
General Terms and Conditions Applicable to Civil-Law Agreements on the General Use of the Port of Hamburg

General Terms and Conditions of the Hamburg Port Authority, a public-law institution, applicable to civil-law agreements on the general use of the port of Hamburg of 1 January 2010

Notice:

In the event of any inconsistency or conflict between the German and the English version, the German version shall prevail.

Table of Contents

1	<i>Area of Validity of the General Terms and Conditions</i>	4
1.1	Statutory basis.....	4
1.2	Subject matter of the General Terms and Conditions.....	4
1.3	Publication of the General Terms and Conditions	4
1.4	Formation of the contract and contract parties.....	4
2	<i>Interpretation and Definitions of Terms</i>	5
3	<i>Port Fees and Charges</i>	7
3.1	Obligation to pay port fees and exemptions.....	7
3.2	Debtor of the port fees	7
3.3	Other claims of the Hamburg Port Authority	7
3.4	Amount of the port fees / schedule of port fees and charges	7
3.5	Obligation to pay value-added tax.....	7
3.6	Calculation basis of the port fees.....	7
3.7	Obligation to calculate	8
3.8	Non-submission of the port fee declaration	8
4	<i>Port Fee Reductions</i>	8
4.1	Prerequisite for being granted additional-traffic reductions for cargo vessels	8
4.2	Calculation of additional-traffic reductions for cargo vessels	9
4.3	Prerequisite for being granted and calculation of frequency reductions in the tariff category “cruise ships”.....	9
4.4	Prerequisite for being granted and calculation of frequency reductions in the tariff category “RoRo container ships”	9
4.5	Assertion of a reduction in port fees.....	9
4.6	Reimbursements of reductions and potential offsettings	9
5	<i>Classification Criteria</i>	9
6	<i>Due Date and Payment of the Port Fees, Delay in Payment</i>	11
6.1	Due date, terms of payment and delay in payment	11
6.2	Damage caused by default.....	11
6.3	Meeting the obligation to pay	12
6.4	Entitlement to offset / retaining of payments	12
6.5	Reminder fees.....	12
6.6	Lien.....	12
6.7	Defence against the invoice for port charges.....	12
7	<i>Limitation of Liability</i>	12
8	<i>Data Protection</i>	13
9	<i>Final Provisions</i>	13
9.1	Publication	13
9.2	Invalidity or unenforceability	13

9.3	Place of performance	13
10	<i>Effective Date</i>	<i>13</i>

Annex: Schedule of Port Fees and Charges

1 Area of Validity of the General Terms and Conditions

1.1 Statutory basis

By the Act on the Establishment of the Hamburg Port Authority (Hamburg Port Authority Establishment Act) of 29 June 2005 (HmbGVBl. S. 256, Hamburg Law Gazette and Official Gazette, page 256) the Free and Hanseatic City of Hamburg has established the Hamburg Port Authority as a public-law institution having legal capacity and entrusted it with the development, expansion and management of the port of Hamburg, including building of the required public infrastructure for all port users, the location of companies and the leasing of port plots of land.

According to article 12, paragraph 4 of the Act on the Hamburg Port Authority of 29 June 2005 the Hamburg Port Authority is entitled to impose fees in as far as services are rendered based on contractual agreements.

1.2 Subject matter of the General Terms and Conditions

The use of the water areas of the port of Hamburg ("**port area**") by port users and the use of other services, in particular the use of deviation dolphins and the acquisition of ship data and ship movement data is based on a contract under civil law between the Hamburg Port Authority and the relevant port user within the meaning of sub-section 1.4.

These General Terms and Conditions apply to this contract in addition to the public-law provisions governing the use of the port, valid as amended, in particular

- the Federal Waterway Act and the ordinances based on it,
- the Port of Hamburg Traffic and Navigation Act and the ordinances based on it,
- the Hamburg Water Act and the ordinances based on it,
- the Port of Hamburg Safety Act and the ordinances based on it,
- the regulation no. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security,
- the Hamburg Act on the Disposal of Ship and Cargo Wastes (Hamburg Act on the Disposal of Ship Waste) and the ordinances based on it.

Subject matter of the civil-law contract on the use of the port and these General Terms and Conditions is the payment of **port fees** and **berth occupancy charges** in accordance with the "**Schedule of Port Fees and Charges**" attached to these General Terms and Conditions as Annex.

Fees for services rendered in connection with the use of the port (e.g. annual port dues, berthage dues, bridge and lock charges, fees for the special use of public areas within the port area, state-managed landing facilities, public discharging and loading places and publicly accessible embankments, a one-time fee for the use of public deviation dolphins by ships, fees for electronically passing on data on ships and ship movements) are imposed in accordance with the schedule of port fees and charges applicable to the port of Hamburg, valid as amended.

Furthermore the Hamburg Port Authority imposes (administration) fees in accordance with article 12, paragraph 1 of the Act on the Hamburg Port Authority for the performance of official acts and for unsuccessful administrative proceedings reviewing an objection to an administrative act on the basis of further schedules of fees of the Free and Hanseatic City of Hamburg.

1.3 Publication of the General Terms and Conditions

These General Terms and Conditions apply to the use of the port by watercrafts. The General Terms and Conditions can be inspected at the premises of the Hamburg Port Authority, Neuer Wandrahm 4, 20457 Hamburg as well as on the website of the Hamburg Port Authority (www.hamburg-port-authority.de). They will be sent to the shipping companies, agents and brokers operating at the port of Hamburg.

