

HWTT GENERAL TERMS AND CONDITIONS FOR STORAGE AND HANDLING ("Conditions") - 2025

DEFINITIONS

Article 1

In these conditions the following terms are defined as follows:

- a. **Business Day:** a day (other than Saturday or Sunday) on which banks are generally open in Hamburg for normal business.
- b. **Client:** the entity which has signed the Agreement (as defined below) with the Storage Company and anyone who, whether or not on his own behalf, places an order with the Storage Company for storage and handling of any Products.
- c. **Comingled Storage:** storage of Products in Storage Space(s) shared by more than one Client. Such storage may or may not result in contact and/or mixing with other Products of a similar specification.
- d. **Confidential Information:** information that is by its nature confidential (including information regarding the financials, customer lists, strategies business plans, commercial terms of the Agreement) or is designated by a party as confidential.
- e. **Premises:** storage spaces, office(s), quays, berths, jetties, Pipelines and all other areas owned or leased by the Storage Company on or in which Products are handled and/or stored by the Storage Company as part of the Services.
- f. **Products:** all oil products which are handled and stored by the Storage Company on behalf of the Client..
- g. **Pipeline(s):** the pipeline(s) used for the transport of Products to, from and via the Premises, including pipeline bore connections.
- h. **Services:** all works to be carried out or outsourced by the Storage Company, including but not limited to the provision of Storage Space, the receipt, storage, manipulation – including handling and pumping of Products at, outside or through the Premises by the Storage Company other than storing or warehousing, including unloading, pumping, by whatever means or operation.
- i. **Storage Company:** HES Wilhelmshaven Tank Terminal GmbH.
- j. **Storage Space(s):** any space made available to or to be used by the Storage Company, designed for the purpose of carrying out Services, including tanks, tanker vessels, tank trucks, rail tank cars, sheds, and all other places together with Pipeline(s), pumps and other component and parts of the same.

APPLICABILITY

Article 2

Each Agreement ("**Agreement**") for storage and handling services ("**Services**") for Products by the Storage Company is deemed to incorporate these Conditions. These Conditions are also applicable to all offers and orders for the same and to all other agreements or correspondence with the Storage Company with respect thereto.

These Conditions apply to the exclusion of any terms of business of the Client, and supersede, replace and override any representations, estimates or terms made or agreed prior to the date of the Agreement.

OFFERS AND AGREEMENTS

Article 3

All orders for Services from the Client shall, if given orally, be confirmed in writing within two Business Days. Any order for Services accepted by the Storage Company shall be irrevocable and subject to these Conditions and the provisions of the Agreement. The provision of the Services shall take place on the basis of a Agreement between the Client and the Storage Company, regardless of whether or not an agreement pertaining to one or more Storage Space(s) or any other agreement has also been entered into between the Client and the Storage Company. The Storage Company is entitled to refuse to enter into any agreement without stating the reasons for such refusal.

DURATION OF THE AGREEMENT

Article 4

The Agreement may be entered into for a definite or an indefinite period. If the Agreement is entered into for a definite period, it shall automatically terminate on the expiry of the agreed definite period. If the Agreement is entered into for an indefinite period, each of the parties to the Agreement is entitled to terminate the Agreement on six (6) month's written notice. Any further ordinary termination of the Agreement is excluded..

Article 5

Without prejudice to Articles 6 and 36, as soon as possible after a termination notice has been given, but in any case so sufficiently prior to the end of the Agreement that the Storage Spaces may be cleaned by the Storage Company until the end of the Agreement, the Client is obliged to take immediate receipt of the stored Products, unless the Storage Company consents to an extension of the term of the Agreement. Any such extension shall be on the same terms as the terminated Agreement including Storage Company's right to demand compensation for all direct and indirect costs and losses and the Storage Company's right to charge storage fees in respect of the Products at its then current rate.

The Client acknowledges that at the end of the duration of the Agreement the Storage Spaces used in the performance of the Agreement must be in the condition they were at the beginning the Agreement. The Client acknowledges and agrees that it shall be responsible for all costs (including costs associated with the disposal of waste water, Product remnants, any chemical or other waste and any applicable administration charge) that are incurred during the duration of the Agreement and on expiration or termination of the Agreement in connection with the cleaning of the Storage Spaces. If the Storage Spaces cannot be cleaned until the end of the duration of the Agreement, the Client shall pay fees for the extended term.

The expiration or termination of the Agreement will not affect any accrued rights of either party, including any right to receive payment due but unpaid, or Articles 4, 5, 26, 30, 36, 39-41, 44-46, 50, 51 together with any other provisions of the Agreement which are expressed to survive expiration or termination or which are required to give effect to such expiration or termination.

