

# GENERAL CONDITIONS FOR TERMINAL HANDLING AND STORAGE 2011





# GENERAL CONDITIONS FOR TERMINAL HANDLING AND STORAGE

These general conditions for terminal handling and storage have been drafted by the Swedish International Freight Association. They are intended for use with respect to handling and storage of whole or loose load carriers, freight-units or containers as well as with respect to handling and storage of loose cargo. Attached to these general conditions are Annex A, B and C specifying terms and conditions for handling and storage of load carriers as well as handling and storage of loose cargo. These general conditions will enter into force as of 2011-04-01 (April 1<sup>st</sup>, 2001) and will remain valid and effective unless otherwise notified.

## GENERAL PROVISIONS

### 1. APPLICABILITY

- 1.1 These general conditions shall apply to contracts of terminal handling of intermodal load carriers, for storage of such load carriers or for terminal handling and storage of loose cargo / loose goods (“goods”) performed by a terminal operator (“operator”) for the account of the principal (“customer”).
- 1.2 These general conditions shall be applicable subject to mandatory national law, international conventions or rules and regulations in force having precedence. The parties may agree on other terms and conditions which may wholly or in part supplement or replace these general conditions.

### 2. DEFINITIONS

Expressions and terms used in these general conditions and annexes attached hereto shall be defined as follows;

- 2.1 “Intermodal load carrier” refers to whole standardized load carriers such as containers, swap body or other standardized units intended for the transportation of goods.  
  
Furthermore, the unit shall be marked in accordance with common standards as well as approved for carriage with the intended mode of transport. The customer shall bear the responsibility for meeting such requirements.

### 3. LIABILITY

- 3.1 The operator shall be liable under these general conditions when he under his own name offers or agrees to perform terminal handling or storage of load carriers, units or goods independently and irrespectively of if later other such operator performs or effects the actual terminal handling or storage of said load carrier, unit or goods.  
  
What actually is included in and meant by terminal handling and / or storage is further defined in annexes attached to these general conditions.
- 3.2 The operator shall not be liable for damage to, loss of or depreciation of goods occurring to goods which are stored within a load carrier or unit and the contract is intended for handling or storage of a whole load carrier, regardless of how such damage, loss or depreciation occurred.

- 3.3 The operator shall not be liable for the delay of delivery of goods (contained within a load carrier or unit) either during terminal handling or temporary storage, with the exception of article 5.2 below.
- 3.4 The customer shall be liable for ensuring that load carrier, unit or goods are correctly packaged, wrapped, marked and labeled. The operator is entitled to and reserves the right and opportunity to control this before said load carrier, unit or goods are collected or received.
- 3.5 The customer shall be liable for damage to goods or load carrier of any third party or any damage to property or personnel of such third party and shall hold the operator free and harmless of any claims or demands from such third party to the extent that such damage has arisen as a consequence or due to incorrect or faulty packaging, wrapping, marking or labeling or alternatively as a consequence of the art and nature of said load carrier, unit or goods.
- 3.6 In the event terminal handling or storage is performed or executed by the operator free of charge and without remuneration or compensation the customer shall solely and without exception or limitation on its own account bear the full risk of any load carrier or unit as well as any possible damage to goods stored inside or separately outside of load carrier or unit.

#### **4. PERIOD OF LIABILITY**

- 4.1 The liability of the operator shall commence at the time and moment when the operator in accordance with an offer or agreement thereof shall receive a load carrier, unit or goods for terminal handling or storage.

“Receiving load carrier or unit” means when a trailer is disconnected from the vehicle or cranes lifts up the unit and the load carrier thus physically has been received for handling in a terminal.

“Receiving goods” means by the operator signed proof of acceptance of the goods.

In the event the operator receives load carrier, unit or goods before the agreed upon time of acceptance, the liability of the operator shall be intended to commence at the time when the terminal at the receiving facility opens on the date when said load carrier, unit or goods shall be received in accordance with the agreement thereof, subject to the provisions of article 4.1 above, however at the earliest at 06.00hrs a.m. local time.

