



**GENERAL TERMS AND CONDITIONS**  
**(GTC)**  
**of Museumspartner Administration GmbH**  
**(Museumspartner)**

**1. General**

These terms and conditions, which can be viewed at any time at [www.museumspartner.com](http://www.museumspartner.com) under „Impressum“, apply to all forwarding, storage, transport and other handling services (relocation, packaging, inventory, assembly and dismantling of objects, hanging and unhooking of pictures, etc.) of goods (in particular objects of partition, antiques, collections, art), as well as all other types of services which Museumspartner Kunstspedition GmbH (hereinafter referred to as "contractor") provides or procures for its principal.

These terms and conditions also apply to principals who act as consumers within the meaning of the Consumer Protection Act. Differing terms and conditions of the principal which are not explicitly recognised (in writing) by the contractor are invalid, even if they are not explicitly rejected. Under no circumstances can the principal rely on his own general terms and conditions, even if these were included in orders. No terms and conditions of the principal contradicting these terms and conditions and the AÖSp are applicable. Furthermore, the principal agrees that these terms and conditions apply to all future business transactions, irrespective of any further express reference, in particular in the case of orders placed verbally, by telephone or by telex. At the latest when the contractor takes over the goods, the principal agrees that the present terms and conditions apply. Moreover, the principal is obliged to also inform the consignee and the owner, of these terms and conditions and to point out to them the applicability of these terms and conditions.

The agreement of these terms and conditions does not affect the validity of conventions in their currently valid version as far as their provisions mandatorily prescribe a deviating regulation, such as the CMR. Even if the scope of application of the CMR is not given, the validity of the CMR is expressly agreed between the contracting parties as a supplement to these terms and conditions

In addition, the General Austrian Forwarders' Terms and Conditions (AÖSp) apply in their currently valid version, published in the Official Gazette of the Wiener Zeitung 1947/184, last amended by the Official Gazette of the Wiener Zeitung 1993/68 (available in English and German on the Internet at [https://www.wko.at/branchen/transport-verkehr/spedition-logistik/Allgemeine\\_Oesterreichische\\_Spediteurbedingungen\\_\(AOeSp\).html](https://www.wko.at/branchen/transport-verkehr/spedition-logistik/Allgemeine_Oesterreichische_Spediteurbedingungen_(AOeSp).html)). The principal declares

himself to be a waiver customer ("Verbotskunde") according to §§ 39 ff AÖSp. The AÖSp also apply in relation to foreign principals.

## **2. Offer**

The contractor's offer is non-binding and is based on the consignment data specified by the principal, current prices, tariffs, exchange rates and other fees of all parties involved in the transport. The prices offered are subject to available loading space and storage space. All surcharges mentioned are valid until revoked and subject to the introduction of further surcharges. All freight rates mentioned are only valid for shipping with partners of the contractor. The freight carriers are selected at the discretion of the contractor.

## **3. Cancellation**

The transport order is binding unless cancelled within one hour of transmission to the contractor.

If the transport order is not cancelled within one hour, the contractor is entitled to a contractual penalty regardless of fault of 80% of the freight price. Any further claims for damages remain unaffected.

The contractor is entitled to cancel the transport order free of charge up to one hour before the agreed collection date.

## **4. Transfer, Subcontractors**

The contractor reserves the right to use subcontractors. However, the contractor will exercise the diligence of a prudent freight forwarder and carrier in selecting the company he commissions.

## **5. Duty to supply information, special goods**

The principal has to provide the contractor in writing in advance of the transport with all information regarding the type, condition, quantity, numbers, marks, addresses, contents, mass, properties, weights, value, ownership of the goods and the circumstances, access and space conditions at the place of loading and place of unloading. The principal is liable regardless of fault and without limitation for all damages incurred by the contractor due to the inaccuracy of such information.

