

# DANSKE HAVNEVIRKSOMHEDER

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## General Conditions of Danske Havnevirksomheder 2016

This is an English translation of the original Danish version of  
Danske Havnevirksomheders Almindelige Betingelser 2016 (DHAB)  
– in case of discrepancy between the two versions, the original Danish version shall apply

### Section 1 - General provisions

#### §1 Definitions

The terms used in these General Conditions shall have the following meaning:

*Orderer.* Orderer means any party having concluded an agreement with a Port Operator.

*Port Operator.* Port Operator means any undertaking which is a member of Danske Havnevirksomheder.

*Goods.* Goods means all conceivable commodities, equipment, materials, containers with or without cargo, pallets, or other transport devices or similar objects in the widest sense.

*Dangerous Goods.* Dangerous Goods means Goods which must be treated in a way that, according to circumstances, require expert knowledge, special care, compliance with norms or rules within private or public law, and/or use of special equipment etc. to avoid risk or danger to persons, property or environment.

*Task.* Task means one or more assignments or tasks usually related to or covered by port work and stevedoring, including, but not limited to

- a) handling of Goods in the widest sense, including loading and unloading of Goods, packing and labelling, test, preparation, fastening, lashing, trimming, securing and sorting as well as transport on quays and in all other relevant areas
- b) storage, stock control and stock hotel operation, as well as any handling of Goods related thereto, as mentioned in a)
- c) all other assignments and tasks, which the Port Operator has assumed to be part of the specific agreement.

*Delivery.* Delivery means the situation where the Port Operator hands over the Goods to the party appearing to be entitled to be recipient, or places the Goods at that party's disposal.

*SDR.* SDR means the special drawing rights applied by the International Monetary Fund. SDR is converted into Danish kroner according to the rate on the day when security for the liability is provided or, in the absence of such security, on the day of payment.

*Written Notice:* Written Notice means any form of written or electronic communication.

## **§2 Scope**

Unless otherwise explicitly agreed, these General Conditions shall apply to any Task performed by a Port Operator.

*Subsection 2.* These General Conditions, regardless of appearing changed or unchanged in a specific agreement, do not apply, unless the party appearing as Port Operator or equivalent in the agreement was a registered member of Danske Havnevirksomheder when the agreement was made

*Subsection 3.* If the Port Operator undertakes to perform tasks that fall outside the scope of these General Conditions (DHAB 2016), but within the scope of the General Terms of Business for members of the Danish Shipbrokers' Association (DSAF), DSAF shall apply to such tasks, if the party invoking DSAF was a registered member of the Danish Shipbrokers' Association at the time of the agreement.

*Subsection 4.* If the Port Operator undertakes to perform tasks that fall outside the scopes of both these General Conditions (DHAB 2016) and DSAF, but within the scope of Nordisk Speditørforbunds Almindelige Bestemmelser (NSAB 2015), NSAB 2015 shall apply to such tasks, if the party appearing as freight forwarder was a member of Nordisk Speditørforbund at the time of the agreement.

If the Port Operator undertakes to perform tasks that fall outside the scope of all of the above, NSAB 2000 shall apply to such tasks.

## **Section 2 - Price, request for offer, payment and lien**

### **§3 Request for offer**

Any price and conditions initially put forward by the Port Operator shall only be considered non-committing requests to the Orderer to propose an offer. When the Orderer has proposed an offer, the Port Operator can reject or accept it, or propose a counter offer. An agreement has not been reached until both parties have accepted prices and conditions.

### **§4 Price**

The Orderer shall pay the price agreed by the parties. All prices shall be stated exclusive of VAT and any other duties and taxes. The Port Operator is not liable for any increase in such duties and taxes.

