



## General terms and conditions of sale

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#### 1. Definitions

- 1.1 Vendor (Seaway Marine Trading B.V.): with whom the Buyer enters into an Agreement;
- 1.2 Buyer: the party who purchases Goods and/or Services from the Vendor;
- 1.3 Goods: the products which the Vendor sells and/or delivers to the Buyer;
- 1.4 Services: all other activities ordered by the Buyer and/or performed by the Vendor;
- 1.5 General Conditions: the Seaway Marine Trading B.V. Conditions
- 1.6 Agreement: the agreement between the Vendor and Buyer regarding the sale and delivery of Goods and/or the provisions of Services;

#### 2. Applicability

- 2.1 These General Conditions shall apply to all Agreements, contracts, orders, deliveries of Goods and/or the providing of Services between the Vendor and the Buyer, unless otherwise expressly agreed in writing.
- 2.2 Any conflicting general terms and conditions of the Buyer are rejected by the Vendor unless expressly accepted in writing.
- 2.3 In the event the Agreement between the Vendor and the Buyer explicitly stipulates otherwise compared to what is stipulated in these General Conditions, the particulars of the Agreement will prevail, whereas the remainder of the General Conditions remains valid.
- 2.4 If any part of these General Conditions is contrary to mandatory law and as a result is void, the validity and enforceability of the remainder of these General Conditions shall not be affected.

#### 3. Quotation and conclusion of Agreement

- 3.1 Quotations and offers from the Vendor to Buyer are not binding upon the Vendor.
- 3.2 An Agreement is concluded by the Vendor accepting the order or assignment made by Buyer by written confirmation, or alternatively by the actual performance of the order or assignment by the Vendor.
- 3.3 Where the Buyer acts as agent, manager or otherwise in representation for a third party (such as an owner or bare-boat charterer of a vessel), this third party and the Buyer shall be jointly and severally bound by the Agreement and liable for payment of the services or goods provided by Vendor.

#### 4. Sale and delivery of Goods

- 4.1 Unless otherwise agreed, all prices as stated in the quotations, offers, contracts and order confirmations are exclusive of VAT, as well as other taxes and/or duties and/or rights which are levied by the authorities.



- 4.2 The goods are delivered at the Vendor's premises or at the place designated by the Buyer. After delivery of the goods at the Vendor's premises or at the place designated by the Buyer, Vendor has fulfilled his obligations and the risk of loss or damage to the goods transfers from Vendor to Buyer. Vendor is not liable for any loss or damage caused after delivery of the goods, such as but not limited to loss or damage caused during storage, transport, discharging, loading or handling of the goods. Any transport, storage, loading, discharging and handling of the goods after delivery is solely for the account and risk of the Buyer. Vendor will not take out a transport or cargo insurance for the benefit of the Buyer in relation to the transport of the goods from the place of delivery to the place of destination. The Buyer will have to arrange the necessary regarding the custom and export formalities.
- 4.3 In derogation of Article 4.2 above it is agreed that goods are delivered 'Free alongside Ship' by truck (FAS), then the risk to the goods as well as (save as for what has been stipulated in para 8.1 of these General Conditions) title to the Goods is transferred from Vendor to Buyer when the Goods are put at the disposal of the Buyer on Quay or (in the event of direct trans-shipment onto the vessel) when the Goods are hooked on by the vessel's gear, or (in the event loading onto the vessel is arranged by Vendor with the truck's or barges' gear), the moment the goods are hooked off on board the vessel.
- 4.4 In the event it has been agreed between Vendor and Buyer that the Buyer shall arrange for transportation of the goods from Vendors premises the goods will be delivered (save as for what has been stipulated in para. 8.1 of these General Conditions) and the transfer of risk shall pass from the Vendor to the Buyer when the Goods have been made available at the premises of the Vendor. Transportation of goods from the premises of the Vendor to elsewhere is for risk and account of the Buyer.
- 4.5 The delivery period stated by the Vendor is indicative and not binding, unless otherwise agreed. Exceeding the stated delivery period does not entitle the Buyer to terminate the Agreement, nor does it entitle the Buyer to claim damages for delay.
- 4.6 The Goods shall be delivered in the customary packing. The Buyer shall inform the Vendor of any special packing requirements. Any additional expenditure incurred in complying with such requirements shall be for the account of the Buyer.
- 4.7 Upon delivery of the Goods, delivery notes or similar document will be signed by the Buyer. Signature of the master or ship's officer and/or agent of the vessel supplied constitutes receipt of the Goods by the Buyer. In the event of delivery of the Goods to the premises of the Vendor, a CMR-waybill signed by or on behalf of the Buyer constitutes receipt of the Goods by the Buyer.
- 4.8 The Buyer shall check the Goods at delivery. By taking receipt of the Goods, the Buyer shall be deemed to have approved and accepted the quality and quantity of the Goods.

