



EUROPEAN BULK SERVICES



STANDARD TERMS AND CONDITIONS
effective August 1st 2010

Standard Terms and Conditions of Storage and Transhipment by European Bulk Services (E.B.S.) B.V., hereinafter to be referred to as Standard Terms and Conditions

Definition

EBS	: European Bulk Services B.V.: the user of these standard terms and conditions, registered at the Dutch Chamber of Commerce of Rotterdam under registration number 24481640.
The Principal	: EBS' counterparty, being a natural or legal person, who has given for his own account and risk an order to EBS and thus represents the owner of the goods, the ship-owner / operator or owner / operator of other Means of Transport and accepts being liable to EBS for said owners/operators for any claim following from the execution of the order.
Services	: All acts performed by EBS including but not limited to loading, unloading, moving, transhipment, treatment, blending, screening, storing and reloading of dry bulk cargo and / or other 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.
Means of Transport	: Every construction designed to carry cargo (by land, rail, or by sea).

Applicable Law and Jurisdiction

Dutch law governs all legal relationships between EBS and the Principal. Disputes under or in connection with these legal relationships shall be tried exclusively by the Court of Rotterdam or, at EBS' choice, in another Court of Law having jurisdiction at the place of establishment of Principal.

Article 1 – Scope and applicability

- 1.1. These Standard Terms and Conditions apply to all legal relationships of EBS concerning any form of service to be performed by EBS, regardless of whether this is effected on orders, on other grounds, against payment or free of charge. The applicability of any other conditions are herewith explicitly excluded and rejected.
- 1.2. Invalidity of any provision of these Standard Terms and Conditions leaves unaffected the applicability of the other provisions under these Standard Terms and Conditions.
- 1.3. EBS is allowed to subcontract the Services to third parties and to accept the (standard) terms and conditions of such third parties. The Principal agrees to let such (standard) terms and conditions apply against the Principal also for additional Services, including but not limited to towing, pushing, transportation of persons or objects, repairs etc. carried out on order of EBS as part of the Services.
- 1.4. For the following (additional) Services other standard terms and conditions apply in addition to the Standard Terms and Conditions at hand:
 - For Services as forwarding agents according to provision 8:60 of the Dutch Civil code: the Dutch Forwarding Conditions (FENEX)
 - For Services concerning inland road transport: the Dutch General Transport Conditions (AVC)
 - For Services concerning push-barges: the General or European push conditions, whichever is the most favourable (Europese- / Algemene Duwcondities)
- 1.4.a. Services concerning rail transport are subject to the COTIF / CIM and the applicable access conditions to the Dutch railway net (toegangsvoorwaarden spoornet).
- 1.4.b. In the event of incompatibility between the Standard Terms and Conditions and the standard terms and conditions and regulations stated in articles 1.3, 1.4 and 1.4a the most favourable provision for EBS shall apply, unless the specific terms, conditions and / or rules are mandatory and therefore their applicability cannot be excluded.
- 1.5. 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.
- 1.6. In its legal relationships with third parties, the Principal shall include a third party clause in favour of EBS which entitles EBS to rely on these Standard Terms and Conditions, including the jurisdiction and choice of law provisions as well as the liability provisions.
- 1.7. In case amendments are made to these Standard Terms and Conditions the amended version of the Standard Terms and Conditions will apply, also for existing legal relationships between EBS and Principal. Principal will be deemed to have agreed explicitly with the applicability of the amended version of the Standard Terms and Conditions.

Article 2 – Offers, orders and agreements

- 2.1. Offers made by EBS and orders made to EBS are non-binding until an agreement with EBS has been concluded in writing. An agreement with EBS is only concluded by written confirmation of EBS or in the event that EBS has started the performance of an order.
- 2.2. Changes in the agreement do not affect the applicability of these conditions. They apply to the changed agreement as well. Deviations from these Standard Terms and Conditions are binding only if and insofar as EBS consents to these in writing.
- 2.3. Changes, supplements and extensions to the agreement can only be added with written permission from both parties and are only considered to be part of the agreement in that case. A change, supplement and/or extension shall be deemed accepted by the Principal if he is informed thereof by EBS and fails to reject the changes, supplement and / or extensions by return or post within 14 days after the notification.

