

# GENERAL TERMS AND CONDITIONS FOR PARTNERSHIPS IN FISHING

## Non-binding translation into the English language of the original in the Dutch language

### Article 1 Scope

- 1.1 Definitions used in these terms and conditions:
  - 1.1.1 *GT&CPF*, the present *General Terms and Conditions for Partnerships in Fishing*;
  - 1.1.2 *crew*, crew as defined in article 1(1)(k) of the Dutch *Wet zeevarenden* (“Seafarers’ Act”). Crew are also party to the partnership agreement;
  - 1.1.3 *owner*, the natural person or legal entity that is the owner or lessee of a sea fishing vessel and has fishing rights to pursue sea fishing with said vessel;
  - 1.1.4 *partner*, one of the partners to the partnership agreement;
  - 1.1.5 *partnership agreement*, a written partnership agreement for share fishermen as referred to in Book 7, Title 10, Section 12B of the Dutch *Burgerlijk Wetboek* (“Civil Code”);
  - 1.1.6 *relief*, a natural person who temporarily replaces a crew member who is also party to the partnership agreement;
  - 1.1.7 *skipper*, the skipper as referred to in article 1(*al*), of the Seafarers’ Act;
  - 1.1.8 *SFSF*, *Sociaal Fonds voor de Maatschapvisserij* (“Social Fund for Share Fishermen”); and
  - 1.1.9 *fishing rights*, all rights, permits and days at sea that make it possible to fish at sea lawfully.
- 1.2 Together with the partnership agreement, these general terms and conditions (also referred to below as ‘T&CSF’) govern the rights and obligations between the partners.
- 1.3 The partnership is the ship operator as defined in article 1(1)(*l*) of the Seafarers’ Act.

### Article 2 Parties

- 2.1 The parties to the partnership agreement for share fishermen are (a) the owner and (b) the members of the crew. The owner may be a partner in two capacities: as owner and as member of the crew, if he is a natural person.
- 2.2 The owner is responsible for the administrative management of the partnership in the sense of Article 1673 of Book 7A of the Dutch Civil Code, except where the partnership agreement specifies that a third party is responsible for the same.

### Article 3 Contribution and risk

- 3.1 The owner undertakes to make the fishing vessel referred to in the partnership agreement ready to go to sea and suitable for immediate use for sea fishing by the partnership at its own expense, including all equipment and crew accommodation on board, plus all fishing rights granted and, to that end, to keep said vessel in a seaworthy condition, ready for use at all times in accordance with the applicable statutory provisions, in compliance with the terms of articles 4 and 5. The risk in relation to the use of the fishing vessel with equipment contributed to the partnership shall be borne entirely by the owner.
- 3.2 The owner is not required to provide any form of compensation if the fishing vessel is not ready to go to sea or not suitable for sea fishing due to unforeseen circumstances.
- 3.3 Where the partnership makes advance payments to the crew, such monies must be off-set against each individual's share in the partnership's profit or loss.
- 3.4 Should the partnership be unable to make full use of the contributed fishing rights in any year, the remainder of the fishing rights shall revert to the owner.

Where the owner decides to lease extra fishing rights at the request of the partnership, the charge paid for the lease shall be met by the partnership. Where the partnership is unable to make full use of the leased fishing rights the owner shall rent them out, where possible, on behalf of the partnership.

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- 3.5 The crew members shall contribute their work, industry and know-how to the partnership and shall, at all times, be in possession of valid certificates of competency, and other certification and documentation as required under the terms of the Seafarers' Act and other legislation.

### Article 4 Maintenance and repair

- 4.1 Maintenance and repair of the fishing vessel and gear contributed by the owner shall be performed at the expense of the owner. The partners, other than the owner, may only be deployed to do this on the basis of a separate agreement to provide services. Small, day-to-day repairs and maintenance of the vessel, its engine, gear, nets etc., and any small day-to-day paintwork are considered an element of sea fishing by the partnership and will be carried out by the crew, even at the weekend, where necessary. The materials required for the repair work, maintenance and paintwork referred to here, shall be purchased in each case at the expense of the owner.

### Article 5 Replacement of the fishing vessel

- 5.1 The owner shall make any decisions relating to replacement of the fishing vessel contributed to the partnership, on condition that the replacement vessel complies with article 3, sub-section 1.

