

**GENERAL TERMS AND CONDITIONS  
FOR THE LEASE OF IMMOVABLE  
PROPERTY IN THE PORT AREA 2015**

These General Terms and Conditions for the Lease of Immovable  
Property  
in the Port Area 2015 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 2015**

**1. Definitions**

**Article:** any article of the present terms and conditions (unless stated otherwise behind the article number).

**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, authorisation 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.

**Soil:** the land and the water bed including the above column water and the ground water.

**Leased Property:** the immovable property situated in the port area leased to the Lessee by the Port of Amsterdam.

**Municipality:** the legal entity 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 there at De Ruijterkade 7, entered in the Commercial Register of the Chamber of Commerce under number 57398879.

**Port Area:** the areas on which activities are performed with regard to the port of Amsterdam, to be determined according to common practice, including the relevant 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.

**Commencement Date:** the date on which the lease of the Leased Property by the Lessee commences, which date is included in the lease.

**Baseline Measurement Report:** the report on the current environmental/hygienic quality of the soil (including 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 or, as the case may be, the land with the structures in, on and above the Leased Property comprising part thereof, or, as the case may be, an area of water.

**Structures:** leased buildings, works, greenery, whether or not situated in the water at the front, including, but not limited to: quay, jetty, pavement, sewerage, equipment, 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 bed including the water columns above it and the ground water.

## 1. Effect

1.1 These General Terms and Conditions are applicable to a lease for:

- undeveloped land, and/or
- land equipped with structures to the use of which Article 7:230a of the Dutch Civil Code applies, and/or
- an Area of Water.

1.2 These General Terms and Conditions do not apply to the lease by Port of Amsterdam 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 and to the exclusion of Article 7:204(2) of the Dutch Civil Code, a “defect” is understood in the Lease and in these General Terms and Conditions exclusively 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 The following will never constitute a defect:

- the refusal and/or rescission of permits and/or authorisations 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;
- limited rights in rem existing and newly established and/or to be newly established or agreed during the term of the Lease for the benefit of Port of Amsterdam and/or third parties (including, but not limited to, easements on the Leased Property as servient land), 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;
- the presence and/or occurrence of (soil and/or water) Contamination as referred to in Article 9, the direct or indirect result of which is that the Lessee is unable to enjoy the Leased Property

- as it could legitimately expect when entering into the Lease;
- all circumstances related to structures, facilities, changes and/or additions to, in and/or on the Leased Property taken over by the Lessee from a predecessor 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 legitimately expect 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, direct and/or indirect damage ensuing from the presence of said defect, and the Lessee is not entitled to a reduction of the Rent, nor does the Lessee have any other claim against Port of Amsterdam in such event, unless the defect in question already existed when the Lease was entered into *and* Port of Amsterdam was or should have been aware of the defect when the Lease was entered into, or if the defect arose as a result of intent or gross negligence on the part of Port of Amsterdam.

### **3. Payments**

3.1 The Rent is due as from the Commencement Date.

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 1 January and 1 July of each year by transfer to a bank account of Port of Amsterdam to be specified by the lessor in good time. In the event Lessee fails to pay the Rent or fails to do so in a timely fashion, it is in default by operation of the law.

3.4 The lessor will send the Lessee an invoice for payment of the amounts initially owed by virtue of the Lease, which invoice is to be paid by the Lessee within 21 (twenty-one) days after the relevant invoice date. For all amounts subsequently owed by the Lessee, invoices will be sent that are exclusively to be considered reminders for payment (and the receipt of which is therefore not a prerequisite for being required to make payment). Paragraph 3.3 of this Article remains fully applicable to the due and payable nature of said subsequent amounts.

3.5 Upon the lessor's first written request, the Lessee must pay the amounts due by virtue of the Lease to the lessor by means of a (commercial European) direct debit.

3.6 Regardless of the purpose indicated by the Lessee, each payment it makes serves to pay its debts to Port of Amsterdam in the following order:

1. any penalty owed pursuant to Article 18;
2. costs owed pursuant to Articles 16 and 17;
3. interest owed pursuant to Article 18;
4. the Lessee's debts by virtue of the Lease other than those referred to at 1., 2. and 3., not being the Rent;
5. the Rent.

