



**DCT GDANSK**

A Member of the  PSA Group

**DCT GDANSK**

**TERMS OF BUSINESS**

**Valid from September 1<sup>st</sup>, 2014**

(changes regarding protecting and processing personal data – 25<sup>th</sup> May 2018)

# DCT Gdansk TERMS OF BUSINESS

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# DCT Gdansk TERMS OF BUSINESS

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## 1. Definitions & interpretation

In these Terms of Business the following words and expressions shall, unless the context shall otherwise require, have the following meanings:

**"ADR"** means European Agreement concerning the International Carriage of Dangerous Goods by Road signed on 30 September 1957;

**"Agent"** means the agent appointed by the Customer;

**"Break Bulk Cargo"** means the Cargo that must be loaded individually, and not in intermodal Containers or in bulk;

**"Cargo"** means (i) any goods or articles of any kind whatsoever including Hazardous Cargo, transported in a Container excluding Non-Containerized Cargo and (ii) empty Containers;

**"Carrier"** means Train Operator's subcontractor engaged in transportation of goods by rail;

**"CFS"** means the Container freight station or stations being the land and premises used by DCT Gdańsk at the Container Terminal where, amongst other things, Cargo is stuffed, stripped and inspected;

**"Claim forms"** documents intended to complete filing the complaint by the Customer or a person duly authorized to represent the Customer;

**"Claim/complaint"**- each Customer application including a written statement (with the possibility of using claim forms of DCT), notifying the damage arising from a direct and normal causal relationship between an action (omission) of the DCT and the resulting damage at the time from the receipt of the Cargo/Container until the release of item and any reservations as to the quantity/rate/service presented on the invoice;

**"COD"** is a change of data (in TOS) of the Container that is already on the Yard. Any change of data (in particular but not limited to the Container Vessel details, voyage route, destination, weight) is considered as COD;

**"Container Terminal Services"** means the services to be provided to the Customer by the Contractor under the Contract as set out in section 2 of these ToB;

**"Container Terminal"** means the Deepwater Container Terminal Gdansk S.A., a container terminal at the Port of Gdansk that began business operations in October 2007 together with the Container Yard and all other equipment and facilities at the said Terminal(s), whether constructed or under construction, together with any additional land, berths, buildings and Container Yards to be installed in connection with any further developments thereto for the purpose of providing Container Terminal Services;

**"Container Vessel"** means a vessel fitted for the carriage of Containers whether below or above deck, including all lashing equipment required for the proper securing of Containers on board;

**"Container Yard"** means the land and premises at the Container Terminal determined by the Contractor as the area where Containers are received, stored and delivered for direct loading onto and discharge from Container Vessels and includes any other areas within the Container Terminal used to provide the Container Terminal Services including, but not limited to, repair, storage, inspection, stuffing and stripping of Containers;

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**"Container"** means (i) any Container 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other Container designated for use in liner shipping at any time whilst these Terms of Business are in force including, but not limited to, flat-racks, open top, platforms, Reefer Containers and tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader; and/or (ii) a Non-standard Container;

**"Container-transporter"** means any road vehicle (including articulated vehicles) used for the carriage of Containers, Non-standard Containers, Out of Gauge Containers or any vessel other than a Container Vessel;

**"Contract"** means the agreement between the Customer and the Contractor for providing Container Terminal Services;

**"Contract Price"** means the price for the Container Terminal Services as set out or referred to in the Contract;

**"Customer"** means any person, firm or incorporated body, statutory corporation or governmental body at whose request/on whose behalf DCT undertakes any business or provides information or services;

**"DCT Website"** means company's website address, which is [www.dctgdansk.com](http://www.dctgdansk.com);

**"DCT"** or the **"Contractor"** means DCT Gdańsk S.A., entered in the business register of the National Court Register under number 0000031077, its successors and its assigns;

**"EDI"** means and electronic data interchange communication whereby any Message is transmitted from one party to another party by electronic means;

**"EDIFACT"** means the United Nations standard for the Electronic Data Interchange for Administration, Commerce and Transport;

