

General Conditions of the Lübecker Hafen-Gesellschaft mbH



Edition: 1st January 2006

I. General Conditions

1. General Provisions

- 1.1 By contract between the Hansestadt Lübeck and the Lübecker Hafen-Gesellschaft mbH (hereinafter called the LHG), the administration and operation of the port facilities in Lübeck have been transferred to the LHG.
- 1.2 The LHG runs the handling and warehousing business on the basis of contracts under private law concluded with the users of the port facilities which are managed and operated by the LHG.
- 1.3 These General Conditions are applicable to all LHG services rendered for their customers and for all users of the port facilities of the LHG. In addition the services of the LHG are subject to the current Wharfage List valid at the time and the fee regulation for the disposal of ships' garbage.
- 1.4 Any conditions of the ordering party conflicting with or diverging from our General Conditions are not accepted by the LHG unless we have expressly agreed in writing to their validity. Our General Conditions are also applicable if we provide our services without reserve although we are aware of the fact that the ordering party's conditions diverge from or are in conflict with our General Conditions.
- 1.5 No oral side agreements have been made. Any agreements supplementary to or diverging from our General Conditions must be made in writing.

2. Regulations under Public Law

- 2.1 The port users are obligated when using the public port facilities to observe all relevant regulations under public law, in particular the current fee regulation of the LHG and the Hansestadt Lübeck for the use of the Public Port Facilities in force at the time; and the port regulations for the ports in Schleswig-Holstein and the port safety regulations. The port users are under obligation to the LHG to comply with these requirements valid at the time.
- 2.2 If a claim is raised against the LHG by authorities on the basis of public law in connection with things having been brought into the area of the port facilities or in connection with other actions or omissions on the part of port users, the LHG may call for compensation from the users for all direct or indirect costs in relation with claims made by the public authorities.

3. Placing of Orders

- 3.1 Orders must be placed in writing. They must contain all details necessary for proper handling and proper warehousing. All instructions concerning the treatment of goods must be included in the order. In the absence of a written order, the LHG is not under any commitment to carry out the work.
- 3.2 As far as the LHG provides order forms, the work will only be carried out if the ordering party has completed such forms in all detail and has duly signed them.
- 3.3 The ordering party shall assume a guarantee that all details given in the order form are correct, in particular with regard to type, quantity and weight of the goods.

4. Ancillary Services

- 4.1 If not otherwise expressly agreed upon, the LHG will also provide the following ancillary services:
 - Weighing and counting of goods, where the ordering party has not indicated any weights or piece numbers and these details are indispensable for the calculation of the fee.
 - Taking into safe custody of any fastening materials found; such materials must be collected or declared for warehousing within three working days.
 - Basic cleaning of rail trucks, containers, swap bodies and road trucks by means of a broom.
- 4.2 Further ancillary services are provided if are specifically ordered, e.g. lashing, sorting, weighing, counting, marking and repairing.
- 4.3 All ancillary services are subject to additional payment. If services are not listed in the Wharfage List their fee shall be negotiated separately.

5. The LHG's Rights and Obligations of Verification

- 5.1 The LHG is not obligated to verify the information provided by the ordering party. Verifications of piece numbers or signing marks will only be carried out where particulars in respect of piece numbers or signing marks are shown in the clearance papers. Verifications of parcel goods and counting checks in case of board-to-board handling will only be carried out by the LHG if a specific order has been placed.
- 5.2 If the LHG is in doubt about the correctness of the information given, it shall have a right to demand the presentation of the accompanying papers and, if necessary, also an inspection of the contents of the consignment. The LHG may also carry out a weighing or counting check.
- 5.3 If the verification reveals any discrepancies, the ordering party will be notified; in case of discharged cargo such a notification may be directed to the ship's management or the ordering party's local agent.
- 5.4 The costs of the re-weighing, re-counting or other verification measures, including the notification of any discrepancies, shall be payable by the ordering party, unless the difference revealed by the said verification is insignificant for the proper performance of the work and the correct calculation of the fee payable. A difference in weight exceeding 55 % is deemed to be significant.

6. Supervision in the Port Area

The instructions given by the LHG supervisory staff must be complied with, in particular the members of the Port Security. LHG shall be authorized to carry out checks on personnel and cargo.

7. Working Time

Orders will only be carried out by LHG within the working hours allowed under the labour law, in particular under the collective-agreement provisions.

8. Certificates, Inspections, Packaging

- 8.1 If requested by the ordering party, a certificate will be issued against payment, showing all work carried out by the LHG.
- 8.2 The inspection of goods for the determination of defects or for the drawing of samples is only allowed with the written approval of the party entitled to dispose of the goods. The inspection is subject to payment. The amount is calculated in accordance with the hourly rate of the accompanying person, as shown in the Wharfage List.
- 8.3 In case of imminent danger to the goods, the LHG is authorized, but not obligated, to repair the packaging of the goods at the expense of the ordering party.

