

**GENERAL CONDITIONS FOR STORAGE
AND TRANSHIPMENT**

BY

EUROPEAN BULK SERVICES (E.B.S.) B.V.

IN THE PORT OF ROTTERDAM

EFFECTIVE AUGUST 1ST 2003

General Conditions for Storage and Transhipment by

EUROPEAN BULK SERVICES (E.B.S.) B.V.

Article 1 – Applicability, definitions, disputes

- 1.1 These general conditions prevail over any conditions in use by the principal and shall apply to any form of service which EBS shall perform including but not limited to loading, unloading, moving, transhipment, treatment, blending, screening, storing and reloading of dry bulk cargo, by means of mechanical equipment and auxiliary systems, fixed, floating or rolling, for grabbing, lifting and conveying in the largest sense, from and into seagoing vessels, barges or rolling stock, together with auxiliary services.
- 1.2.a The principal as referred to in these conditions is a natural or legal person, who has given for his own account and risk an order to EBS and thus represents to EBS the owner of the goods, the ship-owner or owner of other means of transport and accepts being liable to EBS for said owners.
- 1.2.b EBS does not accept orders from any third party on principal's behalf unless the principal declares in writing to protect, hold harmless and indemnify EBS from and against any claim of such third party.
- 1.3 EBS may subcontract contracted services to third parties under EBS's responsibility, under identical conditions.
- 1.4 The principal is obligated to take note of these general conditions as handed to him and cause that all third parties directly or indirectly involved in his behalf be made cognisant of its material contents.
- 1.5 Disputes resulting from the execution of contracted services shall be exclusively submitted by the readiest party to the Rotterdam District Court and shall be decided upon under Dutch law. These general conditions prevail in the English version.

Article 2 – Execution of orders

- 2.1.a Orders are executed with care and diligence as are customary in the Rotterdam port area practice.
- 2.1.b The responsibility for the goods and liability arising therefrom for EBS, as far as not already excluded pursuant to these general conditions, commence when the arriving goods leave the means of transport and terminate when those goods are loaded into the means of transport.

- 2.2.a The principal shall inform EBS before arrival of the goods about all relevant information and hazardous properties (whether or not generally known) of the goods as far as these may cause danger, spontaneously or in the course of time, to other goods or objects (including equipment and storage area), to persons or to the environment (soil, water or air) as well as in respect of legal consequences (ownership, storage banned elsewhere, custom formalities etc.).
- 2.2.b Failing such information or in case of incorrect or insufficient information, EBS may require at any moment that the goods are taken away from storage and from the terminal or that preventive measures (including disposal) be taken otherwise, all at principal's expense.
- 2.2.c In addition the principal is liable for any further damage caused to EBS (or its personnel) or to third parties as far as claimed from EBS which includes penalties imposed by public authorities. Principal will hold EBS harmless, protected and indemnified from and against any such claims or penalties.
- 2.2.d EBS may take samples at any moment and of any quantity for investigation at principal's expense.
- 2.3 Additional services such as but not limited to towing, pushing, transportation of persons or objects, repairs etc., carried out on order of EBS as part of the contracted services, are governed by the general terms and conditions of the subcontractor(s) involved and as such binding upon the principal.
- 2.4 EBS may, without being obligated thereto, take measures for treatment and handling as it may deem necessary for preservation or protection of the stored goods or of its own or other's goods or properties, in which case the principal shall be cooperative and pay the charges as incurred by EBS.
- 2.5 It is known to the principal that EBS does not insure the goods taken in store or being transshipped and that the principal is required to take out adequate insurance both for the goods and for third party liability caused by the goods in store and in transshipment. Policies to be presented to EBS upon request.
- 2.6 Handling and/or storage of goods is at the sole risk of the principal. EBS is not liable for damage and/or loss to the goods caused by defects of any equipment, facilities, tools or other means used by EBS unless in case of proven gross negligence by EBS.
- 2.7.a The loaded or unloaded quantity of goods after weighing or measuring by EBS is binding upon the parties, without any recourse on EBS.
- 2.7.b Differences in loading or in stored quantities are added to or deducted from (as the case may be) the charges due by principal to EBS as from the date the difference is stated without any retroactive compensation being due by either party.
- 2.7.c Sweepings, spillage and waste in connection with any stored or transshipped commodity are added to the quantity as weighed.

- 2.8 If the principal sells or otherwise disposes of (part of) the goods under order, this does not release him of his previously assumed obligations to EBS until EBS has confirmed in writing to the principal that he has accepted such transfer.

Article 3 – Operational procedures

- 3.1 EBS determines the order of sequence in which vessels or other means of transport will be loaded or unloaded and determines time and place for berthing or parking. The captain or driver accepts this place at his own risk. EBS does not assign or provide waiting places for any means of transport to be loaded or unloaded.
- 3.2 All equipment deployed by EBS is used at principal's risk. EBS assumes liability for damage to the goods only if caused by proven lack of maintenance or inadequate repairs as per public safety and technical inspection standards.
- 3.3 The principal is responsible that all his means of transport (floating and rolling) are in conformity with general rules of safety and that the goods to be transhipped are suitable for the contracted operational method in general and for the use of grabs in particular, that winches on board are ready for use and lighting on board is sufficient. Any delay or extra costs on this account are for the principal's risk and account, including the costs involved in additional requirements imposed by environmental authorities.
- 3.4 The principal shall cause that all-general directives and specific instructions given by EBS relating to the execution of the order, are duly observed.
- 3.5 Whilst the vessel is moored or waiting adjacent to the terminal of EBS the principal shall not without written consent of EBS undertake or have undertaken any loading or unloading activities on his own.
- 3.6 Any claim for alleged damage claimable from EBS under these general conditions must be filed in writing prior to departure of the means of transport.