**"ETA"** means Estimated Time of Arrival;

**"Euro"** or **"EUR"** means the lawful currency of the European Union;

**"Force Majeure"** means any circumstances beyond the reasonable control of a party, foreseeable or unforeseeable, which, with the exercise of due diligence, such party is unable to provide against, such as, but not limited to, acts of God, acts of public enemies, war (whether declared or undeclared), restraint of governments, princes or peoples of any nation, riots, strikes or lock outs, insurrections, terrorist attacks, civil commotion, floods, fire, restrictions due to quarantines, epidemics, snow, ice and storms;

**"Haulier"** means an individual or legal entity offering transport to DCT or the Customer as part of regular or occasional services;

**"Hazardous Cargo"** means any Cargo that can harm people, other living organisms, property, or the environment, including materials which are radioactive, flammable, explosive, corrosive, oxidizing, asphyxiating, biohazardous, toxic, pathogenic or allergenic, in each case categorized as such by IMO, ADR or RID;

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**“Hold”** means a condition of a Container which prevents actions to occur (i.e. loading to the vessel, delivery to the truck/rail). A Hold can be applied by Customs office, shipping lines or DCT. Only containers with released Hold can leave the Container Terminal;

**“Hot Stuffing”** procedure of setting required temperature when the reefer Cargo that has not been sufficiently frozen or cooled down to match the setting temperature of the reefer upon stuffing or the temperature has changed significantly to the level improper for the type of Cargo loaded;

**“IMO”** means the International Maritime Organisation;

**“Inspection Yard”** means a Container Yard dedicated for executing inspections by customers and border authorities;

**“Law”** means the entire legal system in Poland including also the adopted European Union law and international law;

**“Message”** means data structured in accordance with EDIFACT standards agreed and configured between the Customer and DCT;

**“Non-Containerised Cargo”** means Cargo not contained in a Container, accepted for transport/carriage on a Container Vessel which cannot be handled by means of normal use of Container spreader ;

**“Non-standard Container”** means a Container accepted for transport/carriage on a Container Vessel which cannot be handled by means of a normal use of a Container spreader, even with attachments;

**“Out of Gauge Container”** or **“OOG”** means a Container whose contents exceed the dimensions of the Container (height, width, length);

**“Permission”** means a condition of a Container which allows for preset actions to occur (i.e. loading to the vessel, delivery to the truck/rail). A requirement to grant Permission is applied automatically on every import and export container arriving at the Container Terminal (details agreed individually between a Customer and DCT). Only containers with granted Permission can leave DCT;

**“POD”** means port of discharge;

**“Polish zloty”** or **“PLN”** means the lawful currency of Poland;

**“Port Procedures”** means the Container Terminal port procedures and requirements prepared by DCT relating to the provision of the Container Terminal Services by DCT which may be amended by DCT, such amendment to be notified to the Customer at which time the amendment shall become immediately operative;

**“Pre-advise”** means appropriate information delivered by Customer to DCT in advance in line with the procedures available on DCT Website;

**“Rates”** means the prices charged by DCT and agreed with the Customer;

**“Reefer Container”** means a Container used for the transportation of refrigerated Cargo;

**“RID”** means regulation concerning the International Carriage of Dangerous Goods by Rail, which is appendix C to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999;

**“Standard Tariff”** means the standard rates applied by DCT for services, as found on the DCT Website.

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“**ToB**” or “**Terms of Business**” mean these Standard Terms of Business;

“**TOS**” means a Terminal Operating System;

“**Train Operator**” means an entity offering land transportation using rail mode. Train Operators are regarded as the Customers;

“**Working day**” means every week day from Monday till Friday inclusive, excluding public holidays;

