



**Port of  
Antwerp  
Bruges**

# GENERAL TERMS AND CONDITIONS FOR CONCESSIONS IN THE ANTWERP PORT AREA

Port of Antwerp-Bruges  
Effective date: July, 1<sup>st</sup> 2011

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## Part I:

### *1. Definitions*

§1 Port area: any sea port with appurtenances in the Flemish Region which forms a spatial, economic or functional entity. (Port Decree of 2 March 1999; Art. 2(4)) The land marked as sea port area in the regional plans or in regional spatial development plans applies to the sea port. (Port Decree of 2 March 1999; Art. 3(1))

§2 Antwerp port area: the docks and appurtenances located on the right and the left bank of the Zeeschelde near the territory of the city of Antwerp, the municipality of Beveren and the municipality of Zwijndrecht. (Port Decree of 2 March 1999; Art. 2(5))

§3 Port of Antwerp-Bruges: the owner and/or caretaker of the public and private domain in the Antwerp port area and the authority that grants concessions in this port area.

§4 Domain concession: an administrative contract in which the Port of Antwerp-Bruges grants a legal entity or individual permission to use part of its public or private domain for private use; the permission is essentially temporary, precarious and assumes payment of a fee. (hereinafter referred to as concession)

§5 ISPS concession: concession for a road, the public character of which was withdrawn as a result of a decision by the municipal executive, within the context of complying with ISPS guidelines.

§6 Concessionaire: the legal entity or individual for which a concession is granted to develop activities that have a direct or indirect port-related character.

§7 Concession period: period during which a legal entity or individual is granted permission to use part of the public or private domain in the port area, which is owned or taken care of by the Port of Antwerp-Bruges, for private use.

§8 Concession fee: fee that is charged to a Concessionaire for the private use of part of the public or private domain in the port area, which is owned or taken care of by the Port of Antwerp-Bruges.

§9 Port appurtenance: part of the public or private domain that is provided as part of a concession; this can be a quay, a shelter, a warehouse, a building or part of it, or grounds at the rear.

§10 Quay: a zone located between the water (the quay wall) and the first public road, public railway or set of tracks, concession located at the rear or private third-party land, road provided as part of a concession under ISPS conditions located at the rear or own concession located at the rear with a non-water-related concession objective located behind the water, excluding the specific cases in which the land is used for industrial purposes and excluding the land that is exploited separately from, materially separated from and without a direct operational link to the exploitation of the mooring place.

§11 Land or grounds at the rear: land that is not a quay.

§12 Shelter: an open, closed or partially closed storage shed currently owned by Port of Antwerp-Bruges, which is situated within the aforementioned quay as defined in §10.

§13 Warehouse: an open, closed or partially closed storage shed currently owned by Port of Antwerp-Bruges, which is situated on the land at the rear as defined in §11.

§14 Quay lighting: the lighting that illuminates a quay in such a way that a sufficient light level is provided to perform work both during the day and at night.

§15 Security lighting: lighting that is placed above gates and under porches of shelters and warehouses to safeguard the security of the concession.

§16 Life-saving equipment: a lifebuoy (either stored in a cabinet and/or mounted to a shelter, crane, ...), a rescue pole (aluminium/wood) and the equipment used to mount both lifebuoy and rescue pole.

§17 Industrial waste: in accordance with Article 110 of the Harbour Police Regulations, industrial waste is defined as:

- all waste that causes the port appurtenances to become polluted, either by loading or unloading of goods, or by delivery or shipping of goods, or by any other use that is made of quays, grounds or buildings;
- all domestic waste produced by the sea vessels to be unloaded and/or loaded, of inland shipping vessels that supply and/or ship merchandise, as well as facilities of the businesses, public authorities and services located in the port.

## **2. Scope**

These 'General Terms and Conditions for Concessions' apply to all port appurtenances provided by the Port of Antwerp-Bruges as part of a concession within the Antwerp port area, as described in Part I, 1. Definitions §2 of these General Terms and Conditions for Concessions.

Any regulations that apply to specific port appurtenances, as well as the special conditions of the concession agreement and current legislation shall always take precedence over these 'General Terms and Conditions for Concessions in the Antwerp Port Area'.

## **Part II: General Terms and Conditions applicable to all concessions**

### ***Article 1: Provision of the concession***

1.1. The correct surface area of the port appurtenance provided as part of the concession shall be determined by measurement by the Port of Antwerp-Bruges as soon as possible after the start of the concession (agreement). If the Concessionaire does not agree with the results of the

measurement, it may contentiously demand a new measurement, to be performed by the Port of Antwerp-Bruges. The results of this measurement shall be binding to both parties.

Any adjustments to the concession surface area shall become valid in the first month following the measurement. As long as the measurement has not been performed, the Port of Antwerp-Bruges shall use the unilaterally estimated measurement in approximate dimensions to determine the concession fee payable.

#### 1.2. The Concessionaire explicitly acknowledges:

- a. that Port of Antwerp-Bruges is merely acting in its capacity of owner or caretaker of the port appurtenances included in the concession and does not stipulate, promise or guarantee anything relating to access, police, fire brigade, gas, electricity and water distribution, drainage of rainwater and wastewater, etc.;
- b. that Port of Antwerp-Bruges makes these port appurtenances available in their current condition and does not provide any guarantee with regard to the condition of foundations, sewers, underground pipelines, materials or waterways that may be present there, nor with regard to the way in which the soil of the port appurtenances included in the concession, or of the adjacent or neighbouring port appurtenances and the facilities and structures present there or to be constructed later, will behave in the future; the Concessionaire accepts the nature and location of the port appurtenances included in the concession without reservation and for the entire concession period, including any consequences that may arise from them; the Concessionaire also accepts any consequences of the work performed by it;
- c. that it shall never be able to make any objection towards Port of Antwerp-Bruges, excluding severe misconduct, gross negligence or intent on the part of Port of Antwerp-Bruges, against the use which could be made with regard to the land, quay areas, facilities or works, adjacent to or located in the vicinity of the port appurtenances provided with the concession, nor against the construction of facilities, classified as hazardous, objectionable or unhealthy, even if these are adjacent to the facilities of the Concessionaire;
- d. that this concession does not grant it a monopoly, which means that Port of Antwerp-Bruges shall be free to establish or operate similar companies, or allow any third party to do so, even in the direct vicinity of the Concessionaire's facilities.

