



PORTS OF SWEDEN

General Conditions 1989 for terminal operations

These conditions are recommended by the Ports of Sweden. Nothing shall prevent the Enterprise and the Customer from reaching agreement on other conditions.

General conditions 1989 established after consultations with ICA, the Swedish Cooperative Union of Wholesale Society, the National Swedish Organisation of Small Business, the Association of Swedish Chambers of Commerce and Industry, Federation of Swedish Commerce and Trade, Federation of Swedish Industries, the Swedish Retail Federation, Swedish Shipowners' Association, the Swedish Freight Forwarders' Association.

These general conditions apply, unless otherwise expressly agreed, to all stevedoring service or other services within a sea port performed by a member of the Ports of Sweden, hereinafter called the Enterprise.

§ 1 Definitions

Services for stevedoring and other services within a sea port (hereinafter called "the Services") include:

- a) loading, unloading and other services with respect to vessels, vehicles of transportation and other cargo handling equipment
- b) storage of goods taken in charge
- c) packing, repacking, marking, arranging, weighing, guarding and checking the goods as well as redistribution and transport of the goods within the port area.

Goods taken in charge shall mean goods (inclusive of vehicles of transport and other handling equipment) which have been taken into or stored in cargo sheds or within premises surrounded by fences during the time when the goods are so stored.

Customer shall mean anyone who has contracted with the Enterprise to perform the Services as well as anyone on whose behalf such a contract has been made.

§ 2 Liability

a) Basis of liability

The Enterprise shall be liable for damage to or loss of goods taken in charge, unless it is proved that reasonable measures have been taken in order to prevent such damage or loss. In all other cases, the Enterprise will be liable only if the damage or the loss can be proved to have been caused by a negligent act or omission on the part of the Enterprise or its employees.

b) Assessment of damage and loss

If the Enterprise is liable to pay compensation for damage to or loss of the goods, the value of the goods shall be calculated according to the market value or the current value of such goods of the same kind and condition at the time when the damage or loss occurred.

Subject to § 2 c) below, if the goods have been lost or become a total loss, such loss or damage shall be compensated with the whole amount. In case of partial loss or damage, the amount shall be reduced in proportion to the difference between the value of the goods in undamaged condition as calculated according to the first paragraph of this § 2 b) and its value as partially damaged or lost.

c) Amount of compensation

Compensation for damage to or loss of the goods is limited to 2 Special Drawing Rights as defined by the International Monetary Fund (SDR) per kilo of the part of the goods lost, or partially lost or damaged. In any event, the liability of the Enterprise is, unless otherwise expressly agreed, limited so that no compensation shall be paid for loss or damage exceeding 50.000 SDR or, in case of damage to vessels, 500.000 SDR for each incident. Incident shall mean damage or loss occurring on one and the same occasion. If such damage or loss has been incurred by several customers and the compensation amounts exceed 50.000 SDR or 500.000 SDR respectively, such amount shall be distributed in proportion to the amounts to which each customer's damage or loss has been assessed according to § 2 b) above.

No compensation shall be paid for delay, consequential loss or indirect damage except as otherwise provided below in the present paragraph. Such loss or damage shall be limited to an amount not exceeding the compensation to the Enterprise relating to the goods delayed, lost or damaged. This provision notwithstanding, with respect to goods taken in charge the customer shall be entitled to claim compensation as if the goods had been lost if they are not delivered within 30 days after request for their delivery has been made.

Compensation for recourse claims caused by the customer's payment of such compensation on account of his liability for delay according to mandatory rules of maritime law shall be payable to the extent that it is proven that the Enterprise has caused such delay.

Exemption from or limitation of liability according to these conditions shall be applied to every claim against the Enterprise for compensation according to the contract for Services irrespective of whether such claim is based on contract or on tort.

d) Liability of employees and servants

In case of claim is made on anyone of the employees or servants of the Enterprise, such employee or servant shall have the right to the same exemptions from or limitation of liability which the Enterprise may invoke according to these conditions. The aggregate amount payable by the Enterprise, its employees or other servants shall not exceed the limits stipulated in these conditions.

e) Loss of the right to limit liability

The right of limitation of liability according to these conditions shall not apply if it is proved that the loss or damage has been caused by an act or omission by the management of the Enterprise committed with the intent to cause such loss or damage or recklessly and with knowledge that such loss or damage would probably occur. The same shall apply to employees or other servants of the Enterprise.