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## 2. Commercial terms

- a. DCT provides services with due care and skill in line with Law, these ToB and concluded agreements and contracts.
- b. DCT renders the services on the basis of the electronic orders, submitted in the format as prescribed by DCT.
- c. The Customer is the payer unless otherwise agreed in writing. The payer for the services figures in the TOS at the moment of rendering services.
- d. Customer is charged for provided Container Terminal Services based on standard rates stated in the Standard Tariff unless stipulated otherwise clearly in writing between the Customer and DCT.
- e. Any activity at DCT of the Customer's subcontractor must be accepted by DCT and must comply with Law and DCT's internal regulations published on DCT Website.
- f. Any rights and obligations under these ToB shall, unless the Parties have agreed otherwise in writing, be governed also by the Standard Tariff, and binding Port Procedures. The documentation mentioned in the previous sentence is available on DCT Website.
- g. If the Customer is not obliged to pay for the Container Terminal Services in the prepayment scheme, Customer is obliged to pay the invoices within 14 days from the date the invoice was issued unless stipulated otherwise clearly in writing between the Customer and DCT. The Customer may not deduct or set off in any way its liabilities to pay for the Container Terminal Services against any liability of DCT towards the Customer.
- h. DCT reserves the right to retain the Cargo at the Container Terminal until all the liabilities of the Customer payable to DCT are paid.
- i. All Rates charged by DCT are valued in Euro (EUR). Conversion of the Rates into payment currency which is Polish zloty (PLN) is done at the average rate of exchange set by the Polish National Bank applicable for the day of the service completion. Payments directly in euro (EUR) are also possible provided that it is stipulated clearly in writing between the Customer and DCT.
- j. Applicable VAT and other similar taxes will be added to the invoice according to the Law.
- k. DCT provides the invoices in the electronic form (e-invoicing), unless agreed otherwise.
- l. If DCT solely decides that there are any circumstances which will or may prevent or hinder the safe handling, storage, loading, unloading or transport of any Containers, DCT may, in its sole discretion, refuse to handle the same and shall give notice of such refusal to the Customer. The recipient of such notice will remove or procure the removal of the Container from DCT forthwith at its own risk and expense.
- m. So as to enable DCT to carry out the provision of services efficiently, the Customer warrants and undertakes that:
  - i. all particulars relating to Containers (including, but not limited to Reefer Containers) provided by the Customer in accordance with the Contract, these Terms of Business and Port Procedures are accurate;

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- ii. all Containers are properly stuffed and labelled when required and the contents are properly stowed and secured therein;
- iii. all Containers are fit for their intended purposes and in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed at the Container Terminal;
- iv. all Containers comply with applicable laws, orders, regulations or other requirements of the government, customs, municipal or other authorities whatsoever; and
- v. all Reefer Containers have been properly pre-cooled or pre-heated as appropriate and their monitoring modems have been properly set

and the Customer shall indemnify DCT in respect of the consequence of the breach of any of these warranties (that is when it turns out that any of them is not true, not accurate and/or is misleading).

- n. DCT shall not be responsible for or liable in any way, and the Customer shall indemnify DCT against, all damages, claims, costs and expenses suffered or incurred by DCT resulting directly or indirectly from any defects in a Container and/or its contents.
- o. Customer is obliged not to let the Cargo stay at the Container Terminal premises longer than 90 days calculated from the date the Cargo has entered the Container Terminal. If the 90-days limit is exceeded due to Customer's fault, DCT reserves the right to request the removal of Cargo. If the Customer does not remove the Cargo within 5 days following the receipt of the request, DCT will be enabled to remove the Cargo from the Terminal at the sole expense of the Customer.
- p. DCT may sell the Cargo if (i) the Cargo's owner is not known, (ii) Cargo stays at the Terminal for more than 90 days and (iii) none of the parties that are stipulated in the Cargo's documentation removes the Cargo from the Terminal within 30 days from the date they were notified by DCT that the Cargo must be removed. If, after the Cargo is sold, the owner is found, DCT will transfer to him within 30 days after establishing the identity of the owner the amount received from the sale diminished by all the costs of Container handling and storage as well as by the costs connected with the sale process.

### 3. The Container Terminal Services

The Container Terminal Services include:

- a. loading and unloading of Container to or from Container Vessels;
- b. lashing and unlashings of Containers on board of the Container Vessels;
- c. receiving and delivering Container from and to land modes of transport (trucks, wagons etc.);
- d. movement of Containers to and from the Container Yard;
- e. movement of Containers to and from CFS and inspection yard;
- f. stuffing and stripping Containers;
- g. handlings Non-Containerised Cargo at CFS



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and any other services which are listed in these ToB, the Standard Tariff, as well as any other services which may be agreed in writing.

