



## **NBMS Terms and Conditions governing a Broker Assignment**

General Terms and Conditions issued by the Dutch Association of Yacht and Ship Brokers (NBMS) and filed with the court registry of the Zwolle-Lelystad court on 24 November 2008 under number 39/2008.  
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### Article 1 – Definitions

- 1.1 'Broker assignment' is understood to mean an agreement of assignment by which a client engages a broker to provide broker services with the aim of effecting one or more intended agreements between the client and a third party.
- 1.2 'Broker' is understood to mean an individual certified as such by the European Maritime Certification Institute (EMCI) who is also a full member of the Dutch Association of Yacht and Ship Brokers (NBMS), and who provides broker services with the aim of effecting one or more agreements between the client and a third party. This definition must in addition be understood to mean patron members of NBMS who are also listed in EMCI's register of prospective brokers. The broker is not a permanent employee of the client.
- 1.3 'Client' is understood to mean the party that grants a broker one or more assignments as referred to in paragraph 1 of this article.
- 1.4 'Commission' is understood to mean the remuneration to which the broker is entitled for the services he or she performs pursuant to the broker assignment.

### Article 2 – Applicability of these general terms and conditions

- 2.1 These general terms and conditions shall apply to all broker assignments agreed upon between the broker and the client and to offers made by the broker in that connection.
- 2.2 In the event of full or partial nullity, or otherwise invalidity, of one or more provisions of these general terms and conditions, the remaining provisions shall remain in force.
- 2.3 The general terms and conditions of the client shall not apply and are hereby expressly rejected. Different stipulations shall only be binding if they have been expressly accepted by the broker in writing.
- 2.4 The provisions of the broker assignment shall prevail over these general terms and conditions if there is a conflict between the agreement concluded between the broker and the client and these general terms and conditions as regards content.
- 2.5 The Dutch text of these general terms and conditions is binding and shall prevail over translations thereof.
- 2.6 These general terms and conditions may only be applied by a broker who is personally certified as a broker by the European Certification Institute (EMCI) and who is a full member of NBMS. Patron members of NBMS who are listed in EMCI's register of prospective brokers shall also be entitled to apply these general terms and conditions.

### Article 3 – The broker assignment

- 3.1 All offers made shall be without obligation.
- 3.2 Unless expressly agreed otherwise in writing, a broker assignment shall be exclusive. The broker assignment shall therefore be deemed to have been concluded only with the broker concerned and to exclude other brokers and/or intermediaries.
- 3.3 A broker assignment shall not as such authorise the broker to conclude agreements on behalf of the client, unless the client has granted the broker authorisation in writing for that purpose.

### Article 4 – Alterations to the broker assignment

- 4.1 In consultation with the broker, the client may alter the content of the broker assignment during the term of the assignment. Any such alteration shall only become effective after it has been confirmed by the broker in writing.
- 4.2 If the assistance to be provided by the broker encompasses more than the services described in the broker assignment, the broker must inform the client accordingly in advance and in writing.
- 4.3 If the parties have reached agreement on the matter in advance and in writing, the costs associated with any alteration made to the broker assignment, whether or not these have been incorporated into an adjusted commission amount, must be paid by the client.

### Article 5 – Term of the broker assignment, cancellation and other forms of termination

- 5.1 Unless agreed otherwise in writing, the broker assignment will be entered into for an indefinite period of time, on the understanding that the agreement may only be cancelled by one of the parties six months after it has been entered into and with due observance of a notice period of three months. Notice of cancellation must be given towards the end of a calendar month by registered letter.
- 5.2 In addition to the option of cancellation as provided for in paragraph 1 of this article, the broker assignment shall end as a result of:
  - a. the coming into effect of the intended agreement;
  - b. the expiry of the agreed term in the case of an agreement entered into for a definite period of time;
  - c. the return of the assignment by the broker as a result of a wish on the part of the client to alter the content of the broker assignment (including a price alteration) in such a way as to make, according to criteria of reasonableness, effecting the intended agreement impossible in the short term and if the alteration in question has not been confirmed in writing in accordance with the provisions of Article 4.1 of these general terms and conditions;
  - d. the object for which the broker services were engaged losing its capacity to be the object of such services due to a change in its condition, including but not limited to a general state of disrepair;
  - e. the object for which the broker services were engaged losing its capacity to be the object of such services due to heavy damage and/or damage to items of the object in question that are essential to effecting the intended agreement.

### Article 6 – Broker services

- 6.1 The broker must advise the client *and* be capable of providing an assessment of the market value of the object in question and, in addition, of other financial, tax, technical and legal aspects of importance to that object and the intended agreement between the client and a third party.
- 6.2 The obligation of the broker to investigate the accuracy of the information provided by the client shall be limited to investigating rights, including mortgage and other rights, restricted or

otherwise, attached to the object, the foregoing to the extent that such rights are specified in public registers in which vessels registered in the Netherlands are listed.

