

Furniture removal note

Article 1

- 1 A furniture removal note shall be made out by the remover. The absence, irregularity or loss of the furniture removal note shall not affect the existence or the validity of the contract for furniture removal.
- 2 The furniture removal note shall, if signed by both parties, be *prima facie* evidence of the statements therein.

Persons for whom the parties to the contract are responsible

Article 2

The parties to the contract shall be responsible for the acts and omissions of their agents and servants and of any other persons of whose services they make use for the performance of the contract for furniture removal when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were their own.

Information to be supplied and statements to be made by the two parties at the formation of the contract

Article 3

- 1 It shall be the responsibility of the remover to estimate the volume and, if necessary, the weight of the articles to be removed. The customer shall, however, be answerable for the consequences of any underestimate of the said volume or weight that is attributable either to the inadequacy or to the inaccuracy of the particulars given to the remover.
- 2 If the remover has inspected the premises from which the furniture is to be removed, and the approach thereto, the fact shall be stated in the furniture removal note. A similar statement shall be made if the remover has inspected the premises in which the furniture is to be placed, or the handling operations, should involve exceptional difficulties, it shall be the responsibility of the customer to bring them to the notice of the remover if the latter has not inspected the said premises and the approach thereto; should the customer fail to do so, he shall be liable to the remover for any expenses, loss or damage thereby incurred, except for expenses, loss or damage caused by some wrongful act or neglect on the part of the remover.
- 3 Without prejudice to the provisions of article 7 concerning articles or substances which are dangerous or liable to cause infection, it shall be the responsibility of the customer to furnish:
 - a) a list of any articles the presence of which involves a special risk of damage to the equipment used or to the furniture to be removed;
 - b) a statement concerning the presence of articles of furniture which are subject to special regulations, such as regulations, if any, relating to articles made of gold, silver or of some other precious metal, provided that the remover has drawn the customer's attention to the special regulations in question;
 - c) a statement concerning the presence among the articles of furniture of *objects d'art*, collector's pieces or other exceptionally valuable articles other than those mentioned in sub-paragraph (b) of the present paragraph.
- 4 The customer shall be responsible for all expenses, loss or damage sustained by the remover by reason of the inaccuracy or inadequacy of any of the particulars specified in paragraph 3 above.

- 5 Unless he has given detailed instructions concerning the articles to be removed, the customer shall be responsible for ascertaining or causing to be ascertained at the time of the furniture removal that no article intended for removal is left behind and that no article is removed by error.

Charge for removal

Article 4

The charge for removal, and the conditions and method of payment, shall be specified in the individual contract. Unless this provides otherwise, the agreed charge for removal shall cover the dismantling, packing and loading of the furniture at the agreed departure point, its carriage to the place of destination and its unloading, unpacking and reassembling at that place of destination; but it shall not cover operations connected with the removal, such as the laying or removal of carpets, curtains, heating apparatus, sanitary equipment and devices fixed to the ceilings, walls and floors.

Insurance

Article 5

- 1 The remover shall offer to take out for the customer, at the customer's expense, an insurance policy covering the risk for which the remover is not liable.
- 2 At the customer's request, the remover shall take out an insurance policy covering all or part of these risks on terms selected by the customer from those which he is offered. The remover shall be liable for any loss or damage sustained by the customer through failure to carry out the instructions given to him.

Customs

Article 6

- 1 The remover shall draw the customer's attention to, and inform him to the best of his ability concerning, the regulations in force regarding the Customs or other formalities which have to be completed during the removal. The customer shall place the necessary documents at the disposal of the remover and shall furnish him with all the information he requires for the purpose of completing the formalities.
- 2 The remover shall not be under any duty to inquire into either the accuracy or the adequacy of the documents or information furnished by the customer. The customer shall be liable to the remover, except in the case of some wrongful act or neglect on the part of the latter, for any damage caused by the absence, inadequacy or irregularity of such documents and information.
- 3 The remover shall be liable for the consequence arising from the loss or incorrect use of the documents specified in paragraph 1 of the present article; the compensation payable by him shall not, however, exceed the charge for the removal.

