

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



## Art. 1 Scope of application

The following general storage terms and conditions of the SWISS MOVERS ASSOCIATION (GSTC SMA) are applicable to all deposit and storage agreements concluded by members of the SMA.

They cover all activities, described in more detail below, of the Warehouse Keeper. All activities not mentioned below are subject to the General Removal Terms and Conditions of the SMA (GTC SMA).

If contradictory regulations or agreements exist, then the following order of precedence shall apply: 1. Mandatory statutory provisions; 2. Individual contractual agreements; 3. GSTC SMA; 4. GTC SMA; 5. Non-mandatory provisions of law.

## Art. 2 Area of activity

In accordance with the terms and conditions, the area of activity of the Warehouse Keeper exclusively covers storage and warehouse management as well as the placement and retrieval of goods.

## Art. 3 Order placement

Orders must be placed in writing within the meaning of Art. 13 f. of the Swiss Code of Obligations ("OR"). Quotations shall lapse if they are not accepted within 60 days.

The order must contain all the necessary information for proper execution, in particular quantity and type of the goods to be stored, storage area required, time and type of delivery etc. as well as indication of regulated goods (e.g. goods not cleared through customs, compulsory stocks etc.) and also goods which require special handling (e.g. due to odour emissions, unusual soil impact, extreme dimensions, humidity and temperature specifications etc.). In addition, the Principal must indicate special characteristics of the stored material, special proneness to damage and products of unusually high value. The additional costs thereby incurred shall be borne by the Principal.

Unless otherwise agreed in writing, the following are excluded from acceptance by the warehouse (prohibited cargo): dangerous goods such as flammable or explosive goods and generally any goods which have a negative impact of any sort on their environment, as well as illegal objects, animals, money, negotiable securities, precious metals, jewellery, stocks in terms of the Swiss Stock Exchange Act and perishables.

It shall be assumed, unless proved otherwise, that the cargo which is to be stored constitutes used personal effects. The Warehouse Keeper shall not be required to add reservations in acceptance protocols or similar documents on the grounds of normal wear and tear. If the Principal orders brand new items to be stored, then he must explicitly inform the Warehouse Keeper of this.

## Art. 4 Acceptance and inspection of incoming goods

The Principal shall notify the Warehouse Keeper of the imminent delivery and the planned retrieval of the goods at least 24 hours in advance.

The inspection of incoming goods to be stored shall be limited to their external properties. The Warehouse Keeper is entitled but not obliged or required to take random samples of the goods to be stored. The Warehouse Keeper shall be liable for the contents of boxes, cartons, baskets, cupboards, drawers and other containers only if they were packed and unpacked and sealed by his own auxiliary staff and if a list of these goods drawn up by the Warehouse Keeper exists.

The Warehouse Keeper must confirm to the Principal the acceptance of goods by the warehouse by completing a warehouse receipt. Only the warehouse receipt shall be the binding document laying down the type and quantity of stored objects. The warehouse receipt must be signed by the Warehouse Keeper and the Principal. The warehouse receipt does not constitute a security; this means it is neither acceptable as collateral nor pledgeable or transferrable.

## Art. 5 Obligations and liability of the Warehouse Keeper

The Warehouse Keeper shall be liable to the Depositor for careful execution of the order. To carry out the order, the Warehouse Keeper has the right to resort to auxiliary staff and/or representatives.

The Warehouse Keeper's duty to exercise care only extends to the storage of goods in storage rooms with room temperature and non-controlled humidity, but not to special procedures and special handling of the goods (special safety measures, air conditioning technology etc.) during storage, unless written agreements have been concluded on this issue.

The Warehouse Keeper becomes responsible for the goods when they are delivered at the ramp or the threshold of the door and hands over responsibility for them when they are collected again at the ramp or the threshold of the door. Under all circumstances, the process of loading and unloading is considered part of the liability period of the Principal. If any auxiliary staff of the Warehouse Keeper help with the loading or unloading process, they shall, for this purpose, be deemed auxiliary personnel of the Principal.

