

**General Business Conditions of  
Seehafen Wismar GmbH  
(Version of 01/04/2008)**

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**§ 1**

**Scope of application**

1. Seehafen Wismar GmbH (SHW) is a corporate body and is based in Wismar. SHW is in particular a stevedoring, cargo handling and storage company. As a comprehensive service provider it brokers all other port services.
  
2. These General Business Conditions (GBC) shall apply to all contracts and business relations, **except for the transactions under § 1 No. 4 of the GBC**, between clients and SHW which are connected with the above-mentioned activities of SHW.
  
3. Each contractual partner and user of the port facilities accepts the GBC and the current scale of charges/prices as components of their contracts with SHW. Agreements deviating from this require written form. General business conditions of the clients and/or users which conflict with the provisions in these GBC shall be deemed contracted out.
  
4. The present conditions shall not apply to contracts by which SHW covenants to organise the pick-up / delivery of the goods through third parties (to the ultimate consignee). The General Terms of Forwarding for Germany (ADSp) as amended shall apply to those contracts.

5. If SHW covenants by unified contract to both handle the goods as well as organise the delivery through third parties to the ultimate consignee, the liability of SHW in case of damage to or loss of the goods from the time of loading onto the means of transport of the third party shall depend on the ADSp. Organisational and other activities of SHW which refer to the carriage of the goods from that moment on shall also be subject to the ADSp. If the place of damage can not be ascertained the liability of SHW shall in general be determined according to the GBC.

6. If SHW has undertaken to manage or insure goods or to perform services that are not within its usual sphere of action the regulations and statutory provisions applying apart from the present GBC shall apply unless they conflict with the GBC.

## **§ 2**

### **Placing of orders**

1. The services of SHW are performed on the basis of written orders. Orders may be placed orally or by phone in exceptional cases, but must be handed in in writing without delay.

2. Orders must contain all details required for proper fulfilment of the order. All instructions with regard to the treatment of the goods are to be included in the order. The customer guarantees the correctness of their information, especially about the type, quantity and weight of the goods. Dangerous goods shall be especially pointed out. Orders concerning dangerous goods must state the information within the scope of § 15.2 of the GBC.

3. SHW may, but is not obliged to, check the information given by the customers. If discrepancies are found, the customer shall bear the cost of this check. Any discrepancies found during subsequent checks will immediately be notified to the client as well as to the management of the ship (in case of goods to be unloaded). Should doubts arise about the correctness of the information, it may be necessary to demand that the contents of the consignment be shown.

## **§ 3**

### **Rendering of accounts and payment**

1. Invoices are payable without discounts within 14 days of the date of the invoice.

2. The calculation basis for the services carried out by SHW are - depending on the contract - the weights to be announced by the customer in metric tonnes (t), in cubic metres of stacked wood (rm), in cubic metres of solid timber (fm), in cubic metre (cbm) or number of items. In calculating the weight the quantities shall be rounded up to the full 100 kg, while other measuring units are rounded up to a full tenth. In the cases of ordered full weighing on the weighing facilities of SHW, the weight established here shall apply. When workers and equipment are provided by the port, the minimum time to be invoiced is one hour.

3. Complaints against the invoice do not release from this term of payment. The customer's obligations to pay the invoice amount are fulfilled when the amount has been paid to SHW in cash or has appeared on its bank account.

4. The customer does not have the right to offset the invoice with counterclaims not recognised by the contractor or not established as valid in law.

5. Should the term of payment be exceeded, SHW shall be entitled to arrears damages of 5 percentage points above the base lending rate according to § 247 of the German Civil Code (BGB).

6. SHW may demand advance payments, particularly when:

- the customer is not previously known,
- the customer falls into arrears with their current payments or a part thereof,
- SHW has other reservations with regard to the customer's ability to pay.

7. If SHW demands an advance payment, it shall be entitled to defer agreed or outstanding work and deliveries until the advance payment has been received.