### **4. Berthing Requirements and Sailing Schedule**

The Customer shall provide DCT with proposed sailing schedule and berthing requirements not later than 6 weeks before the Container Vessel's expected date of arrival at the Container Terminal. The berthing requirements shall include Container Vessel ETAs and estimated number of any Containers to be discharged from, or loaded onto a Container Vessel. Berthing plan (Proforma windows) has to be agreed between Customer and DCT not later than 4 weeks before Container Vessel's expected date of arrival at DCT.

If any changes are required in berthing plan by the Customer a notice shall be given at the earliest possible time by the Customer and in any case no later than 4 weeks before the expected date of arrival of the Container Vessel at the DCT. Changes to the berthing plan shall be agreed between DCT and the Customer prior to these changes coming into effect.

### **5. Arrival of a Container Vessel at the Container Terminal**

Not less than 7 days before the ETA of the Container Vessel's first call at DCT, the Customer shall supply DCT with such particulars in writing as DCT may require as set out in Rules of Cooperation – Vessel Operations (which are part of the Port Procedures). The particulars shall include, but shall not be limited to, ships particulars, bay plans (preferably in electronic form - \*.nsd type of files), and any information that is necessary to create the vessel structure in the TOS.

Not later than 36 hours before the ETA of the Container Vessel at DCT the Customer shall supply DCT with confirmation regarding planned Containers to be discharged from or loaded onto a Container Vessel. The information shall include, but shall not be limited to, information relating to Hazardous Cargo intended to be in a Container.

The Container Vessel arrival condition and departure plans shall be delivered in electronic form (EDIFACT messages i.e. BAPLIE, COPRAR, MOVINS) according to the timeline pre-agreed between DCT and Customer at least 36 hours before the ETA of the Container Vessel.

The final time of arrival of a Container Vessel shall be confirmed in writing at least 12 hours before the Container Vessel's ETA.

Cut-off time for the Containers to be received at DCT is set to be the Container Vessel planned arrival (as confirmed per paragraph above) unless otherwise agreed between the Customer and DCT. However, the cut-off date for Reefer Containers will in any case not be shorter than 8 hours before planned beginning of performing Container Terminal Services. As a general rule no Containers are accepted after cut-off time unless otherwise agreed operationally and commercially between the Customer and DCT.

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### 6. Container Vessels at the Container Terminal

The Customer shall be responsible for any damage to DCT's infrastructure and equipment, other Container Vessels, and property belonging to the third parties, caused during or arising from berthing or unberthing unless due to an intentional fault of DCT and shall indemnify DCT against all claims, demands, losses, costs and expensed arising from any such damage.

DCT provides shore side mooring services during Container Vessel berthing. The labour providing the mooring services will be well trained and will have required qualifications.

Container Vessels at DCT are berthed port side alongside. Any exception to that rule is only allowed following a clear and justified request of the Container Vessel master and/or Customer or Agent representing him, and agreed with DCT not later than 24 hours before the Container Vessel's arrival.

It is a Customer's responsibility to provide safe access and working environment. In case of hazard conditions (oil stained decks, ice and snow, mess on the deck and similar) DCT reserves the right to refuse the service.

Every Container Vessel calling at DCT has to be equipped with appropriate number and quality of lashing equipment. Lashing and unlashng of Container is performed by DCT staff.

Any Customer's Container Vessel, if requested, shall vacate the berth without undue delay upon completion of operations, unless otherwise agreed with DCT.

The services of loading /discharging of standard Containers (full or empty) into or out of the Customer's Container Vessel, includes:

- a. movement of Containers from the Customer's Container Vessel to the quay or vice versa;
- b. movement of Containers from the quay to the stacking area or vice versa;
- c. recording and reporting on the presence of intact seals on Containers;
- d. in case full Container is discharged without a seal the Container will be re-sealed. The Container Vessel's representatives will be informed about the need to re-seal the Container and they may be present during this action. The action will be reported to the Customer;
- e. prompt reporting of visible major external damage (excluding any internal inspection of Containers during discharge operation);
- f. lashing or unlashng of standard ISO deck Containers (with lashing equipment to be provided by the Customer). The Customer will make lashing equipment available at the bay where the Containers are to be lashed;
- g. opening and closing (but excluding securing and unsecuring) of hatches and movement of hatch covers from bay to quay or vice versa.

