

# GENERAL CONDITIONS OF SALE AND DELIVERY

of the companies within the SBI Holding Group of Groningen, the Netherlands, i.e.

**SBI (Sea Bunkering International) BV** of Groningen, the Netherlands,  
**SEA FUELS V.O.F.** of Groningen, the Netherlands,  
**SEA MED BUNKERING LTD.** of Limassol Cyprus and  
**OLIEHANDEL KLAAS DE BOER B.V.** of Urk, the Netherlands

deposited at the Registry of the District Court at Groningen, the Netherlands on May 16th 2008.

## **ARTICLE 1 - APPLICABILITY**

Article 1.1: Unless the contrary is expressly stipulated in writing, these conditions shall apply to the sale of all goods (including, but not limited to Bunker C, Intermediate Fuel Oil, Marine Diesel Oil, Marine Gas oil and any other products destined or received for use as bunkers or as lubricant oils on board) as well as to the performance of any subsequent agreement following or resulting from such sale (hereinafter referred to as "goods"), as well as to all our offers and other agreements. "We", "us" or "our" will mean respectively SEA BUNKERING INTERNATIONAL B.V., SEAFUELS V.O.F., SEA MED BUNKERING LTD., or OLIEHANDEL KLAAS DE BOER B.V., as the case may be. The party contracting with us shall for easy reference hereinafter be referred to as "the Purchaser", even though the agreement in question should in actual fact not be an agreement of sale. Without the prior written authorization of our board of directors, our representatives shall not be empowered to make such a stipulation.

Article 1.2: These conditions shall be binding on the Purchaser, to the exclusion of any other general conditions, including those of the Purchaser which are expressly rejected, unless the contrary has expressly been agreed to in writing by us. If the Purchaser declares his general conditions binding, this clause will be invalid. Without the authorization of our board of directors or of a person duly authorized by the board of directors, our representatives shall not be empowered to agree to applicability of general conditions of the Purchaser.

## **ARTICLE 2 - OFFERS**

Our offers shall be without engagement, unless we have expressly declared the contrary in writing. We shall be bound only after an order has been accepted by us in writing or has been executed by us. In the latter event our delivery and our invoice shall serve as proof of the order and the acceptance thereof. Minor or customary variations from what we have undertaken shall be permitted.

## **ARTICLE 3 - QUALITY AND COMPLAINTS**

Article 3.1: If information about the grade, content and/or quality of our goods is given by us in offers, price-lists or otherwise, the correctness of that information is guaranteed only, if and to the extent that such has been declared by us directly to the Purchaser in writing. Unless otherwise agreed in writing, samples and/or analysis-results supplied by us shall merely indicate the nature and quality of the goods by a rough approximation.

Article 3.2: The Purchaser hereby warrants that it has not relied upon any representations made by us or on our behalf but has relied exclusively on its own knowledge and judgements as to the fitness for its purpose of the goods ordered. We give no guarantee whatsoever in respect of merchantability or of suitability for a particular use.

Article 3.3: If we agree that goods supplied by us should not be up to grade, content and/or quality of or should not come up to the samples or analysis-results supplied by us – but only in case the correctness thereof has been guaranteed by us directly to the Purchaser in writing - or if we agree that supply and delivery should not in any other way be in conformity with what has been agreed upon, we shall - at our free option – either take back the goods that we sold at a reasonable location to be agreed against a refund of the invoice value of the quantity of goods that we have taken back, or allow a price reduction to a sum that in our opinion reflects the lower value of the goods; but in no case shall we have any further or other liability towards the Purchaser and/or third parties. The Purchaser shall be under an obligation to safeguard us from and hold us harmless against any claim made by third parties in respect thereof.

Article 3.4: Complaints about the grade, content and/or quality of goods supplied by us, as well as other complaints, shall - under pain of forfeiture of rights - require to be lodged with and notified to us by registered mail, at the same time submitting a representative sample of the said goods, within 8 (eight) days after factual delivery of those goods. The sample shall have been drawn by an independent surveyor and must weigh at least 5.000 grammes. This sample must contain no traces of any other product which has previously or subsequently been delivered, and must be free from any external pollution. In case we made our own samples, one for the Purchaser and one for ourselves, these samples will determine the quality of the delivered goods.

