



Haven Amsterdam

Port of Amsterdam

GENERAL TERMS AND CONDITIONS
FOR
TEMPORARY GROUND LEASES
IN THE
PORT AREA 2007

These general terms and conditions for temporary ground leases in the port area for 2007 are included in a notarial deed dated 23 May 2007 and were registered together with that deed at the offices of the Land Registry Office and the Public Registers in Amsterdam on 23 May 2007 in Mortgages Register 4, section 52314, no. 115. During the meeting on 6 March 2007, under number BD 2007-000805, the Municipal Executive of Amsterdam laid down the following General Terms and Conditions for temporary ground leases in the port area 2007.

The Port of Amsterdam is part of the City of Amsterdam

This is an informal translation of the general terms and conditions for temporary ground leases in the port area 2007 drafted in Dutch. In case of any discrepancy between the Dutch original text and this English text, the Dutch text will prevail.

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0. Definitions

premium: the premium referred to in Article 7.

prospective leaseholder: the natural person or legal entity that acquires a leasehold.

the Port of Amsterdam management area: the port and the port area for whose development and management the Port of Amsterdam is responsible.

intended use: the permitted occupancy of the parcel as specified in the special terms and conditions.

special terms and conditions: the provisions applicable in addition to, supplementary to, or contrary to the general terms and conditions referred to in the deed of creation or in the deed of amendment of the leasehold.

ground rent: the sum of money payable annually by the leaseholder in exchange for the leasehold.

leaseholder: the natural person or legal entity referred to as the leaseholder in the ground lease agreement.

leasehold: the real ground lease, as stated in the notarial deed of creation and recorded in the public registers.

ground lease agreement: the agreement entered into between the Port of Amsterdam and the prospective leaseholder for the creation of a leasehold, being the ground lease offer signed by the parties.

actual occupation: occupation of the parcel by the leaseholder on a date sometime between the creation of the ground lease agreement and the creation of the leasehold.

right of use: the right to lease, sublease, giving in use or any other real or personal right.

City: the legal entity under public law, namely the City of Amsterdam.

The Port of Amsterdam: the Amsterdam City Council company responsible for the development and management within the Port of Amsterdam management area.

zero measurement report: the report on the current quality of the land and the groundwater on, in or in the immediate vicinity of the parcel, compiled following the soil survey as referred to in Article 10, which report presents the zero situation at the commencement of the leasehold or the actual occupation of the parcel.

property: the land including the groundwater, or the land including the groundwater with the structures present on, in and above, whether divided into apartment rights, and/or a water parcel.

structures: buildings, works, plantings, including but not restricted to quays, jetties, paving, sewerage, installations, infrastructure (underground and aboveground), bank protection and boundary partitions.

parties: The Port of Amsterdam and the leaseholder or prospective leaseholder.

parcel: the property to be allocated or already allocated under a ground lease, located within the Port of Amsterdam management area.

contamination: contamination of the property and/or the soil and/or the surface water and/or other types of environmental contamination.

water parcel: the water bottom and the water column above it.

1. Operation

These general terms and conditions apply during:

1. the period between the moment the ground lease agreement was created, whether or not followed by actual occupation of the parcel and the establishment of the leasehold; and
2. the term of the leasehold.

Wherever these general terms and conditions refer to:

- 'the leaseholder', this should also be read as meaning 'the prospective leaseholder' for the period referred to under 1;
- 'the leasehold', this should also be read as meaning 'the ground lease agreement' for the situation referred to under 1;
- 'the ground rent', this should also be read as meaning 'the user fee' for the period referred to under 1.

2. Allocation of a ground lease

The parcel is to be allocated under a ground lease for a definite period of time, with a maximum term of 50 years. The temporary leasehold is to be established by notarial deed. The deed of creation must be executed by a civil-law notary practising in the City of Amsterdam, as appointed by the prospective leaseholder.

3. Acceptance

- 3.1 The leaseholder will accept the parcel in the state it is in on the leasehold commencement date. If the parcel is actually being occupied, the leaseholder will accept the parcel in the state it is in on the date of actual occupation. The parties will specify the state of the parcel in the special terms and conditions pertaining to the ground lease agreement.
- 3.2 As from the commencement date of the leasehold or the date of actual occupation, all visible and invisible defects relating to the parcel are for the account and risk of the leaseholder. Visible defects recorded in the special terms and conditions pertaining to the ground lease agreement are not for the account and risk of the leaseholder unless agreed otherwise in the special terms and conditions.

4. Guarantees upon establishment of the leasehold

The City guarantees that it:

- a. is the owner of the parcel and has full power to dispose in this matter;
- b. establishes a leasehold that is not encumbered with attachments, mortgages or registrations thereof, or other restricted rights;
- c. delivers a leasehold that is free of rights of use.

These guarantees apply in so far as not specified otherwise in the special terms and conditions.

5. Payments

- 5.1 The ground rent is payable as of the date on which the leasehold commences.
- 5.2 An amount payable by the leaseholder will be rounded off arithmetically to two decimal places.
- 5.3 The ground rent must be paid in advance without any discount, deduction, offsetting or suspension in two equal six-monthly instalments on 2 January and 1 July of each year by means of a transfer to one of the accounts of the Port of Amsterdam in Amsterdam.
- 5.4 An invoice will be sent for payment of the very first ground rent instalment. This invoice must be paid within 21 days after the invoice date. For all subsequent ground rent instalments, invoices will be sent, which should be regarded as payment reminders. The indebtedness and exigibility of these subsequent ground rent instalments will remain subject to paragraph 3 of this Article.

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- 5.5 Irrespective of the intended use the leaseholder assigns to it, each payment by the leaseholder will be applied for the settlement of its debts to the Port of Amsterdam in the following sequence:
1. fine/fines payable pursuant to Article 20;
 2. costs payable pursuant to Article 18;
 3. interest payable pursuant to Article 20;
 4. debts other than those referred to under 1., 2. and 3., which the leaseholder has as a consequence of the leasehold;
 5. the ground rent casu quo the premium.

