



Terms of Use for Service Facilities

Südwestfalen Container-Terminal GmbH

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1. Purpose and scope of application

1.1 Südwestfalen Container-Terminal GmbH (SWCT) operates a handling facility to handle combined transport loading units (semi-trailers, containers, and swap bodies) between the rail and lorry modes of transport. The handling facility is a service facility within the meaning of § 10 Annex 2 no. 2 (b) ERegG as far as combined transport loading units are reloaded onto or from the train.

The location, equipment, and general performance characteristics of the handling facility can be found in the enclosed infrastructure description (**Annex 1**).

1.2 These terms of use refer exclusively to the use of the handling facility as a service facility within the meaning of § 10 ERegG. They are to enable all parties with access authorisation/RCS to have non-discriminatory access to the aforementioned handling facility and non-discriminatory use of the services associated with operation of the handling facility. They shall apply to the entire resulting business relationship between the party with access authorisation/RC and SWCT.

1.3 The details of access, in particular the time and duration of use as well as the fee to be paid and the other terms of use, including any provisions that serves the purpose of ensuring operational safety, are reserved for conclusion of an agreement in accordance with § 20 ERegG.

1.4 Contractual agreements between the parties with access authorisation/RCS and the RCS charged by them cannot influence the contractual agreements between the parties with access authorisation/RCS and SWCT.

2. General access requirements

2.1 Track-side access to the handling facility operated by SWCT is only possible by entering into a separate infrastructure usage contract with the owner and operator of the track-side railway infrastructure, KSW Kreisbahn Siegen-Wittgenstein GmbH, Eiserfelder Straße 16, 57072 Siegen, Germany. SWCT will assist parties with access authorisation/RCS in contacting the owner of the railway infrastructure upon request. Entering into a usage contract with SWCT shall not include any entitlement to track-side access to the handling facility. SWCT points out that an infrastructure usage fee

shall be payable to the owner of the track-side railway infrastructure for track-side access in accordance with the owner's list of fees.

- 2.2 The rail vehicles that enter the handling facility must comply with the provisions of the Railway Construction and Operating Regulations (*Eisenbahn-Bau- und Betriebsordnung*; EBO), as amended, as well as with the structural and operational standards on the track systems to be used (rail tracks / shunting tracks) in construction, equipment, and acceptance. The details of this are subject to the terms of use for the rail network of KSW Kreisbahn Siegen-Wittgenstein GmbH and the infrastructure usage contract between the party with access authorisation and KSW Kreisbahn Siegen-Wittgenstein GmbH.
- 2.3 Use of roadworthy and adequately equipped road vehicles with appropriately qualified operators shall be a prerequisite for roadside access.
- 2.4 The loading units supplied to the handling facility by rail and road must be standardised, suitable for handling, and in perfect technical condition. The standards are set out in item 1.2 of the enclosed General Terms and Conditions (**Annex 2**).

3. Usage contract and individual orders

- 3.1 Use of the services offered by SWCT shall require the conclusion of a usage contract within the meaning of § 20 ERegG. The party with access authorisation will receive a slot from SWCT with this usage contract. A slot defines the contractually agreed arrival and departure on the track. The time window must also be agreed in coordination with the owner of the track-side railway infrastructure. The details of this result from the terms of use for the rail network of KSW Kreisbahn Siegen-Wittgenstein GmbH and the infrastructure usage contract that must be entered into between the party with access authorisation/RC and KSW Kreisbahn Siegen-Wittgenstein GmbH.
- 3.2 The party with access authorisation must first submit an application in writing or electronically to SWCT to enter into a usage contract. In this application, parties with access authorisation in accordance with § 1 (12) no. 2 ERegG also must name the RC they have charged with using the handling facility. If the RC to be charged is not known yet at the time the application is filed, it must be named without undue delay, but no

later than one week before the start of use. The application form enclosed as **Annex 4**, which contains the minimum information required, must be used for an application.