The principal is obliged to warn about special characteristics of the freight. The principal therefore must separately declare if the value of the goods exceeds € 20,- per kilogram, if they are dangerous goods, waste or if there is a particular risk of theft associated with the freight. In addition, the principal must inform the contractor of any particular sensitivity of the goods and correct handling. The principal confirms that he has a dangerous goods officer in his company and that he will provide all data relevant to dangerous goods in accordance with the ADR. Goods which are or may become dangerous goods can only be offered to the contractor for transport, whether they appear in official or unofficial, international or national codes or agreements, if the contractor has been informed in writing in advance of their nature, type, name, labelling and classification and the contractor's prior written consent has been obtained. The carriage of goods which pose a risk to the environment, other persons or other goods is only accepted by the contractor if an express written supplementary agreement has been concluded. In addition, the packaging in which the goods are to be transported, as well as the goods themselves, must be clearly marked on the outside indicating the type and condition of the goods. The principal assures to observe and comply with all statutory provisions concerning dangerous goods.

## **6. Collection, loading, unloading**

Unless otherwise expressly agreed in writing, the contractor is only commissioned to transport the consigned goods. Additional services such as loading, unloading, storage, installing, assembly, setup, etc. are only provided by the contractor on the basis of a separate written agreement. When taking over the goods for transport or storage, the contractor only checks the external condition and, if reasonable, the quantity of the goods. The contractor is not obliged to check the content, properties, weight, value, markings and packaging of the goods. The obligation to pack the goods properly and in a manner suitable for transport or storage and to affix the necessary markings and consignment information (addresses) exclusively concerns the principal.

If the contractor is commissioned with the transport of entire collections or consignments consisting of several goods which the contractor has to dismantle, collect and load himself, the principal has to carry out inventory in advance of the transport and send the inventory list to the contractor. If the contractor does not receive a corresponding inventory list, the contractor's liability is completely excluded regardless of fault.

Delivery is effectively carried out to any person belonging to the business, household, enterprise or present at the place of delivery. Externally visible defects have to be documented by the consignee in writing in the freight documents immediately upon acceptance. Defects that are not externally visible must be reported to the contractor in writing within 7 days at the latest.

## **7. Value declaration, special delivery interest**

An increase in value of the maximum amounts according to Art. 24 CMR or a special delivery interest according to Art. 26 CMR cannot be agreed upon.

A declaration of value or interest cannot be agreed upon. The contractor explicitly objects to any kind of declaration of value or interest, in particular those which may increase the maximum limits of liability provided for in international conventions. It is explicitly pointed out that any kind of announcement of an order value, value of goods (etc.) - in any way whatsoever (in invoices, orders, delivery notes, offers etc.) - does not in any case lead to an agreement of a declaration of value or interest, even if there is no explicit objection by the contractor. It is not possible to agree on an increase or waiver of maximum limits of liability stipulated in contractual terms or in international conventions.

## **8. Damage, liability**

If loss or damage to the goods is not visible from the outside, it is the responsibility of the dispatcher or principal to prove that the loss or damage occurred during the period of liability or transport. Externally visible damage must be reported to the contractor in writing immediately upon delivery, and damage not visible from the outside immediately upon discovery, but within seven days at the latest.

First and foremost, the principal can only demand improvement as compensation for damages. Only if such an improvement proves impossible or involves a disproportionately high effort, is the contractor obliged to pay monetary compensation, insofar as the contractor is actually liable.

The contractor is only liable for damages to goods (loss and damage to the goods) if the contractor is actually guilty of gross negligence. The contractor's liability for slight negligence is excluded. The contractor's liability for indirect damage, damage caused by delay, consequential damage, financial loss, loss of profit, contractual penalties and all immaterial damage is excluded. Furthermore, the disclaimers according to § 57 AÖSp also apply.

Moreover, the contractor is not liable for any damage to objects and buildings other than the goods or other contractual objects during assembly, disassembly, collection and delivery. The contractor is not liable for damage to the packaging material and other tools/equipment provided by the principal.

## **9. Liability limitations**

Unless special freight law or other mandatory legal provisions apply, the contractor is liable for loss of and damage to the goods as well as missed delivery deadlines in accordance with the maximum amounts according to § 54 AÖSp.

The contractor expressly points out that all mandatory special freight law provisions (CMR, Hamburg Rules, Montreal Convention, COTIF-CIM) also provide for limitations of liability on the part of the contractor. For this reason, the principal is advised to instruct the contractor to take out goods transport insurance. Such insurance will only be taken out by the contractor on behalf of the principal following a separate written agreement and against payment of a surcharge.

