

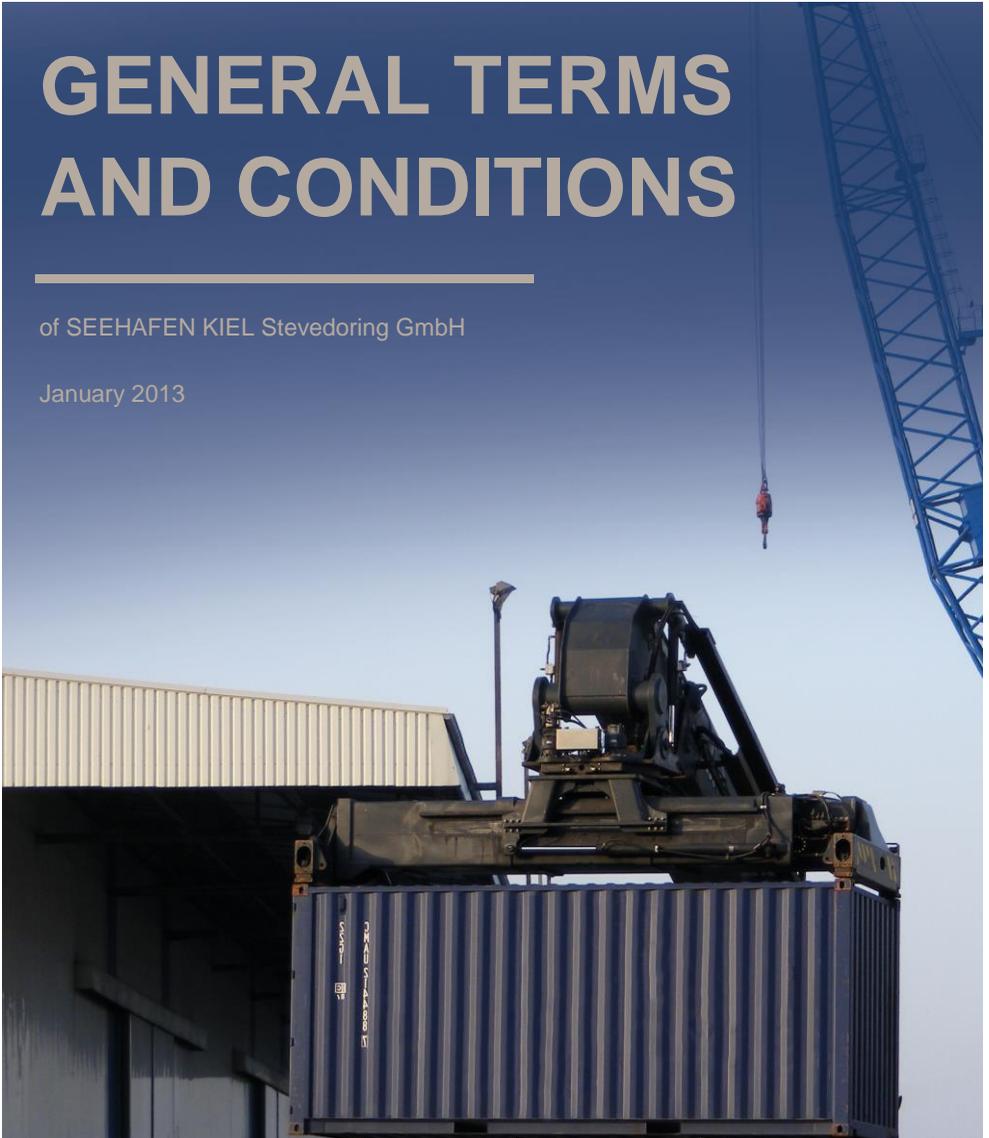


PORT OF KIEL
STEVEDORING

GENERAL TERMS AND CONDITIONS

of SEEHAFEN KIEL Stevedoring GmbH

January 2013



FIRST TRADE ▲ FIRST TRAVEL

1. SCOPE OF APPLICATION

1.1 Factual Scope of Application

The subsequent provisions are valid for the following services provided by SEEHAFEN KIEL Stevedoring GmbH (referred to as SK Steve in the following):

- sea- and shoreside handling of goods including stevedoring and unloading and intermediate storing related to handling (and traffic)
- services, especially sorting, weighing, marking, fastening
- storing goods

if the Tariff for Port Services by SK Steve does not stipulate anything different.