The services of loading / discharging of non-standard Containers include:

- a. loading and discharging OOG or other non-standard Containers, involving the use of special spreader or equipment.

The services of loading / discharging of non-Containerized Cargo include:

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- a. loading and discharging of non-Containerized Cargo to and from the Container Vessel from or to the quay under the crane's outreach, provided that the Container Terminal operations are not affected.

Should the floating crane be required to handle non-Containerized Cargo, it is the sole responsibility and cost of the Customer or its Agent to arrange it.

The services of shifting include:

- a. restow of Containers within the same bay;
- b. restow of Container from the Container Vessel to quay and re-stowing onto the same Container Vessel

All transport related materials (i.e. boxes, pallets, packaging material etc.) should be taken by the Customer from the Container Terminal immediately after the Cargo has left the Terminal; if it is not done in 5 Working days, the Customer automatically loses any rights to these materials and DCT reserves the right to dispose of the equipment at its discretion (destroy, sell, re-use, etc.) charging the Customer with the costs of such disposal and without any right of the Customer to the proceeds of such disposal.

### **7. Acceptance of Containers and Cargo**

Only Pre-Advised Containers and Cargo will be accepted at DCT. The Customer shall provide required data using EDI or using other form of communication agreed by both parties.

In case required information is not available in the TOS the Container will not be accepted (Road Gate) or the Container will be grounded (Rail) in buffer area, and appropriate additional charge will apply.

DCT accepts only Containers meeting ISO procedure requirements. Acceptance of any other Containers requires previous written approval of DCT.

Information required prior delivery of the Container or Cargo is listed in relevant Port Procedures available at DCT Website, depending on the mode of transport used.

### **8. The condition of Containers**

The Customer guarantees that each Container which is delivered to DCT is secure, in a good condition, suitable for its purpose and meets all requirements stipulated in Law. All risks and responsibilities in case the conditions mentioned above are not fulfilled remain with the Customer. DCT is entitled to refuse to load or handle any Container which is not in the condition required by this clause. The Customer shall ensure that the Containers delivered to DCT are weather proof.

DCT shall not be responsible for or liable in any way for any damage to Containers or their content caused by inadequate condition of the Container, such as but not limited to, rust, dents, holes.

## 9. Reefer Containers

In regard to Reefer Containers DCT will provide the following services:

- a. provide plugs for Reefer Containers. Number of plugs may be increased provided the Customer guarantees reefer volume increase to support it, gives six months' notice and obtain confirmation from DCT;
- b. plugging and unplugging of Reefer Containers to suitable electric power supply and monitoring of reefer temperatures twice a day if Containers are not equipped with remote monitoring modems compatible with DCT reefer monitoring system.

The Customer will provide DCT with all necessary information and setting details for every Reefer Container, with the information to be included in EDI messages appropriate for Containers received by road/rail and from the Container Vessel,

DCT will not change the reefer working settings – in case of discrepancies of the reading with TOS DCT will notify the Customer to arrange subcontractor to adjust settings.

In case of Hot Stuffing detected an extra charge will apply.

## 10. Hazardous Cargo / Containers

All Hazardous Cargo (for direct loading to the Container) and Containers which contain Hazardous Cargo shall be Pre-advised at least 48 hours before its arrival to DCT, unless otherwise agreed with DCT. Pre-advise should include all data and documentation in accordance with the provision set out in the Port Procedures available on DCT Website depending on the mode of transport used. DCT only accepts Containers which are properly labelled according to IMO rules.

In case of incorrect / not sufficient information on Hazardous Cargo, DCT reserves the right to refuse to handle the Container and has the right to move it to another location. Any such move will be notified to, and will be at the risk and expense of the Customer.

It is not allowed to store Non-containerized Hazardous Cargo at DCT.

Every leaking Container will be treated as possibly hazardous and the Customer will be charged for the actions taken by DCT preventing possible contamination.

## 11. Non-standard and Break Bulk Cargo

In case of any non-standard or Break Bulk Cargo, operational and commercial conditions have to be agreed before units can be accepted at the Container Terminal. With regard to operational consideration the minimum information shall include, but shall not be limited to, planned Container Vessel/voyage or service, technical drawings, handling procedures including lifting points and stowage requirements.

