

**GENERAL TERMS AND  
CONDITIONS FOR THE  
LEASE OF IMMOVABLE  
PROPERTY IN THE PORT  
AREA 2013**

These General Terms and Conditions for the Lease of Immovable Property in the Port Area 2013 have been filed with the Amsterdam Chamber of Commerce.

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## **GENERAL TERMS AND CONDITIONS FOR THE LEASE OF IMMOVABLE PROPERTY IN THE PORT AREA 2013**

### **0. Definitions**

**designated use:** the permitted use of the Leased Property as provided in the Lease.

**competent authority:** the government body that is authorised on the basis of laws and regulations to grant the relevant permit, permission and/or exemption.

**special conditions:** the provisions applicable in addition to, supplemental to or in derogation from the General Terms and Conditions stated in the Lease.

**leased property:** the leased immovable property situated in the port area.

**municipality:** the legal person under public law, the municipality of Amsterdam.

**Port of Amsterdam:** the public company Havenbedrijf Amsterdam N.V., having its registered office in Amsterdam and its place of business at De Ruijterkade 7, entered in the Commercial Register of the Chamber of Commerce under number 57398879.

**port area:** the areas in which activities are performed with regard to the port of Amsterdam, including the Westpoort area and every other area jointly so designated by the municipality and Port of Amsterdam in mutual consultation.

**lessee:** the natural or legal person referred to in the Lease as the Lessee.

**lease:** the rental/lease agreement entered into between Port of Amsterdam and the Lessee, in which these General Terms and Conditions have been declared applicable.

**rent:** the sum owed per annum by the Lessee as consideration for the use of the Leased Property.

**baseline measurement report:** the report on the current environmental/hygienic quality of the soil (groundwater) on, in or in the direct vicinity of the Leased Property, compiled in response to the soil survey as referred to in Article 9, which report gives the baseline situation upon the commencement of the Lease or the actual occupancy of the Leased Property.

**immovable property:** the land, including the groundwater or the land including the groundwater with the structures in and on the Leased Property comprising part thereof, or an area of water.

**structures:** leased buildings, works, plants, possibly situated in the water at the front, including, but not limited to: quay, jetty, pavement, sewerage, installations, infrastructure (above ground and below ground), bank protection and boundary partition.

**the parties:** Port of Amsterdam and the Lessee.

**contamination:** contamination of the Leased Property and/or the soil and/or the surface water and/or other types of environmental contamination.

**area of water:** the water bottom with the water column above it.

## **1 Effect**

- 1.1 These General Terms and Conditions are applicable to a lease for:
- undeveloped land, and/or
  - ground with structures to which Article 7:230(a) of the Dutch Civil Code is applicable, and/or
  
  - an area of water
- 1.2 These General Terms and Conditions do not pertain to the lease of residential accommodation within the meaning of Article 7:232 of the Dutch Civil Code and/or commercial premises within the meaning of Article 7:290 of the Dutch Civil Code.

## **2. Defects**

- 2.1 In derogation from Article 7:204 of the Dutch Civil Code, a defect is understood in these General Terms and Conditions only as a condition or characteristic of the Leased Property, the occurrence or existence of which can be attributed to Port of Amsterdam and as a result of which the Lessee is unable to enjoy the Leased Property as it could have expected when entering into the Lease.
- 2.2 In any event, the following do not constitute a defect:
- the refusal and/or rescission of permits and/or permissions and/or exemptions as referred to in Article 15 and having to make and the subsequent existence of modifications and/or facilities in, on top of or on the Leased Property pursuant to laws or regulations, the result of which is that the Lessee is unable to enjoy the Leased Property as it could have expected when entering into the Lease;
  
  - existing and newly established/agreed limited rights in rem, qualitative obligations and/or requirements imposed or yet to be imposed by the government and by utility companies as a result of which the Lessee is unable to enjoy the Leased Property as it could have expected when entering into the Lease;
  
  - the placement 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 as a result of which the Lessee is unable to enjoy the Leased Property as it could have expected when entering into the Lease;
  
  - all circumstances related to changes or additions taken over by the Lessee from a previous Lessee or made by the Lessee itself,

the direct or indirect result of which is that the Lessee is unable to enjoy the Leased Property as it could have expected when entering into the Lease.

- 2.3 In the event of a defect, Port of Amsterdam is not required to remedy, nor is it liable for, loss ensuing from the presence of said defect, and the Lessee is not entitled to a reduction of the rent unless the defect in question already existed when the Lease was entered into, and which Port of Amsterdam was or should have been aware of at the time, or if the defect arose as a result of gross negligence or a serious omission on the part of Port of Amsterdam.

