

# General terms and conditions of Hupac Maritime Logistics GmbH | June 2017

## 1. Object and applicability

### 1.1. Object

These General terms and conditions (**HMALO GTC**) shall always be read in conjunction with ADSp 2017. **Together with ADSp 2017, they shall provide the contractual basis for any national and international transportation and logistics services provided by HMALO**, and set forth general principles for the application of the tariff.

### 1.2. HMALO as intermediary

If not differently stated by the Parties in writing, **HMALO acts purely as an intermediary**. As such, HMALO concludes contracts with carriers, forwarders, customs agents, warehousing companies and other sub-contracting parties, for and on behalf of Customer. In particular, **the Parties agree that HMALO never acts as a carrier**.

### 1.3. Integral parts and amendments

These HMALO GTC and the ADSp 2017 are incorporated into, and are integral parts of, any contract or transportation order between HMALO and the Customer.

HMALO is entitled to amend the HMALO GTC, the prices and other terms and conditions at any time. Upon information by HMALO, the Customer shall be deemed to have accepted such amendments if it does not object before they come into force.

### 1.4. Precedence

General terms and conditions as well as other set of rules used by the Customer do not apply. Only mandatory statutory provisions shall supersede these HMALO GTC. In case that any provision of these HMALO GTC should be in conflict with any provision set forth by the ADSp 2017, the former shall prevail.

## 2. Definitions

<b>ADSp 2017</b>	<i>Allgemeine Deutsche Spediteurbedingungen, Version 2017</i>
<b>BAF</b>	Bunker adjustment factor
<b>Customer</b>	HMALO's Customer and contractual party
<b>FCL</b>	Full container loads
<b>HMALO</b>	Hupac Maritime Logistic GmbH
<b>HMALO GTC</b>	These General terms and conditions
<b>ILU</b>	Means an intermodal loading units, i.e. a container, swap body or bulk fit for intermodal transportation.
<b>Party/ies</b>	HMALO and Customer
<b>Special Equipment</b>	As defined by section 8.4
<b>Standard Equipment</b>	As defined by section 8.4
<b>Tariff</b>	Is the tariff for the services rendered by HMALO, as described herein.
<b>VGM</b>	Verified gross mass

### **3. General obligations of the Parties**

#### **3.1. Service duties of HMALO**

##### **3.1.1. Full container loads**

If not differently agreed by the Parties, HMALO does only provide services with respect to Full container loads (FCL).

##### **3.1.2. Loading and unloading**

HMALO's services do not include (i) loading of goods into and unloading of goods from ILUs; nor (ii) loading and unloading of ILUs at the arrival and at the departure place, insofar that place is different from a rail-road intermodal terminal.

##### **3.1.3. Drivers responsibility by loading and unloading**

The driver is not authorized to act in any way for HMALO, other than by completing the prescribed forms relating to hand-over of equipment and cargo receipt. Of course, Customer is free to ask the driver to provide assistance with the packing/unpacking or tilt lashing of ILUs in accordance with local practice at the place of acceptance or the place of delivery. **However, this is not a service offered by HMALO, which cannot be held responsible for the services rendered by any individual driver in this respect.**

#### **3.2. Duties of the Customer**

##### **3.2.1. Booking and information general duties**

Subject to other provisions of this HMALO GTC, the Customer shall transmit its transportation order to HMALO via e-booking at least 48 hours in advance, providing all necessary information (see in particular, section 3.2.6 underneath).

The Customer is responsible for the accuracy of the information supplied by him and for the accuracy of any translations as well as for the completeness of the paperwork. HMALO does not have the duty to check the information, or any statements made, or the paperwork, for accuracy and or completeness. The Customer is liable for all consequences which arise from the absence, the incorrectness, the inaccuracy or incompleteness of information or from late or incomplete communication of information, even if no blame or fault is present; the same shall apply with regard to statements made by the Customer.

##### **3.2.2. Preparation of ILUs, packaging, stewing**

The Customer is responsible that the goods are properly, adequately and appropriately prepared and packed, stowed, labelled and marked, in compliance with the requirements of all relevant transport authorities and carriers. The Customer shall ensure that the goods are properly and competently loaded, under compliance of all relevant regulations; that the goods involved are suitable for carriage in or on the transport unit; and that the transport unit itself is in a suitable condition to carry the goods loaded therein, is fit for the intermodal transportation and complies with the requirements of all relevant transport authorities and carriers.

##### **3.2.3. Sealing**

The ILU must be properly sealed with a bolt seal. ILU without an intact Bolt Seal will not be accepted. In case the customer is not able to provide a bolt seal, the driver may hand over a seal to the Customer, which, then, seals the ILU under its responsibility. Any costs arising from non or late sealing of ILUs will be charged to the customer. The seal number must be shown in the CMR. HMALO is not responsible for any damage due to a ILU handed over by Customer to the driver not properly sealed.