### 12. Out of Gauge Containers (OOG)

In case of OOG Cargo, detailed out of gauge dimensions have to be provided before Container can be accepted at the Container Terminal. Cargo has to be properly lashed and prepared for storage and further voyage.

### 13. Limitations

DCT will have no obligation to handle following Containers:

- a. in poor technical conditions;
- b. overweight Containers (Containers which exceed the maximum gross weight marked on the Container itself);
- c. which are in violation of any laws, statutes, ordinances, regulations, rules or other governmental requirements;
- d. not properly labelled and not accompanied by proper documentation;
- e. flat rack or open top Containers with the Cargo not properly stowed and/or secured for carriage by sea;
- f. transported on chassis not designed for Containers and/or carried on technically poor condition trailers and/or exceeding road weight and axle load limits;
- g. transported on railway wagons not designed for Containers and/or carried on technically poor condition wagons and/or exceeding rail axle load or weight limits and generally not ready for transport (not cleaned from snow etc.).

Handling Containers, Cargo or means of transport as mentioned above must be mutually agreed between DCT and the Customer and will be subject to an additional charge.

### 14. Road gate operations

Customers entering the Container Terminal to receive or deliver the Containers are obliged to follow all safety and operational procedures available on DCT Website as well as in written form at DCT. DCT reserves the right to reject servicing drivers not complying with safety rules – penalty matrix including temporary and/or permanent access bans is available in written form at DCT and on DCT Website.

The current working schedule for all public holidays in Poland is available on DCT Website. DCT reserves the right to change gate working hours depending on the situation, provided the Customers have been informed of the change in advance and provided it is not deteriorating the quality of the service level.

DCT reserves the right to reject handling trucks and Containers which are in violation of any laws, statutes, ordinances, regulations, rules or other governmental requirements (i.e. weight limits).

### 15. Rail operations

Operation windows have to be mutually agreed in advance between DCT, Train Operator and Carriers. Trains are operated seven days a week. Any service planned for public holidays are performed only upon earlier notification by the Train Operator at least 7-days before the beginning of the service. In

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one service window, DCT undertakes to receive a train with the maximum length of 618 m. DCT shall not be liable for delays in providing extra rail cars.

Priority in windows arrangements are given to the Customers able to provide fixed schedule with constant and predictable volume. DCT reserves the right to amend the operation windows depending on the degree of utilization of the rail siding by the individual carriers.

Updated train service calendar is available on DCT Website.

In case the expected arrival of a train does not allow to complete operations within agreed window (in particular but not limited to late arrival or volume exceeding agreed windows) DCT reserves the right to reject or reschedule the train.

Detailed information on the individual trains shall be sent by the Train Operator at least 4 hours before the train's arrival. DCT will not take responsibility for any delays caused in case the above condition is not fulfilled.

Every train has to be removed from the DCT rail siding immediately upon completion of handling operations. In case the train is not removed immediately after handling operations, DCT may instruct another Carrier to relocate such train set to the Gdańsk Port Polnocny rail station at the cost and risk of the Carrier who has failed to collect its rail cars on time.

All Customers are obliged to follow Port Procedures available on DCT Website.

### 16. Container Availability and Acceptance

#### Export Containers

- a. The Containers shall not be delivered on the DCT's yard earlier than 8 days prior to Container Vessels' arrival as per berthing plan;
- b. Export Containers are to be delivered to DCT and nominated according to the timeline agreed (cut-off time).

#### Import Containers

- a. Discharged Containers will be available for delivery to the receivers and/or the Customer not later than 2 hours after all Containers are discharged from the said Container Vessel. The express delivery is available and is subject to an additional charge.

#### Transshipment Containers

- a. Outbound Container Vessel / voyage and POD for transshipment Containers shall be Pre-advised to DCT together with discharge plans / lists according to the timeline agreed.

#### General rule regarding change of data (all Containers)

- a. As a result of change of Container data (in particular but not limited to the Container Vessel, voyage, destination, weight) once the Container has been delivered to DCT a change charge set out in the Standard Tariff will apply.