- 3.3 Only complete applications will be processed.
- 3.4 The application will be reviewed, and any outstanding issues will be clarified within ten days of its receipt. SWCT shall coordinate with the owner of the track-side railway infrastructure within the handling facility on this. SWCT will prepare a contract offer for provision of the requested service (usage contract) for the party with access authorisation/RC if appropriate handling and storage facilities for loading units are available. This shall not include track-side access to the handling facility.
- 3.5 The party with access authorisation may accept the offer submitted in accordance with item 3.4 within five working days. The offer shall be rendered invalid if its acceptance is not received within this period.
- 3.6 If an RC has been nominated by a party with access authorisation within the meaning of § 1 (12) no. 2 ERegG (item 3.3 sentence 2), SWCT shall enter into a separate agreement with such a nominated RC after conclusion of the usage contract on compliance with the relevant provisions on operational safety (§ 21 ERegG). SWCT may refuse to enter into such an agreement if the RC does not comply with the general access requirements in accordance with item 2 or the statutory requirements, in particular safety requirements.
- 3.7 If an RC requests entry of a third-party RC into the agreements entered into with SWCT in accordance with §§ 21 and 22 ERegG (§ 22 ERegG), SWCT may object to this if the entering RC does not comply with the general access requirements in accordance with item 2 or the statutory requirements, in particular safety requirements.
- 3.8 Allocated slots shall be binding upon the parties with access authorisation/RCS. Any delay must be reported to SWCT without undue delay. Delays of more than 30 minutes shall result in loss of the entitlement to the registered slot. In this case, SWCT shall allocate the next available slot to the party with access authorisation/EU upon coordination with the owner of the track-side railway infrastructure. In agreement with SWCT and the owner of the track-side railway infrastructure, the party with access authorisation shall only be entitled to use the remaining slot in case of delays if the

delay was reported before the start of the allocated slot and no impact on subsequent slots is to be expected.

3.9 If there are any valid applications for simultaneous, incompatible slots, SWCT shall strive to work towards an amicable solution by negotiating with the applicants and, where possible, point out a viable alternative in accordance with § 13 (2) ERegG. The negotiation period must not exceed 14 days. If no agreement is reached, SWCT shall consider the applications in the following order:

- (a) Applications that are a necessary consequence of an agreed train route including subsequent shunting tracks, where the necessary consequence of an agreed train route including the subsequent shunting track is generally present if use of a service facility takes place in direct temporal or factual connection with the agreement of a specific train route including the subsequent shunting track.
- (b) If competing slots are equally necessary due to an agreed train route/shunting track, the requested slot priority shall be assigned to the slot application that enables a higher utilisation of the handling facility. The same shall apply to any competing slots that are not a necessary consequence of an agreed train route/shunting track.
- (c) If no decision can be made in accordance with items 3.9 (a) and (b), priority shall be given to applications for which there is no viable alternative.
- (d) If no final decision can be made based on items 3.9 (a) to (c), SWCT shall conduct a maximum price procedure in accordance with § 52 (8) sentences 2 to 8 ERegG. To this end, SWCT shall simultaneously request that the respective parties with access authorisation offer usage fees in excess of the usage fee that would be payable based on the list of fees within five working days. The bids shall be sent only to the Federal Network Agency during this period, which shall be informed of the maximum price procedure by SWCT. The Federal Network Agency shall inform the bidders of the bids and their amounts after the deadline. SWCT shall submit an offer to enter into a corresponding usage contract to the party with access authorisation that submitted the highest bid. SWCT shall make the decision within 10 working days.

- 3.10 70% of the registered slots must be utilised on time and at least 50% of the registered capacity must be complied with within a quarter. If a party with access authorisation/RC undercuts one of these values, SWCT may adjust the agreed slot usage in the following quarter based on the actual usage in the previous quarter. In this case, the party with access authorisation/RC in question must be informed with a reasonable lead time.
- 3.11 The usage contract shall be a master agreement based on which SWCT shall handle the loading units registered by the party with access authorisation. The services agreed in the usage contract shall be specified in individual orders placed by the party with access authorisation in accordance with item 3.2 GTC (**Annex 2**). An individual order shall be placed by written or electronic transmission of the loading unit type (item 1.2 GTC) and the loading unit number, the loading unit weight, and the execution date of the 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 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 by SWCT within the meaning of item 3.2 GTC.