Article 3.5: The Purchaser must prove that the defect, to which his complaint relates, did already exist at the time of the delivery, the foregoing under pain of forfeiture of his rights with regard thereto. Measurements and weighings shall be carried out by us to the best of our knowledge and ability. The Purchaser shall have the right to attend our measurements and weighings, provided that he always notifies us at least 2 days before the measurements and weighings will take place.

## **ARTICLE 4 - PRICES**

Article 4.1: Except as otherwise agreed, in accordance with article 5 of these conditions, all our prices shall be exclusive of the cost of carriage to the destination desired by the Purchaser. If it has been agreed with the Purchaser that the cost of transport shall form part of and be concluded in the selling-price, then the provisions of this article shall apply to any change in the said cost of transport.

Article 4.2: The selling-prices stipulated by us are based on taxes, levies and duties by government or other authorities or import duties which exist within The Netherlands or elsewhere, and prevail at the time the agreement is entered into with the Purchaser. Unless otherwise expressly provided in the agreement, we shall in case of every and each change in those taxes, levies and duties occurring after that point of time be entitled to revise the above mentioned selling-price accordingly and to charge the same to the Purchaser.

Article 4.3: Should, after the agreement has been concluded in terms of article 2 hereof, the prices on the world market or those of our suppliers or the cost of labour, the cost of refining, the costs of processing and/or working up, the cost of storage and/or transport or other costs have risen, then we shall be entitled to proportionately increase the selling-price accordingly.

## **ARTICLE 5 - CARRIAGE**

Article 5.1: If in respect of goods sold we have undertaken the obligation to enter into a contract of carriage, such contract in the widest sense shall be deemed to form part of the purchase agreement, but we shall act as forwarder only. If the carrier is in default, also in the event of his having been contracted by us, we shall not be liable for such default; in such a case we shall be fully discharged by transferring our respective rights as against the carrier to the Purchaser.

Article 5.2: If carriage shall take place by a vessel to be made available by us, the Purchaser shall enable us to unload cargo at the place of discharge on all working-days from 7.30 till 18.00 hours, commencing one hour after arrival of the vessel.

## **ARTICLE 6 - DELIVERY**

Article 6.1: The place where the goods are loaded into any means of conveyance for carriage to the destination agreed upon between the Purchaser and ourselves shall, for the purpose of the passing of risk, be deemed to be the place of delivery, regardless of whether the sale has been effected free domicile, f.o.b., c & f, c.i.f. or any other similar condition.

Article 6.2: If at the time and place of loading the means of conveyance have not yet been set apart for the Purchaser, the time at which and the place where the goods sold were set apart shall be deemed to be the time and place of delivery of the goods sold. The Purchaser shall be deemed to have taken delivery of the goods purchased at the time whereat and the place where the aforesaid delivery took place, and the Purchaser shall as from that point of time bear the risk of the goods purchased, including the risk of carriage thereof. The Purchaser shall - without any notice of default being required to be given - be in default, if he should fail to give his co-operation to the delivery of the goods sold at the agreed date or - failing which - at the date to be fixed by us, if the effecting of such delivery is wholly or partly dependent on his co-operation.

Article 6.3: A period of delivery shall not commence until the agreement has been concluded in terms of Article 2 hereof and until the Purchaser has fulfilled all this obligations towards us.

Article 6.4: If the Purchaser fails at the agreed time to tender or nominate for delivery, to provide transportation or to take delivery at the place of destination, for whatever reason, he shall automatically be in default, without any notice being required and we shall at our option be entitled to consider the agreement immediately cancelled in whole or in part, without any judicial intervention being required and without prejudice to our right to claim damages from the Purchaser or to store or procure the storage of the goods in whole or in part for the account and risk of the Purchaser and to charge the Purchaser the expenses thereby incurred. The damages referred to shall in any case amount to the difference between the market price prevailing at the moment of the breach according to the high of Platt's and the agreed price, without prejudice to our right to claim further damages.