### **3. Payments**

- 3.1 The rent is owed as from the commencement date of the Lease.
- 3.2 An amount owed by the Lessee will be rounded off to the nearest cent.
- 3.3 The rent must be paid in advance without any discount, reduction, set-off or suspension in two equal half-yearly instalments on 2 January and 1 July of each year by transfer to one of the bank accounts of Port of Amsterdam. In the event the Lessee fails to pay the rent or fails to do so in a timely fashion, it will automatically be in default without any further notice of default being required.
- 3.4 An invoice will be sent for the payment of the initial rent instalment. This invoice must be paid within 21 days after the invoice date. Invoices will be sent for all subsequent rent instalments and must be considered a payment reminder. Paragraph 3 of this Article remains applicable to the indebtedness and exigibility of said subsequent rent instalments.
- 3.5 Regardless of the purpose indicated by the Lessee, each payment serves to pay its debts to Port of Amsterdam in the following order:
- penalty/penalties owed pursuant to Article 18.2;
  - costs owed pursuant to Article 16;
  - interest owed pursuant to Article 18.1;
  - debts other than those referred to at 1., 2. and 3. pursuant to the Lease, not being the rent;
  - the rent.

### **4. Annual rent adjustment**

- 4.1 The rent will be adjusted each year in line with the development of the basic price level. The adjustment will take place on 1 January of each calendar year. The rent will be adjusted by one-fifth of the adjustment coefficient stated in Article 4.2.

4.2 The adjustment coefficient applicable to a calendar year is calculated as follows:

$$\frac{a}{b}$$

a = the consumer price index figure, all households series, for the month of June in the year prior to the relevant calendar year, as such value is announced by Netherlands Statistics, or, absent that, by another independent institute;

b = the corresponding figure for the month of June of the sixth year prior to the relevant calendar year.

If, due to any cause, the value(s) of a and/or b is/are not known or not known in a timely fashion, Port of Amsterdam will determine the adjustment coefficient in a manner that approximates the manner described in this Article as much as possible.

4.3 The Lessee will be informed of the adjusted rent as quickly as possible. When the announcement is made does not affect the Lessee's obligation to make an additional payment or its right to repayment.

## **5. Bank guarantee/security deposit**

5.1 By way of security for compliance with its obligations ensuing from the Lease, the Lessee will provide a standing bank guarantee according to the model prescribed by Port of Amsterdam. The bank guarantee must have been given to Port of Amsterdam upon the signing of the Lease. The amount of the bank guarantee is six months' rent plus VAT. The Lessee is not entitled to set off any amount against the bank guarantee. In the event the bank guarantee is called on, the Lessee will arrange a new bank guarantee up to the full amount upon Port of Amsterdam's first request. The Lessee may pay a security deposit instead of providing a bank guarantee. Port of Amsterdam will not compensate the Lessee for any interest on the security deposit.

## **6. Use and designated use**

- 6.1 The Lessee is required to furnish the Leased Property, keep it furnished and use it in accordance with the designated use. In that respect, the Lessee will duly observe existing limited rights, qualitative obligations and the requirements imposed or yet to be imposed by the government or utility companies.
- 6.2 The Lessee is not permitted to not use or practically not use the Leased Property in full or in part longer than six consecutive months.
- 6.3 The Lessee must submit a building plan and/or layout plan to Port of Amsterdam in advance for approval. The Lessee must commence the execution of a building plan and/or layout plan approved by Port of Amsterdam within two (2) years after the commencement of the Lease, and perform the building activities at the appropriate speed and without interruption.
- 6.4 At its own expense and risk, the Lessee will properly maintain facilities added or yet to be added to the Leased Property by it, along with the changes and additions referred to in Article 7 and make the necessary renovations and/or repairs to same in a timely fashion, all to the satisfaction of Port of Amsterdam. If, following a demand, the Lessee fails to perform the maintenance, renovations and/or repairs on the facilities added to the Leased Property by it, or if, in the opinion of Port of Amsterdam, it performs this work improperly, Port of Amsterdam will be authorised to perform this work or procure the performance thereof at the Lessee's expense and risk. Upon Port of Amsterdam's first demand, the Lessee must remove structures it has erected on the Leased Property that, in the opinion of Port of Amsterdam, have become dilapidated and/or are no longer used in accordance with the designated use, to the satisfaction of Port of Amsterdam. Pursuant to these General Terms and Conditions, Port of Amsterdam is expressly authorised to perform the aforementioned work at the Lessee's expense and risk.
- 6.5 When using the Leased Property, the Lessee may not in any way cause or allow the hindrance of traffic, including shipping traffic.
- 6.6 Boats intended for the Lessee must be moored at the mooring facilities intended for that purpose on or near the Leased Property. The boats must be moored to the correct mooring facilities. The Lessee is required to have ships intended for it that must be loaded or unloaded wait as much as possible at the mooring facilities on or near the Leased Property intended for that purpose.
- 6.7 The Lessee may not use the Leased Property in such a way that this:
- constitutes injury to, danger or a hindrance for people, and/or
  - leads to damage to property of Port of Amsterdam or third parties, including affecting public health and/or the environment, including the soil of the Leased Property, and/or
  - disproportionately limits construction on or the use of adjacent plots, without prejudice to the statutory provisions in this area.

Use 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 Port of Amsterdam, which damage arose due to a failure in the performance of an obligation pursuant to this Lease attributable to the Lessee. All damage will be deemed to have arisen due to that.

