

NV Port of Den Helder

**General Terms and Conditions
for Port and Quay Dues
2019**

PARAGRAPH 1 - GENERAL

Article 1 – Definitions

1.1. In these General Terms and Condition and the Charge tables that form an integral part thereof, the following shall be taken to mean:

AV	These General Terms and Conditions
commercial vessel	a vessel which is not a seagoing or inland vessel but which is mainly used or intended for the exercising of a business (for example tours), profession (for example workshop) or socio-cultural activity (for example concerts, exhibitions)
inland shipping vessel	a vessel that is not a seagoing vessel
inland shipping freighter	an inland shipping vessel primarily used for the transport of goods
day	a period of 24 hours, starting at 00.00 hours
service provision	the offering for use by the Company to a counterparty of the port or of other works or facilities managed by the Company, according to their intended purpose, and services provided by the Company in connection with that use, including the collection of the ISPS surcharge and the HAP contribution; this shall not include services undertaken by the Company in exercising an(other) public task, unless occurring on a private basis
director	director of the Company
natural day	a period of 24 hours
operator	the owner, operator, agent, (hull) charterer or any other party who has actual authority over the use of the vessel
HAP contribution	the compulsory contribution by the operator of a vessel as intended in article 6a paragraph 1 of the Prevention of Pollution from Ships Act
Port	the waters owned, leased or managed by the Company in the Municipality of Den Helder, which under all circumstances shall include the water of Het Nieuwe Diep, the Westoeverhaven, the Koopvaardersbinnenhaven, the unloading quay on the Noordhollands Kanaal and the slipways, loading and unloading locations and all engineering structures
port and quay dues	the system of monetary payments owed by a counterparty to the Company on the basis of an agreement entered into or the actual use of the port; this includes port dues, quay dues, the ISPS surcharge, payments for the use of mooring/unmooring services and the HAP contribution
harbourmaster	the person appointed as such by the Company, or his deputy
port reception facilities	fixed, floating or mobile facilities suitable for the reception of ship waste or landing residues
occupied water surface	the surface calculated by multiplication of the longest length by the widest width of the vessel
ISPS certified vessel	a vessel certified according to article 19, part A of the ISPS code (International Ship and Port facility Security code)
ISPS surcharge	surcharge on the use of a public quayside in connection with security measures taken by the Company in the framework of execution of the Port Security Act
quayside	the stone built, steel or concrete separation between the port and the land, and the site located landward of that separation, that is clearly intended for commercial use for the loading and unloading of vessels and/or for temporary storage
quarter	a calendar quarter
load-carrying capacity	difference expressed in tonnes between the freshwater displacement of the vessel at the greatest permitted draught and the empty vessel
mooring	the part of the port allocated by the harbourmaster to a vessel to be occupied, expressed in location and length

month	a calendar month
certificate of tonnage	a: seagoing vessels: the certificate of tonnage as intended in article 24 of the Certificate of Tonnage Act 1981 b: inland shipping vessels: the definition of certificate of tonnage as intended in the Inland Shipping Regulations
warship	a seagoing vessel forming part of the operational strength of the Royal Dutch Navy or the navy of a foreign power, under the command of a serviceman of the sea forces, and which is crewed partially or fully by servicemen
passenger vessel	a vessel primarily intended or used for the commercial transport of people
pleasure craft	a vessel primarily or for the most part used for recreation, which is not a passenger vessel
shipyard	a facility where the main activity is the provision of repairs to vessels, and which has access to moorings specially intended or used for that purpose
vessel	1. any floating body which on the basis of its buoyancy is used or intended or suitable for the transport by water of persons, goods or objects which may or may not form a complete part of the floating body; 2. any other floating body, such as a working and mooring barge, pontoon, elevator, diving bell, suction dredger, dredger, floating equipment, drilling rig or any other floating device used for the exploration or operation of oil and gas fields or the mining of minerals at sea
charge table	the table adopted by the Company applicable in any year, listing the charges for the port and quay dues
tonne	a mass of 1,000 kilograms
GT tonne	the gross capacity of a seagoing vessel, as listed on the certificate of tonnage
Company	the public limited company NV Port of Den Helder, established in Den Helder, entered in the trade register under no.
Mooring and unmooring service	activities whereby a seagoing vessel is moored or unmoored by a person in the exercising of his profession
counterparty:	the natural or legal entity purchasing services from the Company or that makes use of the port and/or quayside with a vessel, including the captain, the operator, the owner of the vessel, the operator of the vessel, the agent or the person who has presented himself to the Company as representative of the persons specified for the purchase of services from the Company, or the vessel's presence in the port
Wvvs	Prevention of Pollution from Ships Act
seagoing vessel	a vessel used for sailing at sea or which on the basis of its construction is intended for sailing at sea or a vessel provided with a document - issued by the competent body in the country where the vessel is registered - demonstrating that the vessel is suitable for sailing at sea
sea fishing vessel	a seagoing vessel used for catching fish or other living marine resources, but not for whale fishing
commercial sailing vessel	a vessel propelled mainly using sails, and which is intended for or used for the commercial transport of persons

Article 2 – Applicability

- 2.1. The user of these General Terms and Conditions is the Company.
- 2.2. The General Terms and Conditions apply to all agreements on the basis of which the Company provides services to a counterparty, and to all offers and quotations relating to the services of the Company.

