

# General Conditions Windseeker Foundation (WSF)

(Based on General conditions BBZ/TCN)



SET COURSE FOR NEW HORIZONS

## Article 1 – Definitions

In these General Conditions, as well as in the related Agreement, the following terms shall have the following meanings:

- a. Supplier: The owner of the Ship
- b. Customer: Any person, whether natural or juridical, who enters into an Agreement with a Supplier.
- c. Agreement: Any agreement that is entered into between a Supplier and a Customer, including any amendments and additions thereto, whereby the Supplier agrees to conduct a Voyage on board his Ship, and to which these General Conditions apply.
- d. Guest: Any person, whether natural or juridical, who is authorized by the Customer to make use of the services of the Supplier.
- e. Trainee: A guest who signed up for a voyage where active participation is expected from him/her.
- e. Voyage: The entire trip, including a stay on board the Ship, taking place during the period set forth in the Agreement.
- f. Luggage: Any luggage, consisting of easily transported or wheeled items, in the possession of a Guest.
- g. Ship: The Ship referred to in the Agreement.
- h. Price: The Price of the Voyage, as set forth in the Agreement.

## Article 2 – Scope of application

2.1 These Conditions shall form part of every Agreement. These Conditions shall also apply to the pre contractual relationship between the Supplier and the Customer, as of such time as the Supplier has provided them to the Customer and the Customer has not objected to their application within 7 days thereof.

2.2 General conditions that conflict with the provisions hereof shall apply only if expressly

accepted by the Supplier in writing and only with respect to the Agreement(s) concerned.

2.3 Amendments or additions to any provision of the Agreement or these Conditions shall be effective only if made in writing.

2.4 The Agreement and these Conditions constitute the entire agreement setting forth the rights and obligations of the Supplier and the Customer.

2.5 In the event that any provision of these Conditions should be invalid, the remaining provisions shall continue to have effect. The invalid provision shall be replaced by a provision that approximates, to the extent possible, the intent of the invalid provision.

2.6 The contracting parties are the Supplier and the Customer. These conditions shall also apply between the Supplier and Guests, who are not parties to the Agreement between the Supplier and the Customer, and the Customer shall be responsible for ensuring this. The Customer shall indemnify the Supplier for any and all liability of the Supplier vis-à-vis a Guest that would have been excluded if the Guest had been bound by these Conditions.

2.7 These Conditions shall also inure to the benefit of any legal or natural person upon whom, in the widest possible sense, the Supplier relies or has relied in the execution or performance of the Agreement or in the conduct of his business activities.

2.8 In the event of a conflict between the provisions of the Agreement and the provisions of these Conditions, the provisions of the Agreement shall prevail.

## Article 3 – Liability of the Supplier

3.1 The liability of the Supplier to pay damages for death or personal injury pursuant to part 3 of title 10 of Book 8 of the Civil Code, shall be limited to the sum of EU 137.000,- per Guest. In the event that such

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damages take the form of an annuity, the capital shall not exceed EU 137.000,-per Guest.

3.2 The liability of the Supplier to pay damages for loss of or damage to Luggage shall be limited to EU 1000,-. Damage shall be limited to the current value of the Luggage. The Supplier shall have no liability for any non-pecuniary loss, indirect or consequential damages arising from the loss of or damage to Luggage.

3.3 The Suppliers shall not be liable for any loss attributable to delay (irrespective of the cause thereof and whether arising before, during or after transportation), or to any deviation from the agreed upon time for starting and ending.

3.4 The Supplier shall have no liability for damages resulting from an object, brought on board by a Guest, that the Supplier would not have permitted on board, had he been aware of its nature or character, if the Guest knew or should have known that the Supplier would not have permitted such a thing on board. The Guest shall be liable to the Supplier for any expenses and damages that may arise as a result of his having brought or having had such object on board.

3.5 Without prejudice to article 6:107 Civil Code, in the event of personal injury suffered by a Guest, only that Guest shall have a cause of action for damages. Without prejudice to article 6:108 Civil Code, only the surviving spouse, children and parents who depended on the Guest for their support shall have a cause of action for damages. The value of the claims provided for in this section shall be based on the relative position and affluence of the claimant.

3.6 In the event that the Supplier proves that damage, loss or injury is attributable to the fault or negligence of the Guest, the Supplier's liability shall accordingly be set off, either completely or in part.

