



**General Terms and Conditions of Business
for Handling and Storage Services
at Container Terminal Herne GmbH (CTH)
(as of January 2008)**

1. Application, supplementary conditions

- 1.1 CTH provides handling and storage services for combined transport exclusively on basis of these General Terms and Conditions of Business (GTC). These also apply for all future business transactions, even if the GTC are not expressly agreed upon again.
- 1.2 Customer's General Business Terms and Conditions apply only in case explicitly agreed in written agreement by us.
- 1.3 Latest on acceptance of our services through the customer, our GTC deemed as accepted.
- 1.4 Further, following is also applicable:
 - operating rules for container handling stations
 - Hazardous goods guidelines for combined transport
- 1.5 These GTC do not apply to contracts with the customer. The consumer is a natural person who is signing the contract for a purpose that is neither commercial nor can it be attributed to the person's independent professional occupation.

2. Scope of services

- 2.1 CTH operates a handling station as connecting point to road and rail transport modes. CTH guarantees all railway operators who offer combined transport, discrimination-free access in comparable quality and price structure.
- 2.2 CTH provides handling and storage of containers of combined transport exclusively in connection with freight contracts.
- 2.3 In addition to the handling and storage services which are provided within the framework of these GTC, CTH offers supplementary services for combined transport, which require separate agreements in each case.

3. Ordering, accepting orders

- 3.1 The basis for services to be provided by CTH is fundamentally a global written contract with the customer as well as a service agreement.
- 3.2 The individual order of the customer for handling and storage has to include all necessary information for correct execution of the order, and is to be given in writing.
- 3.3 The execution and obligation of orders received in electronic form, shall be regulated in a separate concluding contract.
- 3.4 A confirmation by CTH for written orders only takes place if this is specifically agreed upon with the customer.

4. Condition of equipment, liability of the customer

- 4.1 Transport units must conform to valid legal regulations and technical specifications and must be suitable for handling and transport of combined transport. The customer is liable for all damages occurring to CTH and third parties caused due to improper condition of unit or cargo, even if not directly caused through him.
- 4.2 Transport units defined in these GTC are:
 - containers (in accordance with ISO standards)
 - swap bodies (in accordance with CEN standards)
 - semi-trailers (in accordance with German public roads vehicle admittance - StVZO).
- 4.3 All transport units in the sense of these GTC must be approved for combined transport.
- 4.4 At time of giving an order, the customer is to take into account that the weights and dimensions of said transport units must conform to the respective technical conditions of our handling installations.
- 4.5 CTH can check the transport units on obvious defects and damages from the ground during takeover while these are on the delivery vehicle. CTH is not obliged to check the estate, its packing, stowage and fastening nor the details given or the documents handed over by the customer.

5. Handling

- 5.1 Handling begins as soon as the cargo gear (spreader) of the handling equipment is lowered onto the unit.
- 5.2 Handling ends as soon as the cargo gear (spreader) of the handling equipment is released, raised, and is free of the unit.
- 5.3 Handlings are provided in different varieties:
 - 5.3.1 for arrival by road, from a road vehicle onto a railway vehicle, or into storage, or onto a road vehicle in case of rail substitution services.
 - 5.3.2 for arrival by rail, from the railway vehicle onto a road vehicle, into storage, or onto another railway vehicle.
 - 5.3.3 for delivery to road, from a railway vehicle or from storage onto a road vehicle.
 - 5.3.4 for delivery to rail, from the road vehicle, from storage, or from another railway vehicle onto a railway vehicle.

6. Storage

- 6.1 CTH stores empty and laden equipment used for combined transport depending on locally available storage capacities, in case this is required before or after rail transportation or a rail substitution service. A storage obligation of CTH does not exist.

- 6.2 The utilisation of the storage areas is the responsibility of the management of the handling station.
- 6.3 Storage begins after handling into the storage place and ends with handling onto the road vehicle or railway vehicle intended for onward transport.
- 6.4 The usage of support legs to park a swap body or semi trailer before handling on arrival by road truck or railway wagon is only permitted with agreement of CTH.
- 6.5 CTH is entitled to park equipment in case operational matters in the handling station require this.
- 6.6 Storage is charged according to the duration of the storage in accordance with the valid pricelists of CTH.