6. Annual ground rent adjustment and buying off the annual ground rent adjustment

6.1 The ground rent will be adjusted annually based on the development of the general level in prices. The adjustment is to take place on 1 January of each calendar year. The ground rent is to be adjusted by 1/7 part of the adjustment coefficient referred to in Article 6.2.

6.2 The adjustment coefficient, which applies for a calendar year, is to be calculated as follows:

a
—
b

a = the consumer price index, series for all households, for the month of June of the year preceding the calendar year in question, as published by Statistics Netherlands or, failing that, by some other independent institute;

b = the corresponding index for the month of June of the sixth year preceding the calendar year in question.

If for any reason one or more values in this paragraph represented by the letters a and b are not known or not known in time, the adjustment coefficient referred to in this paragraph will be determined by the Port of Amsterdam in a manner that as far as possible corresponds to the method of calculation described in this article. The adjustment coefficient applying for a calendar year will be published in the council newsletter.

6.3 The leaseholder will be notified of the adjusted ground rent at the earliest opportunity. The time of notification will not affect the leaseholder's obligation to make additional payments nor its right to repayment.

6.4 The parties can agree that the leaseholder buys off the annual ground rent adjustment for the term/remaining term of the leasehold. This will involve the leaseholder paying a fixed annual surcharge on top of the ground rent. In such instances, the ground rent is to be calculated as follows:

$$X=Y+(Y*(Z*R)/100\%)$$

X = adjusted ground rent

Y = applicable ground rent

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Z = surcharge percentage determined in accordance with Article 6, paragraph 5.
R = reduction factor, whose value depends in the following manner on the remaining term of the leasehold:

Remaining term of the leasehold	Reduction factor
46 to 50 year	1.0
41 to 45 year	0.91
36 to 40 year	0.82
31 to 35 year	0.73
26 to 30 year	0.63
21 to 25 year	0.51
16 to 20 year	0.39
11 to 15 year	0.26
1 to 10 year	0.13

- 6.5 Each year, the City will determine the surcharge percentage as referred to in Article 6, paragraph 4 of these general terms and conditions and will publish this in the council newsletter (*het Gemeentebld*). The value of the surcharge percentage is to be determined in such a way, and based on the judgement of the City, that the City is indemnified for the exclusion of the annual ground rent adjustment.
- 6.6 The buying off of the annual ground rent adjustment is to be established by notarial deed.
- 6.7 Once the annual ground rent adjustment has been bought off, it will not be possible to reconvert this into an annual ground rent adjustment.
- 6.8 After the annual ground rent adjustment has been bought off, the right to buying off the ground rent not yet due will continue to exist for the remaining term of the leasehold, in accordance with Article 7 of these terms and conditions. As regards the calculation of the premium on the remaining term of the leasehold, the fixed annual surcharge, as referred to in Article 6, paragraph 4 of these terms and conditions, will not be taken into consideration.

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7. Buying off the ground rent

- 7.1 The leaseholder can pay the ground rent not yet due all at once by paying a lumpsum. The ground rent can be bought off immediately at the start of the leasehold or by means of an interim payment.
- 7.2 The Port of Amsterdam determines the value of the premium such that it will compensate for loss of ground rent. The premium is to be determined on the basis of the instalments still to be paid and its value is to be calculated based on an interest rate determined annually by the Port of Amsterdam. This interest rate is to be published in the council newsletter (*het Gemeentebblad*).
- 7.3 If the ground rent is bought off prematurely sometime during the year after a ground rent adjustment pursuant to Article 6, paragraph 1, the premium will be calculated on the basis of the penultimate ground rent adjustment.
- 7.4 Premature termination of the leasehold does not give any entitlement to repayment of the premium, except in the event of termination of the leasehold by the City for reasons of general interest. The amount to be repaid will be calculated on the basis of the same calculation method and percentages as applied when the premium was determined as referred to in Article 7, paragraph 2.
- 7.5 The buying off of the ground rent is to be established by notarial deed.

8 Occupancy and intended use

- 8.1 The leaseholder is obliged to use the parcel in accordance with the intended use.
- 8.2 The leaseholder is not permitted not to use the parcel entirely or partially for longer than twelve successive months.
- 8.3 The leaseholder may not use the parcel in such a way that this:
- injures, endangers or serves as a nuisance to people; and/or
 - poses a danger to or damages the property of the City or of third parties; and/or,
 - hinders the possibility of developing or occupying adjacent parcels, without prejudice to the relevant statutory provisions.
- Occupancy also includes the site load of the parcel.

- 8.4 As regards occupancy of the parcel, the leaseholder may not, in any way, cause or allow nuisance for traffic, including shipping traffic.
- 8.5 As regards vessels used in connection with the leaseholder's parcel, these must be moored at the designated mooring facilities located on or at the parcel.
- 8.6 The leaseholder must remove structures which, in the opinion of the Port of Amsterdam, have fallen into disrepair and/or are no longer being used in accordance with the intended use, such at the first request and to the satisfaction of the Port of Amsterdam.
- 8.7 The leaseholder will take all measures necessary to prevent damage to the parcel.
- 8.8 The leaseholder is liable for all damage to the City's property caused by or through the fault of the leaseholder, unless the damage cannot be attributed to the leaseholder.

