

# Standard Rules of Operation Cuxport (ABC)

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## Standard Rules of Operation Cuxport

*Translation of:*  
Allgemeine Betriebsordnung Cuxport („ABC“)  
Cuxport GmbH, Cuxhaven („Cuxport“)  
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## Section I General Provisions

### 1. Scope of Application

- 1.1 The ABC are valid for and govern any usage of quay and other facilities of Cuxport as well as the seaport-related handling of all types of goods, means of transport and automobiles including any intermediate storage in connection with these, and they are also valid for and govern the storage of goods, means of transport and automobiles as well as all commercial and other activities in any way connected with the execution and/or provision of such work and services, including but not limited to stowing, lashing/securing of goods in and on means of transport, which are offered and carried out by Cuxport.
- 1.2 Cuxport is entitled to have performed the total or any part of such work und services by subcontractor(s).

### 2. Basis of Agreements

- 2.1 By making use of quay or other facilities of Cuxport and/or of any other part of the work and services mentioned in subsection 1.1 the customer accepts that these ABC and the actual Cuxport tariffs are applicable. Any and all agreements, which deviate from these ABC and the Cuxport tariffs, must be made in writing in order to be valid.
- 2.2 Any General Terms and Conditions of the customer which conflict with the regulations of these ABC and the Cuxport tariffs are herewith agreed to be null and void, as far as deviations are not agreed upon in writing.
- 2.3 Parallel to these ABC, the then actual regulations of public law relating to the use of the Port of Cuxport and of the attached Terminal Regulations ("Terminalordnung") shall also apply.

### 3. Orders

- 3.1 In general, Cuxport will only act on the basis of written agreements.
- 3.2 Cuxport may, in general or for special services, demand or permit that orders, cargo releases, as well as certain other declarations essential for processing and carrying out the order be issued on prescribed order forms and/or transmitted by electronic data communications in accordance with the prescribed example and in compliance with the special regulations, if any, for users in connection with such transmissions.
- 3.3 The details regarding the goods to be handled which are prescribed in the order forms and specimen orders must be complete. In respect of dangerous goods, the customer is moreover obliged to supply the required special details according to subsection 24 and, if appropriate, to supply any details over and above these, which are stipulated by law and/or official regulations.
- 3.4 Apart from those details prescribed in the forms and specimen orders, orders may only contain such declarations, instructions and information of the customer, which are generally approved by Cuxport or which have been especially agreed in consultation with the latter. Declarations, which conflict with this regulation, are considered to have not been added, even if Cuxport has accepted such an order without any objection.
- 3.5 Any subsequent changes of any declaration, instruction and information of the customer contained in the forms and specimen orders are considered to have not been added, if not signed by the customer within the written documentation and agreed upon in writing by Cuxport.

- 3.6 Cuxport is under no obligation to verify signatures of statements regarding the goods or on any documents, or to verify the authority of the signatory and/or of the bringer, unless there is obvious doubt about the authenticity or authority.

#### **4. Loading list**

- 4.1 The loading list has to state the following items:

- consignee,
- marks and numbers,
- amount of pieces,
- kind of packing,
- weight of the goods, for items of more than 1.000 kg: single weight,
- nature (valuables, dangerous goods, narcotics, arms, spirits and other goods that are subject to any import prohibition or import regulations are to be itemized in the loading list).

- 4.2 Dangerous properties to be additionally marked as per subsection 24.

#### **5. Carrying out of orders**

Cuxport carries out the work specified in the orders in an appropriate sequence, which it determines at its own discretion. Cuxport shall try to take into consideration the sequence of receipt of orders. Even if Cuxport accepted an order containing the fixing of a time limit without any reservation, the customer has no right to demand that such order be carried out within any certain period of time, if not expressly agreed upon confirmed in writing by Cuxport.

#### **6. Inspection of Goods**

- 6.1 Cuxport checks the goods supplied to it regarding apparent discrepancies from the items stated in the respective orders.
- 6.2 Cuxport is not obliged to a marking and/or tally control of the goods supplied, unless specifically agreed upon in writing. In the case of palletised goods, Cuxport is in any case only obliged to determine the number of pallets. The same applies to other large units of goods, in particular to goods accepted and handled in containers
- 6.3 Cuxport is entitled but not obliged to inspect and ascertain at any time whether the weight, the nature and the condition of the delivered goods correspond to the details stated in the respective orders. Instead of this, Cuxport has the option to demand from the customer proof of the correctness of the data he has stated as well as proof of the measurements of the goods.
- 6.4 If the stated data prove to be incorrect, the customer shall bear the costs of such inspection.

#### **7. Customs clearance**

- 7.1 Compliance with customs, tax, railway or other official regulations and the provisions concerning the statistics of trade and the movement of goods falls under the responsibility of the customer. In this respect, the latter must himself issue and complete the necessary forms and must also ensure that any required processing and/or clearance of the goods or of the accompanying documents is duly carried out.
- 7.2 Insofar as Cuxport, by special agreement, carries out any such activities, it does so as the agent/representative of the customer and at the risk of the customer and Cuxport is entitled to an extra fee for the customs clearance, over and above the actual costs incurred.
- 7.3 The instruction to forward bounded goods or to deliver them free house, includes the authorization, but not an obligation of Cuxport to effect the customs clearance and to advance customs and excise duties and fees.

