

# General Terms and Conditions (GTC)

Südwestfalen Container-Terminal GmbH

Hüttenstraße 40, 57223 Kreuztal, Germany

## 1. Scope of application

1.1 Südwestfalen Container-Terminal GmbH (SWCT) provides handling and storage services as well as repair and maintenance work on loading units (LU), but also the associated inspection of all loading units in Combined Transport (CT), exclusively based on these General Terms and Conditions (GTC). They shall also apply to all future business relationships, even if the terms and conditions have not been explicitly agreed again.

The terms of use for SWCT service facilities shall also apply as far as SWCT renders services as a service facility that are subject to the access regulations of §§ 10, 11 ERegG. The above terms of use are available on the website ([www.swct.de](http://www.swct.de)) and will be sent to you on request.

1.2 LU within the meaning of these GTC shall be:

- Large containers (in accordance with ISO standard);
- Silo containers (in accordance with ISO standard);
- Tank containers (in accordance with ISO standard);
- Swap bodies (in accordance with CEN standard);
- Semi-trailers (in accordance with CEN standard).

All LUs for unaccompanied transport within the meaning of these GTC must be authorised for CT.

1.3 This shall not apply to any forwarding services, which shall be subject to the latest version of the German Freight Forwarders' Standard Terms and Conditions (*Allgemeine Deutsche Spediteurbedingungen*; ADSp) exclusively.

1.4 GTC of the client shall only apply if explicitly confirmed in writing by SWCT; if the client has its own GTC with a defence clause, the provisions that correspond in content in both parties' GTC shall apply. Divergent or supplementary provisions explicitly shall not apply.

1.5 The GTC shall be deemed agreed at the latest upon acceptance of a service provided by SWCT and are thus accepted by the client.

1.6 The latest version of these terms and conditions shall apply unless otherwise agreed in writing.

## 2. Scope of services

2.1 SWCT shall operate the handling terminal as a link between the rail and road modes of transport.

- 2.2 SWCT guarantees non-discriminatory access and handling with a comparable quality and price structure to all companies offering CT.
- 2.3 SWCT provides handling services and parking of LUs for CT, exclusively in connection with freight contracts.
- 2.4 SWCT offers supplementary services for CT, each of which shall require separate agreements in addition to the handling, parking, and repair services provided under these GTC.
- 2.5 Loaded LUs can only be checked for externally visible damage. The client shall be informed by SWCT, and the further procedure shall be discussed if there is any damage.
- 2.6 The SWCT shall check all empty LUs for damage connected to the terminal. Such damage shall be noted on a handover document (interchange) and a corresponding cost estimate shall be drawn up. The client shall then be informed of the damage and its amount.
- 2.7 If the order is placed, such repairs shall be performed by trained specialists.

### **3. Order placement, order acceptance**

- 3.1 Orders for conclusion of a service contract with SWCT that refer to the performance of services that are not part of the rail-related utilisation of the handling facility as a service facility within the meaning of §§ 10 and 11 ERegG must contain all information required for proper execution of the order and must be issued in writing or electronically. Previous quotations by SWCT shall be subject to change and non-binding, unless expressly agreed otherwise.

The service contract is entered into when an order confirmation or confirmation of receipt is sent, at the latest when SWCT takes over the (ordered) item.

- 3.2 The prerequisite for access to and use of the handling facility in accordance with §§ 10 and 11 ERegG shall be conclusion of a usage contract (item 3 NBS), based on which specific individual orders are placed.

An individual order shall be placed by written or electronic transmission of the loading unit type (item 1.2 GTC), the loading unit number, the loading unit weight, and the execution date of the respective handling before SWCT takes over the loading unit. Specific individual orders for conditional loading units shall be deemed accepted by SWCT when issued, unless SWCT objects without undue delay.

If the loading unit type, loading unit number, loading unit weight, and the date of execution of the respective handling process are already included in the usage contract (e.g., in the case of a one-off use of the service facility), the usage contract shall also be deemed order placement accepted and acceptance within the meaning of this provision.

- 3.3 SWCT shall have the right to charge subcontractors with performing the contract wholly or in part.

#### **4. Handling**

- 4.1 Handling shall commence as the loading gear of the handling equipment is lowered onto the LU.
- 4.2 Handling shall end as soon as the loading gear of the handling equipment is detached from the loading unit, lifted, and free from the loading unit. The LU thus shall be deemed transferred.
- 4.3 The carriers arriving at SWCT shall be processed in the order of their arrival in Kreuztal. All dates must be agreed with SWCT no later than 24 hours before arrival of the carriers. This provision shall not apply if the handling facility is used as a service facility within the meaning of § 2 (3c) no. 3 AEG.
- 4.4 Handling and the associated transport-related parking are provided in different versions:
  - 4.4.2 Transfer from rail vehicle to another mode of transport or parking;
  - 4.4.3 Transfer from road vehicle to another mode of transport or parking;
  - 4.4.4 Transfer from parking to another mode of transport;
  - 4.4.5 Operational transfer on the storage areas of SWCT.