TERMINATION OF THE AGREEMENT FOR GOOD CAUSE

Article 6

Either Party is at all times entitled to terminate the Agreement at any time with immediate effect by written notice to the other Party for good cause (*aus wichtigem Grund*) and, if the Agreement has been entered into for a definite period, to demand that the Client takes receipt of the Products within a reasonable time. A good cause that entitles the Storage Company to terminate includes but is not limited to:

- in relation to the Client, the appointment of a receiver or administrative receiver, the passing of a resolution for winding up (other than for the purpose of a bona fide scheme of amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, the application to the court for an administration order, the giving of a notice of appointment or intention to appoint an administrator or liquidator, the entering into of a voluntary arrangement with the Client's creditors or a Client's request for the temporary cessation of payments;
- the financial situation of the Client has deteriorated materially, so that the Client's fulfilment of its contractual obligations is expected to be jeopardized;
- the non-performance by the Client of one or more of its material obligations under the Conditions or the Agreement, including but not limited to a breach of the compliance provisions herein and/or in the Agreement;
- a danger that in the opinion of the Storage Company the Products will cause damage to the Premises, the Storage Space(s) or loss of other products or the Premises or harm to persons;
- Products being susceptible to deterioration or changes to the Products which in the opinion of the Storage Company are likely to lead to loss of value of the Products or Storage Space(s) and upon notification from the Storage Company the Client's failure to provide instructions to prevent or address the same;
- the Storage Space(s) used being entirely or partly destroyed by fire or any other cause or being rendered unsuitable for the performance of the Agreement in any other way; or
- the Products causing or threatening to cause an environmental hazard.

SPECIAL MEASURES

Article 7

Without prejudice to Article 6 (above), the Storage Company is entitled, at the cost and risk of the Client, to take such reasonable measures as the Storage Company deems necessary (including without limitation the destruction of the Products) if in the Storage Company's opinion there is a danger that the failure to take such measures will result in loss of or damage to the Products themselves or to other products or to the Premises or the Storage Space(s) or harm to any person. If reasonably practicable, the Storage Company shall inform the Client immediately of the measures taken however failure to so notify shall not constitute a basis for any claim against the Storage Company.

APPROVAL OF THE STORAGE SPACE

Article 8

Subject to reasonable notice, the Client is entitled at its cost to inspect the Storage Space(s) made available by the Storage Company with regard to their suitability for the handling, storing and/or warehousing of the Products prior to the arrival of the Products. Such inspection shall be in the presence of representatives of the Storage Company. If the Client fails to carry out such inspection the Client thereby accepts the Storage Space(s) being in good order and conditions and waives the right to make any claim on these grounds at a later stage.

MAINTENANCE OF THE STORAGE SPACE(S)

Article 9

Apart from invisible defects and an event of force majeure as set out in Article 44, the Storage Company undertakes to maintain the Storage Space(s) in an operationally safe condition and to the extent necessary for the Storage Company to fulfil this obligation the Client shall:

- a) give the Storage Company the opportunity to carry out an inspection in order to determine whether the Storage Space(s) require maintenance and/or repair; and
- b) give the Storage Company free access to the Storage Space(s) for the time required for any maintenance and/or repairs that the Storage Company deemed necessary.

The Client shall continue to pay the agreed fees for the Storage Space(s) during the period that the Client is deprived of the use of all or part of the Storage Space(s) due to any inspection, maintenance and/or repairs as contemplated by this Article 9. Should, however, the Client's loss of use of such Storage Space(s) last for more than 15 days, the Client shall be refunded a pro rated amount of the fees paid to the Storage Company, unless suitable alternative Storage Space(s) is/are made available by the Storage Company at its Premises, in which case the Storage Space(s) shall be offered to the Client free of charge, on the understanding that the fee payable for the unavailable Storage Space(s) shall continue unchanged. Subject to Articles 45 and 46, the Storage Company shall not be liable to the Client for damage caused directly or indirectly by the Storage Company's inspection, maintenance and/or repairs and/or temporary loss of the Storage Space(s).

If the Storage Space(s) is/are entirely or partly destroyed or is/are rendered unsuitable for storage, by any cause or event of force majeure, as set out in Article 44, the Storage Company shall not be liable for any associated loss to the Client, nor shall the Storage Company be obliged to provide alternative Storage Space(s) for the Client, even if other Storage Space(s) is/are available.

NOTIFICATION

Article 10

All applications, orders, notifications, requests and communications to the Storage Company must be made in writing, without the Client being able to invoke the absence of any such written documentation. The Storage Company's administration is decisive in this respect. Facsimiles and e-mail are considered a suitable form of written communication in this context.

