

# **General Austrian Forwarders' Terms and Conditions**

## **I. General**

### **Section 1**

The freight forwarder ("forwarder") will execute his commercial activities with the due care and diligence of a prudent businessman, safeguarding the interests of the principal.

### **Section 2**

(a) The General Austrian Forwarders' Terms and Conditions apply to all activities performed by the forwarder in the course of commercial transactions with businessmen and companies under Section 1 Para. 2 of the Consumer Protection Act, irrespective of whether it concerns forwarding, freight, warehousing, commission or any other business related to or connected with the forwarding industry.

(b) The General Austrian Forwarders' Terms and Conditions do not apply

(1) if the forwarder is acting solely as vicarious agent of a transport company in accordance with special conditions, or as surface transport entrepreneur on the basis of a surface transport contract of the Austrian Federal Railways;

(2) to the transportation of removal goods using a removal van (trailer, swap-body, container, lift-van), as well as warehousing of removal goods; transportation of removal goods for principals in the sense of Para. (a) above, either domestic or to and from foreign countries, is subject to the General Austrian Forwarders' Terms and Conditions, provided that the forwarding activities are covered under Section 407 of the Austrian Commercial Code.

(c) The General Austrian Forwarders' Terms and Conditions take precedence over local and municipal commercial practice. Mandatory provisions limit the effective scope of the General Austrian Forwarders' Terms and Conditions accordingly. In the case of ocean and inland waterway transportation, deviating arrangements may be concluded in compliance with special shipping terms and conditions of the forwarder.

(d) Furthermore, the terms and conditions stipulated by third parties involved in the execution apply.

### **Section 3**

The rights of the principal may only be assigned to third parties, and claims against the forwarder in the name or for the account of third parties (cf. Section 67 of the Insurance Contract Act) may only be asserted to the extent that such rights or claims against the forwarder are based on these terms and conditions.

### **Section 4**

All quotations made by the forwarder are only valid subject to prompt acceptance for immediate execution of the order concerned, unless stipulated otherwise in the quotation, and only to the extent that the quotation is referenced in the confirmation of the order.

## **II. Unacceptable Goods**

### **Section 5**

(a) Unless expressly agreed upon in writing, all goods that could be detrimental to individuals, animals, goods or other objects, or that are liable to rapid spoiling or decay, will not be accepted.

(b) If these goods are handed to the forwarder without special notification or identification, the principal will be liable for any resulting damages, even if he was not responsible for the damage.

(c) To the extent justified by such circumstances, the forwarder may sell the goods either publicly or privately, without resort to legal process. If possible, the principal should

be notified of any such intended sale. In cases of imminent danger, the forwarder may also destroy such goods, even if prior notification to the principal has not been made.

### **III. Orders, Communication, Instructions and forwarder's Discretion**

#### **Section 6**

The forwarder assumes no liability for the compliance with orders placed either verbally, by telephone or telegraph, or by any other form of notification, which have not been confirmed in writing by either party, including compliance with any communication made to drivers or accompanying personnel. All goods and documents of any type whatsoever will be released to the forwarder's employees at the sole risk of the principal, unless expressly or implicitly otherwise agreed in advance with the forwarder or one of his authorized employees.

#### **Section 7**

(a) All orders placed with the forwarder must contain marking, number, type and content of the consignments, as well as any other information necessary for the proper execution of the orders. The principal will be liable for any consequences of incorrect or incomplete information (even if he was not responsible for the release), unless the forwarder had prior knowledge of the incorrectness or incompleteness of the information. The forwarder is only be obliged to review and supplement such information without being requested to do so if this accords with general business practice. Furthermore, the principal will be liable for any damage caused by the forwarder or third parties due to the absence of weight specifications on freight with a minimum gross weight of 1,000 kg.

(b) The forwarder is obliged to weigh the goods only upon special written request to do so.

(c) A receipt issued by the forwarder will, in case of doubt, not include a guarantee as to the type, content, value, weight or packaging of the goods.

(d) The goods receipt will not include confirmation of quantity, if this is not usual in the forwarding industry (such as bulk goods, lorry-loads, and the like).

#### **Section 8**

Should manufacturers or dealers of specific products release a consignment without statement of contents to the forwarder for dispatch, it will be assumed in case of doubt that the consignment contains the products of the dispatcher. The terms and conditions set out in Section 7 remain unaffected.

#### **Section 9**

The principal will notify the forwarder without delay of his address and any change of address. Otherwise, the last address known to the forwarder will apply.

#### **Section 10**

(a) Unless specifically requested in writing, the forwarder is not obliged to send notifications by registered mail, or to insure documents of any type whatsoever prior to dispatch.

(b) The forwarder is not obliged to verify the authenticity of either the signatures on any communication or other documents concerning the goods, or the authority of the signing officer, unless otherwise agreed upon with the principal in writing, or unless the lack of authenticity or authorization is obvious.

(c) The forwarder is entitled, but not obliged, to consider a notification (advice) sent by him to be sufficient evidence of dispatch. He is entitled, but not obliged, to verify the authorization of any party presenting documents to him.

#### **Section 11**

(a) Any instructions made with respect to the goods will be decisive for the forwarder pending the principal's revocation of it.

(b) An instruction to hold goods at the disposal of third parties cannot be revoked once the forwarder has received these instructions.

#### **Section 12**

An instruction by the principal to carry out an order on account of a third party will not affect the principal's obligation towards the forwarder.

#### **Section 13**

In case of insufficient or impractical instructions, the forwarder is entitled to act at his own discretion in the interest of the principal, and in particular to choose the type, route or means of transportation.

#### **Section 14**

The forwarder may dispatch the goods together with those of other consignors in consolidated shipments or on a general bill of lading, unless he has been expressly ordered in writing to proceed otherwise. The acceptance of a package cargo bill of lading will not be deemed to be a contrary order.

#### **Section 15**

If the forwarder accepts the goods together with a bill of lading or any other freight document (waybill/consignment note) given to him by the principal, the forwarder is entitled to convey the goods with a new bill of lading bearing his trade name and the name of the principal, unless the latter has stipulated otherwise.

### **IV. Inspection, Maintenance and Packing of Goods**

#### **Section 16**

(a) In the absence of a written agreement, the forwarder is only be obliged to inspect, maintain and rectify any damage to the goods and their packaging within the scope of general business practices. Section 388 Para. 1 of the Austrian Commercial Code remains unaffected.

(b) In the absence of instructions to the contrary, the forwarder is entitled to make all declarations required by the Austrian Federal Railways concerning lacking or deficient packaging.

### **V. Time Periods and Deadlines**

#### **Section 17**

No guarantee will be granted for loading times or a specific sequence of goods handling to be transported in the same manner unless specifically agreed. In the absence of such an agreement, goods marked as trade or fair goods will not receive preferential handling.

### **VI. Force Majeure**

#### **Section 18**

Circumstances (including strikes and lock-outs) for which the forwarder is not responsible, but which prevent him in whole or in part from fulfilling his obligations, will release him from his obligations in connection with the orders affected by such circumstances, as long as such circumstances continue. In such cases the forwarder will be entitled but not obliged (even if a fixed date for acceptance of the goods has been agreed) to withdraw from the contract, even if the order has already been partially carried out. In such cases the principal is entitled to the same rights, provided that he cannot be reasonably expected to execute the contract. Should the forwarder or the principal withdraw from the contract in accordance with the provisions set out above, the forwarder must be recompensed for all resulting costs.

#### **Section 19**

Within the scope of his duty to be diligent, the forwarder must check whether legal or official impediments exist concerning forwarding, and must inform the principal accordingly.

## **VII. Forwarder's Services, Remuneration and Expenses**

### **Section 20**

Offers by the forwarder and agreements with him regarding price and services always refer to his own services or those of third parties, and to goods of normal size, weight and characteristics. The following presumptions are made: Normal unfettered transport, unimpeded access and the possibility of immediate on-shipment. Furthermore it is assumed that freight rates, exchange rates and tariffs upon which the quotation was based remain valid. The forwarder may charge the usual supplements and surcharges, provided that he has drawn the principal's attention to them. The note "plus the usual ancillary charges" is sufficient for this purpose.

### **Section 21**

Should an order be withdrawn, the forwarder is entitled at his own discretion to demand either payment of the agreed remuneration (minus expenditures not incurred), or of a reasonable commission fee.

### **Section 22**

Should a consignee refuse acceptance of a consignment dispatched to him, the forwarder is entitled to reasonable remuneration for the return transport of such a consignment. Should the forwarder incur expenses due to delayed acceptance of delivery, such expenses will be borne by the principal.

### **Section 23**

The commission will also be collected if a C.O.D. or other collection order has been withdrawn retroactively, or if payment for an order has not been received.

### **Section 24**

If the forwarder has arranged for the shipment of goods to a foreign country up to the recipient's door at a fixed percentage of the invoice value (including customs charges), the principal is obliged to declare the total invoice value irrespective of any cash discounts granted (including customs, freight and packing charges).

### **Section 25**

- (a) The instruction for shipment to a destination in another country includes instructions for customs clearance, if this is necessary for arranging the transport to the place of destination.
- (b) The forwarder is entitled to an extra fee for customs clearance, over and above the actual costs incurred.
- (c) The instruction to forward bonded goods or to deliver them free house, authorizes the forwarder at the same time to effect customs clearance at his own discretion (Section 13) and to advance the applicable customs and excise duties and fees.
- (d) Should the principal give the forwarder instructions concerning the handling of customs formalities, these must be strictly complied with. Should the handling of customs formalities according to the principal's instructions not be possible, the forwarder must inform him accordingly without delay.

### **Section 26**

The order to receive incoming goods authorizes (but does not oblige) the forwarder to pre-pay all charges imposed on the goods concerning freight, collection fees, customs duties and expenses incurred.

### **Section 27**

The forwarder is entitled at his own discretion to demand payment from foreign consignees and principals either in the currency of their country or that of Austria, under observance of existing foreign currency regulations.

#### **Section 28**

If the forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand (unless stipulated otherwise by provisions under public law) at his discretion either payment in foreign or Austrian currency. If he demands payment in Austrian currency, the current exchange applicable on the day the order was commissioned will be used, unless he can prove to have paid a higher rate of exchange rate.

#### **Section 29**

All the forwarder's invoices must be paid promptly. Payments will be deemed in arrears by no later than a period of five days following their due date, with no reminders or other requirements (unless delay in payment according to law has already occurred at an earlier date). In case of default the forwarder is entitled to charge local interest and expenses. Any further claims under law remain unaffected.

