

UNTERNEHMENSVERBAND HAFEN HAMBURG E.V.

Non-Obligatory Recommendation for the General Terms of Business of Quay Terminal Operators in the Port of Hamburg (Kaibetriebsordnung) *

as per May 1, 2004

I. General Regulations

§ 1

Function of Quay Facilities

1. Quay facilities provide a service for the handling and storing of goods which have been or are to be carried by sea.
2. Incoming goods which are sensitive to temperature will be given priority for storage in air-conditioned quay sheds (fruit sheds).

§ 2

Validity of the General Terms of Business, Obligations of Customers

1. These General Terms of Business shall apply to the handling of goods at quay facilities as well as to general management of transactions which the quay operator carries out for the customer.
2. The quay operator is entitled to demand the acceptance of his services at any time he chooses to determine, including times outside normal working hours.
3. The customer is required to use the printed forms provided by the quay operator or transfer the application data to the quay operator by electronic data interchange (EDI) via the means of communication developed for this purpose.

If the quay operator in question has introduced EDI to handle applications, preference is to be given to the use of this procedure.

II. Regulations for Shipping

§ 3

Definitions of Vessels

The following definitions shall apply in these General Terms of Business:

1. "Sea-going vessels" are all vessels which carry goods seawards and to and from coastal waters;
2. "Inland waterway craft" are all vessels which carry goods to localities on the Lower and Upper Elbe and waters connected with them;
3. "Harbour vessels" are all craft designated for use in the Port of Hamburg.

* English translation: in cases of dispute, the German text shall be binding.

§ 4
Berthing

Sea-going vessels, inland waterway craft and harbour vessels may only moor at the berth allocated to them by the quay operator. The provisions of the Hamburg Port Traffic Regulations (Hamburger Hafenverkehrsordnung), in particular with regard to the issue of berthing permits, will not be affected by this regulation.

§ 5
Obligation to Shift

In order to ensure that operations at quay facilities proceed smoothly, sea-going vessels, inland waterway craft and harbour vessels must be shifted immediately at the request of the quay operator. § 4, Sentence 2 above shall apply accordingly.

III. Regulations for Handling Goods

A. General Regulations

§ 6
Handling and Weighing of Goods

Goods will be handled by the quay operator's personnel and weighed upon application. The quay operator's weighers are committed to fidelity in measurement.

§ 7
Extra Work

1. Extra work connected with the handling of sea-borne goods such as marking, improvements to packing, etc. will as a rule be carried out by the quay operator's personnel.
2. The quay operator can permit other persons to carry out such tasks on his terminal under supervision.

§ 8
Discharging and Loading

1. The quay operator's lifting gear will be used for handling goods across the quay. A sea-going vessel's lifting gear may only be used to work between the ship and the quay or between the sea-going vessel and inland waterway craft or harbour vessels if prior permission is obtained from the quay operator.
2. Sea-going vessels lying alongside the quay may only load or discharge overside goods which cause dust if permission from the quay operator has been obtained.
3. Slings gear must be supplied by the sea-going vessel.

§ 9
Transfer of Goods from and to other Craft

For discharging and loading from and to inland waterway craft and harbour vessels, goods will be moved with the quay operator's lifting and slinging gear.

§ 10

Transfer of Goods to and from Road Vehicles

Goods handled at the quay will be loaded or unloaded onto or from lorries free of an additional charge for this assistance. In exceptional cases – especially when advance notice is not given – the drivers of the vehicles will assist in loading and unloading.

§ 11

Transfer of Goods from and to Rail Waggons

Rail waggons arriving at and leaving the quay facility will be unloaded and loaded and dispatched by the quay operator's personnel.

§ 12

Quayside Storage

1. Sea-borne goods will be stored inside or in front of the quay sheds until delivery is taken by the consignee (inward traffic) or by the vessel (outward traffic) – see also § 29.
2. The quay operator is entitled to store suitable goods in the open.

§ 13

Restrictions on Handling Goods

1. Valuables, refrigerated or frozen goods, dangerous or loose goods or goods with excessive measurements can be excluded from handling operations or be handled subject to special terms at special charges.
2. Goods which in kind and quantity are for operational reasons unsuitable to be handled on parts of the quay where there are sheds can be excluded.
3. If required by a sovereign power or legal provisions valid in the Federal Republic of Germany, the quay operator is entitled to refuse acceptance of or hold up goods and to make his acceptance or surrender of the goods dependent on specific preconditions. Any costs thus incurred shall be met by the party that delivered the goods or commissioned their delivery to the quay operator. No claims for damages may be made against the quay operator as a result of his exercising the above powers.
4. If goods that have been delivered or unloaded are not allowed to be supplied, shipped or delivered as a result of statutory regulations or official directives, the quay operator's customer is required to take back the goods without delay.