9. Equipping, occupation and subsidence

- 9.1 The leaseholder may not develop and occupy the parcel in a way that is not in keeping with that for which it has acquired or wishes to acquire written consent from the competent authorities. The leaseholder is obliged to ensure that that for which it has acquired or wishes to acquire written consent from the competent authorities is in accordance with the provisions of the ground lease deed, including the intended use. The leaseholder is obliged to ensure that that for which it has acquired or wishes to acquire written consent from the competent authorities does not give any more authorities or rights than those resulting from the provisions of the ground lease deed.
- 9.2 The leaseholder is obliged to furnish the undeveloped part of the parcel with paving and/or planting for its own account and risk.
- 9.3 The leaseholder is at all times obliged for its own account and risk to provide sufficient parking spaces on the parcel. The size, location and number of parking spaces must be determined in consultation with the Port of Amsterdam. In so far as legislation or regulations require access control, sufficient parking spaces must be located on the parcel in front of the entrance to the premises.
- 9.4 The leaseholder is obliged for its own account and risk to separate the parcel in an appropriate manner from the adjoining parcels and or the public highway and to keep it separate, such to the satisfaction of the Port of Amsterdam.
- 9.5 If, during the term of the leasehold, subsidence occurs on the parcel, the leaseholder will be responsible for the possible repair of the subsidence. Damage caused as a consequence of the subsidence and/or the non-repair, or unsatisfactory or late repair of the subsidence is for the account and risk of the leaseholder.

10. The environment

10.1 Duty of care

The leaseholder is required to prevent contamination on, in or near the parcel, and the threat, increase, expansion, or spread of contamination due to or because of any acts or omissions on the part of the leaseholder, its subordinates or third parties that have a right of use or access to the parcel during the term of the leasehold or the actual occupation.

10.2 Duty to report

If contamination is present or there is the risk of contamination, the leaseholder will immediately notify the Port of Amsterdam, as well as the competent authority.

10.3 Liability for contamination

The leaseholder is liable for contamination present on, in or near the parcel, as well as for injury/damage resulting from the contamination, unless the leaseholder demonstrates that:

- the contamination was present at the location before the commencement date of the leasehold, whereby the zero measurement report will be used as the point of departure; or
- the contamination was already present at the location before the date of actual occupation, whereby the zero measurement report will be used as the point of departure; or
- the contamination was not caused, aggravated by or due to any acts or omissions on the part of the leaseholder, its subordinates, or third parties that have a right of use or access to the parcel during the term of the leasehold or the actual occupation.

In the event of injury/damage to the property of the City or of third parties resulting from the contamination or injury to people, the leaseholder must implement measures to limit the damage.

10.4 Zero measurement report

Prior to the establishment of the leasehold or the actual occupation, the Port of Amsterdam will conduct a soil survey for its own account. The findings of the soil survey are to be recorded in a zero measurement report that, after authentication by the leaseholder, will form part of the ground lease agreement.

The leaseholder has the right to have an additional survey carried out for its own account if the leaseholder believes that the zero measurement report offers insufficient security as regards recording the current soil situation on the parcel. If this additional survey takes place in consultation with the Port of Amsterdam and reveals that the findings of the soil survey are insufficiently normative or differ significantly from the additional survey, the Port of Amsterdam will pay the costs of the additional survey carried out by the leaseholder. In this case, the results of the additional survey will be considered part of the zero measurement report after the leaseholder has authenticated the zero measurement report. If the Port of Amsterdam is not consulted, the Port of Amsterdam will be free to assess how much significance and which consequences are to be attributed to the additional survey carried out on behalf of the leaseholder and whether the costs of said additional survey are to be reimbursed.

10.5 Surveys during the term of the leasehold

The Port of Amsterdam is at any time during the term of the leasehold entitled to initiate a survey into the presence, extent, cause and/or consequences of contamination. The leaseholder is obliged to provide all data, to cooperate (including by providing access to the parcel) and to make the resources available that the Port of Amsterdam deems necessary in connection with the survey. During the survey, the leaseholder's business operations will be taken into account, wherever possible. If the survey reveals contamination, the costs of this survey will be for the account of the leaseholder, unless the leaseholder demonstrates that it is not liable for the contamination in accordance with paragraph 3 of this Article.

10.6 Remediation during the term of the leasehold

If, during the term of the leasehold, the results of the survey referred to in paragraph 5 of this Article reveal the presence of contamination and the leaseholder cannot invoke one of the three grounds for excluding liability referred to in paragraph 3 of this Article, the leaseholder will be required, at the first request of the Port of Amsterdam and/or the competent authority, to remediate the contamination for its own account and risk and to take all measures necessary to prevent contamination. This obligation to remediate during the term of the leasehold applies in so far as any environmental standards and requirements under public law are violated.

10.7 Final measurement report

Before the end of the leasehold, the leaseholder must have a final measurement carried out into the current quality of the land and the groundwater of the parcel and/or the surrounding sites. The final measurement must be based on the same points of departure as the zero measurement report. In addition, the final measurement must include an assessment of the consequences of all commercial activities that have taken place on the parcel during the term of the leasehold. The findings of the final measurement are to be recorded in a final measurement report, which will be submitted to the Port of Amsterdam. The costs for compiling the report are to be paid by the leaseholder. If, in the opinion of the Port of Amsterdam, the final measurement report provides insufficiently addresses the current quality of the land and the groundwater of the parcel and/or the surrounding sites, the Port of Amsterdam will be entitled to have its own final measurement carried out for the leaseholder's account at the end of the leasehold.

10.8 Remediation at the end of the leasehold

Before the end of the leasehold, the leaseholder is obliged to have any contamination remediated for its own account and risk to the level applicable to the parcel as described in the zero measurement report. One of the consequences of this is that the Port of Amsterdam may oblige the leaseholder to carry out more extensive remediation and/or remediation measures than the remediation and/or remediation measures imposed by the competent authorities.

10.9 Remediation method and plan

If the leaseholder has to remediate the parcel at any time, either during the term of the leasehold or at the end of the leasehold, it must submit in a timely manner a description of the remediation method for the parcel, including a remediation plan and details of the remediation company that is to carry out the work, to the Port of Amsterdam for approval. The remediation must take account of all the interests of the City and third parties.