8. Instead of advance payment, the customer may provide security in the form of a directly enforceable, open-ended guarantee appropriate to the sum concerned, at a German bank. If SHW has already begun to fulfil the contract and demands a guarantee while the contract is being fulfilled and such guarantee has not arrived after the period of one week has elapsed, this shall entitle SHW to withdraw from the contract. In such a case, the customer's breach of contract shall entitle SHW to legal choice of disposal. If the right of disposal of goods is changed, the original customer shall continue to owe SHW, apart from the goods themselves (§ 475 b Code of Commercial Law), any and all remunerations.

#### **§ 4**

#### **Notice of damage**

1. If a loss of or damage to the goods is visible on the outside and if the client does not notify the loss or damage to SHW not later than at the transfer of the goods (48 hours after transfer) it shall be presumed that the goods were handed over in contractual condition. Said notice must identify the damage with sufficient clarity.

2. The presumption under subsection 1 shall also apply if the loss or damage was not visible on the outside and if it has not been notified within 7 days.

3. A notice of damage after transfer shall be submitted in writing; the transmission of the notice of damage may be performed by means of telecommunication facilities. The deadline may be observed by sending off the notice in time. If a loss or damage is stated at the transfer of the goods, notice to the person handing over the goods shall be sufficient.

4. If SHW has undertaken the stowage of goods on board a sea-going vessel the client or a representative of the vessel shall inspect and accept the work performed immediately after it has been accomplished. Obvious shortcomings or those discernible after the check shall be notified immediately; otherwise the work shall be deemed to have been carried out as contracted. Acceptance shall have been affected at the latest with the departure of the vessel and shall be documented with the joint signing of the loading/discharging reports.

## **§ 5**

### **Liability**

1. The client shall be liable for every damage arising to the goods themselves, to the facilities of SHW, the goods in storage or handling there or to third parties due to incorrect, inaccurate, insufficient or belated information, especially about the number of items, the weight, nature (e.g. dangerousness) or as a result of defects of the goods or their packaging. § 278 sentence 1 BGB remains unaffected.

2. SHW shall be liable for damage of every kind only in case of gross misconduct (criminal intent or gross negligence) of its organs, executive officers or other vicarious agents unless the damage is based on the breach of an essential contractual obligation of SHW.

3. SHW shall not be liable, except in the case of gross misconduct by its organs or executive officers, in cases of

- a) damage caused by fire, water, high winds and explosion; high water, flooding and frost
- b) damage by robbery and theft, vandalism,
- c) damage caused by waste, shrinkage, breakage, rust, internal destruction, puncture or leakage as a result of the peculiarities of the goods or by pests,
- d) defects in the seaworthy packaging and/or, in case of incoming vessels, of the seaworthy stowage,
- e) loss of or damage to goods which are, according to the agreement or as usual, stored out in the open, in spaces only roofed over or in rooms where the parties entitled to dispose of the goods or their agents are allowed to treat the goods,
- f) damage resulting from free assistance which SHW renders without contractual obligation.

4. Except for criminal intent or gross negligence of its employees, liability by SHW in case of handling by crane and ground conveying equipment shall be ruled out, especially

- a) for damage to articles stowed improperly under or in the immediate vicinity of the goods to be transhipped,
- b) for damage in the hold or to the ship, if the ship is not suitable for the agreed type of handling,
- c) for damage caused by third parties in particular by improper fastening of the goods or operation of the grab, or by improper combination of the loading tackle,

- d) for injury to persons lingering within the jib range of the crane or the working area of the ground conveying equipment,
- e. for injury to persons or damage to objects caused by the falling of suspended loads.

5. If damage has occurred that may by the circumstances of the case have arisen as a result of

- a) acts of authorities, *force majeure*, natural disasters, war and civil war or warlike events, especially terrorist attacks, strikes, lockouts, workers' unrest, political acts of violence, rebellions or other work impediments, other civil unrest, sabotage,
- b) damage having its cause in the sphere of the customer (a person, instructions of the customer or their appointed third party) and/or the goods, this also includes wagon demurrage, ship's demurrage and other costs,
- c) acts or omissions by the parties entitled to dispose or their accessories,
- d) loading or unloading of the goods by the parties entitled to dispose or their accessories,
- e) missing or defective packaging, insufficient or wrong labelling, marking, statement of measurements or weights, insufficient designation of the centre of gravity or of the slinging points,
- f) hidden defects or the peculiar natural kind and nature of the goods,

it shall be assumed that the damage emerged from such danger.

