

**RESOLUTION BY ALFAPORT ANTWERP DATED SEPTEMBER 3rd 2010
CONCERNING ELECTRONIC RELEASE OF CONTAINERS
IN THE PORT OF ANTWERP
(a free translation of the official Dutch wording)**

Art. 1: Approval of the Model Covenants

The following have been approved:

1. the attached Model Covenant, with one appendix, between the terminal operator and the shipping company or its ship's agent, for the electronic release of containers;
2. the attached Model Covenant, with two appendices, between the forwarder and the shipping company or its ship's agent, for the electronic release of containers;

Art. 2: Withdrawal of the AGHA Resolution of 22 December 1994

The AGHA Resolution of 22 December 1994 concerning the release of containers on fenced container terminals, as amended on 4 September 1997, has been withdrawn.

**MODEL COVENANT
BETWEEN THE TERMINAL OPERATOR
AND THE SHIPPING COMPANY OR ITS SHIP'S AGENT
FOR THE ELECTRONIC RELEASE OF CONTAINERS
IN THE PORT OF ANTWERP**

Art. 1: Obligatory use of the electronic release procedure

For the purpose of delivering full import containers, the parties hereby agree only to use an electronic release procedure in which:

- 1) the container is released by the shipping company or its ship's agent, to the consignee or the latter's representative, by communicating an electronic release code generated individually for each container, which is also communicated to the terminal operator;
- 2) delivery of the container by the freight handler to the consignee or the latter's representative can only be made once the latter has entered the container number together with the corresponding release code mentioned under (1) above in the terminal operator's ICT system.

The release procedure mentioned in the first paragraph is governed by this covenant. The delivery procedure mentioned in the second paragraph is to be carried out under the applicable conditions, including those specified in the release notice and where applicable the conditions of the bill of lading or other transport conditions, together with the port customs and the applicable legislation, under the reserve of good arrival of the ship, actual unloading and contribution of the cargo towards the gross average. The consignee is required to give a specific customs destination for the goods, at the latest on collection of the container. These conditions apply without prejudice to the applicable legal and contractual provisions governing liability for loss or damage to cargo.

Art. 2: Exclusion of other procedures and codes

The release procedure mentioned in art. 1 replaces all other release procedures previously used by the parties.

No right of delivery may be conferred by any codes or references other than the release code mentioned in art. 1, such as the booking number.

Art. 3: Communication of the release code to the terminal operator

The shipping company or ship's agent mentioned in art. 1 shall communicate the release code to the terminal operator by means of an EDI message, the contents and technical specifications of which are specified in appendix 1 to this covenant. The most recent version of the technical specifications shall always be used.

Art. 4: Expiry and cancellation of the release

The shipping company or ship's agent can at any time announce that the release has expired or has been withdrawn.

The parties can agree that the release shall expire *de jure* if the container is not collected within the free period.

In particular, the release can be cancelled on the orders of the competent authority.

If the release expires or is cancelled, then the terminal operator shall not deliver the container.

The further arrangements for the exchange of information concerning the expiry of the free period, the expiry or cancellation of the release, any notice to be given to the consignee or the latter's representative and the settlement of the costs shall be further agreed between the parties.

Art. 5: Recording of the electronic communications

Within the scope of the electronic release procedure, the terminal operator shall record the electronic communications and keep them for a period of at least three years.

Art. 6: Liability of the terminal operator

The terminal operator may be held liable for IT fraud only if it can be demonstrated that this constitutes a crime and is committed by the terminal operator's own employees, either as perpetrator, accomplice or accessory.

In case of incorrect use of the electronic release procedure, the terminal operator may be held liable only if he is unable to demonstrate that the container was delivered with the correct release procedure being entered in his ICT system.

The provisions of this covenant are complementary to the stevedoring or terminal contract.

Art. 7: Exemption from liability on the part of the terminal operator

Without prejudice to other liability conditions agreed by the parties, the terminal operator shall in all cases be exempted from liability for loss or damage caused by:

- 1) untimely, faulty or non-reception or functioning of the EDI message and associated data referred to in arts. 2 and 3, including faults or defects in connection with the identification, authentication, integrity or confidentiality of the EDI message, due to circumstances beyond the control of the terminal operator;
- 2) malfunctioning or non-functioning of IT systems, connections, networks or programs due to circumstances beyond the control of the terminal operator;
- 3) the use and management of the release codes communicated, on the part of the consignee, or the latter's representative, or authorised or unauthorised third parties.

Art. 8: Specific technical conventions and emergency procedures

Any specific technical conventions, other security measures or emergency procedures agreed between the parties shall be added in an appendix to this covenant.

Art. 9: Competent court and applicable law

In case of dispute concerning the interpretation or implementation of this covenant, the parties shall do everything that is reasonably possible to arrive at an amicable settlement.

If an amicable settlement proves impossible, then only the courts of the district of Antwerp shall be competent.

This covenant and its implementation shall be governed by and interpreted according to Belgian law.

This covenant is made in two originals, each party acknowledge receipt of one of them.

APPENDIX 1

**CONTENT AND TECHNICAL SPECIFICATIONS
OF THE EDI MESSAGE TO BE SENT TO THE TERMINAL OPERATOR**

[to be filled in by the parties]

**MODEL COVENANT
BETWEEN THE SHIPPING COMPANY OR ITS SHIP'S AGENT AND THE FORWARDER
FOR THE ELECTRONIC RELEASE OF CONTAINERS
IN THE PORT OF ANTWERP**

Art. 1: Definitions

For the purpose of this covenant, the following definitions apply:

- Free period: period during which containers may remain on the quay for storage without cost.
- Demurrage: remuneration charged by the shipping company to its customers for the use of containers that remain on the terminal beyond the permitted free period, or in other words the charge for containers being delivered on the terminal too early or collected too late.
- Detention: remuneration charged by the shipping company to its customers for the use of containers longer than the permitted free period after they have left the terminal, or in other words the charge for bringing containers back too late.
- Storage/quay rent: charge payable by the shipping company to the terminal operator for the storage of containers. This cost may be passed on by the shipping company, usually when the permitted free storage period is exceeded.

