

**General Conditions  
Moerdijk Port Authority  
2007**

Laid down by the Board of Management  
in the meeting of 26<sup>th</sup> June 2007.

To my knowledge,  
The secretary,

U. Uiterwijk MA, MBA

## **GENERAL SECTION**

General Conditions

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## GENERAL SECTION

General applicable conditions, applying to all agreements for the purpose of the allocation of land by the Moerdijk Port Authority by means of sale, under a ground lease, or rent, whether or not together with structures, as well as agreements for the purpose of establishing the right of superficies.

### ARTICLE 1

#### Definitions

In this agreement, the following terms are defined as stated below:

1. "Moerdijk Port Authority": the public body established in Zevenbergen, as formed under the Moerdijk Port Authority Joint Scheme, review of 1997;
2. "control area": the area of the Moerdijk Port Authority as defined in article 3, first paragraph of the Moerdijk Port Authority Joint Scheme, review of 1997;
3. "Managing director": the managing director of the Moerdijk Port Authority;
4. "Managing Committee": the Managing Committee of the Moerdijk Port Authority;
5. "Board of Management": the Board of Management of the Moerdijk Port Authority;
6. "General Conditions": these general conditions;
7. "Special Conditions": the conditions that apply concurrently with, in addition to or contrary to the General Conditions, stated in the deed of establishment and/or change to the ground lease or the lease;
8. "agreement": the agreement regarding the lease, or the issue of leasehold land and all relevant agreements entered into or to be entered into, relating to a parcel of land owned by the Moerdijk Port Authority;
9. "contracting party": the party with whom the Moerdijk Port Authority enters into an agreement.
10. a. "leaseholder": the acquirer of the leasehold, as well as his successors;  
b. "lessee": the party with whom the Moerdijk Port Authority enters into a lease.
11. "mortgage holder": the mortgage holder, whose right is established with the consent referred to in article 12 of the Special Section General Conditions Ground Lease, and with regard to whose mortgage a copy has been received as referred to in the second paragraph of article 12;
13. "ground rent": the sum per square metre per year to be paid by the leaseholder to the Moerdijk Port Authority for the enjoyment of the land granted to him under a ground lease;
14. "rent": the sum per square metre per year to be paid by the lessee to the Moerdijk Port Authority for the enjoyment of the land rented out to him (including any structures thereon);
15. "land" or "ground": the parcel of land to be sold, rented out or (to be) granted under a ground lease, depending on the nature of the agreement;
16. "structures": the immovable property constructed, placed or present at any time above, on and in the land on or in the ground prior to the leasehold taking effect; insofar as this is applicable, this also includes remnants of foundations, posts, pipes, cables, scaffolding, paving, fencing and buildings already built, or which could be built or constructed by virtue of a planning or construction permission granted prior to the commencement of the ground lease;
17. "land which borders the water": the parcel bordering the water, the slope or the embankment or the strip of water with the slope underneath, if the agreement also applies to that;

18. "slope": each bank revetment – except embankments – measured from the crown line to the base line of the ground granted under a ground lease – including all corresponding constructions;
19. "embankment": a vertical or near vertical bank revetment including all corresponding constructions;
20. "quay platform": a strip of land directly located behind the embankment where loading, unloading, transshipment and storage activities take place, this strip not being part of the purchased property, the property granted under a ground lease, or the rented property as the case may be;
21. "month": the period which starts on the day of a certain date of a calendar month and which ends at the end of the day preceding the day of the same date of the following calendar month;
22. "SBIM": the Foundation for the Protection of the Moerdijk Industrial Estate, established in Moerdijk;
23. "harbour master": the harbour master of the Moerdijk Port Authority, as referred to in the Moerdijk Port and Site Regulations as in force at any time;
24. "DHM": Steering Group Sustainable Moerdijk Harbour and Industrial Area (DHM).
25. "land value": the value of a parcel of land in an open market sale.

## OBJECT CONCLUSION OF AGREEMENT AND DELIVERY OF IMMOVABLE PROPERTY

### ARTICLE 2

#### Premature dissolution of (verbal) agreement

1. The Moerdijk Port Authority is entitled to dissolve an agreement previously entered into with immediate effect, without the requirement for any notice of default or judicial intervention, in the following situations:
  - a. if a contracting party is put into liquidation before the deed creating the leasehold or occupation of the leased land, whether or not including structures, is executed,
  - b. in the event of a petition or notification for a compulsory liquidation order, or an offer of settlement or request for receiving moratorium of payment by the contracting party,
  - c. in the event of death of the contracting party or dissolution and/or winding-up of the legal person, if insufficient creditworthiness is proven, if the contracting party has (had) made any incorrect or incomplete statement or has concealed any fact or circumstance known to it, with regard to which it understood or ought to have understood that this would be of essential interest to the Moerdijk Port Authority when concluding the agreement, as well as
  - d. in the event of executory attachment of movable and/or immovable property of the contracting party.
2. The Moerdijk Port Authority will immediately notify the contracting party of the afore-mentioned decision.
3. On application of this article, the Port Authority of Moerdijk is liable to pay damages, under whatever name.
4. Parts of the ground rent/rent which have already been paid will be refunded, insofar as these exceed the amount of the costs paid and/or income lost and/or penalties incurred by the Moerdijk Port Authority in accordance with this agreement.

### **ARTICLE 3**

#### **Permitted activities**

Business grounds may only be used for the establishment of a company whose activities, in the opinion of the SCMVM, do not present any problems as to environmental protection in the indicated location, which cannot be met by setting conditions under the prevailing environment laws.

### **ARTICLE 4**

#### **Environmental research**

1. Indicative research based on NEN 5740 and NVN 5725 will be held by order and at the expense of the Moerdijk Port Authority with regard to the presence of substances in the land and/or groundwater to be allocated, which pose a danger to the environment and public health.
2. The results of this research will be recorded in a report which describes the condition of the land and the groundwater and – with a view to the intended use of it by the contracting party – which establishes whether the land or the groundwater contains unacceptable amounts of substances which are deemed to be harmful to the environment or public health according to the then prevailing standards.
3. The Moerdijk Port Authority will provide the contracting party with the report at least four weeks prior to the execution of the notarial deed of issue of leasehold, or as soon as possible prior to the undersigning of the lease.
4. If the research shows that the land does contain an unacceptable amount of substances which are deemed to be harmful to the environment or public health according to the then prevailing standards, the parties will consult about possible decontamination or other measures so that the land will comply with the agreement. If the parties cannot reach an agreement about that, each of both parties is entitled to dissolve the agreement without becoming liable for compensation as a result.
5. The following are *not* taken to mean substances which are deemed to be harmful to the environment or public health according to the then prevailing standards: remnants of foundations, clean rubble or other remains of a structural nature, or the presence of circumstances which influence the bearing power of the ground. Therefore, the previous paragraph of this article does not apply to these matters.
6. If the contracting party abandons the dissolution as referred to in the fourth paragraph, it can no longer claim that, with regard to the environmental protection situation, the supplied matter does not comply with the agreement entered into by the Moerdijk Port Authority and the contracting party.
7. The contracting party indemnifies the Moerdijk Port Authority against all claims from third parties for compensation of damage which could arise after the issue of leasehold land or commencement of the lease, and which is caused by substances contaminating the ground through or as a result of the purchaser, leaseholder or lessee to such an extent that it poses a danger to the environment and/or public health according to the then prevailing opinions.
8. The Port Authority of Moerdijk is not bound to give any indemnity, under whatever name, towards the contracting party.

## **ARTICLE 5**

### **Dissolution in the event of unacceptable contamination**

1. If, prior to the date of signing the notarial deed creating the leasehold, or signing the lease, or if sooner, prior to the date of the actual occupation of the immovable property, it is proven, other than through the research referred to in article 4, that unacceptable amounts of substances are present which are deemed to be harmful to the environment or public health according to the then prevailing standards, the parties will consult about possible decontamination or other measures so that the land will comply with the agreement. If the parties cannot reach an agreement about that, each of both parties is entitled to dissolve the agreement without becoming liable for compensation as a result.
2. The following are *not* taken to mean substances which are deemed to be harmful to the environment or public health according to the then prevailing standards: remnants of foundations, clean rubble or other remains of a structural nature, or the presence of circumstances which influence the bearing power of the ground. Therefore, the previous paragraph of this article does not apply to these matters.

## **ARTICLE 6**

### **Specification and condition**

1. The immovable property is delivered in the state it is in at the time of execution of the notarial deed creating the ground lease, or the date on which the lease is signed, or, in the case of earlier occupation, the time of that occupation.
2. The actual delivery of the property granted under a ground lease will take place when the transfer title deed is signed. If the actual delivery takes place at an earlier time, the duty of care of the Moerdijk Port Authority ends at this earlier time. Unless otherwise agreed, the actual delivery of the leased property will take place at the commencement date of the lease stated in the agreement.
3. Therefore, from the moment of such actual delivery as referred to under '2' of this article, the immovable property granted under a ground lease or leased is at the risk of the contracting party.
4. Unless otherwise agreed or stipulated in writing, the land is sold, granted under a ground lease or rented out on the following conditions:
  - a. unconditionally, and not subject to any reduction, dissolution or annulment;
  - b. not encumbered with attachments, mortgages or registrations thereof, or any other rights than the restricted rights stated;
  - c. free of (other) rent, lease and other rights of use;
  - d. free of special burdens and restrictions - except for the burdens and restrictions included in the General Conditions (the General and Special Sections) - which prevent or restrict the construction, further organisation, occupation and use of the parcel.

