdam. If the lessee does not pay the rent or does not pay the rent on time, it will be legally in default without any additional notice of default being necessary.

3.4 An invoice will be sent for payment of the very first rent instalment. This invoice must be paid within 21 days of the invoice date. For all subsequent rent instalments, invoices will be sent, which should be regarded as payment reminders. The indebtedness and exigibility of these subsequent rent instalments will remain subject to paragraph 3 of this article.

3.5 Irrespective of the intended use the lessee assigns to it, each payment by the lessee will be applied for the settlement of its debts to the Port of Amsterdam in the following sequence:

- fine/fines payable pursuant to Article 18.2;
- costs payable pursuant to Article 16;
- interest payable pursuant to Article 18.1;

- debts other than those referred to under 1, 2 and 3, which the lessee has as a consequence of the lease, not being the rent;
- the rent.

4. Annual rent adjustment

4.1 The rent is to be adjusted annually based on the development of the general level in prices. The adjustment is to take place on 1 January of each calendar year. The rent is to be adjusted by 1/7th part of the adjustment coefficient referred to in Article 4.2.

4.2 The adjustment coefficient, which applies for a calendar year, is to be calculated as follows:

- a
-
- b

a = the consumer price index, series for all households, for the month of June of the year preceding the calendar year in question, as published by Statistics Netherlands or, failing that, by some other independent institute.

b = the corresponding index for the month of June of the sixth year preceding the calendar year in question.

If for any reason one or more values in this paragraph represented by the letters a and b are not known or not known in time, the adjustment coefficient referred to in this paragraph will be determined by the City in a manner that as far as possible corresponds to the method of calculation described in this article.

The adjustment coefficient applying for a calendar year will be published in the municipal gazette (*Gemeenteblad*).

4.3 The lessee will be notified of the adjusted rent at the earliest opportunity. The time of notification will not affect the lessee's obligation to make additional payments nor its right to repayment.

5. Bank guarantee/deposit

In connection with the fulfilment of its obligations under the lease, the lessee will provide a continuous bank guarantee in accordance with a model prescribed by the Port of Amsterdam. The bank guarantee must be submitted to the Port of Amsterdam when the lease is signed. The amount of the bank guarantee is six months' rent plus turnover tax. The lessee is

not entitled to offset any amount against the bank guarantee. In the event of a claim under the bank guarantee, the lessee will, at the first request of the Port of Amsterdam, provide a new bank guarantee for the full amount. The lessee may pay a deposit instead of a bank guarantee. The Port of Amsterdam will not pay the lessee any interest.

6. Occupancy and intended use

- 6.1 The lessee is obliged to use the leased property in accordance with the intended use. The lessee will also observe existing restricted rights, qualitative obligations and requirements imposed or to be imposed by the government and public utility companies.
- 6.2 The lessee is forbidden not to use or substantially not to use the leased property entirely or partially for longer than six successive months.
- 6.3 The lessee must submit a building and/or development plan to the Port of Amsterdam in advance. The lessee must, within two years after the lease commencement date, start the implementation of a building and/or development plan approved by the Port of Amsterdam and execute the building work with due speed and without interruption.
- 6.4 The lessee will, for its own account and risk, properly maintain the provisions it has installed or is going to install on the leased property, as well as the changes and additions referred to in Article 7, and carry out the necessary renovation and/or repair work, such to the satisfaction of the Port of Amsterdam. If, after a warning, the lessee fails to carry out the maintenance, renovation and/or repair work on the provisions it has installed or if the Port of Amsterdam is of the opinion that this work has been carried out in an unsound manner, the Port of Amsterdam is entitled to carry out this work or have this work carried out for the account and risk of the lessee. The lessee must remove structures installed on the leased property if the Port of Amsterdam is of the opinion that they have fallen into disrepair and/or are no longer being used as intended, such at the first request and to the satisfaction of the Port of Amsterdam. Pursuant to these general terms and conditions, the Port of Amsterdam is explicitly authorised to carry out the above-mentioned work for the account and risk the lessee.
- 6.5 As regards the occupancy of the leased property, the lessee may not, in any way, cause or allow nuisance for traffic, including shipping traffic.

