

## Terms of Use Blue Water App for Sailors

Dear reader,

Welcome to the General Terms of Use of the Blue Water App for Sailors. We have tried our best to make a useful and convenient app for boat enthusiasts, which makes booking berths at marina's in advance a lot easier.

To provide users with this opportunity, we had to make arrangement with the contributing international Marinas and Marina Masters.

Obviously, house rules apply to the provision of our services. These house rules ('terms of use') of the Blue Water App are meant to provide clarity about what we do and what you can expect from us. These rules also help to cooperate with pleasure and to protect each other's interests.

Please do read on.

### **1 General conditions**

- 1.1 The Blue Water App is a product of the Dutch private limited company "Blue Water App B.V." situated at the Scheepmakerij 220 in Zwijndrecht, The Netherlands and registered with the Chamber of Commerce under number 59429267.
- 1.2 Should you have any questions during the use of our services, or after reading these terms, please feel free to contact our colleagues by email. Blue Water App B.V. can be reached via the email address [Info@bluewaterapp.com](mailto:Info@bluewaterapp.com)
- 1.3 For most users of our app this is the first time that they enter into an agreement with Blue Water App B.V. Because we like to treat our users equally, we use the same conditions for all users. These conditions of use therefore conclude the entire agreement between Blue Water App B.V. and you ("Sailor") regarding the use of the Blue Water App. These conditions substitute all verbal and written agreements relating to this subject, which may have been made earlier with individual sailors.
- 1.4 Please note that there are many sailors on the water, who have their boat for business or on behalf of an organization. If that applies to you and you use the Blue Water App on behalf of a company or employer, you guarantee to be authorized to enter into this agreement on behalf of the company or employer in question. So we know for sure with which party enters into the agreement with Blue Water App B.V.
- 1.5 The applicable Dutch legislation gives consumers, such as most sailors, many rights in the conclusion of contracts which are entered into electronically, such as specific termination terms. The delivery of digital content, such as the content in this app, could mean that Sailors first use our services, and after that can call in the dissolution (Dutch: ontbinding) of the agreement. Especially for our services that require payment, this is considered to be unfair. When entering into the Agreement, Sailor explicitly agreed to the start of the service by Blue Water App B.V. during the legal term of dissolution and has expressly waived his right to dissolve the Agreement, all this within the meaning of Art. 6: 230p under d of the Dutch Civil Code.
- 1.6 Unfortunately, we cannot foresee the future. There may, therefore, be circumstances that require us to decide that changes to these conditions are necessary. Blue Water App B.V. is therefore entitled to change these conditions of use. The amended conditions of use will apply after Boater has been notified of this change in writing or by e-mail.

## **2 User rights**

- 2.1 In order to use the Blue Water App, Sailor needs the right to use the software. Blue Water App B.V. hereby grants the Sailor the non-exclusive and revocable right to use the Blue Water App.
- 2.2 The Blue Water App is delivered As Is (in the technical state in which the app is at the time of installation) and without further warranty.
- 2.3 Blue Water App B.V. can only take responsibility for matters that it can influence. Technical equipment such as devices or other software that are needed to use the Blue Water App, Sailors have provide for themselves. Blue Water App B.V. is not responsible for the purchase and / or proper functioning of the equipment or software of Sailor, such as a solid internet connection or mobile device, because Blue Water App B.V. has no influence on these matters.
- 2.4 The right of use is limited to the object code. Rights to and the source codes are not provided.
- 2.5 Reverse engineering or compilation of the Blue Water App is prohibited, unless explicitly permitted by mandatory law.
- 2.6 It is forbidden to copy, duplicate or modify the Blue Water App in any way whatsoever and / or through third parties, without having received prior written permission from Blue Water App B.V.
- 2.7 The user rights provided to Sailor in these terms of use, cannot be transferred or assigned to third parties. Of course this should not be necessary, because everyone can download the Blue Water App from the relevant app stores for themselves.
- 2.8 Blue Water App B.V. has the right to unilaterally determine that the user right only commences once payment has been made by Sailor and other obligations resting on Sailor have been fulfilled.
- 2.9 Blue Water App B.V. shall ensure the provision of the Blue Water App. Thereby, Blue Water App B.V. is dependent on the services of third parties, such as internet providers and hosting providers. Blue Water App B.V. will on a best effort basis and where influential by Blue Water App B.V. strive for a further to be indicated availability percentage of the Blue Water App.
- 2.10 The percentages mentioned in clause 2.9 are measured over a calendar year. The time for Maintenance is not included.