5. When entering into the agreement, the Moerdijk Port Authority will give notice of all easements, perpetual clauses, quality obligations and other burdens and restrictions, insofar as they are stated in the public registers as referred to in article 3:16 of the Netherlands Civil Code or otherwise known by the Port Authority. The contracting party expressly accepts the burdens and restrictions arising from these documents. Furthermore, the contracting party expressly accepts those burdens and restrictions which are not stated in the aforementioned public registers insofar as they are known to him from the actual situation and/or do not reasonably pose an actual heavier burden.
6. The Moerdijk Port Authority does not give indemnity with regard to shortcomings not known to them.
7. The Moerdijk Port Authority is not responsible for qualities other than those required for normal use, and for shortcomings known to the contracting party.

## **ARTICLE 7**

### **Surface area, position, discrepancies**

1. A map (the site plan) of the land to be sold, granted under ground lease or rented out under the agreement is certified by both parties, drawn at a scale of at least one to two thousand (1:2000) and attached to the deed or the agreement.
2. If the exact cadastral boundary has not been recorded clearly enough, the boundaries of the territory will, on request of the contracting party, be indicated on the ground once, at the expense of the Moerdijk Port Authority, prior to the date of the actual delivery of the land.
3. If the situation referred to in paragraph 2 arises, parties declare to agree that the results of the land survey (referred to in paragraph 2) requested by the parties replace the description in the agreement and on the site plan and are therefore decisive for that which is granted/obtained under a ground lease or that which is/will be sold, or is/will be rented out.
4. Subject to recalculation of the purchase price or the ground rent or rent, discrepancies which amount to less than 5% of the land will not give any of the parties the right to bring any actions.

## **ARTICLE 8**

### **The Moerdijk Port Authority's duty of disclosure / the contracting party's duty to research**

1. The Moerdijk Port Authority guarantees that it will furnish the contracting party with all land-related information which, in accordance with the prevailing opinion, should be brought to the attention of the contracting party.
2. The Moerdijk Port Authority is not obliged to give information about competitive conditions, the geological / geo-technical condition of the land and other facts which could have been known to the contracting party from own research, insofar as such research can be demanded from the contracting party according to prevailing opinion.
3. The contracting party expressly accepts that the contents as well as the results of the research into the facts and circumstances which, according to prevailing opinion, are part of the field or research are at his risk.

## **ARTICLE 9**

### **Declarations by the Moerdijk Port Authority**

Insofar as not stipulated or agreed otherwise, the Moerdijk Port Authority declares as follows:

- a. The Moerdijk Port Authority is authorised to enter into the agreement with the contracting party concerned.
- b. From the moment of conclusion of the agreement, the land will not in any way be fully or partially rented out, sold by hire-purchase or granted in use to any other party than the contracting party, unless with the written consent of the contracting party.
- c. The authorities or utility companies have not made any requests or announcements to the Moerdijk Port Authority of changes regarding the grounds which have not yet been carried out.
- d. The land is not included in any land consolidation or renovation plan and has not been designated for expropriation.
- e. There are no obligations towards third parties by virtue of a pre-emption right or right of option.

## **RIGHTS AND OBLIGATIONS OF PARTIES REGARDING USE AND MAINTENANCE**

## **ARTICLE 10**

### **General obligations of contracting party**

1. When using the ground allocated under the agreement, the contracting party is obliged to behave in accordance with the provisions, regulations and bylaws – (yet to be) drawn up - applicable to the control area of the Moerdijk Port Authority.
2. The contracting party must observe all regulations and prohibitive provisions with regard to the storage, processing or treatment of certain goods, as they have been prescribed or will be prescribed by the authorities.
3. The contracting party is obliged to refrain from acts which, in the opinion of the Managing Committee, may cause danger, damage, hindrance or nuisance to the Moerdijk Port Authority or third parties, insofar as those acts are not covered by a public or private licence or with regard to which the Moerdijk Port Authority has given its explicit consent.

## **ARTICLE 11**

### **Construction and development obligations**

1. The contracting party is not permitted to use the land and the structures in any other way or to give them any other purpose than stipulated in the agreement and/or its appendices, unless after receiving the written consent from the managing director.
2. The managing director can give the consent referred to in the first paragraph of this article for a certain period of time or until further notice, and may set conditions in that respect.
3. The contracting party is obliged to construct any structures and to put into use and to develop the land and any structures in a manner which is in accordance with the objectives of the company pursuant to the socially accepted standards as soon as possible yet no later than the end of the term laid down in the agreement or notarial deed. The managing director can decide to extend the term after receiving a reasoned request from the contracting party.

4. Without prejudice to the prevailing legal regulations, the contracting party is also obliged to apply for the licences required by virtue of the legal regulations for the formation and operation of his business, within six months of entering into the agreement. The managing director can extend this term after receiving a reasoned request from the contracting party. Before the application for the required licences is made to the authorised authorities, it must be submitted to the managing director of the Moerdijk Port Authority.
5. The business, which is the purpose of the use of the land, may not be left inoperative by the contracting party any longer than two consecutive years. Within ten years of putting the business into operation again, the contracting party can only take the business out of operation following consent of the managing director. When giving his consent, the managing director assesses the maximum period of time during which the company can be left inoperative.
6. If the contracting party leaves the business inoperative, the Managing Committee of the Moerdijk Port Authority is authorised to request further explanation into the reason for that from the contracting party. If the contracting party cannot put forward satisfactory legitimate reasons to that end, the Moerdijk Port Authority can assume that the business is kept inoperative for strategic reasons. In that case, the Managing Committee can decide to impose a penalty consisting of a fine related to the Moerdijk Port Authority's loss of income, which the Moerdijk Port Authority used to receive or could have reasonably expected to receive, with a view to the business activities of the contracting party.
7. Each time the contracting party does not observe one of his obligations towards the Moerdijk Port Authority pursuant to this article, the Moerdijk Port Authority can impose a penalty of € 1,000 per day for the duration of the violation.
8. The Moerdijk Port Authority notifies the contracting party of that by means of registered letter.
9. The provisions in paragraph 7 of this article leave intact the Moerdijk Port Authority's right to also claim damages.
10. The fine referred to in paragraph 7 of this article is due without notice and is forfeited by the single fact of non-compliance or violation without the requirement for any notice of default. The contracting party is charged interest of one and twenty-five hundredth percent (1.25%) per month or part thereof until the moment the imposed fine is paid.

## **ARTICLE 12**

### **Provisions for use**

1. The contracting party may not use the land bordering onto the water in such a way that the structure of the slope or the embankment etc is put into danger.
2. The land and the structures erected on it must be used with the appropriate means in such a way, that no nuisance, danger or damage is caused to third parties or the businesses, such at the discretion of the managing director. Apart from that, the contracting party is obliged to do or omit all that which can prevent or cause damage, danger or unacceptable nuisance, in any form. Any reasonable instructions from the managing director to that end must be followed insofar as they are within the limits of these provisions.
3. If any damage as referred to above is caused, the contracting party is obliged to fully compensate this damage, while all other measures deemed necessary by the managing director to be taken as a result of this damage and to prevent any further damage, are at the full expense of the contracting party.

4. Without prejudice to the consent under legal regulations, the contracting party may only create structures if their nature, purpose, location and number is approved by the managing director in writing in advance. However, there is no such obligation towards the Moerdijk Port Authority with regard to that which is introduced in order to pave the ground or to connect to the utility companies.
5. The contracting party is obliged to strictly adhere to all instructions from the managing director in order to prevent overloading of and nuisance caused by the land. This obligation applies in full, including when prior consent as referred to in one of the paragraphs of this article is given.
6. Signs and symbols other than those giving a clear indication as to the business carried out on the land may not be introduced.  
Introducing signs or symbols relating to the business requires the prior consent of the managing director.
7. The discharge of solid substances, gases and liquids into the harbour basin or adjoining waterways is not permitted without the written consent of the managing director. Conditions may be attached to this consent.
8. The construction of an exit on the boundary of the land to the public road is to be paid by the contracting party. To that end, the Moerdijk Port Authority grants a licence on application, subject to urgent causes. The Moerdijk Port Authority charges a fee for the exit section leading from the parcel boundary to the public road.

#### **ARTICLE 13**

##### **Joint and several liability and indivisibility**

1. That which is payable or can be claimed by virtue of an agreement is indivisible. If the tenancy right or the leasehold belongs to multiple (legal) persons, each of them is jointly and severally liable for the fulfilment under the lease (hold).
2. If the contracting party is made up of multiple (legal) persons, they immediately appoint one of them as representative and immediately notify the Managing Committee of this and any substitution of the representative. Notifications, announcements, claims, demands etc. pursuant to the provisions of this agreement will be duly addressed to the representative or sent to or by him.

#### **ARTICLE 14**

##### **Liability/claims by third parties**

The contracting party is liable for all claims that can be enforced by third parties against the Moerdijk Port Authority in respect of the compensation of damage which, after the assignment of leasehold land or lease, arises as a result of the use, contamination of the land or other acts or omissions by or on account of the contracting party, or as a result of full or partial collapse of the structures. If necessary, it will indemnify the Moerdijk Port Authority.

#### **ARTICLE 15**

##### **Payments**

1. Depending on the nature of the agreement, the payment owed (ground rent, rent or other expenses) is due from the date of commencement of the agreement and, in the case of periodically due payments, must be paid in advance in three-monthly instalments prior to or on the due date in a currency which is prevailing and legal on the due date, in a manner to be stipulated by the Moerdijk Port Authority.

