

## **TERMS & CONDITIONS HUTCHISON PORTS EUROPE INTERMODAL AND HUTCHISON PORTS INLAND TERMINALS**

General Terms and Conditions (hereinafter: "**Conditions**") of Hutchison Ports Europe Intermodal (statutory name: European Gateway Services B.V.) and the following terminals of Hutchison Ports: Hutchison Ports Venlo B.V., Hutchison Ports Duisburg GmbH and Hutchison Ports Belgium N.V. (hereinafter individually and jointly referred to as: "**Contractor**").

### **ARTICLE 1. SERVICES, OBLIGATIONS AND SUB-CONTRACTING**

- 1.1 These Conditions shall apply to all quotations, offers and booking confirmations made by Contractor, to all contracts entered into by Contractor and to all services provided by Contractor for its customer (hereinafter: "**Customer**"). A booking made by Customer with Contractor shall be considered as an unconditional acceptance of the quotation or offer, as well as these Conditions.
- 1.2 Contractor shall provide logistics services, including transport, freight forwarding, terminal and ancillary services, at the instruction of Customer (hereinafter: "**Services**").
- 1.3 If agreed between Contractor and Customer, the Services may also include customs formalities (hereinafter: "**Customs Services**"). Otherwise, Contractor shall have no obligations with respect to import, export or customs formalities and can never be deemed to take care of such formalities on behalf and for account of Customer.
- 1.4 If specified by Contractor in its quotation, offer or booking confirmation, the Services will entail the conclusion of one or more contracts of carriage by Contractor with one or more carriers for the benefit of and at the risk and expense of Customer (hereinafter: "**Freight Forwarding Services**"). During the performance of Freight Forwarding Services, Contractor acts as a freight forwarder within the meaning of Article 8:60 of the Dutch Civil Code (*'expediteur'*).
- 1.5 To instruct Contractor to perform certain Services, Customer shall place bookings with Contractor. The procedure for making such bookings and all applicable operational procedures of Contractor are described in the latest version of the relevant Standard Operating Procedure (hereinafter: "**SOP**")<sup>1</sup> and the Electronic Communication Procedure (hereinafter: "**ECP**")<sup>2</sup>. In addition, Hutchison Ports Venlo B.V., Hutchison Ports Duisburg GmbH and Hutchison Ports Belgium NV each has its own SOP. The SOP of each respective terminal applies to the terminal services, performed by one of these terminals<sup>345</sup>. Customer shall at all times comply with the SOP('s) and the ECP.

<sup>1</sup> The Standard Operating Procedure of Hutchison Ports Europe Intermodal B.V. can be found via [this link](#).

<sup>2</sup> The Electronic Communication Procedure can be found via [this link](#).

<sup>3</sup> The Standard Operating Procedure of Hutchison Ports Venlo B.V. can be found via [this link](#).

<sup>4</sup> The Standard Operating Procedure of Hutchison Ports Duisburg GmbH can be found via [this link](#).

<sup>5</sup> The Standard Operating Procedure of Hutchison Ports Belgium NV can be found via [this link](#).

- 1.6 Customer shall – timely and prior to the acceptance of the cargo by Contractor – furnish all data and documents required for the Services, including but not limited to the nature of the cargo, the number and type of the container, seal number, weight, contents and condition of the container, as well as all required customs and port documents. Customer shall guarantee the correctness, completeness and accuracy of these data and documents. Contractor shall in no manner be obliged to verify or check the provided data and documents.
- 1.7 Customer shall ensure that the containers and cargo comply with all applicable laws, rules and regulations. Customer shall abide by all Services-related formalities and follow any instructions given by Contractor.
- 1.8 Customer and/or its client must have and maintain an adequate insurance for loss of or damage to the cargo (property damage) during the Services.
- 1.9 Contractor may at any time during the Services and without notice to Customer at its own discretion:
  - a. use any transport mode;
  - b. use any means of transport;
  - c. use any route to the destination; and
  - d. stay at any place.
- 1.10 Any time for delivery or pick-up, time of arrival or any other time, period or deadline given by Contractor and/or Customer shall not be a strict deadline and shall not be guaranteed, unless Contractor explicitly stated otherwise in writing.
- 1.11 Customer is solely responsible for proper and sufficient preparing, packing, loading, stowing and securing of the cargo inside the container, as well as for unloading the cargo. Any assistance provided by Contractor, its employees or sub-contractor does not change the fact that Customer has exclusive responsibility in this respect.
- 1.12 When requested by Customer, the Contractor will provide a copy of the consignment note or waybill within 2 working days after delivery, but this shall have no effect on the rates being due and payable for the Services.
- 1.13 Contractor shall be entitled to sub-contract on any terms the whole or any part of the Services. Any sub-contractor shall enjoy the same protection and shall be entitled to the same exclusions, exemptions and limitations of liability as applicable to Contractor under these Conditions. In that event, any reference to 'Contractor' in these Conditions shall include a reference to such sub-contractor.