*Subsection 2.* Unless the Port Operator receives special written instructions from the Orderer concerning the nature and extent of the Task or other assistance, the price of the Port Operator shall be based on

- a) a usual handling of general Goods packed in accordance with common practice,
- b) performance of the Task or other assistance in usual gang sizes using the gear normally employed in the port in question and within normal working hours, with
- c) possibility for continuous execution of the Task or assistance without interruptions due to the weather, the structure of the means of transport, inadequate preparation, or similar obstacles.

*Subsection 3.* Any work exceeding the scope of work expressly agreed by written agreement or the scope which can be proved that the Port Operator should have anticipated at the time of quotation, cf. subsection 2, shall be considered additional work for which the Port Operator is entitled to separate payment. This also applies if the work of the Port Operator is hampered, delayed or cost-increased due to circumstances beyond its control.

*Subsection 4.* In cases where the parties have not agreed a price in advance and in cases subject to subsection 3, the Orderer shall pay the price charged by the Port Operator unless the Orderer proves that such price is evidently unfair. Where the Orderer without delay does not object to the price charged by the Port Operator, such price shall be considered fair.

## **§5 Outlays**

The Port Operator shall be entitled to claim reimbursement of any documented outlay and outlay costs.

*Subsection 2.* The Port Operator shall be entitled either to add a specific outlay provision or to charge outlay costs or default interest to cover any documented outlays on the account of the Orderer.

## **§6 Currency**

Unless otherwise agreed, all prices shall be stated in Danish kroner.

*Subsection 2.* Where the price is stated in a currency other than Danish kroner, the Orderer shall bear the risk of any exchange loss by fluctuation of the exchange rate between the Danish krone and the currency stated in the period from the date of quotation to the date of payment.

## **§7 Terms of payment**

Terms of payment for Tasks and other assistance performed by the Port Operator shall be due for net cash payment on receipt of invoice.

*Subsection 2.* If payment under subsection 1 is not effected, the Port Operator may send a letter demanding payment within 1 week to the Orderer. If payment is not received within the time stipulated in such a letter, §18 shall apply.

*Subsection 3.* The Port Operator's claim carry interest at the rate of 2% per commenced month from the due date.

## **§8 Security**

In addition to §7, the Port Operator may, according to its own fair judgement, either demand payment in advance or demand that the Orderer provides such security as the Port Operator considers adequate for its claim for any unpaid invoices, the performance of current, unsettled Tasks or any other claim.

*Subsection 2.* Until payment or provision of security has taken place, the Port Operator may without prior notice and without incurring liability to pay compensation, discontinue current Tasks or assistance.

## **§9 Set-off**

The Orderer is not justified to any set-off whatsoever against the Port Operator's claims.

## **§10 Lien**

The Port Operator shall have a right of retention and a lien on Goods, documents, cash etc. under the Port Operator's control for any claims and costs related hereto, including remuneration and warehouse rent, as well as for any other claims of the Port Operator against the Orderer. That applies regardless of whether these claims and demands are related or unrelated, and regardless whether they pertain to other Tasks performed by the Port Operator for the Orderer.

*Subsection 2.* In the event of any loss of or damage to objects subject to the lien of the Port Operator under subsection 1, the Port Operator shall have a similar lien on any amount of compensation.

*Subsection 3.* If due claims of the Port Operator have not been paid within 2 weeks from the date of a letter of demand forwarded by the Port Operator under §7(2), the Port Operator is eligible for arranging for that a proportion of the Goods large enough to cover the claim of the Port Operator can be sold out of court in a safe way, by public auction or by offering it to relevant buyers. Where possible, the Port Operator shall give prior notice of such sale to the Orderer.

## **Section 3 - Performance of the Task**

### **§11 Information on the Goods**

The Orderer shall give the Port Operator all instructions and information as can be necessary or expedient for the performance of the Task or the assistance. This includes providing information to the Port Operator in good time on, amongst others:

- a) the nature, weight and volume of the Goods
- b) any special precautions necessary for the performance of the Task
- c) stowage and/or discharge plans
- d) any other relevant facts, including information on any special precautions to be observed for the protection of individuals, the environment or the property of the Port Operator or any third party against damage caused by the Goods.

