



General Terms and Conditions  
applicable to the Use of the Port of Hamburg  
by Watercrafts

## **(Hafen AGB - Port GTC)**

Effective as of 01 January 2019

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

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## List of Annexes

Special Terms and Conditions applicable to the Use of the Port of Hamburg by Seagoing Vessels in all Shipping Areas and Types of Traffic and other Watercrafts if they are deployed in Maritime Shipping ( <b>Special Terms and Conditions applicable to Maritime Shipping</b> )
Special Terms and Conditions applicable to the Use of the Port of Hamburg by Inland Vessels not deployed in Maritime Shipping ( <b>Special Terms and Conditions applicable to Inland Shipping</b> )
Schedule of Fees and Charges annexed to the Special Terms and Conditions applicable to Seagoing Vessels ( <b>Schedule of Fees and Charges - Maritime Shipping</b> )
Schedule of Fees and Charges annexed to the Special Terms and Conditions applicable to Inland Shipping ( <b>Schedule of Fees and Charges - Inland Shipping</b> )

## Definition and Interpretation of the Terms used in these GTC

The terms used in these Port GTC have the definitions and meanings as shown in the table below:

<b>Term</b>	<b>Definition &amp; Meaning</b>
Departure	as defined in 1.3
Facilities	definable parts of the port infrastructure, in particular shipping terminals and quay berths, quay, landing and operating facilities as well as dolphins
Call	as defined in 1.3
Special Terms and Conditions applicable to Inland Shipping	as defined in the List of Annexes
Special Terms and Conditions applicable to Maritime Shipping	as defined in the List of Annexes
Special Terms of Use	Special Terms and Conditions applicable to Maritime Shipping and Special Terms and Conditions applicable to Inland Shipping
Inland vessel	any watercraft not classified as seagoing vessel
GT	Gross tonnage
Reference tonne	load-carrying capacity of a watercraft as specified in the official tonnage certificate
Ships carrying persons	see passenger vessel
Cargo vessel	ships and other floating crafts the profit-making purpose of which is the transport of all kinds of cargo, irrespective of whether cargo is actually carried or handled
Port GTC [Hafen-AGB]	as defined in 1.1
Port fees and charges	as defined in 2.1
Port area	all water areas of the Port of Hamburg within the meaning of section 1(1) 1st sentence, (2) and (3) of the Hamburg Port Traffic and Navigation Act, the River Bille and its canals downstream of the River Bille pumping station as well as the harbour basins of Oortkarten and Zollenspieker. The port area is defined by the port boundary as set forth in the Schedule to the Hamburg Port Traffic and Navigation Act.
Port User	every charterer, shipping company, owner, ship chandler of a watercraft used in the port as well as any third party that operates or has a watercraft deployed in the port or otherwise uses the port, in each case individually or collectively
Use of the port	as defined in 1.3
Port fees and charges	as defined in 2.1.1
HmbGVBl	Hamburg Law Gazette
HPA	Hamburg Port Authority AöR
Disembarking/embarking of passengers	embarking and disembarking of passengers including all services associated with it
Passenger vessel	ships and other floating crafts the commercial purpose of which is the transport of passengers or persons, irrespective of the fact whether passengers are actually carried or passenger disembark/embark
Schedule of Fees and Charges - Inland Shipping	as defined in the List of Annexes

Schedule of Fees and Charges - Maritime Shipping	as defined in the List of Annexes
Schedule/s of Fees and Charges	as defined in 2.1.1
Ship data and ship movement data	ship data such as name, length, gross tonnage, etc.; ship data such as position, ETA, etc. from a ship data processing system of the HPA
Sea border	the seafaring border as defined in section 1 Flaggenrechtsverordnung [German Law of the Flag]
Seagoing vessel	ships and other floating crafts that are registered in a ship register and classified accordingly and/or for which a permit to operate has been issued or whose suitability to be deployed in maritime shipping can otherwise be determined
Day-trip traffic	passenger ships that carry persons to go on event trips, day trips and harbour tours without overnight stay
Watercrafts deployed in inland shipping	ships and other floating crafts not deployed in maritime shipping
Watercrafts deployed in maritime shipping	ships and other floating crafts that have directly or indirectly crossed or will cross the sea border after using the port
TEU	twenty foot equivalent unit
Handling	the loading and unloading of watercrafts including the disembarking/embarking of passengers as well as the transport of goods to be loaded and unloaded at the quayside handling terminals, in the sheds, on open spaces and other storage places and any services associated with it, provided as part of the use of the port
German Traffic Statistics Act [VerKStatG]	Federal Statistics Act applicable to maritime and inland shipping, goods transports, air and rail traffic, and commercial passenger transport by road, valid as amended
Watercrafts	seagoing vessels and inland vessels, sports boats, floating equipment and other floating crafts which are generally used for movement. Watercrafts also include amphibious vehicles, seaplanes and non-water-displacing watercrafts

