

# **General Terms and Conditions of the WIENCONT Group**

Version effective as of 1/1/2019

## **1. Scope**

These General Terms and Conditions shall apply to all agreements concerning services provided by WIENCONT Container Terminal GmbH (WIENCONT) and its subsidiaries within the context of their activities as defined in Article 2 below. The scope of application shall extend to all locations operated by WIENCONT.

Any agreements that deviate from these General Terms and Conditions must be made in writing. The General Terms and Conditions specified herein take precedence over any conflicting terms and conditions that may appear in any documents supplied by the client.

Any matters not regulated by these General Terms and Conditions shall be governed by the General Austrian Forwarders' Terms and Conditions (Allgemeine Österreichische Spediteursbedingungen, AÖSp) and the provisions of the Forwarder's Risk Insurance Policy (Speditionsversicherungsschein, SVS), in the versions applicable at the time the contract is entered into on a subsidiary basis.

In addition to these General Terms and Conditions, the client shall comply with the provisions of public law, with particular respect to customs procedures.

## **2. Services provided by WIENCONT**

WIENCONT provides the following services:

1. Handling/transshipment of cargo units designed for intermodal transport;
2. Transport-related intermediate storage of cargo units;
3. Storage of cargo units;
4. Other services subject to special agreement between WIENCONT and the client.

Within the meaning of these General Terms and Conditions, "cargo units" are:

- ⇒ Large volume containers (compliant with ISO standards)
- ⇒ Swap bodies (compliant with CEN standards – "WAB")
- ⇒ Semitrailers (compliant with the Austrian Road Traffic Licensing Act (StVZO) – "SAL")

## **3. Prerequisites for order processing**

To enable WIENCONT to properly and efficiently process orders, the client shall submit a written document to WIENCONT. Such a document must contain all relevant details and information and be submitted via electronic interface, fax or e-mail. If the information provided to support the order is incomplete, the order cannot be processed and thus will not be legally binding.

The document must be submitted to WIENCONT in sufficient time in advance to allow processing of the order during WIENCONT's customary business hours.

If a document that contains all relevant information is submitted to WIENCONT in a timely manner, the order shall become legally binding between the client and WIENCONT based on the present General Terms and Conditions.

## **4. Changes of orders**

As a general principle, order changes are possible only when received by WIENCONT no less than 24 hours before commencement of the scheduled service(s). Any such changes must be requested in writing and approved by WIENCONT; otherwise the modifications sought shall not be effective.

In the event that cargo units are rebooked to another operator, WIENCONT reserves the right to charge the client for any resulting additional costs.

## **5. Delivery of cargo units for transshipment**

If cargo units are delivered for transshipment, the delivering party must assign such units to the storage facility of a certain operator. The delivering party will receive a confirmation of the incoming delivery, which states the type of cargo unit delivered, and its/their identifying features.

The delivering party is required to sign a copy of the confirmation of receipt. Furthermore, the delivering party must assume liability for all costs and charges to the extent that these are not borne by or cannot be recovered from the operator.

## **6. Client's obligations**

When delivering any cargo units to WIENCONT, the client (operator or delivering party) must submit sufficiently in advance, either in written form or electronic format (as is customary at the location delivery takes place), all data, shipping documents and descriptions/specifications of the individual consignments which are necessary for transshipment and storage. The client also has to take care that each loading unit is provided with an ILU-Code or BIC, otherwise WIENCONT may refuse to process an order. The client is required to ensure that the consignment(s) contained in the cargo unit(s) can be transported and handled safely (i.e. securely stowed and fastened).

If cargo units require special treatment during transshipment or storage because of their specific characteristics, the client shall inform WIENCONT accordingly, sufficiently in advance of delivery, and shall include a precise description of the specific characteristics and of the treatment required. If WIENCONT cannot provide the type of special treatment requested, the client shall take appropriate measures, either directly or through third parties, to ensure safe treatment and shall assume all costs associated therewith. WIENCONT reserves the right to refuse the acceptance of loading units that don't comply with the standard dimensions.

