

General Terms & Conditions of Business*

*English translation: in case of dispute, the german text shall be binding

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I. General terms

Article 1 Scope

- (1) These Terms & Conditions shall apply to goods handling, storage and all other performances which the Company (company of the EUROGATE Group) undertakes for its customers, unless otherwise required by statutory regulations at the registered office of the undertaking Company in question.
- (2) Unless agreed otherwise, remuneration for the Company's performances shall be determined by the Company's Schedule of Prices and Conditions in its latest version.
- (3) Any agreements deviating from these Terms & Conditions must be in writing. Such of the customer's terms and conditions as conflict therewith shall not be accepted.
- (4) Along with these Terms & Conditions, the customer must observe those regulations under public law governing use of the ports and governing customs handling.

Article 2 Data transfer, performance time, broker clause

- (1) The customer must use for exchange of information those methods of data transfer established by the Company, especially pre-printed forms and electronic data interchange (EDI).
- (2) The Company shall be entitled, but shall have no duty, to check that signatures on orders and notices are genuine and that the signatories are authorised persons.
- (3) The Company may at any time require acceptance of its performances at a time determined by operational considerations.
- (4) Should the customer avail itself of a Third Party in establishing or managing its contractual relations with the Company, the said Third Party shall not be entitled, without a particular written authorisation by the Company, to give declarations binding on the Company or to receive payments.

II. Goods handling

1. General

Article 3 Mode of handling

- (1) Goods shall be handled by the Company's employees and with their equipment.
- (2) The customer and its assistants shall have a duty to collaborate in the handling as far as required.

(3) Ancillary work connected with the goods handling will also usually be carried out by the Company's staff and with its equipment. The Company may, however, permit the customer to carry out such work under its supervision.

(4) Any work using the ship's on-board gear in the area of the Company's operating facilities shall require the Company's permission.

(5) The Company shall be entitled to carry out orders by means of Third Parties working to its instruction or by using outside equipment.

(6) The Company will carefully process the orders in sequence at its discretion. Execution within a certain period of time can only be demanded when explicitly confirmed in writing.

(7) Orders must be issued by EDI, or in exceptional cases in text form, preferably in accordance with the contents stipulated on the forms or templates. They may only contain such declarations or notices by the customer as are generally allowed or which have been expressly approved by the Company.

(8) An order for direct handling requires the Company's prior, express, written permission.

Article 4 Berthing, shifting

Ships must occupy the berth allocated to them by the Company. They must shift immediately should the Company so require, particularly if this is necessary to ensure smooth operational working; should they fail to obey this requirement, the Company may cause such action to be undertaken as is necessary, at the customer's cost and risk.

Article 5 Monitoring of goods designations and weight

(1) The Company may require that the contents of packages be demonstrated if justified suspicion exists that the designation of the said goods is incorrect.

(2) The Company shall be entitled to weigh the goods at the customer's expense if a statement of weight is lacking or if justified suspicion exists that it is incorrect. In this case the customer shall pay the costs of the weighing, but only if the said weighing discloses a minimum difference of five per cent from the stated weight.

Article 6 Special goods, return of goods

(1) Should goods require special treatment in handling and storage due to their particular features or characteristics (e.g. valuables, easily broken, unwieldy or loose goods, container's centre of gravity, excess width, excess height), the customer must inform the Company thereof in text form in good time, stating the particular features or characteristics precisely. In the case of refrigerated containers or other temperature-controlled goods, and in the case of perishable goods, the customer must take or arrange the measures necessary for safe handling.

(2) Should statutory regulations or official directives prohibit goods, once delivered or discharged, from being further provided, loaded or dispatched, the customer shall have a duty

to take them back immediately. Should it fail to meet this call for return at once, the Company shall be entitled to destroy the said goods at the customer's expense.

(3) The Company may refuse to accept goods or require that goods be taken back if no proof is supplied that they are definitely designated for further carriage.

(4) Should it transpire following acceptance of any item of goods that due to its condition it is a hazard to persons, other property or the environment, the said item of goods must be immediately repaired, refilled in other receptacles, or removed from the operating premises by the customer, should the Company so require. Should the customer fail to meet this requirement immediately, the Company shall be entitled to have the requisite measures undertaken at the customer's expense.

