



PORT OF KIEL

# GENERAL TERMS

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For using the wharfage of  
SEEHAFEN KIEL GmbH & Co. KG

valid from 1 March 2007





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# I. PREFACE

## § 1 General Scope

1.1 These General Terms – referred to as „GT“ in the following – apply to wharfage, berths and Kiel's port area operated by SEEHAFEN KIEL GmbH & Co. KG – referred to as PORT OF KIEL in the following. For using the railway construction of PORT OF KIEL, separate General Terms do apply. For handling and storing goods by PORT OF KIEL as agent, the Tariffs for Port Services are to be regarded with priority.

1.2 The port area is stipulated according to the announcement of the port authority of the state capital city of Kiel dated 30 November 2001 and comprises

- a) the inner Kiel Fjord, seawards limited by the line between the beacon on the northern mole of the "Scheerhafen" in the west and the city border between Kiel and Mönkeberg in the east
- b) the lower Schwentine River from its mouth to the bridge at the former Holsatia mill,
- c) the North Port at the Kiel Canal.

1.3 For using the wharfage and berths, also the terms of the state order for ports in Schleswig-Holstein, the state order for safety in handling dangerous goods in the ports of Schleswig-Holstein, the state order for the disposal of ship waste and load residues in the ports of Schleswig-Holstein and the port usage order by the state capital city of Kiel are to be applied in their particular and current versions for their designated scope directly, otherwise correspondingly.

1.4 The wharfage particularly includes open areas, cargo quays, ramps, entrances and exits, warehouses, passenger terminals, handling facilities and the special ferry quays.

## § 2 Functions

2.1 The wharfage serves the handling and related storage of goods as well as passenger traffic.

2.2 The berths are designated to mooring of their assigned vessels.

2.3 Trespassing on the wharfage is not permitted. PORT OF KIEL reserves the right to control entrance authorisations and ban unauthorised persons or deny them access.

## § 3 User Duties

3.1 Every wharfage user and every client of services and deliveries of PORT OF KIEL at the quays acknowledges the terms of these GT and commits to their compliance. Deviations are only valid if confirmed by PORT OF KIEL in writing.

3.2 Instructions of PORT OF KIEL personell are to be obeyed. Violations can result in denied access to the wharfage.

3.3 Regarding business correspondence with PORT OF KIEL, its established forms are to be used. This also refers to electronic forms where available.

## § 4 Tariffs

4.1 Fees and tariffs are payable according to the valid quay and port tariff when using wharfage and port area.

4.2 Fees for services of PORT OF KIEL on and at the wharfage are stipulated in the effective version of the Quay Tariff.

4.3 For services by PORT OF KIEL that are not listed in the tariff, special fees are agreed.

4.4 The client must convey the data required for calculating the tariff and prove it through presenting unambiguous documentation, e.g. ship's and load papers, transport documents; he guarantees for their accuracy.

4.5 Should the forms not be or not completely be filled out in accordance with § 3.3, should data be missing in accordance with § 4.4 or should the accuracy of information be doubted, PORT OF KIEL can estimate the missing details or replace them by own appraisal at the expense of the client.

### **§ 5 Terms of Payment, Default Interest, Modes of Payment**

5.1 Fees are payable immediately.

5.2 Default interest will be calculated with 5 per cent per annum over the base rate according to § 247 German Civil Code (BGB) – irrespective of the enforcement of further damages. If the liable party is a business, the default interest amounts to 8 per cent per annum over the base rate according to § 247 BGB.

5.3 PORT OF KIEL can claim advance payment up to the total amount expected and subject the execution of its services to the receipt of payment.

5.4 The client entitles PORT OF KIEL to directly debit his account with the open amount when due for payment.

5.5 Several debtors are liable as joint debtor.

5.6 Means of payment is the Euro.

### **§ 6 Prohibition to Set-off, Right to Retention**

6.1 Set-off against a claim of PORT OF KIEL is only allowed with counterclaims that have been proven uncontended or legally valid.

6.2 The client is only entitled to a right of retention out of the same contractual relationship.

## **II. SERVICES, TRANSPORT**

### **§ 7 Port Labour**

7.1 Port labour is the entire labour of loading, unloading, bunkering vehicles including storing and of putting on/down cargo deliveries and of ship provisioning and disposal within the scope of these GT.

7.2 If port labour shall be executed by companies that are not handling or stevedoring companies from Kiel, agreement by PORT OF KIEL is required. The agreement can be subject to constraints. This also applies to the adoption of stores, ship provisions and travel necessities.

### **§ 8 Usage of Handling and Transport Devices and Personnel**

8.1 For handling cargo, PORT OF KIEL provides cranes and other handling and transport devices including operating staff for value. There is no obligation to provide a certain crane or device and apart from that, availability is subject to the capacities of PORT OF KIEL.