4. Scope and duration of use

- 4.1 The details of the agreed slots are set out in the usage contract. The party with access authorisation must ensure that the track section used is vacated at the end of the slot.
- 4.2 If the right arising from a usage contract that was entered into is not exercised wholly or in part within one month of the agreed start of use for reasons for which the party with access authorisation/RC is at fault, SWCT shall have the right to terminate the usage contract with immediate effect. The party with access authorisation who received the termination shall be obligated to compensate SWCT for the damage caused by the termination or partial termination of the contract; in particular, it shall pay the lost remuneration for use of the handling facility to SWCT, with SWCT offsetting any costs or expenses saved as well as remuneration from any other use of the terminated capacities.

5. Parties' rights and obligations

5.1 Principles

5.1.1 The SWCT Terminal Regulations (Provisions on Operational Safety) enclosed as **Annex 3** apply to use of the handling facility in addition to the relevant laws and regulations.

5.1.2 The contracting parties commit to cooperating in a spirit of trust, under consideration of the special features of use of the handling facility and minimising negative effects on the other contracting party as far as possible. To this end, one contracting party shall provide the respective other party with all information necessary to ensure maximum safety and efficiency in its operations without undue delay.

5.1.3 In their contract, the contracting parties shall designate one or several persons or bodies who are authorised and able to make operational decisions on their behalf within the shortest possible period of time.

5.1.4 The party with access authorisation must make SWCT's NBS available to authorised third parties and instruct them to comply with the resulting usage requirements. This shall apply in particular to compliance with the general access requirements in accordance with item 2 and the provisions on operational safety in accordance with item 5.1.1.

5.1.5 Parties with access authorisation in accordance with § 1 (12) no. 2 ERegG must not exercise their rights arising from the usage contract until a separate agreement on operational safety in accordance with item 3.6 sentence 1 has been entered into between SWCT and the designated RC. SWCT shall inform the respective party with access authorisation of any obstacles to such an agreement without undue delay. This shall apply accordingly if such an agreement is terminated.

5.1.6 The contracting parties to an agreement in accordance with item 3.6 sentence 1 shall also designate one or several person(s) or body (bodies) in this agreement who is (are) authorised and able to make operational decisions on their behalf

within the shortest possible period of time.

5.2 Information on agreed use and in the case of malfunctions

5.2.1 SWCT shall inform the contracting partner of any changes in the condition of the handling facility (e.g., construction work, maintenance, or replacement of handling equipment) as well as of any other irregularities and disruptions, without undue delay, as far as they may be of significance for the contracting partner's further dispositions.

5.2.2 The party with access authorisation/RC shall ensure that SWCT is informed of the following circumstances without undue delay:

- (a) Changes to the use in accordance with the application (e.g., length of the train/shunting unit, type and number of loading units to be handled),
- (b) any special features (e.g., transport of dangerous goods in accordance with ADR/RID, loading gauge overruns),
- (c) other irregularities and disruptions in relation to the use of the handling facility, in particular factors relevant to delays (e.g., train/switching unit delay at the entrance, delayed collection of the switching unit/train at the exit).

5.3 Interferences in operational processing

5.3.1 The parties commit to eliminating faults. Faults shall be removed without undue delay unless rectification without undue delay is technically or economically unreasonable.

5.3.2 SWCT shall be informed of any train delays in accordance with item 3.8. Priority shall be given to other uses in accordance with item 3.9 sentence 3 (b) if there are any overlapping delays of several trains or other disruptions.

5.3.3 The party with access authorisation/RC shall remedy any disruptions in the operational process that are attributable to its area of responsibility without undue delay. In particular, they must ensure that the handling facility is not utilised beyond the contractually agreed extent (e.g., due to broken-down rail vehicles). In any case, SWCT shall also have the right to remedy the disruption to operations

at the expense of the party responsible or to have it remedied by a third party (e.g., by towing broken-down rail vehicles) at any time.

