

**Terms and Conditions of Use
for the terminal operations
of the service facility**

**KTL Kombi-Terminal Ludwigshafen GmbH
Am Hansenbusch 11
67069 Ludwigshafen**

As of 01/01/2018

Table of contents

List of abbreviations.....	3
1. Object and scope.....	4
2. General access conditions.....	5
3. Contract of use and individual orders	6
4. Scope and term of use.....	9
5. Rights and duties of the parties	10
6. Liability.....	13
7. Hazards for the environment	14
8. Payment principles	15
Annexes.....	18

Note: the page numbers are still to be readjusted.

List of Abbreviations:

AEG	German General Railway Act
EBO	German Railway Construction and Operation Regulations
ERegG	German Law on Railway Regulation
RU	Railway undertaking
GGVSEB	German Hazardous goods ordinance for road, rail and inland waterways navigation
RID	German Ordinance for international rail transportation of hazardous goods

1. Purpose and scope

1.1

KTL Kombi-Terminal Ludwigshafen GmbH (hereinafter: KTL) operates a handling facility, whereby loading units of combined transportation (semi-trailers, containers and swap containers) are handled between the railway and truck transport carriers. Place, facilities and general service features of the handling facility arise from the attached infrastructure description (Annex 1).

1.2

The existing Terms and Conditions of Use are to facilitate non-discriminating access to the aforementioned handling facility for all those entitled to access and non-discriminating use of the services related to the operations of the handling facility. They shall wholly apply to the resultant business relationship between those entitled to access and KTL.

1.3

Access details, in particular time and duration of use, as well as the fees to be paid and the other terms and conditions of use including the provisions which serve operational safety, remain subject to the conclusion of an agreement pursuant to Sec. 20 ERegG.

1.4

Contractual agreements between those entitled to access and the RU commissioned by them, have no influence on the contractual agreements between those entitled to access and KTL.

2. General access conditions

2.1

Those entitled to access must themselves organise access on the track into the handling facility siding assigned by KTL. To this end the conclusion of a separate infrastructure user agreement with the operator of the railway infrastructure within the handling facility, BASF SE, is required. The infrastructure user agreement between those entitled to access and BASF SE also governs shunting activities for “combined transportation“ trains, in particular the transition into the flow procedure and the exchange of defective wagons. BASF SE payment principles do not provide for any user fees for trains in the flow and standing procedures in the infrastructure user agreement contract.

2.2

The rail vehicles travelling into the handling facility must comply in terms of construction, facilities and approval with the provisions of the EBO as amended as well as the structural and operational standards for the routes travelled and the facilities.

2.3

A prerequisite for roadside access is the use of transport-safe and adequately equipped road vehicles with properly qualified drivers.

2.4

The loading units which access the handling facility by rail and road must be standardised, functional and in perfect technical condition. The standards can be found in Clause 2.3 and Clause 7.1 of the attached General Terms and Conditions of Business (Annex 2.)

3. User agreement and individual orders

3.1

The use of the services offered by KTL require the conclusion of a user agreement for the purpose of Sec. 20 ERegG. With this user agreement those entitled to access are allocated a slot by KTL. A slot describes the timeframe allocated to an entity who is entitled to access to a certain siding of the handling facility, during which the handling services are carried out. In the general case of a train despatch with unloading and loading the slot is divided into two, a window for unloading and one for loading.

3.2

To conclude a user agreement the entity entitled to access must first of all submit an application either in writing, electronically or as data medium to KTL. In accordance with Sec. 1 Para.12 No.2 ERegG, entities entitled to access must also specify in their applications the name of the RU (railway undertaking) contracted by them to use the handling facility, provided the RU has already been appointed when the application is made. Where this is not the case, the name of the RU must be provided at least 5 days prior to commencement of the relevant services. For the application, the attached registration form in annex 4 must be used, which must contain the minimum details required.

3.3

Only complete registration forms will be processed.

3.4

The application is checked and any questions are clarified within ten days of receiving the application. At the same time KTL makes arrangements with the operator of the railway infrastructure within the handling facility. If suitable handling and storage opportunities are available, KTL submits an offer to the entity entitled to access within the specified approval period to conclude a contract for the provision of the service applied for (user agreement).