Articles or substances which are dangerous or liable to cause infection

Article 7

- 1 If the customer hands over to the remover articles or substances which are dangerous or liable to cause infection, he shall inform him of the exact nature of the danger and indicate, if necessary, the precautions to be taken. If this information has not been entered in the furniture removal note, the burden of proving, by some other means, that

the remover had notice of the exact nature of the danger constituted by the carriage of the said articles or substances, shall rest upon the customer.

- 2 The remover reserves the right to refuse to accept for removal any article or substance which is dangerous or liable to cause infection of the nature of which he has not been informed by the customer, in accordance with paragraph 1 of the present article, at the latest at the time when the furniture removal contract was concluded.
- 3 Articles or substances which are dangerous or liable to cause infection of the nature of which the remover did not have notice as provided in paragraph 1 of the present article may, at any time or place, be unloaded, destroyed or rendered harmless by the remover without compensation; in addition, the customer shall be liable for all expenses, loss or damage arising out of their removal.
- 4 If the remover was informed, in accordance with paragraph 1 of the present article, of the presence among the articles to be removed of articles or substances which are dangerous or liable to cause infection, and of the nature of such articles or substances, and if he has taken the appropriate precautions, he shall not be liable for loss or damage resulting from the presence of such articles or substances, and he shall have a claim against the customer in respect of any damage caused to third parties by their presence.

Modification of the contract for furniture removal

Article 8

- 1 The customer shall have the right to stop the removal or to change the place at which the furniture is to be handed over to him.
- 2 The exercise of this right shall be subject to the following conditions:
 - (a) that the customer indemnifies the remover for all expenses, loss and damage involved in carrying out the customer's instructions;
 - (b) that the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out, and neither interferes with the normal running of the remover's business nor causes prejudice to other customers.
- 3 When, by reason of the provisions of sub-paragraph 2 (b) of the present article, the remover cannot carry out the instructions which he receives, he shall immediately notify the customer thereof.
- 4 If the remover fails to carry out the instructions given to him in the circumstances contemplated in this article, he shall be liable to the customer for the consequential loss.

Article 9

- 1 If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the furniture removal note before the furniture reaches its destination, the remover shall ask the customer for instructions.
- 2 Nevertheless, if circumstances are such as to allow the removal to be carried out under conditions differing from those laid down in the furniture removal note and if the remover has been unable to obtain instructions from the customer, he shall take such steps as seem to him to be in the best interests of the customer.
- 3 The remover shall be entitled to recover the cost of his request for instructions and any expenses incurred by him in carrying out such instructions, or of taking the steps referred to in paragraph 2 of the present article, unless such expenses were caused by his wrongful act or neglect.
- 4 If, upon the arrival of the furniture at its place of destination, the customer is for any reason whatsoever unable to accept delivery at the place designated by him and specified in the furniture removal note, and if he does not

give the remover instructions in good time concerning the disposal of the furniture, the remover shall be entitled to unload the furniture forth with and to deposit it in a place of his own choice, the remover being answerable only for the judicious choice of that place and of the person into whose custody the furniture is delivered. The remover shall be entitled to recover the cost of the action which he has taken.

Article 10

- 1 Without prejudice to the provisions of the articles 6, 8 and 9 above, if, owing to an act or omission of the customer, the removal cannot be carried out in the manner stipulated, the remover shall be entitled to compensation for any loss suffered, which shall not exceed the agreed charge for the removal.
- 2 However, paragraph 1 of this article shall not be applicable if the act or omission of the customer is the result of circumstances which he could not avoid and the consequences of which he was unable to prevent.