## **3 Bookings, prices and payment**

- 3.1 The Blue Water App offers Sailore the possibility to make in-app purchases, such as berth bookings and payments in marinas. The operation depends on payment systems and data originating for third parties, including the relevant app stores, payment providers an marinas. Blue Water App B.V. is therefore only required to effect the in-app purchases, such as bookings, when said payment systems have confirmed the payment.
- 3.2 If Sailor makes a booking or payment for a berth in a marina via the Blue Water App, Blue Water App B.V. assists – as an intermediary – when booking the desired location. The final agreement regarding the booking of the berth, is entered into between Sailor and the marina concerned, in the same way as Sailor is used to. Blue Water App B.V. is not a contracting party to the booking.
- 3.3 Marinas and marina masters try on a best effort basis to indicate the availability of berths and boxes. However, it is of course possible that a berth booked by Sailor is still occupied. This can occur, for example, due to a seasonal berth holders not sailing out, as a result of which a certain spot will not be released. Therefore no rights can be derived from bookings for specific berths or boxes. Marina masters at the location of the marina are entitled and may, where

appropriate, assign a different berth, without being obliged to provide any explanation or compensation.

3.4 All marina prices are displayed including VAT, but excluding other levies imposed by the government. The amounts invoiced to Sailor will include applicable VAT and other levies possibly imposed by the government.

3.5 Until full payment has been made, Blue Water App B.V. has the right to suspend all services and obligations to Sailor. Sailor's obligation to meet Sailor's commitments remains unchanged.

#### **4 Use of identification codes**

4.1 In order to make full use of the Blue Water App, Sailor will have to register. This is necessary, for example, in order to be able to make bookings. Registration also prevents Sailor from having to re-enter all his data during each use. The data entered by Sailor during the registration process, is called Identification data.

4.2 Blue Water App B.V. will make Identification data, explicitly including account information, available to Sailor for use of the Blue Water App. Sailor will handle these Identification Data carefully. Sailor will inform Blue Water App B.V. by e-mail in case of loss, theft and / or other forms of unauthorized use of Identification Data so that the parties can take appropriate measures. Thus, Sailor can prevent unauthorized use of Sailor's Identification data after, for example, a mobile phone has been stolen.

4.3 Because Blue Water App B.V. cannot see which specific individual finalizes the booking, but only which Identification data are used for making the booking, Sailor bears all responsibility, liability and costs caused by the use of Sailor's Identification data, used and / or distributed by Sailor or his account or profile. Under no circumstances is Blue Water App B.V. liable for the misuse and / or unauthorized use of the Identification Data.

4.4 If it can reasonably be assumed that abuse or unauthorized use has been made of the Sailor's Identification Data, Blue Water App B.V. may give instructions to Sailor, which must be carried out. This way we can prevent the problem from getting bigger. If it has been established that the Identification Data has been misused or that Sailor has not complied with the instructions given by Blue Water App B.V., Sailor is immediately in default.

#### **5 Data traffic**

5.1 Blue Water App B.V. has no control over and / or insight into the content of the data traffic from and / or to Sailor. Blue Water App B.V. is merely a passive conduit and depends on the availability of information and input from third parties, including marinas and Marina Masters. Because Blue Water App B.V. has no control over and / or insight into the content of the data traffic, Blue Water App B.V. cannot give any guarantees regarding the content of data, for example with regard to its reliability and completeness. Because it concerns content that is added by third parties, Blue Water App B.V. is not responsible or liable for said content.

5.2 Sailor will make use of the Blue Water App and the other offered facilities, in a responsible manner. It is prohibited to use the Blue Water App and / or the other offered facilities in such a way that i) damage can occur in the systems of Blue Water App and / or third parties; (ii) disruptions in use can occur.

5.3 It is not permitted to use the Blue Water App and the other offered facilities for activities that are illegal and/or in violation with the terms of use.

5.4 Blue Water App B.V. reserves the right, at Blue Water App B.V.'s sole discretion, if forced by law or a court order; and/or a third party informs Blue Water App B.V. and/or a suspicion

exists that through the Blue Water App a violation is made of the rights of a third party; there is a breach of the Terms of Use of Blue Water App B.V. and/or the agreement and the resulting obligations in question have not been met wholly or partially, to bar access to the Blue Water App and/or other facilities offered, to remove the information in question and/or suspend its other obligations until Boater meets its obligations.

- 5.5 Blue Water App B.V. and/or third parties will never be liable for damage of whatever nature suffered by Sailor or third parties for measures taken by and/or on behalf of Blue Water App B.V. on the basis of clause 5.4. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of Blue Water App B.V. on the basis of clause 5.4.
- 5.6 If – in the opinion of Blue Water App B.V. – the actions and/or failure to act of Sailor justifies this and/or the actions and/or failure to act of Sailor continues regardless of the measures under taken by Blue Water App B.V., as set out in clause 5.4, Blue Water App B.V. will be entitled to terminate the agreement, without being required to any damage compensation or restitution of monies paid.
- 5.7 Sailor indemnifies and will keep Blue Water App B.V. free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Sailor.
- 5.8 Blue Water App B.V. is entitled to view log-files and the like for purposes of analyzing the use of the Blue Water App. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of Blue Water App B.V.).
- 5.9 All costs associated with transferring or migrating process data and / or other data at Sailor's request from the Blue Water App to any other application are entirely at the expense of Sailor.