**6. The liability of SHW for loss of or damage to the goods shall be limited to two units of account for each kg of the gross weight of the goods.**

**7. If only parts of the consignment have been lost or damaged the liability of SHW shall be limited to an amount of two units of account for each kg of the gross weight**

- a) of the whole consignment if the entire consignment has been devalued,**
- b) of the devalued part of the consignment, if only part of the consignment has been devalued.**

8. The unit of account mentioned in item 6 and 7 of this section is the Special Drawing Right of the International Monetary Fund. The amount is converted into EURO according to the value of the EURO against the Special Drawing Right on the day of delivery of the goods by SHW. The value of the EURO against the Special Drawing Right shall be established by the method of calculation applied by the International Monetary Fund on the respective day for its operation and transactions.

9. If SHW is liable for damages not caused by loss of or damage to goods, the liability to pay compensation shall be limited to a maximum of €50,000.00 per claim.

10. SHW shall in no case be liable for resulting or financial loss or lost profit.

11. If, in case of damage, several persons are entitled to claims for damages against SHW which, added up, exceed the maximum liability determined in item 6, item 7 and item 9 of this section the principal to be claimed by every claimant shall, as far as it exceeds the maximum liability, first of all be reduced to the maximum liability. The maximum liability amount payable by SHW in total shall then be distributed *pro rata* among the sum of all claims thus resulting. If the amount of individual claims or the distribution among the individual claimants is contentious SHW may free itself from any liability towards all claimants by depositing the total payable maximum liability amount.

12. The limitations of liability determined above refer to all kinds of claims including claims from actionable tort.

13. If claims of claimants are made against organs or employees of SHW or against such persons towards whom SHW has an obligation to provide for the welfare of employees under labour law, said persons may cite all limitations of liability applying for SHW.

14. These limitations of liability do not apply when

- a) the damage is due to an act or omission which SHW, its staff in the performance of their work or other persons whom SHW uses in the execution of its activities have committed premeditatedly or negligently and in the awareness of a damage being likely to occur or
- b) an injury to life, limb or health has occurred.

## **§6**

### **Right of lien, retention of goods and emergency sale**

1. SHW shall have a right of lien and retention of the goods supplied to it for all receivables it is entitled to for the fees, remunerations and expenses apportionable to the respective goods.

2. If the client is in arrears SHW shall have the right, after one unsuccessful reminder, to sell as much of the goods as is necessary in its discretion to satisfy its claims without further formalities after 10 days.

3. The remaining provisions on the realisation of pledged property shall remain unaffected.

## **§7**

### **Statute of limitations**

1. All claims against SHW for loss of or damage to goods as well as for other legal reasons shall lapse after 6 months. The statute of limitations extends to contractual as well as non-contractual claims of any kind, except for claims due to criminal intent.

2. The limitation period shall begin at the end of the day on which the person entitled, their representative or associates have received or were able to receive knowledge of the claim or on the day when the goods were handed over or should have been handed over.

## **§ 8**

### **Handling of ships**

1. Ships to be handled for loading or unloading by SHW shall be notified to SHW in good time. Every ship must be ready for warping at any time.
2. Sea-going vessels, (inland waterway craft and harbour craft) may only assume a berth allocated to them. In order to assure a smooth traffic at the quay facilities, sea-going vessels shall warp immediately upon demand by SHW. The warping cost shall be at the expense of the vessel.
3. The client has to make sure that the ship is ready for loading and discharging. Idle times on shore for which SHW is not responsible shall be charged to the party responsible for them.
4. The list of port duties and charges of SHW, as amended, shall apply for every ship calling at the port of Wismar. The port duties and charges shall be payable by the ship-owner and/or their authorised broker, respectively.
5. Services such as supplying fresh water and an electricity shore connection shall be performed on a contract basis and shall be billed according to the price list. All stowage loading and shore transshipment work shall be carried out by SHW.