#### **5. Parking**

- 5.1 Parking of the unit on order for longer than until the next possible change of mode of transport shall be deemed storage.
- 5.2 SWCT shall park empty and loaded LUs used in CT within the scope of the available parking space capacities.
- 5.3 SWCT shall be solely responsible for disposal of the parking spaces.
- 5.4 Parking shall commence following transfer to the parking area and end upon transfer to the vehicle intended for onward transport.
- 5.5 Semi-trailers or swap bodies must only be parked on support legs at the road entrance before handling and at the rail entrance after handling with the consent of SWCT.
- 5.6 SWCT has the right to shut down LU if the operating procedures in the terminal require this.
- 5.7 Parking outside of transport-related intermediate parking is subject to a charge depending on the duration. The latest versions of the SWCT price lists to be agreed shall apply.
- 5.8 SWCT is authorised to park the LU in a suitable location of its choice on the premises. The client agrees that the LU may be parked in the open air before and/or after repair or maintenance.

## 6. Prices

- 6.1 The prices agreed with the client shall be decisive for services, including consultancy and other ancillary services.
- 6.2 The prices are based on the cost factors applicable at the time of submission of the quotation. If these increase before placement of the order or during its execution, the order price may be increased in reasonable proportion to the change that has occurred.
- 6.3 The costs for handling of the LU to and from the repair area are not included in the cost estimate if they are not documented as a separate item on the cost estimate.

## 7. Repairs to the loading units

- 7.1 The client shall be solely responsible for determining the scope and expediency of a repair. The SWCT has the right to base its work on the unchecked opinion of a classification society.
- 7.2 SWCT shall not be responsible for any delays in the dates and deadlines agreed with the client due to force majeure, operational disruptions, strikes, lockouts, shortages of raw materials, or similar events that impede the fulfilment of the order.
- 7.3 If there are any delays for which SWCT is at fault, the client shall only have the right to cancel the order after setting a reasonable grace period. Assertion of claims for damages shall be excluded unless SWCT has caused damage through intent or gross negligence.
- 7.4 If compliance with the order and performance become impossible for a reason for which neither party is responsible, the client shall reimburse SWCT for the resulting damage, but at least 10% of the contract price and the costs for the parts already purchased, unless the client can prove that SWCT has suffered no damage or significantly less damage.
- 7.5 If the client cancels the contract or fails to provide an item to be processed, SWCT may also assert the rights under § 649 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB) instead of the above compensation.
- 7.6 The client shall be solely responsible for deciding on the scope and expediency. SWCT may base its work on the opinion of a classification society without verification.
- 7.7 If the client refuses a repair and/or has the LU repaired by another partner, SWCT shall under no circumstances be liable for any loss or damage to these LU.
- 7.8 If the client has the quality of SWCT's services and/or cost estimates confirmed by a third party, SWCT shall charge the client for the handling incurred in accordance with the instalment agreement.
- 7.9 Quoted prices shall be calculated so that any waste material becomes the property of SWCT without compensation and, if necessary, is disposed of in accordance with regulations.

## 8. Condition of the loading unit

- 8.1 The loading units must comply with the applicable statutory regulations and technical provisions and must be suitable for handling and transport by CT. The client shall be liable for all damage incurred by SWCT and any third parties due to improper condition of the LU or the cargo that was not caused by its fault.
- 8.2 The handling equipment used by SWCT is generally suitable for handling of LUs and complies with the legal guidelines. Maintenance and repair of the handling equipment is provided by SWCT.