1.4 Formation of the contract and contract parties

The contract on the use of the port comes into effect once the port area is entered or the port facilities are used or ship data and ship movement data collected by the Hamburg Port Authority are acquired. Parties to the contract on the use of the port are the Hamburg Port Authority on the one hand and

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- the charterer,
 - the shipping company,
 - the owner,
 - the ship Chandler,
 - any other natural or legal entity using the respective watercraft without being the charterer, shipping company, owner or ship Chandler as well as
 - a potential third party who both ordered to call and use the port and owes the port fees
 - the acquirer of ship data and ship movement data
- (individually or collectively called the “**port user(s)**”) as joint and several debtors on the other hand.

Notwithstanding the relevant provisions, in particular the public-law provisions mentioned in sub-section 1.2, these General Terms and Conditions apply exclusively to the contract on the general use of the port.

Adverse conditions of a port user or conditions of a port user deviating from these General Terms and Conditions are not recognised and therefore do not become part of the content of the contractual relationship. This also applies to such matters that may be set forth in the conditions of a port user which, however, do not form part of these General Terms and Conditions.

2 Interpretation and Definitions of Terms

2.1 **Port area** includes all

water areas of the port of Hamburg within the meaning of article 1, paragraph 1, section 1, paragraph 2 and 3 of the Port of Hamburg Traffic and Navigation Act of 3 July 1979 (HmbGVBl. S. 177; Hamburg Law Gazette and Official Gazette, page 177), last amended by the law of 6 October 2005 (HmbGVBl. S. 424; Hamburg Law Gazette and Official Gazette, page 424), valid as amended, the river Bille and its canals downstream the river Bille pumping station as well as the ports of Oortkaten and Zollenspieker.

2.2 **Port use** means

the use of the port area by watercrafts.

2.3 **Call** means

entering of the port area by a watercraft.

2.4 **Facilities** means

shipping terminals and quay berths as well as landing and operating facilities.

2.5 **Seaborder** means

the seaborder in accordance with article 1 of the Third Implementation Order on the Law of the Flag (seafaring border, painting of names on ships) as amended and published in the BGBl. III, 9541-1-3 (Federal Law Gazette III, 9541-1-3), amended by article 11.07 of the Order of 14 January 1977 (BGBl. 1 S. 59; Federal Law Gazette I, page 59).

2.6 **Watercrafts** are

ocean-going vessels and inland barges, harbour crafts, sports boats, floating equipment and other floating bodies which are usually used for transport. Crafts also include seaplanes and non-water-displacing crafts.

2.7 **Ocean-going carriers** are

(water)crafts which have passed or will pass the seaborder.

2.8 **Inland waterway crafts** include

(water)crafts whose port of departure and port of destination are located on this side of the seaborder.

2.9 **Harbour crafts** are

(water)crafts which move exclusively within the harbour.

2.10 **Cargo vessels** are

ships the profit-making purpose of which is the transport of all kinds of cargo, independent of the fact whether cargo is actually transported or handled.

2.11 Open-top container ships are

vessels which carry their entire cargo load in containers and which are constructed like an open "U". They are fitted with a double bottom and high-sided erections without hatch covers on the upper deck and without a complete deck above the moulded draught. The open container stowage area must occupy at least 66.7% of the total hatchway clear opening area.

2.12 Passenger ships and cruise ships are

ships the profit-making purpose of which is the transport of persons, independent of the fact whether persons are actually carried or there is a change of passengers. These ships transport cargo regularly only to provide for their passengers.

2.13 Sports boats are

ships used for sporting and recreation purposes, including crafts operated commercially for the purpose of training people in handling sports boats.

2.14 Traditional ships are

crafts that are subject to the scope of application of the Safety Regulations for Traditional Ships published by the Federal Ministry of Transport, Building and Urban Affairs or that are recognised as such upon application by the Hamburg Port Authority for the sole purpose of calculating fees.

2.15 Other ships are

all ships, vessels, carriers, crafts and boats not mentioned in the above sub-sections 2.10 – 2.13 such as, for example, deep-sea and rescue tugboats, anchor-handling tugboats, crane ships, drilling ships, excavators, pushboats.

2.16 Shipmaster means

every shipmaster of a craft/carrier or every person otherwise in charge of the safety of a craft/carrier.

2.17 Gross tonnage (G.T.) refers to

the cubic capacity of a craft/carrier and/or the measurement result determined based on the International Convention on Tonnage Measurement of Ships ("London Convention") of 23 June 1969 (BGBl. 1975 II S. 67; Federal Law Gazette 1975 II, page 67). The G.T. is determined in accordance with the "International Tonnage Certificate (1969)" (subsequently called "ITC 69"). If no "ITC 69" is submitted, the Hamburg Port Authority will determine the G.T. in a different way.

2.18 Cargo handling means

the loading and discharging of vessels as well as freight containers including the transport of goods to be loaded and discharged at the quay handling terminals, in the sheds, on open/free spaces and other storage places. Handling also includes the embarkment and disembarkment of passengers.

2.19 Floating facilities means

floating equipment not usually meant for transport, in particular docks and jetties. They are considered crafts/carriers if they are used as a means of transfer or as overpasses.

2.20 Shipping areas refers to the areas mentioned and defined below:

1. Inland waterway transport

Traffic up or down the river Elbe from Hamburg, including flowing-in rivers and canals up to the next seaborder or navigation head

2. North Sea/Baltic Sea traffic

Traffic from and to Hamburg from and to ports within the North Sea / Baltic Sea area as well as from and to Norway, Great Britain, the Faeroe Islands, Ireland and the French Coast down to the Spanish border at the Bay of Biscay

3. Overseas traffic

All other traffic

2.20 Type of transport refers to the modes mentioned and defined below:

1. Liner service refers to

regular, not just sporadic, general traffic from and to Hamburg, which runs and is proven running according to a published timetable within a defined shipping area. The ports of call or port groups must be listed by name in the timetable. For the purpose of this provision timetables are the sailing times as per the DVZ shipping list, shipping line timetables and sailing lists published in the shipping business.