Article 6.5: Regardless of whether the discharging operations are carried out by us, the Purchaser or third parties, the Purchaser shall pay demurrage for each period of 24 (twenty-four) hours or part thereof, by which the time allowed for discharging according to the Skipper or Master has been exceeded. Times allowed for discharging and demurrage shall be computed upon the basis of the customary standards. The foregoing shall not in any way whatsoever limit our right to claim any other damage or loss which may result from delay.

Article 6.6: If vessels of the carrying capacity agreed with the Purchaser to be provided by us in view of the water-level cannot reach their place of destination fully laden, the extra costs and/or freight resulting there from shall be borne and paid for by the Purchaser. If and to the extent that the Purchaser shall in pursuance of his agreement with us be under the obligation to provide storage accommodation and such storage accommodation is not provided, is not provided in proper time or to a sufficient extent, or is otherwise provided contrary to what has been agreed, we shall have the right - without any further notice of default being required - either to dissolve the purchase-agreement in whole or to such part as shall be convenient to us, without any judicial intervention being required, or to discharge and/or store the goods sold and/or keep the same stored at the expense and risk of the Purchaser, without prejudice to our right to claim from the Purchaser, without any further notice of default being required, compensation for all costs, damage and loss incurred and sustained as a consequence of the Purchaser's default herein referred to.

Article 6.7: If no arrangement has been made about carriage or about means of conveyance to be provided by us, as well as if the Purchaser shall fail to provide transportation at the appointed time and place in conformity with the agreement, the place where the goods are available at the agreed time of delivery shall be deemed to be the place of delivery.

Article 6.8: Each part delivery shall be deemed to be a separate and independent delivery. We may oblige the Purchaser to accept part deliveries. These general conditions shall apply to every part delivery. We are not under an obligation to send a copy of these general conditions with every delivery or an obligation to make a reference to the application of the general conditions with every delivery.

Article 6.9: The Purchaser shall ensure that the vessel to be supplied with goods shall be free from all conditions or defects which might give rise to any hazard in connection with the delivery of goods to such vessel. We reserve the right not to supply without thereby incurring any liability where we reasonably believe that the Purchaser has failed to ensure the safe reception of goods.

Article 6.10: The Purchaser shall provide a free side for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. We reserve the right not to deliver in location or over roadways which in our opinion are unsafe for our barges or vehicles without thereby incurring any liability.

Article 6.11: In the event a quantity of goods ordered and tendered by us to the vessel cannot, wholly or partly, be discharged into the vessel for which this quantity is destined, at the agreed time and place, for whatsoever reason, we shall without prejudice to our other contractual rights, be entitled to rescind our agreement with the Purchaser wholly or partly, without any judicial intervention being required and to sell the quantity ordered or the undischarged remainder thereof to third parties and the Purchaser shall be liable for all damages arising as a consequence thereof, among which our extra bargaining costs and the difference between the agreed sales-price and our final sales-price.

## **ARTICLE 7 - PACKING**

Article 7.1: If packing material or means of conveyance are made available by us on behalf of the Purchaser, then same shall as from the time of delivery be at the risk of the Purchaser; we shall not assume any liability whatsoever for the soundness and reliability of the packing material or means of conveyance. Except in cases where a different arrangement has expressly been made between the Purchaser and ourselves in writing, the Purchaser shall within 24 (twenty-four) hours after arrival at the agreed place of destination or - failing agreement thereon - at such place of destination as shall be designated by us return the packing material or - as the case may be - the means of conveyance, at his risk, free domicile and empty, to a destination to be named by us.

Article 7.2: If from any cause whatsoever such return is delayed, the Purchaser shall - without any notice of default being required - be bound to make good the costs, damage and loss incurred

and sustained as a result of such delay. Packing materials and means of conveyance made available by us to the Purchaser shall have to be returned to us properly cleaned and in a good condition. If we have not received back the packing material or - as the case may be - the means of conveyance made available by us within 2 (two) months after the moment when this should have been done under and in pursuance of these Conditions, we shall - without any further notice of default being required - be entitled to regard the same as having been lost and to claim from the Purchaser their replacement value.

