

## ALB 2022

### General terms and conditions of warehousing of the german furniture removal industry

#### 1. Scope of these Terms and Conditions

- 1.1 The following General Terms and Conditions of Warehousing of the German Furniture Removal Industry are deemed to have been agreed for the 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 Warehouse Operator shall be rendered exclusively based on these Terms and Conditions, which shall also apply for all future performances even if they have not been once more expressly agreed.
- 1.3 General Terms and Conditions for Removals and Warehousing have been agreed in addition, the ALB 2022 shall prevail in the case of conflicts between individual clauses or where a situation cannot be allocated to one contract.

#### 2. Performance of the Warehouse Operator

- 2.1 The Warehouse Operator shall perform his obligations with the usual care of a prudent Warehouse Operator and upon protection of the interests of the Depositor against payment of the agreed fee.
- 2.2 The Warehouse Operator shall generally perform the following services:
  - 2.2.1 Storage shall be in a suitable storage facility belonging to the Warehouse Operator 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 warehouse, he discloses the latter's name and the location of the storage facility to the Depositor 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 List of the property stored under this Storage Contract shall be prepared and signed by the Depositor and the Warehouse Operator. The property shall be labelled in numerical order. The number 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 List shall be handed out or sent to the Depositor. In the case of partial removal from storage, equivalent deductions will be made on the warrant or the Inventory List or on the storage release notice.

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

- 3.1 The Depositor is obliged to make a special disclosure to the Warehouse Operator in text form if the following items are intended to be included under the Storage Contract:
  - 3.1.1 dangerous goods such as flammable or explosive or radioactive 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 during the term of warehousing. This includes especially rechargeable batteries, batteries, combustible and heating vehicles, chemical products, gases, resolvers, munitions etc.
  - 3.1.2 goods subject to rapid spoilage or decay;
  - 3.1.3 goods such as foodstuffs which can attract 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, or goods with an actual value of at least 50 euros/kg;
  - 3.1.5 live plants or animals.
- 3.2 In the case of hazardous goods, the Depositor must inform the Warehouse Operator 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, or on the handling goods or waste, the Depositor must disclose all the information required for their proper storage, particularly their classification under the applicable hazardous goods laws.
- 3.3 If the Depositor is in breach of one of in 3.1 or 3.2 mentioned duties of disclosure, the Warehouse Operator shall be free
  - to refuse acceptance of the goods,
  - to return goods he has already accepted or to hold them for pickup by the Depositor
  - to store them elsewhere without informing the Depositor or to destroy them in the event of immediate risks arising from the goods.
- 3.4 The Depositor's liability under Sections 468, 414 German Commercial Code may not be less than one million euros per event of loss. Proof of equivalent liability insurance must be provided upon the request of the Warehouse Operator.

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#### **4. Inventory List of Stored Property**

- 4.1 The Depositor is obliged to check the Inventory List of the stored property for accuracy and completeness and to sign it. If the Depositor is present upon storage, complaints must be issued in text form immediately upon the completion of the storage. If the stored property is brought to the storage facility in the absence of the Depositor, the Depositor must present any complaints within 7 days of the receipt of the Inventory List of stored property. If complaints are not made in the aforesaid period, it shall be assumed that the Inventory List is complete and correct.
- 4.2 The Warehouse Operator is entitled to surrender the stored property upon presentation of the Warehousing Contract, including the Inventory List or an equivalent note of transcription contained on the Inventory List unless the Warehouse Operator 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 Warehouse Operator is authorised, but not obliged, to check the proof of authority of the person presenting the Storage Contract.
- 4.3 The Depositor is obliged to surrender the Storage Contract upon the complete delivery of the stored property and to issue a written acknowledgement of receipt.

#### **5. Execution of Warehousing Duties**

- 5.1 The Depositor is entitled to inspect the storage space prior to storage himself or through another person in co-ordination with the Warehouse Operator. 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 Warehouse Operator complying with normal industry standards.
- 5.2 The Depositor is entitled to enter the storage facility during the Warehouse Operator's normal business hours if the visit has been arranged in advance and the Storage Contract/Inventory List has been presented.
- 5.3 The Depositor is obliged to inform the Warehouse Operator immediately in text form of any changes in his address. In the absence of such notification, the Depositor shall not be entitled to claim that he has failed to receive notices the Warehouse Operator has sent to the last address disclosed to him.

#### **6. Warehousing Fee**

- 6.1 Invoices of the Warehouse Operator for warehousing fees, fees for ancillary performance, insurance premiums and expenses are immediately due for payment.
- 6.2 The invoiced amounts are net amounts. The Depositor shall pay the additional value-added tax in the respective statutory amount.
- 6.3 Provided a monthly payment arrangement was agreed for the warehousing fee, the Depositor is obliged to pay the monthly warehousing fee to the Warehouse Operator in advance by no later than on the 3rd working day of the month.

- 6.4 The Warehouse Operator shall be reimbursed for his necessary out-of-pocket expenses.
- 6.5 The costs of storage, visits of the storage facility, partial storage and removal as well as subsequent storage shall be charged as incurred unless otherwise agreed.

#### **7. Set-off, Assignment, Pledge**

- 7.1 Only claims of the Depositor due for payment which are ripe for judgment, are not contested or for which a final judgment has been issued may be set off against the Warehouse Operator'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 Warehouse Operator.
- 7.3 The Warehouse Operator 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 Warehouse Operator knows or remains unaware due to its own negligence that the signatures are forged, or the signer is not authorised.