- 6.3 The broker must advise the client *and* take an active approach with respect to effecting and completing the intended agreement between the client and a third party.
- 6.4 If, with respect to the intended agreement, an accord is reached between the client and a third party about the price and terms and conditions of delivery, the broker shall make the name and address details of each party known to the other party in writing if, taking the given circumstances into account, the broker has not already voluntarily done so.
- 6.5 The broker must ensure that the intended agreement between the client and a third party is *not* dependent on a specialist notice or expert and/or valuation report prepared by the broker him or herself.
- 6.6 With respect to a broker assignment concerning one and the same object, the broker shall *not* be entitled to serve the interests of the client and third party involved at the same time, unless both parties have granted permission in writing for the broker to do so.
- 6.7 The client may not derive any rights from the advice and information he/she receives from the broker if such advice and information does not directly relate to the broker assignment.

#### Article 7 – Obligations of the client

- 7.1 The client is responsible for the state, form and accuracy of the information he/she provides about the object.
- 7.2 The client indemnifies the broker against any third-party claims with respect to the information referred to in paragraph 1 of this article.
- 7.3 In the event of an assignment of sale, the client shall be obliged to have *and* maintain appropriate, adequate and index-linked insurance cover against fire, theft and damage and against liability for the object for which the broker provided his or her services.

#### Article 8 – Commission owed

- 8.1 The client shall owe the broker a commission if he/she and a third party reach a consensus *ad idem* about the intended agreement, the foregoing subject to the invocation of a resolutive condition included in the intended agreement.
- 8.2 Different arrangements and/or options to effect full or partial dissolution agreed between the client and a third party without the involvement of the broker shall be without prejudice to the broker's right to receive a commission.
- 8.3 Pursuant to the exclusivity referred to in Article 3.2 of these general terms and conditions, an intended agreement that is effected within the term of a broker assignment shall be deemed to have been effected through the services of the broker, the foregoing subject to the option available to the client of proving that the intended agreement was effected without the services of the broker.
- 8.4 The client shall owe the broker 50% of the commission amount as calculated on the basis of the last asking price agreed in writing if the client proves that the intended agreement was effected without the services of the broker *within the term of the broker assignment*. However, the client shall remain obliged to pay the full commission to the broker if the foregoing is not conclusively proven by the evidence submitted.
- 8.5 For a period of *six months following the end of the broker assignment*, the broker shall remain entitled to the full commission amount as calculated on the basis of the last asking price agreed in writing if:

- the client as yet achieves a consensus ad idem in any way whatsoever with a third party that was in the first instance referred to and/or approached and/or informed about the availability of the object concerned by the broker;
- the client makes the object concerned available for use on a long-term basis to a third party that was in the first instance referred to and/or approached and/or informed by the broker.

8.6 If the broker assignment ends due to cancellation or the expiry of its term *and* the client reaches a consensus ad idem through a similar broker assignment granted to another broker within the meaning of Article 1.2 of these general terms and conditions, the provisions of paragraph 5 of this article shall not apply.

#### Article 9 – Amount and determination of the commission

9.1 The amount of the commission shall be agreed in writing between the broker and the client. If no amount has been agreed in writing, the percentage commonly applied in the sector shall be charged.

9.2 The commission shall be calculated on the basis of the total sum of the intended agreement effected within the context of the broker assignment, including the costs of additional work and deliveries that one party has to pay the other as a result of the intended agreement coming into effect.

9.3 If it is determined in the agreement effected within the context of the broker assignment that payment is to be made in several instalments, the sum of all instalments shall be used as the basis for calculating the commission amount.

9.4 If no monetary amount is specified in the agreement effected within the context of the broker assignment, the value of the subject of the agreement shall be used as the basis for calculating the commission amount. If the parties' respective valuations of performance differ, the highest value shall be used.

#### Article 10 – Payment of costs and expenses

10.1 The client shall be obliged to pay the costs and expenses arising from the performance of the broker assignment to the broker if:

- a. the broker assignment is cancelled by the client within the meaning of Article 5.1;
- b. the broker assignment is returned by the broker within the meaning of Article 5.2 under c (alteration of the broker assignment);
- c. the client makes it, in any way whatsoever, impossible for the broker to perform the broker assignment;
- d. the client makes the object concerned as referred to and described in the broker assignment available for use on a long-term basis to a third party during the term of the broker assignment;
- e. the broker assignment is terminated within the meaning of Article 5.2 under d and e (loss of capacity to be the object of the broker services engaged).

10.2 The costs and expenses referred to in *paragraph 1 under a, b, c and d* of this article (with the exception of paragraph 1 under e; see in this regard paragraph 3 of this article below) shall amount to the following:

- 10% of the agreed commission in the event of termination within a period of up to two months after the start of the broker assignment;
- 25% of the agreed commission in the event of termination within a period beyond two months but no longer than four months after the start of the broker assignment;
- 50% of the agreed commission in the event of termination within a period beyond four months after the start of the broker assignment.

10.3 The costs and expenses referred to in *paragraph 1 under e* of this article (termination within the meaning of Article 5.2 under d and e due to a loss of capacity to be the object of the broker services engaged) reasonably incurred by the broker must be paid by the client to the broker.

