

**General Terms of Business**  
**of**  
**Seehafen Rostock Umschlagsgesellschaft mbH (SHRU)**

## CONTENTS

	Page
<b>I. General Terms of Business .....</b>	<b>3</b>
1. Area of application .....	3
2. Placing of orders .....	3
3. Materialisation of the transshipment or storage agreement.....	5
4. Clearance .....	6
5. Remuneration for waiting times.....	6
6. Contractual lien.....	8
7. Hazardous goods .....	8
8. Settlement of accounts, remuneration, payments .....	8
9. Offsetting .....	9
10. Liability of the customer .....	10
11. Liability of SHR-U .....	10
12. Limitation of liability .....	12
13. Intent and gross negligence .....	13
14. Limitation of time .....	13
15. Jurisdiction, place of fulfilment and applicable law .....	14
16. Partial ineffectiveness .....	14
17. Entry into force of the General Terms of Business .....	14
<b>II. Address/ Telephone Numbers .....</b>	<b>backpage</b>

## **1. Area of application**

### **1.1 Material area of application**

The following provisions apply to all goods handling services performed by SHRU:

- at sea and on shore, including stowage, unloading and transshipment-related interim storage
- mooring and unmooring services or haulage of ships
- as well as to services performed within the context of such activities, especially sorting, weighing, marking and lashing
- long-term storage

unless other provisions apply as set out in the Special Terms, Conditions and Rates for Services Performed by SHRU.

In the event of forwarding operations, the General Forwarding Terms for Germany (ADSP) shall apply.

### **1.2 Personal area of application**

The following provisions apply only to transactions with businesses or business people. Individual agreements are drawn up with consumers within the meaning of § 13 of the German Civil Code (BGB) and § 414, Par. 4 of the German Commercial Code (HGB).

## **2. Placing of orders**

The order shall be placed in writing at the terminals.

- 2.2 The order shall contain all details required for the due and proper execution of the services concerned. This applies, in particular, to all instructions regarding handling and treatment of the goods.
- 2.3 Orders for services to be performed by SHRU shall be drawn up only on the approved forms provided for this purpose by the wharfage operations department. SHRU can, in general or for particular services, permit and/or require orders to be transmitted via electronic data communication in the form specified by SHRU. If the company is a business person or entity, the regulations concerning information obligations in electronic business transactions, §§ 312 e of the German Civil Code (BGB), shall apply only insofar as this is mandatory under law.
- 2.4 Apart from the data and details already provided for on the order forms, the only additional explanations and information permissible shall be those agreed upon with SHRU in advance. Explanations and information contrary to this provision shall be deemed not to have been added, even where SHRU has accepted such an order without raising any objection. In the case of hazardous goods, only goods of the same risk category may be listed on one order. The customer guarantees that the details and information it gives are correct, especially those concerning the type, quantity and weight of the goods.
- 2.5 Where goods are accepted on the basis of a cargo manifest, such document must contain the following information.

- Marking

- Number of items
- Hazardous attributes
- Type of packaging
- Type of goods
- Condition
- Weight of goods in kg
- For bulk goods, the volume in cubic metres

- 2.6 SHRU shall, unless specifically commissioned to do so, not be obliged to verify the data and details provided by the customer unless this is normal business practice.
- 2.7 Orders shall be submitted to the respective port operations office by, at the latest, midday of the preceding day or, in the case of Sunday or Monday work, at the latest by 12 noon on the preceding Friday.

### **3. Materialisation of the transshipment or storage agreement**

- 3.1 The transshipment or storage agreement between SHRU and the customer shall come into effect at the time the order is issued to SHRU by the customer or a third party authorised by the customer insofar as the type and extent of the service to be provided by SHRU can be determined unequivocally from the order issued.
- 3.2 Orders accepted shall not comprise any accommodation or warehousing obligations. These shall be agreed separately.
- 3.3 Should the handling of particular goods require official approval, the contract for the handling of the goods shall come into effect under the condition precedent of such approval being produced.