2. If the payment referred to in paragraph 1 is not made on time, the managing director can stipulate that the contracting party owes default interest, equal to the statutory interest, on the payment not made or not made in time for the period from the due date until payment is made. In order to apply this, a part of the month is regarded as a full month.

## **ARTICLE 16**

### **No deduction or setoff**

All that is owed by the contracting party to the Moerdijk Port Authority under the agreement must be paid by the former without any deduction or setoff of whatever nature.

## **ARTICLE 17**

### **Taxes/expenditures**

1. All costs, rights and taxes in respect of the assignment or amendment of the leasehold or the tenancy right, including the costs of a cadastral survey other than pursuant to article 7, paragraph 2, are at the expense of the contracting.
2. All taxes, as well as all other usual and unusual charges, which are levied on or on account of the land and the structures, are charged to the contracting party, starting on the date of execution of the notarial creation of his leasehold or commencement of the lease, with the exclusion of the owner's part of the land in the event of lease, which is chargeable to the Moerdijk Port Authority.
3. The costs owed by the Moerdijk Port Authority in respect of taxes will be separately passed on to the contracting party in proportion to the number of months remaining in the year of creation or transfer. The start date is the date stated in paragraph 2 or 4 of this article.
4. If within the framework of the agreement, occupation starts prior to the date referred to in paragraph 2, the expenditures referred to in paragraphs 2 and 3 are at the expense of the contracting party from the day of occupation.
5. If the Moerdijk Port Authority has made any payment which is chargeable to the contracting party pursuant to the provisions in the previous paragraphs, the Moerdijk Port Authority notifies the contracting party about that in writing, which is obliged to pay the Moerdijk Port Authority the amount stated in the notification within a month of it being sent.
6. Article 15, paragraph 2 applies when payment is not made on time or not made in full, while the due date used in that respect is the date of the notification referred to in the previous article.

## **ARTICLE 18**

### **Maintenance and damage**

1. The contracting party is obliged to maintain at its own expense and to the satisfaction of the Moerdijk Port Authority the ground, including any structures, constructions, fencing, embankments, quays, jetties and railway, and subsequently to carry out all necessary repairs – including extraordinary ones – or have them carried out, unless otherwise agreed in the agreement.
2. Undeveloped pieces of the land must be protected against damage caused by wind and drifts at the expense of the contracting party and to the satisfaction and at the discretion of the Moerdijk Port Authority.

3. The contracting party is liable for the damage caused to the ground and any structures allocated pursuant to the agreement, whatever the cause.
4. All works or properties of the Moerdijk Port Authority, which are damaged as a result of the use by the contracting party and/or third parties working by order of the latter, must be repaired by and at the expense of the contracting party.
5. The contracting party in advance abandons all claims which it could enforce against the Moerdijk Port Authority relating to damage, however caused, to the constructions, buildings, warehouses, paving and all works and machines commercially related to its business, to be realised on the land which is obtained under a ground lease or rented. The afore-mentioned does not apply if the damage is caused by an intentional act or a serious fault on the part of the Moerdijk Port Authority.
6. The maintenance of the embankment and quay platform as such is chargeable to the Moerdijk Port Authority.
7. The repairs of damage caused to the embankment and the quay platform and relevant facilities which is not the result of natural causes (not including subsidence), are carried out by the Moerdijk Port Authority at the expense of the contracting party, unless it was stipulated under the agreement that the maintenance rests with the contracting party.
8. As such, the Moerdijk Port Authority carries out the repair and maintenance work of the embankment and quay platform in consultation with the contracting party. The contracting party allows this work to be carried out and is not entitled to a reduction of that which he owes the Moerdijk Port Authority pursuant to the agreement.
9. The contracting party carries out that which is necessary with regard to the work of the Moerdijk Port Authority, to the structures as well as the relevant stored matters and the vessels berthed alongside the land at its own expense and risk. The Moerdijk Port Authority is not liable for any damage which the contracting party or third parties suffers as a result of this work.
10. The contracting party indemnifies the Moerdijk Port Authority against all claims which others could enforce on the latter for compensation of damage which in any matter relates to the construction, change, use, maintenance, presence or removal of the works present under the agreement. The afore-mentioned does not apply if the damage is caused by, or the claim arises as a result of a serious fault or gross negligence on the part of the Moerdijk Port Authority.

## **ARTICLE 19**

### **Ground fencing**

The contracting party is obliged to fence off and keep fenced off the land and any structures allocated pursuant to the agreement at its own expense, to the satisfaction of the managing director and in accordance with the regulations stipulated by him.

## **ARTICLE 20**

### **Structures**

1. If the agreement implies the renting or ground lease including structures or right of superficies, an inventory will be included in the agreement or corresponding appendix – which is an integral part of the agreement – giving a brief description of these structure(s) and their condition.
2. The supply of means to prevent and fight fire and other risks, as well as the installation of facilities for the business of the contracting party remains at his expense.
3. If the Moerdijk Port Authority insures the structures, the contracting party will pay the relevant premiums. Article 15, paragraph 2 equally applies in this case, with the due date being the date of the demand for payment.

## **ARTICLE 21**

### **Right of access**

1. For the benefit of the management and maintenance, the construction, the changes and maintenance of the works that are part of the control area, the bank revetments, the dikes and the roads as well as the supervision over the correct observance of the provisions in this agreement, the Moerdijk Port Authority has unrestricted right of access to the immovable property allocated under this agreement, for its personnel, as well as all those who are involved in said work, police officers, (special) investigating officers included.
2. The contracting party must at all times permit the unrestricted delivery and removal of the equipment and materials required for the execution of said work on the land allocated to him, or their positioning on there, without this being cause for a claim for any damages.
3. This transport and positioning will, in consultation with the contracting party if possible, take place on the most suitable paths and roads and the most suitable locations on his land.

## **ARTICLE 22**

### **Additional works**

1. When the, in the Port Authority's opinion, necessary works, which are part of the harbour, the bank revetments, the dikes and the roads which border the land and structures allocated or made available under the agreement, are established sooner than the works following on from that, which will be constructed by the contracting party itself, or when the latter works, in the opinion of the managing director, are of insufficient size or quality or insufficiently maintained, the Moerdijk Port Authority is authorised to construct, keep and maintain the, in their opinion, necessary works on the land and structures allocated under the agreement, without the contracting party being able to lay a claim to any compensation from the Moerdijk Port Authority of whatever nature.

2. If, in the interest of the Moerdijk harbour and industrial area, a change must be made to the location or the composition of the works constructed on the land, and the change relates to works or work with regard to which no further rules are laid down in the purchase, ground lease or rental agreement or the General Conditions, General and Special Sections, the contracting party must, following notice from the Moerdijk Port Authority's managing director, carry out the change at the expense of the Moerdijk Port Authority, unless special circumstances give rise to the agreement of another arrangement.

#### **ARTICLE 23**

##### **Pipes through pitching**

If pipes for the purpose of the business of the contracting party or for the purpose of the business which is established at the scene with the permission of the contracting party stick through the pitching which covers the slope of the land bordering onto the water, the contracting party pays the Moerdijk Port Authority for all damage found on the pitching in the vicinity of the mouths of these pipes.

#### **ARTICLE 24**

##### **Water depth in front of land**

1. If the land borders onto water, the agreement will stipulate up to what depth the Moerdijk Port Authority will maintain the water bed.
2. When the maximum depth referred to in the agreement is exceeded, the Moerdijk Port Authority will, given the circumstances, take care of the repairs to the contractual depth within a reasonable term after the contracting party has ordered the fulfilment of this obligation in writing.
3. Nuisance suffered as a result of the work referred to in paragraph 2 of this article does not entitle the contracting party to compensation.
4. The contracting party will cooperate fully in a correct, unhampered execution of the work referred to in paragraph 2 of this article.  
Any costs arising from this are all borne by the contracting party.

#### **ARTICLE 25**

##### **Elevation of land**

1. The Moerdijk Port Authority does not have to keep the land allocated under the agreement elevated.
2. The Moerdijk Port Authority can demand that elevation material coming from the land is put at the disposal of the Moerdijk Port Authority free of charge.  
In that case, the contracting party must at its own expense dump and level this elevation material within the Moerdijk Port Authority's control area in a location to be specified.

## **ARTICLE 26**

### **Railway connection and railway guarantee**

1. In order to realise a connection from the business to be run by the contracting party to the main railway line, a licence from the Managing Committee is required, without prejudice to other consent or licences.
2. The railway connection, including additional works such as points, roads, culverts, fencing, and railway crossings etc, must be constructed and maintained by and at the expense of the contracting party.
3. The contracting party is not permitted to transfer the cargos anywhere else than on the property which is obtained under a ground lease or rented.
4. An annual fee is payable for having a railway connection across the grounds of the Moerdijk Port Authority. The fee payable will be claimed under the Tariff regulations.
5. The use of the main railway line situated on the grounds of the Moerdijk Port Authority is subject to a fee payable by the contracting party and calculated according to the following formula:  
$$K = A [(B \times T) + (L \times W)]$$
which reads as follows:  
K: the annual fee payable by the contracting party;  
A: the distance in kilometres from Lage Zwaluwe to the siding tracks of the contracting party;  
B: the tariff set by the Moerdijk Port Authority for the relevant year, based on the average ton price/mileage for the National Dutch Railway Network, the so-called fictitious ton price/mileage;  
T: the tonnage in products and materials transported over the main line in the relevant year, as announced by the contracting party;  
L: € 0.0454;  
W: the number of wagons (loaded and empty) transported over the main line in the relevant year, as announced by the purchaser, leaseholder or lessee;
6. The contracting party undertakes towards the Moerdijk Port Authority to pay an annual guarantee in the form of a minimum fee, which will be based on a tonnage of three thousand (3,000) per hectare per year and a number of wagons of one hundred (100) per hectare per year. The minimum guarantee must also be paid if the contracting party does not make a connection to the main line as referred to in paragraphs 1, 2, 3, and 4 of this article.

