



PCC INTERMODAL S.A.

Terms and conditions of using the access to the infrastructure

General conditions to perform reloading on the terminal in Frankfurt an der Oder
(as at 1st January 2013)



(NBS-PCCI S.A.)

I. General information.

I. Scope of application:

These general conditions consider reloading services as defined in § 2 paragraph 3c AEG provided by PCC Intermodal S.A., as the administrator of the terminal in Frankfurt/Oder.

II. Principles of introducing changes:

All changes and updates of these conditions shall be published on the Internet at the following website:

www.pccintermodal.pl

II. Conditions of cooperation.

(1) Entering into a contract for services

Providing services by PCC Intermodal S.A. is based on a contract entered into in writing.

(2) Scope of service

Making use of reloading services shall require a notification of use at each time, as well as entering into a contract for service according to the point II (1).

(3) Transferring the contract for services (cession)

1. The parties to the contract may transfer their rights and duties arising from the contract subject to the paragraph 3(2) exclusively by a prior written consent of the other party to the contract.
2. Transferring the rights and duties of PCC Intermodal S.A. to other enterprises connected with the PCC group shall be also permissible without a consent of the party to the contract. PCC Intermodal S.A. provides services by means of machines available on the terminal in Frankfurt/O according to these contractual provisions. The access to the infrastructure without making use of the services provided by PCC Intermodal S.A. shall not be possible.



2. Part: Making use of reloading machines

I. Ordering reloading services

(1) Requirements regarding orders / commissions

Making use of reloading services shall require a written order.

Orders for reloading services should be issued to PCCI S.A. in writing or electronically, or submitted on a data carrier. They shall include at least the following data:

- Type and scope of the provided services
- Location where the services should be provided
- Time or duration of providing the services
- Technical data concerning the requirements indispensable for reloading: unit type, max weight, height, size, necessity to use additional devices as long as they are available on the terminal.
- Information about a train: timetable, arrival, length of a train, type of loading unit (stackable or unstackable), semitrailers; information about dangerous goods, shipments under customs supervision, etc.
- Demand for storage together with a list of entities authorized to collect containers from the terminal on means of road transport (exemptions).
- Appointed contact person (+phone and e-mail address) responsible for problem solving.
- Data for providing manoeuvring services and details of contact persons. The submitting party shall prove / show, upon the request by PCC Intermodal S.A., that it holds appropriate permits required for transport services according to the Railway Act (**Eisenbahngesetz AEG**). The submitting party shall immediately inform PCC Intermodal S.A. of any motion or change, relatively of revoked permits.

(2) Missing information

If the data are incomplete and the submitting party does not provide missing information within due time in spite of calls by PCC Intermodal S.A., then PCC Intermodal S.A will not accept the commission.

(3) Changes in orders / commissions

Complete orders submitted in due time shall be binding for the participants (parties). They constitute the basis for planning reloading activities on the terminal. If the Submitting Party changes its commission (partly or entirely) after the planning of reloading activities have been commenced, then the risk of not performing the commission shall be assumed by the Submitting Party. The Submitting Party shall be obliged to cover the costs incurred by PCC Intermodal S.A. due to the change.

(4) Dangerous goods



Works on the terminals administered by PCC Intermodal S.A. are conducted according to the “Recommendations on the Combined Transport of Dangerous Goods” - currently valid edition.

The parties to the contract shall be obliged to accept the Recommendations as the basis for handling dangerous goods on the terminals administered by PCC Intermodal S.A.

II. Allocation of reloading possibilities

The company PCC Intermodal S.A. on the terminal in Frankfurt/O will take into consideration, if possible, all applications related to making reloading machines available and using them to provide services within reported periods of use.

Applications to use reloading machines and to provide services may be submitted at any time. If the application refers to the period for which the services have already been planned for another client, PCC Intermodal S.A. offers another term to provide services.

If applications refer to the same scope and term of providing services, then PCC Intermodal S.A. will aim at reaching a solution through negotiations with the submitting parties. The negotiations should not exceed 14 days.

If any agreement cannot be settled, PCC Intermodal S.A. will accept applications according to the following pattern:

- a) Applications which are a necessary consequence of agreed train routes - whereas a necessary consequence of agreed train routes occurs when making use of machines follows in direct temporal or subject relation with an agreed train route.
- b) If two competing applications are a necessary consequence of an agreed train route equally, then the provisions stipulated in § 9 paragraph 4 i 5 EIBV (**Eisenbahninfrastruktur-Benutzungsverordnung**) shall be applied correspondingly. If the decision cannot be made on the basis of § 9 paragraph 4 and 5, then a higher payment for the administrator of the infrastructure shall be decisive in a particular case.
- c) If two competing applications are an **unnecessary** consequence of an agreed train route equally (application with no promise of a route), then the decision is made by PCC Intermodal S.A. on the first come, first serve basis. When two applications are submitted at the same time, then a higher number of reloadings; number of intermodal loading units shall be decisive. In the case when the number of reloadings is equal, then the price offered by applicants shall be taken into consideration. The highest offer shall be decisive. Provisions stipulated in § 9 paragraph 6 **of the EIBV** shall be applied correspondingly.

