



Port of Amsterdam

GENERAL CONDITIONS FOR LAND LEASE FOR A LIMITED TERM IN THE PORT OF AMSTERDAM 1992

The Municipal Council of Amsterdam, in its meetings on
17 December 1992, by resolution number 1040, and
6 April 1994, by resolution number 290,
adopted the following General Conditions for Land Lease for a limited term in the Port of Amsterdam:

Preliminary provision

These general conditions are based on the Municipality policy on the granting of land in the port on long-term leases, which is aimed at creating long-term employment, promoting the use of the port of Amsterdam by sea going vessels, long-term intensive use of Municipality real properties and infrastructure, and generally at promoting optimum use of Municipality real properties in accordance with the public interest.

1. Acceptance

- 1.1. The Lessee shall accept the Property - which in these general conditions shall be the property let under a long-term lease - in the condition in which it is found at the commencement of the Lease. The condition of the Property shall include the condition of the site and the subsoil with any and all appurtenances present and existing in or on the Property.
- 1.2. The Lessee represents that at the commencement of the Lease the Property is in a good and clean condition, save insofar as stated otherwise in a report certified by the parties, which has been appended to the deed.
- 1.3. The Municipality shall not be liable for any visible or hidden defects of the Property.

2. Payment of the ground rent

- 2.1. Payment of the ground rent must be made in advance without any discount, deduction or set-off, in two equal biannual instalments to be paid on 2 January and on 1 July of each year into one of the accounts of the Port management in Amsterdam.
- 2.2. The ground rent for the term from the date of commencement of the Lease to the next biannual due date must be paid within 21 days after the request to that effect.

3. Bank guarantee

As security for the fulfilment of its obligations under the Lease Contract the Lessee shall provide a bank guarantee in accordance with a model prescribed by the Municipality to an amount equal to the annual ground rent including turnover tax.

4. Annual adjustment of the ground rent

4.1. With effect from 1 January of each year the ground rent shall be adjusted in accordance with changes in the general level of prices by increasing or decreasing the valid ground rent by a percentage equal to one seventh of the percentage derived from the adjustment ratio as referred to in paragraph 4.2 of this article, determined for that calendar year.

The adjusted ground rent shall be rounded up to the nearest guilder. The Lessee shall be notified of the adjusted ground rent as soon as possible. Late notification shall not release the Lessee from his obligation to pay the additional charge, nor shall it nullify his entitlement to repayment.

4.2. The adjustment ratio valid for one calendar year shall be calculated by applying the formula:

a

- in which the following values are represented by:

b

the letter a: the family cost-of-living index ("prijsindexcijfer van de gezinsconsumptie") for the total population for the month of June in the year preceding the calendar year referred to in this paragraph, as announced by the Central Bureau of Statistics or failing this by any other independent institution;

the letter b: the corresponding figure for the month of June in the sixth year preceding the calendar year referred to in this paragraph.

If due to any specific circumstance one or more values in this paragraph represented by the letters a and b are not known or not known in due time, the adjustment ratio referred to in this paragraph shall be determined by the local council in such manner as shall correspond insofar as possible with the calculation method described in this article.

The adjustment ratio valid for a calendar year shall be announced in the Municipal Gazette.

4.3. The Municipality and the Lessee may agree to exclude the yearly adjustment of the ground rent laid down in paragraph 4.1 for the remaining term of the lease.

The ground rent shall in that event be calculated as follows:

- a. the valid ground rent shall be increased by a surcharge percentage;
- b. the surcharge percentage to be applied shall be multiplied by the following reduction factor, which shall vary in accordance with the remaining term of the ground lease, as follows:

remaining term of ground lease	reduction factor
forty-six up to and including fifty years	1,00
forty-one up to and including forty-five years	0,91
thirty-six up to and including forty years	0,82
thirty-one up to and including thirty-five years	0,73
twenty-six up to and including thirty years	0,63
twenty-one up to and including twenty-five years	0,51
sixteen up to and including twenty years	0,39
eleven up to and including fifteen years	0,26
one up to and including ten years	0,13