WIENCONT must be informed in writing and sufficiently in advance of any delivery of cargo units which, due to their specific characteristics, may be hazardous during transshipment, preparation for onward transport or during storage. Such notification must address the precise nature of the hazards involved and, if necessary, describe the precautionary measures to be taken. If the handling of hazardous goods is subject to special statutory or regulatory requirements, the client is obliged to ensure compliance with such requirements. WIENCONT only provides transshipment of hazardous goods, but cannot store them. Should storage become necessary, the client shall bear all associated costs and responsibilities. In such cases, WIENCONT will not assume any cost or liability for storage at the nearest hazardous goods storage facility.

If WIENCONT discovers apparent defects in the cargo unit upon delivery, WIENCONT may refuse to accept and forward the cargo unit in question. If a defect is discovered after accepting the consignment, WIENCONT shall seek instructions from the client whenever possible. If no instructions can be obtained from the client, WIENCONT shall take the measures it considers to be in the client's best interests, at the client's expense.

## **7. Fumigated containers**

The client is required to clearly identify cargo units that have been fumigated or otherwise chemically treated in any manner by affixing clearly visible warning labels in German and English to such cargo units. The labels must indicate clearly the type of chemical treatment used. All such labels shall comply with the most recent statutory requirements in effect in Austria. Mere reference to such treatment in the shipping documents is not an acceptable substitute for appropriate warning labels. The client must understand and acknowledge that special precautions are required when handling fumigated or chemically treated containers, and that proper labeling is an essential prerequisite for safeguarding the health and safety of WIENCONT's employees.

The client must inform WIENCONT in advance, if cargo units that have previously undergone chemical treatment are handed over empty to WIENCONT for inspection since such units may still contain toxic residues.

## **8. Transshipment**

Transshipment of cargo units from railway vehicle or ship to road vehicle, from road vehicle to railway vehicle or ship, from ship to railway vehicle or from railway vehicle to ship is generally performed by craning or mobile hoisting equipment.

Transshipment commences upon delivery of the cargo unit, as soon as the loading gear of the cargo handling equipment is lowered onto the cargo unit. Transshipment ends at the point when the loading gear of the cargo handling equipment is released from the cargo unit, raised, and is clear of the cargo unit, so that the cargo unit is ready for onward transport.

Upon delivery of cargo units, the client is required (by using hired assistants, where applicable) to release the bolts that attach the cargo unit to the road vehicle and to ensure that the cargo unit can be removed safely. Upon pick-up of cargo units, the client is required (by using hired assistants, where applicable) to position the road vehicle's locking elements appropriately to enable it to receive the cargo unit(s).

Transshipment shall be performed by WIENCONT employees using WIENCONT equipment. WIENCONT is entitled to coordinate transshipment by third parties or use third-party equipment. The client and its hired assistants (where applicable) are required, to the extent necessary, to monitor the transshipment and to provide the requisite assistance.

## **9. Temporary storage during transport**

After being unloaded from a railway vehicle, ship or road vehicle, the cargo units shall be stored on WIENCONT's premises when such storage is operationally necessary and feasible. Storage will be outdoors. The client is responsible for ensuring that its cargo unit(s) is/are capable of such storage without sustaining damage and shall bear all associated risks. Insofar as operational procedures permit, the empty container dispensing takes place according to the "first in – first out" principle.

## **10. Checks of the cargo units**

Upon acceptance, the cargo units will be checked only for transportability; i.e. the accessible parts will be given a routine evaluation intended to identify any obvious serious defects. This procedure is referred to as "check". Defects are considered serious if they are identified as being significant enough to affect the transportability and operability of the cargo unit. If cargo units are accepted by WIENCONT without reservation, they are considered transportable at the time of handover, and all accessible parts will have been determined to be free from obvious defects.

Any further inspection of cargo units at the time of acceptance (a procedure referred to as "detailed check" and seal control) requires a separate written agreement between the client and WIENCONT.

Any complaints must be submitted to WIENCONT in writing and without delay upon acceptance. The client or third parties acting on the client's behalf must take proper measures to document the defects noted in the complaint.

