



## Standard Terms and Conditions - Art (Dated: 10.05.2023)

### Preamble

The Standard Terms and Conditions – Art, hereinafter called „AVB Art“, take into account customary practices regarding the forwarding, transport and dealing with art and antiques, objects shown in exhibitions, collections and related objects of that kind (hereinafter: objects of art). All orders, including orders placed by private individuals (non-business persons), are exclusively furnished on the basis of the following provisions. The Standard Terms and Conditions shall also apply to future contracts, even if the parties had not explicitly agreed again on their applicability. Any deviation must be agreed in writing. It is hereby emphasised that these Terms and Conditions may exclude and limit certain liabilities; it is also emphasised that it is possible to agree on an extended liability and to insure higher risks.

### 1. Scope of application

1.1. The Terms and Conditions – Art shall apply to services of all kind relating to the handling of Objects of Art, irrespective of whether they concern forwarding, freight, storage or other activities which usually are associated with the art business. This includes e.g. agreements, also in form of separate contracts on hanging up and taking down pictures, the installation and the dismantling of other objects of art, the wrapping, loading, stowing, transport, unloading and the storage of objects of art, on the levying of amounts to be collected on delivery, on customs clearance, on courier services or on arranging of travel contracts and transport - and property insurance coverage.

1.2. Without prior written agreement such as goods are excluded from the services that may impose dangers for other goods, the environment or human beings. This in particular applies to hazardous goods in the meaning of the German Statute on Hazardous Goods (Gefahrgutgesetz). If such goods are handed over despite of the aforesaid provisions the client shall be strictly liable (irrelevant of any negligence) for all damages which may occur.

1.3 The client shall agree with his contractual partners, e.g. the recipient or owner of a certain object of art, in favour of Frey & Klein Int. Spedition GmbH on the application of the Standard Terms and Conditions - Art.

### 2. Information supplied by the Client

2.1 The client shall inform Frey & Klein Int. Spedition GmbH in writing at the time of the order about addresses, symbols, numbers, amount, kind and content of the items, size, weight, characteristics and the fair market value of the objects of art to be dealt with as well as about the available Space and facilities at the place of collection and destination.

2.2. The client shall be liable for any incorrect information or omissions, even if not based on any negligence on his side, unless the incorrectness was obvious and known at the time of the order. Frey & Klein Int. Spedition GmbH shall not be liable for any damage caused by the failure of the Client to provide correct or complete information.

### 3. Liability

3.1. With respect to international orders, Frey & Klein Int. Spedition GmbH is authorised to contract with third parties on the basis of their customary terms and conditions. If and in so far any damage is caused by a foreign partner, Frey & Klein Int. Spedition GmbH shall only be liable according to the terms and conditions agreed upon with the foreign partner. Frey & Klein Int. Spedition GmbH shall only be liable to a further extent if the damage results from any negligence on the side of Frey & Klein Int. Spedition GmbH.

3.2. In all other matters Frey & Klein Int. Spedition GmbH is liable for any acts committed by its staff and by third parties instructed by Frey & Klein Int. Spedition GmbH as if such acts had been committed by Frey & Klein Int. Spedition GmbH itself. Frey & Klein Int. Spedition GmbH shall be liable for:

- a) damages caused to the goods themselves (Güterschäden), i.e. loss of artworks or damage caused to it
- b) indirect damages of the goods (Güterfolgeschäden), i.e. losses resulting from a damage of the good

c) consequential damages (reine Vermögensschäden), i.e. damages which do not relate to any damage of goods or any other damage of such kind unless Frey & Klein Int. Spedition GmbH or any third parties instructed by it have acted negligently. In case of a transport by vehicle on the road, by plane, by railway or maritime transport, Frey & Klein Int. Spedition GmbH shall be liable on the basis of such regulations applicable for the respective kind of transportation in so far as such regulations are mandatory.