9. Terms of Payment

- 9.1 As far as no specific agreement has been made, invoices are payable in Euros within 14 days from the date of invoice without any deduction. If payment is not made in due time, the LHG is authorized to charge interests by default at a rate of 8 % p. a. in excess of the basic interest rate. The assertion of further damage is not ruled out.
- 9.2 The ordering party may set off its own claim against the claims of the LHG claim only if its own claim is legally effective and beyond dispute. The ordering party has no right of retention in respect of claims which do not originate from the same contract.
- 9.3 If it turns out after conclusion of an order that the claim for payment is endangered by lack of financial capacity - specifically through the absence of credit worthiness - on the part of the ordering party, the LHG shall be entitled to call for immediate provision of security or cash payment without any deduction for all services provided and for prepayment for all services still to be provided.

10. Service Impediments

- 10.1 If the LHG is prevented from the provision of services within the agreed period of time due to circumstances which could not be recognized until after conclusion of the contract, specifically Force Majeure, Acts of God, measures of industrial disputes, lack of supplies, government interventions, difficulty in providing supplies, obstruction of traffic, unforeseeable operational failures, unforeseeable delay in deliveries or other circumstances of a similar nature, the commitment to provide services shall be suspended until the impediment has ceased to exist and to the extent of its effect. If the ordering party cannot reasonably accept this arrangement, he shall be entitled to withdraw from the contract after having given notice to the LHG for a reasonable period of time. In the cases specified by law (Sec. 323 II and IV, Sec. 325 V Civil Code) it is not necessary to grant this period of time. The LHG shall not be responsible for the non-performance or delayed performance due to the above-mentioned reasons. Any claim for damages or reimbursement of expenses shall be ruled out. In the event that the customer is responsible for any delayed performance, the agreed performance periods and dates shall be extended or postponed accordingly.
- 10.2 The LHG's liability for any delayed performance is limited to € 10,000.00. In other respects the liability is limited as defined in Clause 13 and/or Clause 24 and 30.

11. Change of Disposing Party

Should a change take place in the party holding the right to dispose of a consignment, the original customer shall also continue to owe all payments to the LHG.

12. Liability of Port Users

The port users, in particular the ordering party, shall be liable according to legal requirements for any and all damage caused by them or by the persons instructed to act on their behalf.

13. The LHG's Liability to Pay Compensation

- 13.1 The LHG is liable to pay compensation, for whatever legal reason, only in cases of intent or gross negligence on the part of agents or employees of the LHG. The foregoing exclusion of liability in respect of ordinary negligence does not apply to violation of essential contractual obligations. Concerning the violation of essential contractual duties and obligations, the liability is limited to typically foreseeable damage.
- 13.2 The liability of the LHG to pay compensation, for whatever legal reason, is restricted to a total amount of €12,000.00. The LHG points out that in individual cases it may be possible that claims arise for a loss or damage at a higher value. The LHG therefore offers to take out a relevant insurance policy at the expense of the ordering party.
- 13.3 Claims for damages based on contractual liability become statute-barred after one year counted from the date on which the service was provided; except in cases of intent. This is also applicable to identical concurring claims resulting from extra-contractual liability.
- 13.4 Any liability to pay compensation under a guarantee assumed by the LHG and any liability pursuant to other imperative legal standards are not affected by the above. The same applies to the causation of a claim involving the injury to life, bodily harm or health.
- 13.5 The handling and warehousing of cargo are subject to Clauses 24 and 30.

14. Requirement to Give Notice of Defects; Notice of Damage

- 14.1 Any damage/loss or complaint of all kinds shall be reported in writing to the LHG without delay, however not later than 7 days after its occurrence, giving full reasons. The LHG must be given an opportunity to verify the claim so asserted or have it verified by an authorized agent and/or to carry out a joint inspection for verification. If the ordering party fails to give the LHG such an opportunity the claim against the LHG regarding compensation for property damage and any other financial damage connected therewith - for whatever legal reason - is ruled out.
- 14.2 In view of the risk involved in the handling and warehousing operations it is recommended that ordering parties take out suitable insurances policies.

II. Special Provisions for Cargo Handling

15. Execution of Handling Work

All handling work on shore will be carried out by the LHG.

16. Handling Work subject to Special Authorization

Should authorization be required for the handling of certain goods, the handling work will not be carried out unless the said authorization is presented.

17. Hiring of Handling Equipment

- 17.1 If the LHG hires out any working equipment without the pertaining personnel, the equipment must be checked for its good working order on receipt. Subsequent assertions of defects, which would have been discovered by an adequate checking procedure, cannot be considered. After use, the working equipment must be returned to the point of delivery in a perfect working order.
- 17.2 The hirer shall be liable for the loss of or damage to the equipment, as far as the hirer or a third party acting on his behalf is responsible for the damage.