WIENCONT may refuse to accept any cargo units that are not transportable.

## **11. Safety regulations**

All persons entering the WIENCONT container terminal, whether walking or driving, must comply with WIENCONT's safety regulations. These are available at the "in gate" of the Vienna-Freudenau location and/or may be downloaded (for all locations) from WIENCONT's website ([www.wiencont.com](http://www.wiencont.com)). Any instructions given by WIENCONT employees at the container terminal must be followed without exception. Should any individual fail to comply with the instructions given despite prior warning,

WIENCONT reserves the right to prohibit that individual's entry into the container terminal, either on foot or in a vehicle. WIENCONT shall be entitled, at its discretion, to refuse access/entry to the terminal by individuals or transport vehicles due to safety or security considerations at any time, and/or refuse to accept or hand over goods for storage or transshipment. Furthermore, WIENCONT shall be entitled to take any measures it deems necessary to prevent danger to the safety and good order of its cargo terminals. For the purposes of this clause, any measure demanded by appropriate authorities shall be considered a "necessary measure". If any measure taken to prevent danger results, wholly or in part, from the client's negligent act or omission, the client shall bear all costs incurred as a result.

When transshipment activities are in progress, no one is permitted to remain below the hoisting machinery/vehicles or within the swivel and/or operating range of such machinery/vehicles. There are no exceptions to this policy.

Without exception, all transshipment, loading or unloading activities must be performed in areas designated for such purposes. It is thus imperative to use only designated entrances and exits, ensure that they remain clear of obstructions at all times and comply with all traffic signs inside the container terminal.

## **12. Customs**

Liability for compliance with the applicable customs and other administrative regulations rests solely with the client.

## **13. Customs inspection**

Any confiscation or other measures initiated by official agencies or authorities shall be without prejudice to WIENCONT's rights towards the client. The client shall remain WIENCONT's contracting party and shall be liable to WIENCONT for all consequences that result from such events, even if the client is not at fault. The foregoing shall be without prejudice to WIENCONT's claims against federal agencies or authorities or other third parties.

## **14. Reporting**

If the client receives periodic reports from WIENCONT, the client is entitled to present written objections to the contents thereof within 7 days of receipt. Any objections presented by the client more than 7 days after receipt will be disregarded.

## **15. Services and prices**

WIENCONT reserves the right to change prices at any time if, after entering into the contract, cost increases occur, particularly by reason of tariff agreements or changes in the price of materials, insurance premiums or port/transfer services. WIENCONT shall provide proof of such changes to the client upon request.

## **16. Client's liability**

The client shall be liable for the prudent and diligent selection of the forwarding agent/carrier hired by the client and for any damage that results from insufficient insurance coverage or from any violation of the provisions of these General Terms and Conditions on the part of the forwarding agent/carrier hired by the client.

The client shall be liable to the company for any damages arising out of incorrect, imprecise or incomplete details given in the manifest or in other forms, applications or notifications/reports under the Electronic Data Interface (EDI) system, if such incorrect, imprecise or incomplete details are due to the client.

If a service is scheduled for a certain point in time and the client fails to accept the service for a reason for which the client is responsible, the client shall be liable for all costs/expenses that arise from such

non-acceptance. This shall apply, in particular, in respect of costs associated with supplying personnel and equipment.

Furthermore, the client shall be liable for any negligent breach of duties. The client shall also be liable for any negligent or tortious acts on the part of the client's customers, agents and subcontractors, or any other persons who obtain access to the terminal by virtue of a contractual relationship with the client or who otherwise have or had access to cargo units intended for transshipment on the client's orders.

#### **17. WIENCONT's liability**

WIENCONT shall not be liable for damages/expenses resulting from incorrect refrigeration or non-refrigeration of refrigerated containers to the extent that such damages/expenses are attributable to incorrect, incomplete and/or inconsistent temperature data or to registration of the container with WIENCONT in a manner contrary to these General Terms and Conditions.