- 4.4 The Municipality shall determine the surcharge percentage annually; the surcharge percentage shall be determined at such level as is necessary to compensate the Municipality for the exclusion of the yearly adjustment of the ground rent.
 - 4.5 The exclusion of the yearly adjustment of the ground rent shall be officially recorded in a notarial deed. The costs of the notarial deed and the registration thereof in the public records, as well as any taxes due and other ordinary and special charges, shall be for the account of the Lessee.
 - 4.6 Interim termination of the exclusion of the yearly adjustment of the ground rent as referred to in paragraph 4.3 shall not be possible.
 - 4.7 If the Lessee, after exclusion of the yearly adjustment of the ground rent, wishes to pay in advance the ground rent not yet due for the remaining term of the lease in accordance with article 5 of these conditions, the surcharge shall not be taken into account in the calculation of the lump sum.
- 5. Ground rent paid in advance**
- 5.1. The Lessee may pay the ground rent which has not yet become due for the remaining term of the lease by way of a lump sum payment.
 - 5.2. The Municipality shall determine the lump sum; the lump sum shall be determined at such level as is necessary to compensate the Municipality for the loss of ground rent. The lump shall be calculated according to an instruction to be laid down by the Municipality, which shall be announced in the Municipal Gazette.
 - 5.3. If the period of payment in advance takes effect within one year after a yearly adjustment of the ground rent in accordance with article 4.1, this adjustment shall not be taken into account in the calculation of the lump sum.
 - 5.4. Interim termination of the ground lease shall confer no entitlement to repayment of the lump sum except in the event of termination of the Lease by the Municipality for public purposes. The amount to be repaid in that event shall be calculated by applying the same factors as were applicable to the determination of the lump sum payment referred to in the article 5.2.
 - 5.5. The payment in advance of the ground rent shall be recorded in a notarial deed. Article 4.5 shall apply as appropriate.
- 6. Prohibitive clauses**
- 6.1. Use
 - 6.1.1. The Lessee may not leave the Property or any part thereof unused for any period exceeding twelve successive months.
 - 6.1.2. The Lessee may not use the Property for any other purpose other than stated in the deed containing the Lease and may not use it in any manner that is not in accordance with that purpose.
 - 6.1.3. The Lessee shall refrain from performing or omitting to perform any act which may result in a devaluation of the Property.

6.2. Buildings

The Lessee may only build on the site in accordance with plans in respect of which the Municipality has given its written approval. Buildings shall be deemed to include any objects of whatever nature, in particular barriers and fencing higher than 2 metres or, as the case may be, higher than 1 metre if placed in front of the front wall alignment. Any damage inflicted on existing objects in the building process shall be for the account of the Lessee.

6.3. Load on site

The Lessee may not place such a load on the site as may cause danger for, damage to or hindrance to any property of the Municipality or third parties. The Lessee shall indemnify the Municipality for any claims filed by third parties in that respect.

6.4. Environment

- 6.4.1. The Lessee shall refrain from performing or omitting any act as a result of which pollution of soil, groundwater, surface water or subsoil water or any other forms of environmental pollution may arise or any act which may be conducive thereto on, in or near the Property.
- 6.4.2. If any pollution as referred to in paragraph 6.4.1. is present or imminent, the Lessee shall immediately inform the Municipality to that effect.
- 6.4.3. The Lessee shall be liable for any pollution existing on, in or near the Property as referred to in paragraph 6.4.1., save insofar as such pollution already existed there before the commencement of the Lease or of any prior use of the Property by the Lessee, or if it was not caused or stimulated by any act or omission of the Lessee, its subordinates or of any third parties who had access to the Property during the Lease or the prior use of the Property.
- 6.4.4. The Municipality shall at all times during or after termination of the Lease, after consultation with the Lessee, be entitled to conduct a survey on the presence, extent, cause and/or effects of any pollution referred to in paragraph 6.4.1.
- 6.4.5. If any pollution as referred to in paragraph 6.4.1. is present or imminent, the Municipality shall, after consultation with the Lessee, be entitled to determine and to carry out or to cause the Lessee or a third party to carry out any measures which it deems necessary to remove, restrict or prevent such pollution or the probable cause or possible effects thereof.
- 6.4.6. The Lessee shall be required to submit any and all information and to render any assistance which the Municipality shall deem necessary in connection with the survey or measures as referred to in this article, and furthermore to grant access to any persons charged with such survey or measures and any devices to be used therefor on and in the Property.