- 6.6 Vessels intended for the lessee must be moored at the designated mooring facilities located on or at the leased property. Mooring must take place at the correct mooring facilities. The lessee is obliged to have vessels intended for it, which have to be loaded or unloaded, wait wherever possible at the designated mooring facilities on or at the leased property.
- 6.7 The lessee may not use the leased property in such a way that this:
- injures, endangers or serves as a nuisance to people; and/or
 - poses a danger to or damages the property of the City or of third parties; and/or
 - disproportionately hinders the possibility of developing or occupying adjacent parcels, without prejudice to the relevant statutory provisions.
- Occupancy also includes the site load of the leased property.
- 6.8 The lessee will take all measures necessary to prevent damage to the leased property.
- 6.9 The lessee is liable for damage to the leased property and to the property of the City, which damage is caused by a failure attributable to it in the fulfilment of an obligation under the lease. All damage is to be presumed to have been caused by this.
- 7. Layout and occupation**
- 7.1 The lessee requires the prior written consent of the Port of Amsterdam to fully or partially alter the layout or appearance of the leased property, unless these involve changes and additions which can be reversed and removed at the end of the lease without any appreciable costs being incurred.
- 7.2 The costs associated with changes or additions to the leased property and/or property of the City necessary in connection with the occupancy of the leased property by the lessee will be borne by the lessee.
- 7.3 Structures installed on the leased property and/or changes or additions to the layout or appearance of the leased property by the lessee will not be part of the leased property and the Port of Amsterdam will not be liable in any way for any damage caused as a consequence of these changes and additions. The changes and additions may never cause a defect within the meaning of Article 2.1.

7.4 The lessee is obliged to furnish the undeveloped part of the leased property with paving and/or planting for its own account and risk and to maintain these in an orderly fashion to the satisfaction of the Port of Amsterdam.

7.5 The lessee is at all times obliged for its own account and risk to provide sufficient parking space on the leased property. If, during the term of the lease, the Port of Amsterdam is of the opinion that the number of parking spaces is insufficient, the lessee will be obliged to increase the number of parking spaces for its own account and risk. The size, location and number of parking spaces must always be determined in consultation with the Port of Amsterdam. In so far as legislation or regulations require access control, sufficient parking spaces must be located on the leased property in front of the entrance to the premises.

8. Partitions and subsidence

8.1 The lessee is obliged for its own account and risk to separate the leased property in an appropriate manner from the adjoining parcels and/or the public highway and to keep it separate, such to the satisfaction of the Port of Amsterdam. This obligation does not apply if the leased property is a water parcel.

8.2 If, during the term of the lease, subsidence occurs on the leased property, the lessee will be responsible for the repair of said subsidence. Damage caused as a consequence of the subsidence and/or the non-repair or unsatisfactory or late repair of the subsidence is for the account and risk of the lessee.

9. The environment

9.1 Duty of care

The lessee is required to prevent contamination on, in or near the leased property, as well as the threat, increase, expansion or spread of contamination due to or because of any acts or omissions on the part of the lessee, its subordinates or third parties that have a right of use or access to the leased property during the term of the lease.

9.2 Duty to report

If contamination is present or there is the risk of contamination, the lessee will immediately notify the Port of Amsterdam, as well as the competent authority.

9.3 Liability for contamination

The lessee is liable for contamination present on, in or near the leased property, as well as for injury/damage resulting from the contamination, unless the lessee demonstrates that:

- the contamination was present at the location before the lease commencement date, whereby the zero measurement report will be used as the point of departure; or
- the contamination was not caused or aggravated by or due to any acts or omissions on the part of the lessee, its subordinates, or third parties that have a right of use or access to the leased property during the term of the lease.

In the event of injury/damage to people or property of the City or of third parties resulting from the contamination or if there is a threat of such injury/damage, the lessee must implement measures to prevent and/or limit damage/additional damage.

9.4 Zero measurement report

Before entering into the lease, the Port of Amsterdam will conduct a soil survey for its own account. The findings of the soil survey are to be recorded in a zero measurement report that, after authentication by the lessee, will form part of the lease.

The lessee has the right to have an additional survey carried out for its own account if the lessee is of the opinion that the zero measurement report offers insufficient security as regards the recording of the current soil situation on the leased property. If this additional survey takes place in consultation with the Port of Amsterdam and reveals that the findings of the soil survey are insufficiently normative or differ significantly from the additional survey, the Port of Amsterdam will pay the costs of the additional survey carried out by the lessee. In this case, the results of the additional survey will be considered part of the zero measurement report after the lessee has authenticated the zero measurement report.

If the Port of Amsterdam is not consulted, the Port of Amsterdam will be free to assess how much significance and which consequences are to be attributed to the additional survey carried out on behalf of the lessee and whether the costs of said additional survey are to be reimbursed.

9.5 Survey during the term of the lease

The Port of Amsterdam is at any time during the term of the lease entitled to initiate a survey into the presence, extent, cause and/or consequences of contamination. The lessee is obliged to provide all data, to cooperate (including by providing access to the leased property) and to make resources available which the Port of Amsterdam deems

necessary in connection with the survey. During the survey, the lessee's business operations will be taken into account, wherever possible. If the survey reveals contamination, the costs of this survey will be for the account of the lessee, unless the lessee demonstrates that it is not liable for the contamination in accordance with paragraph 3 of this article.