- 2.3. The counterparty hereby expressly waives any own general terms and conditions, except in the event that they are expressly agreed upon.
- 2.4. The Company expressly rejects the applicability of any general terms and conditions of the counterparty to an agreement.

Article 3 – Establishment of agreements

- 3.1. An agreement between the Company and the counterparty shall be established by:
- written acceptance by the Company of an order or assignment from the counterparty;
 - written acceptance by the counterparty of an offer from the Company;
 - notice by the representative of a seagoing vessel to the Company, as intended in article 5.1;
 - the circumstance that the counterparty actually makes use of the services of the Company.
- 3.2. Without prejudice to the provisions of the previous paragraph, the offer by the Company to enter into an agreement is embodied in the signposts placed at the harbour mouths, 'Port Area Port of Den Helder'. The agreement shall be considered to have been irrevocably accepted by the counterparty if and as soon as this counterparty passes said signposts, and/or registers with the harbourmaster.
- 3.2. All persons referred in the definitions under counterparty shall be identified as joint and severally-liable debtors in respect of compliance with the obligations arising from an agreement with the Company. If one of the persons belonging to the counterparty pays, the others shall be discharged.

Article 4 – Service provision by the Company

- 4.1. The Company will make every effort to provide the service with due care, on the understanding that the Company will be free to choose the nature and the method of execution of the service provision, in as much as remaining within the boundaries of reasonableness and fairness.
- 4.2. If made necessary by circumstances, in the judgement of the Company, the Company may be assisted in the execution of the services by third parties or call in third parties for that purpose, or make use of goods other than those agreed, in as much as the quality of the agreed performance is not negatively influenced as a consequence.
- 4.3. If the time by which the agreed service was to be completed is not achieved as a consequence of circumstances as intended in the previous paragraph or unforeseen circumstances or force majeure, the counterparty shall not be entitled to any compensation claim.

Article 5 – Reporting and issuing of details

- 5.1. The counterparty who is a (representative of a) seagoing vessel is required to pass on all details relevant for the correct implementation of the service and for the invoicing of port and quay dues, in good time, by means of the port management system 'Portaal' or if this is not possible, in the manner specified by the harbourmaster, whereby the legally imposed time limit must be complied with.

- 5.2. Negligence in the provision of the details as intended in the previous paragraph shall entitle the Company to suspend execution of the services, without thereby detracting from the obligation upon the counterparty to pay the port and quay dues payable.

PARAGRAPH 2 - PORT AND QUAY DUES

Article 6 – Consideration by counterparty

- 6.1. By way of consideration, the counterparty shall owe port and quay dues to the Company:
- a. if an agreement with the Company is established or can be considered as having been established: from the moment that the counterparty actually selects a mooring or purchases other services from the Company;
 - b. if no agreement is established with the Company: from the moment that the counterparty actually makes use of the port or quayside or any other form of service by the Company.
- 6.2. Contrary to the provisions of the previous paragraph, no port and quay dues will be payable in the following cases::
1. if the vessel is a warship;
 2. if the vessel is a rowing boat, belonging to a vessel of a counterparty;
 3. if a vessel waiting for lock passage in the Koopvaardersschutsluis is required to moor at the quayside of Het Nieuwe Diep;
 4. if a vessel exclusively enters the port to land sick or deceased persons;
 5. if the vessel exclusively enters the port for maintenance at a shipyard;
 6. if the vessel is a commercial vessel belonging to the so-called Bruine Vloot (pleasure craft fleet) during the period 1 October to 1 April, in as much as moored at the Flaneerkade in the Koopvaardersbinnenhaven. In the period 1 April to 1 October, port dues will be charged according to the Charge table part A – 1.II, section d;
 7. if the vessel is a hospital ship that is in use as such, all subject to the judgement of the director;
 8. if the vessel is required by (weather) conditions to make use of the Noord-Hollandskanaal and thereby makes no use of the facilities in the port, all subject to the judgement of the director.
- 6.3. Contrary to the provisions of the first paragraph, the HAP contribution will not be charged to:
- a. vessels for which an exemption has been awarded from the provisions in or according to articles 6a, 12a or 12b of the Act on the Prevention of the Pollution by Ships, on the basis of 35a of that Act;
 - b. vessels, equipped or for commercial purposes used for sport or leisure, and which cannot carry more than 12 passengers;
 - c. sounding vessels and dredging vessels at work in the port;
 - d. vessels employed as tender vessel for vessels working along the coast;
 - e. vessels covered by GT class 0 -100, and which themselves have taken sufficient measures for the handling in of waste substances (NB: from 101 GT, the HAP contribution will be charged);
 - f. harbour tugs, exclusively if and in as much as they are used in the framework of normal assistance to seagoing vessels in entering and leaving the port.