8.2 Using private cranes, including deck cranes, is subject to permission by PORT OF KIEL. Usage of other handling and transport devices as well as ground conveyors with an approved payload of more than 5 t is also subject to permission by PORT OF KIEL.

Permission will be granted if these devices comply with the requirements of the point of use regarding port and structural engineering.

8.3 The equipment needed for lifting and moving goods such as chains, strops, hawsers etc. must be provided by the user. If these devices are provided by PORT OF KIEL for rent, the lessee is liable for any damage to the equipment and for

any damage caused by using the devices during the term of lease.

## **§ 9 Limitations to Handling and Storing Goods**

Valuables, (things that are worth more than EURO 25.00 per kilogram), fragile, dangerous, bulk/loose and particularly bulky goods can be excluded from handling and storing. They can be accepted under certain conditions; however, a special fee has to be paid for any kind of cargo that is not listed in the Quay Tariff of Kiel.

Explosive goods may only be taken into the port area if approved by the Port Authority together with PORT OF KIEL.

## **§ 10 Leasing of Working Equipment**

10.1 If PORT OF KIEL rents out working equipment without dedicated personnel, the recipient has to check that the devices are in good order and condition upon receipt. Any complaint about the condition of the device is to be submitted immediately and in writing to PORT OF KIEL. Later complaints are unre-markable in case they had been identifiable upon proper examination.

10.2 After use, the working equipment has to be returned in proper condition where handed out.

10.3 The lessee is liable for loss or damage of the device as well as for all damage done to himself, third parties or to PORT OF KIEL while using the device, unless damage has been culpably caused by PORT OF KIEL respective its employees or authorised persons. The lessee has to adduce proof of exoneration.

## **§ 11 Working Hours**

11.1 Regular working hours of personnel on working days is Mondays to Fridays 7 a.m. to 4 p.m., Saturdays from 7 a.m. to 1 p.m.

11.2 If manpower of PORT OF KIEL is required outside of normal working hours or it becomes clear during the cargo handling process that the job won't be finished by 6 p.m., PORT OF KIEL has to be informed about the required manpower beyond regular working hours by 12 p.m. (noon).

## **§ 12 Ordering and Using Equipment**

Cranes and other devices need to be ordered and -if necessary- cancelled by 4 p.m. of the previous working day; orders received after that time will only be considered subject to available capacities. Should a device that had been ordered not be used, PORT OF KIEL can claim full payment; with respect to cranes however, a minimum fee for gripper operations for 4 full hours can be claimed in accordance with chapter 2.4.2.2 of the Quay Tariff of Kiel unless PORT OF KIEL has used the device otherwise, grossly negligent did not use it in spite of the opportunity to do so or the customer can prove to PORT OF KIEL that no damage or just a significantly lower damage than the estimated one has been caused.

## **§ 13 Crane Work**

13.1 The crane driver is responsible for the correct operation of the crane. Should the crane be rented to a contractor, the crane operator has to follow the instructions of the contractor respective his substitute unless the instructions given conflict with the service instructions by PORT OF KIEL and unless human beings or objects are endangered by them. Service instructions can be consulted at PORT OF KIEL.

13.2 Goods to be handled must be put in vertical position under the crane hooks. The contractor is responsible for correctly fastening the cargo. The crane operator is not obliged to validate this. The contractor is liable for any damage caused by improper fastening unless PORT OF KIEL respective the crane operator assigned by PORT OF KIEL acts with intent or grossly negligent. The crane driver is entitled to deny using the crane if

the goods are improperly fastened or not accessible with vertical ropes.

13.3 When loading and unloading a vessel, a hatch assistant needs to be on board. He is not required if the crane operator finds that he can communicate directly with the clerks aboard.

13.4 While loading and unloading, the crane tracks are to be kept clear. In consultation with the ship management, the individually involved handling or stevedoring company has to take care that the crane operations are not obstructed by gangways and the like.

### III. STORING

#### § 14 General

14.1 Goods can be stored in quay warehouses and open storage areas.

14.2 When third parties store cargo on the wharfage, PORT OF KIEL is not the storekeeper pursuant to §§ 467 ff. HGB (German Commercial Code) but only the wharfage operator.

14.3 Smoking and open fire is forbidden in warehouses, on their ramps and entrances.

#### § 15 Storing Goods and Storing Location

15.1 PORT OF KIEL can reject any goods that are not suitable for storing.

15.2 PORT OF KIEL stipulates at its own dutiful discretion where the goods are to be stored.

15.3 PORT OF KIEL is not obliged to let the goods be stored longer than 24 hours on the wharfage. It can order acceptance to the authorised party with 24 hours notice. In case the order is not complied with, an authorized person is not known or cannot be reached, PORT OF KIEL can relocate or store the goods elsewhere on

account of the authorized party after the deadline of 24 hours has been passed.