For freight-forwarding services, the General German Carrier Conditions (ADSp) do apply (especially see Liability Regulations chapter 17.1.1).

As long as not stipulated differently by these General Terms and Conditions (GTC), the "General Terms for Using the Wharfage of SEEHAFEN KIEL GmbH & Co. KG (GT)" apply in their individually latest version.

1.2 Personal Scope of Application

The following provisions are only applicable to commercial connections with businesses. With consumers according to §§ 13 BGB (Civil Code), 414 Abs.3 HGB (Commercial Code), individual agreements are made.

2. PLACING ORDERS

- 2.1 Orders for SK Steve are to be placed in writing.
- 2.2 The order has to contain all details required for the proper provision of services. This does especially apply for the instructions about the treatment of the goods.

- 2.3 For certain services SK Steve can grant and/or request orders to be transmitted in an electronic way. If the client is an employer, the provisions about information duties in electronic business correspondence, §§ 312 e BGB, do only apply as far as they are legally compulsory.
- 2.4 In addition to the data required in the order forms, only those explanations and remarks made by the client are allowed which have been agreed with SK Steve in advance. Other declarations are considered as not-added, even if SK Steve has accepted such an order without objection. Concerning dangerous goods, only goods of the same danger class may be listed on the same order. The client guarantees that his specifications are correct, especially the ones regarding kind, amount and weight of the goods.
- 2.5 The client has to present an unloading list one day before the beginning of the unloading process. A cargo manifest has to be presented by the client upon delivery of the goods.
- 2.6 The deliverer respective his authorised representative is obliged to conduct the stipulated foreign commercial treatments of the goods in due time prior to loading them on board. The unloading list and the cargo manifest must contain the following details:
 - name and address of issuer and addressee
 - marking
 - number of units
 - dangerous characteristics
 - kind of packaging
 - kind of good
 - properties and condition
 - weight of individual goods and unit in kg
 - for measured goods also their cubic content in cubic metres
 - content, valuables, dangerous goods, narcotic substances, arms, gasoline and spirits

- goods subject to import and transit bans and limitations are to be marked as such

In addition, the cargo manifest must contain the following specifications:

- port of destination
- name of the vessel

The port of destination can only be filled in belatedly, if the note “details follow” is given instead.

- 2.7 SK Steve is not obliged to double check the specifications made by the client without explicit order unless it is commercially common.
- 2.8 Orders are to be placed at the order centre of SK Steve at the latest at 12 o'clock one day before, for works on Sundays and Mondays at 12 o'clock on Friday, unless the Tariff for Port Services does not stipulate anything different.
- 2.9 Regular working hours are Mondays to Fridays from 07:00 – 16:00 h, Saturdays 07:00 – 13:00 h. Manpower required outside of these working times is to be agreed in time, these hours are charged for with additional cost.

3. FORMATION OF THE HANDLING RESP. STORAGE CONTRACT

- 3.1 The handling respective storage contract between SK Steve and the client is formed by the client resp. a third party authorised by him placing the order with SK Steve and the beginning of the handling or the explicit acceptance, as far as the specifications according to chapter 2 above are made and kind and scope of the service to be provided by SK Steve can be determined without doubt and SK Steve does not immediately reject the order.

- 3.2 Accepted orders do not imply any commitment to storing or warehousing. This is to be agreed separately.
- 3.3 If the handling of certain goods requires approval, the contract is formed through handling the goods subject to the postponing condition of presenting the approval. Upon regulatory request, SK Steve is authorised to adjourn, stop or subject to special conditions handling or storing the goods. In case delivered/unloaded cargo must not be further provided or loaded/delivered due to legal regulations or regulatory requests, the client is obliged to immediately accept the returned goods upon instruction of SK Steve; the same applies to goods where the documentation about further transport is missing.