# 1 Legal Bases for the Use of the Port of Hamburg

## 1.1 Area of Validity and Subject Matter

These General Terms of Use including Annexes (Special Terms of Use and Schedules of Fees and Charges, collectively referred to as **Port GTC**) govern the use of the infrastructure in the port area.

The Port GTC do not govern

- a. the use of bridges and locks;
- b. the use of berths that goes beyond mooring;
- c. the use of special cruise ship facilities; fees and charges applicable to the use of the special cruise ship infrastructure are payable to CGH Cruise Gate Hamburg GmbH in accordance with the terms and conditions and agreements in force;
- d. the use of berths under individual contracts governing the use of land sites between Port Users and the HPA;
- e. the use of other services not mentioned in the Port GTC such as, for instance, erecting and using mobile fences, security and surveillance services, leasing out of equipment, etc., in particular in connection with the use of a berth as ISPS berth. Enquiries should be addressed to HPA, Property Management, Neuer Wandrahm 4, 20457 Hamburg (immobilienservice@hpa.hamburg.de).

The Port GTC do not replace the rules on the charging of fees for statutory services provided in relation to the use of the port in accordance with the Port of Hamburg Scale of Public Fees [Hafengebührenordnung] applicable in the Port of Hamburg, the Fees Act [Gebührengesetz] of the Free and Hanseatic City of Hamburg or other public-law regulations.

## 1.2 Services provided by the HPA

The Port of Hamburg is a universal port. To enable and promote the commercial use of the port area by watercrafts, the HPA operates and maintains infrastructure in the port area as part of its entrepreneurial activities, continuously expands it and acts as service provider for Port Users.

## 1.3 Contract between the HPA and Port Users

A contract is entered into between the Port User and the HPA, an integral part of which are the Port GTC, when

- a. a watercraft enters the port area (**call**),
- b. a watercraft stays in the port area,
- c. a watercraft uses the facilities of the HPA, or
- d. the use of concrete specific services mentioned in the schedules of fees and charges irrespective of whether a watercraft is involved or not

(individually referred to as **use of the port**). With regard to the respective use of the port all Port Users are liable as joint and several debtors in accordance with the port fees and charges due for the respective scope and type of use of the port set forth in the Port GTC. Call is defined as the use of the port from the point in time a watercraft enters up until the watercraft leaves the port area (**departure**).

## 1.4 Exclusion of deviating terms and conditions of a Port User

The civil-law relationships between the HPA and the Port Users are exclusively governed by the Port GTC without prejudice to the relevant public-law provisions and

the exemptions listed in 1.1(2) letter a. - e. The HPA does not recognise any provisions to the contrary or provisions set out in a Port User's own terms that deviate from these Port GTC, and such provisions do not become part of the respective contractual relationship. This also applies to any subject matter set forth in a Port User's own terms and conditions, which however is not a subject matter of these Port GTC.

## 1.5 Elbe Habitat Foundation [Stiftung Lebensraum Elbe]

To recognise the special responsibility towards the environment, the Free and Hanseatic City of Hamburg has initiated several projects; among others, it founded the Elbe Habitat Foundation (<http://www.stiftung-lebensraum-elbe.de/>). The foundation's aim is to improve the ecological conditions of the tidal Elbe and protect the biodiversity and unique habitats along the river. The HPA contributes five per cent of the port fees and demurrage charges to the funds of the foundation.