Article 7 Hazardous goods

(1) Prior to the delivery of goods which, due to their specific properties or characteristics, may cause hazards when being handled, provided for further carriage, or stored, the Company must be notified in writing or other legible form of the precise nature of the hazard and, as far as requisite, the preventive measures which must be taken; damaged hazardous-goods containers, in particular, must be reported in detail and in advance.

(2) Should treatment of hazardous goods be subject to particular statutory and official provisions, the customer shall have a duty to ensure that these provisions are met. Packages, containers or trailers containing hazardous goods must fulfil the regulations governing the transport of hazardous goods.

(3) For the handling and provision of hazardous goods, the Company must in particular be supplied in writing, or in clearly legible form, with the information necessary under statutory and local safety regulations, and as a minimum with the information on the Declaration of Responsibility or Dangerous Goods List pursuant to the Transport of Dangerous Goods by Sea Ordinance (GGVSee). In the case of containerised hazardous goods the container number must be stated in addition.

(4) The Company may destroy or otherwise render harmless any item of hazardous goods which has been supplied to it without the information set out in Paragraphs 2 and 3, nor shall it be liable to the customer for compensation thereby insofar as a hazard is created by the said goods. The customer must pay the costs of these measures.

Article 8 Provision, intermediate storage, bonded warehouse

(1) Goods received by the Company shall be kept ready on the Company's premises until, having been received from the ship by way of incoming transport, they are dispatched to a party entitled to receive them or, having been received by the company for outgoing transport, they are transferred to the ship. Reception from and transfer to another mode of transport in the case of other than seaward handling services shall be equivalent to reception from ship and transfer to ship

(2) Should goods be in store for longer than 2 days, they shall be treated as stored goods (Articles 17ff.).

(3) Following expiry of the term set out in Paragraph 2, however, the Company shall be free to require the party so entitled to collect the said goods. Should this requirement not be met within a period set by the Company, which must be at least 3 days, or should the party so entitled be unknown or undiscoverable, the Company may relocate the goods, or store them with a Third Party, for the entitled party's account.

(4) Should the Company undertake temporary custody of an item of goods in a customs seaport, the Company shall transfer the said goods to a bonded warehouse or free trade area 5 days prior to expiry of the custody period, pursuant to statutory customs regulations.

(5) The customer must reimburse the Company for all costs of performances which the Company has undertaken pursuant to this Article.

Article 8a **Customs handling for incoming goods**

(1) Incoming goods entering a free trade area must be presented by the customer to the competent customs authority. Incoming goods entering a customs port shall be presented by the Company in the customs port in the customer's name, following reception from the ship, and taken into temporary custody. In a customs port the goods will only be dispatched to the party entitled to dispose of them when the said goods have received customs-approved treatment in accordance with the Customs Code.

(2) The customer shall have a duty

1. to supply a ship report no later than 24 hours prior to arrival of the ship, using the information and communication channels established at each locality;
2. to transmit to the Company in electronic form the information required for presentation in the customs port.

(3) Should the customer fail to provide the ship report required under Paragraph 2, No. 1, or should the information required under Paragraph 2, No. 2 be incorrect or incomplete, it shall be liable to the Company for all loss and expenditure arising consequentially therefrom, even if it is not culpable. The customer shall be liable in every case for ensuring that one of the procedures stipulated under customs law is arranged and carried out in good time pursuant to the Customs Code and Customs Code Implementation Order. Article 28, Paragraph 1 shall apply.

Article 8b **Customs handling for outgoing goods**

Outgoing goods exiting a customs seaport with the status of non-Community goods under customs law, having been received by the Company, shall be received into temporary custody. All goods, Community goods and non-Community goods, shall only be transferred to the ship, both in the customs seaport and in the free zone, when permission for export has been received from the customs authority. Outgoing goods exiting a customs seaport by land shall only be released following the end of ancillary customs proceedings. Article 8a, Paragraph 2, No. 2 and Paragraph 3 shall apply correspondingly.

