

TERMS & CONDITIONS EGS AND HUTCHISON PORTS INLAND TERMINALS

General Terms and Conditions (hereinafter: the "**Conditions**") of European Gateway Services B.V. and its group companies, including: TCT Venlo B.V., DeCeTe Duisburger Container-Terminalgesellschaft mbH and TCT Belgium N.V. (hereinafter jointly referred to as: the "**Contractor**").

ARTICLE 1. SERVICES, SUB-CONTRACTING AND BOOKINGS

- 1.1 These Conditions shall apply to all quotations, offers and booking confirmations made by the Contractor, to all contracts entered into by the Contractor and to all services provided by the Contractor for its customer (hereinafter: the "**Customer**").
- 1.2 A booking made by the Customer with the Contractor shall be considered as an unconditional acceptance of the quotation or offer, as well as these Conditions.
- 1.3 The services are to be provided by the Contractor at the instructions of the Customer (hereinafter: the "**Services**"). If agreed between Contractor and Customer, the Services may also include import, export or customs formalities (hereinafter: the "**Customs Services**"). Otherwise, the Contractor shall have no obligations with respect to import, export or customs formalities and can never be deemed to take care of such formalities on behalf and for account of the Customer.
- 1.4 The applicable procedure for making bookings with the Contractor and all applicable operational procedures of EGS are described in the agreed Standard Operating Procedure (hereinafter: the "**SOP**"). The Customer shall comply with the SOP.
- 1.5 The Contractor shall be entitled to sub-contract on any terms the whole or any part of the Services.
- 1.6 The Customer shall – prior to the acceptance by the Contractor – furnish all data and documents required for the Services, including the number and type of the container, seal number, weight, contents, condition of the container and nature of the goods as well as all required customs and port documents, and shall abide by all Service-related formalities. These data and documents shall only bind the Contractor insofar as it has been reasonably possible for the Contractor to verify their accuracy.
- 1.7 The Contractor may at any time during the Services and without notice to the Customer at its own discretion:
 - a. use any transport mode;
 - b. use any means of transport;
 - c. use any route to the destination; and
 - d. stay at any place.
- 1.8 The Customer is solely responsible for the loading, stowing, securing and unloading of the cargo inside the container.

- 1.9 When requested by the Customer, the Contractor will provide a copy of the consignment note or waybill within 2 working days after delivery, but this shall have no effect on the rates being due and payable for the Services.

ARTICLE 2. RATES

- 2.1 The Contractor undertakes to render the Services against the rates as specified in the applicable EGS Price List (hereinafter: the "**Price List**"). These rates can be annually adjusted, as per the first day of January of each year, in accordance with the Consumer Price Index in the Netherlands.
- 2.2 The invoices of the Contractor shall be deemed to be accepted by the Customer unless written protest is made within 8 days of the invoice date.
- 2.3 All invoices shall be paid within 30 days after the date of the invoice unless expressly agreed otherwise, without any discount and without any costs for the Contractor.
- 2.4 Under no circumstances may the Customer set off its alleged claims towards the Contractor against the due invoices of the Contractor.

ARTICLE 3. WAITING HOURS AND STORAGE COSTS

- 3.1 The Contractor has the right to charge costs charged to the Contractor by its sub-contractors for waiting hours and storage during the Services, outside the agreed free period of time for loading and discharging. The Contractor always strives to inform the Customer as soon as possible when waiting hours or storage of containers are expected to occur, but in any event within 2 working days after occurrence thereof. The Customer shall pay costs for waiting hours and storage to the Contractor in – amongst others – the following situations:
- a. In case the container is present at the agreed time at a loading or discharging location and waiting costs occur, whether or not the Customer has been informed about the waiting hours.
 - b. In case the container is loaded or discharged earlier than the agreed time. In this case the free period of time will begin when loading or discharging begins.
 - c. In case the Contractor informs the Customer before arrival at the loading or discharging location about a delay and the Customer accepts this delay.
 - d. In case of force majeure circumstances, including the situations mentioned in Article 6.1 and 7.1.
- 3.2 The start and end times for loading and discharge mentioned on the signed consignment note or waybill are leading in the administration of waiting hours.