9.6 Remediation during the term of the lease

If, during the term of the lease, the results of the survey referred to in paragraph 5 of this article reveal the presence of contamination and the lessee is liable on the basis of paragraph 3 of this article, the lessee will be required, at the first request of the Port of Amsterdam and/or the competent authority, to remediate the contamination for its own account and risk and to take all measures necessary to prevent contamination/additional contamination.

9.7 Final measurement report

At the end of or as close as possible to the end of the lease, the lessee must have a final measurement carried out into the current quality of the land and the groundwater of the leased property and/or the surrounding sites. The final measurement must have at least the same points of departure as the zero measurement report and must also comply with the latest criteria as regards technology, science and research standards valid at the time at which the survey is carried out. In addition, the final measurement must include an assessment of the consequences of all commercial activities that have taken place on the leased property during the term of the lease. The findings of the final measurement are to be recorded in a final measurement report, which will be submitted to the Port of Amsterdam. The costs for compiling the report are to be paid for by the lessee. If the Port of Amsterdam is of the opinion that the final measurement report insufficiently addresses the current quality of the land and the groundwater of the leased property and/or the surrounding sites, the Port of Amsterdam will be entitled to have its own final measurement carried out for the lessee's account at the end of the lease.

9.8 Remediation at the end of the lease

Before the end of the lease, the lessee is obliged to have any contamination remediated for its own account and risk to the level applicable to the leased property as described in the zero measurement report. As a consequence, the lessee may have a further obligation to carry out remediation and/or remediation measures other than the remediation and/or remediation measures imposed by the competent authorities.

- 9.9 Remediation method and plan
If the lessee has to remediate the leased property at any time, either during the term of the lease or at the end of the lease, it must submit in a timely manner a description of the remediation method, including a remediation plan and details of the remediation company that is to carry out the work, to the Port of Amsterdam for approval. The remediation must take account of all the interests of the City and third parties.
- 9.10 Reporting after remediation
At the end of a remediation pursuant to paragraphs 6 or 8 of this article, the lessee must demonstrate by means of a survey report that the remediation obligation referred to in paragraphs 6 or 8 of this article has been complied with. The costs of this survey are for the account of the lessee. The Port of Amsterdam is entitled to have this survey report by the lessee assessed by carrying out its own survey. The costs of this survey by the Port of Amsterdam, as well as the damage and costs associated with the activities resulting from this survey are for the account and risk of the lessee if said survey reveals that the leased property has not, has not entirely, or has insufficiently been remediated in accordance with the remediation obligation as referred to in paragraphs 6 or 8 of this article.
- 9.11 Measures
If the Port of Amsterdam is of the opinion that the lessee does not fulfil its obligations on account of this article or does not do so on time or insufficiently, the Port of Amsterdam is entitled to take measures for the account and risk of the lessee to discontinue, limit or prevent the contamination and the consequences of the contamination.
- 9.12 Exclusion of liability on the part of the City
The City is not liable for damage, which the lessee suffers or will suffer as a consequence of the survey referred to in paragraph 5 of this article or of the measures referred to in paragraph 11 of this article, except in the event of serious fault or gross negligence (*grove schuld of ernstige nalatigheid*) on the part of the City.
- 9.13 Bank guarantee/deposit
If contamination is established, the lessee will be obliged, in connection with the fulfilment of its obligations on account of this article and with any fines and costs payable due to non-compliance by the lessee of the obligations on account of this article, at the first written request of the Port of Amsterdam, to provide a bank guarantee in accordance with a model prescribed by the Port of Amsterdam. The Port of

Amsterdam will determine the amount of the bank guarantee to be provided. The lessee is not entitled to offset any amount against the bank guarantee. In the event of a claim under the bank guarantee, the lessee will, at the first request of the Port of Amsterdam, provide a new bank guarantee for the full amount. The lessee may pay a deposit instead of providing a bank guarantee. The Port of Amsterdam will not pay the lessee any interest. The lessee's obligation to provide a bank guarantee or pay a deposit will not prejudice the lessee's obligations resulting from Article 5 of these general terms and conditions.

10. Subletting/contract acquisition/change of control

10.1 The lessee may not, without the prior, written consent of the Port of Amsterdam:

- relinquish the leased property entirely or partially under a lease, sublease or occupancy, transfer the rental rights entirely or partially to third parties or contribute to a (different) legal entity or public or limited partnership without legal personality;
- enter into any other agreement with a view to a legal act referred to in this article or with a view to the direct or indirect transfer of the power to dispose of the leased property.