##### **3.2.4. Information required for transport**

###### **3.2.4.1. General Information**

A transport order is always required and must contain the following information:

- Vessel / voyage
- ILU number(s)
- Weight and proper cargo description
- Complete description and documentation of dangerous goods
- Country of origin or destination and loading port
- Load / delivery address incl. phone nr. if available
- Load / delivery date & time specified per ILU number.
- Multi-stop / generator set and or special requirements
- Information concerning customs documentation and customs office
- Who creates the document and or what type of document will be used and if applicable B/L copy
- Billing party for transport related costs
- Empty pick-up reference and depot
- VGM instruction

### 3.2.4.2. *Customs documentation*

Upon request, HMALO may prepare the documentation needed for customs formalities on Customer's behalf, such as T1, export documents, import documents, veterinary documentation. For the T1 the bill of lading is needed.

### 3.2.4.3. *Delivery term for documentation*

All documents which are of relevance for the transport have to be submitted to HMALO **latest 3 working days** before the arrival of the import vessel.

### 3.2.5. *Weight limitations*

**The Customer shall ensure that gross weights (including ILU tare) comply with all national regulation on weight limitations on each country which the ILU will pass during transportation.** The ILU weight includes the tare weights (including empty ILU weight, generator, etc.), all packaging, pallets and any blocking, bracing and dunnage materials, the weight of the goods, etc. Extra costs caused by low loaders, special permissions, etc., shall be charged in addition to the agreed Inland Haulage Rates.

Following are some of the current national weight limitations:

#### **Max weight incl. ILU tare rail/road**

Country	20 FT	40 FT
Austria	25 tons	26.5 tons
Belgium	26 tons	26 tons
Germany	25 tons	26.5 tons
Netherland	32 tons	32 tons
Switzerland	26 tons	26 tons
Italy	25 tons	26 tons

### 3.2.6. *Dangerous goods and waste*

#### 3.2.6.1. *Dangerous goods*

HMALO accepts orders for dangerous goods only if all necessary information in accordance with RID, in its latest version, as well as any other applicable regulation, is provided **at least 3 days in advance**. Orders for dangerous goods will be processed subject to facilities availabilities and any road limitation prescription.

#### 3.2.6.2. *Waste*

Waste shall be defined in accordance with Regulation EC 1013/2006. For each waste transport, the Customer shall issue the form according to this Regulation and its Annex VII. This form has to be provided to HMALO for transportation **at least 3 days in advance**.

#### 3.2.6.3. *Non-observance of delivery times*

If dangerous goods and waste are delivered in advance to the scheduled loading time, or, if for any other reason, they shall be stored prior to loading, **HMALO shall be entitled to take any measure, or accept that any measure will be taken, which is necessary in order to minimize the risk and/or comply with statutory regulations, or contractor's internal rules** (such as general terms and conditions of terminal or port operators), including transport of the ILUs to a storage facility. The same apply in case of Customer's default at delivery time. Section 6 hereunder applies to these cases.

#### 3.2.6.4. *Labelling*

ILUs with dangerous goods and waste shall be labelled correctly.

### 3.2.7. *Export control and sanctions law*

The Customer expressly declares that he understands applicable Swiss, EU, U.S., and other applicable jurisdictions' export controls and sanctions law. The Customer confirms that he has obtained the required licences for the import, transfer, export or re-export of the goods, or that he has complied with the applicable notification obligations, and that he has not or will not export, re-export, transfer, retransfer, or sell the goods to a destination, end-user, or end-use that would be in breach of, or be penalized under Swiss, EU, U.S., or other applicable jurisdictions' export control and sanctions laws, as the case may be. The Customer undertakes to submit such licenses or notifications to HMALO on its own initiative. HMALO shall not transport the goods or be liable to pay any damages or provide any benefit to the Customer to the extent that undertaking such an act, or failing to act or omitting material information related to such an act, would expose HMALO to any sanction,

restriction, prohibition, or penalty under Swiss, EU, U.S., or other applicable jurisdictions' export controls and sanctions laws.

### **3.2.8. Empty ILUs**

Corresponding return of an empty ILU in the wake of an import shipment to the ILU depot or pick up of an empty ILU in the wake of an export shipment / empty evacuation set by the Customer is only possible if the turn-in number / pick-up number is given correctly and correct registration has been made by the shipping line concerned. Additional costs resulting from incorrect submission of the reference number or defective information to HMALO and or depot will be passed on to our Customer in accordance with actual expenditure.