3.5

The entity entitled to access may accept the offer submitted pursuant to Clause 3.4 within five working days. If it is not accepted within this period, then the offer becomes invalid.

3.6

Where, in accordance with Sec. 1 Para.12 No.2 ERegG, an RU has been specified by an authorised access entity (Clause 3.2, Point 2), KTL shall, following conclusion of the user contract, enter into a further special agreement with the said RU in respect of compliance with the relevant operational safety provisions (Sec. 21 ERegG), see Annex 7. KTL shall be entitled to refrain from signing any such agreement, where the said RU is unable to satisfy the General Access Regulations outlined in Clause 2, or any relevant legal requirements and, in particular, those relating to safety.

3.7

Where an RU wishes to bring a third-party RU into the agreement (Sec. 22 ERegG) already concluded with KTL in accordance with Sec. 21 and 22 ERegG, the latter shall be entitled to refuse entry to the contract by the third-party RU, where the said RU is unable to satisfy the General Access Regulations outlined in Clause 2, or any relevant legal requirements and, in particular, those relating to safety.

3.8

Allocated slots are binding for those entitled to access. Any delay must be reported immediately to KTL. Delays of more than 60 minutes in the agreed terminal siding shall lead to loss of the claim on the registered slot. In this case KTL shall allocate those entitled to access the next available slot. Those entitled to access may then only make a claim on the remaining slots in the case of delays in agreement with KTL, if the delay had been reported before the start of the allocated slot and no effects on the subsequent slots are to be expected.

3.9

If there are valid applications for simultaneous slots, which cannot all be agreed, KTL shall try to come to a reasonable compromise with the applicants and, wherever possible, put forward a valid alternative, in accordance with the provisions of Sec. 13 Para.2 ERegG. The negotiating period may not exceed 14 days. If an agreement is not reached KTL shall consider the applications in the following sequence:

a) Applications, which are the unavoidable sequence of an agreed train route, whereby the unavoidable sequence of an agreed train route is then generally awarded as a rule, if the handling facility is used in direct connection in terms of time and facts with the agreement for a certain train route.

b) If competing slots are equally unavoidable sequences of an agreed train route, then the slot applied for is given priority, which facilitates a higher utilisation of the handling facility. The same applies with competing slots that are not an unavoidable sequence of an agreed train route.

c) Where, in accordance with Clause 3.9 lit. a) and lit. b), it is not possible to come to a decision, applicants will be given priority in those cases in which there is no valid alternative.

d) Where, in accordance with Clause 3.9 lit. a) to c) no final decision is possible, KTL will implement highest bidder procedures, as outlined in Sec. 52 Para.8 sentences 2 - 8 ERegG. In addition, KTL will at the same time request the authorised access entities concerned to offer, within a period of five working days, user fees over and above the fee which would be payable on the basis of the list of charges. The ensuing bids shall, during the said period, be forwarded exclusively to the Federal Network Agency which, in turn, will be notified by KTL of its decision to introduce highest bidder procedures. At the end of the period, the Federal Network Agency will inform the bidders of the offers made and their associated amounts.

KTL Kombi-Terminal Ludwigshafen GmbH shall inform those bidders who have not made the highest bids that, in accordance with Sec. 13 Para.4, it does not intend to conclude the user contract. Where possible, valid alternatives in other establishments will be offered. KTL shall, at the same time, inform the Federal Network Agency of the decision, in accordance with Sec. 72 Point 1 No.3. Provided the Federal Network

Agency does not overrule the decision within the 10-day inspection period, KTL Kombi-Terminal Ludwigshafen GmbH shall be entitled to offer to conclude a user contract with the authorised access entity which made the highest bid.

3.10

Within a quarter, 70% of the registered slots must be used punctually and at least 50% of the registered volumes be maintained. The punctuality of a train is awarded if it is not delayed by more than 60 minutes. If an entity entitled to access falls short of one of these values, KTL shall adjust the agreed slot use in the following quarter in line with the actual use in the previous quarter. The said entity entitled to access in this case must be informed well enough in advance.

3.11

The user agreement is a framework agreement, on the basis of which KTL undertakes the handling of the loading units booked by the entity entitled to access. The services agreed in the user agreement are defined by individual orders, which the entity entitled to access places pursuant to Clause. 3.1 GTCB (Annex 2). An individual order is placed in writing or electronically, by communicating the loading unit type (Clause. 2.3 GTCB) and the date of despatch before KTL takes over the loading unit. Defining individual orders for loading units as per the terms and conditions are considered to be accepted by KTL, provided no immediate objection is made on the part of KTL.