Article 7.3: If, after consultation with us, the Purchaser provides packing material or means of conveyance, we shall load the same as soon as possible. However, we shall under no circumstances whatsoever be liable therefore; any additional amount payable in respect of demurrage shall invariably be for the account of the Purchaser.

#### **ARTICLE 8 – SECA'S**

If we have agreed with the Purchaser that the goods sold by us may only be used and/or consumed in a specified area, the Purchaser shall be liable towards us for all costs, damage, loss and/or fines incurred, sustained and/or paid by us as a result of the goods sold being used in or consumed elsewhere by any other person. The Purchaser shall release us from all liability.

#### **ARTICLE 9 - PAYMENT**

Article 9.1: The Purchaser shall at the agreed date - and when no date has been agreed upon, immediately after receipt of our invoice - pay the selling price, and any additional expenses due by him in the nominated currency either at our office in Groningen, in cash - without any reduction -, or into a banking account or postal clearing account to be designated by us. The Purchaser may not at any time claim a set-off or invoke any other right to withhold or suspend full payment. The Purchaser agrees that we may set off his possible claims, in whatever currency, with any claims we or one of the companies with which we have an association as parent, subsidiary or sister company or otherwise, may have against the Purchaser, its parent, subsidiary or other affiliated company. Set-off by us may also take place if the claims or counterclaims are not yet due. In this case settlement will take place at values fixed by us. The companies meant in this clause will be disclosed by us to the Purchaser at his request.

Article 9.2: The Purchaser shall to an undiminished extent continue to be under the aforesaid obligation to pay, if we charge him for a part delivery as mentioned in article 6.8.

Article 9.3: Complaints lodged by the Purchaser shall leave his obligations to make payment intact. The Purchaser shall at all times - consequently both prior to and after delivery - be compelled to give security for the proper performance of all his obligations as against us in such manner as shall be designated by us. As long as this security has not been given, we shall not be under the obligation to make delivery under any contract with the Purchaser. If this security is given by means of a letter of credit, such letter of credit shall in that event - unless otherwise expressly agreed in writing - be irrevocable, transferable, confirmed and divisible, shall have been opened with a bank approved by us and payable against invoice, the customary shipping and/or forwarding documents and weigh-note; all costs and expenses incidental to the opening of the credit shall be borne and paid by the Purchaser.

Article 9.4: If the Purchaser fails to pay the sum due by him at the point of time mentioned in the first paragraph of this article, he shall immediately be in default - without any further notice of default being required. In such event he shall as from time he is in default pay interest at the rate of the European legal interest.

Article 9.5: If the Purchaser is in default in the manner as previously mentioned or otherwise, we shall, moreover, be entitled to immediately cancel deliveries still to be made to the Purchaser and/or take back goods already delivered, without prejudice to our right to claim damages in respect thereof. If the Purchaser is adjudicated bankrupt, applies for or has been granted a moratorium in respect of his debts, lost the free control over his property or has in any other way apparent has come into financial difficulties which in our opinion justify the expectation that he will not make payment, all our claims will become immediately due and payable, and we shall have the right to regard - without the intervention of any court of law being required - the agreement(s) made with him or - as the case may be - parts thereof as dissolved and to claim compensation for the damage or loss resulting from such dissolution.

Article 9.6: All judicial and extra-judicial costs and expenses, including the extra-judicial costs, expenses, fees and disbursements of our lawyers, which will be incurred by us in connection with such non-payment or delayed payment or by any other breach by the Purchaser of these conditions shall be for his account. 10 (ten) per cent of the amount to be claimed shall be charged by way of fixed extra-judicial costs and expenses without prejudice to our right to prove that the amount of the actual costs and expenses was in excess of the said percentage and to claim in that event payment of such excess-amount as well.

Article 9.7: Deliveries of goods are not only on the credit of the Purchaser but also on the faith and credit of the vessel for which the same is destined or which uses the same and it is agreed that we will have any may assert a lien against such vessel for the amount of the purchase price of the goods and any other amounts due by the Purchaser arising out of or connected with a sale and delivery of said goods.

