

## GENERAL TERMS AND CONDITIONS (GTC)

of

**KUNSTTRANS Zagreb d.o.o. (*Kunststrans*)**

(Last revised: 1<sup>st</sup> November 2016)

### Preamble

These GTC take account of the customs related to forwarding, carriage and storage of and dealing with goods (in particular objects of art and antiques, exhibition items, collections and other items), related activities (in particular set-up and tear-down of exhibitions as well as object-art installations, relocations) and related production and delivery of packaging units.

*Kunststrans* shall accept and execute all orders, including from non-entrepreneurs, exclusively on the basis of these GTC and in accordance with the following provisions unless these GTC provide otherwise:

- GENERAL CONDITIONS (2005) OF THE INTERNATIONAL FREIGHT FORWARDERS ASSOCIATION OF CROATIA
- Provisions of the Convention on the Contract for the International Carriage of Goods by Road (CMR) for cross-border carriage by road,

all of which can be retrieved from the homepage of *Kunststrans* "[www.Kunststrans.hr](http://www.Kunststrans.hr)"

These GTC shall also apply to future contracts and orders, even if applicability of the same is not expressly agreed again. Deviations from these GTC shall require written form. We expressly refer to the exclusions and limitations of liability, in particular of these GTC and of the General Austrian Forwarders' Terms and Conditions, as well as to the possibilities of agreements on and insurance of higher sums insured.

The contracting party of *Kunststrans* agrees that also in the case that he uses general terms and conditions, the GTC of *Kunststrans* shall be the basis, even if the terms and conditions of the contracting party are not objected to. Thus, acts of *Kunststrans* in performance of the contract shall not be deemed acceptance of deviating contractual provisions. General terms and conditions of whatsoever kind which are in conflict with these GTC shall only be effective insofar as confirmed by *Kunststrans* in writing.

### **1 Applicability**

- 1.1 These GTC shall apply to all offers, deliveries and services of *Kunststrans*, in particular to all kinds of work in connection with dealing with goods (in particular objects of art and antiques, exhibition items, collections and other items, hereinafter referred to as "Goods"), irrespective of whether it concerns forwarding, freight, warehousing or other related business, exhibition or gallery and collector's service or relocations. This shall include, e.g., agreements, also in the form of separate contracts, on hanging and taking down, mounting and dismantling, packing, loading, stowage, carriage, unloading and storage of Goods, on collection of payments on delivery, on customs handling, on courier services or negotiation of travel contracts and taking out of transport and property insurance. These GTC shall also apply to selling or letting of packaging units by *Kunststrans*.
- 1.2 Without prior written agreement Goods that may constitute a peril for other goods, the environment or persons, in particular dangerous goods, shall be excluded from the work. *Kunststrans* shall be entitled to refuse transportation and storage of such Goods without having to give reasons. If

such Goods are handed over to *Kunststrans* nevertheless, the customer shall be liable for any resulting damage irrespective of fault.

- 1.3 The customer undertakes to agree on these GTC in favour of *Kunststrans* also with his contracting party, e.g. the recipient or owner of an object of art.

### **2 Information about the Goods**

- 2.1 When placing the order the customer shall provide *Kunststrans* in writing with all details required for execution of the order, in particular for transportation and storage, including but not limited to information on quality, addresses, marks/references, numbers, quantity, type and content of the packages, dimensions, weights, properties and the actual value (appraisal value or fair market value), ownership structure of the Goods to be handled and the condition of access roads and space at the place of collection and at the place of destination.
- 2.2 Incorrect information or omissions shall be the customer's responsibility even if it is not his fault.

### **3 Receipt of the Goods**

- 3.1 *Kunststrans* shall only examine the external condition and the number of units at the time of collection or receipt of the Goods or acceptance for storage. Apart from that, *Kunststrans* shall not be obliged to examine the information provided by the customer as per Clause 2.1., in particular not with respect to the contents of the packages or the weights, properties and the actual value or mark (declaration) to be affixed by the customer. Any further examinations of the Goods shall only be carried out if so agreed in writing.
- 3.2 Unless otherwise agreed in the contract for carriage or warehousing the customer shall be obliged to mark (declaration) and pack the cargo properly and to affix the recipient's address to the Goods and the shipping instruction form. The customer shall provide *Kunststrans* with all information necessary for preparation of the consignment note or other transport documents. If transportation and/or storage also include customs clearance, the customer shall inform *Kunststrans* about the status of customs clearance (cleared or uncleared) and *Kunststrans* shall also be provided with the necessary customs documents or, if *Kunststrans* carries out customs clearance as agreed, the information required for that purpose. To the extent that *Kunststrans* is in charge of packing, the customer shall provide *Kunststrans* with the information required for declaration and marking.
- 3.3 Specific collection and delivery periods shall only be deemed fixed dates if expressly agreed in the contract of carriage.