## **ARTICLE 2. RATES**

- 2.1 Contractor undertakes to render the Services against the rates specified in the relevant offer or quotation of Contractor to Customer and/or in the Hutchison Ports Europe Intermodal Price List applicable at the time when the Services are performed. The rates

will be valid as specified in the Hutchison Ports Europe Intermodal Price List, offer and/or quotation. After this period of validity, the rates can be unilaterally adjusted by Contractor.

- 2.2 In case of Freight Forwarding Services, the rates are deemed to include the freight price(s) charged by the carrier(s) instructed by Contractor for the benefit of Customer as well as the freight forwarding commission of Contractor, even if Contractor charges all-in or fixed rates to Customer.
- 2.3 The invoices of Contractor are deemed to be accepted by Customer unless written protest is made within 8 days of the invoice date.
- 2.4 All invoices shall be paid by Customer within 30 days after the date of the invoice unless expressly agreed otherwise, without any discount and without any costs for Contractor.
- 2.5 Customer is not entitled to set-off any (possible) right to compensation from Contractor against an obligation to pay Contractor. Customer may neither withhold nor defer any payments due to Contractor.

### **ARTICLE 3. WAITING HOURS AND STORAGE COSTS**

- 3.1 Contractor has the right to charge costs that are charged to Contractor by its sub-contractors for waiting hours and storage of containers during the Services, outside the agreed free period of time for loading and discharging. Contractor always strives to inform Customer as soon as possible when waiting hours or storage are expected to occur, but in any event within 2 working days after occurrence thereof. Customer shall pay costs for waiting hours and storage to Contractor in – amongst others – the following situations:
  - a. In case the container is present at the agreed time at a loading or discharging location and waiting costs occur, whether or not Customer has been informed about the waiting hours.
  - b. In case the container is loaded or discharged earlier than the agreed time. In this case the free period of time will begin when loading or discharging begins.
  - c. In case Contractor informs Customer before arrival at the loading or discharging location about a delay and Customer accepts this delay.
  - d. In case of force majeure circumstances, including but not limited to the situations mentioned in Article 6.1 and 7.1 of these Conditions.
- 3.2 The start and end times for loading and discharge mentioned on the signed consignment note or waybill are leading in the administration of waiting hours.

### **ARTICLE 4. APPLICABLE LAW AND CONVENTIONS, CONTRACTOR'S LIABILITY**

- 4.1 These Conditions and all other legal relationships between Customer and Contractor shall be governed by and construed in accordance with Dutch law.
- 4.2 The applicability of any standard terms and conditions of Customer, its agents or servants is explicitly excluded.

