

# GENERAL TERMS AND CONDITIONS OF STORAGE OF THE GERMAN FURNITURE REMOVAL INDUSTRY (ALB)

## NON-BINDING RECOMMENDATION OF BUNDESVERBAND MÖBELSPEDITION UND LOGISTIK (AMÖ) e.V. (GERMAN FEDERATION OF MOVERS AND LOGISTIC COMPANIES)

Version dated October 2016

### 1. Scope of these Terms and Conditions

- 1.1 The following General Terms and Conditions of Storage of the German Furniture Removal Industry are deemed to have been agreed storage of removal goods, provided they have not been entered into with consumers and do not concern a contract for the letting of storage facility space for the purpose of self-storage.
- 1.2 Performance by the Storage Company shall be rendered exclusively on the basis of these Terms and Conditions, which shall also apply for all future performance even if they have not been once more expressly agreed.
- 1.3 Where the General Terms and Conditions for Household Goods Moving and Relocation Services and Storage have been agreed in addition, the ALB shall prevail in the case of conflicts between individual clauses or a situation cannot be allocated to one contract.

### 2. Performance of the Storage Company

- 2.1 The Storage Company shall perform its obligations with the usual care of a prudent Storage Company.
- 2.2 The Storage Company shall generally perform the following services:
  - 2.2.1 Storage shall be in suitable storage facility belonging to the Storage Company or a third party; storage in appropriate moving trucks or containers is deemed to be equivalent. Should the moving company store the goods at a third-party Storage Company, he must disclose the latter's name and the location of the storage facility to the customer in text form pursuant to Sec. 126 German Civil Code or, if a warehouse warrant has been issued, to mark this on the warrant.
  - 2.2.2 Upon storage, an Inventory of the property stored under this Storage Contract shall be prepared and signed by the Customer and the Storage Company. The property shall be labelled in numerical order. The number and weight of bins or boxes shall be recorded, and the total weight must be indicated.

The parties may waive the preparation of an inventory if the stored property is put into a container directly on the site of loading, the container is immediately sealed and it remains sealed during storage.
  - 2.2.3 A copy of the Storage Contract and the Inventory shall be handed out or sent to the Customer.

### 3. Special Goods - Disclosure Duty of Customer

- 3.1 The Customer is obliged to make a special disclosure to the Storage Company if the following items are intended to be included under the Storage Contract:
  - 3.1.1 dangerous goods such as inflammable or explosive or radiating items, items with a tendency to spontaneously combust, poisonous, corrosive or malodorous items from which negative effects can be anticipated for other property and/or people;
  - 3.1.2 items subject to rapid spoilage or decay;

- 3.1.3 items such as foodstuffs which are capable of attracting pests;
- 3.1.4 items of unusual value such as precious metals, jewels, precious stones, money, stamps, coins, securities of all kinds, papers, official documents, data carriers, works of art, fine carpets, antiques, collectors' items;
- 3.1.5 live plants or animals.
- 3.2 In the case of hazardous goods, the Customer must inform the Storage Company in writing upon the execution of contract of the exact nature of the risk and - to the extent this is required - of any precautionary measures to be taken. If the goods are hazardous goods within the meaning of the Transport of Hazardous Goods Act or other goods for the transport or storage of which there are special legal provisions on hazardous goods, handling goods or waste, the customer must disclose all of the information required for their proper storage, particularly their classification under the applicable hazardous goods laws.
- 3.3 The Customer shall inform the Storage Company in writing or in text form of particularly valuable goods or goods particularly susceptible to theft within the meaning of clause 3.1.4 and of all goods with an actual value of 50 euros/kg and more in such good time prior to acceptance by the Storage Company that the Storage Company has the opportunity to decide on whether or not to accept such goods and to take the action for safe and damage-free storage.
- 3.4 If the Customer is in breach of one of the aforesaid duties of disclosure, the Storage Company shall be free
  - to refuse acceptance of the goods, to return goods he has already accepted or
  - to hold them for collection by the Customer
  - to store them elsewhere without informing the Customer or to destroy them in the event of immediate risks arising from the goods.
- 3.5 The Customer's liability under Sections 468, 414 German Commercial Code may not be less than a one million per event of damage.

### 4. Inventory of Stored Property

- 4.1 The Customer is obliged to check the Inventory of the stored property for accuracy and completeness and to sign it.

If the Customer is present upon storage, complaints must be issued immediately upon the completion of the storage. If the stored property is brought to the storage facility in the absence of the Customer, the Customer must present any complaints within 7 days of the receipt of the Inventory of stored property. If complaints are not made in the aforesaid period, it shall be assumed that the Inventory is complete and correct.
- 4.2 The Storage Company is entitled to surrender the stored property upon presentation of the Storage Contract,

including the Inventory or an equivalent note of transcription contained on the Inventory unless the Storage Company is aware or fails to be aware because of his negligence that the person presenting the Storage Contract is not authorised to accept the stored property. The Storage Company is authorised, but not obliged, to check the proof of authority of the person presenting the Storage Contract.