10.10 Reporting after remediation

At the end of a remediation pursuant to Article 10, paragraph 6 or paragraph 8, the leaseholder must demonstrate by means of a survey report that the remediation obligation referred to in Article 10, paragraph 6 or paragraph 8, has been fulfilled. The costs of this survey are for the account of the leaseholder. The Port of Amsterdam is entitled to have this survey report by the leaseholder assessed by carrying out its own survey. The costs of this survey by the Port of Amsterdam, as well as the damage and costs associated with the activities resulting from this survey are for the account and risk of the leaseholder if said survey reveals that the parcel has not, has not entirely or has insufficiently been remediated in accordance with the remediation obligation as referred to in Article 10, paragraph 6 or paragraph 8.

10.11 Measures

If, in the opinion of the Port of Amsterdam, the leaseholder does not fulfil its obligations on account of Article 10 or does not do so on time or insufficiently, the Port of Amsterdam is entitled to take measures for the account and risk of the leaseholder to discontinue, limit or prevent the contamination and the consequences of the contamination.

10.12 Exclusion of liability on the part of the City

The City is not liable for damage, which the leaseholder suffers or will suffer as a consequence of the survey referred to in Article 10, paragraph 5, or the measures referred to in Article 10 paragraph 11, except in the event of intent or gross negligence on the part of the City.

10.13 Bank guarantee/deposit

In connection with the fulfilment of the leaseholder's obligations on account of this article, as well as any fines and costs payable due to non-fulfilment by the leaseholder of the obligations on account of Article 10, the leaseholder is obliged, at the first written request of the Port of Amsterdam, to provide a bank guarantee in accordance with a model prescribed by the Port of Amsterdam or to pay a deposit. The amount of the bank guarantee to be provided or the deposit to be paid is to be determined by the Port of Amsterdam. The leaseholder is not entitled to offset any amount against the bank guarantee. In the event that the bank guarantee is claimed under, the leaseholder will, at the first request of the Port of Amsterdam, provide a new bank guarantee for the full amount.

11. Transfer, assign, division, letting, encumbrance

11.1 The leaseholder may not, without prior, written consent from the Port of Amsterdam:

- a. divide, assign, transfer, allocate, combine, apply a sublease to, or add the leasehold to the same or a different legal entity or public or limited partnership without legal personality;
- b. let the leasehold to a third party or give in occupancy in any other way;

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- c. encumber the leasehold with a restricted right, with the exception of a right of mortgage;
 - d. divide the leasehold into apartment rights or transfer to a third party an apartment right arising after the division of the leasehold;
 - e. agree to qualitative leasehold obligations attached to a certain capacity as referred to in Section 6:252 of the Dutch Civil Code;
 - f. enter into any other agreement with a view to a legal act as referred to in this article or with a view to the direct or indirect transfer of the power to dispose of the let object.
- 11.2 If the direct or indirect control over the leaseholder's business activities or part thereof is transferred to one or more third parties, without the prior written approval of the Port of Amsterdam, the latter will be entitled to terminate the leasehold. The transfer of direct or indirect control means, in any event, a merger as referred to in the *S.E.R. besluit Fusiegedragsregels 2000* (Merger Code 2000 of the Social and Economic Council of the Netherlands).

12. Consent

- 12.1 If the leaseholder submits an appropriate written request, the Port of Amsterdam may give its written consent for the provisions pursuant to Article 11 and for deviations from the provisions contained in Articles 8 and 9. This consent can be made subject to deadlines and terms and conditions, including an adjustment of the ground rent and of the provisions of the deed creating a ground lease. The Port of Amsterdam will charge a fee, to be determined annually by the director of the Port of Amsterdam, for processing the request for consent as referred to in this article. The Port of Amsterdam must receive a request for consent no later than four weeks before the intended date on which consent is required to be granted. The Port of Amsterdam will take a decision regarding this request within this four-week period, unless the Port of Amsterdam indicates it needs more detailed information in order to make a decision regarding this request.
- 12.2 The Port of Amsterdam is at all times entitled to reject a request for consent, stating its reasons for doing so. In any event, consent can be refused on the basis of, for example, the following grounds:
- 12.2.1 if the commercial activities on a parcel located near the water no longer result in the supply and conveyance of goods by a sea-going vessel via the waterway in front of the parcel and the transshipment of these goods on the parcel;
 - 12.2.2 if the leaseholder or a third party acquires a real right or a right of use to the parcel or the structures, whose continued existence does not depend on the existence of the leasehold and/or whose term exceeds that of the leasehold;
 - 12.2.3 if inconvenience or nuisance are caused to the public space and/or adjoining parcels.

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- 12.3 In the event of a request for consent, the leaseholder will at all times submit the draft deed or agreement for approval to the Port of Amsterdam, as it is to be passed or agreed between the parties concerned.
- 12.4 The Port of Amsterdam has the right, within the framework of a request for permission as referred to in this article, to carry out an investigation on the leaseholder's history or criminal record or of the future leaseholder, lessee, user or other party entitled.

13. Qualitative obligations, third-party effect, perpetual clause

- 13.1 All obligations of a party on account of these general and the special terms and conditions to tolerate or not to do something in respect of the property concerned and/or the leasehold as restricted right, in so far as they are obligations not forming part of the ground leasehold, will be deemed applicable as qualitative obligations (attached to a certain capacity) and will transfer to those who acquire the property. The same will apply to those who acquire a right of use from the party entitled.
- 13.2 The parties expressly envisage effect on a third party in respect of their rights and obligations on account of these general terms and conditions and the special provisions.
- 13.3 In the event of:
- the full or partial transfer of the ground lease or
 - the full or partial encumbrance of the leasehold with a restricted right of enjoyment,

the leaseholder is obliged to impose the obligations resulting from the general and special terms and conditions of the leasehold, in so far as the obligations are not part of the leasehold and are not qualitative obligations (attached to a certain capacity) for the benefit of the City, on the new owner of the real rights, with the literal inclusion of those provisions, except that the name of the leaseholder will be replaced by the name of the new owner of the real rights. The leaseholder will only be regarded as having fulfilled this obligation when an authentic copy of the deed in question has been submitted to the Port of Amsterdam.