- 4.2 The liability of the operator for damage to load carriers, units or goods shall be intended to cease at the time and moment at which said load carrier, unit or goods in accordance with agreement or offer thereof is placed or has been placed at the disposal of the consignee or customer and said party has been instructed by the operator to take possession of said load carrier, unit or goods. After such time and moment the operator undertakes to store said load carrier, unit or goods without assuming any liability for damage to said load carrier, unit or goods unless this has been agreed upon in writing.

The customer is thereafter obliged to make payment for storage fees and charges in accordance with applicable provisions in these general conditions until said load carrier, unit or goods is finally collected.

- 4.3 If the operator instructs the customer in writing to collect load carrier, unit or goods and such load carrier, unit or goods have been placed at the disposal of the customer or consignee and said customer or consignee has not taken possession of said load carrier, unit or goods after a period of thirty (30) days have expired after the written instructions were notified to the customer or consignee, the operator is entitled to and reserves the right to have the load carrier, unit or goods either destroyed or sold and out of the proceeds of any sale cover its outstanding claims/debts for said load carrier, unit or goods.

## **5. LIMITS OF LIABILITY**

5.1 The liability of the operator for damage to or loss of load carrier or unit is limited to an amount not exceeding SDR 50 000 per load carrier or unit regardless of the circumstances. With regards to several damages occurring at the same time and in accordance with article 5.1 the total liability of the operator is limited to and shall not exceed SDR 500 000 at any one occurrence.

5.2 For delay in delivery of load carrier or unit the liability of the operator is limited to the contract fee as specified in the agreement or offer.

5.3 The liability of the operator for damage to, loss of, depreciation to or delay of loose goods / loose cargo (“goods”) regardless of whether it is goods stored inside a load carrier or unit or goods in itself is limited to the value of the goods at the most likely time of damage or deficiency or if such value can not be verified, the market price of goods of the same kind at the storage location on the above mentioned time and moment.

Compensation in accordance with article 5.3 above may however under no circumstances exceed SDR 2 per kilogram unless specifically agreed upon in writing or any applicable national law, international convention or regulation stipulates otherwise. For several damages under article 5.3 which occurs at the same time and moment the total liability of the operator shall be limited to and shall not exceed SDR 50 000 at any one occurrence.

The liability of the operator for goods in accordance with the above mentioned and under these general conditions shall not be dependent on whether the contract has been entered into for handling or storage of load carriers containing goods, or if the contract also includes handling and / or storage of loose cargo / loose goods (“goods”).

5.4 Furthermore, the operator shall not be liable for indirect damages or other consequential damages such as but not limited to loss of revenue or good-will which may not be directed against the operator under any circumstances regardless of the nature of the contract or irrespectively if damage has been caused to a load carrier, unit or goods.

5.5 The operator may not rely on and invoke the limits of liability under article 5.1, 5.2 and 5.3 above if damage, loss, depreciation or delay has resulted or arisen, been caused or arisen out of, directly or indirectly, the gross negligence or intentional act of the operator.

5.6 The customer of the operator shall be liable towards the operator for any and all claims that any third party may direct against the operator as a consequence of terminal handling or storage and the customer undertakes to hold the operator free and harmless for any such claims to the extent they exceed the limits of liability of the operator or, should it be the case, in the event that the operator is not liable for the occurred damage.

5.7 The above mentioned shall apply regardless of the art and nature of the contract or if damage has been caused to a load carrier, unit or goods.

## **6. FEES AND CHARGES**

6.1 The customer will be charged in accordance with at each time applicable and valid tariffs on the terms and conditions specified below, unless otherwise specifically agreed upon.

6.2 The operator has the right to charge the customer for services performed within the scope of the agreed contract if such services are of the art and nature that they constitute normal business practice and as such may be included in the intended contract even if said services have not been agreed upon. The above mentioned shall furthermore apply in case a service is by the operator regarded as necessary for the execution and performance of the contract and the operator has been unable to reach the customer within reasonable time to confirm the performance and execution of said service.

