



## **Terms of Use for Service Facilities (TUS)**

KombiPort Kiel GmbH

Intermodal Transport Terminal Ostuferhafen  
and  
Intermodal Transport Terminal Schwedenkai

Schwedenkai 1  
24103 Kiel

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### **1. Purpose and Scope**

- 1.1 KombiPort Kiel GmbH (KOMBIPORT) operates a service facility for handling cargo units of combined transport (trailers, containers and swap bodies) in the transport mode mix rail/truck as well as for keeping them there (in line with the interim storage of cargo units during transport). This is a service facility in line with Section 9 AEG connection with Annex 2-4 ERegG and Section 2 11 of the general railway law. Location, equipment and general service features can be found enclosed in the Local Instructions (Annex 1).
- 1.2 The present terms of use shall allow non-discriminatory access to the above mentioned handling facility as well as non-discriminatory use of services relating to the handling facility's operations for anyone possessing authorised access. They are valid for the entire resultant business relationship between the authorised user and KOMBIPORT.

- 1.3 Access details, especially time and duration of usage as well as the charged rates and other terms of use including operational safety directives are subject to an agreement according to § 20 and 21 ERegG.
- 1.4 Contractual agreements between the authorised users and their commissioned rail companies do not affect the contractual agreements between the authorised users and KOMBIPORT.

## **2. Approval**

- 2.1 Authorised users resp. their commissioned rail companies have to prove that they are in possession of the following regulatory authorisations by presenting the original document or a certified copy thereof:
  - an authorisation to provide railway services in line with § 6 Section 3 No. 1 AEG or
  - an authorisation to provide railway services granted according to the law of another member state of the Europe Community or a member state of the treaty dated 2<sup>nd</sup> May 1992 about the European Economic Area.
- 2.2 Owners of railway vehicles have to prove that they are in possession of the following regulatory authorisations for the independent participation in railway operations by presenting the original document or a certified copy of the following:
  - an authorisation for the independent participation in railway operations as owner of railway vehicles according to § 6 Section 3 No. 2 AEG or
  - an authorisation for the independent participation in railway operations as owner of railway vehicles granted according to the law of another member state of the Europe Community or a member state of the treaty dated 2<sup>nd</sup> May 1992 about the European Economic Area.
- 2.3 A certified translation into German shall be provided to KOMBIPORT regarding authorisations by foreign authorities.
- 2.4 Any revocation and any amendment of the authorisation has to be communicated to KOMBIPORT immediately and in writing by the authorised users.

## **3. Liability Insurance**

Authorised users' resp. their commissioned rail companies have to prove to KOMBIPORT the existence of a liability insurance in line with the regulation about liability insurance of railways in the meaning of § 14 of the general railway law (AEG). Amendments to the existing insurance contract are to be communicated to KOMBIPORT immediately and in writing.

## **4. Requirements for the Personnel, Local Knowledge**

- 4.1. The operating personnel of the railway company has to meet the requirements of the Railway Construction and Operations Act (EBO) valid for the respective service facility. Furthermore, the personnel have to know the German language to the extent required for their respective activity both orally and in writing.

- 4.2. Train drivers need the respective license required. The train drivers must be in possession of a train driver's license and a valid additional certificate from their EVU and must show the documents at the request of the railway operating management of KOMBIPORT.
- 4.3. KOMBIPORT provides the railway company personnel with the necessary local knowledge and provides the necessary information to that end. Subject to agreement by the railway company, KOMBIPORT can commission an agent to do so. KOMBIPORT charges the same fee from any railway company for the local knowledge transfer if such provisions have been made in the price list. After the initial knowledge transfer, the railway company can pass on the local knowledge required to its staff itself.
- 4.4. The authorised user shall transfer any required information for using the service facilities to commissioned third parties and request compliance with the usage requirements.

## **5. Requirements for vehicles and cargo units**

- 5.1. Rail vehicles accessing the handling facility have to comply with the valid service facility's Railway Construction and Operations Act (EBO) in their design, equipment and maintenance and have to be approved by the authority in charge or dispose of an operations approval in line with §§ 6 ff. TEIV.
- 5.2. There are no control, security and special communication systems for the operation in the service facilities
- 5.3. Access from the roadside is subject to the usage of roadworthy and adequately equipped road vehicles with sufficiently qualified driving personnel.
- 5.4. Cargo units entering the handling facility from rail- and roadside must be standardised, ready for handling and in proper technical condition (large containers as per ISO-standard, swap bodies as per CEN standard, semi-trailers as per StVZO). The load units supplied must be secured as defined in the current regulations.