### Article 6 Division of labour

- 6.1 The skipper shall fulfil the duties and bear the responsibility placed on him by the law.
- 6.2 Until stated otherwise, the partnership delegates the following duties to the skipper: determining the places, dates and times of sailing and fishing, and the dates, times and manner in which the catches are to be sold or offered for sale, and the ports at which this is to happen.
- 6.3 With a view to its statutory duties and responsibilities, the partnership shall delegate day-to-day management of the work to the skipper, who shall act as first among equals. The skipper shall adhere to all instructions lawfully given to him by the partnership in carrying out his duties.
- 6.4 The skipper shall hand over his duties and responsibilities in any event to the deputy skipper if he can no longer fulfil his duties or bear his responsibilities as he is either leaving the vessel or has become incapable of fulfilling the role of skipper.

### Article 7 Relief crew member

- 7.1 Any crew member may be temporarily replaced by a sufficiently-qualified relief crew member. In consultation with the crew, the skipper shall assess whether the envisaged relief crew member is sufficiently qualified. Where a member of the crew is unable to contribute his work, industry and know-how for a specific period of time and he has not nominated an accepted relief crew member in good time, the skipper may, with the consent of the other partners, admit one or more sufficiently-qualified relief crew members to the partnership for the period in question. Under such circumstances the other partners shall not unreasonably withhold consent, taking into account the skipper's responsibility under the terms of article 4(5) of the Seafarers' Act, which states that the crew of the fishing vessel must, at all times, be of sufficient strength to carry out work on board.
- 7.2 The relief crew member's legal status in relation to the partnership will be governed by the supplement to the partnership agreement for share fishermen that he signs.
- 7.3 The supplement to the partnership agreement for share fishermen shall be signed by the relief crew member and, on behalf of the partnership, by the owner or the skipper.
- 7.4 The supplement to the partnership agreement for share fishermen shall specify the relief crew member's share of the profit or loss of the partnership.
- 7.5 During the time in which the partner is replaced by the relief crew member, the partner is no longer entitled to his share in the profit or loss of the partnership. Any discrepancy between the partner's share and that of the relief crew member will revert to the other crew members in the proportion agreed for that purpose, taking into account the processing of the said discrepancy.

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## Article 8 Temporary enlargement of the partnership

- 8.1 Under the terms of article 4(5), of the Seafarers' Act the skipper may, with the consent of the other partners, allow one or more sufficiently-qualified fishermen to join the partnership, in which case the terms set out in the present GT&CPF under 7.1 shall apply by analogy. On behalf of the partnership, the skipper shall sign the written supplement to the partnership agreement drawn up for that purpose, which shall also be signed by the temporary crew members.
- 8.2 The legal status of the temporary crew member during his period in the partnership in relation to the other members of the partnership shall be governed by the terms of the partnership agreement, the T&CSF and the terms of the supplement to the partnership agreement.
- 8.3 The supplement to the partnership agreement shall specify the share in the profit or loss of the partnership to which the temporary crew member is entitled during the period that he is part of the partnership. This share shall be deducted in proportion to the share of the other crew members in any profits or losses.

## Article 9 Hours of work and rest for fishermen aged 18 years and over

- 9.1 Without prejudice to section 6A of the *Arbeidstijdenbesluit vervoer* ("Working Hours Decree for the Transport sector"), the hours of rest for crew members aged 18 years and over on board a fishing vessel that is at sea longer than three consecutive days shall be at least:
- 9.1.1 ten hours in each period of 24 hours; and
- 9.1.2 77 hours in each period of seven days.
- 9.2 The skipper is responsible for properly logging the hours of rest taken by himself and the other crew members.

## Article 10 Hours of work and rest for fishermen aged 16 or 17 years

- 10.1 This article applies without prejudice to section 6A of the Working Hours Decree for the Transport sector.
- 10.2 A crew member aged 16 or 17 years:
- 10.2.1 shall work for at most eight hours in each period of 24 hours;
- 10.2.2 shall have at least 9 consecutive hours of rest in each period of 24 consecutive hours, including the period from midnight (00.00) to 05.00;
- 10.2.3 shall perform at most 40 hours' work in each period of seven days;
- 10.2.4 shall have at least 36 hours of uninterrupted rest in each consecutive period of seven times 24 hours; and
- 10.2.5 shall not, in principle, perform any work on Sundays.
- 10.3 The skipper shall arrange the work in such a way that 16 and 17 year-olds have a break of at least 30 minutes, uninterrupted where possible, where the daily working time exceeds 4.5 hours.
- 10.4 Contrary to the terms of 10.2, preamble and operative parts 10.2.1 and 10.2.2, 16 and 17 year-olds:
- 10.4.1 shall perform at most 12 hours' work in each consecutive period of 24 hours where they are actually timetabled for watch duty;
- 10.4.2 shall perform work between the hours of midnight (00.00) and 05.00, if this is required as part of their training.

