General Removal Terms and Conditions of the SWISS MOVERS ASSOCIATION (SMA)

SWISS MOVERS ASSOCIATION

Art. 1 Scope of application

The following terms and conditions of the SWISS MOVERS ASSOCIATION (GTC SMA) are applicable to all legal agreements concluded by SMA members, insofar as these agreements are not subject to the General Storage Terms and Conditions of the SMA.

If contradictory regulations or agreements exist, then the following order of precedence shall apply: 1. Mandatory statutory provisions; 2. Individual contractual agreements; 3. GTC SMA; 4. Non-mandatory provisions of law.

Art. 2 Order placement

Orders must be placed in writing within the meaning of Art. 13 f. of the Swiss Code of Obligations ("OR"). Quotations shall lapse if they are not accepted within 90 days.

The order must contain all the necessary information for proper execution, in particular addresses, volumes, quantity and characteristics of the cargo or local conditions at the place of loading and unloading. In addition, the Principal must draw attention to any special characteristics of the cargo or its particular susceptibility to damage, as well as any hazardous goods or other goods which require special handling or which could represent a danger for the environment, persons or other goods – in order to enable the Haulage Contractor to take appropriate measures. The costs thereby incurred shall be borne by the Principal.

Unless otherwise expressly agreed, the following are excluded from the transport (prohibited cargo): animals, cash, negotiable bearer securities, precious metals and gemstones, firearms with their components and munitions, dangerous goods such as gas cylinders or jerricans, human mortal remains, pornography, illegal drugs or other illegal items.

It shall be assumed, unless proved otherwise, that the cargo which is to be transported constitutes used personal effects. The Haulage Contractor shall not be required to add reservations in acceptance protocols or inventory lists on the grounds of normal wear and tear. If the Principal orders new items to be transported, then he must explicitly inform the Haulage Contractor of this in writing.

Art. 3 General assumption of transport

Each order is contingent upon the prevalence of normal access conditions; the main thoroughfares as well as the roads and paths leading to the places of loading and unloading must be accessible for the deployed transport vehicles. In the case of front gardens etc., normal access conditions mean a distance of up to 15 metres (unobstructed access) between the vehicle and the entrance to the building as well as cumulative rooms which are not higher than the second story or lower than the second basement level. Corridors, stairs, windows etc. must facilitate trouble-free transportation. Furthermore, the official regulations must permit the execution of the order in the intended manner.

In all other cases the price of the removal shall be raised in accordance with the additional incurred costs.

Art. 4 Rights and obligations of the Haulage Contractor

The principal contractual performance of the Haulage Contractor constitutes taking over the dismantled, properly and securely packed cargo at the place of loading, the loading and stacking thereof in the means of transport, the transportation of the cargo to the place of unloading, the unloading of the cargo at the place of unloading and the initial placement thereof in the rooms specified by the Principal.

The Haulage Contractor is obliged to provide the means of transport required for the execution of the order at the agreed time. The Haulage Contractor shall perform his duties in accordance with the provisions of the order and with the necessary diligence. The Haulage Contractor does not guarantee any delivery period. The delivery of the cargo at the place of destination must be performed immediately following the arrival of the cargo or as agreed.

The Haulage Contractor is neither obliged to check the contents of transport containers or packed items or consignments, nor to undertake weight or measurement checks. The Haulage Contractor is not obliged to check the appropriateness or transport-safety of packaging. If the Haulage Contractor ascertains clear shortcomings or ambiguities, then the Principal shall be informed thereof without delay.

The Haulage Contractor is only obliged to obey instructions issued by the party with the power to issue instructions. Should a third party have the power to issue instructions, then this must be reported to the Haulage Contractor in writing.

Should obstacles appear en route which have the effect of making the continued transportation impossible or unreasonable (blocked or damaged roads, official directives etc.), then the Haulage Contractor shall obtain instructions from the party with the power to issue instructions. If the Haulage Contractor does not receive any instructions within the deadline specified below, then he may at his own choice either put the cargo into storage at the expense of the Principal or may take an alternative route of his own choice. In the case of international transportation, the deadline is 4 hours, in the case of national transportation the deadline is 1 hour. The same rules shall apply mutatis mutandis if the recipient is unwilling to receive the cargo or cannot be reached (delivery obstacles).