The respective liner service is operated by a shipping company that makes break-bulk cargo bookings on liner service conditions and at liner service rates in all ports or port groups which are to be called according to the schedule and transports these commodities.

2. **Tramp vessel service** refers to traffic which is not covered by liner service.

2.22 A **deviation dolphin** is a pile rammed into the harbour bottom to determine and compensate for the magnetic deviation/declination of ships' compasses.

2.23 **Ship data and ship movement data** are: data on the ship's name, length, gross tonnage, etc. ("ship data") and on the ship's position, arrival time, etc. ("ship movement data") from the ship data processing system of the Hamburg Port Authority. The data can be obtained via the internet against payment of a fee.

3 Port Fees and Charges

3.1 Obligation to pay port fees and exemptions

Notwithstanding the obligation to pay fees imposed under public law for the purposes of sub-section 1.2, the user of the port has to pay a fee for the use of the port in the form of port fees, berth occupancy charges and / or other fees and charges pursuant to the schedule of port fees and charges (individually or collectively also called "**port fees**"). Watercrafts using the port that do not serve profit-making purposes are exempted from paying these fees unless otherwise stated in the schedule of port fees and charges. In particular, the use of the port is free of charge for marine crafts, crafts of non-profit institutions and research ships.

3.2 Debtor of the port fees

Debtor of the port fees is each and every port user. If several parties are liable to pay, they will always be liable as joint and several debtors. Any user not working/operating at the port of Hamburg is obligated to name a person authorised to accept service (shipping company, agent, broker or similar natural or legal entities) working/operating at the port of Hamburg and to authorise this person to process the payments due for the use of the port and pay the Hamburg Port Authority. The Hamburg Port Authority is entitled to invoice the port fees to be paid by the port user to the person named and authorised by the port user to accept service.

3.3 Other claims of the Hamburg Port Authority

Claims of the Hamburg Port Authority against a port user resulting from or in connection with the use of the port for other legal reasons remain unaffected by the obligation to pay port fees.

3.4 Amount of the port fees / schedule of port fees and charges

The amount of the port fees due is defined in the schedule of fees and charges, valid as amended, which forms the basis of each contractual relationship between the Hamburg Port Authority and the port user. Changes to the schedule of fees and charges are governed by sub-section 1.3.

3.5 Obligation to pay value-added tax

Port fees are charges as defined in article 10, paragraph 1 of the Value Added Tax Act as published on 21 February 2005 (BGBl. S. 386; Federal Law Gazette page 386), last amended by article 8 of the law of 22 August 2006 (BGBl. S. 1970; Federal Law Gazette page 1970), each as amended. The debtor of the port fees is therefore obligated to pay turnover tax in addition in as far as the services rendered are subject to value-added tax.

3.6 Calculation basis of the port fees

If the amount of the port fees to be paid is based on the load-carrying capacity of watercrafts and if these crafts are measured based on their cubic capacity, or if the amount of the port fees to be paid is based on

the cubic capacity and the craft is measured based on its load-carrying capacity, then one cubic metre of net cubic capacity or one and a half cubic metres of gross cubic capacity are equivalent to one tonne of load-carrying capacity and one net tonnage or one and a half gross tonnages are equivalent to three tonnes of load-carrying capacity.

3.7 Obligation to calculate

Port users have to calculate their own port fees likely due for cargo vessels as well as passenger ships and cruise ships in accordance with the schedule of port fees and charges. The calculation ("port fee declaration") has to be submitted in full and well legible to the Hamburg Port Authority, port fees office, on a form to be collected from the Hamburg Port Authority immediately after, latest however within a week upon entering the port area.

If port users have not anticipated material facts when calculating the port fees or if crucial calculation characteristics have changed, they have to re-calculate the port fees upon departure of the ship and re-submit the amended calculation to the Hamburg Port Authority on a new form. Important are such facts or calculation characteristics that are relevant to the determination of the port fees to be paid in accordance with the schedule of port fees and charges.

In the event of doubt port users have to prove, at their own expense, that the schedule of port fees and charges item their calculation is based on corresponds to the classification regulations. This is usually done by submitting a copy of the tonnage certificate. The Hamburg Port Authority is entitled to request for additional supporting documents, such as ship drawings or other appropriate documentation.

3.8 Non-submission of the port fee declaration

If port users have not submitted the port fee declaration at all or not in full upon one week of entering the port area of the Hamburg Port Authority, they will be sent an initial reminder in writing to submit the port fee declaration in full within the deadline mentioned therein.

If port users do not submit the port fee declaration within the deadline set in the initial reminder, a second reminder in writing will be sent to them. In addition, due to not having met their obligation to cooperate, port users have to pay the Hamburg Port Authority - in as far as they are responsible for the failure to submit the port fee declaration - a penalty in accordance with the schedule of fees. The penalty will be charged separately each and every time port users fail to meet their obligation to cooperate.

If port users do not submit the port fee declaration within the deadline set in the second reminder, the Hamburg Port Authority will calculate the port fees based on the ship information available to the Hamburg Port Authority.