DESCRIPTION OF THE PRODUCTS - INCORRECT AND INCOMPLETE STATEMENTS

Article 11

Prior to the starting date of the Services, the Client shall provide the Storage Company with a written description of the Products and warrants that any Products which it delivers shall correspond to the written description and meet the properties of any relevant European Standards Specifications and any Material Specification Data Sheet providing information in accordance with the Chemicals (Hazards Information and Packaging for Supply) Regulations and shall not contain any substances or be in such a state which may cause loss of or damage to other Products, to the Storage Space(s) or to the Storage Company's storage facilities or to any person when stored in normal conditions. If the specifications or characteristics of the Products change at any time, the Client shall notify the Storage Company immediately. The Client shall be liable for all damage and shall indemnify and hold harmless the Storage Company against all claims of third parties resulting from inadequate, incorrect and/or incomplete descriptions, specifications and other communications, as well as from defects in the Products not communicated to the Storage Company in writing in advance of the Products' delivery to the Premises.

Where the Client is subject to the provisions of Regulation 1907/2006, concerning the registration Evaluation, Authorization and Restriction of Chemicals including any related and implementing legislation (REACH Regulation), the Client is obliged to comply with the REACH Regulation at all times. If any Products which is, or have been, stored with the Storage Company becomes a Substance of Very High Concern under the REACH Regulation, the Client shall inform the Storage Company

immediately in writing of such classification and the Storage Company may request that the Products is removed from the Premises.

USE OF STORAGE SPACE FOR DIFFERENT TYPES OF PRODUCT

Article 12

If an Agreement is entered into for the storage of Products of a certain specified type, the Client shall not use the Storage space(s) offered by the Storage Company in respect of those Products for the Handling, storing and/or warehousing of Products of a different type than those specified without the express consent of the Storage Company.

If the Client reasonably considers it necessary that in view of the Handling, storing and/or warehousing of Products other than as originally agreed or originally Handled, stored and/or Stored, sweepings, pump remnants or sealments should be removed or that the Storage Space(s) or the Pipelines be cleaned, steam-cleaned, oiled or painted, the Client may request that the Storage Company perform such tasks. The Storage Company shall have the option of accepting or refusing to undertake such tasks and, if accepted, the work shall be at the sole risk and expense of the Client.

CONDITION OF THE PRODUCTS ON ARRIVAL

Article 13

If, on arrival at the Premises, and in the Storage Company's opinion, the Products are visibly damaged or are in a faulty condition, the Storage Company shall be entitled, at the Client's risk and expense, to protect the interests of the Client by acting as agent for the Client in refusing to take delivery of the Products and/or refusing to endorse any delivery documents. The Storage Company shall inform the Client of this matter, however the Client shall have no claim in respect of a failure to do so by the Storage Company or in respect of the manner in which the Storage Company has acted with respect to the Products.

TITLE

Article 14

The Client shall retain title to all Products owned by it delivered to the Storage Company at the Premises.

MEANS OF TRANSPORT

Article 15

The Client shall ensure that all means of transport in connection with the Products shall be suitable and clean, and that the Products are kept in a secured condition. If the means of transport in question does not meet these requirements, the Storage Company may refuse to grant the means of transport or the Products access to the Premises and if the means of transport or Products are already on the Premises, the Storage Company may request their removal, or remove the same at the Client's cost.

PRODUCTS SUBJECT TO CHARGES/LEVIES/TAXES

Article 16

The Storage Company shall be under no obligation to admit to the Premises any Products, which remain subject to freight costs. All costs in connection with the transportation of the Products to the Premises, which are due either upon arrival or at any time thereafter, shall be paid in advance by the Client.

The Client will be responsible for and shall indemnify and hold harmless the Storage Company against all taxes, charges, levies, customs, assessments, duties, fines freight costs, C.O.D. charges or other charges or impositions whatsoever at any time levied against or in connection with the Products or any part or parts thereof.

PERIOD DURING WHICH THE PRODUCTS ARE ON THE PREMISES

Article 17

The Products are deemed to be on the Premises and within the Storage Company's custody:

- if they are pumped out of tankers, ship or other vessels, as soon as they have passed the connection of that tankers'/ships'/vessels' manifold;
- if they are brought packaged by ship, after the Products or the Products or the material with which these are unloaded have been unhooked from the crane on the jetty or on the premises; and
- if they are brought by container truck/train, after they have been unloaded from the truck/train at the Premises.

The Products are deemed to have left the Premises and within the Storage Company's custody:

- if they are shipped out via tankers, ships or tanks or other vessels after they have passed the connection of that tankers', ship's or other vessel's manifold;
- if they are taken away packaged by ship, after they are hooked on the crane on the premises.
- if they are taken away by container truck/train, after they have been loaded onto the truck/train at the Premises.