## **10. Force Majeure**

If the contractor is prevented from fulfilling one, several or all contractual obligations as a result of natural disasters, war, terrorist attacks, riots, lockouts, pandemics (e.g. Corona pandemic etc.), strikes (e.g. in ports) or other cases of force majeure and if these obstacles are beyond the contractor's direct control and cannot be averted or circumvented with reasonable economic and/ or technical effort, the contractor is exempt from the performance of the contractual obligation(s) affected by the force majeure event for the duration of this event. The parties agree that cyber (hacker) attacks on the IT system of a contracting party or a subcontractor commissioned to carry out the transport also constitute a case of force majeure.

Should a service provided by the contractor violate applicable laws or regulations, in particular the law of the European Union, the United Nations, the USA or individual countries, laws enacted in the fight against terrorism or which order trade restrictions such as embargoes, the contractor is entitled to discontinue the provision of services and to terminate the contract without notice. Any liability on the part of the contractor in connection with this is excluded. Partial services carried out up to the time of the contractor's withdrawal have to be remunerated by the principal.

The contractor's liability for damages as a result of force majeure events is excluded.

## **11. Compliance with all provisions**

The principal is obliged to comply with all applicable laws, provisions and regulations as well as the provisions of customs, port and other authorities and to bear and pay all customs duties, taxes, charges, etc., as well as to reimburse all penalties, duties, expenses and damages incurred or suffered. The principal must inform the contractor of any obstacles subject to public law and other obstacles, in particular import restrictions/export restrictions and such.

## **12. Delivery deadlines**

Specified loading and unloading dates are not delivery deadlines according to Art. 19 CMR, but only approximate guide values/standard transit times and can therefore not be guaranteed by the contractor. Claims due to the exceeding of performance deadlines (of any kind whatsoever) are therefore not accepted by the contractor, nor are any costs for any consequential damages in the event of delays or late payment fines for documents sent too late. Any liability of the contractor for exceeding loading dates/ for failure to comply with "loading windows" is generally excluded, unless the contractor has missed these deadlines "through gross negligence".

## **13. Transport insurance**

As the contractor's liability is limited, it is recommended to take out transport insurance. However, transport insurance will only be taken out if explicitly requested in writing and payment of a surcharge.

If the contractor is commissioned to take out insurance, this is only taken out under the insurance conditions customary at the place of performance. Insurance cover for risk of breakage is excluded in any case. If a corresponding transport insurance policy is taken out, the principal's claim for compensation against the contractor in the case of an insured event is limited to the compensation paid by the insurer.

If insurance is taken out by the principal himself, any recourse of the insurer against the contractor is excluded and no claims of the principal pass to the insurer. A waiver of recourse in favour of the contractor is thus expressly agreed.

#### **14. Staffing, vehicle, routes**

The vehicles used by the contractor are generally dispatched with one truck driver. In the event of a written agreement for 2-man staffing and payment of a freight surcharge, the contractor will provide two drivers, which can reduce the risk of theft. This is recommended due to the current situation of danger in European freight traffic. As a rule, the statutory driving and rest breaks can only be consumed on "conventional parking spaces". Should the principal wish to consume the prescribed driving and rest breaks on guarded parking spaces, this must be explicitly notified to the contractor in writing in advance and can be agreed by paying a surcharge.

The vehicles used are usually ordinary tarpaulin trailers. In order to minimise possible dangers, in particular the risk of theft, it is recommended, however, that the contractor be explicitly commissioned in writing and by paying a surcharge with the use of a so-called box body vehicle, as this offers increased security. Additional security measures requested by the principal (GPS tracking, alarm system, etc.) must also be disclosed in writing in advance and can be agreed by paying a surcharge.

The routes chosen by the contractor are the fastest and most cost-effective routes. Should the principal wish for a special route in order to minimise possible dangers, the contractor must also be informed of this explicitly and in writing in advance and another route can then be agreed upon against payment of a freight surcharge.

#### **15. Rights of lien and retention**

The contractor has the right of lien and the right of retention on the goods or other items in his power of disposal for all due and not due claims against the principal to which he is entitled under the present contract. If the principal does not explicitly state the owner of the goods in the consignment note when placing the order, the contractor can assume that the freight is the property of the principal. The principal is entitled to prohibit the exercise of the lien if he grants the contractor an equivalent means of security (e.g. bank guarantee).