### **4 Warehousing Business**

The basis for warehousing Goods and stored items in general shall be the warehousing contract and the relevant warehouse receipt issued by *Kunststrans*. The latter shall constitute no security. *Kunststrans* may allow the beneficiary to dispose of the stored items also without presentation of the warehouse bond if the authorisation is beyond doubt or evidenced to *Kunststrans* by safe documents or in another suitable manner, such as, in particular by means of a bill of delivery of the beneficiary or the beneficiary's agent against presentation of the power of attorney.

### **5 Liability**

- 5.1 The prerequisite for liability claims against *Kunststrans* shall be immediate written notification of the damage after occurrence of the damage has become noticeable if the Goods are taken delivery of as laid down in Clause 6.2.
- 5.2 The contracting party shall prove that *Kunststrans* caused the damage unlawfully and negligently.
- 5.3 First of all the contracting party may only demand compensation in the form of improvement. Only if improvement is impossible or involves unreasonable

time and expenses on the part of *Kunsttrans* may the contracting party demand damages immediately.

#### 5.4 Exclusions of liability:

1 Liability for ordinary negligence and gross negligence shall be excluded except in cases of bodily injury.

2 In the following cases liability of *Kunsttrans* shall in any case be excluded:

(1) damage (including but not limited to damage caused by theft) to unpacked or inadequately packed goods, unless a special written agreement concerning such liability has been concluded in advance;

(2) goods which are deemed unpacked or inadequately packed according to the applicable terms and conditions of carriage; such goods will also be deemed unpacked or inadequately packed vis-à-vis the forwarder;

(3) damage to packaging that is noticeable from outside appearing at once or later; the forwarder may have such damage repaired at the customer's expense but shall not assume any liability extending beyond the liability set out in the preceding paragraphs.

(b) damage caused by outdoor storage if such storage was agreed upon or if a different type of storage was inappropriate according to ordinary business operations or under the circumstances prevailing at the time;

(d) the direct or indirect consequences of any other event that cannot be attributed to the forwarder (e.g. acts of God, weather conditions, defective equipment or lines, impact of other goods, damage caused by animals or natural changes in the goods themselves);

(e) damage or loss caused during inland waterway shipping (including pre-carriage and on-carriage transportation via land vehicles, as well as advance, interim and final storage) which is covered by transport or warehousing insurance or which could have been covered by transport or warehousing insurance policies of a usual kind, or which can be covered according to standard practices of diligent business people beyond the scope of transport or warehousing policies of a usual kind, unless a duly concluded insurance policy becomes ineffective due to faulty action on the part of the forwarder.

5.4.3. In addition, *Kunsttrans's* liability for accuracy and completeness of packaging containers handed over to *Kunsttrans* without an accompanying list of contents or where the content was not inspected by *Kunsttrans* for lack of a respective instruction shall be excluded.

5.4.4. *Kunsttrans* shall be entitled to use auxiliary staff and subcarriers to execute the transport order and the other work as defined in Clause 1. Liability (for agents and subcontractors) shall be limited to negligent selection if *Kunsttrans* provably failed to observe the necessary care of a prudent businessman when selecting or instructing or passing on information to auxiliary staff or subcarriers.

5.4.5. *Kunsttrans* shall only be liable for damage to Goods, i.e. loss of and damage to those Goods which are the subject-matter of the contract. *Kunsttrans's* liability for indirect damage, consequential damage, damage caused by delay or lost profit, such as impairment of value or contractual penalties shall therefore be excluded.

5.4.6. In the case of transport by motor vehicle on the road or by air liability shall be in accordance with the regulations applicable to such means of transport provided that application of the same is compulsory.

5.4.7. Liability for packaging material, fixing material and other small parts and tools provided by the customer shall also be excluded unless defects of those materials are obvious.

5.4.8. In the case of disassembling and assembling and collection and delivery *Kunsttrans* shall not be liable for any objects or buildings other than the Goods or other subject-matter of the contract. The customer shall ensure that safe and free-of-damage dispatch of the Goods will be possible.