- 6.3 In the event there are no valid tariffs in force for executed and performed services not agreed upon as specified above, the operator is entitled to and reserves the right to charge the customer a reasonable fee, including any possible necessary disbursements, for the execution and performance of such services.
- 6.4 Value added tax as well as any other taxes or duties are for the payment and account of the customer.
- 6.5 The operator is entitled to and reserves the right to at any given time adjust published or specified fees and charges in the event of a significant economic circumstance beyond the control or influence of the operator. Should such fee or charge be so adjusted, the customer is entitled to terminate the contract with effect from date of said adjustment subject to the adjustment being of significant importance to the customer.
- 6.6 In the event the costs of the operator for the completion of the contract is significantly affected by fluctuations in currency exchange rates, the operator is entitled to adjust published or specified fees with the difference between the currency exchange rate which formed the basis of the announced fee and the currency exchange rate at the completion of the assignment.

## **7. PAYMENT TERMS AND CONDITIONS**

- 7.1 Payment of charges due shall be at the account of the operator at the latest within the time specified on the invoice.
- 7.2 The customer shall within thirty (30) days after the expiry date of the invoice notify the operator whether the invoice is regarded as incorrect or containing faults. Failing this the customer will lose its rights of objections against said invoice.
- 7.3 The customer shall be liable for and hold the operator free and harmless for the completion of any transport-, storage- or terminal fees and charges in case the operator in accordance with instructions from the customer charges a third party and such third party within thirty (30) days after the expiration date of the invoice fails to make payment in full of outstanding debts as specified above, regardless of reasons thereto. The liability of the customer as detailed above shall also include any possible penalty interests on overdue payments, invoice- and reminder fees for overdue payments.
- 7.4 The operator shall be entitled to and reserves the right to demand payment in advance for contracts where the value of the goods can not be deemed to cover freight-, terminal- and storage fees and charges.
- 7.5 With regards to charges collect shipments the customer shall be liable for payments of any charges, fees, expenses and disbursements related to the contract should the consignee neglect to or not be in a position to make payment for the contract, regardless of whether the consignee has taken possession of the goods or not.
- 7.6 Should the invoice be disputed in part or in whole, the above mentioned shall not affect the disputed part of the invoice. Should the disputed part of the invoice later be found unjustified, the customer shall make payment of penalty interests on overdue payments, fees and other costs for the disputed part from the time the claim was presented until the claim was found to be unjustified.
- 7.7 In the event payment of charges is overdue the operator is entitled to and reserves the right to charge the customer with penalty interests on overdue payments in accordance with the applicable Swedish act on interest payments as well as any reminder fees allowed under Swedish law and where applicable any fees and charges for collection services.

## **8. LIEN AND RIGHT OF RETENTION**

- 8.1 Subject to the extent permitted by applicable national law, the operator shall have a lien on goods, load carrier, unit or any documents relating to goods such as documents of transport and 'bills of lading' that the operator has under his control, custody or possession for claims that the operator has towards the customer as a consequence of storage or terminal handling of goods, load carrier or unit for the account of the customer after a contract thereof. This shall apply equally to goods, load carrier or unit that the operator undertakes for transport, terminal handling or storage and that the consignee has yet not taken possession of.
- 8.2 The above mentioned lien shall apply equally to claims of the operator towards the customer regarding contracts of terminal handling or storage of goods, load carrier or unit that is no longer is in the possession or control of the operator.
- 8.3 In the event the customer enters into receivership or reconstruction the customer shall be obliged to inform the court appointed trustee or liquidator of the prioritized claims of the operator and shall hold the operator free and harmless to the fullest extent permitted under the law in case such obligation is not met or performed by the customer.
- 8.4 In the event the customer fails to make payment for terminal-, storage- or other costs related to the contract the operator shall be entitled to exercise his lien and prevent or refuse delivery of load carrier, unit or goods until payment has been made in full. In the event the customer does not take possession of or collect load carrier, unit or goods and further does not make full payment of terminal-, storage- or other costs related to the contract and fails to correct this after thirty (30) days have passed since the customer was notified of this by the operator, the operator shall be entitled to sale of load carrier, unit or goods at private or public auction and cover its claims out of the proceeds thereof and to deposit any excess income amount to the account of the customer at the general county authority (Länsstyrelsen) of Stockholm, Sweden.

