

UNTERNEHMENSVERBAND HAFEN HAMBURG E.V.

Unbinding recommendations for general business conditions of the grab operator companies amalgamated in the Association of Hamburg Port Enterprises - Unternehmensverband Hafen Hamburg e.V. (General loading conditions)

Version 01/05/2011

I. General provisions

§ 1

Scope of validity

1. These loading conditions apply to the loading and discharging of sea-going ships, inland waterway ships and harbour boats as well as to other commercial commissions, which the grab operator company (hereafter called contractor) carries out for the client.
2. Variations and supplements require the written form.

§ 2

Duties of the client

1. The client shall inform the contractor of all matters, which are necessary for the performance of the order; in particular, goods requiring special handling are to be notified.
2. The client shall ensure that endangered parts of the ship, equipment, accessories or other projecting components in the hold are provided with protection against contact with the grab or trimming machinery.
3. The ship suitable for grab loading or unloading shall be provided to the contractor in a condition ready for loading or unloading.
4. The client shall indemnify the contractor from claims for compensation from owners, persons operating a ship owned by another person ("Ausrüster", sec. 477 German Commercial Code) or other parties authorised to dispose of ships to be loaded or unloaded, to the extent that these exceed the liability exclusions or limitations of these loading conditions.
5. If damage is externally apparent, the contractor is to be notified verbally immediately after the occurrence and the notice is to be filed in writing within 7 days of the occurrence of the damage.

§ 3

Payment calculation basis

1. The agreed cargo handling rates and the supplements for ancillary works apply to work in the 1st and 2nd shifts on working days Monday to Friday and in the 1st shift on Saturday. They only apply to goods suitable for grabbing and with the ship being shovelled clean before being handed over.

2. The basis for payment calculation is a self-trimming bulk carrier with steel bottom, which permits unhindered unloading with wheeled loader or grab.
3. Waiting times are not included in the agreed payment unless there is a clear contractual provision.
4. Necessary expenses are to be reimbursed by the client to the contractor.
5. Costs, which arise for the contractor due to official directives and decrees and apply to the goods, are to be borne by the client.

§ 4 Force majeure

In case of force majeure or other unforeseeable, exceptional events that are not the fault of the contractor - e.g. state of war, strikes, official interventions -, which hinder the contractor in the performance of his contractual duties, he is released from his duties under the accepted order for their duration.

II. Payment transactions

§ 5 Payment

1. Payments and accrued costs (plus statutory VAT) are due without deduction within 14 days of issue of the invoice.
2. An extra sum in the amount of the currently valid harbour fund will be added to all invoice sums. Docking and warehousing charges are excepted from this.
3. If the client is in delay with payment, then delay interest in the amount of 3 % p.a. above the central rate of the European Central Bank is payable. This is without prejudice to the assertion of any further claims for delay.
4. The contractor can claim advance payments when a timely payment is not guaranteed.

§ 6 Offsetting and retention

The offsetting or retention of any claims of the contractor by the client is only permissible with undisputed or legally binding (res judicata) counterclaims.

III. Liability provisions

§ 7 Liability of the client

The client is liable for occurrences of damage to the handling equipment of the contractor, which arise from deviation of the actual from the agreed properties or quality of the cargo (e.g. foreign bodies) or due to ships, which are not suitable for grab handling.

§ 8
Principles of liability of the contractor

1. The contractor is only liable under statutory or contractual provisions for all activities as long as these are at his fault or at the fault of his employees or agents.
2. The duty of demonstrating due care and diligence lies with the contractor. If the clarification of the cause of an occurrence of damage cannot reasonably be expected of him according to the state of the situation, then the client has to demonstrate that the contractor has caused the damage at his fault.
3. If externally apparent damage is not – in contravention of § 2 point 5 – notified within the due period, then it is assumed that the damage is due to a circumstance that is not the responsibility of the contractor.

§ 9
Liability exclusion

Liability of the contractor is excluded

1. for damage to objects, which lie beneath the cargo in the holds, e.g. spare propellers, shafts, timbers,
2. for damage to objects remaining in the working area of the grab, which could have been removed without unreasonable expenditure of time or cost,
3. for damage caused by part of the cargo being loaded or unloaded falling from the slewing or swinging grab due to the composition of the cargo,
4. for damage, which could ensue from the natural composition of the cargo being loaded or unloaded, e.g. large, hard pieces, which do not compress and thus cause damage when the grab contacts them,
5. for damage to parts or equipment or accessories of the ship, which are located in the hold, e.g. ladders, frames, stringers, floor plates, bearings, shaft tunnels, tank covers or projecting parts, e.g. bearing brackets, rings, clamps, uneven timber bilge ceiling or overlaps of bilge ceiling boards, if such parts, equipment, accessories or projecting parts of the ship are exposed to contact with the grab or with cargo moved by the grab without protection from the hooks of the grab by protection timbers in good condition, also for damage caused to protection timbers themselves,
6. for damage caused due to riot, strikes, lockouts, operational disruptions or due to the failure, improper function or breakage of equipment, devices or parts provided by the contractors, unless the appropriate care has been neglected in the obtaining, maintenance or operation of the equipment or devices.

§ 10
Liability limitation

1. If the contractor is liable, then the amount of the due compensation payment is limited to the market value of the damaged objects; if the market value of the damaged goods cannot be determined, then the general value of the objects at the time and place of unloading or loading is applicable. The total sum is limited to EUR 30,000.00 for all claimants.
2. If the total damage exceeds the amount of EUR 30,000.00 and there is more than one claimant, then the maximum amount of EUR 30,000.00 is divided among the individual claimants in proportion to the ratio of their claims.
3. The client is entitled to agree with the contractor a liability exceeding the extent of the liability according to the provisions of these conditions.

§ 11
Liability of employees

The liability of employees of the contractor is excluded or limited according to the above liability provisions.

§ 12
Intent and gross negligence

In case of intent or gross negligence of the contractor himself, his organs or management or intent or gross negligence of persons whom the contractor used to perform his obligation in the performance of a main contractual duty of the contractor, he cannot assert the previously stated liability exclusions or liability limitations.

§ 13
Insurance

Considering the liability exclusions and liability limitations, the client is recommended to conclude an insurance policy.

IV. Final provisions

§ 14
Limitation

1. All claims against the contractor expire in one year. In case of intent or gross negligence, the period of limitation is three years.
2. The period of limitation begins with the end of the day, when the claimant, his representatives or a person whom the claimant used to perform an obligation became aware of the damage or when the handling process was completed.
3. For the start of the period of limitation, the earliest point in time applies.

§ 15

Place of performance, place of jurisdiction and applicable law

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

§ 16

Partial invalidity

Should one provision of these general business conditions be or become invalid, then the validity of the remaining provisions is not affected by this.

Hamburg, on the 01/05/2011