## **8. Calculation of fees, Billing of Waiting Times, Extra Costs**

- 8.1 Calculation of fees, if not otherwise agreed upon in writing, to be calculated according to Cuxport's actual tariffs.
- 8.2 Cuxport is entitled to charge the customer or the vessel, respectively, the relevant tariff rates also for waiting times which may arise due to the fact that operational equipment and/or manpower, which was held available, could not be used or could not be used to a sufficient extent as a result of measures of the customer or the vessel, as a result of special working conditions on board of the vessel or because the necessary order papers were not submitted and available in due time or as a result of other circumstances, for which Cuxport is not responsible, e.g. delay of vessel or adverse weather conditions.
- 8.3 The customer is obliged to reimburse Cuxport for extra costs incurred due to incorrect, inaccurate, insufficient or delayed declaration, in particular in respect of the number of pieces, the weight, condition (e. g. dangerous nature) or defects of the goods or of their packing.

## **9. Disclosure of Information**

Information about individual transactions or goods will only be disclosed to the parties authorized to dispose of the goods.

## **10. Terminal Regulations**

The customer is responsible that his and his subcontractors' personnel who enter and spend time on or in the facilities of Cuxport must strictly comply with the provisions of the Terminal Regulations of Cuxport and of the relevant Accident Prevention Regulations, which are then in force, as well as with the ban on smoking.

## **11. Dispatch of averaged Vessels**

Cuxport will only do discharging or performing of other works at or on averaged vessels on the basis of special arrangements. Cuxport may, as condition to performing such work, request for an indemnity against all liabilities.

## **Section II: Dispatch of Vessels**

### **12. Berths**

- 12.1 Berths for loading and discharging to be assigned by Cuxport informing the vessel's/owner's agent.
- 12.2 Notwithstanding the assignment of a berth as per subsection 12.1, each shipmaster remains responsible for continuous compliance with the regulations under public law relating to vessels taking up the assigned berth of Cuxport.

### **13. Dispatching order, Shifting**

- 13.1 Cuxport reserves the right to determine the dispatching order.
- 13.2 In the interest of the best possible utilization of the facilities of Cuxport as well as to ensure smooth traffic movements and operations, Cuxport or the Port Authority, respectively, can demand that vessels shift to other berths and leave their assigned berth immediately after completion of the handling operations. If a vessel fails to comply with the directions issued in accordance with sentence 1, Cuxport shall be entitled, after consultation and agreement with the Port Authority/Harbour Master, to have the measures that were the subject of such directions carried out by third parties for the account and risk of the vessel.

- 13.3 The public law regulations of the Harbour Law ("Hafengesetz") and the General Lower Saxon Harbour Regulations ("Allgemeine Niedersächsische Hafenordnung"), in particular the provisions regarding the granting of berth permits under public law, are in no way affected by the foregoing.

#### **14. Dispatch of Vessels**

- 14.1 Documents (loading/discharging lists etc.) for loading and discharging must be submitted in good time, thus enabling Cuxport to make the necessary handling arrangements. Vessels being loaded and/or discharged must arrange their activities in the hatches, on or below deck in such a way that the work on the quay is in no way delayed or interrupted. Cuxport may demand that vessels work without interruption until handling operations have been completed.
- 14.2 Cuxport is entitled to stop the cargo handling operations and to demand that the vessel shifts to another berth if this proves to be necessary on account of reasons specifically connected with the goods or if the vessel or the stevedores employed by the vessel do not properly fulfil their obligations because of a shortage of staff, a refusal of a request to work overtime or for other reasons including force majeure. Cuxport by issuing any such instructions shall not be responsible for disadvantages incurred by the vessel as a result of such events
- 14.3 Loading and discharging with the vessel's own lifting gear is only permitted in exceptional cases and with the express consent of Cuxport.

#### **15. Ship's/Owner's Agents**

Agreements made with the agent/ship broker who is acting for the vessel are just as binding as agreements made directly with the vessel's master.

### **Section III: Handling of Goods**

Insofar as no agreements to the contrary have been made, all handling of goods executed within the area / scope of application of this Cuxport ABC, will be performed exclusively by Cuxport employees and / or Cuxport subcontractors and by technical equipment of Cuxport. Handling of goods in this context includes all operations, where goods will be loaded to or discharged from means of transport, and/or moved in connection with transport related or long term storage, or for the purpose of assembly/disassembly. Handling rates will be charged per anterior agreement.

#### **16. Acceptance of Inland Goods**

- 16.1 Insofar as no agreements to the contrary have been made, the goods, which are to be loaded on vessels, are discharged and accepted for further treatment by Cuxport in reception areas determined by Cuxport. Cuxport performs discharging and taking over of goods continuously as far as operationally feasible.
- 16.2 When goods are accepted from railway wagons, the respective consignment notes have to be submitted simultaneously with the discharging orders.
- 16.3 Cuxport is not responsible for calling off goods, means of transport, equipment and/or materials that are to be delivered by the customer or any third party.

#### **17. Packing of Containers/Flats, Roll trailers, Trailers**

If Cuxport undertakes the packing of conventionally supplied cargo goods in containers, on flats, roll trailers or trailers, in the case of each single package the act of loading it into the container, or onto the flat, roll trailer or trailer is deemed to constitute delivery to the vessel

on behalf of which Cuxport keeps the particular package in custody until the packed container, flat or trailer is set down on board of the vessel carrying out the transport.