## **9. INSURANCE**

- 9.1 The customer shall in its own name and account procure and maintain any required insurance coverage for storage-, terminal handling- or transport risks to cover the liability for goods, unit or load carrier in excess of that which is laid down and stipulated for the operator under these general conditions.
- Any possible and potential self-deductible which the insurers at any given time elects to apply shall be for the account of the customer.
- 9.2 In the event the customer chooses to in its own name and account procure insurance coverage brokered by an insurer for storage- or cargo risks, the customer shall be liable towards the operator as well as third party such as buyer, seller or other final receiver of load carrier, unit or goods for the correct and sufficient insurance of said load carrier, unit or goods delivered to the operator by the customer for terminal handling or storage.

## **10. TRANSFER OF ASSIGNMENTS**

- 10.1 The customer may not assign its rights and/or liabilities, in part or in whole, under these general conditions to any third party without the express previous written consent of the operator.
- 10.2 The operator shall however always be entitled to assign its rights and liabilities, in part or in whole, under these general conditions to another legal entity within the same company group or such entity where the operator owns a controlling share.

## **SPECIAL PROVISIONS**

### **11. PACKAGING, WRAPPING AND MARKING / LABELING OF GOODS**

- 11.1 If in the opinion of the operator goods are not correctly packaged, wrapped, and / or marked or labeled the operator is entitled to require that the customer undertakes this and if it therefore can not be carried out in time for the performance or completion of the contract, such performance or completion shall take place at a later stage when the goods is deemed correctly packaged, wrapped, and / or marked or labeled. The customer shall assume liability for delay or other damages that might occur or arise in the event the operator in his opinion regards goods as not being correctly packaged, wrapped and / or marked or labeled.
- 11.2 In the event the operator discovers obvious deficiencies with regards to the packaging, wrapping, marking or labeling of the goods after taking delivery of such goods, and furthermore said deficiencies, if they are not corrected, may cause damage to the operator or third party the operator shall be entitled to correct these deficiencies at the risk and expense of the customer if in the reasonable opinion of the operator instructions from the customer can not be received in time for the deficiency to be corrected.
- 11.3 In the event the customer requires that the operator, in spite of the opinion of the operator that the goods is not correctly packaged, wrapped, marked or labeled, nevertheless shall handle the goods in the terminal alternatively store said goods, such terminal handling and storage shall be carried out and performed entirely on the responsibility, liability, risk and expense of the customer and the operator shall not be held responsible or liable for any damage or injury which may be caused by or arise as a consequence or reason of the incorrect packaging, wrapping, marking or labeling, including any damages for delay in connection thereto.
- 11.4 The operator reserves the right to request the customer to seal any packaging or wrapping before taking possession of the goods. In the event the operator requests such sealing of the goods, and the customer does not perform or effect such sealing, the operator shall not be held responsible or liable for any damage or injury which may arise in the event of a dispute on whether the packaging or wrapping has been broken or tampered with.
- 11.5 In the event transport is performed to the wrong destination as a consequence of and due to incorrect marking or labeling performed or effected by the customer of goods or, where applicable, of load carriers, the customer shall assume responsibility and liability of all costs and expenses for the re-routing of the goods, or load carrier, including storage- and terminal handling charges and fees, which may arise as a consequence of said transport to the wrong destination.
- 11.6 In the event goods or load carriers are transported to the wrong destination as a consequence of and due to incorrect marking or labeling of goods effected and performed by the operator, and the operator has undertaken in the contract or in an offer to mark up or label goods, the operator shall assume responsibility and liability for all costs and expenses for the re-routing of the goods or load carrier, including storage- and terminal handling charges and fees, which may arise as a consequence of said transport to the wrong destination on the condition that the operator has been duly notified by the customer of this fact and thereafter has been given reasonable and fair opportunity and possibility to effect and perform said re-routing.
- 11.7 In the event the customer without allowing the operator reasonable and fair opportunity and possibility to effect and perform the re-routing decides to perform such re-routing on the account and expense of the operator, the operator shall nevertheless only be held liable and responsible for the part of the final costs and expense for said re-routing that the operator after the fact can verify it could have effected said re-routing for. Any additional costs and expenses in excess of this amount shall be for the account and expense of the customer.