7. Liability

- 7.1 CTH is liable for handlings and storage in accordance with the provisions of §§ 407 ff, HGB (German commercial code), as long as no other agreements have been made.
- 7.2 Liability for loss or damage is limited to an amount of 8.33 times the invoicing unit for each kilogram of the gross weight of the transport unit. In case of partial loss or partial damage, § 431 chapter 4 HGB applies accordingly. The value of the invoicing unit is determined in accordance with § 431 chapter 4 HGB.
- 7.3 Continued claims for damage compensation against employees of CTH and its agents are excluded, unless liability exists on the basis of compelling legal legislation or the damage is caused by intent or gross negligence. The exclusion of liability does not apply for infringement of services bound to the contract. In these cases, claims for compensation are limited to the foreseeable typical damage.
- 7.4 In case an action of the customer, his employees, his agents or his customers, their employees or agents has contributed to the occurrence of the damage, the obligations of CTH to compensate for damages and the extent of the compensation for damages to be provided is dependent on the extent to which these circumstances contributed to the damage.
- 7.5 Should high quality or hazardous goods (e.g. alcoholic beverages, electronic goods, telecommunication equipment, IT equipment, tobacco goods or goods under class 1) be handled by CTH, the customer shall inform CTH in due time. Due to special insurance conditions pertaining to such goods, an individual liability agreement has to be reached prior to this by both parties. In case the customer neglects to notify CTH, CTH accepts no liability in case of damages.

8. Damage settlement

- 8.1 In case of damage or loss, § 438 HGB applies. Delivery in case of road haulage is deemed when road hauler has taken delivery of unit. The same applies in rail carriage once railway operator has taken delivery of unit.
- 8.2 Accident reports are to be made in writing. The accident report can be transmitted by a communication appliance. A signature is not necessary if there is another obvious indication who the sender is. To ensure the deadline, an in-time dispatch is sufficient.
- 8.3 The customer shall give CTH the opportunity to inspect the damage.

9. Special provisions for hazardous goods

- 9.1 Transport units with hazardous goods (laden as well as empty but dirty ones) are not stored by CTH.
- 9.2 For temporary storage of units containing hazardous goods in handling stations; supplementary to the guidelines for hazardous goods, the hazardous goods guidelines for combined transport apply as well.
- 9.3 Transport units containing hazardous cargo may only be delivered on the dispatch day.
- 9.4 Incoming transport units containing hazardous cargo must be collected on day of arrival but latest within 24 hours. Otherwise CTH may return these units to sender on account and risk of the customer, store it at a third party who has the necessary infrastructure for this, or, if deemed necessary, destroy it, without being made liable for this.
- 9.5 In case units containing hazardous cargo are handed over to CTH without mentioning the contents or in case it is not visible through labelling, the customer is liable for all damages arising through this.

10. Payment

- 10.1 Basis for invoicing is the valid handling and storage tariff.
- 10.2 Payments are due in Euro and are charged with the addition of the legally applicable VAT in the amount applicable at the time.
- 10.3 Payments are to be transferred at the cost of the customer to an account to be determined by us, and are due on receipt of the invoice.
- 10.4 Alternative payment conditions may be established within the framework of a separate agreement.
- 10.5 In the event of payment arrears, the customer has to pay interest in the amount of 5 % above the official interest rate set by the European Central Bank. In addition € 15,00 will be charged for each written reminder to cover expenses.
- 10.6 Offsetting or retention against CTH payment demands are excluded, unless the counter claim has legally been accepted.

11. Right of distraint and retention

- 11.1 For all due and overdue invoices for services which CTH has rendered towards the customer, CTH has the right of distraint and retention of goods under its jurisdiction. This right of distraint and retention does not exceed the legal legislation of restraint and retention.
- 11.2 For demands arising against the customer with other contracts, CTH may only make use of it's right of distraint and retention as long as these are not disputed or if the financial situation of the customer endangers the demands of CTH.

12. Limitation of claim

- 12.1 Claims against CTH fall under the statute of limitation after one year. With intent or something equal to it after § 435 HGB, the deadline is three years.
- 12.2 The limitation of claim starts with the end of the day on which the transport units left the terminal.

13. Jurisdiction

- 13.1 For all disputes arising through this contract (incl. counter claims, cheque and bill of exchange processes) the sole place of jurisdiction is the registered base of CTH, unless CTH chooses place of jurisdiction of the customer.

- 13.2 The law of the Federal Republic of Germany for legal relationships between domestic parties is applicable.
- 13.3 Only the German version of the general terms and conditions is binding. The English translation only serves for a better understanding. In case of differences between the German version and the English translation, the German version has priority.
- 14. Salvation clause**
In case individual clauses of these General Terms and Conditions of Business are void or ineffective, or become so, the effectiveness of the remaining provisions and clauses is not affected by this.