4 Port Fee Reductions

4.1 Prerequisite for being granted additional-traffic reductions for cargo vessels

The port fees for cargo vessels are reduced retrospectively – except for traffic of the tariff category "RoRo container ships" - for the respective calendar year for any additional traffic movements which the port user has towards the Hamburg port area within one calendar year compared with the average traffic movements of the two previous calendar years (reference period) due to the use of additional or bigger ships ("additional traffic movements"), if

- a) in the overseas traffic an additional 200,000 G.T. have been achieved due to the use of bigger ships or if at least ten additional calls have been made;
- b) in the North Sea/Baltic Sea traffic an additional 40,000 G.T. have been achieved due to the use of bigger ships or if at least 25 additional calls have been made.

If several port users merge as set forth in the Law on the Transformation of Companies, the traffic movements of the port users that form part of the merger are determined and added up for the reference period prior to the merger in order to determine if the additional-traffic requirements have been met. The additional traffic includes any traffic movements which the port users had towards the port of Hamburg. With regard to the previous years to be taken into account, traffic movements of potential legal predecessors also have to be included.

4.2 Calculation of additional-traffic reductions for cargo vessels

If the requirements regarding a reduction in port fees are met, the port fees for the additional-traffic movements of the previous calendar year are reduced to the extent the traffic movements of this calendar year, determined on the basis of the gross tonnage, exceed the average traffic movements of the two previous calendar years, maximally however by 50% of the port fees due without the reduction for additional traffic movements. The calculation only takes into account the additional traffic that is below the cap listed in the special tariff 41 of the schedule of port fees and charges.

4.3 Prerequisite for being granted and calculation of frequency reductions in the tariff category “cruise ships”

Cruise shipping companies will be granted, in retrospect, a 10% reduction in the port fees to be paid in accordance with the respective schedule of port fees and charges item on all calls made within the relevant calendar year from the ninth call onwards ships of their cruise ship fleet make. From the twelfth call onwards the reduction applicable to all calls within the relevant calendar year is 15%.

4.4 Prerequisite for being granted and calculation of frequency reductions in the tariff category “RoRo container ships”

Shipping companies will be granted, in retrospect, a reduction in the port fees to be paid from the one-hundredth call onwards vessels of their RoRo container ship fleet make within one calendar year. Only the calls made after the hundredth call will be calculated as if they were classified in the tariff category “car carriers”.

4.5 Assertion of a reduction in port fees

In order to be granted a reduction in port fees, the port user has to notify the Hamburg Port Authority in writing. The notification should refer to movements of the previous calendar year and must reach the Hamburg Port Authority between 1 January and 31 May. It should state all the facts proving that the requirements for a reduction in port fees have been met. If several port users merge, the application must, in particular, contain detailed information about the traffic movements of the port users involved covering the two previous calendar years (reference period).

4.6 Reimbursements of reductions and potential offsettings

In as far as the port fees actually paid by a port user for a previous calendar year exceed the amount that the port user owes, after a reduction in accordance with this sub-section has been granted, the Hamburg Port Authority will reimburse the port user the amount overpaid. The right of the Hamburg Port Authority to offset this amount against other fees due by the relevant port user remains unaffected.

5 Classification Criteria

For cargo vessels as well as passenger and cruise ships using the port and its facilities port fees are charged based on the price categories set forth in the schedule of port fees and charges. Vessels are classified into the relevant price category based on the following criteria.

1. Oil tankers

The classification into this category is independent of the type of transport and is determined according to shipping areas and G.T. Furthermore following sub-classifications apply:

- **Oil tankers with segregated ballast tanks (SBT):**

These must be identified as such by the government of the flag state or other authorised institutions. Usually proof is to be submitted in the form of an International Tonnage Certificate (1969) in accordance with the Act to the International Convention on Tonnage Measurement of Ships of 22 January 1975 (BGBl. II S. 65; Federal Law Gazette II, page 65). Transitional certificates issued by the tonnage measurement authority in charge will also be recognised. The segregated water ballast tanks must comply with the requirements laid down in regulation 18 of the amended Annex I to the protocol of 1978 to the International

Convention, 1973, for the Prevention of Pollution from Ships (BGBl. 2007 II S. 397; Federal Law Gazette 2007 II, page 397) ("MARPOL Convention").

- **Double hull oil tankers:**

These must be identified as such by the government of the flag state or other authorised institutions. Usually proof is to be submitted in the form of a recognised certificate (International Oil Pollution Prevention Certificate - IOPP) issued by the ship safety authority certifying that the ship is fitted with a double hull. The double hull must comply with the requirements laid down in regulation 19 of the amended Annex I to the protocol of 1978 to the International Convention, 1973, for the Prevention of Pollution from Ships (BGBl. 2007 II S. 397; Federal Law Gazette 2007 II, page 397) ("MARPOL Convention"). For oil tankers not meeting the requirements to be issued an IOPP, an equivalent certificate certifying that the ship is fitted with a double hull is to be submitted.

- **Other oil tankers:**

Oil tankers not fitted with a double hull or segregated ballast tanks.

2. **Other bulk carriers (liquid or solid goods)**

The classification into this category is independent of the type of transport. Classification is based on shipping areas and G.T.

This category comprises, e.g. cargo vessels for the transport of:

- Chemicals, products and other liquid goods not holding the respective MARPOL status as mentioned in sub-section 1 (oil tankers)
- Suction goods / agri-bulk (e.g. oil seeds, fertiliser, grain)
- Grab goods (e.g. coal, ore, scrap metal)
- Different types of bulk goods, e.g. oil/bulk/ore – ships (OBO)

3. **Break-bulk (general) cargo vessels, passenger / cruise ships and other carriers**

3.1 **Full container vessels, liner service**

Classification is based on shipping areas and G.T. For open-top container ships, the port fees due are calculated based on the reduced G.T. measurement if the ITC submitted shows the reduced gross tonnage accordingly (special tariff 45 pursuant to the Annex 'Schedule of Port Fees and Charges').