#### 5.5. Limitations of Liability:

To the extent *Kunsttrans's* liability is not excluded (Clause 5.4.) *Kunsttrans's* liability - based on whatsoever legal ground - shall be limited as follows:

5.5.1 Liability for damage to Goods shall be limited to EUR 8.33 special drawing rights per kilogram gross of the damaged or lost Goods as defined in the CMR in the case of carriage by motor vehicle on the road or EUR 16.67 according to the Warsaw Convention or the Montreal Convention replacing the same in the case of carriage by air.

5.5.2 If the delivery period is not observed, *Kunsttrans* shall pay compensation for proven damage caused by *Kunsttrans* up to the contractually agreed consideration; any other damages shall be excluded.

5.5.3 As long as there are no special limits of liability in these General Conditions, liability - based on whatsoever legal ground - shall in any case be limited to the value of the Goods stated by the customer.

5.6. The exclusions and limitations of liability provided in Clauses 5.4 and 5.5 of these GTC shall apply to any claim vis-à-vis *Kunsttrans* regarding Goods which are the subject-matter of the order placed with *Kunsttrans*, irrespective of the legal ground on which the claim is based.

#### 5.7. Insurance:

1 *Kunsttrans* shall take out insurance for the Goods, e.g. a transport or warehousing insurance, exclusively on the basis of a written agreement stating the sum insured and the risks to be covered.

2 If *Kunsttrans* is instructed to take out insurance, insurance shall only be taken out at insurance conditions customary at the place of performance and in no case against the risk of breakage. *Kunsttrans* shall properly meet the instruction to take out insurance also if the insurance is part of or included in an open cover policy of *Kunsttrans*.

3 In an insured event the customer's claim for compensation vis-à-vis *Kunsttrans* shall be limited to the indemnity paid by the insurer. *Kunsttrans* shall fulfil its obligations in an insured event if it assigns the claims vis-à-vis the insurer to the customer; *Kunsttrans* shall be obliged to pursue the claims only on the basis of a special written agreement and only at the cost and risk of the customer.

4 If the customer takes out the insurance himself, any claim for damages vis-à-vis *Kunsttrans* arising from the risks covered by such insurance shall be excluded, i.e. the claim shall not pass to the insurer (waiver of recourse by the insurer).

5.8. For a separate payment the customer may agree on a maximum indemnity for damage to the Goods higher than

that regulated in Clause 5.5 of these GTC and Clause 54 of the General Austrian Forwarders' Terms and Conditions in writing in the contract. In the case of doubt *Kunsttrans* shall decide according to its best judgement on the type and scope of insurance and take out the same at market conditions. *Kunsttrans* shall be entitled to a separate consideration and reimbursement of its expenses for taking out of insurance.

5.9. The customer shall indemnify *Kunsttrans* against claims of third parties asserted vis-à-vis *Kunsttrans* on the basis of an action or omission of the customer in violation of the contract. If *Kunsttrans* is held liable by third parties, *Kunsttrans* shall be fully indemnified and held harmless by the customer, including with regard to lawyer's and court fees, if any.

5.10. The customer shall be liable vis-à-vis *Kunsttrans* for any and all damage or loss suffered by *Kunsttrans* due to a violation of the customer's duty to co-operate and provide information or due to improper packaging or other violations of the contract for carriage or warehousing or the present GTC.

5.11. Clause 5 shall not apply to consumer transactions.

## 6. Delivery; Complaint

6.1 Unless otherwise agreed in writing delivery may be made with releasing effect to any person belonging to the business or household or enterprise who is present on the premises of the recipient or the contractually agreed premises of receipt.

6.2 If at the time of delivery external damage to Goods is noticeable, the recipient shall record such damage including specific details about the loss or damage in a confirmation of receipt to be signed by both parties. In addition, the recipient shall check the goods for completeness and defects immediately upon delivery and notify any defects within six (6) days of delivery of the Good by registered letter which shall state the type and extent of the defect; any other claims shall be excluded. If defects are not notified or not notified in time, the service provided shall be deemed accepted. This clause shall not apply to consumer transactions.

## 7. Sale or Letting of Packaging Units

7.1 These GTC shall apply *mutatis mutandis* to sale or letting of individually produced packaging units or standard packaging (such as air-conditioned crates for paintings, air-conditioned slot crates, crates for paintings, slot crates, object crates, transport frames, cardboard boxes for shipping and hand luggage cases) by *Kunsttrans*, in particular Clauses 5.1 to 5.3, 5.4.1., 5.4.5., 5.9. and 5.10.

7.2 In the case of warranty the following shall apply:

7.2.1 no warranty shall be assumed for patent defects which are already obvious at the time of delivery or putting into operation of the contractual service.

