



## **LOCAL PUBLIC COMPANY SPL CHERBOURG PORT**

**GENERAL TERMS AND CONDITIONS  
APPLICABLE TO RENTALS OF  
HANDLING VEHICLES AND EQUIPMENT  
WITH DRIVERS/OPERATORS AND HANDLING STAFF**

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## **PREAMBLE**

### **Use of "delegated" equipment by third parties**

**SPL CHERBOURG PORT is a local public company (*société publique local*) subject to the provisions of the public service delegation (DSP) contract concerning the eastern part of the Port of Cherbourg signed on 28 December 2021.** Accordingly, SPL CHERBOURG PORT is obliged to:

- ✓ Obey port regulations;
- ✓ Comply with decisions taken by the port authorities in the interests of public safety and the safety of port operations;
- ✓ *Specify the respective obligations of the delegatee and the users in particular cargo handling companies renting publicly owned equipment managed by “Société d'exploitation du Port de Cherbourg”) concerning operating conditions and instructions and the conditions of use of said "delegated" equipment.* That is the object of these general terms and conditions, which may be completed by particular conditions for certain operations.

### **Contractual arrangement envisaged in these terms and conditions**

In its capacity as delegatee, SPL CHERBOURG PORT may operate at the Port of Cherbourg in a number of arrangements:

- ✓ As a cargo handler itself;
- ✓ As the lessor of (publicly owned) equipment with provision of drivers/operators and handling staff to a cargo handling company, i.e. the lessee of said equipment and staff.

These general terms and conditions apply exclusively to the second of these arrangements.

### **Contractual value of the Terms and Conditions**

These general terms and conditions are sent to the different cargo handling operators working at the Commercial Port of Cherbourg as soon as they are approved by the delegating authority. They are attached to the "Schedule of Rental Fees at the Commercial Port of Cherbourg".

## **Article 1 – Object of the terms and conditions**

The object of this document is to set out the terms and conditions under which SPL CHERBOURG PORT (lessor) provides handling equipment and vehicles with drivers/operators and handling staff to the cargo handling companies operating on the Commercial Port of Cherbourg (lessees).

## **Article 2 – Definition of equipment rented and staff provided – Identification**

Annex 1 describes the technical characteristics of the equipment available for rental to the cargo handling companies.

Each booking made in accordance with the Commercial Port of Cherbourg schedule of rental fees must specify the types of equipment and staff required for the operation envisaged.

## **Article 3 – Place of use**

The equipment must be used exclusively for operations at the port of Cherbourg, unless specifically provided otherwise in the particular conditions (e.g. exemption granted for use outside the boundary of the Commercial Port).

Any use outside the zone specified without the lessor's explicit prior agreement will be grounds for termination of the rental contract.

## **Article 4 – Duration and end of rental**

The booking will specify the date and time when the rental period starts.

The actual duration of the rental will be determined after completion of the handling operation, on the relevant form.

Any anomalies, such as breakdowns or other incidents, will be recorded on the same form.

## **Article 5 – Equipment provided – Joint condition report**

### ***5- 1. Equipment provided***

All equipment and all accessories required for its normal use, including safety devices, are deemed to meet the relevant standards and to be in good working order.

The equipment rented is deemed to be compliant with all regulatory requirements relating, in particular, to the Labour Code and workers' health and safety.

## ***5- 2. Joint condition report***

If requested by either party, a joint condition report can be drawn up at the start of the equipment rental period. If the joint condition report reveals that the equipment is unable to fulfil its normal purpose, it will be considered as not having been delivered.

If no condition report is drawn up, the equipment will be considered as being in good working order and equipped with the accessories required to use it.

## **Article 6 – Type of use**

The lessee is assumed to be aware of the technical characteristics of the equipment when making the booking. The lessee is solely responsible for ensuring said equipment is suitable for the handling operations envisaged.

The lessee is also responsible for the use of the equipment and for taking account of the environment in which it is used. The lessee will be held liable for any damage resulting from any improper or unintended use of the equipment.

The rental being granted to the lessee personally, the equipment may not be subrented and/or loaned without the lessor's permission.

Equipment subject to these general terms and conditions being rented with a driver/operator, the lessee must not allow the equipment to be driven or operated by anyone other than the lessor's staff.

Any use of the equipment for purposes other than those declared or the normal purpose of the equipment rented will entitle the lessor to terminate the rental contract and demand the return of the equipment.

## **Article 7 – Equipment servicing and maintenance**

All servicing and maintenance interventions on the equipment are the responsibility of the lessor.