## 9. Liability

- 9.1 SWCT shall be liable:
- for ordered storage from §§ 467 et seq. of the Commercial Code (*Handelsgesetzbuch*; HGB);
  - for all other services from §§ 453 et seq. in conjunction with 407 et seq. HGB.
- 9.2 Liability for loss of or damage to the goods shall be limited to 8.33 special drawing rights (SDR) per kilogramme of the gross weight of the consignment.
- 9.3 Liability for loss of or damage to the goods shall be limited to 1 million euros per loss event and 2 million euros per loss event or 2 SDR per kilogramme of lost or damaged goods, whichever is higher. SWCT shall be liable to several injured parties in proportion to their claims.
- 9.4 Liability for damage due to loss of or damage to the goods in the event of ordered storage shall amount to 5 euros for each kilogramme of the gross weight of the damaged or lost consignment, up to a maximum of 5,000 euros per claim. § 431 (2) HGB shall apply accordingly. Furthermore, SWCT's liability for loss or damage during ordered storage shall be limited to 2 million euros per loss event, irrespective of the number of claims arising from one loss event; in the case of several injured parties, SWCT is liable in proportion to their claims.
- 9.5 SWCT's liability for damage other than to goods, with the exception of injury and property damage to third-party goods, shall be limited to three times the amount that would be payable in the event of loss or damage, up to a maximum of 100,000 euros. §§ 431 (3) and 433 HGB shall not be affected by this.
- 9.6 However, the above exemptions and limitations of liability shall not apply if the damage has been caused:
- by intent or gross negligence on the part of the bodies of SWCT, its executive employees, or by breach of material contractual obligations; in the latter case, claims for compensation shall be limited to the foreseeable, typical damage;
  - wilfully or recklessly and in the knowledge that damage would probably occur in the cases of §§ 425 et seq., 461 et seq. HGB by bodies of SWCT or the persons named in §§ 428, 462 HGB.
- 9.7 Loading units shall be parked outdoors by SWCT or, if storage is ordered, stored outdoors.

9.8 Under no circumstances shall SWCT be liable for any damage due to the type of storage, in particular due to weather conditions (e.g., rain, snow, ice, hail, storm, fire, explosion, etc.) and as a result of the natural condition of the item, nor for flood damage.

## **10. Notice of defects and warranty for repairs**

10.1 SWCT commits to carefully selecting the material and spare parts suppliers for any repair and maintenance orders from LU. SWCT guarantees proper execution of the work in the form that any defects - provided they are noted in the return certificate or reported immediately - will be remedied by rectification.

10.2 If the LU is accepted by Germanischer Lloyd or a comparable inspection body, it shall be assumed that any defects that become apparent later are not attributable to the work of the contractor or its vicarious agents and that the contractor has met its obligations with the due care of a prudent businessperson.

10.3 The client shall be obligated to inspect the service upon acceptance of the work. Evident defects must be reported in writing at once, but no later than within eight days of delivery or handover of the object of the order, and hidden defects must be reported without undue delay after their discovery.

The repaired LU shall also be deemed accepted as free of defects if it is taken over by a third party charged or accepted by the client.

10.4 SWCT commits to always documenting any handover/acceptance to/from third parties in the form of a handover document (interchange).

10.5 Any claims against SWCT, no matter the legal reason, shall lapse two months after acceptance of the item.

10.6 The client must deliver and collect the item at its own expense if rectification is requested.

If SWCT does not meet its obligation to remedy the defect in spite of a reminder and setting of a reasonable deadline, or if rectification is impossible, the client is entitled either to reduce the remuneration (reduction) or to withdraw from the order (cancellation). If the costs for rectification exceed the value and scope of the contractual service, the contractor may refuse to perform the rectification work. In this case, the client shall also be entitled to the above rights. Rectification work performed by third parties without the contractor having been given an opportunity to inspect and remedy the work shall not entitle the client to any reduction in price or cancellation of the contract.

Any further claims, in particular any claims for damages, shall be excluded unless gross negligence on the part of the contractor or its vicarious agents can be proven, irrespective of their legal basis.

10.7 As far as any defects are caused by the quality of the material supplied or the spare parts supplied or this is suspected, SWCT shall only be obligated to assign the claims it has against the supplier to the client.

No warranty shall be given for repairs that are only performed on a makeshift basis at

the request of the client.

- 10.8 If SWCT charges a third party with performing the contract wholly or in part, it shall only be liable for careful selection of the subcontractor.

SWCT commits to assigning its warranty and compensation claims against the subcontractor to the client upon request.

- 10.9 In the case of storage contracts, SWCT shall not be obligated to perform any work to maintain or improve the item without special agreement. However, it shall have the right to have any damage repaired immediately at the client's expense if there is a risk of the damage to the item itself increasing or other stored goods being damaged if the repair is not performed.

However, SWCT commits to informing the client of such a service in writing in the form of a cost statement.

## **11. Settlement of claims**

§ 438 HGB shall apply to any damage or loss. Delivery shall be deemed the transfer of the loading unit by the road haulier in the case of road departure and by the railway company in the case of rail departure. The client must give SWCT the opportunity to inspect the damage.

