

# GENERAL TERMS AND CONDITIONS FOR THE STORAGE OF OBJECTS OF ART (2006)

These general terms and conditions (called "GTC" below) govern the rights and obligations of the consignor, as well as of Welt-Furrer Fine Art AG (called "WF" below), with regard to the instorage of objects of art and/or antiques (called "objects of art" below).

## 1 PREFACE

- 1.1. WF undertakes the instorage and storage of objects of art according to the provisions set forth below and in return for payment of the remuneration agreed upon.
- 1.2. The storage contract which has been signed by both parties, as well as these GTC's, serve as a basis for the storage of objects of art. In the event of contradiction, the terms of the storage contract shall have prevalence.
- 1.3. In addition, the provisions of the Swiss Law of Contract (OR) on the deposit contract shall apply.
- 1.4. These GTC'S shall not be applicable for the transport/manipulation of the objects of art outside the art storage facility. In this context reference is made to the special "General Terms and Conditions of Transport for Objects of Art".

## 2 CONCLUSION OF THE CONTRACT

- 2.1. WF has the right to refuse the instorage of objects of art without the obligation of stating the reasons for such refusal. This refusal must occur at the latest immediately before the acceptance of the objects of art. Under no circumstances shall WF be held liable for damages resulting from such refusal, unless written assurances to this effect have been made by WF in writing in the storage contract.
- 2.2. The consignor is obliged to provide WF with complete and correct data on the objects of art to be stored. This includes, but is not limited to in particular quantity, declaration, condition, hazardous materials, estimated or current market value, ownership and third party entitlements. WF is to be notified in writing of any changes thereto during the term of storage. In addition, the consignor shall inform WF in writing of any change in his or her domicile.
- 2.3. For WF, as a general rule the data set forth in the storage contract are binding. WF is not obliged, but is entitled, to check said data. WF has the right to make random checks, for which WF may open or destroy the packing. In the event of the data made by the consignor being incomplete or incorrect at the beginning or during the course of the storage, any liability of WF shall be reduced (cf. 7.2 and 7.4(h)).

## 3 EXECUTION

- 3.1. On the instorage of the objects of art WF will check only the outside condition, as well as the quantity. Any checks of the objects of art beyond the foregoing to which WF is entitled have no effect on the liability of WF.
- 3.2. On the instorage the objects of art will only be weighed if the consignor expressly requires such weighing, if it is necessary for customs procedures or if WF deems to be necessary for reasons of verification.
- 3.3. On the instorage of the objects of art WF will issue the consignor a storage receipt which when signed becomes binding for both parties. The storage receipt does not have the character of a security, which means that it can neither be used as collateral, pledged nor assigned to others.
- 3.4. WF provides for the instorage and outstorage operations of the goods. WF will ensure to the extent possible that no truck demurrage charges are to be paid, but is generally not obliged to provide for in- and outstorage within specified time periods and assumes no liability for damages which occur during an eventual waiting time.
- 3.5. With reservation to a special contractual agreement WF is not obliged, but is entitled to pay freight fees, customs duties, taxes etc. for the account of the consignor. In this regard WF is to be entitled to rely on the data provided by the consignor. The consignor is liable for all consequences resulting from incorrect declaration, including taxes, customs duties, fines and penalties. The consignor shall recompense WF for its expenditures, including deferred payment interest and a processing fee.

## 4 OUTSTORAGE AND ASSIGNMENT

- 4.1. The outstorage order by the consignor must be made in writing, and must contain the following data:
  - (a) Storage number, code, quantity, type of packing, contents and declared value;
  - (b) Recipient, type of handover, as well as a separate order for the transport;
  - (c) Instructions relating to eventual inspections of the objects of art.
- 4.2. The consignor in whose name the goods are put into storage is designated as the party entitled to dispose of the goods. Moreover, WF has the right to regard the deliverer of the goods as legitimized to accept delivery thereof. However, WF is entitled to demand additional legitimization, or to hand over the goods without the presenting of the storage receipt if verification of entitlement of disposal is presented in another fashion.
- 4.3. Loss of the storage receipt is to be notified to WF immediately for the purpose of issuing a duplicate and voiding the first storage receipt.
- 4.4. WF is not obliged to effect even partial outstorage of the stored objects of art until all of WF's requirements ensuing from this or other contracts between the parties have been fulfilled.
- 4.5. Partial outstorages will only be made against a corresponding delivery note. In the event of individual pieces being requisitioned, the consignor shall reimburse WF separately for the rearrangement, the opening of the containers and any other related work.
- 4.6. Complete dissolution of the storage consignment is only admissible against return of the storage receipt. The consignor will be notified of the outstorage operations in writing.
- 4.7. For the outstorage WF is to be allotted the necessary time to conduct the outstorage operations correctly.
- 4.8. WF is to be advised in writing of the assignment (wholly or partially) of the property to third parties. WF will then issue the third party a new storage receipt and will notify the assignee in writing. Up until such time, versus WF the consignor remains entitled and obligated. The right to collateral and retention claims of WF for obligations of the former as well as those of the subsequent entitled party remains in effect. If acceptance of the assigned property is refused, the storage contract with the original consignor remains in force. The original consignor shall bear all costs incurred to WF by the assignment in joint and several liability with the party entitled to dispose of the objects of art.
- 4.9. On acceptance of the objects of art the party storing said objects or the entitled recipient thereof shall inspect the condition and quantity of said objects and report deficiencies which are externally discernible immediately and those which are not externally discernible at the latest within a period of 8 days after the handover. If neither deficiencies nor defects are reported within these time periods, all claims versus WF become null and void.
- 4.10. In addition, all claims against WF fall under the statute of limitations one year following the delivery of the objects of art to the recipient entitled to dispose of said objects.