## **7. Layout and occupancy**

- 7.1 The Lessee requires the prior written consent of Port of Amsterdam for the full or partial changing of the layout or appearance of the Leased Property, unless the changes and additions can be reversed and removed upon the end of the Lease without significant costs.
- 7.2 If, in connection with the use of the Leased Property by the Lessee, changes or additions to the Leased Property and/or property of Port of Amsterdam are necessary, the related costs will be borne by the Lessee.
- 7.3 Structures erected on the Leased Property and/or changes or additions to the layout or appearance of the Leased Property made by the Lessee itself are not part of the Leased Property and Port of Amsterdam is in no way whatsoever liable for any damage that occurs as a result of said changes and additions. The changes and additions may never constitute a defect within the meaning of Article 2.1.
- 7.4 The Lessee is required, at its own expense and risk, to surface and/or plant the undeveloped part of the Leased Property and maintain same in an orderly fashion to the satisfaction of Port of Amsterdam.
- 7.5 The Lessee is required, at its own expense and risk, to create sufficient parking places on the Leased Property. If, during the term of the Lease, the number of parking places is insufficient in the opinion of Port of Amsterdam, the Lessee will be required to expand the number of parking places at its own expense and risk. The determination of the size, location and number of the parking places must always take place in consultation with Port of Amsterdam. In so far as laws or regulations require an admission system, sufficient parking places must also be situated on the Leased Property in front of the company entrance.

## **8. Partitions and subsidence**

- 8.1 The Lessee is required, at its own expense and risk, to properly partition off the Leased Property from the adjacent plots and the public road and keep it partitioned off, all to the satisfaction of Port of Amsterdam. This obligation does not apply if the Leased Property is an area of water.



8.2 If, during the term of the Lease, subsidence occurs on the Leased Property, it is the Lessee's responsibility whether or not to remedy the subsidence. Damage as a result of the subsidence and/or not remedying same, doing so insufficiently or tardily will be at the Lessee's expense and risk.

## **9. Soil**

### **9.1 Duty of care**

The Lessee must prevent contamination on, in or near the Leased Property from occurring, impending, increasing, expanding or spreading as a result of the Lessee's own acts or omissions, those of its subordinates or third parties who have a right of use on or access to the Leased Property during the term of the Lease.

### **9.2 Obligation to report**

If contamination is present or threatens to occur, the Lessee will immediately inform Port of Amsterdam, in addition to the competent authority.

### **9.3 Liability for contamination**

The Lessee is liable for contamination on, in or near the Leased Property, along with personal injury or damage ensuing from the contamination, unless the Lessee demonstrates that:

- the contamination was already present on site prior to the commencement of the lease, with the baseline measurement report being used as the starting point, or
  
- the contamination was not caused or exacerbated by or due to any act or omission by the Lessee, its subordinates or third parties who have a right of use on or access to the Leased Property during the term of the Lease.

In the event of personal injury or damage to property of Port of Amsterdam or third parties as a result of the contamination or if such injury or damage is impending, the Lessee must immediately take measures to prevent and/or limit (further) injury or damage.

### **9.4 Baseline measurement report**

Prior to entering into the Lease, Port of Amsterdam will conduct a soil survey at its own expense. The results of the soil survey will be laid down in a baseline measurement report, which, following certification by the Lessee, will be part of the Lease.

The Lessee has the right, at its own expense and risk, to procure an additional survey if the Lessee is of the opinion that the baseline measurement report offers insufficient certainty with regard to recording the current soil condition of the Leased Property.

If this additional survey is performed in consultation with Port of Amsterdam and this additional survey reveals that the results of the

soil survey are insufficiently indicative or deviate greatly compared to the additional survey, Port of Amsterdam will bear the costs of the additional survey conducted by the Lessee as yet. In this case, after the Lessee has certified the baseline measurement report, the results of the additional survey will be deemed to be part of the baseline measurement report.

If there has been no consultation with Port of Amsterdam, then Port of Amsterdam will be at liberty to determine what significance must be given to and what consequences must be associated with the additional survey performed on behalf of the Lessee and whether the costs of this additional survey performed on behalf of the Lessee will be reimbursed.

9.5 Survey during the term of the Lease

Port of Amsterdam is entitled at all times during the term of the Lease to conduct a survey of the presence, scope, cause and/or consequences of contamination. The Lessee is required to provide all information and its cooperation (including access to the Leased Property) and make resources at its disposal available that Port of Amsterdam and the competent authority deem necessary in connection with the survey. The Lessee's operations will be taken into account as much as possible during the performance of the survey. If the survey reveals contamination, the costs of this survey will be borne by 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 contamination and the Lessee is liable on the basis of paragraph 3 of this Article, the Lessee must, upon the first request by Port of Amsterdam and/or the competent authority, remediate the contaminated soil and take all such measures that are necessary in connection with the prevention of (further) contamination.

