

Hamburg

Terms of Storage

This amended version is valid from August 1, 1999

HAMBURG TERMS OF STORAGE

I. GENERAL PROVISIONS

§ 1

Scope of the Hamburg Terms of Storage

1. The most recent version of the Hamburg Terms of Storage shall apply for business transactions which a warehouse keeper or Quartiersmann conducts on behalf of the depositor of goods in a warehouse (hereafter known as the depositor) or any third party on the basis of a contract or statutory provisions. If the terms of business detailed below do not contain any relevant provisions, § 467 – 475 h of the Commercial Code (HGB) shall apply.
2. The Hamburg Terms of Storage shall also apply to each and every legal successor to the depositor or third party.
3. The Hamburg Terms of Storage shall also apply, in accordance with § 1, Item 1, to each and every additional work carried out by the warehouse keeper; this particularly applies to sorting, sampling, plucking, cleaning, sieving, blending, order picking, assembling parts, dealing with cases of damage, packaging etc. even if such work is not carried out by the warehouse keeper at his own warehouse but, for example, in other warehouses, at the quay, on means of transport, etc.

§ 2 Business transactions carried out by others

1. If a warehouse keeper makes use of other persons not belonging to his firm to carry out business transactions, he shall agree with such persons that the customary terms of business shall apply to their work with due consideration given to the interests of the depositor or any third party (§ 1, Item 1).
2. In any case of loss or damage the warehouse keeper shall assign

any claim against the party responsible if required to do so by the depositor or the third party.

3. The warehouse keeper is not obliged to supervise such non-company persons while they are carrying out such work.

§ 3

Checking declarations

The warehouse keeper is not required to check

- a) the validity of any kind of signature
- or
- b) the authority of any person to undertake any signature referred to in a).

II. CONTRACT OF STORAGE

§ 4

Conclusion of contract

1. All registrations, applications or other directions must be made in writing.

The depositor or third party shall be responsible for any uncertainties, disadvantages, questions of proof or similar problems caused by unclear verbal transmission of information.

2. When goods are registered, they must be specified in such detail that proper stacking and storage of and work on the goods are possible. Such specification must be made available to the warehouse keeper.

All instructions for treating and keeping the goods must be included in this specification.

The warehouse keeper is not required to check the validity of the information contained in the specification nor to add to it.

The individual weight of any items weighing more than 500 kg must be detailed.

If any details of the registration and/or specification are incorrect, the depositor shall bear any resultant costs incurred.

§ 5

Taking the goods into storage

1. Upon arrival at the warehouse vehicles will be unloaded and goods received in the order in which they have been registered at the appropriate warehouse office, unless other provisions have been made.
2. All parties involved must comply with the hours of work applying to the warehouse in question.
3. All orders taken on by the warehouse keeper will be carried out on the working day following delivery of the necessary documents (warehouse warrant, bill of lading, delivery note, etc.) unless other arrangements have been made or specific circumstances prevent such implementation. Any documents delivered after 12 o'clock are considered to have arrived on the following day.
4. Goods will be stored in a warehouse of the warehouse keeper's choice - either his own or a third party's warehouse.
5. If goods are to be stored or processed which may, as a result of their condition or properties (e.g. inflammable, harmful to health, etc.), have damaging effects of any kind on the warehouse or other goods stored there, the party handing the goods over for storage is obliged to notify the warehouse keeper in good time and in writing about the precise nature of the dangers involved and what precautionary measures need to be taken. Moreover, the party handing over the goods for storage must, if required, pack and mark the goods properly, provide any necessary documents and supply any information the warehouse keeper may require to carry out his duties.

Furthermore, the party handing the goods over for storage is required to provide the warehouse keeper with instructions on how to store the goods properly. If the former fails to meet this requirement, the warehouse keeper will store the goods in a way which he deems to be

correct. In such cases, § 6, Item 8, Para. 2 shall apply.

Storage and/or processing of the above-mentioned goods is, however, only possible once express agreement has been reached with the warehouse keeper. The latter is entitled, without specific notice, to store such goods in separate rooms, storage facilities specially set up for such goods or, if necessary, in the open air.

6. The warehouse keeper will issue the depositor with a storage certificate for the goods stored.

7. The warehouse keeper will specify any visible damage to the goods or their packing on the storage certificate and/or the warehouse warrant.