If loading unit types and the despatch date are already included in the user agreement (such as for one-off use of the service facility for example), the user agreement is at the same time considered a placed order which is accepted by KTL for the purpose of Clause 3.1 GTCB.

4. Scope and term of use

4.1

The individual details of the agreed slot can be found in the user agreement. The entity entitled to access must ensure that the allocated siding is vacated at the end of the slot or slot section. An exception may be made to vacating the siding if the siding is not used otherwise up to the start of the second slot section according to the siding allocation plan or the current timetable situation. The entity entitled to access may enquire with KTL management for the concerned operating day, whether the current timetable situation permits a train to be left there. KTL allots the siding bookings in a way that facilitates maximum possible use of the handling facility.

4.2

If the right arising from the concluded user contract is not exercised in full or in part within one month after the agreed start of usage for reasons which are attributable to the entity entitled to access, KTL is entitled in this respect, to terminate the user agreement with immediate effect. The authorised access entity which has been given notice shall be obliged to compensate for any damages arising due to either total or partial termination of the contract and also to compensate KTL, in particular, for any incomes lost in respect of the use of the handling facility, whereby any costs or expenses saved or fees received by KTL as a result of another use of the cancelled capacity are to be taken into account.

5. Rights and obligations of the parties

5.1 Principles

5.1.1

For use of the handling facility, and in addition to the respective rules and regulations, the following operational safety provisions, attached at Annex 3 as House Rules for external persons, shall apply, together with the route of the train driver to their workplace, as described in Annex 6.

5.1.2

The contractual parties undertake to form a trustworthy cooperation, which accommodates for the specifics in the use of the handling facility and to keep negative effects on the other contractual party to a minimum. To this end one contractual party shall convey to the other immediately any information to secure the highest level of security and efficiency during operational management.

5.1.3

The contractual parties shall nominate in the contract one or several person(s) or position(s) who is (are) authorised and in a position to make decisions as quickly possible on their behalf.

5.1.4

Authorised access entities shall ensure that the representatives of all third parties are familiar with the TCUSF of KTL and also instruct the said representatives on proper compliance with the user requirements contained therein. This shall particularly apply to compliance with the General Access Regulations, as defined in Clause 2 and with the Operational Safety Regulations outlined in Clause 5.1.1.

5.1.5

Authorised access entities, as outlined in Sec. 1 Para. 12 No. 2 EregG, shall not be entitled to use any of the rights conferred in the Contract of Use, until a special agreement on operational safety, as outlined in Clause 3.6 Point 1, has been concluded between KTL and the specified RU. In the event of any obstacle preventing the signing of such an agreement, KTL shall immediately inform the relevant entity. The same shall apply on the termination of any such agreement.

5.1.6

The parties to the above agreement shall, in accordance with Clause 3.6, Point 1, specify the name(s) or position(s) of one or more persons and/or entities authorised and able to make prompt decisions on their behalf.

5.2

Information on the agreed use and in the case of disruption

5.2.1

KTL shall inform the contractual partner immediately of any changes in the condition of the handling facility (e.g. building work, maintenance or replacement of handling devices) as well as about other irregularities and disruptions, if they might be of significance to the contractual partner as regards further planning.

5.2.2

The entity entitled to access shall ensure that KTL is informed immediately about the following circumstances:

- a)** Changes in the type of use applied for (e.g. length of train, type and number of loading units to be handled),
- b)** Any specifics (e.g. shipping of hazardous goods pursuant to GGVSE/RID, oversized cargo dimensions),
- c)** Other irregularities and disturbances in relation to the use of the handling facility, in particular delay-related factors (e.g. train delay on arrival, delayed collection of train on departure).

5.3 Disruption in the operational procedure

5.3.1

The parties undertake to eliminate disruption. Disruption is eliminated promptly, unless immediate remedy is technically or financially not feasible.

5.3.2

In the event of train delays KTL shall proceed pursuant to Clause 3.8. In the event of overlapping in terms of the time delays of several trains or other disruptions, usages shall be given priority with the correct application of Clause 3.9-sentence 3 lit. b).