4. HANDLING

- 4.1 The order of handling the ships is subject to availability of a suitable berth (turn rule). If several berths are available at the same time, the handling order will be determined by SK Steve.
- 4.2 All other means of transport will be handled according to their arrival at the place of loading/unloading if nothing different has been agreed in writing. If several means of transport are arriving at the same time, the handling order will be determined by SK Steve.
- 4.3 SK Steve can request the examination of goods or the content of cargo units if the accuracy of the provided product designation should be doubted for justifiable reasons.
- 4.4 SK Steve is entitled to weigh goods or make own estimations at the expense of the contractor if details on weight or measurements are missing or their accuracy is doubted for justifiable reasons.

5. COMPENSATION OF WAITING TIME

5.1 Waiting Time

SK Steve is obliged to advise the client or a third party named by him of its willingness to provide the service defined in the contract. The contractor resp. the third party named by him is then obliged to accept the service at the agreed point in time. If the time of service is not defined, the service is to be accepted immediately. If the client does not - in spite of the statement of willingness by SK Steve to provide the service - accept the service at the agreed time resp. immediately after SK Steve has declared its willingness and SK Steve is not responsible for that, SK Steve is entitled to claim compensation for damages from the client in line with chapter 5.4.

5.2 Failure to Assist

The client has to prepare the vessel and the vehicles in such a way that the handling can be conducted without any dangers for vessel, vehicles and port facilities. SK Steve does not accept liability for any damage to objects that were not secured as mentioned above. If the client does not assist in the way he committed to in time or within the time limit in particular (e.g. providing vehicles for land transport, providing the cargo to be handled and the like) and thereby hampers SK Steve in fulfilling its servicing duties, SK Steve is entitled to claim compensation for damages from the client in line with chapter 5.4.

5.3 Delay

If a specific point in time was agreed and not complied with or if delays arise from operating vessels or other means of transport, the client is liable for the cost of unavailingly providing and not utilising

employees and resources according to chapter 5.4.

5.4. Compensation of Damage

As overall damage compensation, SK Steve is entitled to claim an hourly rate for every started hour. The hourly rate results from the "Tariff for Port Services – Crane Fee paragraph (5), Provision of Labour paragraph (1)". SK Steve reserves the right to claim higher damage compensation in individual cases instead. The client is free to prove that the damage has not occurred at all or that it is significantly lower than the overall damage.

6. CONTRACTUAL LIEN

All mobile objects that are owned by the client which somehow got into the possession or control of SK Steve, serve as lien – as long as legally acceptable – for all claims (including conditional or temporary claims) against the client, no matter why they arose or were passed on to SK Steve.

7. DANGEROUS GOODS

- 7.1 Handling and storing dangerous goods by SK Steve underlies the "State Order for Handling Dangerous Goods in Ports of Schleswig-Holstein dated 4 December 1997" in its individually valid version. Furthermore, the regulations of § 1.3 of the „General Terms for Using the Wharfage of SEEHAFEN KIEL GmbH & Co. KG" do apply.
- 7.2 Prior to delivering dangerous goods, all relevant data and information is to be conveyed in a legible format to the authorities in charge. For correct handling as well as storing of the goods, copies of these specifications and the authority approval have to

be presented to SK Steve in due time before delivering the goods.

- 7.3 As far as SK Steve has not committed in writing to handling or storing dangerous goods, it is entitled to reject acceptance of these goods.

8. CARGO HANDLING

- 8.1 The goods are handled by SK Steve or third parties contracted by it with their individual equipment and hoisting devices. Operating board cranes or ship gear between vessel and quay requires agreement by SK Steve.
- 8.2 SK Steve executes the assignments at its dutiful discretion in a specific order. Claims to fulfillment within a certain timeline are only accepted in line with explicit and written confirmation.
- 8.3 Heavy packages can only be handled with heavy-duty-cranes. If that requires moving vessels or land vehicles, the clients in question are charged with the related cost.
- 8.4 If not agreed differently, extra work related to cargo handling e.g. marking, refinishing the packaging and the like, will be executed by SK Steve with costs.

9. TAKEOVER/HANDOVER OF GOODS

- 9.1 The goods are considered as taken over after hoisting them in the ship. A confirmation of receipt about all landed goods will be issued upon the client's request.
- 9.2 The goods are loaded according to the stevedoring plan agreed between the parties. They are considered as taken over from the ship upon putting down, loading into the hold on deck's height or ex ro-ro ramp. Solely those complaints with have been

stated immediately in writing can be considered by SK Steve; otherwise the goods are considered as taken over as per agreement.