## 5 SALES OF STORED MATERIALS / INSPECTION

- 5.1. WF can accept commissions to sell the stored objects and to show the sellable objects of art to interested parties. Without contradictory written agreement WF is free to set the pricing at its own discretion.
- 5.2. For this activity WF receives a commission on the gross revenue which is to be specified. If this commission does not fully cover the expenses of WF for the inspection and sale of the objects of art, such uncovered costs are to be additionally remunerated by the consignor.
- 5.3. Each inspection of the objects of art shall be preceded by an order by the party storing the objects to this effect with indication of the inspecting persons. WF is entitled to require the presentation of identification of an inspecting person. The expenses thereby incurred will be invoiced to the consignor separately.
- 5.4. The consignor only has access to the storage facility only during business hours after adequate prior notice and in the accompaniment of WF and against presentation of the storage receipt.

## 6 STORAGE FEE / RIGHT OF RETENTION AND COLLATERAL

- 6.1. The storage fee is based on the space requirement and on a surcharge on the value and is calculated per calendar month. Each beginning month will be charged fully. Special work caused by virtue of the stored objects or performed at the request of the consignor will be charged to the account of consignor separately.
- 6.2. Normally, the storage fee is payable quarterly. On partial outstorages or additional instorages the new storage fee may be set at the discretion of WF.
- 6.3. In accordance with art. 485, section 3 of the Law of Contracts (OR) WF has a right of retention on the stored objects of art pursuant to art. 895 ff. of the civil code (ZGB).
- 6.4. Moreover, WF has a contractual collateral holding right on the objects of art in its possession or power of disposition for the purpose of covering all claims ensuing from any legal title to which it is entitled.
- 6.5. If the consignor has been in arrears in the payment of the storage fees for more than a year, WF is entitled to sell the stored objects on the open market. If any doubt exists as to whether the objects of art will cover WF's outstanding fees,

- 6.6. WF is entitled to sell the objects of art before this year has elapsed.
- 6.7. Before such an intended measure is taken, WF shall notify the consignor by registered letter to the last-known address. If the consignor does not respond to this last reminder within a period of 20 days, WF can immediately proceed to sell the objects on the open market.
- 6.8. The consignor shall be liable for any negative balance; in the event of a surplus balance, if the balance could not be transferred to the consignor such balance will be left credited to the non-interest-bearing account of the consignor.
- 6.9. The assignment of the objects of art in the storage facility to third parties has no effect on the right of collateral and retention claims of WF versus the assigner.
- 6.10. If the consignor claims deficiencies on the objects of art for which he intends to hold WF liable, WF is entitled to retain the objects of art until such time as the claim has been settled without the consignor being entitled to file claims for indemnity. Claims for indemnity due to unfounded non-outstorage of objects of art shall be null and void in their entirety.
- 6.11. The consignor expressly renounces offsetting WF's claims for storage fees and recompense for eventual additional work with any and all counter-claims.
- 6.12. In the event of local rates or local commercial tariffs changing after the conclusion of the contract, the contractual storage fees will change correspondingly.