## **18. Loading of Vessel**

- 18.1 Empty and full containers/flats, roll trailers and trailers are moved by Cuxport with its equipment to the vessel's stowage place designated by the vessel's management. The same applies to cargo units, which move under their own power.
- 18.2 Normally, conventionally carried goods are loaded on operations board by Cuxport using its crane or ramp. The goods are considered as having been taken over by the vessel when the package has effectively passed the ship's rail or the ramp, respectively. After this point in time, all activities of Cuxport which serve to move the goods to the final stowage place, including the further use of its gear are carried out by order and on behalf of the vessel. The lifting gear and/or other equipment of Cuxport being charged with the handling operations work in the area of the vessel from and to ship's rail in accordance with the instructions of the representatives of the vessel; the vessel is consequently obliged to provide and bear responsibility for appropriate signalling by a signalman.
- 18.3 The employees of Cuxport must on demand of Cuxport be granted access to those areas of the vessel in which Cuxport is operating with its lifting gear. This shall be without prejudice to the responsibility of the personnel employed by the vessel for the activities incumbent on the vessel such as for example signalling.
- 18.4 As far as separately ordered, Cuxport performs the lashing of the loaded containers, flats, roll trailers, trailers and other goods in accordance with subsection 27.

## **19. Discharging of Vessels**

- 19.1 Containers, flats, roll trailers and trailers to be discharged are discharged by Cuxport and brought ashore with Cuxport's equipment. They are deemed to have been accepted by Cuxport as soon as set down at the first intermediate storage area under the provision that the respective goods are kept in the custody of Cuxport on behalf of the vessel until the goods are delivered to the consignee. This also applies if the goods stowed in/on containers, flats, roll trailers or trailers being unpacked or discharged from trailers by Cuxport on behalf of the vessel.
- 19.2 In general, Cuxport discharges conventionally carried goods with its handling equipment. Such goods are deemed to have been accepted by Cuxport as soon as set down on quay or on means of transport supplied by Cuxport.
- 19.3 Subsection 18.3 shall apply by analogy. In the case of handling conventionally carried goods, the vessel is, furthermore, responsible for the continuous supervision of the handling gear while the goods are being attached to the gear in the vessel, as far as Cuxport has not used its handling equipment.
- 19.4 When Cuxport accepts goods from seagoing vessels, it does not notify the consignee of the arrival of the goods, this being incumbent upon the carrier. Cuxport is furthermore not obliged to notify the consignee of any possible discrepancies between the details in the cargo documents and the actual situation regarding e.g. measurements, weights, marks or designations of the goods.

## **20. Vessel's lifting Gear**

Any handling and lifting equipment supplied by the vessel to be in good order and condition.

## **21. Shore-Side Delivery**

- 21.1 Cuxport is entitled to refuse to deliver goods brought by vessels as long as the discharging operation of the vessel in question has not been finalized, as far as in the opinion of Cuxport the proper



execution of the discharging operations and/or the necessary overview of the consignments that are to be delivered would be impaired.

- 21.2 Cuxport delivers the goods to the party who submits the delivery and/or dispatch order and a written cargo release declaration of the ship's agent/shipowner or owner of the goods identifying the applicant as authorized consignee (see subsection 3.6). Cuxport may prescribe special forms for such release declarations.
- 21.3 The goods will only be delivered against payment of all fees, charges and remunerations incurred for the goods and owing to Cuxport. The rights of Cuxport under subsection 31 are in no way affected by the foregoing.
- 21.4 Cuxport shall load the goods, which are to be delivered, onto means of land transport at the places determined by Cuxport.

## **22. Cargo Handling (Rail and Road Traffic)**

- 22.1 As far as Cuxport acts as an intermediary in requesting the provision of railway wagons, it cannot accept any guarantee that the wagons will be provided in good time. The customer is obliged to inform himself at the appropriate offices as to whether the wagons will be provided in good time.
- 22.2 If Cuxport requests the provision of railway wagons and the customer has not given special instructions about the kinds of wagons to be used, Cuxport will request the wagons at its own discretion and at the risk of the customer.
- 22.3 Loading and discharging of railway wagons in the facilities of Cuxport companies are carried out exclusively by or under instruction of Cuxport in accordance with the orders placed with it.
- 22.4 In the case of loading goods into railway wagons, Cuxport carries out such securing of the loaded goods, which is necessary for operational safety according to the loading regulations of the respective rail operating company. Cuxport will only carry out additional securing measures for the protection of the loaded goods if the customer expressly requests such measures. The costs for securing measures will be charged separately to the account of the customer, if not otherwise agreed upon.
- 22.5 In the case of goods discharged from railway wagons by Cuxport, the latter does not advise the consignee stated in the waybill of the arrival of the goods and/or about any discrepancies between the details stated in the waybill and the actual situation.
- 22.6 As a rule, goods arriving or departing by road vehicles are discharged or loaded by Cuxport in accordance with the orders issued to it. In exceptional cases, Cuxport may allow or request the carrier to carry out the loading by himself.
- 22.7 If loading is carried out in accordance with subsection 22.6 by Cuxport, the goods are stowed in accordance with the instructions of the vehicle driver. Cuxport will comply with any special loading instructions of the customer, provided that the driver agrees to the prescribed form of loading. The securing measures for the protection of the goods and the safety of the vehicle do not form part of a loading order. If Cuxport carries out the securing of goods on road vehicles on the basis of a separate order, this is done in accordance with the instructions of the responsible vehicle driver.
- 22.8 Subsection 22.5 applies by analogy for goods which have been delivered on road vehicles.

## **23. Limitations of Acceptance and Goods Handling**

- 23.1 Cuxport is entitled to refuse acceptance and/or handling of
  - a) goods, the keeping, handling and/or transporting of which in the port area is forbidden or limited in numbers/units due to the then actual legal and official regulations;
  - b) goods, which are in the judgment of Cuxport and/or the Port Authority by virtue of their properties, their condition and/or their packing unsuitable for acceptance, handling and/or which constitute a danger to safe handling and or to the facilities of Cuxport and/or of the Port Authority.