### 4. Exclusion of Liability

Unless acting negligently, Frey & Klein Int. Spedition GmbH shall not be liable – on whatever legal ground – if the damage results from instructions given by the client, or given by a third party who was so entitled, or results from circumstances which could not be avoided observing the diligence of a reasonably acting business person.

### 5. Limitation of Liability

Unless provided by mandatory law otherwise (clause 3.2. above) and subject to clause 5.7., the liability of Frey & Klein Int. Spedition GmbH – irrespective on what legal grounds – shall be limited as follows:

5.1. Liability for damages to goods (Güterschäden) is either limited to 8,33 special drawing rights (Sonderziehungsrechte) per kilogram of the damaged or lost object of art or to the amount of € 1.100,- per cubic meter of the damaged or lost object of art, whichever amount is higher.

5.2. To the exclusion of any further claims for damages, Frey & Klein Int. Spedition GmbH shall indemnify the client for any damage proved if Frey & Klein Int. Spedition GmbH fails to meet the agreed time of delivery, such compensation, however, being limited in any event by the consideration agreed upon in the contract. The time of delivery has not been met if the good was not delivered within the agreed deadline, or, should no time of delivery had been agreed, if the actual time of transportation exceeds what is reasonably appropriate for a diligent shipper.

5.3. If objects of art, which are subject to this agreement, are handed over to the recipient without the agreed amount being collected on delivery, Frey & Klein Int. Spedition GmbH shall be liable to the client for the damage resulting therefrom. However, compensation is limited to the amount which should have been collected on delivery.

5.4. Liability for losses other than those described in clauses 5.2. and 5.3. herein is limited to the consideration agreed in the contract.

5.5. In any case, liability – irrespective on what legal grounds – shall be limited to the value of the damaged objects of art, as indicated by the client.

5.6. Against additional consideration, the client may agree in writing on higher maximum amounts than described in clauses 5.1. to 5.5. above, regarding damages, indirect damages as well as consequential damages. If so stipulated in writing Frey & Klein Int. Spedition GmbH shall obtain insurance coverage for the object of art, e.g. covering transport or storage, provided, however, the amount to be insured and the risks to be covered were indicated by the client. In cases of doubt, Frey & Klein Int. Spedition GmbH shall decide on the kind and extent of insurance exercising reasonable discretion and shall enter into the insurance agreement applying market conditions. For obtaining such insurance coverage Frey & Klein Int. Spedition GmbH shall be entitled to a separate remuneration and reimbursement of its expenses.

5.7. Any exclusion and limitation of liability pursuant to clauses 4 and 5 of these Standard Terms and Conditions – Art shall apply to every claim against Frey & Klein Int. Spedition GmbH regarding objects of art which are subject to a client's contract with Frey & Klein Int. Spedition GmbH, irrelevant of the legal ground on which the claim is based. This exclusion and limitation of liability can also be invoked by Frey & Klein Int. Spedition GmbH's employees and persons for which Frey & Klein Int. Spedition GmbH is liable, unless they have caused the damage intentionally or by gross negligence. The limitations of liability shall not apply if the damage has been caused intentionally or due to gross negligence by any persons instructed by Frey & Klein Int. Spedition GmbH acting in a senior position and/or due to intentional or grossly negligent



violation of integral obligations of the contract. Intent or gross negligence must be proven by the claimant.

5.8. The client has to hold Frey & Klein Int. Spedition GmbH harmless of third parties' claims brought against Frey & Klein Int. Spedition GmbH which are based on any act violating the terms of contract or omission by the client.

#### **6. Delivery, Complaints**

6.1. Unless otherwise agreed in writing, any delivery with the effect of full discharge can be made by handing over the goods to each adult person belonging to the business or the household of the recipient and is present at the recipient's premises or at such other premises as agreed upon.

6.2. If at the time of the delivery visible damage to the object of art can be determined, the recipient shall make note of such damage specifically indicating the kind of loss or damage in the delivery receipt to be signed by both sides. Externally invisible damages have to be notified in writing in due course, however, not later than 7 days after delivery. The burden of proof is with the claimant.