## **§ 9**

### **Freight list**

Not later than on the day before the start of loading or unloading the client shall submit a freight list. In case of delivery of goods for loading the client shall hand in a freight list one day before the start of loading. The freight list must contain:

- a) the consignee,
- b) mark and number,
- c) no. of items,
- d) type of packaging,
- e) content; precious objects, dangerous goods, narcotics, weapons, petrol and spirits as well as other goods which are subject to bans and restrictions on import and transit shall be designated as such;
- f) weight; for pieces of 100 kg and more, the individual weight shall be stated.

## **§10**

### **Loading and unloading of sea-going vessels**

1. The handling of goods via the quay shall be performed with the handling equipment of SHW. Work involving the hoisting equipment of ships between ship and quay requires the consent of SHW.
2. For the goods accepted by it from the sea-going vessel, SHW shall not take over the notification of the consignee regarding the arrival of the goods or the differences between the information in the cargo documents and the actual facts which is incumbent on the shipper.
3. When loading SHW shall perform such securing of the goods which is necessary for reasons of seaworthiness. In doing so it shall act exclusively upon instructions from the ship. Any fastening of the goods beyond that shall only be performed by SHW if and when it is expressly commissioned to do so. When performing such an order SHW shall again act exclusively upon instructions from the ship. Stevedoring material shall be supplied by the client.
4. For difficult work or work in ship spaces of restricted accessibility such as refrigerated holds, waterways or `tween decks and similar, a stowing surcharge shall be charged.

## **§ 11**

### **Loading and unloading of trucks**

1. The outgoing and incoming goods shall be loaded and unloaded onto and from the means of transport by SHW at the places determined by it. SHW shall carry out the loading and unloading continuously within its operational possibilities. SHW may refuse to receive goods for which there is no proof that they have been bindingly consigned for onward carriage.
2. The securing for the protection of the goods and for operational safety of the heavy goods vehicle is not part of the transshipment order. If SHW takes on the fastening of goods on road vehicles due to a separate order this shall be done according to the instructions of the driver in charge; the cost of such fastening will be billed separately to the client.
3. For the goods unloaded by it from the truck, SHW shall not take over any notification of the consignee as per the bill of freight regarding the arrival of the goods or the differences between the information in the bill of freight and the actual facts.

## **§ 12**

### **Loading and unloading of railway wagons**

1. If and as far as SHW takes on the requisitioning of railway wagons it shall not accept any guarantee for providing the wagons on time. The client must obtain information about the timely provision of wagons at the points of operation himself.
2. When loading onto railway wagons SHW shall perform such securing of the goods which is necessary for reasons of operational safety according to the loading regulations of the respective railway operator. Any fastening for the protection of the goods beyond that shall only be performed by SHW if and when it is expressly commissioned to do so. The cost of such fastening will be billed separately to the client.
3. For the goods unloaded by it from the wagon, SHW shall not take over any notification of the consignee as per the bill of freight regarding the arrival of the goods or the differences between the information in the bill of freight and the actual facts.

## **§13**

### **Placing and storage of goods**

1. SHW may refuse goods that do not appear to be suitable for storage. SHW may in general and in individual cases prohibit the storage of goods, impose a time limit on it or make it conditional upon compliance with terms and conditions that are necessary for the avoidance of dangers at the port.
2. SHW may remove goods stored without permission that have not been removed upon request, or have them removed, at the cost of the person(s)/organisation(s) who have stored them.
3. All dangerous goods may only be brought onto the port territory with the express permission of the authorities in charge and may only be stored at the places designated for dangerous goods.
4. SHW shall only return stored goods on production of the transshipment papers issued or signed by those entitled to disposal. SHW shall be entitled, but not obliged to, check the signatures or the authority of the signatory.
5. The preliminary placing of goods for loading and for onward carriage shall also be deemed storage within the meaning of this provision.
6. SHW may permit exceptions from the provisions of paragraph 1 to 5 in individual cases.
7. The following applies to putting into storage:

The day when the goods are put into storage shall count as the first day of storage, while the day of loading of the stored goods shall count as the last day of storage. The storage charge shall be calculated on the basis of the gross weight or the gross cubic metres. Parts of 1,000 kg shall be rounded up to full 1,000 kg. Parts of cbm/fm/rm are rounded up to full units. In the case of accident, *force majeure* or the agreed storage period or storage quantities being exceeded, SHW may cancel the existing storage deal without notice.