ARTICLE 4. APPLICABLE LAW AND CONVENTIONS, CONTRACTOR'S LIABILITY

- 4.1 These Conditions and all other legal relationships between the Customer and the Contractor shall be governed by and construed in accordance with Dutch law.

- 4.2 The applicability of any standard terms and conditions of the Customer or its agents is explicitly excluded.
- 4.3 The following Conventions, laws or conditions shall apply to the following Services performed by the Contractor or its sub-contractor:
- a. domestic or international carriage by inland waterways: the CMNI Convention;
 - b. domestic road carriage in the Netherlands: the Dutch General Transport Conditions 2002, version 2015, with the exception of clause 29 of those Conditions.¹
 - c. domestic road carriage in all other countries and international road carriage: the CMR Convention;
 - d. domestic or international carriage by rail: the COTIF-CIM Convention;
 - e. terminal services performed at the terminal in Duisburg (Germany) and ancillary transport services, directly booked by the Customer with DeCeTe Terminalgesellschaft mbH: the ADSp Conditions version 2017.² Only for these Services the ADSp shall, in case of discrepancies, prevail over these Conditions;
 - f. Customs Services: the Dutch Forwarding Conditions 2018, with the exception of clause 23 of those Conditions.³
- 4.4 If the Services include carriage by multiple transport modes (combined transport), each part of the carriage shall only be governed by the regimes applicable to that part of the carriage as set out in Article 4.3 a – d of these Conditions.
- 4.5 For:
- a. all Services not mentioned in Article 4.3 of these Conditions;
 - b. all issues arising during inland waterway, road or rail carriage which are nevertheless not governed by the regimes mentioned in Article 4.3 a – e; and
 - c. all issues arising during combined transport where it is unclear during which part of the Services the damage, loss or delay occurred,
- the CMR Convention shall apply between the Customer and the Contractor. For any other losses or damages not characterizing as damage to containers or other goods, Contractor's liability under this Article 4.5 shall be limited to EUR 2,500 per incident or series of incidents with the same cause with an annual aggregate maximum of EUR 100,000.
- 4.6 The Customer shall indemnify and hold the Contractor harmless against any and all third-party claims for payment of compensation relating to the Services, in as far as

¹ The Dutch General Transport Conditions 2002, version 2015 ('AVC 2002, versie 2015'), can be downloaded via [this link](#).

² The ADSp Conditions version 2017 ('Allgemeine Deutsche Spediteurbedingungen 2017') can be downloaded via [this link](#). Note: In clause 23 the ADSp deviates from the statutory liability limitation in section 431 German Commercial Code (HGB) by limiting the liability for multimodal transportation with the involvement of sea carriage and an unknown damage location to 2 SDR/kg and, for the rest, the customary liability limitation of 8,33 SDR/kg additionally to Euro 1,25 million per damage claim and EUR 2,5 million per damage event, but not less than 2 SDR/kg.

³ The Dutch Forwarding Conditions 2018 ('Nederlandse Expeditievoorwaarden 2018') can be downloaded via [this link](#).

these claims exceed Contractor's liability towards the Customer under these Conditions.

ARTICLE 5. CONTRACTOR'S PERIOD OF LIABILITY

- 5.1 The Contractor's period of liability shall commence when the container and/or the goods are placed in the custody of the Contractor or its agent or sub-contractor in order to start the Services.
- 5.2 The Contractor's period of liability shall end at the time of delivery of the container and/or the goods to the agreed consignee. Delivery has taken place at the time the container and/or the goods are made available to the consignee or its servant or agent.
- 5.3 The Contractor's period of liability shall also end by the consignee's refusal to take delivery of the container and/or the goods at the place of delivery.
- 5.4 The Contractor shall be under no liability whatsoever for loss of or damage to the container or the goods in the container, howsoever occurring, when such loss or damage arises outside the period of liability defined in this Article 5.

