

**GENERAL TERMS AND CONDITIONS OF SALE OF SOCIETE D'EXPLOITATION DES PORTS DE MONACO**  
**(SEPM)**

**ARTICLE 1 - PURPOSE AND SCOPE OF APPLICATION**

**1.1** These Terms and Conditions constitute the basis of commercial negotiations and are addressed or handed over upon request to each buyer, whether a natural or legal person, hereinafter the "Client", of services provided by SEPM.

By default, when ordering, the Client confirms that he has read these Terms and Conditions. Hereunder, the status of Client is acquired after SEPM has agreed the sale of services it offers to the said natural or legal person requesting a purchase from it.

**1.2** These Terms and Conditions will apply automatically, except by specific agreement prior to the order agreed in writing between the parties, to all sales of services provided by SEPM or its contractors through it and, in particular, the following: mooring, right of use of electrical installations, right of use of the drinking water system, piloting and sundry services.

**1.3** Accordingly, the placement of an order by a Client entails unconditional acceptance by the latter of the present Terms and Conditions, unless special conditions agreed in writing by SEPM for the Client.

**1.4** All the prices of the services provided by SEPM are available at the headquarters and captaincies of the latter. "Passage" prices are available on the website of SEPM. It is recalled that there is a monthly mooring fee and a daily mooring fee whose implementing rules are laid down in para 6.5 of Article 6.

**1.5** The sale of services will be deemed concluded on the date of acceptance of the order by SEPM. Prior to that date, these Terms and Conditions are available to any purchaser for informational purposes on the website of SEPM.

**1.6** The invalidity of a contractual clause does not invalidate the Terms and Conditions.

SEPM has the right to modify these Terms and Conditions subject to publication available at its headquarters, in its captaincies and on its website. These amendments will apply to current contracts, provided that the Client has not expressed disagreement to them by due notice within seven days.

**1.7** If the order is confirmed, the Client has acknowledged having read and adhered unreservedly to the Terms and Conditions, which can be found online at: <http://www.portsmonaco.com> or consulted at the office of SEPM and the captaincies.

**1.8** Any other document than the Terms and Conditions, including catalogues, flyers, advertisements, notices, is merely informative, indicative and non-contractual.

**ARTICLE 2 - APPLICABILITY**

**2.1** SEPM reserves the right to supplement the present Terms and Conditions by Special Conditions. The General and Special Conditions will prevail over the purchase conditions of the Client unless formal written acceptance by SEPM. Any contrary condition cited by the purchaser will, therefore, by express acceptance, be unenforceable against SEPM, regardless of when it may have been brought to its attention.

**2.2** The fact that SEPM does not at a given time make use of any of these Terms and Conditions will not be construed as a waiver of the right to make use later of any of these Terms.

**ARTICLE 3 - ORDERS**

**3.1 Definition**

**3.1.1** An order means any order for products and services, in particular a reservation, accepted by SEPM, together with the payment of any deposit stipulated.

Any order is irrevocable for the Client without the written consent of SEPM.

The service contract is concluded for the lifetime accepted by SEPM.

**3.1.2** If the request is made by an agent, it is binding on it and the Client, in particular for the proper settlement of this order or any services.

The agent, with a written power of attorney issued by the Client, must act under cover of a notification by the Client, which must specify the characteristics of the power of attorney, in particular its scope and duration, the power of attorney being communicated on request to SEPM, if this is deemed necessary. If the applicant is the captain of the vessel concerned, he must have a power of attorney on the above-mentioned terms.

**3.1.3** Any mooring reservation request will mention the length and the effective width of the vessel concerned. The Client or, if appropriate, his representative applicant, are jointly and severally responsible for the measures communicated to SEPM when applying for a reservation.

The length and the effective width of the vessel concerned is deemed after consideration of all the elements to correspond to a true length or width (including, but not exhaustively, the bowsprit, the rear deck, the presence of an off-engine board, etc.). In the event of dispute between the parties on these elements, the dispute will be resolved by an expert designated by SEPM, and the cost of said expertise will be met by the defaulting party.

**3.2 Change, cancellation, failure to appear ("No-Show")**

**3.2.1 Change** Orders are final and irrevocable, and therefore any request for a change in the delivery of an order placed by a Client will only be taken into account by SEPM if the request is made in writing, including by fax or email, 48 hours before noon (local time in Monaco) on the expected day of arrival.

If the request is made by telephone, it must be confirmed in writing in the above form and deadline.

In the event of change of the order by the Client, SEPM will be freed from the agreed deadlines for its implementation.

**3.2.2 Cancellation** When the cancellation of the order is received by SEPM more than 48 hours before noon (local time in Monaco) on the expected day of arrival, no penalty will be due by the Client.