#### **Section 30**

(a) At the request of the forwarder, the principal will immediately indemnify him against any claims concerning freight, contributions and settlements of average, customs duties, taxes and other levies made against the forwarder, especially in his capacity of authorized agent or owner of third-party goods. Otherwise the forwarder is entitled to take all measures he deems appropriate for his security or indemnification, even including (if justified by the facts and circumstances) the destruction of the goods themselves.

(b) The principal must inform the forwarder in an appropriate manner about all public law obligations arising from the possession of the goods. e.g. regarding customs regulations or trademark obligations.

#### **Section 31**

Seizure of goods or any other legal action taken by public authorities does not affect the forwarder's rights concerning the principal. The principal remains the forwarder's contractual partner and is liable to the forwarder for any resulting consequences, even if he was not responsible for them. Any claims of the forwarder concerning the State or any other third party whatsoever remain unaffected.

#### **Section 32**

Claims arising out of the forwarding contract and other related claims may only be set off against counter claims, if these are undisputed.

### **VIII. Delivery**

#### **Section 33**

(a) Delivery of goods with discharging effect takes place when the goods are handed over to any adult person belonging to and present at the business or household premises of the recipient.

(b) In the absence of an agreement, the forwarder will place the goods in or on the conveyance (e.g. truck, loading ramp) in front of or, if possible, on the consignee's property for the latter's acceptance.

(c) The consignee may request that the goods are unloaded in a courtyard, onto ramps, into rooms, onto shelves and the like at his own risk and expense. This does not apply for goods weighing more than 50 kg apiece, or for goods which, due to their bulk, cannot be carried by one person alone.

### **Section 34**

(a) Upon acceptance of the goods, the consignee is obliged to immediately pay all costs concerning to the goods, including C.O.D. charges. Should payment not be effected, the driver and accompanying personnel are entitled to re-appropriate the goods.

(b) If payment of the costs upon delivery (including C.O.D. charges) is omitted inadvertently or not effected for any other reasons whatsoever, the consignee is obliged (should he fail to pay the required amount despite a reminder) to return the goods immediately and unconditionally to the forwarder, or if he is unable to do so, to pay damages to the forwarder. Assertion of counterclaims, rights of retention or disposition of the goods are not allowed.

## **IX. Insurance of Goods (Transportation, Fire Insurance, etc.)**

### **Section 35**

(a) The forwarder is not obliged to insure the goods unless an express written order (including the value to be insured and risks to be covered) has been concluded. In case of not unclear or unfeasible insurance cover, the forwarder is entitled to determine the type and scope of such insurance at his own discretion. Insurance policies will not enter into force until the forwarder, in the ordinary course of business, has been able to take out such policies.

(b) The forwarder is not entitled to consider the mere statement of value as an order to take out an insurance policy.

(c) The acceptance of an insurance policy certificate by the forwarder does not mean that he assumes the obligations concerning the insured party. However, the forwarder must take all reasonable measures to ensure the maintenance and support of all insurance claims.

### **Section 36**

In the absence of a written agreement to the contrary, the forwarder is only obliged to have insurance coverage in accordance with the usual terms and conditions relevant to his place of performance, but not including breakage risk. The forwarder will always be considered to have fulfilled his mandatory obligation to take out insurance, if coverage under an open-cargo policy has been provided.

### **Section 37**

(a) Should coverage be provided under an insurance policy, the principal is only entitled to such compensation as the forwarder has received from the insurer subject to the terms and conditions of such a policy.

(b) The forwarder has fulfilled his obligations upon assigning his claims against the insurer to the principal at the latter's request. The forwarder is only obliged to pursue claims on the basis of special written agreements and at the principal's risk and expense.

(c) The forwarder is not liable for damages covered under an insurance policy concluded by him in the name of the principal.

(d) Should the principal take out the insurance himself, any claims against the forwarder for damages concerning the risks covered under such insurance will be excluded (i.e. they cannot be assigned to the insurer).

### **Section 38**

The forwarder is entitled to special remuneration for obtaining insurance, collecting damages, compensation and other efforts involved in the handling of insurance cases and sea damage.

## **X. Forwarder's Risk and Cartage (Haulage) Insurance Policies**

### **Section 39**

(a) The forwarder will conclude, unless expressly forbidden by the principal in writing, a policy with the insurer of his choice and at the principal's expense, covering all damage, which could be caused by the principal in the course of the order's execution by the forwarder. Such an insurance policy must at least meet the requirements of the Forwarder's Risk and Cartage Insurance Policy ("Spedition- und Rollführversicherungsschein", "SVS/RVS"), particularly concerning the scope of the policy's coverage. The forwarder will make a record of premiums paid for each individual transport agreement under every order, and remit them in full to the insurer concerned in the form of expenditures incurred by the principal exclusively for payment of the forwarding insurance. The forwarder undertakes to report to the principal, at the latter's request, the name of the company from whom he has taken out the forwarding insurance.

(b) To the extent provided for in the Forwarder's Risk Insurance Policy ("Speditionversicherungsschein", "SVS"), all damage, which could be caused by those persons entitled to claim coverage at the time when the event causing the damage occurred, will also be insured.

(c) It is most strongly emphasized that, according to Section 5 Para. 1 of the Forwarder's Risk Insurance Policy, all damage covered by transport or warehousing insurance, or otherwise usually covered under such insurance, is excluded from the scope of the forwarder's insurance. On the other hand, the principal will be insured against so-called cartage damage in accordance with the Cartage Insurance Policy unless he has explicitly refused such additional insurance in writing.

(d) If the principal provides forwarding insurance himself, any claims for damages against the forwarder concerning risks covered by such an insurance policy will be excluded and may not be transferred to the forwarder's insurer.

### **Section 40**

The principal, as well as all those persons in whose interest or for whose account he acts, will be subject to all terms and conditions of the Forwarder's Risk and Cartage Insurance Policies. In particular, the principal must ensure that all damage is reported promptly (Section 10 of the Forwarder's Risk Policy).

### **Section 41**

(a) If the forwarder has provided coverage under the Forwarder's Risk Policy in compliance with an explicit or assumed order (Section 39), he will be released from liability for any damage covered under such a policy. This also applies in particular if the insured sum falls short of the actual value or damage claim due to lacking or insufficient statement of value by the principal.

(b) In case of dispute, the competent court will exclusively resolve the issue of whether damage is covered by the Forwarder's Risk Policy.

(c) Should the forwarder not have concluded a Forwarder's Risk Policy in accordance with Section 39, he may not invoke the General Austrian Forwarders' Terms and Conditions concerning the principal.

(d) Paras. (a) through (c) apply analogously to the insurance covered under the Cartage Risk Policy.

### **Section 42**

The second and third sentences of Section 35 Para. (a), apply analogously to the Forwarder's

Risk and Cartage Insurance Policies.

## **XI. Warehousing**

### **Section 43**

(a) Warehousing will be carried out at the warehouse keeper's discretion, either in his own warehouse or that of a third party (private or public). Should the warehouse keeper store goods in a third party's warehouse, he has to inform the depositor in writing of the location of the warehouse and the name of its keeper or, in case of a warehouse warrant, to mark these on the warrant. This provision does not apply in cases of warehousing abroad or warehousing connected with the transportation of the goods.

(b) If the warehouse keeper has stored the goods in a third party's warehouse, the relationship between the principal and himself according to Section 2 Para. (c) will be subject to the same terms and conditions, which apply to the relationship between the warehouse keeper and the third party concerned. If requested to do so, the warehouse keeper must supply the principal with details of such terms and conditions. However, the terms and conditions of the third-party warehouse keeper will not apply to the relationship between the principal and the warehouse keeper, to the extent that they include a right of lien exceeding the scope of the lien set out in Section 50 of these terms and conditions.

(c) The warehouse keeper is only liable for the security and surveillance of the warehouse to the extent that he himself is the proprietor and the security and surveillance of the warehouse is deemed reasonable and usual under consideration of all circumstances concerning the warehouse location. The warehouse keeper is deemed to have fulfilled his surveillance duty, provided that he has applied due and proper diligence upon recruiting and hiring security personnel.

(d) The depositor is entitled to inspect the warehouse or have it inspected. Objections or complaints about the storage of the goods or the choice of warehouse must be made without delay. If he does not exercise the right of inspection, he waves all rights to objections against the storage and warehousing, as long as the choice and type of storage complies with the due and proper diligence of a prudent warehouse keeper.

### **Section 44**

(a) The depositor can only access the warehouse if accompanied by the warehouse keeper or an employee duly authorized by him.

(b) Access to the warehouse may only be granted during the warehouse keeper's normal business hours, and only if the work can be conducted during daylight.

### **Section 45**

(a) Should the depositor handle the goods in any way whatsoever (e.g. taking samples), he will return them to the warehouse keeper in a manner appropriate under the circumstances and complying with customary business practice, and, if necessary, inspect and record the quantity, weight and state of the goods together with the warehouse keeper. Otherwise, the warehouse keeper is released from any liability for damages, which are subsequently discovered.

(b) The warehouse keeper reserves the right of handling the stored goods by his own employees in the manner requested by the depositor.

### **Section 46**

(a) The depositor is liable for all damage to the warehouse keeper, other depositors or the property owner, caused by his employees or agents upon entering or driving into the warehouse or warehouse property, unless he, his employees or agents are not responsible for the damage. Agents of the depositor include also third parties visiting



the warehouse or the warehouse property on the depositor's authority.

(b) The warehouse keeper may not assign the rights to third parties, which he is entitled according to Para. (a), provided that such rights exceed the scope stipulated by law.

#### **Section 47**

(a) Unless otherwise agreed in writing, the warehouse keeper is entitled to terminate the warehouse contract by giving one month's advance notice by means of registered letter to the address last known to him.

(b) Termination without advance notice is allowed in particular if the goods concerned constitute a hazard to other goods stored.

(c) If the warehouse keeper has reasonable doubt that the security of his claim is covered by the value of the goods, he is entitled to set a reasonable time limit for the depositor to either secure the claims of the warehouse keeper or to make alternative provisions for the storage of the goods. If the depositor does not comply with this, the warehouse keeper is entitled to terminate the contract without further notice.

#### **Section 48**

(a) As soon as the goods have been duly and properly stored, either a warehouse warrant or a warehouse warrant made out to a named person is to be issued upon request. In case of doubt, the certificate issued by the warehouse keeper will be considered to be merely a warehouse warrant.

(b) The warehouse warrant constitutes merely a certificate of goods received by the warehouse keeper, who is not obliged to release the goods to any party presenting the warrant.

(c) The warehouse keeper is entitled, but not obliged, to check the identity of the party presenting the warrant. Accordingly, the warehouse keeper may release the goods immediately to any party presenting him with the receipt.

(d) Any assignment or pledging of the depositor's rights arising from the warehouse contract is not binding on the warehouse keeper until the depositor has informed him about it in writing. In such a case only the person who has been assigned or pledged the depositor's rights concerning the warehouse keeper, is entitled to deal with the stored goods.