*Subsection 2.* Where the Task comprises a stock hotel, warehousing or storage of Goods for a short-term or long-term period, the Orderer shall also be responsible for providing the Port Operator with all relevant instructions pertaining to any special warehousing or storage conditions, including temperature, light and humidity conditions, required for the warehousing/storage of the Goods in question.

*Subsection 3.* The instructions and information referred to in subsections 1 and 2 shall be given by separate Written Notice to the Port Operator. Information written on shipping notes etc. shall not be considered adequate.

*Subsection 4.* If the Orderer does not meet his obligations under § 11 subsections 1 and 2, the Port Operator shall be entitled, without notice and for the Orderer's account and risk, to take all the precautions required to prevent damage to persons, property or the environment. If deemed necessary, the Port Operator may thus have the Goods removed, destroyed, made harmless or sold pursuant to the provisions of §10(3).

### **§12 Dangerous Goods**

The Orderer is strictly liable to the Port Operator for any damage and loss that he may incur to

persons, property or the environment following noncompliance with the rules and principles regarding Dangerous Goods.

*Subsection 2.* If the Task includes Dangerous Goods, the Orderer warrants to the Port Operator that the Port Operator in due time will receive all relevant information pursuant to the conventions, rules and regulations on Dangerous Goods in force. The Orderer warrants to the Port Operator that all Dangerous Goods have been packed, labelled, packaged and classified according to the applicable conventions, rules and norms, cf. §1. Furthermore, the Orderer warrants that all necessary regulatory permits have been obtained.

*Subsection 3.* The Orderer shall, in due time, inform the Port Operator to what extent the means of transport or the transport device carry Dangerous Goods. The Orderer must declare the nature, classification and treatment of such Goods. This applies even if such Dangerous Goods are merely in transit. Furthermore, the Orderer shall ensure compliance with the rules and norms on Dangerous Goods applying to the port in question.

*Subsection 4.* §11(3-4) in these General Conditions shall apply accordingly.

### **§13 Handling of Goods**

If agreed, the Port Operator will carry out tally for the Orderer's account and risk.

*Subsection 2.* Unless otherwise agreed, the Orderer shall make sure that the Goods are packed and labelled in accordance with the rules and customs in force and so as to withstand handling as well as wind and weather.

### **§14 Equipment**

The Port Operator shall provide own, usual equipment for loading, stowage, securing, unloading etc.

*Subsection 2.* Irrespective of subsection 1, the Orderer shall ensure, where this is required, customary or expedient, the provision of fully appropriate special equipment to the Port Operator, without expense for the latter and with due notice. In that case, such equipment shall meet all regulations in force as well as any specific requirements set out by the Port Operator prior to the execution of the Task. In addition, the Orderer shall ensure that the Port Operator is properly instructed in the use of the equipment. In general, the Orderer is obliged to prevent damage and loss to persons, property or the environment.

### **§15 Preparation of means of transport**

Unless otherwise agreed, the Orderer shall ensure that the relevant means of transport is prepared for the Port Operator to load, handle, unload and/or otherwise expediently perform the Task or assistance. This includes ensuring that the holds are clean, ready for loading or unloading, that access to the means of transport and its holds is adequate and safe and that the means of transport in every respect is ready for the Goods to be handled.

*Subsection 2.* Furthermore, the Orderer shall ensure that the working conditions on board the means of transport, including ventilation, light, mooring and safety measures, are well-functioning and comply with regulations.

*Subsection 3.* If in the opinion of the Port Operator the Orderer has not met his obligations under subsections 1 and 2, the Port Operator shall have the right, but not the duty, to perform the relevant

Tasks or assistance for the Orderer's account and risk. This also applies if the relevant Tasks or assistance are usually performed by the Port Operator.