Except in the event of force majeure as provided for in these Terms and Conditions, when the cancellation of the order is received by SEPM within 48 hours and before noon on the expected day of arrival, the Client will be charged for one night by way of a penalty.

Cancellation requests must be made in writing, including by fax or email. If the request is made by telephone, it must be confirmed in writing in the above form and deadlines.

**3.2.3 Failure to appear ("No-Show")** In the case of a failure to appear ("No-Show") of the ship from the date of the reservation accepted by SEPM, the Client will be charged for one night by way of a penalty and the said reservation may be cancelled

automatically, except in the event of force majeure as provided for in these Terms and Conditions.

#### **ARTICLE 4 - SUSPENSION OF SERVICES**

In the event of non-payment in full of an invoice which has become payable after formal notice has had no effect within 48 hours, SEPM reserves the right to suspend any ongoing and/or future service without the Client being entitled to claim any compensation for any reason whatsoever.

#### **ARTICLE 5 - PAYMENT**

##### **5.1 Cash payment**

**5.1.1** The invoices are drafted on the basis of the reservation dates and must be paid in cash, without discount. The invoice will be issued in the name of the Client.

**5.1.2** Any delay in payment will result in the immediate maturity of amounts billed and a fixed indemnity, as a penalty clause, of 10% of the amounts due and unpaid.

Any delay in payment will also result in the application of a late fee in the terms set out in para 7.3.1 of Article 7 of these Terms and Conditions.

**5.1.3** In the case of a Client acting through the intermediary of a representative appointed by him for that purpose, whether a natural or a legal person, the invoice will be sent to the Client through the care of the agent, who acknowledges having read these Terms and Conditions.

The liability of the latter and the Client is triggered vis-à-vis SEPM for the payment of the invoices corresponding to the order, both for mooring and for all other expenses whether related or not to the mooring. This also applies to all sundry sales requested by the Client or his representative, accepted by SEPM and invoiced by the latter.

**5.1.4** All orders that SEPM agrees to perform will be performed, on the assumption that the Client has offered sufficient financial guarantees deemed to be such by SEPM and actually settles the amounts due on maturity, in accordance with the legislation. Similarly, if SEPM has serious or particular reason to fear payment difficulties on the part of the Client at the time of the order, or after it, or if the Client does not offer the same guarantees as on the date of acceptance of the order, SEPM may make the acceptance of the order or continuation of its service subject to a cash payment or the provision by the Client of guarantees in favour of SEPM.

**5.1.5** SEPM also has the opportunity, without justified, only to accept the order placed by the Client after prepayment for the requested services.

In the event of refusal by the Client of the payment in advance, without any sufficient guarantee considered to be such by SEPM being offered by said Client, SEPM may refuse to honour the order (s) placed and provide the services concerned, without the Client being entitled to cite wrongful refusal to sell or claim any compensation.

**5.2 Refusal of order** If a Client places an order with SEPM without having made the payment of the invoice (s) stipulated, SEPM may refuse to honour the order and provide the service concerned, without the Client being entitled to any compensation for any reason whatsoever.

#### **ARTICLE 6 - TARIFF - PRICE**

**6.1 Tariff** The current tariff may be revised at any time by prior notice. Any tariff change will automatically apply up to the date indicated on the new tariff.

**6.2 Price** Our prices are fixed by the tariff in force on the date of the submission of the order. They are all deemed to be in euros (€) and inclusive of tax (all taxes included) for pleasure crafts and exclusive of tax (excluding taxes) for cruise vessels.

Regarding the wintering contract, the tariff applied on the day of order placement changes each year on 1 January.

**6.3** Any invoice issued is final. In the event that the Client or its agent requires special billing, for the request to be taken into account, it must be made before the arrival of the ship in the "remarks" section of the reservation request form on the Internet, particularly with regard the application of VAT. In all cases, SEPM will verify the supporting documents before any invoicing, and Client or its representative undertake to provide the said documents to SEPM.

**6.4** The invoice for the mooring price relates to the docking period requested and accepted by SEPM. In the event of absence during a stay, the Client may opt to pay for the entire period of absence if he wishes to retain his port berth. Alternatively, he may be charged for one night by way of penalty, in which case the rest of his reservation will be cancelled.

**6.5** If, in a calendar month, the application of the daily tariff is less advantageous for the Client than the monthly fee, the latter will be applied to it.

**6.6** When an extension of docking is requested and accepted by SEPM, it leads to a new invoice, which cannot give rise to the application of the monthly tariff if the duration of the extension added to the duration of the initial docking reaches or exceeds one month.

**6.7** Depending on the commercial optimisation strategy, SEPM can apply special commercial discounts in the manner determined. They apply only from the date of submission of proof corresponding to said discounts and without application of any retroactivity.