- 4.3 The following conventions, laws, conditions or provisions shall apply to the following Services actually performed by Contractor or its sub-contractor:
- a. domestic or international carriage by inland waterways: the CMNI Convention.
  - b. domestic road carriage in the Netherlands: the Dutch General Transport Conditions 2002, version 2015, with the exception of clause 29 of those Conditions.<sup>6</sup>
  - c. domestic road carriage in all other countries and international road carriage: the CMR Convention.
  - d. domestic or international carriage by rail: the COTIF-CIM Convention.
  - e. terminal services performed at the terminal in Duisburg (Germany) and ancillary transport services if directly booked by Customer with Hutchison Ports Duisburg GmbH: the ADSp version 2017.<sup>7</sup> Only for said Services the ADSp shall, in case of discrepancies, prevail over these Conditions.
  - f. terminal services performed at any other terminal: Article 4.6 of these Conditions.
  - g. Customs Services: the Dutch Forwarding Conditions 2018, with the exception of clause 23 of those Conditions.<sup>8</sup> In derogation from the overall limitation amount mentioned in clause 11.3 of the Dutch Forwarding Conditions 2018, '10,000 SDR' shall be read as 'EUR 250'.
  - h. Freight Forwarding Services: the Dutch Forwarding Conditions 2018, with the exception of clause 23 of those Conditions.<sup>8</sup> In derogation from the overall limitation amount mentioned in clause 11.3 of the Dutch Forwarding Conditions 2018, '10,000 SDR' shall be read as 'EUR 250'.
- 4.4 The liability of Contractor for damage to and/or loss of and/or delay in delivery of containers or other cargo that is subject to the Services shall be governed by the regimes applicable pursuant to Article 4.3 of these Conditions. If the Services include carriage by multiple transport modes (combined transport), each part of the carriage shall only be governed by the regime applicable to that part of the carriage as set out in Article 4.3 of these Conditions.
- 4.5 In case Contractor provides Freight Forwarding Services and damage to and/or loss of and/or delay in delivery of containers or other cargo occurs, Contractor shall provide Customer with all information and documentation necessary for Customer to institute a claim against the carrier engaged by Contractor, all in accordance with Articles 8:62 and 8:63 of the Dutch Civil Code.
- 4.6 In case the Services concern terminal services performed by Contractor or its sub-contractor, the Contractor shall not be liable for damage or loss whatsoever, unless Customer proves that the damage or loss has been caused by the actual fault or negligence of Contractor, its employees or sub-contractors. In the event that Contractor

<sup>6</sup> The Dutch General Transport Conditions 2002 version 2015 ('AVC 2002, versie 2015') can be downloaded via [this link](#).

<sup>7</sup> The ADSp version 2017 ('Allgemeine Deutsche Spediteurbedingungen 2017') can be downloaded via [this link](#). Note: In clause 23 the ADSp deviate from the statutory liability limitation in section 431 German Commercial Code (HGB) by limiting the liability for multimodal transportation with the involvement of sea carriage and an unknown damage location to 2 SDR/kg and, for the rest, the customary liability limitation of 8.33 SDR/kg additionally to Euro 1.25 million per damage claim and EUR 2.5 million per damage event, but not less than 2 SDR/kg.

<sup>8</sup> The Dutch Forwarding Conditions 2018 ('Nederlandse Expeditievoorwaarden 2018') can be downloaded via [this link](#).

is liable, the Contractor's liability shall be limited to SDR 2 per kilogram gross weight of cargo actually damaged or lost. In case of delay during terminal services, the Contractor's liability shall in any event be limited to EUR 250. For any other losses or damages during terminal services not concerning loss of or damage to containers or other cargo that is subject to the Services, the Contractor's liability shall be limited to EUR 2,500 per incident or series of incidents with the same cause with an annual aggregate maximum of EUR 100,000.

- 4.7 For:
- a. all Services not mentioned in Article 4.3 of these Conditions;
  - b. all issues arising during inland waterway, road or rail carriage which are nevertheless not governed by the regimes mentioned in Article 4.3 of these Conditions; and
  - c. all issues arising during combined transport where it is unclear during which part of the Services the damage, loss or delay occurred,
- the CMR Convention shall apply between Customer and Contractor. For any other losses or damages not characterizing as loss of or damage to containers or other cargo that is subject to the Services, the Contractor's liability shall be limited to EUR 2,500 per incident or series of incidents with the same cause with an annual aggregate maximum of EUR 100,000.
- 4.8 Customer shall indemnify and hold Contractor harmless against any and all third-party claims for payment of compensation relating to the Services, in as far as these claims exceed Contractor's liability towards Customer under these Conditions.