Article 3 – General provisions regarding the Services

- 3.1. The Principal shall see to it that all necessary permits are obtained and kept as well as that all regulations applicable to the agreement are complied with.
- 3.2. All information supplied by EBS, such as the availability of berths and the time of execution of the Services is not binding.
- 3.3. The Principal is deemed to be aware of the fact that EBS does not insure the goods under the agreement. The Principal is obliged to take adequate insurance for both the goods and third party liability caused by the goods in store and transhipment. Upon EBS' request Principal is obliged to present to EBS the respective insurance policies.
- 3.4. Before arrival of the goods the Principal shall provide EBS with all relevant information as to
 - I. The nature, type, quality, composition, temperature, weight, volume, source, origin, physical / chemical properties of the goods;
 - II. Hazardous properties/substances (whether or not generally known or recognized as such) of / within the goods as far as these may cause danger or delays, 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);
 - III. Legal consequences (ownership, storage banned elsewhere, custom formalities etc.);
 - IV. Whether a special method of storage is required or necessary due to the nature of the goods;
 - V. Special directions regarding the manner of loading or unloading; and all other particulars, which are of importance to EBS;
 - VI. Should the vessel and / or cargo be fumigated, then the Principal is to inform EBS well in advance, at the latest 7 days prior to arrival in Rotterdam of the fumigant used and in which hold(s) it was applied). The vessel is to berth only after the vessel and / or cargo has been declared gas-free.

- 3.5. The Principal is obliged to inform EBS of the arrival time of the goods; independent of the Means of Transport the goods arrive with. The arrival time mentioned by Principal is binding between parties.
- 3.6. Notwithstanding EBS' other rights under the agreement, failure to provide such information or failure to provide correct or sufficient information, gives EBS the right to refuse the goods or, at Principal's risk and expense, require at any moment that the goods are taken away from storage from the terminal to, immediately stop loading, discharging operations or take other measures (including disposal). EBS also has the right to refuse the goods in case the goods arrive in a damaged or defective condition.
- 3.7. EBS may, without being obliged 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, all at Principal's risk and expense.
- 3.8. Only the loaded or unloaded quantity of goods established after weighing or measuring by EBS is binding upon parties, this without any recourse on EBS. EBS may take samples at any moment and of any quantity for investigation at Principal's expense. Differences in loading or in stored quantities are added to or deducted from (as the case may be) the charges due by the Principal to EBS as from the date the difference is stated without any retroactive compensation being due by either party. Sweepings, spillage and waste in connection with any stored or transhipped commodity are added to the quantity as weighed.
- 3.9. 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.
- 3.10. The Principal is obliged to immediately notify EBS in writing of transfer or passing of ownership of goods or transfer or passing of the right to take delivery of the goods, as the case may be.

Article 4 – Performance of the Services

- 4.1. EBS determines the order of sequence in which vessels 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.
- 4.2. EBS is entitled to have the Services carried out in whole or in part by staff and equipment by third parties as well as, at the discretion of EBS, with the help of the loading and unloading equipment and/or drive power of the Means of Transport to be made available by the Principal, in the latter case free of charge.

- 4.3. Unless otherwise agreed it is Principal's obligation to prepare the Means of Transport and the goods to be loaded or unloaded from it at its own risk and expense such that EBS is able to carry out the Services safely, in a responsible matter and without delay. It is the Principal's responsibility 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.
- 4.4. In case of refusal, suspension, interruption or termination of the Services, the Principal must ensure that the Means of Transport and corresponding items shall leave the Terminal upon EBS' first request, failure of which shall entitle EBS to take appropriate measures at the Principal's risk and expense.
- 4.5. The Principal shall see to it that all general directives and specific instructions given by EBS relating tot the execution of the order, are duly observed.
- 4.6. 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.
Unless otherwise agreed, the vessel is to vacate the discharge berth within ninety minutes after EBS completed the Services, which includes the removal of the equipment of EBS. Should this period be exceeded, the costs of EBS and / or incurred by EBS will be charged.

Article 5 – Rates and tariffs

- 5.1. All rates and tariffs are in Euro's per **1,000** kilo and excluding V.A.T., taxes and charges, levied by public authorities on particular goods, their transhipment and / or storage.
- 5.2. The tariffs are applicable for Services carried out on a berth allocated by EBS and for sound, normally stowed, harmless and non dangerous bulk cargo, which is in every respect fit and accessible for discharge, at normal speed, by equipment in use with the Stevedore, without any impediment preventing a continuous discharge by the Stevedore. Goods are to be suitable for grab and or mechanical loading and or unloading.
- 5.3. EBS is entitled to, in all fairness, adjust the rates agreed, if after the conclusion of the agreement cost-increasing factors occur that are beyond the control of EBS, such as but not limited to (government) measures in the area of safety, quality, the environment and taxation aspects and marketing developments in the area of labour and energy that had not been taken into account upon entering the legal relationship with EBS.
- 5.4. The tariffs do not include the costs of forwarding agents, supervision, sampling, custom formalities etc.