3.4 Should all or part of any provisions contained in the concluded agreement prove to be ineffective or should any such provisions subsequently lose their legal effect, this shall not affect the validity of the remaining provisions or the agreement in general. The same shall apply in the case of any loophole or omission concerning said agreement. In such cases, the ineffective provision shall be replaced or the loophole or omission remedied by an appropriate provision which, as far as is admissible, comes closest to that originally desired by the parties to the agreement or what they would have desired in accordance with the aim and purpose of the agreement if they had considered his point at the time.

#### **4. Clearance**

4.1 The sequence of events for clearing ships is determined by the availability of a suitable berth (turn arrangement). Should more than one berth be available at the same time, the clearing sequence shall be determined by SHRU.

4.2 All other means of transport shall be cleared in the order of their arrival at the loading or unloading point unless agreed otherwise in writing. Should several means of transport arrive simultaneously, the clearing sequence shall be determined by SHRU.

#### **5. Remuneration for waiting times**

5.1 SHRU is obliged to notify the customer or a third party nominated by the same of its readiness to perform the service defined in the agreement. The customer or third party nominated by the same shall thereupon be obliged to avail itself of the service at the agreed time. If the time of the service has not been specified, it must be availed of without delay.

Should the customer, despite notification by SHRU that the latter is ready to perform the service, not avail itself of the service at the agreed time or without undue delay following such notification and the customer is responsible for such non-performance, SHRU shall be

entitled to charge the customer an hourly rate as fixed-sum compensation for every hour or part thereof accordingly. The hourly rate shall be taken from the Special Terms, Conditions and Rates for Services Performed by SHRU. Should it wish, SHRU shall be able to claim unusually high compensatory damages in individual cases in place of the fixed-rate compensation referred to above.

The customer shall, in such cases, be at liberty to furnish proof that the loss or damage did not occur at all or is significantly lower than the amount claimed.

## 5.2 Failure to cooperate

Should the customer fail to cooperate on matters such as providing on-shore transport facilities, making the transshipment goods available, etc. which it has undertaken to do under the agreement in good time or, in particular, by the deadline set, thus hindering SHRU in the performance of its service under the agreement, SHRU shall be entitled to charge the customer a hourly rate as fixed-sum compensation for every hour of such hindrance or part thereof accordingly. The hourly rate shall be taken from the Special Terms, Conditions and Rates for Services Performed by SHRU. SHRU reserves the right to claim unusually high compensatory damages in individual cases in place of the fixed-rate compensation referred to above.

The customer shall, in such cases, be at liberty to furnish proof that the loss or damage did not occur at all or is significantly lower than the amount claimed.

## 5.3 Force majeure, delay on the part of other service providers

Should SHRU be hindered in performing its service promptly as a result of rain, storm, other weather conditions or because of a delay on the part of other service providers in the

transport chain without SHRU being at fault, SHRU shall be entitled to charge the customer an hourly rate as fixed-sum compensation for every hour of such hindrance or part thereof accordingly. The hourly rate shall be taken from the Special Terms, Conditions and Rates for Services Performed by SHRU. SHRU reserves the right to claim unusually high compensatory damages in individual cases in place of the fixed-rate compensation referred to above.

The customer shall, in such cases, be at liberty to furnish proof that the loss or damage did not occur at all or is significantly lower than the amount claimed.

## **6. Contractual lien**

All movable property owned by the customer that comes into the possession or under the power of disposal of SHRU in any way shall serve SHRU, insofar as is legally permissible, as lien for all claims – including conditional claims and claims limited in time – by SHRU vis-à-vis the customer, regardless of the reasons for such claims arising or passing to SHRU.

## **7. Hazardous goods**

- 7.1 The handling and storage of hazardous goods by SHRU is subject to the "Land Regulations governing the Handling of Hazardous Goods in the Ports of Mecklenburg-Vorpommern" (HGGV) dated 13 September 1991 as last amended.
- 7.2 Where SHRU does not undertake in writing to handle or store hazardous goods, it shall be entitled to refuse acceptance of such goods.