(e) If a warehouse warrant to a named person has been issued, the warehouse keeper is only authorized to release the goods against presentation of the warrant, and not against a delivery note, delivery order or the like. In case of assignment, the goods may only be released to the holder of a warehousing warrant whose authority can be traced back on the basis of the assignments listed in uninterrupted sequence on such a receipt.

(f) The warehouse keeper is not obliged to verify

(1) the authenticity of the signatures appearing on the declarations of assignment;

(2) the authenticity of the signatures appearing on the delivery order or the like;

(3) the authority of the signatories under Clauses (1) and (2) above, unless otherwise agreed with the principal, or if a lack of authenticity or authority is obvious.

(g) Any assignment or pledging of the depositor's rights arising from the warehousing contract will not be binding on the warehouse keeper, unless confirmed on the warehouse receipt in writing and, in the case of a pledging, also reported to the warehouse keeper.

(h) In accordance with the terms and conditions set out above, the warehouse keeper may only dispute the depositor's authorized legal successor on the basis of the validity of

the issuance of the warehousing warrant, or objections concerning the warrant itself, or with other objections to which the warehouse keeper is directly entitled concerning the legal successor concerned. The warehouse keeper's right of lien or retention as stipulated by law remains unaffected.

#### **Section 49**

The provisions of this section also apply to temporary storage of goods, e.g. for purposes of shipment (unless stipulated otherwise in Section 43).

## **XII. Right of Lien**

#### **Section 50**

(a) The forwarder has a right of lien and retention on all goods or other valuables in his possession to cover any accounts receivable, whether due or not due, to which he is entitled concerning the principal on the basis of his activities as set out in Section 2 Para. (a). To the extent that such right of lien or retention, in the sense of the preceding sentence, is used to secure accounts receivable not secured under legally stipulated rights of lien or retention, only those goods and valuables belonging to the principal will be covered.

(b) To the extent that the right of lien or retention as set out in Para. (a) above should exceed the legally stipulated rights of lien or retention, it covers, in the case of orders placed by one forwarder with another, only those goods and other valuables, which belong to the principal forwarder or which the commissioned forwarder possesses or is entitled to possess in the name of the principal forwarder (e.g. removal van, blankets).

(c) The forwarder may exercise his lien for claims arising out of other contracts with the principal only if they are undisputed or if the financial situation of the debtor puts the claims of the forwarder at risk.

(d) In connection with an order, the forwarder is not entitled to keep the goods at a third party's disposal or to release them to a third party, or to exercise his right of lien or retention with respect to accounts receivable from a third party, which are not connected with the goods concerned, to the extent that and as long as the exercise of such right could be in contradiction to the instructions and the legitimate interests of the original principal.

(e) The provisions set out above do not affect any of the forwarder's further legal rights of lien or retention.

(f) If a threat of forced sale arises, the debtor will be granted a period of one week to settle the matter. The debtor must be notified of any sale of the goods.

(g) For sales under lien or upon resale of goods without recourse to legal process, the forwarder may charge in any case a sales commission on the gross proceeds in an amount conforming to local rates.

## **XIII. Forwarder's Liability**

#### **Section 51**

(a) As a rule, the forwarder is only liable for all his activities (Section 2 Para. [a]) to the extent that he is at fault. The forwarder carries the burden of proof. However, if no damage to the goods was externally recognizable, or if it cannot be reasonably expected of the forwarder under the circumstances to have clarified the cause of such damage, the principal must prove that the forwarder was responsible for the damage.

(b) Furthermore, the forwarder's liability is limited or not applicable, subject to the provisions set out above and below, except in the case of intent or gross negligence.

(c) The principal is free to arrange for liability coverage with the forwarder beyond the

scope of these terms and conditions against special compensation, apart from the insurance mentioned above (Sections 35 and Section 39). Such an agreement must be in writing.

### **Section 52**

(a) Should damage have been caused to a third party, i.e. a freight carrier, warehouse keeper, shipping company, interim or sub-forwarder, insurer, a railway or freight collection point, banks or other enterprises involved in the execution of the order, the forwarder will assign any of his claims concerning the third party to the principal at the latter's request, unless the forwarder, on the basis of a special agreement, pursues the claim on the account and risk of the principal. The third parties mentioned above will not be considered to be vicarious agents of the forwarder.

(b) Any further obligation or liability of the forwarder only exists if he is in culpable violation of his obligations as set out in Section 408 Para. 1 of the Austrian Commercial Code.

(c) The forwarder is also liable subject to these terms and conditions in cases concerning Sections 412 and 413 of the Austrian Commercial Code.

### **Section 53**

The forwarder's liability ends as soon as the goods have been made available for acceptance by the consignee (Section 33 Para. [b]) and have been accepted by him.

### **Section 54**

(a) To the extent that the forwarder is actually liable, his liability is limited to:

(1) € 7.267,28 for each damage claim resulting from misappropriation or embezzlement by the forwarder's employees. This does not include legal agents, holder of a statutory authority, whose actions are not subject to limited liability. A case of damage in the sense of this provision is defined as 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 damage concerned, and whether the damage affects one sole principal or several independent principals of the forwarder. The forwarder is obliged upon request to inform his principal whether he has covered this liability risk and, if so, with which insurance company.

(2) € 1,09 per kg of gross weight of each damaged or lost package, however not to exceed € 1.090,09 per damage claim.

(3) € 2.180,18 maximum liability per damage claim other than that set out in Clause 1.

(b) Should the stated value of the goods be lower than that set out in Para. (a) above, the stated value forms the basis for assessment.

(c) Should the relevant value in the sense of Para. (b) above be higher than the common market value or, in its absence, higher than that common value, which is applicable to goods of the same type and character at the time and place of their release to the forwarder, said common market value or other common value supersedes the stated value.

(d) In case of discrepant values, the lower value applies in each case.

### **Section 55**

In case of material damage to goods having an independent value (e.g. machine parts), or damage to any of several objects belonging together (e.g. household furniture), any eventual decrease in value of the rest of the object, or the remaining objects or parts, will not be taken into consideration.

## **Section 56**

(a) In the case of goods worth more than € 29,06 per kg of gross weight, and with respect to money, documents and official stamps and coupons, the forwarder is only liable for damage of whatever kind, if he has received a written statement of value from the principal in sufficient time for him to have been able to conclusively decide about the acceptance or rejection of the order, as well as precautionary measures to be taken with respect to the acceptance, custody and dispatch of the goods.

(b) A statement of value given to drivers and accompanying personnel has no legal effect unless it has been received by the forwarder or one of his commercial employees authorized to do so, or unless otherwise agreed.

(c) Para. (a) above is applicable if the principal can prove that damage has been caused by circumstances other than the omission of a statement of value, or that it would also have been incurred if a statement of value had in fact been made.

(d) The provisions of the other Sections remain unaffected, in so far as they limit liability or render it inapplicable beyond the scope of the provisions of this Section.

## **Section 57**

The forwarder will not be liable for:

(a) (1) damage (including in particular 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 to be unpacked or inadequately packed in accordance with applicable terms and conditions of conveyance; such goods will also be deemed unpacked or inadequately packed by the forwarder;

(3) externally recognizable damage to packaging appearing at once or at a later time; the forwarder may remedy such damage at the principal's expense, but does 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 another type of storage was inappropriate according to normal business operations or under the circumstances prevailing at the time;

(c) damage caused by theft in the sense of Sections 127 of the Austrian Penal Code, or through blackmail or robbery in the sense of Sections 144 and 142 of the Austrian Penal Code;

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

(e) damage and loss caused during inland waterway shipping (including pre-carriage and on-carriage transportation via land vehicles, as well as preliminary, interim and oncarrying storage) which is covered under transport or warehouse insurance, or which could have been covered by transport or warehouse insurance policies of the usual kind, or which can be covered applying the usual principles of diligent business practice above and beyond the scope of transport or warehouse policies of the usual sort, unless any duly concluded insurance policy is rendered ineffective due to improper action on the part of the forwarder.

## **Section 58**

(a) If damage could have arisen as a result of one of the risks defined in Section 57, it will be assumed that it actually arose in this way. In such cases, the forwarder will only be liable to the extent that it can be proved that he caused the damage.

(b) The provisions of the other Sections remain unaffected, provided that that they limit liability or render it inapplicable beyond the scope of the provisions of Sections 57 and 58 Para. (a).

#### **Section 59**

The forwarder will be exempted from any liability if he is able to prove that he delivered the goods in the same external condition in which he had received them. The forwarder's obligations as set out in Section 388 of the Austrian Commercial Code remain unaffected.

#### **Section 60**

(a) All damage, even if not externally recognizable, must be reported to the forwarder in writing without delay. If the goods have been delivered by a forwarding agent, the forwarder delivering the goods must be in possession of the damage report by no later than the sixth day following that of delivery.

(b) In cases of non-compliance with this provision, damage will be deemed to have occurred subsequent to their delivery.

(c) Should the forwarder receive a damage report at a time when it is no longer possible for him to safeguard rights against third parties, the forwarder will not be responsible for the consequences.

#### **Section 61**

In all cases, in which the damage amount to be paid or voluntarily offered by the forwarder covers the full value of the goods, he will only be obliged to effect payment subject to back-to-back transfer of the goods, and against assignment of all claims to which the principal or payee is entitled concerning third parties with respect to the goods.

#### **Section 62**

Unless limited in its meaning by preceding clauses, damage as used in these terms and conditions is to be understood in the broadest sense of the term (cf. Section 1295 of the Austrian Civil Code), thus including in particular total or partial loss, diminution, decrease in value, breakage, damage through theft as well as consequential damages.

#### **Section 63**

(a) Should the forwarder claim one of the liability restrictions or exemptions set out in these terms and conditions, no objection may be raised asserting a case of unlawful action.

(b) Should a third party directly or indirectly interested in the subject or execution of the order placed with the forwarder assert claims against the forwarder for reasons of allegedly committed unlawful action which, according to Para. (a), may not be asserted against the forwarder, the principal will indemnify the forwarder against any such claims without delay.

### **XIV. Statute of Limitations**

#### **Section 64**

All claims asserted against the forwarder, irrespective of their legal basis and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins upon the beneficiary's awareness of his claim, however, no later than upon delivery of the goods.

### **XV. Place of Performance, Jurisdiction and Applicable Law**

#### **Section 65**

(a) The place of performance is where the forwarder receiving the order has his commercial head office.

(b) The place of jurisdiction for all matters of legal dispute arising from the contractual

relationship or in connection therewith will be the place of performance where the forwarder receiving the order has his commercial head office. This jurisdiction will have exclusive competence in all matters concerning claims against the forwarder.