1.3. Any find of any importance for art, archaeology, natural history, numismatics or science, as well as any rare or valuable objects found during digging or demolition work shall be reported to the Port of Antwerp-Bruges and the Flemish Region (Antwerp spatial planning department) within three days. The finds involved remain the property of the land owner, namely the Port of Antwerp-Bruges. The Concessionaire undertakes to keep the archaeological finds discovered and their place of discovery up to the tenth day after the aforementioned report in unaltered condition, to protect them from damage or vandalism and to make them accessible for the competent public services, without this resulting in any claim for any compensation.

## *Article 2: Use of the concession*

### 2.1. General Terms and Conditions for the performance of activities

A port appurtenance is assigned to a Concessionaire for the purpose of performing activities as described in the Special Conditions for the Concession Agreement. In view of the fact that the purpose of the concession is an essential criterion in the assignment policy of the Port of Antwerp-Bruges, the Concessionaire is forbidden to change any part of this purpose without prior written permission from the Port of Antwerp-Bruges. Any change to the purpose of the concession without prior permission by the Port of Antwerp-Bruges may result in termination of the agreement in accordance with Article 5 of this agreement.

If any situation or incident occurs within its business, which may pose a threat to the environment or the safety or health of people, both during normal operation and in the event of unforeseen or abnormal circumstances such as an accident, fire, explosion, etc., the Concessionaire shall immediately notify the emergency services, regardless of its obligation to fight the hazard immediately with its own equipment and limit the consequences thereof. At the same time the competent Dock Superintendent-Supervisor should also be informed of this (tel. 03/205.67.33).

The Concessionaire shall comply with the provisions of the Harbour Police Regulations, especially articles 110 and 115 relating to keeping the concession clean, as well as with regard to the provision of the facilities required to dump industrial waste. If the Port of Antwerp-Bruges establishes that these provisions are not being observed, it may take action against this in accordance with Article 117 of the Harbour Police Regulations. If the Concessionaire fails to comply with the obligation to keep the concession clean, the services of the Port of Antwerp-Bruges may perform this maintenance work and recover the costs for this from the Concessionaire.

The Concessionaire shall maintain the facilities with appurtenances and equipment to keep them in good condition.

The Concessionaire shall at all times, both during the day and at night, grant the representatives of the public services and of public utility services access to its facilities for the performance of their service provision. The services of the Port of Antwerp-Bruges involved and the Concessionaire shall make clear arrangements about how the access to the concessions can be guaranteed, both during the day and at night.

The Concessionaire provides, in accordance with section I.4.1. of the general regulation concerning electricity of the technical regulations on electricity of the Flemish Region (most recent version, at present December 4<sup>th</sup>, 2009), a permanent and immediate (24h/24h) access for the local competent distributionnet-caretaker to the installations of the local competent distributionnetcaretaker and/or distributionnet-user. This access will be granted after a simple oral request and legitimation. The Concessionaire will notify to the local competent distributionnet-caretaker and her workingcompany the contacts of a permanent attainable representative.

The Concessionaire shall place the dock number assigned to it on its concession in a location that is clearly visible from the public road. All work that Port of Antwerp-Bruges may have to perform based on or as a result of this concession shall be reimbursed by the Concessionaire to Port of Antwerp-Bruges.

In consultation with Infrabel and the railway operators present, the Concessionaire shall at all times make the arrangements necessary to ensure safe handling of traffic at the terminal. In all crossable locations of the track located within the boundaries of its concession or the private roads provided giving access to its concession, the Concessionaire shall paint a continuous yellow line of 20 cm wide along the length of the crossable zone, at a distance of 1.6 metres (outside of rail to centre line) on both sides of the rails. The zone between the continuous yellow lines, which has a total width of 4.7 metres (centre to centre), shall be marked with crossing yellow lines of 15 cm wide at an angle of 45° to the axis of the track and with a grid size of 1.0 m. Any Concessionaire that discovers decommissioned Infrabel tracks during quay renovation (such as the renewal of paving) or the building of structures (such as sheds, transshipment installations, etc.), undertakes to dismantle these and make them available to Infrabel in a location agreed in advance, unless agreed otherwise with Infrabel (e.g. payment of the residual value).

The modification or dismantling of public tracks, located either inside or outside of the concession boundaries, requires prior decommissioning and shall always be the subject of a prior written permission request addressed to the Port of Antwerp-Bruges. In this case the Port of Antwerp-Bruges will make the necessary arrangements with Infrabel.

Unless with prior written permission from the Port of Antwerp-Bruges, the Concessionaire or Subconcessionaire (in so far as this subconcession has been approved by the Port of Antwerp-Bruges) shall not put up any inscriptions, signs or indications of its own company name or have them put up wherever they are visible from any location in the open air.

Signs or indications other than those matching the name and the brand of the Concessionaire or the Subconcessionaire (in so far as this subconcession has been approved by the Port of Antwerp-Bruges), provided that the provisions of the previous paragraph are met, shall be subject to the applicable rate regulations relating to advertising in the port area. Putting up these signs shall only be possible after receiving prior written permission from the Port of Antwerp-Bruges.

With regard to work performed by or on behalf of the Port of Antwerp-Bruges or any other authority, the Concessionaire undertakes to pay for any damage suffered, costs incurred and/or loss of income that may directly and/or indirectly arise from this, except if this is the result of severe misconduct, gross negligence or intent on the part of Port of Antwerp-Bruges.

## 2.2. Permits and regulations

The Concessionaire shall behave in accordance with current and future legislation, decisions, decrees, rules and regulations, among other things, relating to the construction, erection, use and exploitation of grounds and structures, facilities and their appurtenances and equipment.