### **4. Annual Rent adjustment**

4.1 The Rent is adjusted each year in line with the development of the basic price level. The adjustment takes place on 1 January of each calendar year. The Rent is adjusted by 1/5 part 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 that 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 determines 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. The time of the announcement does not suspend the Lessee's obligation to make an additional payment or its right to repayment.

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

As security for the performance of all its obligations ensuing from or relating to 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' (current) Rent increased by the VAT due. The Lessee is not entitled to set off any amount owed by the Lessee to Port of Amsterdam against the bank guarantee. In the event the bank guarantee is called on or in the event Port of Amsterdam so desires in light of, inter alia, the annual Rent adjustments as referred to in Article 4, the Lessee will arrange a new bank guarantee up to the full or higher amount upon Port of Amsterdam's first written request. If Port of Amsterdam so desires, instead of a bank guarantee the Lessee will transfer a security deposit into an account to be indicated by Port of Amsterdam. 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 contractual Designated Use of the Leased Property. In that respect, the Lessee will duly observe and tolerate limited rights existing or established during the term of the Lease (including, but not limited to, easements on the Leased Property as servient land), qualitative obligations and the requirements imposed or yet to be imposed by the government or utility companies and will comply with the same - in respect of the aforementioned requirements - as the occasion arises, without the Lessee being entitled to any claim in the matter against Port of Amsterdam.

6.2 The Lessee is not permitted to refrain from using the Leased Property in part or in full at all or virtually at all for more than 6 (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 in writing by Port of Amsterdam within 2 (two) years after the Commencement Date and perform the building activities diligently and without interruption.

- 6.4 At its own expense and risk, the Lessee will properly maintain the structures and facilities added and yet to be added to the Leased Property by it and/or taken over by a former lessee of the Leased Property, 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 structures, facilities, changes and or additions added to the Leased Property by it or taken over by it from a former lessee, 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. By virtue of 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 Vessels intended for the Lessee (or its enterprise) must be moored at the mooring facilities intended for that purpose on or adjacent to the Leased Property. The vessels 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 at the mooring facilities on or adjacent to the Leased Property intended for that purpose to the extent possible.
- 6.7 The Lessee is not permitted to use the Leased Property such that:
- this may decrease the value of the Leased Property and/or the adjacent plots, and/or;
  - this results in injury to, danger or a hindrance for people, and/or;
  - this 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;
  - this limits development or use of adjacent plots, without prejudice to the statutory provisions in this area.
- "Use" is understood to include the Leased Property's site load.
- 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 that has occurred due to a failure in the performance of an obligation pursuant to this Lease attributable to the Lessee. All damage will be assumed to have occurred due to that and if the Lessee presents a defence it must refute that assumption.

## **7. Layout and Occupancy**

- 7.1 The Lessee needs prior written consent from Port of Amsterdam for changing the layout or appearance of the Leased Property in part or in full, unless the changes and additions can be reversed and removed upon the end of the Lease without significant costs. "Without significant

costs" is exclusively deemed to mean costs up to EUR 100 (in words: one hundred euros).

- 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 are borne by the Lessee.
- 7.3 Structures and/or facilities erected on the Leased Property by the Lessee itself or taken over from a former lessee of the Leased Property or changes and/or additions to the layout or the appearance of the Leased Property made by the Lessee or taken over from a former lessee are not part of the Leased Property and Port of Amsterdam is not liable in any way for any damage that occurs as a result of said structures, facilities, changes and/or additions. The presence and/or state of the aforementioned structures, facilities, changes and/or additions can 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 to maintain the 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 is required to expand the number of parking places at its own expense and risk in accordance with the instructions and requirements to be issued by Port of Amsterdam at that time. The determination of the size, location and number of parking places must always take place in consultation with Port of Amsterdam. In so far as laws or regulations require access control, sufficient parking places must also be situated on the Leased Property before the company entrance.
- 7.6 Other than with previous written consent from Port of Amsterdam, the Lessee is not entitled to affix advertisements in, on or on top of the Leased Property.