(c) Austrian law applies to all legal relations between the forwarder and the principal, and the latter's legal successors.

## **Annex 1 to Sections 39 - 42 of the Austrian Forwarders' Terms and Conditions**

# **Forwarder's Risk Insurance Certificate**

## **Section 1**

### **Insured Party**

The insurance is concluded on account of a third party. The owner of the goods is insured as principal or the party, who has an insured interest at the time when the circumstances led to the damage.

## **Section 2**

### **General Third Party Liability Issues**

(1) The insurers are liable for all damages suffered by the insured party under a transportation contract, for which the forwarder can be legally held responsible.

(2) A transportation contract under this Forwarder's Risk Insurance Certificate is to be understood as:

Any forwarding, freight or warehouse contract within Austria, including any subsidiary contracts, even if these are independent contracts, such as collections, weighing, other quantity determination, packing, sampling, loading, unloading, customs, mediation of transport, fire and housebreaking insurance, but excluding any other insurance proposal of any kind (cf. Section 9).

## **Section 3**

### **General Insurance Coverage**

1. The insurers will compensate any mandatory damage concerning the liability of the insured party under a transportation contract. They waive any objections that the forwarder could claim under the General Austrian Forwarders' Terms and Conditions or any other agreement, trade or transportation practice regulations concerning exclusion or limitation of mandatory liability.

2. The insurance also covers claims of the insured party not based on the transportation contracts, but on property, illegal behaviour or unjustified enrichment, as long as these claims are connected to a transportation contract concluded with the forwarder.

3. The insurance also covers claims resulting from failure to seek recourse, if it can be established that the insured party suffered damage.

4. Intentional damage caused by the forwarder, his legal agents, employees or vicarious agents, is also covered.

5. The insurer covers damage to goods and property damage (loss of earnings) as long as these claims are directly connected to a transportation contract concluded with the forwarder.

## **Section 4**

### **Particular Provisions**

The insurance also covers the following claims of the insured party against the forwarder:

1. Claims concerning the negligent choice of intermediate forwarder or warehouse

keeper.

2. Claims concerning damage, including wilful damage (cf. Section 5 Para. 6), for which an intermediate forwarder, whether from Austria from Europe (including Turkey), can be legally held responsible; the insurer has to approve in advance any extension of the intermediate forwarder's liability outside of Europe.

## **Section 5**

### **Limitation of Liability**

The following claims are not covered by the insurance policy:

- (1) All damages covered by another insurance policy, in particular transportation, warehouse keeping (e.g. housebreaking, water and storm) or the Forwarder's Risk Insurance Certificate, unless such a properly concluded insurance policy is invalidated by default of the forwarder;
- (2) Damage to goods caused abroad by foreign intermediate forwarders or other companies in the execution of a transportation contract;
- (3) Damage to goods forwarded by sea or inland waterway;
- (4) All damages that basically fall within the responsibility of a long-distance traffic forwarder;
- (5) Claims between the insured party and the forwarder that are not common to the forwarding industry trade (e.g. penalties, guaranteed delivery deadlines), and all other claims based on agreements between the forwarder and the insured party, which are not based on activities covered by Section 2 Para. 2, or that exceed the mandatory third party liability of the forwarder;
- (6) All damages resulting from embezzlement or speculation;
- (7) Damage to goods during storage, if these damages resulted after being stored for 15 days (Sundays and holidays not included) under a warehousing contract;
- (8) Personal injury;
- (9) In the event that the insured party at the time of the carrier order has sold the goods he/she shall receive, as a maximum, the sales price, taking into account any actual or saved cash expenses (freight rates, customs duties, etc.), unless it has been possible to supply the damaged or lost goods from the seller entitled to the claims. In the latter case the insurers shall only pay the original costs of the damaged goods.
- (10) Damages directly or indirectly caused by war, public disorder, looting, strikes or civil unrest;
- (11) Damages caused by nuclear energy and radioactivity.

## **Section 6**

### **Insurance Proposal, Sum, Value and Notification**

- (a) Every transportation contract including warehousing covered by these provisions is insured.
- (b) The following applies in general to transportation contracts:
  - (1) The principal is entitled to refuse insurance coverage. The refusal has to be communicated in writing to the authorized broker by the forwarder or the principal of the insured party. It can only be withdrawn by written notice, and, if need be, sent immediately to the authorized broker.
  - (2) Insurance value and sum
    - (a) The insurance value is the selling price, or lacking that the common market value or market value that the goods have upon issuance of the transportation contract at the place of taking over the goods, including

transportation and forwarding costs as well as customs fees and duties. If the principal or other insured party under Section 1 want to insure the transportation contract for more than € 1.453,46, then they have to advise the forwarder in writing immediately upon notification, but latest before completion of the contract.

(b) The forwarder is entitled to estimate the value, even if he has not been asked to do so. In this case he should do it upon acceptance of the contract, but latest before completion, based on proper documentation.

(c) If the forwarder has been given no instructions under Clause (a), or not asked to estimate under Clause (b) above, then every transport contract under Section 2 for the insured party under Section 1, is to be insured up to a maximum of € 1.453,46 (cf. Section 8 Para. 3).

(d) If the forwarder mistakenly fails to notify the insurance contract, an insurance value exceeding € 1.453,46 under Para. (a), pay the premium or completely omits to insure the goods, then this should not be to the detriment of the insured party. In the case of failure to notify a value above € 1.453,46, then this is only valid if the principal or any other insured party under Section 1 has fulfilled Para. (a).

(3) The maximum insurance coverage for a single transportation contract is € 1,090.092,51. The insured party can not claim underinsurance for a contract exceeding this value, which has been valued at this sum.

(4) The forwarder is obliged to notify the insurers' authorized broker about all transportation contracts and pay the premiums at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month. The forwarder is obliged to notify the insurers' authorized broker about transportation contracts with a value above € 1.453,46 at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month, stating the insurance value, marking, contents and number of packages, on the corresponding specifications form.

## **Section 7**

### **Insurers' Right of Inspection**

The insurers are entitled to check the notification of the forwarders by examining the company books and other documents, insofar as they concern the insurance. The insured parties have the same right.

## **Section 8**

### **Compensation for Damages**

(1) In all circumstances the insured sum shall, as defined in § 6 para B.2 a), constitute the maximum limit of the damages to be paid. In the event of underinsurance the companies shall only be liable for the respective percentage. For pure damages to property the insurance sum shall be increased by 100%.

(2) Otherwise the insured party receives at most the common market value or market value of the goods at the place of delivery, upon issuance of the transportation contract, taking in to account any expenses or savings.

(3) Damages occasioned directly by the use, forward, or re-payment of advances, reimbursements, etc. not according to purpose. Any further damage occasioned in the process shall not be affected thereby.

(4) The insurers are also liable to the insured parties for circumstances covered by Section 12 Para. 2, Section 15 and 16, in particular about termination of the insurance policy



without notice for any transportation contracts up to the effectiveness of the termination.

## **Section 9**

### **Maximum Liability**

(1) The insurers are liable to the extent of their participation (Section 19) for all damages arising and claimed under this contract up to a sum of € 1,090.092,51, even if a number of insured parties of the same forwarder have been affected by the damage concerned.

(2) In the case of storage under a transportation contract, whether prior to, intermediate or afterwards, the maximum liability for fire damage caused by the forwarder is € 1,090.092,51.

(3) The forwarder's liability for damages due to faulty mediation or complete omission to notify a transport, fire and housebreaking insurance is € 181.682,08 per damage claim.

## **Section 10**

### **Damage Claims, Obligations of the Insured Parties and of the Forwarder, Time of Limitation**

The insured party has to report any damage immediately in writing, but latest within a month of knowing about it, to the insurers' authorized broker or via the forwarder. The grace period is maintained if the notification has been sent in time. If the forwarder is negligent in reporting the damage within the grace period the insurers are released from their duty to provide insurance coverage.

The insured party is obliged to prevent or minimize any damage, taking into account any instructions of the insurers. He is also obliged to give the insurers any information or documents requested. He is effectively obliged to do everything to help clarify the damage that will be and can be justly requested by the insurers. If he breaches these obligations in a gross negligent or wilful manner, then the insurers are released from their duty to provide insurance coverage.

The forwarder is obliged in the same manner to prevent or minimize any damage, taking into account any instructions of the insurers. He is also obliged to give the insurers any information or documents requested. He is effectively obliged to do everything to help clarify the damage that will be and can be justly requested by the insurers. If the forwarder, his legal representative, proxy or an independent manager of a branch office, breaches these obligations in a gross negligent or wilful manner, then the forwarder is liable to the insurers for full reimbursement of the resulting damages. Payment of the damage claim is made to the insured party or his delegate.

If the damage is caused by defective loading under a transportation contract or defective storage of insured goods, the insurers will compensate the forwarder for any supplementary costs, including any telegram, telephone and postal fees, which were incurred or had to be incurred to avoid any further damage, if a mandatory claim could be made against him by the principal or any other insured party under Section 1 (see however Section 14). The forwarder is obliged to report the defective loading immediately to the authorized broker after he has known it, and to give all relevant information. In the case of gross negligent or intentional breach of these responsibilities, the insurers are released from their duty towards the forwarder. The claims of the principal remain unaffected.

## **Section 11**

## **Assignment and Devolution of Rights**

- (1) Once a damage claim has been made the insured party's rights under this contract cannot be assigned against the insurers to someone other than the forwarder.
- (2) Claims by other insured parties in the case of a mandatory devolution are excluded from this insurance contract.
- (3) The forwarder's rights can not be assigned to other persons than the insurers.

## **Section 12**

### **Right of Recourse of the Insurers**

- (1) The insurers waive their right of recourse against the forwarder, his employees or any intermediate forwarders, who have signed the Forwarder's Risk Insurance Policy.
- (2) However the insurer has the right of full recourse against anybody who caused a damage intentionally.

## **Section 13**

### **Premiums**

- (1) Premiums have to be paid for every transportation contract with any principal. If the transportation contract includes dispositions to a number of recipients, then each disposition is a contract subject to a premium, unless it concerns collection by the customer. In this case there is an insured transportation contract not subject to a premium.
- (2) The premium rates for each transportation contract (including insurance premium tax) are detailed in the premium schedule.
- (3) The respective premium will be charged for any temporary warehousing up to a period of 15 days (Sunday and holiday not included) directly connected to a forwarding and freight contract. In the case of any temporary warehousing made in connection with a warehousing contract for the same period, the premium will be charged from the beginning of the storage. The premium for warehousing contracts will be charged from the beginning of each month. If the warehousing contract includes further services, such as commissioning, packing, pricing or the like, then the premium is doubled from the beginning of storage.