It is prohibited to assign claims against the contractor. The principal must indemnify the contractor against claims of third parties. In the event of claims being made against the contractor by third parties, the contractor has to be fully indemnified and held harmless by the principal.

## **16. Offsetting**

Under no circumstances is the principal entitled to make freight reductions or to set-off counterclaims against claims of the contractor. Without exception, there is a ban on offsetting and retention in favour of the contractor. Section 32 AÖSp applies.

## **17. Demurrage**

The contractor is entitled to charge the principal demurrage in the amount of € 450,- per day (at least € 80,- per hour for a standing time of less than 24 hours); the contractor is entitled to the demurrage even if the principal is not at fault. A demurrage claim arises if a waiting time/standing time of 1.5 hours in total is exceeded.

## **18. Contractual language**

Contract language is German and English. There is a German and an English version of these terms and conditions. In case of difficulties of interpretation, ambiguities and contradictions, the German version prevails.

## **19. Jurisdiction**

The contractual relationship is subject to Austrian law with exclusion of the provisions of the IPR. For all disputes between the parties in connection with this agreement, including disputes about the effective existence of this agreement, as well as disputes relating to individual agreements concluded in execution of this agreement, the jurisdiction is agreed to be attributed to the court competent in the subject matter of the dispute for A-6020 Innsbruck.

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Date, Signature

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Date, Signature



### **Addendum for consumers**

If the principal is a consumer within the meaning of the Consumer Protection Act, the following is additionally agreed and confirmed by the consumer:

- I confirm that I have been specifically informed in accordance with Section 6 Subsec. 1 No. 2 of the Consumer Protection Act (KSchG) that, in accordance with point 7 of this agreement, I must immediately upon delivery notify the contractor in writing of any externally visible defects in the freight documents and of any externally non-visible defects within 7 days at the latest.
- I confirm that I have been specifically informed that the contractor has a right of lien and a right of retention on the goods or other property under his control with regard to all claims, whether due or not, to which he is entitled against me under the present contract.
- I confirm that I have been specifically informed that in accordance with this agreement, provided that the goods are delivered without reservation to the consignee, the burden of proof for the existence of any damage and loss rests with me. Furthermore, the burden of proof that the damage or loss occurred during the contractor's period of care rests with me.
- I confirm that I have been specifically advised that the contractor's liability for damage, loss and delay in delivery is limited. In particular, the mandatory special freight provisions listed below as examples contain the following limitations of liability. Depending on the scope of application, these provisions could apply and limit liability:

CMR (transportation by road) 8.33 Special Drawing Rights per kilogram of the goods lost or damaged. Liability for exceeding delivery deadlines is limited to the amount of the freight.

Hamburg Rules (transportation by sea) 835 Special Drawing Rights per package or other unit of cargo or 2.5 units of account per kilogram of gross weight of the goods lost or damaged.

Montreal Convention (airfreight) 22 Special Drawing Rights per kilogram of goods lost or damaged.

COTIF-CIM (rail freight) 17 Special Drawing Rights per kilogram of goods lost or damaged.

Provided that none of the aforementioned mandatory statutory provisions apply, the contractor's liability for loss and damage is limited to a maximum of 8.33 Special Drawing Rights per kilogram of the lost or damaged goods. For all other damages, liability is limited to a maximum of € 30 000. All of the aforementioned limitations of liability are not applicable in the event of gross negligence on the part of the contractor.

I expressly acknowledge that I have been made aware of these limitations of liability and hereby confirm that they form part of this agreement.

As the contractor's liability is limited, the contractor recommends taking out transport insurance. If such insurance is desired, please confirm this as follows:

☐ I commission the contractor to take out transport insurance covering a value of goods amounting to € \_\_\_\_\_.

\_\_\_\_\_

Signature, Date

If such insurance is not desired, please confirm the following:

☐ I confirm that the contractor shall not take out transport insurance to cover the transport I have ordered.

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Signature, Date

- I confirm that I can cancel a transport order I have placed with the contractor within 1 hour free of charge. In case of a later cancellation, a conditional penalty of 80 % of the agreed freight is due.
- I confirm that I have fully read and understood the terms and conditions of the contractor.

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Signature, Date