10.2 In so far as the Port of Amsterdam grants the lessee consent to lease or sublease the leased property and/or give the leased property in occupancy entirely or partially to a third party, the lessee is not permitted to:

- enter into a lease, sublease and/or occupancy agreement with a longer term than the term of the lease; and/or
- enter into a lease, sublease and/or occupancy agreement for a higher rent than the rent applicable to the lease at the time.

10.3 The lessee will, at the first request of the Port of Amsterdam, properly provide a copy of the leases/subleases applicable at the time, as referred to in paragraph 2 of this article, to the Port of Amsterdam for perusal.

10.4 If the Port of Amsterdam grants consent on the grounds of paragraph 1 of this article, the lessee will be obliged to impose all the obligations under this lease, including these general terms and conditions, on its lessee, sublessee or occupant.

10.5 If the direct or indirect control of over all or part of the lessee's business activities is transferred to one or more third parties,

the Port of Amsterdam will be entitled to cancel the lease prematurely. The transfer of direct or indirect control means, in any event, a transfer of shares and a merger as referred to in the Decree on the Rules Relating to Mergers of the Social and Economic Council of the Netherlands (*SER-besluit Fusiegedragsregels 2000*). The lessee is obliged to inform the Port of Amsterdam at the earliest opportunity of such a transfer, such under pain of a penalty of € 200 for every day that the lessee is in default. The lessee is considered to be in default *ipso jure* if no notification has been given within a week after the day on which the transfer is effectuated.

11. Consent

- 11.1 A request by the lessee for consent on the grounds of Articles 6, 7 and 10 must always be made in writing. Consent will only be granted once and does not apply to other or successive cases. This consent can be made subject to deadlines and conditions, including an adjustment of the ground rent and of the provisions of the lease. The Port of Amsterdam will charge a fee, to be determined annually by the director of the Port of Amsterdam, for processing the request for consent as referred to in this article. The Port of Amsterdam must receive a request for consent no later than four weeks before the intended date on which consent is required. The Port of Amsterdam will make an effort to decide on the request within four weeks.
- 11.2 The Port of Amsterdam is at all times entitled to reject a request for consent, stating its reasons for doing so. In any event, consent can be refused on the basis of the following, non-limiting, grounds:
- if the leased property is located near water and the commercial activities at the leased property no longer result in the sufficient supply and conveyance of goods by a sea-going vessel via the waterway in front of the leased property and the transshipment of these goods on the leased property, or if these commercial activities reduce (considerably and otherwise).
 - if inconvenience or nuisance are caused or will be caused to the public space and/or adjoining parcels.
- 11.3 The Port of Amsterdam has the right, within the framework of a request for permission as referred to in this article, to examine the lessee's or future lessee's, sublessee's, user's or party otherwise entitled's antecedents.

12. Maintenance, repair and renovation

- 12.1 The lessee is obliged to carry out all small- and large-scale maintenance, repair and renovation work on the leased property properly, on time and for its own account and risk.
- 12.2 If the lessee does not maintain the parcel or maintains it poorly, the consequences thereof will be for the account and risk of the lessee.
- 12.3 If the lessee fails to carry out the maintenance, repair and/or renovation work, or if the Port of Amsterdam is of the opinion that this work has been carried out in an unsound manner, the Port of Amsterdam will be entitled to carry out this work or have this work carried out for the account and risk of the lessee, if the lessee has remained in default after being warned.
- 12.4 With regard to shared partitions, which are part of the leased property, the repair, renovation and maintenance obligation and the related costs are the joint responsibility of the lessee and the owner or user of the adjacent parcel, each for 50%.
- 12.5 The lessee is obliged to maintain, repair or renovate changes and additions to the leased property it has made for its own account and risk.

13. Tolerance obligations and other obligations of the lessee**13.1 Works, cables and pipes**

- 13.1.1 The lessee will tolerate the construction, use, inspection, maintenance, repair, renewal or removal by the City or third parties of cranes, tracks, cables, pipes, posts, sewerage and other similar provisions in, on, above or over the leased property, whether or not for public purposes, as well as related items. In so far as possible, reasonable account will be taken of the lessee's business operations.
- 13.1.2 The lease does not include and does not relate to items referred to in the previous paragraph.
- 13.1.3 If the items referred to in paragraph 1.1 of this article have to be adapted, moved, repositioned, repaired or renewed due to the acts or omissions by the lessee, such will take place by the City or third parties for the account and risk of the lessee.