Remover's liability

Article 11

- 1 Subject to the conditions specified hereunder, the remover shall be liable for total or partial loss and for damage or delay occurring in the course of the operations performed in carrying out the removal contract.
- 2 The customer or the remover shall be entitled to require the establishment, at the expense of the party requesting it, of a detailed description of the condition of all or part of the furniture and, if such a description is established, the articles shall, in the absence of proof to the contrary, be presumed to have been in the conditions so described.
- 3 Where it is proved that the loss, damage or delay occurred while the furniture was in the care of a carrier employed as sub-contractor, and that the customer agreed to the use of the mode of transport employed by the sub-contractor, the liability of the remover shall be determined, both in principle and in extent, by the mandatory rules governing the contract for carriage of such carrier. With respect to the customer the remover cannot, however, plead the sub-contractor's partial or total exemption from liability by reason of some act or omission for which the remover is liable as sender.

Article 12

- 1 The remover shall be relieved of liability if the loss, damage or delays was caused by the wrongful act or neglect of the customer, by the instructions of the customer given otherwise than as the result of a wrongful act or neglect on the part of the remover, by inherent vice of the articles to be removed, or through circumstances which the remover could not avoid and the consequences of which he was unable to prevent.
- 2 In the event of breakage of or damage to especially fragile articles such as marble slabs, glass, china, mirrors, stucco panels, chandeliers, lamp-shades, radio and television sets, or worm-eaten furniture, the remover shall be relieved of liability if he proves that he has taken the customary precautions.
- 3 Without prejudice, to the provisions of sub-paragraphs 4 (a) and (b) hereunder, the remover shall not be relieved of liability by reason of the defective condition of the equipment which he uses for the purpose of the removal, nor by reason of wrongful acts or neglect on the part of the person from whom he hires the equipment, or on the part of the person's agents and servants.
- 4 Subject to article 13, paragraphs 2 and 3, the remover shall be relieved of liability if the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) dismantling, packing, handling, loading, stowage, unloading, unpacking or reassembling performed by the customer or by means of labour or equipment supplied to the remover by the customer of his own accord;
 - (b) the choice by the customer, notwithstanding other offers by the remover, of conditions of packing and transport differing from the standards which ought normally to have been adopted for the removal in question;
 - (c) the presence, unknown to the remover, of articles in respect of which the remover, had he been aware of their presence or nature, would normally have taken special precautions;
 - (d) the nature of certain articles which particularly exposes them to the risk of total or partial loss or to damage or renders them liable to cause damage to other articles, especially through rust, decay, desiccation, atmospheric humidity, frost, leakage, insufficiently dry coats of paint or the like, or the action of vermin or rodents;
 - (e) exceptional handling difficulties due to the dimensions or weight of the furniture, in view of the dimensions of the premises and the approaches thereto, and of the structural solidity of the premises.
- 5 Where, under this article, the remover is not under any liability in respect of some of the factors causing the loss or damage, he shall be liable only to the extent to which those factors for which he is liable under this article have contributed to the loss or damage.

Article 13

- 1 The burden of proving that the loss, damage or delay was due to one of the causes specified in article 12, paragraph 1, shall rest upon the remover.
- 2 When the remover establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 12, paragraph 4, it shall be presumed that it was so caused. The customer shall, however, be entitled to prove that the loss or damage was not, intact, attributable either wholly or partly to one of these risks.
- 3 This presumption shall not apply in the circumstances set out in article 12, sub-paragraph 4(a), if the remover has given faulty instructions for the performance of the operations enumerated in that sub-paragraph.

Article 14

- 1 When, under the provisions of articles 10 to 13, the remover is liable for compensation in respect of total or partial loss, such compensation shall be computed on the basis of the value declared by the customer. Where the declaration of value is not detailed enough to enable the value of the articles involved to be determined, or in the absence of such a declaration of value, compensation shall be computed on the basis of the market value of the articles, as determined by all available means, at the place of destination and at the time specified for arrival at the destination; if, however, in the event of partial loss or damage, the value so determined exceeds the difference between the total declared value and the value of the remaining articles, the value of the articles lost or damaged shall be reduced prorata, and any loss of value resulting from the fact that a set of articles is rendered incomplete by such loss or damage shall not be taken into consideration.
- 2 When, under the provisions of articles 10 to 13, the remover is liable for compensation in respect of damage, such compensation shall be equal to the difference between the value of the articles involved before, and their value after, the damage, their value before the damage being estimated in accordance with the rules laid down in paragraph 1 of the present article.

