

TERMS & CONDITIONS OF SERVICE

of

Otrans Transport GmbH (Otrans)

Preamble

These terms and conditions are drawn up in compliance with common trade usage and practice in the forwarding, shipment, and handling of art and antiques, exhibits, entire collections, and similar objects (art objects). Services ordered by traders or non-traders shall be performed by Otrans on the basis of the terms and conditions specified below and the General Terms and Conditions of Austrian Freight Forwarders (Allgemeine Österreichische Spediteursbedingungen – AÖSp) only. The specified Terms and Conditions shall also apply to future contracts and orders even if not explicitly agreed upon again. Any modification or amendment of the terms specified herein must be made in writing. Attention is invited to the exclusion and limitation of liability, as well as to the possibility of taking out, by special agreement, higher insurance over.

1. Applicability

- 1.1 The terms and conditions specified herein shall apply to all services relating to the handling of art objects, including consignment, transportation, storage, and any other services as are customary in the forwarding of art objects. This furthermore includes the contracting of other services as are customary in the forwarding of art objects. This furthermore includes the contracting of other services, also by separate agreement, such as the hanging up or taking down of paintings, the setup or dismantling of other art objects, loading, packing, stowage, shipment, unloading, and storage of art objects, collection of payment on delivery, custom clearance, courier services, or the procurement of travel contracts and of transportation or property insurance.
- 1.2 Goods, in particular hazardous goods, that are likely to put people, other goods, or the environment at risk shall be excluded from service, unless agreed otherwise in writing beforehand. In case such goods are nevertheless handed over to Otrans, the customer shall be liable for any damage arising thereof regardless of negligence or fault.
- 1.3 The customer undertakes to make his/her contractual partners, such as the consignee or the proprietor of the art objects, agree to be bound by these terms and conditions.

2. Information about Art Objects

- 2.1 Upon placing an order, the customer shall furnish Otrans, in writing, with full information about the consignee's address, about the number, kind, contents, marking, and numbering of the freight items as well as about the measurements, weight and actual value of the art objects consigned, and about conditions at the places of pickup and delivery.
- 2.2 The customer shall be liable for any damage resulting from incorrect or omitted information about freight items, regardless of negligence or fault, unless the incorrectness is evident and known to Otrans upon receipt of order.

3. Liability

- 3.1 In executing orders, Otrans shall be liable only if and in so far as any damage incurred results from culpable negligence on the part of Otrans. It is understood that Otrans shall be held liable for negligence under Austrian law only.
- 3.2 Otrans shall furthermore be liable for any violation of due diligence on the part of Otrans employees or third-party agents contracted by Otrans. It is understood that Otrans shall be held liable for negligence under Austrian law only.
- 3.3 Otrans shall be liable for damage of property only, i.e. for loss or damage of the art object which is the contracted consignment. In case of carriage by road (truck) or air (plane), the assumption of liability shall be governed by the specific legal provisions applicable to the respective means of transportation as far as these provisions are mandatory.

4. Exclusion of Liability

Otrans shall not be liable if and in so far as damage is caused in consequence of instructions issued by the customer or customer's agent outside the responsibility of Otrans, or by circumstance beyond the control of Otrans which could not have been prevented by due diligence.

5. Limitation of Liability

Unless provided otherwise by mandatory law (see sub-clause 3.3) and save as provided in sub-clause 5.6 below, liability on the part of Otrans shall be limited as follows:

- 5.1 Liability for damage to property shall be limited, in the case of transportation by road, to the equivalent in euros of 8.33 Special Drawing Rights per kilogram of gross weight of the art object damaged or lost in compliance with the Convention on the Contract for the International Carriage of Goods by Road (CMR 1956, as amended by the CMR Protocol of Geneva, 1987), or, in the case of transportation by air, to the equivalent in euros of 16.67 Special Drawing Rights in compliance with the Warsaw Convention.
- 5.2 In the case of a delay in delivery, Otrans shall be liable for a compensation for any proven and culpable damage not exceeding the total fee(s) charged for service. Payment of any compensation in excess of the stated amount shall be excluded. A delay in delivery shall be said to occur when the goods have been delivered within the agreed time limit or when, failing an agreed time limit, the actual duration of the shipment, considering the circumstances of the case, exceeds the time it would be reasonable to allow a diligent carrier.
- 5.3 Should art objects consigned under the respective forwarding agreement be delivered to the consignee without collection of the cash-on-delivery charge which should have been collected, Otrans shall be liable to the sender for compensation not exceeding the amount of such charge.
- 5.4 In any case, liability on the part of Otrans shall be limited to the actual value, as declared by the customer, of the art objects subject to loss or damage.

