



General Business Conditions of Seehafen Wismar GmbH (GBC)

valid from 01/07/2017

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Part 1 General stipulations

§ 1

Scope of application

1. These General Business Conditions of Seehafen Wismar GmbH (GBC) shall apply to all contracts and business relations between Seehafen Wismar GmbH (SHW) and clients of SHW having to do with port services (port cargo handling, servicing of ships, trains and trucks, storage) rendered by SHW. These GBC furthermore apply to every use of the port territory. The port territory includes the areas between the North Gate (Tonnenhofstrasse) and the South Gate (Kopenhagener Strasse) including the pertinent cargo handling and storage areas and sheds, railway facilities as well as the ships' berths.
2. If SHW performs or arranges transport services that are not port services, § 13 of these GBC shall apply exclusively to those cases.
3. Every client of SHW and user of the port facilities (hereinafter only referred to as "client" accepts these GBC and the provisions named below as part of the contract and/or submits to their validity. In addition to these GBC the following provisions apply (available at www.hafen-wismar.de), as amended:
 - a) Conditions of use of service facilities,
 - b) Access management,
 - c) Port dues and charges for using the port territory of SHW with watercraft,
 - d) other applicable ordinances and laws.

Agreements deviating from this require written form. General Business Conditions of the clients and/or users which conflict with the provisions in these GBC and/or the additional provisions shall be deemed contracted out.

§ 2

Permission of use, placing of orders

1. Any use of the port territory requires permission and is subject to dues and charges. Orders to SHW are on principle to be placed in writing. In exceptional cases orders may be placed orally/by phone but they must then be handed in in writing without de-

lay. The order must arrive at SHW at the latest 24 hours before the intended use; orders received at short notice may be accepted in exceptional cases.

2. The client has to inform SHW of all data and circumstances relevant to the proper fulfilment of the order in good time before the performance of the service. These include, e.g., the type, amount, confirmed gross weight, marks, markings and special properties (e.g. perishableness, sensitivity to moisture) of the goods as well as all data necessary under the pertinent safety and security regulations (e.g. SOLAS). Furthermore the client has to point out to SHW all relevant legal obligations pertaining to the goods, such as those under customs law, foreign trade, waste disposal, copyright, trademark or danger avoidance legislation. Special instructions and requirements with regard to the treatment/handling of the goods are to be included in the order. Dangerous goods are to be especially pointed out. Orders concerning dangerous goods require the prior permission of SHW in addition to the information to be provided as per § 12 of these GBC.
3. The client warrants the correctness of the information provided by him, in particular the information about the type, amount, confirmed gross weight, marks, markings and special properties of the goods. SHW is entitled, but not obliged, to verify the information provided by the client. If deviations are found the client shall bear the cost of this verification. If there are doubts about the correctness of the information provided, SHW may demand to be shown the content of the consignment.

§ 3

Performance of service, rendering of accounts and payment

1. SHW may demand acceptance of its services at a time determined by itself also outside regular working hours. If ordered services are not made use of these services shall still be paid for by the client unless SHW was able to perform other orders of equal value during the time set aside for them.
2. Invoices from SHW are due when received and payable without discounts within 14 days of the date of the invoice. The invoicing is done on the basis of the rates applying to the respective services and/or of the contractually agreed prices. The calculation basis for the services performed by SHW are, depending on the subject matter of the agreement, the weights in metric tonnes to be named by the client, the cubic volume in cubic metres of stacked wood, cubic metres of solid timber, cubic metres or

the number of items. The calculation of the weight (tonnes) or of other units of measure is done exactly to three decimal places. If weighing on the weighing facilities of SHW has been ordered the weight established there shall apply. When workers and equipment are provided by the port the minimum time to be invoiced is one hour.

3. The client does not have the right to offset or retain payments against counterclaims not recognised by SHW or not established with legal validity.
4. Should the term of payment be exceeded, SHW shall be entitled to damages for delay in the amount of 9 percentage points above the respective base lending rate as per §§ 288, 286 of the German Civil Code (BGB) unless SHW renders proof of a higher damage.