## **Section 14**

### **Damage Contribution by the Forwarder**

- (1) The forwarder has to immediately reimburse the insurers' authorized broker 10% of any sum per damage claim paid by the insurers, but at least € 10,90, up to a maximum of € 181,68. The first forwarder is entitled to claim his risk contribution from the party who caused damage resulting in a claim satisfied by the insurers.
- (2) The contribution of the forwarder towards the damage increases from 10% to 20% if a legal representative, proxy or independent manager of a branch office has caused the damage intentionally or criminally, and if the forwarder has breached the supervision obligation of a prudent businessman. The maximum contribution in such a case is € 726,73. Section 12 Para. 2 remains unaffected.

## **Section 15**

### **Compensation of the Forwarder**

The forwarder is liable for full compensation towards the insurers in the following cases (with the exception of those covered by Section 10 Para. 3 and Section 12 Para. 2):

- (1) If he intentionally breached his notification responsibility under Section 6 Para. 2 Clause (b) (the burden of proof is on the insurers).

(2) If he is delayed by more than 2 weeks after receiving a reminder concerning an overdue premium. The reminder must be sent by registered letter.

(3) If the forwarder does not or refuses to remedy a defect causing damages due to substantial defects in his operation, which the insurers justly requested him to do on the basis of a previous damage occurrence, and if they had given him a grace period to remedy the defect, stating the legal consequences resulting from expiry of the grace period.

## **Section 16**

### **Termination**

The insurers have the right of terminate the Forwarder's Risk Insurance Certificate after approval of the Trade Association of Forwarders. This approval is deemed effective if it is not refused in writing within 4 weeks after receipt of the written notification of the insurers.

(1) Termination without notice

The insurers can terminate a contract without notice under the following circumstances:

(a) In cases under Section 12 Para. 2 and Section 15;

(b) If the forwarder has delayed payment of a sum due after receiving a reminder for any sum due under Section 14, or sum specifically known to him, or any sum under final judgement of an ordinary court. The reminder must be sent by registered letter, stating the legal consequences resulting from expiry of the grace period;

(c) Under any other mandatory requirements, in particular concerning a material matter. Insofar as a right to termination is covered by these provision, the contractual provision takes precedence over the law;

(d) The effectiveness of the termination without notice begins at the end of 5th day after the day, when the termination notice was handed over to the postal authorities.

(2) Particular right of termination

If the services of the insurer over a calendar year exceed the gross payments (minus insurance premium tax) made by the forwarder in the same period, the insurers are entitled to insist on specific reorganization measures by the forwarder during the following year. If no agreement is reached within a reasonable grace period, then the insurers are entitled to terminate the contract with a month's notice.

(3) If the Trade Association of Forwarders and the insurers can not reach agreement, then an arbitration court will make the decision. Each party elects one arbitrator, who then elect the chairman. If the arbitrators can not agree on the chairman within 2 weeks, then he will be appointed on the suggestion of one of both parties by the President of the Federal Chamber of Trade and Industry, or if he is not available, by his deputy.

(4) The termination has to be sent by registered mail to the forwarder and the Trade Association of Forwarders.

## **Section 17**

### **Terms of Insurance**

(1) This contract is valid from 1 January 1989 to 31 December 1989. It is extended annually, unless terminated with 3 month's notice prior to the end of the calendar year. The termination has to be sent to the insurers' authorized broker.

If any amendments to this contract are made between the insurance companies participating in this insurance policy and the Trade Association of Forwarders, then these amendments take precedence over previous terms.

## **Section 18**

### **Jurisdiction**

(2) The place of jurisdiction is Vienna for claims by the insurers against the forwarders concerning the payment of premiums or contributory damages under Section 14. The leading insurer is authorized by the participating insurers to deal with all legal disputes, including their participation quotas as plaintiff or correspondent. The other insurers will recognize any court decision against the leading insurer as binding. The authorized broker is entitled to assert the rights of the insurers under this contract in his own name.

## **Section 19**

### **Leadership Clause and Shareholder List**

All the following insurance companies participate with their respective quotas in the Forwarder's Risk Insurance Certificate, and to the exclusion of joint liability. The Wiener Allianz Versicherungs AG is responsible for management of the Forwarder's Risk Insurance Certificate.

### **Participation List<sup>1</sup>**

Wiener Allianz Versicherungs AG (Leader) 14%  
Anglo Elementar Versicherungs AG 11.6%  
Erste Allgemeine Unfall- und Schadensversicherung Ges. 11.6%  
Donau Allgemeine Versicherungs AG 9.3%  
RAS-Österreich Adriatische Versicherungs AG 9.3%  
Versicherungs Anstalt der österreichischen Bundesländer 9.3%

<sup>1</sup> The above list and quotas are not up-to-date as many of the insurance companies have amalgamated, changed their legal identity or name. For up-to-date information, contact the Trade Association of Forwarders, Tel.: (+43 1) 50105-ext. 3240/3758

Winthethur Versicherungs AG 8.8%  
Wiener Städtische Wechselseitige Versicherung 7%  
Basler Versicherungs Gesellschaft 3.7%  
Helvetia Schweizerische Feuerversicherung Ges. 3.7%  
Nordstern Allgemeine Versicherungs AG 2.9%  
Mannheimer Versicherungs Ges. 2%  
Internationale Unfall- und Schadensversicherung AG 1.8%  
Colonia Versicherungs AG 1%  
Grazer Wechselseitige Versicherung 1%

100%  
Substitute participant: Hannover International AG 1%

Annex 2 to Sections 39 to 42 of the General Austrian Forwarders' Terms and Conditions

## **Cartage Risk Certificate**

### **Concerning Damage to Goods from Cartage Agreements in Local and Short-Distance Traffic**

#### **Section 1**

#### **Scope of the Insurance and Instance Proposal**

(3) On the basis of the following provisions the participating insurance companies named in the Forwarder's Risk Insurance Certificate are liable for damages caused to goods during local or short-distance traffic haulage within Austria, if the forwarder or his agent are held responsible, and a legal claim can be made against them. Damages to goods stored up to 15 days (Sundays and holidays not included) directly connected to

a haulage contract, are also covered.

Every haulage contract is covered, unless the principal has specifically excluded insurance in writing.

The haulage contract covers incoming and outgoing traffic, goods being taken to a warehouse and the transshipment involved. Any haulage contract directly connected to a transportation contract is also insured.

## **Section 2**

### **Limitation of Third Party Liability**

The following is not covered by the insurance:

(4) All damages covered by transportation or warehousing contracts, unless a properly concluded insurance is invalidated by default of the forwarder;

Cases covered under Section 5 Para. 1 Clauses 5, 8, 9, 10 and 11 of the Forwarder's Risk Insurance Certificate under;

All other insurance cases covered by the Forwarder's Risk Insurance Certificate.

## **Section 3**

### **Insurance coverage and Notification**

(5) Every Haulage contract under Section 1 is covered to the insured value. The provisions of Section 8 of the Cartage Risk Certificate apply analogously.

The forwarder is obliged to notify the insurers' authorized broker of all insurance cases concerning this insurance certificate at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month, on the corresponding form.

## **Section 4**

### **Premium**

The premium rates for each transportation contract (including insurance premium tax) are detailed in the premium schedule.

## **Section 5**

### **Reference to the Forwarder's Risk Insurance policy**

Unless otherwise stated, the provisions of the Forwarder's Risk Insurance Certificate apply.

# **Conditions of Carriage for Furniture Transport**

## ***XVI. General***

### **Section: 1**

- a) These conditions of carriage for furniture transport are valid for furniture removals using removal vans (furniture trailer, swap body box, container, Liftvan) both domestically and internationally. They apply to all of the Contractor's actions and related businesses, insofar as they are not legal requirements, particularly those opposed to consumer protection.
- b) The Contractor will perform his obligations with the due care and diligence of a prudent businessman.

## ***XVII. Liability***

### **A. The Contractor**

#### **Section: 2**

- a) The Contractor shall be liable for any loss or damage to the goods, where such loss or damage arises from the Contractor's negligence during the handling or transport of the goods.
- b) The Contractor shall remedy the damage, to the exclusion of liability for any natural depreciation, but he is free in any case to provide monetary compensation instead. In any case, the liability of the contractor is limited to € 1,090.09 per each 4 cubic metre of furniture.

#### **Section: 3**

Liability is excluded:

- a) for the contents of containers of all kinds, where the packing and unpacking is not included in the contract;
  
- b) for the content of any furniture vans left for loading by the client, unless otherwise specifically agreed upon;

c) for damages incurred as a result of the natural characteristics or defective quality of goods, such as breakage or damage to marble sheets, glass, porcelain, mirrors, gas mantles, stucco frames, lighting fixtures, lampshades, heaters and mechanical movements, unless the contractor is found at fault. A special insurance against damage of marble, glass, porcelain, etc. can be concluded.

Liability is also excluded for damage such as excessive loads on the furniture, loosening of gluing, cracking or dulling of polished surfaces, oxidation, internal deterioration, leaks or spillage, and atmospheric influences

d) 1. for damage to precious metals, jewels, precious stones, money, stamps, coins or securities of any kind, documents and certificates;

2. for functional damage to electrical appliances such as washing machines, radios, televisions, computer hardware or similar sensitive equipment;

3. for damage to plants or animals;

4. for damages caused by explosive, flammable, radioactive, spontaneously inflammable, toxic, or corrosive substances, or via oils, fats and animals

e) for damage of the goods occurring during loading, unloading or lifting, where the weight or dimensions of the goods are incompatible with the space available at the location of loading or unloading, as long as the Contractor had previously drawn the client's or the consignee's attention on that matter and that the client demanded the execution of the service in spite of such warning.

#### **Section: 4**

Liability is further excluded:

a) for damage to walls, windows, floors or ramps when the dimensions or weight of the goods to be transported are incompatible with the space available at the location of loading or unloading.

b) for delays, damages or losses resulting from unpunctual provision of the transport means (e.g. rail, ship etc.) or arising from traffic incidents (such as vehicle breakdowns, Road conditions) which are completely outside the Contractors control;

c) for compliance with predetermined set dates resulting from late receipt of official documents, as well as for customs clearance information, export regulations or other legal requirements.

#### **Section: 5**

a) All defects must be notified to the Contractor in writing. The liability becomes void if externally visible defects are not notified immediately upon delivery and non-externally visible defects are not notified within a period of six days after delivery.

b) If under this contract the contractor has to replace any goods lost, then the fair market value at the time and place of delivery of goods of the same kind and quality is to be File :

compensated. However, any savings made on customs or freight fees etc due to the loss will be deducted from this amount.

c) In the event of damage, the compensation depends on the difference between the sale-value of the goods in their damaged condition and their undamaged fair market value at the time and place of delivery. However, any savings made on customs or freight fees etc due to the damage will be deducted from this amount.

d) For damages due to late delivery, the Contractor's liability in each case is limited to € 109.01 per day, with a maximum of € 1,090.09.

e) The Contractor shall not be liable for damages that occur as a consequence arising from the loss or damage of the goods.