With regard to the warehousing of or other work on cargoes (unit loads, palletized or bundled goods, packed receptacles or containers) the warehouse keeper's inspection will only cover the external condition of the unit of cargo in question.

§ 6 Storage

1. The warehouse keeper can transfer the goods from one site to another within his warehousing facilities (in his own or a third party's warehouse). He must inform the depositor of such a transfer giving exact details of the new site.

2. The warehouse keeper shall be responsible for the customary guarding and control of the goods; however, the warehouse keeper is not required to undertake any special guarding or control measures exceeding those deemed to be customary.

3. The warehouse keeper will not open the packing of any goods unless specifically ordered to by the depositor.

However, the warehouse keeper is entitled to open packing if there is an important reason for such an action. Such a reason is deemed to exist if the warehouse keeper is justified in thinking that the contents of such packaged goods have not been recorded correctly or the kind of goods in question has not been detailed clearly in the accompanying

documents.

4. The warehouse keeper is not required to carry out any work to maintain or improve the condition of the goods or their packing, unless specific agreement has been reached. He is entitled to carry out such work at the depositor's expense if in his good judgement the non-completion of such work would lead to the loss of or damage to the goods themselves, other goods or the storage facilities.

5. The warehouse keeper is entitled, without specific instructions, but not required to have any goods weighed or measured.

If goods are weighed by the warehouse keeper without specific instructions and found to be heavier than specified, the depositor shall bear the costs of weighing.

6. Only the depositor or persons authorized by him are entitled to request information about goods in storage.

The depositor or any such persons are entitled to enter the warehouse during the customary hours of work in the company of the warehouse keeper or any of his employees.

7. If the depositor or any persons authorized by him undertake any action with respect to the goods in storage, they are required to hand the goods over to the warehouse keeper anew and together with the latter determine the weight and condition of the goods. If this does not take place, the warehouse keeper shall not be held responsible for any diminution of or damage to the goods which may be subsequently ascertained.

If requested by the warehouse keeper, the depositor must allow any action to be taken with respect to the goods in storage to be carried out by the warehouse keeper's employees.

8. The depositor is entitled to inspect the warehouse and the way in which his goods are stored or to have such an inspection carried out by persons he has authorized.

The depositor must raise any objections to the way in which the goods are stored with the warehouse keeper. If the depositor does not raise such objections immediately after the goods are taken into store, he shall

be deemed to have relinquished any objections, providing the goods are stored with the due care customary for a prudent warehouse keeper.

9. The warehouse keeper is entitled to exercise domiciliary rights at the site of storage.

The depositor or any persons he has authorized must comply with any directions issued by the warehouse keeper or his employees relating to the warehouse; this particularly applies to their behaviour in the warehouse, the storage of the goods and the like.

§ 7

Removal of goods from storage

1. The goods can only be taken out of storage with the prior approval of the warehouse keeper. Only the depositor or persons authorized in writing to receive the goods are entitled take possession of the goods.

2. § 5, Item 1 shall apply accordingly to the loading of vehicles.

§ 8

Relinquishment of ownership

Neither the depositor nor his legal successor nor any person authorized by the depositor are entitled to relinquish unilaterally ownership of the goods at the warehouse keeper's disposal.

III. LIABILITY

§ 9

The depositor's liability

1. The depositor shall be liable to the warehouse keeper for any damage or loss resulting from the fact that the depositor, contrary to § 5, Item 5 of these Terms, fails to give notice of the dangerous nature of the goods or from the fact that goods are incorrectly or inadequately marked, their weight is wrongly given or their packing is faulty.

2. The depositor shall be liable to the warehouse keeper for any damage or loss which he himself, his employees or any persons he has authorized may cause, upon entering the warehouse or upon entering or driving on the warehouse property, to the warehouse keeper, other depositors or the owner of the property.

The definition of "authorized persons" also includes any third party instructed by the depositor to visit the warehouse or the warehouse property.

3. The depositor shall be liable to the warehouse keeper for any damage or loss the latter incurs as a result of the fact that the depositor, contrary to § 6, Item 9 of these Terms, does not comply with directions issued.

§ 10

Basic principles concerning the warehouse keeper's liability

1. The warehouse keeper shall only be liable, by reason of statutory or contractual provisions, for any work he undertakes if he or any persons authorized by him to carry out work are at fault.