## 2 Compensation payable by Port Users for the Use of the Port

### 2.1 Calculation basis, minimum fee

2.1.1 Port Users are liable to pay fees and charges each time they use the port (the fees and charges are individually and collectively referred to as **port fees and charges**). The fees and charges due for the use of the port are determined based on the various fees/charges components listed in the Schedule of Fees and Charges. The components are calculated based on different bases of assessment in accordance with the price category in the Schedule of Fees and Charges. The detailed fees and charges, fees/charges components, price categories and bases of assessment as well as potentially applicable rebates/discounts valid for seagoing vessels and other watercrafts deployed in maritime shipping are set forth in the Special Terms and Conditions applicable to Seagoing Vessels and the Schedule of Fees and Charges - Maritime Shipping. All other watercrafts that use the port are subject to fees and charges in accordance with the Special Terms and Conditions applicable to Inland Shipping (Schedule of Fees and Charges - Inland Shipping). A minimum fee as set forth in the respective Schedule of Fees and Charges must be paid for each use of the port (the two schedules of fees and charges are individually referred to as **Schedule of Fees and Charges** and collectively referred to as **Schedules of Fees and Charges**). The Schedules of Fees and Charges also contain fees and charges for the use of the port not related to ships.

2.1.2 As there are different ways to a measure watercraft, the port fees and charges are calculated based on the assumption that

- a. one cubic metre of net cubic capacity or one and a half cubic metres of gross cubic capacity equals one tonne of load-carrying capacity;
- b. one net tonnage or one and a half gross tonnage equals three tonnes of load-carrying capacity.

To calculate the port fees and charges for containers it is assumed that a container the length of which is shorter than or equivalent to 20 feet equals one TEU and containers longer than 20 feet equal two TEU.



- 2.1.3 The schedules of fees and charges provide for various rebates/discounts on the port fees and charges and their components. If under a type of fees/charges or a fees/charges component several rebates/discounts apply to the use of the port, the rebates/discounts will be granted on the relevant sub-total in accordance with the sequence stated in the Schedule of Fees and Charges.
- 2.1.4 Unless otherwise stated in the Port GTC, Port Users must provide appropriate proof at their own cost in a timely manner if, under the Port GTC, they wish to be allocated to or classified under a certain price category as well as if they wish to be granted reductions in or rebates/discounts on port fees and charges.
- 2.1.5 If the data and/or variables of freely available sources such as, for instance, websites, legal bases and/or ESI certificates, Green Award certificates or Blue Angel certificates, are relied on to calculate the ports fees and charges, the calculation depends on the databases of the respective sources. If the index values, bases of assessment or other data and/or variables of such sources based on to calculate the ports fees and charges are modified, Port Users are not entitled to demand from the HPA to consider such data and/or variables in the calculation of the respective port fees and charges.
- 2.1.6 Authorisation to perform audits  
Port Users hereby authorise the HPA and third parties engaged by the HPA to perform audits to verify the data transmitted - for example data on the environmental friendliness of the respective watercraft - on board the respective watercraft at any time. If the audit reveals that data obtained from freely available sources such as registers or databases deviate from the audit results, the HPA has the right to share such information with the operator of the respective data source.
- 2.1.7 Incorrect data and invalid documents  
If the HPA becomes aware that price-relevant data are incorrect, the respective Port User is not entitled to have such data considered in the calculation of the port fees and charges. The same applies to invalid documents such as certificates or badges that have expired.

## 2.2 Exemptions and reductions

Port Users who

- (1) are recognised as non-profit organisations under the Fiscal Code or use the port in their capacity as public authorities; and
  - (2) do not use the port for profit-making purposes
- are exempted from paying port fees and charges.

- 2.2.1 To be granted an exemption or reduction, Port Users must submit proof to the HPA in writing that the requirements to be granted an exemption have been met in time prior to the actual use. The duty to provide proof is irrelevant if due to the type of use or the type of watercraft it is obvious that the watercraft is eligible for exemption.
- 2.2.2 If the type of use or the type of watercraft is explicitly mentioned in the Schedule of Fees and Charges, no exemption or reduction will be granted.

## 2.3 Additional fees and penalties

Port Users must pay additional fees and penalties if one of the following situations occurs. The HPA reserves the right to claim damages in addition to imposing a

penalty. However, penalties will be deducted from any such claims for damages. Invoices will be sent for penalties imposed.

2.3.1 Processing fees as set out in the Schedule of Fees and Charges will be charged if Port Users are in breach of the duty to co-operate as set forth in clause 4. Submitting data using a transmission option that is not provided for in the relevant Special Terms and Conditions is also deemed a breach of duty.