## **12. Special provisions for dangerous goods**

- 12.1 SWCT does not store any LUs with dangerous goods.
- 12.2 The provisions of the "Dangerous Goods Guide for Combined Transport" shall apply to the transport-related parking of vehicles that carry dangerous goods in the terminal in addition to the regulations for the carriage of dangerous goods.
- 12.3 Units with dangerous goods must be delivered by the client on the day of load transfer. SWCT may refuse acceptance if no loading facility is available for such an LU.
- 12.4. If possible, dangerous goods units must be collected on the day of receipt, and no later than within 24 hours or on the following working day. If such a dangerous goods unit is not collected within this period, the unit will be delivered to the client or a recipient to be named by the client at the client's expense.
- 12.5 If any LUs with dangerous goods are handed over to SWCT without any special notice and if this is not evident from labelling of the LU, the client shall be liable for the resulting damage in accordance with the statutory provisions.

## **13. Special provisions for goods prone to theft and valuable goods**

- 13.1 SWCT shall not store any LUs with goods prone to theft (in accordance with item 1.3 ADSp 2017) or valuable goods (in accordance with item 1.17 ADSp 2017).
- 13.2 The client must deliver the unit with goods prone to theft or valuable goods on the day

of load transfer. SWCT may refuse acceptance if no loading facility is available for such an LU.

- 13.3 If possible, LU with goods prone to theft or valuable goods must be collected on the day of receipt, and no later than within 24 hours or on the following working day. If such an LU is not collected within this period, the unit will be delivered to the client or a recipient to be named by the client at the client's expense.
- 13.4 If any LUs with goods prone to theft or valuable goods are handed over to SWCT without any special notice and if this is not evident from labelling of the LU, the client shall be liable for the resulting damage in accordance with the statutory provisions.

#### **14. Debt collection**

- 14.1 Any fees payable shall be paid in euros and shall be charged plus statutory VAT at the applicable rate.
- 14.2 Payments shall be transferred to an account to be determined by SWCT at the expense of the client and are due no later than 10 days after the invoice date.
- 14.3 Any deviating payment procedures may be stipulated in a separate agreement.
- 14.4 If payment is late, the client shall pay interest on arrears at a rate of 3% above the base interest rate set by the Deutsche Bundesbank until further notice and defined in the Discount Rate Transition Act (*Diskontsatzüberleitungsgesetz*; DÜG). In any other cases, the provisions of § 1 DÜG shall apply. Furthermore, a flat-rate reminder fee of 10.00 euros shall be charged for each written reminder.
- 14.5 Offsetting or retention against SWCT's claims is excluded unless the counterclaim is undisputed or has been recognised by declaratory judgement.
- 14.6 Payment transaction costs shall be borne by the client.

#### **15. Lien**

- 15.1 SWCT shall have the right to a contractual lien on the item that has come into its possession as a result of the order due to its claims against the client. The contractual lien may also be asserted based on claims arising from work, deliveries or other services performed earlier, provided that these are undisputed or a legally binding title exists.
- 15.2 Any unit sold shall remain the property of SWCT until full payment of the purchase price and all claims arising from the entire business relationship, regardless of their nature.
- 15.3 The client shall not have the right to transfer possession or the expectant right to the goods to any third parties, to pledge the goods or the expectant right, or to dispose of them in any other manner, in particular to sell them, without the prior explicit written consent of SWCT for the duration of the retention of title, unless the following provision applies.
- 15.4 The client shall have the right to resell the item with the consent of SWCT in its



ordinary course of business, but only subject to retention of title. The client's claims against any third parties relating to the goods delivered subject to retention of title shall be deemed to have been acquired in the name and for the account of SWCT until the purchase price has been paid in full. The client hereby assigns all rights and claims arising from such resale to SWCT. SWCT accepts this assignment.

- 15.5 As far as the client is due any claims against third parties due to damage, reduction, loss, or destruction of the goods subject to retention of title or for other reasons, such claims shall be assigned to the contractor in advance together with all ancillary rights. The latter hereby accepts the assignment.
- 15.6 If SWCT acts in violation of the contract - in particular by default of payment - the client shall have the right to retrieve the goods subject to retention of title or, if applicable, to demand assignment of the client's claims for restitution against third parties. Retrieval or seizure of the goods subject to retention of title by SWCT does not constitute a cancellation of the contract unless the German Instalment Purchase Act (*Abzahlungsgesetz*) applies.

## **16. Place of jurisdiction**

- 16.1 The place of performance and the exclusive place of jurisdiction shall be Siegen.
- 16.2 German law shall apply exclusively to all legal relationships to the exclusion of foreign law.

## **17. Non-disclosure**

Any knowledge gained directly or indirectly about the business activities and trade secrets of the respective other party in connection with execution of the contract must not be disclosed to third parties without the consent of the respective party. The parties shall obligate their employees to maintain appropriate confidentiality.

## **18. Severability**

If any provision of these General Terms and Conditions is invalid, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by such agreement that comes closest to the intended economic purpose.

As of: 17 June 2019