

# GENERAL TERMS AND CONDITIONS

for the use of infrastructural facilities and services of

**Hafen Lüneburg GmbH**

Date: 01/05/2020



# Hafen Lüneburg GmbH

Headquarters/post: Stadtkoppel 12, 21337 Lüneburg

Operations : Elso-Klöver-Straße 12, 21337 Lüneburg

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## 1. Scope

These terms and conditions shall apply exclusively in business transactions with companies within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), with legal entities under public law or with special funds under public law (collectively referred to as 'customer').

They apply to all services provided by the service provider, both within the context of current business relations and with respect to future services, even if these terms and conditions are no longer explicitly agreed. They apply to all contractual relationships.

- 1.1 The service provider provides its infrastructure facilities
- for the 'Hafenbahn' industrial port railway (east); and
  - for the 'Goseburgbahn' industrial railway (west)

for use by the customer. Customers are exclusively licensed railway undertakings (RUs).

For this purpose, the terms of use published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de) apply in their current version at the time of use by the customer. The same applies to the operating instructions to be taken into consideration by the RU. The RU is required to conclude a contract of use with the service provider in order to use the railways. The contract of use only entitles the RU to use the railways, and not to transship goods and cargo at loading points.

- 1.2 The service provider provides its infrastructure facilities
- to the inland port of Lüneburg on the Elbe Lateral Canal

for use with ships, boats and work equipment, as well as use of the shipping berths.

In connection with the use of the port, customers are the service provider's transshipment customers, but also ship owners and their employees who use the inland port of Lüneburg with their ships, boats and work equipment and who use the shipping berths.

For this purpose, the port regulations published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de) apply in their current version at the time of use by the customer.

The service provider provides cargo handling and services for the customer and makes storage and pre-stacking areas available to the customer for temporary storage.

- 1.3 If individual contractual regulations exist which deviate from or contradict the provisions of these T&Cs, the individual contractual regulations shall take precedence.

## **2. Object of agreement**

- 2.1. Use of the railways in accordance with point 1.1 is subject to the general terms of use published by the service provider via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de), the RUs' instructions for use and—where available—individual contractual agreements. The user fee that the customer is required to pay to the service provider is calculated on the basis of the scale of charges published by the service provider via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de) valid at the time the service provider's services are used.
- 2.2 Use of the port basin and use of the shipping berths are not subject to the general terms of use, but to the port regulations published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de). The quayside fee that the customer is required to pay to the service provider is calculated on the basis of the scale of charges published by the service provider via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de) which is valid at the time the service provider's services are used.
- Quayside fees valid at the time of use are charged for the use of shipping berths. Fee amounts are published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de).
- 2.3 With respect to the specific services to be provided on a case-by-case basis, individual contractual agreements shall be concluded for cargo handling services and the temporary storage of goods and cargo on the service provider's port premises, whereby these general terms and conditions of the service provider shall be the basis and object of agreement.
- 2.4 The service provider does not assume any obligation for the customer to pay the related charges (taxes/social security contributions etc.) to third parties; the customer is obliged to indemnify the service providers against any possible third-party claims in this respect.
- 2.5 The conclusion of a contract between the service provider and customer does not prevent the service provider from acting in the same way or a different way for the customer's competitors.

## **3. Conclusion of the contract**

- 3.1 The conclusion of the contractual relationship between the service provider and the customer comes into effect through the service provider's confirmation to the customer regarding the services requested by the customer.
- If the customer makes use of the service provider's services without prior confirmation by the service provider, the contractual relationship under the provisions of these general terms and conditions shall nevertheless be deemed to have been concluded. In this case, the service provider shall be entitled to charge an increased user fee/quayside fee for the use of its services without prejudice to the service provider's right to claim further damages.
- 3.2 A written order confirmation from the service provider is required for the provision of cargo handling and other services by the service provider as well as for the temporary storage of goods and cargo on port premises. An order confirmation shall also be deemed to have been issued if the service provider provides the services requested by the customer and does not confirm these in writing.
- The regulations published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de) apply with respect to the registration of cargo handling services/temporary storage on port premises; the customer only has a claim to the provision of the service provider's services with the service provider's explicit written confirmation.