### **Section: 6**

For losses and damages incurred during transport by rail, by ship or by plane, the Contractor fulfils his obligation by assignment of this claim against the respective rail, shipping or Airline Company.

### **Section: 7**

a) The Contractor is obligated to conclude an insurance policy covering any damages against the Client's goods incurred during execution of the order by the Contractor. The Contractor is free to choose the insurer and it will be made at the expense of the Client. This insurance policy must, in particular concerning its scope of coverage, at least meet the requirements of the Austrian Furniture Carrier's Insurance Certificate (Moebel-SVS). The Contractor must pay this insurance premium to the selected insurance company for each individual furniture transportation contract and back-charge it fully to the Client as expenses for the insurance of the furniture insurance. The Contractor must notify the Client on request, with whom the furniture transport insurance has been concluded.

b) The Client, and all persons on whose behalf or account he acts, shall comply with all conditions of the (Moebel-SVS) insurance certificate.

c) 1. By the conclusion of the (Moebel-SVS) insurance certificate, the Contractor is released from liability for any of the covered insurance risks. This is especially true for the case where, due to a missing or insufficient declared value by the Client, the insured sum is less than the real value or amount of damage.

2. If the Contractor has no furniture shipping insurance coverage in accordance with Para.

a), then the Client may not appeal against the conditions of carriage for furniture transport.

### **B. The Client**File :



## **Section: 8**

The Client is liable:

- a) for the authenticity, accuracy and completeness of the given receipts.
- b) for loss and damage to the means of transportation, accessories and packing materials, in so far as he or assistants hired by him were responsible.
- c) for the furniture van, including material belonging to the contractor in case of self-loading or self-discharge of the cargo.
- d) for the consequences of providing incorrect information concerning weight, content and nature of the cargo; the contractor is not committed to check these points. In the absence of an expressly written statement to the contrary, at the Client's risk the Contractor assumes the transport to be of household goods within the meaning of the furniture transportation tariff of the Association of Freight Forwarders
- e) for any damage resulting from the transport of goods listed in Section 3, Para. d) 4.
- f) for all expenses that arise as a result of transport delays or troubles, for which the Contractor is not responsible, such as Acts of God, war, governmental action, strikes, obstruction of waterways and railways, etc.).

## ***XVIII. Transport Insurance***

### **Section: 9**

- a) The contractor is required to insure the cargo, provided that a written order has been received giving the insurance value and the risks to be covered.
- b) The transport insurance only covers transport accidents, fire, theft, accidents caused by Acts of God and breaking of furniture.
- c) A separate insurance can be concluded to cover the risks of breakage of glass, porcelain, etc., and against war, looting and riots.
- d) In the event of a claim, the Contractor fulfils his obligation by assignment of his claim against the insurance company. In the case where the Client has concluded his own insurance, then any claim for compensation for hazards covered by this insurance against the Contractor are ruled-out and thus are not transferred to the insurer.

## ***XIX. Price Calculation\*)***

## **Section: 10**

- a) The price calculation is based on the applicable tariff rates, freight rates and exchange rates at the time of execution of the move.
- b) If the tariff rates, freight rates or exchange rates increase or decrease, between the date that the offer was presented (Appendices 1 and 2) and the date of execution of the move, then the agreed transport price will change accordingly.

## **Section: 11**

The following will incur additional costs:

- a) transport of pianos, safes and other heavy goods.
- b) additional expenditure or services deemed necessary in the interests of the removal, even if not specifically commissioned by the Client. The Contractor is free to choose the method of execution.
- c) installation, decorating, carpentry and cleaning work;
- d) additional costs due to weather conditions or where blocked or damaged roads mean that the removal vehicle cannot be driven directly to the house, likewise for the waiting of the removal vehicle and personnel for which the Contractor is not at fault. Also appropriate supplements for the carrying of goods on long or unusual routes, as long as these circumstances have not been taken into account in the price calculation, as well as additional costs due to detours, if the direct ways were barred or impassable;
- e) official fees and customs charges, and any public charges.

\*) These provisions apply only insofar as they do not oppose any antitrust regulations (Comment from the Austrian Association of Freight Forwarders).

## ***XX. Obligations of the Client***

### **Section: 12**

- a) the Client is responsible for the provision of all necessary documents and permits required to enable the transport to be implemented.
- b) if the unloading of the removal vehicle cannot be made immediately after arrival at destination, the Contractor may request reimbursement of extra expenses and losses

resulting from the delayed reception and at the expense of the client and unload the cargo and store it.

c) Upon collection of the goods the Client is obliged to verify that no object is taken in error or that no object is mistakenly left behind.

**Section: 13**

For shipments that have been agreed to or from a station or airport, the Client must accept or deliver the respective loaded or empty swap body boxes, containers or Liftvans including the relevant inventory list. In this case, concerning all other liabilities, he is responsible for safeguarding the rights with respect to the mode of transport, in particular by arranging a joint damage protocol.

**Section: 14**

a) The invoice amount is to be paid:

1. for domestic shipments prior to unloading;
2. for international shipments prior to loading.

The Contractor shall be entitled to request an advance payment if required.

b) A set-off or retention of payment is only allowed against the claims of the Contractor where valid Client counter-claims have been determined and the amount of which and the reason are undisputed.

**Section: 15**

If storage of the goods is necessary in conjunction with a removal, then these are governed by the Association of Freight Forwarders published storage conditions. If the removal of the stored goods is not performed by the Contractor, then he has the right to claim compensation calculated on the basis of the furniture transportation tariff of the Professional Association of Freight Forwarders.

**Section: 16**

If the Client requires the Contractor to collect any of the surrendered packing materials, then the Client must request this to be done.

***XXI. Verbal Agreements***

**Section: 17** File : AÖSP-Übersetzung Engl transporte 2012.doc Seite 7 von 21

The Client bears the risk for the execution of any orders issued verbally, which are not confirmed in writing by either party.

## ***XXII. Statute of Limitations***

### **Section: 18**

All claims asserted against the Contractor, irrespective of their legal basis and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins upon the beneficiary's awareness of his claim, however, no later than upon delivery of the goods.

## ***XXIII. Jurisdiction***

### **Section: 19**

The venue for all parties involved is the location of the Contractor's commercial establishment where the transaction was completed.

However, if the Client is considered to be a consumer under the Austrian Consumer Protection Act, BGBl. No. 140/1979 in its current version, and has domestic domicile or habitual residence or is employed in this country, then it is possible to bring an action against him under §§ 88, 89, 93 paragraph 2 and 104 Section 1 of the Law of Jurisdiction (JN), but only through a court in whose jurisdiction the domicile, habitual residence or place of employment is located.

## **Storage Conditions for Furniture Transport**

### ***XXIV. Scope***

#### **Section: 1**

a) These "Storage conditions for furniture transport" are valid for the storage of removal furniture. They apply to all of the Contractor's furniture storage activities, insofar as they are not legal requirements, particularly those opposed to consumer protection.

b) The Warehouse Keeper will perform his obligations with the due care and diligence of a prudent businessman.

## ***XXV. Liability***

### **A. The Warehouse Keeper**

**Section: 2**

a) The Warehouse Keeper shall be liable for any loss or damage to the goods, where such loss or damage arises from the Contractor's negligence during the handling or transport of the goods.

b) The Warehouse Keeper shall remedy the damage to the exclusion of liability for any natural depreciation, but he is free in any case to provide monetary compensation instead. In any case, the liability of the Warehouse Keeper is limited to the value of the Storage Fee, with a maximum of the value of the Storage Fee for a period of 12 months.

**Section: 3**

Liability is excluded:

a) for the contents of containers of all kinds, where the packing and unpacking is not included in the contract;

b) for damages incurred as a result of the natural characteristics or defective quality of goods, such as breakage or damage to marble sheets, glass, porcelain, mirrors, gas mantles, stucco frames, lighting fixtures, lampshades, heaters and mechanical movements, unless the Warehouse Keeper is found at fault.

c) for damages such as excessive loads on the furniture, loosening of gluing, cracking or dulling of polished surfaces, oxidation, internal deterioration, leaks or spillage, and atmospheric influences;

d) 1. for damage to precious metals, jewels, precious stones, money, stamps, coins or securities of any kind, documents and certificates;

2. for functional damage to electrical appliances such as washing machines, radios, televisions, computer hardware or similar sensitive equipment;

3. for damages caused by explosive, flammable, radioactive, spontaneously inflammable, toxic, or corrosive substances, or via oils and fats;

4. for damages caused by burglary, robbery or extortion;

e) for the quantity, type and external characteristics of the stored goods except as described in the respective warehouse receipt list . Where the Warehouse Keeper can show that an item to be delivered has the same external characteristics as it originally had on receipt, then any claim for damages against it is precluded.

**Section: 4**

a) All defects must be notified to the Warehouse Keeper in writing. The liability becomes void if externally visible defects are not notified immediately upon retrieval and non-externally visible defects are not notified within a period of six days after retrieval.

- b) If under this contract the Warehouse Keeper has to replace any goods lost, then without prejudice to Section 2 above, the fair market value at the time and place of retrieval of the goods of the same kind and quality is to be compensated.
- c) In the event of damage, without prejudice to Section 2 above, the compensation depends on the difference between the sale-value of the goods in their damaged condition and their undamaged fair market value at the time and place of retrieval.
- d) The Warehouse Keeper shall not be liable for damages that occur as a consequence arising from the loss or damage of the goods.

### **Section: 5**

- a) The Warehouse Keeper is obligated to conclude an insurance policy covering any damages against the Client's goods incurred during execution of the order by the Warehouse Keeper. The Warehouse Keeper is free to choose the insurer and it will be made at the expense of the Client. This insurance policy must, in particular concerning its scope of coverage, at least meet the requirements of the Austrian Furniture Carrier's Insurance Certificate (Moebel-SVS). The Warehouse Keeper must pay this insurance premium to the selected insurance company for each individual furniture storage contract and back-charge it fully to the Client as expenses for the insurance of the furniture insurance. The Warehouse Keeper must notify the Client on request, with whom the furniture transport insurance has been concluded.
- b) The Client, and all persons on whose behalf or account he acts, shall comply with all conditions of the (Moebel-SVS) insurance certificate.
- c) 1. By the conclusion of the (Moebel-SVS) insurance certificate, the Warehouse Keeper is released from liability for any of the covered insurance risks. This is especially true for the case where, due to a missing or insufficient declared value by the Client, the insured sum is less than the real value or amount of damage.  
2. If the Warehouse Keeper has no furniture storage insurance coverage in accordance with Para. a), then the Client may not appeal against the conditions of warehousing of furniture transport.