#### **ARTICLE 7 - TERMS OF PAYMENT**

**7.1 Payment** Our invoices are payable on receipt.

**7.2** In any event and in accordance with Article 9.7 of the Rules of Procedure of the Ports of Monaco, the settlement of amounts due to SEPM must always be carried out before the ship's departure.

##### **7.3 Non-payment**

**7.3.1** Any amount not paid when due will result in the payment by the Client of penalties set at 1.50% per month of delay. These penalties are due automatically and will be debited from the account of the Client. Any recovery costs are the responsibility of the debtor.

**7.3.2** In addition, SEPM reserves the right to request the Court of competent jurisdiction to recover the amounts due subject to a daily fine per day of delay.

**7.4 Claims relating to services invoiced.** To be admissible, any claim must be submitted by the Client to SEPM in writing within fifteen days of the dispatch of the invoice.

**7.5 Prohibition of offset.** It is expressly understood that no offset between the claims of SEPM and the claims of the Client may take place.

**7.6 Provisional payment duty.** Any submission of a claim does not relieve the Client of its obligation to pay the entire invoice.  
**7.7 Limitation** All actions arising from the application of these Terms and Conditions will be subject to limitation within the period of one year.

#### **ARTICLE 8 - FORCE MAJEURE**

**8.1** Force majeure is considered to mean events beyond the control of the parties, which they could not reasonably be required to anticipate and could not reasonably have avoided or overcome, insofar as the occurrence renders totally impossible the performance of the obligations, subject to the provision of proof.

**8.2** In particular, force majeure or fortuitous events discharging SEPM of its obligation to provide the services within the time originally planned include: strikes of all or part of the personnel of SEPM, fire, flood, war, inability to obtain supplies of raw materials, epidemics, interruptions to the supply of fluids for reasons not attributable to SEPM and the unavailability of docks and pontoons.

**8.3** In such circumstances, SEPM will notify the Client in writing, including by fax or email, within 24 hours from the date of occurrence of the events, and the contract between SEPM and the Client will be suspended automatically without compensation as from the date of the occurrence of the event.

**8.4** If the event were to last longer than 30 days from the date of its occurrence, the contract concluded by our company and its Client may be terminated by either party, without any of the parties being entitled to the award of damages.

Such termination will take effect on the date of first presentation of the registered letter with acknowledgment of receipt cancelling said sales contract.

#### **ARTICLE 9 - PARTIAL INVALIDITY**

If one or more provisions of these Terms and Conditions are held to be invalid or declared as such under any law or regulation or further to a final decision of a competent Court, the remaining provisions will retain their full force and scope.

#### **ARTICLE 10 - NON-WAIVER**

The fact that SEPM does not at a given moment cite any provision of these Terms and Conditions cannot be regarded as a waiver of the right to cite these terms later.

#### **ARTICLE 11 - JURISDICTION**

**11.1** The domicile is elected by SEPM at its headquarters.

**11.2** In the event of a dispute or claim arising out of these Terms and Conditions or in connection with them or with the failure to perform them, the contracting parties will consult and negotiate and, recognising their mutual interests, will try to find a satisfactory solution.

**11.3** If the parties fail to reach a settlement within a period of sixty (60) days after notice given by either party by registered letter with acknowledgment of receipt, any dispute concerning the application of these Terms and Conditions and their interpretation, their performance and delivery contracts concluded by SEPM, or the payment of the price, may be brought before the Courts of Monaco, whatever the place of the order, delivery and payment and the method of payment, and even in cases of third-party claim or plurality of defendants.

**11.4** The allocation of competence is general and applies both to a principal claim, an incidental claim, a substantive action or summary proceedings.

**11.5** In addition, in the event of legal action or other debt collection action by SEPM, judicial fees for summonses and agent and bailiff fees, with all additional costs, will be charged to the defaulting Client, as well as the expenses related to or resulting from non-compliance by the Client with the terms of payment or delivery of the order in question.

#### **ARTICLE 12 - APPLICABLE LAW**

Any questions relating to these Terms and Conditions as well as the services governed by them, which are not covered by these contractual provisions, will be governed by the law of Monaco to the exclusion of any other law.

#### **ARTICLE 13 - PERSONAL INFORMATION**

According to Law No. 1165 of 23 December 1993, as amended, on the protection of personal data, and taking into account the Ministerial Decree No. 2014-176 of 28 March 2014 on the automated processing of personal data performed by legal persons of public law, public authorities, private bodies with a public interest function or the franchisees of a public service, the Client has the right to access, change, rectify and delete personal data concerning him. To exercise this right, the Client must make the request by post or in person at the headquarters of SEPM, to the processing controller or his representative.

#### **ARTICLE 14 - ENTRY INTO FORCE**

These Terms and Conditions for the services of SEPM come into force on June 1, 2016