2. The warehouse keeper is basically required to provide evidence of non-responsibility; however, if there was no external evidence of damage to the item in question or circumstances are such that the warehouse keeper cannot be reasonably expected to determine the cause of any damage, the depositor or any third party (§ 1, Item 1) are required to prove that the warehouse keeper was culpably responsible for the damage.

3. Upon payment of a higher storage fee, the depositor is free to come to an agreement with the warehouse keeper on extended liability on the latter's part.

4. The warehouse keeper shall only be liable for the accuracy of the properties of the goods, especially the kind of goods, weight, measurements, country of origin, etc., if he has ascertained such details and confirmed them in writing. The fact that any liability for ullage (§ 11, Item 3, Hamburg Terms of Storage) is excluded is unaffected by this provision.

§ 11

Exclusion of liability

Claims against the warehouse keeper resulting from complete or partial loss or damage shall be excluded if

1. the depositor or any person authorized by him fails to give the warehouse keeper writing notice of any claim or complaint immediately the goods are delivered to the warehouse or, in the case of any externally non-visible damage, immediately after its discovery;
2. any loss or damage is caused by force majeure, natural disasters, war, civil war or war-like events, strikes, lock-outs, industrial disputes, political acts of violence, riot or any other civil commotions, sabotage, withdrawal or intervention by the powers-that-be or official directives, and the damage or loss thus caused could not have been prevented through the due care shown by a prudent warehouse keeper;

moreover, if any loss or damage did result from one of the above-mentioned causes, it shall be assumed that this was indeed the case until proof to the contrary has been provided;

3. the cause of the loss or damage lies within the depositor's sphere of responsibility (i.e. with regard to the depositor himself, his instructions or any third party authorized by him) and/or is connected to the goods in storage;

this applies in particular when the loss or damage is caused by the natural properties of the goods in question, faulty packing or a lack of it, pest infestation, intrinsic deterioration, ullage, rust, mould, rotting or the like;

4. the goods have been stored, by agreement or custom or in accordance with § 5, in separate rooms, storage facilities specially set up for the goods or, if required, the open air, and the loss or damage is caused by this form of storage;
5. the loss or damage concerned is insured;
6. the depositor has violated his specification duty laid down in § 4,

Item 2 above and this has resulted in the loss or damage.

§ 12

Limitation of liability

1. The value of the goods for compensation purposes shall be deemed to be their fair market value.

If the warehouse keeper is liable, the compensation paid shall be limited to two units of account per kilo of the good's gross weight.

2. The warehouse keeper's liability is limited to direct material damage.

The warehouse keeper shall not be liable for any consequential damage which does not affect the goods themselves (pecuniary damage), especially lost profit.

If the depositor has failed to give immediate notice of any objections in accordance with § 6, Item 8 of these Terms and if any loss or damage has been caused by the way in which the goods are stored and/or protected, the warehouse keeper's liability shall be limited in accordance with § 254 of the German Civil Code (BGB) or completely excluded.

The unit of account referred to in Item 1 above is the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The amount in question will be converted into D-marks¹ at the rate of exchange applicable between the D-mark and the SDR on the day the goods are handed over or on a date agreed on by the parties in question. The SDR value of the D-mark shall be calculated according to the method applied by the IMF for its operations and transactions on the day in question.

§ 13

Cessation of liability exclusions and limitations

The exclusions and limitations of liability outlined in the Hamburg Terms of Storage shall not apply if the damage or loss is due to wilful or grossly negligent action or failure to act or any such action or failure to act undertaken in the knowledge that damage or loss may well occur, on the part of the warehouse keeper, his employees in the performance of their duties or any third parties employed by the warehouse keeper in the performance of his work.

¹ With the establishment of EMU on 1.1.99 the euro is the valid currency in Germany. Thus, from this date onwards, the euro-SDR exchange rate shall apply in addition to the DM-SDR exchange rate.

The onus of proof is on the owner of the goods stored. The warehouse keeper is required to co-operate to whatever extent possible in

determining the circumstances of significance in determining the case of damage or loss.

§ 14 Employees' liability

The liability of the warehouse keeper's employees to the depositor or third parties is excluded or limited in accordance with the above liability provisions of the Hamburg Terms of Storage.

§ 15 Compensation

1. The warehouse keeper is entitled but not obliged to satisfy the depositor's claim for compensation by providing the latter with goods of the same kind and quality within a period of six months.

The warehouse keeper is entitled to repair any damage himself or have such damage repaired to the exclusion of the liability for loss in value.

