

Standard Terms and Conditions "AVB Kunst"

(Effective: 10.10.2016)



Preamble

processing imports. If, in departure herefrom, ARTSECO is commissioned to do same, ARTSECO shall be entitled to require the customary payment therefor.

1 Scope of application

1.1 Except where stated otherwise in the following provisions of these AVB-Kunst (clauses 10.2, 12.2 and 13; applicability to all contract partners), the AVB-Kunst shall apply to all contractual relationships in which ARTSECO is commissioned as principal or contractor to perform transport, forwarding, warehousing and/or other logistic services – in particular regarding objects of art – or services related thereto (e.g. packing, hanging and taking down or assembling items, collecting COD (cash on delivery), export declarations, import processing, brokering travel contracts, obtaining transport and property insurance, including in case of independent (e.g. not part of a transport contract) contracts for work and labour).

2.7 If ARTSECO has to make payments to third parties (e.g. damages, import duties) for which the principal must reimburse ARTSECO, the principal shall, on request, be obliged to indemnify ARTSECO.

1.2 The goods to be handled by ARTSECO (goods for transport, storage, etc.) must not – subject to agreement otherwise in text form – consist of hazardous goods (hazardous goods within the meaning of the hazardous goods ordinance, other dangerous goods), money, securities, animals, arms and weapon parts or body parts.

3 Limitations of liability for damage to goods under transport and forwarding contracts

3.1 No limitations of liability shall be agreed which deviate from the scope of application of section 431 (1) HGB (German Commercial Code) – including using sections 458 to 461 (1) HGB.

3.2 Within the limits of liability under maritime law – directly pursuant to sections 498 ff. HGB or indirectly in the case of multimodal transport under section 452 a HGB – ARTSECO shall not be responsible for any fault found in its staff and the ship's crew if the damage or loss was due to acts by the navigation or other management of the vessel, but not in the case of measures taken predominantly in the interest of the cargo or in case of fire or an explosion on board the vessel.

2 Obligations of principal

2.1 When placing an order the principal must inform ARTSECO in text form about the addresses, marks, numbers, quantity, type and content of the packages, dimensions, weights, properties and the spatial conditions at the places of collection and destination. The principal shall ensure that the point of collection and delivery for transports on the private premises at the collection address or delivery address are readily accessible at the customary times of business – when outside these: at the agreed time of collection or delivery.

4 Limitation of liability in case of authorised storage

4.1 The limitation of liability for damage to property (loss of or damage to warehoused goods) in case of authorised storage is agreed, on the basis of these AVB-Kunst, to be 8.33 special drawing rights per kilogramme of the damaged portions of the goods. Liability shall in any case be limited to EUR 25,000.00 per damage event. The amount of damage shall be calculated subject to section 429 HGB (compensation for lost value).

2.2 When placing an order, the principal shall inform ARTSECO in text form of the actual value of the goods to be handled (e.g. goods for transport or storage) and the risks apparent to the principal in case of possible defects of performance (e.g. loss of profits, interruption of production, contractual penalties) and number the same. This shall not involve limitations of liability or an order to arrange transport insurance.

4.2 The limitation of liability for harms not caused by damage or loss to the warehoused goods shall – with the exception of injury to persons and damage to third party property – is agreed, on the basis of these AVB-Kunst, to be three times the amount of what would have had to be paid in the case of loss of the warehoused goods, but not more than EUR 25,000.000 per damage event.

2.3 If risks for the goods to be handled by ARTSECO are apparent to the principal (e.g. increased risk of theft, increased sensitivity of the goods), it shall incur its own responsibility – irrespective of any possible responsibility held by ARTSECO – to commission the taking of special measures to curb such risks (e.g. transport in panel vans and/or use of two drivers, direct transport without transhipment or additional load).

5 Other limitations of liability; third-party services

5.1 For all the principal's claims not covered by sections 3 and 4 of these AVB-Kunst, liability is agreed on the basis of these AVB-Kunst to be limited to EUR 25,000.00 per damage event, but a maximum of EUR 100,000.00 per damage event. This shall also apply if a damage event has caused several damaged parties to have claims against ARTSECO. If however, ARTSECO is liable, outside of the transport, forwarding or warehousing liability as mentioned in sections 3.1 and 4, for damage to an object of art – for example in connection with the hanging of a picture – section 3.1 of these AVB-Kunst shall apply correspondingly.

2.4 Missing or incorrect information within the meaning of sections 2.1 to 2.3 may result in contributory negligence.

2.5 The principal must pack and mark the goods to withstand transport, with particular consideration for the demands and risks of a consolidated shipment, unless packing by ARTSECO has been agreed between ARTSECO and the principal in text form. This agreement must refer either to a specific transport or expressly to all transports; the simple fact that a previous shipment was packed by ARTSECO – whether based on an agreement or not – does not suffice in this respect. If a shipment is packed by ARTSECO under the terms of an order, ARTSECO shall be entitled to require customary and reasonable payment therefor.

5.2 With the exception of the limitations of liability regulated in section 3 and other limitations of liability under transport law, an upper limit is agreed by virtue of these AVB-Kunst for all claims of one principal at EUR 1,000,000.00 per year, and for the claims of all principals or damaged parties at EUR 2,000,000.00 per year.

2.6 Except where agreed otherwise in text form, the principal shall be responsible for obtaining export permits and

5.3 If the maximum amounts per damage event or per year stated in this section 5 do not suffice to satisfy the claims of all damaged parties, their claims shall be satisfied in proportion to the justified total demands until the relevant maximum amount has been reached.

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5.4 If ARTSECO only arranges service level contracts on the basis of contractual agreement – for example, furniture assembly by other companies – ARTSECO shall be liable only for the proper selection of such contractors.