## **ARTICLE 27**

### **Connection to utility companies**

1. All costs relating to the laying, connection and maintenance of paving, sewers, power cables, gas and water pipes and lighting are borne by the contracting party, as well as the use as such.
2. In the event of alienation or encumbrance with a restricted real right, as well as in the event of full or partial rental, the legal successor is obliged to have the licences relating to the utility companies referred to in the first paragraph transferred into his name.

## **ARTICLE 28**

### **Sewers**

1. A sewerage system must be laid by and at the expense of the contracting party. Depending on the existing public facilities, the construction of the system must be designed as a separate or improved separate system.
2. To that end, the contracting party must draw up a business sewer plan and submit this for approval to the Moerdijk Port Authority and the appointed water quality manager, in this case the Water Board Brabantse Delta in Breda and the Directorate-General for Public Works and Water Management. Depending on the nature and/or quality of the industrial water to be discharged, a licence within the framework of the Pollution of Surface Waters Act may be required.
3. With regard to the connection of the yard drainage and the discharge of industrial water into the sewerage system of the Moerdijk Port Authority, a licence must be obtained from the Managing Committee, in addition to the licence referred to in article 2, possibly required under the Pollution of Surface Waters Act.
4. The approved business sewer plan can provide for the discharge of clean water into surface waters such as ditches and harbours. An annual fee is payable to the Moerdijk Port Authority for clean water discharge into the grounds of the Moerdijk Port Authority. The fee payable is claimed under the Tariff regulations.
5. The maximum amount of industrial water that can be discharged in the form of dry-weather discharge is two-and-a-half cubic metres (2.5 m<sup>3</sup>) per hour per hectare of ground. If the business sewer system must be of an improved separate design, the rainwater system must allow for a storage capacity of 2 mm per m<sup>2</sup> of paved ground surface.
6. The Moerdijk Port Authority does not issue a guarantee for the continuous discharge of both clean and industrial water.
7. In principle, the contracting party must take into account that discharge into surface water is not permitted with regard to thermally polluted industrial water and therefore an air cooling system (cooling towers in this case) must be assumed when drawing up the plan. Only if it has been established that the available cooling capacity of the Hollandsch Diep enables this and that the rights for the discharge of cooling water granted to third parties under the Pollution of Surface Waters Act are not affected, the Moerdijk Port Authority will consider direct river cooling. Under the Pollution of Surface Waters Act, this does not affect the rights of the quality manager of the surface water, in this case the Directorate-General for Public Works and Water Management.

## **ARTICLE 29**

### **Quay dues**

The contracting party must pay a fee for the location on the water, the amount of which is established on the basis of the provisions relating to the levy of quay dues in the prevailing Quay Dues Regulations, or failing that, the prevailing or most recent Harbour and Quay Dues Regulations. This fee depends on:

- a. the length of the bank along the land allocated (to be determined ad hoc);
- b. the realised position of the bed level;
- c. the bank construction.

## **ARTICLE 30**

### **Harbour dues guarantee**

1. The contracting party undertakes towards the Moerdijk Port Authority to pay an annual minimum guarantee in the form of a fee, based on the tariff entered under the Bunker tariff, Tariff B of the Tariff table which is part of the General Conditions Seaport Dues, in which a guarantee of one thousand three hundred gross tons (1,300 GT) per running meter of length of bank of the allocated length is followed.
2. The annual sum of the harbour dues which is collected from ships, berthed along the bank of the rented property, by the Moerdijk Port Authority will be deducted from the guarantee amount.

## **ARTICLE 31**

### **Exit road**

1. The contracting party must obtain a licence from the Managing Committee for having an exit road leading from the business grounds to the roads on the industrial estate. General and technical conditions will be attached to this licence. No fee is payable for the use of the grounds of the Moerdijk Port Authority in respect of this exit road.
2. A licence from the Managing Committee is also required for having multiple exit roads. Among other things, a condition will be attached to this licence in respect of the payment of the annual fee for using the grounds of the Moerdijk Port Authority. The fee payable will be claimed under the Tariff regulations.
3. The exit road(s) must be laid and maintained by and at the expense of the contracting party.

## **ARTICLE 32**

### **Parking**

At its own expense the contracting party takes care of sufficient parking facilities on its land in order to meet the normal demand from its business, personnel and visitors.

## **ARTICLE 33**

### **Fire prevention/fire fighting**

Without prejudice to the obligations which arise from public-law licences or other agreements within this framework, the contracting party is obliged to take those measures to prevent and fight fire which comply with the reasonable requirements established in that field.

## **ARTICLE 34**

### **Remedy by the Moerdijk Port Authority**

1. If the contracting party fails to fulfil any obligation arising from these General Conditions and/or the agreement in a timely or proper manner or not at all, the Moerdijk Port Authority can have this obligation carried out at the expense of the contracting party. Pursuant to these General Conditions, the Moerdijk Port Authority is explicitly authorised to such execution towards the contracting party after sending a written notification and notice of default within this framework, as well as after expiry of the term referred to in paragraph 2 of this article. Under the same conditions, the Moerdijk Port Authority is also authorised to undo, at the expense of the contracting party, all that which is carried out by the contracting party contrary to any obligation.
2. The managing director notifies the contracting party -and in the case of ground lease, any mortgage holder - in writing of his intention to use the authority as referred to in paragraph 1 of this article. This notification will include:
  - a. a specification of the probable sum of the costs incurred with respect to the execution;
  - b. a notice of default in respect of the neglected duty or contradictory act;
  - c. a demand to comply with everything within a reasonable term.
3. Without prejudice to the indebtedness of any other costs, damage and interest incurred by the Moerdijk Port Authority as a result of the negligence on the part of the contracting party, the contracting party is obliged to pay the costs incurred with respect to the remedy at first demand of the managing director. With the demand the managing director will include a specification of the costs of the Moerdijk Port Authority and he has the authority to claim fulfilment and/or any further damages, if necessary by ordering the statutory interest after expiry of the payment term set by the Moerdijk Port Authority.

## **ARTICLE 35**

### **Participation in SBIM**

The contracting party is obliged to participate in the cooperative arrangement concerning the comprehensive protection of the Moerdijk Industrial Estate. To that end, a subcontract will be entered into, operative under the general contract between the security firm and the SBIM. The annual financial contribution due depends on the classification which is based on the risk class classification used, as well as the floor area of the company structures, in accordance with the criteria set out on the SBIM Classification Form. By the mere failure to conclude a contract with the SBIM, the contracting party annually forfeits towards the Moerdijk Port Authority an indisputable penalty which is not open to judicial mitigation, of twice the amount of what the Port Authority is entitled to under the SBIM regulations.

## **OTHER PROVISIONS**

## **ARTICLE 36**

### **Sanction provision**

On non-fulfilment or violation of his obligations arising from the agreement and corresponding General and Special Conditions, the contracting party is in default *de jure* in accordance with the provisions in article 6:83 of the Netherlands Civil Code.

## **ARTICLE 37**

### **Penalty**

1. Each time the contracting party does not observe one of his obligations towards the Moerdijk Port Authority, the Moerdijk Port Authority can impose a penalty of € 1,000.00 per day for the duration of the violation.
2. The Moerdijk Port Authority notifies the contracting party of that by means of registered letter.
3. The provisions in the first paragraph of this article leave intact the Moerdijk Port Authority's right to also claim damages.
4. The fine referred to in the first paragraph of this article is due without notice and is forfeited by the single fact of non-compliance or violation without the requirement for any notice of default. The contracting party is charged interest of one and twenty-five hundredth percent (1.25%) per month or part thereof until the imposed fine is paid.

## **ARTICLE 38**

### **Perpetual clause / qualitative obligation**

Insofar as these General Conditions (both the General Section and the Special Sections) as well as the conditions mentioned in the agreement are not already regarded as qualitative obligation within the meaning of article 6:252 of the Netherlands Civil Code, the contracting party and its successors by singular and universal title (subject to express exemption of the managing director) are - in the event of any full or partial transfer of ownership of the land, the transfer, division and/or reverse division of the leasehold or the creation of a sublease, a restricted right or the granting of another right of use - obliged to impose the conditions under which the relevant right has been granted upon its successors and to stipulate and accept these for the benefit of the Moerdijk Port Authority, all this under forfeit by the contracting party and each subsequent successor who fails to include, impose, stipulate and accept, of a penalty which is immediately due and payable and not open to judicial mitigation, amounting to the purchase price or the amount which is regarded as consideration to the contracting party and its counterparty in respect of the transaction involved, with a minimum of € 50,000 (in words: fifty thousand euros) for the benefit of the Moerdijk Port Authority and without prejudice to its right to claim fulfilment and/or any damages.

## **ARTICLE 39**

### **Submission of documents**

1. If, pursuant to the provisions of the agreement, documents must be submitted to the Moerdijk Port Authority on a regular basis, the Moerdijk Port Authority will issue a receipt for this submission, unless the documents have been served by means of a bailiff's notification.
2. If such receipt or bailiff's notification cannot be shown, the submission cannot be invoked against the Moerdijk Port Authority.
3. The managing director can permit the extension of certain terms for submission of documents.

## **ARTICLE 40**

### **Terms**

The General Extension of Time Limits Act applies to the terms stated in this agreement.