ARTICLE 6. FORCE MAJEURE AND OTHER EXCLUSIONS OF LIABILITY

- 6.1 The Contractor is not liable in case of force majeure. Force majeure circumstances shall include any circumstance beyond the reasonable control of the Contractor or its sub-contractor that prevents the performance of the Services, including but not limited to war, embargo, natural disasters, bad weather conditions, terrorist activities or attacks, strikes, labour disputes, blockades or closures of any road, river, railway or port, or other infrastructural issues and unavailability of infrastructure, high and low water, causing capacity constraints, congestion at a seaport, inland terminal accidents, cargo not being loaded in time at container terminals, police or customs formalities, people trying to gain access to a means of transport, fire, technical problems to means of transport, non-performance by or insolvency of sub-contractors, cybercrime or cyber-attacks.
- 6.2 The Contractor's liability is explicitly excluded for:
 - a. lost profit, consequential and/or indirect damage (including – but not limited to – return transport costs, products recalls, and loss of use of containers) and immaterial damage;
 - b. penalties including – but not limited to – import duties, excise duties, turnover tax, restitutions and/or other levies or related fines which are imposed by any government or any other authority charged with such duties, which are demanded in connection with the Services.
- 6.3 The Customer shall indemnify and hold the Contractor harmless against any and all costs, fines and/or penalties, expenses, duties, tax or excises incurred by or levied upon the Contractor in connection with the Services for any cause whatsoever,

regardless of whether such claim is the result of a fault in the performance on the part of the Contractor, its employees and/or sub-contractors.

ARTICLE 7. DELAY

- 7.1 If the Contractor cannot comply with the agreed time windows for pick-up and delivery, the Contractor is excluded from liability for any delay and/or demurrage and detention costs that may occur, when one of the following situations is applicable:
- a. the deep-sea vessel is arriving earlier or later than planned and Customer failed to inform the Contractor;
 - b. the Customer has not met the requirements described in the applicable SOP; or
 - c. force majeure within the meaning of Article 6.

In all other cases, if the Contractor cannot comply with the agreed time windows for pick-up and delivery, the Contractor's liability shall be determined in accordance with the liability regimes for delay in delivery contained in the regimes mentioned in Article 4.3 a – d of these Conditions.

- 7.2 In case of delay in delivery, the consignee is not allowed to refuse delivery of the container and/or other goods. In case of refusal, Customer shall indemnify and hold the Contractor harmless against any and all costs incurred by the Contractor in connection with the consignee's refusal to take delivery, including – but not limited to – demurrage, detention, terminal and storage costs.

ARTICLE 8. NO EXCLUSION OR LIMITATION OF LIABILITY

- 8.1 The limitations of liability provided for in these Conditions shall not apply in so far as it is proven by the claiming party that the damage or loss resulted from an act or omission of the liable party or its management, committed with the intent to cause such damage or loss, or recklessly and with knowledge that such damage or loss would probably result.

ARTICLE 9. CLAIMS AND TIME BARS

- 9.1 For any claim against the Contractor the EGS claims procedure applies, as referred to in the Price List.
- 9.2 The Customer warrants to duly check the condition of the containers at delivery, together with the Contractor or its sub-contractor. The fact of taking delivery of the container shall be prima facie evidence that the Customer has received the container in the condition described in the consignment note or waybill, unless notice of loss or damage and the general nature of such loss or damage is given in writing to the Contractor not later than at the time of delivery in case of apparent loss or damage, or within 5 working days of delivery in case of loss or damage which is not apparent.
- 9.3 Notwithstanding any mandatory rules applicable to the Services, any claim against the Contractor shall lapse after 12 months, unless a time-extension has been agreed in

writing by the Contractor and the claimant. The term shall commence on the day following the day of delivery, or if no delivery took place, the agreed day of delivery.