#### **8. Warehouse Operator's Lien and Right of Retention**

- 8.1 The Warehouse Operator shall have a lien and a right of retention for all claims against the Depositor that are due or not yet due under the Storage Contract on all 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 Warehouse Operator avail himself of his right to sell the items of pledged property in his possession, the sending of a notification to the last address of the Depositor 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 Warehouse Operator may only exercise a lien or retention right due to claims arising from other transport contracts with the Depositor in so far as they are undisputed or if the financial situation of the debtor threatens the Warehouse Operator'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 Warehousing 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 Warehousing Contract by giving notice in text form upon a notice period of one month.
- 9.3 In the event of the termination of the Storage Contract by the Depositor, a date for the delivery of the stored goods must be agreed in advance. The Depositor is also obliged to pay the outstanding claims of the Warehouse Operator up to such time.

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### 10. Warehouse Operator's Liability

#### 10.1 Damage to Property

10.1.1 The Warehouse Operator 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 Warehouse Operator has stored the property with a third party pursuant to Sec. 472 (2) German Commercial Code.

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

10.1.2 If the Warehouse Operator 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 mitigate and remedy damage shall be equivalent to the difference to be calculated in accordance with 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 Warehouse Operator 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 Depositor or other pecuniary damage if he is guilty of gross negligence or intent.

### 11. Exclusion of Liability

The Warehouse Operator is not liable for damage

- 11.1 arising from acts of God;
- 11.2 caused by the fault of the Depositor 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 Warehouse Operator, unless the Depositor can prove that the damage occurred because of the treatment by the Warehouse Operator;

11.10 to or loss of 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 Depositor in text form as being valuable so that special protective measures may be adopted;

11.11 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 Depositor and/or delivered to the Warehouse Operator in a sealed condition and/or were sealed by the Depositor after proper packing;

11.13 to live plants and live animals.

### 12. Limitations of Liability

12.1 The Warehouse Operator's liability in the event of the loss of or damage to the stored property (property damage) is limited upon storage

12.1.1 according to Sec. 431 paragraph 1,2 and 4 German Commercial Code to 8,33 special drawing rights for each kilogram,

12.1.2 a maximum of € 35,000 per event of loss,

12.1.3 where, in the case of damage to the Depositor, the damage is comprised of the difference between what the Inventory should be and actually is, in deviation from the provision of clause 12.1.2, the Warehouse Operator's liability shall be limited to € 70,000 per year, irrespective of the number and nature of the instances of loss causing the difference in Inventory.

12.2 The aforesaid limitations of liability shall not apply if the Depositor stated a higher value of the goods to be stored in text form prior to the grant of contract.

The indicated value of the goods for which the Depositor has taken out insurance with the Warehouse Operator shall be deemed to have been agreed as the liability cap. The resulting costs, as well as any special security measures, shall be borne by the Depositor. The Depositor may specify in text form a figure for increasing liability which exceeds the maximum amounts set down in clause 12.1.1 against payment of a surcharge to be agreed between the parties. In this case, the stated figure will replace the relevant maximum amount.

12.3 The Warehouse Operator's liability is limited to € 2.5 MM for all damage which is not personal injury or damage incurred by third parties, regardless of the number of claims arising from an event of loss. Where there is more than one aggrieved party, the Warehouse Operator shall be liable in proportion to their claims. Clause 12.2 remains unaffected.

12.4 The foregoing exclusions and restrictions of liability in clauses 11 and 12 shall not apply if the damage was caused by the intent or gross negligence of the Warehouse Operator or his managers or through the breach of primary contractu-

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al duties. In the latter case, damage claims shall be limited, however, to foreseeable, typical damage. The Depositor is hereby expressly advised of the disclosure duties in clause 3.

- 12.5 In deviation from clause 12.4, the liability caps in clauses 12.1 and 12.2 shall only not apply in the event of grossly negligent or intentional breaches of primary contractual duties.

#### **13. Liability for Third Parties**

The Warehouse Operator shall be liable for his servants and for the other persons he uses for the execution of the performance taken on by the Warehouse Operator.

#### **14. Forfeiture of Claims**

- 14.1 The Depositor must comply with the following damage notice periods:

14.1.1 Obvious damage, or the complete or partial loss of the stored property must be reported by no later than upon the handing out of the property where the Depositor collects the property himself; in all other cases this must be reported in text form by no later than on the day after delivery.

14.1.2 Non-visible damage shall be reported to the Warehouse Operator in text form within 7 days of the acceptance of the stored property. If the Depositor has taken care of the packaging of the goods himself, he must prove that this damage occurred during the storage or handling of the deposited goods by the Warehouse Operator.

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 damage notice periods under clauses 14.1.1 and 14.1.2 it 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 Warehouse Operator commissioned by the Depositor 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.

#### **17. Choice of Law**

German law shall apply.

#### **18. Data Protection**

The privacy policy of the Warehouse Operator applies for the processing of personal data.

#### **19. AMÖ Conciliation Board**

The commissioned Warehouse Operator is obliged and willing to participate in conciliation proceedings before a consumer conciliation board. Responsible for the commissioned Warehouse Operator is the „Conciliation Board Removals“ at

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