13.2 Mooring and mooring facilities

- 13.2.1 The lessee will permit, at the first request of the Port of Amsterdam, mooring facilities for the benefit of the City or third parties to be installed on or bordering the leased property.

- 13.2.2 The lessee will permit, at the first request of the Port of Amsterdam, vessels not intended for the lessee's operations to moor at the mooring facility on or at the leased property or the bank bordering the leased property. This obligation to tolerate does not apply if the lessee leases a water parcel or has such a water parcel under a ground lease. The lessee will allow the crew of said vessels to move over the leased property from and to the vessels, with due regard for the applicable legislation in the field of safety and security. The lessee will be entitled, within the framework of applicable safety and security legislation, to impose additional requirements to this access.
- 13.3 Nuisance, damage, danger
The lessee is aware that the leased property is located in a port and industrial area. This location implies a certain degree of nuisance and/or danger from established businesses or from new business to be established in the vicinity of the leased property. The lessee accepts and tolerates a certain degree of nuisance and/or danger. The City is not liable for damage the lessee suffers as a consequence of nuisance or danger resulting from the presence of these businesses.
- 13.4 Cooperation and access
- 13.4.1 The lessee will at all times grant permission and cooperate as regards activities, work and/or acts carried out or to be carried out by or on behalf of the City or third parties within the framework of the general and special terms and conditions, including the tolerance obligations of this article.
- 13.4.2 The lessee will at all times grant access to the leased property to all people designated and to be designated by the City and their vehicles and/or vessels for the execution and verification of compliance with the lease. In so far as possible, the business operations of the lessee will be impeded as little as possible. The designated personnel will behave in accordance with the lessee's safety and security instructions.
- 13.5 No compensation
The lessee is not entitled to any compensation, including any reduction in rent, for the tolerance obligations of this article.
- 13.6 Drainage and discharges
- 13.6.1 If the lessee wishes to drain the leased property, it will only do so only after receiving permission from and in consultation with the Port of Amsterdam. In this context, the lessee is required to take account of the interests of lessees, leaseholders and other users of adjacent parcels and must prevent any inconvenience and damage to the adjacent parcels resulting from the drainage.

- 13.6.2 The lessee will take measures for its account and risk to prevent rainwater from being discharged, directly or indirectly, from the leased property onto adjacent non-water parcels or roads.
- 13.6.3 At the first request of the City, the lessee will connect discharge units in and on the leased property for its account and risk.
- 13.7 Lighting
- 13.7.1 The lessee is obliged to provide and use the lighting on the leased property in such a way that the Port of Amsterdam is of the opinion that it does not impede the identification of harbour lights and does not disrupt shipping traffic. The lessee will ensure that this obligation will also be observed on vessels moored on behalf of the lessee's company, with the exception of vessels described in Article 13.2.2.
- 13.7.2 The lessee is obliged to tolerate the fact that the Port of Amsterdam installs one or more harbour lights at a location on the leased property selected at its own discretion. The costs of installation and maintenance are for the account of the Port of Amsterdam.
- 13.7.3 At the first request of the Port of Amsterdam, the lessee will tolerate the fact that the Port of Amsterdam will issue additional instructions and regulations regarding the use of the commercial lighting.
- 13.8 Instructions
The lessee is obliged to comply with all instructions of the Port of Amsterdam and/or the competent authorities relating to, for example, the occupancy of mooring facilities, the bank and the water located adjacent to the leased property, the method of transshipment of hazardous/environmentally hazardous substances, the method of mooring and tying up and safety aspects.
- 14. Harbour floor**
- 14.1 If the depth of the harbour floor is stipulated in the lease, the Port of Amsterdam will keep the harbour floor for the leased property at this depth by dredging, taking account of any underwater incline.
- 14.2 If the lessee is of the opinion that the depth of the harbour floor differs from that stipulated in the lease (being shallower), the lessee will notify the Port of Amsterdam to this effect in writing. In its notification, the lessee must make a reasonable case, for example by means of an expert opinion attesting to a different depth of harbour floor.

14.3 After the Port of Amsterdam has received a notification from the lessee as referred to in paragraph 2 of this article, the Port of Amsterdam will investigate, within a reasonable period of time, whether the depth of the harbour floor differs from that specified in the lease. If this difference is substantiated, the Port of Amsterdam will ensure that, within a reasonable period of time, the depth of the harbour floor corresponds at least to the depth of the harbour floor specified in the lease.