## **12. DANGEROUS GOODS**

- 12.1 The customer shall notify the operator in due time and at the latest twenty-four (24) hours before dangerous goods are handed over to the operator, that the contract concerns dangerous goods. The notification shall include the UN-number, official transport designator, class, packaging-group and quantity of the goods.
- 12.2 Units or load carriers containing dangerous goods shall be delivered and collected by the customer on the agreed upon date, time and location. The operator assumes no liability or responsibility for dangerous goods which are delivered by the customer prior to the agreed upon time and date, or at another location than what has been agreed upon, unless the operator has duly signed for the receipt of said dangerous goods.
- 12.3 Dangerous goods may only be delivered by the customer to the operator in load carriers intended for and used for transport and storage of dangerous goods according to the at each time valid and applicable national and international laws, rules and regulations in force regarding transportation of dangerous goods.
- 12.4 The operator reserves the right to refuse acceptance of certain dangerous goods such as but not limited to radioactive material, explosives or otherwise hazardous material, etc.
- 12.5 It is the obligation of the customer to establish a safety plan with regards to and concerning the part of the activity during transport and storage of dangerous goods for which the customer is responsible and liable. The customer shall hold the operator free and harmless in the event the customer fails or neglects to establish a safety plan and the operator as a result of this breach suffers damage or is levied fine, duties or other sanctions by a governmental authority.

In addition to the above mentioned the customer shall compensate the operator in full and hold the operator free and harmless for any and all costs, losses or damages that may occur or arise as a consequence of the handling, including but not limited to transportation and storage, of dangerous goods, including any possible damages dangerous goods belonging to the customer, may cause any third party.

## **13. SPECIAL GOODS**

- 13.1 Special goods requiring temperature controlled-, safety-, or high value storage and / or similar handling shall be received and handled by the operator after specific agreement only and in accordance with valid and applicable separate terms and conditions for forwarders or terminal operators. Goods which requires safety-, or high value storage and thus can be classified as goods with a high risk, shall be notified by the customer to the operator at least twenty-four (24) hours prior to acceptance or delivery of the customer and receipt of such goods by the operator.
- 13.2 In the absence of separate terms and conditions with regards to special goods, the customer shall have a strict liability exceeding that which follows under the provisions of these general conditions for damage that said and such goods may or can cause the operator, its property, facilities, personnel or employees, and any third party, including goods, facilities, personnel or employees of such third party.
- 13.3 Damages referred to under article 13.2 above may include but not be limited to leakage, wastage or the like occurring as a consequence of the incorrect or insufficient packaging or wrapping of the goods.
- 13.4 In the event goods requiring special terminal handling and/ or storage such as but not limited to temperature controlled-, safety-, or high value storage in ancillary facilities, are not collected or picked up at the agreed upon time by the customer or consignee, or if no time for pick-up or collection has been agreed upon, within twenty-four (24) hours immediately following the working day the customer was instructed by the operator to collect the goods

and it was placed at the disposal of the customer, and the said facilities as mentioned above after the end of the agreed upon contract was booked and reserved by another customer, and the operator due to the art and nature of said goods can not without risk of damage remove said goods from said facility but must arrange for other facilities of a similar nature for the newly arrived goods of a similar art and nature belonging to another third party customer, the original first customer shall be responsible and liable for the added extra expenditures which may arise as a consequence of re-placing said goods belonging either to the first customer or to a third party, including any and all damages which may be caused to the goods of the first customer or any third party as a consequence of this.