#### **§16 Insurance**

The Port Operator is under no obligation to insure the Goods, including stored Goods, whether for their own or the Orderer's account.

*Subsection 2.* The Orderer shall take out insurance against any damages to persons, property or the environment caused by the Goods. At the request of the Port Operator, the Orderer shall prove that such insurance has been taken out and is in force.

#### **§17 Termination**

The agreement between the Orderer and the Port Operator shall cover the period of time agreed upon or assumed to be applicable. If the agreement is for an indefinite or undefined period, it shall be terminable by either party giving at least 30 days' written notice to expiry on the last day of any month.

*Subsection 2.* If the Orderer or any party entitled thereto has not collected the Goods after expiry of such notice, § 23(2-3) shall apply accordingly.

#### **§18 Material breach**

Irrespective of §17, the agreement between the Port Operator and the Orderer is terminable without notice upon material breach. Examples of material breach are:

- a) failure to pay by the time stipulated in the letter of demand under §7(2)
- b) missing, unclear or inadequate significant information, such as regarding Dangerous Goods
- c) filing of a reconstruction petition, initiation of insolvency proceedings, filing of a winding-up petition, or similar, in respect of either party.

### **Section 4 - Liability of the Port Operator**

#### **§19 Period of liability**

The Port Operator shall be in charge of the Goods from the time the Port Operator takes over the Goods at its proper place and until the time of their Delivery.

#### **§20 Liability in respect of third parties**

The Port Operator can at any time have the Task or other assistance performed in full or in part by any third party, for whom the Port Operator shall be liable.

#### **§21 Liability for loss, damage and delay in respect of Goods**

The Port Operator shall be liable for any loss of or damage to the Goods and for any delay in Delivery where

- a) it is proved that the event having caused such loss, damage or delay occurred in the period during which the Port Operator was in charge of the Goods (including relating to storage), cf. §19, and
- b) it is proved that such loss, damage or delay was caused by fault or negligence on the part of the Port Operator or any party for which the Port Operator is responsible.

*Subsection 2.* The Port Operator shall not be liable for any loss, damage or delay in respect of the Goods caused by strike, lockout, blockade or boycott of any kind, whether or not the Port Operator is party to such conflict.

Loss, damage or delay is also permissible and exempt from liability if the cause of such a situation is unpredictable weather conditions, change in delivery and force majeure.

### **§22 Liability for any other harm, including to persons and the environment**

The Port Operator shall be liable for any harm, damage or loss other than that specified in §21 if it is proved that such harm, damage or loss was a result of fault or negligence on the part of the Port Operator or any party for which the Port Operator is liable.

Examples of any other harm are:

- a) harm to the Goods other than loss, damage or delay in Delivery
- b) loss, damage or delay in respect of the means of transport and the transport device
- c) loss, damage or delay in respect of any other Goods
- d) damage to the property of the Orderer or any third party
- e) errors in respect of document handling, performance of tally or any other control function
- f) damage to the environment
- g) damage to persons, including death.

*Subsection 2.* §21(2) applies accordingly.

### **§23 Delay**

Delay shall be said to occur when exceeding the period of time agreed upon to carry out the Task or assistance, or in lack of such an agreement, when undoubtedly exceeding a time which should be reasonable and expected under the given circumstances.

*Subsection 2.* If the party entitled and obliged to take Delivery does not receive the Goods within the agreed time-limit or, failing an agreed time-limit, in reasonable time after the Port Operator's notice has been received by the Orderer, the Goods may be stored for the account and risk of the Orderer.

*Subsection 3.* If in the cases mentioned in subsection 2, the Port Operator is unable to preserve the Goods without considerable inconvenience or expense, or the Orderer has not taken the Goods into his possession within a reasonable time after having been requested to do so, the Port Operator may sell the Goods as specified in §10(3). If no sale can be made or it is clear that the expense incidental to the sale cannot be reimbursed from the selling price, the Port Operator can dispose of the Goods.