#### **ARTICLE 10 - TITLE**

Article 10.1: Title to goods sold shall pass to the Purchaser only after the same have been delivered to him and the selling-price and all and any additional charges incidental thereto due and payable by him, also in the event of our having granted to the Purchaser for any cause whatsoever a credit, and any other indebtedness on the part of the Purchaser as against us, in our sole discretion, have been satisfied and after we shall have given the Purchaser full discharge thereof.

Article 10.2: If goods delivered by us to the Purchaser are unsold by him to third parties and if such goods have been sold by us to the Purchaser under reservation of title, he shall only sell and deliver such goods to third parties under reservation of title as well, and he shall be obliged to transfer to us beforehand all rights as against those third parties, including the right to payment, or alternatively, at our option, to pledge such rights to us. The Purchaser shall be obliged to notify the third party that the right of payment has been transferred, alternatively has been pledged, to us. Herewith the Purchaser irrevocably and unconditionally gives a power of attorney to us to sign any document on behalf of the Purchaser to the above effect. The Purchaser is not allowed to set off any claims on such third parties arising out of such on sale with claims of such third parties against the Purchaser and is obliged to on sell only under the condition of non-compensation. Any set-off which has taken place notwithstanding the above will not be valid as against us.

Article 10.3: As long as the Purchaser is indebted to us in any sum in respect of any goods purchased from us and unsold by him to third parties, each payment received by him from such third party shall in that event be deemed to have been received by the Purchaser respectively be received by him for and on our behalf. The Purchaser shall keep the sums so received solely for our benefit and in our name. The Purchaser shall immediately pay over the said sums to us until he has fully been discharged for all his debts due to us on any account whatsoever. The Purchaser shall not be entitled to pledge or transfer goods, title whereof is vested in us, or alleged claims against us, to third parties by way of security or otherwise.

Article 10.4: If goods delivered by us are subsequently mixed or blended with or - as the case may be - into other products, the Purchaser shall in that event be deemed to have pledged to us, respectively be obliged to pledge to us his (joint) rights to those other products as security for all debts due from him, specifically but expressly not solely those with respect to the goods delivered

or blended. Herewith the Purchaser irrevocably and unconditionally gives a power of attorney to us to sign any document on behalf of the Purchaser to the above effect.

#### **ARTICLE 11 - QUANTITY**

Article 11.1: Our barge meter readings or other soundings carried out by our barge personnel as to the quantities of goods delivered are conclusive and binding. The Purchaser has the right to require personnel to sound the barge in his presence before and after discharging. If the Purchaser has not exercised this right, he shall be estopped from claims as to quantities delivered. In the event these soundings lead to a difference between the barge meter readings and the results of these soundings, this difference will be yet supplied by us.

Article 11.2: In the event a barge is not equipped with meters, the Purchaser shall require the barge personnel to sound the barge in his presence before and after discharging, failing which the soundings carried out by the barge personnel without the Purchaser's presence shall be conclusive and binding.

Article 11.3: If the quantity sold by us has been indicated between the Purchaser and us only approximately, we shall, unless otherwise agreed, have the right - at our free option - to supply and deliver 10 per cent more or less than the quantity indicated with no other consequence than a corresponding price adjustment.

Article 11.4: In the event a quantity of goods ordered is already being loaded or is already loaded on board of one of our barges and the Purchaser advises us that he wishes to reduce said quantity, we may consent thereto, but the Purchaser shall be liable for all damages arising as a consequence of said reduction, among which our extra bargaining costs and the difference between the agreed sales-price and the final sales-price of the quantity with which the quantity ordered originally is reduced.