- 13.5 The customer shall be liable for damages to its own goods as well as goods belonging to any third party even if the operator should choose not to relocate the goods of the customer alternatively is not successful in attempting to relocate the goods of the customer and said goods, as a consequence of this, is damaged when the customer or the consignee fails to pick-up or collect said goods within the agreed upon time or the time so instructed.

## **FINAL PROVISIONS**

### **14. FORCE MAJEURE**

- 14.1 The operator shall be free of liability and claims for damages or any other sanctions if the completion of a certain commitment is prevented or significantly obstructed by any occurrence or circumstance beyond the reasonable control of the operator which the operator could not have anticipated, nor avoided or prevented.

Circumstances which shall be considered as force majeure shall include but not be limited to strikes, labour stoppage (except strikes or labour lockouts with regards to employees of the operator) , seizure, lockout, war, riots, natural disasters, unexpected weather conditions including avalanches or landslides and the like, flooding, fires, thunder- or strokes of lightning, national emergency, acts of God, actions of any government, or the like, lack of or deficiencies in services from sub-contractors due to circumstances mentioned above, general shortage of transport, goods or energy or similar circumstance.

- 14.2 If the completion of the contract is significantly prevented during a period of more than three (3) months due to any circumstance in accordance with the above mentioned, the operator shall be entitled to terminate the contract with immediate effect by giving notice in writing to the customer.

### **15. CLAIMS AND STATUTE OF LIMITATIONS**

- 15.1 No action shall be maintained unless a written complaint is made to the operator within seven (7) days from the date of receipt of the goods. Any right of damages against the operator shall be extinguished unless an action is brought within one (1) year after the date of delivery, or in case of loss of or delay of load carrier, unit or goods, within one (1) year after said load carrier, unit or goods should have arrived. In case of part delivery the aforementioned times shall be calculated from the last arrived load carrier, unit or loose cargo / loose goods (“goods”).

### **16 DISPUTE RESOLUTION, APPLICABLE LAW AND JURISDIKTION**

- 16.1 The parties agree that these general conditions and any annexes attached thereto shall be interpreted and governed by, and construed in accordance with at any given time applicable Swedish law, EU-law, international convention or where another country’s laws or international convention has precedence, such other country’s law or international convention.
- 16.2 The parties mutually agree to solve any disputes if and when a dispute arises through

mediation via neutral representatives appointed by each party.

- 16.3 Should such mediation through neutral representatives not be achievable, the dispute shall, unless otherwise specified in any applicable legislation, finally be referred to and settled by a competent court of law having jurisdiction over the registered domicile of the operator.

## **17. MISCELLANEOUS**

- 17.1 All notices, statements and reports including claims or other messages with regards to the application of the contract shall be in writing and deemed to have been effectively given and received if: (a) five (five) business days after the date of mailing if sent by registered or certified mail; (b) when transmitted if sent by telefax or e-mail, if such transmission and receipt thereof is verifiably confirmed.
- 17.2 No terms, conditions, understandings or agreements purporting to modify, vary, supplement or expand any provision of these general conditions shall be effective or binding unless signed in writing by a duly authorized representative of each Party.
- 17.3 If any term, provision or part condition of these conditions (or the application of any such term, provision or condition to any circumstance) or in any annex attached to these general conditions, shall to any extent be held invalid or unenforceable, the remainder of these general conditions, and the application of such term, provision or condition other than to the extent it is held invalid, shall not be invalidated or affected thereby and each other term, provision and condition shall be valid and enforceable to the fullest extent permitted by law.
- 17.4 In the event a contract is being so terminated, such termination shall be without prejudice to the rights and liabilities of each party in accordance with these general conditions or any annex attached to these general conditions hereunder as well as under any applicable law.