A decision shall be communicated to an applicant in writing.

III. Security (warranty)

1. If there are doubts regarding the solvency of the carrier or the companies do not have records of cooperation, then the company PCC Intermodal S.A. shall demand adequate securities for its services (except carriers specified in § 14 paragraph 2 No. 2, 3 and 4 of the **AEG** (carriers / persons authorized to the access) in relation to the scope of the services applied for.



- a) When the carrier does not pay due liabilities.
 - b) Issuing a negative opinion for an enterprise by a credit reference agency.
 - c) Filing a petition to open bankruptcy proceedings relative to carrier's estate or proceed with the liquidation.
 - d) The emergence of other circumstances implying a low level of solvency, such as: petitioning for legal assistance, lack of effective address or constant (over two weeks) inaccessibility at the given address.
2. The security may be demandable before providing services.
 3. It is suitable to post security in advance in the amount of one monthly payment. The value of the security is calculated from an expected average payment based on a mean of three coming subsequent months. If the calculation of the above-mentioned monthly payment is impossible, the security should be based on three previous months. If this data is not complete, the value of the security paid in advance must be estimated on the basis of expected services. In the case of further doubts, an average monthly payment of the carrier with a comparable product structure shall be applicable.
 4. If a carrier does not comply with the requirement of § III. 1 within 10 calendar days, PCC Intermodal S.A. shall be entitled to refuse to provide services until the security is posted.
 5. A carrier may replace the security with a monthly advance payment. In the case of an unpunctual advance payment, PCC Intermodal S.A. shall be entitled to refuse to provide services without further notification until an advanced payment is settled.

Advance payments shall be always settled in full amount charged for use or in the amount estimated in a given month, whereby the value of the estimated payment shall be based on the provisions stipulated in § III. 1 a). Advance payments shall be settled at least five (banking) days before the date of providing services; they shall be accounted for in next invoices.

This provision shall not prejudice the provisions about assuming an obligation to settle advance payments through deductions which shall be agreed upon with a carrier to facilitate payments.

6. A financial security shall not be subject to interest. Securities shall be returned upon request, as long as the provisions of the warranty are expired.
7. PCC Intermodal S.A. shall be entitled to verify financial credibility both before entering into a contract and during the contractual relationship.

If a carrier or operator is in default (§ 286 BGB) for which there was no security posted according to III.1 and does not settle his payments arising from a contractual relationship immediately after a renewed demand note, then PCC Intermodal S.A. may satisfy its claims from the security (Point III.3) and claim to pay further securities, as long as the charges are undisputed as for the amount and the basis. Otherwise, PCC Intermodal S.A. shall be entitled to demand payment according to the point III.5 Any further notification shall not be required.



In the case of delay in payments, a carrier or operator shall pay interests due to delay according to legal regulations of the BGB as elaborated by the European Central Bank. Thereby, flat-rate costs of a reminder shall be contributed in the amount of EUR 15 for each written reminder.

IV. Basis of payments and components depending on services

1. A fixed payment for each reloading shall be made within the opening time based on the regulations. Standard payments results from the price list.
2. If PCC Intermodal is in default with reloading actions of a client's transport process which has been planned and agreed as for time, and in effect a client is subject to delay in providing his services, then a payment is decreased by 5%.
3. If a delay is caused by a client himself and it makes PCC Intermodal S.A. responsible towards other clients according to the point 2, then a payment for a client who caused a delay shall be increased to the amount for which PCC Intermodal S.A. is responsible according to point 2.
4. Changes in the price list are permissible when keeping an appropriate term of notification (6 weeks before a month in which the change becomes effective).
5. A payment shall be made (as per the price list) for reloading services beyond the opening hours specified in the Appendix1. The payment shall be made for reloading machines and for started 30 mins of opening beyond standard opening hours, but at least a payment for a number of standard (regular) reloadings, indicated in the price list under the point 2, for each reloading terminal.
 - a) The duration of special opening results from a notification of an entity authorized for the access (who applies for opening) which is approved by PCC Intermodal S.A.
 - b) A demand for opening which is applied for shall be established by PCC Intermodal taking into consideration the engagement of reloading machines (assuming an average reloading capacity at the level of 20 reloadings per hour.

If the occupancy of the terminal which is applied for beyond standard opening hours cannot be executed by prolonging a shift, then the minimum time of occupancy is established for 6 hours.

Reporting a demand for making use of service infrastructure and services beyond standard opening hours, i.e. between 10 p.m. and 6 a.m. from Monday to Friday, as well as on Saturday and Sunday or holiday, must occur on a working day in standard opening hours of the terminal - at least 48 hours before a required slot begins.