Art. 2: Obligatory use of the electronic release procedure

For the purpose of delivering full import containers carried by the shipping company [...], the parties hereby agree to use only an electronic release procedure in which:

- 1) the container is released by the shipping company or its ship's agent, to the consignee or the latter's representative, by communicating an electronic release code generated individually for each container, which is also communicated to the terminal operator;
- 2) delivery of the container by the terminal operator to the consignee or the latter's representative can only be made once the latter has entered the container number together with the corresponding release code mentioned under (1) above in the terminal operator's ICT system.

The release procedure mentioned in the first paragraph is governed by this covenant and its appendices, including the “Conditions for the electronic release of containers in the port of Antwerp” in appendix 1.

Art. 3: Exclusion of other procedures and codes

The release procedure mentioned in art. 2 replaces all other release procedures previously used by the parties.

No right of delivery may be conferred by any codes or references other than the release code mentioned in art. 2, such as the booking number.

Art. 4: Communication of the release code to the consignee or the latter's representative

The release code mentioned in art. 2 shall be communicated by the shipping company or ship's agent to the consignee or the latter's representative by means of an EDI message, unless the parties agree to use an e-mail message. The content and technical specifications of the EDI message to be used are laid down in appendix 2 of this covenant. The most recent version of the technical specifications shall always be used.

Art. 5: Competent court and applicable law

In case of dispute concerning the interpretation or implementation of this covenant, the parties shall do everything that is reasonably possible to arrive at an amicable settlement.

If an amicable settlement proves impossible, then only the courts of the district of Antwerp shall be competent.

This covenant and its implementation shall be governed by and interpreted according to Belgian law.

This covenant is made in two originals, each party acknowledge receipt of one of them.

APPENDIX 1

CONDITIONS FOR THE ELECTRONIC RELEASE OF CONTAINERS IN THE PORT OF ANTWERP

Art. 1: Applicable conditions and reservations in connection with arrival, unloading and gross average

Delivery shall be made in accordance with the applicable conditions, including those specified in the release notice and where applicable the conditions of the bill of lading or other transport conditions, together with the port customs and the applicable legislation, under the reserve of good arrival of the ship, actual unloading and contribution of the cargo towards the gross average.

These conditions apply without prejudice to the applicable legal and contractual provisions governing liability for loss or damage to cargo.

Art. 2: Costs

Unless agreed otherwise, delivery shall be made after payment of all costs owed, including demurrage, storage, reefer connection costs, ISPS and other costs owed, according to the shipping company's rates and/or the port customs.

The rates may be obtained on simple request from the ship's agent.

Art. 3: Exceeding the free period and demurrage

If the container is not collected within free period as specified either in the release notice or in other applicable rules or regulations, then the release of the container may be withdrawn without notice and demurrage shall be owed in accordance with the rates mentioned in art. 2.

Art. 4: Withdrawal of the release during the free period

The release may be withdrawn during the free period if additional costs are incurred, or in other special cases. This withdrawal of release shall be notified to the consignee or the latter's representative. A new release and/or de facto delivery may be made conditional on prior payment of the costs still outstanding.

Art. 5: Return of the container

The container must be brought back within the applicable period, at the appointed place and in good condition. An Equipment Interchange Report shall be drawn up each time the container is returned.

The obligation to return the container is an obligation of results.

Under “good condition” is meant the same external condition as the container was in when it was delivered to the consignee or the latter's representative. All components and accessories of the container must also be in good condition.

Traces of previous contents, stowage or packaging material, IMO labels and nails must all be removed so that the container is suitable once more for loading and transport. Specific arrangements for cleaning must be agreed individually.

If when it is returned the container is found not to be in good condition, it shall be placed in a separate stack with a view to inspection. A damage estimate shall be made with a view to repair. This damage estimate shall be accepted irrevocably unless a counter-estimate is demanded within two working days. In such cases the consignee or the latter's representative shall owe the costs of among other things cleaning, repair, additional handling, transport and storage.

If the container is returned to a different place, the resulting transport, handling and storage costs shall be owed.

Art. 6: Customs obligations

The consignee is required to give a specific customs destination for the goods, at the latest on collection of the container.

Art. 7: Other information

The ship's agent undertakes that it shall to the best of its ability to inform the notifying party mentioned on the B/L about the arrival of the seagoing ship, the conditions and practical arrangements for the release, the free period, the rates, bringing back the container, the customs obligations and other relevant aspects.

Art. 8: Non-liability

Notwithstanding other applicable provisions concerning liability, in particular those mentioned in art. 1, the carrier, the ship's agent and the terminal operator shall be exempt from all liability for loss or damage caused by:

- 1) malfunctioning or non-functioning of IT systems, connections, networks or programs due to circumstances beyond their control;
 - 2) the use and management of the release codes communicated, on the part of the consignee, or the latter's representative, or authorised or unauthorised third parties.
 - 3) work interruptions, strikes, government action and other cases of *force majeure*.
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APPENDIX 2

**CONTENT AND TECHNICAL SPECIFICATIONS
OF THE EDI MESSAGE TO BE SENT
TO THE CONSIGNEE OR THE LATTER'S REPRESENTATIVE**

(optional)

[...]