9.7 Final measurement report

Upon the end of the Lease or as shortly before that as possible, the Lessee must have a final measurement performed of the current environmental/hygienic quality of the soil, including the ground water of the Leased Property and/or the adjacent sites. The final measurement must have at least the same starting points as the baseline measurement report and also comply with state-of-the-art, science and investigation standards at the time the survey is carried out. Moreover, the final measurement should also include an examination of the consequences of all operations that took place on the Leased Property during the term of the Lease. The results of the final measurement will be laid down in a final measurement report that will be submitted to Port of Amsterdam. The costs of compiling the report will be borne by the Lessee. If, in the opinion of Port of Amsterdam, the final measurement report gives insufficient insight into the current environmental/hygienic quality of the soil, including the ground water of the Leased Property and/or the adjacent sites, Port of

Amsterdam itself will be entitled to have a final measurement performed upon the end of the Lease at the Lessee's expense.

9.8 Remediation upon the end of the Lease

Prior to the end of the Lease, the Lessee is required to remediate any contamination at its own expense and risk up to the level at which the Leased Property was, as described in the final measurement report. As a result, the Lessee may have a more far-reaching obligation to remediate and/or to take remediation measures than the remediation and/or remediation measures that have been and/or will be imposed by the competent authority.

9.9 Remediation method and plan

If, at any time, either during the term of the Lease or upon the end of the Lease, the Lessee begins the remediation of the Leased Property, it must submit the remediation method, including a remediation plan, and provide the name of the envisaged remediation company to Port of Amsterdam in a timely fashion. During the remediation, all interests of Port of Amsterdam and third parties must be taken into account.

9.10 Report following remediation

After the remediation is completed on the basis of paragraph 6 or paragraph 8 of this Article, the Lessee must demonstrate on the basis of an investigation report that the remediation obligation referred to in paragraph 6 or paragraph 8 of this Article has been complied with. The costs of this investigation will be borne by the Lessee. Port of Amsterdam is entitled to have the Lessee's investigation report assessed by conducting its own investigation. The costs of Port of Amsterdam's investigation, along with the damage and costs related to the actions ensuing from this investigation by Port of Amsterdam will be at the expense and risk of the Lessee if this investigation shows that the Leased Property has not been remediated, not remediated in full or insufficiently remediated in accordance with the remediation obligation as referred to in paragraph 6 or paragraph 8 of this Article.

9.11 Measures

If, in the opinion of Port of Amsterdam, the Lessee fails to comply with its obligations pursuant to this Article, fails to do so in a timely fashion or complies with these insufficiently, Port of Amsterdam will be entitled to take measures at the expense and risk of the Lessee to eliminate, limit or prevent the contamination and the consequences of the contamination.

9.12 Exclusion of Port of Amsterdam's liability

Port of Amsterdam is not liable for damage suffered or to be suffered by the Lessee as a result of the survey referred to in paragraph 5 of this Article or the measures referred to in paragraph 11 of this Article, unless there is intent or gross neglect on the part of Port of Amsterdam.

9.13 Bank guarantee/security deposit

If contamination is discovered, the Lessee is required, upon the first request by Port of Amsterdam, to provide a bank guarantee according

to a model prescribed by Port of Amsterdam for the with its obligations, along with any penalties and costs owed for the Lessee's failure to comply with the obligations pursuant to this Article. Port of Amsterdam will determine the amount of the bank guarantee to be provided. The Lessee is not entitled to set off any amount against the bank guarantee. In the event the bank guarantee is called on, the Lessee will arrange a new bank guarantee up to the full amount upon Port of Amsterdam's first request. The Lessee may pay a security deposit instead of providing a bank guarantee. Port of Amsterdam will not compensate the Lessee for any interest on the security deposit. The Lessee's obligation to provide a bank guarantee or to pay a security deposit does not diminish the Lessee's obligations ensuing from Article 5 of these General Terms and Conditions.

## **10. Subletting/contract takeover/change of control**

10.1 Without the prior, written consent of Port of Amsterdam, the Lessee may not:

- let, sub-let or grant usage rights on the Leased Property to third parties in whole or in part, nor assign the tenancy rights in whole or in part to third parties nor contribute these to (another) legal person or partnership;
- enter into other agreements aimed at a legal act as referred to in this Article or aimed at the direct or indirect transfer of the power of disposition over the Leased Property.

10.2 In so far as Port of Amsterdam gives the Lessee permission to let the Leased Property to a third party, sublet it to a third party and/or grant a right of usage to a third party in full or in part, the Lessee is not permitted:

- to enter into a (sub-)lease and/or a contract of use with a term longer than the term of the Lease, and/or
- to enter into a (sub-)lease and/or a contract of use at a rent higher than the rent referred to in the Lease applicable at the time.

10.3 Upon Port of Amsterdam's first request, the Lessee will provide Port of Amsterdam with a copy of the then applicable (sub-)lease(s) as referred to in paragraph 2 of this Article for examination.

10.4 In the event Port of Amsterdam grants permission pursuant to paragraph 1 of this Article, the Lessee will be required to impose all the obligations it has pursuant to this Lease, including these General Terms and Conditions, on its (sub-)lessee or user.