5.3.3

The entity entitled to access must immediately eliminate disruptions in the operational procedure that are under its area of responsibility. It must in particular ensure that the handling facility is not called upon in a way that goes beyond the contractually agreed scope (e.g. by leaving rail vehicles behind). In any case KTL is also entitled at any time to eliminate disruption in the operational procedure at the cost of the perpetrator (e.g. by towing away abandoned rail vehicles).

5.3.4

KTL must immediately eliminate disruptions in the operational procedure, which are under its area of responsibility.

5.4 Changes to the handling facility

KTL is entitled to change the handling facility as well as the technical and operational standards for the use of the railway infrastructure fairly taking into the account the interests of the entities entitled to access. KTL shall immediately inform the entities entitled to access of any planned changes, and where necessary, keep them updated, too (e.g. for longer-lasting measures). Existing contractual obligations remain unchanged.

5.5 Maintenance and building work

5.5.1

KTL is entitled to carry out at any time maintenance and building work to the handling facility. KTL shall undertake these measures within reasonable financial limits, in a way that negative effects on the operations of the entity entitled to access are kept to a minimum.

5.5.2

KTL shall immediately inform the entities entitled to access about planned work, which may have effects on their operations (e.g. in text form or by publication on the Internet). The entity entitled to access may give an opinion on the planned work.

6. Liability

6.1

KTL's General Terms and Conditions of Business, attached as annex 2, govern liability. In addition and subordinately, the contractual partner is liable according to the provisions of these Terms and Conditions of Use.

If the General Terms and Conditions of Business (Annex 2), and these Terms and Conditions of Use, contain no deviating, special regulations, liability can be governed by statutory provisions.

6.2

Employee liability goes no further than the liability of the contractual parties. The personal liability of the employees to third parties remains unaffected. Recourse to employees of the respectively liable contractual party is only possible for the party on the basis of its internal principles.

7. Environmental risks

7.1

The entity entitled to access is obliged to prevent effects that might be harmful to the environment.

7.2

Should emissions which are harmful to the environment be created, and which are related to the execution of operations by entities entitled to access or substances harmful to water are discharged from the loading units brought into the handling facility by the entities entitled to access, or there are risks of explosion, fire or other hazards risks, KTL must be informed immediately. In the above-mentioned cases KTL shall immediately initiate all necessary emergency measures. The costs incurred as a result of implementing such measures are borne by the entity entitled to access. If the risk situation pursuant to Clause 1 requires the facility site of KTL to be vacated, the costs are borne by the contractual party to blame.

7.3

In the event of ground or infrastructure contamination, which has been caused by the entities entitled to access – even through no fault of its own, KTL shall arrange the necessary remedial measures. The remedial costs are borne by the entity entitled to access.

7.4

If KTL, as status disrupter, is liable for the elimination of environmental damage which has been caused by the entities entitled to access – even through no fault of their own, the entity entitled to access shall bear the costs incurred by KTL. If KTL has contributed to causing the damage, then the obligation to pay compensation depends on the circumstances, in particular upon, to what extent the damage has been caused predominantly by one or the other parties.

8. Payment principles

8.1 List of fees for terminal operation

Standard fees for services of KTL can be found in the respective current list of fees for the terminal operation, which shall be sent to the entity entitled to access upon request. The fee for crane handling covers the processing of user applications. Short-term changes to the standard fees are permissible with advance notice of 8 weeks to the start of the month.

8.1.1 Handling and additional services

a) A handling process is the use of a crane for a loading unit, which starts with lowering the cargo gear onto the loading unit and ends with the removal of the cargo gear after the changing location.

Fees for handling services (use of crane) are calculated on an individual basis of the number of the handled loading units in the railway entry or railway exit multiplied with the handling price per loading unit pursuant to the valid fee list.

b) Subsequent railway despatch loading units delivered by road are checked by KTL for apparently relevant transport safety criteria (Check-In). The check includes the inspection of dangerous good labels, the external condition of the loading unit as well as its ability to be moved by crane. The inspection is performed from the ground. The costs for this are included in the fee for the use of the crane.

c) KTL checks the loading units for completeness and damage for all incoming trains. The submission of data required for this purpose is regulated by KTL with the entity entitled to access. The costs for the inspection are included in the fee for use of the crane.

d) If in the case of rail-side transfer of liability of hazardous goods loading units to KTL, missing, defective or incorrect GGVSEB labelling is discovered, KTL shall affix the legally stipulated GGVSEB label or remove the incorrect GGVSEB label.