**ARTICLE 41****Rules regarding cancellations and notifications**

All notifications and statements pursuant to these General Conditions and the relevant agreement can legally be made by registered letter, insofar as not stipulated otherwise.

**ARTICLE 42****Remedies**

Insofar as the provisions stated in the agreement assign any special power to the Moerdijk Port Authority, this power leaves intact the right of the Moerdijk Port Authority to use or institute all other remedies or claims which are available or accrued to them, insofar as this power is not expressly restricted.

**ARTICLE 43****Dutch language**

If the General Conditions and/or the separate agreements are translated, the Dutch text will nevertheless exclusively prevail.

**ARTICLE 44****Official title**

These General Conditions are further referred to as "General Conditions Moerdijk Port Authority 2005, General Section".

**SPECIAL SECTION**  
General Conditions - Special Section  
Ground lease 2005

## GROUND LEASE - SPECIAL SECTION

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## GROUND LEASE - SPECIAL SECTION

### **ARTICLE 1**

#### **Applicability of General Conditions – General Section**

Unless explicitly stated to the contrary, the General Conditions of the General Section continue to be fully applicable if and insofar the nature of the agreement does not dictate otherwise.

### **ARTICLE 2**

#### **Deed creating the ground lease**

1. The land will be issued under a creating deed in the presence of a civil law notary to be appointed by the Moerdijk Port Authority following consultation with the applicant.
2. The deed creating the ground lease will at least include the following:
  - a. The inception date and the period for which the ground lease is granted;
  - b. The amount of the ground rent and the time when this can be reviewed;
  - c. The intended purpose of the land and the use which, in connection with that, can be made of the ground and the structures erected on it;
  - d. The dates on which the instalments of the ground rent must be received;
  - e. The general provisions applicable to the ground lease and the special provisions which have been stipulated or agreed;
  - f. The details, as referred to in article 20, paragraph 1 General Conditions, General Section;
  - g. The depth of the port, as referred to in article 24 General Conditions, General section.
3. Unless otherwise agreed upon in the agreement, the leaseholder is obliged to cooperate in the execution of the notarial deed creating the leasehold no later than within two months of the date on which the Moerdijk Port Authority has signed the agreement.
4. From the first day of the month following the date on which the Moerdijk Port Authority signs the agreement until the date on which the notarial deed creating the leasehold is executed, the leaseholder owes the Moerdijk Port Authority an interest payment on the capitalised ground rent.
5. The percentage of the interest payment owed as referred to in paragraph four of this article is equal to the interest rate of the statutory interest.

### **ARTICLE 3**

#### **Term of the ground lease**

1. The allocation of leasehold land is made for a fixed period of time and amounts to a maximum period of 25 years, unless the deed of issue stipulates otherwise.
2. On expiry of the fixed term the ground lease will be extended with the same term by operation of law, unless the leaseholder has given notice of termination. This notice of termination of the ground lease can only be given by bailiff's notification at least one year prior to expiry of the 25-year term.
3. The Moerdijk Port Authority can only terminate the ground lease on the grounds and in the manner described hereafter.
4. The ground lease cannot be prematurely terminated by the leaseholder during the term of the ground lease.

5. In the event of a deviating term - referred to in paragraph one of this article - contained in the deed of issue, a separate arrangement will be included in the deed of issue with regard to the review period of the land value.

#### **ARTICLE 4**

##### **Determination of ground rent.**

The leasehold is issued on payment of a ground rent, the extent and conditions of which are determined when the agreement for land granted under a ground lease is entered into

#### **ARTICLE 5**

##### **Review of ground rent based on CPI**

1. The ground rent is reviewed annually using the consumer price index established by the Central Bureau of Statistics, the basis being 1 October of the year preceding the calendar year in which the ground rent was agreed for the first time.
2. The first review will take place on 1 January in the year following the time of issue of the leasehold land.
3. The leaseholder is informed of the new ground rent within three months from the review date.
4. All taxes, as well as all other ordinary and extraordinary expenditures which are levied on or due to the land and the structures erected on it, are at the expense of the contracting party and will be charged separately.
5. Interest, equal to the statutory interest, can be charged on late or outstanding ground rent for the period from the due date until the date of settlement.

#### **ARTICLE 6**

##### **Review of ground rent based on interest component and land value carried out every 12 and 25 years**

- 1a. Starting in the thirteenth year of the leasehold, the ground rent will be reviewed on the basis of the adjusted land value.
- b. If the leasehold is continued by operation of law after 25 years or after the term referred to in paragraph 2 of article 3 has expired, the ground rent will also be reviewed on the basis of both the adjusted land value and the adjusted interest component.
2. The review of the ground rent is calculated by multiplying the interest component by the adjusted land value.
3. The interest component is derived from an interest rate for long-term loans *NV Bank Nederlandse Gemeenten* payable by the Moerdijk Port Authority, plus a 1.5% surcharge.
4. If the leaseholder does not agree to the value of the parcel of land granted under a lease that forms the basis of the reviewed ground rent referred to in paragraph one of this article, the land value to be adjusted will be determined through a binding decision from an expert committee, comprising three experts appointed by the parties. The experts are appointed as described in appendix 1 which forms part of these General Conditions.

#### **ARTICLE 7**

##### **Enforcement of ground rent level**

The ground rent level remains unchanged if a review as referred to in article 6 would lead to a drop in the most current ground rent.

## **ARTICLE 8**

### **No reduction in ground rent in the event of reduced enjoyment**

1. The leaseholder must respect all applicable rights (e.g. easements) of third parties to the leasehold land.
2. The leaseholder cannot claim damages, reduction, remission or refunds of the ground rent, if he has no or only limited enjoyment of the ground and the structures erected on it, regardless of the circumstances.

## **ARTICLE 9**

### **Creation of limited rights**

1. The leaseholder is obliged to refrain from all which may result into third parties obtaining (limited) rights to the ground or the structures, which remain effective following termination of the leasehold.
2. The leaseholder is not authorised to rent/lease out the land/leasehold and the structures during a period following termination of the leasehold.

## **ARTICLE 10**

### **Notice of termination of the leasehold in the event of failure to fulfil**

1. The Moerdijk Port Authority can terminate the lease with due observance of the provisions of article 5:87 of the Netherlands Civil Code if the leaseholder defaults on payment of the ground rent for two consecutive years or seriously fails in the fulfilment of his remaining obligations. The notice of termination is given as determined hereafter, in paragraphs 2 to 4 of this article. This notice of termination must be served within eight days and under penalty of nullity on the persons listed in the public register as holding a restricted right or levying an attachment to the leasehold. Following expiry of the ground lease, the leaseholder will be refunded the current value of the ground lease including the legally present structures, after deduction of that which the Moerdijk Port Authority is owed by the leaseholder in respect of the ground lease, including the costs. The provision as stipulated hereafter in article 13 paragraph 6 also applies.
2. Termination is established by revoking the lease after the Board of Management has made a decision to that effect.
3. The Managing Committee submits a proposal to the Board of Management to revoke the lease. It sets out the reasons, with substantiation, which justify revocation of the lease as stated under 1. The Managing Committee informs the leaseholder of the proposal in writing.
4. The Board of Management does not make a decision before one month has elapsed after issue of the notification as referred to in paragraph 3 of this article. During that period the leaseholder can submit objections to the proposal.
5. Subsequently, the Board of Management makes a decision about the proposal. If the Board of Management does not decide to revoke within one year, the proposal as referred to in paragraph 3 of this article is deemed not to have been submitted.
6. If the Board of Management does decide to revoke, the notice of termination will be given with due observance of article 11 paragraphs 5 and 6.

## **ARTICLE 11**

### **Notice of termination of the leasehold on grounds of general interest**

1. The Moerdijk Port Authority can give notice of termination of the leasehold due to reasons of general interest as referred to in article 12 hereafter, without prejudicing his rights pursuant to article 11 above. The termination is established by revoking the lease after the Board of Management has made a decision to that effect.

2. The Managing Committee submits a proposal to the Board of Management to revoke the lease. This proposal sets out the reasons, with substantiation, which justify the revocation of the lease with regard to the general interest. The Managing Committee informs the leaseholder, the mortgage holder and any third parties concerned of the proposal in writing. Also, the Managing Committee publicly notifies the intention to expropriate in the usual manner.
3. The Board of Management does not take a decision with regard to the proposal to revoke the lease, before two months have elapsed since the date of the notification as referred to in paragraph 2 of this article. During this period the leaseholder, the mortgage holder and other parties concerned can submit objections against the proposal to the Board of Management.
4. If the Board of Management does not decide to revoke the lease within one year of the notification as referred to in paragraph 2 of this article, the proposal referred to in paragraph 3 of this article is deemed not to have been submitted.
5. The resolution of the Board of Management determines the day on which the leasehold must be revoked. Subsequently, notice of termination is established by bailiff's notification with due observance of a period of at least one year prior to the date of revocation.
6. This notice of termination must, within eight days and under penalty of nullity, also be served on the mortgage holder and others who are listed in the public register as holding a restricted right or levying an attachment to the (sub) leasehold.
7. If the leasehold ends in accordance with the provisions in paragraph 1 of this article, the Board of Management is authorised to produce this in public registers with reference to the resolution of the Board of Management and the notice of termination submitted to the leaseholder.

## **ARTICLE 12**

### **General interest**

Reasons which may justify a notice of termination of the ground lease by the Moerdijk Port Authority as referred to in article 11 above, stem from infrastructural reasons, particularly within the framework of further development of the dock areas of the Moerdijk Port Authority and/or reasons/circumstances in respect of environmental protection.