## Article 11 – Liability

- 11.1 The broker shall only be liable for any damage suffered by the client that is exclusively and directly the result of a failure attributable to him or her. In addition, only damage against which the broker is insured on the basis of his or her profession, or should according to criteria of reasonableness be insured against, shall be eligible for damages.
- 11.2 If, when the broker assignment was entered into, it was not possible for the broker to take out professional liability insurance as referred to in paragraph 1 of this article, or to renew such insurance subject to reasonable conditions, the amount of damages paid for the damage referred to shall be limited to the commission charged by the broker pursuant to the broker assignment (exclusive of Dutch VAT).
- 11.3 Damages paid for damage suffered by the client shall exclude:
- a. damage that is the result of an intentional act or omission or deliberate recklessness on the part of assistants or non-managerial subordinates of the broker;
  - b. trading and consequential loss, including, for example, loss of profit and damage resulting from business stagnation; taking out insurance against these risks is a matter that must be decided and attended to by the client.

## Article 12 – Complaints

In the event of inadequate performance on the part of the broker, the client shall no longer be able to take action on the matter if he/she has not submitted a complaint in writing to the broker containing a comprehensive description and closer explanation of the inadequacy within fourteen days after discovering the inadequacy or within fourteen days after he/she should have discovered the inadequacy according to criteria of reasonableness.

## Article 13 – Payment of the principal pursuant to the conclusion of the intended agreement between the client and a third party

- 13.1 The broker shall receive the principal paid pursuant to the conclusion of the intended agreement between the client and a third party on behalf of the client.
- 13.2 The broker shall hold the principal referred to in paragraph 1 of this article in a third-party account maintained for the purpose for the benefit of the client. If the broker does not have his or her own third-party account, he or she must make use of the services *and* third-party account of a civil-law notary.
- 13.3 The broker shall retain the right to deduct the commission owed to him or her pursuant to the broker assignment from the principal referred to in paragraph 2 of this article.

## Article 14 – Payment of the commission

- 14.1 Unless agreed otherwise in writing, the commission shall be paid into a bank or giro account designated by the broker *or* at the broker's registered office.
- 14.2 Upon the request of the broker, the client shall be obliged to furnish security deemed sufficient by the broker for the payment of the commission, irrespective of the agreed terms of payment. If the client fails to furnish such security within the term set by the broker according to criteria of reasonableness, he/she shall immediately be in default. The broker shall then be entitled to dissolve the agreement in full or in part and claim damages from the client.
- 14.3 Unless the broker goes bankrupt or is judicially subjected to a debt rescheduling arrangement, the client shall not be entitled to set off any debts owed to him/her by the broker against any payments due from him/her to the broker.

14.4 If the commission is not paid within the agreed term, the client shall immediately owe the broker interest. The applicable interest rate shall be 12% a year or equal to the statutory interest rate if the latter is higher. A part of a month shall be deemed to be a full month in this regard.

14.5 If the commission is not paid within the agreed term, the client shall owe the broker all extrajudicial costs incurred. A minimum of €100 shall apply in this regard.

The following table shall be used to calculate the costs:

For the first €2,500	15%
For a greater amount up to €5,000	10%
For a greater amount up to €15,000	8%
For a greater amount up to €50,000	5%
For an amount greater than €50,000	3%

If the actual extrajudicial costs incurred are higher than those calculated according to the above table, the actual costs incurred shall be owed.

14.6 The full amount of the commission shall become immediately due and payable if:

- a. an agreed payment term is exceeded;
- b. claims and/or property of the client is or are attached;
- c. the client goes bankrupt or applies for a suspension of payments;
- d. in his capacity as a natural person, the client applies for a judicial debt rescheduling arrangement, is placed under guardianship or dies;
- e. in its capacity as a business or company, the client is dissolved or liquidated.

14.7 If, upon the conclusion of possible judicial proceedings, the court rules in favour of the broker, the client shall be obliged to pay the broker all costs incurred in connection with those proceedings.

#### Article 15 – Right of pledge and right of retention

15.1 Pursuant to the broker assignment, the broker shall have a right of possessory pledge on the object concerned as long as the client has not fulfilled its obligations arising from the broker assignment as well as those arising from the conclusion of the intended agreement between the client and a third party.

15.2 The broker shall have the right to suspend fulfilment of an obligation pursuant to the broker assignment to hand over the object concerned to his or her client until the client has paid the amount he/she owes to the broker.

#### Article 16 – Confidentiality

16.1 To the extent that he or she is obliged to do so according to criteria of reasonableness, the broker shall treat all information received from the client within the context of the broker assignment as confidential.

16.2 On pain of owing damages for any damage suffered by the broker as a result of such disclosure, the client may not disclose information received from the broker within the context of the broker assignment to third parties.

#### Article 17 – Applicable law and competent court

17.1 Dutch law shall apply.

17.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG; 'Vienna Sales Convention') shall not apply; its operation is at any rate hereby expressly excluded.

17.3 Unless contrary to mandatory law, disputes shall be heard exclusively by the competent Dutch civil court of the jurisdiction in which the broker has his or her registered office. The broker shall

be authorised to depart from this stipulation on competence and apply the statutory regulations on competence.

17.4 If the client and broker so desire, they may opt for a different method of settling disputes, such as mediation or arbitration.