### **B. The Client**

#### **Section: 6**

- a) Inflammable, explosive, radioactive, self-ignition prone, toxic, corrosive, foul-smelling, and any other such goods that are potentially disadvantageous to the warehouse or to the storage of other goods, shall, except by a separate written agreement, be excluded from storage. The same is true of any goods that are subject to rapid deterioration or decay.
- b) In the event that any such goods were nevertheless stored, the depositor shall be liable for all damage that may result there from. This liability does not apply if the

Warehouse Keeper was made aware of the disadvantageous characteristics of the goods at the time of delivery and he has not rejected the acceptance of the goods for storage.

## ***XXVI. Warehouse Insurance***

### **Section: 7**

- a) The Warehouse Keeper is obligated to insure the goods if a written order has been received giving the insurance value and the scope of risks to be covered. A simple declaration of value or an unfeasible or inaccurate insurance instruction is not sufficient to justify an obligation for the Warehouse Keeper to insure the goods.
- b) The warehouse insurance covers only fire, theft and water leakage damage.
- c) In the case of an insurance claim by the Client against the Warehouse Keeper of the facility covered by the insurance risks, then this is limited to that amount which he receives from the insurance company itself. The Warehouse Keeper is also entitled to deduct any claims which he has against the Client. In the event of a claim, the Warehouse Keeper fulfils his obligation by assignment of his claim against the insurance company.
- d) In the case where the Client has concluded his own insurance, then any claim for compensation for hazards covered by this insurance against the Warehouse Keeper are ruled-out and thus are not transferred to the insurer.

## ***XXVII. Verbal Agreements***

### **Section: 8**

The Warehouse Keeper takes no responsibility for compliance with verbal instructions, which have not been confirmed in writing by either party.

## ***XXVIII. General***

### **Section: 9**

- a) The Client receives a warehouse receipt (see Appendix 1) for the stored goods, which must be returned in order to enable return of the goods. The warehouse receipt is however only a proof of receipt and the Warehouse Keeper is therefore not obligated to hand over these goods only against presentation of this warehouse storage receipt. The Warehouse Keeper is entitled, but not obliged, to verify the legitimacy of the party presenting the warehouse receipt. He is also entitled without further notice to return the goods to the bearer of the warehouse storage receipt.

b) An assignment or pledge of rights under the storage contract is only binding for the Warehouse Keeper if he has been informed in writing by the Client. In such cases, the Warehouse Keeper is authorised to give the person or body, to whom the rights have been assigned, access to the stored goods.

c) The Warehouse Keeper is under no obligation to verify signatures on any documents regarding the goods or to verify the authority of the signatory.

### **Section: 10**

a) The storage of the goods may take place in either in-house or third party warehouses. In case of a third party warehouse the Warehouse Keeper must notify the Client in writing of the warehouse company and its address. If the storage must be done in a public storage warehouse, then the applicable terms and conditions of this warehouse will primarily apply.

b) The Warehouse Keeper is only liable for the security and surveillance of the warehouse to the extent that it is deemed reasonable and usual under consideration of all circumstances concerning the warehouse location. The Warehouse Keeper is deemed to have fulfilled his surveillance duty, provided that he has applied due and proper diligence upon recruiting and hiring security personnel.

c) The Client is entitled to inspect the warehouse or have it inspected. Objections or complaints about the storage of the goods or the choice of warehouse must be made without delay. If he does not exercise the right of inspection, then he waves all rights to objections against the storage and warehousing, as long as the choice and type of storage complies with the due and proper diligence of a prudent Warehouse Keeper.

### **Section: 11**

a) Access to the warehouse by the Client or his authorized representative is possible during business hours only. The Client must give at least three days prior notification of this visit and submit the respective warehouse storage receipt and he will be accompanied by the storekeeper or other appointed employee during this visit. A visit is not possible in the first and last three days of every month.

b) If the client performs any action on the stored goods, then following this he shall be required to newly pass possession of the goods back to the Warehouse Keeper and if necessary, together with the Warehouse Keeper determine the number, type and condition of the goods. Otherwise, all liability of the Warehouse Keeper for damage discovered later, which due to the circumstances may have been caused by the Client's actions is excluded. The Warehouse Keeper reserves the right of handling the stored goods by his own employees in the manner requested by the Client. The costs incurred by the Warehouse Keeper or his staff in performing the tasks associated with the picking out and inspection of the Client's goods will be calculated charged according to the



storage company's current business tariff or, failing that, according to local commercial prices and are to be paid by the Client on completion of the inspection tasks.

**Section: 13**

Following completion of the storage period, the Warehouse Keeper will arrange the transport of the stored goods to the Client's future home or to any other defined destination.

**Section: 14**

The Warehouse Keeper is not obligated to perform any work related to the conservation, preservation, or packaging of the goods, unless expressly requested to do so in writing by the Client.

**Section: 15**

a) The Warehouse Keeper is entitled at any time to terminate the warehouse storage contract by giving one month's advance notice to the Client by means of registered letter to the address last known to him.

b) The client may cancel the contract at any time without a notice period, notwithstanding the claim of the Warehouse Keeper for storage charges pursuant to Section 16 below.

c) Retrieval of the stored goods by the Client is not possible in the first and last three days of every month. The Client will not incur any additional storage charges as a result of this.

***XXIX. Price Calculation***

**Section: 16**

a) The storage fee is calculated monthly. Every newly started calendar month is considered as a full month. If the local industry tariff rates change following agreeing the price for this storage, then the agreed transport price will change accordingly.

b) The cost of storage, stacking and subsequent retrieval will be charged separately in accordance with local commercial or industry collectively agreed rates. Any applicable public charges shall be borne by the Client.

c) The storage costs are, as far as expenses are incurred to be paid at once, otherwise monthly on the first weekday of each month.

d) A set-off or retention of payment is only allowed against the claims of the Contractor where valid Client counter-claims have been determined and the amount of which and the reason are undisputed.

**Section: 17**

a) As a result of any outstanding claims by the Warehouse Keeper against the Client concerning a current invoice or otherwise, the Warehouse Keeper maintains a lien on the stored goods.

b) For the lien or self-help sale, the Warehouse Keeper is entitled to levy a sales commission of 10% of the gross proceeds.

***XXII. Statute of Limitations***

**Section: 18**

All claims asserted against the Warehouse Keeper, irrespective of their legal basis and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins upon the beneficiary's awareness of his claim, however, no later than upon retrieval of the goods.

***XXIII. Jurisdiction***

**Section: 19**

The venue for all parties involved is the location of the Contractor's commercial establishment where the transaction was completed.

However, if the Client is considered to be a consumer under the Austrian Consumer Protection Act, BGBl. No. 140/1979 in its current version, and has domestic domicile or habitual residence or is employed in this country, then it is possible to bring an action against him under §§ 88, 89, 93, Paragraph 2 and 104, Section 1 of the Law of Jurisdiction (JN), but only through a court in whose jurisdiction the domicile, habitual residence or place of employment is located.

**Austrian Furniture Carrier's Insurance Certificate  
(Moebel-SVS)**

**Federal Chamber of Commerce**

## **Association of Freight Forwarders Announcement**

According to the "Conditions of carriage for the transport of furniture" and the "Warehousing conditions for transport of furniture," promulgated by the Federal Chamber of Commerce, Department of Transport, Association of Freight Forwarders, in the "Wiener Zeitung" of 9 August 1947, the liability for freight forwarders involved with the carriage or storage of furniture is limited.

In order to give Clients of the Freight Forwarders the opportunity to claim for damages occurring during the execution of orders, the Austrian Association of Freight Forwarders chose to incorporate in the said conditions, a compulsory insurance in favour of the Freight Forwarder's Clients that takes the interests of both parties into account. During their meeting on 13th September 1951, the Association of Freight Forwarders decided to make a corresponding addition to the "Conditions of carriage for the transport of furniture" and the "Warehousing conditions for the transport of furniture," namely the "Furniture carrier's insurance certificate (Moebel-SVS)". It was further decided to make this addition effective as of 1. October 1951 and to complete the official notification requirements, it was published three times in the official part of the "Wiener Zeitung". The full text of the addition was included in the third publication and was therefore officially made public.

Association Head: *Minkus* Association Secretary : *Winkler*

### **Appendix A to Section 7, Para. a) and Section 5, Para. a) of the Furniture Transport Conditions of Carriage and Warehousing.**

#### **Austrian Furniture Carrier's Insurance Certificate (Moebel-SVS)**

##### **Section 1: Subject Matter of the Insurance and Scope of Application**

1. The insurance covers the transport of furniture and is valid for furniture removals using removal vans (furniture trailer, swap body box, container, Liftvan) both domestically and internationally, and hereafter referred to as "Furniture Transport".
2. It is to be understood that this includes all services covered under the Association of Freight Forwarders Furniture Transport published tariff, including all the usual fringe benefits.
3. The term "furniture removal goods" does not refer to trade with new furniture.

##### **Section 2: Policy Holder and Insured Persons**

1. The insurance is concluded on account of a third party. The Client is insured or the party, who has an insured interest at the time when the circumstances led to the damage (e.g. the Contractor).
2. The policyholder is the Contractor, who performs the furniture transport and storage (hereinafter called removal company) and operates in accordance with the provisions of the stated "Conditions of carriage for furniture transport" and the "Storage conditions for furniture transport".

### **Section 3: Scope of the Insurance in General**

The insurance indemnifies:

1. for such damages that the removal company is liable to the Client for under the stated "Conditions of carriage for furniture transport" or the "Storage conditions for furniture transport". Losses caused by deliberate acts of damage, and particularly misappropriation and embezzlement by the company owner, its agents, officers or independent branch managers shall be deemed excluded.
2. for such damages, additional to those covered under Para. 1 , for which the removal company can be made liable for due to negligence etc under the statutory provisions of the Austrian General Civil Code and Commercial Code (ABGB and HGB), under the conditions of Section below. The insurer waives the objections that could be raised by the removal company based on the provisions given in the "Conditions of carriage for furniture transport" and "Storage conditions for furniture transport", which exclude or reduce the statutory liability.
3. Should the removal company use subordinate affiliates or other freight forwarders during the performance of the contract, then their faults are also covered

### **Section 4: Scope of the Insurance in Relation to Statutory Liability**

Subject to the statutory liability provisions of the Austrian General Civil Code and Commercial Code (ABGB and HGB), the following points are valid concerning the liability of the insurer:

#### **A. Included Risks**

1. For furniture removals, damages or losses resulting from planning errors made by the removal company in arranging the transport. In relation to these insurance policy conditions, "planning errors" are understood to specifically cover:
  - a) selection of an inappropriate means of transport;
  - b) missed notifications;
  - c) misdirection or lack of addressing;
  - d) incorrect delivery;

e) incorrect placement or complete omission of transport insurance contracts;  
f) an unplanned storage period of up to 15 days (not counting Sundays and holidays), which is directly related to the furniture transport contract, is included in the insurance.

