

# GENERAL PORT OPERATING CONDITIONS IN FINLAND 2006

## Table of contents

<b>INTRODUCTION .....</b>	<b>1</b>
1 § CONTRACTING PARTIES TO A PORT OPERATING CONTRACT.....	1
2 § BINDING EFFECT OF THE GENERAL PORT OPERATING CONDITIONS IN FINLAND 2006 .....	1
3 § DUTIES OF THE PORT OPERATOR .....	1
4 § ELECTRONIC COMMUNICATION .....	2
<b>OBLIGATIONS AND LIABILITY OF THE PRINCIPAL.....</b>	<b>3</b>
5 § PROVIDING INFORMATION AND INSTRUCTIONS AND PREPARATIONS FOR DELIVERING AND RECEIVING GOODS .....	3
6 § PROVIDING INFORMATION ON THE SPECIFIC NATURE OF THE GOODS .....	3
7 § RIGHT OF THE PORT OPERATOR TO ACT WITHOUT INSTRUCTIONS FROM THE PRINCIPAL .....	3
8 § RIGHT OF THE PORT OPERATOR TO REMOVE AND SELL THE GOODS AND THE TRANSPORT UNIT.....	3
9 § ESTABLISHING THE QUANTITY OF GOODS.....	4
10 § INSURING THE GOODS.....	4
11 § CONDITION OF THE LIFTING GEAR ATTACHED TO THE GOODS .....	4
12 § CHARACTERISTICS OF THE VESSEL AND OTHER MEANS OF TRANSPORT .....	4
13 § LIABILITY OF THE PRINCIPAL .....	5
<b>OBLIGATIONS AND LIABILITY OF THE PORT OPERATOR .....</b>	<b>6</b>
14 § PERFORMANCE OF THE PORT OPERATOR'S OBLIGATIONS .....	6
15 § WORKING HOURS OF THE PORT OPERATOR .....	6
16 § TIME SHEET .....	6
17 § CLEANING OF THE HOLDS OF THE VESSEL .....	6
18 § STORAGE CERTIFICATE.....	6
19 § METHOD OF STORAGE .....	6
20 § NOTICE OF LOSS OF OR DAMAGE TO THE GOODS.....	7
21 § RISK DIVISION OF WAITING TIME BETWEEN THE PORT OPERATOR AND THE PRINCIPAL .....	7
22 § LIABILITY OF THE PORT OPERATOR FOR HIS EMPLOYEES AND INDEPENDENT CONTRACTORS AND LIABILITY OF EMPLOYEES AND INDEPENDENT CONTRACTORS .....	7
23 § PERIOD OF THE PORT OPERATOR'S LIABILITY CONCERNING THE GOODS IN HIS CHARGE .....	7
24 § BASIS OF LIABILITY OF THE PORT OPERATOR FOR LOSS OF OR DAMAGE TO THE GOODS OR OTHER PROPERTY AND IN CASES OF DELAY .....	7
25 § BASIS OF LIABILITY OF THE PORT OPERATOR IN OTHER CASES OF LOSS .....	8
26 § CALCULATION OF DAMAGES PAYABLE BY THE PORT OPERATOR.....	8
27 § NOTICE OF A CLAIM TO THE PORT OPERATOR.....	9
28 § LIMITATION OF ACTION AGAINST THE PORT OPERATOR.....	9
<b>OTHER CONDITIONS.....</b>	<b>10</b>
29 § PORT OPERATOR'S RIGHT TO INDEMNITY .....	10
30 § PORT OPERATOR'S LIEN ON THE GOODS.....	10
31 § DEPOSIT AND SECURITY.....	10
32 § APPLICABLE LAW AND JURISDICTION.....	10

*In the event of any dispute concerning the conditions below, the text in Finnish shall prevail. The English text is a translation only.*

## **GENERAL PORT OPERATING CONDITIONS IN FINLAND 2006**

The Finnish Port Operators Association has issued these General Port Operating Conditions in Finland 2006. They replace the General Stevedoring and Terminal Regulations 2002 and the General Conditions for Loading and Discharging in Finland 2002 of the Federation of Finnish Master Stevedores. The Members of the Finnish Port Operators Association are not obliged to apply the General Port Operating Conditions in Finland 2006. The port operator and his principal may agree upon other terms of their choice.