TRANSPORT TO AND FROM THE PREMISES

Article 18

The Products shall be conveyed to and from the Premises in accordance with the terms set out in the Agreement.

LATE TRANSPORT TO AND FROM THE PREMISES

Article 19

The Client shall inform the Storage Company reasonably in advance (and in accordance with Article 21) of the time certain volumes of Products will be transported to or from the Premises. If the Client fails to transport the Products to or from the Premises at a time which approximates to that notified to the Storage Company and in a manner customarily used for such transportation, the Client shall compensate the Storage Company for any costs incurred as a consequence.

ARRIVAL OF VESSELS AND VEHICLES

Articles 20

The Storage Company may refuse to allow the mooring of vessels at the Premises and the arrival of vehicles at the Premises unless the transport of Products to and from the Premises has been arranged with the Storage Company at a reasonable time in advance (and in accordance with Article 21) and there are no legal or compliance restrictions or other impediments which would hinder the delivery or taking of receipt of the Products.

ORDER IN WHICH VESSELS AND VEHICLES ARE HANDLED

Article 21

The Client or its agent shall nominate every vessel or vehicle required to load or unload Products at the Premises to the Storage Company at least seventy two (72) hours prior to the estimated time of arrival at the berth or jetty or the Premises and no vessel shall berth alongside unless such nomination has been accepted by the Storage Company. Where nominations are received by the Storage Company less than seventy two (72) hours prior to the estimated time of arrival, the Storage Company may accept such nominations at its discretion but shall not be bound to and shall not be liable for any loss caused to the Client due to the late nomination or non-acceptance of the nomination.

The Storage Company shall in ordinary circumstances load or unload (as the case may be) vessels, craft, vehicles or wagons in the order of arrival at the Premises or quay. At its sole discretion, the Storage Company shall nevertheless be entitled to depart from such order for the purpose of complying with the regulations or directions of the Customs authority, Harbour authority or other relevant authorities for ensuring the safety or smooth or economic working of the Storage Company's operations or for any other purpose whatsoever.

INSPECTION OF THE PRODUCTS UPON ARRIVAL

Article 22

The Storage Company is not obliged but it may at any time, at its sole option, weigh, measure or investigate the condition of any Products delivered in order to confirm the nature and condition of those Products delivered. Should the Storage Company ascertain from an inspection of the Products that any of the number, weight, size or condition has been incorrectly indicated, the Storage Company may make a reasonable charge to the Client for the cost of this inspection.

DEMURRAGE AND DELAY

Article 23

Subject to Article 45 and 47, the Storage Company accepts no responsibility whatsoever for delay incurred by vessels, craft, vehicles or wagons and shall not at any time be bound to make payment or reimbursement of demurrage, fees for waiting time or for any consequential loss, loss of profits, economic loss, or loss of business, profit or goodwill arising from delay.

RELOCATION OF STORED PRODUCTS

Article 24

Unless explicitly agreed otherwise, the Storage Company may choose the location of the Storage Space(s) for the Products. The Storage Company may move the Products from one Storage Space(s) to another suitable for the Products concerned. Before moving Products in this way, the Storage Company shall notify the Client of the intended move. If the Storage Company considers it necessary for the proper performance of the Agreement, the Storage Company may transfer the Products to Storage Space(s) of a third party without the prior consent of the Client.

COMINGLED STORAGE

Article 25

In the event of Comingled Storage, the Client is entitled only to store Products of the same type, volume and/or grading that the Client has supplied to the Storage Company for storage with Products from other clients.

If, according to the Storage Company's reasonable judgement, it considers that because of type, grading or characteristics, the Products are not suitable for Comingled Storage, the Storage Company is entitled to store those Products separately and to charge the Client the applicable fees related thereto.

NOT PERMITTED TO SUBLEASE / NO ASSIGNMENT

Article 26

The Client shall not permit any third party to use the Storage Space(s), either by sublease or assignment of rights, without the express prior written consent of the Storage Company and always subject to specific conditions as agreed between the parties.

QUANTITY

Article 27

The Client shall accept the accuracy of the Storage Company's statement of the volumes and/or weights of the Products (or any part or parts thereof) received into and/or delivered out of storage.

PERFORMANCE OF THE WORK

Article 28

Any additional services the Client wishes to be carried out with respect to the Products must be assigned to the Storage Company for implementation to be carried out on the terms and conditions of the Storage Company as the Storage Company may specify from time to time unless agreed otherwise. The Storage Company shall charge a fee for any such services at the rate specified by the Storage Company from time to time. Activities the Storage Company does not wish to undertake can be carried out by the Client or on his behalf after having obtained permission from the Storage Company and under the supervision of the Storage Company. The Client shall pay the Storage Company any costs incurred in respect of such services. The Storage Company shall have no liability in respect of such services.