Article 4 – Rates and tariffs; payment

- 4.1.a All rates and tariffs are excluding VAT and taxes and charges levied by public authorities on particular goods, their transshipment and/or storage.
- 4.1.b Unless expressly otherwise agreed, all rates and tariffs are subject to annual escalation (as per January 1) in accordance with the family consumption increase factor of the Central Bureau of Statistics of the Netherlands.
- 4.2.a Payment is due within fourteen days after date of invoice; delays bear interest of 1% per month or part thereof.
- 4.2.b Unless the principal has provided adequate financial surety for all outstanding and future payments, EBS holds a right of pledge or of retention concerning all goods of the principal that are in custody with EBS.

- 4.2.c Payment of invoices to may not be set off against debts of EBS to the principal unless specifically acknowledged by EBS.
- 4.3 Delays in commencement, execution and/or completion of the order, regardless of the reason, do not release the principal from his payment obligations, including those costs caused by such delays.
- 4.4 Costs for additional services, such as those mentioned in art. 2.3 and art. 2.4, are invoiced separately and paid directly upon receipt of invoice unless costs involved are part of the price of the contracted order.
- 4.5 Direct payments, as mentioned in the previous article, also apply to charges for damage directly or indirectly incurred by EBS on account of defective means of transport (floating or rolling) as used by or on behalf of the principle.

Article 5 – Force majeure; exclusion of liability

- 5.1.a The stevedore shall never be responsible or liable for damages caused by or to be attributed to occurrences of force majeure, including but not limited to war, riots, government or any other public authority interference, sabotage, strikes (organised or unorganised), lockouts and other labour unrest, burglary, fire and explosions, nuclear reaction, failure of energy and/or water supply, failure of computerised systems, high or low tide, excessive weather circumstances and any other event that EBS could not or can not reasonably foresee or prevent.
- 5.1.b Breakdown and repair/replacement of EBS's equipment and/or other appliances – at the sole judgement of EBS whether and when necessary – is deemed to be identical to force majeure.
- 5.1.c The non-availability of berthing or parking place upon arrival of floating or rolling transport equipment is identical to force majeure.
- 5.2 In all situations of force majeure the costs of delay, costs of demurrage and of recovery therefrom, as incurred by the principal, shall not be indemnified by EBS.
- 5.3 EBS is only liable for damage caused to goods, to means of transport or to persons in principal's employ or working on his behalf, if and to the extent this damage has been caused by proven gross negligence on the part of EBS or his personnel. The maximum liability for EBS shall not exceed Euro 4.500 per event or Euro 22.500 in the aggregate under any one order or contract. Any payment by EBS under this clause implies fault or liability only if and to the extent explicitly acknowledged by EBS.
- 5.4.a EBS shall never be liable for loss of profit, consequential and/or immaterial damage incurred by the principal. Loss of dispatch money and demurrage of any means of transport (floating or rolling) are deemed consequential damage under this clause.

- 5.4.b The principal shall hold harmless, indemnify and protect EBS from and against any claims with respect to loss or damage filed against him and/or EBS by a client of principal, which results from principal's contract with such client. When so requested by EBS, the principal and EBS shall act as co-defendants.
- 5.4.c All exclusions or limitations of liability under these general conditions apply likewise to all subcontractors of EBS engaged by him in the execution of order or contract.
- 5.5 Unless in case of proven gross negligence on the sole part of EBS, EBS is not liable for any damage to the goods which is, wholly or partly, attributable to the nature and condition of the goods or to the customary working methods applied, or for loss of weight or quality, contamination or the presence of alien objects in the goods, or for damage caused to other cargo on board the ship being loaded or unloaded.

Article 6 – Termination of storage

- 6.1 The principal shall collect the goods (or have them collected) before the last day of the agreed period of storage.
- In case of storage for an indefinite period of time EBS may serve written notice to the principal to have the goods removed from storage with a minimum term of 15 days to be observed.
- 6.2 The principal is liable for all costs and damage caused by any delay in either case.
- 6.3 EBS is empowered in such cases to have the goods removed for the account and risk of the principal and to have the goods stored elsewhere.
- 6.4 Furthermore the principal is deemed to have voluntarily and unconditionally waived his right of ownership of the goods (surplus if any included) in favour of EBS if he fails to remove the goods within the time as agreed or served upon him. EBS is entitled – at his own and sole option – to dispose of the goods and pay the proceeds, if any, to the principal minus costs incurred.
- 6.5 In the event of bankruptcy and similar events or if the principal fails to pay outstanding dues despite reminder, the storage may be terminated by EBS with immediate effect in conformity with the provisions of article 6.
- 6.6 Upon termination of the storage or of the storage contract (whichever may be the first) the storage space and its immediate surroundings will be cleaned from all remains including sweepings, spillage and waste for the account of the principal. Removal of such remains from the terminal will be added to the goods in storage or be removed by the principal on the date of termination or, failing this, by EBS, who is then entitled to freely dispose of the remains, all for principal's account. In the latter case principal will make an advance payment or provide adequate surety.