14.4 If circumstances:

- make it difficult or impossible for the Port of Amsterdam to maintain the harbour floor at the proper depth for reasons that cannot be attributed to the Port of Amsterdam; or
 - entail costs that, given the circumstances, cannot reasonably be demanded of the Port of Amsterdam,
- the obligation of the Port of Amsterdam as referred to in paragraph 1 of this article will lapse, except in the event of serious fault or gross negligence (*grote schuld of ernstige nalatigheid*) on the part of Port of Amsterdam.

The circumstances referred to include, in any event, contamination of the harbour floor.

If the lapsing of the obligation of the Port of Amsterdam as referred to in paragraph 1 of this article makes it impossible for the lessee to perform its activities, each of the parties will be entitled to terminate the lease extrajudicially. However, the lessee is not entitled to terminate the lease if the lapsing of the obligation pursuant to paragraph 1 of this article was caused in full or in part by or due to any acts or omissions on the part of the lessee, its subordinates or third parties who have a right of use or access the leased property. The parties are not mutually entitled to compensation for any damage as a consequence of the lapsing of the obligation of the Port of Amsterdam as referred to in paragraph 1 of this article and/or termination of the lease by one of the parties. Termination of the lease as described above will not prejudice the lessee's obligation to hand over the leased property as laid down in more detail in Article 19 (Handing over at the end of the lease).

14.5 If, after the Port of Amsterdam dredges the port, the harbour floor is deeper than the depth of the harbour floor specified in the lease and the lessee uses the extra depth by receiving vessels with a greater draught, the Port of Amsterdam will have the right to permanently or temporarily adapt the rent in accordance with the extra depth without the lessee being entitled to maintain this extra depth.

- 14.6 Objects and/or substances located on or in the harbour floor in front of the leased property are to be regarded as originating from the lessee, unless the lessee proves these objects and/or substances did not originate from it, its personnel, third parties it called in or vessels intended for the lessee's company.
- 14.7 Objects and/or substances as referred to in paragraph 6 of this article, deemed to have originated from the lessee, must be removed by the lessee within a reasonable term after their presence has been identified. If, after being warned, the lessee fails to remove the objects and/or substances or if the Port of Amsterdam is of the opinion that the removal has been or is to be carried out in an unsatisfactory manner, the Port of Amsterdam will be entitled to remove the objects and/or substances or have these removed for the account and risk of the lessee.
- 14.8 If the lessee fails to remove the objects and/or substances referred to in paragraph 6 of this article, the lessee will be liable for all damage resulting from the presence of said objects and/or substances. Damage is also understood to include the repair costs of damage to dredging equipment and loss of profits of the dredging company carrying out the work resulting from the presence of said objects and/or substances.
- 15. Required permits, consents and dispensations**
- 15.1 The lessee is at all times responsible for applying for, acquiring and retaining all permits, consents and dispensations required for its business operations and development of the leased property pursuant to any law, bye-law or regulation. The lessee is obliged to observe the permits, consents and dispensations and to comply with the regulations. The leasing of the property by the City will not prejudice the lessee's obligations on the basis of the law and/or regulations. If, within the framework of the law and/or regulations, changes or additions to the leased property and/or property of the City are essential, Article 7 (Equipping and occupation) will apply in full and the lessee will be required to take responsibility for this for its own account and risk.
- 15.2 As regards the acquisition of a required consent by virtue of any provision of this agreement, the lessee cannot invoke any previously acquired permit, consent or dispensation pursuant to any law, bye-law or regulation.

15.3 The lessee must at the first request of the Port of Amsterdam submit a copy of its permits, consents or dispensations and/or of the associated applications.

16. Costs

All costs incurred in the entering into or adjusting of this lease are for the account of the lessee.

All extrajudicial and judicial costs the City reasonably incurs in retaining and exercising its rights under this lease are for the account of the lessee.

17. Taxes, insurance and mains services

17.1 All existing or future taxes, levies and costs imposed on or relating to this lease, the leased property, a restricted right or the occupancy of the leased property by the lessee are to be paid for by the lessee as of the date of commencement of this lease. With regard to taxes, levies and costs paid by the Port of Amsterdam, the lessee must reimburse these to the Port of Amsterdam at its first request.

17.2 All insurance premiums owed by the Port of Amsterdam in relation to the leased property are for the account of by the lessee as from the date of commencement of this lease.

17.3 The costs associated with the use of electricity, gas, water or other mains services in relation to the leased property are for the account of the lessee as from the date on which this lease commences.

18. Default, interest and fines

18.1 The lessee will owe the Port of Amsterdam interest for overdue payment of 1% per month over the period the lessee defaults in paying any sum of money owed to the Port of Amsterdam. At the end of each twelve-month period, the amount used to calculate the interest for overdue payment will be increased by the interest owed for the same twelve months.