### **17. Release of Containers (road and rail)**

The delivery of Containers to the Customer or its Customers is only possible based on the assigned PIN issued by the Customer or the Agent on the Customer's behalf. The PIN is assigned in TOS using pre-agreed and pre-set EDI messages (EDIFACT COREOR) or manually by the Customer.

The Customer will not held DCT responsible for delivery of the Container to the wrong party as long as PIN provided by the Customer matches the information in the system.

DCT will only release Containers with granted Permissions and without active Holds. Please see the Customs procedures section below for further details.

### **18. Customs procedures, Holds and Permissions**

Every import Container being delivered to the Terminal on a Container Vessel will require a customs Permission to be granted (according to Law) before it is able to leave DCT (Road gate or Rail). It is the Customer's responsibility to follow customs procedures and to assure the customs Permission is granted.

Customs, other border authorities, and shipping lines are able to apply individually recognized Holds on every Container or Cargo. DCT will not take responsibility for any delays, loss or liabilities arising from Container not being released for loading or land side delivery by above mentioned parties. It is Customer's responsibility to arrange the release of a specific active Hold or grant Permission with respective party.

### **19. Additional Container and Cargo related services**

DCT accepts orders for additional services (specified in the Standard Tariff) in electronic form only by means of TOS. DCT accepts orders during weekdays only until 1700 hrs (CET), for services to be carried out at the following day.

CFS facility operates on Working days. Services on non-Working days are possible provided the order is placed before 1700 hrs (CET) on the Working day before the non-Working day.

The Customer is obliged to follow CFS related procedures which specify the requirements related to additional services offered by DCT (Procedures related to operations at the CFS), available on DCT Website. Supporting documentation and information should be delivered to DCT using communication channels specified in the available procedures.

### **20. EDI system**

Transmission and interchange of Messages between the parties are possible by means of an EDI system, and have to be agreed in writing. All Messages utilized in communication between Customer and DCT shall follow EDIFACT standard (version D and release number 95B). Commencing transmission and interchange of Messages requires an operational agreement to be signed by the Customer and DCT specifying configuration and interchange details, communication rules and responsibilities. Standard Messages used for communication are as below.

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- a. EDIFACT Inbound messages include:
- Stowplan
  - Manifest
  - Discharge List
  - Load List
  - Stow Advice
  - Operator Release
- BAPLIE (D10B version also acceptable)  
– CUSCAR  
– COPRAR  
– COPRAR  
– MOVINS  
– COREOR (one file per one interchange)
- b. EDIFACT Outbound messages include:
- Stowplan
  - Gate Activity
  - Vessel Activity
- BAPLIE  
– CODECO  
– COARRI

Implementation of any other Messages is subject to separate discussion and agreement between parties.

### 21. Procedure regarding Claims

- a. Either party must without undue delay notify the other of an event which customarily requires a survey of loss or a damage.
- b. Notwithstanding any other provision herein, both DCT and the Customer shall at all times take all reasonable steps to minimise and mitigate any loss, damage and/or costs and expenses for which the relevant party is entitled to bring a claim against the other pursuant to the Contract or mandatory provisions of law.
- c. Claims documentation should comply fully with prevailing law regulations and the utmost care in accordance with established principles of DCT. The purpose of the complaint documentation is:
- i. identification of the complaint,
  - ii. establishing the way, term and responsibility for examining claims,
  - iii. to determine the prevention activities for the future,
  - iv. to enable registering the costs incurred by the Customer as a result of complaints reported in a suitable report.
- d. Procedures related to operations at the CFS are available on DCT Website.
- e. All Customers are obliged to follow claim procedure available on DCT Website unless the parties have agreed otherwise.

### 22. Limitation of Liability

The total liability of the DCT to the Customer for any damages and other claims relating or arising from the concluded agreements (including by way of recourse), may not exceed the Contract Price. DCT's total liability towards the Carrier/Haulier is limited to the claims resulting from direct and normal causal link between DCT's actions (omission) and the damage. Notwithstanding the foregoing, the liability of the DCT does not cover loss of profits, loss of contracts, loss of use, loss of data or consequential or indirect losses. Furthermore, the liability of the DCT does not cover any loss or



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damage of any kind arising for any reason, except in the cases of a breach of these ToB or the Contract, and any tortuous liability of DCT in such case is expressly excluded.