10. DELIVERING LANDED GOODS

- 10.1 Delivery can be rejected until the vessel has been entirely unloaded if it - at SK Steve's discretion - hampers the correct execution of the landing business or the overview about the units to be delivered.
- 10.2 The landed goods are delivered
- to the party presenting a release certificate by the client in his favour. The recipient has to present the bill of lading or the shipping note on request as long as the documents are marked with the delivery stamp of the ship representative or
 - to the party authorised for reception named by the ship representative to SK Steve in writing
- SK Steve is not obliged to check the genuineness of the signatures or the authorisation of the signer unless the lack of genuineness or authorisation is obvious.

- 10.3 The receipt of the cargo is to be confirmed in writing.
- 10.4 Conditional delivery/receipt does only happen after the agreement by the ship representative has been proved in writing.

11. PROVISIONING, INTERIM STORAGE

- 11.1 The goods taken over are prepositioned until they are taken over – by the recipient when coming in, by the vessel when going out.

- 11.2 If goods are kept longer than 24 hours, they are treated as stored cargo as described in chapter 12.
- 11.3 SK Steve reserves the right to request authorised parties to collect the goods. If the request is not fulfilled within the set deadline or the contractor is unknown or cannot be found, SK Steve can relocate or store the goods at a third party at the expense of the client or his representative.

12. STORAGE ON THE QUAY

- 12.1 The sea freight is stored until it is taken over by the recipient when arriving and by the ship when leaving. SK Steve can store suitable goods outdoors.
- 12.2 SK Steve is authorised to store suitable goods of different clients together and by doing so, mixing them with foreign objects (joint storage).
- 12.3 If not agreed differently, SK Steve is not obliged to let goods be stored on the quay longer than 24 hours. It can ask the client to take the goods over within the following 24 hours. If this request is not complied with, the client can neither be found nor reached, § 18 “General Terms for Using the Wharfage of SEEHAFEN KIEL GmbH & Co. KG“ applies.

13. TERMINATION OF STORAGE AND RELOCATION

- 13.1 SK Steve can request immediate return of the goods if there is an important reason.
- 13.2 Otherwise, SK Steve can request the return of the goods only after termination with one month notice if the goods have not been taken back after the agreed storage period has passed or in those cases where no period was agreed, two months have passed

since transferring the goods into stock. The period of notice begins with receipt of the cancellation statement by the client.

- 13.3 Goods stored for sale are subject to § 18 “General Terms for Using the Wharfage of SEEHAFEN KIEL GmbH & Co. KG“.
- 13.4 SK Steve only discloses information about the storage to authorised parties.
- 13.5 Reports about entry and storage of goods as well as possible damages can be made available against payment upon request.

14. INVOICING, FEES, PAYMENTS

- 14.1 The services of SK Steve are invoiced to the client after delivering the service, however, SK Steve is entitled to request an appropriate payment in advance. This does especially apply to long-term (month-wise) storage or when the right of disposal of stored goods is transferred. Regarding the transfer of the right of disposal, all fees for the period ending with the day of transfer are to be paid immediately.
- 14.2 SK Steve is entitled to separately invoice the services summarised in the indirect handling rate.
- 14.3 All fees of the tariff are net rates. Services subject to VAT are charged with the VAT rate in line with the valid VAT law.
- 14.4 The debtor of the fees is the client. If the right of goods’ disposal is passed on, the first client remains liable to pay as joint debtor next to the new authorised party, as long as he has not explicitly stipulated in the order that the cargo is to be delivered only against cash on delivery.
- 14.5 The invoices of SK Steve are generated automatically and are legally binding without signature.

14.6 The fees and expenses charged by SK Steve are payable upon receipt of the invoice. The client is delayed in payment 14 days after the due date, without a reminder being required. When delayed, SK Steve charges interest of 8 % above the base rate of the European Central Bank (ECB). Other claims for damages remain unaffected.

15. SET-OFF

Set-off by the client regarding claims of SK Steve is only allowed with uncontroversial and legally valid counter-claims. The client is entitled to a right of retention out of the same contractual relationship only.