Part 2 Description of services

§ 4

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 vessels and other (harbour) craft may only assume the berth allocated to them. In order to assure a smooth traffic at the quay facilities, ships shall warp immediately upon demand by SHW. The warping cost shall be at the expense of the client. Producing a fixed connection with the shore (gangway) is on principle up to the vessel.
3. The client has to make sure that the ship is ready for loading and discharging. Delays and idle times on shore caused by a belated readiness of the ship for loading and/or discharging or by other circumstances within the sphere of influence of the client shall be invoiced to the client.
4. If the handling of the ship is interrupted due to official directives or due to the weather the costs (waiting times) arising as a result may be charged to the account of the client by SHW.
5. For the use of the port, dues and charges are levied. The details may be derived from the 'Port dues and charges for using the port territory of SHW with watercraft', as

amended. These port dues and charges are to be paid jointly and severally by the ship (i.e. by the owner/shipowner/ship supplier/etc.) and by its agent and the client.

6. Services such as the supply of freshwater, shore connection for electricity or waste disposal shall be performed on the basis of orders and shall be invoiced separately. § 4 subsection 5 sentence 2 and 3 of these GBC apply *mutatis mutandis*.
7. In case of work that needs to be done on board at a great height (more than 2 metres), such as on platforms or installations in hatches or on deck, the ship's command has to take care of effective fall protection measures.

§ 5

Goods handling

1. At the latest 24 hours before the time planned for each handling activity (loading or discharging, putting into or retrieval from storage) the client has to submit a cargo list in digital form. The cargo list must include:
 - a) Consignor / consignee,
 - b) Description of the goods,
 - c) Mark and number,
 - d) No. of items,
 - e) Weight (confirmed gross weight); for pieces of 100 kg and more the individual weight is to be stated,
 - f) Type of packaging
 - g) Information in case of special content/features: e.g. on especially valuable, dangerous or bulky items or items easily damaged, narcotics, weapons, petrol and spirits. Goods subject to bans and restrictions on import and/or transit are to be designated as such.
2. The goods are to be distinctly marked by the client with the features necessary for handling (such as markings, marks, addresses, lifting points, indications of weight).
3. If in order to accept the goods SHW needs to present a bill of lading, shipping note, delivery note or another document to the carrier/consignor making delivery, the client shall make sure that such documents are presented to the carrier/consignor making delivery in good time before the scheduled start of the handling.

4. SHW is entitled to rule out the handling and putting into storage of goods that are particularly prone to theft or to getting damaged, bulky, dangerous or otherwise not suitable or to stipulate conditions for their handling or storage. A surcharge will be levied for the additional expenditure. The same applies *mutatis mutandis* for goods whose handling is limited according to statutory regulations or on the basis of administrative orders.
5. The respective goods or the respective amount of goods shall be deemed taken over by SHW from the moment the lifting tackle is completely fastened by SHW and handling commences. Receipts for acceptance or acknowledgments of receipt shall only be made out by SHW if this has been expressly agreed before.
6. The respective goods or the respective amount of goods shall be deemed to have been delivered by SHW with their setting down by SHW on the means of transport and/or with their introduction into the respective cargo hold. The receipt of the goods is to be received by the carrier/consignor taking them over.
7. SHW may withhold the delivery of the goods until these are fully unloaded from the means of transport delivering them if this appears necessary for reasons of overview, checking or other circumstances in order to properly carry out the order.
8. SHW shall hand over goods it has taken over only on presentation of the shipping documents issued or signed by the person/party entitled to dispose of the goods. SHW is entitled, but not obliged, to verify the signatures or the authorisation of the signatory.

§ 6

Intermediate storage

1. The goods are stored temporarily on the premises of SHW until their transshipment to the next means of transport or until they are put into storage on the basis of a separate order (intermediate storage). Goods are stored out in the open on principle; storage under a roof or under a tarpaulin is owed by SHW only under an express order to this effect. A surcharge is levied for the additional expenditure.
2. Without an order for putting into storage (§ 10 of these GBC) SHW is not obliged to store goods temporarily for longer than 48 hours at the place of reception. SHW may demand from the client or consignee (person entitled to dispose) to accept the goods

within another 24 hour period. If this deadline for accepting the goods is not complied with or if a person entitled to dispose is not known or cannot be found, SHW may restore the goods, after 48 hours of intermediate storage, for account of one of the persons/parties entitled to dispose or it may store the goods otherwise. From this point on the goods shall be deemed placed in storage (§ 10 of these GBC).