Article 9 Sale

(1) Should goods be stored for more than two months on the Company's operating premises, or should they be stored on the premises of a Third Party under Article 8, Paragraph 3 for longer than 2 months, the Company may cause the said goods to be publicly auctioned or sold by private treaty at their market value if

despite warning and threat of sale, the due charges have not been paid,

or the party entitled to the goods is unknown or not discoverable.

(2) The party entitled to the goods shall be notified of the intended sale. Should a party so entitled be unknown and undiscoverable, the intended sale shall be advertised in the Official Gazette. The sale must not take place prior to expiry of one week following the advertisement.

(3) The Company shall not be bound to the foregoing deadlines, nor shall it have a duty to threaten sale if the goods in question are easily-perishable or low-value goods and the charges due cannot in its opinion be covered by the proceeds.

(4) Should no purchaser be found for the goods put on sale, the Company may remove or destroy them at the entitled party's expense.

(5) The Company may use the proceeds of the sale to satisfy its claims for storage charges and other expenditure on the item of goods. It shall further have a right of lien upon the goods and the proceeds for all other receivables due from the customer. Should the party entitled to the goods be unknown, its claims to payment of such proceeds as exceed the Company's claims under Clauses 1 and 2 shall expire after one year.

2. Cargoes

Article 10 Required information

(1) Prior to the delivery of containerised cargoes the customer and the deliverer shall have a duty to state the following in particular, in electronic form, or in the exceptional case in text form:

- a) Name and address of customer
- b) Name of ship
- c) Voyage number
- d) Container number
- e) Size and type of container under the ISO Code
- f) Gross and net weight
- g) Empty or full (for containers)
- h) Port of discharge
- i) Hazardous-goods designation under the Transport of Dangerous Goods by Sea Ordinance (GGVSee)
- j) Set temperature of temperature-controlled container
- k) Information on excess height, excess width, excess length
- l) Booking number

(2) Prior to delivery of non-containerised cargoes the following additional information must be available:

a) Quantity, markings and numbers

b) Type of packaging

c) Dimensions

d) List of contents, cargo designation under GGVSee (valuables, flammable or otherwise hazardous goods, narcotics, weapons, and goods subject to export and transit prohibitions and restrictions must be designated as such).

(3) Prior to loading the following data must be available both for containers and non-containerised cargoes:

a) Stowage position, special loading instructions

b) Export-release information by the customs.

(4) Prior to delivery of containers, both by truck and by rail, the customer and the deliverer shall have a duty to transmit all requisite data and documents to the Company, using the information and communication channels established at the locality in question.

(5) The customer is obliged, in good time prior to reception of the goods by the ship, to undertake such handling of the goods as is stipulated legally or officially.

(6) Should the customer fail to supply the information set out in Paragraphs 1, 2 and 3, or fail to supply it in good time, or should it fail to meet its duties under Paragraphs 4 and 5, loading may not take place; the customer shall be liable for any costs which the Company may incur thereby.

(7) Containers and other goods shall be loaded onto the ship, in accordance with the customer's order in electronic form, particularly in accordance with the CAL (Container Announcement List). Prior to loading hazardous-goods containers the Company must be notified in text form of the correct stowage position.

Article 11 Transfer to ship

Goods shall be transferred to the ship designated in accordance with Article 10, Paragraph 1, Section b, pursuant to the stowage plan agreed between the Parties. They shall be deemed to have been received by the ship if they are deposited on the ship. Any externally identifiable damage must be notified to the Company in writing by the ship's command at reception of goods; should this fail to be done, the goods shall be deemed to have been received in accordance with contract.

Article 12 Stoppage, return

Goods accepted for shipping will be stopped should the customer, or deliverer working to the customer's order, so require in writing or in the form stipulated by the Company.

3. Goods for unloading

Article 13 Unloading instructions

- (1) The customer must submit the unloading instructions to the Company no later than 48 hours prior to start of unloading.
- (2) Unloading instructions must contain the following information in particular:
- a) Name and address of customer
 - b) Quantity, markings and numbers of packages
 - c) Type of packaging
 - d) Dimensions
 - e) List of contents, cargo designation under GGVSee (valuables, flammable or otherwise hazardous goods, narcotics, weapons, oversize dimensions, container's centre of gravity, and designation of goods subject to export and transit prohibitions and restrictions).
 - f) Name of ship
 - g) Voyage Number
 - h) Container number
 - i) Size and type of container under the ISO Code
 - j) Gross and net weight
 - k) Empty or full (for containers)
 - l) Mode of transport for onward carriage
 - m) Stowage position
 - n) Hazardous-goods designation under GGVSee
 - o) Set temperature of temperature-controlled container
 - p) Information on excess height, excess width, excess length

Prior to the discharge of non-containerised cargoes the precise measurements must also be available.