## **6. Usage Contract**

- 6.1. Using the services offered by KOMBIPORT requires the conclusion of a contract in accordance with § 20 ERegG. Through the agreement, KOMBIPORT assigns a slot to the authorised user. A slot is a time frame assigned to the authorised user for a specific track on the handling facility, during which the transshipment services are provided. The slot begins with the arrival time and ends with the departure time agreed in the contract. In addition, the fees are specified in the user agreement.
- 6.2. In order to conclude a usage contract, the authorised user shall send a written or electronic enquiry to KOMBIPORT first. The enclosed application form (Annex 3) shall be used for application as it contains the minimum details required.
- 6.3. Only fully completed applications will be processed.
- 6.4. Within 10 days from the receipt of the enquiry, it will be processed and open questions will be dealt with. If appropriate handling and storage capacities are available, KOMBIPORT will submit an offer to the authorised user within the above mentioned time period for concluding a contract to provide the service (usage contract).

- 6.5 The offer submitted under the terms of Fig. 6.4 can be accepted by the authorised user within 5 working days. If the offer is not accepted within this period of time it becomes invalid.
- 6.6 Assigned slots are binding for the authorised user. Any delay has to be reported to KOMBIPORT immediately. Delays of more than 30 minutes lead to losing the slot entitlement. In this case, KOMBIPORT assigns the next possible slot to the authorised user. In case of delays, the authorised user is only entitled to the usage of the remaining slot in coordination with KOMBIPORT if the delay was announced before the beginning of the assigned slot and the following slots are not expected to be affected.
- 6.7 If there are enquiries for parallel usage which cannot be combined, KOMBIPORT proceeds in line with § 13 ERegG in the following way to reach an amicable solution:
- a) KOMBIPORT starts simultaneous negotiations with all authorised users affected by a conflict. All concerned parties are to be involved in the negotiation with a consistent information status.
  - b) In deviation from clause a, KOMBIPORT can offer alternative usage slots to individual parties affected by the conflict. In case bilateral negotiations were not successful, it has to resume negotiations with all authorised users affected by a conflict.
  - c) If no decision can be made by means of the criteria in ERegG, KOMBIPORT prioritises the cargo units according to their urgency to be shipped.
- 6.8 Within one quarter of a year, 70 % of the registered slots shall be used on time and at least 50 % of the announced volume must be met. If an authorised user drops below one of these values, KOMBIPORT can adapt the slot allotment of the following quarter according to the actual usage of the quarter before. The authorised user in question will be informed in good time.
- 6.9 If the beneficiary uses a railway undertaking because he himself has no EVU status, a separate agreement must be concluded between KOMBIPORT and the EVU to fulfill operational safety requirements.

## **7. Usage Scope and Period**

- 7.1 The usage contract contains the details about the agreed slots. The authorised user shall make sure that the allotted slot will be available again at the end of the slot time. If this does not happen, KOMBIPORT can clear the assigned track at the expense of the authorised user.
- 7.2 If the right stemming from an agreed usage contract is not exercised in whole or partly within one month after the agreed usage beginning for reasons the authorised user is responsible for, KOMBIPORT shall be entitled to cancel the usage contract.

## **8. Rights and Duties of the Parties**

### **8.1 Principles**

- 8.1.1 In addition to the applicable laws and regulations, the operational provisions (local directives) enclosed in Annex 3 shall be respected when using the handling facility.
- 8.1.2 The contracting parties commit to a trustful cooperation, taking into account the specialties in using the service facility and minimizing negative impacts on the other contracting party. To that end, one contracting party shall provide any information required for ensuring maximum operational security and efficiency to the other party.
- 8.1.3 The contracting parties assign one or more person(s) resp. point(s) of contact in the contract who is/are able and authorised to make operational decisions on their behalf within a short period of time.

## **8.2 Information about the Agreed Usage upon Disruptions**

- 8.2.1 KOMBIPORT informs the contracting party immediately about status changes of the handling facility (e.g. construction work, alterations of technical or operational conditions of the tracks, maintenance or replacement of handling devices) as well as about any other irregularities and disruptions, provided that these can be of importance for the contracting party's further planning.
- 8.2.2 The authorised user ensures that KOMBIPORT will be informed immediately about the following:
- a) Alterations to the usage applied for (e.g. length of train, kind and number of load units to be handled),
  - b) any special features (e.g. transport of dangerous goods as per GGVSE/RID, excess of loading gauge,
  - c) any other irregularity and disruption regarding service facility usage, especially delays (e.g. delayed arrival, delayed collection of train upon departure)