- 5.5. The tariffs for discharging the Means of Transport are based on self-trimming bulk carriers, being a single deck vessel for the carriage of dry bulk commodities, and / or other cargo without any obstacle in the holds. For any other type of Means of Transport, such as, but not limited to singledeckers, tweendeckers (dry cargo vessels), coasters, barges, push barges and lash barges, other tariffs apply.
- 5.6. Spout-trimmed loading is included in the tariff. Extra trimming requirements can be arranged upon request, against payment.

Article 6 – Special rates and tariffs

- 6.1. The agreed tariffs only apply during official working hours.

Working hours

EBS Europoort Terminal and Sint Laurens haven Terminal

Monday - Friday

Day shift 07:30-15:30 hours

Evening shift 15:30-23:30 hours

Night shift 23:30-07:30 hours

30 minute meal break per shift

Saturday

Day shift 07:30-15:30 hours

30 minute meal break per shift

In case of an official Dutch public holiday, the Services will be stopped the day before at 15:30 hours and resumed at the beginning of the first scheduled dayshift following the public holiday.

- 6.2. Special rates and tariffs apply in the case of:

- I. Overtime Services

Overtime is subject to the availability of the workforce. Services outside official working hours and during official Dutch public holidays (including the evening and night shifts preceding such days) is considered overtime.

II. Idle Time

The idle time incurred will be charged when operations, including delivery out of floating storage, are interrupted or delayed by causes such as:

- a. Waiting for arrival and / or the preparations to discharge the ocean vessel (opening hatches, gas free certificate, etc.),
- b. Waiting for the arrival and/or the departure of barge(s),
- c. Waiting for the arrival and/or the departure of coasters; waiting due to draft survey, deballasting, preparing for seaworthiness, pilots, etc.,
- d. Weather circumstances.

The idle time incurred will also be charged for delays or interruptions in loading operations out of storage, not being floating storage, by causes such as described above.

III. Reduced Turnover

If parties agree to a time period in which the operations must be concluded an extra charge will be imposed when operations are slowed down by causes beyond EBS' control (based on the total manipulation).

Causes considered to be beyond the control of EBS are amongst others:

- a. Restricted access through hatchcoamings, tank openings, ullage / butterworth, manholes, etc.,
 - b. Obstacles in hold / tank, e.g. heating coils (except those in tankers), propellers, propeller shaft, Australian ladders, container fittings, dunnage, other cargo, open brackets, open bilges, bilge well covers, motorcar decks or any other obstacle,
 - c. Part cargoes in holds, tween decks or tanks out of which part of the cargo has been discharged in other ports,
 - d. Inaccessible, mixed and / or damaged cargoes,
 - e. Delays as a consequence of improper separation materials and / or improper placement,
 - f. Low production rate due to the specific product characteristics,
 - g. Water or residues in the hold which have to be removed for whichever reason.
- In cases as mentioned above, EBS will inform the Principal or their representative as soon as possible.

In all other cases, where operations are slowed down and extra Services is required, the real incurred costs will be charged.

IV. Separations

For the clearing up of an artificial separation EBS will charge a lump sum (the amount thereof to be agreed between parties) This lump sum is applicable for a separation, which is well placed, i.e. horizontal, flat and cargo underneath properly trimmed.

Upon request of the Principal and for Principal's expense, EBS can coordinate and /or arrange the removal and the destruction of the separation material. Parties will have to agree on the costs to be charged to Principal.

V. Operations at a different discharge berth

When, at the request of the Principal, the operations of EBS are to be carried out at a berth, which is not allocated by EBS, the extra costs of EBS will be charged to the Principal.

VI. Ice

When ice is obstructing the performance of the Services, the extra costs, including costs of possible ice-breakers, will be charged to the Principal.

VII. Heated cargo

In the case of cargoes being heated to such a degree that special measures have to be taken to prevent damage to storage facilities, discharge equipment and / or the discharging speed is slowed down, a surcharge on the corresponding tariff is to be paid. This surcharge will be based on the loss of capacity and/or the extra expenses involved.

VIII. Operations on bags / bagging up and trimming

Bagging up and trimming can be arranged upon Principal's request and expense. For cutting, bleeding and bundling of bags the Principal is requested to arrange same well in advance with the Planning Department.