- 23.2 Cuxport is entitled to refuse indirect handling of
- a) goods, which are only allowed for direct handling due to the then actual legal and official regulations;
  - b) goods, which are in the judgment of Cuxport by virtue of their properties, their condition and/or their packing unsuitable for intermediate storage in the facilities of Cuxport.
- 23.3 Special acceptance and handling conditions must be agreed upon in writing for the acceptance and handling of goods, the treatment of which requires special measures in the facilities of Cuxport, such as precious objects, art objects, precious metals, money and securities, fragile goods as well as live animals. Such agreement has to be initiated by the customer.
- 23.4 If an agreement of the type mentioned in subsection 23.3 is omitted, Cuxport shall be exempted from any responsibility and liability for any damage which arises on the basis of the special nature of these goods.
- 23.5 In the case of the acceptance and handling of temperature-sensitive or otherwise highly perishable goods, the customer is himself obliged to initiate the measures necessary for safe handling of the goods in due time prior to delivery or acceptance or to reach agreement that such measures will be implemented by Cuxport.
- 23.6 Dangerous goods being detected in a damaged condition at the facilities of Cuxport which could in the judgment of Cuxport and/or the Port Authority endanger the facilities and/or other goods being stored or handled there the goods in question must, on demand of Cuxport and/or the Port Authority, immediately be properly and competently repaired, be transferred to other containers or must be removed from the said operating facilities by the party authorized to dispose of the goods.
- 23.7 The same applies, if after goods have been accepted, Cuxport is of the opinion that by virtue of their nature or condition such goods constitute a danger for the facilities or for other goods being stored or handled in said facilities.
- 23.8 Cuxport, as far as ordered by official regulation, is entitled to refuse delivery of goods or to deliver goods only subject to special conditions.
- 23.9 In case goods delivered to or discharged by Cuxport may not, according to legal or official regulations, be handled or loaded, the customer is obliged to take back the goods in question immediately and on his own costs.

#### **24. Special Regulations for Dangerous Goods**

- 24.1 The following subsections 24.2 to 24.5 additionally apply for the acceptance and handling of dangerous goods within the meaning of the legal and official regulations valid at the time.
- 24.2 The customer is obliged to check whether the acceptance and handling of the goods are permissible according to the relevant legal and/or official regulations and whether or not special obligations exist in this regard. The order must expressly state whether legal or official supervision of the cargo handling by competent supervisory personnel is required.
- 24.3 The customer is obliged to deliver the packages with the prescribed markings/labels. In case of missing markings/labels Cuxport is entitled but not obliged to add such markings/labels and to receive a special fee.
- 24.4 In the case of dangerous goods, only the special order forms prescribed by Cuxport for this purpose may be used. These order forms must contain the required details in accordance with the relevant legal and official regulations valid at the time, these being in particular the designation of the substance, class and properties of the dangerous goods. Furthermore, the **“Dangerous Goods Declaration”** duly filled out has to be enclosed. Any one order form may only contain goods of one and the same dangerous goods class. The customer is obliged to ensure that the ship's management receives the prescribed copies of the orders in good time.

- 24.5 If Cuxport is expected to accept dangerous goods on the basis of a loading list of a vessel, such list to contain the details required in subsection 24.4. Dangerous goods mentioned in loading lists to be underlined in red and/or to be specially marked.
- 24.6 The special order forms mentioned in subsection 24.4 have also to be used for goods, which are not subject to the then valid regulations regarding the carriage of dangerous goods but which may give rise to danger during handling and/or storage by virtue of their specific properties. Such goods must be correspondingly identified in the order forms by means of express warnings with regard to these properties; in addition, the respective class of dangerous goods has to be identified.

## **25. Intermediate Storage**

- 25.1 In general, Cuxport accepts short-term intermediate storage only as far as, according to the usage in seaports, this is deemed to be related directly to seaport handling.
- 25.2 Goods, which are generally suitable for storage in the open, may be put into intermediate storage in the open, insofar as no agreements to the contrary have been made in writing.

## **26. Insurance of Goods**

- 26.1 Cuxport does not arrange any insurance against fire and other risks for goods delivered to its facilities without an express written order. This also applies in the case of goods for which direct handling has been ordered, but which have to be placed into intermediate storage for operational reasons as well as in the case of goods mentioned in subsection 30.
- 26.2 The order to arrange for insurance must be made in writing and contain all details needed for a correct contracting. Cuxport to inform the customer of its decision to accept or to reject such order without delay.
- 26.3 If an insurance contract does not come into force due to circumstances Cuxport is not liable for, Cuxport is not obliged to compensate any resulting detriments. Cuxport, however, has to inform the customer without delay of the insurance coverage not coming into force.
- 26.4 In case of the insured event, any liability of Cuxport for loss of or whatsoever is limited to the amount of compensation by the insurer. This limitation shall be without prejudice to any exceeding claims against Cuxport under other legal and/or contractual provisions.
- 26.5 The customer may request Cuxport to assign the rights under the insurance coverage (being obtained under order of the customer) to the latter.

## **Section IV: Stevedoring**

### **27. Stevedoring and Lashing**

- 27.1 In accordance with the orders received and accepted, Cuxport performs normal stevedoring and/or lashing work on the vessels being loaded or discharged at the facilities of Cuxport. Such work to be performed under the directives and the supervision of the vessel's management. Such work shall be deemed to have been correctly performed, if the vessel's management does not complain to Cuxport about a specific fault in writing without delay after end of work.
- 27.2 The vessel to provide sufficient equipment needed for operational safety of such work as well as lighting in accordance with official regulations, energy etc.
- 27.3 Special conditions must be agreed in writing for extraordinary stowing and/or lashing work. In particular, Cuxport may, as condition to performing such work, request for special liability provisions.