## **8. Settlement of accounts, remuneration, payments**

8.1 The services performed by SHRU shall be invoiced to the customers after due performance of such services, though SHRU shall be entitled to demand a reasonable advance payment. This applies, in particular, to long-term (monthly) storage items or in the case of the transfer of the right of disposal for stored goods. In the case of transfer of the right of disposal concerning stored goods, all payments for the period up to the day of such transfer must be paid immediately.

8.2 SHRU is entitled to issue a separate invoice for the payments combined in the indirect transshipment rate.

8.3 All remunerations of charges are deemed to be net amounts. Services coming under the May 1994 “Administrative regulations for General Operations at the Port of Rostock” shall be subject to a surcharge in the sum of the Port Fund levy in force at the time (presently 1.5 % on net payments). Warehouse services and invoiced waiting times are exempt from said surcharge. The currently enforceable rate of sales tax shall be charged on services (including the Port Fund) subject to sales tax.

The party liable for the payments is the customer. Where the right of disposal changes in relation to goods, the first customer shall remain liable for payment unless it has provide in express terms in the agreement for the goods only to be delivered on c.o.d. payment terms.

8.5 The invoices issued by SHRU are generated by computer and are valid without signature.

8.6 The remunerations and expenses invoiced by SHRU shall become due on receipt of the invoice. The customer shall be deemed to be in default of payment 14 days after the due date without any reminder being required. In the case of default, SHRU shall charge interest at a rate of 5% above the respective base interest rate of the European Central Bank (ECB).

Claims for damages and compensation in excess of this shall remain unaffected.

## **9. Offsetting**

Offsetting by the customer vis-à-vis claims due to SHRU shall be permissible only in the case of counterclaims that are undisputed or recognized by declaratory judgement.

## **10. Liability of the customer**

10.1 The customer shall be liable for any and all loss or damage arising from incorrect or incomplete details contained in orders or accompanying documents. This applies, in particular, to details concerning the hazardous nature of the goods and their handling or treatment.

10.2 The customer shall be liable for any and all loss or damage caused by the customer, its employees or its agents when entering the business premises or property of SHRU or a third party insofar as the customer, its employees or its agents are responsible for such loss or damage. The same applies to infringements of SHRU's domiciliary right.

The regulations issued by the Hanseatic City of Rostock concerning the use of its ports are to be adhered to.

## **11. Liability of SHR-U**

11.1 SHRU shall assume liability on the basis of statutory or contractual provisions only insofar as SHRU or persons employed in the performance of its obligations are at fault.

11.2 Where the cause of loss or damage cannot be clarified or where this would not be reasonable for SHRU under the circumstances, the expense of such loss or damage shall be borne by the claimant.

11.3 SHRU shall not assume liability for

- force majeure, natural disasters, war or warlike occurrences, strike, lock-out, industrial unrest, acts of political violence, sabotage, deprivations, revocations or interventions by public authorities or loss or damage arising from any of the above which could not have been avoided even when applying the diligence of a prudent businessman
- Burglary, fire, water, explosion
- Climatic conditions
- Goods stored in the open by way of customary practice or agreement
- The natural state of the goods, faulty or deficient packaging, intrinsic deterioration, wastage, rust mould, etc.

- In relation to goods that were, under the agreement, normally or in accordance with the order, stored in the open or in stores set up specially and the damage is attributable to such type of storage
- a cause lying in the sphere of the customer.

11.4 SHRU shall not assume liability for any consequential loss or damage or loss of profits.

11.5 Claims against SHR-U shall be excluded in all other cases where the customer has not submitted written notification of loss or damage immediately after such loss or damage being ascertained.