In order to be classified into this category, this type of ship must be fully fitted with (permanent) container cells.

3.2 **Car carriers**

Classification is based on shipping areas and G.T.

In order to be classified into this category, the ship must be hulled almost completely. Furthermore it is crucial that the cargo of these ships is discharged or loaded exclusively by rolling it through bow ports, side doors or stern flaps. These vessels are fitted with closed decks that normally are not sub-divided and generally run the entire length of the ship.

The typ-relevant prerequisites are met, for example, by car carriers (PCC (Pure Car Carrier) and PCTC (Pure Car and Truck Carrier)).

3.3 **RoRo container ships (Con Ro)**

Classification is based on shipping areas and G.T.

In order to be classified into this category, these ships must be less fully hulled than car carriers and they must be equipped with at least 3 RoRo loading decks, one on top of the other. Furthermore it is crucial that the cargo of these ships is handled partly through bow ports, side doors or stern flaps and it is also important that containers or other break-bulk cargo are discharged or loaded vertically (LoLo procedure) with deck or wharf cranes.

The typ-relevant prerequisites are met, for example, by RoRo container ships (ConRo carrier) fitted with container cells below deck and/or on deck.

3.4 Other RoRo ships / multi-purpose cargo vessels

Classification is based on shipping areas and G.T.

In order to be classified into this category, these ships must be less fully hulled than car carriers and ConRo ships and/or they should be fitted with utmost 2 RoRo loading decks, one on top of the other. Furthermore it is crucial that the cargo of these ships is handled partly through bow ports, side gates or stern flaps and it is also important that other break-bulk cargo is discharged or loaded vertically (LoLo procedure).

The typ-relevant prerequisites are met, for example, by:

- Heavy-cargo carriers with RoRo facilities
- ConRo vessels with just one or two RoRo loading decks, one on top of the other

3.5 Combined passenger and RoRo ferries (RoPAX) and their use in the liner service

Classification is based on G.T.

In order to be classified into this category, the ship must be hulled almost completely. In a shuttle service the ship regularly calls just one other port and regularly transports cargo that can be transferred fast, such as persons and rolling goods, inclusive of rail-bound rail waggons to cross waterways.

3.6 Passenger ships / cruise ships

The classification into this category is independent of the type of transport and shipping areas. Classification is based on G.T.

In order to be classified into this category it is crucial that the profit-making purpose of these ships is the transport of persons, independent of the fact whether persons are actually carried or there is a change of passengers. These ships transport cargo regularly only to provide for their passengers.

3.7 Other cargo vessels and types of transport

This tariff contains all those types of ships and transport that cannot be classified into the categories 1 – 3.6.

Classification is based on types of transport and shipping areas. Measurement is based on G.T.

This category comprises, for instance:

- Reefer ships: carriers equipped with fastened permanent cooling aggregates
- Heavy-cargo carriers without RoRo facilities
- Pallet carriers or barge carriers
- Oil rig supply ships, unless RoRo ships
- Barges

6 Due Date and Payment of the Port Fees, Delay in Payment

6.1 Due date, terms of payment and delay in payment

The port fees are due upon receipt of the invoice by the port user or a third party as stipulated in sub-section 3.2 of these General Terms and Conditions. Payment is due within 30 days upon receipt of the invoice.

6.2 Damage caused by default

In the event of delay of payment, the Hamburg Port Authority is entitled to charge interests in accordance with the statutory provisions. The Hamburg Port Authority reserves the right to claim higher default damages for other legal reasons.

6.3 Meeting the obligation to pay

The payment obligation of the port user is considered met only when the Hamburg Port Authority can definitely and finally dispose of the amount.

6.4 Entitlement to offset / retaining of payments

The port user is only entitled to offset and retain payments against the entitlement of the Hamburg Port Authority to port fees if the counterclaims of the port user are undisputed or have been recognised by declaratory judgement.

6.5 Reminder fees

For each reminder sent following the delay in payment port users will be charged reminder fees to the amount of € 5.00, in as far as users do not prove that costs have not been incurred at all or that the amount of costs incurred was less.

6.6 Lien

In order to secure the entitlement of the Hamburg Port Authority to receive payment of port fees, the Hamburg Port Authority has a legal lien on the relevant ship in accordance with the legal provisions on maritime liens.

6.7 Defence against the invoice for port charges

If port users disagree with the invoice amount, they have to raise an objection with the Hamburg Port Authority in writing within one month upon receipt of the invoice. If no objection is made within this period – subject to the subsequent reservation – the invoice is considered accepted. On the invoice for port charges the Hamburg Port Authority will specifically point out the objection period and the legal consequences if an objection is not raised within the time limit set.

If port users were unable to comply with the time limit set without any fault on their part, they will have to make their objection within two weeks after the problem has been rectified at the latest. Any other statutory claims of the port user with regard to reasonable objections raised after the time limit set has expired remain unaffected.

7 Limitation of Liability

7.1 The port is used at one's own risk. Subject to sub-sections 7.2 and 7.3, the Hamburg Port Authority as well as its employees, personnel, representatives and vicarious agents are solely liable for damages caused by port facilities, the violation of traffic safety obligations or damages which can be attributed to the Hamburg Port Authority in any other way - regardless of the legal nature of the claim asserted and independent of the kind of breach of obligation - if the damages are due to wilfulness and gross negligence.