## Article 11 Workplace health and safety

- 11.1 The partnership has a workplace health and safety policy that complies with the Dutch *Arbeidsomstandighedenwet* ("Occupational Safety and Health Act") and other legislation derived from the same.

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- 11.2 The skipper is responsible for the safety of the crew and any other people on board and for operating the vessel safely including, but not limited to, the following:
- 11.2.1 providing supervision to ensure that the partners can perform their work under the best possible conditions for their health and safety;
  - 11.2.2 managing the partners in such a way that their health and safety is respected, including the prevention of fatigue;
  - 11.2.3 providing awareness training courses on board in relation to workplace health and safety; and
  - 11.2.4 ensuring that the standards for safe navigation, watch shifts and general good seamanship are observed.
- 11.3 The partnership may not prevent the skipper from making decisions that, in the professional opinion of the skipper, are necessary for the safety of the vessel, safe navigation and the safe operations, or the safety of the partners on board.
- 11.4 The crew shall comply with all lawful orders given by the skipper and with all applicable legislation in the field of workplace health and safety.

### Article 12 Social Fund for Share Fishermen

- 12.1 As of the day on which the partnership agreement and/or the supplement to the partnership agreement comes into force, the partnership shall register all crew members with the Social Fund for Share Fishermen and keep them registered as such for the duration of the agreement, so that they are covered for the financial consequences of incapacity for work, and to comply with all obligations implied by the articles of association and rules and regulations of the SFSF promptly (either directly or indirectly).
- 12.2 The partnership shall deduct the insurance premiums payable to the SFSF from each individual's share in the profit or loss of the partnership, and shall pay these insurance premiums to the SFSF within the term specified in the relevant invoice from the SFSF.
- 12.3 Where the partnership receives monies from the SFSF for an insured individual, the partnership shall pay the same to the insured individual in question in the next settlement.
- 12.4 The partnership shall pay any contribution refunds it receives from the SFSF to the entitled individuals in the next settlement.
- 12.5 The crew members undertake to abide by the terms of the dispute resolution mechanism outlined in article 14 of the articles of association of the SFSF.

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## Article 13 Repatriation

- 13.1 As far as the partnership is concerned, a crew member has the right to rapid, appropriate repatriation, where possible by aircraft, to a place nominated by him in the event of:
- 13.1.1 dissolution of the partnership;
  - 13.1.2 illness that demands repatriation;
  - 13.1.3 recuperation, where he has been left to receive medical attention outside the country in which he habitually resides, or the place where the partnership agreement (or supplement) was signed;
  - 13.1.4 shipwreck;
  - 13.1.5 the partnership not being able to fulfil its statutory or contractual obligations due to insolvency, sale of the fishing vessel, change to the registration of the fishing vessel or for any other similar reason;
  - 13.1.6 the fishing vessel setting course for a war zone, where the crew member in question refuses to go to that area, or
  - 13.1.7 expiry of a period of time of at most twelve months in which the crew member in question has been working on board.
- 13.2 In the event of repatriation, the partnership shall reimburse the cost of the following:
- 13.2.1 the onward journey to the final destination;
  - 13.2.2 accommodation and food from the day on which the crew member leaves the fishing vessel until he reaches his final destination;
  - 13.2.3 his share in the profit or loss of the partnership from the day on which the crew member left the fishing vessel until he reaches his final destination, less any payments to the crew member in question under any insurance policy covering the financial consequences of incapacity for work;
  - 13.2.4 medical treatment, where necessary, until the crew member in question's health permits travel to his final destination.
- 13.3 In this context, final destination means:
- 13.3.1 the place where the partnership agreement (or supplement) was signed;
  - 13.3.2 the country in which the crew member normally resides, or
  - 13.3.3 the place defined as such in the partnership agreement (or supplement).
- 13.4 The right referred to in 13.1 shall cease to apply if the crew member fails to make his wish for repatriation known to the skipper within two days of one of the circumstances referred to in 13.1, operative parts 13.1.1 and 13.1.3 - 13.1.7 inclusive, arising.
- 13.5 A copy of this article, sub-sections 13.1 - 13.4 inclusive, is available to the crew on board in both Dutch and English.