§ 14

Dangerous Goods

1. The handling of dangerous goods in the Port of Hamburg is subject to the provisions of the Ordinance on Safety in the Port of Hamburg (Hafensicherheitsverordnung) in conjunction with the Port Traffic and Shipping Law of the Free and Hanseatic City of Hamburg.
2. The quay operator is to be supplied with all the data relevant to the dangerous goods before they are delivered – whether they are bound for export or arrive as imports. In particular, the following details must be supplied:
 - danger class/sub-class as defined by the Gefahrgutverordnung See (German Regulations on the Carriage of Dangerous Goods by Sea);
 - UN No.;
 - correct, technical name of the dangerous goods;
 - gross weight and in the case of explosives or items containing explosives, the net weight of the explosive;

- kind of packaging and in the case of materials or substances carried under a not-otherwise-specified (NOS) entry¹ or catch-all category, the packaging group.
3. Items to be shipped, containers and trailers carrying dangerous goods must comply with the regulations on the carriage of dangerous goods.

B. Receipt and Delivery of Goods To Be Discharged

§ 15 Ship's Manifest

1. The shipping agent must submit a manifest at the latest one day before discharging commences.
2. The manifest must contain the following details:
 - a) consignee;
 - b) marks and numbers;
 - c) number of packages;
 - d) packing details;
 - e) description of contents; valuables, dangerous goods, anaesthetics, weapons, alcohol, spirits and other items subject to import and transit prohibitions and restrictions must be identified as such;
 - f) weight; the weight of items weighing 1,000 kilos or more must be detailed separately.

§ 16 Discharging

1. The vessel must deliver the lots listed in the manifest whole.
2. As far as possible, the lots discharged should be of the same size and weight.

§ 17 Receipt

1. Once the goods have landed on the quayside, they shall be deemed to have been received by the quay operator. A receipt for the discharged goods will only be issued if this has been applied for before discharging and if the discharging conditions demanded by the quay operator have been fulfilled.
2. The goods will be stored separately by the quay operator according to the details of the manifest and bills of lading.

§ 18 Delivery against Bill of Lading or Delivery Order or by Order of a Shipping Agent

1. The quay operator can refuse delivery up to complete discharge of the vessel if, in his opinion, the proper execution of discharging operations and the required supervision of the lots to be delivered would thereby be impaired.
2. Discharged goods will be delivered
 - to the bearer of the bill of lading or of the delivery order providing these documents bear the shipping agent's delivery stamp;

¹ The reference here is to materials or substances which are not specified in regulations on the carriage of dangerous goods.

or

- to the authorized recipient detailed to the quay operator in writing or per EDI.

3. Receipt of the goods must be certified to the quay operator.
4. Provisional receipt or delivery is only permissible if the quay operator has obtained prior proof in writing of the shipping agent's agreement.

§ 19

Delivery against Part Delivery Order

1. The goods listed in the bill of lading or delivery order can also be delivered on part warrants (part delivery orders). These must be issued by the owners of the bill of lading or delivery order and stamped by the quay operator on receipt of the bill of lading or delivery order. The number and contents of the part delivery orders must be certified on the bill of lading or delivery order.
2. If the part quantities of a uniform lot for delivery on part delivery orders are not specially marked and stacked separately either in splitting the delivery order by the issuer of the part delivery orders or in sampling by the part consignee, the quay operator will deliver them according to the order of demands (on hand). Removal of part quantities by separate stacking and marking will be carried out by the quay operator only if specifically requested.
3. The receipt of goods must be certified on the part delivery order.

§ 20

Different Documentation

If the ship's agent and quay operator agree to replace the documents mentioned in §§ 15 – 19 by other procedures and forms of documentation, the quay operator shall only be liable for any consequences in accordance with § 34.

C. Receipt and Delivery of Goods To Be Loaded

§ 21

Acceptance

1. Delivery of goods must be accompanied by a shipping note or the specific printed form issued by the quay operator. Alternatively, the application data must be transferred in advance to the quay operator by EDI via the means of communication developed for this purpose (i.e. the port data record).

If the quay operator in question has introduced EDI to handle applications, preference shall be given to this procedure.
2. The deliverer or his representative shall be obliged to undertake the prescribed customs clearance of the goods in due time before receipt of the goods by the sea-going vessel. The prerequisite for loading the goods on board ship is that the data required for customs presentation of the goods have been entered into the ZAPP² System correctly and in due time and that a B No. has been issued as proof of their presentation.