4.3 The Customer is obliged to surrender the Storage Contract upon the delivery of the stored property and to issue a written acknowledgement of receipt. In the case of the partial delivery of the stored property, the Storage Company and the Customer shall make corresponding deductions in written form on the Inventory and Storage Contract.

## 5. Execution of Storage Duties

5.1 The Customer is entitled to inspect the storage space himself or through another person in co-ordination with the Storage Company. Any objections or complaints against the storage of the property or the choice of storage space must be presented without undue delay.

Should he not avail himself of this right of inspection, he shall have renounced all objections to the manner and form of storage to the extent the choice of the storage space and the storage itself have been executed upon compliance with the care of a prudent Storage Company complying with normal industry standards.

5.2 The Customer is entitled to enter the storage facility during the Storage Company's normal business hours if the visit has been arranged in advance and the Storage Contract and Inventory have been presented.

5.3 The Customer is obliged to inform the Storage Company in text form without undue delay of any changes in his address. In the absence of such notification, he shall not be entitled to claim that he has failed to receive notices the Storage Company has sent to the last address disclosed to him.

## 6. Storage Fee

6.1 Invoices of the Storage Company for storage fees, fees for ancillary performance, insurance premiums and the like require immediate payment.

6.2 The invoiced amounts are net amounts. The Customer shall pay the additional value-added tax in the respective statutory amount.

6.3 Provided a monthly payment arrangement was agreed for the storage fee, the Customer is obliged to pay the monthly storage fee to the Storage Company in advance by no later than on the 3<sup>rd</sup> working day of the month.

6.4 The Storage Company shall be reimbursed for his necessary expenditures.

6.5 The costs of storage, visits of the storage facility, partial storage and removal as well as subsequent storage as incurred shall be charged unless otherwise agreed.

## 7. Set-off, Assignment, Pledge

7.1 Only claims of the Customer due for payment which are not contested or for which a final judgment has been issued may be set off against the Storage Company's claim to payment of the storage fee.

7.2 Assignments and pledges of rights under the Storage Contract shall require the consent of the Storage Company.

7.3 The Storage Company is not obliged to check the authenticity of the signatures on the documents pertaining to the stored goods or the authority of the signer unless the Storage Company knows or remains unaware due to its

own negligence that the signatures are forged or the signer is not authorised.

## 8. Storage Company's Lien and Right of Retention

8.1 The Storage Company shall have a lien and a right of retention for all claims against the Customer that are due or not yet due under the Storage Contract on all of the goods or other items of value under his power of disposal. The lien and right of retention shall not be in excess of the statutory lien and statutory right of retention.

8.2 Should the Storage Company avail itself of its right to sell the items of pledged property in his possession, the sending of a notification to the last address of the Customer disclosed to it pursuant to clause 5.3 hereof shall be sufficient for the notice warning of the impending auction and giving the date of the auction.

8.3 The Storage Company may only exercise a lien or retention right due to claims arising from other transport contracts with the customer in so far as they are undisputed or if the financial situation of the debtor threatens the Storage Company's claim.

8.4 In all cases, a period of two weeks shall apply in lieu of the period of one month set down in Sec. 1234 German Civil Code.

8.5 The time and place of the auction shall be publicly announced upon a general description of the pledged items.

## 9. Term and Termination of the Storage Contract

9.1 If a fixed term of the Contract has not been agreed, this shall be for a minimum of one month.

9.2 Each party may terminate the storage contract by giving a written notice one month prior to the end of contract.

9.3 In the event of the termination of the Storage Contract by the Customer, a date for the delivery of the stored goods must be agreed in advance. The Customer is also obliged to pay the outstanding claims of the Storage Company up to such time.

## 10. Storage Company's Liability

10.1 Damage to Property

10.1.1 The Storage Company is liable for damage incurred by the loss of or damage to the property in the period from the acceptance for storage up to delivery unless the damage could not have been averted even through the care of a prudent businessman. This shall also apply if the Storage Company has stored the property with a third party pursuant to Sec. 472 (2) German Commercial Code.

Where the Customer is entitled to demand damage compensation for loss, he may treat the property as lost if it has not been delivered by the Storage Company within 30 days following the expiration of the delivery period, unless the Storage Company has a lien or right of retention on the goods.

10.1.2 If the Storage Company must pay damage compensation for a total or partial loss of the property, the actual cash value is to be paid.

10.1.3 In the event of damage to the property, the difference between the value of the undamaged goods at the location and the time of acceptance for storage and the value the damaged goods would have had at the time and place of such acceptance shall be refunded. It shall be assumed that the costs to be spent to avert and remove damage shall be equivalent to the difference to be calculated in accordance with the sentence 1 hereof.

10.1.4 The value of the property shall be governed by the market price, and otherwise by the fair market value of items of

the same type and quality. If the property has been sold directly preceding storage, it shall be assumed that the purchase price stated by the seller in his invoice minus any transport costs is the market price.