Article 7 – Principles for calculating the level of port and quay dues

- 7.1. The principles for calculating the port and quay dues are as follows:
- I. Port dues:
 - a. for seagoing vessels: the gross capacity in GT as shown in the certificate of tonnage;

- b. for sea fishing vessels; the gross capacity in GT as shown in the certificate of tonnage;
- c. for inland shipping freighters: the number of tonnes load capacity as shown in the certificate of tonnage;
- d. for commercial vessels and inland shipping vessels: the occupied water surface as shown in the certificate of tonnage belonging to the vessel;
- e. for pleasure craft: the number of running metres measured over the longest length.

II. Quay dues:

The number of square metres on the quayside occupied by objects placed on the quayside, except in the event of sectoring of the quayside, whereby a fixed amount will be charged for each sector, irrespective of total or partial occupation of the sector.

III. ISPS surcharge:

The gross capacity of the ISPS-certified vessel in GT as shown in the certificate of tonnage.

IV. HAP contribution:

The gross capacity of a vessel in GT.

V. Mooring and unmooring service:

The time at which and the period of time within which the mooring and unmooring work is carried out.

- 7.2. In the absence of the certificate of tonnage or refusal to show this certificate, and if in the judgement of the harbourmaster insufficiently reflects the capacity, load-carrying capacity or occupied water surface of a vessel, the capacity, load-carrying capacity or occupied water surface will be determined by the harbourmaster.
- 7.3. In the event of two certificates of tonnage, namely a certificate of tonnage for seagoing vessels and a certificate of tonnage for inland shipping vessels, upon entry to the port from the North Sea/Wadden Sea, the certificate of tonnage for seagoing vessels will be used, and upon entry from the Koopvaardersschutsluis, the certificate of tonnage for inland shipping vessels.
- 7.4. The amount of port and quay dues will be determined on the basis of the Charge table applicable on the first day on which the service is provided, subject to the understanding that in the event of occupancy longer than the period specified in A, 5 of the Charge table, the charge will be applied that is applicable on the first day of each subsequent period.
- 7.5. For the calculation of the port and quay dues, any part of the unit referred to in the Charge table will be identified as a full unit, while part of a square metre shall be calculated as one square metre and, in the absence of sectors, partial occupancy of a sector shall be counted as a full sector.
- 7.6. Under the name HAP contribution, the operator of a vessel will be charged a contribution as intended in article 6a, paragraph 1 of the Wvvs Act. Upon paying the contribution, the captain of the vessel, in accordance with article 6a, paragraph 3 of the Wvvs Act will receive a non-transferrable right, during the period of residence of the vessel in the port, to hand over ship waste to a holder of a port reception facility as intended in article 6, paragraph 1 Wvvs Act.
- 7.7. All amounts payable in port and quay dues will be rounded upwards to the next eurocent.
- 7.8. All charges in the Charge table are excluding turnover tax, unless otherwise specified.

Article 8 – Invoicing and payment

- 8.1 For each payment in return for the service, the Company will provide the counterparty with an invoice.
- 8.2 The counterparty must pay the port and quay dues within 14 days following issue or receipt of the invoice, either in cash or by transfer to the bank account of the Company, except in the case of pleasure craft whereby the invoice must be paid immediately, or under all circumstances prior to departure from the port.
- 8.3 Disputes between the Company and the counterparty concerning port and quay dues shall not entitle the counterparty to suspend or set off payment.

Article 9 – Force majeure

- 9.1 Any shortcoming in complying with a contractual obligation upon the Company cannot be attributed to the Company if said shortcoming is the consequence of foreseeable or unforeseeable circumstances beyond the Company's power, including but not limited to war, terrorism, occupation, government measures, natural disasters, fire, explosion, blockade, strike, shortage of mooring facilities, weather conditions which reasonably make execution of the services irresponsible.
- 9.2 In the event of force majeure as intended in the previous paragraph, the Company shall be entitled to suspend its obligations until the force majeure situation is ended.
- 9.3 If the force majeure situation lasts longer than 30 days, both the Company and the counterparty shall be entitled to fully or partially dissolve the agreement, without being required to pay compensation.

