

**SMALS VERHUUR B.V. – GENERAL TERMS  
AND CONDITIONS  
GOVERNING THE RENTAL OF EQUIPMENT**  
Version: June 2017

Article 1 – Definitions

- 1.1 "Smals Verhuur": the private company with limited liability, Smals Dredging B.V., incorporated under the law of the Netherlands, which has its registered office in Cuijk, the Netherlands, which is registered with the Chamber of Commerce under Number 08124001 and/or the private company with limited liability (Gesellschaft mit beschränkter Haftung), Smals Dredging GmbH, incorporated under the law of Germany, which has its registered office at Kallerstrasse 2a in (49846) Hoogstede, Federal Republic of Germany, and/or the private limited company, Smals Dredging UK Ltd., incorporated under British law, which has its registered office at Crown Chambers, Bridge Street in Salisbury, Wiltshire (SP1 2LZ), United Kingdom.
- 1.2 "Hirer": any business, organisation or private individual with which or whom Smals Verhuur conducts negotiations concerning the conclusion of an agreement and/or enters into an agreement.
- 1.3 "General Terms and Conditions": these general terms and conditions of hire employed by Smals Verhuur;

Article 2 – General

- 2.1 These General Terms and Conditions shall apply to all legal relations pursuant to which Smals Verhuur acts as the lessor of equipment, in particular, dredging, transport and other ancillary equipment in the broadest sense of the term.
- 2.2 These terms and conditions may only be derogated from provided that this has been agreed to in writing.
- 2.3 The application of any general terms and conditions employed by a client is explicitly precluded.
- 2.4 In the event that one (1) or more provision(s) or part thereof of these General Terms and Conditions is or are void, nullified or otherwise inapplicable, the remaining provisions shall continue to apply in full. As far as possible action shall be taken in line with the void, nullified or inapplicable provision as the case may be. In such a case the parties shall enter into consultation with each other as soon as possible in order to remedy the deficiency that has arisen.

Article 3 – Rental

- 3.1 Unless explicitly stipulated otherwise in writing, every quotation issued by Smals Verhuur shall be free of obligation. A quotation shall always be valid for no more than fourteen (14) days, unless otherwise agreed.
- 3.2 The agreed rental shall be weekly and shall be based on the usage of a hired item for no more than sixty (60) hours a week.
- 3.3 Unless otherwise agreed, the rental shall not include:
  - a. any transport costs associated with the conveyance of the hired item to and from the hirer, as well as the transport of the hired item between the hirer's projects;
  - b. the staff's labour costs;
  - c. the costs of any repairs and maintenance;
  - d. any insurance that is required;
  - e. the cost of fuels and lubricants;
  - f. port charges, navigation dues and other expenses;
  - g. 50% of the assessment fee for the outbound and inbound inspections stipulated in Articles 5.2 and 6.3;
  - h. any VAT payable,
- 3.3 The rental charged by Smals Verhuur may be indexed on 1 January each year based on the consumer price index (CPI) published by Statistics Netherlands [Centraal Bureau voor de Statistiek] with the date of the relevant quotation (initial or otherwise) serving as the reference date. Smals Verhuur shall not exercise its right to alter the rental if this were to result in one that amounts to less than the last applicable rental.
- 3.4 An amended rental shall apply as of 1 January each year irrespective of whether or not a hirer is notified of this separately.
- 3.5 Rental shall be payable in full over the entire term of the hire also on Sundays and public holidays, even if

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it is impossible or effectively impossible to use the item hired for any reason whatsoever. A day or part of a day shall be calculated as one fifth (1/5) of a week.

Article 4 – Term of hire

- 4.1 The term of the hire shall commence on the date and at the time agreed and, more specifically:
  - at such time as the item hired leaves the Smals Verhuur depot for the hirer;
  - where it is stipulated that Smals Verhuur will be responsible for delivering the item hired, at such time as the outbound inspection of the item hired occurs, as provided for in Article 5.2.
- 4.2 The term of the hire shall also expire on the date and at the time agreed and, more specifically, at such time as the hirer hands the item hired to Smals Verhuur.
- 4.3 In the event that it is not agreed in advance what time the agreement is to expire, it shall terminate by means of cancellation and both Smals Verhuur and the hirer shall be required to observe a term of notice of one (1) month.
- 4.4 Subject to the provisions of the foregoing clauses, a term of hire shall nevertheless not expire before the inbound inspection referred to in Article 6(4) of these General Terms and Conditions and any damage which has occurred in the course of the term of the hire is repaired.
- 4.5 Except where Smals Verhuur consents to this in writing, a hirer shall not be entitled to cancel a rental agreement with Smals Verhuur after the latter has confirmed it. In the event that a hirer declines a hire without Smals Verhuur's consent, they shall nevertheless have a duty to pay the rental over the entire agreed term of the hire.