## Article 14 Calculation of profit and loss

- 14.1 The gross profit and loss of the partnership includes all revenue generated by the partnership.
- 14.2 The net profit and loss of the partnership is formed by the gross profit and loss of the partnership, less the expenditure involved in the business of sea fishing. Such expenditure may include the following:
- 14.2.1 costs for lubricants and oil, gas oil and greases;
  - 14.2.2 all costs involved in storing the catch properly, including the costs of refrigeration;
  - 14.2.3 costs of hiring navigation/position location equipment;
  - 14.2.4 port and lock charges;
  - 14.2.5 the costs of feeding all contractors, where food is eaten on board during the voyage;
  - 14.2.6 costs for fresh water;

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- 14.2.7* catch sorting costs;
  - 14.2.8* freight costs, less any payments received;
  - 14.2.9* any criminal, administrative or private-law penalties incurred in relation to fishing at sea;
  - 14.2.10* fish market costs;
  - 14.2.11* leasing of fishing rights;
  - 14.2.12* travel costs from the homes of crew members to the vessel, where travel is arranged collectively;
  - 14.2.13* unloading costs;
  - 14.2.14* customs area charges and ancillary costs;
  - 14.2.15* 'mending money' for nets repaired on shore;
  - 14.2.16* official charges relating to the catch, including charges from public and private bodies relating to fisheries;
  - 14.2.17* costs arising from keeping records for the partnership, including costs relating to preparing the financial statements;
  - 14.2.18* the costs associated with implementation of workplace health and safety legislation;
  - 14.2.19* the costs of hiring third-party workers;
  - 14.2.20* anything else specifically stated in addition to the above in the partnership agreement.
- 14.3 The owner is responsible for proper documentation of the costs by means of invoices, expense claims, tax assessments, fines etc. and for proper documentation of payment of the same by means of bank statements and receipts.

### Article 15 Share in profit and loss

- 15.1 The partnership agreement determines each person's share in the profit or loss of the partnership.
- 15.2 Without prejudice to the terms of 13.2, operative part *13.2.3*, a crew member who is unable to perform the work that he has contributed to the partnership shall not be able to claim a share in the profit or loss of the partnership for the duration of his absence from the vessel.
- 15.3 For the purposes of 15.2, a crew member will in any event be deemed to be unable to perform the work in question where he:
- 15.3.1* is not in possession of the required documentation referred to in 3.5;
  - 15.3.2* is not able to perform the work that he is to contribute to the partnership at the start of a voyage due to illness, a disability or personal injury, or due to the influence of medicine, alcohol or drugs.
- 15.4 Contrary to the terms of 15.2, a crew member shall retain his share in the profit or loss of the partnership for as long as he stays on board during a voyage, where he is unable to perform the work that he has contributed to the partnership.
- 15.5 Article 7, sub-section 7.5, applies by analogy.

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## Article 16 Settlement

- 16.1 The partnership agreement determines the way in which and the terms within which settlement of profit and loss must be made.
- 16.2 Under the terms of section 1672(2) of Book 7A of the Dutch Civil Code, the partnership agreement may stipulate that a loss may solely be borne by the owner.

## Article 17 Accounting

- 17.1 The owner shall keep reliable records and accounts for the partnership and shall submit these to the scrutiny of each partner within a period of time to be determined by each partner.
- 17.2 Within three months of dissolution of the partnership or within three months of the end of the calendar year the owner shall submit a balance sheet, and a profit and loss account to the other partners.