Any space in the cargo hold which exceeds the volume agreed with the Principal shall remain at the disposal of the Haulage Contractor.

The Haulage Contractor is entitled to assign the execution of the accepted order to a third party wholly or in part.

Art. 5 Rights and obligations of the Principal

The Principal shall be responsible for ensuring that the packaging is appropriate and safe for transportation. In particular, but not exclusively, fragile objects, lamps, lampshades, plants and technical equipment (televisions, computers etc.) must be packed in such a manner that they are sufficiently protected against the forces to which they may be exposed during transportation. Cargo which is not packed appropriately or safely for transportation may be rejected, without this affecting the other contractual rights and obligations.

The Principal must ensure that the removal work can commence at the agreed time or immediately upon the arrival of the transport vehicles. The Principal shall be exclusively responsible for checking whether all of the cargo intended for transportation has been loaded, and that no cargo is loaded which is not intended for transportation.

The Principal or his staff should not perform any works for which the Haulage Contractor is responsible, nor should they support the work of the Haulage Contractor. If the Principal or his staff nevertheless perform such activities, then they shall do so at their own risk and not as vicarious agents of the Haulage Contractor.

The Principal shall be responsible for procuring all documents, permits and barriers required for the execution of the transport.

The Principal is obliged to declare the cargo truthfully and shall assume full responsibility for his declaration vis-à-vis the Haulage Contractor and his vicarious agents as well as public authorities (in particular customs organs).

The Principal shall be responsible for procuring the necessary customs documents and shall also be responsible for ensuring that these are correct. The Principal shall be liable for all consequences arising out of the absence, the delayed forwarding and the incompleteness or inaccuracy of such documents. He shall be liable vis-à-vis the Haulage Contractor for all expenses arising out of the customs processing of the cargo. The price for the customs processing costs shall be conditional upon normal processing. The Haulage Contractor must be correspondingly reimbursed for extended customs visits and special negotiations with the responsible authorities. The Haulage Contractor is not obliged to advance any freight charges, customs or duties. The Haulage Contractor may demand the advance payment of these items by the Principal in the respective currency. If the Haulage Contractor advances the sums required for such items, then he must be recompensed for the advance commission and interest as well as a reasonable exchange rate loss.

Art. 6 Prices

If no all-inclusive price has been agreed, the price shall be calculated on a time and materials basis. If an all-inclusive price has been agreed, then the principal contractual performance of the Haulage Contractor pursuant to

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Art. 4 shall be included. All further performances are not included and must be remunerated separately, such as in particular (but not exclusively):

a) all packing and unpacking or putting away of the removal cargo;
b) repositioning of furniture at the place of unloading following the initial positioning;
c) special transport or return transport of packing material, as well as the hiring or purchase thereof;
d) dismantling and assembly of furniture;
e) transport of refrigerators/freezer chests with a capacity of over 200 l, upright pianos, grand pianos, safes and other items with a net weight of 100 kg or more;
f) removal and affixing of pictures, mirrors, clocks, lamps, curtains, fitted cabinets etc.;
g) additional costs incurred in conjunction with items which need to be transported through windows or over balconies;
h) premiums of transport insurance policies;
i) customs processing, customs duties and customs expenses;
j) road taxes and ferry costs as well as official fees of all kinds;
k) additional expenditure or additional performances in the interests of the removal, even if not specifically commissioned;
l) additional expenditure attributable to transport or delivery obstacles (demurrage, route diversions, waiting periods for the transport vehicle and personnel, storage, etc.) which are not caused by the fault of the Haulage Contractor
m) additional expenditure caused by the carrying of the cargo in conjunction with access conditions which are not considered normal within the meaning of Art. 3.

Pursuant to legal regulations, the connection of lighting and other devices connected to the electricity network may not be performed by the transport personnel.

Art. 7 Payment

Removals must be paid in cash. The transport price is due for payment before the start of the performance to be rendered.

Where the carrier makes an advance payment or where payment on account has been agreed, in the event of a delay in payment the customer is required to pay a fee of CHF 50 in addition to the statutory default interest.

Art. 8 Changed arrangements / withdrawal of the Principal

The Principal is entitled to change the arrangements pertaining to a transport operation which is in the process of being performed, in return for the full settlement of all additional expenditure incurred thereby.

Any possible withdrawal of the Principal must be made in writing.