The Warehouse Keeper is not obliged to check the condition of the goods during the time they are stored. However, if he notices obvious changes which suggest damage or danger, he shall report this to the Principal. The Warehouse Keeper does not have any further obligations beyond notification of the Principal.

The Warehouse Keeper is released from all liability if the stored goods are damaged as a result of circumstances for which neither the Warehouse Keeper nor any of his contractors are responsible.

Liability of the Warehouse Keeper for slight negligence is excluded in accordance with Art. 100 of the Swiss Code of Obligations (OR). Equally, liability for slight negligence on the part of auxiliary staff or representatives is also excluded. These provisions shall apply provided that no agreements to the contrary have been entered into.

Damage which is attributable to the following causes shall not be deemed to be the fault of the Warehouse Keeper:

- a) damage caused by rust, mice and moths (even where moth treatment has taken place), woodworm, mould;
- b) detachment of glued parts, abrasion, pressure marks, loss of shine of the furniture polish, breakage of rotten furniture and linoleum carpets as well as the consequences of temperature fluctuations or the effects of air humidity;
- c) force majeure such as war, earthquake, pillaging, destruction, social unrest;
- d) loss or damage of contents on data carriers;
- e) damage in case of storage in containers or in cases where separate rooms are rented.

Items of sentimental value shall not be replaced.

Liability of the Warehouse Keeper ends with the termination of the storage agreement.

## Art. 6 Obligations and liability of the Principal

The Principal shall be liable for all direct and indirect damage which the Warehouse Keeper suffers through the stored goods.

The following duties are incumbent upon the Principal. This means that any damage resulting from a breach of these duties does not constitute a fault on the part of the Warehouse Keeper:

- a) especially fragile objects such as porcelain, glass, marble, lamps, lamp shades, pictures, mirrors, works of art, electric and other appliances must be packed before handing them over for storage;
- b) stored goods must be truthfully declared;
- c) clothes, laundry, blankets, small mats and generally any small objects which may be lost if not packed must be packed before they are handed over for storage;
- d) perishable or prohibited goods must not be handed over for storage;
- e) the Principal must point out to the Warehouse Keeper any special properties, special proneness to damage and unusually high value of the goods to be stored (e.g. money, securities and documents, or valuables such as works of art, jewellery, gold and silver goods, antiquities); see above, Art 3.

The Principal must compensate the Warehouse keeper for all expenses

including interest which the latter has incurred as part of proper order execution. Equally, the Principal must make good any loss which the Warehouse Keeper has incurred in the course of proper order execution.

#### **Art. 7 Insurance**

The Warehouse Keeper shall only be obliged to insure the stored goods against damage resulting from fire, water or burglary if a written order to that effect was submitted by the Depositor indicating the insurance value of the risk to be covered.

However, the Warehouse Keeper is entitled to insure the goods at the expense of the Principal even in the absence of a special order. In that case, the policy shall cover damage resulting from water, fire or burglary, and the extent of coverage must be adequate. Passing on the costs to the Principal shall be possible only where the Principal has been informed of an existing or intended insurance coverage and where he does not immediately communicate to the Warehouse Keeper that he does not want the proposed coverage.

The premiums for such insurance policies shall be invoiced separately.

#### **Art. 8 Storage fees and payment conditions**

The receivables of the Warehouse Keeper become due immediately. Payment must be made immediately upon receipt of the invoice. Default starts immediately upon receipt of the invoice without the need for any further reminder (settlement day agreement).

The storage fees are calculated per calendar month. Full charges apply to each month begun. Special work which is either caused by the stored goods or carried out on the order of the Depositor is to be invoiced separately.

In the event of delay in payment, the customer is required to settle a fee of CHF 50 to the warehouse-keeper in addition to the statutory default interest.

In the event of delay in payment of more than 60 days, all claims of the customer against the warehouse-keeper arising from an insurance policy taken out or arranged by the warehouse-keeper shall also lapse.

#### **Art. 9 Change of domicile**

The Depositor must immediately inform the Warehouse Keeper in writing every time he changes domicile. As long as the Warehouse Keeper has not been informed of a change of domicile, the last known address shall be used as the mailing address.