### **§24 Extra-contractual claims for compensation**

In the event of extra-contractual claims for compensation, including product liability, direct or delictual claims, the Port Operator and any other party with relation hereto which may be the aim of such a claim for compensation, may invoke the provisions of these General Conditions which among others exclude or limit the liability for damages.

*Subsection 2.* The total liability incurred by the Port Operator and the parties for which it is liable

shall in no event exceed the limitations of liability set out in §26.

Should any non-contractual claim(s) be incurred by the Port Operator, which goes beyond the limitations of liability in these General Conditions, the Orderer must compensate and indemnify the Port Operator for the difference.

#### **§25 Calculation of compensation**

The compensation for any damage to or total or partial loss of Goods shall be calculated by reference to the invoiced value at which the Goods were last traded before being delivered into the charge of the Port Operator.

*Subsection 2.* If there is no invoiced value as referred to in subsection 1, the value of the Goods shall be calculated by reference to the current value of Goods of the same nature and quality at the time and place when and where the Port Operator took over the Goods.

*Subsection 3.* The Port Operator is not liable for any indirect loss or implied loss whatsoever, including loss caused by delay, lost profit, lost production, lost use or similar.

#### **§26 Limitation of liability**

Irrespective of §25, the compensation shall not exceed 666.67 SDR per package or other unit of Goods, or 2 SDR per kilogram of damaged or lost Goods, whichever yields the higher amount.

*Subsection 2.* If containers, trailers, pallets or similar articles of transport are used for consolidating the Goods, such article of transport shall, for the purposes of subsection 1, in itself be deemed to constitute a package or other unit of Goods. Unless otherwise agreed, the calculation shall not take into account the number of packages consolidated in such article of transport.

*Subsection 3.* Under no circumstances can and shall the compensation exceed 25,000 SDR per compensation event, including interest and total costs. If more than one Orderer, each suffer a loss due to damage occurring on one and the same occasion, the Port Operator's liability to all Orderers concerned shall still be limited to a maximum of 25,000 SDR per Orderer, including interest and total costs, and the Port Operators maximum total liability to all Orderers concerned is limited to 500,000 SDR, including interest and total costs. The latter amount is distributed on a pro rata basis between the Orderers according to the value of the Goods, calculated as set out in §25.

The limitations of liability on respectively 25,000 SDR per compensation event and 500,000 SDR for all Orderers (both including interest and total costs) is thus covering all compensation events following a Port Operator's performance of a task or other assistance and which are not covered by subsection 1 and 2. Limitations of liability also covers environmental damage, personal damage and deaths.

The mentioned limitations of liability also covers the Port Operator's customs warehousing, non-procedural importation, removal from customs supervision, or other similar acts or omissions regarding Tasks or other assistance with relation to the Goods and custom rules and procedures.

Recourse claims in this regard toward the Orderer refers to §27.

*Subsection 4.* If it is proved that damage and loss has resulted from the delay of the Goods, and

that the Port Operator is responsible for this delay, the Port Operator shall, according to these General Conditions, pay compensation not exceeding the amount to which the Port Operator is entitled for the execution of the Task or assistance, including interest and total costs.

*Subsection 5.* If the Port Operator is liable for any other harm as set out in §22, the Port Operator may limit its liability pursuant to subsections 1-3.

*Subsection 6.* The Port Operator's total liability under subsections 1-4 shall not exceed the limitation of liability that would apply to a total loss of the Goods covered by such liability, cf. subsections 1-3.

*Subsection 7.* The Port Operator's liability shall not exceed the liability of the Orderer. If the Orderer has limited his liability towards any third party, the Port Operator shall, as a matter of course, be entitled to the same limitation of liability towards the Orderer and any third party.