3. SHW may remove goods or have goods removed that were unloaded without permission and are not removed upon request, at the expense of the person(s) who has/have performed the storage.

§ 7

Loading and discharging of sea-going and inland waterway vessels

1. Cargo handling activities on shore are exclusively performed by SHW. If cargo handling on shore is to be performed by external companies this requires the prior consent of SHW. The handling of goods via the quay shall be performed with the handling equipment of SHW. Work involving the hoisting equipment of sea-going ships between ship and quay or between ships requires the consent of SHW. If the hoisting equipment of a sea-going ship is used after the consent of SHW the ship's command shall guarantee the safe technical condition of the hoisting equipment and the proper instruction of the operating staff. The risk of using the ship's own hoisting equipment shall be borne solely by the ship's command.
2. The client is obliged to point out to SHW all peculiarities, dangers and aggravating circumstances relevant for the loading/discharging of a vessel. For difficult work or work in spaces on board ship difficult to reach (such as refrigerated holds, waterways or 'tween decks) a stowing surcharge shall be charged.
3. If SHW, after having received an order to this effect, carries out load securing work for the goods that is necessary for reasons of seaworthiness, it shall act exclusively upon instructions from the ship in doing so. Any fastening of the goods beyond that for their protection 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. The stevedoring / load securing material is to be provided by the client.
4. If SHW has taken on the stowage of goods on board a sea-going vessel the client or a representative of the ship has to check and accept the service performed immediately

after it is completed. Obvious defects or defects visible after scrutiny are to be immediately notified, otherwise the work shall be deemed to have been performed according to contract. The acceptance has taken place at the latest with the sailing of the vessel and is documented by the joint signing of the loading reports.

5. For the goods accepted by SHW from sea-going and internal waterways vessels, SHR 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 consignor.

§ 8

Loading and unloading of trucks

1. SHW shall load the outgoing and incoming goods onto and unload them from the means of transport at the places determined by it. SHW shall carry out the loading and unloading of the goods 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. Furthermore SHW may refuse to load trucks whose condition does not warrant a safe transport.
2. The securing of goods for their protection and for operational safety of the heavy goods vehicle is not part of the transshipment order.
3. For the goods unloaded by SHW 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.

§ 9

Loading and unloading of railway wagons

1. The loading and unloading of railway wagons is performed by SHW staff and with SHW handling gear.
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 SHW from railway wagons, SHW shall not take over the 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.

§ 10

Putting goods into storage

1. Goods are put into storage by SHW upon an order to this effect. The storage shall take place in open spaces or in covered stores. Unless expressly ordered otherwise and unless the goods are obviously unsuitable for open-air storage SHW is entitled to store them in open spaces. SHW is solely in charge of determining the storage place. It is allowed to restore the goods within the port territory of SHW without the consent of the client.
2. If a lease has been concluded between SHW and the client for the renting of open, covered or other storage areas the legal relations of the parties shall be exclusively determined by that lease. The client shall be free to issue a handling order independently of the lease.
3. 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 volume. In this the basic amounts for the accounting are used as a basis, to three decimal places.
4. If there is an important reason SHW may terminate the storage contract without notice and demand that the store be vacated immediately. An important reason exists in particular if the performance of the storage contract is influenced by *Force Majeure*, if the depositor falls two months in arrears with the payment of the storage charge, if the value of the stored goods no longer covers the receivables of SHW or if the stored goods pose particular dangers.
5. The storage cost shall be billed to the client.

§ 11

Ancillary activities

1. Ancillary activities such as sorting, packaging and marking of goods are carried out by SHW only upon an express order.
2. SHW is not obliged to weigh the goods unless a weighing order has been expressly agreed. The weighing is to be paid for separately. If SHW is commissioned to handle freight containers the client is obliged to notify SHW of the confirmed gross weight in a transport document. SHW is entitled to carry out independent weighing for verification purposes. If there are deviations from the stated cargo weights the resulting costs shall be at the expense of the client.
3. Without an express order SHW does not arrange insurance coverage for the goods supplied to it. This also applies to such goods for which direct handling has been commissioned but which need to be stored temporarily for operational reasons.