INFORMATION REGARDING THE PRODUCTS

Article 29

The Storage Company shall only provide information regarding the Products to the Client, its authorised agent or any authorities.

FEES

Article 30

The Services and all other works to be carried out by the Storage Company shall be charged at the current prices and/or rates of the Storage Company from time to time unless explicitly agreed otherwise in the Agreement.

TRANSFER OF PRODUCT

Article 31

The Client shall not transfer its ownership/ title of Products stored at the Premises to a third party without the prior written consent of the Storage Company, which shall only be given if all claims which the Storage Company has against that Client on any grounds whatsoever have been satisfied or settled. The Client shall inform the Storage Company immediately in writing of any intended transfer of the Products.

Without prejudice to the foregoing, the Storage Company shall only consent to the transfer of the Products if the new owner agrees to be bound by the provisions of the Agreement and these Conditions and joins the Client's obligations under or in connection with the Agreement as additional debtor and has informed the Storage Company about its VAT details. The Storage Company shall not be required to recognise any transfer of the title to the Products and, in addition, the Storage Company is also entitled to refuse to release the Products if it is of the reasonable opinion that legal title of the person claiming the Products is defective. The Client shall ensure and the Storage Company may trust that even after a transfer of title, the Client remains entitled to dispose (*verfügen*) of the Products.

If a dispute has arisen with respect to the title or entitlement to delivery of the Products, the Storage Company may retain possession of the Products until it has been agreed between the Storage Company and those claiming title to the Products or a decision has been taken by a court of competent jurisdiction as to which party is entitled to have the Products delivered and the Storage Company has received confirmation of this decision from the parties.. After the transfer of the Products has been approved by the Storage Company, the transferee will be regarded as the Client and the Client together with the transferee will be jointly and severally liable for all claims referred to in Article 39 (below), insofar as these already existed before the transfer. On the transfer of the Products, these Conditions and the Agreement shall apply unamended to the transferee. The Client shall hold harmless and indemnify the Storage Company against any loss or damage suffered by the Storage Company and all claims brought by any third party against the Storage Company as a result of the Storage Company exercising its rights under these Conditions.

RISK AND INSURANCE

Article 32

Subject to the conditions set out herein (in particular Article 45 and 46), all risk of loss or damage in connection with the handling and storing of Products received by the Storage Company remains with the Client for the duration of the Agreement. Risks contemplated by this Article include but are not limited to the risk of clineage, evaporation, settlement, shrinkage, or any change in the quality or deterioration of Products due to any cause whatsoever.

Article 33

In the event that the Storage Company's co-operation is required with respect to a claim regarding damage to or loss of the Products due to any cause, the Storage Company shall give such reasonable assistance as is required, subject to being fully reimbursed by the Client in respect of any expenses and/or costs incurred by the Storage Company and the payment of a reasonable fee as specified by the Storage Company. The Storage Company may make its co-operation conditional on cash payment of all outstanding claims against the Client.

Article 34

The Storage Company shall not be responsible for any insurance of the Products. The Client is solely responsible for insuring the Products stored and handled by Storage Company at the Premises.

RELEASE OF PRODUCTS

Article 35

Subject to the Agreement and these Conditions, the Client may collect the Products, which have been stored by the Storage Company only if all the Storage Company's claims against that Client under or in connection with any agreement have been settled (to include, without limitation, the payment of any fee or charge under any Agreement). Further, the Storage Company shall only release Products in exchange for a proof of receipt issued by and signed by an authorised signatory of the Storage Company.

The Storage Company may at its discretion require the claimant of the Products to furnish further proof of identity. In advance of the Storage Company releasing the Products, the Storage Company may verify the proofs of receipt are genuine but it is not obliged to carry out such verification. Without prejudice to Article 39, the Storage Company shall be entitled to demand payment of all its claims against the Client under or in connection with any agreement before full or partial release of the Products. In the event that less than all of the Products are released to the Client, the Storage Company shall be entitled to assert any outstanding claims against the remaining part of the Products. The remaining part of the Products shall remain attached to the uncollected amount. In the event that only part of the Products is released, a record of this release shall be noted which subsequently will be returned to the Client.

On termination of the Agreement, the Client shall return the Storage Space(s) to the Storage Company in no worse condition than at the commencement of the Services, as confirmed by the inspection carried out by the Client under Article 8. The cleaning and inspection costs shall be borne by the Client. If the Client fails to do so, the Storage Company may take any necessary action and invoice the Client for the costs incurred. If the Client has not approved the Storage Space(s) under Article 8, the opinion of the Storage Company as to the condition of the Storage Space(s) shall, in the absence of manifest error, be binding on the Client.