3.7 In the event that persons assisting the Supplier in performing his obligations render, at the request of the Customer or Guests, services that the Supplier is not obligated to perform, such persons shall be deemed to have acted under the instructions of the Customer

and/or the Guests to whom the services were rendered.

3.8 The Customer waives the right to set-off based on comparative negligence.

#### **Article 4 – Liability of Customer and Guests**

4.1 The Customer and the Guests shall be jointly and severally liable for any damage, loss or injury to the Supplier caused by the Customer, Guest or their Luggage. This implies that dangerous goods are not allowed on board. This shall apply to damage to the Ship, to injury and damage to any persons or property located on board, as well as to injury and damage caused by the Customer, Guests or their Luggage to persons or property not located on board the Ship, in the event such damages are sought from the Supplier.

4.2 The Customer shall not be entitled to rely on the Guests own liability.

4.3 This article shall apply without prejudice to other or additional rights, including rights vis-à-vis third parties, of the Supplier.

#### **Article 5 – Obligations of Supplier**

5.1 The Ship and its crew conform to the international and the flag state's legal requirements.

5.2 Pursuant to the Agreement, the Supplier is obligated to use his best efforts to carry out the Voyage.

5.3 The sailing route shall be determined by the Supplier in consultation with the Customer, keeping third parties interests in consideration (f.e. Tall Ships Races).

5.4 The Supplier and/or the Captain shall at all times be entitled to decide that, as a result of weather conditions, high or low water, blocked sailing routes and similar conditions, including those relating to the Ship, the Ship cannot sail, or that it is necessary, in the broadest sense, to modify or cancel the Voyage, or to change the place of departure or arrival.

5.5 The Supplier shall, in such case, make every effort to cooperate in finding an

alternative or a solution, provided that any additional costs in connection therewith shall be reimbursed by the Customer. It shall be within the discretion of the Supplier to determine whether an alternative or solution is capable of being implemented and whether the Supplier can reasonably do so.

5.6 The provisions of this article shall also apply in event that the Supplier or Captain is forced to take one of the decisions referred to herein as a result of the actions or failure to act of one or more Guests, in the case of a delay, howsoever caused, and in the event the Supplier cannot reach the place of departure or arrival agreed to with the Customer.

5.7 In the event that the Ship unexpectedly turns out to be unavailable, the Supplier shall use his best efforts to provide a comparable Ship. If this should prove impossible, the Supplier shall be entitled to rescind the Agreement. If the unavailability of the Ship is not attributable to the fault or negligence of the Supplier, the Supplier shall not be liable to pay damages or make restitution to the Customer and/or Guest. In all other cases, the liability of the Supplier shall be limited to sums already paid by the Customer pursuant to the Agreement.

## **Article 6 – Obligations of Customer and Guests**

6.1 The Ship shall be made available upon the commencement of the Voyage, clean and with its complete inventory. Unless otherwise agreed, the Customer shall, no later than the day of debarkation, leave the ship behind in the same condition as he found it upon embarkation, i.e., clean, and with its complete inventory.

6.2 The Customer and the Guests must strictly comply with all requirements and instructions, whether prescribed by law or given by or at the behest of the Supplier or the Captain, in particular but not exclusively those relating to order and safety. In the event that such requirements or instructions are not followed, the Supplier shall be entitled

to suspend performance or to rescind the Agreement.

6.3 The Customer and Guests shall not bring anything on board other than the Luggage.

6.4 The Luggage belonging to the Customer and Guests shall not constitute a nuisance. The Customer and Guests shall in no case be permitted to carry with them dangerous substances (in the broadest sense of the word), or to bring on board drugs or contraband. In addition, no pets or animals may be brought on board without prior permission.

6.5 Two weeks before embarkation, the Customer shall provide the Supplier with a list of the names of the Guests. After this the list can only be changed after consultation.

## **Article 7 – Supplier's right to suspend Performance**

7.1 In the event of non-performance, inadequate performance or late performance by or on behalf of the Customer, the Supplier shall in all circumstances be entitled to immediately suspend performance of his obligations under the Agreement, while reserving all remaining rights vis-à-vis the Customer, including any exclusion of Suppliers liability for damages.

7.2 The right to suspend performance shall include the Supplier's right to deny the Customer or any of the Guests access to the Ship.