- 3 Nevertheless, subject to the provisions of paragraph 4 hereunder, the compensation for total loss shall not exceed 133,33 special drawing rights (SDR = Currency of the common market) per cubic meter and the compensation for partial loss or damage shall not

$$\text{exceed } A \times \frac{133,33 \text{ SDR} \times V}{B} \quad \text{where } A \text{ is}$$

the value of the missing articles or the loss of value of the articles damaged, as determined in accordance with paragraphs 1 and 2 of the present article, B the total value of all the articles to be removed, which is equivalent to the total declared value, if a total value has been declared, or, if not, to the total value of the articles at the place of destination, and V the volume in cubic metres of the removal consignment.

- 4 Paragraph 3 of the present article shall not apply if the customer has specified in the furniture removal note, against payment of an agreed additional charge, that the remover's liability shall extend to the value declared by the customer and exceeding 133,33 SDR per cubic metre.

Article 15

- 1 If the parties have agreed that the removal shall take place by a specified time, delay shall be deemed to have occurred if the removal is not completed by that time. If the parties have agreed that removal shall take place within an unspecified time, no delay in the performance of the contract shall in any circumstances be deemed to have occurred. In the absence of any agreement between the parties concerning delay, delay shall be deemed to have occurred when – having regard to the mode of transport to be used, the nature of the removal and the other relevant circumstances, including the customer's consent to the coupling of the removal operation with another removal operation, or, in the case of a partial load, the time required for making up a complete load – the time actually taken to effect the removal exceeds the time it would be reasonable to allow to a diligent remover.
- 2 In the event of delay, if the customer proves that he has suffered damage by reason of the delay, the remover shall pay compensation not exceeding the agreed charge for the removal. In addition, in the absence of any agreement between the parties concerning delay, the compensation shall cover only damage suffered after the remover has been notified of the delay either by the customer, by any means of communication whatsoever, or by some other means.

Extra-contractual claims

Article 16

In case where, under the law applicable to the contract, an event involving the liability of one of the parties under the contract for the furniture removal gives rise to an extra contractual claim, the parties undertake not to avail themselves of that claim in order to obtain compensation in excess of that specified in these general conditions or in the specific clauses of the contract.

Wilful misconduct or default

Article 17

The parties shall not, however, be entitled to avail themselves of the provisions of these general conditions or of the specific clauses of the contract which enable them to exclude or limit their liability or which shift the burden of proof if they or the persons for whom they are responsible under article 2 committed a wrongful act or omission with the intention of causing the damage or acted in a manner implying either deliberate disregard or the prejudicial consequences which might ensue their conduct or inexcusable ignorance of these consequences.

Interest on compensation

Article 18

The party to whom compensation is payable shall be entitled to claim interest thereon. Such interest, calculated at the rate of 5 per cent *per annum*, shall accrue from the date on which the claim was first made in writing.

Receipt of furniture

Article 19

- 1 If the furniture has been handed over to the customer, such handing over shall be *prima facie* evidence that he has received it in the condition in which the remover took it over, unless:
 - (a) at the time when the furniture was handed over to him he duly checked its condition with the remover or made reservations, or
 - (b) In the cases of loss or damage not apparent at the time, – he duly checked its condition with the remover, or – sent reservations in writing to the remover by registered post, within the seven days. Sundays and public holidays excepted, following the day on which the furniture was handed over to him.
- 2 The remover and the customer shall give each other every reasonable facility for making the requisite investigations and checks.