5.3.4 SWCT shall remedy any disruptions in the operational process that are attributable to its area of responsibility without undue delay.

5.4 Changes to the handling facility

SWCT shall have the right to modify the handling facility with due consideration of the interests of the parties with access authorisation/RCs. SWCT shall inform the parties with access authorisation/RCs of any planned changes without undue delay, if necessary also on an ongoing basis (e.g., in the case of longer-lasting measures). Existing contractual obligations shall not be affected by this.

5.5 Maintenance and construction measures

5.5.1 SWCT shall have the right to perform maintenance and construction work on the handling facility at any time. It shall implement these measures within the bounds of what is economically reasonable in such a way that negative effects on the party with access authorisation's business operations are minimised.

5.5.2 SWCT shall inform the party with access authorisation/RC of any planned work that may have an impact on the party with access authorisation/RC's operations without undue delay (e.g., in text form or by publication on the internet). The party with access authorisation may comment on the planned work.

SWCT points out that access to the handling facility may be restricted or made more difficult by maintenance, servicing or repair measures, and other changes to the railway infrastructure by the owner of the track-side railway infrastructure. SWCT shall inform the parties with access authorisation of such measures without undue delay. In all other respects, the KSW Kreisbahn Siegen-Wittgenstein GmbH terms of use shall apply.

6. Liability

6.1 Liability shall be subject to the General Terms and Conditions of SWCT enclosed as

Annex 2. In addition and subordinately, the contracting partners shall be liable in accordance with the provisions of these terms of use.

Unless the General Terms and Conditions (**Annex 2**) and these terms of use contain more specific provisions to the contrary, liability shall be subject to the statutory provisions.

- 6.2 Liability of employees shall not extend beyond the liability of the contracting parties. Personal liability of employees towards third parties shall not be affected by this. Recourse to employees of the respective liable contracting party is only possible for that party itself, based on its internal principles.

7. Hazards for the environment

- 7.1 The party with access authorisation must refrain from environmentally hazardous impacts.

- 7.2 SWCT must be informed at once if environmentally hazardous emissions occur in connection with the operations of the party with access authorisation/authorised agent or if any substances hazardous to water are released into the soil from the vehicles or loading units brought into the handling facility by the party with access authorisation/RC, or if there is a risk of explosion, fire, or other hazards. SWCT shall initiate all necessary emergency measures in the above cases without undue delay. The costs for these measures to be performed shall be borne by the party with access authorisation. If the hazardous situation in accordance with sentence 1 makes it necessary for SWCT to clear the operating facilities, the contracting party causing the hazard shall bear the costs.

- 7.3 If any soil or infrastructure contamination caused by the party with access authorisation/RC occurs - even without any fault of its own - SWCT shall arrange for the necessary remediation measures. The party with access authorisation shall bear the costs of the restoration.

- 7.4 If SWCT is obligated to remedy environmental damage caused by the party with access authorisation/RC - even if it is not at fault - the party with access authorisation shall

bear the costs incurred by SWCT. If SWCT contributed to causing the damage, the obligation to pay compensation shall depend on the circumstances, in particular on the extent to which the damage was predominantly caused by one or the other.

8. Usage fee

8.1 List of fees

The standard fees for SWCT's services are set out in SWCT's current list of fees, which will be sent to the party with access authorisation/RC on request. The fee for handling shall also cover processing of usage applications. Changes to fees may be declared with a period of notice of 6 weeks at the end of the month.

8.2 Handling and additional services

8.2.1 Handling of a loading unit shall commence when the loading gear is lowered onto the loading unit and ends when the loading gear is released after the change of location has been completed.

Charges for handling services shall be calculated separately based on the number of loading units handled at rail entry or rail exit multiplied by the handling price per loading unit in accordance with the valid list of fees. The same shall apply to any handling services rendered before or after chargeable parking.

8.2.2 Loading units delivered for subsequent rail shipment shall be inspected externally by SWCT in order to verify compliance with the prescribed shipping conditions (check-in procedure). The costs for this shall be covered by the handling fee.