2.3.2 Each breach of duty committed by Port Users is subject to additional fees and penalties. The level of the penalty is set forth in the Schedule of Fees and Charges - Maritime Shipping as well as in the Schedule of Fees and Charges - Inland Shipping.

2.3.2.1 Penalty in the event of a breach of the duty to co-operate

If Port Users are in breach of the duty to co-operate as provided for in clause 4, they must pay a penalty as set out in the Schedule of Fees and Charges.

If Port Users use the port with a watercraft in the area of validity of the Special Terms and Conditions applicable to Maritime Shipping, they will additionally be sent a request to submit the required declaration, fully completed, including the relevant supporting documents within the time limit specified in the request. As regards the area of validity of the Special Terms and Conditions applicable to Inland Shipping, Port Users will be asked to contact without delay the relevant office in charge concerning the duty to notify.

2.3.2.2 Penalty if facts relevant to calculate the port fees and charges have been misstated  
A penalty in accordance with the relevant Schedule of Fees and Charges will also be imposed on Port Users who misstate facts relevant to calculate the port fees and charges.

## 3 Payment Terms and Late Payment

### 3.1 Due date

Payment must be made in full without discount or deduction within 14 days of the invoice date. If Port Users opted for the direct debit procedure, payment of the invoice is due within 30 days of the date of invoice without discount or deduction.

### 3.2 Obligation to pay value-added tax

Port fees and charges are fees and charges as defined in section 10(1) German Value Added Tax Act [UStG]. The debtor of the port fees and charges is therefore obligated to pay German value-added tax if the services rendered are subject to value-added tax.

### 3.3 Meeting the obligation to pay

The payment obligation of the Port User is deemed to have been met only when the HPA can definitely and finally dispose of the amount. Cheques will not be accepted. Upon request Port Users may take part in the SEPA direct debit procedure in the form of a SEPA direct debit order.

If a direct debit is rejected due to insufficient funds in the Port User's account or due to other negligence on the part of the Port User, the HPA will charge EUR 5.00 to re-process the direct debit.

### **3.4 Entitlement to offset / retain payments**

Port Users are only entitled to offset and/or retain payments against port fees and charges payable to the HPA if the counterclaims of the Port User are undisputed or have been recognised by declaratory judgment.

### **3.5 Refund of Port Fees and Charges**

3.5.1 Insofar as the port fees and charges actually paid by a Port User in a previous calendar year exceed the amount that the Port User owes after the reductions retroactively granted have been applied, the HPA will refund the Port User the amount overpaid. The right of the HPA to offset the refund amount against other amounts owed by the relevant Port User remains unaffected.

3.5.2 No other fees and charges will be refunded unless proof is submitted to the HPA that the respective watercraft was sold during a specific period of use for which the fees and charges have been paid. In that case the fees and charges will be reduced in proportion to the actual period of use.

3.5.3 Applications for a refund that state the reasons for the application must be submitted in writing to the HPA without delay, latest however within one month after the Port User became eligible for a reduction or refund. On request of the HPA, Port Users must submit proof that they are eligible for the reduction or refund as well as proof of the actual period of use at their own cost.

### **3.6 Late payment**

If the Port User delays payment of an invoice, the HPA has the right to charge a lump sum fee of EUR 40 in addition to default interest as set forth in section 288 BGB [German Civil Code]. This does not exclude the right to claim further damages for default. The lump sum mentioned in sentence 1 above will be deducted from damages owed insofar as the damage was incurred in connection with the assertion of the claim.

### **3.7 Lien**

To secure the entitlement of the HPA to be paid port fees and charges, the HPA has a legal lien on the relevant ship as provided in the statutory provisions on maritime liens.

### **3.8 Exclusion of defence against invoices for port fees and charges**

If Port Users disagree with the invoice amount, they must object to the invoice in writing. The notice of objection must be sent to the HPA within one month of receipt of the invoice. If no objection is made within this period – subject to the subsequent reservation – the invoice is considered accepted.

If Port Users were unable to comply with the time limit without any fault on their part, they must submit their objection within two weeks after the problem has been rectified at the latest. Other legal rights Port Users have with regard to substantiated objections raised after the time limit set has expired remain unaffected.