The type and characteristics of the equipment provided must be suitable for the loading intended and be supplied in a corresponding condition for delivery at the depot or terminal. Due to local circumstances (space and light available and any safety regulations) at the depots or terminals the equipment so supplied will only be given an external visual inspection by the subcontractor employed by HMALO. HMALO will not pay any additional costs resulting from wrong deliveries at the depot or terminal or refusal to accept on the part of the unloader.

### **3.2.9. Default of loading and delivery times, demurrage**

There will be a charge per ILU/trailer unit where the truck is detained in excess of the following loading/unloading times. In case the ILU is provided later than agreed between the supplier and HMALO in the transport order then the waiting time will be counted as from the time of placing the ILU. If the haulage is carried out earlier than agreed in the transport order then the waiting time will be counted as from the time agreed respectively from the start of loading operations by the customer. In case the customer starts the loading operations before the time agreed in the transport order the waiting time will be counted as from the actual start of loading. When the ILU gets provided at the time agreed in the transport order the waiting time will start independent of the actual start of loading.

With reference to art. 11.2 ADSp 2017, the Parties agree that a reasonable time for loading and unloading shall not exceed two (2) hours. After such period, HMALO has the right to **an overtime surcharge of EUR 50 for each 30 minutes overtime.**

## **4. Further services offered by HMALO**

### **4.1. Weighbridge**

Upon Customer's request, HMALO can, without liability and subject to availability arrange for FCL ILUs to make use of a weigh bridge. Quotations will be supplied upon request and all costs will be for the Customer's account. Weighbridge Charges will include any additional haulage to or from the weighbridge.

### **4.2. Special equipment**

Subject to availability, HMALO might provide to the Customer special equipment, such as 20' tipper trailers, 20' low loader trailers, 40' low loader specialist trailers, 20'/40' Sideloaders, etc. Fees for this will be quoted separately.

### **4.3. T1**

HMALO can prepare T1 documentation for inbound ILUs. Preparation fee per T1 document amount to EUR 30. A copy of the bill of lading is required

## **5. Cancellation charge**

HMALO shall be entitled to an overcharge of EUR 120 per TEU in case of cancellation of the booked transportation received later than by noon (12.00) of the day before the scheduled departure time, or, if the departure time is on Monday, later than by noon (12.00) of the precedent Friday, unless such cancellation is due to performance hindrances as set forth in art. 12.2 ADSp 2017.

For the sake of clarity, the cancellation overcharge is in particular due in following cases:

- Departure hindered because of Customer's failure to provide complete, sufficient and clear information and/or documents needed for transportation and/or customs purposes,
- Departure hindered because the ILU is damaged or not fit for transportation.
- Loading impossible due to lack of release note and or lack of V certificate
- Failure to provide the ILU in time at inland rail transshipment station or terminal.

## **6. HMALO's discretion**

If at any time, HMALO shall reasonably consider to be in the Customer's interests to depart from any of Customer's instructions, then, it shall be entitled to do so and shall not incur any liability. If events or circumstances come to the attention of HMALO which, in its opinion, make it in whole or in part, impossible or impracticable for it to comply with any instructions, it shall take reasonable measures to inform the Customer

and to seek further directions. If these are not received by HMALO in writing within a reasonable time, HMALO shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

In the absence of instructions given by the Customer to HMALO in good time, (i) it shall be in the discretion of HMALO to decide at what time to perform or to procure the performance of any or all of the acts necessary to perform its obligations; (ii) HMALO shall have an absolute discretion to determine the means and procedure to be followed in performing all or any of the acts or services it has agreed to perform; and (iii) in all cases where fees, prices, tariff rates or premiums offered by any carrier, warehouse facilities, or other service providers, depend on the value of the goods, it shall be in the discretion of HMALO as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the aforementioned service providers.

## **7. Liability**

HMALO's liability is defined by the relevant articles of ADSp 2017. **However, if statutory liability provisions applicable to a specific transport are more favourable to HMALO, they shall apply. Moreover, in case of any transportation via rail, the limitations of liability of the UIRR General terms and conditions shall apply.**

## **8. Tariff**

### **8.1. Object and applicability of the tariff**

The tariff is reviewed by HMALO from time to time and is only applicable to FCL and inland transportation, to the exclusion of deep sea and air transportation.

The rates offered by this tariff are the basis rates for the haulage of FCL between either the place of acceptance or the place of delivery and the shipping line's appropriate port terminal.

### **8.2. Currency**

All fees, charges, costs are shown in EURO, unless otherwise stated.

### **8.3. Modal choice**

The mode of transport shall be determined by the Customer and the inland transport rate as stipulated in this tariff will apply accordingly.