14. Maintenance

- 14.1 The leaseholder will properly maintain the structures present and to be erected on the parcel for its own account and risk and to carry out the necessary modernisation and/or repair work in a timely manner, such to the satisfaction of the Port of Amsterdam.
- 14.2 If the leaseholder does not maintain or maintains poorly the parcel, the consequences thereof will be for the account and risk of the leaseholder.
- 14.3 If, after a warning, the leaseholder fails to carry out the maintenance, modernisation and/or repair work, or if, in the opinion of the Port of Amsterdam, this work has been carried out in an unsound manner, the Port of Amsterdam is entitled to carry out this work or have this work carried out for the account and risk of the leaseholder. The Port of Amsterdam is explicitly authorised to take such action vis-à-vis the leaseholder pursuant to these general terms and conditions.

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- 14.4 In connection with the fulfilment of the leaseholder's obligations on account of this article, as well as any fines and costs payable due to non-fulfilment by the leaseholder of the obligations on account of this article, the leaseholder is obliged, at the first written request of the Port of Amsterdam, to provide a bank guarantee in accordance with a model prescribed by the Port of Amsterdam or to pay a deposit. The amount of the bank guarantee to be provided or the deposit to be paid is to be determined by the Port of Amsterdam. The leaseholder is not entitled to offset any amount against the bank guarantee. In the event that the bank guarantee is claimed under, the leaseholder will, at the first request of the Port of Amsterdam, provide a new bank guarantee for the full amount.
- 14.5 The repair and maintenance obligation of and the related costs associated with shared partitions are the joint responsibility of the leaseholder and the owner or user of the adjacent parcel.

15. Tolerance obligations and other obligations of the leaseholder

15.1 Works, cables and pipes

- 15.1.1 The leaseholder will tolerate the construction, use, inspection, maintenance, repair, renewal or removal by the City or third parties of cranes, tracks, cables, pipes, posts, sewerage and other similar provisions, in, on, above or over the parcel, whether or not for public purposes, as well as related items. In so far as possible, reasonable account will be taken of the leaseholder's business operations.
- 15.1.2 The leasehold does not relate to the items referred to in the previous paragraph.
- 15.1.3 If the items referred to in paragraph 1.1 of this article have to be adapted, moved, repositioned, repaired or renewed due to the acts or omissions by the leaseholder, such will take place by the City or third party for the account and risk of the leaseholder.

15.2 Mooring facilities and tying up

- 15.2.1 The leaseholder will permit, if summoned to do so by the Port of Amsterdam, mooring facilities for the benefit of the City or third parties to be installed on or bordering the parcel.

15.2.2 The leaseholder will permit, if summoned to do so by the Port of Amsterdam, vessels not intended for the leaseholder's operations to tie up at the mooring facility on or at the parcel or the bank bordering the parcel. This obligation to tolerate applies unless the leaseholder leases a water parcel located at the parcel or has such a water parcel under a ground lease. The leaseholder will allow the crew of said vessels to move over the parcel from and to the vessels, with due regard for the applicable legislation in the field of safety and security. The leaseholder will be entitled to impose additional requirements within the framework of applicable safety and security legislation.

15.3 Nuisance, damage, danger

15.3.1 The leaseholder is aware that the parcel is located in a port and industrial area. This location implies a certain degree of nuisance and/or danger from established businesses, or new businesses to be established, in the vicinity of the parcel. The leaseholder accepts and tolerates a certain degree of nuisance and/or danger. The City is not liable for damage the leaseholder suffers as a consequence of nuisance or danger resulting from the presence of these businesses.

15.4 Cooperation and access

15.4.1 The leaseholder will at all times grant permission and cooperate as regards activities, work and/or acts carried out by the City or third parties within the framework of the ground lease provisions, including the tolerance obligations of this article.

15.4.2 The leaseholder will at all times grant access to the parcel to all people designated by the Port of Amsterdam and/or the City and their vehicles and/or vessels for the execution and verification of compliance with the ground lease provisions. If and in so far as possible, the leaseholder's business operations will be hindered as little as possible. The personnel present will behave in accordance with the leaseholder's safety instructions.

15.5 No compensation

15.5.1 The leaseholder is not entitled to any compensation, including any reduction in the ground rent, in exchange for the tolerance obligations of Article 15.

15.6 Drainage and discharges

15.6.1 If the leaseholder wishes to drain the parcel, it will do so in consultation with the Port of Amsterdam. In this context, the leaseholder is required to take account of the interests of leaseholders of adjacent parcels and must prevent any inconvenience and damage to the adjacent parcels resulting from the drainage.

15.6.2 The leaseholder will take measures for its account and risk to prevent rainwater from being discharged, directly or indirectly, onto adjacent non-water parcels or roads.

15.6.3 If summoned to do so by the City, the leaseholder will connect discharge units in and on the parcel for its own account and risk.

15.7 Lighting

- 15.7.1 The leaseholder is obliged to provide and use the lighting on the parcel and on vessels moored at the parcel in such a way that, in the opinion of the Port of Amsterdam, does not hinder the identification of harbour lights and does not disrupt shipping traffic.
- 15.7.2 The leaseholder is obliged to permit the Port of Amsterdam to install one or more harbour lights at a location selected at its own discretion. The costs of installation and maintenance are for the account of the Port of Amsterdam.
- 15.7.3 If summoned to do so by the Port of Amsterdam, the leaseholder will tolerate the fact that the Port of Amsterdam will issue additional instructions and regulations regarding the use of the commercial lighting.

