

General Terms and Conditions Art as of 1 November 2018

Introduction

The General Terms and Conditions Art regulate the legal basis with regard to all matters relating to transport and logistics services for art, antiques, exhibition items, collections and similar items (hereinafter referred to as objects of art). All orders, including those from private individuals, shall be fulfilled exclusively on the basis of the provisions below. The User works exclusively on the basis of the following provisions.

1 Scope

1.1 The General Terms and Conditions apply to the performance of all kinds of activities relating to the handling of objects of art, from freight forwarding to storage and other transactions commonly concluded in the sector. These include:

- a) Taking down paintings
- b) Setting up and taking down other objects of art
- c) packaging, moving, loading, transporting, unloading and storing objects of art
- d) Collecting cash on delivery payments.

1.2 Contractual services which may pose a risk to other goods, the environment or persons, particularly hazardous goods within the meaning of the Hazardous Goods Act (Gefahrentgutgesetz) shall be excluded unless prior written consent has been given. The Customer shall always indicate the type and scope of such goods prior to handing over the contractual goods. The Customer shall hold the Contractor entirely harmless of any damages relating to such goods.

1.3 The Customer shall undertake to also agree compliance with the General Terms and Conditions Art with its contracting partner, such as the recipient or owner of the object of art, to the benefit of Knab GmbH, International Art Movers, if required. In any case, however, the Customer shall provide its contracting partner with the full version of these General Terms and Conditions Art in good time.

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2 Stating the objects of art

2.1 When placing an order, the Customer shall notify Knab GmbH in writing of all addresses, references, numbers, quantity, type and content of the objects of art, of their dimensions, weight, properties and values of their contents as well as the room conditions at the place of collection and destination.

2.2 The Customer shall be liable for incorrect or missing information, even if this falls outside its scope of control, unless the incorrect information is apparent and known when placing an order.

3 Liability

3.1 Knab GmbH generally shall assume liability in accordance with the ADSp 2017, which explicitly form the basis of agreement, unless otherwise specified in the General Terms and Conditions Art. Liability shall apply to both freight forwarding and transport services. The additional services commonly provided in connection with art and furniture transports, as described in Section 1.1 of the General Terms and Conditions Art, shall also be covered by liability. These terms and conditions shall also apply to cross-border and/or international transports, unless overriding international standards, such as CMR, must be applied. In the event of a foreign partner being engaged to fulfil the agreement, different maximum liability limits may exist of which the Customer shall be informed in advance and which shall apply correspondingly to this contractual relationship.

3.2 Knab GmbH shall otherwise assume liability for the conduct of its employees and third-party companies engaged in accordance with the terms and conditions of liability that have been standardised in the ADSp 2017. Knab GmbH shall not assume any liability for damages caused by acts of malicious intent or gross negligence performed by third parties and/or its employees.

3.3 In the event of a third party incurring damages due to incorrect or incomplete information as well as delays that fall within the scope of control of the Customer, Knab GmbH may invoice the Customer in full for them. The Customer may choose to provide evidence that the damages incurred are less severe than claimed.

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4 Exclusion of liability

Knab GmbH shall be held harmless of liability, for any legal reason whatsoever, if and insofar as the damage has been caused by instructions issued by the Customer or one of its authorised representatives that do not fall within the scope of responsibility of Knab GmbH or by circumstances that could not be prevented even when applying the due diligence and care of a proper business person.

This rule shall also apply if the damage event is caused by force majeure or unforeseeable circumstances that fall outside the scope of control of Knab GmbH.

5 Limitation of liability

The liability of Knab GmbH shall be limited as follows in accordance with the standardised provisions of Sections 22 and 24 ADSp 2017.

5.1 Liability for damaged goods shall be limited to 8.33 special drawing rights per kilogram gross of the damaged or lost objects of art. Any liability in excess of this amount shall herewith be explicitly excluded and shall require a separate agreement on a case-by-case basis.

5.2 Knab GmbH shall pay compensation for any damages caused by delayed deliveries in the amount of the proven damages and up to the contractually agreed payment. All further compensation for damages shall be excluded. The contractually agreed payment shall be deemed to be the compensation payable in accordance with the agreement for the respective individual service and/or partial service. This is not the same as the compensation agreed for the entire agreement. The delivery period has been exceeded if the goods have not been delivered within the agreed period. Delivery periods shall always be agreed in writing. In the event of the reasons for the delayed delivery being caused by circumstances outside the scope of control of the Customer (severe weather conditions, full closures, strikes, force majeure), liability shall be excluded upon provision of proof.