The Concessionaire shall construct the structures it wishes to erect according to plans, which should also be approved in advance by the Port of Antwerp-Bruges, acting as owner or caretaker of the port appurtenances provided as part of the concession, taking into account the conditions that Port of Antwerp-Bruges attaches to this. The Port of Antwerp-Bruges may have the work halted if it were to be performed without its prior written permission or not in strict accordance with the aforementioned conditions and plans. After performing the work, a plan shall be submitted to the Port of Antwerp-Bruges with the correct details (location, dimensions, gradients, foundations) of the work performed, including the sewerage system and road construction work. (where possible plan in digital format; currently .DXF or .DWG file)

Without prejudice to the locally applicable legal regulations, the Concessionaire may only place an easily removable road surface above underground mains pipes and cables (gas, electricity, water mains, etc.); the Concessionaire shall therefore also consult with the Port of Antwerp-Bruges in advance about the existence and location of such pipes and cables. The above obligations also apply when developing entrance and exit driveways. However, this provision does not apply to pipes and cables for private use, which are located within the concession and which are owned by the Concessionaire, for which it can freely choose their covering.

The Concessionaire shall at all times be able to provide the necessary certificates, demonstrating that it has disposed of waste produced by demolition work on the structures present on its concession, for cleaning sewers, etc. in accordance with legal stipulations. Any surplus soil produced by digging work by the Concessionaire shall be removed in its care and at its expense according to the current regulations determined by rules, legislation and/or decrees and the additional instructions that the Port of Antwerp-Bruges may impose.

When handling rainwater and wastewater, and when pumping water out of the ground, the Concessionaire shall comply with the relevant legal regulations and additional instructions it will receive from the Port of Antwerp-Bruges.

In view of the fact that the Antwerp Port Area is located in a C class water purification zone and only has a rainwater drainage system (artificial system for gravitational draining of rainwater and purified effluent to the receiving waterway), the Concessionaire is obliged to purify all domestic and industrial water within the boundaries of the concession up to the level of the standards for discharging in surface water. This can be done individually or in collaboration with a third party.

All cars and lorries, as well as the goods belonging to the Concessionaire, its personnel, its suppliers and its customers must be placed and handled within the boundaries of the concession. For the development or modification of the concession, there must also be sufficient parking spaces for: o cars (personnel, visitors, suppliers), in so far as there are no public parking spaces available in the vicinity;



- o lorries being driven on behalf of suppliers and customers, taking into account the regular handling capacity and requirements of the terminal. The Concessionaire cannot be held responsible for nuisance outside of the concession caused by force majeure or a third party with which the Concessionaire does not have a contractual relation.

At its expense, the Concessionaire shall take all precautionary measures necessary to protect its facilities, as well as the area surrounding them from disaster, fire and environmental pollution in accordance with the regulations arising from rules, legislation and/or decrees; these precautionary measures shall be reported to the Port of Antwerp-Bruges by the Concessionaire in advance. After prior consultation with the Concessionaire, the Port of Antwerp-Bruges shall always be entitled to have these supplemented and/or changed at the Concessionaire's expense without prejudice to the relevant legal regulations and without this affecting the responsibility of the Port of Antwerp-Bruges.

The Concessionaire and/or party unloading the goods and equipment shall take any measures necessary to prevent that the goods can end up on the public road or in the quay water, for example, because of rain, storm, handling method, etc.

The Concessionaire shall take any measures necessary to comply with the regulations relating to maritime security and the security of port facilities, as described in Regulation 725/2004/EC, as well as those described by current and future legislation.

The Concessionaire shall, at the request of Port of Antwerp-Bruges, close off the area provided as part of the concession using a method that is acceptable to the Port of Antwerp-Bruges with a clearly marked entrance and exit driveway.

### 2.3. Efficient and effective use of space, operational efficiency and port involvement

The amended clauses shall be submitted to the interest groups before being added to the General Terms and Conditions for Concessions in the Antwerp Port Area. The Port of Antwerp-Bruges reserves the right to include provisions that relate to spatial performance in the special conditions of the concession agreement, whilst awaiting a blanket clause to be included in the General Terms and Conditions.

### 2.4. Transfer restrictions

The Concessionaire recognises that the Port of Antwerp-Bruges may include clauses relating to transfer restrictions in the special conditions of the concession agreement. The Concessionaire shall at least inform the Port of Antwerp-Bruges of any substantial changes to the shareholder structure of the Concessionaire affecting the control over the company.

## 2. 5. Environmental provisions

*In addition to the Soil Remediation Decree and the Flemish regulations for soil remediation, the following practical conditions relating to reporting, control and remediation of soil pollution of concession land in the port area are imposed.*

### 1. Transfer of land

#### Entering into a concession

The Port of Antwerp-Bruges provides the Concessionaire with the soil certificate containing the most recent soil information for the plot in question. This condition is the zero condition for the Concessionaire on the basis of which the pollution caused by it shall be determined at the end of the concession. If the soil certificate does not state any details about the soil condition, the background values shall be taken as the zero situation, unless the Concessionaire demonstrates otherwise on the basis of an initial soil survey declared to be compliant.

#### Terminating a concession (cancellation by the Concessionaire or end of period or termination in mutual consultation)

##### *a) The land is high-risk land as defined in the Soil Remediation Decree*

The Concessionaire has an initial soil survey performed at its expense and submits it to OVAM with a transfer report form. The Concessionaire delivers the soil certificate to the Port of Antwerp-Bruges.

If the soil certificate shows that no further measures are required, the concession can be terminated.

If further measures are required, it will only be possible to terminate the concession

- either when a descriptive soil survey has shown that no remediation is required and OVAM has declared this survey to be compliant;
- or when a soil remediation project has been declared compliant by OVAM, a unilateral remediation contract has been concluded and financial security has been provided by the transferring party and the Port of Antwerp-Bruges has given its explicit approval;
- or pursuant to a mutual agreement between the transferring party and the Port of Antwerp-Bruges.

*b) It is not high-risk land*

No soil survey is required. The Concessionaire delivers a recent original soil certificate for each plot recorded in the land register to the Port of Antwerp-Bruges to terminate the concession.

Termination of the concession by the Port Authority

*a) The land is high-risk land as defined in the Soil Remediation Decree*

At the expense and risk of the Concessionaire and reserving all rights, the Port of Antwerp-Bruges has an initial soil survey performed and takes further measures where required. All costs for the survey (initial and descriptive) and possible remediation are charged to the Concessionaire.

*b) It is not high-risk land*

No soil survey is required. The Port of Antwerp-Bruges applies for the soil certificate(s).