2. By storage of the furniture, the following are in particular compensated for:

a) Incorrect retrieval of stored goods, loss or damage, if not excluded by the provisions of Part B. Section 5.;

b) incorrect placement or complete omission of storage insurance contracts (fire, burglary and water leakage damage).

3. For valuable items, such as genuine carpets and objects of art, both the transport and storage insurance basically only covers them under the terms of the "Conditions of Carriage for furniture transport" or the "Storage conditions for furniture transport", if the removal company or Warehouse Keeper has been expressly notified in writing of this fact together with the respective values. Money and securities are, in any case, excluded from this insurance.

4. The insurer also compensates for claims caused by negligent failure to maintain a recourse, provided that it can be shown that no harm to the Client has developed.

5. The insurance also covers client claims where the grounds for the claim do not refer to the contract of carriage or storage, but are based on the property, tort or unjust enrichment, provided that these claims are directly related to an already concluded transport or storage contract with the removal company.

6. Should loading errors occur relating to an already insured furniture transport or an insured furniture storage contract, then the insurer will reimburse to the removal company for the additional transport costs incurred, including any telegram, telephone and postage costs, which have been spent to mitigate the damage or had to be spent.

#### **B. Ausgeschlossene Gefahren**

The following are excluded from the insurance cover:

1. Damage or loss caused by the Client or his agent or by force majeure. Furthermore, damage or loss arising from war or warlike events, acts decreed by governments, gang warfare, civil unrest, looting, strikes or lockouts; unless the policyholder can prove that the damage was neither directly nor indirectly related to the previously stated events.

2. Claims by the Client against the removal company, which derive from contracts that are non-customary for the furniture transport industry or from an agreement between the Client and the removal company that does not fall within the businesses mentioned in Section 1 or are not covered by the removal company's legal liabilities.

3. Damages and losses resulting from wilful acts on behalf of the company owner, its agents, officers or branch managers. Such wilful acts are understood to particularly

include damage and losses caused by misappropriation and embezzlement of funds by the previously mentioned persons.

4. Damage caused by unrestrained loads, loads that are without any packing or inadequately packed goods, also for goods that are not possible to be insured for transport.

5. For storage contracts, damage to the goods that are already covered by a fire, burglary, theft and water leakage damage insurance, or that could have been so covered.

6. Scarring damage, cracking or dulling of polished surfaces, loosening of gluing, or abrasive damage, unless caused by intent by employees who are not executive officers as referred to in paragraph 3 above.

7. So-called minor damages having a value less than € 36.34 will not be reimbursed.

8. Any transport of computers and computer equipment. When the move is part of an office relocation, then the office computer equipment will be insured to 10% of the total sum insured, up to a maximum of € 7,267.28.

### **Section 5: Compensation for Damages or Losses**

1. In the event of damage or loss of a property compensation will be paid based on the market value of the subject goods at the time of the occurrence. In case of loss, damage or breakage of any component of a property unit, then compensation will only be paid for the damage of the affected part.

2. If a number of causes of damage occur together, namely damage to property and pecuniary losses, then the insurer pays compensation for the total damage up to the extent of the sum insured, which in all cases represents the maximum amount of liability. In the case of under-insurance, the insurers are liable only on a pro rata basis.

### **Section 6: Maximum Amount of Liability**

1. The insurers are liable to the extent of their participation in any one registered claim under this insurance policy up to an amount of € 145,345.67, even if several insured persons are affected by this incident. If the total value of the claims from several Clients exceeds the maximum available amount, then the insurers are liable to the individual Clients only to an amount based on the proportionality of the individual values to the total value. In the case of household goods, where the actual value exceeds the maximum liability of € 145,345.67, then the insurer will waive the objection of under-insurance.

2. For any loss due to incorrect placement or total failure by the removal company to conclude a transport or storage insurance policy, then the maximum liability is limited to € 36,336.42.

### **Section 7: Insurance Contract and Insured Sum**

1. Premiums are levied for each individual carriage and storage contract.

2. Every contract, which is subject to payment of an insurance premium, is to be insured for the value of the goods at the premium corresponding to the insured sum as stated in Section 8 "Insurance premiums":

a) The present day value of the household effects and furniture shall be used as the basis for establishing the insured amount. The removal company has to ensure as far as possible that the Client provides the correct sum to be insured. If the Client fails to provide an insurance sum, then the removal company is required to estimate the insurance sum. Estimation errors are not covered by this insurance policy and as such may not develop into a liability for either the removal company or the Insurer.

b) The insurer shall only lodge an objection to the under insured value of the goods based on the removal company's estimate if the real value exceeds the estimated value by more than 20%.

### **Section 8: Premium**

The premium rates for all furniture transport and furniture storage contracts, including the applicable insurance tax are laid down in the Premiums Table.

### **Section 9: Registration**

1. The removal company has to register all insured transport and storage contracts with the insurance company at the end of each calendar month and not later than the 10th of the following month. The registration and payment of the applicable premiums are to be made simultaneously via the insurance company's appointed processing office using the forms supplied by them. Transport and storage contracts having an individual value exceeding € 3,633.64 are to be individually registered with the respective higher insured sum and together with details of the Client and the removal company's respective order number entered on the insurers supplied Specification Form.

2. Transport and storage contracts having an individual value of over € 14,534.57 shall be separately and immediately registered on issue of the order.

3. Transport and storage contracts having an individual value of over € 14,534.57 and involving valuable items such as genuine carpets and objects of art shall be separately and immediately registered on acceptance of the order.

## **Section 10: Insurer's Right to Audit**

The insurer is entitled to verify the registrations made by the removal company through inspection of the company's books and other documents relating to these insurance policies.

## **Section 11: Assertion of Damages, Obligations of the Insurer and the Removal Company**

1. The removal company, being the policyholder, shall promptly register any damages that become known to him with the insurance company in writing via the insurance company's appointed processing office. This registration must be made at the latest within six weeks of becoming aware of the damages. The deadline can be met by timely mailing of the notifications. In the case of culpable neglect of the period of grace, then the insurer is freed from his obligations concerning this job.

2. The removal company is obligated to establish any damages in an impartial and timely manner and in as far as he can influence the events, he shall in compliance with any instructions of the insurer do everything possible to stop or minimize the damages.

He must also give the insurer any information requested and to provide any documents which may serve to clarify the damage. If these obligations are grossly neglected by the removal company then the insurance companies are freed from their obligations.

3. As soon as the insured Client is aware of the damage event, then he is equally committed to determine, in compliance with any instructions of the insurer, the objective extent of the damage. He is also obligated, as far as possible, to stop or minimize the damages. Should the insurers be disadvantaged as a result of the insured Client breaching his duty to mitigate damages, then the insurance companies are freed from their obligations.

4. The disbursements concerning the amount of loss are made to the insured as the injured party. However, the removal company is authorized to receive the payments for this amount of loss when he has handled the claim notification and can submit the insured's settlement acceptance declaration.

5. Due to the statute of limitations on the insurance claims and that insurance claims rejected by the insurer will expire, the provisions of Section 12 of the Austrian Insurance Contracts Law are applicable.

## **Section 12: Right of Recourse**

1. The Insurers waive any recourse against the removal company and its employees. As far as the removal company, in its execution of the contract, also used subordinate affiliates or other freight forwarders and they have also signed the certificate of



insurance, then the insurers also waive their Right of Recourse against these removal companies.

2. However, recourse in full is permitted against anyone who caused the damage intentionally.

### **Section 13: Removal Company Disbursement Contributions**

1. The removal company must reimburse the insurance companies with a contribution towards the cost of the damage disbursement. This contribution will be equal to 10% of the loss amount paid out, with a minimum of € 36.33 and a maximum of € 254.35 and shall be paid without delay via the insurance company's appointed processing office.

2. If the damage has been caused through gross negligence by a legal representative, Director or a Branch Manager of the removal company, then the disbursement contribution is increased to 20% of the loss amount paid out, with a minimum of € 36.33 and a maximum of € 254.35. This does not affect the provisions of Section 12, Para. 2 above.

### **Section 14: Period of Insurance**

1. This Agreement is concluded initially for the period from 1<sup>st</sup> January 1989 to 31<sup>st</sup> December 1989. Thereafter, it shall be automatically renewed for a further year unless it is terminated by either party observing the notice period of three months to the end of the respective contractual term. Termination must be made in writing and sent by registered mail.

2. If changes to this contract are agreed between the involved insurance companies and the Austrian Association of Freight Forwarders, then these will replace the previous respective provisions.

### **Section 15: Extraordinary Right of Termination**

1. The Insurers have the right to require the Austrian Association of Freight Forwarders to enter into immediate negotiations concerning readjusting the premiums, if the total paid-out damages reach 80% of the registered paid premiums. If no agreement is reached with the Austrian Association of Freight Forwarders within 14 days, then the Insurers shall be entitled to terminate all of the furniture-SVS insurance certificates with a four-week notice period. In this case, the insurer is obligated to give notice to both the Austrian Association of Freight Forwarders, as well as to each individual Furniture-SVS Insurance signatory by registered letter.

2. The Insurers are in agreement with the Association of Freight Forwarders that they are entitled to terminate individual contracts with a notice period of three weeks at each end of each month:

a) when they can demonstrate significant deficiencies in the operation of the removal company which could reasonably be expected to be rectified, which despite giving the removal company a reasonable period of notice to rectify these, they have failed to be rectified.

b) if the removal company has intentionally violated the premium registration deadline;

c) if the removal company is more than two weeks in default in payment of a due premium after receiving a payment reminder. The payment reminder must be sent by registered mail and specifying the legal consequences associated with the expiration of the notice period.

### **Section 16: Jurisdiction**

1. The ordinary courts of law are responsible to deal with any disputes arising under this agreement.

2. The lead insurance company is authorized by the co-insurer companies, to handle all associated lawsuits on their behalf, also in terms of their shares as plaintiff or defendant. The participating companies recognize that a judgment against the lead company is also binding on their companies.

3. The Processing Offices appointed by the insurance companies for this work are entitled to assert the rights of the insurer under this contract in their own names.

### **Section 17: Leadership and List of Participants**

In this insurance policy and under exclusion of joint liability, the insurers listed below participate according to the given percentages.