If there are any limits to the Customer's liability provided by Law, they will apply also to the liability of the Customer under these ToB and the Contract

### **23. Force Majeure**

A party shall not be liable for any failure to perform its obligations under the Contract caused by Force Majeure provided it gives prompt notification to the other party of (i) the event of Force Majeure and its likely duration (ii) the obligation(s) which are affected, and how they are affected, and provided that it takes all reasonable steps to mitigate the effects of Force Majeure.

### **24. Power of attorney to sell the Containers and the Cargo**

If any charges are not paid within one (1) calendar month after notice requiring payment has been given to such Customer, the Containers or Cargo may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by DCT in such sale. The Customer hereby grants an irrevocable power of attorney to DCT to sell the Containers and Cargo in the circumstances described above and to apply the proceeds of the sale as per preceding sentence and shall provide DCT if requested with any documents and statements confirming this. Any sale of Containers or Cargo by DCT pursuant to these ToB may be conducted by private agreement, by public auction or otherwise in such manner as DCT shall in its sole discretion determine and DCT shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. This right shall be in addition to any allowed by law.

### **25. Personal data protection**

- a. In relevant cases, in compliance with Article 6(1) (b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (the "GDPR"), DCT and the Client (the "Parties"), for the purpose of the performance of the agreement, share personal data of their employees, agents, advisors and other persons, when necessary (the "Data"), for the purpose of providing the services provided for in the concluded Agreement and in connection with the Agreement. Additionally, the Parties may also process Data for the purpose of the fulfilment of their legal obligations as the Controllers (Article 6(1) (c) of the GDPR), e.g. in the scope of responding to requests made by public authorities.
- b. The scope of the personal data shared by the Parties shall be defined in detail in the recitals of the concluded Agreement.
- c. For avoidance of any doubts, DCT and the Client confirm that DCT is entitled to further share personal data to third parties without the Client's prior consent, on condition of maintaining the purpose of the processing, as defined in the concluded Agreement.

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- d. The Parties warrant that their technical and organisational measures comply with security requirements defined in generally applicable legal provisions in force, including the GDPR, and that they allow to secure Data against unauthorised access, modification, loss, seizure by an unauthorised person, and damage thereof.
- e. Prior to the commencement of processing Data the Parties shall provide security measures set out in Articles 24-36 of the GDPR.
- f. The Parties represent that they are familiar with the content of the GDPR and have IT systems used for processing personal data and they shall process Data in compliance with the said provisions.
- g. The Parties may process Data throughout the term of the Agreement or for the period necessary for the establishment, exercise or defence of claims in connection with the Agreement. In the event of a lack of the purpose of processing Data, termination or expiration of the Agreement, or the expiry of the time necessary for the establishment, exercise or defence of claims connected with the Agreement, the Parties shall destroy any and all documents and copies containing Data, or return the same at a request, and delete Data from any and all equipment and software used for the processing thereof, unless the further processing thereof is required by law.
- h. DCT shall bear liability up to PLN 5,000 for any damage suffered by the Client as a result of the violation of the provisions of this Section, in particular due to improper processing of the entrusted Data.
- i. The Parties shall immediately notify each other of each case of Data breach.

### 26. General provisions

- j. The provisions of these ToB shall be subject to Polish law and shall be interpreted in accordance with the law, and in particular in accordance with international conventions and regulations and international practice, unless otherwise agreed in writing.
- k. Any dispute between the DCT and the Customer, as well as other persons mentioned in these ToB, to which provisions of the ToB are or may be applicable, arose in connection with the provisions of the ToB, shall be settled by the competent common court in Gdansk, unless the parties expressly agree in writing to choosing the jurisdiction of another court.
- l. These Terms of Business are drawn up in Polish and English versions. In case of any interpretive doubt concerning content of Terms of Business, Polish language version shall prevail.
- m. These Terms of Business may be amended from time to time by DCT upon notice to the Customer, in which case the Customer shall have a right to terminate the Contract upon termination notice as set out in the Contract, by serving to DCT a notice of termination within 7 days from receipt of notice on the amendments to the ToB. If the Customer fails to serve the termination notice within 7 days from receipt of notice on the amendments to the ToB, the Customer shall be deemed to accept the amended ToB.