#### **7. Payment, Set-off, Statute of Limitation**

7.1. Invoices are immediately payable. The client shall be in default upon the expiry of ten days commencing on the receipt of the invoice; no reminder or the meeting of other requirements is necessary for such default. In case of default Frey & Klein Int. Spedition GmbH shall have the right to charge interest at the rate of 10% from the date of default plus locally usual costs, notwithstanding Frey & Klein Int. Spedition GmbH's right to prove higher damages.

7.2. Upon demand, the client shall immediately hold Frey & Klein Int. Spedition GmbH harmless of all freight charges, charges and contributions in connection with an accident, tariffs, taxes and other expenses which were charged to Frey & Klein Int. Spedition GmbH as the person entitled to dispose or as bailee.

7.3. Against claims resulting from this agreement and against non-contractual claims related to a set-off or a right of retention shall only be admissible if the counterclaims are due and unchallenged.

7.4. Frey & Klein Int. Spedition GmbH has a pledge and a right of retention with respect to all goods and other assets in its possession for all its claims against the client based on activities stipulated in this agreement, irrespective of whether these claims are payable or not. The pledge also includes all accompanying documents. If the client is in default, Frey & Klein Int. Spedition GmbH may, after having notified the client accordingly, sell as many goods and assets being in its possession as, in its own discretion, are necessary to satisfy its claims, not being obliged to observe any further formalities. Frey & Klein Int. Spedition GmbH is also entitled to such sale if the client cannot be determined subsequent to due inquiries. Frey & Klein Int. Spedition GmbH may charge the customary commission for the sale of the pledged goods calculated on the basis of the gross sales proceeds.

7.5. Claims, irrespective on whatever ground, shall be timebarred after one year commencing either at the time the claimant became aware of the damage, or, at the latest, however, at the time of delivery of the object of art. In the event of no delivery the deadline commences at the end of the day which the good should have been delivered.

#### **8. Compliance**

In the event that the services or parts thereof contemplated are prohibited under any laws or regulations, including but not limited to US-law, law of the European Union or national laws, including but not limited to laws and regulations relating to the fight against terrorism and embargos, Frey & Klein Int. Spedition GmbH is at its sole discretion entitled to partially or fully cancel the service at any time, without prior notice and without incurring any liability to client whatsoever.

#### **9. Final provisions**

9.1 The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

9.2 In the absence of mandatory legal provisions to the contrary, the place of jurisdiction and place of fulfillment shall be the location of Frey & Klein Int. Spedition GmbH's office that received the order. In cases in which the

client is a private person, his or her place of residence shall be the place of jurisdiction.

9.3 Any agreements, amendments, additions or ancillary understandings shall be set out in writing. This shall also apply for an agreement with which this written form clause is to be revoked either completely or in part.

9.4 Should one of the above clauses prove to be invalid, this shall not affect the remaining provisions for these Standard Terms and Conditions - Art or any other individual provision. In this case, the parties shall endeavor to replace the invalid clause with another clause that most closely approximates the original commercial and legal intent of the invalid clause.

9.5 Should a gap come to light in the Standard Terms and Conditions - Art or an individual provision, the parties shall close this gap by adding a provision that they would have adopted if this gap had been detected at the time at which the contract was signed.

9.6 Both parties agree to fulfill the requirements of the applicable data protection regulations. The contractor obliges his employees comply with the relevant legal provisions for the protection of personal data and educates his employees to that effect. Both parties will pay special attention to the practical implementation in the case that data protection law contains special principles which are mandatory for the provision of the service. If the realization of a service provided by the contractor is associated with activities for which the conclusion of a processing contract in accordance with the applicable data protection provisions (for example within the meaning of Art. 28 of the General Data Protection Regulation (GDPR)) is required, such a contract must be negotiated and concluded between the parties. In any case, personal data have to be treated confidentially by the contractor. For more details on the handling with personal data by Frey & Klein Int. Spedition GmbH, please visit our data protection policy.

9.7. In case of ambiguities or discrepancies of the English version from the German text, the German text shall always prevail.