## **Section V: Special Provisions for Storage Operations**

### **28. Legal Basis**

In the case of goods, which are taken into storage on the basis of a warehousing contract, the provisions of the German Commercial Code [HGB] shall apply as far as deviations are not contained in these ABC. In particular, as regards liability of Cuxport, which functions as the warehouse keeper and with regard to the statute of limitations, the provisions of subsections 35, 37 and 39 of these ABC shall apply in place of §§ 475, 475 a) HGB.

## **Section VI: Coercive Measures**

### **29. Checking of Designations of the Goods and Weight**

- 29.1 Prior to delivery or to loading into the vessel, Cuxport may request the contents of the packages to be checked, if the accuracy of the designation of the goods is not being proved without any doubts. Cuxport shall be entitled to claim the cost of such checking.
- 29.2 Cuxport is entitled but not obliged to check the gross weight of the goods. Cuxport shall be entitled to claim the cost of such checking from the Customer, if it turns out that the weight in excess is 5 % or more of the designated weight.

### **30. Goods undeliverable or excluded from Acceptance**

- 30.1 Goods whose acceptance or delivery were refused or not effected in time, or for which no party authorized to dispose of the goods can be found, or goods which can for some other reason not be delivered or dispatched can be stored by Cuxport at its own discretion elsewhere for the account and at the risk of the customer or of the party authorized to dispose of the goods.
- 30.2 Cuxport is entitled to sell the goods described in subsection 30.1 without further formalities at the best possible price, if they are exposed to rapid deterioration or if they cannot be stored under the local conditions or if their value would be disproportionately diminished as a result of longer storage or of the resultant additional cost. Cuxport may also sell without further formalities goods for which no party authorized to dispose of the goods can be found despite inquiries having been made.
- 30.3 Goods, which are supplied to the operating facilities of Cuxport without advance notification or application or contrary to the provision of subsection 23, as well as goods, which in the opinion of Cuxport must be regarded as spoilt, perished or deteriorated, must be removed upon demand of Cuxport. If this demand is not immediately complied with, Cuxport is authorized at its own discretion to store such goods elsewhere, to sell them without further formalities or, should this prove to be unfeasible, to destroy or have them destroyed, all for the account and at the risk of the party authorized to dispose of the goods.
- 30.4 Cuxport informs the party authorized to dispose of the goods, as far as such party is known to Cuxport, of the measures as per subsections 30.2 and 30.3.
- 30.5 The proceeds from any sale effected in accordance with subsections 30.2 and 30.3 will be placed at the disposal of the party authorized to dispose of the goods after deduction of all costs incurred. Any claim to the net proceeds mentioned in sentence 1 expires after two years and from then shall be due to Cuxport.

### **31. Liens and Rights of Retention**

- 31.1 In the case of goods which are taken into storage on the basis of a warehousing contract, Cuxport is entitled to a lien on the goods pursuant to § 475 b) HGB.
- 31.2 Subject to the special regulation of subsection 31.1 applicable to goods in storage Cuxport has both a lien and a right of retention with regard to any goods supplied to it and any other valuables

in its possession covering any claim, whether due or not for any services, remunerations and expenses attributable to the goods in question. The lien also extends to any amounts deposited in lieu of the goods as well as to receivables from any insurance of the goods. From the moment when amounts or receivables, respectively, of the type named in the preceding sentence come into existence, they are deemed to have been assigned to Cuxport. Such liens and rights of retention do not exceed the general legal lien and rights of retention.

- 31.3 Cuxport may exercise its lien for claims arising out of other contracts with the customer only if they are undisputed or if the financial situation of the debtor puts such claims of Cuxport at risk.
- 31.4 The time limit of one month as specified in § 1234 of the German Civil Code [BGB] is superseded in all cases by a time limit of two weeks.
- 31.5 After having unsuccessfully threatened the selling of goods to a debtor in default, Cuxport is entitled without further formalities to sell such part of the goods, which at its own discretion is necessary to satisfy its claims. Such informal sale may also be carried out if the debtor cannot be ascertained despite inquiries having been made.
- 31.6 Cuxport is entitled to the locally usual sales commission on the net proceeds of the sale when exercising its lien.
- 31.7 If the customer transfers his right to claim the goods in possession of Cuxport to a third party, the latter has to tolerate that the goods are subject to the lien and retention right as far as Cuxport does not waive its respective rights in writing. The provisions of this subsection shall be without prejudice to § 404 of the German Civil Code [BGB].

## **Section VII: Procedures in Cases of Loss or Damage**

### **32. Ascertainment of Loss or Damage**

- 32.1 Upon acceptance and delivery or handing over of the goods as well as upon direct handling of the goods, Cuxport shall state only those defects, which can easily be discovered by external examination. The result will be noted in writing on the corresponding orders or will be otherwise recorded in writing and will upon demand be notified to the party authorized to dispose of the goods.
- 32.2 If the party authorized to dispose of the goods has notified any loss of, depreciation of or damage to the goods, Cuxport will ascertain the condition of the goods in question and, if possible, also the cause and the time of the loss, depreciation or damage and will notify the authorized person of the result of its investigation in writing. If requested by the authorized person and/or Cuxport, such investigation to include the ascertaining of the amount of damages. In the latter case, the authorized person to be invited to such investigation, if possible.
- 32.3 On taking over goods discharged from vessels Cuxport shall have no responsibility in respect of enforcing any of the consignee's rights against the carrier arising out of the bills of lading or other documents issued by the carrier. In particular, Cuxport is not obliged to file the notice of loss or damage provided for in § 611 of the German Commercial Code [HGB] or to attend any joint survey of the goods arranged on behalf of the vessel.