V. Disturbances/failures in operations / traffic

Disturbances include irregularities, exceptions to agreed actions, as well as other special incidents with a considerable impact on reloading capacities of service machines or scheduled actions of a carrier / operator. There shall be an obligation to inform of disturbances in actions which last over 30 mins, unless stipulated otherwise in separate provisions; this shall refer to the parties which are directly affected by the consequences (disturbances).

PCC Intermodal S.A. shall inform of disturbances in the operation of reloading machines and other devices resulting from the activities of other carriers / operators (in particular, departures from the agreed upon schedule of actions) in the way specified in the contract.

Departures from the agreed upon use which result from irreversible events (e.g. accidents, force majeure, strikes of third parties, etc) within the scope of parties to the contract, as well as other carriers / operators, lead bilaterally to the freedom in (providing) services.

PCC Intermodal S.A. shall take all necessary and reasonable measures, taking into consideration the interest of a carrier / operator, to return to standard conditions of the operations. Particularly, the company may slow down or accelerate the service of trains, or envisage making use of other agreed infrastructure or service devices.

In this case, PCC Intermodal S.A. shall offer a price settled legally for making use of reloading machines (which has been agreed upon in the contract) for a carrier who is not responsible for disturbances/failures in traffic. No additional costs / expenses shall be included.

If a service device is already used by another carrier / operator, PCC Intermodal S.A. shall be entitled (in the case of disturbances/failures in operations) to return to standard service of trains or part of trains of other carriers / operators according to agreements with the current users, to set aside a device temporarily or to use it in another way, as long as this does not disturb transport operations performed by current carriers operators.

If there is a risk of delay, PCC Intermodal S.A. may take all necessary measures to restore and/or maintain operations. As long as these measures refer carriers / operators that are not responsible for disturbances/failures in operations, these carriers / operators shall accept special measures taken by PCC Intermodal S.A. and their consequences without claims.



A carrier / operator that is responsible for disturbances/failures shall cover all costs connected with the special measures and be at disposal for other carriers / operators affected by disturbances/failures in the case of potential claims for damages.

VI. Basis of responsibility

Each party to the contract shall be responsible according to the provisions of law, as long as the conditions of use do not include different provisions.

Compensation of own material damages shall be excluded in the relationship between PCC Intermodal S.A. and a carrier / operator. The above shall not be effective if a participant's material damages exceed the value of EUR 5.000 for the instance. Furthermore, this shall not be effective if a participant is accused of gross negligence or acting intentionally. Finally, this shall not be effective, when it is necessary to compensate not solely participants' own, but also material and personal damages of third parties.

VII. Offers of the contract

Appropriate contracts shall be entered into in the case of applications for which schedules can be prepared without conflicts. Reaching an agreement regarding the services is the basis for making use of reloading plants.

Having entered into a contract, a carrier / operator is granted a right to make use of service devices within the scope specified in the contract.



Appendix 1

List of infrastructural facilities - localizations of PCC Intermodal

Reloading station (F/O)

Contact details:

KV-Terminal Frankfurt (Oder)

PCC Intermodal GmbH

Georg-Richter-Strasse 15

15234 Frankfurt/ Oder

Phone: 0049 335 401

Mobile: 0049 162 2315986 67 63

kvtffo@pcc.eu

damian.jarmolowicz@pcc.eu

Standard (regular) opening hours:

Monday - Friday: 6:00 to 22:00

Data concerning the infrastructure:

Number of reloading tracks: –	1
Length of tracks in m (operating length): –	600
Electric traction:	none
Number of cranes: –	none
Number of mobile machines (RS):	2
Load/ lifting capacity: –	41
Holding tracks:	none
Place for leaking containers: -	none
Electric service lines for loading units:	none
Equipment for a brake test: -	none

Appendix No. 2 to NBS

Reloading services

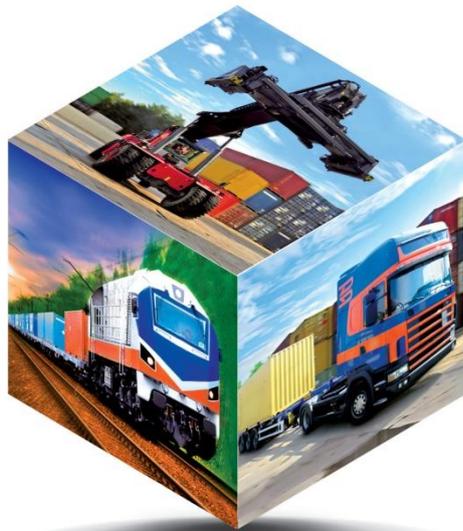
Reloading services, as specified in these terms and conditions, are: lifting and lowering loading units in a combined transport

- From carriages to road vehicles
- From road vehicles to carriages
- From carriages to carriages

Within standard opening hours specified in the Appendix 1.

Reloading services beyond opening hours specified in the Appendix 1 shall require a special agreement.

Before reaching an agreement, it shall be required to check the possibilities and conditions of executing a commission by PCC Intermodal and operators (authorized to the access).



pcc
Intermodal

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