#### **ARTICLE 12 – FORCE MAJEURE**

Circumstances preventing, impeding or delaying our obligations, including the production, the delivery, the shipment to us or to the Purchaser, or the discharge, such as a strike or lockout, lack of labour inside or outside our business, lack of suitable means of conveyance, stoppages or congestions of traffic by sea or land, discontinuance of mines, pits, refineries or other installations, stoppages of operations, natural or forced, decrease of production at the place from where the goods to be delivered by us are obtained, abnormal and unforeseeable increase in prices, refusal, omission or failure on the part of our pre-suppliers, carriers or other parties introduced by us, war, hostilities, state of war and/or siege or mobilization, in the country of origin, transit, storage and/or destination, export, import or transit prohibitions issued and placed by the Authorities of the country of origin, destination or transit, shipwreck or damage to means of transport, measures taken by Government in the form of restriction, introduction or - as the case may be - cancellation of permits for the product to be delivered or any raw material therefore required, and all other calamities of any nature whatsoever, garnishments or arrests laid under us or third parties on whom we are dependent, shall release us - at our free option - from our obligations resulting from the agreement made with the Purchaser, without us being under the obligation to pay any damages whatsoever with regard thereto.

#### **ARTICLE 13 - LIABILITY**

Article 13.1: Without prejudice to all the other provisions laid down in these Conditions with regard thereto, we shall be liable for any damage or loss only, if the Purchaser proves that such damages or loss is attributable to wilful intent or gross fault on our part. We shall under no circumstances be liable for any damage caused by third parties contracted by us. Liability shall at all times be limited to the price payable by the Purchaser for the respective delivery. The Purchaser shall safeguard us and hold us harmless from any liability as against third parties in excess thereof. No claim of any kind shall exceed the purchase price of goods, and in no event shall we be liable for any prospective or speculative profits or special, indirect or consequential damages, inflicted, directly or indirectly, on persons or merchandise of buyer and/or third parties. Buyer shall safeguard us and hold us harmless against any claims from third parties in regard thereto.

Article 13.2: The Purchaser agrees to indemnify us against all damages and liabilities arising from any acts or omissions of the Purchaser, its agents and servants or the ship's officers or crews of Purchaser's vessels in connection with the sale and delivery of goods.

#### **ARTICLE 14 - MISCELLANEOUS**

Article 14.1: Neither of the Parties shall be entitled, without the prior written permission from the other Party, to transfer or assign all or part of its rights under the Agreement to a third party. We shall, however, at all times be entitled to transfer our rights under this Agreement in full or in part to a party belonging to the same group, by mere written notification to Purchaser.

Article 14.2: In the event any clause or clauses in these general conditions should turn out to be wholly or partly invalid, this will not affect the validity of the rest of the agreement, but only apply to the clause or clauses concerned. The invalid clause or clauses will then, if legally possible, be replaced by a valid, similar clause, having the same effect.

Article 14.3: Postponement or omission in claiming strict fulfilment of contractual obligations on one or more occasions or in exercising any right or privilege shall in no case be regarded as renunciation for the future or the right of fulfilment or such rights or privileges unless that renunciation for the future has been expressly made in writing.

Article 14.4: Headings are for convenience of reference only and are not to be taken into account in construction.

#### **ARTICLE 15 – LAW AND JURISDICTION**

Article 15.1: The agreement entered into with the Purchaser shall be governed by the laws of the Netherlands. The application of the uniform laws on international sales, or any law that will replace these uniform laws on international sales, shall be excluded. The International Rules for the Interpretation of Trade Terms used in trade contracts as revised in 2000 by the International Chamber of Commerce (Incoterms 2000) or their latest version, shall apply hereto, unless the terms and provisions expressly provide to the contrary.

Article 15.2: Our liability on account of an alleged improper fulfilment shall lapse if the goods have been utilised or processed. Without prejudice to earlier estoppel as described in these Conditions, all claims against us shall in any case become time barred and lapse unless a claim has been instituted before the court mentioned in par. 3 hereof within 1 year from the date of delivery of the goods, or the date that delivery as per the agreement should have taken place.

Article 15.3: All disputes arising or resulting from or connected with the legal relationship between us and the Purchaser shall be exclusively referred to the competent Court at Groningen. However, we shall be entitled to address courts for claims against the Purchaser that would otherwise have jurisdiction. Nothing herein shall prevent the parties to address the otherwise competent courts for a court order in protective or summary measures ("kort geding").