7.3 In the event of non-performance, inadequate performance or late performance of these obligations by or on behalf of the Customer, followed by recourse by the Supplier to this right to suspend performance, the Supplier shall nevertheless be entitled to receive payment in the amount agreed upon, and shall not operate to the detriment of other or additional rights that the Supplier is entitled to enforce against the Customer pursuant to these Conditions and/or basic contract law.

## **Article 8 – Further rights of Supplier**

Access to the Ship, as well as to the Voyage and the lodging and catering services, may

be denied by the Supplier where necessary due to capacity, safety, public order, potential damage or nuisance, as well as in cases of past overdue invoices, all without prejudice to the other provisions of these conditions and reserving all remaining rights against the Customer, including any exclusion of Supplier's liability for damages.

## **Article 9 – Payment terms**

9.1 Unless otherwise agreed, full pension is included in the price.

9.2 Unless otherwise agreed, the Price is inclusive of costs related to ports, bridges, locks and pilotage, as well as local charges such as tourist tax and fuel charges.

9.3 The Customer shall pay the Supplier the sum due in the currency expressed in the Agreement within the time period provided therefore in the Agreement, without any discount, deduction or set off. The Customer shall at no time be entitled to suspend his obligation to make payment. Payment shall be deemed to have been made on the credit date indicated on Supplier's bank or giro statement.

9.4 The Supplier shall be entitled, at any time up to twenty days prior to the initial date of the Voyage, to increase the Price as a result of extreme changes in the cost of carrying out the Voyage. The Customer shall, in such a case, be entitled to cancel the Agreement, provided he does so within ten days of receipt of notice to this effect.

9.5 Failure by the Customer to fulfil his obligation to make payment to the Supplier within the time period agreed upon therefore, shall automatically constitute default without any notice of default being required. From the time that the Customer is in default until the time of payment in full, interest for late payment shall be due in the amount of 2% of the amount due per month or partial month, without prejudice to the Supplier's legal right to full damages.

9.6 All costs connected with the collection of the amount due from the Customer, including court costs, shall be borne by the Customer.

## **Article 10 – STO Garant Guarantee Scheme - DIRECTIVE (EU) 2015/2302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on package travel and linked travel arrangements**

In order to meet its statutory obligation to provide a guarantee according with the EU – Directive 2015/2302 of 25 November 2015 on package travel and linked travel arrangements, WSF makes use of the guarantee scheme provided by STO Garant. You can check that this is the case by visiting STO Garant's website and verifying that the organisation is listed as a participant ([www.stogarant.nl/en/members](http://www.stogarant.nl/en/members)).

You can find all information relating to STO Garant at [www.stogarant.nl/en](http://www.stogarant.nl/en). Whether STO Garant's guarantee applies to a particular (travel) offer made by WSF is clearly stated for that offer. The Guarantee Scheme specifies what the guarantee covers and which conditions apply. You can find the Guarantee Scheme on STO Garant's website ([www.stogarant.nl/en/downloads](http://www.stogarant.nl/en/downloads)).

If STO Garant's guarantee applies to your booking, you do not pay the booking sum to WSF but instead into the escrow account belonging to Stichting Deringelden Certo Escrow, a payment services provider registered with De Nederlandsche Bank (DNB) and the Dutch Authority for the Financial Markets (AFM). This trust account holds your payment in reserve until the voyage booked has come to an end. If services are not supplied (in full and/or on time) due to the financial insolvency of WSF, STO Garant implements the guarantee. The Guarantee Scheme details how you can make a claim under the guarantee in such cases.

## **Article 11 – Complaints**

11.1 Complaints concerning invoices shall be made within fourteen days of the invoice date.

11.2 The Customer and/or Guest shall communicate any complaints concerning the performance of the Agreement to the Supplier and/or the appropriate personnel present immediately (during the trip), in order to give the Supplier the opportunity to take measures aimed at correcting any situation that is the subject of a legitimate complaint.

## Article 12 – Cancellation

12.1 In the event of cancellation by the Customer, the following percentages shall be due:

Price for Ship:

after reservation: 15%

6-5 months prior to sailing: 20%

5-4 months prior to sailing: 30%

4-3 months prior to sailing: 40%

3-2 months prior to sailing: 50%

2 months - 31 days prior to sailing: 75%

30 days or less prior to sailing: 100%

Catering and other services:

after reservation: 15%

1 week up to sailing date: 100%

12.2 In the event of cancellation by the customer, an administrative costs fee of 25 Euro will apply.

12.3 Cancellation must be made by fax or e-mail, with receipt to be acknowledged and confirmed by Supplier, or by registered mail. The date of cancellation shall be the date of receipt by the Supplier.