§ 12

Dangerous goods

1. The handling of dangerous goods at Wismar Seaport is subject to the State Ordinance on the Transport of Dangerous Goods in the Ports of Mecklenburg-Vorpommern (Hafengefahrgutverordnung HGGVO) (Landesverordnung über die Beförderung gefährlicher Güter) of 22 January 2008, as amended.
2. In good time before the planned handling of dangerous goods, all data concerning the dangerous goods have to be transmitted to SHW and the necessary documents have to be handed over completely and in good time in each case. 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 containing explosives, in addition the net weight of the explosive substance,
 - Type of packaging and, for substances being carried under a listing of “not otherwise mentioned” or under a collective term, the packaging group.

If possible the data is to be transmitted electronically.

3. The goods must take into account the Regulations on Dangerous Goods (in particular the GGVSee/Dangerous Goods at Sea, as amended).
4. SHW has the right to exclude certain dangerous cargoes from handling.

§ 13

Arranging of transport services

1. Transport services that are not a subject-matter of §§ 4 to 12 of these GBC shall not be performed by SHW. In individual cases such transport services by third parties may be arranged by SHW. The legal relations between the client and SHW in such cases shall be subject to the provisions, including the provisions on liability, of the General Terms of Forwarding (Germany) (ADSp) in the version of 2017 or following.
2. To the extent that SHW arranges for transport services it shall not warrant the timely provision of the means of transport. The client must inform himself about the provision of the means of transport in good time, on his own.

Part 3 Measures of constraint

§ 14

Right of lien and retention of goods

1. Apart from the pertinent legal rights of lien and retention of goods the client shall grant SHW a contractual right of lien and retention of all goods of the consignor or of a third party who has agreed to the respective services, conveyed or handed over to it. This right of lien and retention shall serve to provide security for all claims of SHW towards the client resulting from the contractual relationship on the basis of which the goods have been conveyed [to the port] or handed over to SHW. The right of lien and retention furthermore extends also to all receivables from other contracts signed with the client that are a subject-matter of these GBC as far as they are uncontested or if the financial situation of the client is in danger.
2. With regard to the realisation of distrained goods the legal provisions applicable in each case apply subject to the proviso that instead of the period of one month named in § 1234 of the German Civil Code (BGB), a period of one week shall apply.

Part 4 Liability

§ 15

Notice of damage

1. If a loss of or damage to the goods is visible on the outside and if the client or consignee does not notify the loss or damage to SHW not later than at the delivery of the goods in text form with adequate photographic documentation it shall be presumed that the goods were delivered in complete and undamaged condition. The notice must identify the loss or 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 after delivery.

§ 16

Liability of the client

1. The client shall be liable irrespective of fault for all damages and expenditures resulting from an incorrect, inaccurate, insufficient or belated statement of information that needs to be transmitted under § 2 subsection 2 of these GBC (in particular with regard to the number of items, weight, marking or nature (e.g. dangerousness)). The client shall furthermore be liable irrespective of fault for all damages resulting from shortcomings of the goods or of their packaging, to the goods themselves, the facilities of SHW, the goods stored or undergoing handling there or for damages to third parties. The behaviour of his employees and agents/representatives shall be attributable to the client.
2. The statutory provisions on liability shall remain unaffected.

§ 17

Liability of SHW

1. In the case of cargo handling, storage and ancillary activities (§§ 4 to 11 of these GBC) SHW shall be liable according to the statutory provisions. Unless compulsory legal provisions or legal provisions unalterable by GBC stipulate otherwise, the following provisions shall apply in addition.