10.5 If the control over the activities of the Lessee's business or part thereof passes to one or more third parties, directly or indirectly, Port of Amsterdam will be entitled to terminate the Lease prematurely. In any event, the passing of control, directly or indirectly, includes a share transfer or a merger as referred to in the SER Resolution concerning the Merger Code 2000. The Lessee is required to inform

Port of Amsterdam as soon as possible regarding such a passing, subject to a penalty of € 200 for each day that the Lessee is in default. Absent a notification within a week after the day on which the passing was effected, the Lessee will be deemed to be in breach of contract and in default automatically.

## **11. Permission**

- 11.1 A request by the Lessee for permission on the basis of Articles 6, 7 and 10 must always be made in writing. Any permission given will always be a one-off and will not apply to other or subsequent instances. Time limits and conditions may be imposed on this permission, including changing the rent and the provisions of the Lease. Port of Amsterdam will charge a fee for handling the request for permission as referred to in this Article. Port of Amsterdam must have received a request for permission no later than four (4) weeks prior to the date on which the permission is required. Port of Amsterdam will decide on the request within said period of four (4) weeks, unless Port of Amsterdam indicates that it needs further information in order to decide on the request.
- 11.2 Port of Amsterdam is at all times authorised to deny a request for permission for reasons of its own. In any event, permission may be denied on the following, non-exhaustive grounds:
- if the Leased Property is situated near water and operations on the Leased Property no longer lead to the sufficient supply and transport of goods by sea-going vessel and the transfer of these goods to the Leased Property or if these operations decrease, considerably or otherwise;
  - if a nuisance or hindrance is caused or will be caused to the public area and/or adjacent plots.
- 11.3 In connection with a request for permission as referred to in this Article, Port of Amsterdam has the right to investigate the background of the Lessee or future (sub-)lessee, user or party otherwise entitled.

## **12. Maintenance, repair and renovations**

- 12.1 The Lessee is required to perform all the minor and major maintenance on and repairs and renovations to the Leased Property in a timely fashion, at its own expense and risk.
- 12.2 If the Lessee does not perform any maintenance or performs poor maintenance on the plot, the consequences thereof will be at the Lessee's expense and risk.
- 12.3 If the Lessee fails to perform the maintenance, repairs and/or renovations or if, in the opinion of Port of Amsterdam, it performed such work improperly, Port of Amsterdam will be authorised to perform this work or procure the performance thereof for the account

and risk of the Lessee if the Lessee has continued to be in default following a demand.

- 12.4 With regard to common partitions that are part of the Leased Property, the repair, renovation and maintenance obligation and the related costs will be borne in equal shares by the Lessee and the owner or user of the adjacent plot.
- 12.5 The Lessee is required to maintain, repair or renovate changes and additions it made to the Leased Property at its own expense and risk.

### **13. Obligations to tolerate and other obligations of the Lessee**

#### **13.1 Works, cables and pipes**

13.1.1 The Lessee will tolerate the fact that Port of Amsterdam or third parties install, move, use, inspect, perform maintenance on, repair, renew or remove stopcocks or tracks, cables, pipes, fibres and other facilities for communication purposes, along with piles, sewerage and drainpipes and other similar facilities for public use and the related items in, on, above or over the Leased Property. In that case, the Lessee's operations will reasonably be taken into account as much as possible.

13.1.2 The Lease does not encompass and does not pertain to the 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 changed, relocated, moved, repaired or renewed as a result of acts or omissions by the Lessee, this will be performed by Port of Amsterdam or third parties at the Lessee's expense and risk.

#### **13.2 Mooring facilities and mooring**

13.2.1 The Lessee will tolerate the fact that, upon Port of Amsterdam's first notification, mooring facilities will be placed on or adjacent to the Leased Property for the benefit of Port of Amsterdam or third parties.

13.2.2 Upon Port of Amsterdam's first notification, the Lessee will tolerate the fact that ships that are not intended for the Lessee's company moor at mooring facilities on, in or near the Leased Property or at a bank adjacent to the Leased Property. This obligation to tolerate is not applicable if the Lessee rents the area of water or holds it under a subleasehold. The Lessee will allow the crew of said ships to traverse the Leased Property to and from the ships, with due observance of the applicable legislation pertaining to safety and security. In connection with applicable safety and security legislation, the Lessee will be entitled to impose further conditions on granting access.

#### **13.3 Hindrance, damage, danger**

The Lessee is aware that the Leased Property is located in a port and industrial area. This location entails a certain level of hindrance and/or danger originating from companies already established or new companies to be established in the vicinity of the Leased Property.

The Lessee accepts and tolerates this certain level of hindrance and/or danger. Port of Amsterdam is not liable for any damage suffered by the Lessee as a result of hindrance or danger ensuing from the presence of said companies.

13.4 Cooperation and access

13.4.1 The Lessee will at all times give permission for and cooperate with activities, work and/or acts performed or to be performed by or on behalf of Port of Amsterdam or third parties in connection with the General Terms and Conditions and special conditions, including the obligation to tolerate, in this Article.