### **INTRODUCTION**

#### **1 § Contracting parties to a port operating contract**

1. The parties to a port operating contract are the port operator and his principal.
2. When the principal concludes a port operating contract, he simultaneously acts as an authorised agent on behalf of the sender and the consignee of the goods. Based on this authorisation, the sender and the consignee of the goods are bound by the port operating contract. The principal guarantees that he has a valid authorisation to act on behalf of the sender and the consignee of the goods.
3. The port operating conditions in a port operating contract that are binding to the principal shall also be applicable to the sender and the consignee of the goods.

#### **2 § Binding effect of the General Port Operating Conditions in Finland 2006**

The General Port Operating Conditions in Finland 2006 are binding to the contracting parties provided that

- a) these conditions are made part of the particular port operating contract,
- b) a reference is made to them with a binding effect for the parties, or
- c) their application is based on practices which the parties have established between themselves.

#### **3 § Duties of the port operator**

1. Port operating duties may, for example, include the following activities:
  - a) loading goods or transport units in a vessel or other means of transport or unloading them from a vessel or other means of transport,
  - b) stuffing and stripping transport units and securing and unbinding goods in transport units,
  - c) transport within a port,
  - d) receipt, storage and delivery of goods and transport units, as well as ascertaining the quantity and external condition of goods and transport units,
  - e) assembling and disassembling shipping units,
  - f) reporting and calling goods for loading,
  - g) stowage of goods and transport units in vessels or the placing of goods and transport units in other means of transport,
  - h) moving goods and transport units from one means of transport to another.

2. The duties of the port operator are agreed upon in the port operating contract. The port operator shall not be obliged to take on any other duties whatsoever except those mentioned in the port operating contract.

3. Should both the General Port Operating Conditions in Finland 2006 and the General Conditions of the Nordic Association of Freight Forwarders 2000 be applicable to the same contract and there is a conflict between these conditions, the General Port Operating Conditions in Finland 2006 are primarily applicable, provided that the business enterprise in question has substantially performed port operating duties.

#### **4 § Electronic communication**

All references in the General Port Operating Conditions in Finland 2006 to documents and written and other notices and communication include electronic communication. Documents and notices may be signed electronically.

## **OBLIGATIONS AND LIABILITY OF THE PRINCIPAL**

### **5 § Providing information and instructions and preparations for delivering and receiving goods**

1. The principal shall in a timely manner provide the port operator with the necessary information and instructions in order for the port operator to perform his duties in accordance with the port operating contract. The instructions shall be given in writing directly to the port operator. The principal shall also provide the port operator with an address to which notices may be sent and from which instructions concerning the goods can be received.

2. The principal shall, in addition to his other obligations, enable the port operator to perform his duties based on the port operating contract efficiently and in accordance with the customary working methods and customs of the port. The principal shall be responsible for:

- a) delivering the goods marked and packaged in an appropriate way,
- b) whenever performed by the principal, loading the road vehicle, rail car or other means of transport on land, or transport unit in an appropriate way,
- c) loading and lashing unitised goods in the means of transport in an appropriate way.

### **6 § Providing information on the specific nature of the goods**

1. The principal shall take care of marking and packaging specific goods (such as dangerous or heavy goods) in an appropriate way and of providing notices of such goods in accordance with the requirements of Finnish law and Finnish authorities, and of fulfilling any other requirements of Finnish law and Finnish authorities concerning such goods. The principal shall provide information in a timely manner to the port operator concerning these matters.

2. When delivering goods with an ADR or IMDG classification to the port operator, the principal shall in a timely manner specifically inform the port operator of the nature of the danger as well as the method of storage and safety measures which the port operator must apply due to the dangerous nature of the goods. The principal shall conform with Finnish law, the requirements of Finnish authorities and Finnish administrative port regulations in force in the relevant port.