2. Soil remediation

- The Concessionaire that starts a soil remediation project submits the soil remediation project to the Port Authority before submitting it to OVAM. This is done in an information meeting in the presence of the soil remediation expert.
- A certificate of conformity from OVAM is not valid as approval from the Port of Antwerp-Bruges. For each type of remediation work, approval has to be requested from the Port of Antwerp-Bruges.
- In principle, the remediation objectives should at least be set to the level of the standards for free recycling of excavated soil.
- The Port of Antwerp-Bruges is kept up to date about the progress of the remediation work and its representatives are given the opportunity to follow up the work from close-up by means of yard meetings and site visits.

3. Soil certificate

The soil certificate is requested by the Port of Antwerp-Bruges. The costs for requesting the soil certificate are charged to the Concessionaire.

4. Exchange of information

A copy of each survey report or remediation project submitted to OVAM by the Concessionaire must be submitted to the Port of Antwerp-Bruges at the same time as it is submitted to OVAM. (Port of Antwerp-Bruges, Environmental Unit, Siberiastraat 20, Kaai 63, 2030 Antwerp, tel: 03/205.24.95, fax: 03/205.24.37)

## 2.6. Insurance obligation

Article 9 of the “Regulations for the use of the quays and shelters in the port area” or, depending on the situation, Article 9 of the “Regulations for the use of the land in the port area” applies to this concession, whereby it should be noted that, in addition to and without deviation from the clause relating to mutual waiving of recourse rights:

- a) the Concessionaire is obliged to insure all of the facilities, including appurtenances and equipment, constructed or to be constructed by it for their total value against the risk of fire, lightning, explosion, aircraft crashes and storm damage. This insurance must be taken out with an insurance company registered or represented in the EU, subject to the general terms and conditions of the Belgian fire insurance policy.

The above obligation is expanded to urban appurtenances provided as part of a concession if these were altered to such an extent by the Concessionaire or one of its legal predecessors that the difference with the structures of the Concessionaire itself is difficult to see and in so far as the Concessionaire itself is the owner of these alterations.

This insurance contract shall contain a clause waiving the right of recourse for the benefit of all possible lessees, sublessees and all other users, all neighbours, people responsible and guarantors, from the Port of Antwerp-Bruges and all other third parties, namely those that would have a responsibility arising from services and works. The insurance policies that are to be taken out from the date on which the construction work starts shall explicitly state that the Concessionaire acts both on behalf of the Port of Antwerp-Bruges and on its own behalf. The policies shall also provide that they can only expire or be terminated or their guarantee only suspended one month after the insurers have notified the Port of Antwerp-Bruges by means of a registered letter and that, if this is the case, the compensation to be paid pursuant to the policies shall be spent on the reconstruction, repair or replacement of the insured structures, or on new structures on the appurtenances provided under a concession to be approved by the Port of Antwerp-Bruges.

The Concessionaire is also obliged to have the necessary amendments made to the policies that are required as a result of the possible additional value of the installations, in accordance with the indexation clause specified by the Belgian Association of Assessors (abbreviated as BAA) and applied by the Committee of Belgian Insurers for the reviewing of insured sums for houses.

Should the Concessionaire fail to make the necessary amendments, it will nevertheless be obliged to spend at least the same amounts on the reconstruction, repair or

replacement of the facilities that would normally have been paid out, had it made the necessary amendments in time.

- b) the Concessionaire, as stipulated in Article 22 of the “Regulations for the use of the quays and the shelters in the port area” or, depending on the situation, Article 9 of the “Regulations for the use of the land in the port area”, is always obliged in the event of danger to take care of the removal, destruction and possibly rendering harmless of the goods laid down, within the period determined by the Port of Antwerp-Bruges.

In this case, the Concessionaire shall not be able to rely on the waiver of recourse rights provided in Article 9 of the aforementioned regulations, nor shall it be able to release itself from this obligation.

If the Concessionaire fails to comply with this obligation within the period set by the Port of Antwerp-Bruges or in the event of extreme urgency, the Port of Antwerp-Bruges may proceed ex officio and without notice of default to remove, destroy and possibly render harmless the goods laid down at the expense and risk of the Concessionaire.

The Concessionaire explicitly accepts that it waives the right to dispute the nature, scale or costs of the work performed ex officio. In this case, it shall release the Port of Antwerp-Bruges from any responsibility, both towards themselves and towards any third party, for the consequences of the decisions made or measures taken, orders issued and instructions given by the Port of Antwerp-Bruges and its appointees whilst performing the provisions of this clause; it shall also release the Port of Antwerp-Bruges and its appointees from any claim that may be lodged against it by any third party with regard to this.

- c) The Concessionaire shall indemnify the Port of Antwerp-Bruges and its appointee against any claim lodged against it by any third party, except claims that are irrefutably the result of severe misconduct, gross negligence or intent by the Port of Antwerp-Bruges, and shall include this in its Civil Liability policy.

## 2.7. Fees

A fee is payable by the Concessionaire, which is specified in the special conditions of the concession agreement.

The basic fee is determined on the basis of the following parameters: condition of soil, location of the site and activities that are performed on the site.

A substantiated review of this fee can always be submitted for approval to the management committee and the board of directors as a general measure and after prior discussion with the Consultation Board. This review shall be performed in a transparent manner as a function of the social objectives, among other things.

This fee must be paid into the account of the Port of Antwerp-Bruges in advance every quarter.

Invoices relating to the concession must be paid no later than on the due date stated. If payment is late, interest shall be payable by operation of law without notice of default. The interest is calculated based on the special statutory interest rate, as published in the Belgian Official Journal. The management committee establishes the actual performance conditions for the addition of interest if payment is late; limited deviations are possible from the strict and literal interpretation of the aforementioned rules on a substantiated basis. Any costs payable for the exchange of foreign currency into euro, as well as any other costs, are at the expense of the debtor.

In the event of disputes, only the Antwerp courts shall be competent. Only Belgian law applies.

As part of a search procedure, the Port of Antwerp-Bruges may decide to sell structures present on the site and owned by the Port of Antwerp-Bruges via auctions.

The Concessionaire shall also bear all stamp duty and duties considered equivalent to stamp duty, as well as all taxes and duties, regardless of their nature, established or to be established pursuant to tax legislation, decrees, decisions or regulations on the port appurtenances provided as part of the concession and the installations constructed on it or their proceeds, for the entire length of the concession, pro rata including all taxes and duties relating to the year in which this concession commenced up to the year in which it ends.