IX. Floating storage

All tariffs related to the reception, delivery and rent are only applicable to open silo and / or flat storage. Floating storage can be arranged upon request. Different charges apply.

X. Cleaning silo's or sheds

When renting a silo or a shed a separate amount will be charged for cleaning. The amount depends on the nature of the product and the size of the silo or shed.

XI. Sweeping barges

If sweeping of barges has to be done by EBS the costs of this operation will be charged separately.

XII. Discharge of vessels fitted with open brackets

An extra charge will apply for the discharge of the vessels fitted with open brackets.

XIII. Discharging ex holds

An extra charge will apply for discharging ex holds of which cargo is of difficult access to the grabs.

XIV. Extra Services

Extra Services will be charged for an agreed price between EBS and Principal.

XV. Labour costs

Extra labour costs will be charged separately.

XVI. Sweeping and cleaning

The Principal is responsible for all the costs deriving from the sweeping and cleaning of the terminal and the Means of Transport and disposal of waste resulting from the loading, discharging and storage of the goods, all in accordance with the CDNI-convention.

6.3. All special rates and tariffs are upon request at EBS.

Article 7 – Payment Conditions

7.1. Unless otherwise agreed, payment is due within fourteen days after date of invoice, without the Principal having any right of deduction, suspension or set off against debts of EBS; delays bear interest of 1% (EBS) per month or part thereof.

7.2. 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 caused by such delays.

7.3. Costs for additional Services, such as that mentioned in article 1.3, are invoiced separately and paid directly upon invoice unless costs involved are part of the price of the contracted order.

7.4. Direct payments, as mentioned in the previous article, also apply to charges for damage directly or indirectly suffered by EBS on account of defective Means of Transport (floating or rolling) as used by or on behalf of the Principal.

7.5. Payment to EBS must be effected in the manner specified by EBS to Principal. Payment to a(n) (alleged) representative of EBS shall not release Principal from its payment obligations towards EBS.

7.6. Upon EBS' first demand, Principal must provide EBS with an advance payment, a prepayment, an interim payment or (sufficient) security that EBS deems adequate to cover all outstanding invoices / claims by EBS against Principal, now and in the future.

- 7.7. All outstanding invoices / claims of EBS shall become immediately payable if and as soon as the Principal or its representative applies for an administration order, files a bankruptcy petition, is declared bankrupt, ceases its activities in whole or in part or transfers them to third parties, or loses control of its assets in whole or in part due to attachment or similar measures.
- 7.8. EBS has a lien and a right of retention towards anyone requesting delivery thereof, on all goods and documents and funds EBS holds or will hold for whatever reason and for whatever purpose, for all claims it has or may have in future on the Principal and / or owner. EBS may exercise the same aforementioned rights for all amounts the Principal still owes EBS in connection with earlier legal relationships or previous assignments.
- 7.8.a. EBS shall regard anyone who, on behalf of the Principal entrusts goods to EBS for performance of the Services as the Principal's agent for creating a lien and a right of retention on such goods.
- 7.9. Failure of (timely) payment of EBS' invoices / claims, shall constitute an increase of the amount of the outstanding invoices / claims by at least 15% to cover all judicial and extrajudicial costs incurred by EBS for the collection of the amount, unless the real costs are higher, in which case EBS is entitled to the extra amount.

Article 8 – Termination, suspension and interruption, general provisions

- 8.1. In case circumstances occur where it is unfair to expect that EBS continue the performance of the agreement, such as but not limited to Force Majeure (provision 10.5), EBS has the right to terminate the agreement without becoming liable for damages as a result.
- 8.2. Notwithstanding EBS' other rights under the agreement, including the right to claim damages from the Principal, any breach of Principal's obligations constitutes a right of EBS to terminate the agreement, suspend or interrupt the Services, with immediate effect and without the requirement of a prior (written) notice of default and without Principal being entitled to claim any damages or costs from EBS.
- 8.3. EBS has the same rights as mentioned in provision 8.2 in case of non compliance by the Principal with provision 7.6 or occurrence of a situation as mentioned in provision 7.7.

Article 9 – Termination of storage

- 9.1. The Principal shall collect the goods (or have them collected) before the last day of the agreed period of storage and/or in case of a termination of the agreement, whichever comes first within 15 days. 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.
- 9.2. The Principal is liable for all costs and damage caused by any delay in either case.
- 9.3. EBS is empowered in such cases to have the goods removed for the account and risk of Principal and to have the goods stored elsewhere.
- 9.4. Furthermore, the Principal is deemed to have voluntarily and unconditionally waived its 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.
- 9.5. Upon termination of the storage or of the agreement (whichever may be the first) the storage space and its immediate surroundings will be cleaned from all remains including sweeping, 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 security.