## **Article 8 – Immobilisation**

### ***8- 1. Non-availability of equipment***

No replacement equipment may be demanded from the lessor by the lessee if the equipment is unavailable for any reason whatsoever.

### ***8- 2. Broken-down equipment***

If the equipment is immobilised by a breakdown rendering the intended handling operation impossible, the rental will be suspended without compensation.

The lessor undertakes to find a solution as quickly as possible. The rental will be suspended for the time required to repair equipment as far as payment is concerned, but all the other obligations will continue to apply.

## **Article 9 – Repairs, breakdowns**

Any repairs that are necessary during the rental period will be carried out at the lessor's initiative.

If a mechanical breakdown immobilises the equipment, the rental period will be suspended until it is returned to service.

## **Article 10 – Regulatory inspections**

The equipment and vehicles rented must undergo regulatory checks and inspections in accordance with the applicable regulations.

Agreements with the regulatory inspection bodies are a matter for the owner of the equipment and vehicles, namely the lessor (in its capacity as delegatee), and it pays the corresponding costs.

The lessor undertakes to comply with the opinions and recommendations of said bodies. In any cases where it does not do so, it will keep and allow the lessee to consult any document or letter justifying the non-application of such recommendations.

The lessor undertakes to provide the lessee, on request, with all the certificates and inspection reports authorising the use of the equipment. If an inspection reveals that the equipment rented is unfit for purpose, the consequences will be the same as if it were unavailable, broken down or in need of repair (see Articles 8 and 9).

## **Article 11 – Provision of staff**

For the purposes of this document, the term "staff" refers to:

- ✓ The driver/operator of the equipment;
- ✓ The handling staff.

Said staff will be provided to and used by the lessee in accordance with all general and particular regulations and collective agreements currently applicable to them.

### ***11- 1. Conditions of provision***

The staff provided (driver/operator and handling staff) are deemed to be qualified to do the job for which they are provided, to have undergone all the examinations and tests required by law and the regulations and to be in possession of any work authorisations, permits or cards that may be required.

The absence of the driver/operator will be assimilated with an equipment breakdown and will suspend the rental period in the same way.

## ***11- 2. Information - Training***

The lessor is under a permanent obligation to inform its employees of the risks of their work. The lessee is under a similar obligation for the staff provided to it, as regards the specific risks of the operation said staff are hired to perform.

The training of the staff provided to the lessee is the responsibility of the lessor. This training obligation concerns at least the following, as soon as staff are employed:

- ✓ Risks relating to the circulation of people, vehicles and equipment of all kinds in the workplace;
- ✓ Driving/operation of the equipment for drivers/operators (self-propelled mobile equipment and lifting equipment).

Specific safety training must be provided in certain circumstances:

- ✓ Changes to the conditions of circulation or operation;
- ✓ Creation or modification of a workstation or techniques;
- ✓ Accident or serious illness.

Appropriate specific training must also be provided for the following staff:

- ✓ Employees subject to certain risks (e.g. chemical risks);
- ✓ Employees required to manually handle loads;
- ✓ Employees using personal protective equipment and those in charge of maintaining it.

## ***11- 3. Enhanced training***

The lessor also has a duty to provide enhanced safety training for precarious workers.

## ***11- 4. Accreditations***

The lessor takes all the measures necessary for its staff to gain the relevant accreditations and to keep those accreditations up to date in line with the law and regulations.

# **Article 12 – Performance of handling and lifting operations**

## ***12- 1. Conditions of performance of handling and lifting operations***

As soon as the equipment and staff are made available, the lessee is responsible for the conditions of performance of the work done by the driver/operator and handling staff. It must guarantee their safety throughout the period when they are at its disposal.

The driver/operator and handling staff, by the very fact of their provision to the lessee, come under its authority, supervision and control, and the lessee is then solely and exclusively responsible for giving them orders relating to the performance of the tasks: setting up, moving, driving/operating the vehicles/equipment, slinging and handling operations, etc.

## ***12- 2. Compliance with instructions***

The lessee is responsible for the instructions and directions it gives to the operator/driver and the handling staff.

However, in the case of lifting operations, drivers/operators carry out their tasks according to the operational instructions given by the lessee, but also whilst complying with good professional practice and the signals given by the signaller.

The lessor's staff must be dressed and behave appropriately. They must comply with the contractual working hours, the lessee's company rules, all applicable health and safety rules in force in the lessee's company and the instructions the latter gives to staff.