## **8.3 Operational Disruptions**

- 8.3.1 The parties commit to eliminating disruptions. Disruptions shall be eliminated immediately unless an immediate elimination is unacceptable due to technical or commercial reasons.
- 8.3.2 When trains are delayed, KOMBIPORT follows Fig. 6.6. If there is an overlap due to several trains being delayed or if there are any other disruptions, usages shall be prioritized as per Fig. 6.7 (d).
- 8.3.3 The authorised user shall immediately eliminate operational disruptions he is responsible for. He shall make sure that the handling facility will not be used beyond the contracted scope (e.g. through immobilized railway vehicles). In any case, KOMBIPORT is also entitled to remedy the disruption at the expense of the polluter at any time, (e.g. towing away immobilised railway vehicles).
- 8.3.4 KOMBIPORT shall immediately eliminate operational disruptions of their responsibility.

## **8.4 Examination and Access Right, Authority**

On its premises, KOMBIPORT reserves the right to make sure that the authorised users comply with the regulations of these Terms of Use. In order to guarantee safe and proper operations, persons authorised by KOMBIPORT can access vehicles of the authorised user and give instructions to the staff or the authorised user.

## **8.5 Handling Facility Alterations**

KOMBIPORT is entitled to alter the handling facility as well as the technical and operational standards for using the railway infrastructure subject to appropriate consideration of the authorised users' needs. KOMBIPORT informs the authorised users immediately about planned alterations, also on a continuous basis if applicable (e.g. upon longer measures). Existing contractual duties remain unaffected.

## **8.6 Maintenance and Construction Work**

8.6.1 KOMBIPORT is entitled to execute maintenance and construction work at the handling facility at any time. KOMBIPORT executes these measures within economically reasonable bounds so that any negative impact on the operations of the authorised user is kept at a minimum.

8.6.2 KOMBIPORT informs the authorised user immediately about any measures that might affect the authorised user's operations (e.g. in writing or on the Internet). The authorised user can give his view on the planned measures.

## **9. Liability**

### **9.1 Principle**

9.1.1 Any contracting party is liable according to the applicable law unless the terms of use do not contain deviating provisions.

9.1.2 The contracting parties are liable for indirect damages only if life, limb or health is injured as well as in cases of gross negligence. In cases of ordinary negligence the contracting parties are liable for indirect damages only in so far as essential contractual obligations have been breached and only for typically foreseeable damages. Essential contractual obligations are obligations which enable the proper execution of the contract in the first place and on whose compliance the contracting party can constantly rely on. Apart from that, there is no liability for indirect damages.

9.1.3 Regarding the relationship between KOMBIPORT and the railway company, compensation for own material damage is excepted. This does not apply if the material damage of one party concerned exceeds 10,000 EUR; besides it does not apply if one party is attributed with purpose or gross negligence or if in addition to own material damage to the parties there are material damages to third parties or personal injuries that need to be compensated.

### **9.2 Contributory Negligence**

§ 254 BGB and – within its requirements – § 13 HPfIG are applicable.

### **9.3 Liability of Staff**

The liability of the employees does not exceed the liability of the contracting parties. The personal liability of the employees towards third parties remains unaffected. It is only the liable contractual party that can fall back upon its staff subject to their internal policy.

### **9.4 Allocation of Liability when the Perpetrator is Unknown**

In case it is not possible to determine who has caused damage to KOMBIPORT or third parties, both contractual parties are liable in equal shares. If other rail companies use / have also used the tracks in question, the following regulation applies:

- a) If the rail company can prove that it has obviously not been involved in causing the damage, it shall be exempted from liability.
- b) Apart from that, the damage shall initially be shared in equal parts among the total of the remaining parties involved.
- c) The total share allocated to the railway companies shall then be shared among them in proportion of the actual usage of the rail tracks during the last 3 months prior to the occurrence of damage.

### **9.5 Deviations from the Agreed Scope of Usage**

Deviations from the agreed scope of usage that could not be avoided even in consideration of due diligence, are part of the general operational risk at the expense and risk of the damaged party in the individual case, unless something different has been agreed between the parties. The liability for intent and gross negligence shall remain unaffected hereby.