DESTRUCTION OF PRODUCTS

Article 36

In the event the Products are destroyed entirely or in part by any means, as well as in the event pursuant to Article 7, the date of this loss or damage shall be deemed to be the date on which the Products were released.

DISTRIBUTION IN THE EVENT OF JOINT OWNERSHIP

Article 37

If the Products belong to more than one Client or other legal entity, the Storage Company shall, at its own discretion and having considered the quantity of the Products, the duration of the storage, any possible operations, dehydration, evaporation, clineage, shrinkage and redistribution losses, as well as the sweepings, sediments, residual gases, condensation, deposits and discharges which have formed during storage, divide the Products and losses among the various entitled parties. The costs connected with removal and division of Product shall be borne by the various entitled parties and shall be apportioned between the parties in accordance with the proportion of the Products received by each party.

PAYMENT CONDITIONS

Article 38

Any fees payable to the Storage Company by the Client are exclusive of all customs and excise duties, taxes and other levies imposed on the Products, which shall be paid by the Client, are due and payable immediately and may be enforced against the Products without the Client having any right of set-off.

Storage fees and other fees will be invoiced monthly in advance and any amounts owing in respect of a part of a month shall be charged as a full month, unless parties have agreed otherwise in writing. Handling fees will be invoiced at the end of the month in which the handling services were executed.

All amounts due from Client to the Storage Company are exclusive of V.A.T. which shall be payable by the Client in addition.

Without prejudice to the provisions in the remainder of this Article and unless otherwise agreed under the Agreement, the Client shall pay all fees due to the Storage Company without discount or compensation within fifteen (15) days of the date of the invoice. In the event the Client remains in default, the Storage Company shall be entitled to charge interest for any invoices not paid within the specified time at an annual rate of 9 % above the base lending rate for the Storage Company's applicable bank on the amounts outstanding from the date of invoice until payment.

The Client acknowledges that the Storage Company may request security for any payment to which it is entitled. The Storage Company may require the Client to provide an on first demand bank guarantee for such sum as the Storage Company may specify and on terms acceptable to the Storage Company to cover the Client's payment obligations under the Agreement.

Despite the terms of Article 39 the Storage Company is not obligated to release all Products, unless all fees due to the Storage Company have been paid by the Client.

LIEN AND RIGHT OF RETENTION

Article 39

Without restricting the Storage Company's lien and right of retention under applicable statutory law, Storage Company shall have a lien on all Products, documents and valuables of the Client that are in the Storage Company's possession in connection with the Services until payment is made in full by the Client of all sums due to the Storage Company out of or in connection with any agreement. This lien shall also extend to the right for Storage Company to sell all Products of the Client in accordance with the terms of Article 40.

Further, the Storage Company shall have a right of retention on all Products, documents and valuables of the Client that are in the Storage Company's possession in connection with the Services until payment is made in full by the Client of all sums due to the Storage Company out of or in connection with any agreement. The same lien and retention right shall exist with regard to all Products, documents and valuables that are not owned by the Client, but about which the Client was entitled to dispose ("verfügen") of.

PROCEEDING WITH SALE ON ITS OWN AUTHORITY IN THE EVENT THE CLIENT REMAINS IN DEFAULT

Article 40

Without prejudice to Article 39 and without restricting the Storage Company's right to enforce its lien or retention rights under statutory law, the Storage Company is entitled to sell the Products, documents and valuable on which it has a lien or retention right, however it should choose whether privately or publicly or at an auction via a broker or otherwise without further formalities and at the expense of the Client, and may use the proceeds to settle any claims it has against the Client, if:

- (a) within a reasonable time, the Client fails to reclaim the Products given to the Storage Company for storage, either on the basis of Article 5 after termination of the Agreement or at some other time in the event of one of the good cause set out in Article 6; or
- (b) the Client remains in default with respect to satisfying the Storage Company's claims pursuant to these Conditions.

In the event of (a) or (b) above, no further notification or notice of default is required before such a sale may proceed.

ACCESS TO THE PREMISES

Article 41

The Storage Company shall grant the Client and persons designated by it reasonable access to the Premises in accordance with the HSSE provisions of Storage Company and these Conditions, subject to due observance of the formalities prescribed by public authorities or by or on the part of the Storage Company. Access to the Premises shall only be granted under the supervision of persons designated for that purpose by the Storage Company. The Client is responsible for all losses and damages originating from failure to observe the provisions of this Article by itself or its (sub)contractors and shall indemnify and hold harmless the Storage Company for (a) any possible claims against Client or Client's (sub)contractor or for (b) any possible claims against the Storage Company by third parties. The Storage Company is at all times entitled to refuse access to the Premises to any person or request that any person leaves its Premises at its sole discretion.