#### **ARTICLE 5. CONTRACTOR'S PERIOD OF LIABILITY**

- 5.1 Contractor's period of liability shall commence when the container and/or the cargo is placed in the custody of Contractor or its sub-contractor in order to start the Services.
- 5.2 Contractor's period of liability shall end at the time of delivery of the container and/or the cargo to the agreed consignee. Delivery has taken place at the time the container and/or the cargo is made available to the consignee or its servant or agent.
- 5.3 Contractor's period of liability shall also end by the consignee's refusal to take delivery of the container and/or the cargo at the place of delivery.
- 5.4 Contractor shall be under no liability whatsoever for loss of or damage to the container and/or the cargo, when the incident causing such loss or damage occurs outside the period of liability defined in this Article 5.

#### **ARTICLE 6. FORCE MAJEURE AND OTHER EXCLUSIONS OF LIABILITY**

- 6.1 Contractor is not liable in case of force majeure. Force majeure circumstances shall include any circumstance beyond the reasonable control of Contractor or its sub-contractor that prevents the performance of the Services, including but not limited to war, war threat, riot, uproar, embargo, natural disaster, severe weather conditions, nuclear

disaster, terrorist threat or activities, strikes or similar labour actions, compliance with any mandatory law or regulation, acts and controls of any governmental authority, vermin, virus diseases, quarantine, government measures relating to virus diseases and/or quarantine, electricity breakdowns, blockades or closures of any border, road, river, railway or port, or other infrastructural issues and unavailability of infrastructure, high or low water causing capacity constraints, congestion at a seaport, inland terminal accidents, containers or cargo not being loaded in time at container terminals, people trying to gain access to a means of transport or container, fire, explosion, extinguishing water, leakage, technical problems to means of transport, non-performance by or insolvency of sub-contractors, computer viruses, cybercrime or cyber-attacks and police, military or customs formalities.

- 6.2 Contractor's liability is explicitly excluded for:
- a. lost profit, consequential and/or indirect damage (including but not limited to return transport costs, products recalls and loss of use of containers) and immaterial damage;
  - b. penalties or fines including but not limited to import duties, excise duties, turnover tax, restitutions and/or other levies or related fines which are imposed by any government or any other authority charged with such duties, which are demanded in connection with the Services;
  - c. loss, damage or delay resulting from any negligent act or omission of Customer, its client or any of their servants or agents; and/or
  - d. lawyers' costs and internal costs incurred by Customer due to handling a claim.
- 6.3 Contractor shall not be liable for claims in respect of or relating to general average, including but not limited to recovery claims from Customer or any third party. If for any reason a liability for general average arises in connection with the containers or cargo that is subject to the Services, the Customer shall promptly provide security to the Contractor or to any other party designated by Contractor. Customer shall ensure that it has and maintains sufficient insurance for general average
- 6.4 Customer shall indemnify and hold Contractor harmless against any and all costs, claims, fines and/or penalties, expenses, duties, tax or excises incurred by or levied upon Contractor in connection with the Services for any cause whatsoever, regardless of whether such claim is the result of a fault in the performance on the part of Contractor, its employees and/or sub-contractors.

## **ARTICLE 7. DELAY**

- 7.1 If Contractor cannot comply with the agreed time windows for pick-up and delivery, the Contractor's liability is explicitly excluded for any delay and/or demurrage and detention costs that may occur, in the event that one the following situations occurs:
- a. the deep-sea vessel arriving earlier or later than planned and Customer failed to inform Contractor;
  - b. Customer has not met the requirements described in the applicable SOP; or
  - c. force majeure within the meaning of Article 6 of these Conditions.

In all other cases, if Contractor cannot comply with the agreed time windows for pick-up and delivery, the Contractor's liability shall be determined in accordance with the liability regimes for delay in delivery contained in the regimes mentioned in Article 4.3 of these Conditions.

- 7.2 In case of delay in delivery, the consignee is not allowed to refuse delivery of the container and/or other cargo. In case of such refusal, Customer shall indemnify and hold Contractor harmless against any and all costs incurred by Contractor in connection with the consignee's refusal to take delivery, including but not limited to demurrage, detention, terminal and storage costs.

#### **ARTICLE 8. NO EXCLUSION OR LIMITATION OF LIABILITY**

- 8.1 The exclusions and limitations of liability provided for in these Conditions shall not apply in so far as it is proven by the claiming party that the damage or loss resulted from an act or omission of the liable party or its management, committed with the intent to cause such damage or loss, or recklessly and with knowledge that such damage or loss would probably result.