§ 3 Notice of claims and time-bar

a) Notice of claims

Notice of claims against the Enterprise shall be made without unreasonable delay. In case of apparent damage or loss claims ought to be notified immediately when the goods are received and, in other cases, within seven days after the receipt of the goods.

b) Time-bar

Any right of action against the Enterprise shall be lost unless legal proceedings are initiated within one year. The one year period shall in case of partial loss of or damage to the goods run from the day when the goods were delivered. In case of total loss of a consignment or other loss, the time shall run from the time when 30 days have elapsed from the day when the Enterprise took the goods in charge; however the right of action will nevertheless be preserved until 30 days have elapsed from the day when the customer discovered or ought to have discovered the loss or damage. With respect to recourse actions against the Enterprise on account of damage or loss incurred by the customer on account of his liability under maritime law, the same extension of the time-bar as applies according to chapter 19 Section 1, fourth paragraph, of the Swedish Maritime Code shall apply.

§ 4 Insured goods

The Enterprise will insure the goods only after instructions in writing by the customer to do so.

§ 5 The customer's liability and duty to inform

The customer shall give to the Enterprise all such information which is necessary or relevant to the performance of the Services. The customer shall see to it that the goods are correctly listed and described and that the stipulations which apply to the handling and carriage (e.g., according to IMDG, ADR, RID and RAR) have been properly complied with. The customer is liable to hold the Enterprise harmless and indemnified for all costs and expenses which may arise because

- a) the information concerning the goods is incorrect, unclear or insufficient
- b) the goods are inadequately packed, marked, declared etc
- c) the stipulations incumbent upon him with respect to the handling or carriage of the goods have not been complied with
- d) the goods have been inadequately loaded or stowed by the customer, e.g., on road vehicles, railway wagons, flats or other transportation units (containers) or similar equipment
- e) the goods have such characteristics, able to cause loss or damage, which the Enterprise could not reasonably foresee.

§ 6 Circumstances preventing the performance of the Services

If on account of unforeseen circumstances the Services have to be performed differently from what was originally intended, the Enterprise shall, so far as possible, inform the customer and ask for instructions. If it is impossible to get such instructions in time, the Enterprise may perform the Services in a suitable manner and at the customer's risk and expense. If, on account of hindrances as aforesaid, the goods cannot be delivered in time, the Enterprise shall have the right to postpone delivery as long as the hindrance subsists.

§ 7 Particular charges

The customer shall pay to the Enterprise compensation for such expenses which the Enterprise has had for customs duties, taxes and other similar charges, as well as for particular and unforeseen charges and costs relating to the Services which the Enterprise could not with reasonable measure have prevented. If the Enterprise should incur such particular and unforeseen charges, costs or undertakings, the customer shall pay for these in addition to the amount due according to the tariff in force.

§ 8 General Lien

The Enterprise has a general lien in goods under its control for all costs relating to such goods as well as for other claims against the customer relating to Services performed by the Enterprise for the account of the customer.

If the goods are lost or damaged, the Enterprise has a corresponding general lien in any amounts due to the customer from insurance companies, carriers or other parties.

If claims are not paid when they fall due, the Enterprise may in a satisfactory manner sell as much of the goods that, in addition to the costs incurred by such sale, all amounts due to be paid by the customer are covered.

The Enterprise shall, so far as possible, inform the customer in advance of any measures intended for such sale of the goods.

§ 9 Arbitration and applicable law

Except as provided below, any disputes between the Enterprise and the customer shall, with the exclusion of ordinary courts of law, be decided by arbitration at the place where the Enterprise has its place of business and according to the Swedish Statute on arbitration then in force and with the application of Swedish law. Legal proceedings initiated for the purpose of collecting claims not in dispute shall not imply a waiver of the right to submit to arbitration, according to the present clause, such counter-claims which may be in dispute and such counter-claims may not be made or set-off except in arbitration proceedings.

Disputes concerning amounts not exceeding the amount referred to as "basbeloppet enligt lagen (1962:381) om allmän försäkring" applicable at the time of the notification of the claim multiplied by four (4) may not be referred to arbitration.

Note: These general conditions are valid in the Swedish language only. In case of inconsistency between the Swedish and the English text, the Swedish text shall govern.