3. The principal shall in a timely manner inform the port operator of goods to be received by the port operator which are of particular value.

### **7 § Right of the port operator to act without instructions from the principal**

In performing his duties, the port operator has the right to act without instructions from the principal for the benefit of the principal, if acquiring instructions is not reasonably possible. Under such circumstances, the port operator acts on behalf of the principal.

### **8 § Right of the port operator to remove and sell the goods and the transport unit**

1. If the goods or the transport unit are not received within 45 days from the date when the goods or the transport unit were unloaded from the means of transport and from when the goods or the transport unit were stored, the port operator has the right to take necessary measures to minimize any costs that may arise. The port operator has the right to remove the goods and the transport unit from the port area and store them in a suitable way on behalf of the principal. The principal shall compensate the port operator for all costs that arise due to such measures.

2. The port operator also has the right to take the measures mentioned in paragraph 1 when it is not possible to start loading the goods or the transport unit because of a hindrance due to the goods, the vessel or other means of transport. The port operator has the right to take such measures after 14 days from the date when loading was to start as agreed. The principal shall compensate the port operator for all costs that arise due to such measures.

3. If there is a risk of the value of the goods decreasing while in the charge of the port operator, or if the goods by their nature cause danger to persons, property or the environment and the principal is not available, or if the principal, after having received a request, does not without delay remove the goods or prevent the danger from arising by other measures, the port operator has the right to take any necessary measures to prevent the danger. The port operator has the right to remove the goods and the transport unit from the port area and store them in a suitable way. The principal shall compensate the port operator for all costs that arise due to such measures.

4. The port operator may sell the goods and the transport unit

- a) if the measures provided for in paragraphs 1 - 3 above are not considered to be adequate,
- b) if the port operator cannot find suitable storage space by reasonable measures,
- c) if the port operator has a well-founded reason to believe that the principal will not compensate the costs that arise due to the removal or storage of the goods and the transport unit, or
- d) in other situations where the removal or storage of the goods or the transport unit is considered to be unreasonable.

The port operator also has the right to sell the goods and the transport unit in accordance with the Finnish Act on the Right of a Business Enterprise to Sell an Object not Collected. Should a third party have a better right to the goods than the principal, the principal shall pay the port operator a compensation equivalent to the compensation paid by the port operator to a third party due to the fact that the goods and the transport unit were removed or sold.

## **9 § Establishing the quantity of goods**

Unless otherwise expressly agreed, the principal shall establish the quantity of the goods in connection with loading and unloading and also otherwise when goods are delivered to the port operator.

## **10 § Insuring the goods**

Unless otherwise expressly agreed, the principal shall insure the goods and the transport unit against loss or damage while the goods and the transport unit are in charge of the port operator. The port operator shall have no obligation to insure the goods or the transport unit.

## **11 § Condition of the lifting gear attached to the goods**

The principal shall ensure that the lifting gear attached to the goods meets the approval of the authorities when such an approval is required pursuant to Finnish law.

## **12 § Characteristics of the vessel and other means of transport**

1. If there is lifting gear onboard the vessel, the principal shall ensure that the lifting gear to be used by the port operator for the purpose of moving the relevant goods has a sufficient lifting capacity and also that the lifting gear is otherwise appropriate.

2. The lifting gear, equipment and passageways of the vessel shall fulfil the requirements of Finnish legislation and Finnish authorities, where the objective of these requirements is to protect the workers loading and unloading the vessel.

3. The structures of the vessel shall withstand the use of customary handling machinery and handling equipment for goods. The vessel shall also withstand the customary use of grabs when the cargo to be transported requires the use of such grabs.

4. The vessel shall in other respects also be suitable for the agreed port operating activities. This requires, for example, that

- a) the hatches of the vessel are sufficiently large for the removal of the goods,
- b) the holds of the vessel enable working with machinery and enable other efficient handling of the goods,
- c) there is no need in loading the vessel to use other than customary carpentry work, supports for the goods or protection of the working environment.