6 Lapse of liability limitations

6.1 The limitations of liability regulated in sections 4 and 5.1 to 5.3 shall lapse if the damage or loss was caused by the wilful intent or gross negligence of the management or a senior executive of ARTSECO. They shall also lapse if the damage or loss is due to the intentional or grossly negligent – in contracts with consumers: also moderately negligent – breach of primary contractual obligations by other persons working for the company, in which case the claim for compensation shall be limited to predictable and typical damage or loss. Primary contractual obligations are obligations the fulfilment of which makes the proper execution of the contract possible in the first place and on the fulfilment of which the contract partner can normally rely.

6.2 Whether and in what circumstances the limitations of liability regulated in section 3 lapse shall be subject to the relevant and applicable statutory provisions.

7 Non-contractual claims

All the foregoing provisions for the limitation of liability regulated in these AVB-Kunst shall also apply – subject to mandatory statutory provisions of other effect – to non-contractual claims and also to the advantage of auxiliary persons and companies of ARTSECO.

8 Extensions of liability, insurance

8.1 All the limitations of liability mentioned above may be replaced, by way of express individual agreement, concluded in text form, with different amounts or stipulations. The designation of a specific value for an item or an interest shall not, alone, be sufficient grounds for such an agreement. In the event of such an agreement, ARTSECO shall be entitled, at its reasonable discretion and subject to the provisions of sections 315 and 316 BGB (German Civil Code), to require separate remuneration therefor.

8.2 ARTSECO shall obtain insurance cover for the goods, for example transport or warehouse insurance, only on the basis of an agreement concluded in text form, specifying the insurance amount and the risks covered. In case of doubt ARTSECO shall decide at its reasonable discretion on the type and extent of the insurance and take out insurance on terms customary for the market. ARTSECO shall be entitled to separate remuneration for taking out insurance and to reimbursement of its expenses.

9 Delivery, complaints

9.1 Except where agreed otherwise in text form, delivery may be made with discharging effect to any adult person present on the premises of the recipient and belonging to the business or the household.

9.2 If the principal wishes to commission collection of the shipment by the customer at the receiving warehouse, it must, not later than the time of commissioning, advise ARTSECO in text form of the first and family names of the person collecting and hence authorised to take receipt. Should more than one person be so authorised, this shall apply to each of these persons. Changes in the person of the collecting party must be communicated in such good

time before collection that they do not detract from normal business operations. The shipment shall then be handed over only to one of the persons whose details have been given and only against presentation of an official photo-bearing identity document. The shipment must be collected after it has arrived at the receiving warehouse, not later than Friday 2 pm. If it is collected later, the customary warehousing fees may be charged. This shall not apply if the arrival of the shipment at the receiving warehouse has been delayed by at least one day and the sender or recipient was not informed, at the latest one day before the aforesaid collection time, that the shipment was ready for collection.

9.3 The principal must ensure that ARTSECO will be informed without delay, but not later than one day after delivery or handover, of any damage to the article that is apparent from the outside at the time of delivery or handover, and of any damage that is not apparent from outside not later than 14 days after delivery or handover. If notice of damage is given after delivery or handover, it must be in text form and describe the damage. If it is not given in due time, the claims for damages based on the damage or partial loss of the article shall lapse. This shall apply in particular to warehousing. In the case of transports, the relevant statutory provisions for notice of damage or loss shall apply instead.

10 Due date, offsetting, withholding payment

10.1 ARTSECO shall be entitled to require a reasonable advance. Storage charges shall be payable monthly in advance not later than the third working day of the month.

10.2 All contract partners shall only be entitled, in respect of claims by ARTSECO, to offset or withhold payment on grounds of counterclaims which are due and which ARTSECO has declared to be undisputed, or which have been established at law. This shall apply to contracts with consumers subject to the restriction that the right to withhold payment in relation to counter-claims arising from the same contractual relationship shall remain unaffected.

11 Other provisions related to warehousing contract

11.1 ARTSECO may carry out the warehousing of the article on its own or third-party premises. The principal may require, in text form, that it be informed without delay about storage on third-party premises and if so about the venue of the storage premises.

11.2 The warehousing contract may, if it is concluded for an indefinite period, be terminated by either contracting party at one month's notice to the end of a month.

12 Statute of limitations

12.1 The time-barring of claims under transport, forwarding and warehousing law shall be subject to the relevant statutory provisions. In departure from section 475 a HGB, the period of limitation for claims for damages by the principal shall, however, commence as soon as the principal gains

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knowledge of damage or loss. The latter provision shall not apply to contracts with consumers.

12.2 For all other claims against ARTSECO by the contract partner – for example claims connected with the assembly of pieces of furniture – the period of limitation shall be one year and commence as of the claim arising.

13 Final provisions affecting all contracting parties

13.1 These contractual terms and conditions and all legal relations between the contract partner and ARTSECO shall be governed by the law of the Federal Republic of Germany.

13.2 Where the contract partner is a registered trader as defined in the German Commercial Code, a legal entity in public law or a special fund under public law, the courts at Cologne shall have jurisdiction for all disputes arising, directly or indirectly, from the contractual relationship. These courts shall have sole jurisdiction for claims against ARTSECO, except where this is in conflict with mandatory statutory provisions – for example CMR regulations.

13.3 Should individual provisions of these AVB-Kunst be invalid, this shall not affect the conclusion of the contract and the validity of all the other provisions of the AVB-Kunst.

13.4 General terms and conditions to other effect shall not apply, even if they are condoned without demur and even if they contain clauses which are not in conflict with these AVB-Kunst.

DECLARATION BY PRINCIPAL SIGNATURE:

I have received and taken note of the Standard Terms and Conditions "AVB-Kunst".

Signature: _____

Date: _____

Place: _____

Customer number: _____

Customer name: _____

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