SPECIAL CONDITIONS

- 1 These Special Conditions form part of the terms and conditions of this contract and are subject as mentioned below in addition to (and not in substitution for) the General Conditions specified above. In the event that there is conflict of meaning or interpretation as between any of these Special Conditions and any of the General Conditions then the meaning or interpretation of such Special Conditions shall prevail and be given effect. Such of the General Conditions as would nullify the effect of or otherwise exclude the application to this contract of any of these Special Conditions shall be and are hereby excluded.
- 2 On behalf of the owner or any person, firm or company having an interest in the goods, the customer hereby warrants to the remover that he has full authority to enter into this contract and any extension thereto and will indemnify and keep indemnified the remover against all costs, charges, damages or expenses which the remover may be liable for, incur or sustain arising from any claim action or demand made or brought against the remover or his agent by or upon behalf of any person, firm or company having or purporting to have an interest in the goods.
- 3 A The remover shall have a general lien upon all or any part of the goods.
 - 1 for all monies due to or becoming due after the date hereof to the remover from the customer, and
 - 2 for all liabilities of the remover presently subsisting or hereafter incurred by the remover under any contract or arrangement made with the customer either before or after the date hereof or in consequence of any act or default on the part of the customer.The remover shall be entitled to charge the customer warehouse rent * and other expenses incurred during all periods during which a lien on the goods is being established, and may, whilst exercising such lien, enter into any contract with any person, firm or company for the storage of the said goods and charge the expenses thereof to the customer.

B In the event that the remover exercises his right of lien on any goods, he shall give notice in writing to the customer at the customer's last known address, and if the remover's charges are not paid within three months after he has given such notice, the remover shall have power, without giving any further notice, to sell any goods so retained either by public auction or private treaty, to pay the debts, charges and expenses of sale and also clear the depository of the goods.

C Should the remover be put to any costs, charges or expenses in consequence of any claim by a third party in respect of any goods removed, packed or warehoused or pay any damages arising out of any such claim or shall be liable to pay any penalty under statute or otherwise or put to any expense in recovering any charges due to them the same shall be recoverable from the customer and the remover shall have a general lien upon all goods in their possession for all such costs, charges, damages, penalties or expenses.

- 4 1 These General and Special Conditions shall apply to any work done in relation to the goods, whether by way of removal into store, storage or delivery from store or otherwise, and shall be deemed to be incorporated in any contract which may be entered into with regard to such work or in relation to such goods.
 - 2 If for any reason whatsoever the goods are delayed en route or by reason of any default or wrong declaration of the customer, the remover shall be at liberty to deposit and store the goods in a place of his own choice. All charges for such storage and ultimate delivery shall be borne by the customer and the terms of this contract shall apply during and in respect of such storage and delivery.
- 5 If any dispute difference or question shall at any time hereinafter arise between the parties hereto or their respective representatives touching any claims or counter-claims put forward on the part of the customer against the remover in connection with or arising out of this contract or any extension thereof the same shall be finally settled under the Rules of Conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The costs of any such arbitration shall be in the discretion of the arbitrator, and the award of such arbitrator shall be a condition precedent to any legal proceedings in a Court of Law in respect of any matters hereby agreed to be the subject of arbitration. The arbitration shall unless otherwise agreed be held in the country in which the remover's office from which the contract was issued is situated. *Except that if the national law of any country shall conflict with these conditions, then the national law shall apply.*
- 6 The remover shall not be liable for non delivery, loss, damage or delay unless the customer makes reservations in accordance with article 19 of the General Conditions and unless he files a detailed claim by registered post within one calendar year from the date of the delivery.
- 7 In these Special Conditions the expression "the goods" shall be construed as meaning the furniture, articles and substances in respect of which the contract is made.
- 8 All charges shall be paid to the remover at his registered office prior to the commencement of the removal. The existence of any claim shall not be a reason for withholding any payment to the remover.

* The remover may here insert in brackets the equivalent amount in his national currency.