18.2 If the lessee defaults in the compliance of any of its obligations, the Port of Amsterdam can impose an immediately due and payable fine of a maximum of ten times the amount of rent applicable at the time. The fines must be paid within a month after the notification imposing the fines has been sent. The costs of collecting the fines are for the account of the lessee.

18.3 The fine referred to in paragraph 2 of this article will not prejudice the right of the Port of Amsterdam to compliance and full reimbursement of damages caused by the default.

If the lessee defaults in the compliance of any obligation other than the obligation referred to in paragraph 1 of this article, the Port of Amsterdam is entitled, without judicial intervention being required and for the account and risk of the lessee, to effect that which would have resulted in compliance by the lessee.

19. Handing over at the end of the lease

- 19.1 Unless agreed otherwise in writing, the lessee will hand over the leased property at the end of the lease to the Port of Amsterdam in the condition it was in on the lease commencement date. This, in any event, means that:
- the leased property must be handed over at the correct height and levelled; and
 - all that which the lessee or a legal predecessor has or is deemed to have installed on, above and in the leased property has been removed, so that the leased property is free from such things as foundations and piles; and
 - the leased property is – properly and to the satisfaction of the Port of Amsterdam – handed back to the Port of Amsterdam cleared and at its free disposal, meaning free of rights of use and restricted rights; and
 - the soil of the leased property, including the land and the groundwater, are restored to the same condition as specified in the zero measurement report, such as determined in more detail in Article 9 and as also demonstrated by the final measurement report referred to in Article 9.7.
- 19.2 If, at the end of the lease, the leased property has not been cleared, has not been cleared on time or has not been cleared properly in accordance with paragraph 1 of this article, the lessee will owe a payment equal to the rent, without prejudice to the right of the Port of Amsterdam to a reimbursement of costs, fines, damage and interest. If the leased property needs to be remediated and the remediation takes place at the end of the lease, the provisions of the previous sentence will also apply.
- 19.3 If and in so far as the Port of Amsterdam approves that all that which the lessee or a legal predecessor has installed on the leased property does not have to be removed or does not have to be removed completely by the end of the lease, the lessee will not be entitled to reimbursement of the value of buildings, works or plantings still present, unless agreed otherwise. The Port of Amsterdam can apply the condition to its consent that the lessee has to pay an amount towards

future demolition costs or restrictions for use.

- 19.4 The lessee must contact the Port of Amsterdam no later than four weeks before for the expiry date of this lease in order to arrange a final inspection of the leased property by the parties. A report will be drawn up of the final inspection in which the findings as regards the state of the leased property are laid down. The report will also record any work relating to repairs and overdue maintenance for the account of the lessee and the way in which this work is to be carried out. If the lessee, after being given the opportunity to do so, does not cooperate with the final inspection and/or the recording of the findings in the report within a reasonable time period, the Port of Amsterdam will be authorised to carry out the final inspection without the lessee and to lay down the report as binding for the parties.
- 19.5 The lessee is obliged to carry out the work by the deadline specified in the report or as otherwise agreed between the parties to the satisfaction of Port of Amsterdam. If the lessee continues to be fully or partially in default as regards the fulfilment of its obligations, the Port of Amsterdam will be entitled to have this work carried out for the account of the lessee.
- 19.6 After the end of the lease, the Port of Amsterdam can remove and destroy at its discretion, without being liable in any way and at the lessee's expense, all items the lessee has apparently relinquished. The lessee will, in any event, be deemed to have relinquished those items left behind in, on or above the leased property when the leased property is actually vacated. The Port of Amsterdam has the right to have these items destroyed at its own discretion at the expense of the lessee or to appropriate these items without any compensation being payable and, if it wishes, to sell these items and to retain the proceeds.

20. Default

In the event of default as regards timely fulfilment of any of the lessee's obligations pursuant to this lease, the law or any by-law, the Port of Amsterdam will be entitled to terminate the lease with immediate effect and without any compensation being payable. The lessee is obliged to compensate the Port of Amsterdam for the costs, damage and interest resulting from the lessee being in default.