## **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, the Lessee is required to remedy the subsidence or to procure the same as quickly as possible at its own expense and risk, if and in so far as Port of Amsterdam notifies the Lessee of this in writing. Damage to (the goods, employees and/or agents of) the Lessee as a result of subsidence and/or the failure to remedy subsidence, or doing so insufficiently or not in a timely fashion, is at the expense and risk of the Lessee.

## **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, by or due to 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 Baseline Measurement Report

Prior to entering into the Lease, Port of Amsterdam will conduct a soil survey at the site of the Leased Property at its own expense. The results of the soil survey are laid down in a Baseline Measurement Report, which, after being initialled by the Lessee, is part of the Lease.

The Lessee has the right, at its own expense and risk, to procure a further 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 such additional survey is conducted in consultation with Port of Amsterdam and such additional survey shows that the results from the Baseline Measurement Report are insufficiently indicative or strongly deviate in comparison with the additional survey, Port of Amsterdam will bear the costs of the additional survey conducted by the Lessee as yet. In such cases, the results from the additional survey will be deemed to be part of the Baseline Measurement Report once the lessor has initialled the Baseline Measurement Report.

If there has been no consultation with Port of Amsterdam, then Port of Amsterdam will be at liberty to determine the significance to be assigned to and the consequences to be connected with the additional survey conducted on behalf of the Lessee, and whether the costs of such additional survey conducted on behalf of the Lessee will be reimbursed.

#### 9.3 Obligation to report

If Contamination is present or threatens to occur, the Lessee will immediately inform Port of Amsterdam along with the competent authority.

#### 9.4 Liability for Contamination

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

- the Contamination was already present on site before the Commencement Date, with the Baseline Measurement Report mentioned in Article 9.2 being used as the point of departure, 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, respectively, to persons or 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 and immediately notify Port of Amsterdam accordingly.

#### 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 into the presence, scope, cause and/or consequences of Contamination. The Lessee is required to provide all information, cooperate (including providing 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 in so far as reasonably possible during the performance of the survey. If the survey reveals

Contamination, the costs of such survey will be borne by the Lessee, unless the Lessee demonstrates that it is not liable for the Contamination in accordance with Article 9.4.

9.6 Remediation during the term of the Lease

If, during the term of the Lease, the results of the survey mentioned in Article 9.5 show that there is Contamination and the Lessee is liable in accordance with Article 9.4, upon the first request by Port of Amsterdam and/or the competent authority the Lessee must remediate the Contamination and take all such measures as are necessary within the context of preventing (further) Contamination, at its own expense and risk.

9.7 Final Measurement Report

Upon or as shortly as possible before the end of the Lease, 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 plots. The final measurement must have at least the same points of departure as the Baseline Measurement Report and also comply with the state of the art, science and investigation standards at the time the final measurement is performed. Moreover, the final measurement must 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 drawing up the report will be borne by the Lessee. If, in the opinion of Port of Amsterdam, the Final Measurement Report provides 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 is 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 present on the Leased Property on the Commencement Date, as described in the Baseline 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 completion of remediation based on Article 9.6 and/or Article 9.8, the Lessee must demonstrate by means of an investigation report that the remediation obligation mentioned in the relevant articles has been met. 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 Article 9.6 and/or Article 9.8.

#### 9.11 Measures

If, in the opinion of Port of Amsterdam, the Lessee fails to perform its obligations by virtue of this Article 9, or fails to do so in a timely fashion or sufficiently, Port of Amsterdam is 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 Article 9.5 or the measures referred to in Article 9.11, unless there is intent or gross negligence on the part of Port of Amsterdam.

#### 9.13 Bank guarantee/security deposit

If Contamination is discovered, the Lessee is required, upon the first written request by Port of Amsterdam, to provide a bank guarantee or have such provided according to a model prescribed by Port of Amsterdam for the performance of its obligations pursuant to Article 9 and for any penalties and costs owed due to the Lessee's failure to perform its obligations pursuant to Article 9. Port of Amsterdam will determine the amount of the bank guarantee to be provided. The Lessee is not entitled to set off any amount owed by the Lessee to Port of Amsterdam 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. If Port of Amsterdam so desires, instead of a bank guarantee the Lessee will make a security deposit into an account to be indicated by Port of Amsterdam. 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 make a security deposit does not diminish the Lessee's obligations ensuing from Article 5.