5.3 In the event objects of art that are the object of agreement being delivered to the recipient without collecting cash on delivery payments as contractually agreed, Knab GmbH shall assume liability to the Customer for the damages thus incurred, but only up to the amount to be collected cash on delivery.

5.4 Liability for all other damages that do not constitute damaged goods shall be limited in accordance with Section 23.4 ADSp 2017.

5.5 In any case, liability, for any legal reason whatsoever, shall be limited to the value of the objects of art that have been damaged as stated by the Customer, unless the maximum liability limits in accordance with ADSp 2017 have already been reached.

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5.6 The Customer may agree maximum liability limits in excess of those stipulated in the ADSp 2017 and/or these General terms and Conditions Art in writing and for an additional fee. However, Knab GmbH shall only increase the insured amount for an object of art if a written agreement on the insured amount and the risks that may develop has previously been concluded to this effect. The customer shall pay all of the additional costs thus created in advance and separately to the contractual fee. If the arrangement of such insurance creates significant additional costs for Knab GmbH, the latter may charge a reasonable fixed fee for expenses.

5.7 The third parties engaged with the fulfilment of the agreement and their employees may also refer to these liability provisions, both with regard to type and scope, when dealing with the Customer. This privilege shall only be excluded in the event of acts of malicious intent or gross negligence which would have to be disclosed and proven by the Customer.

5.8 The Customer shall hold Knab GmbH harmless of all third-party claims, upon first request and immediately, if these claims are asserted against Knab GmbH on the grounds of actions, or failures to act, within the scope of control of the Customer, resulting in a violation of the agreement.

6 Delivery, complaints

6.1 Unless agreed otherwise and in writing, the goods may be delivered to any adult who is part of the business or household and present in the premises of the recipient or the contractually agreed premises to which the goods are to be delivered with discharging effect.

6.2 If damage to the transported goods is externally visible upon delivery, the recipient shall at all times state this, including the specific type and scope of the damage, in a notice of receipt, which is to be signed by both parties. The recipient shall visually inspect the transported goods for any externally visible damage upon hand-over. The recipient shall report any damages that are not externally visible immediately and in writing, but no later than seven days from delivery. The type and scope of damage shall be explained and documented. The claimant shall carry the burden of proof in this respect.

7 Payment, offsetting, statutes of limitation

7.1 Invoices shall be payable in full upon receipt. In the event of a payment being delayed, Knab GmbH may charge interest in the amount of five percentage points above the base rate. Knab GmbH reserves the right to provide proof of damages in excess of this amount at any time.

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7.2 The Customer shall approve all contributions, customs duties, taxes and other levies placed upon Knab GmbH, particularly as the authorised representative or owner of the transported goods, immediately and upon request. Any payments made for measures required in this respect by Knab GmbH shall be reimbursed immediately. The Customer may provide proof that the costs incurred are less than those stated.

7.3 The rules for offsetting or retaining payments shall comply exclusively with Sections 19 and 20 ADSp 2017.

7.4 Knab GmbH shall have the right to seize and retain goods within its care or other valuables on the grounds of all payable and non-payable receivables to which it is entitled on the grounds of its obligations to the Customer stated in this agreement. The right to seize goods shall also include all accompanying documents. In the event of the Customer defaulting on payment, Knab GmbH may send written warning of the sale of the goods, then proceed to sell the goods and valuables in its possession for the best price possible and up to an amount which it believes to be just without requiring any further formalities. The goods may also be sold if the Customer cannot be found despite investigation, but at the earliest after one year. Knab GmbH shall be entitled to a reasonable flat fee for expenses incurred for the sale of seized goods to recover its costs. This fee may be deducted from the gross proceeds.

7.5 Claims, for any legal reason whatsoever, shall expire by limitation after one year from the performance of the agreement.

8 Final provisions

8.1 These General Terms and Conditions Art and all legal relationships between the Customer, recipient and claimant shall be governed by the laws of the Federal Republic of Germany.

8.2 In the event of the Customer being a business person within the meaning of the German Commercial Code (Handelsgesetzbuch – HGB), legal entity under public law or special trust under public law, Düsseldorf, Germany, shall be the place of fulfilment and exclusive place of jurisdiction for all disputes directly or indirectly arising from this contractual relationship.

Apart from that, the place of jurisdiction shall be determined in accordance with Section 30 ADSp 2017.

Should a provision of this agreement or other related agreements be or become ineffective, this shall not affect the effectiveness of the remaining provisions or agreements.

The German version shall always take precedence over any translated version of these General Terms and Conditions.