Article 5 – Delivery

- 5.1. Although Smals Verhuur shall observe any stipulated delivery time as far as possible, it shall merely be indicative and will not be binding on Smals Verhuur. Unless explicitly agreed otherwise in writing, under no circumstances may any stipulated delivery time be deemed to constitute a material deadline. Failure to meet a delivery time shall at any rate therefore not confer on the relevant hirer entitlement to cancel the relevant agreement and/or to demand compensation.
- 5.2. Upon the commencement of the term of the hire an expert designated by Smals Verhuur shall inspect the item hired for any defect or damage ("outbound inspection"). The aforementioned expert shall then draw up an assessment report covering the condition of the item hired. Any defect or damage noted during the outbound inspection shall be stipulated in the assessment report, which the relevant hirer shall then sign. The aforementioned assessment report shall determine the condition in which the item hired must be returned following the term of the hire.

Article 6 – Hirer's obligations and liability

- 6.1 In so far as is applicable, a hirer shall be responsible for ensuring at their own expense that they possess the requisite permits, licences or approvals before the item hired is delivered.
- 6.2 A hirer shall warrant that the staff, aides and/or any other person who operates the item hired at their behest and/or under their responsibility is skilled for this purpose and possesses any relevant diploma, certificate, driving licence and so forth.
- 6.3 A hirer shall be required to maintain the item hired at their expense throughout the term of the hire and to ensure that it remains in a good state of repair. A hirer shall have a duty to return the item hired to Smals Verhuur upon the expiry of the term of the hire clean and in the same condition in which the hirer received the item hired upon the commencement of the term of the hire in accordance with the assessment report.
- 6.4 Smals Verhuur shall be entitled to arrange for an expert designated by it to inspect the item hired after its return ("inbound inspection"). The aforementioned expert shall then draw up an assessment report covering the condition of the item hired.
- 6.5 In so far as the inbound inspection and/or the expert's assessment report notes the existence of any damage inflicted on the item hired or any impairment of its value, the relevant hirer shall be liable for all of the costs involved in the repair and/or replacement of the item hired.

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- 6.6 A hirer shall be prohibited from renting out an item that has been hired to any other party, allowing such party to use it or using it for any work other than that mentioned to Smals Verhuur without the latter's prior written approval. Where Smals Verhuur consents to this in writing, this shall not affect the relevant hirer's duty to continue to comply with all of the provisions of the agreement concerned and these General Terms and Conditions themselves along with any such other party.
- 6.7 In the event that Smals Verhuur wishes to assign its rights and duties in relation to the item hired pursuant to a rental agreement to another party, the hirer shall have a duty to assist with such a takeover of the relevant contract.
- 6.8 Should another party arrange the attachment of the item hired or claim any rights in relation to it, the relevant hirer shall have a duty to notify such other party of Smals Verhuur's exclusive proprietary rights in relation to the item hired. Furthermore, in such a situation the relevant hirer shall be required to notify Smals Verhuur within twenty-four (24) hours that another party is claiming rights but, only where such other party arranges such an attachment of the item hired at the hirer's expense, shall the hirer be required to take all steps (legal or otherwise) that are required to secure Smals Verhuur's proprietary rights in relation to the item hired. Where an attachment is arranged at Smals Verhuur's expense, the relevant hirer shall only have a duty to take such steps in so far as Smals Verhuur may reasonably request this of the hirer but at any rate at Smals Verhuur's expense case.
- 6.9 Any damage inflicted on the item hired within the term of the hire must be reported to Smals Verhuur immediately after it has been discovered but by no later than within forty-eight (48) hours after it has occurred.
- 6.10 In the event that the item hired is stolen and/or goes missing, the relevant hirer shall have a duty to report this to Smals Verhuur within twenty-four (24) hours after discovering this and to report any theft to the police. Furthermore, a hirer shall have a duty to present a copy of the official report to Smals Verhuur.
- 6.11 Subject to the provisions of the foregoing clauses and irrespective of the fact as to whether or not the relevant hirer may obtain full or partial insurance, the following shall occur at the hirer's risk and expense:
- any damage inflicted on the item hired by the hirer or any other party directly or indirectly in the broadest sense of the term during the term of the hire;
  - any loss suffered by Smals Verhuur or any other party as a result of the item hired going missing during the term of the hire, irrespective of whether the hirer may be held culpable for it or not;
  - Any harm that is caused to a person and/or property by the item hired during the term of the hire. For the purposes of this article "loss" or "harm" shall also be deemed to refer to environmental pollution in the broadest sense of the term.
- A hirer shall indemnify Smals Verhuur against any claim made by another party on the grounds of a loss or any harm referred to in this article.

