

## **NBMS – General terms and conditions brokerage activities in purchase/sale of vessels**

These general terms and conditions have been laid down by the 'Dutch Association of Shipbrokers' (*Nederlandse Bond van Makelaars in Schepen*, NBMS) and filed at the court registry of the court in Amsterdam on 13/04/2017 under number 28/2017 in Dutch. These terms and conditions apply exclusively to members of the NBMS. The terms and conditions came into force on 15/03/2017. ©Dutch Association of Shipbrokers.

### **1 Article 1 – Definitions**

- 1.1. Brokerage agreement: the agreement for the provision of services, the purpose of which is to broker one or more envisaged purchase/sales agreement(s) between the client and a third party.
- 1.2. Broker: a broker affiliated with the NBMS or the company of a broker affiliated with the NBMS. 'Associate' members are deemed to be affiliated with the NBMS.
- 1.3. Client: natural person or legal entity that enters into an agreement for services with the broker.
- 1.4. Brokerage fee: the fee that the client is obliged to pay with respect to the brokerage activities.
- 1.5. Costs: the fee that the client is obliged to pay, in addition to the brokerage fee, with respect to extra work carried out by the broker and/or the costs incurred for carrying out the assignment.

### **2 Article 2 – Applicability of the general terms and conditions**

- 2.1. These general terms and conditions form part of the agreement for services in which they have been declared applicable.
- 2.2. If the general terms and conditions deviate from the agreement, then the provisions as included in the agreement prevail.
- 2.3. If a provision from the agreement or the terms and conditions are found to be invalid, this shall not affect the validity of the entire agreement.
- 2.4. General terms and conditions of the client do not apply and shall be explicitly rejected.
- 2.5. Amendments to the general terms and conditions are only binding if they are agreed upon in writing.

### **3 Article 3 – The brokerage assignment**

- 3.1. The brokerage assignment is an assignment whereby the broker undertakes to the client to work as an agent, for a brokerage fee, in the formation of a purchase/sales agreement between the client and a third party.
- 3.2. All offers from the broker are subject to contract unless explicitly stated otherwise.
- 3.3. The brokerage agreement comes into effect at the time that the parties agree on the brokerage fee, the duration of the agreement and the way in which the agreement can be terminated, the asking price and the further conditions under which the brokerage activities are performed.
- 3.4. The broker ensures that the assignment is put down in writing.
- 3.5. The client gives the broker the exclusive right to carry out the assignment, that the client will not sell the object himself, or have another person sell the object, during the term of the agreement.

- 3.6. The broker is only entitled to enter into an agreement on behalf of the client with a power of attorney to that end.
- 3.7. The broker has completed his assignment at the time that the envisaged agreement between the parties concerned has been concluded as a result of the services provided by the broker. Nevertheless, the broker will still assist the client in the further settlement thereof.

#### **4. Article 4 – Obligations of the broker**

- 4.1. Unless otherwise agreed, the brokerage agreement includes the following services:
  - a. discussion and advice about the opportunities to reach the envisaged agreement;
  - b. evaluation of the value of the object concerned and determining the asking price by consultation;
  - c. devoting attention to legal, fiscal, technical and other aspects of importance;
  - d. with respect to vessels registered in the Netherlands, investigate the rights attached to the object;
  - e. undertake activities in order to bring the object to the attention of potential buyers;
  - f. conduct negotiations;
  - g. actively promote the formation of an agreement between the client and a third party, and draw up the purchase/sales agreement;
  - h. supervise the customary settlement.
- 4.2. With respect to the envisaged agreement, as soon as agreement has been reached between the client and a third party about the price and the terms and conditions governing delivery, the broker will – if this is not yet known among the parties – disclose the name and address details of both parties to each other in writing.
- 4.3. The broker will not allow the envisaged agreement between the client and a third party to be dependent on an expert's opinion, expertise and/or valuation report compiled by the broker himself.
- 4.4. In the case of brokerage assignments that relate to one object, the broker will charge one party for the brokerage fee one time only, unless the parties have agreed otherwise in writing.

#### **5. Article 5 – Client's obligations**

- 5.1. The client is obliged to provide the broker with all information about the object relevant to the sale thereof, including a general description, the condition of the vessel, the equipment present, the registration and if there are any mortgages or attachments. With regard to this information (or the withholding of that information), the client indemnifies the broker against claims from third parties.
- 5.2. The client guarantees that he is authorised to sell the object and indemnifies the broker against claims from third parties in this respect.

#### **6. Article 6 – Duration of the assignment**

The brokerage assignment will be entered into for an indefinite period, unless agreed otherwise.