- 3.3 The service provider has pointed out that it performs the function of port authority by order of the Hanseatic City of Lüneburg and that any use of its infrastructural facilities not agreed with the service provider may be punished as an administrative offence.

#### **4. Contractual term and termination**

- 4.1 The contractual relationship is established by the customer's registration of use and confirmation of use by the service provider. The latter will reserve the infrastructural facilities and services required by the customer for the customer.

The contractual relationship ends as soon as the service provider has provided the agreed service, unless the contractual partners have made other individual contractual agreements in writing.

- 4.2 Each contractual partner is entitled to terminate the concluded contract with a notice period of 5 calendar days, unless other notice periods have been agreed in individual contracts.

Postponement of the date of performance of the service shall not be deemed to be termination; it requires confirmation by the service provider.

- 4.3 The service provider may terminate the contract without notice if there is good cause in reference to the person of the customer, in particular if

- a) the customer defaults on due payments and fails to make payment after a reasonable grace period passes, where a grace period of 10 days is deemed to be reasonable; or
- b) an application is made for the commencement of insolvency proceedings with respect to the customer following conclusion of the contract, insolvency proceedings commence or enforcement measures are initiated over the customer's assets.

- 4.4. Notice of termination must be given in writing or by e-mail.

#### **5. Scope of services, duties of the contractual partners**

- 5.1 The scope of the service provider's services results from the services confirmed by it in accordance with the customer's order.

- 5.2 If the service provider is unable to provide the services commissioned by the customer, it must inform the customer of this without undue delay.

If there are delays in the provision of services due to facts and/or events for which the service provider is not responsible, the customer is not entitled to claim damages from the service provider.

The same shall apply in the event that the service provider's equipment breaks down for technical reasons whilst agreed services are being provided. If the delay lasts for more than 24 hours, the customer is entitled to claim increased time expenditure resulting from this from the service provider without prejudice to its obligation to minimise damages.

- 5.3 The service provider provides the equipment and personnel required in order to provide the service, unless otherwise agreed in an individual contract.

The parties shall endeavour to assist the contractual partner to the best of their knowledge and belief in the performance of the respective obligation by providing information, details or experience in order to ensure a smooth and efficient work process for both parties.

- 5.4 Execution deadlines and times for the execution of the service provider's services are only approximate—with the exception of explicitly agreed fixed dates. The service provider shall endeavour to meet the service dates and deadlines requested and specified by the customer. In the event that deadlines and dates are exceeded and the service provider is at the fault, and with the exception of agreed fixed dates, the service provider shall only be in default if the customer sends written reminders.

The service provider shall notify the customer of any significant delay in the provision of the service at an agreed point in time. In this case, the service provider shall not fall into debtor's default unless it is responsible for the circumstance that delayed the provision of services.

- 5.5 In the event of force majeure and other hindrances beyond the control of the service provider, e.g. strikes, work stoppage, lockout, energy and transport difficulties, government bans and war and operational disruptions etc., execution deadlines and dates shall be extended accordingly. The same applies to any deadline set by the customer for the execution of work, with particular reference to extension periods in accordance with Section 281 (1) and Section 323 (1) of the BGB. This extension also applies if the service provider is already in default in the provision of the service. The service provider shall notify the customer of such delays as early as possible, stating the expected start and end dates.