*Subsection 8.* The right of the Port Operator to disclaim or limit its liability according to these General Conditions shall explicitly be valid and maintained even if damage and loss may be caused due to any form of gross negligence from the Port Operator, its owners, management, employees or any third party for which the Port Operator is liable.

#### **§27 Custom claims**

If the Port Operator by administrative decision or by legal judgment is seen to have infringed custom rules or procedures (for example non-procedural importation or removal from customs supervision in connection with customs warehousing) or in other cases of infringement of custom rules or procedures, and a fine or other claim is held against the Port Operator, the Port Operator shall in its relation to the Orderer inter partes only be liable for the payment of an amount of 25,000 SDR (including interest and total costs), as mentioned in §26.

The Orderer shall thus pay the remaining part of the fine or claim including interest and total costs. Payment of these amounts shall happen immediately to the Port Operator on demand, alternatively shall an equivalent security be established on demand, according to the choice of the Port Operator.

The Orderer shall on demand pay the Port Operator's costs to treat such a case or establish an adequate security for this.

### **Section 5 - Liability of the Orderer**

#### **§28 Liability basis**

The Orderer is objectively liable and shall indemnify the Port Operator against any loss or damage that may be incurred by the Port Operator, amongst others as a result of the following:

- a) The Orderer has provided incorrect, incomplete or insufficient information concerning the Goods or their treatment;
- b) The Goods were not correctly packed, labelled and declared by the Orderer or any party for which the Orderer is liable;
- c) The Orderer or any party for which the Orderer is liable has loaded, unloaded, stowed or

secured the Goods incorrectly, negligent or inappropriate;

- d) The Goods have harmful characteristics of which the Port Operator has not been expressly or sufficiently informed;
- e) The Port Operator is ordered, because of the Orderer's assignment, to pay a fine, tax, customs duty (including for non-procedural importation, removal from customs supervision in connection with customs warehousing or other infringements of custom rules and procedures), VAT or any other public duties or taxes, or is ordered on demand to provide security for any of the above and for other costs and interest, in the extent and in the case, that this is not covered by the clauses in §26 and 27.

*Subsection 2.* If the Port Operator is liable to pay compensation for any damage to the property of a third party (for instance a road haulier), the Orderer shall indemnify the Port Operator for any part of such compensation that the Port Operator would not be obliged to pay if these General Conditions could be asserted against such third party.

## **Section 6 - Claims and actions**

### **§29 Duty to give notice**

Where the Orderer intends to hold the Port Operator liable for any damage, loss or delay in respect of the Goods or for any other harm, he shall give the Port Operator written notice thereof immediately after the Orderer discovers or ought to have discovered the default giving rise to such claim for compensation. If the Orderer does not give such notice without delay, the claim shall lapse.

*Subsection 2.* Irrespective of subsection 1, no compensation for delay in Delivery shall be payable unless the Port Operator within 21 days from Delivery receives a Written Notice of the Orderer's intention to rely on such delay.

### **§30 Limitation in respect of claims**

Any claim against the Port Operator shall become time-barred after a period of 10 months running from the times stipulated in subsection 2. The deadline is interrupted by agreement on deadline prolongation or by a timely legal action.

*Subsection 2.* In the event of damage to or partial loss of Goods, the limitation period referred to in subsection 1 shall run from the time of Delivery. In case of delay in Delivery, total loss of Goods or any other harm, the limitation period referred to in subsection 1 shall run from the time when such default first becomes apparent.

### **§31 Venue and governing law**

Any legal proceedings arising out of or relating to the legal relationship between the Port Operator and the Orderer shall be instituted before the court in the jurisdiction where the Port Operator has its registered office.

*Subsection 2.* Any dispute between the Port Operator and the Orderer shall be subject to Danish law.

## **Section 7 - Concluding provisions**

### **§32 Commencement**

These General Conditions shall apply to all agreements subject to §2 which are concluded after 31 January 2017 and shall, as from that date, supersede the General Conditions of Danske Havnevirksomheder 2007.