2 The warranty period shall be six (6) months and shall commence at the time the risk passes. The goods shall be checked for completeness and soundness immediately upon delivery. Defects shall be notified within six (6) days of delivery of the subject-matter of contract by registered letter which shall state the type and extent of the defect; any other claims shall be excluded. If a defect is not notified or not notified in time, the service provided shall be deemed accepted. In deviation from Section 924 ABGB the contracting party shall prove that the defect already existed at the time of delivery of the service provided.

3 *Kunsttrans'* warranty obligation shall be limited, at its option, to improvement or replacement of the defective parts or price reduction. In the case packaging units are let the contracting party's claim for reduction of rent shall be excluded. Within the scope of

improvement/replacement *Kunsttrans* shall be entitled to have the defective goods or defective parts returned to it at its cost. *Kunsttrans* shall only have to pay the costs of repair of defects not carried out by *Kunsttrans* if it agreed to such repair in writing.

4 *Kunsttrans* shall only be obliged to assume warranty if the contracting party has fulfilled his payment obligations completely.

5 If a packaging unit is manufactured by *Kunsttrans* on the basis of specifications of the contracting party, *Kunsttrans's* liability shall be limited to execution as per the instructions. The contracting party confirms, however, that his information relating to the order is correct and has been checked. *Kunsttrans* shall, therefore, not be obliged to examine, warn or inform.

This Clause 7.2 shall not apply to consumer transactions.

## 8. Statutory Limitation

All claims vis-à-vis *Kunsttrans* based on whatsoever legal ground (except for warranty claims as defined in Clause 7) and independent of the degree of fault shall become statute-barred six months after knowledge or negligent ignorance of the claim but not later than after delivery of the item. This Clause shall not apply to consumer transactions.

## 9 Payment; Set-off; Retention of title; Lien

9.1 Unless otherwise agreed all payments shall be made within 14 days of the invoice date free of postage and expenses. A payment shall be deemed made on the day on which *Kunsttrans* is able to dispose of it. In the case of default in payment *Kunsttrans* shall be entitled to charge default interest and compound interest at a rate of 8 percentage points above the base rate of the Austrian Central Bank [OeNB] but at least 12% p.a. In the case of default the contracting party shall be obliged to reimburse, in addition to default interest, also all other appropriate procedural and out-of-court costs of recovery including the fees of a lawyer called in by *Kunsttrans* as per the Lawyers' Tariff.

9.2 The customer shall indemnify *Kunsttrans* against freight claims, average deposits or contributions, customs duties, taxes and other charges raised vis-à-vis or imposed on *Kunsttrans*, in particular in its capacity as party authorised to dispose of or possessor of third-party goods immediately upon demand.

9.3 The customer shall only be entitled to set off claims against claims of his own if they have been acknowledged by *Kunsttrans* in writing or ascertained by court in a non-appealable manner.

9.4 *Kunsttrans* shall have a lien in all of its claims vis-à-vis the customer, be they due or not due, to which *Kunsttrans* is entitled from the work that is subject to these GTC and a right to withhold the Goods and assets in its control. The lien shall include the accompanying papers. If the customer is in default, *Kunsttrans* may - after a warning that it will sell the Goods and assets - without having to fulfil any other formal requirements sell as many of the Goods and assets in its possession as are required for satisfaction according to its best judgement. The sale, which is not subject to any formal requirements, may also be carried out if it is not possible to identify the customer despite reasonable investigations. *Kunsttrans* shall be entitled to charge the usual sales commission on the gross proceeds for a sale of pledge or emergency sale.

## 10 Declaration of Consent

10.1 The customer explicitly agrees that *Kunsttrans* will use data, such as name, company data and address, including e-mail, fax and phone number for *Kunsttrans's* own purposes and that such data will also be processed electronically.

In particular, the customer agrees that such personal data shall be transmitted and processed for the purpose of a business relationship with customers and suppliers including automated and archived text documents (such as correspondence). The customer further agrees that these data may be used for advertising purposes of Kunsttrans in the form of a newsletter, whether by e-mail, fax or mail, in individual cases, by telephone.

**10.2 Kunsttrans represents to the customer that the customer data will not be passed on to third parties.**

**10.3 The customer may revoke such consent at any time by written notification to Kunsttrans's company address.**

#### **11 Final Provisions**

11.1 All legal relations between the customer, the recipient or claimant and *Kunsttrans* shall be subject to Austrian law and the international conflict of laws rules shall be excluded.

11.2 If the customer is not a consumer as defined by the Austrian Consumer Protection Act [*Konsumentenschutzgesetz/KSchG*], Vienna shall be the place of performance and the exclusive place of jurisdiction for all disputes arising out of the contractual relationship, including disputes arising indirectly.