Article 14 Discharge

The ship must release the goods to the Company in accordance with the discharge instructions.

Article 15 Reception, certification of receipt

Goods shall be deemed to have been received by the Company following their reception on the ship. Should the customer so require, the Company shall issue a confirmation of receipt covering all goods received.

Article 16
Dispatch in return for customer's declaration of release

(1) The Company may refuse dispatch until the ship is fully discharged if in its judgement due and proper handling operations and the requisite oversight of batches for delivery would be impeded thereby.

(2) Following release by the customs, discharged goods shall be dispatched to the party which submits a declaration of release in its favour given by the customer in electronic form (e.g. PIN) or text form or which has demonstrated an authorisation to that effect. The recipient must provide evidence of its identification should the Company so desire. Article 10, Paragraph 4 of these General Terms & Conditions of Business shall apply to transshipment transport correspondingly.

(3) Receipt of goods must be confirmed to the Company by the recipient or customer in writing

(4) Dispatch of goods shall be made only following payment of all charges accrued at the Company.

Article 16 a
Participation in port information system for purposes of statutory customs requirements

Information on containers due for handling will normally be input by the Company into the port information system for purposes of statutory customs legislation (customs-information system) as it exists at the locality in question, but it shall have no contractual duty to do so. The Company shall not be liable for any statements made in the customs-information system, and in particular shall not be liable for ensuring that they are full and correct. The customer shall have a duty to check the information contained in the customs-information system prior to its further use, to ensure that it is full and correct.

III. Storage

Article 17
Storage

(1) Should storage be agreed, and in the cases set out in Article 8, Paragraph 2, the Company shall have a duty to store and keep the goods. They shall be guarded in the way usual in the industry.

(2) The Company may remove the stored goods to another storage location within its operating premises. The Company shall be entitled to store them in an Third Party facility only with the customer's permission, whether given expressly or tacitly.

(3) The customer shall be entitled to inspect the goods, or to have them inspected by parties so authorised, during business hours following consultation and agreement with the Company; such inspection must fulfil operational safety regulations and shall be subject to a charge.

(4) The Company shall have no duty without particular agreement to undertake work for purposes of maintaining or improving the goods. It shall be entitled to undertake such measures

at the customer's expense, however, if they should appear necessary in order to avert damage to the said goods, to other goods, or to the storage premises.

Article 18

Provision of information, special and hazardous goods

(1) The customer must specify the goods in such a way that due and proper storage is possible.

(2) Should goods need special treatment during storage due to their particular features or characteristics (e.g. temperature-controlled goods, valuables, easily breakable goods), the customer must notify the Company thereof, stating the particular features or characteristics precisely. Prior to delivery of goods which, due to their specific features or characteristics, may create hazards during storage, the Company must be notified, pursuant in particular to statutory and local safety regulations, in good time, in writing, or in other legible form, of the precise nature of the hazard and, as far as necessary, of the safety measures which are to be taken. Article 5, Paragraph 1, Article 6, Paragraphs 2 and 3, and Article 7, Paragraphs 2 to 4, shall apply correspondingly.

Article 19

Confirmation of receipt

Following removal of goods to store, the Company may issue a confirmation of receipt. It will indicate therein any externally identifiable damage to the goods or their packaging.

Article 20

Period of storage

(1) The storage contract may be terminated by either Party by giving notice of one month. Should good cause be present, termination may be made without giving notice. Good cause shall be present in particular if the customer is in arrears of more than 2 months in payment of the storage charge, or if the value of the goods no longer covers the Company's receivables.

(2) Following ending of the contract, the Company may require the customer – or, if a warehouse warrant was issued, the last certified holder of the warehouse warrant of whom it has cognizance – to take back the goods. Should the Party subject to the said duty fail to meet this requirement within one month, the Company shall enjoy the rights set out in Article 9.