## 7 LIABILITY

- 7.1. Versus the consignor WF undertakes to store the objects in conformity with the contract and with due diligence.
- 7.2. WF is liable only for damages which have verifiably been caused by the intent or by the gross negligence of WF. In the event of data not being available on the value, or in the event of the available data being incorrect, the value will be assessed by WF, but in any case is limited to a maximum total of CHF 50,000.--.
- 7.3. In other cases, in particular in transport, shipping and customs clearance WF is liable only for careful selection and instruction of the assisting person.
- 7.4. Moreover, WF's liability is excluded in the following cases:
  - (a) for damages caused by force majeure, strikes, events relating to war and similar instances;
  - (b) for objects of art which are fragile and inappropriately packed;
  - (c) for small objects which are handed over unpacked that are subject to the risk of loss or damage such as e.g. miniatures, small carpets etc.;
  - (d) for the contents of crates, baskets, cabinets, drawers or other containers, unless WF has a special listing, the packing was done or inspected by WF and a special written agreement to this effect is in force;
  - (e) for gluing and veneering solvents, scorings, dents in furniture, breakage of disintegrating furniture, as well as for the consequences of temperature fluctuations or the influence of moisture;
  - (f) for rust, mouse, rat and moth damages, wood worm, mildew;
  - (g) for internal damages of objects with an intact external appearance;
  - (h) for the consequences of false data;
  - (i) for indirect damages, consequential damages, deferral damages, loss of profit, claims for reduction in value, non-compliance penalties, etc.;
  - (j) for circumstances for which WF, despite the exercising of due diligence, was not able to influence and the consequences of which it was not able to avert.
- 7.5. The due diligence of WF extends only to the storage of objects of art in suitable storage facilities, but not to special precautionary measures and the treatment of the objects of art during the storage, unless an express written agreement has been made in this regard.
- 7.6. In any case the liability of WF starts at the earliest with the instorage and ends at the latest with the outstorage of the objects of art. If the consignor performs the in- or outstorage him- or herself, WF is exonerated from any and all liability for such actions, as well as from any liability until after or starting from this point in time.
- 7.7. The consignor is liable for any and all damages which are incurred as a result of the instorage

## 8 INSURANCE

- 8.1. WF only concludes insurance for the stored objects of art only if requested in writing by the party storing the objects. The value declared by the storing party is taken as the insurance value. In the event of damage this value must be verified by the beneficiary. The pertaining insurance premiums will be invoiced to the consignor.
- 8.2. In the event of a change in the objects of art in terms of quantity or value, at the written request of the consignor the insurance sum will be adjusted accordingly. Any disadvantages ensuing from an adjustment of the value which was not reported or not reported on time to WF shall be borne solely by the consignor.
- 8.3. If the consignor does not issue WF an order to conclude an insurance policy, WF proceeds on the assumption that the object of art is adequately insured by the consignor or by a third party. In this case, in the event of any damage WF is exempt from any and all liability.
- 8.4. In each case of damage the consignor is only entitled to indemnity to the extent that on the basis of the respective insurance conditions the insurance company makes compensation, with deduction of any claims to which WF is entitled versus the consignor. Any further liability of WF which acts merely as a mediator between the consignor and the insurance company is therewith excluded in full.

## 9 TERMINATION

- 9.1. If the storage contract is concluded for a specified term, it is terminated when the term elapses.
- 9.2. If the storage contract is concluded for an indefinite period, with reservation of section 9.3 it can be terminated by the consignor at any time in observation a notice of termination period of 48 hours, and by WF in writing to the last-advised address of the consignor in observance of a notice of termination period of one month.
- 9.3. In addition, the storage contract can be dissolved prematurely with immediate effect for important reasons. This is the case in particular in the event of provisions of this contract being breached.
- 9.4. In the event that after a regular or extraordinary termination the consignor fails to meet the request to pick up the objects of art within the specified period, WF has the right to sell the stored objects on the open market. When the deadline for retrieval of the objects of art up to the actual outstorage (sale) has elapsed, twice the storage fee is due for payment.

## 10 GENERAL PROVISIONS

- 10.1. Changes and additions to the storage contract and to these General Terms and Conditions must be in written form.
- 10.2. WF reserves the right to revise these GTC's at any time. These changes will be notified to the consignor by circular letter, or in another appropriate way, and if not objected to by the consignor within a month will be construed as having been approved.
- 10.3. WF is entitled but not obliged to receive orders, instructions or communications of the consignor by telephone, fax, email, SMS or similar means of communication, or to react to such communications. Orders, instructions or communications of the consignor thus transmitted take effect only if WF confirms in writing to the consignor that the order will be executed, the instructions accepted or the communication taken note of. Contradictory written agreements are reserved.

## 11 PLACE OF PERFORMANCE, VENUE AND GOVERNING LAW

- 11.1. The place of performance and exclusive venue for the arbitration of all disputes in connection with the storage is Zürich. The place of performance is also the collection venue for consignors with headquarters/residence abroad. WF also has the right to file suit against the consignor at a court of any jurisdiction.

## 12 Exclusively Swiss substantive law shall apply.