### **33. Notice of Loss or Damage**

- 33.1 Any loss of or damage to goods shall be notified to Cuxport at the latest at the time when the respective goods were delivered to the party authorized to receive them. If the loss or the damage was not externally recognizable, the notice of loss or damage is held to have been made in time, if Cuxport has received it within seven days after the date of delivery. The loss or damage must be generally described in the notice of loss or damage. Notification of the damage by way of a standard form is not sufficient.
- 33.2 Delivery of the goods to an agent of the consignee or to a carrier legitimated to receive the goods is deemed to be equal to delivery of the goods to the consignee himself. Furthermore, loading the

goods into railway wagons or into containers or onto flats or trailers as well as handing over the goods to the vessel is deemed to be equal to delivery.

- 33.3 The notice of loss or damage according to subsection 33.1 is not required if at the latest at the point of time stated in subsection 33.1, sentence 1, the condition of the goods or their measurements, number or weight will have been ascertained and recorded in writing in a survey to be held in cooperation with the employee responsible for damage appraisal in Cuxport.
- 33.4 If any loss of or damage to the goods has neither been notified nor appraised in the manner described in subsection 33.3 above, then it shall be assumed that the goods were delivered completely and in the condition stated in the handling documents of Cuxport, and that, if any loss of or damage to the goods is verified, this damage shall be attributed to circumstances for which Cuxport is not responsible.

## Section VIII: Liability - Statute of Limitations

### 34. Liability of the Customer

- 34.1 The customer shall be liable for any loss or damage of whatsoever nature, in particular caused to the goods themselves, to the facilities of Cuxport, to the goods stored or handled there, to the property of third parties or to any person, due to incorrect, inaccurate, insufficient or delayed declaration, in particular in respect of the number of pieces, the weight, condition (e. g. dangerous nature) or defects of the goods or of their packing.
- 34.2 The customer is responsible for fault or negligence of the persons he has employed in the performance of its obligations relating to the correct completion of orders, manifests, loading lists, packing lists etc. to the same extent to which he is liable for his own fault or negligence.
- 34.3 In addition, the customer shall be liable for any loss or damage of whatsoever nature that are caused to the detriment of Cuxport or any third party by any of the customer's employees or agents, when driving vehicles on or in the facilities of Cuxport or using said facilities in any other way or when entering and spending time on or in said facilities.

### 35. Responsibility of Cuxport

- 35.1 In fulfilment of their contractual obligations, Cuxport is responsible for exercising the diligence of an ordinary and prudent businessman; in any case of culpable violation of this obligation, Cuxport is liable for the loss or damage incurred by the customer **to the extent stated in subsections 35.2 to 35.5 and 36 to 43.**
- 35.2 Subject to the provisions of the following sentence 3 of this subsection, Cuxport shall be responsible for acts and omissions of its employees to the same extent as for its own acts and omissions insofar as said employees acted in the performance of their assigned tasks. The same applies in the case of acts and omissions of other persons who act as servants of Cuxport in fulfilment of the customer's order. However, all liability of Cuxport is excluded in a case of loss or damage, which
- without being the consequence of faults in the operational organization which from the very start jeopardized the attainment of the scope of the contract (§ 307 subsection (2) No. 2 of the German Civil Code [BGB]) -
- arise during execution of the contract through slightly negligent oversights or through laxity of the persons named in sentences 1 and 2 of this subsection.
- 35.3 The liability provisions of this Section VIII apply irrespective of whatever contractual or non-contractual grounds the claim for loss or damages may be based on.

- 35.4 The liability provisions shall be without prejudice to further limitations of liability in other provisions of these ABC and/or in individual agreements.
- 35.5 Except in the case of intent or gross negligence on the part of their legal representatives, Cuxport is not liable for causing any loss or damage in the course of auxiliary services being provided by them free of charge and which it is not obliged to provide under a contract.

### **36. Implied Absence of Fault**

- 36.1 If loss or damage has occurred, which, in the light of the circumstances of the case, may have been caused by the occurrence of one of the following risks:

- lightning, fire, penetration of water, storm, explosion;
- grand theft or robbery (§§ 243, 244, 249 StGB [German Penal Code]);
- loss of or damage to goods which by agreement or by custom are stored in the open or in warehouses or storage areas which are only roofed over;
- restraints of princes, force majeure, strike, lock-out or any other obstruction of normal work;
- acts or omissions of the parties authorized to dispose of the goods or of their representatives, employees, agents or subcontractors;
- loading or discharging of the goods by the parties authorized to dispose of the goods or their representatives, employees, agents or subcontractors;
- missing or defective packing, insufficient or incorrect labelling, marks, statements of measurements or weight or insufficient indication of the locations of the centres of gravity and/or of the points for attaching lifting gear;
- hidden defects or the distinctive natural type and condition of the goods,
- pest, grid, mould, rot or the like,

then it shall be presumed that the loss or damage arose from such risk.

- 36.2 In the cases stated under subsection 36.1 Cuxport is liable only if it is proven that the loss or damage was (also) attributable to fault or negligence laying the foundation for its liability in accordance with subsection 35.2. § 254 of the German Civil Code [BGB] is not attached.
- 36.3 If any loss or damage is attributable both to the occurrence of a risk stated under subsection 36.1 and also to fault or negligence resulting in liability of Cuxport in accordance with subsection 35.2, the obligation to compensate loss or damages as well as the extent of such compensations depend on the one hand on the extent to which the special risks named in subsection 36.1 and on the other hand on the extent to which said fault or negligence laying the foundation for liability contributed to such loss or damage.