## 5. Reclamation

- 5.1 Any complaints from the Buyer concerning the quality and/or quantity of the Goods delivered must be submitted in writing to the Vendor upon or immediately after delivery.
- 5.2 When the Goods are no longer in their original state or no longer in their original packing, lodging a complaint is prohibited.
- 5.3 In case a complaint is considered justified by the Vendor, the Vendor is entitled to credit the Buyer with the decreased value up to a maximum of the invoice amount, or, alternatively, to repair or replace the good delivered or, as the case may be, to deliver a supplemental quantity. This is to the sole discretion of the Vendor.



## 6. Provision of Services

- 6.1 If with respect to provision of Services third parties are instructed by the Vendor, the Vendor in instructing these third parties shall act as agent for the Buyer. The Buyer authorizes the Vendor to contract on the usual terms with those third parties.
- 6.2 In the event the Vendor is handling and/or keeping in storage goods of third parties and/or of the Buyer (such as spare parts for a vessel) such handling and/or storage will be at the sole risk and expense of Buyer. The Vendor is not liable for any loss of and/or damage to such goods during storage, handling, manipulating, loading and/or discharging, nor for any consequential damage/loss. The Vendor has no obligation or requirement to insure the Buyers goods.
- 6.3 In the event the Vendor is a reception agent, and/or is to arrange customs clearance and/or storage and/or is to arrange transport the above goods from the storage location to a place of delivery (for instance the vessel), the Vendor is instructed as agent to the Buyer and not as storekeeper and/or carrier. The Vendor is not liable for any loss of and/or damage during the transport, nor during loading and/or discharging, whatever the means of the transport may be. The Vendor is also not liable for any consequential damage/loss.
- 6.4 In the event of third party damages for which the Vendor is or may be held liable, and these third party damages are the result of any wrongdoing of the Buyer, the Buyer will hold harmless the Vendor.
- 6.5 The Buyer is responsible for fully and accurately declaring, describing and documenting the contents of any package or packages passed on to the Vendor for handling, such declaration, description and documentation being appropriate for the place at which the Vendor is required to handle the Buyer's Goods.

## 7. Payment

- 7.1 Unless explicitly agreed otherwise, the Buyer shall pay the purchase price upon delivery of the goods, prior to the vessel's departure, or, alternatively, before expiry of the payment term stipulated in the order confirmation. Payment has to be effected in the currency stipulated on the invoice, without any deduction of costs of whatever kind.
- 7.2 In the event payment has not been effected by the Buyer within the period stated above, the Buyer shall be in default by operation of law, without any further notice of default being required.
- 7.3 The Vendor is entitled to charge interest on all overdue or unpaid sums at a rate of 1.5% per month or part thereof.
- 7.4 All costs and expenses incurred by the Vendor with respect to recovering or seeking to recover from the Buyer any overdue or unpaid sums, whether or not by formal legal steps, shall be for Buyer's account. Such costs include both internal costs and costs and expenses incurred to external advisers, lawyers or debt collectors instructed for such purpose.
- 7.5 A payment by the Buyer shall first of all be considered a payment of outstanding (legal) fees, subsequently payment of accrued interests and finally the invoiced sums and running interests, starting with the oldest invoice.
- 7.6 The Buyer shall not be entitled to withhold payment of any sums after they have become due, by reason of any claim, set-off or counterclaim which the Buyer may allege or for any reason whatsoever.