WIENCONT shall by no means be held liable for any damages or costs that may arise as a result of any idle periods experienced during transshipment activities at the terminal. WIENCONT's liability within the framework of the provisions of the mutatis mutandis and subsidiary applicable Part XIII, §§51 ff. of the applicable "General Austrian Forwarders' Terms and Conditions (AöSp)". In all cases, any further liability shall be excluded.

#### **18. Third-party liability**

The client shall indemnify WIENCONT from any claims of third parties exceeding the scope of liability stipulated in Article 16, with whom the client has entered into a freight, forwarding or warehousing agreement, by means of a separate agreement to be concluded with the third party in question.

#### **19. Liability for damages caused to transport vehicles owned by the client or a third party**

WIENCONT shall only be liable for damages caused to vehicles or other items owned by the client or a third party which are used by the client for handing over or collecting cargo units if fault on the part of WIENCONT's employees can be proven and the damage is reported immediately to WIENCONT. WIENCONT's liability in such cases shall be limited exclusively to the replacement value, except for such damage as may be caused through gross negligence or willful misconduct.

The client and WIENCONT shall presume that cargo units will generally have signs of wear and other minor damage. For the purposes of these General Terms and Conditions, any damage is considered "minor" if it has no apparent impact on the transportability and operability of the container/means of transportation. To ensure prompt transshipment of the cargo units, which is in the interest of both parties, such minor damage shall not be recorded separately during the check or included in the check report.

However, the fact that minor damage is not recorded in the check report issued by WIENCONT at the time of acceptance shall not be construed as evidence that such damage occurred after acceptance by WIENCONT.

The foregoing paragraph shall not apply if the client has entered into a "detailed check" agreement with WIENCONT as stipulated in Article 10 above.

#### **20. Force majeure**

Any damages/expenses and/or delays resulting from cases of force majeure shall not give rise to any claims for damages/cost reimbursement against WIENCONT. For the purposes of these General Terms and Conditions, cases of force majeure include, but are not limited to fires, explosions, storms (wind speeds greater than 60 km/h), flooding, lightning, strikes and theft by third parties (provided that WIENCONT took reasonable anti-theft measures).

WIENCONT shall be relieved from performing its contractual obligations for the duration of the event of force majeure or the effects thereof.

## **21. Statute of limitations**

Any claims asserted against the company, with the exception of claims based on intentional damage or negligence equivalent to intent, will expire within one year. The period of limitation shall commence on the date upon which WIENCONT delivered the cargo unit to the client or to a third party acting on the client's instructions. In the event of non-delivery of cargo units, the period of limitation shall commence on the date upon which the cargo units should have been delivered.

## **22. Right of lien and retention, set-off, security services**

For all claims arising out the services rendered by WIENCONT to the client, WIENCONT shall have a right of lien and retention over the cargo units located in WIENCONT's possession, as well as the corresponding shipping papers, provided that the cargo units in question belong to the client or were handed over to WIENCONT with the owner's consent. This consent is at least consistently available with the handover of the loading units to WIENCONT.

Set-off or retention for the purpose of securing any of WIENCONT's claims shall be permissible only where the client's corresponding claim is due and undisputed or has been finally adjudicated.

If the customer is in arrears with payments or there are justified doubts about the creditworthiness of the client, WIENCONT can demand adequate security from the client for the order volume or refuse the service until provision of the security.

## **23. Invoices**

Invoices issued by WIENCONT shall be payable immediately upon receipt unless different terms of payment have been agreed with WIENCONT. The client shall automatically be deemed in default, without a requirement for any reminder or other prerequisites, five days after the due date (at the latest), unless such default occurs sooner according to applicable statutory regulations. In the event of default, WIENCONT is entitled to charge fees and interest at a rate of 1.5% without prejudice to further statutory claims.

## **24. Place of performance**

The place of performance shall be the location of the WIENCONT Group to which the cargo unit was delivered or from which it was retrieved.

## **25. Severability**

If any of the provisions contained in these General Terms and Conditions should be or become invalid or ineffective in whole or in part, the other provisions shall remain unaffected thereby.