### **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 (whether or not by means of a legal demerger) in whole or in part to third parties, nor contribute these to a (or another) legal person or partnership;
- enter into any other agreement aimed at a legal act as referred to in this article or aimed at the direct or indirect transfer of the right of use in respect of 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 agreement for use with a term longer than the term of the Lease, and/or to enter into a (sub-)lease and/or agreement for use at a higher rent than the rent applicable at that time by virtue of the lease, and/or
- enter into a (sub-)lease and/or agreement for use with a party that, in the reasonable opinion of Port of Amsterdam, does not have a good reputation.

10.3 Upon first request by Port of Amsterdam, the Lessee will provide a copy of the agreement(s) concluded as referred to in Article 10.2 to Port of Amsterdam for perusal.

10.4 In the event Port of Amsterdam grants permission pursuant to Article 10.1, the Lessee is required to impose all the obligations applicable to it by virtue of the Lease, including obligations

ensuing from the present General Terms and Conditions, on its (sub-)lessee or user in a similar manner.

- 10.5 If the control over the activities of the Lessee's enterprise or a part thereof transfers to one or more third parties, directly or indirectly, Port of Amsterdam is entitled to terminate the Lease with immediate effect (whether or not prematurely) by means of written notice to the Lessee to that effect. In any event, the transfer of control, directly or indirectly, is understood to include a share transfer and a merger as referred to in the SER Resolution concerning the Merger Code 2000. The Lessee is required to inform Port of Amsterdam as quickly as possible after learning of such transfer, subject to a penalty of € 5,000 for each day that the Lessee is in default of doing so. The Lessee will be deemed to be in default absent a notice within 30 (thirty) days after the day on which the transfer takes effect.

## **11. Permission**

- 11.1 A request by the Lessee for permission from Port of Amsterdam on the basis of Articles 6, 7 and 10 must always be made in writing. Any permission given by Port of Amsterdam will always be considered one-off and will not apply to other or subsequent requests. Time periods and conditions may be imposed on this permission by Port of Amsterdam, including changing the Rent and provisions of the Lease. Port of Amsterdam will charge a fee for handling the request for permission as referred to in this Article. A request for permission must be received by Port of Amsterdam no later than 4 (four) weeks prior to the proposed date on which the permission is required. Port of Amsterdam will decide on the request within this 4 (four)-week period, unless Port of Amsterdam indicates that it needs further information in order to decide on the request.
- 11.2 Port of Amsterdam is entitled at all times to deny a request for permission for reasons of its own, without being obliged to notify the Lessee of those reasons. In any event permission may be denied on the following, non-exhaustive grounds:
- if the Leased Property is adjacent to water and the operations on the Leased Property no longer lead to sufficient supply and transport over water of goods by sea-going vessel and the transshipment of these goods to the Leased Property, or if these operations decrease (considerably);
  - if 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 the future (sub-)lessee, user or other beneficiary.

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

- 12.1 The Lessee is required to perform (or procure) 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, in which the Lessee is obliged at all times to comply (or procure compliance) with all laws and regulations concerning the relevant activities.
- 12.2 If the Lessee does not perform maintenance or performs poor maintenance on the plot, the consequences thereof will be at the Lessee's expense and risk, without prejudice to the rights accruing to Port of Amsterdam in that event.
- 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 activities improperly, Port of Amsterdam is entitled to perform these activities or procure their performance at the expense and risk of the Lessee, if the Lessee is in default of doing so.

- 12.4 With regard to common partitions that are part of the Leased Property, the repair, renovation and maintenance obligation and the related costs are borne jointly and in equal shares by the Lessee and the owner or user of the adjacent plot, and the Lessee and the aforementioned owner or user will, in mutual consultation, perform these activities (or procure such performance) and pay the costs involved.
- 12.5 The Lessee is required to perform (or procure) all maintenance on and repairs and renovations to the changes and additions to the Leased Property made by it at its own expense and risk, in which respect the Lessee is obliged at all times to comply (or procure compliance) with all laws and regulations concerning the relevant activities.