## **10. Risks to the Environment**

- 10.1 The authorised user is obliged to refrain from actions endangering the environment.
- 10.2 KOMBIPORT shall be informed immediately if emissions endangering the environment occur in relation with business operations of the authorised user or if water-polluting substances get into the ground from the vehicles or cargo units brought onto the handling facility by the authorised user or if there is a risk of explosion, fire or of other hazards. This notification shall not affect the authorised user's responsibility to immediately intervene with countermeasures and rescue operations, e.g. notifying the police department, fire department etc. If the operating facilities of KOMBIPORT should have to be evicted due to the hazardous situation according to Section 1, the causative contracting party shall bear the related costs.
- 10.3 If soil has been contaminated by the authorised user – even if without his fault – KOMBIPORT will arrange for immediate remediation measures. The costs for the remediation measures shall be borne by the authorised user.
- 10.4 If KOMBIPORT as status disrupter is obliged to eliminate the environmental damages caused by the authorised user – even if without his fault -, the authorised user shall bear the costs arising for KOMBIPORT. If KOMBIPORT has contributed to causing the damage, the liability depends on the circumstances and in particular on the question in how far the damage has been caused mainly by one or the other.

## **11. Usage Fee**

### **11.1 Charging Principles**

KOMBIPORT provides the service facility to the authorised user within the scope defined in the contract in return for payment. The standard fees for services by KOMBIPORT are the result of the applicable list of rates (Annex 4) that will be sent to the authorised user upon request. The standard fee includes the processing of usage applications.

11.1.1 As per the authorised user's order, KOMBIPORT performs the crane operations for the cargo units arriving by rail and road according to the applicable list of rates.

11.1.2 The fees for using the track infrastructure within the transshipment facility are included in the handling rate.

11.1.3 Subject to free parking capacities, KOMBIPORT allows the authorised user to park his cargo units in relation to transport requirements and on an interim basis. Parking cargo units will be charged. The amount of the fee depends on the period of time. The fee will be charged as stipulated in the list of rates.

In order to avoid any disruption to the handling operations due to overcrowded parking areas for cargo, KOMBIPORT limits the number of the complementary parking days and charges a standard parking fee for additional parking days as well as an additional crane operation fee as stipulated in the list of rates. For cargo units arriving by rail without the availability of a direct connection (booking at a ferry company), special regulations according to the list of rates apply. This does also apply to cargo units whose onward ferry transshipment is not supposed to happen on the day of provision by KOMBIPORT or the following day. If the handling facility has no more storage capacity available, KOMBIPORT is entitled to limit or refuse acceptance of cargo units delivered prior to their actual day of dispatch. The calculation of fees for using the storage areas is based on calendar days.

11.1.4 The authorised user shall place his cargo-related orders at KOMBIPORT via an agreed electronic data interface.

### **11.2 Cancellation**

11.2.1 The fee for cancellations by the authorised user of agreed usages is as follows:

- 0 % of the valid fee of the current price list for the volume of transshipment order (receipt and/or delivery) within this slot if the note of cancellation is received by KOMBIPORT up to 8 days before the agreed usage begins
- 15 % of the valid fee of the current price list for the volume of transshipment order (receipt and/or delivery) within this slot for cancellations received by KOMBIPORT 7 days and later before the agreed usage begins
- 30 % of the valid fee of the current price list for the volume of transshipment order (receipt and/or delivery) within this slot for cancellations received by KOMBIPORT less than 24 hours before the agreed usage begins

11.2.2 If the agreed usage is not utilised and was not cancelled as per Fig. 11.2.1 by the authorised user, KOMBIPORT will charge 60 % of the regular fee for the announced cargo volume (dispatch + receipt) in this slot. If there is no specific announcement,



the cargo volume of the last utilised slot (of the same weekday) will be taken as a basis.

### **11.3 Disruptions**

In order to avoid disruptions to the handling operations through overcrowded standing spaces for cargo units, KOMBIPORT limits the number of complementary storage days and charges the regular storage fee as well as additional crane fees as per the list of rates for any extra days. For cargo units arriving by rail without availability of a direct connection (booking at a shipping company), separate regulations as per list of rates apply. This does also include cargo units whose booked ferry departure is not planned for the day of provisioning by KOMBIPORT or the following day. If the storage capacity at the handling facility is exhausted, KOMBIPORT is entitled to limit or decline the pre-delivery of cargo units prior to the actual day of dispatch. The calculation of fees for using the standing spaces is based on calendar days.

### **11.3 Maturity**

Payment shall be made without any deductions immediately on receipt of the invoice.

### **11.4 Claims**

Claims by KOMBIPORT must not be offset or payment be withheld in respect of counterclaims, unless the counter-claim is undisputed or has become res judicata.

## **Anlagen:**

Anlage 1: Local instructions by KOMBIPORT

Anlage 2: General terms of KOMBIPORT

Anlage 3: Application for the conclusion of a usage agreement

Anlage 4: List of rates