## 8. Retention of Title, Security

- 8.1 The title to the Goods shall remain with the Vendor, until the purchase price has been paid in full. Until payment in full the Buyer shall hold the goods in trust for the Vendor. If the Buyer fails to pay the purchase price in accordance with the contract, the Vendor shall have the right to repossess the goods, without any prior notice.
- 8.2 Notwithstanding the above, the Buyer shall be entitled to use the goods in the normal course of its business before the purchase price has been paid in full, unless the Vendor has claimed repossession of the goods.
- 8.3 The Vendor shall have a pledge and a lien on all goods, documents and moneys which he holds or will hold in his possession whatever the reason and the purpose thereof may be, for any sums due by the Buyer. The Vendors pledge and lien shall also extend to cover the cost and legal expense of recovering any sums due.
- 8.4 Buyer shall by reason of the Agreement and upon demand of the Vendor provide security in the form of a bond with sureties for any amount for which the Buyer is or may be indebted to the Vendor.

## 9. Liability

- 9.1 The Vendor is not liable for any damage resulting from errors or unlawful acts by itself, its employees or any other persons engaged by or on behalf of the Vendor in the execution of the agreement(s) concluded with the Buyer, unless it is an error made or unlawful act committed by persons that can be considered to be bodies of its company or executive officers and the Buyer also proves that the error or unlawful act is committed with intent or gross negligence of such persons.
- 9.2 Insofar Dutch law does not apply but instead the United States federal or state law applies, Clause 9.1 is not applicable, but instead the following applies. The Vendor shall not be liable for ordinary negligence on the part of its agents, employees and/or subcontractors.

To the fullest extent permitted by law, the Buyer shall indemnify and hold harmless the Vendor, its agents, employees and/or subcontractors from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of the Agreement, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of the Buyer, anyone directly or indirectly employed by the Buyer, or anyone for whose acts Buyer may be liable, regardless of whether it is caused in part by the negligence of the Vendor. In the event any portion of this indemnity obligation is prohibited and/or deemed invalid and/or unenforceable by applicable law, then that limited portion of the indemnity provision which is found unenforceable shall automatically be deemed reformed to the minimum extent necessary to render the indemnity obligations valid and enforceable, preserving and maintaining as closely as possible the parties' intent to afford the Vendor the maximum indemnity protections allowed by law.

- 9.3 If, despite the foregoing, the Vendor would be liable, his liability is limited to the amount the Vendor has or would have invoiced to the Buyers for the specific service.
- 9.4 The Vendor does not guarantee the suitability of the goods and services supplied or made available.
- 9.5 The Vendor is not liable for any damage and/or loss, resulting directly or indirectly from this Agreement. The Vendor is especially not liable for defects in goods supplied or made available by the Vendor or goods used in the execution of the agreement or resulting from a non-standard quality of the goods supplied by the Vendor. The Vendor is not liable for any consequential damage/loss, including delay of any vessel.
- 9.6 The Buyer accepts the Goods in their present condition without reliance on any representation as to their condition, performance, suitability, quality, capability, or other representation which may have been made by the Vendor, and assuming all risk of defect or patent, as-is-where-is, without warranty



of any kind, including any warranty of seaworthiness or of fitness for any particular purpose or of merchantability, and the Vendor expressly disclaims and the Buyer expressly waives all such warranties.

- 9.7 Any claim of Buyer against the Vendor is time barred after lapsing of 6 months from the time of delivery of the Goods to Buyer or counting from the last day Services were provided in respect of services that later were proved to be defective.

## 10. Applicable Law and Jurisdiction

- 10.1 All disputes are submitted to the exclusive jurisdiction of the Court of the place where the Vendor has its registered office. However, the Vendor may at its sole option also bring suit against Buyer before the Court at the place of domicile of the Buyer, or the Court where an asset (for instance a vessel or vessels bunker oil) are arrested, attached or seized in relation to such dispute, or the Court where the Goods are delivered and/or the Service is provided.
- 10.2 Notwithstanding the above under 10.1, the Vendor shall be entitled to commence proceedings in any other jurisdiction or before any court in order to obtain security for its claim, including security for interest due and legal costs to be incurred.
- 10.3 Dutch law is applicable. The United Nations Convention on Contracts for the International Sale of Goods (Vienna UNCITRAL Convention on International Trade Law, also known as the Vienna Treaty) is excluded from application.