7.2 In the event of a breach of material contract or key obligations, the Hamburg Port Authority will be liable for any negligence, limited however to the amount of the foreseeable damage. Material contract obligations are obligations that must be met to enable the contract to be executed properly and which the contractual partner may trust to be met regularly. Claims of the port user out of damage claims of third parties, claims for lost profits as well as compensation claims for other pecuniary damages or indirect and consequential damages are excluded.

7.3 The above-mentioned liability limitations and exclusions do not apply to damages caused by injuries to the life, body or health of persons. Furthermore they do not apply to claims for material damages in as far as these are covered by a third-party liability insurance taken up by the Hamburg Port Authority.

7.4 The Hamburg Port Authority is not liable for damages caused by an act of God or the elements.

8 Data Protection

Upon conclusion of the contract the port user agrees that the Hamburg Port Authority may store and keep any port user data obtained in connection with the contractual relationship, in particular data to calculate the port fees collected through the forms, and use them for statistical and planning purposes.

The Hamburg Port Authority will pass on data not made anonymous to third parties only with the consent of the port user concerned.

9 Final Provisions

9.1 Publication

These General Terms and Conditions as well as any subsequent amendments to these General Terms and Conditions are published as set forth in sub-section 1.3.

9.2 Invalidity or unenforceability

The invalidity or unenforceability of one or several provisions of these General Terms and Conditions does not affect the validity of the remaining provisions.

9.3 Place of performance

The place of performance for all services to be rendered in accordance with these General Terms and Conditions is Hamburg. The contractual relationships between the Hamburg Port Authority and the port user are governed by German law. The exclusive place of jurisdiction for any disputes arising from the contractual relationship between the Hamburg Port Authority and the port user or in connection with it is Hamburg.

10 Effective Date

These General Terms and Conditions come into effect on 1 January 2010. They apply to all contracts on the use of the port concluded on or after that day.

Schedule of Port Fees and Charges

Annex to the General Terms and Conditions of the Hamburg Port Authority, a public-law institution, applicable to civil-law agreements on the general use of the port of Hamburg of 1 January 2010.

Part A: Port Fees and Charges

For cargo vessels as well as passenger and cruise ships using the port of Hamburg, the river Bille and its canals downstream the river Bille pumping station that

- a) discharge cargo or carry passengers and which have passed the seaborder during the transport
- b) take on cargo or passengers and which will pass the seaborder during the transport,

port fees are to be paid for a period of time of up to five calendar days per each call and per each 100 gross tonnage (G.T.) in accordance with the price categories listed below. From 50 G.T. onwards, figures are to be rounded up to the nearest 100 G.T. value and below 50 G.T. figures have to be rounded down.

For cargo vessels as well as passenger and cruise ships of up to 500 G.T. one tenth of the prices indicated is to be paid per each 10 G.T. From 5 G.T. onward, figures are to be rounded up to a full 10 G.T. value and below 5 G.T. figures have to be rounded down.

1.	Price Category 1	Oil Tankers	Fee € / 100 G.T.
		<u>Overseas traffic</u>	
	11ÜD	~ with double hull	35,50
	11ÜB	~ with segregated water ballast tanks	39,30
	11ÜO	other overseas oil tankers	54,90
		<u>North Sea/Baltic Sea traffic</u>	
	11ND	~ with double hull	16,80
	11NB	~ with segregated water ballast tanks	18,60
	11NO	other North Sea / Baltic Sea oil tankers	26,10
2.	Price Category 2	Other Bulk Carriers (Liquid and Dry)	Fee € / 100 G.T.
		<u>Overseas traffic</u>	
	21ÜK	~ up to 4,000 G.T.	29,70
	21ÜG	~ > 4,000 G.T.	41,20
		<u>North Sea/Baltic Sea traffic</u>	
	21NK	~ up to 4,000 G.T.	9,30
	21NG	~ > 4,000 G.T.	19,50

3.	Price Category 3	Break-Bulk (General) Cargo Vessels, Passenger, Cruise Ships and Other Carriers	Fee € / 100 G.T.
3.1		<u>Full Container Ships, Liner Service</u>	
		<u>Overseas traffic</u>	
	31ÜK	~ up to 4,000 G.T.	11,60
	31ÜG	~ > 4,000 G.T.	21,70
		<u>North Sea/Baltic Sea traffic</u>	
	31NK	~ up to 4,000 G.T.	3,30
	31NG	~ > 4,000 G.T.	6,50
3.2		<u>Car Carriers</u>	
	32Ü	<u>Overseas traffic</u>	9,70
	32N	<u>North Sea/Baltic Sea traffic</u>	3,40
3.3		<u>ConRo Ships</u>	
	33Ü	<u>Overseas traffic</u>	11,10
	33N	<u>North Sea/Baltic Sea traffic</u>	3,90
3.4		<u>RoRo / Multiple-Purpose Carriers</u>	
	34Ü	<u>Overseas traffic</u>	12,30
	34N	<u>North Sea/Baltic Sea traffic</u>	4,40
3.5	35	<u>Combined Passenger / RoRo Ferries (Ro/PAX), Liner Service</u>	5,50
3.6	36	<u>Passenger / Cruise Ships</u>	21,60
3.7		<u>Other Cargo Vessels and Types of Transport</u>	
		<u>Overseas traffic and tramp vessel service</u>	
	37ÜTK	~ up to 4,000 G.T.	29,50
	37ÜTG	~ > 4,000 G.T.	41,00
		<u>Overseas traffic and liner service</u>	
	37ÜLK	~ up to 4,000 G.T.	11,60
	37ÜLG	~ > 4,000 G.T.	21,70
		<u>North Sea/Baltic Sea traffic and tramp vessel service</u>	
	37NTK	~ up to 4,000 G.T.	9,30
	37NTG	~ > 4,000 G.T.	19,40
		<u>North Sea/Baltic Sea traffic and liner service</u>	
	37NLK	~ up to 4,000 G.T.	3,30
	37NLG	~ > 4,000 G.T.	6,50