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

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

13.1.1 The Lessee will tolerate and accept the fact that Port of Amsterdam or third parties install, move, use, inspect, maintain, repair, renew or remove, in, on, above or over the Leased Property, cranes, tracks, cables, pipes, fibres and other facilities for communication purposes, piles, sewerage and drainpipes and other similar facilities, whether or not for public use and the related items. To the extent reasonably possible, the Lessee's operations will be taken into account in doing so.

13.1.2 The items referred to in Article 13.1.1 are not part of the Leased Property.

13.1.3 If the items referred to in Article 13.1.1 must be changed, relocated, moved, repaired or renewed as a result of acts or omissions by the Lessee, this will be done 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 and accept that, upon Port of Amsterdam's first notification, mooring facilities are 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 and accept that vessels that are not intended for the Lessee's company moor at mooring facilities on, in or adjacent to the Leased Property or a bank bordering on the Leased Property. The Lessee will allow the crew of said vessels to traverse the Leased Property to and from the vessels, with due observance of the applicable law and regulations in the area of safety and security. Within the context of applicable safety and security law and regulations, the Lessee will be entitled to impose further, reasonable 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. By definition, this location entails a certain level of hindrance and/or danger originating from companies already established or to be newly established in the vicinity of the Leased Property. The Lessee tolerates and accepts this certain level of hindrance and/or danger.

#### 13.4 Cooperation and access

13.4.1 The Lessee will at all times permission to 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 obligations to tolerate under 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 vessels for the purposes of the performance and monitoring of compliance with the Lease. If and in so far as reasonably possible, the operations will be hindered as little as possible in that respect. The designated personnel will conduct themselves in accordance with the Lessee's reasonable safety instructions.

#### 13.5 No claims Lessee

In respect of the performance of the acts and activities with regard to which the Lessee has obligations to tolerate as mentioned in this Article 13, the Lessee has no claims, howsoever called, against Port of Amsterdam.

#### 13.6 Drainage and discharges

13.6.1 If the Lessee wishes to drain the Leased Property, it will only do so after obtaining permission from and in consultation with Port of Amsterdam. In that respect, the Lessee must take into account the interests of lessees, (sub-)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 obstructed and that it is not intrusive to shipping. The Lessee will ensure that this is also taken into account on vessels moored for the benefit of the Lessee's company (that are not the vessels mentioned in Article 13.2.2).

13.7.2 The Lessee is required to tolerate and accepts 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 and accept that Port of Amsterdam gives further instructions and rules related to the use of the Lessee's operational 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 transfer of (environmentally)

hazardous substances, the manner of mooring and safety aspects.

#### 13.9 Roads and Infrastructure

The Lessee expressly declares that it is aware of the fact and tolerates and accepts that the Municipality (both under public law and in its capacity as title-owner within the meaning of the Dutch Roads Act) has and uses and/or will be able to use the powers to designate (existing and/or future) roads accessible to the public as public roads as referred to in the Roads Act, in which designation the Lessee must cooperate in every way in such an event without any claim against Port of Amsterdam accruing to the Lessee in the matter of such designation.

For all (existing and/or future) public roads within the meaning of the Roads Act that are part of the Leased Property, the Lessee must tolerate the competent authority (including the Municipality) meeting its responsibility in an adequate manner in respect of the management, construction, renovation and relocation of public roads (including construction works) The Lessee will cooperate in every way with the construction, renovation and/or relocation of (existing and/or future) public roads within the meaning of the Roads Act and the Road Traffic Act 1994 without any claim against Port of Amsterdam accruing to the Lessee with regard to the construction, renovation and/or relocation.

#### 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 the provisions of the Lease (exclusively within the meaning that the depth is shallower), the Lessee will inform Port of Amsterdam of this 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 Article 14.2, Port of Amsterdam will investigate within a reasonable period whether the depth of the water bottom deviates from the provisions of the Lease. If there is a deviation as referred to in Article 14.2, Port of Amsterdam will ensure that the water bottom will at least comply as yet with the depth of the water bottom as provided 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 that cannot be attributed to Port of Amsterdam, or require expenditures that cannot be reasonably required of Port of Amsterdam in the given circumstances, Port of Amsterdam's obligation as referred to in Article 14.1 and/or 14.3 lapses, unless there is intent or gross negligence on the part of Port of Amsterdam. The circumstances mentioned above in any event include contamination of the water bottom.