#### **ARTICLE 9. CLAIMS AND TIME BARS**

- 9.1 For any claim against Contractor the Hutchison Ports Europe Intermodal Claims Procedure applies.<sup>9</sup>
- 9.2 Customer warrants that the condition of the containers and the cargo will be duly checked on its behalf at delivery, together with Contractor or its sub-contractor. The fact of taking delivery of the container and the cargo shall be prima facie evidence that Customer has received the container and the cargo in the condition described in the consignment note or waybill, unless notice of loss or damage and the general nature of such loss or damage is given in writing to Contractor not later than at the time of delivery in case of apparent loss or damage, or within 5 working days after delivery in case of loss or damage which is not apparent. Contractor shall not be liable for any delay in delivery unless notice is given in writing by Customer to Contractor within 21 days after delivery.
- 9.3 In case of any claim for loss, damage or delay during the Services, Customer will provide Contractor with a complete and clear substantiation and all necessary evidence regarding (i) the cause and nature of the loss or damage, such as survey reports, and (ii) the damage amount, such as invoices, which shall always be accompanied by a corresponding proof of payment.
- 9.4 Customer shall enable Contractor to be present or represented during the investigation into the cause and extent of any damage, loss or costs. In the event that Customer has compensated any third party for any damage, loss or costs, and Customer takes recourse against Contractor, the Customer is obliged to prove that it has put forward all possible

<sup>9</sup> The Hutchison Ports Europe Intermodal Claims Procedure can be found via [this link](#).

defences in its legal relationship with such third party in order to limit or exclude its liability. If Customer fails to prove so, Contractor shall be discharged from all liabilities.

- 9.5 Notwithstanding any mandatory rules applicable to the Services, any claim against Contractor shall lapse after 12 months, and in the event of Customs Services after 8 months, unless a time-extension has been agreed in writing by Contractor and the claimant. The term shall commence on the day following the day of delivery or, if no delivery took place, on the agreed day of delivery.

#### **ARTICLE 10. PLEDGE AND RIGHT OF RETENTION**

- 10.1 Contractor shall have a pledge, a right of retention and a lien or similar right on the containers, cargo, monies and any documents relating thereto for any and all sums, including but not limited to the rates, freight, dead freight, demurrage, detention, costs, dues, taxes, tolls, fines, penalties or claims for damages or indemnity payable by Customer to Contractor or related to the Services. Contractor may also exercise the aforementioned rights in respect of the sums that Customer owes to Contractor in relation to previous Services.
- 10.2 In order to enforce its pledge and/or right of retention and/or lien or similar right, Contractor shall have the right to sell the container and/or its contents by public auction or private treaty and recover all his costs therefrom without notice to Customer.
- 10.3 Customer shall not be entitled to exercise a right of retention, a right of pledge, a lien or any similar right.

#### **ARTICLE 11. TEMPERATURE CONTROLLED SERVICES AND HAZARDOUS CARGO**

- 11.1 In case temperature controlled Services are required, Customer shall inform Contractor thereof in conformity with applicable procedures in the SOP. Contractor shall not be liable for any temperature damage in case:
- a. Customer has not properly informed Contractor of the temperature requirements;
  - b. Customer cannot prove that the cargo was at the right temperature before handing over of the cargo to Contractor; or
  - c. Customer agreed that the cargo will be carried without temperature control during certain parts of the Services.
- 11.2 In the event that Contractor, its employee or sub-contractor fails to comply with Customer's explicit temperature instructions, the Contractor will not be liable, unless Customer proves (i) a substantial change in the physical condition of the cargo during the Services and (ii) that the damage actually results from the failure to comply with Customer's temperature instructions.
- 11.3 Customer warrants that – unless Contractor receives written notice prior to acceptance – the container does not contain hazardous cargo which would require specific permits and that the cargo does not constitute any danger for the environment or public health. For hazardous cargo the procedures described in the SOP shall apply.



