

Standard Terms and Conditions ART
Brandl Transport GmbH Cologne
(hereinafter referred to as *BT*)
(October 2003)

Preamble

The Standard Terms and Conditions 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 referred to as Object(s) 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 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 aforestating provisions the client shall be strictly liable (irrespective 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 *BT* on the application of the Standard Terms and Conditions ART.

2. Information on the Objects of Art

- 2.1. The client shall inform *BT* in writing at the time of the order about addresses, symbols, numbers, amount, kind and content of the packed 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 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.

3. Liability

- 3.1. With respect to international orders, *BT* 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, *BT* shall only be liable according to the terms and conditions agreed upon with the foreign partner. *BT* shall only be liable to a further extent if the damage results from any negligence on the side of *BT*.

- 3.2. In all other matters *BT* is liable for any acts committed by its staff and by third parties instructed by *BT* as if such acts had been committed by *BT* itself. *BT* shall be liable for:

- damages caused to the goods themselves (Güterschäden) i.e. loss of an Object of Art or damage caused to it
- indirect damages of the goods (Güterfolgeschäden) i.e. losses resulting from a damage of the good
- consequential damages (reine Vermögensschäden) i.e. damages which do not relate to any damage of goods or any other damage of such kind unless *BT* or any third parties instructed by it have acted negligently. In case of a transport by vehicle on the road, by plane, railway or maritime transport, *BT* 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, *BT* 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 *BT* – 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 gross 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, *BT* shall indemnify the client for any damage proved if *BT* 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, *BT* 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.

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- 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 *BT* 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, *BT* 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 *BT* 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 shall apply to every claim against *BT* regarding Objects of Art which are subject to a client's contract with *BT*, irrelevant of the legal ground on which the claim is based. This exclusion and limitation of liability can also be invoked by *BT*'s employees and persons for which *BT* 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 *BT* 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 *BT* harmless of third parties' claims brought against *BT* 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 seven 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 *BT* shall have the right to charge interest at the rate of 10% from the date of default plus locally usual costs, notwithstanding *BT*'s right to prove higher damages.
- 7.2. Upon demand, the client shall immediately hold *BT* harmless of all freight charges, charges and contributions in connection with an accident, tariffs, taxes and other expenses which were charged to *BT* as the person entitled to dispose or as bailee.
- 7.3. Against claims resulting from this agreement and against non-contractual claims related thereto a set-off or a right of retention shall only be admissible if the counterclaims are due and unchallenged.
- 7.4. *BT* 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, *BT* 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. *BT* is also entitled to such sale if the client cannot be determined subsequent to due inquiries. *BT* 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 time-barred 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. Miscellaneous**
- 8.1. These Terms and Conditions and the entire legal relations between client, recipient or claimant are subject to the laws of the Federal Republic of Germany.
- 8.2. If the client has to be considered a business person (Kaufmann) as stipulated by the German Commercial Code (Handelsgesetzbuch) or a legal entity or separate estate under public law (Juristische Person des öffentlichen Rechts or öffentlich-rechtliches Sondervermögen), the place of performance and the exclusive place of jurisdiction for all disputes resulting directly or indirectly from this agreement shall be Cologne.
- 8.3. Should any provision of these Terms and Conditions or a provision in context with another agreement be or become void, this shall not affect the validity of all remaining provisions or clauses.
- 8.4. In case of ambiguities or discrepancies of the English version from the German text, the German text shall always prevail.