If the lapse of Port of Amsterdam's obligation as referred to in Articles 14.1 and/or 14.3 results in it being impossible for the Lessee to operate its business, each of the parties is entitled to terminate the Lease with immediate effect without the intervention by the courts. However, in that event the Lessee is not entitled to terminate the Lease if the lapse of the obligation as referred to in Articles 14.1 and/or 14.3 was caused (in part) by or due to 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 have no right to compensation from each other of any damage as a result of the lapse of the obligation as referred to in Articles 14.1 and/or 14.3 and/or termination

of the Lease, unless the lapse of the obligation as referred to in Articles 14.1 and/or 14.3 was caused (in part) by or due to any act or omission by the Lessee, its subordinates or third parties who have a right of use or access to the Leased Property, in which case Port of Amsterdam does have the aforementioned right as well as all other rights accruing to it in such an event. 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.

- 14.5 If Port of Amsterdam dredges the port and the water bottom is subsequently deeper than the depth of the water bottom as mentioned in the Lease and the Lessee utilises the additional depth by receiving vessels with a deeper draught, Port of Amsterdam will have the right to (temporarily) adjust the Rent upward to its own satisfaction but in a reasonable manner in accordance with the additional depth, without any upward adjustment 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 are deemed to have originated from the Lessee, unless the Lessee proves that said objects and/or substances did not originate from it, its personnel, or third parties it engages or from vessels destined for the Lessee (or its enterprise).
- 14.7 The Lessee must remove objects and/or substances as referred to in Article 14.6 that are deemed to have originated from the Lessee within a reasonable period after the discovery of the presence of such 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 is entitled to remove the objects and/or substances or have these removed at the Lessee's expense and risk, without prejudice to all other rights accruing to Port of Amsterdam in such an event.
- 14.8 If the Lessee fails to remove the objects and/or substances referred to in Article 14.6, the Lessee will be liable for all damage resulting from the presence of the objects and/or substances, without prejudice to all other rights accruing to Port of Amsterdam in such an event. Damage as referred to above includes the costs of repairing damage to dredging equipment and business loss incurred by 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, regulation or rule 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 applies in full and the Lessee must arrange this at its own expense and risk.
- 15.2 In connection with obtaining permission required pursuant to any provision of this Lease, the Lessee may not rely on permission obtained previously pursuant to this Lease or a permit, permission or exemption obtained previously pursuant to any law, regulation or rule.
- 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 application(s) to that end.



## **16. Costs**

- 16.1 All costs incurred for the purpose of entering into or amending this Lease are 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 ensuing from and/or related to the Lease are borne by the Lessee.

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

- 17.1 All existing and future taxes, levies and charges levied on or related to the Lease, the rights in rem in the Leased Property, a limited right or the use of the Leased Property by the Lessee, are borne by the Lessee as from the Commencement Date of the lease period of this Lease as mentioned in Article 3.1 of the Lease. In so far as taxes, levies and charges have been paid by Port of Amsterdam, the Lessee must reimburse these to Port of Amsterdam upon first notice.
- 17.2 All insurance premiums owed by Port of Amsterdam in connection with the Leased Property are borne by the Lessee as from the Commencement Date.
- 17.3 The use of gas, water and electricity is at the expense and risk of the Lessee, and the costs related to consumption of electricity, gas, water or other utilities in respect of the Leased Property are borne by the Lessee as from the Commencement Date. For the purpose of the aforementioned use, the Lessee must conclude agreements with the relevant suppliers in its own name, which agreements must be agreeable to Port of Amsterdam. As quickly as possible following a request to that end from Port of Amsterdam, the Lessee will provide copies of the agreements concluded by the Lessee concerning utilities to Port of Amsterdam.