## **ARTICLE 13**

### **Indemnification in the event of a notice of termination in the general interest**

1. If the leasehold expires in the manner as referred to in article 11, paragraph 1 above, indemnification is granted pursuant to the Expropriation Act.
2. The value of that which is created contrary to any provision or condition in the creating deed or in a deed containing changes to the leasehold will not be reimbursed, nor any damage in respect of terminating any activity performed on the ground and in the structures contrary to any provision or condition in the creating deed or in a deed containing changes to the leasehold, unless the Moerdijk Port Authority has issued a written approval to that effect.  
Neither will be reimbursed the value of that which is created without planning permission or contrary to the zoning plan, nor the damage in respect of terminating any activity performed in the structures contrary to the zoning plan or any other statutory provision.
3. If the leaseholder does not agree to the compensation offered by the Managing Committee, he must inform the Managing Committee of this in writing within two

months of receipt of the notification of compensation sent by registered post. When no agreement is reached on the amount of the compensation, it will be established by three experts prior to an appeal to the competent courts. Each of both parties appoints one of these experts, while the thus two appointed experts together appoint the third expert. The third expert will act as chairman. When, after having been invited to do so, one of the parties or one of both experts fail to appoint an expert or the third expert respectively during a period exceeding one month, any interested party may appeal to the president of the court with the request to appoint an expert or a third expert. The costs related to the decision of the appointed experts pursuant to this article, are equally shared between the Moerdijk Port Authority and the leaseholder.

4. The Moerdijk Port Authority pays the damages due to the leaseholder, after deduction of all that which the leaseholder still owes the Moerdijk Port Authority with regard to the leasehold of the ground and structures.
5. If, at the time of termination of the lease, the leasehold was encumbered with a mortgage, the maximum damages, contrary to paragraph 4 of this article, will be paid to the mortgage holder(s) after deduction of all that which is still due to the Moerdijk Port Authority with regard to the leasehold, the ground and the structures erected on it, plus the amount, if and insofar as possible, still due to the mortgage holder(s) pursuant to the mortgage loan involved. Any remaining amount of the damages is paid to the leaseholder.
6. As long as the ground and the structures erected on it (with the exception of the legally obtained property rights of third parties) have not been put at the free disposal of the Moerdijk Port Authority, the afore-mentioned is authorised to retain payment pursuant to this article. Solely for the application of this article, legally obtained property rights are considered to be equal to property rights otherwise obtained by third parties, which in the opinion of the Moerdijk Port Authority do not give rise to any objections.

## **ARTICLE 14**

### **Vacation of the ground and structures**

If, on the day the agreement ends, the parcel of land and the structures erected on it have not been vacated by the leaseholder and put at the disposal of the Moerdijk Port Authority, the managing director can, without any further notice of default, effectuate eviction with due observance of the legally obtained property rights of third parties, all this at the expense of the contracting party except if and insofar the latter can invoke his right of retention towards the Moerdijk Port Authority, until the indemnification and/or compensation due to him have been settled pursuant to article 9.

## **ARTICLE 15**

### **Alienation and encumbrance during ground lease**

1. Subject to consent of the managing director the leaseholder can:
  - a. In respect of his leasehold and rights and obligations from agreements based on and/or connected to that - the subleasing of land included - wholly or partly transfer, assign, encumber, divide or establish a limited or commercial right of enjoyment (easement) or a qualitative obligation. The consent requirement does not apply to the right of creating a mortgage.
  - b. Lease, let out, grant the usufruct/use of or sublease the leasehold, rights and obligations from agreements based on and/or connected to that, or the grounds and structures – or parts thereof – to others.

2. In order to obtain the consent as referred to in paragraph 1, the leaseholder must send the draft deed / draft agreement to the managing director indicating the anticipated inception date of the relevant right of the third party, after which the managing director will as make a decision on granting consent for the relevant juristic act as soon as possible.
3. In respect of the managing director granting his approval the following conditions are set regardless:
  - a. The leaseholder remains responsible towards the Moerdijk Port Authority with regard to timely settlement of the ground rent and other charges in connection with the immovable property, unless the legal successor/party entitled, in the opinion of the Moerdijk Port Authority, provides satisfactory guarantees and safeguards.
  - b. The leaseholder and his successor must ascertain the condition of the land at the time of the juristic acts as referred to under a of this article, in conjunction with article 4 of the General Conditions, General Section and article 21 of the General Conditions, Special Section, particularly in respect of the obligations towards the Moerdijk Port Authority.
  - c. Transfer of the leasehold and the rights and obligations from agreements based on and/or connected to that, or another limited right other than a mortgage, granting the usufruct/use or letting out of the immovable property granted under ground lease, must solely be established by means of a deed executed in the presence of a civil law notary to be appointed by the Moerdijk Port Authority in consultation with the leaseholder.
  - d. An officially certified copy of the deed referred to in paragraph 3, under c of this article must be made available to the managing director by and at the expense of the leaseholder within one month of its date.
4. The managing director reserves the right to attach additional conditions to the consent and/or can grant this consent for a limited period of time until notice of termination under certain terms.

## **ARTICLE 16**

### **Position of the leaseholder during alienation and encumbrance of the ground lease**

Acts in violation of the afore-mentioned provisions in article 15 and the (additional) conditions attached to the consent give the Moerdijk Port Authority the right to invoke the nullity of it and to regard these as not performed towards him.

## **ARTICLE 17**

### **Obligations towards the mortgage holder**

The Moerdijk Port Authority will in due time inform the mortgage holder in writing of the intention to terminate the ground lease or of changes of the land value on which the ground rent is based. Changing or dividing the leasehold can only be established with prior written consent of the mortgage holder.

## **ARTICLE 18**

### **Removal of structures following expiry of ground lease**

1. At the end of the ground lease, other than by termination in the public interest, the leaseholder is obliged to remove the structures at his own expense.
2. The leaseholder is obliged to return the immovable property granted under a ground lease in the original condition. Failing that within three months of expiry of

the period for which the leasehold was granted, the Moerdijk Port Authority will be authorised to take the necessary steps at the expense of the leaseholder.

3. The managing director can grant part or full exemption of the obligations as referred to in the previous paragraphs. The managing director is entitled to attach conditions to that.

#### **ARTICLE 19**

##### **No compensation following expiry of ground lease / structures**

After expiry of the ground lease the former leaseholder is not entitled to compensation of the value of any structures still present.

#### **ARTICLE 20**

##### **Liability following transfer / assignment of leasehold**

Following the transfer or assignment of the leasehold, the legal predecessor remains responsible for that which is owed to the Moerdijk Port Authority at the time of transfer/assignment, and the transferee *and* his legal predecessor are jointly and severally liable for the ground rent owed by the latter to the Moerdijk Port Authority.

#### **ARTICLE 21**

##### **Entry in the public registers**

Following expiry of the leasehold, the leaseholder irrevocably authorises the Moerdijk Port Authority to make an entry in the public registers to that effect and to do all that is necessary and relevant, all this at the expense of the leaseholder.

#### **ARTICLE 22**

##### **Right of superficies for the leaseholder**

1. If the leaseholder is also granted the right to have structures on or in the land granted under a ground lease, this real right will be considered to be a right of superficies, which will be created together with the leasehold and form an integral part of it and - subject to agreed deviations - will be controlled by these provisions both in respect of the meaning and the revocation of the right.
2. The right of superficies to be granted in paragraph one of this article relates to the entire parcel of land with regard to which the ground lease is created.
3. The leaseholder must notify the Moerdijk Port Authority of any creation or change with regard to the granted right of superficies referred to in paragraph one of this article.

#### **ARTICLE 23**

##### **Structures**

1. If and insofar the ground lease on the grounds of article 20, paragraph 1 of the General Conditions 2005, General Section, includes the structures on the land granted under the ground lease, the leaseholder is not allowed to make changes to the structures without the consent of the Managing Committee.
2. On expiry of the leasehold, the lease holder puts the structures at the free disposal of the Moerdijk Port Authority in such condition which can be reasonably expected on the grounds of:
  - a. the inventory of the structures described and referred to in paragraph 1, article 20 of the General Section of the General Conditions 2005,
  - b. The period of the leasehold and

- c. The obligation to maintenance and repair of damage as referred to in article 18 of the General Section of the General Conditions 2005.
3. If the condition of the structures has dropped below the level which can be reasonably expected as referred to in the second paragraph of this article, the leaseholder will compensate the damage incurred by the Moerdijk Port Authority.
  4. If the structures, as a result of the use by the leaseholder, are rendered unsuitable for normal occupancy, this by reasonable assessment of the Managing Committee, the leaseholder will reimburse any resulting damage incurred by the Moerdijk Port Authority.