6.4.7. The Municipality shall not be liable for any loss incurred by the Lessee as a result of any survey or measures as referred to in this article, save to the extent that such loss is caused by wilful misconduct, gross negligence or breach of duty of the Municipality. The costs of the said survey and measures shall be borne by the Lessee, unless the Lessee is not liable for the pollution.

6.4.8. The Lessee shall take out insurance to the satisfaction of the Municipality against the Lessee's risks arising from this article insofar as this is possible within reasonable limits in the Dutch insurance business.

6.5. Assignment, division, etc.

6.5.1. The Lessee shall not assign, allocate or divide the Lease. Assignment shall be deemed to include contribution to any other legal person or any other legal act aimed at the direct or indirect devolution of the Lease or of the power of control over the Property.

6.5.2. The Lessee shall not sublease the Property or part thereof.

6.5.3. The Lessee shall not give or let the site or the buildings erected thereon or any part thereof to third parties or allow third parties to make use thereof under any title whatsoever.

6.6. Traffic.

The Lessee shall not in any way cause or allow any hindrance to the traffic along the site. The Lessee shall ensure that any vehicles coming from his site or destined for his site will not be parked, placed or operated off the site, whether or not it concerns a no stopping clearway.

6.7. Exemption

The Municipality may grant exemption from any of the prohibitive clauses set forth in this article by written request to that effect by the Lessee. Stipulations as to time and other conditions may be attached to any exemption or permission, including alteration of the ground rent and other provisions of the deed containing the Lease. Any such exemption or permission may be granted only to the extent that it does not interfere with the policy on the granting of land on long-term leases referred to in the preliminary provision and shall never result in third parties acquiring any real or personal rights in respect of the site or the buildings, the continuance of which is not dependent on the existence of the Lease or the term of which exceeds the term of the Lease.

7. Obligations

7.1. Provisions and demarcations

7.1.1. Except insofar as paragraph 3 of article 7.2 provides otherwise, the Lessee shall be required to surface or plant the part of the site which will not be built on, and to keep this part in good condition.

- 7.1.2. The Lessee shall put up a demarcation on the site, to the extent that it is not closed off by outer walls, on its own account, and keep the demarcations in good condition and permit the Municipality or third parties to have demarcations of adjacent sites link up with or attach to the Lessee's demarcations.
- 7.1.3. The passageways necessary for traffic in the demarcations referred to in paragraph 7.1.2. must be properly lockable. The passageways shall be operated by and the costs thereof shall be borne by the Lessee.

7.2. Maintenance

- 7.2.1. The Lessee shall maintain any buildings present or to be erected on the site and any other facilities for its own account and shall make any ordinary and extraordinary repairs necessary in due time.
- 7.2.2. The Lessee shall keep the site at its appropriate level for its own account.
- 7.2.3. Upon the Municipality's first request the strip of land between the site boundary and the public road, insofar as it is not occupied by entrances or dock tracks, shall be properly covered with rich soil, sown with grass seed and maintained and kept clean by the Lessee at his own expense.

7.3. Works, cables and piping

- 7.3.1. The Lessee shall permit tracks, crane gantries, pipes, cables, poles and sewers with accompanying objects and installations to be placed, altered, maintained on, in or over or removed from the site by the Municipality or with its permission or consent. The Lessee shall in such an event be obstructed in the execution of his business activities as little as possible.
- 7.3.2. The Lessee shall permit cranes and railway material to be transported over existing tracks and over tracks to be laid for the benefit of the Municipality or third parties.
- 7.3.3. The transfer of any tracks, crane gantries, cables, pipes and sewers already existing or to be placed on and in the site will be for the account of the Lessee, if the necessity thereto is brought about by the act or omission of the Lessee.