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

- 18.1 The Lessee will owe Port of Amsterdam interest for delayed payment of 1 (one) percent 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 12 (twelve) months expires, the amount on which the default interest is calculated will be increased by the interest owed over those preceding twelve months.
- 18.2 If the Lessee is in default of performing any of its obligations, Port of Amsterdam may, at its discretion, impose an immediately due and payable penalty on the Lessee of a maximum of ten times the amount of the Rent applicable at the time. The penalty must be paid within 1 (one) month of the dispatch of the notice in which the penalty is imposed. All costs involved in the collection of the penalty are at the Lessee's expense.
- 18.3 The penalty referred to in paragraph 2 of this Article does not prejudice Port of Amsterdam's right to performance, to termination and to full compensation of the damage caused by the Lessee's default. If the Lessee is in default of performance of any obligation other than the obligation referred to in paragraph 1 of this Article, Port of Amsterdam is entitled, without intervention by the courts, to cause to happen that which would have resulted from performance by the Lessee, at the Lessee's expense and risk.

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

- 19.1 Unless it has been otherwise agreed in writing or Port of Amsterdam has notified the Lessee otherwise in writing (to be exclusively determined by Port of Amsterdam), upon the end of the Lease the Lessee will deliver the Leased Property to Port of Amsterdam in the condition it was in on the Commencement Date, which condition is laid down in the official report of delivery as mentioned in the Lease. In any event, this means that:
- the Leased Property is delivered at the proper height and levelled, and
  - that which the Lessee added, took over or is deemed to have taken over from a previous lessee of the Leased Property, on, above or in the Leased Property, has been removed from the Leased Property, including, inter alia, structures, facilities, changes, additions, foundations and/or 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, meaning free of rights of use and any limited rights established for the benefit of the Lessee, and
  - the soil of the Leased Property, including the land and ground water, has been restored to the same condition as laid down 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, or not in good time or properly in accordance with paragraph 1 of this Article, the Lessee owes compensation equal to the rent until the date on which these obligations are met as yet, without prejudice to Port of Amsterdam's other rights (including, but not limited to, Port of Amsterdam's right to compensation of costs, penalties, damage and interest). If the Leased Property must 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 upon the end of the Lease the Leased Property does not have to be free of all that which the Lessee added or took over or is deemed to have taken over from a previous lessee of the Leased Property, the Lessee is not entitled to any compensation for the value of structures, facilities, changes, additions, buildings, works or greenery still present, and will not have any other claim against Port of Amsterdam (including, but not limited to, any claim by virtue of Article 6:212 of the Dutch Civil Code), unless agreed otherwise in writing. Port of Amsterdam may attach to its consent 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 the Lease, the Lessee will contact Port of Amsterdam to make an appointment for a final inspection of the Leased Property by the Parties. A report of the final inspection will be drafted in which the findings with regard to the condition of the Leased Property at that time are laid down. Any activities related to repairs and overdue maintenance are at the expense and risk of the Lessee, and the manner in which these activities are to be performed is also to be laid down in the report. If, after having been given the opportunity to do so, the Lessee does not cooperate with the final inspection and/or the laying down of the findings in the report within a reasonable period of time, Port of Amsterdam is entitled to perform the final inspection without the Lessee 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 perform its obligations, in whole or in part, Port of Amsterdam is entitled to have the activities performed at the Lessee's expense and risk.

19.6 After the end of the Lease, Port of Amsterdam may, at its own discretion and without being liable for this 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 any compensation and, if so desired, to sell the same and retain the proceeds from the sale.

## **20. Failure to perform by Lessee, termination, information**

20.1 Absent the timely performance of any obligation the Lessee has pursuant to this Lease, the law or regulations, Port of Amsterdam has the right to terminate the Lease with immediate effect and without paying any compensation by means of written notification to that end. The Lessee is required to compensate Port of Amsterdam for the costs, damage and interest caused by the Lessee's failure to perform.

20.2 Without prejudice to the statutory rights and the rights ensuing from the Lease (including the present General Terms and Conditions) to which Port of Amsterdam is entitled in such cases, Port of Amsterdam is also entitled to terminate the Lease with immediate effect by means of written notification to that end if:

- a. the execution of any attachment at the expense of the Lessee by writ has commenced;
- b. the Lessee is declared bankrupt or subject to statutory debt rescheduling;
- c. the Lessee is granted suspension of payments and the administrator performs acts of disposition in respect of the Lease or intends to do so, or damages or threatens to damage the interests of Port of Amsterdam as the beneficiary of rights in rem.