IV. Liability

1. Liability of the Company

Article 21 Liability in goods handling

(1) The Company shall be liable for breach of its duties in goods handling and all performances connected therewith, except for storage pursuant to Articles 17ff., in accordance with the statutory regulations of Sections 425 to 439 of the German Commercial Code (HGB) governing the liability of freight carriers, even insofar as individual performances are not of the nature of a contract of carriage.

(2) The following amounts of liability shall apply, however, in contradistinction to the statutory regulations governing contracts of carriage:

a) Compensation for loss or damage to goods shall be restricted to two accounting units for each kilogram of the gross weight of the goods.

b) Should only individual parts of a consignment be lost or damaged, liability shall be restricted to the sum of two accounting units for each kilogram of the gross weight

- **of the whole consignment, if the whole consignment is devalued,**
- **of the invalidated part of the consignment, if only a part of the consignment is devalued.**

(3) The Company's liability for late dispatch shall be restricted to three times the handling charge for the goods delivered late.

Article 22 Liability towards Third Parties

The customer shall have a duty to release the Company from any liability beyond the liability set out in Article 21 towards a Third Party with whom the customer has concluded a contract of carriage, a contract of sea carriage or a freight-forwarding contract.

Article 23 Liability in storage

(1) Should storage be agreed (Articles 17ff. and 8, Paragraph 2), the Company shall be liable in accordance with statutory regulations.

(2) Liability for loss or damage shall be restricted, however, to the fair market value of the stored goods and to the maximum amounts set out in Article 21, Paragraph 2. No compensation shall be payable for further pecuniary loss, especially loss of profit or other consequential loss.

(3) Should loss be attributable to

- the natural characteristics of the goods,
- inadequate packaging or lack of packaging,

- vermin attack, internal spoilage, shrinkage, rust, mould or rot
- the agreed type of storage in special stores or in the open, or
- instructions by the storer or a Third Party instructed by the storer

it shall be assumed that it has been caused thereby.

(4) The Company's liability shall be governed correspondingly by Sections 433 and 434 of the German Commercial Code (HGB) and the liability of the Company's people by Section 436 of the German Commercial Code (HGB).

(5) The limitations mentioned above are not valid if the damage was caused with the intention to cause such damage or recklessly and with knowledge that damage would probably result.

Article 24 Declaration of value

(1) The customer shall be free to state a higher value for the goods in the individual case and to agree furthergoing liability.

(2) The Company may make adoption of any liability beyond Articles 21 to 23 dependent on a supplement to the usual charge.

Article 25 Notification of damage

(1) Should any loss or damage to goods be externally identifiable, and should the recipient or customer fail to notify the Company of such loss or damage upon delivery of the goods at the latest, it shall be presumed that the goods were transferred in their proper contractual condition. The notification must specify the damage sufficiently clearly.

(2) The presumption under Paragraph 1 shall also apply if the loss or damage was not externally identifiable and has not been notified within seven days following delivery.

(3) Claims for failure to meet delivery deadline shall expire if the recipient fails to notify the Company of such failure to meet the handover date within 21 days following delivery.

(4) A claim following delivery must be issued in text form. It need not contain a signature if the issuer is identifiable from the notice. Dispatch in good time shall be sufficient to meet the deadline.

(5) Should loss, damage or failure to meet delivery deadline be notified upon handover, a notice in text form to the party handing over the goods shall suffice.

Article 26 Liability for damage to property of the customer or of Third Parties

(1) The Company shall be liable for damage to the customer's property, particularly to the customer's road or water-borne vehicles which the customer is using to hand over or collect goods, only if culpability by the Company or its servants in the exercise of their prescribed duties is proven. Should the damage have been caused by the minor negligence of a non-

executive employee, the Company shall be liable for consequential commercial loss beyond material loss only to the sum of 5 million Euros.

(2) Should the customer use vehicles which are the property of a Third Party to receive or collect goods, it shall have a duty to release the Company from any liability towards the said Third Party beyond the liability set out in Paragraph 1.

Article 27

Limitation of claim

(1) All claims against the Company are time-barred after one year. In case of intent or of fault considered to be equivalent to intent in accordance with Section 435 of the German Commercial Code (HGB) the limitation period shall be three years.