21. Termination for reasons of general interest

- 21.1 The Port of Amsterdam can terminate the lease at any time on the basis of a statement by the Amsterdam City Council to the effect that the general interest makes it necessary to terminate the lease. The termination will take the form of a letter sent by registered post at least twelve months prior to the termination date.
- 21.2 If the lease ends for reasons mentioned under paragraph 1 of this article, the lessee will be entitled to compensation on the basis of the Expropriation Act (*Ontheffingswet*).
- 21.3 The value of that established in contravention of any provision or condition in the lease will not be compensated, nor will any compensation be made for damage relating to the termination of an activity carried out on the leased property in contravention of any provision or condition in lease, unless the Port of Amsterdam has given its written consent.
- 21.4 If the lessee does not agree with the compensation offered by the City, it will inform the Port of Amsterdam to this effect within two months of receiving written notification of compensation. If no agreement is reached on the amount of compensation, it will be determined by three experts.
- 21.5 If experts have to make a decision pursuant to paragraph 4 of this article, the Port of Amsterdam and the lessee will, at the written request of either party, each appoint one expert within six weeks of the date of the above-mentioned request. These experts will in turn appoint a third expert. If no agreement has been reached by the two experts within three months after the above-mentioned request regarding the appointment of the third party, this expert will be appointed, at the request of either party, by the chairman of the Chamber of Commerce and Industry in Amsterdam.
- 21.6 The experts will not decide before both parties have been given an opportunity to be heard. The experts will take a decision with due regard for the applicable general and special conditions of this lease and the relevant guidelines drawn up by the City.
- 21.7 The decision of the experts is to be communicated with reasons and in writing to the parties within six months after appointment of the third expert and will have the effect of a binding third-party ruling (*bindend advies*).
- 21.8 The amount of compensation will be reduced by any claims of the City under lease, including costs. These include any costs

required to return the leased property to the state in which it should have been handed over if the lease had been terminated regularly pursuant to Article 19, plus other costs.

21.9 When determining the amount referred to in paragraph 2 of this article, no account will be taken of new building work, alterations or rebuilding work, which has taken place after termination.

21.10 The costs incurred in connection with the experts and of the chairman referred to in paragraph 5 of this article, are to be shared equally by the parties.

22. Competent court and applicable law

All disputes arising from this lease will be submitted to the competent court in Amsterdam. This lease is governed by Dutch law.

23. Indemnity

The lessee indemnifies the City against third-party claims resulting from or relating to the leased property and its occupancy, including claims resulting from:

- Article 6:174 of the Dutch Civil Code;
- contamination of the leased property for which the lessee is liable on the basis of Article 9 of these general terms and conditions;
- non-compliance by the lessee of obligations under public law applicable to this lease;
- non-compliance by the lessee of any obligation under this lease;
- endangerment, damage or nuisance relating to the property of third parties.

24. Representation and several liability

24.1 If the rental right belongs to two or more persons or legal entities, they will appoint in writing one of their number as representative and will record this first choice in the lease. Any change in representation must be communicated immediately in writing. The Port of Amsterdam can issue all notifications, summons and terminations with regard to the lease and institute all claims with regard to the lease against the last representative notified to it.

24.2 If various natural persons or legal entities have bound themselves as lessee, these will always be jointly and severally liable vis-à-vis the Port of Amsterdam for all obligations resulting from the lease. Deferment of payment or remission by the Port of Amsterdam to one of the lessees, or an offer to that effect, only concerns that lessee. The

obligations under the lease are joint and several, including with regard to heirs and legal successors of the lessee.

25. Communications

Unless explicitly determined otherwise, all communications, notifications, requests and approvals on account of the lease will be made in writing and all claims on account of the lease will be instituted in writing.

26. Election of domicile

26.1 The lessee or representative as referred to in Article 24 is required to ensure that its address is known to the Port of Amsterdam. If the lessee or representative as referred to in Article 24 has no actual or elected domicile in the Netherlands, it is obliged, with regard to the lease, to choose domicile at the offices of a civil-law notary established within the City.

26.2 The lessee or representative must inform the Port of Amsterdam in writing of the election of or changes in domicile . The first election of domicile is to be recorded in the lease.

26.3 The Port of Amsterdam can legally send notifications, summons and termination notices to and institute all claims at the domicile last communicated to it.

27. General Extension of Time-Limits Act

The General Extension of Time-Limits Act applies *mutatis mutandis* to the deadlines referred to in these general terms and conditions.

28. Changes to the general terms and conditions

28.1 The City may amend these general terms and conditions.

28.2 In the event of an amendment to the general terms and conditions, the Port of Amsterdam will send the new general terms and conditions to the lessee, after which the latter can choose whether to replace these general terms and conditions with the new general terms and conditions and to have the new general terms and conditions apply to the lease.

28.3 If the lessee accepts the applicability of the new general terms and conditions, it must inform the Port of Amsterdam in writing to this effect within three months of the Port of Amsterdam providing the new general terms and conditions. The new general terms and conditions will take effect on the first day of the month following the month in which the lessee has accepted the new general terms and conditions in writing. At

the first request of the Port of Amsterdam, the lessee will cooperate in recording the amended general terms and conditions by private deed.