The Concessionaire shall therefore, at the first request of the Port of Antwerp-Bruges, repay all taxes and duties referred to above to it, including property tax, which is claimed by the tax authorities from the Port of Antwerp-Bruges in its capacity as owner of the port appurtenances. For this matter the Concessionaire explicitly recognises that this concession on part of the public domain of the Port of Antwerp-Bruges cannot be considered a lease and that, as a result, the obligation for repayment also applies to the taxes and duties for which the legal tax regulations stipulate that recovery from the lessee is prohibited. Should there be grounds to dispute the assessment for the taxes and duties referred to in this article, the Concessionaire shall report this to the Port of Antwerp-Bruges. However, the Port of Antwerp-Bruges shall consult the Concessionaire before making a decision with regard to this. The comments from the Concessionaire, however, are not binding for the Port of Antwerp-Bruges and the Concessionaire shall accept the decisions from the Port of Antwerp-Bruges with regard to this and shall refrain from any recourse, regardless of its nature.

The stamp duty for this concession agreement is at the expense of the Concessionaire.

As a party liable to pay VAT, the Port of Antwerp-Bruges is subject to VAT legislation and must therefore apply the relevant regulations to this concession agreement. The Concessionaire shall therefore pay all VAT charged by the Port of Antwerp-Bruges.

## 2.8. Safeguards

Candidate Concessionaires will be financially screened by the Port of Antwerp-Bruges. If this screening yields signs of possible or acute financial difficulties, it will be possible to reject the candidacy in a substantiated manner.

Each candidate Concessionaire should make a choice between providing a direct debit or providing a bank guarantee covering the concession fee for a period of two quarters. The choice made shall subsequently also apply to all additional concession agreements. If payment behaviour has been impeccable for two years and there are no other reasons for which maintaining the bank guarantee would be required, a switch from bank guarantee to direct debit whilst abandoning the bank guarantee will be possible upon request of the Concessionaire. A reversed switch (from direct debit to bank guarantee whilst abandoning the direct debit) shall not be allowed.

If the direct debit is cancelled, a direct debit is rejected or an invoice remains unpaid, the regular collection procedure shall be initiated for which, in accordance with the current procedures within the Port of Antwerp-Bruges, the records shall be submitted to the legal department of the Port of Antwerp-Bruges for further legal action.

In the event of a problematic payment history, the Port of Antwerp-Bruges shall immediately be entitled to demand a bank guarantee covering the concession fee for two quarters.

This kind of additional bank guarantee can also be requested as a condition for allowing repayment schemes.

In the event of repeated direct debit rejection/late payment (defined as four rejected direct debits/late payments over a period of two years), the Port of Antwerp-Bruges shall be entitled to terminate the concession unilaterally in accordance with the conditions contained in Article 5 of these General Terms and Conditions.

If for a particular reason a bank guarantee was imposed in addition to the direct debit, the bank guarantee can be withdrawn at the request of the Concessionaire if the direct debit is once again fully valid and payment behaviour has been fully correct for two full years.

The amount of the bank guarantee can be reviewed every five years on the basis of the indexed concession fee.

When applying the above principles, the Port of Antwerp-Bruges shall therefore not impose any additional financial conditions if certain permissions are requested in the meantime that form part of the regular operation of the concession (e.g. permission to take out a mortgage, subletting, etc.).



The following transitional measure is proposed for Concessionaires already present (i.e. Concessionaire before 2007): in each event that the Concessionaire must obtain permission from the Port of Antwerp-Bruges (for example, request for postponement of payment, mortgage, concession extension, concession expansion, etc.), the Concessionaire shall be given the opportunity to adjust to/meet the principles stated above. Should it not wish to do so, a bank guarantee covering the concession fee for two quarters shall be requested for all its concessions as a condition for permission.

## 2.9. Third-party relations

Unless with prior written permission from the Port of Antwerp-Bruges, the Concessionaire shall not be allowed to mortgage the structures to be constructed, including appurtenances and equipment, for the benefit of any party other than the Port of Antwerp-Bruges, or to take any action that would result in a third party gaining a privilege or contractual right; if permission is granted, the conditions imposed by the Port of Antwerp-Bruges must be observed and the mortgage or privilege must end no later than when the concession ends or is terminated.

Unless with prior written permission from the Port of Antwerp-Bruges, the Concessionaire shall not be allowed to make any changes to the intended use, as stated in the special conditions, of the port appurtenances provided as part of the concession and the structures erected on them, transfer the concession or its facilities to any third party, or allow any third party to use all or part of them, or to rent them out. Should the Port of Antwerp-Bruges grant permission to allow a third party to use its facilities or to rent them out to a third party, the Concessionaire shall nevertheless remain jointly responsible towards the Port of Antwerp-Bruges for the timely and correct performance of all provisions in this agreement and specific additional conditions may be imposed.

If a Concessionaire wishes to transfer its concession to a third party, a joint request for transfer must be signed by both parties (transferor and transferee) and submitted to the Port of Antwerp-Bruges with the request to grant permission for the transfer. After analysing the records, the management committee will either approve or reject the transfer and conclude a new concession agreement with the new Concessionaire (transferee).

### ***Article 3: Liability***

The Concessionaire alone is liable for any damage and accidents that are caused directly or indirectly, regardless of who or what is involved, as a result of the construction, the presence, the use, the maintenance and possible demolition of the installations that are to be/have been erected by the Concessionaire.

Should the Concessionaire continue to fail taking/performing any precautionary measures, maintenance or repair work, imposed as part of the performance of this agreement within the period determined in a demand notice from the Port of Antwerp-Bruges sent by registered mail, the latter shall, ex officio and without any prior procedure, be entitled to start performing this at the



expense and risk of the Concessionaire after informing the latter of the details of the work. The Port of Antwerp-Bruges remains liable for severe misconduct, gross negligence or intent during the performance of this work.

The Concessionaire explicitly waives the right to dispute the nature, scale or costs of the measures taken or work performed ex officio.