15.8 Instructions

- 15.8.1 The leaseholder is obliged to comply with all instructions of the Port of Amsterdam and/or the competent authorities relating to, for example, the occupancy of mooring facilities, the bank and the water located in front of the parcel, the method of transshipment of (environmentally) hazardous substances, the method of mooring and tying up and safety aspects.

16. **Water bottom**

- 16.1 If the depth of the water bottom is specified in the deed of creation of leasehold land, the Port of Amsterdam will maintain this water bottom depth for the parcel by dredging and will also take account of any underwater incline.
- 16.2 If the leaseholder believes that the depth of the water bottom differs from that specified in the deed of issue of leasehold land, the leaseholder will make a reasonable case for this before the leaseholder reports this in writing to the Port of Amsterdam.
- 16.3 After the Port of Amsterdam has received a notification from the leaseholder as referred to in Article 16, paragraph 2, the Port of Amsterdam will investigate, within a reasonable period of time, whether the depth of the water bottom differs from that specified in the deed of creation of leasehold land. If this difference is substantiated, the Port of Amsterdam will ensure that, within a reasonable period of time, the depth of the water bottom corresponds to the depth of the water bottom specified in the deed of creation leasehold land.
- 16.4 If circumstances:
- make it difficult or impossible for the Port of Amsterdam to maintain the water bottom at the proper depth and
- cannot be attributed to the Port of Amsterdam,
then the obligation of the Port of Amsterdam as referred to in Article 16, paragraph 1, will lapse.
In that case, the leaseholder cannot reasonably demand fulfilment of this obligation. The circumstances referred to include, in any event, contamination of the water bottom.
If the lapsing of the obligation of the Port of Amsterdam, as referred to in Article 16, paragraph 1, makes it impossible for the leaseholder to perform its activities, the leaseholder will have the right to terminate the leasehold, with due regard to the statutory period of notice and without the Port of Amsterdam being liable for any damage or costs as a consequence of a termination by the leaseholder. However, the leaseholder is not entitled to terminate if the lapsing of the obligation pursuant to Article 16, paragraph 1, has been caused entirely or in part by or due to any acts or omissions on the part of the leaseholder, its subordinates or third parties who have a right of use or access to the parcel.

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- 16.5 If, after the Port of Amsterdam dredges the port, the water bottom is deeper than the depth of the water bottom specified in the deed of creation of leasehold land and the leaseholder uses the extra depth by receiving vessels with a greater draught, the Port of Amsterdam will have the right to adapt the ground rent in accordance with the extra depth.
- 16.6 Objects and/or substances located on or in the water bottom in front of the parcel are to be regarded as originating from the leaseholder, unless the leaseholder proves these objects and/or substances originate from someone else.
- 16.7 Objects and/or substances as referred to in Article 16.6, deemed to be originating from the leaseholder, must be removed by the leaseholder within a reasonable term after their presence has been identified. If, after being warned, the leaseholder fails to remove the objects and/or substances or if, in the opinion of the Port of Amsterdam, the removal has been or is to be carried out unsatisfactorily, the Port of Amsterdam will be entitled to remove the objects and/or substances or have these removed for the account and risk of the leaseholder.
- 16.8 If the leaseholder fails to remove the objects and/or substances referred to in Article 16.6, the leaseholder will be liable for all damage resulting from the presence of said objects and/or substances. Damage is also taken to include the repair costs of damage to dredging equipment and loss of profits of the dredging company carrying out the work resulting from the presence of said objects and/or substances.
- 16.9 In connection with the fulfilment of the leaseholder's obligations on account of this article, as well as any fines and costs payable due to non-fulfilment by the leaseholder of the obligations on account of Article 16, the leaseholder is obliged, at the first written request of the Port of Amsterdam, to provide a bank guarantee in accordance with a model prescribed by the Port of Amsterdam or to pay a deposit. The amount of the bank guarantee to be provided or the deposit to be paid is to be determined by the Port of Amsterdam. The leaseholder is not entitled to offset any amount against the bank guarantee. In the event that the bank guarantee is claimed under, the leaseholder will, at the first request of the Port of Amsterdam, provide a new bank guarantee for the full amount.

17. Required permits, consents and dispensations

- 17.1 The leaseholder (itself) is at all times responsible for applying for and acquiring all the permits, consents and dispensations required for its business operations and development of the parcel pursuant to any law, bye-law or regulation. Issue under a ground lease by the Port of Amsterdam will not prejudice the leaseholder's obligations pursuant to the law and/or regulations.
- 17.2 As regards the acquisition of a required consent by virtue of any provision of this agreement, the leaseholder cannot invoke any previously acquired consent pursuant to this agreement or a previously acquired permit, consent or dispensation pursuant to any law, bye-law or regulation.
- 17.3 The leaseholder must at the first request of the Port of Amsterdam submit a copy of its permits, consents or dispensations and/or of the associated applications.

18. Costs

- 18.1 All costs incurred for the purpose of the establishment or adaptation of the leasehold, including those relating to the cadastral survey of the parcel, the notarial costs, as well as the establishment of the premium for the ground rent or ground rent adjustment, are to be paid for by the leaseholder.
- 18.2 All extrajudicial and judicial costs the City reasonably incurs in retaining and exercising its rights based on the deed of creation of leasehold land and the associated terms and conditions, are to be paid for by the leaseholder.

19. Taxes

All taxes, levies and costs imposed on or relating to the leasehold, the property, a restricted right or the occupancy of the parcel are to be paid for by the leaseholder as of the date on which the leasehold commences. With regard to taxes, levies and costs paid by the City, the leaseholder must reimburse these to the Port of Amsterdam if summoned to do so.