16. LIABILITY OF THE CLIENT

- 16.1 The client is liable for any damage and expense caused by insufficient packaging or marking of the cargo or by incorrect, unclear or incomplete specifications provided to SK Steve. § 414 HGB (German Commercial Code) applies.
- 16.2 The client is liable for any damage caused by him, his employees or contractors to SK Steve or a third party when accessing the premises, as far as they are to be considered responsible. The same applies to infringements of the sanctity of the home of SK Steve. The valid version of the Port Usage Order by the state capital city of Kiel has to be respected. The contractor has to keep claims by third parties from SK Steve.

17. LIABILITY OF SK STEVE

17.1 SK Steve is liable in case it neglected its duties in handling cargo and all related services, except for cases related to storing

goods according to chapter 12 in line with the legal regulations of §§ 425 – 439 HGB (German Commercial Code) dealing with the liability of the forwarder. However, the following special stipulations apply:

17.1.1 The compensation to be paid by SK Steve due to loss or damage of goods is calculated according to chapter 23 ADSp. Chapter 23 ADSp contains limitations of liability which diverge from the ones in the German Commercial Code. These limitations of liability are as follows:

23.1 The liability of the freight forwarder for loss of or damage to goods, with the exception of warehousing on request, is limited.

23.1.1 to EUR 5 per kilogram of gross weight of the consignment;

23.1.2 in case of damage occurring to goods whilst being carried, the damage is limited - contrary to section 23.1.1 - to the legally limited maximum amount specified for this type of carriage;

23.1.3 in case of a contract of multi-modal carriage - including sea transport - to 2 SDR per kg; 23.1.4 to EUR 1 million or 2 SDR per kg per claim, whichever is the higher.

23.2 If only individual packages or parts of the consignment were damaged or lost, the maximum liability is calculated on the basis of the gross weight - of the whole consignment if it is rendered valueless - of that part of the consignment that is rendered valueless.

23.3 The liability of the freight forwarder for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to three times the amount payable for the loss of the goods, but not more than EUR 100,000 per event. §§ 431 section 3 and 433 HGB (German Commercial Code) remain unaffected;

23.4 The liability of the freight forwarder,

irrespective of the number of claims per event is limited to EUR 2 Million per event or 2 SDR per kg of lost or damaged goods, whichever is the greater; in the case of more than one claimant the freight forwarder's liability is proportionate to their individual claims.

23.5 The SDR is calculated in accordance with § 431, section 4 of the German Commercial Law.

17.1.2 SK Steve's liability due to passing a deadline of handover is limited to the threefold amount of the handling fee.

17.2 SK Steve is not liable for any damage

- caused by force majeure, natural catastrophes, war or war-like events, strike, lock-out, labour unrest, political violence, sabotage, divestments or interventions by higher authority and the damage caused could not have been prevented by the diligence of a decent merchant.
- caused by housebreaking, fire, water, explosion
- caused by influence of weather
- caused by the natural characteristics of the goods, insufficient or missing packaging, loss, inherent vice, rust, fungi and the like
- caused to goods that – according to the agreement, usually or according to the order - had been stored outdoors or in specially established warehouses and the damage is due to that kind of storage
- that originate from the sphere of the client

17.3 SK Steve is not liable for consequential damage and missed profit.

17.4 SK Steve's liability for damages to the vessels to be unloaded or loaded is excluded for

- damage to objects that remained in the scope of grippers and hoists that could

have been removed without disproportionate effort in time and cost

- damage to objects lying under the goods in the hold
- damage to parts, equipment or accessories of vessels that are located in the hold, e.g. ladders, moulded beams, stringers, shaft alleys, manhole covers if these are exposed to contact by grippers and hoists without proper protection facilities, just as little for damage done to the protection holes themselves
- damage caused by the fact that a part of the goods to be unloaded or loaded fall down from floating or swinging grippers due to the cargo characteristics
- damage due to the natural characteristics of the cargo e.g. big hard pieces that do not yield and thereby cause damage when a gripper is put on them.

17.5 Liability regarding Storage

17.5.1 Regarding agreed storage (chapters 12, 13), legal regulations apply for liability.

17.5.2 Liability for loss or damage, however, is limited to the common value of the stored goods as well as the maximum amounts mentioned in chapter 17.1. Further damages will not be replaced.