Furthermore, the Concessionaire releases the Port of Antwerp-Bruges and its staff from any responsibility towards any third party for the consequences of the decisions and measures, and also the orders and instructions that, with a view to comply with these conditions, are taken/issued by the Port of Antwerp-Bruges or its staff. Subsequently, the Concessionaire indemnifies the Port of Antwerp-Bruges and its staff against any claim lodged against it by any third party with regard to this, except for claims resulting from severe misconduct, gross negligence or intent by the Port of Antwerp-Bruges and its staff.

#### *Article 4: Term of the concession agreement*

The Port of Antwerp-Bruges determines the term of the concession based on the following criteria:

The term for concessions is 40 years maximum for port activities and 30 years maximum for serviceproviding activities. Terms longer than 40 years are basically not granted. Only if the proposed projects exceed the investment forks in a substantial manner or if the project is of great strategic importance to the port, longer terms may be allowed if they are substantiated and approved by the management committee.

The term is determined based on the investment amount per m<sup>2</sup>, among other things. In this context, investments are considered to be the investments in property or the costs that directly lead to investments in property. Investments/m<sup>2</sup> are deciding when determining the concession term for land at the rear of buildings. Furthermore, the following additional criteria shall also be taken into account apart from investments: transshipment, use of space, employment, intermodality, added value for the port, extent to which the project has a cluster-strengthening effect, strategic importance, etc.

If the investments are deciding, a fork system will be used to determine the term of the agreement. In this case the Port of Antwerp-Bruges will take into account a certain usable area within the concession, in particular that which can be used for building. The Port of Antwerp-Bruges assumes that on average 70% of a concession can be used for building. The Port of Antwerp-Bruges may deviate from this only if the specifications of the site show that a 70% area suitable for building is not possible.

Investment fork	Term (extension)
Investment $\geq$ 375 EUR/m <sup>2</sup> built-on area	40 years (5)
225 EUR $\leq$ investment $<$ 375 EUR/m <sup>2</sup> built-on area	35 years (5)
175 EUR $\leq$ investment $<$ 225 EUR/m <sup>2</sup> built-on area	30 years (5)
150 EUR $\leq$ investment $<$ 175 EUR/m <sup>2</sup> built-on area	25 years (5)
125 EUR $\leq$ investment $<$ 150 EUR/m <sup>2</sup> built-on area	20 years (5)
100 EUR $\leq$ investment $<$ 125 EUR/m <sup>2</sup> built-on area	15 years (5)
25 EUR/m <sup>2</sup> $\leq$ investment $<$ 100 EUR/m <sup>2</sup> built-on area	10 years (3)
0 EUR/m <sup>2</sup> $\leq$ investment $<$ 25 EUR/m <sup>2</sup> built-on area	Quarter (0)

The Port Authority always intends to grant a reasonable term, whereby deviations from the above fork system are possible, subject to clear motivation and approval by the management committee.

At the end of a concession, the Port of Antwerp-Bruges shall grant an extension for renewable periods of 1 to 5 years (as listed in the above table), without prejudice to legislation current at the time, if the Concessionaire implements the purpose of the concession in a normal manner and if the site in question is not located in a zone where the Port of Antwerp-Bruges intends to implement

a new strategic purpose. Concessions shorter than ten years, but longer than one year shall be entitled to an extension of two years under the same conditions as those stated in this paragraph. If there are no prospects for the Concessionaire to keep the concession, it shall be granted a single extension of 3 years.

Extensions during the first half of the term of a concession can only be permitted if the Concessionaire can demonstrate irrefutably that these are additional investments and not the investments initially reported to obtain a concession term. In this case, the calculated extension of the term, namely the extension calculated on the basis of additional investments, shall be allowed, similar to extensions of terms in the third quarter of the concession term. In the last quarter of the term, the calculated extension of the term shall be granted, increased by 1 to 5 years (as listed in the above table). Concessions shorter than ten years, but longer than one year shall be entitled to an extension of two years under the same conditions as those stated in this paragraph.

The Concessionaire is granted the initial concession term under the condition of developing the project as described in the Special Conditions of the concession agreement. The Concessionaire must submit the evidence, preferably official invoices or a document from an independent auditor, which clearly states the investments made, to the Port of Antwerp-Bruges on its own initiative within a period of five years, to be calculated from the start date of the concession.

If these are not submitted on its own initiative, it shall be implicitly concluded that the project has not been developed following a once-only request by the Port of Antwerp-Bruges to submit them after all.

If the projects submitted are not developed, the Port of Antwerp-Bruges may, without any right to compensation for the Concessionaire, reduce the concession term proportionally or, if the project was an essential part of the granting or extension of the concession, terminate it unilaterally in accordance with Article 5 of the General Concession Terms and Conditions.

The Concessionaire reserves the right, if the planned investments are not realised, to submit the relevant evidence to the management committee of the Port of Antwerp-Bruges that the realisation of the project within the set term was impossible as a result of third-party action or by a general and objectively negative, observable sector-wide economic situation within the Hamburg – Le Havre Range or, depending on the type of activity, within the applicable reference framework.

Any disputes shall be submitted to the board of directors of the Port of Antwerp-Bruges.

### *Article 5: Termination of the concession*

Should the Concessionaire continue to fail to meet any of its obligations pursuant to the General Terms and Conditions and the Special Conditions within the period set by the Port of Antwerp-Bruges, to be calculated from date on which the Port of Antwerp-Bruges sent a demand notice by registered mail, the Port of Antwerp-Bruges shall be free to terminate this agreement. This termination shall be effective by operation of law and without any other procedure or formality immediately after serving a writ.

This means that the Concessionaire shall be obliged to pay the Port of Antwerp-Bruges as compensation the amount of all fees, taxes and duties payable for a period equal to one tenth (1/10) of the full years of the concession term still to be completed, with a minimum of one year and a maximum of two years, regardless of the right of the Port of Antwerp-Bruges to demand payment from the Concessionaire for all amounts that are payable to the Port of Antwerp-Bruges for the performance of the regulations in these concession terms.

Upon expiry or termination of the concession, the permanent structures and facilities constructed by the Concessionaire, except for the equipment present, shall become the property of the Port of Antwerp-Bruges free of charge, unless it were to refuse ownership of them or would only accept ownership of part of them.