Article 42

Anyone entering the Premises and/or vessels moored at the Premises do so at their own risk and, subject to Articles 44 and 45, the Storage Company accepts no liability for damage or loss, of any kind whatsoever, arising therefrom.

FORCE MAJEURE

Article 43

The Storage Company shall not be in breach of these Conditions or any Agreement to the extent that it is prevented from or delayed or hindered in complying with what would otherwise be its obligations under the Agreement or these Conditions by any circumstances which it could not reasonably be expected to control. This shall include, but is not limited to:

- a. any Act of God, the natural state of the Products, changes in the quality of the Products due to passage of time, any form of internal deterioration, evaporation, shrinkage or formation of sediments and the like;
- b. damage caused by other Products, hidden defects of the Storage Spaces, Pipelines and foundations;
- c. war, armed hostilities, act of terrorism, civil commotion, government measures, change of law, mobilisation, seizure, quarantine measures, epidemics, obstruction of access to the harbours or berths where the Products are due to be delivered or the harbours or berths where the Products are due to leave, import and export bans and restrictions, attachments, strikes and work stops, lock-outs and blockades, abnormal costliness, sabotage, riots, revolts, plunder, theft; and
- d. fire, smoke, explosion, fire extinguishing water, burst water mains, flooding, bursting of dikes, perils of the sea, tidal conditions, accidents, snow, floating ice and danger of ice, as well as other shipping disruptions or obstructions of the transport connections to the Premises by water or geological disturbance, faults in the means of transport, delay in the delivery of the stored Products, non-appearance or late delivery of packaging material or means of transport, delayed delivery or execution by third parties, whether or not engaged by the Storage Company, business disruptions of any kind whatsoever, irrespective of whether these originated on or outside the Premises.

In all cases of force majeure, any estimated delivery dates shall be extended by that period of time during which Storage Company is unable to perform. If such event exceeds a period of three (3) months thereafter, Storage Company may terminate the Agreement by written notice and without incurring any liability towards Client or any third party.

LIABILITY

Article 44

The Storage Company will supervise the storage and handling of Products with all reasonable skill and care.

The Storage Company shall be liable for any damage, loss and/or costs incurred by Client as a result of its storage and handling of the Products or for any other reason if it is proven that such damage, loss and/or costs were caused by the wilful intent or gross negligence of the Storage Company, its legal representatives or its agents ("Erfüllungsgehilfen"). In case of

any damage, loss and/or costs caused by the slightly negligent breach of the Storage Company, its legal representative or its agents, the Storage Company shall be liable only if this is a breach of a fundamental duty (*wesentliche Vertragspflicht*) which endangers the achievement of the objective of the Agreement; and in such case only to the typical and reasonably foreseeable loss and damage. The Storage Company shall not be liable for damage to, or loss of, the Products occurred when the Products are not on the Premises (Article 17).

Any further liability of the Storage Company is excluded.

Each claim in connection with damage to or loss of Products lapses if it is not notified by the Client to the Storage Company at the latest at the moment of the release of such Products from the Premises;

Unless legal proceedings are commenced against the Storage Company by that time, any claim against the Storage Company lapses after a period of one year from the time the claim arose.

LIMITATIONS AND EXCLUSIONS

Article 45

In any event, and only to the extent Storage Company is liable, any and all damages or losses to be paid by the Storage Company shall be capped to a maximum amount of €1,000,000.00 (in words one million Euro) per event or series of events caused by one and the same event; the parties agree that such maximum amount covers the typical and reasonably foreseeable damage under the Agreement. If more than one party entitled to damages files a claim, the amount of the damages will be divided among the entitled parties in proportion to the amount of the damage sustained by each of them.

Nothing in these Conditions limits or excludes either party's liability (i) for fraud, intent or gross negligence of that party, its legal representatives or its agents (ii) for death or damage to health or body cause by negligence or wilful misconduct of that party, its legal representatives or its agents, (iii) for slightly negligently breach of a party, its legal representative or its agents, the party shall be liable only if this is a breach of a fundamental duty ("*wesentliche Vertragspflicht*") which endangers the achievement of the objective of the Agreement; and in such case only to the typical and reasonably foreseeable loss and damage.

NON-COMPLIANCE WITH OBLIGATIONS BY THE CLIENT

Article 46

If the Client is prevented for a certain period from complying with its obligations under the Agreement or these Conditions due to any of the events set out in Article 43 (above) the Client shall immediately notify the Storage Company and the Storage Company is entitled to demand compliance when both parties agree (such agreement not to be unreasonably withheld) that the event(s) is/are no longer preventing the performance of the Agreement or these Conditions.