7.4. Drainage and sewerage

- 7.4.1. If the Lessee wishes to drain the site, he shall do so in consultation with the Municipality.
- 7.4.2. The Lessee shall for his own account make such provisions as to ensure that no precipitation will be discharged onto adjacent sites or roads.
- 7.4.3. At the Municipality's first notice the Lessee shall, for his own account, connect the drainage system in and on the site to the main sewage. The charges due for such connection by virtue of the relevant by-law shall be paid by the Lessee.

7.5. Mooring bollards

7.5.1. At the Municipality's first notice the Lessee shall allow mooring bollards to be placed on the site for the benefit of the Municipality or third parties.

7.5.2. The parties shall not charge each other for the presence or use of bollards.

7.6. Mooring vessels

At the harbour master's first notice the Lessee shall allow vessels not destined for the Lessee's business to moor to temporarily unused parts of the site. The Lessee shall allow the crew of such vessels to leave and board the vessel by way of the site.

7.7. Lights

7.7.1. The Lessee shall ensure that the lights used on the site, on or in the existing buildings or any building to be erected and on any ships moored to the site, are provided with screens to such extent that in the port master's opinion they do not impede the recognition of harbour lights and they do not have a disturbing effect on navigation.

7.7.2. The Municipality shall be authorized to place one or more harbour lights on the site. The costs of installation and maintenance shall be for its account.

7.7.3. In special circumstances the Lessee shall at the port master's first notice burn the outside lights on the side closest to the water of the existing buildings or any building to be erected on the site.

7.7.4. The costs of power consumption arising from the provisions of paragraphs 7.7.2 and 7.7.3 shall be paid by the Lessee insofar as they are within reasonable limits.

7.8. Hindrance

The Lessee shall allow the presence or admittance of installations on sites in the vicinity of the Property. The Lessee shall not claim damages against the Municipality on account of any danger, damage or hindrance arising from the presence or admittance of any such installations.

7.9. Access of Municipality employees

7.9.1. The Lessee shall grant any authorized Municipality officials access to the site and the buildings existing or to be erected thereon, in order to check on the performance of the provisions of the Lease.

7.9.2. The employees referred to in paragraph 7.9.1. shall insofar as possible prevent any disruption to the business activities of the Lessee and shall conduct themselves in accordance with the Lessee's safety directions.

8. Depth of water

- 8.1. If so provided in the deed containing the Lease, the Municipality shall keep the bottom of the harbour in front of the Property at the depth referred to in the deed, subject to the observance of any submerged slope.
- 8.2. Any objects and substances present on or in the bottom of the harbour in front of the Property shall be deemed to originate from the business of the Lessee or from vessels having loaded or unloaded there for the benefit of his business, save insofar as a plausible case can be made for the contrary.
- 8.3. All extra costs incurred by the Municipality and arising from the presence of the objects and substances referred to in paragraph 8.2, shall be reimbursed by the Lessee to the Municipality at its first notice, without prejudice to the provision of article 6.4, save insofar as a plausible case can be made for the contrary as referred to in paragraph 8.2.
- 8.4. The costs referred to in paragraph 8.3 shall also include the costs of repairing damaged dredging equipment and the loss of income incurred by the executing dredging company as a result of the presence of objects or substances as referred to in paragraph 8.2.
- 8.5. Before the dredging operations have begun, the Municipality shall be entitled to require from the Lessee a security to be determined by the Municipality for the fulfilment of the Lessee's obligation to pay in connection with the provisions of paragraphs 8.3 and 8.4.
- 8.6. The Municipality shall be deemed to have fulfilled an obligation as referred to in paragraph 8.1 in due time, if the dredging operations take place as soon as possible after it has appeared that the depth of the water is not sufficient.
- 8.7. An obligation of the Municipality as referred to in paragraph 8.1. shall cease to exist, if its fulfilment cannot reasonably be required due to causes which cannot reasonably be attributed to the Municipality, or due to the amount of the costs, arising from pollution of the bottom of the harbour.
- 8.8. The provisions of paragraphs 8.2. through 8.5 shall also apply if no obligation of the Municipality as referred to in paragraph 8.1. has been included in the deed containing the Lease.