#### § 16 Dangerous Goods

16.1 For handling dangerous goods in the port area and on the wharfage, the state order concerning safety in handling dangerous goods at the ports of Schleswig-Holstein (port security order) and the port usage order of the state capital of Kiel are applicable in their individually valid version.

16.2 Goods classified as dangerous according to statutory provisions have to be announced in writing at PORT OF KIEL via the port authority 48 hours prior to importing them into the port area. Concerning container and RoRo-vessels: Dangerous goods entering the port have to be declared at the latest when leaving the port before, outgoing dangerous goods have to be declared at the latest immediately before entering the port area; if declared less than 24 hours before, a timely inspection in the port area must be rendered possible.

16.3 PORT OF KIEL can - in agreement with the port authority – exclude dangerous goods that seem inappropriate for provision from import into the port area.

#### § 17 Risk, Insurance

The risk of sinking, degrading or damaging the goods stored indoors and outdoors lies with the contractor who is exclusively responsible for insuring the goods against theft, fire, water and frost damage etc.

#### § 18 Selling and Reutilising Goods

18.1 After a storing period of one month, PORT OF KIEL is entitled to publicly auction or privately sell such goods on the account of the contractor that are

- a) relocated or stored otherwise according to § 15.3
- b) stored at the quay:
  - 1. if the fees payable according to these GT and the valid Quay Tariff of Kiel have not been settled in spite of two reminders or
  - 2. if the contractor is not known or cannot be reached.

18.2 The intention to sell the goods will be communicated to the contractor; if the contractor is not known or cannot be reached, the sales intention will be published in the daily newspaper “Kieler Nachrichten”.

18.3 The deadline mentioned in § 18.1 does not apply for perishable or low-value goods; furthermore PORT OF KIEL is neither obliged to remind as mentioned in § 18.1 b) paragraph 1 nor to public announcement as mentioned in § 18.2

18.4 Can no purchaser be found, PORT OF KIEL can dispose of the goods at the expense of the contractor.

18.5 PORT OF KIEL can settle its claims from the proceeds in advance. Rights to an afterwards remaining net profit expire after a period of two years for the benefit of PORT OF KIEL.

18.6 Claims against PORT OF KIEL for damages due to sales or demolition of the stored good according to this provision are not possible.

## IV. PASSENGER TRAFFIC

### § 19 Embarking and Disembarking

19.1 Embarking and disembarking of passengers in shipping traffic is only allowed at designated and particularly marked facilities.

19.2 Facilities according to paragraph 19.1 may only be used with prior agreement by PORT OF KIEL.

## V. SPECIAL PROVISIONS

### § 20 Cleaning the Wharfage

20.1 The user has to clean and tidy up the wharfage after use.

20.2 The user has to remove things that have fallen into the port basin while handling them at his own expense.

20.3 If the user does not attend to his duty according to paragraph 20.1, 20.2 within an appropriate period of time, PORT OF KIEL can do the works or have it done by a third party at the expense of the user; due to the resulting claims, it has a lien on the amount of goods to be handled or stored that has been won upon the cleaning or disposal.

### § 21 Current Drain

21.1 Occupants of a designated berth are entitled to current drain for relevant cargo units after prior agreement by PORT OF KIEL.

21.2 Current drain is measured with measuring devices and charged with the fee stipulated in the individually valid Kiel Quay Tariff.

21.3 The responsibility of PORT OF KIEL for the VDE conforming and accident-proof condition of the current provisioning facilities ends at the electrical connection at the end of the power supply line of PORT OF KIEL. The users are responsible for the VDE conforming condition of the plug, connection lines and the joined device. When the user is absent, there must not be any

electric cables lying around. Should displayed cables be unattended, PORT OF KIEL will initiate their removal against costs.

21.4 Users must not change anything at the power provisioning facilities or sockets.

## **§ 22 Obligation to Disclosure**

Damages of any kind, irregularities or power failure must be immediately disclosed to PORT OF KIEL.

## **§ 23 Sale and Reutilisation of Vehicles and Means of Transport**

23.1 The user authorises PORT OF KIEL to reutilise vehicles and means of transport he brought into the port area of Kiel (semi-trailers, trailers, swap bodies, containers etc.) if a minimum of two weeks has passed after entering or after the end of an agreed period for parking and the user or other authorised persons have not removed the vehicle or means of transport in spite of two reminders that fixed at least two weeks each as deadline.

PORT OF KIEL is entitled to retention until open claims have been settled. The same applies to ships that have been abandoned by the crew and have not been manned or moved during two months after entering or elapse of the agreed demurrage. Furthermore, the user must be delayed at least two months with paying quay and/or port charges according to the individually valid Kiel Quay Tariff and the Kiel Port Tariff.