5. Means of transport other than a vessel shall wherever applicable fulfil the requirements in paragraphs 1 - 4 above.

### **13 § Liability of the principal**

1. If the principal breaches his obligations pursuant to sections 5 - 6 and 9 - 12 or his other obligations included in the port operating contract, the principal is liable for the damage, costs and economic loss caused to the port operator. To be exempted from this liability, the principal shall prove that he did not cause the damage, costs or economic loss by fault.

2. Notwithstanding paragraph 1, the principal is liable for the damage, costs and economic loss caused to the port operator by the breach of the principal's obligation to inform the port operator of goods specified in section 6.

3. Notwithstanding paragraph 1, the principal is liable for costs caused to the port operator by a breach of section 12 requiring the vessel or other means of transport to possess certain characteristics.

4. The port operator's costs which have arisen due to the removal or sale of the goods are regulated in section 8.

# **OBLIGATIONS AND LIABILITY OF THE PORT OPERATOR**

## **14 § Performance of the port operator's obligations**

The port operator shall perform the agreed obligations with care and due despatch.

## **15 § Working hours of the port operator**

1. In ports, the provisions of the collective bargaining agreement establishing two types of working hour systems, i.e. two or three shifts, shall apply. In a system based on two shifts, the working week is from Monday to Saturday inclusive, taking into consideration public holidays and days preceding public holidays, where two shifts are worked from Monday to Friday inclusive and the morning shift only is worked on Saturdays and days preceding public holidays. The ordinary working hours per day are a maximum of eight hours.

2. The parties may, on an individual business enterprise basis, agree upon other working time arrangements than those mentioned in paragraph 1 in compliance with the collective bargaining agreement.

## **16 § Time sheet**

In the loading and unloading operations of a vessel, the port operator shall compile a daily time sheet. Overtime, waiting time and materials and equipment used shall be included in the time sheet. The time sheet shall be delivered to the master or first mate of the vessel or to the agent of the vessel for signature.

## **17 § Cleaning of the holds of the vessel**

1. The port operator shall not be obliged, subsequent to the unloading of the goods, to clean the holds of the vessel or to remove residue of cargo, nor any support materials.

2. The unloading of bulk cargo is deemed to be completed when the holds are machinery clean. Any other unloading is deemed to be completed when the goods have been removed from the vessel.

## **18 § Storage certificate**

If the port operator has promised to store the goods, he shall issue a storage certificate on request. The storage certificate is a receipt for the goods. The storage certificate is not proof of the quantity of goods unless a control tally is part of the agreed task.

## **19 § Method of storage**

If the principal has not provided written instructions concerning the storage of the goods, the port operator has the right to choose the method of storage.

## **20 § Notice of loss of or damage to the goods**

If the goods are totally or partially lost or if the goods are damaged, the port operator shall immediately give notice thereof to the principal. The port operator is not obliged to establish who is liable for the loss or damage. The port operator shall give notice on behalf of the principal only if this has been expressly agreed upon between the port operator and the principal.

## **21 § Risk division of waiting time between the port operator and the principal**

1. The principal is liable to pay compensation to the port operator for costs that have arisen due to waiting time in connection with the vessel's loading, unloading and handling of the goods otherwise, if the work has not been performed due to a hindrance on the part of the principal, actual shipper, consignee or the vessel. If work has not been performed due to a hindrance on the part of the port operator, the principal is not obliged to pay compensation to the port operator for costs that have arisen due to waiting time.

2. If a force majeure arises when work on overtime is being performed, the principal shall, notwithstanding paragraph 1, pay compensation to the port operator for costs that have arisen due to waiting time.

## **22 § Liability of the port operator for his employees and independent contractors and liability of employees and independent contractors**

1. The port operator is vicariously liable under circumstances mentioned in sections 24 and 25 for the performance under the port operating contract of the port operator's employees. An intentional criminal act by an employee does not constitute a performance under the port operating contract.