Article 10 – Indemnification

- 10.1 The counterparty indemnifies the Company against claims from third parties, on whatever grounds, that claim that they have suffered damages as a consequence of the use of the port or as a result of the service provision.
- 10.2 The Company is not required to indemnify the counterparty on whatever grounds.

Article 11 – Suspension and dissolution

- 11.1 Without prejudice to the provisions in article 6:83 of the Dutch Civil Code, upon failure to pay following a (written) reminder from the Company, the counterparty shall be in default. In that situation, the Company is entitled, without judicial intervention and without being required to pay compensation, to dissolve the not yet executed part of the agreement, by submitting a written statement to that effect, without prejudice to any other right accruing to the Company.
- 11.2 All claims from the Company against the counterparty shall be immediately, fully demandable through the simple fact of dissolution.

Article 12 – Right of removal or right of recovery

- . If the counterparty fails, fails entirely or fails on time to comply with its obligations arising from a service agreement, the Company shall be entitled to remove or recover the vessel or to have it removed or recovered, for the account and risk of the counterparty.

Article 13 – Liability

- 13.1. The liability of the Company arising in respect of any activity by the Company or a person for whom the Company is liable according to the law, shall not exceed the amount paid to the Company by the insurer of the Company.
- 13.2. Liability of the Company for its public law activities or those of the harbourmaster in the service of the Company shall be excluded.
- 13.3. If the insurer of the Company does not undertake to make payment to the Company for whatever reason, or if the damage is not covered by the insurance of the Company, the liability of the Company shall under all circumstances not exceed an amount of € 500 per claim/occurrence. A series of related claims/occurrences shall be considered a single claim/occurrence.
- 13.4. The provisions in this article shall not apply if and in as much as the damage is a consequence of deliberate action or gross negligence on the part of the Company.
- 13.5. Liability of the Company for lost profit, reduced income and/or turnover, loss of time or other indirect and/or consequential damages shall be expressly excluded.

Article 14 – General provisions

- 14.1. Access to the port does not imply that the counterparty is able to claim entitlement to a mooring. The Company at all times has the right to refuse a mooring for reasons of its own.
- 14.2. The charges contained in the Charge table may be changed at all times by the Company.
- 14.3. The invalidity of any provision of the General Terms and Conditions shall have no consequences for the other provisions of the agreement and the General Terms and Conditions.
- 14.4. If a provision from the General Terms and Conditions or of a service agreement are judged to be unreasonably burdensome, unacceptable or invalid, that provision shall be replaced by a provision which, given all circumstances of the case, as closely as possible approximates the intention of the nullified provision.
- 14.5. In respect of all formal and informal notifications, notices or other expressions for which an address is required, the Company elects domicile at its offices at Het Nieuwe Diep 33 in Den Helder.

Article 15 – Lack of or incorrect statement

- 15.1. If the counterparty fails to submit the statement or does not submit the statement on time, an extra charge of 12.5% will be made in addition to the applicable cost owed in accordance with the Table of Charges NV Port of Den Helder, with a minimum of € 500 (five hundred euro).
- 15.2. If the counterparty determines that due to a lack/an incorrect statement, the amount paid is either too low or too high, the counterparty shall be required to inform the Company in writing immediately. In that case, the counterparty is obliged to enclose all documents in evidence of the inaccuracy of the initial or supplementary statement.

- 15.3 If the Company determines that the counterparty has paid too little or too much, the Company shall decide whether to settle the difference by means of an invoice or credit note.
- 15.4 If a Company audit reveals that the counterparty paid too little or too much, due to an incomplete and or incorrect statement, the counterparty shall owe the difference plus a surcharge of 10% of the total amount payable, with a minimum of € 500,- (five hundred euro). This surcharge is not applicable when the counterparty informs NV Port of Den Helder in writing that the audit was incomplete or incorrect. This notice has to be within 3 weeks after invoice date.
- 15.5 Notifications defined in the second paragraph of this Article must have been received by The Company no later than three months after the invoice date. Upon expiry of this period, the counterparty is deemed to be in agreement with the level of sea harbour dues.

Article 16 – Applicable law and disputes

- 16.1. All agreements between the Company and the counterparty, including the General Terms and Conditions and the resultant rights, obligations and disputes are exclusively subject to Dutch law.
- 16.2. All disputes that may arise between the Company and the counterparty in connection with a service agreement and the General Terms and Conditions, even if such a dispute is only characterised as such by one of the parties, shall exclusively be settled by the competent court in Alkmaar.

In case of divergence between the language versions, The Dutch version shall prevail.

These General Terms and Conditions are effective as from 1 January 2019.

The General Terms and Conditions can be referred to as:
General Terms and Conditions for Port and Quay Dues Port of Den Helder 2019



J.F. Bolderheij
Managing Director
NV Port of Den Helder
19 December 2018