(2) The limitation period shall begin to run upon the expiry of the day on which the goods were delivered. Should the goods not have been delivered, the limitation period shall begin to run upon expiry of the day on which the goods ought to have been delivered. In contradistinction to Clauses 1 and 2, the limitation period for recourse claims shall begin to run upon the day when the court judgement against the recourse obligee becomes final or, if no legal judgement has been made, upon the day on which the recourse obligee has satisfied the claim, unless the party liable to recourse was not notified of this loss within three months after the recourse obligee became cognizant of the loss or of the person of the party liable to recourse.

(3) In the case of claims for damage to a material possession of the customer or of a Third Party working to the customer's instruction, particularly to road or sea-borne vehicles which the customer is using to hand over or collect goods, the expiry period in accordance with Paragraph 1 shall begin to run upon the act of damage.

(4) The limitation period for other claims shall begin to run upon creation of the claim.

(5) The limitation period of a claim against the Company shall cease to run in response to a declaration by the customer in text form with which the latter brings these claims for compensation, until the time at which the Company rejects in text form the fulfilment of the said claim. A further declaration, having as its subject the same claim for compensation, shall not cause the limitation period to cease running again.

2. Liability of customer

Article 28

Liability of customer

(1) The customer shall be liable to the Company, even without culpability, for all losses and expenses arising from insufficient packaging or designation of goods, from provision of incorrect, unclear or incomplete information pursuant to Articles 6, 7, 10, 13 and 18 or in other notifications, or from failure to submit a notification that goods are hazardous.

(2) Should a particular time have been agreed for the performances of the Company, or should a particular time have been agreed for the acceptance of a performance of the Company, and should the customer fail to accept the said performance at this time on grounds for which it is responsible, it shall be liable for all the costs and expenditure incurred thereby by the Company, particularly costs of providing staff and operating resources.

(3) The customer shall be liable for damage to terminal equipment or other damage through its vehicles or staff, unless the latter are not culpable.

V. Common provisions

Article 29

Right of lien and retention, offset

(1) The Company shall have a right of lien on all receivables due to it from performances for the customer, and a right of lien on the customer's property transferred to it or on that of a Third Party, which has consented to the transfer to the Company. The right of lien on the customer's property shall also extend to all undisputed receivables due under other contracts concluded with the customer.

(2) The right of lien under Paragraph 1, Clauses 1 and 2 shall also extend to accompanying papers.

(3) In lieu of the deadline set in Section 1234 of the German Civil Code (BGB) of one month, a deadline of two weeks shall apply in all cases.

(4) An offset or retention against claims by the Company under the handling or storage contract, and extra-contractual claims connected therewith, shall only be allowed with due counterclaims against which no protest has been made.

Article 30

Termination

Should a price be agreed which is lower than the price set out in the Company's Schedule of Prices and Conditions, this special agreement may be terminated by the Company without giving notice if a justified risk is disclosed that the customer will not meet its financial liabilities according to contract.

Article 31

Combating terrorism

(1) The customer hereby warrants that it is not a terrorist, criminal or anti-constitutional association, organisation or person and maintains no contacts, whether commercial or otherwise, with terrorists.

(2) The customer further hereby warrants that in its business operations it obeys all relevant regulations for combating terrorism, particularly the relevant EU Directives, by means of suitable organisational measures.

Article 32

Specific local regulations

Unless regulated otherwise in these Terms & Conditions, the provisions of the Hamburg Quay Operating Regulations, the Bremen Port Regulations and the Wilhelmshaven Port Usage Regulations shall apply hereto by way of supplement.

Article 33
Governing law, place of fulfilment, place of jurisdiction

- (1) The Company's legal relations with its customers shall be governed by German Law.
- (2) The place of fulfilment shall be the Company's registered office.
- (3) The courts at the place of the Company's registered office shall be competent for all legal disputes arising from relations of contract or in connection therewith. This place of jurisdiction shall be exclusive for all claims brought against the Company.

Article 34
Partial invalidity

Should one of the provisions of these Terms & Conditions of Business be invalid, either wholly or in part, this shall not affect the validity of the remaining provisions.