20. Default, interest and fines

- 20.1 The leaseholder will owe the City interest for overdue payment of one percent per month for the period the leaseholder defaults in paying any sum of money owed to the City, whereby part of the month applies as a whole month. At the end of each twelve-month period, the amount used to calculate the interest for overdue payment will be increased by the interest owed for the twelve months in question.

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- 20.2 If the leaseholder does not comply with the fulfilment of one of its obligations, the City can impose an immediately due and payable fine of a maximum of ten times the amount of the annual ground rent. If the ground rent has been bought off, the annual ground rent will be derived from the premium. The fines must be paid within a month after the notification imposing the fines has been sent. The costs of collecting the fines are for the account of the leaseholder.
- 20.3 The fine referred to in paragraph 2 of this article will not prejudice the right of the City to compliance and full payment of damage caused by the default.
- 20.4 If the leaseholder does not comply with the fulfilment of any obligation other than the obligation referred to in paragraph 1 of this article, the Port of Amsterdam is entitled without judicial intervention being required and for the account and risk of the leaseholder to effectuate that which would have resulted in compliance by the leaseholder.

21. Handing over at the end of the leasehold

- 21.1 Unless agreed otherwise in writing, the leaseholder will hand over the parcel at the end of the leasehold to the Port of Amsterdam in the state it was in at the commencement of the leasehold. This means, in any case, that:
- the parcel must be handed over at the correct height and levelled; and
 - all that which the leaseholder or a legal predecessor has installed on, above and in the parcel has been removed, so that the parcel is free from such things as foundations and piles; and
 - the parcel is – properly and to the satisfaction of the Port of Amsterdam – handed back to the Port of Amsterdam cleared and at the free disposal (i.e. free of rights of use and restricted rights except those for which the Port of Amsterdam has granted its consent); and
 - the soil of the parcel, including the land and the groundwater, are restored to the same state as specified in the zero measurement report, such as determined in more detail in Article 10 and as also demonstrated by the final measurement report of Article 10.7.
- 21.2 If, at the end of the leasehold, the parcel has not been cleared, not cleared in its entirety or improperly cleared in line with Article 21.1, the Port of Amsterdam hereby notifies the leaseholder in these terms and conditions of the fact that the City regards the leasehold as being terminated.
- 21.3 If, at the end of the leasehold, the parcel has not been cleared, has not been cleared on time or has not been cleared properly in accordance with Article 21.1, a payment will be due equal to the ground rent, without prejudice to the City's right to a reimbursement of costs, fines, damage and interest. If the parcel has to be remediated and the remediation takes place after the leasehold has ended, the leaseholder is obliged to pay a fee for the occupancy of the parcel, which is equal to the ground rent.

- 21.4 If and in so far as the Port of Amsterdam has agreed that all that the leaseholder or a legal predecessor has installed on the parcel will not have to be removed completely by the end of the leasehold, the leaseholder will not be entitled, pursuant to Section 99, paragraph 2 under a of Book 5 of the Dutch Civil Code, to reimbursement of the value of buildings, works or plantings still present, unless agreed otherwise. The Port of Amsterdam can make its consent subject to the condition that the leaseholder has to pay an amount towards future demolition costs or restrictions for use.
- 21.5 After the end of the leasehold, the Port of Amsterdam can remove and destroy – at its discretion, without being liable in any way and at the leaseholder’s expense – all items the leaseholder has apparently relinquished. The leaseholder will, in any event, be deemed to have relinquished those items left behind in, on or above the parcel when the parcel is actually vacated. The Port of Amsterdam has the right to have these items destroyed at its own discretion at the expense of the leaseholder or to appropriate these items without any fee being payable and, if it wishes, to sell these items and to retain the proceeds.
- 21.6 The leaseholder is required to contact the Port of Amsterdam in a timely manner to reach an agreement on the final delivery of the parcel, so that the Port of Amsterdam can establish compliance with the provisions of Article 21.1. at the time of final delivery.

22. Termination

- 22.1 The leaseholder cannot terminate the leasehold unless the provisions of Article 16, paragraph 4, apply (water bottom). Termination pursuant to Article 16, paragraph 4, does not prejudice the leaseholder’s obligation to deliver the parcel at the end of the leasehold as specified in more detail in Article 21.
- 22.2 Without prejudice to the provisions of Article 23 (Termination for reasons of general interest), the Port of Amsterdam can terminate the leasehold if the leaseholder:
- is in default as regards payment of the ground rent for two successive years; or
 - seriously fails to fulfil its other obligations.

Notice of termination will take place by writ at least one month before the date of termination.

- 22.3 Under pain of nullity of the termination referred to in Article 22, paragraph 2, notice of said termination must be served within eight days to those who referred to in the public registers as a holder of a restricted right or judgment creditor of the leasehold.

- 22.4 After the end of the leasehold due to termination as referred to in Article 22, paragraph 2, the Port of Amsterdam is obliged to reimburse the value the leasehold has at that time to the leaseholder, after deducting that which the City can claim from the leaseholder on account of the leasehold, including the costs. These include any costs required to return the object to the state in which it should have been in the event of the regular ending of the leasehold pursuant to Article 21, plus other costs.