Article 10 – Force Majeure and exclusion of liability

- 10.1. EBS' responsibility for the goods and liability arising thereof, as far as not already excluded pursuant to these Standard Terms and Conditions, commences when the arriving goods leave the Means of Transport and terminates when those goods are loaded again into the Means of Transport.
- 10.2. Handling and or storage of goods is at the sole risk of the Principal. Unless in the case of gross negligence by EBS, to be proven by the Principal, EBS is not liable for any damage to or loss of the goods caused by EBS' performance of the Services i.e. any breach of EBS' obligations under the agreement, 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. This applies also in the case of damage to the goods, which is, wholly or partly, attributable to the nature and conditions of the goods or to the customary working methods applied.

- 10.3. The maximum liability for EBS shall not exceed **€ 4,500** per event or **€ 22,500** in the aggregate under the agreement. Any payment of EBS under this clause implies fault or liability only if and to the extent explicitly acknowledged by EBS.
- 10.4. 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.
- 10.5. EBS shall never be responsible or liable for failure to perform its obligations under the agreement nor indemnify the Principal for damages or costs, including but not limited to the costs of delay, costs of demurrage and of recovery thereof, caused by or due to Force Majeure, meaning any circumstance beyond EBS' control, 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, or excessive weather circumstances and any other event that EBS could or can not reasonably foresee or prevent.
- 10.6. Breakdown and repair/replacement of EBS' equipment and / or other appliances – at the sole judgement of EBS whether and when necessary – is deemed to be identical to Force Majeure.
- 10.7. The non-availability of a berthing or parking place upon arrival of floating or rolling transport equipment is identical to Force Majeure.
- 10.8. 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.
- 10.9. Any claim for alleged damage against EBS under these Standard Terms and Conditions must be submitted in writing to EBS prior to departure of the Means of Transport, the goods or the person(s) involved, whichever occurs first, failing which any claim against EBS shall be barred. In any case, any claim against EBS will become time-barred unless a summons to appear before the Court of Rotterdam has been served to EBS within twelve months after the event that has given rise to such claim occurred.
- 10.10. All exclusions or limitation of liability under these Standard Terms and Conditions apply likewise to all subcontractors of EBS engaged by EBS in the execution on order or contract.

Article 11 – Principal's liability

- 11.1. It is at Principal's risk if the goods, Means of Transport and or person's involved leave the terminal without prior inspection by the Principal.
- 11.2. The Principal is liable for and shall hold harmless, indemnify and protect EBS from and against any claims resulting from Principal's breach of any provision under the agreement and / or these Conditions, including but not limited to provision 3.6 of these Conditions. In case of termination of the agreement, suspension or interruption of the Services caused by Principal, for example in the event of a situation as mentioned in provisions 7.6, 7.7, 8.2 and 8.3, the Principal is liable for all costs and damage caused.
- 11.3. Principal is also liable and shall hold harmless, indemnify and protect EBS from and against any claims by whatever name concerning, but not limited to customs duties or similar duties and charges, fines, expenses and interest, including import duties, excise duties and expenses for removal and destruction referring to or in connection with goods that EBS holds, has held or will hold by virtue of the Services resulting from any type of governmental or EU- regulation.
- 11.3.a. Moreover, Principal is liable and shall hold harmless, indemnify and protect EBS from and against any claims by whatever name, from whichever person, legal or private, concerning:
- The (EC) Regulation No. 1907 / 2006 of 18 December 2006, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);
 - The Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act (Wet Ketenaansprakelijkheid);
 - The Act on Environmental tax base, specifically related to the tax on coal (Wet belastingen op milieugrondslag / kolenbelasting);
 - The CDNI-convention (Scheepsafvalstoffenverdrag);
 - The BLU-code (Bulk loading and unloading code)
- 11.4. Principal shall also hold harmless, indemnify and protect EBS from and against any claims with respect to loss or damages filed against him and / or EBS by a third party, which results from Principal's contract with such third party. When so requested by EBS, the Principal and EBS shall act as co-defendants.

Article 12 – General Provisions

- 12.1. These Standard Terms and Conditions may be quoted as "EBS' Standard Terms and Conditions 2010".
- 12.2. These Conditions are in the English language. In case of any discrepancy between the English text and a translation, the English text shall prevail.