13.4.2 The Lessee will at all times give access to the Leased Property to all individuals designated and to be designated by Port of Amsterdam and the municipality and their vehicles and/or ships for the purposes of the performance of and monitoring of compliance with the Lease. If and in so far as possible, this will hinder the operations as little as possible. The designated personnel will conduct themselves in accordance with the Lessee's safety instructions.

13.5 No compensation

The Lessee is not entitled to any reimbursement as compensation for the obligations to tolerate in this Article, including a reduction of the rent.

13.6 Drainage and discharges

13.6.1 If the Lessee wants to drain the Leased Property, it will only do so after obtaining the permission of and in consultation with Port of Amsterdam. In that respect, the Lessee must take into account the interests of lessees, leaseholders and other users of adjacent plots and must prevent nuisance and damage to the adjacent plots occurring as a result of draining.

13.6.2 At its own expense and risk, the Lessee will take measures to ensure that the Leased Property does not directly or indirectly discharge rainwater onto adjacent plots that are not areas of water, or roads.

13.6.3 Upon Port of Amsterdam's first notice, the Lessee will connect discharge systems in and on the Leased Property to the sewer at its own expense and risk.

13.7 Lighting

13.7.1 The Lessee is required to fit and use the lighting present on the Leased Property in such a way that, in the opinion of Port of Amsterdam, the recognition of port lights is not impeded and shipping is not disrupted. The Lessee will ensure that this is also taken into account for ships moored in connection with the Lessee's company, with the exception of ships as described in Article 13.2.2.

13.7.2 The Lessee is required to tolerate the fact that Port of Amsterdam installs one or more port lights on the Leased Property at a location to be determined by Port of Amsterdam. The costs of installation and maintenance will be borne by Port of Amsterdam.

13.7.3 Upon Port of Amsterdam's first notice, the Lessee will tolerate the fact that Port of Amsterdam gives further instructions and rules related to the use of interior and exterior lighting.

13.8 Instructions

The Lessee is required to comply with all instructions given by Port of Amsterdam and/or the competent authority with regard to, inter alia, the use of mooring facilities, the bank and the water located in front of the Leased Property, the manner of transferring (environmentally) hazardous substances, the manner of mooring and safety aspects.

## 14. Water bottom

14.1 If the depth of the water bottom is stipulated in the Lease, Port of Amsterdam will maintain the water bottom in front of the Leased Property at this depth by dredging, taking into account any underwater slope.

14.2 If the Lessee is of the opinion that the depth of the water bottom deviates from that stipulated in the Lease (is shallower), the Lessee will so inform Port of Amsterdam in writing. In its notice, the Lessee must make it plausible, for example by means of an expert report, that the depth of the water bottom deviates.

14.3 After Port of Amsterdam has received a notice from the Lessee as referred to in paragraph 2 of this Article, Port of Amsterdam will investigate within a reasonable period whether the depth of the water bottom deviates from that stipulated in the Lease. If there is such a deviation, Port of Amsterdam will ensure that the water bottom concurs as yet with the depth of the water bottom as stipulated in the Lease within a reasonable period.

14.4 If there are circumstances that:

- impede or make it impossible for Port of Amsterdam to maintain the depth of the water bottom and cannot be attributed to Port of Amsterdam, or require expenditures that cannot reasonably be required of Port of Amsterdam in the given circumstances, Port of Amsterdam's obligation as referred to in paragraph 1 of this Article lapses, unless there is intent or gross negligence on the part of Port of Amsterdam.

In any event, these circumstances include contamination of the water bottom.

If the lapse of Port of Amsterdam's obligation as referred to in paragraph 1 of this Article results in it being impossible for the Lessee to operate its business, each of the parties will have the right to terminate the Lease without the intervention of the courts. However, the Lessee is not entitled to terminate the Lease if the lapse of the obligation as referred to in paragraph 1 of this Article was caused (in part) by or because of any act or omission by the Lessee, its subordinates or third parties who have a right of use on or access to



the Leased Property. The parties are not entitled to reciprocal compensation for any damage resulting from the lapse of Port of Amsterdam's obligation as referred to in paragraph 1 of this Article and/or the termination of the Lease by one of the parties. The termination of the Lease as described above does not diminish the Lessee's obligation to deliver the Leased Property as provided in more detail in Article 19 (Delivery upon the end of the Lease).

- 14.5 If Port of Amsterdam dredges the port and the water bottom subsequently becomes deeper than the depth of the water bottom as stipulated in the Lease and the Lessee utilises the additional depth by receiving ships with a greater draught, Port of Amsterdam will have the right to adjust the rent (temporarily) in accordance with the additional depth, without this giving the Lessee the right to maintain this additional depth.
- 14.6 Objects and/or substances located on or in the water bottom in front of the Leased Property will be deemed to have originated from the Lessee, unless the Lessee proves that said objects and/or substances did not originate from it, its personnel, third parties it engages or from ships destined for the Lessee's company.
- 14.7 The Lessee must remove objects and/or substances as referred to in paragraph 6 of this Article that are deemed to have originated from the Lessee within a reasonable period after the discovery of the presence of said objects and/or substances. If, following a demand, the Lessee fails to remove the objects and/or substances or, if, in the opinion of Port of Amsterdam, the removal has been or will be performed improperly, Port of Amsterdam will be entitled to remove the objects and/or substances or have these removed at the Lessee's expense and risk.
- 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 the objects and/or substances. Damage includes the costs of repairing damage to dredging equipment and of trading loss of the contracted dredging company as a result of the presence of these objects and/or substances.