ARTICLE 10. PLEDGE AND RIGHT OF RETENTION

- 10.1 The Contractor shall have a pledge, a right of retention and a lien or similar right on the containers and the cargo, monies and any documents relating thereto for any and all sums, including but not limited to freight, dead freight, demurrage, detention, costs, dues, taxes, tolls, fines, penalties or claims for damages or indemnity payable by the Customer to the Contractor or related to the Services.
- 10.2 In order to enforce its pledge and/or right of retention and/or lien or similar right, the Contractor shall have the right to sell the container and/or its contents by public auction or private treaty and recover all his costs therefrom without notice to the Customer.

ARTICLE 11. TEMPERATURE CONTROLLED SERVICES AND HAZARDOUS CARGO

- 11.1 In case temperature controlled Services are required, the Customer shall inform the Contractor thereof in conformity with applicable procedures in the SOP. The Contractor shall not be liable for any temperature damage in case:
- a. Customer has not properly informed the Contractor of the temperature requirements;
 - b. Customer cannot prove that the goods were at the right temperature before handing over of the goods to the Contractor; or
 - c. Customer agreed that the goods will be carried without temperature control during certain parts of the Services.
- 11.2 In the event that the Contractor, its employee or Sub-contractor fails to comply with the Customer's temperature instructions, the Contractor will not be liable, unless the Customer proves that there is a substantial change in the physical condition of the goods and that such damage actually results from the failure to comply with the Customer's temperature instructions.
- 11.3 The Customer warrants that – unless the Contractor receives written notice prior to acceptance – the container does not contain hazardous goods which would require specific permits and that the cargo does not constitute any danger for the environment or public health. For hazardous cargo the procedures described in the applicable SOP shall apply.
- 11.4 If cargo whose dangerous nature was not notified to the Contractor constitutes a danger for the means of transport, the terminal, sub-contractors or third parties, the Contractor and its sub-contracting parties shall be entitled to take all appropriate measures in respect of the cargo in order to avoid or remove said danger, without the Customer being entitled to any compensation whatsoever. The related costs shall be borne by the Customer who shall remain obliged to pay the agreed freight.

ARTICLE 12. CUSTOMS SERVICES

- 12.1 In case Customs Services are agreed upon between Contractor and Customer, the Contractor will instruct a customs agent to perform and take care of the Customs Services on behalf and for account of the Customer.
- 12.2 The Customer shall furnish all data and documents required for the Customs Services. The Customer shall promptly furnish any additional information to the customs agent or provide a bank guarantee, if the customs agent so requests.
- 12.3 The Customer shall cooperate in negotiating and signing any agreement or power of attorney required by the customs agent in the performance of the Customs Services.
- 12.4 The Customer shall indemnify and hold the Contractor and/or the customs agent harmless against any and all costs, fines and/or penalties, expenses, duties, tax or excises incurred by or levied upon the Contractor and/or the customs agent in connection with the Customs Services for any cause whatsoever, regardless of whether or not such claim is the result of a fault on the part of the Customer, the Contractor, the customs agent, their employees and/or sub-contractors.

ARTICLE 13. ORDER OF PRECEDENCE

- 13.1 In case of any discrepancy between the applicable law, these Conditions and any other relevant document or rules, the following descending order of precedence shall apply:
- a. mandatorily applicable Conventions, laws and/or regulations;
 - b. these Conditions;
 - c. the regimes applicable based on Article 4.3;
 - d. the applicable Price List;
 - e. the SOP;
 - f. the EGS claims procedure referred to in the Price List;
 - g. the booking confirmation;
 - h. non-mandatorily applicable Conventions, laws and/or regulations.

ARTICLE 14. JURISDICTION

- 14.1 Any dispute between the Contractor and the Customer shall be exclusively submitted to arbitration in Rotterdam, the Netherlands, under the UNUM Arbitration Rules.
- 14.2 In as far as relevant for the Services concerned the arbitration tribunal shall apply the provisions of the CMR Convention. The CMR Convention shall be interpreted by the arbitration tribunal in accordance with the settled case-law of the Dutch regular courts.

ARTICLE 15. MISCELLANEOUS

- 15.1 If any (part of a) provision in these Conditions is declared illegal or void, all remaining parts of these Conditions will remain in full force and effect.