9. Required licences and the like

The Lessee's obtaining any consent, approval, licence, release, exemption or the like required under any law or by-law shall not confer or prejudice the granting by the Municipality as the owner of the Property of any consent, approval, licence, release, exemption or the like required under any provision of the agreement, and vice versa.

10. Costs

- 10.1. All costs and charges payable on the granting of the land on a long-term lease, including the costs of the cadastral survey of the real property, shall be paid by the Lessee. The same applies to costs and charges arising from any changes made in the conditions under which the land is granted on a long-term lease at the Lessee's request.
- 10.2. All extra-judicial costs and court fees which the Municipality is reasonably required to incur in order to maintain and exercise its rights under the deed containing the Lease and the conditions pertaining thereto, shall be borne by the Lessee.

11. Taxes

All state, provincial and local taxes, taxes imposed by a drainage district (*Waterschap*), charges and other liabilities which are payable on or on account of the ownership, a limited right or the use of the land or the buildings or on account of the land lease, regardless of whom they are imposed by or on whose behalf, shall be borne by the Lessee as from the date of commencement of the Lease or of prior use by the Lessee of the Property. To the extent that the liabilities have been paid by the Municipality, the Lessee shall compensate the Municipality therefor at its first notice.

12. Interest on arrears. Corrections made by the Municipality

12.1. The Lessee shall be liable to the Municipality to interest on arrears amounting to 1% per month on the period of time for which the Lessee is in default of the payment of any sum owing to the Municipality. Each time after twelve months have lapsed the amount on which the interest on arrears is due shall be increased by the interest payable over those twelve months.

12.2. If the Lessee fails to fulfil any obligation than that referred to in paragraph 12.1, the Municipality shall be entitled, without requiring any judicial authorization, to bring about that which fulfilment by the Lessee would have resulted in, at the risk and expense of the Lessee.

13. Penalty

13.1. If the Lessee fails to fulfil one of his obligations, the mayor and aldermen may impose on him an immediately due and payable penalty for the benefit of the Municipality, of a maximum of ten times the amount of the annual ground rent. If the provision of article 5 has been applied, this shall not be taken into account in determining the maximum of the penalty.

13.2. The penalty referred to in paragraph 13.1 shall not affect the Municipality entitlement to performance and to full compensation of the loss sustained by the default.

14. Surrender upon termination of the Lease

14.1. Upon termination of the Lease other than by notice given in accordance with article 16, the Lessee shall, save insofar as the Municipality shall provide otherwise, place the Property at the free disposal of the Municipality, after removing anything placed thereon or therein by the Lessee or any legal predecessor and duly vacated, in the same condition in which the Property was accepted at the commencement of the Lease. The Lessee shall not be entitled to compensation for the value of any buildings, works or plantation or for the cost of removal.

14.2. For as long as the Property is not vacated in due time, the Lessee shall continue to owe a sum equal to the ground rent, without prejudice to the Municipality entitlement to compensation for costs, losses and interest.

15. Termination

- 15.1. The Lease cannot be terminated by the Lessee.
- 15.2. Subject to the provisions of article 16, the Lease may be terminated by the Municipality, if the Lessee has failed to pay the ground rent over two successive years or if he seriously fails in performance of his other obligations. Notice of termination shall be served by writ at least one month prior to the time as at which notice is given.
- 15.3. Under penalty of annulment of the notice referred to in paragraph 15.2, the notice must be served within eight days to any persons registered in the public records to have a limited entitlement to or to have levied an attachment on the Lease.
- 15.4. After termination of the Lease by giving notice as referred to in paragraph 15.2, the Municipality shall be required to compensate the Lessee for the value of the Lease at that time, after deduction of any claims which the Municipality has against the Lessee on account of the Lease, including the costs to be incurred in order to get the Property in the condition in which it should have been surrendered in the event of regular termination of the Lease pursuant to article 14, and any other costs.
- 15.5. If the parties do not reach agreement on the compensation referred to in paragraph 15.4, the amount of the compensation shall be determined by experts in a binding statement.
- 15.6. For the determination of the amount referred to in paragraph 15.4. any new construction, alteration or reconstruction which has taken place after the notice of termination shall not be taken into account.