#### **Art. 10 Right of retention**

The storage goods entrusted to the Warehouse Keeper shall be held as a pledge for the respective balance arising out of the entire business transaction with the Principal. Following the fruitless expiry of a payment deadline imposed by the Warehouse Keeper in conjunction with the threat of exploitation, the Warehouse Keeper may optimally exploit the respective storage goods on the open market without further formalities. The Warehouse Keeper has the right to send the threat of exploitation to the last address known to him in accordance with Art. 9.

#### **Art. 11 Transfer of ownership**

In the case of transfer of ownership of the stored goods, the Principal shall remain liable, in his capacity as contractual partner, for the fulfilment of all obligations, and the right of retention of the Warehouse Keeper shall continue to apply. Only once all open accounts have been settled and upon request of the Principal and the new owner must the Warehouse Keeper agree to a contractual transfer of the goods to the acquirer and issue a new warehouse receipt in the name of the acquirer.

#### **Art. 12 Inspection of the stored goods**

Having given notice at least 24 hours in advance, the Depositor may, accompanied by an employee of the Warehouse Keeper, access the storage area during normal business hours. For this purpose, he must show the warehouse receipt and bear the costs resulting from this visit.

#### **Art. 13 Cancellation**

If the storage agreement has been concluded for a definite period, it shall end on the expiry of that period.

If the storage agreement has been concluded for an indefinite period, the Principal may cancel the contract by giving 48 hours notice at any time. The notice period for the Warehouse Keeper is 30 days. All cancellations must be made in writing.

Upon good cause shown, the storage agreement may be cancelled prematurely without notice. The following reasons in particular shall be deemed good cause shown: if the stored goods have or develop unwanted properties (odours, leaking, vermin, warming etc.) which have a negative effect on other goods, the warehouse itself, staff working in the warehouse or on the environment or if, after an additional ten-day payment period has been granted, the amount owed to the Warehouse Keeper is still not paid.

The Depositor must be granted an adequate period in which to collect the stored goods after the end of the contract. **If the stored goods are not picked up within the specified period, the Warehouse Keeper shall be entitled to sell the goods on the free market or to dispose of them if they no longer have any material value.**

#### **Art. 14 Retrieval of goods**

The order for the retrieval of goods must be initiated by the Principal and must be carried out in good time, i.e. at least 48 hours before the intended retrieval date. Under all circumstances, the Warehouse Keeper shall have the right to verify the identity of the person claiming the goods.

Before even one part of the stored goods can be retrieved, any amount owed on the stored goods must first be settled (Art. 8 and Art. 10).

If individual items are claimed, the Principal shall bear the costs of relocating the furniture, opening boxes and any other work carried out. Whenever items are claimed, the Warehouse Keeper shall be entitled to a receipt. If only some of the goods are retrieved (or additional goods are stored), the Warehouse Keeper may redefine the storage fees.

If the goods are not transported by the Warehouse Keeper, he shall be entitled to adequate compensation for infrastructural costs (ramp, lift etc.) and for any auxiliary staff provided.

#### **Art. 15 Complaints**

Unconditional acceptance of the goods shall be construed as approval of the condition of the goods. Complaints on the grounds of missing storage goods or externally visible damage must be made in writing immediately during the retrieval process. Hidden damage must be reported to the Warehouse Keeper, also in writing, within 3 days following retrieval of the goods.

#### **Art. 16 Sale of stored goods**

The Warehouse Keeper may accept orders to sell the stored goods. In that case, he shall be bound by the rules concerning commission (Art. 425 ff. Swiss Code of Obligations, OR). If no other agreements have been reached, the Warehouse Keeper shall be free as regards pricing. Unless otherwise agreed, he shall receive a commission of 10% on the gross proceeds for his efforts. The Depositor must separately reimburse the Warehouse Keeper for expenses, irrespective of the sale.

#### **Art. 17 Place of jurisdiction and applicable law**

In respect of the adjudication of all disputed claims between the contracting parties arising out of the Agreement, the registered domicile of the Warehouse Keeper shall be the place of jurisdiction.

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