- 5.5 The customer may stipulate, in writing in the forwarding agreement, excess valuation coverage to be provided, at the customer's expense, beyond the liability limits specified in clauses 5.1 to 5.4 of these terms and conditions. Otrants shall procure insurance of the art objects, such as transit or warehouse insurance, only if obliged to do so under a written agreement stating the insured value and the hazards to be covered. In case of doubt, Otrants shall be free to determine, according to best judgment, the appropriate and advisable insurance type and coverage and take out insurance at the usual market price. Otrants shall be entitled to special compensation and reimbursement of expenses incurred for the procurement of such insurance.
- 5.6 Exclusions and limitations of liability as specified herein under clause 4 and 5, shall apply for any and all claims made against Otrants with regard to the art objects that are the subject of the order placed with Otrants, regardless of the legal reason of such claim. It is agreed that exclusions and limitations of liability specified herein shall also extend to Otrants employees as well as to any third-party agent that Otrants assumes liability for, unless they have caused the damage by willful misconduct or gross negligence. However, limitations of liability shall not apply for damages caused by vicarious agents in a managerial capacity through willful intent or culpable neglect, or through gross and culpable violation of essential contractual duties; the burden of proof for willful or gross and culpable negligence shall rest upon the claimant.
- 5.7 The consignor undertakes to indemnify and hold Otrants harmless from any claim made by a third party against Otrants for non-contractual action or nonfeasance on the part of the consignor.

6. Delivery, Complaints

- 6.1 Unless agreed otherwise in writing, delivery shall be considered as effected in full discharge of contractual obligations if the consignment is placed in the custody of any adult person that belongs to the consignee's business or household or is present as consignee's representative at the premises or the agreed place of delivery.
- 6.2 In the event that the art object is visibly damaged upon delivery, the consignee shall record this defective state with detailed specification of the damage or loss in a notice of receipt signed by both parties. The consignee shall also be obliged to give immediate notice – no later than seven days upon delivery and in writing – of any damage incurred that was not outwardly visible upon delivery. The burden of proving any such damage shall rest upon the claimant.

7. Payment, Set-Off, Limitation of Claims

- 7.1 Invoices issued by Otrants for services under these terms and conditions are due upon receipt and payable strictly net. Payment will be considered as in delay, without a reminder notice issued by Otrants or any other condition precedent, if the invoice is still outstanding after 14 days upon receipt. In case of such delay, Otrants shall be entitled to charge 1,5 percent per month interest from the date of the occurrence plus the usual collection charges. Otrants moreover reserves the right to claim any substantial damage exceeding the amount due.
- 7.2 The customer shall be obliged, upon request by Otrants, to make advance payments for expenses such as freight claims, general average deposits, customs duties, taxes, or any other dues incurred by Otrants, in particular if incurred as consignor's bailee.
- 7.3 Any set-off against claims made by Otrants shall be admissible only if the respective counterclaims are due and uncontested.
- 7.4 For all monies due at any time for services performed under these terms and conditions, Otrants shall have a general lien and right for retention on all art objects, goods, and other valuables in its possession or custody, as well as on all documents relating to them. Should payment be in arrears, Otrants shall have the right, after timely notice has been given to the customer cannot be found or indentified despite adequate efforts to do so. Otrants shall be entitled to the usual sales commission to be deducted from the gross proceeds of such lien or self-help sale.
- 7.5 All claims against Otrants, for whatever reason, shall lapse after a period of one year. The said limitation period shall begin to run from the date on which the claimant becomes aware of the damage or loss, but no later than the date of delivery of the art object(s). If delivery was not effected at all, the limitation period shall begin to run on the day after the consignment should have been delivered.

8. Concluding Provisions

- 8.1 All legal relations between the customer, consignee, or claimant shall be exclusively governed by, and construed in accordance with, Austrian law.
- 8.2 Unless the customer is a "consumer" in the sense of the Austrian Consumer Protection Act, it is understood that 6372 Oberndorf bei Kitzbühel shall be the sole place of performance under the forwarding agreement and that any legal dispute arising there under either directly or indirectly shall be brought before a competent court of law in 6370 Kitzbühel.
- 8.3 If any provision or clause of these terms and conditions should be or become invalid or ineffective, the remaining provisions or clauses shall be in no manner affected thereby but shall remain in full force and effect.

CUSTOMER'S STATEMENT OF ACCEPTANCE – SIGNATURE:

I declare to have received and accepted the above Terms and Conditions.

Signature: _____

Place / Date: _____

Name in capitals: _____