CUSTOMS, FORWARDING AND TRANSPORT ACTIVITIES

Article 47

If the Storage Company carries out any work other than the Services for which it or its employees are responsible towards third parties, including but not limited to any customs, forwarding or transport activities, the Client shall bear all taxes, duties, charges, levies, penalties, costs and/or damages incurred by the Storage Company in connection therewith. The Client shall reimburse any and all amounts to the Storage Company on request and indemnify and hold harmless the Storage Company in full in the event of any claims by third parties resulting in damage and/or loss to the Storage Company.

LIQUIDATED DAMAGES

Article 48

- a) If the Client does not meet the minimum guaranteed financial commitment in respect of monthly storage charges or minimum guaranteed throughput in any Agreement then the Client shall pay to the Storage Company the minimum monthly storage fee or throughput fee, which shall be calculated as the difference between the then current monthly storage fee or the guaranteed minimum throughput multiplied by the applicable storage fee per tonne and the amount already paid by the Client to the Storage Company as storage fees in that Agreement, such minimum storage fee or throughput charge representing the genuine pre-estimate by the parties of the losses or damages likely to arise to or be incurred by the Storage Company as a result of such failure by the Client and not by way of a penalty or similar charge (and the Client hereby acknowledges that the storage charges agreed are predicated on the basis of the Client's guaranteed commitment).
- b) In the event of the premature termination of the Agreement (whether by repudiation or in any other way whatsoever involving a breach of Agreement on the part of the Client), the Client agrees to pay the Storage Company by way of liquidated damages a sum equivalent to the minimum guaranteed storage fees or throughput fees in respect of each Agreement year to the end of the relevant term (and the Client acknowledges the difficulty which the Storage Company would face in obtaining replacement customer in the event of such premature termination and that liquidated damages

as above are a genuine pre-estimate of the loss which would be suffered by the Storage Company as a result of premature termination).

- c) The Client shall indemnify and shall hold harmless the Storage Company from and against any and all losses, damages, liabilities, obligations, costs, charges and expenses suffered or incurred by the Storage Company of whatsoever nature arising out of or in connection with a breach by the Client of its obligations under Conditions a) and b) above. The Client hereby agrees and acknowledges that aforesaid compensation may not be adequate or appropriate to remedy or compensate for a breach of its obligations under such Conditions and that consequently the parties expressly contemplate and acknowledge that in the event of a breach of such obligations the Storage Company shall be entitled to seek injunctive relief (including specific performance) in addition to any other available remedy, including damages, from a Court of competent jurisdiction.

DISPUTES AND APPLICABLE LAW

Article 49

The Agreement and any non-contractual obligations arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of Germany (excluding International Private Law). Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination or any non-contractual obligations arising out of or in connection with the Agreement shall be referred to the exclusive jurisdiction of the Commercial Court of the Regional Court of Hamburg, Germany (Landgericht Hamburg).

GENERAL

Article 50

- 50.1 Each party ("Recipient") undertakes to hold all Confidential Information of the other party ("Discloser") which it obtains in relation to the Agreement, in confidence and not use, or authorise use of such Confidential Information for any purpose other than the performance of this Agreement. Each party may disclose the other party's Confidential Information to its affiliates and their respective officers, directors, employees, contractors, advisors and auditors provided that such persons need to know the Confidential Information disclosed to them and comply with the terms of the Agreement in respect of the Confidential Information disclosed to them. Such obligation to confidentiality does not apply to the extent that such Confidential Information has become public other than through the fault of Recipient or the Discloser has approved in writing the disclosure of the Confidential Information or such Confidential Information was already known by Recipient prior to the disclosure without an obligation of confidentiality or if, and to the extent that, it is required to release such information by law, relevant stock exchange or ordered by court or an authority. The obligations with respect to Confidential Information will survive until two (2) years after the end of the duration of the Agreement.
- 50.2 These Conditions and the Agreement replace all previous agreements between the Storage Company and the Client and is the entire agreement between the Storage Company and the Client for the Services.
- 50.3 The Client may assign any rights out of and/or in connection with these Conditions or the Agreement only subject to the Storage Company's prior written approval.
- 50.4 The headings in these Conditions are for convenience only and shall not affect the interpretation of these Conditions or the Agreement.
- 50.5 Any amendment to these Conditions, including any amendment of this sentence, shall be binding upon the parties only if agreed in writing.
- 50.6 If a court or administrative organisation with competent jurisdiction decides that a provision in these Conditions or the Agreement is not valid this will not affect the rest of the Conditions. The Storage Company and the Client shall try to agree on a suitable provision to replace the one which is not valid. The new provision should, as far as possible, achieve the same economic, legal and commercial aims as the invalid one. Section 139 German Civil Code (BGB) is excluded.