8.2.3 SWCT shall check all incoming trains for completeness and damage of the loading units. SWCT shall arrange provision of the data required for this with the party with access authorisation. The costs for this shall be covered by the handling fee. This shall apply to all loading units that are delivered for rail despatch.

8.2.4 If any missing, defective, or incorrect ADR/RID labelling is found when transferring liability of loading units with dangerous goods to SWCT, SWCT shall apply the legally required ADR/RID labels or remove inapplicable labels. ADR/RID labelling is a mandatory service provided by SWCT for which a fee is charged in

accordance with the applicable list of fees.

8.2.5 Preparation of railway wagons for loading is a service provided by SWCT and includes the proper connection of the loading unit to and from the wagon, in particular the loosening and tightening of the fastening devices including their securing devices and fixing devices on the wagon to accommodate the loading units. The costs for this are covered by the fee for crane handling.

8.3 Parking services

Loading units delivered by road or received by rail for which no immediate change of mode of transport takes place shall be parked on the parking areas available in the terminal by SWCT for transport purposes.

Parking before a rail despatch or after a track-side entrance shall be free of charge. Any additional parking shall be charged separately in accordance with the list of fees per loading unit and working day (Monday to Saturday). Sundays and public holidays shall be free of charge.

Loading units with dangerous goods (ADR/RID) must be parked in special areas for which a separate fee is charged, irrespective of the type and size of the loading units.

8.4 Cancellations

The following cancellation fee shall apply if any agreed use is cancelled by the party with access authorisation for which the party with access authorisation is responsible:

- Zero percent of the applicable fee rate of the current list of fees for the handling quantity (dispatch + receipt) of the slot last used on the same weekday, for cancellations received by SWCT up to 48 hours before the agreed use.
- 10 percent of the applicable fee rate of the current list of fees for the handling quantity (dispatch + receipt) of the slot last used on the same weekday, for cancellations received by SWCT less than 48 hours and more than 24 hours before the agreed use.
- 30 percent of the applicable fee rate of the current list of fees for the handling quantity (dispatch + receipt) of the slot last used on the same weekday, for cancellations received by SWCT less than 24 hours before the agreed use.

If there is no previously used slot for the same day of the week as a reference value, the ordered handling quantity (receipt + dispatch) shall be used as the basis for calculation.

8.5 Non-utilisation of ordered services

SWCT shall charge 50% of the standard fee for the handling quantity (dispatch + receipt) of the slot last used on the same weekday if the agreed use is not utilised by the party with access authorisation without a cancellation in accordance with item 8.4. If there is no previously used slot for the same day of the week as a reference value, the ordered handling quantity (receipt + dispatch) shall be used as the basis for calculation.

8.6 Remuneration for changes to crane orders

SWCT shall charge a fee per loading unit in accordance with the current list of fees for changes to crane orders initiated by the party with access authorisation.

8.7 Due date and method of payment

The due date and method of payment are set out in item 13 of the General Terms and Conditions of SWCT enclosed as **Annex 2**.

8.8 Offsetting or retention of claims

Offsetting or retention against SWCT's claims is excluded unless the counterclaim is undisputed or has been recognised by declaratory judgement.

Annexes:

Annex 1: Infrastructure description

Annex 2: General terms and conditions of Südwestfalen Container-Terminal GmbH

Annex 3: Terminal rules of Südwestfalen Container-Terminal GmbH

Annex 4: Application for a usage contract

Annex 5: Service description

List of abbreviations

ADR	European Agreement concerning the International Carriage of Dangerous Goods by Road
AEG	Allgemeines Eisenbahngesetz (General Railway Act)
EBO	Eisenbahn Bau- und Betriebsordnung (Railway Construction and Operating Regulations)
ERegG	Eisenbahnregulierungsgesetz (Railway Regulation Act)
EC	Railway Companies
KSW	KSW Kreisbahn Siegen-Wittgenstein GmbH
RID	Regulation concerning the International Carriage of Dangerous Goods by Rails
SWCT	Südwestfalen Container-Terminal GmbH