## **15. Required permits, permissions and exemptions**

- 15.1 The Lessee itself is at all times responsible for applying for, obtaining and retaining all permits, permissions and/or exemptions under any law, by-law or regulation required for its operations and the development of the Leased Property. The Lessee is required to comply with the permits, permissions and exemptions and to adhere to the rules. If, in connection with the law and/or regulations, changes or additions to the Leased Property and/or municipal property are necessary, Article 7 (Layout and occupancy) applies in full and the Lessee must arrange this at its own expense and risk.
- 15.2 The Lessee may not, in connection with obtaining permission required pursuant to any provision of this Lease, rely on a previously obtained permission pursuant to this Lease or a previously obtained permit, permission or exemption pursuant to any law, by-law or regulation.
- 15.3 Upon Port of Amsterdam's first request, the Lessee must submit a copy of its permits, permissions or exemptions and/or of its applications to that end.

## **16. Costs**

- 16.1 All costs incurred for the purpose of entering into or amending this Lease will be borne by the Lessee.
- 16.2 All extrajudicial and legal costs reasonably incurred by Port of Amsterdam for the retention and exercise of its rights under this Lease will be borne by the Lessee.

## **17. Taxes, insurance and utilities**

- 17.1 All existing and future taxes, levies and charges levied on or related to this Lease, the ownership of the Leased Property, a limited right or the use of the Leased Property by the Lessee will be borne by the Lessee as from the commencement date of this Lease. In so far as Port of Amsterdam has paid taxes, levies and charges, the Lessee must reimburse Port of Amsterdam for this upon its first notice.
- 17.2 All insurance premiums owed by Port of Amsterdam in connection with the Leased Property will be borne by the Lessee as from the commencement date of this Lease.
- 17.3 The costs of the consumption of electricity, gas, water or other utilities related to the Leased Property will be borne by the Lessee as from the commencement date of this Lease.

## **18. Default, interest and penalty**

- 18.1 The Lessee will owe Port of Amsterdam default interest of 1% per month over the period that the Lessee is in default of paying any sum owed to Port of Amsterdam. Each time that a period of twelve months expires, the amount on which the default interest is calculated will be increased by the interest owed over those 12 months.
- 18.2 If the Lessee is in default of the compliance with one of its obligations, Port of Amsterdam may impose an immediately exigible penalty on the Lessee of a maximum of 10 times the sum of the rent applicable at the time. The penalty must be paid within a month of the dispatch of the notice in which the penalty is imposed. The costs of collecting the penalty will be for the Lessee's account.
- 18.3 The penalty referred to in paragraph 2 of this Article does not diminish Port of Amsterdam's right to compliance and full compensation for the damage caused by the default. If the Lessee is in default of the compliance with any obligation other than the obligation referred to in paragraph 1 of this Article, Port of Amsterdam will be entitled, without intervention by the courts, to facilitate that which would have resulted from compliance by the Lessee, at the Lessee's expense and risk.

## **19. Delivery upon the end of the Lease**

- 19.1 Unless agreed otherwise in writing, the Lessee will deliver the Leased Property to Port of Amsterdam upon the end of the Lease in the condition the Leased Property was in on the commencement date of the Lease. In any event, this means that:
- the Leased Property will be delivered at the proper height and levelled; and
  - the Leased Property will be free of that which the Lessee fitted on, above and in the Leased Property or of that which was taken over or deemed to have been taken over from a legal predecessor, including, inter alia, foundations and piles, and
  - the Leased Property is delivered back to Port of Amsterdam vacant and at the free disposal of Port of Amsterdam to the satisfaction of Port of Amsterdam, so free of rights of use and limited rights, and
  - the soil of the Leased Property, including the land and ground water, has been restored to the same condition as recorded in the baseline measurement report, all as provided in more detail in Article 9 and as also evidenced by the final measurement report as referred to in Article 9.7.
- 19.2 If, upon the end of the Lease, the Leased Property has not been vacated, not vacated in a timely fashion or not properly vacated in accordance with paragraph 1 of this Article, the Lessee will owe compensation equal to the rent until the date on which these obligations have been complied with as yet, without prejudice to Port

of Amsterdam's right to compensation of costs, penalties, damage and interest. If the Leased Property has to be remediated and the remediation is performed after the end of the Lease, the provisions in the previous sentence also apply.