## **6 Personal Data**

- 6.1 Blue Water App B.V. acts in accordance with the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens) and the General Data Protection Regulation (GDPR). Blue Water App B.V. processes personal data in accordance with Privacy Statement which can be found at the following link: <https://www.bluewaterapp.com/links-for-skipper>
- 6.2 Sailor guarantees that all requirements for the lawful processing of the personal data entered by Sailor in the software made available to Sailor in the context of the Blue Water App have been met.
- 6.3 Sailor indemnifies Blue Water App B.V. of all claims based on breach of privacy.

## **7 Personal Profile / Account**

- 7.1 To register a user page or profile, registration is mandatory. Because we would like to pass on the bookings to marinas and Marina Masters in the best way, Sailors are obliged to provide the following information to the registration: Name, e-mail address, unique username, desired password, payment details, telephone number, gender, ship information and boat documentation. Some marinas also require the personal data, including passport information, of crew members. If a Sailor has not yet reached the age of sixteen years when registering, the registration may only take place if a parent or guardian has given permission for the registration.
- 7.2 Users of Blue Water App have the possibility to set up a personal profile photo. Sailor guarantees to own the copyrights of this profile photo, or to be authorized to upload and use

the profile photo by means of a user license. Sailor indemnifies Blue Water App B.V. for all claims of third parties with regard to the profile photo.

## **8 Maintenance and support**

- 8.1 Blue Water App B.V. does not guarantee that the Blue Water App will function without interruptions or errors, is suitable for any intended use by Sailor and / or will lead to the result desired by Sailor.
- 8.2 Blue Water App B.V. will make every commercial reasonable effort to repair defects in the Blue Water App within a reasonable period of time. Blue Water App can delay the correction of errors and / or malfunctions until a new version of the Blue Water App is put into use.

## **9 Third party products**

- 9.1 Blue Water App B.V. has the right to deliver products and/or services origination from third parties or make use of products and/or services originating from third parties (Third Party Products), such as but not limited to hosting- and payment providers, in fulfilling its obligations flowing forth from the agreement.
- 9.2 If Blue Water App B.V. delivers Third Party Products to Sailor, general conditions of these Third Party will be applicable to the agreement in addition to the Terms of Use of Blue Water App B.V.

## **10 Liability**

- 10.1 Blue Water App B.V.'s total liability shall be limited to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of € 1.000,- (thousand euros), whereby a sequence of events is regarded as one event.
- 10.2 Blue Water App B.V.'s liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Sailor to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Sailor, is expressly rejected.
- 10.3 Also excluded is the liability of Blue Water App B.V. due to mutilation, destruction or loss of data or documents.
- 10.4 Blue Water App B.V.'s liability exists solely when Sailor immediately and appropriately notifies Blue Water App B.V. of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Blue Water App B.V. then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Blue Water App B.V. is able to react adequately.

## **11 Transfer**

- 11.1 Sailor gives Blue Water App B.V. in advance the right, without needing the explicit approval of Sailor, to transfer the whole agreement or parts thereof to holding-, sister- and/or subsidiary companies, a third party in the case of merger or acquisition of Blue Water App B.V. In the event this happens, Blue Water App B.V. will inform Sailor.

## **12 Intellectual property rights**

- 12.1 All intellectual property rights to the software made available to Sailor are exclusively vested in

Blue Water App B.V. Sailor only obtains the rights of use expressly granted in these terms of use.

- 13.2 Sailor is not permitted to remove and / or change any designation concerning copyrights, trademarks, trade names or any other intellectual property right from the software.

### **13 Duration**

- 13.1 The right of use is granted for an indefinite period of time.
- 13.2 If Sailor acts in violation of the Terms of Use, Blue Water App B.V. at all times the right to terminate the right of use with immediate effect.

### **14 Termination of services**

- 14.1 Blue Water App B.V. reserves the right to terminate, discontinue or change the Blue Water App or the services related thereto in whole or in part. Sailors cannot derive any rights from the availability of the Blue Water App's functionalities at the time of entering into this user agreement, at the time of downloading or installing the Blue Water App or at the time of putting it into use. Nor can Sailor derive any rights from functionalities added during the course of the user agreement to the Blue Water App.
- 14.2 Blue Water App B.V. reserves the right to deny a Sailor access to the Blue Water and/or make inaccessible, change, delete or discontinue the Blue Water App (or parts thereof) including the data entered in the app, (temporarily or otherwise), without being obliged to provide any explanation or compensation.

### **15 Nullity**

- 15.1 If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.

### **16 Applicable Law and Dispute resolution**

- 16.1 All agreements made between Blue Water App B.V. and Sailor are governed by the laws of The Netherlands. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 16.2 All disputes between parties, that cannot be resolved amicably, will be placed before the qualified court in The Hague, the Netherlands.
- 16.3 These terms of use of Blue Water App B.V. are translated from the original Dutch version and the intention thereof is valid in any disagreement.

The Hague, April 2018