In that case the Concessionaire shall fully remove all the structures or those parts indicated by the Port of Antwerp-Bruges at its own expense and risk, also subject to the obligation to repair any damage that may be caused during this to the parts of it of which the Port of Antwerp-Bruges wishes to accept ownership. No compensation shall ever be payable to the Concessionaire by the Port of Antwerp-Bruges.

The provision that the Port of Antwerp-Bruges is to be compensated by the Concessionaire for all work which the Port of Antwerp-Bruges would have to perform arising from or as a result of this concession also applies to all maintenance and repair work that may still have to be performed by the Concessionaire upon expiry or termination of the concession. The concession fees, taxes and duties shall remain payable up to the date on which all work is finished, even for performance ex officio by the Port of Antwerp-Bruges.

If the Concessionaire enters into liquidation, the Port of Antwerp-Bruges may terminate the concession, with respect for the mortgagees. If the activities of the Concessionaire are continued by the liquidator, the Port of Antwerp-Bruges may decide after all to continue the concession for a term to be determined by the board of directors.

## Part III: Additional general terms and conditions

### *Article 6: Additional terms and conditions applicable to concessions of quays and shelters*

Without prejudice to the provisions of the “Regulations for the use of the quays and the shelters in the port area” and as a supplement to the other provisions stated in these General Terms and Conditions applicable to all concessions in the port area, the Concessionaire is also obliged to comply with the following additional terms and conditions if the concession refers to a quay or a shelter and depending on the situation:

- 1) The Concessionaire must take all measures necessary to prevent that objects and materials fall into the quay water. Should this be the case, the Port Captain-Commander or his/her representative must be informed of this immediately.
- 2) If the maintenance dredging work is hindered by the presence of material dumpings that definitely come from the quay or if dredging work is necessary due to the presence of these material dumpings, the Concessionaire will have to repay the Port of Antwerp-Bruges the costs incurred by the Port of Antwerp-Bruges for this, except if the innocence of the Concessionaire is certain.

If the maintenance work is hindered by the Concessionaire failing to make required areas available for the performance of the work within the possibilities of the planned shipping traffic, the Concessionaire will have to repay the Port of Antwerp-Bruges the costs incurred by the Port of Antwerp-Bruges as a result of this.

The provisions of the Harbour Police Regulations must also be applied in full to the use of quays, among other things.

Furthermore, the Concessionaire releases the Port of Antwerp-Bruges from any third-party claims relating to damage caused by the presence of the aforementioned objects, liquids or materials.

- 3) The Concessionaire is allowed to use the mooring facilities belonging to the mooring place(s) provided to it for use as a priority for the loading and unloading of vessels that are being treated there under its care, provided that the Port Captain-Commander or his/her representative is informed of their arrival at least 48 hours in advance and provided that his/her instructions are strictly followed.
- 4) The Port of Antwerp-Bruges can still enforce the temporary availability of the quay with a view to perform maintenance and/or repair work on the quay infrastructure and/or maintenance dredging work. The Port of Antwerp-Bruges shall inform the Concessionaire of the time when this maintenance, repair and/or maintenance dredging work is to be performed.

5) With a view to maintaining uniformity in quay numbering, the Concessionaire must put up signs with dimensions of 120 cm x 80 cm; the height of the numbering to be printed on the sign is set to 70 cm and the indications must be printed in black on a white background. The Concessionaire must keep these signs in a good state of repair and must keep them legible; they must be visible both from the public road and from the water.

6) If no security lighting is present, the Concessionaire shall ensure that it is installed on the quay areas provided as part of the concession at its expense in accordance with the instructions from the Port of Antwerp-Bruges services. The security lighting must be installed in such a way that it can be switched on and off by the Concessionaire itself and must continue to be lit on the quay for as long as the public lighting in the port.

At the end of the concession the security lighting's ownership must be transferred to the Port of Antwerp-Bruges free of charge and in a good state of repair.

This security lighting may not be blinding to road and shipping traffic.

7) The Concessionaire shall install quay lighting at its expense to shelters and warehouses in order to increase the safety of the activities performed both during the day and at night.

At the end of the concession the quay lighting's ownership must be transferred to the Port of Antwerp-Bruges free of charge and in a good state of repair. This quay lighting may not be blinding to road and shipping traffic.

8) On the quay provided to it as part of the concession and equipped under its care, the Concessionaire shall take care, at its expense, of the installation, maintenance and, where required, replacement of the life-saving equipment in accordance with the relevant guidelines.

9) The infrastructural department of the Port of Antwerp-Bruges shall prepare a descriptive overview of the appurtenances provided as part of the concession that are owned by the Port of Antwerp-Bruges and of the work to be performed by the Port Authority on the shelters, lighting and flooring. All damage discovered afterwards, also damage caused by unknown individuals, must be paid for by the Concessionaire. The same arrangement applies to the periodic supervision by the aforementioned infrastructural services.

10) The Port of Antwerp-Bruges shall only place fenders and associated equipment if it believes this to be necessary for the stability of the quay wall. The Port of Antwerp-Bruges shall maintain the fenders and associated equipment placed by it and at its expense, and shall replace them as part of this maintenance.

The Concessionaire must report any damage, including a description of the cause and/or data about a possible party responsible, caused to the quay infrastructure (quay walls, jetties, fenders, quay equipment, etc.) that is owned by or under the care of the Port of Antwerp-Bruges to the following contact address: [schademeldingen@haven.antwerpen.be](mailto:schademeldingen@haven.antwerpen.be). At the same time the competent Dock Superintendent-Supervisor should be informed of any damage (tel. 03/205.67.33).

11) Unless with special prior written permission by the Port of Antwerp-Bruges and, should this be the case, provided that the conditions for said permission are met, the Concessionaire is strictly forbidden to:

- a) Use the port appurtenances or allow them to be used for storage of goods that exceeds the periods determined in articles 17 and 18 of the “Regulations for the use of the quays and shelters in the port area”; for each violation of this prohibition, the Port of Antwerp-Bruges is entitled to remove the goods stored in violation of this prohibition ex officio and store them elsewhere at the expense and risk of the stakeholder;
- b) make any changes to the port appurtenances provided as part of the concession or the facilities present there, to make a fire, to smoke or to use artificial lighting other than electrical lighting (the smoking ban must be announced by means of clear signs on the site).