12.4 If cancellation by the customer is due to the impossibility of the client for attending the voyage, then he/she will have the right to name another person who can attend the voyage on their place. The client should contact the Supplier for changes of this nature and will need to pay the appropriate fee for administrative costs deriving from it.

## Article 13 – Rescission

13.1 In the event the Customer is declared bankrupt, makes assets available to creditors,

submits a request for a moratorium on payments, has an attachment levied on all or part of his assets that is not lifted or placed in custodianship within ten days after the date of attachment; or

b. decides to proceed or proceeds with the cessation or transfer of all or a significant part of his business activities, including the contribution of his business activities to an existing or to-be-established company, or changes the objects of his business enterprise; or

c. fails in full or in part to fulfil any legal or contractual obligation vis-à-vis the Supplier, after having received written notice of default; or

d. fails to pay any invoiced amount or portion thereof within the time period provided therefore, the Customer shall by operation of law be deemed to be in default, and any remaining payments shall immediately fall due.

13.2 Under the circumstances set forth in the previous section, the Supplier shall be entitled, without giving rise to any liability in damages and without prejudice to his other rights, such as rights relating to overdue fines, interest, and the right to demand damages, and without giving notice of default or seeking judicial intervention:

a. to rescind the Agreement in whole or in part, by sending written notice to that effect to the Customer; and/or

b. to demand immediate payment of any sums due to the Supplier from the Customer; and/or

c. before performing the Agreement any further, to obtain from the Customer security for the (timely performance of his payment obligations.

13.3 In the event that the Supplier elects to rescind the Agreement, the Customer shall pay liquidated damages consisting of the Price, or the amount of actual damage, if this exceeds the Price.

## Article 14 – Force Majeure

14.1 In the event that the Supplier is prevented by force majeure or “unavoidable

and extraordinary circumstances” ’ means a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken. Significant risks to human health, such as the outbreak of a serious disease like the COVID-19 at the travel destination or its immediate vicinity usually qualify as such unavoidable and extraordinary circumstances, or any other circumstances of such a nature,

of a permanent or temporary nature from performing or continuing to perform his obligations under the Agreement, the Supplier shall be entitled, without giving rise to any liability in damages, by giving notice to that effect and without judicial intervention being required, to rescind the Agreement in whole or in part, without prejudice to the Supplier’s right to demand payment from the Customer for performance rendered prior to the commencement of the force majeure, or to suspend in whole or in part the performance or continued performance of the Agreement. The Supplier shall notify the Customer forthwith of any situation involving force majeure. In the event of suspension of performance, the Supplier shall retain the right to subsequently rescind the Agreement in whole or in part.

14.2. In case of cancelation of the travel due to the causes explained in art.13.1, the Supplier has the right to offer to the customer the possibility of postponing the voyage to a later point in time when the circumstances are adequate to perform the voyage by a credit note so-called ‘voucher’. The customer

should have the freedom to accept the voucher or ask for a refund.

### **Article 15 – Applicable law**

15.1 Both the Agreement and these general conditions shall be governed by Dutch law.

15.2 Any dispute shall be submitted to the competent court in the district in which the Supplier has his place of business. In the event that the Customer is a Consumer, he shall be entitled, within one month, to designate a different court.

### **Article 16 – Guided Youngsters Programs**

16.1 Mentors on International Exchanges and other Sail Training Programs organized by WSF are guiding like good parents would do. WSF is not responsible for trainee behavior whether the trainees are adults or minors. The mentors follow the guidelines listed in this article. Trainees will be instructed on arrival onboard.

16.2 Unsupervised shore leave will always be done in groups of at least three trainees. The captain or the mentors will set hours of shore leave depending on the circumstances. For minor trainees return on board no later than 24.00 hours (unless supervised by the mentor or crew).

16.3 Drugs are prohibited on board of all the vessels and during all programs.

16.4 Alcohol while at sea is prohibited and under supervision of the captain and crew. Alcohol use in port and during shore leave according to the local laws and regulations.

16.5 Trainees breaking these rules might be sent home on captain’s decision.

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