## **6. Prices and terms of payment**

- 6.1 The service provider will invoice the customer for fees for the use of the railways as well as quayside fees for the use of the shipping berths immediately after use of the facilities, but no later than on a cumulative monthly basis, unless individual contractual agreements provide for a different due date.
- 6.2 The service provider will invoice the customer for services provided, storage charges and use of areas for the temporary storage of goods and cargo on port premises immediately after the service has been provided, but no later than on a cumulative monthly basis, unless individual contractual agreements provide for a different due date.
- 6.3 VAT is invoiced at the rate applicable at the time of performance.
- 6.4 Invoices are payable on receipt without deduction. If the invoice amount is not received within 30 days of the invoice date, the service provider is entitled to charge default interest. Default interest amounts to 9% p.a. above the base rate in accordance with Section 247 of the BGB.
- 6.5 The customer has no right of retention, unless the counterclaim on which the right of retention is based is recognised by the service provider or has been established by law. In this case, assertion of the right of retention shall only become effective after one week. If the right of retention is based on the same contractual relationship as the receivable, the customer is entitled to immediately assert its counterclaim on which the right of retention is based, insofar as it is recognised by the service provider or has been established by law. The customer is not entitled to offset against a counterclaim unless the counterclaim is undisputed, acknowledged by the service provider or established by law. The service provider is entitled to offset the customer's counterclaims against its own receivables.
- 6.6 If, after the contract is concluded, it becomes apparent that the service provider's payment claim is endangered by the customer's inability to pay, the service provider shall be entitled to rights arising from Section 321 of the BGB (plea of uncertainty). Under these conditions, the service provider is then also entitled to make all non time-barred receivables from the current business relationship with the customer immediately due for payment. In all other respects, the plea of uncertainty shall extend to all other outstanding services of the service provider from the business relationship with the customer. If lack of solvency by the customer becomes apparent on the basis of objective circumstances and claims of the service provider are thereby endangered, the service provider can also demand advance payments or appropriate security from the customer. The assertion of further rights of the service provider remains unaffected.

## 7. Liability

- 7.1 The service provider is liable in cases of intent or gross negligence in accordance with the statutory provisions. Liability for guarantees is independent of fault. For slight negligence, the service provider is only liable for injury to life, limb or health. The service provider is also liable for the fault of its vicarious agents and representatives to the aforementioned extent.
- 7.2 The service provider's liability is limited to damages. The service provider's liability amount is limited to an amount which corresponds to three times the agreed service price.
- 7.3 The service provider is not liable to the customer for damage by third parties to goods and cargo that are handled, set down or temporarily stored using the service provider's infrastructure facilities and on port premises.
- 7.4 Goods and cargo temporarily stored on port premises are not transferred to the custody of the service provider. In particular, the service provider is not liable for fire damage to goods and cargo, nor for consequential damages, insofar as it did not cause the fire damage. The service provider is also not liable for theft.
- 7.5 The service provider is not liable in the event that motor vehicles are overloaded where the service provider itself is not the client for the transportation of goods and cargo.
- 7.6 The service provider is not liable for loads on motor vehicles or railway wagons being correctly secured, unless individual contractual agreements provide for a different arrangement. Furthermore, the service provider is in no way liable for the suitability and testing of lifting equipment provided by transport companies or the customer. Similarly, the service provider is in no way liable for the suitability and proper condition of attachment points on motor vehicles and railway wagons.

## 8. Place of jurisdiction

The business relationship between the parties shall be governed exclusively by German law.

The place of jurisdiction for all disputes arising from this contract is Lüneburg.

## 9. Other provisions

- 9.1 The customer must observe the provisions of the port regulations published via [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de). Road traffic regulations apply to motor vehicles on port premises, where rail traffic takes priority. The customer must inform any other service providers it may have engaged of the regulations.
- 9.2. Port premises are fenced off and secured with sliding gates, such that access for the customer and any other service providers engaged by the customer is generally possible even outside the service provider's operating hours. Access must be requested via the service provider's website, [www.hafen-lueneburg.de](http://www.hafen-lueneburg.de).
- 9.3. If declarations must be submitted in accordance with these general terms and conditions, these can be sent in writing, by fax or by e-mail.

Lüneburg, 01/05/2020



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Place, date

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Lars Strehse - Managing Director