8. Without express order SHW shall not arrange any insurance for the goods supplied to it. This shall also apply to goods for which direct handling has been ordered and which are, however, put into intermediate storage for operational reasons.

#### **§ 14 Weighing**

In the absence of an agreement to that effect, the order given to SHW shall not cover the weighing of goods. The weighing shall be paid for separately.

#### **§ 15 Dangerous goods**

1. The handling of dangerous goods is subject to the State Ordinance on the Handling of Dangerous Goods in the Ports of Mecklenburg-Vorpommern (Hafengefahrgutverordnung - HGGV) of 13 September 1991.

2. Before delivery of dangerous goods both in export and import, all data concerning the dangerous goods have to be transmitted to Wismar sea port and the necessary documents have to be handed over completely and in good time. The following information is necessary in particular:

- Class/sub-class according to the ordinance on dangerous goods at sea,
- UN number
- correct technical term for the dangerous goods
- gross weight for explosives and objects with explosives, in addition the net weight of the explosive substance
- type of packaging and, for substances being carried under a listing of "not otherwise named" goods or a collective term, the packaging group.

If possible the data are to be transmitted by means of an electronic data carrier.

3. The goods must take into account the Regulations on Dangerous Goods (GGVSee as amended).

## **§16**

### **Other port services**

If SHW commissions third parties with other services the statutory provisions applying between SHW and the third party shall also be applicable between SHW and the client as long as the present GBC do not conflict with them.

## **§ 17**

### **Office hours and port working hours**

1. The daily office hours are Monday to Friday 8am to 4.30pm.
2. The local working hours of SHW on working days are arranged as follows:  
Monday - Friday shift I 6.00am to 2.00pm (half hour break)  
Monday - Friday shift II 2.00pm to 10.00pm (half hour break)  
Work at night in shift III, 10pm to 6am (half hour break), on public holidays, days before public holidays or weekends shall only be performed under separate agreement and as far as permitted under collective bargaining law.

All ships calling at the port shall be obliged upon demand from SHW to allow work to be performed also outside the regular working hours mentioned and to create the necessary preconditions for this on the part of the ship.

## **§ 18**

### **Ordering and cancellation of workers for work outside local port working hours**

1. Ordering or cancellations shall be made in written form to SHW during daily office hours. If ordering or cancellation is performed orally, written confirmation shall be handed in afterwards in any case.
2. The ordering of workers for work outside normal working hours must take place at least 36 hours before the start of work. The cancellation of workers ordered for work outside the normal working hours must take place at least 24 hours before the work is planned to begin.
3. If the cancellation occurs later, the customer shall bear the contractually agreed extra costs, at least, however, the useless expenditure.

## **§ 19**

### **Rules of behaviour on port territory**

1. The clients and the port users as well as their helpers shall be obliged to observe all relevant public law regulations in using the port facility. The client and the port users undertake to adhere to those regulations also towards SHW. If recourse is taken to SHW on the basis of public law in connection

with objects conveyed into the area of the port facility by the clients or the port users or in connection with other acts or omissions of the clients and the port users, SHW shall have the right to demand compensation from the clients and port users for all costs of the recourse to itself by authorities.

2. Helpers of the clients/port users who use the operation area of SHW with vehicles or in any other way or who linger there must comply with the rules and prohibitions announced by signs and must follow the orders of SHW staff assigned as supervisors. They must in addition follow the health and safety regulations of the employees' industrial compensation society responsible in each case.

3. Clients and their helpers as well as port users are banned from smoking on port territory. If the client or their helpers should intend to carry out any kind of welding work they must obtain a welding permit from SHW for this, adhering to the applicable regulations.

## **§ 20**

### **Other provisions**

1. Claims of SHW may only be offset with unchallenged or legally established counterclaims.
2. Place of performance and jurisdiction is Wismar.
3. German law shall apply to all legal relations between SHW and its customers.
4. If one of the aforesaid stipulations happens to be or become invalid this shall not affect the effectiveness of the remaining stipulations of these GBC.