### **37. Maximum Amount of Liability (general)**

Insofar as Cuxport is liable for any total or partial loss of or damage to goods, Cuxport shall - **subject to the limitations of liability set out in the following subsections 38, 39** - compensate the fair market value of the respective goods, or, in case such value cannot be assessed, the fair value of goods of same kind and condition in Cuxhaven at the time of performance of Cuxport's duties. Thereby, any cost savings are to be deducted, which are incurred by that loss of or damage to the goods, such as savings of custom duties, other costs and freight. Furthermore, in case of damage to the goods, the respective selling value has to be deducted.

### **38. Maximum Amount of Liability with regard to Contracts subject to the German Freight Law (§§ 407 ff. of the German Commercial Code [HGB])**

As far as the German Freight Law (§§ 407 ff. of the German Commercial Code [HGB]) is compulsory for the contractual relationship, the following and for the rest the legally defined maximum amounts of liability are to be applied:

- 38.1 **If compensation becomes payable for damage to or for the total or partial loss of goods, such compensation shall be limited to a maximum of two accounting units as defined in §**

- 431, subsection (4) HGB for each kilogram of the gross weight of the goods which suffered loss or damage.**
- 38.2 **If only individual packages or parts of the consignment were damaged or lost the maximum liability as per subsection 38.1 is calculated on the basis of the gross weight**
- **of the whole consignment, if it is rendered valueless,**
  - **of that part of the consignment that is rendered valueless.**
- 38.3 In accordance with §§ 434, 436 HGB, the above-mentioned maximum limits of liability are to be applied for any claims against Cuxport based on any non-contractual grounds.
- 38.4 The provisions for abolition, if any, of liability limitations as per subsection 41 to be applied.

### **39. Maximum Amount of Liability in other Cases**

- As far as the German Freight Law (§§ 407 ff. of the German Commercial Code [HGB] is not compulsory for the contractual relationship the following maximum amounts of liability are to be applied:
- 39.1 The liability of Cuxport for loss of or damage to goods is limited to two accounting units as defined in § 431, subsection (4) HGB for each kilogram of the gross weight of the consignment.
- 39.2 If only individual packages or parts of the consignment were damaged or lost the maximum limit of liability as per subsection 39.1 is calculated on the basis of the gross weight
- of the whole consignment, if it is rendered valueless,
  - of that part of the consignment that is rendered valueless.
- 39.3 The liability of Cuxport for damages of means of transport are limited to:
- a) € 10.000 per damage event to rail waggon, trains, trucks and other means of transport,
  - b) € 50.000 per damage event to ships
- 39.4 The liability of Cuxport for damages or loss of containers are limited to
- a) a maximum of € 1.500 per 20' container
  - b) a maximum of € 12.500 per each refrigeration container or tank container
  - c) a maximum of € 5.000 for other containers.
- 39.5 If the claim of a principal is based upon the difference between the nominal and actual inventory the liability is limited to € 25,000, irrespective of the number of events causing the inventory discrepancy.
- 39.6 The liability of Cuxport for claims other than for damage to goods, except for personal injury, is limited to € 5,000 per damaging event and claimant.
- 39.7 In any case, the liability of Cuxport for any damages (other than for personal injury and for damages subject to the German Freight Law, §§ 407 ff. HGB) is, irrespective of the number and the total amount of claims per damaging event limited to € 1 million per damaging event. If the total of such individual claims, taking into account the maximum limits of liability stated in subsections 39.1 to 39.6 and 40, respectively, will be higher than the amount of € 1 million, the latter amount shall be distributed pro rata according to the relative shares of the claims of the individual claimants, thereby taking into account such maximum limits.
- 39.8 The liability of Cuxport for personal injury is limited to € 250,000 per injured person.
- 39.9 In any case, the liability of Cuxport for any personal injuries (other than for personal injuries subject to the German Freight Law, §§ 407 ff. HGB) is, irrespective of the number and the total amount of claims per damaging event limited to € 2.5 million per damaging event. If the total of such individual claims, taking into account the maximum limit of liability stated in subsections 39.8 will be higher than the amount of € 2.5 million, the latter amount shall be distributed pro rata according to the relative shares of the claims of the individual claimants, thereby taking into account such maximum limits.



39.10 The above-mentioned maximum limits of liability are to be applied for any claims against Cuxport based on any non-contractual grounds.

39.11 The provisions for abolition, if any, of liability limitations as per subsection 41 to be applied.

#### **40. Extended Liability if Value was declared**

40.1 In the case that the customer wishes extended Cuxport liability exceeding the limits as specified in subsections 35, 37, 38 and 39, a separate written agreement in accordance with § 126 BGB must be concluded with Cuxport prior to placing of the order and against additional remuneration. To determine the amount of this additional remuneration the customer has to provide Cuxport with the following information: commercial- and/or invoice value, type of the good (goods) and handling instructions, if necessary duration and type of storage.

40.2 Cuxport will buy additional insurance cover for the declared value goods in accordance with the separate agreement concluded as per subsection 40.1 above, covering the risks of loss or damage while in Cuxport custody. The cost of such additional insurance cover will be charged to the customer as a surcharge.

40.3 Without prejudice to the provisions under subsection 38 and 39 Cuxport's liability is limited to the insured sum as agreed per subsection 40.1 above.