2. If SHW is liable for the loss of or the damage to goods it shall provide indemnification and cost refund according to §§ 429, 430, 432 s. 1 of the German Commercial Code (HGB). SHW shall not be liable for consequential or pecuniary damage or for lost profit.
3. Pursuant to § 427 HGB, SHW shall be released from liability in case of the special grounds for exemption from liability named there. In addition SHW shall not be liable for damages caused by:
 - a) storage as agreed or as usual, out in the open or in spaces only roofed over or covered with tarpaulins or in such rooms where the parties entitled to dispose of the goods or their agents are allowed to treat the goods;
 - b) robbery, theft, vandalism;
 - c) fire, water, high winds and damage by explosion; high water, flooding and frost damage;
 - d) damage caused by waste, shrinkage, breakage, rust, internal destruction, puncture or leakage as a result of the nature of the goods and/or of pests;
 - e) defects in the seaworthy packaging and/or, in case of incoming vessels, of the seaworthy stowage,
 - f) damage resulting from free-of-charge assistance which SHW renders without contractual obligation;
 - g) *force majeure*; effects of the weather; effects by other goods, damage to or loss through animals, natural changes of the goods.
4. Liability by SHW is furthermore excluded in case of handling by crane and ground conveying equipment, in particular
 - 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 and/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.

§ 18

Limitation of liability of SHW

1. § 17 subsection 1 of these GBC apply *mutatis mutandis*.
2. The liability of SHW for loss of or damage to the goods shall be limited to two special drawing rights (SDR) for each kilogramme of the gross weight of the goods. § 431 subsection 4 of the German Commercial Code (HGB) shall apply to the calculation of the SDR.
3. In case of cargo handling and ancillary activities (§§ 4-9, 11 of these GBC) the liability of SHW per claim shall be additionally limited to an amount of Euro 1 million or 2 SDRs for each kilogramme depending on which amount is higher. In cases of putting into storage (§ 10 of these GBC) liability is additionally limited to Euro 25,000 per claim and in case of differences between the target and actual stock on hand of the inventory, to Euro 50,000.
4. The liability of SHW for exceeding the time for delivery is limited to three times the quay dues.
5. The liability of SHW for damage other than damage to goods, except for personal damage and material damage to third-party goods, is – except in cases of putting into storage (§ 10 of these GBC) – limited in its amount to three times the amount payable in case of loss of the goods, but limited to a maximum amount of Euro 100,000 per claim. In cases of putting into storage this limitation of liability is Euro 25,000 per claim.
6. The liability of SHW for damage that is not personal damage is additionally limited to Euro 2 million per claim or 2 SDRs for each kilogramme, depending on which amount is higher, irrespective of how many claims are asserted as a result of an occurrence of damage. In case of several claimants SHW shall be liable pro rata of their claims.

§ 19

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.

2. The limitation period shall begin at the end of the day on which the person entitled to dispose, his representatives or associates have received or were able to receive knowledge of the claim or on the day when the goods were delivered or – if the goods were not delivered - should have been delivered.

§ 20

Further liability arrangements

1. The exemptions from liability and limitations of liability contained in §§ 18 to 20 of these GBC apply according to §§ 434, 436 of the German Commercial Code (HGB) also to non-contractual claims.
2. In case of cargo handling and ancillary activities within the meaning of §§ 4 to 9 and 11 of these GBC the exemptions from liability and limitations of liability contained in §§ 18 to 20 of these GBC do not apply if the damage is due to an act or omission within the meaning of § 435 HGB.
3. In case of putting into storage (§ 10 of these GBC) the exemptions from liability and limitations of liability contained in §§ 18 to 20 of these GBC do not apply if the damage was caused deliberately or through gross negligence of SHW or its executive officers or through grossly negligent or deliberate violation of material contractual obligations. In the latter case claims for damages shall be limited to the foreseeable typical damage.

Part 5 Other provisions

§ 21

Office hours and port working hours

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

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

§ 22

Ordering and cancellation of workers

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

§ 23

Rules of behaviour on port territory

1. The clients and 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 the port users for all costs of the recourse to itself by public 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/port users and their helpers are banned from smoking on the port territory. If the client should intend to carry out any kind of welding work he must obtain a welding permit from SHW for this, adhering to the applicable regulations.

§ 24

Place of jurisdiction, choice of law and safeguarding clause

1. Place of performance and exclusive place of jurisdiction is Wismar.
2. German law shall apply to all legal relations between SHW and its clients/port users.
3. Should one of the aforesaid provisions be invalid this shall not affect the validity of the remaining provisions of these GBC.