² ZAPP: Customs Export Supervision in a Paperless Port.

§ 22
Shipping Note

1. The shipping note must contain the following details:
 - a) name of vessel and port of destination;
 - b) marks and numbers;
 - c) number of packages;
 - d) packing details;
 - e) description of contents; valuables, dangerous goods, anaesthetics, weapons, alcohol, spirits and other items subject to import and transit prohibitions and restrictions must be identified as such;
 - f) weight; the weight of items weighing 1,000 kilos or more must be detailed separately;
 - g) name of issuing party.
2. The port of destination may only be added subsequently if in its place the words "instructions following" are entered.

§ 23
EDI Notification

If the data required for shipment are transferred by EDI (see § 2, Section 3), the provisions laid down for this means of communication must be complied with.

§ 24
Delivery on Board

The goods will be offered to the next vessel of the liner service indicated in the shipping note or EDI notification and delivered on board in the sequence required by the shipping agent. The goods shall be deemed to have been received by the vessel when they have landed on deck or been loaded into the hold at the height of the hatch. Complaints will be considered only if they are submitted immediately.

§ 25
Holding Back

Goods received for shipment will be held back if the issuer of the shipping note or the EDI notification applies for this in writing or the manner prescribed by the quay operator.

§ 26
Re-Delivery

Goods delivered for shipment can be taken off again by the issuer of the shipping note or the EDI notification.

IV. Regulations concerning Intervening Measures

§ 27
Shifting

If the order to shift a vessel in accordance with § 5 is not immediately complied with, the quay operator shall be entitled, after consulting with the Port Authority about the new berth, to take the necessary measures to ensure this is carried out at the expense and risk of the vessel. If it is not possible to shift the vessel, the quay operator shall be compensated for the loss thus incurred.

§ 28

Control of Description and Weight of Goods

1. The quay operator can demand to inspect the contents of packages before delivery or delivery on board if the correctness of the goods' description is not apparent from the documents.
2. If details of weight are lacking or there is reason to doubt their correctness, the quay operator shall be entitled to have the goods weighed at the expense of the party concerned. If the weight ascertained exceeds the weight shown by at least 5 per cent, the party concerned must pay the costs of this weighing.

§ 29

Restorage of Goods

The quay operator is not obliged to leave goods standing on the quay longer than 48 hours after landing on the quay. Before or after expiry of this period, he can order the parties entitled to receive the goods to take delivery within 24 hours. If this order is not complied with or the party entitled to receive the goods is unknown, cannot be traced or is not resident in Hamburg, the quay operator can move the goods or store them elsewhere at the expense of the party concerned after expiry of the 48-hour period.

§ 30

Sale of Goods

1. After a storage period of two months, the quay operator shall be entitled to sell privately or by public auction, at the expense of the party entitled to receive the goods, those goods which
 - a) have been stored elsewhere in accordance with § 29,
 - b) stored on the quayside:
 1. if the charges due have not been paid in spite of a demand for payment and the threat of sale,
 2. if the party entitled to receive them is unknown, cannot be traced or is not resident in Hamburg.
2. The party entitled to receive the goods will be informed of the intention to sell the goods. If the party is unknown, cannot be traced or is not resident in Hamburg, notice of the intended sale will be published in the *Amtlicher Anzeiger*. The goods may not be sold until a week after notification is given of the intention to sell.
3. The quay operator shall not be bound to the two-month period and shall not be required to inform the party concerned of the threat of sale and indicate the intention to sell in accordance with Section 1 b) and Section 2 respectively if the goods are perishable or of small value and the monies due cannot, in his opinion, be covered by their sale.
4. If no buyer can be found for the goods, the quay operator shall be entitled to have them removed or destroyed at the expense of the party concerned.
5. All claims for net proceeds from the sale will lapse in favour of the quay operator after a period of one year.

V. Regulations for Goods Carriage by the Port Railway

§ 31

Connections to the Port Railway

Incoming sea-borne goods will be carried by the Port Railway with direct connections to goods stations. Outgoing goods can therefore be delivered direct providing the loading points (quay sheds, etc.) are indicated.

§ 32

Loading Restrictions

1. An obligation to load general cargo will only apply if the amount of weight fixed in the regulations by the respective railway company for the formation of covered general cargo waggons is attained or the volume of the waggons is fully utilised.³
2. The quay operator is entitled to temporarily close the quay facilities to rail waggons in order to ensure cargo-handling operations can be carried out smoothly.