12) In accordance with Article 108 of the Harbour Police Regulations, the Concessionaire shall at all times keep a passageway of 5 metres from the waterside free to allow quick passage of the emergency services.

13) When erecting fences around the concession and to comply with the provisions made in the context of the ISPS code, the Concessionaire shall take into account Article 6.13 relating to the access by emergency services and representative of the Port of Antwerp-Bruges along the quay strip. When closing off its concession up to the quay wall, the Concessionaire must provide a sliding or rotating fence/gate, so that access by emergency services and by the services of the Port of Antwerp-Bruges or the party appointed by it is not hindered and Article 6.13 is met. It must at all times be possible for seagoing vessels to moor safely. The fencing must not make it impossible to place hawsers over bollards of the neighbouring concession. Stems and/or sterns of the vessels will sometimes cross the boundary between two concessions. This is why the fencing must always be prevented from protruding from the blue stone.

14) During the cost-free mooring times provided in articles 17 and 18 of the “Regulations for the use of the quays and shelters in the port area”, the Concessionaire is not allowed to demand a fee from any party placing goods there simply for the fact that the goods are present on the appurtenances provided to the company as part of the concession.

The Concessionaire may demand a fee from the party placing goods or from the user of a mooring facility that is part of the mooring place(s) provided to it for the facilities provided by it (i.e. effective costs for security as part of ISPS, safekeeping, supervision, treatment).

### ***Article 7: Additional conditions for ISPS concessions***

1. The public road may be closed off for the organisation of access checks. The existing public road, i.e. road surface, verges and sewerage must remain in the current state. At the start of the concession an overview of the concession's condition shall be prepared, to which the parties will have to agree.
2. Before proceeding to close off the public road, the necessary traffic signals must be placed on the surrounding public road network, based on a signalling plan approved by the traffic police.
3. The highway code that applies within the Antwerp port area remains valid for the ISPS concession, especially with regard to parking (only vehicles in the spaces intended for this, in other words, no chassis, no non-registered vehicles) and the right-of-way rules for traffic coming from driveways, etc. Among other things, this provision should allow third parties (Port of Antwerp-Bruges staff, customs staff, NMBS and Infrabel staff, access traffic for customs, personnel of the local competent distributionnet-caretaker and her workingcompany, etc.) to drive safely on the road network.
4. The costs for modifying the existing traffic signals are at the expense of the Concessionaire.
5. Access by emergency services, Port of Antwerp-Bruges staff, customs and Infrabel shall at all times be guaranteed.
6. The Concessionaire must at all times allow the various utility companies (Belgacom, A.W.W., Electrabel, the local competent distributionnet-caretaker, etc.) access to the concession, so that they can inspect and/or repair their mains equipment.
7. In emergencies, the road must be opened at the first request by the Port of Antwerp-Bruges, ambulances or the police.
8. Neither goods may be stacked nor structures erected on the ISPS concession.
9. The fences and the gates must be installed in consultation with the infrastructural department of the Port of Antwerp-Bruges. The gates may not open over land for which no permit has been granted.



10. Upon termination of the concession, the road must at least be returned to its original state by and at the expense of the Concessionaire, and the original road signalling must be reinstalled.
11. During the possible performance of its own work or work performed on its behalf, the Concessionaire must take adequate measures to prevent “any damage whatsoever” to the underground electricity cables of the port’s power distribution network that are present on the site. In order to achieve this, consultations must be held with the local competent distributionnet-caretaker and her working-company.
12. If the site is closed off with fencing, the cable zone must be accessible 24 hours a day, 7 days a week for the personnel of the local competent distributionnet-caretaker of her working-company in order to perform inspections, measurements and repairs. A key to a possible access gate shall be provided for this and placed in a lockable key cabinet next to the gate. This also applies to access to possible high-voltage cabins on the closed-off site.
13. If any high and/or low-voltage cables are present on the site, these cables may only be covered with a (non-monolithic) surface that can easily be removed by hand (cobblestones, clinkers, etc.). If the paving has to be broken up in order to repair cable faults or to renew or add cables in the power distribution network of the local competent distributionnet-caretaker of her working-company, the breaking-up and repairing of the paving must be performed by and at the expense of the company. If the company fails to respond immediately to the request for breaking-up the pavement, this shall be done ex officio at the expense of the company. No goods or containers may be stacked on top of the cables. The contact details of a person responsible who can be contacted at all times must be submitted to the local competent distributionnet-caretaker and her working-company.
14. For the public lighting using installations on the Concession, the annual cost per light shall be charged to the Concessionaire, for the use of the lights, the maintenance of the lights and other costs that the Port Authority will have to pay to the local competent distributionnetcaretaker for these installations. The Concessionaire is liable for any damage caused to the installation. The required damage repairs shall be performed by the Port Authority; it will recover the costs for this from the Concessionaire.
15. In the event of non-compliance with the regulations stated above, the Port Authority shall apply the effect of the rate regulation to this concession and, in the event of repeated noncompliance, the Port Authority may proceed to terminate the concession.
16. The Concessionaire shall pay recognition rights for mains located under the roads allocated as ISPS concession.

## Part IV: Concluding provisions

These General Terms and Conditions can always be revised/amended unilaterally by the Port of Antwerp-Bruges as a general measure after consulting and negotiating with the representatives of the concessionaires and after submitting them to the Consultation Board. In this case, the following aspects are always important:

- The Port of Antwerp-Bruges shall only amend the General Terms and Conditions as a function of the general port interests or if a changing context requires an amendment;
- These amendments shall always be made, taking into account the principles of sound administration, in which transparency, duty to state reasons and the equality principle are crucial;
- Amendments shall always be submitted to the representatives of the port companies. In this case, the representatives in question also undertake to participate in the amendment procedure in a constructive manner;
- The Port of Antwerp-Bruges undertakes to sufficiently inform all concessionaires about the changes that are actually involved in these amendments, as well as to provide sufficient reasons for the revision.

These amendments shall only be enforceable after announcing them to the Concessionaire by means of a registered letter.

These amendments shall be reported in advance for information purposes to the professional associations of the port sector and interest groups of the companies active in the port area. They may submit comments and suggestions about them, which they consider to be useful.

These amendments shall always be submitted to the Board of Directors of the Port of Antwerp-Bruges for approval and shall apply to all future and existing concessions.