## Article 18 Complaints procedure

- 18.1 Where a crew member is of the opinion that the partnership is failing to comply with terms of the partnership agreement (or the supplement), he may submit a complaint.
- 18.2 There shall be no victimisation of complainants.
- 18.3 For the purposes of this article the hierarchy, in ascending order, is as follows:
- 18.3.1 the confidential counsellor nominated by the partnership;
  - 18.3.2 the skipper; and
  - 18.3.3 the owner.
- 18.4 Complaints shall, in principle, be submitted to the lowest level of the hierarchy. If the complaint is not dealt with to the satisfaction of both parties, it shall be referred for a decision to the following hierarchical level.
- 18.5 The decision time for each of the first two hierarchical levels is five calendar days.
- 18.6 The person making the complaint may immediately submit his complaint in writing to the skipper or to the owner.
- 18.7 The skipper shall deal with any complaints presented to him in person. In dealing with complaints he may call on the assistance of the owner.
- 18.8 Where the skipper is unable to make a decision on the complaint, the person making the complaint has ten calendar days to submit the complaint, via the skipper, to the owner. The person making the complaint may also submit the complaint to the owner himself, where the complaint relates to the skipper.
- 18.9 The owner and the person making the complaint have twenty calendar days to find a solution to the complaint. If it is not possible to resolve the issue, either party shall have another twenty days to submit the issue to the *Inspectie Leefomgeving en Transport* (“Human Environment and Transport Inspection”) of the Ministry of Infrastructure and Water Management or the appropriate agency of the flag state of the fishing vessel.
- 18.10 The person making the complaint has the right to assistance or representation for the duration of the procedure of settling the complaint.
- 18.11 The decision on the complaint shall be presented in writing, with a copy going to the person making the complaint.

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### Article 19 Disputes

- 19.1 The parties shall explicitly consider mediation in the event of any disputes.
- 19.2 Where the option of mediation is rejected or where mediation fails to provide a solution, the parties shall explicitly consider having their disputes - whether about a point of law or fact - in relation to the interpretation of stipulations in the GT&CPF and the partnership agreement entered into by the parties arbitrated by means of a method as referred to in section 96 of the Dutch Code of Civil Procedure.
- 19.3 The sub-sections above shall not, in any way, restrict the rights of either party to use normal legal channels.
- 19.4 Disputes shall be submitted by the claimant(s) within one month of the definitive position of the defendant(s) coming to the knowledge of the claimant(s). If this term is not adhered to, the claims at law instituted by the claimant(s) shall be deemed inadmissible, regardless of the form of dispute resolution. If the claimant(s) nevertheless takes the initiative to use the option of mediation within this time-frame of one month, the one-month limit will not commence until it has been conclusively established that mediation can either not go ahead or will not lead to resolution of the situation.

### Article 20 Dissolution and reorganisation of the partnership

- 20.1 For the purposes of further specifying the ways in which the partnership can be dissolved in accordance with section 1683 of Book 7A of the Dutch Civil Code, the following applies:
- 20.1.1 Where the partnership is entered into for a fixed term, it shall be automatically dissolved in the first port at which the vessel calls once said fixed term has expired.
- 20.1.2 Where a partnership is entered into for a fixed term, it may be dissolved prematurely if one or more one or more partners gives notice in writing to that effect to the other partner(s). The period of notice is four weeks. Under such circumstances, the partnership shall be dissolved in the first port at which the vessel calls once the period of notice has expired.
- 20.1.3 Where the partnership is entered into permanently, it may be dissolved if one or more of the partners gives notice in writing to that effect to the other partner(s). The notice period is four weeks. Under such circumstances, the partnership shall be dissolved in the first port at which the vessel calls once the notice period has expired.
- 20.2 Where the partnership is dissolved by one of the partners other than the owner, the partnership will be reorganised immediately after its dissolution under the same conditions by the remaining partners. In any case, where this is necessary under crewing and rest-time legislation, the reorganised partnership shall be enlarged with the addition of a sufficiently-qualified partner at the earliest convenience. In the meantime, the remaining share in the profit or loss of the partnership shall be distributed among the remaining crew members in proportion to each person's share in the same.
- 20.3 If, in the event of notice being given, the notice period is ignored or not complied with in full, dissolution of the partnership will, nonetheless, be valid. Under such circumstances, the partner giving notice of his wish to leave the partnership must compensate the other partners. The amount to be paid in compensation per week shall be set out in the partnership agreement. The compensation shall correspond to the portion of the notice period that was not observed. Where the party giving notice is the owner, he shall pay the compensation immediately to each of the other partners. Where the partner giving notice is not the owner, the partner giving notice shall pay compensation to all partners, other than the owner, after which they shall distribute the amount among themselves in proportion to each individual's share in the profit or loss of the partnership. The compensation will be deemed to have been accepted as the agreed, fixed, final amount of compensation by the partners who are entitled to it.