16. Termination for public purposes

- 16.1. The Lease may at any time be terminated by the Municipality on account of a declaration of the local council stating that termination of the Lease is necessary for public purposes. Notice of termination shall be served by writ at least twelve months prior to the time as at which notice is given.
- 16.2. In the event referred to in paragraph 16.1 the Municipality shall be required to compensate the Lessee for any loss sustained as a result of the termination of the Lease, provided however that no compensation shall be given for anything erected in breach of the deed containing the Lease or the conditions pertaining thereto, or for any loss of income incurred on account of a business activity performed in breach of the said deed or conditions. The compensation shall be reduced by any claims which the Municipality has against the Lessee on account of the Lease.
- 16.3. If the parties do not reach agreement on the compensation referred to in paragraph 16.2, the amount of the compensation shall be determined by experts in a binding statement.
- 16.4. For the determination of the amount referred to in paragraph 16.2. any new construction, alteration or reconstruction which has taken place after the notice of termination shall not be taken into account.

17. Experts

- 17.1. If an expert statement is required pursuant to article 15, paragraph 5 or article 16, paragraph 3, the Municipality and the Lessee, upon the initiating party's written request, shall appoint three experts in mutual consultation. If the parties do not reach agreement within two months after the said request is made, the three experts, at the request of the initiating party, shall be appointed by the chairman of the Chamber of Commerce and Industry for Amsterdam.
- 17.2. The experts shall render their statement within six months after having accepted their appointment.
- 17.3. The amounts due to the experts and, as the case may be, to the Chairman referred to in paragraph 17.1 on account of their appointment shall be borne by the Lessee in the event referred to in article 15, paragraph 5, and shall be borne by the Municipality in the event referred to in article 16, paragraph 3.

18. Mortgagees

If the Lease is encumbered with a mortgage and if the mortgagee has sent a conformed copy of the mortgage deed to the Municipality, with an undertaking to inform the Municipality forthwith of its removal from the register of mortgages, the Municipality shall inform the mortgagee within one month by registered letter of:

- a. the Lessee's failure to pay the ground rent for a period of nine months;
- b. a declaration of the local council as referred to in article 16, paragraph 1;
- c. an alteration of the general conditions as referred to in article 20.

In the event referred to under a. the mortgagee shall, before the term of two years referred to in article 15, paragraph 2 has elapsed, be entitled to pay to the Municipality on behalf of the Lessee the ground rent due, the interest on arrears and the costs incurred by the Municipality due to the default in payment.

19. Covenant to insert a fresh positive covenant in any subsequent covenant

- 19.1. In the event of assignment of the Lease or part thereof, the Lessee shall be required to impose on the new holder of the right in rem the obligations arising for him from the general and special provisions applying to the Lease, stating those provisions verbatim save for replacement of the name of the Lessee by the name of the new holder of the right in rem. The Lessee shall be deemed to have fulfilled this obligation only after a conformed copy of the deed concerned has been submitted to the Municipality.
- 19.2. For any failure to meet or sufficiently meet his obligation arising from paragraph 19.1 the Lessee shall owe the Municipality an immediately due and payable penalty amounting to the ground rent due for the remaining duration of the Lease, without prejudice to the Municipality's entitlement to fulfilment and/or compensation and without prejudice to the rights of the Municipality vis-à-vis third parties, if there are grounds therefor. If the provision of article 5 has been applied, this shall not be taken into account in determining the amount of the penalty.

20. Alteration of general conditions

- 20.1. These general conditions may be altered by the Municipality.
- 20.2. For an existing Lessee alterations of the general conditions shall take effect on the first of January at least twelve months after the Lessee has been informed in writing of the altered conditions, save to the extent that they weigh unreasonably heavily on him.
- 20.3. At the first request the Lessee shall cooperate in the alteration of the conditions being officially recorded in a notarial deed and in the registration thereof in the public records. The costs incidental to the execution of the deed and registration thereof in the public records shall be for the account of the Municipality.