2. In the case of damage to part of any item with a determinable value of its own or of damage to one of several connected items, there shall be no loss in value of the remaining parts of the said item or of the other connected items.

3. Any claims by the owner of the goods against a third party with respect to the goods stored shall pass to the warehouse keeper up to the amount of the compensation paid. If a claim against a third party or any right serving as a security has been relinquished, the warehouse keeper shall be freed from any obligation to pay compensation if he could have obtained damages from that claim or right.

4. If the compensation paid by the warehouse keeper is equivalent to the fair market value of the goods or parts of the goods, the warehouse keeper may choose whether the rights to the goods or parts of the goods be assigned to him as a result of his payment of compensation or not. The warehouse keeper shall not be entitled to such assignment of rights if he fails to choose assignment within 10 working days of payment of compensation to whomsoever is entitled.

IV. WAREHOUSE WARRANT

§ 16

Issue and contents

1. At the depositor's request, the warehouse keeper will issue a warehouse warrant for the goods stored with him.

The warehouse keeper may refuse to issue a warehouse warrant if he has some legitimate interest in not doing so. This is in particular the case when his claims against the depositor for remuneration, expenses etc. are no longer covered by the goods in storage.

2. The warehouse keeper will note any partial delivery of the goods on the warehouse warrant. He is entitled to take back the warrant and issue a new one for the rest of the goods.

§ 17

Assignment of the claim for return of deposited goods

1. The claim for return of deposited goods may be assigned by filling in the appropriate parts of the warehouse warrant form. The provisions of the German Civil Code (BGB) shall apply with regard to the legal effects of such an action providing no provisions to the contrary are laid down in these Terms.

2. The assignment of the claim for return of deposited goods only becomes effective for the warehouse keeper when the assignor gives him notice in writing of exactly who the assignee is. If this assignment has been detailed in writing on the warehouse warrant through completion of the appropriate parts of the form, the presentation of the warehouse warrant by the new owner shall be deemed to be sufficient notification.

§ 18

Loss of the warehouse warrant

1. If the warehouse warrant is lost, the warehouse is required, at the depositor's expense, to give immediate notice of this loss in the Hamburg Amtlicher Anzeiger and two Hamburg daily newspapers and

indicate the end of the limitation period (§ 18, Item 3).

2. If a warehouse warrant has been lost or destroyed, the warehouse keeper is entitled to hand over the goods to the depositor or the latter's legal successor if he undertakes in writing to release the warehouse keeper from any consequences resulting from handing over the goods and, as a security for his undertaking, provides a declaration of suretyship issued by a German bank and deemed permissible as a security by the provisions (§ 108, Para. 1) of the German Code of Civil Procedure (ZPO).

3. If the goods are handed over after the depositor has issued such a undertaking and the warehouse keeper has been given a declaration of suretyship for all the obligations relating to this undertaking, any claims against the warehouse keeper resulting from the goods detailed in the warehouse warrant shall fall under the statute of limitation 12 months after publication in the Amtlicher Anzeiger.

V. INSURING THE GOODS

§ 19

Conclusion of an insurance contract and settlement

1. The warehouse keeper is not required to insure the goods on his own or another's account.

2. Any application to obtain insurance must be made in writing and contain all details required for the proper conclusion of an insurance contract. The warehouse keeper must declare his acceptance or refusal of the application without undue delay.

If no insurance or insufficient insurance is obtained for reasons the warehouse keeper is not responsible for, the latter shall not be liable for any resultant disadvantages. He must inform the depositor, without undue delay, of the non-conclusion of the insurance.

3. In any occurrence of the event insured against, any claim shall be limited to the compensation payment laid down in the insurance.

Any further claims against the warehouse keeper based on general statutory or contractual provisions remain unaffected by the above.

The party ordering the insurance may demand from the warehouse keeper assignment of the rights resulting from the insurance contract concluded on his orders.

VI. TERMS OF PAYMENT

§ 20

Remuneration

1. The warehouse keeper is entitled to the agreed remuneration or that which is customary in Hamburg.

In calculating storage fees or warehouse rent, parts of months, of any 100 kg or of any square or cubic metre will be counted as full units.

The warehouse keeper is entitled to charge a suitable commission for his expenses without prejudice to his claim for compensation for any damage caused by default or delay and interest on arrears.

A fee shall be paid to the warehouse keeper for issuing or altering warehouse warrants.