VI. Provisions concerning Liability

§ 33

Customer's Liability

1. The shipping agent or the issuer of the shipping note, of the application form for unloading rail waggons, of the loading list or of the EDI notification shall be liable for all damage which might arise as a result of incorrect, unclear or incomplete entries in the manifest, shipping note, other application forms or EDI notification.
2. If a certain time is agreed for the quay operator's services or if delays result from the operation of vessels or other means of transport, the applicant shall bear the liability for the costs of the preparations and the non-use of quay labour and equipment unless he cannot be held responsible for the cause in question.
3. The customer shall be liable for any damage caused to the quay facilities by his vehicles or personnel. Any additional liability shall be unaffected by this provision.

§ 34

Quay Operator's Liability

1. The quay operator shall be liable for any damage or loss in accordance with the legal stipulations and as provided by the following regulations.
2. **In cases of damage to or loss of goods, the amount of compensation to be paid by the quay operator is limited to two units of account per kilo of the gross weight of the damaged or lost goods.**
3. **If individual parts of the lot in question have been lost or damaged, the quay operator's liability shall be limited to two units of account per kilo of the gross weight of**
 - the entire lot, if the entire lot has been reduced in value;
 - that part of the lot that has been reduced in value, if only one part of the lot has been reduced in value.
4. The quay operator's liability in the event of the deadline for delivery being exceeded shall be limited to three times the sum of the cargo-handling fee.

³ There are no minimum-weight stipulations on the Port Railway for incoming traffic.

5. The limitations of liability detailed in Sections 2 – 4 shall not apply if any case of damage or loss is due to the action or failure to act committed intentionally, recklessly or in recognition of the probable occurrence of damage or loss by the quay operator, any of the quay operator's personnel in the performance of their duties or any other persons the quay operator makes use in carrying out his operations.
6. The unit of account referred to in Sections 2 – 3 is the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The amount in question will be converted into Euro at the rate of exchange applicable between the Euro and the SDR on the day the goods to be handled are received or on a date agreed by the parties in question. The SDR value of the Euro shall be calculated by the method applied by the IMF for its operations and transactions on the day in question.
7. The above provisions shall not affect § 13, Section 3.

§ 35

Notification of damage or Loss

1. If the loss of or damage to any goods is externally apparent and the customer fails to inform the quay operator of such, at the latest upon delivery of such goods, it will be assumed that the goods have been delivered in contractually correct condition.
2. The assumption detailed in Section 1 shall also apply if any loss or damage was not externally apparent and notification was not received within seven days of delivery of the goods.
3. Any claims relating to non-compliance with a delivery deadline shall lapse if the customer does not notify the quay operator of such non-compliance within 21 days of delivery. If the customer cannot comply with this 21-day period because of the length of time required to transport the goods, notification must take place without delay upon completion of the transport process.
4. Notification of any damage or loss must be undertaken in writing; however, such notification can be transmitted by telecommunication means. No signature is required if the issuer of such notification is identifiable by other means. The dispatch date shall be deemed sufficient as regards compliance with this deadline.
5. If notification of loss, damage or non-compliance with a deadline is given upon delivery of the goods, notification need only be given to the person delivering the goods.

§ 36

Limitation Period

1. All claims against the quay operator shall be subject to a limitation period of twelve months. In cases involving intent or negligence equivalent to intent as per § 34, Section 5, a limitation period of three years shall apply.
2. The limitation period begins at the end of the day on which the goods are delivered. If the goods have not been delivered, the limitation period begins at the end of the day on which the goods should have been delivered. In derogation of sentences 1 and 2 above, the limitation period for claims of recourse begins on the day any judgement against the recourse obligee becomes final or, if no final and absolute judgement exists, on the day the recourse obligee satisfies the claim, unless the party liable to recourse was not notified of the damage or loss within three months of the recourse obligee obtaining knowledge of the damage or loss or the person of the party liable to recourse.
3. If the customer declares his claim to compensation in writing, the limitation period for claims against the quay operator shall be suspended until the quay operator declares in writing his refusal to satisfy the claim. Any further declaration relating to the same claim for compensation shall not effect any additional suspension of the limitation period.

VII. Remaining Regulations

§ 37 Set-off

The set-off against claims of the quay operator is only permissible through uncontested or legally proven counterclaims.

§ 38 Jurisdiction, Law Applicable

1. Place of performance and place of jurisdiction is Hamburg.
2. The law of the Federal Republic of Germany shall apply.

§ 39 Legal Consequences of Void Provisions

If any regulation or provision of these General Terms of Business is or becomes void, the remaining regulations or provisions shall nevertheless remain in force.

Hamburg, May 1, 2004