## 4 Other Port User Duties

### 4.1 Duty to provide information / duty to notify

Port Users have the duty to co-operate as provided for in the Special Terms and Conditions applicable to them. In the event of doubt and irrespective of the transmission option chosen, the HPA reserves the right to request Port Users to submit, at their expense, appropriate documents to prove the correctness of the data based on to calculate the port fees and charge such as, for instance, actual loading and unloading volume lists, original manifests/manifest data, ship drawings, documents based on which rebates/discounts or exemption will be granted or other appropriate documentation.

### 4.2 Reimbursement of expenses

The HPA incurs expenses if Port Users do not submit any notice of call and/or notice of departure and/or give a wrong invoice address and/or if correspondence and invoices cannot be delivered. Port Users must reimburse the HPA such expenses. Port Users will be charged the costs the HPA incurred from third parties such as the registrar of ships [in Germany: district courts], registration office, registrar of companies, Federal Waterways and Shipping Administration.

## 5 Data Protection

### 5.1 Agreement

With the conclusion of the contract Port Users agree to the HPA storing, keeping and using for statistical and planning purposes any Port User data the HPA collected in connection with the contractual relationship, in particular data to calculate the port fees and charges provided in forms and via the web portal.

### 5.2 Communication to third parties

The HPA will communicate data not made anonymous to third parties only as required by law, for instance as laid down in the German Traffic Statistics Act. Otherwise such data will only be communicated with the consent of the Port User concerned. The regulation set forth in 2.1.6 remains unaffected.

## 6 Liability of the HPA

### 6.1 Principle of liability

Port Users can only claim damages or the reimbursement of costs, irrespective of the legal grounds, as provided for in this clause. Any other claim for damages is excluded. Claims that do not fall under the area of validity of these Port GTC, for example claims based on tort or public-law regulations, are not affected.

### 6.2 Liability in the event of intent, gross negligence and loss of life or injury to limb or health

The HPA is liable towards Port Users in accordance with the statutory provisions in the event of intent and/or gross negligence, loss of life or injury to limb or health the HPA is responsible for.

### 6.3 Liability in the event of slight negligence

In the event of slight negligence the liability of the HPA is excluded unless the HPA is in breach of a material contractual duty. If the breach of a material contractual duty is due to slight negligence, liability is limited to the damage foreseeable at the time the contract was concluded. Material contract obligations are obligations that are material for the purpose of the contract execution and that the contractual partner relies on and may regularly rely on to be complied with. Claims for loss of profits and claims for compensation of other pecuniary damage or indirect and consequential damage are excluded.

### 6.4 Indemnity clause

To the extent the HPA is held liable by third parties based on or in relation to the legal relationship with a Port User, the Port User indemnifies the HPA against all such claims. This also applies if the respective third-party claim against the Port User has become statute-barred.

### 6.5 Third-party contents

The Port GTC refer to third-party regulations, standards and websites. The HPA is not responsible for the contents and efficiency of such third-party contents. The responsibility solely lies with the respective operator, publisher or author. The HPA does not claim such contents to be its own contents and cannot be held liable for potential damage Port Users may suffer based on or in relation to third-party contents.

## 7 Publication of the Port GTC

The latest version of the Port GTC can be inspected at the premises of the HPA, Neuer Wandrahm 4, 20457 Hamburg or on the HPA's website ([www.hamburg-port-authority.de](http://www.hamburg-port-authority.de)). The Port GTC will be sent to shipping companies, agents and brokers operating in the Port of Hamburg that have business relations with the HPA.

## 8 Severability Clause

If individual provisions of these terms of use are invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, such invalidity or unenforceability does not affect the validity of the remaining provisions. Instead the parties agree to replace the invalid or unenforceable provision with a provision that is as similar to the economic intention of the parties underlying the invalid or unenforceable provision(s) as may be possible. The same applies in the event of a loophole in the contract.

## 9 Place of Performance

The place of performance for all services to be rendered under these Port GTC services is Hamburg.

## 10 Governing Law

The courts in Hamburg shall have exclusive jurisdiction over any disputes arising from or in connection with the Port GTC.

## 11 Choice of Law

The contractual relations between the HPA and the Port User are governed by German law.

## 12 Entry into Force

The Port GTC enter into force on 1 January 2018. They apply to all contracts and agreements on the use of the port entered into on or after that date. With regard to the Annexes the periods of validity as mentioned therein apply.