2. The port operator is only liable for loss due to acts or omissions by an independent contractor if the port operator has been at fault in choosing or supervising the independent contractor or in providing instructions to such an independent contractor. In such a case the liability of the port operator is decided in accordance with the General Port Operating Conditions in Finland 2006.

3. An employee of the port operator or an independent contractor assisting in the performance of the port operating contract may exempt himself from or limit his liability by reference to the conditions of the port operating contract if compensation is claimed on the basis of loss caused in connection with performing the agreed task.

## **23 § Period of the port operator's liability concerning the goods in his charge**

1. The port operator is liable for the goods in his charge from the time when he receives the goods until the time when the goods are delivered to the principal, or to a person entitled to receive the goods, or to a person entitled to receive the goods on behalf of the principal or the consignee, or until the time when the goods have been placed at the disposal of one of the persons mentioned in this paragraph.

2. If the port operator has agreed to store the goods and no time of storage has been agreed upon, the period of the port operator's liability for the goods in storage ends in 14 days from the time when the port operator notified the principal of the fact that the port operator will no longer store the goods.

## **24 § Basis of liability of the port operator for loss of or damage to the goods or other property and in cases of delay**

1. The port operator is liable for total or partial loss of the goods or damage to the goods, as well as for delay in their delivery within the period defined in section 23, if it is proved that the loss, damage or delay has been caused by the fault of the port operator.

2. If goods are totally or partially lost, if they are damaged or if there is delay in their delivery in connection with the loading, stowing or unloading of the means of transport or the transport unit, the port operator is, in addition to paragraph 1, entitled to refer to the provisions or contract terms that exempt the carrier or the shipowner from liability or limit the liability of the carrier or the shipowner.

3. The port operator is liable for damage caused to the vessel, another means of transport, or property other than the goods to be handled or stored, if it is proved that such damage was caused by the fault of the port operator.

## **25 § Basis of liability of the port operator in other cases of loss**

The port operator is liable for loss suffered by the principal in situations other than those mentioned in section 24, if it is proved that the loss was caused by the fault of the port operator.

## **26 § Calculation of damages payable by the port operator**

1. The amount to be paid by the port operator due to total or partial loss of the goods or damage to the goods shall be calculated by reference to the value of such goods at the place and time at which the goods were received by the port operator.

2. Notwithstanding paragraph 1, the liability of the port operator for total or partial loss of the goods or damage to the goods is limited to 666.67 SDR<sup>1</sup> per package or unit, or to two SDR per kilo of the gross weight of the goods lost or damaged, whichever is the higher. When a container, pallet or similar transport unit is lost or damaged and when the goods are totally or partially lost or damaged, the maximum amount payable by the port operator is 15,000 SDR per each incident.

3. Where a container, pallet or similar transport unit has been used to consolidate goods, the number of packages or units enumerated in the transport document as packed in such transport unit, shall be deemed the number of packages or units for the purpose of paragraph 2 as far as these packages or units are concerned. Except as now mentioned, such transport unit shall be considered the package or unit. In cases where the transport unit itself is lost or damaged, that transport unit, if not owned or otherwise supplied by the port operator, is considered one separate unit for the purposes of paragraph 2. Transport document in this paragraph means the transport document that has been issued by a carrier and on the basis of which transport document the port operator performs his activities.

4. The liability of the port operator for delay in the delivery of the goods is limited to an amount equivalent to one times the fee that the port operator charges for the services to be performed according to the port operating contract.

5. The liability of the port operator for damage based on section 24 paragraph 3 is limited to 15,000 SDR per each incident. If damage has been caused to other means of transport than a vessel, the liability of the port operators is, however, limited to 7,500 SDR per each incident. If each of these limitation rules are applied, the aggregate liability of the port operator is limited to 15,000 SDR per each incident, taking into consideration that liability for damage to other means of transport than a vessel is within this aggregate amount limited to 7,500 SDR.