17.5.3 If a damage can be related to

- natural characteristics of the good,
- insufficient or missing packaging,
- pest infestation, inherent vice, loss, rust, fungi or decay,
- the agreed storage outdoors or in special warehouses
- instructions by the client or his representatives,

it is assumed that the damage has been caused by this.

17.5.4 § 434 HGB (German Commercial Code) applies to SK Steve's liability, § 436 HGB applies to the liability of its employees.

17.5.5 The limitations to liability do not apply if the damage was caused deliberately or carelessly and under the awareness that a damage is likely to occur.

17.6 Liability for Damage to Vehicles

SK Steve is liable for damages to water and land crafts of the client or of a third party that the client uses for fetching or handing over the goods, if gross negligence or deliberate intention can be proven to SK Steve or its employees. Liability is limited to material damage.

17.7. Third-party liability according to § 437 HGB

The client is obliged to indemnify SK Steve from third-party liability beyond chapter 17.1 by agreement with the third party with whom the client signed a freight contract.

18. ADVICE OF DAMAGE

18.1 If a loss or damage of the good is visible from the outside and the client does not give notice about loss or damage when handing over the goods at the latest, it is assumed that the good was handed over in the condition agreed upon. The advice has to indicate the damage adequately.

18.2 The assumption in line with chapter 18.1 does equally apply if loss or damage was not visible from the outside and not advised within 7 days after handover.

18.3 Claims due to passing a deadline of handover lapse if the client does not give notice of this transgression within 21 days after handover. If the client cannot meet this 21-day deadline because of the transport duration, he must give notice immediately after finishing the transport procedure.

18.4 An advice of damage after handover has to be filed in writing; the advice of damage can be transmitted electronically. A signature is not required if the issuer can be recognised on the advice in another way. For meeting the deadline, in-time posting is sufficient.

18.5 When loss, damage or delay are advised upon handover, it is sufficient to give notice to the one handing over the good.

19. DELIBERATE INTENTION AND GROSS NEGLIGENCE

The above mentioned exemptions from and limitations of liability do not apply if the elements or managing employees of SK Steve or its assistants – for the latter when fulfilling a contractual primary obligation of SK Steve – acted with deliberate intention or grossly negligent. Furthermore, the above mentioned exemptions from and limitations of liability do not apply for damage from injuring life, body or health that results from a deliberate or negligent violation of duty by the elements, managers or assistants of SK Steve.

20. LAPSE OF TIME

20.1 Any claims against SK Steve lapse within one year no matter their cause in law as long as SK Steve is not liable because of deliberate intention.

20.2 According to legal regulations, lapse of time begins

- with accepting the service, applicable for claims regarding deficient handling service unless the deficiency was maliciously concealed by SK Steve,
- with the claim coming into existence, applicable to claims for restitution of prop-

erty and other rights in rem (§ 197 BGB, German Commercial Code),

- for the rest by the end of the year where the claim arose and the client was informed or - grossly negligent - not informed about the circumstances resulting in a claim and the guilty party,
- with the action, the violation of duty or any other event causing the damage according to § 439 HGB paragraph II applicable to claims for damages without consideration of this knowledge where applicable.

Furthermore, the legal regulations apply. For storage contracts, the regulations of SK Steve's "Tariff for Port Services" apply.

21. CANCELLATION

The business can be cancelled and a relevant agreement terminated by SK Steve without notice if there is justified danger of the client not going to meet his financial obligations as per agreement.

22. COURT OF JURISDICTION, PLACE OF FULFILMENT AND APPLICABLE LAW

Kiel is the exclusive court of jurisdiction and place of fulfilment. The law of the Federal Republic of Germany applies.

23. INEFFECTIVENESS

Should a provision of these GT become invalid as a whole or in parts, the validity of the remaining stipulations remains unaffected. In place of the invalid one, an adequate regulation shall be agreed that comes closest to sense and purpose of the invalid

one. The same applies to open contractual gaps.

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

24. COMMENCEMENT OF GENERAL TERMS AND CONDITIONS

The General Terms and Conditions in the present version come into effect from 1 October 2005.

Kiel, January 2013

SEEHAFEN KIEL Stevedoring GmbH



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