18. Notification of Handling Work

- 18.1 The LHG shall be advised of any forthcoming handling work by 2.00 p.m. on the preceding day. If Sunday work is required, the notification must be received by the LHG at the latest on Friday, 2.00 p.m.
- 18.2 If a customer fails to make use of the notified time reserved for handling, the LHG shall have the right to charge for the additional expenditure arising from waiting and idle time in accordance with the Wharfage List or the special customer contract.

III. Special Provisions for Warehousing

19. Sequence of Clearance

- 19.1 Road vehicles are cleared in an order that takes account of the LHG's operational and organizational concerns. Vehicles which have not been booked in, will only be dealt with after those which have given prior advice.
- 19.2 The order for the clearance of ships and vehicles will be determined by the LHG in each individual case.

20. Berthing of Ships

- 20.1 Ships are not allowed to berth until they have reported to the port authority (Hafenbehörde) of the Hansestadt Lübeck and have been assigned a berthing place.
- 20.2 If instructions are given by the port authority, ships must shift their position in the port immediately.
- 20.3 The gangways of ships must be arranged in such a manner that they are not exposed to damage by crane operations or train shunting.

21. Loading and Unloading

- 21.1 The LHG shall determine the working equipment to be used for handling.
- 21.2 The ship's management and/or vehicle drivers shall prepare the vehicles in such a manner that the handling work can be carried out without creating a danger to the vehicle and/or the port facilities. In particular, it must be ensured that tackling and other objects in or on the hatch opening are not exposed to damage by crane work.
- 21.3 When the ship is being unloaded, the removal of cargo from the ship must be carried out at the same speed at which it can be received on shore; when the ship is being loaded, the cargo must be taken on board at the same speed at which the LHG is able to load. If idle time ensues on shore due to slow execution of loading or unloading, the idle time so caused will be charged according to the Wharfage List and/or the special customer contract.
- 21.4 Where road vehicles are being unloaded, the goods are to be placed in the area assigned by the LHG in such a manner that they can be taken up by means of handling equipment. Where road vehicles are being loaded, the goods will be placed in the area on the loading ramp assigned by the LHG.
- 21.5 Heavy goods or containers can only be handled by means of the heavy-load cranes. If this necessitates the shifting of ships or relocation of land vehicles, the ordering party will be charged for the costs arising.

22. Handling by Means of Cranes and Ground-level equipment

- 22.1 For incoming traffic and for handling operations from board to board, the gear for the load slinging shall be provided by the ship. In the case of outgoing traffic, such gear shall be provided by the LHG, if not otherwise agreed upon. The ship must ensure that a sufficient number of ship's tallymen are available. If no such tallymen are provided in sufficient number by the ship, the LHG shall be authorized to make such personnel available at the expense of the ship.
- 22.2 The goods to be handled must be placed vertically beneath the crane hook and ready for slinging up. Where goods are improperly slung up, the crane operator may refuse to continue his work. The crane will not be swung out.

23. Rates for Handling

The rates for the handling of normal goods and the types of goods to be handled are subject to the current Wharfage List if no special agreement has been reached.

24. The LHG's Liability to Pay Damages

- 24.1 The LHG's liability in case of loss of or damage to the handled goods is limited to two (2) units of account for each kilogram of gross weight of the goods.
- 24.2 If only single parts of the goods are lost or damaged, the liability of LHG is limited to two (2) units of account for each kilogram of the gross weight
- of the total goods if the goods are depreciated in their entirety,
 - of the depreciated part of the goods, should there only be a depreciation in value for part of the goods.
- 24.3 The unit of account mentioned in paragraphs 1 and 2 above is the special drawing right of the International Monetary Fund. The amount is converted into Euros according to the value of the Euro as against the special drawing right on the day on which the goods were taken over for conveyance or on the day agreed between the parties. The value of the Euro as against the special drawing right is calculated in accordance with the method of calculation used by the International Monetary Fund for its operation and transactions on that particular day.
- 24.4 Sec.432 Commercial Code is applicable.
- 24.5 If the LHG accepts liability for violation of a contractual obligation in connection with handling work which does not involve the damage of goods or non-compliance with the delivery time, or damage to property and injury to persons, the liability is limited, also in this case, to three times the amount which would be payable for the loss of goods.
- 24.6 In all events, the liability of the LHG for damages is limited to the amount of €12,000.00 for each occurrence of damage, regardless of how many claims are raised in connection with one occurrence of damage. The LHG points out that in individual cases, claims may arise due to a loss or damage exceeding the above value, and therefore the LHG offers to take out a relevant insurance policy at the customer's expense.
- 24.7 The foregoing exemptions from and limitations to liability are also valid for extra-contractual claims raised by the customer or the consignee of the goods against the LHG for loss of or damage to the goods or for non-compliance with the delivery time. LHG may also raise objections against extra-contractual claims of third parties for loss of or damage to the goods as defined in the foregoing paragraph. However, such objections may not be put forward if
- 1) the third party did not give its approval for the conveyance of the goods and the absence of the customer's approval for the transport was known to the LHG or was unknown to the LHG due to negligence
 - 2) the third party or a person deriving its right to possession from the third party has lost the goods before they could be taken over for transport.
- 24.8 The afore-mentioned liability limitations are not applicable if the damage is due to an act or omission which has been committed by the LHG or by a person employed by the LHG to act on its behalf or by a person employed by the LHG for the execution of this transport, wilfully or negligently and in full awareness of the likelihood that a damage would occur.