### **8.4. Standard and special equipment**

The tariff sets forth different rates for standard equipment and special equipment. Standard equipment includes dry container (DC), dry van container (DVC) and 9'06" high cube ILUs (HC). Special equipment includes all other equipment, excluded reefer ILUs (RF), insulated ILUs (IN) and out-of-gauge cargo.

### **8.5. Goods excluded from the tariff**

The tariff does not apply to, and rates shall be quoted separately for, cargos of following kinds:

- IMDG Cargo Classes 1, 6.2 and 7 are excluded from carriage
- Kind of "waste" Cargo
- Temperature Controlled Cargo
- Specified Cargo (e.g. over-dimensions)

The rates have to be quoted separately.

### **8.6. Costs variation**

HMALO is entitled to pass on costs modifications, surcharges and taxes, which are beyond its control, such as (but not limited to) energy costs variation and law changes at any level.

### **8.7. Included costs**

#### **8.7.1. Bunker adjustment factor**

An additional charge for average BAF / Diesel is included in the rates.

#### **8.7.2. Maut / Motorway toll**

The German motorway toll (Maut) as well as motorway tolls in other countries are included in the rates if not otherwise specified.

### **8.8. Excluded costs**

#### **8.8.1. Port terminal fees**

The rates exclude port terminal charges and any other charges for additional services in the port.

#### **8.8.2. Demurrage and storage**

In case of delays, HMALO will not pay the costs of ILU rent or the costs of ILU storage.

### **8.8.3. Waste transportation**

Waste transportation is subject to additional charges.

### **8.8.4. Safeguarding measures**

HMALO reserves the right to invoice without prior notice any safeguarding measures needed during the loading of goods. Such safeguarding measures may include inserting lamps and or doorstops, affixing labels, etc.

### **8.8.5. Container scanning required by custom authorities**

In case customs authorities shall demand import or export FCL to be delivered to the customs scanning facilities, additional costs resulting therefrom will be charged to HMALO.

### **8.8.6. New destination**

When the HMALO agrees to re-direct a vehicle from the originally specified place of delivery to another place, all additional costs will be for the account of the Customer.

### **8.8.7. Other costs and fees not included in the fees**

Further, following charges are not included in the tariff and will be charged separately, if applicable:

- Terminal handling fee
- Terminal storage fee
- Customs clearance and customs services fees
- Extra stops
- Congestion surcharges
- All national taxes, custom duties
- All local surcharges
- Any kind of administration and documentation fees
- All other charges not named above.

## **9. Invoicing and payment terms**

### **9.1. Invoicing**

National taxes and customs duties are billed separately.

### **9.2. Payment**

HMALO's invoices shall be settled by the Customer **within 14 days** form reception.

### **9.3. Guaranty, prepayment**

Prior to any transport and if required by any freight forwarder, carrier or service provider, Customer shall supply an irrevocable guarantee of payment at first request released by a bank for an unlimited period, covering all contractual liabilities and the related payments and claims up to a specific amount. Other securities or insurances might also be accepted. If the transport volumes of the Customer increase, the guaranty shall be also increased accordingly. In case of non-compliance with this clause or withdrawal of an existing guaranty, HMALO is entitled to take adequate measures, as suspending of the service and stopping transports

As an alternative, prior to any transport, HMALO might issue a request for prepayment of all fees and costs to Customer, which shall pay that amount before the departure of the ILUs. Upon arrival at destination of the ILUs, HMALO shall issue an invoice to customer.

## **10. Contacts**

Any communication with respect to any service rendered by HMALO and to these HMALO GTC shall be sent to:

**Hupac Maritime Logistics GmbH**  
Bliersheimer Straße 80, LOC B  
D-47229 Duisburg -Rheinhausen

Phone +49 2065 9067711  
Fax +49 2065 9067712  
E-Mail [info.de@hupac.com](mailto:info.de@hupac.com)

## **11. Applicable law and jurisdiction**

The legal relationship between HMALO and Customer is governed by German law.

The place of fulfilment for all involved parties is the location of HMALO's main office (Duisburg). The place of jurisdiction for all disputes and all involved parties arising from the freight forwarding contract, an initial enquiry or are in relation to it, is the location of HMALO's main office (Duisburg), in as far as all these parties are merchants. Claims against HMALO are exclusively covered by this place of jurisdiction. Then, the aforementioned place of jurisdiction shall be deemed as an additional place of jurisdiction in case of article 31 CMR and article 46 § 1 CIM, but not in case of article 39 CMR, article 33 MC, article 28 Convention for the Unification of certain rules relating to international carriage by air (WC).