- 11.4 If cargo, of which the hazardous nature was not notified to Contractor, constitutes a danger for the means of transport, the terminal, sub-contractors or third parties, the Contractor and its sub-contracting parties shall be entitled to take all appropriate measures in order to avoid, mitigate or remove said danger, including but not limited to the destruction of the cargo, without Customer being entitled to any compensation whatsoever. The related costs shall be borne by Customer, in addition to the agreed rates for the Services.

## **ARTICLE 12. CUSTOMS SERVICES**

- 12.1 In case Customs Services are agreed upon between Contractor and Customer, the Contractor can instruct a customs agent to perform and take care of the Customs Services. In any event, the Customs Services are performed on behalf of, and at the risk and expense of Customer.
- 12.2 Customer shall cooperate in negotiating and signing any agreement or power of attorney required by Contractor or the customs agent in the performance of the Customs Services. Customer shall – at Contractor’s first request – provide Contractor with proof of existence of its company, its current place of business and names of the person(s) authorized to lawfully represent the company.
- 12.3 Customer shall furnish all data and documents required for the Customs Services and provide these to Contractor or the customs agent. Customer shall promptly furnish any additional information to Contractor or the customs agent at first request. Customer warrants that all data, information and documents provided are correct, complete and accurate; Contractor shall not be obliged to verify these.
- 12.4 Upon first demand by Contractor or the customs agent, the Customer shall pay any costs incurred or to be incurred by Contractor or the customs agent in connection with the Customs Services, or arrange for sufficient security for these costs by means of a guarantee by a first class bank at its own expense.
- 12.5 Customer shall indemnify and hold Contractor and/or the customs agent harmless against any and all costs, fines and/or penalties, expenses, duties, taxes (including VAT), customs debts or excises, including interests, incurred by or levied upon Contractor and/or the customs agent in connection with the Customs Services for any cause whatsoever, regardless of whether or not such claim is the result of a fault on the part of Customer, Contractor, the customs agent, their employees and/or sub-contractors.
- 12.6 Notwithstanding the provisions in these Conditions, in the event that customs authorities claim payment of any customs debt, such as VAT, customs duties, levies, fines, or excise duties in relation to the cargo and/or Services, Contractor and Customer shall discuss whether an objection and/or an appeal should be lodged. If so, Contractor and Customer shall also discuss which party shall take the lead in the objection or appeal proceedings, and each party shall always keep the other party closely informed of these proceedings. Contractor shall at all times remain entitled to protect its interests by lodging objections or taking other actions to address claims, in which case it will inform Customer of all such

actions. All aforementioned proceedings and actions shall be at the risk and expense of Customer.

- 12.7 Contractor shall at all times be entitled to refuse to perform acts or activities with regard to Customs Services, providing that it will inform Customer thereof as soon as possible.

#### **ARTICLE 13. ORDER OF PRECEDENCE**

- 13.1 In case of any discrepancy between the applicable law, these Conditions and any other relevant document or rules, the following descending order of precedence shall apply:
- a. mandatorily applicable conventions, laws and/or regulations;
  - b. these Conditions;
  - c. the regimes applicable based on Article 4.3;
  - d. the applicable Hutchison Ports Europe Intermodal Price List;
  - e. the applicable quotation;
  - f. the SOP;
  - g. the Hutchison Ports Europe Intermodal Claims Procedure;
  - h. the booking confirmation;
  - i. the ECP;
  - j. non-mandatorily applicable conventions, laws and/or regulations.

#### **ARTICLE 14. JURISDICTION**

- 14.1 Any dispute between Contractor and Customer shall be exclusively referred to arbitration in Rotterdam, the Netherlands, in accordance with the UNUM arbitration rules.
- 14.2 In as far as relevant for the Services concerned the arbitration tribunal shall apply the provisions of the CMR Convention. The CMR Convention shall be interpreted by the arbitration tribunal in accordance with the settled case-law of the Dutch regular courts.

#### **ARTICLE 15. MISCELLANEOUS**

- 15.1 If any (part of a) provision in these Conditions is declared illegal or void, all remaining parts of these Conditions will remain in full force and effect.
- 15.2 Contractor reserves the right to update and amend these Conditions at any time and without notice to Customer. Any change or update will become effective from the moment of publication of the amended Conditions on the website of Contractor or at any other date as specified by Contractor.