Article 7 – Smals Verhuur's liability

- 7.1 Under no circumstances shall Smals Verhuur be liable for any form of loss in relation to the hirer and/or any other party with the exception of a wilful act or omission, or gross negligence.
- 7.2 In particular, Smals Verhuur shall not be liable for any loss which is due to *force majeure*. Amongst other things, *force majeure* is deemed to include but is not confined to a strike (industrial or otherwise), problems affecting the energy supply, the weather (abnormal or otherwise), a wilful act or omission, gross negligence, culpable default or the invocation of *force majeure* by or on the part of any other party, transport difficulties, an import, export or a transit prohibition, any impediment occasioned by government measures, a natural and/or nuclear disaster, war and/or the threat of war.
- 7.3 Furthermore, Smals Verhuur shall not be liable for a disruption of business, consequential loss and/or loss of earnings by or on the part of the hirer and/or any other party in connection with the use or non-operation of the item hired.
- 7.4 Subject to the provisions of the foregoing clauses, in each case Smals Verhuur's overall liability shall be confined to no more than the amount that its insurer actually pays out in the relevant case. In so far as the insurer does not proceed with a payout or no insurance has been taken out either for any reason whatsoever, under no circumstances shall the overall compensation exceed the total rental for which the hirer would have been liable throughout the term of the hire. Where no specific term of hire has been agreed to, it shall be deemed to amount to no more than twenty-six (26) weeks for the purposes of the aforementioned calculation.

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Article 8 – Invoicing and payment

- 8.1 Every week Smals Verhuur shall send a hirer an invoice for the rental for the preceding week.
- 8.2 The rental shall be effectively paid into a bank account designated by Smals Verhuur in the agreed currency in the absence of any setoff, discount and/or suspension
- 8.3 A hirer shall be required to pay an invoice issued by Smals Verhuur within thirty (30) days after the invoice date stipulated in it. Nevertheless, all of Smals Verhuur's claims shall fall due immediately by virtue of the hirer's bankruptcy (or should they be granted a moratorium on payments). As of the aforementioned deadline of thirty (30) days or the time when any debt falls due at an earlier stage, the relevant hirer shall be in default by operation of the law and shall be liable for interest at the rate of 1% of the invoiced amount per month or part thereof as of the due date until that of payment. A hirer shall be liable for all judicial and extrajudicial expenses which Smals Verhuur is required to incur for the purposes of collecting any outstanding invoices and the extrajudicial debt collection costs shall be deemed to constitute no less than 15% of the total outstanding amount.
- 8.4 By way of additional security for any payment that is to be effected, a hirer shall present an appropriate bank guarantee from a reputable Dutch banking institution when first requested to do so by Smals Verhuur. As long as a hirer fails to do so, Smals Verhuur shall be entitled to suspend compliance with its obligations.
- 8.5 A complaint concerning an invoice must be submitted in writing to Smals Verhuur along with a clear, thorough statement of the grounds for it within seven (7) days after the relevant invoice date. Smals Verhuur shall be entitled to decline to consider any claim which is submitted more than seven (7) days after the relevant invoice date. A complaint shall not suspend the hirer's financial obligations. A legal claim in such respect must be filed within one (1) year after such timely claim has been made on pain of ceasing to apply.

Article 9 – unilateral cancelation or annulment of a rental agreement

Smals Verhuur reserves the right to suspend all or part of the execution of an agreement with immediate effect and in the absence of any further notice of default and/or to annul an agreement by means of an extrajudicial declaration without it having a duty to provide compensation in this respect and subject to any other rights it may have in the event that:

- the relevant hirer is declared bankrupt, is granted a moratorium on payments, is placed in the care of a guardian or their power to perform a legal act is limited in some other similar way;
- the relevant hirer ceases to conduct business;
- the relevant hired item is attached;
- the relevant hirer fails to comply with any obligation they have pursuant to the law, an agreement or these general Terms and Conditions or fails to do so properly and/or on time.

Article 10 – Governing law and competent court of law

- 10.1 All legal relations between Smals Verhuur and a hirer shall be solely governed by and construed in accordance with the law of the Netherlands.
- 10.2 Any dispute between Smals Verhuur and a hirer shall be exclusively adjudicated by a competent judge of the District Court of Eastern Brabant having its seat in 's-Hertogenbosch, subject to the proviso that Smals Verhuur shall be entitled to file a claim against a hirer before any other judicial tribunal which enjoys jurisdiction to consider such a claim pursuant to the relevant legislation.

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