23. Termination for reasons of general interest

- 23.1 The Port of Amsterdam can terminate the leasehold at any time on the basis of a statement by the City Council to the effect that the general interest makes it necessary to terminate the leasehold. The notice of termination will be performed by writ at least twelve months before the date of termination. Under pain of nullity, notice of said termination must be served within eight days to those referred to in the public registers as a holder of a restricted right or judgment creditor of the leasehold.
- 23.2 If the leasehold ends on the basis of the circumstance referred to in Article 23, paragraph 1, compensation will take place on the basis of the Expropriation Act.
- 23.3 The value of that established in contravention of any provision or condition in the deed of creation of the leasehold or in a deed containing an adjustment of the leasehold will not be compensated, nor will any compensation be made for damage relating to the termination of an activity carried out on the parcel and in the structures in contravention of any provision or condition in the deed of creation under the ground lease or in a deed containing an adjustment of the leasehold, unless the Port of Amsterdam has given appropriate written consent.
- 23.4 If the leaseholder does not agree with the compensation offered by the City, the leaseholder will inform the Port of Amsterdam to this effect within two months of receiving the written notification of compensation. If no agreement is reached on the amount of the compensation, it will be determined by three experts.
- 23.5 If three experts have to make a decision pursuant to Article 23 of these general terms and conditions, the Port of Amsterdam and the leaseholder will, at the request of either party, each appoint one expert in mutual consultation within six weeks. These experts will in turn appoint a third expert. If no agreement has been reached by the two experts within three months after the above-mentioned request regarding the appointment of the third party, said expert will be appointed, at the request of either party, by the chairman of the Chamber of Commerce and Industry in Amsterdam.
- 23.6 The experts will not decide before both parties have been given an opportunity to be heard. The experts will take a decision with due regard for the applicable general and special provisions of the leasehold and the relevant guidelines drawn up by the City.

- 23.7 The decision of the experts is to be communicated with reasons and in writing to the parties within six months after appointment of the third expert and will have the effect of a binding third-party ruling.
- 23.8 The amount of compensation will be reduced by that which the City can claim from the leaseholder on account of the leasehold, including the costs. These include any costs required to return the object to the state in which it should have been in the event of the regular ending of the leasehold pursuant to Article 21, plus other costs.
- 23.9 When determining the amount referred to in Article 23, paragraph 2, no account will be taken of new building work, alterations or rebuilding work, which has taken place after the termination.
- 23.10 The costs incurred in connection with the experts and of the chairman referred to in Article 23, paragraph 5, are to be shared equally by the parties.

24. Competent court and applicable law

All disputes ensuing on account of these general terms and conditions, the leasehold or the ground lease agreement will be submitted to the competent court in Amsterdam. These general terms and conditions, the leasehold or the ground lease agreement are governed by Dutch law.

25. Mortgagees

If the leasehold is encumbered with a mortgage and the mortgagee has sent an authentic copy of the mortgage deed to the Port of Amsterdam undertaking to notify the Port of Amsterdam immediately of any cancellation of the mortgage registration, the Port of Amsterdam will notify the mortgagee by means of a letter sent by registered post of:

- a. failure by the leaseholder to pay the ground rent during a nine-month period;
- b. a serious failure by the leaseholder in the fulfilment of its obligations resulting from the leasehold;
- c. a statement by the City Council as referred to in Article 23;
- d. an adjustment to the general terms and conditions as referred to in Article 27.

In the case referred to under a., the mortgagee will be entitled, before expiration of the two-year period referred to in Article 22, paragraph 2, to pay the City the ground rent due, the interest for overdue payment and the costs incurred by the City due to the default on the leaseholder's behalf.

26. Indemnity

The leaseholder indemnifies the City for claims from third parties for all damage, costs and Interest, for which the City is held liable on account of:

- Section 6:174 of the Dutch Civil Code;
- contamination of the parcel for which the leaseholder is liable on the basis of Article 10 of these general terms and conditions;
- the non-fulfilment by the leaseholder of obligations under public law applicable to the leasehold;
- the non-fulfilment by the leaseholder of any obligation on account of the special terms and conditions and/or these general terms and conditions,
- endangerment, damage or nuisance relating to the property of third parties.

27. Reasonableness and fairness

The parties are obliged to treat each other in accordance with the requirements of reasonableness and fairness.

28. Representation

If the leasehold belongs to two or more parties, they will appoint in writing one of their number as the representative. Any change in representation must be communicated immediately in writing. The Port of Amsterdam can issue all notifications, summons and cancellations with regard to the leasehold to and institute all claims with regard to the leasehold against the last representative about whom it has been notified.

29. Communications

- 29.1 The leaseholder is obliged to send the Port of Amsterdam copies of all relevant legal documents within three months in the event of leasehold acquisition under universal title and within one month in the event of acquisition under particular title.
- 29.2 Unless explicitly determined otherwise, all communications, notifications, requests and approvals on account of the leasehold will be made in writing and all claims on account of the leasehold will be instituted in writing.

30. Election of address for service

The leaseholder or representative as referred to in Article 28 is required to ensure that its address is known to the Port of Amsterdam.

If the leaseholder or representative as referred to in Article 28 has no actual or elected address in the Netherlands, it is obliged, with regard to the leasehold, to choose domicile at the offices of a civil-law notary established within the City.

The leaseholder or representative as referred to in Article 28 must inform the Port of Amsterdam in writing of the election of or changes in address for service.

The Port of Amsterdam can legally send notifications, summons and cancellations and institute all claims to the address/elected address for service last communicated to it.

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31. General Extension of Time-Limits Act

The General Extension of Time-Limits Act applies mutatis mutandis to the deadlines referred to in these general terms and conditions.

32. Changes to the general terms and conditions

32.1 The Port of Amsterdam may amend these general terms and conditions.

32.2 In the event of a amendment to the general terms and conditions, the Port of Amsterdam will send the new general terms and conditions to the leaseholder, after which the latter can choose whether to replace these general terms and conditions with the new general terms and conditions and to have the new general terms and conditions apply to the leasehold.

32.3 If the leaseholder accepts the applicability of the new general terms and conditions, it must inform the Port of Amsterdam in writing to this effect within three months after receipt of the new general terms and conditions. The new general terms and conditions will take effect on 1 January at least twelve months after the leaseholder has been informed in writing of the changed terms and conditions. At the first request to this effect by the Port of Amsterdam, the leaseholder will cooperate in recording the change in the general terms and conditions by notarial deed and its inclusion in the public registers. The costs of executing the deed and the costs associated with registration, as well as any other costs, are for the account of the leaseholder.

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