#### **41. Abolition of Liability Exemptions and Limitations**

The exemptions from liability and limitations of liability provided for in these ABC do not apply if the loss, damage or injury is attributable to an act or omission which managing director or an executive officer [leitender Angestellter] of Cuxport committed with the intent to cause such loss, damage or injury, or recklessly and with knowledge that such loss, damage or injury would probably result. The same applies in the case that another employee or servant of Cuxport has in the performance of their assigned tasks violated obligations of material importance to the contract within the meaning of § 307 subsection (2) No. 2 BGB [German Civil Code] with intent to cause such loss, damage or injury, or recklessly and with knowledge that such loss, damage or injury would probably result.

#### **42. Liability of Cuxport Personnel**

If claims for loss of or damage to the goods or for any other loss, damage or injuries based upon liability in tort will be made against representatives, personnel or servants of Cuxport, such individuals may also invoke the exemptions from liability and limitations of liability being statutory and/or provided for in these ABC. This does not apply if said individuals acted with the intent to cause such loss, damage or injury, or recklessly and with knowledge that such loss, damage or injury would probably result.

#### **43. Statute of Limitations**

All contractual and other claims against Cuxport, its managing directors, personnel and servants shall be barred under the statute of limitations on expiry of a period of one year, in cases mentioned under subsection 41, however, on expiry of a period of three years.

### **Section IX: Final Provisions**

#### **44. Set-off Ban**

The customer is not permitted to set off any liabilities, in particular remuneration owed to Cuxport against any counterclaims, which are contested by Cuxport, provided such counterclaims are not assessed by final judgment. Also the customer is not permitted to exercise any right of retention on account of such counterclaims.

**45. Applicable Law, Place of Performance and Jurisdiction**

45.1 German law shall apply to all legal relations between Cuxport and their customers.

45.2 The place of contractual performance shall be Cuxhaven. In the event of any litigation, which may arise from or in connection with the contractual relationship, the Cuxhaven and Stade Courts shall have jurisdiction for all parties concerned; in the case of claims against Cuxport, this jurisdiction shall be exclusive, as far as not otherwise agreed upon.

**46. Separability Clause**

Should one or more of the foregoing provisions be or become ineffective in whole or in part, this shall not in any way impair the effectiveness of all other provisions of these ABC. The ineffective provisions shall be re-interpreted by way of a supplement to the contract in such a way that they attain the intended purpose, as far as possible, in a legally admissible manner.

**47. Effective Date**

The provisions of these ABC shall be effective as from February 01, 2010 and replaces the ABC from December 20, 2002.

**48. English Translation**

In case of any discrepancies between the German original version of the ABC and this English translation, the German version shall be binding.

Cuxhaven, this 04<sup>th</sup> day of Januar 2010

Cuxport GmbH  
*Original signed by the Managing Directors  
Dr. Andreas Schmidt and Hans-Peter Zint*

**Terminal Regulations Cuxport GmbH („Cuxport“)**  
(Issued in 04. January 2010)

**1. General Regulations**

1.1 Normal opening and dispatching hours are:

Container and other units: Monday to Friday from 7.00 to 22.00 o'clock,  
Saturday from 7.00 to 12.00 o'clock

Warehouse / Breakbulk Monday to Friday from 7.00 to 19.00 o'clock,  
Saturday from 7.00 to 12.00 o'clock

Dispatch outside of normal opening hours only on the basis of special arrangements, to be agreed upon at least 12 hours in advance.

1.2 Persons who drive vehicles on or in the facilities of Cuxport or use said facilities in any other way or who enter and spend time on or in said facilities must comply with the directives and prohibitions made known by signs and notices and must follow the instructions of the personnel of Cuxport to whom supervisory functions have been assigned. Furthermore, all persons must comply with the provisions of the relevant Accident Prevention Regulations valid at the time.

1.3 Throughout the terminals the StVO (Straßen Verkehrsordnung) in their latest version apply.

1.4 During handling operations, it is strictly forbidden to any person to enter the space under lifting gear or the areas swept by such gear.

1.5 Smoking is prohibited on and in the facilities of Cuxport with the exemption of specifically designated areas reserved for the employees.

1.6 Throughout the terminal area the transport, possession and consumption of alcoholic beverages is strictly prohibited.

1.7 Independently of any permission issued by the authorities, the use of fire and open light and in particular welding and oxygen cutting work require prior permission in writing from Cuxport.

1.8 In addition, the regulations of the Standard Rules of Operation of Cuxport (Allgemeine Betriebsordnung Cuxport = „ABC“) shall apply.

**2. Restrictions and Special Regulations for Driving on and Entering the Facilities of Cuxport**

2.1 For driving on and entering the facilities of Cuxport a special or a permanent permission is required that will be issued on reasoned application in the gatehouse.

2.2 Such special permission to be obtained in the gatehouse and given back there when leaving the facilities of Cuxport.

2.3 Such permanent permissions to be displayed at the windscreen of the vehicle or to be shown in the gatehouse.

2.4 The holder of a special or permanent permission shall be liable for any loss or damage of whatsoever nature that are caused to the detriment of Cuxport or any third party, when driving vehicles on or in the facilities of Cuxport or using said facilities in any other way or when entering and spending time on or in said facilities.

2.5 Spending time on or in said facilities to be at own risk. Special attention to be granted to such extraordinary sources of danger as traffic with terminal equipment, shunting of rail, traffic with handling gear, as well as unsecured railways and quays.

Cuxhaven, this 04<sup>th</sup> day of January 2010

Cuxport GmbH  
*Original signed by the Managing Directors  
Dr. Andreas Schmidt and Hans-Peter Zint*