4.	Special Tariffs	Tariff Reductions	Reduction
41		<u>Cap</u>	
41.1		For container ships with a gross tonnage of more than 110,000 G.T. no port fees are due for the gross tonnage in excess of 110,000 G.T.	variable
41.2		For all other ships with a gross tonnage of more than 100,000 G.T. no port fees are due for the gross tonnage in excess of 100,000 G.T.	variable
42		No entry	
		<u>Second Calls</u>	
43		Ships listed under the price categories 3.1, 3.2, 3.3, and 3.4 as "overseas traffic", as well as ships listed under the price category 3.7 as "overseas traffic and liner service" if they call again at Hamburg within 2 calendar weeks coming from the North Sea / Baltic Sea area and had to pay port fees for their previous call.	50%
44		Ships listed under the price categories 1 and 2 will be granted a reduction in port fees if they call Hamburg again within 5 calendar days upon their leaving the port of Hamburg. The calculation of the time limits is based on Sections 187 ff of the German Civil Code (BGB). A reduction will only be granted if the ship has not called any other port for commercial purposes in between and if the debtor who has to pay the port fees is the same.	50%
		<u>Open-Top Container Ships</u>	
45		As to open-top container ships, the port fees due are calculated based on the reduced G.T. measurement if the ITC submitted shows the reduced gross tonnage accordingly.	variable
5.	Special Tariffs	Tariff Exemptions	Reduction
51		No entry	
52		<u>North Sea Resorts Traffic</u> Passenger ships running between Hamburg and the German North Sea resorts if their load amounts to less than 10 tonnes – excluding hand luggage and mail	100%
53		<u>Special Fishing Boats</u> Fishing boats carrying their own catch only	100%

54	<u>Special Port Areas</u> Ships going only to the Neuhöfer Kanal excluding the water area in front of the Neuhöfer Pier	100%
6.	Penalty in accordance with Sub-Section 3.8 (Failure to submit the Port Fee Declaration)	Fee
61	The penalty amounts to 5% of the net invoice amount Minimum fee due Maximum fee due	€150 € 20 € 600

Part B: Berth Occupancy Charges

For cargo vessels as well as passenger and cruise ships using the port of Hamburg, the river Bille and its canals downstream the river Bille pumping station as well as the ports of Oortkaten and Zollenspieker for longer than five calendar days after entering the port area, berth occupancy charges are due for any use in excess of this period of time.

An interruption in the use that lasts less than 24 hours can be taken into account only if the period of use was interrupted for commercial activities and if, upon the request of the Hamburg Port Authority, appropriate proof has been submitted.

The following berth occupancy charges per each 100 G.T. value are due:

1.	Price Category	Berth Occupancy Charges	Fee € / 100 G.T.
1.1		Ocean-Going Vessels for a period of use subject to berth occupancy charges of	
	Li111	up to one week, for each 24 hours or part thereof ...	1,80
	Li112	more than one week, for each 24 hours or part thereof ...	3,00
1.2		Inland Barges for a period of use subject to berth occupancy charges of	
	Li121	up to two weeks, for each week or part thereof ...	9,40
	Li122	more than two weeks, for the first two weeks charges as per item b 1; for any further period of use, for each four weeks or part thereof ...	58,30
1.3	Li131	Ships registered in Hamburg for each four weeks or part thereof ...	9,20
2.	Special Tariffs	Exceptional Cases	
		There is <u>no</u> obligation to pay berth occupancy charges	
	Li21	Inland Barges / Ice for inland barges if they cannot leave because of floating ice.	
	Li22	Time in the Shipyard for ships for as long as they are in the shipyard for repair work.	
	Li23	Repair Work for ships for as long as they remain in the port of Hamburg due to repair work carried out in shipyards or repair shops; the port user has to submit appropriate proof to the Hamburg Port Authority in the form of a certificate issued by the shipyard or the repair shop.	

Cap

- Li24 For container ships with a gross tonnage of more than 115,000 G.T. no berth occupancy charges are due for the gross tonnage in excess of 115,000 G.T.
- Li25 For all other ships with a gross tonnage of more than 100,000 G.T. no berth occupancy charges are due for the gross tonnage in excess of 100,000 G.T.

Part C: Other Fees and Charges

- | | | |
|----|--|------------|
| 1. | Use of public deviation dolphins by ships
for a one-time compensation,
for each 100 G.T. or part thereof | € 21,20 |
| 2. | Electronic communication of ship data and
ship movement data,
annual fee | € 1.145.00 |

Part D: Temporary Measures

Preamble

The HPA is tackling the challenges of the financial and economic crisis. The subsequent programme is meant to increase the attractiveness of the port of Hamburg as a business location.

Period of validity

This Annex, Part D, is valid from January 1st, 2010 to December 31st, 2010.

D.1 Temporary Offer: "Transshipment Container Rebate"

In order to strengthen the port of Hamburg's transshipment role in the North Sea and Baltic Sea area in particular, container traffic incentives for overseas shipping companies will be implemented.