GGVSEB labelling is an obligatory additional service, for which KTL charges a fixed price per loading unit as per the current list of fees.

e) The production of the notice to proceed with the loading of railway cars is a service of KTL, if the loading of the railway car with a loading unit is planned. It includes the proper connection of the loading unit from and to the car, in particular the release and the attachment of the locking devices including the safety devices and fixing devices on the car to take on the loading units.

The costs for this are included in the fee for the use of the crane, if loading of the railway car with a loading unit is planned.

8.1.2 Storage services

Handling by a carrier vehicle in to intermittent transport-related intermediate storage is generally subject to free storage capacities. There is no obligation for the temporary transport-related intermediate storage on the part of KTL.

Loading units which have been delivered by road or which have arrived by rail, for which no direct transportation carrier or change of train is made, shall be stored by KTL in the available storage area in the terminal. In order to avoid disruption due to overfilled storage areas and the associated negative repercussions on the operating areas, KTL provides an incentive system for the shortest-term possible storage.

a) For the storage of loading units before railway despatch, KTL charges a storage fee per unit and working day pursuant to the valid list of storage fees for terminal operations.

This regulation applies to all loading units, which are delivered via road and rail for railway despatch.

The amount of the working day storage fee is based on the length of the concerned loading unit, whereby loading units up to and including 7.82 m in length and loading units with a length of more than 7.82 m are differentiated.

b) The storage of loading units following arrival by rail and a later departure by road is brought to account using a bonus/malus system. If the loading units leave the terminal by road within a certain timeframe specified in the list of fees after preparation of the train, the entity entitled to access receives a separate payment from KTL, the amount of which can be found in the valid list of storage fees. If the loading units leave the terminal after the bonus time the entity entitled to access is in turn charged a storage fee per loading unit, which is calculated on the basis of the consecutive hourly periods and which gradually rises over a longer period of time. Individual details can be found in the valid list of storage fees for terminal operations.

The amount of the Boni or Mali is based on the length of the concerned loading unit, whereby loading units up to and including 7.82m in length, between 7.83 – 9.12 m in length more than 9.12 m are differentiated.

8.1.3 Cancellations

For cancellation of agreed usage by the entity entitled to access, the cancellation fee is:

- Zero percent of the respective valid price of the current list of fees for the handling volume of the slots last used on the same weekday, for cancellations received by KTL 24 hours or more before the agreed time of use.

- 20 percent of the respective valid price of the current list of fees for the handling volume of the slots last used on the same weekday, for cancellations received by KTL less than 24 hours the agreed time of use.

If there is still no previously used slot for the same weekday as a reference, alternatively the ordered handling volume shall be used as a basis for calculation.

The cancellation fees are waived in the event of cancellations due to force majeure or striking.

8.1.4 Unclaimed ordered services

If the agreed use is not used without a cancellation being made by the entity entitled to access pursuant to Clause 8.1.3, KTL shall charge 50% of the standard fee for the handling volume of the slots last used on the same weekday. If there is still no previously used slot for the same weekday as a reference, alternatively the ordered handling volume (despatch + receipt) shall be used as a basis for calculation.

8.1.5 Fees for changes to crane orders

For changes to crane orders requested by the entities entitled to access, KTL charges a fee per loading unit as per the current fee list.

8.2 Payment dates and payment methods

Payment dates and payment methods can be found in Clause 10 of the General Terms and Conditions of KTL attached as annex 2.

8.3 Set-off or retention of claims

Set-off or retention is excluded against the claims of KTL, unless the counterclaim is undisputed or legally established.

Annexes

Annex 1: Description of the Infrastructure

Annex 2: General Terms and Conditions of Business of KTL Kombi-Terminal Ludwigshafen GmbH

Annex 3: House Rules for External Persons

Annex 4: User Agreement Application

Annex 5: List of Fees for Terminal Operations

Annex 6: Route to Work of the Train Driver

Annex 7: Safety Regulations of the RU (Railtransport Undertaking)