The lessee must immediately stop the work if behaviour of the staff provided means that they are unfit, for any reason whatsoever, to perform the work for which they have been hired. It will inform the lessor immediately.

In this case, the rental period will be interrupted as soon as the lessor has been informed by the lessee.

## ***12- 3. Supply and wearing of personal protective equipment (PPE)***

The staff provided by the lessor are provided with certain items of personal protective equipment (hard hats, safety shoes, high-visibility clothing, gloves, safety glasses, ear plugs) as required by current regulations. Any further equipment required by the handling operation must be provided by the lessee.

However, the lessee has a responsibility to ensure that said PPE is worn and used during the handling operations.

## ***12- 4. Right to withdraw of staff provided***

The staff provided are not obliged to perform tasks not compatible with the equipment rented or statutory safety requirements or safety instructions given by the manufacturer of the equipment. If such requests are made of them, they must use their right to withdraw and inform a representative of the lessee of the dangerous situation identified.

The staff member concerned must also immediately inform the lessor.

The lessor and the lessee will then seek a solution to remedy the dangerous situation.

## ***12- 5. Responsibility for safe use***

Where no fault of the lessor (failure to train staff, failure to maintain equipment) or its employee (driving/operating error, inappropriate behaviour, failure to comply with rules or instructions) is involved, it is agreed that the lessee will be responsible for taking all the measures and precautions required by the nature of the operations undertaken.

## ***12- 6. Risk assessment – Single Document***

Both parties have a responsibility to draw up and keep up to date a single safety document (DUER) relating to the operations that are part of their respective activities.

## ***12- 7. Management of interference risks – Prevention plan***

When staff and equipment are provided and the relationship of subordination is transferred for the duration of the rental, lessors and lessees do not fall within the scope of Articles R4512-1 to R4512-12 of the French Labour Code.

## **Article 13 – Civil liability**

### ***13- 1. For third parties and goods***

It is agreed that, where there is no fault on the part of lessor or its employees, the lessee may not seek to hold the lessor or its employees liable in the event of damage caused to third parties or the goods handed and occurring during or after the handling operation, it being understood that it is the responsibility of the lessee to take all safety precautions and measures required by the nature of the operations undertaken.

### ***13- 2. For the equipment***

Regarding any damage caused to or by the equipment provided, it is agreed:

- ✓ that the lessee may not be held liable for any damage due to hidden defects in the equipment rented or wear on the equipment rendering it unfit for the intended purpose;
- ✓ that the lessee has legal and material custody of the equipment/vehicles rented during the rental period, and that they are therefore under its full responsibility;
- ✓ that the lessee is responsible for the use of the equipment rented and for any damage incurred or caused by that equipment, except if the driver/operator is recognised as being at fault.

### ***13- 3. For the lessor's employees***

Injuries caused to the lessor's employees whilst they are provided to the lessee are a matter for their employer and they are covered by the insurance taken out by the latter to this effect. However, where the cause of the injury can be attributed to the lessee, the lessor or its insurers will be entitled to claim compensation from the lessee or its insurers.

### ***13- 4. For the lessee's employees***

Injuries caused to the lessee's employees during handling operations where equipment and staff are provided to the lessee are a matter for their employer and are covered by the insurance taken out by the latter to this effect. However, where the cause of the injury can be attributed to the lessor, the lessee or its insurers will be entitled to claim compensation from the lessor or its insurers.

## **Article 14 - Insurance**

Damage caused to the goods handled for which the lessor is liable is insured by the lessor.

Damage to equipment whose cause can be attributed to the lessor is the latter's responsibility.

## **Article 15 - Rental charges**

The charges and terms of payment are set out in the "Schedule of Rental Fees at the Commercial Port of Cherbourg".

## **Article 16 - Dispossession of the lessor**

The lessee undertakes not to assign, give as security or pledge, subrent or loan the equipment rented or dispose of it in any way whatsoever, without the prior written consent of the lessor.

If a third party were to attempt to claim any rights in said equipment, in the form of a claim, caution or attachment, the lessee must inform the lessor immediately.

Owner's plates or markings on the equipment must not be removed or altered by the lessee. The lessee may not add any inscriptions or marks to the equipment without the lessor's permission.

## **Article 17 - Operating losses**

Whatever the grounds for any claim, no direct and/or indirect operating losses will be covered by the lessor.

## **Article 18 - Settlement of disputes**

In the event of any disputes, the Commercial Court of Cherbourg will have jurisdiction.

## ANNEX

Annex 1- List of equipment and vehicles that can be rented