25. Legal Basis

The LHG is the warehouse-keeper as defined by the Commercial Code. The obligation to notify the customer under Section 471 Item 2 Commercial Code shall be subject to a special disposition by the parties.

26. Stored Goods, Storage Location and Warehousing Rates

- 26.1 The LHG has a right to reject any goods if they are not suitable for warehousing. Dangerous goods must not be stored in the port area unless the port authority (Hafenbehörde) of the Hansestadt Lübeck and the LHG have expressly consented to the storage at locations provided for that purpose. Explosives are barred from warehousing.
- 26.2 The LHG shall decide where the goods are to be stored. Suitable goods may be stored outdoors. The customer expressly allows the LHG to store the customer's goods together with other goods of the same kind and quality, if this is feasible (collective warehousing), thus mixing the customer's goods with other goods.
- 26.3 The LHG will reach an agreement with the customer as to whether the warehousing fee is to be calculated by the weight, by the type of goods or by the storage area used.
- 26.4 When the goods are stored, the LHG acquires a lien based on a legal transaction. Sections 1204 ff of the Civil Code are applicable. This does not affect the provision of Section 475 b of the Commercial Code.

27. Long-time Warehousing

- 27.1 All goods that are intended for long-term warehousing must be declared in a special notification to the operating manager within 10 days after the goods are put into storage. In the absence of such a notification, the goods are deemed to be intended for temporary warehousing. If the notification is delayed, the goods are deemed to be warehoused on a temporary basis until notification has been given.
- 27.2 In case of long-term warehousing, the limited period of free warehousing will not be granted. This applies likewise to a delay in notification. The day on which the goods are put into storage is deemed to be the first warehousing day.
- 27.3 The warehousing fee is payable in advance and/or in accordance with the separate customer contract.

28. Termination of Warehousing and Relocation of Goods

- 28.1 The LHG may demand the immediate removal of the warehoused goods without prior notice, should there be a sound reason.
- 28.2 In all other cases, the LHG may only demand the removal of the stored goods if prior notice of one (1) month is given, or if the goods have not been removed after expiration of the agreed warehousing time or, in the absence of an agreed time limit, if two (2) months have expired since storage commenced. The term of notice begins when the declaration of termination is received.
- 28.3 The LHG is authorized to relocate the stored goods within its warehousing facilities. In case of a sound reason for which the LHG is not responsible, the relocation of the goods will be made at the expense of the customer.

29. Collection of Warehoused Goods

Except where otherwise provided for and outstanding warehouse fees owed to LHG are paid, LHG will return the stored goods only against presentation of the shipping documents duly made out and signed by the party holding the right to dispose. The LHG is not obligated to check the authenticity of the signatures or the authority of the signing party, unless a lack of authenticity or authority is evident.

30. Liability to Pay Damages

The LHG's liability to pay damages is subject to the provisions of Clause 24 mutatis mutandis.

IV. Final Provision

31. Validity

These General Conditions of LHG shall apply to all contracts currently existing and still to be concluded with its customers.

32. Place of Jurisdiction, Applicable Law

- 32.1 The place of jurisdiction for all legal disputes arising from and in connection with the contract shall be Lübeck if the ordering party is a merchant, legal entity under public law or Public Special Fund. The agreement on the place of jurisdiction shall also be applicable if the ordering party has no general place of jurisdiction in the inland. The LHG shall also be authorized to file an action at the ordering party's place of residence.
- 32.2 The law of the Federal Republic of Germany shall be applicable.
- 32.3 If any provisions of the foregoing General Conditions are or become ineffective or are subject to a special disposition by the parties, the remaining provisions shall nevertheless remain in full force and effect. The contract parties are obligated to replace any ineffective provisions by legally effective provisions that correspond as far as possible to the spirit and purpose and to the economic result of the ineffective provision.