11.6 Liability on the part of SHR-U for loss or damage to ships being loaded or unloaded shall be excluded in relation to:

- Damage to items remaining in the area of the grabs or lifting gear which could have been removed without an unreasonable amount of work or expense
- Damage to items lying beneath the goods in the cargo holds
- Damage to parts, equipment or fittings of the ships located in the cargo holds, e.g. hold ladders, framework, stringers, shaft tunnels, manhole covers, where these are exposed to contact with grabs or lifting gear without there being any protective rings in good condition, as well as in relation to damage caused to the protective rings themselves.

- Damage caused by part of the goods being loaded or unloaded falling out of the suspended or swinging grabs - as a result of the nature of the goods
- Damage that can be ascribed to the natural state of the goods, e.g. large, hard items with no give or yield, thus causing damage when the grab settles on the goods

## 12. Limits of liability

12.1 The Liability of SHRU for loss or damage of goods is limited to the actual market value and, in the absence of such, to the value of the goods in an open sale. **SHRU is liable for all damage of a claims event independently of the number of claimants up to the amount of two Special Drawing Rights for each kilogramme of the gross weight of the goods. If only individual parts of the consignment have been lost or damaged the liability is limited to the amount of two Special Drawing Rights for each kilogramme of the gross weight**

- of the entire consignment if the entire consignment has been damaged;
- of the damaged part of the consignment if only a part of the consignment has been damaged.

The amount is converted into Euro according to the value of the Special Drawing Rights on the day of conclusion of the contract, with the computation done on the basis of the conversion rates and methods of conversion of the International Monetary Fund on the day of the claims event. This limitation also applies to damage that has occurred in the discharging and/or loading of a vessel if and to the extent that the consignment has been affected thereby.

12.2. Deviating from the stipulations of Section 12.1. the liability of SHRU for damage in the storage business is limited to the value of the goods in an open sale. For all damage of a claims event SHRU is liable independently of the number of claimants up to an amount of EUR 50,000.00.

12.3. Liability for delay is limited to the threefold amount of the remuneration agreed upon.

## 13. Intent and gross negligence

The exclusions and limitations of liability referred to above shall not apply where the agents or executive officers of SHRU or persons employed in the performance of the any of the SHRU's principal contractual obligations has acted with intent or gross negligence.

Nor shall the above-mentioned exclusions and limitations of liability apply to loss or damage resulting from harm to life, body or health caused by intentional or negligent failure by the institutions or executive personnel of SHRU or by persons employed in the performance of SHRU's contractual obligations to comply with their duties.

#### **14. Limitation of time**

14.1 All claims against SHRU shall lapse within one year regardless of their legal grounds insofar as SHRU is not liable for intent.

14.2 The limitation of time shall commence in accordance with the relevant statutory provisions

- on final acceptance of performance in the case of claims of defects or shortcomings in the transshipment service, unless such defects or shortcomings have been deceitfully concealed by SHRU
- with the emergence of the claim in the case of claims for surrender relating to property and other real rights (§ 197 of the German Civil Code [BGB])
- otherwise at the end of the year in which the claim arose and the customer obtained knowledge or grossly negligent lack of knowledge of the circumstances justifying the claim and the identity of the party liable,
- on commission of the action, breach of obligation or other incident giving rise to the loss or damage in the case of claims for damages or compensation, where applicable

irrespective of such knowledge

The relevant statutory provisions shall otherwise apply. Storage agreements shall be subject to the provisions set out in the Special Terms, Conditions and Rate for Services Performed by SHRU.

**15. Jurisdiction, place of fulfilment and applicable law**

Exclusive jurisdiction and place of performance is Rostock. The law of the Federal Republic of Germany shall apply.

**16. Partial ineffectiveness**

Should part or all of any provision or provisions contained in these General Terms of Business prove to be ineffective, this shall not affect the validity of the remaining provisions.

**17. Entry into force of the General Terms of Business**

These General Terms of Business shall enter into force on 1 January 2004 and shall, at the same time, supersede the General Terms of Business dated 1 June 2002.

Ran Langer  
Managing Director

Edith Waack  
Authorized Representative