#### **7. Article 7 – End of the assignment**

- 7.1. The assignment shall end as a result of:
  - a. the formation of the envisaged agreement;
  - b. the expiration of the agreed time in the case of an agreement that is entered into for a specified period;
  - c. revocation of the assignment by the client;
  - d. return of the assignment by the broker;
  - e. termination by one of the parties.
- 7.2. The client is entitled to revoke the agreement at any time after nine months have passed with due observance of a notice period of three months.
- 7.3. The broker can return the assignment on the basis of compelling reasons such as, among others, serious damage to the relationship between the broker and the client or the condition which the object was in.
- 7.4. The assignment can be terminated if there is a failure in the performance of the obligations on the part of the other party.
- 7.5. The statement of revocation, return and/or termination must take place by registered letter or by email confirmed reciprocally by both sides. In the case of revocation or return, the broker is entitled to a percentage of the brokerage fee to be reasonably determined with a maximum of 50% and reimbursement of the costs already incurred.

## **8. Article 8 – Brokerage fee**

- 8.1. The client shall owe the broker a brokerage fee if the envisaged agreement is concluded during the term of the assignment. This also applies in the event that:
  - the agreement is not executed due to one of the parties being in default;
  - the agreement is not the result of the services provided by the broker, unless the parties have explicitly ruled out the exclusivity of the broker.
- 8.2. If the definitive formation of the agreement is dependent on a suspensive or resolutive condition - provided this condition is agreed upon through the broker - the right to a brokerage fee is also dependent on this.
- 8.3. The client also owes a brokerage fee if:
  - the envisaged agreement is concluded within six months after the end of the brokerage agreement, unless the client can satisfactorily demonstrate that the formation of the agreement is not related in any way to the service provision of the broker.
  - the client has made the object permanently available to a third party, who was, in the first instance, specified and/or approached and/or informed at a later date.
- 8.4. If in the case of the envisaged purchase/sales agreement, the agreed counter-performance entirely or partially consists of the part exchange of a vessel, the brokerage fee will be partly determined on the basis of the value of the vessel. In the event that there is a pure exchange without additional payment, the brokerage fee will be determined on the basis of the vessel with the highest value.

## **9. Article 9 – Costs**

Unless otherwise agreed, the client will reimburse the costs that the broker has incurred for the purpose of the assignment. If no agreements have been made

about this beforehand, the broker will in any case be entitled to reimbursement of the reasonably incurred costs. The obligation to reimbursement of the costs also applies in the event of revocation or return of the assignment.

#### 10. **Article 10 – Liability**

The liability of the broker is limited to the amount which will be actually paid out in the case concerned under the professional liability insurance. If, for whatever reason, the broker should still have a payment obligation in addition to this, then that will be limited to the brokerage fee charged in that case up to a maximum of € 10,000.

#### 11. **Article 11 – Complaints**

- 11.1. A complaint about a failure in the performance of the agreement should be lodged with the broker in writing, adequately described and further explained as soon as possible, but in any case, within 14 days after the client has discovered the failure or could reasonably have been expected to discover it.
- 11.2. After this period has expired, the client shall be deemed to have approved the service provision delivered and the invoice respectively, unless the client cannot reasonably be blamed for exceeding this period.

#### 12. **Article 12 – Purchase price flow of money**

- 12.1. The broker will take delivery of the purchase price concerned for the client under the (envisaged) agreement concluded between the client and a third party. The broker shall retain the purchase price for the client on a clients' account designated for that purpose. In the absence of a personal clients' account, the broker will make use of the services and clients' account of a civil-law notary, or make a written agreement with the parties about the route and terms of the money flows.
- 12.2. The broker reserves the right to offset the reimbursement that he is due on the basis of the brokerage assignment (brokerage fee and costs) against the purchase price mentioned in subsection 1 of this article.
- 12.3. If no use is made of the services of a civil-law notary, the broker will, after the settlement of the purchase/sale, send the client the purchase price as soon as possible after deduction of the brokerage fee and costs.

#### 13. **Article 13 – Payment of brokerage fee**

- 13.1. The payment of the brokerage fee and the costs must, if they have not been offset against the purchase price mentioned in article 12.1, be paid to a bank account designated by the broker or at the business address of the broker, unless the parties have agreed otherwise in writing.
- 13.2. If the client does not pay in a timely fashion, he will be deemed to be in default de jure and the broker will be authorised to take steps to collect it and charge for the extrajudicial costs.

#### 14. **Article 14 – Right of retention**

The broker is entitled to retain the object of the brokerage agreement until his client has paid the total amount due, also including the costs arising from this right of retention. In the event of partial performance or failure to perform

properly, suspension of the delivery of the object is only permitted insofar as the failure warrants that.

**15. Article 15 – Confidentiality**

- 15.1. The broker will treat the communications by the client within the context of the brokerage assignment confidentially.
- 15.2. The client is bound not to divulge information of a confidential nature to third parties that he receives from the broker in connection with the brokerage assignment.

**16. Article 16 – Applicable law**

- 16.1. Dutch law applies to all disputes relating to this agreement.
- 16.2. Before submitting a dispute to the court, the parties will first enter into consultation with each other with a view to examining whether the dispute can also be resolved in another way, for example via arbitration, mediation or a binding third-party ruling.

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