23.2 The reutilisation according to § 23.1 means free sale at market rate, which, - by the order of PORT OF KIEL - has to be assessed by a publicly sworn expert authorised by the chambers of commerce Kiel or Hamburg; the proceeds may fall below the assessed market value by up to 15 %. Can no buyer be found, PORT OF KIEL is entitled to have the vehicle (motor vehicle or vessel) or means of transport be auctioned by a bailiff or officially assigned auctioneer; if unsuccessful,

PORT OF KIEL can dispose of or scrap the vehicle at the expense of the user.

23.3 The intention of reutilisation has to be announced to the user as mentioned in § 18.2

23.4 If the user has not conveyed an address for service at the beginning of the usage and no address can be found out in the usual way (e.g. vehicle, shipping, professional or commercial registries), the appointment of dates as mentioned in § 23.1 does not apply. In this case, however, the reutilisation must not be conducted before the deadlines have passed.

23.5 PORT OF KIEL is entitled to first satisfy its open claims from the proceeds. Regarding a possible claim for damages and further cost related to the reutilisation, SEEHAFENKIEL has the right to offset. A remaining surplus has to be paid to the contractor; if the latter cannot be found, a surplus of more than 10,000.00 EUR is to be deposited at the local district court of Kiel; the right to disbursement for a smaller surplus expires two years after reutilisation.

23.6 Claims for damages against PORT OF KIEL due to reutilisation in line with this provision are forbidden.

# **VI. LIABILITY**

## **§ 24 Liability of Users and Contractors**

24.1 The users and contractors are liable for any damage caused by them, their employees or subcontractors when using the wharfage or damage caused by devices and goods brought to the wharfage by them; they are also liable for any damage caused through incorrect, unclear or incomplete specifications in the documentation. Insofar, they have to hold at bay claims of third parties against PORT OF KIEL.

24.2 If a certain point in time has been agreed for services of PORT OF KIEL, the authorised party is

liable for the costs that PORT OF KIEL faced through providing personnel and devices in vain irrespective of the reason; further claims remain unaffected.

### **§ 25 Liability of PORT OF KIEL**

PORT OF KIEL is liable in line with legal regulations, as long as liability is not excluded or limited through these GT or individual agreements.

### **§ 26 Liability Limitations**

26.1 PORT OF KIEL is not liable for

- a) any damage related to breaking and entering, theft, fire, water, frost or explosion,
- b) incorrect stacking of goods,
- c) any damage caused by force majeure or interventions by authorities,
- d) goods stored outdoors,
- e) any damage occurring during non-obligatory assistance services,
- f) delays in handling or loading or unloading due to reasons that PORT OF KIEL is not responsible for
- g) material or financial damage resulting from the usage of power supply facilities.

The liability limitations do not apply for damages caused by gross negligence or deliberate intention of a legal representative or auxiliary person of PORT OF KIEL and for damages resulting from harming life, body or health.

26.2 Regarding valuables (§ 9), PORT OF KIEL is only liable upon gross negligence or deliberate intention as well as regarding any other damage only in the case that a written statement of value was conveyed to it in time so that it was able to draw conclusions about the acceptance or rejection of the application and about the precautionary measures to be taken regarding receipt, storage and transport. Illegitimate objections are:

- a) PORT OF KIEL had known or should have known about the value of the good in another way.
- b) the damage resulted from other circumstances rather than the non-disclosure of the value or it would have also been caused even if the value statement was made in time.

26.3 The amount of a compensation for damages to be paid by PORT OF KIEL will be stipulated according to the German Code of Commerce §§ 429-433 (HGB).

## **VII. FINAL CLAUSE**

### **§ 27 Applicable Law**

For the privity of contract between PORT OF KIEL and the users or contractors as well as their legal successors, the German law does apply.

### **§ 28 Place of Fulfilment, Court of Jurisdiction**

The place of fulfilment and the court of jurisdiction is Kiel, as far as such an agreement is legitimate.

### **§ 29 No Validity of Foreign Terms and Conditions**

For using the wharfage and berths, solely these GT apply, also in the case that PORT OF KIEL does not explicitly object to other conditions. Different terms and conditions are only accepted as part of the contract if this has been explicitly agreed in writing.

### **§ 30 Saverability Clause**

1. Should one or more clauses of these GT be or become invalid, the remaining clauses are not affected.

2. In case of any divergence between the English and the German version of these General Terms, the German one shall prevail.

### **§ 31 Commencement**

These General Terms are valid from 1 May 2005.

Kiel, 1 March 2007

SEEHAFEN KIEL GmbH & Co. KG

A handwritten signature in black ink, appearing to read 'D. Claus', with a long horizontal flourish extending to the right.

Dr Dirk Claus  
Managing Director

# KIEL. GERMANY.

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Welcome to our landing page:  
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