6. The liability of the port operator for loss based on section 25 is limited to 15,000 SDR per each incident.

7. The port operator is under no circumstances liable for indirect loss caused to the principal, such as for decrease in production or turnover or lost profits due to the fact that the principal's contract with a third party has been terminated or performed defectively.

8. The aggregate liability of the port operator and of any person for whom the port operator is liable shall not exceed the limits stated in this section.

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1 SDR = Special Drawing Right

9. The provisions in these General Port Operating Conditions in Finland 2006 and in the port operating contract exempting the port operator from liability or limiting his liability prevail, whether the action against the port operator is founded in contract, in tort or otherwise.

## **27 § Notice of a claim to the port operator**

1. Notice of partial loss of the goods or damage to the goods shall be given to the port operator in writing. Where the partial loss or damage is apparent, notice shall be given to the port operator when he delivers the goods. In any other case, notice must be given within seven days from the day when the goods were delivered. The principal shall without undue delay give notice to the port operator for goods totally lost.

2. Notice of delay in the delivery of the goods shall be given in writing within 21 days from the day when the goods were delivered. Without such notice, no compensation is payable for delay in the delivery.

3. Notice of damage to the vessel or other means of transport shall be given in writing prior to the departure of the vessel or other means of transport from the port and no later than within two days of the occurrence of the damage. Without such notice, no compensation is payable for the damage.

4. In cases other than those mentioned in paragraphs 1 - 3, notice shall be given in writing within 21 days of the occurrence of the loss. Without such notice, no compensation is payable for the loss that has occurred.

## **28 § Limitation of action against the port operator**

Any action against the port operator is time-barred if judicial proceedings have not been instituted within a period of one year. The limitation period commences according to the following rules:

1) where the goods have been partially lost or where the goods have been damaged, on the day when the port operator delivered the goods,

2) where the goods have been totally lost or where there is delay in the delivery of the goods or where there is a loss other than that mentioned under subparagraph 1), from the end of the calendar year during which the total loss, delay or other loss occurred.

## **OTHER CONDITIONS**

### **29 § Port operator's right to indemnity**

If the port operator is liable to a third party for loss based on the obligations deriving from the port operator's port operating contract, the port operator has the right to claim indemnity from the principal by recourse action. The principal shall compensate the port operator with an amount equivalent to the compensation paid by the port operator to a third party, however providing that the port operator would not be liable in accordance with the conditions of the port operating contract, had the principal made a similar claim against the port operator.

### **30 § Port operator's lien on the goods**

1. The port operator has a lien on the goods under his control for expenses in respect of such goods as well as for all other amounts due from the same principal. The port operator's right to such lien also includes his remuneration and storage hire. The outstanding claims by the port operator shall be based on having performed tasks that fall under port operating activities.
2. Should the goods be totally or partially lost or should the goods be damaged, the port operator has rights similar to those stated in paragraph 1 in respect of any compensation payable by an insurer, a carrier, a shipowner or by any other person.
3. Should the amount due to the port operator not be paid, he has the right to arrange the sale of the goods in an appropriate manner. The port operator has the right to sell as much of the goods as is required to cover the total amount due to him, including expenses incurred.
4. The port operator shall, if possible, inform the principal in a timely manner of the measures the operator intends to take in terms of his right of lien on the goods.
5. If a third party had a better right to the goods than the principal, the principal shall compensate the port operator with an amount equivalent to the compensation paid by the port operator to a third party due to the sale of the goods.

### **31 § Deposit and security**

If a dispute arises between the port operator and the principal concerning the basis or amount of the port operator's invoice, an amount equivalent to the invoice shall be deposited in a joint bank account in Finland. The port operator has a lien on the deposit. After the dispute has been solved, the port operator shall immediately inform the bank of the port operator's right to the deposit and of the termination of the lien on the deposit to other parts.

### **32 § Applicable law and jurisdiction**

Finnish law is applicable to the port operating contract between the port operator and the principal. Any dispute arising from the port operating contract shall be decided by a competent court at the place of the port operator's domicile.