- 19.3 If and in so far as Port of Amsterdam agrees that the Leased Property does not have to be free of all that which the Lessee or a legal predecessor has fitted upon the end of the Lease, the Lessee will not be entitled to any compensation for the value of buildings, works or plants still present, unless agreed otherwise. Port of Amsterdam may subject its permission to the condition that the Lessee owes compensation in connection with future demolition costs or limitations on use.
- 19.4 No later than four (4) weeks before the end date of this Lease, the Lessee must contact Port of Amsterdam to make an appointment for a final inspection of the Leased Property by the parties. A report on the final inspection will be drafted in which the findings with regard to the condition of the Leased Property are laid down. Any work related to repairs and overdue maintenance will be at the expense of the Lessee, and the manner in which this work will be performed will also be laid down in the report. If, after having been given an opportunity to do so, the Lessee does not cooperate as regards the inspection and/or the laying down of the findings in the report within a reasonable period of time, Port of Amsterdam will be entitled to perform the inspection in the Lessee's absence and to draw up a report that is binding on the parties.
- 19.5 The Lessee is required to perform the work within the period laid down in the report or a period yet to be determined between the parties, to the satisfaction of Port of Amsterdam. If the Lessee continues to fail to comply with its obligations, in whole or in part, Port of Amsterdam will be entitled to have the work carried out at the Lessee's expense.
- 19.6 After the end of the Lease, Port of Amsterdam may, at its own discretion and without being liable for that in any way, remove and destroy all items which the Lessee has manifestly abandoned, at the Lessee's expense. In any event, the Lessee will be deemed to have abandoned those items left behind in, on or above the Leased Property when the Leased Property is actually vacated. Port of Amsterdam has the right, at its own discretion, to have these items destroyed at the Lessee's expense or to appropriate said items without owing or having owed by compensation, and if so desired, to sell same and retain the proceeds from such sale.

## **20. Breach of contract**

Absent the timely performance of any obligation the Lessee has pursuant to this Lease, the law or by-laws, Port of Amsterdam will have the right to terminate the Lease with immediate effect and without paying any compensation. The Lessee is required to compensate Port of Amsterdam for the costs, damage and interest caused by the Lessee's continued default.

## **21. Competent court and applicable law**

Any and all disputes ensuing from this Lease will be brought before the competent court in Amsterdam. This Lease is governed by the laws of the Netherlands.

## **22. Indemnification**

The Lessee indemnifies Port of Amsterdam against all third-party claims ensuing from or related to (the use of) the Leased Property, including claims ensuing 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;
- the Lessee's failure to comply with regard to public-law obligations applicable with regard to this Lease;
- the Lessee's failure to comply with any obligation pursuant to this Lease;
- risk of and damage or hindrance to third-party property.

## **23. Representation, joint and several liability**

23. If the right of tenancy accrues to two or more (natural or legal) persons, they will designate one of their number in writing as representative and will lay down this initial choice in the Lease. Any change to the representation must be announced to Port of Amsterdam immediately in writing. Port of Amsterdam may make all announcements, notices and terminations with regard to the Lease to and lodge any and all claims related to the Lease against the most recent representative of which it was informed.

23.2 If various (natural or legal) persons are contractually bound as Lessee, they will always be jointly and severally liable to Port of Amsterdam for all of the obligations ensuing from the Lease. Postponement of payment or cancellation by Port of Amsterdam for one of the lessees, or an offer to do so, shall apply to that lessee only.

The obligations pursuant to the Lease are joint and several, also with regard to heirs and assignees of the Lessee.

## **24. Announcements**

Unless expressly provided otherwise, all announcements, notices, requests and approvals pursuant to the Lease will be effected in writing and any and all claims pursuant to the Lease will be lodged in writing.

## **25. Address for service**

- 25.1 The Lessee or the representative as referred to in Article 24 must ensure that Port of Amsterdam has its address. If the Lessee or representative as referred to in Article 24 has no actual or elected domicile in the Netherlands, it is required to elect address for service with regard to the Lease at the offices of a civil-law notary based in the municipality.
- 25.2 The Lessee or the representative must inform Port of Amsterdam of the address for service and any change thereto in writing. The first address for service will be laid down in the Lease.
- 25.3 Port of Amsterdam may validly make all announcements, notices and terminations and lodge any and all claims to the most recently chosen address for service of which it was informed.

## **26. General Extension of Time Limits Act**

The General Extension of Time Limits Act applies mutatis mutandis to the time limits referred to in these General Terms and Conditions.

## **27. Amendments to the General Terms and Conditions**

- 27.1 Port of Amsterdam may amend these General Terms and Conditions.
- 27.2 In the event the General Terms and Conditions are amended, Port of Amsterdam will send the new General Terms and Conditions to the Lessee, following which the Lessee has the choice of replacing these General Terms and Conditions with the new General Terms and Conditions and allow the new General Terms and Conditions to apply to the Lease, or allow the General Terms and Conditions to continue to apply.

27.3 In the event the Lessee opts for the applicability of the new General Terms and Conditions, it must inform Port of Amsterdam of this within three months after dispatch by Port of Amsterdam. The new General Terms and Conditions will come into force on the first day of the month following the month in which the Lessee opted for the applicability of the new General Terms and Conditions in writing. Upon Port of Amsterdam's first request to that end, the Lessee will cooperate in the confirmation of the amendment to the General Terms and Conditions by private deed.

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