## **ARTICLE 24**

### **Condition of the soil**

1. The leaseholder will refrain from any acts or omissions which can cause or stimulate pollution of the soil, the groundwater, surface water or the water bed or any other forms of pollution on, in or near the leasehold land.
2. If pollution as referred to in paragraph 1 of this article is real or threatens to become real, the leaseholder will inform the Moerdijk Port Authority of this immediately.
3. The leaseholder will be responsible for the pollution on, in or near the leasehold land as referred to in paragraph 1 of this article, except insofar as that pollution was real at the scene prior to inception of the ground lease or preceding use of the leasehold land by him, or has not been caused or stimulated by any actions or omissions by him, his subordinates, or third parties who had access to the leasehold land during the ground lease or preceding its use.
4. The Moerdijk Port Authority will at any time during or after expiry of the ground lease, and following consultation with the leaseholder, be authorised to conduct an inquiry into the scope, the cause and/or the consequences of pollution as referred to in article 1 of this article.
5. If pollution as referred to in paragraph 1 of this article is real or threatens to become real the Moerdijk Port Authority will, following consultation with the leaseholder, be authorised to establish and effect measures, or have the leaseholder or a third party effect measures which, in its opinion, are necessary to neutralise, limit or prevent that pollution or the suspected causes or possible consequences thereof.
6. The leaseholder will be obliged to provide all details and render all assistance which the Moerdijk Port Authority deems necessary in connection with the inquiry or measures as referred in this article, and to furthermore allow persons charged with that inquiry or those measures, including auxiliaries to be used to that effect, onto the leasehold land.
7. The Moerdijk Port Authority is not responsible for damage which the leaseholder may incur as a result of the inquiry or measures as referred to in this article, except insofar as this damage is the result of intention, a serious fault or gross negligence on the part of the Moerdijk Port Authority. The costs for the inquiry and those measures are at the expense of the leaseholder, unless he is not responsible for the pollution.
8. The leaseholder will, to the satisfaction of the Moerdijk Port Authority, take out insurance against the risks arising from this article, insofar as all this is possible on the Dutch insurance market within the limits of reasonableness.
9. Following expiry of the ground lease, the leaseholder is obliged to again put the land at the free disposal of the Moerdijk Port Authority in at least the original condition as at the time of inception of the ground lease, which condition is

described and recorded in the report of the environmental research as referred to in article 4, General Conditions, General Section.

10. If there is cause to doubt the condition of the land, the managing director, without prejudice to his authority in paragraph 4 of this article, is entitled to demand from the leaseholder an environmental inquiry into the condition of the land. The aforementioned inquiry must be completed within three months after expiry of the lease.
11. If the inquiry as referred to in paragraph 10 of this article indicates that the land is to a more or lesser degree polluted, the leaseholder is obliged to decontaminate the ground and return it in a clean condition, or at least in the condition as referred to in paragraph 9 of this article.
12. If and insofar the leaseholder to that end, despite the request and demand made by the managing director in paragraph 10 of this article, remains in default to conduct the research, the Moerdijk Port Authority is authorised to have this enquiry conducted and to recover the relevant costs from the leaseholder.
13. If the leaseholder despite a demand to this end, given the seriousness and nature of the detected pollution, remains in default to decontaminate the land within the meaning as referred to in paragraph 9, the Moerdijk Port Authority is entitled to have the decontamination carried out and to recover the relevant costs from the leaseholder.

#### **Article 25**

##### **Official title**

These General Conditions are further referred to as "General Conditions Moerdijk Port Authority 2007, Special Section - Ground Lease".

**SPECIAL SECTION**  
General Conditions - Special Section  
Rent 2005

## RENT - SPECIAL SECTION

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## **ARTICLE 1**

### **Term of the rental agreement**

The rental agreement will be applicable for a (maximum) period of five years and incept on the first day of the month following the date on which the decision to rent out was taken by the Moerdijk Port Authority.

## **ARTICLE 2**

### **Rental agreement and turnover tax**

1. All amounts stated in these Special Conditions and in the offer or the agreement as the case may be, for which these Special Conditions have been made applicable, are exclusive of turnover tax.  
The lessee is obliged to pay turnover tax for additional deliveries and services rendered. In the event of taxed rental, this also applies to the rent. The turnover tax is charged by the Moerdijk Port Authority and must be paid together with the rent and fees for additional deliveries and services, or the advance to that.
2. The parties agree that the Moerdijk Port Authority charges turnover tax on the rent.
3. If it is agreed that turnover tax is charged on the rent, the lessee herewith grants irrevocable authority to the lessor and his legal successor(s) to submit a request on his behalf also as referred to in article 11, paragraph 1, under b, 5 of the Turnover Tax Act 1968 (request opting for taxed rent). If so requested, he will countersign and return this request within fourteen (14) days of having received it from the Moerdijk Port Authority.
4. The lessee and the Moerdijk Port Authority explicitly declare that the rent is established on the basic assumption that the lessee will continue to use the rented property for at least the statutory or yet to be determined minimum percentage for activities which entitle deduction of turnover tax, in such a manner that taxed rent can be opted for.
5. Should the decision on the request submitted to opt for taxed rent/rental be reversed, since the lessee no longer uses the rented property for activities which gives entitlement to deduction of turnover tax as referred under 4, the lessee no longer owes the Moerdijk Port Authority turnover tax on the rent, yet, from the date on which the option decision was reversed, the lessee is obliged to pay the lessor a separate fee in addition to the rent exclusive of turnover tax, to the extent that the latter is fully compensated for:
  - I. The turnover tax on the operating costs of the rented property or investments therein (no longer) deductible for the Moerdijk Port Authority as a result of the reversal of the option, as well as the future absence of return on the turnover tax (previously) deductible by the Moerdijk Port Authority.
  - II. The turnover tax which the Moerdijk Port authority must pay to the tax authorities as a result of the reversal of the option due to recalculation as referred to in article 15, paragraph 4 of the Turnover Tax Act 1968 or revision as referred to in articles 11 to 13 of the turnover Tax Implementation Decree 1968, as well as the future absence of return on the amount to be paid to the tax authorities.
  - III. All other damage incurred by the Moerdijk Port Authority as a result of the reversal of the option decision.

The financial loss incurred by the Moerdijk Port Authority following the reversal of the option decision, insofar as has been or can be determined, is always paid by the lessee simultaneously with the periodic rent instalments to the Moerdijk Port authority, with the exception of the damage as referred to under I., if possible

- equally divided across the remaining term of the current rent period by means of an annuity, yet becomes fully and immediately due and payable by the lessee when the rental agreement is terminated prematurely, regardless of the reason.
6. That which is stated under paragraph 5 of this article also applies when the request opting for taxed rent pursuant to article 11, paragraph 1, under b, 5e of the Turnover Tax Act 1968, is not honoured by the tax authorities, regardless of the reason.
  7. Should the situation arise as referred to under paragraph 5 of this article, the Moerdijk Port Authority will inform the lessee of the amounts payable by the Moerdijk Port Authority to the tax authorities and will provide an insight in the remaining damage as referred to under paragraph 5 of this article, all this with the exception of the damage assessed in advance as referred to under I. The Moerdijk Port Authority will render its assistance if the lessee wishes to have the statement of costs of the Moerdijk Port Authority verified by an independent chartered accountant. The costs of this are at the expense of the lessee.
  8. At the end of each financial year of the lessee, he will promptly send a statement to the Moerdijk Port Authority signed by him stating that the property rented by him (also when it has been given in use to a third party wholly or partly) has during the past financial year either or not been used for purposes which, on the grounds of article 15 of the Turnover Tax Act 1968, fully or virtually fully qualify (at least ninety percent (90%)) for deduction of turnover tax.
  9. If the lessee does not comply with the aforementioned information obligation or it turns out in retrospect that he has adopted an incorrect assumption as a result of which the Moerdijk Port Authority, as it turns out in retrospect, has wrongly charged turnover tax on the rent, the lessee remains in default and the Moerdijk Port Authority is entitled to recover the financial loss from the lessee. This loss concerns the total turnover tax payable by the Moerdijk Port Authority to the tax authorities in this respect, increased by interest and any increments. The stipulations in this paragraph contain an arrangement for compensation in case the option decision is reversed with retroactive effect, all this in addition to the arrangement stipulated under paragraph 5 of this article. The additional damage incurred by the Moerdijk Port Authority as a result of this retroactive effect, becomes fully and immediately due and payable by the lessee. The Moerdijk Port Authority will render its assistance if the lessee wishes to have the statement of additional damage by the Moerdijk Port Authority verified by an independent chartered accountant. The costs of this are at the expense of the lessee.
  10. That which is stated under paragraph 5 of this article also applies when the Moerdijk Port Authority is first confronted with damage, either or not following premature termination of the rental agreement, as a result of the applicable decision option being reversed, which damage in that event becomes fully and immediately due and payable.

### **ARTICLE 3**

#### **Use of the rented property**

Without prior written approval of the Moerdijk Port Authority the lessee is not allowed to have the rented property used by third parties, neither wholly nor partly, or to sublet it to third parties.

## **ARTICLE 4**

### **Condition of the soil**

1. The lessee will refrain from any acts or omissions which can cause or stimulate pollution of the soil, the groundwater, surface water or the water bed or any other forms of pollution on, in or near the rented property.
2. If pollution as referred to in article 4, paragraph 1 is real or threatens to become real, the lessee will inform the Moerdijk Port Authority of this immediately.
3. The lessee will be responsible for the pollution on, in or near the rented property as referred to in article 4, paragraph 1, except insofar as that pollution was real at the scene prior to inception of the rent or preceding use of the rented property by him, or has not been caused or stimulated by any actions or omissions by him, his subordinates, or third parties who had access to the rented property during the rent or preceding its use.
4. The Moerdijk Port Authority will at any time during or after expiry of the rent, and following consultation with the lessee, be authorised to conduct an inquiry into the scope, the cause and/or the consequences of pollution as referred to in article 4, paragraph 1.
5. If pollution as referred to in article 4, paragraph 1, is real or threatens to become real the Moerdijk Port Authority will, following consultation with the lessee, be authorised to establish and effect measures, or have the lessee or a third party effect measures which, in its opinion, are necessary to neutralise, limit or prevent that pollution or the suspected causes or possible consequences thereof.
6. The lessee will be obliged to provide all details and render all assistance which the Moerdijk Port Authority deems necessary in connection with the inquiry or measures as referred to in this article, and to furthermore allow persons charged with that inquiry or those measures, including auxiliaries to be used to that effect, onto the leasehold land.
7. The Moerdijk Port Authority is not responsible for damage which the lessee may incur as a result of the inquiry or measures as referred to in this article, except insofar as this damage is the result of intention, a serious fault or gross negligence on the part of the Moerdijk Port Authority. The costs for the inquiry and those measures are at the expense of the lessee, unless he is not responsible for the pollution.
8. The lessee will, to the satisfaction of the Moerdijk Port Authority, take out insurance against the risks arising from this article.
9. Following expiry of the rent, the lessee is obliged to again put the land at the free disposal of the Moerdijk Port Authority in at least the original condition as at the time of inception of the right to rent, which condition is described and recorded in the report of the environmental research as referred to in article 4, General Conditions, General Section.
10. If there is cause to doubt the condition of the land, the managing director, without prejudice to his authority in paragraph 4 of this article, is entitled to demand from the lessee an environmental inquiry into the condition of the land. The aforementioned inquiry must be completed within three months of expiry of the rental agreement.
11. If the inquiry as referred to in paragraph 10 of this article indicates that the land is to a more or lesser degree polluted, the lessee is obliged to decontaminate the ground and return it in a clean condition, or at least in the condition as referred to in paragraph 9 of this article.