2. Any remuneration for or expenses incurred by the warehouse keeper must be paid immediately, i.e. at the latest by the working day after the invoice has been forwarded.

Merchants shall be deemed to have defaulted in payment five days after the due date; no demand for payment shall be necessary. In such cases of default, interest shall be payable at a rate 6 % above the base interest rate². The assertion of any claims resulting from such delay in payment remain unaffected by the above.

² The base rate of the European Central Bank shall apply from 1.1.02

3. Any drop in the exchange rate of the means of payment used occurring between the due date, or in the case of expenses between the date they were incurred, and the day payment is received by the warehouse keeper must be paid for by the debtor.

4. The remuneration for reception and putting in store does not include the surcharges for loading or unloading railway wagons, vehicles, containers, truck-trailer combinations or any other means of transport which will be charged additionally; the same applies to uncovering or covering open railway wagons and to blocking off or roping cargoes.

5. The depositor or owner of the goods must reimburse the warehouse keeper for any kind of expense incurred (e.g. berthing or demurrage charges, postage, etc.).

§ 21

Offsetting and retention

The offsetting or retention of any claims the warehouse keeper has resulting from storage and any associated claims is only permissible through uncontested or *res judicata* counterclaims.

§ 22

Lien and right of retention

1. Any claims, due or not yet due, which the warehouse keeper has against the depositor for whatever reason, shall result in the warehouse keeper having a lien and right of retention on the goods so long as they are at his disposal.

2. The warehouse keeper is entitled to refuse to hand over the goods or parts of the goods until his claims have been fully satisfied.

3. If the depositor assigns his claim for return of the deposited goods to a third party, the assignee must tolerate any lien and right of retention on the goods resulting from the earlier contract of storage unless the warehouse keeper waives this right. § 404 of the German Civil Code (BGB) remains unaffected by the above.

4. The depositor as assignor remains liable for any claims on the part of the warehouse keeper resulting from the earlier contract of storage until the latter releases the former from this liability.

5. If a warehouse warrant has been issued and the claim for return assigned to a third party, there shall only be a lien and right of retention against the latter with regard to storage charges or expenses connected to the assigned goods in store or owed to the warehouse keeper by the assignee direct.

VII. DURATION OF CONTRACT

§ 23

Termination of contract

1. The contract of storage expires at the end of the period agreed upon.
2. If the contract of storage has been concluded for an indefinite period, it may be terminated with one month's notice.
3. The warehouse keeper is entitled to terminate the contract without notice and demand immediate clearance of the warehouse if there is good cause for such an action for which the warehouse keeper is not responsible.

There is good cause for the above action in particular if

- the depositor is two months in arrears in payment of storage charges or warehouse rent;
- the events listed in § 11, Item 2 prevent or affect fulfillment of the contract of storage;
- the value of the goods in storage no longer covers the warehouse keeper's claims;
- the goods represent a danger to the warehouse or other goods;
- the depositor failed to indicate any particular risks emanating from his goods when they were taken into store.

4. If the warehouse keeper is entitled to terminate the contract without notice and the goods in question are

- of no value,
- spoiled,
- or of potential danger to the warehouse or other goods stored in it,

the warehouse keeper may have the goods destroyed at the owner's expense and risk, providing sufficient warning of such action is given.

§ 24

Clearance of the warehouse

If the depositor fails to clear the warehouse in due time, the warehouse keeper is entitled, without setting any further deadline, to have the depositor's goods removed from the warehouse at the latter's expense and risk.

VIII. LOSS OF RIGHTS

§ 25

Limitation of actions

1. All claims against the warehouse keeper, irrespective of their cause in law, are subject to a limitation period of six months. In any case of wilful intent or fault as defined in § 13 of the Hamburg Terms of Storage, the limitation period is 12 months.
2. The limitation period begins at the end of the day when the rightful claimant receives notice of the claim or delivery takes place.
3. The limitation period shall commence on the earlier of the two dates detailed above.

IX. CONCLUDING PROVISIONS

§ 26

Jurisdiction, place of performance and law applicable

1. Exclusive jurisdiction and place of performance shall be Hamburg in the Federal Republic of Germany.
2. German law shall be applicable.

§ 27

Legal validity clause

Even if any provision of these Terms is or becomes legally invalid, this shall have no effect on the legal validity of the remaining provisions.

§ 28

Validity of the Hamburg Terms of Storage

The current version of the Hamburg Terms of Storage shall be valid from August 1, 1999.