

# HVCC Terms of Use for Online Coordination Services

**Last updated: February 2018**

## **1. Scope of application**

For the commercial relationship between HVCC Hamburg Vessel Coordination Center GmbH, Bei St. Annen 1, 20457 Hamburg (hereinafter: HVCC) and the Client, the following Terms of Use apply to the use of the online Coordination Services as well as the ancillary services in connection with those offered by HVCC under Section 2 of these terms and conditions. Any deviations from these Terms of Use are only considered to have been agreed if they have been explicitly confirmed by HVCC in written form. Terms and conditions of the Client that deviate from these Terms of Use are not binding for HVCC, even if these have not been explicitly objected to or if services are rendered without reservation in knowledge of the different terms and conditions.

## **2. Object of the online Coordination Services**

- 2.1. Using the “Client Login” page on the website [www.hvcc-hamburg.de](http://www.hvcc-hamburg.de), HVCC allows its clients, following successful registration, to access and use company coordination data and services (hereinafter referred to together as the “Coordination Services”).
- 2.2. The Coordination Services comprise in particular the scheduling data, overview of traffic situations and nautical information for ships relevant to the Client in approach to the port of Hamburg, for rotation in the port as well as departure after clearance. In doing so, HVCC acts as a central, neutral and inter-company coordination point for large size vessels, feeder and barges in the Port of Hamburg.

## **3. Coming into force and termination of the contractual relationship**

- 3.1. A contract that is binding for HVCC only comes into force following written confirmation from HVCC. The Client recognises these Terms of Use by using the Coordination Services.
- 3.2. If free use of the Coordination Services has been agreed, HVCC reserves the right to terminate the commercial relationship at any time as well as to suspend the Coordination Services in full or in part.

3.3. If a paid use of the Coordination Services has been agreed, both Parties are entitled to terminate the agreement in writing with a period of notice of three months to the end of the quarter.

#### **4. Online access, specific use, actions which impair function**

- 4.1. The Client acquires the right to personally access the data that are to be retrieved using the HVCC application. The Client's access is password-protected and it uses the login data provided by HVCC. Additional requirements can be found in the User Manual, which is located in the application under the heading "Handbook".
- 4.2. The Coordination Services may only be used by the Client for the Client's collaboration with HVCC or coordination with relevant port service providers (e.g. pilots, tugboats, mooring ropes and port authorities). If HVCC receives information and data from the Client, HVCC is entitled to use this to perform Coordination Services vis-à-vis third parties.
- 4.3. Online access shall not be used simultaneously by two or more computers, irrespective of whether they are used by the same or different persons. The Client is not permitted to pass on and/or sell the Coordination Services to third parties. Any use that contradicts this Agreement requires the prior written consent of HVCC.
- 4.4. Any actions that are directed towards or appropriate for disrupting the Coordination Services from HVCC, or to make use of the Coordination Services more difficult for anybody, are to be omitted.

#### **5. Availability**

HVCC intends to provide online access to the Coordination Services 24/7 throughout the year. HVCC does not however assume any guarantee for availability at any time. In particular, for technical reasons, such as due to necessary maintenance and service work, access to the data may be temporarily limited.

#### **6. Client's duties**

- 6.1. The Client is to specify to HVCC a responsible employee who should receive online access to the Coordination Service, and who HVCC shall name to its employees.

- 6.2. The Client is obligated not to disclose the access data as well as the passwords and to prevent unauthorised use by third parties. The Client is to inform HVCC immediately if the access data is lost or if there is suspicion of improper use of these data. HVCC is moreover entitled to block online access in case of improper use.
- 6.3. The Client is responsible for ensuring that in its area the technical requirements for online access are met and maintained, in particular regarding the hardware and operating system software used, the connection to the internet and the current browser software.
- 6.4. The Client is obligated to take the measures required to secure its systems, in particular to use the common security settings of the browser and to use up to date protection mechanisms to defend against damaging software.

## **7. Terms and conditions of payment**

If the services of HVCC are used against payment, invoices are due within 30 days after receipt without deduction.

## **8. Data protection**

The Client is informed that HVCC collects, processes and uses personal inventory and use data in machine-readable form within the framework of the intended purpose of the user agreement. All personal data shall be treated confidentially and managed in accordance with the provisions of the “Bundesdatenschutzgesetz” [German federal law on data protection].

## **9. Exclusion of liability**

- 9.1. HVCC obtains the presented data inter alia from third parties and assumes no guarantee whatsoever for the data and Coordination Services provided to the Client being current, correct and complete. Liability claims against HVCC, which are based on material or intangible damages which were caused by the use or non-use of the Coordination Service or through the use of defective and incomplete data, are excluded.
- 9.2. The exclusion of liability pursuant to Paragraph 9.1 does not apply for damages arising from injury to life, body or health if these are based on a negligent breach of duty by HVCC or an intentional or negligent breach of duty by one its legal representatives or vicarious agents.

- 9.3. For other damages, HVCC is only liable if these are based on a grossly negligent breach of duty by HVCC or on an intentional or grossly negligent breach of duty by a legal representative or vicarious agents, as well as in the case of mandatory statutory liability.
- 9.4. If HVCC receives data and information from the Client, the above limitations of liability apply analogously in favour of the Client.

## **10. Place of performance, court of jurisdiction, applicable law**

- 10.1. The place of performance for all obligations from the contractual relationship between the Parties is the registered office of HVCC.
- 10.2. The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Hamburg, Germany.
- 10.3. The legal relationships between HVCC and the Client shall be governed exclusively by the laws of the Federal Republic of Germany and the rules on the conflict of laws (Internationales Privatrecht) shall not apply.

## **11. Final provisions**

- 11.1. Should individual provisions of these Terms of Use be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. In place of the unenforceable and/or invalid provision, such an enforceable and/or effective provision shall be agreed between HVCC and the Client, which comes as close as possible to the economic purpose strived for. This also applies for possible loopholes in these terms and conditions.
- 11.2. This is an English translation of the original German version of the HVCC Terms of Use for Online Coordination Services. If there is any contradiction between the German language version of this Terms of Use for Online Coordination Services and this translation, the German language version shall prevail.