#### 10.2 Other damages

The Storage Company shall replace pecuniary damage resulting from the loss of or damage to the property, pecuniary damage following the delivery of the wrong items or delayed delivery, pecuniary damage because of incorrect advice to the customer or other pecuniary damage if he is guilty of gross negligence or intent.

#### 11. Exclusion of Liability

The Storage Company is not liable for damage caused

- 11.1 by acts of God;
- 11.2 by the fault of the Customer or authorised persons;
- 11.3 by war or war-like events and government orders, including, but not limited to, seizures;
- 11.4 by nuclear energy;
- 11.5 to radioactive materials;
- 11.6 to items which has been caused by radioactive materials;
- 11.7 by explosive, inflammable, radiating, spontaneously combusting, poisonous, corrosive materials, oils, fats and animals;
- 11.8 due to the nature or poor quality of the stored property such as detachment of glue, cracks or dullness of polish, oxidation, intrinsic deterioration, leaks or seepages;
- 11.9 or loss of the stored property located in containers of any kind, provided that they have not been packed or unpacked by the Storage Company, unless the Customer can prove that the damage occurred because of the treatment by the Storage Company;
- 11.10 or damage to property of unusual value such as precious metals, jewels, precious stones, money, stamps, coins, securities of all kinds, papers, official documents, data carriers, works of art, fine carpets, antiques, collectors' items, unless the items have been indicated by the Customer in the Inventory in text form as being valuable so that special protective measures may be adopted;
- 11.11 damage to the functioning of radios, televisions or similarly sensitive machines or appliances;
- 11.12 to the content of the loading units which were packed by the Customer and/or delivered to the Storage Company in a sealed condition and/or were sealed by the Customer after proper packing;
- 11.13. damage to live plants and live animals.

#### 12 Limitations of Liability

- 12.1 The Storage Company's liability in the event of the loss of or damage to the stored property (property damage) is limited upon storage
  - 12.1.1 in the case of property damage to 8,33 special drawing right) per kilogramme of the gross weight of the shipment, € 5,000 per container or loading unit (container, pallet, break bulk cargo), but a maximum of € 35,000 per event of damage,
  - 12.1.2 in the case of the Customer's damage to € 70,000 for the difference what the inventory should be and actually is , irrespective of the number of the instances of loss causing the difference in inventory.
- 12.2 The aforesaid limitations of liability shall not apply if the Customer stated a higher value of the goods to be stored in writing prior to the grant of contract.  
The indicated value of the goods for which the Customer has taken out insurance with the Storage Company shall be

deemed to have been agreed as the liability ceiling. The resulting costs, as well as any special security measures, shall be borne by the Customer.

- 12.3 The Storage Company's liability is limited to € 2,5 MM per damaging event. This applies to all damages/losses which are not considered personal injuries or damages caused to third parties – regardless of the number of claims arising from an occurrence of damage. When there is more than one aggrieved party, the Storage Company shall be liable in proportion to their claims.
- 12.4 The foregoing exclusions and restrictions of liability in sections 11 and 12 shall not apply if the damage was caused by the intent or gross negligence of the Storage Company or his managers or through the breach of major contractual duties. In the latter case, damage claims shall be limited, however to foreseeable, typical damage. Express notice is made of the Customer's duty to provide advice in section 3.

#### 13. Liability for Third Parties

The Storage Company shall be liable for its servants and for the other persons of which it avails itself for the execution of the performance taken on by the Storage Company.

#### 14. Forfeiture of Claims

- 14.1 The Customer must comply with the following damage notice periods:
  - 14.1.1 Apparent damages, loss, partial losses or damages to the stored property shall be reported in text form by the Customer; in the event that he collects them himself, no later than upon handing out of the property, and in all other cases on the day after delivery.
  - 14.1.2 Non-visible damage shall be reported to the Storage Company in text form within 7 days of the acceptance of the stored property. If the Customer has estimated the packaging of the goods himself, he must prove that this damage occurred during the storage or handling of the deposited goods by the Storage Company.
  - 14.1.3 Damage due to overruns of the delivery deadlines must be asserted in text form within 21 days, calculated from the date of delivery. Claims due to overruns on the delivery deadline shall lapse upon the expiry of this deadline.
- 14.2 Upon expiry of the deadlines for notices of defect under clauses 14.1.1 and 14.1.2 is shall be assumed that the goods are complete and undamaged.

#### 15. Venue

In the event of disputes based on this Storage Contract and concerning claims on other legal grounds which are related to the Storage Contract, the court in whose district the branch of the Storage Company commissioned by the Customer is located shall have exclusive jurisdiction.

#### 16. Final Provisions

- 16.1 Should individual provisions be invalid, this shall not affect the validity of the remaining provisions. The parties to the contract are obliged to replace the invalid provision by a new clause coming as close as possible to the commercial effect of the invalid clause.
- 16.2 Should a party to the contract stop payment or if insolvency proceedings concerning his assets or an out-of-court settlement are filed for, the other party shall be entitled to rescind the contract for the as yet unperformed portion.