In the event of a withdrawal within 14 calendar days of the planned move, 30% of the sum specified in the offer shall be due in the form of flat-rate compensation. In the case of withdrawal within 48 hours, the respective sum owed shall be 80%. If the Haulage Contractor is able to prove that he has suffered greater damage, then this must also be compensated.

Art. 9 Right of retention

The cargo entrusted to the Haulage Contractor shall be held as a pledge for the respective balance arising out of the entire business transaction with the Principal. Following the fruitless expiry of a payment deadline imposed by the Haulage Contractor in conjunction with the threat of exploitation, the Haulage Contractor may optimally exploit the respective cargo on the open market without further formalities.

Art. 10 Liability

In the event of damage caused through mild negligence, the liability of the Haulage Contractor shall be excluded in application of Art. 447 Para. 3 and 448 Para. 2 OR. In the event of gross negligence or wilful intent, liability shall be limited to the respective current market value of the cargo.

The liability of the Haulage Contractor shall commence with the acceptance of the cargo and shall end at the time of contractually compliant delivery. If the cargo is justifiably handed over to another Haulage Contractor or to a storage facility, then the Haulage Contractor shall be liable only for the proper selection and instruction thereof.

Art. 11 Liability exclusion

The Haulage Contractor shall not be liable to the extent that he is able to prove that he exercised all appropriate due diligence under the circumstances to guard against damage of this nature, or that the damage would also have arisen had this due diligence been exercised.

The Haulage Contractor shall in particular be released from his liability,

- if the loss, damage or delay was caused through the fault of the Principal, by an instruction issued by him, by a defect in or the nature of the cargo or by circumstances which lie beyond the influence of the Haulage Contractor, or
- if the cargo was packed inappropriately or in a manner which was not safe for transport, unless the Haulage Contractor performed the packaging himself, or
- if particularly vulnerable items such as marble, glass and porcelain slabs, plaster frames, chandeliers, lampshades, radios and televisions, computer hardware and software as well as data losses and other highly-sensitive items are broken or damaged, unless the Principal is able to prove that the Haulage Contractor did not exercise due diligence commensurate under the circumstances, or
- if the Principal hands prohibited goods over to the Haulage Contractor (Art. 2 Para. 3) for transportation, without having first agreed this with him, or
- if damage was caused by force majeure, or
- if the Haulage Contractor draws attention to the fact (warns) that due to its size or weight a specific item cannot be removed from its current position, loaded/unloaded or raised/lowered on a rope without causing damage, and the Principal insists upon the performance of these operations notwithstanding this warning, or
- if the cargo arrives late at the place of unloading, despite the fact that the Haulage Contractor exercised due diligence commensurate under the circumstances (for example, in the event of transport obstacles which are not the fault of the Haulage Contractor).

Art. 12 Transport insurance

At the express wish of the Principal, the Haulage Contractor shall take out an insurance policy against the risks associated with the transportation (transport insurance). Insurance of the risk of breakage is conditional upon the respective items being packed and unpacked by the Haulage Contractor or his representatives. The insurance sum shall be stipulated by the Principal. The insurance policy shall apply in every case in accordance with the standard clauses of the respective “General Terms and Conditions for Insuring the Transportation of Goods” [“Allgemeinen Bedingungen für die Versicherung von Gütertransporten” (ABVT)] applied in Switzerland pertaining to the removal of used cargo. The premium for any such insurance policy shall be charged to the Principal.

If the Principal does not take out an insurance policy, he shall himself bear all risks for which the Haulage Contractor is not liable in accordance with the wording of these Conditions.

Art. 13 Complaints

The Principal must check the cargo immediately upon unloading. Complaints brought on the grounds of loss or damage must be brought immediately at the time of the delivery of the cargo and must moreover be confirmed in writing to the Haulage Contractor within three days. Damage which is not immediately apparent must be reported to the Haulage Contractor in writing within three days following the discovery thereof, although at the latest seven days after the rendering of the service.

Following the expiry of these deadlines it shall no longer be possible to consider any further complaints.

Art. 14 Place of jurisdiction and applicable law

In respect of the adjudication of all disputed claims between the contracting Parties arising out of the Agreement, the registered domicile of the Haulage Contractor shall be the place of jurisdiction.

Swiss law shall be applicable, subject to the exclusion of the rules pertaining to international private law.

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