The Lessee is required to immediately inform Port of Amsterdam by registered letter if:

- any conservatory or executorial attachment has been imposed against the Lessee;
- the Lessee itself or any third party has applied for bankruptcy of or the applicability of the statutory debt rescheduling to the Lessee;
- suspension of payments by the Lessee has been requested;
- a resolution to dissolve the Lessee's enterprise has been put on an agenda;
- any other circumstance exists or event occurs that could result in the Lessee no longer being able to correctly perform its obligations by virtue of the Lease.

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

All disputes by virtue of or connected to the Lease will at first instance be brought before the competent court of the Amsterdam District Court. The Lease is exclusively governed by Dutch law.

## **22. Indemnification**

The Lessee indemnifies Port of Amsterdam against 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;
- the Lessee's failure to perform in respect of public-law obligations applicable with regard to the use

- of the Leased Property by the Lessee;
- the Lessee's failure to perform any obligation by virtue of this Lease;
- risk of, damage to or hindrance of third-party property.

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

23. If the right of tenancy belongs to two or more (natural or legal) persons jointly, they will designate one of their number in writing as representative and will lay down this initial choice in the Lease. Any change in the representation must immediately be communicated to Port of Amsterdam in writing. Port of Amsterdam is entitled (but not obligated) to give all communications, notifications and notices of termination with regard to the Lease to and to lodge any and all claims related to the Lease against the representative of which it was last informed.
- 23.2 If various (natural or legal) persons are contractually bound as Lessee, each of these is always jointly and severally liable to Port of Amsterdam for the performance of all obligations ensuing from or related to the Lease. Postponement of payment, cancellation and/or granting consent by Port of Amsterdam for one of the (co-)lessees, or an offer to do so only applies to that (co-)lessee. The undertakings under the Lease are joint and several, even in respect of the Lessee's heirs and successors in title.
- 23.3 By signing the Lease, the Lessee declares in advance that the person(s) signing all documents related to this Lease on its behalf and making the related arrangements with Port of Amsterdam, is/are authorised to do so. The documents and arrangements referred to above include, but are not limited to, to the official report of delivery as mentioned in the Lease, the final inspection report as mentioned in Article 19.4, and also all other arrangements relating to the delivery of the Leased Property (including return delivery by the Lessee at the end of the Lease). Further to the above, the Lessee will never invoke lack of authority of said representative or representatives in respect of Port of Amsterdam. The Parties furthermore agree that Port of Amsterdam is not required to conduct an investigation into the power of representation of the person(s) acting on behalf of the Lessee.

### **24. Announcements**

Unless expressly provided otherwise, all announcements, notifications, requests and consents by virtue of the Lease will be made or given in writing and all claims by virtue of the Lease will be lodged in writing.

### **25. Address for service**

- 25.1 The Lessee and the representative(s) referred to in Article 23 must ensure that their current addresses (for service or of its registered office) are known to Port of Amsterdam at all times. If the Lessee or representative(s) as referred to in Article 23 has no actual or elected address for service 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(s) must inform Port of Amsterdam of the address for service and any change thereof in writing. The first address for service is laid down in the Lease.

25.3 Port of Amsterdam may validly give all notifications and notices (including notice of termination) and lodge all claims at the most recent (or recently elected) 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 at any time.

27.2 In the event of amendment of the General Terms and Conditions, Port of Amsterdam will send the new general terms and conditions to the Lessee, following which the Lessee has the choice of either replacing these General Terms and Conditions with the new general terms and conditions and having the new general terms and conditions henceforth apply to the Lease or having these General Terms and Conditions continue to apply.

27.3 In the event the Lessee opts for the applicability of the new general terms and conditions, it must so notify Port of Amsterdam in writing within three months after dispatch by Port of Amsterdam of the new general terms and conditions. The new general terms and conditions will then come into force on the first day of the month following the month in which the Lessee opted in writing for the applicability of the new general terms and conditions. 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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