Area of validity

Exclusively applicable to the tariff categories:

- 31 ÜG (full container ships - overseas traffic, liner service),
- 33 Ü (ConRo ships, overseas traffic) with regard to their share in container trade, and
- 37 ÜLG (other cargo vessels and types of transport - overseas traffic and liner service) with regard to their share in potential container trade

Contents

The rebate will be granted for transshipment containers. Transshipment containers are containers that the ship serving the area of validity received by sea from an ocean-going vessel serving the North Sea and Baltic Sea area or transferred or will transfer to such an ocean-going vessel. The reduction will only be granted to ships that carry transshipment containers the number of which, per each call at the port of Hamburg, is above the minimum threshold not eligible for a reduction, whereby the minimum threshold is a transshipment share of 5% in the total container volumes handled in the port of Hamburg.

The fee due for vessels transporting more transshipment containers than the applicable minimum threshold will be reduced by € 2.00 per TEU; however only up to a maximum of 10% of the fees payable in accordance with the applicable basic tariff that would be due as per this Part D without taking into account any rebate.

Transshipment containers from 10' to 30' are considered TEU (20'). Transshipment containers larger than 30' are considered FEU (40'); the fee payable will be reduced by € 4.00 for each of such containers.

Procedure

The port user who wishes to take part in this incentive scheme and who meets the requirements as mentioned above has to submit the following information to the HPA / port fees office, as an EXCEL file or in writing, on a quarterly basis:

- the name, call sign, G.T. and arrival date of the vessels that carried transshipment containers, and
- the number of transshipment containers and the total volumes handled by size (20' / 40') and travelling direction (unloading / loading) as per the sample table shown below:

ship's name	call sign	G.T.	arrival	total no. of TEU		transshipment, unloaded			transshipment, loaded		
				unloaded	loaded	total	20'	40'	total	20'	40'

In order to be eligible for the rebate, these data must be provided in full within three calendar months following the end of the quarter relevant for the reduction to be granted at the latest, i.e. the data have to be provided for the first time in the period from April 1st to June 30th for vessel arrivals in the first quarter of 2010 and for the last time in the period from January 1st, 2011 to March 31st, 2011 for vessel arrivals in the fourth quarter of 2010.

Other prerequisites

A reduction will not be granted if the data provided by the port user do not match the data submitted by the handling terminals involved and/or the data stored in DAKOSY AG's systems.

The port user therefore authorises the HPA to obtain details from the handling terminal(s) involved as well as DAKOSY AG to verify the data supplied by the port user. The subsequent declaration of authorisation which has to bear the port user's legally binding signature must be submitted to the HPA in writing before any rebate will be granted.

Furthermore, the port user grants the HPA access to all documents held by the port user that may be based on to verify the information provided by the port user to be granted the reduction, in particular loading and unloading lists.

The HPA guarantees that any information provided will be treated confidentially.

Authorisation

...(Name of the shipping company)... herewith authorises the Hamburg Port Authority AöR (HPA) to verify at the handling terminal the data, individually or as a whole, submitted/provided by us/the shipping company for the purpose of participating in the transshipment container incentive and rebate programme laid down in Part D of the General Terms and Conditions Applicable to Civil Law Agreements on the General Use of the Port of Hamburg.

The terminal operator is herewith authorised to disclose to the HPA the data requested by the HPA in relation to the granting of a rebate.

Furthermore, ...(name of the shipping company)... authorises the Hamburg Port Authority AöR (HPA) to verify at DAKOSY AG the data, individually or as a whole, submitted/provided by us/the shipping company for the purpose of participating in the transshipment container incentive and rebate programme laid down in Part D of the General Terms and Conditions Applicable to Civil Law Agreements on the General Use of the Port of Hamburg.

DAKOSY AG is herewith authorised to disclose to the HPA the data requested by the HPA in relation to the granting of a rebate.

D.2 Temporary Offer: "Reductions applicable to Ships carrying Wheeled Cargo, serving Europe"

The HPA temporarily promotes a targeted incentive scheme in the transport categories of car carriers, ConRo ships and RoRo ships, which foresees the reduction of the respective basic "overseas" tariff applicable to shipping routes within Europe and beyond the defined "North Sea/Baltic Sea" shipping area for new services by 20%.

New services are services which are introduced during the validity period of this Part D and which are communicated in writing to the port fees office, including the name of the ships deployed. They will be considered for the rebate if the ships call at the port of Hamburg within the period from the date their names are registered until the end of the validity period of this Part D.

The new service and the name of the ships deployed must be communicated in writing to the HPA / port fees office in advance.

D.3 Temporary Offer: "Extension of Payment Terms / Deferral of Payment"

The port users can opt to have payment of the port fees due for ships calling at Hamburg within the validity period of this Part D extended by up to 12 months (deferral of payment). The extension must be applied for in writing.

Area of validity

All types of transport and price categories

Prerequisite

The deferral of payment is granted under the condition that the port user provides the HPA as security a suretyship for the amount of the port fees paid by the port user in 2009, plus 30%.

The declaration of suretyship must be submitted in writing, waiving the benefit of discussion (§ 771 BGB; *German Civil Code*); it must be unlimited in time and issued as per the HPA regulations. The HPA must recognise the surety as suitable; this is the case if the credit institute or credit insurer has been licensed to do business in the territory of the European Community.

The application for a deferral of payment must be submitted in writing to the:

HPA
F14-1 Debitorenbuchhaltung [*Debtors' Accounts*]
Neuer Wandrahm 4
20457 Hamburg

The application can only be made for port fee payments due after the application has been received by the HPA. A retrospective extension of payment terms is excluded.

The procedure regarding the submission of port fee declarations remains unaffected by this provision. The port fee declarations have to be submitted to the port fees office as per the procedure already in place.