12. If and insofar the lessee, despite the request and demand made by the managing director in paragraph 10 of this article to that end, remains in default to conduct the research as referred to in article 10, the Moerdijk Port Authority is authorised to have this enquiry conducted and to recover the relevant costs from the lessee.
13. If the lessee despite a demand to this end, given the seriousness and nature of the detected pollution, remains in default to decontaminate the land within the meaning as referred to in paragraph 9 of this article, the Moerdijk Port Authority is entitled to have the decontamination carried out and to recover the relevant costs from the lessee.

## **ARTICLE 5**

### **Giving possession**

1. On expiry of the rent, compensation for structures or their demolition will not be granted.
2. The Moerdijk Port Authority determines to either demolish structures on expiry of the rent or not.
3. On expiry of the rent the lessee will give possession of the rented property in the original condition in which he accepted the rented property at inception of the rent.
4. On expiry of the rent an environmental report will again be compiled at the expense of the lessee. If it becomes evident that during the rent soil pollution has been caused, the soil pollution will be removed at the expense of the lessee.
5. In the event of non-compliance of the obligation to remove soil pollution as referred to in paragraph 4 of this article, the lessee forfeits a penalty which is calculated in accordance with the following formula:

$$B = [ S + (H \times L) ] \times E$$

In which the elements are represented as follows:

B: the penalty forfeited by the lessee

S: the cost regarding decontamination and other clean-up work of the soil and ground water

H: the rent of the ground

L: the number of months the land cannot be rented out (as a result of the time needed to clean up the land)

H x L: lost rental earnings

E: 150%

## **ARTICLE 6**

### **Dissolution of the rental agreement in the event of the lessee failing to fulfil obligations**

The Moerdijk Port Authority is authorised to dissolve the rental agreement without judicial intervention if the lessee defaults on payment of the rent for six consecutive months or seriously fails in the fulfilment of his remaining obligations.

## **ARTICLE 7**

### **Dissolution of the rental agreement on grounds of general interest**

1. The Moerdijk Port Authority can also give notice of termination due to reasons of general interest as referred to in article 8 hereafter, unless mandatory legal provisions dictate otherwise. Termination is established through dissolution of the rental agreement after the Board of Management has made a decision to that effect.

2. The Managing Committee submits a proposal to the Board of Management. This proposal sets out the reasons, with substantiation, which justify the termination of the rental agreement. The Managing Committee informs the lessee and any interested parties of the proposal in writing.
3. The Board of Management does not take a decision with regard to the proposal referred to in paragraph 2, before two months have elapsed since the date of the notification as referred to in paragraph 2 of this article. During that period the lessee and any interested parties can register a notice of objection.
4. The Board of Management decides, if possible, with due observance of any objections submitted. If the Board of Management does not decide to dissolve the rental agreement within six months of the notification as referred to in paragraph 2 of this article, the proposal referred to in paragraph 2 of this article is deemed not to have been submitted.
5. The resolution of the Board of Management also determines the day on which the rental agreement expires. Subsequently, the notice of termination is sent by means of registered letter with due observance of a period of at least six months in the event of termination on the grounds of paragraph 2 of this article and at least one month if termination is established on the grounds of paragraph 1 of this article.

## **ARTICLE 8**

### **General interest**

Reasons which may justify a notice of termination of the rental agreement or ground lease by the Moerdijk Port Authority as referred to in article 7 above, stem from infrastructural reasons, particularly within the framework of further development of the dock area of the Moerdijk Port Authority and/or reasons/circumstances in respect of environmental protection.

## **ARTICLE 9**

### **Indemnification in the event of a notice of termination in the general interest**

1. If the rental agreement expires in the manner as referred to in article 7 above, indemnification is granted pursuant to the Expropriation Act.
2. The value of that which is created contrary to any provision or condition in the rental agreement will not be reimbursed, nor any damage in respect of terminating any activity performed on the ground and in the structures contrary to any provision or condition in the rental agreement, unless the Moerdijk Port Authority has issued a written approval to that effect.  
Neither will be reimbursed the value of that which is created without planning permission or contrary to the zoning plan, nor the damage in respect of terminating any activity performed in the structures contrary to the zoning plan or any other statutory provision.
3. If the lessee does not agree to the compensation offered by the Moerdijk Port Authority, he must inform the Managing Committee of the Moerdijk Port Authority of this in writing within two months of receipt of the notification of compensation sent by registered post. When no agreement is reached on the amount of the compensation, it will be established by three experts to be appointed by the court of competent jurisdiction prior to an appeal to the competent courts.
4. The Moerdijk Port Authority pays the damages due to the lessee, after deduction of all that which the lessee still owes the Moerdijk Port Authority with regard to the rental agreement of the ground and structures.

5. As long as the ground and the structures erected on it (with the exception of the legally obtained property rights of third parties) have not been put at the free disposal of the Moerdijk Port Authority, the afore-mentioned is authorised to retain payment pursuant to this article. Solely for the application of this article, legally obtained property rights are considered to be equal to property rights otherwise obtained by third parties, which in the opinion of the Moerdijk Port Authority do not give rise to any objections.

#### **ARTICLE 10**

##### **Vacation of the ground and structures**

If, on the day the agreement ends, the parcel of land and the structures erected on it have not been vacated by the lessee and put at the disposal of the Moerdijk Port Authority, the managing director can, without any further notice of default, effectuate eviction with due observance of the legally obtained property rights of third parties, all this at the expense of the contracting party except if and insofar the latter can invoke his right of retention towards the Moerdijk Port Authority, until the indemnification and/or compensation due to him have been settled pursuant to article 9.

#### **ARTICLE 11**

##### **Official title**

These General Conditions are further referred to as "General Conditions Moerdijk Port Authority 2007, Special Section - Rent".

## **Appendix 1**

### **Appointment and working procedure of experts**

1. Whenever these conditions mention Experts, this is taken to mean a group of three (3) experts.
2. The Experts are appointed upon notification from the Leaseholder in mutual consultation with the Port Authority and the Leaseholder if possible.
3. If no agreement is reached within one (1) month of the notification referred to in paragraph 2 in respect of the appointment of Experts, an Expert must have been appointed by both parties within four (4) weeks of the date on the notification referred to in paragraph 2.
4. Both Experts thus appointed must appoint a third Expert within three (3) months of the date on the notification referred to in paragraph 2.
5. If either the appointment of an Expert as referred to in paragraph 3 has not been communicated to the other party within the term given in that paragraph, or if the appointment referred to in paragraph 4 has not been communicated to both parties within the term given in that paragraph, either party will ask the president of the District Court of Breda to appoint three (3) Experts as soon as possible.
6. The Leaseholder must submit a statement of claim to the Experts within fourteen (14) days of the day on which the parties have been notified of the appointment of a third Expert, or the day on which the president of the District Court of Breda has appointed the Experts; at the same time, the Leaseholder will send one (1) copy of said statement to the Port Authority.
7. Within fourteen (14) days of receiving the statement of claim, the Port Authority will submit its statement of defence to the Experts; at the same time, it will send one (1) copy of said statement to the Leaseholder.
8. The Experts will be in session within one (1) month of the statement of defence having been submitted. The parties are notified of the time and date of the session in a written announcement fourteen prior to the date of the session. Any party that deems it advisable for a witness or an expert witness to be heard at the session will notify the Expert committee thereof in writing in its statement. When neither of the Experts feels that the wish to hear the witness or expert witness in question appears unfounded, they will summon him at least fourteen (14) days prior to the hearing in their written notification.
9. The parties will be given the opportunity to further explain their conclusion during the session. Witnesses and expert witnesses will be heard whenever one (1) of the Experts or Parties deems this advisable.

10. The Experts will make a decision within two (2) months of the session. The parties will be notified of the decision within fourteen (14) days, in writing.
11. If the stipulations in the previous paragraph are not complied with, the Leaseholder will ask the president of the District Court of Breda to appoint three (3) new Experts as soon as possible after expiry of the term given in the previous paragraph.
12. The costs estimated by the Experts in their decision and incurred by the parties, as well as the advice-related costs will be at the expense of the Port Authority and the leaseholder in accordance with an apportionment - to be determined by the Experts in their decision - according to the extent to which the Experts in their opinion have met the wishes of either party in their decision.
13. The costs referred to in paragraph 12 are at the expense of the Leaseholder if he obtained a decision.