11.3 If a provision of these GTC or a provision under other agreements is or becomes ineffective, the effectiveness of all other provisions or agreements shall not be affected thereby.

**Express reference is made to the applicability of the provisions of the General Austrian Forwarders' Terms and Conditions stated in detail below:**

#### **Clause 54**

(a) To the extent that the forwarder is liable at all, his liability shall be limited to:

(1) EUR 7,267.28 per claim for damage or loss resulting from misappropriation or embezzlement by the forwarder's employees. This shall not include legal representatives, whose actions are not subject to limited liability. For the purpose of this provision a claim shall mean any damage caused by an employee of the forwarder through misappropriation or embezzlement, irrespective of whether other employees of the forwarder are involved in the damaging action and whether the damage affects one or several independent customers of the forwarder. The forwarder shall be obliged upon request to inform his customer on whether he has covered this liability risk and, if so, with which insurance company.

(2) EUR 1.09 per kg of gross weight of each damaged or lost package, but not more than EUR 1,090.09 per claim.

(3) A maximum liability of EUR 2,180.18 for all other claims, except for those described in para 1.

(b) If the stated value of the goods is lower than the amounts set out in para (a) above, the stated value shall form the basis for assessment.

(c) If the relevant value as defined in para (b) above is higher than the common market value or, in its absence, higher than the fair market value which is applicable to goods of the same type and quality at the time and place of delivery to the forwarder, such common market value or fair market value shall replace the stated value.

(d) In the case of differences in the values stated, if any, the lower value shall apply in each case.

#### **Clause 55**

In the case of damage to a part of an item which has an independent value (e.g. machine parts) or damage to any of several objects belonging together (e.g. household furniture), any impairment in value of the remainder of the object or the remaining parts or objects shall not be taken into consideration.

#### **Clause 56**

(a) In the case of goods worth more than EUR 29.06 per kg of gross weight, and with respect to money, documents and postal stamps, the forwarder shall only be liable for any damage of whatever kind if he has received a written value statement from the customer so timely that he was able to conclusively decide about acceptance or rejection of the order as well as on precautionary measures to be taken with respect to acceptance, custody or shipping of the goods.

(b) A value statement given to drivers and accompanying personnel shall have no legal effect unless and until it has been received by the forwarder or one of his commercial employees authorised to receive the same, unless otherwise agreed.

(c) Para (a) above shall not apply if the customer can prove that the damage was caused by circumstances other than an omission to state the value or that it would also have occurred if a value statement had in fact been made.

(d) The provisions of the other Clauses shall remain unaffected insofar as they limit or abolish liability beyond the provisions of this Clause.

#### **Clause 57**

The forwarder shall not be liable for:

(a)

(1) damage (including but not limited to damage caused by theft) to unpacked or inadequately packed goods, unless a special written agreement concerning such liability has been concluded in advance;

(2) goods which are deemed unpacked or inadequately packed according to the applicable terms and conditions of carriage; such goods will also be deemed unpacked or inadequately packed vis-à-vis the forwarder;

(3) damage to packaging that is noticeable from outside appearing at once or later; the forwarder may have such damage repaired at the customer's expense but shall not assume any liability extending beyond the liability set out in the preceding paragraphs.

(b) damage caused by outdoor storage if such storage was agreed upon or if a different type of storage was inappropriate according to ordinary business operations or under the circumstances prevailing at the time;

(c) damage caused by theft as defined by Sections 127 *et seq.* of the Austrian Criminal Code [*Strafgesetzbuch/StGB*], or through blackmail or robbery as defined by Sections 144 *et seq.* and 142 *et seq.* *StGB*;

(d) the direct or indirect consequences of any other event that cannot be attributed to the forwarder (e.g. acts of God, weather conditions, defective equipment or lines, impact of other goods, damage caused by animals or natural changes in the goods themselves);

(e) damage or loss caused during inland waterway shipping (including pre-carriage and on-carriage transportation via land vehicles, as well as advance, interim and final storage) which is covered by transport or warehousing insurance or which could have been covered by transport or warehousing insurance policies of a usual kind, or which can be covered according to standard practices



of diligent business people beyond the scope of transport or warehousing policies of a usual kind, unless a duly concluded insurance policy becomes ineffective due to faulty action on the part of the forwarder.

**DECLARATION OF THE CUSTOMER - SIGNATURE:**

I herewith confirm receipt of the GTC and acknowledge the same.

**Place/Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

Name in  
capital letters: \_\_\_\_\_