

GENERAL **CONDITIONS**

Commercial Removals 2009



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General Conditions for Commercial Removals

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GENERAL CONDITIONS FOR COMMERCIAL REMOVALS (AVB)

ARTICLE 1 - DEFINITIONS

In these conditions the following shall be understood to mean:

1. **AVB:** the General Conditions for Commercial Removals, as last laid down by sVa / Stichting Vervoeradres and filed at the offices of the clerks of the Amsterdam and Rotterdam District Courts.
2. **Business:** any enterprise or organisation, whether or not independently established, with or without motive of profit.
3. **Commercial removal:** any contract for the removal of things entered into between the Commercial Remover and :
 - a. legal person
 - b. natural person, whether carrying on a business or being self- employed
 - c. (government) agency or an institution
4. **Employer:** the other party to the contract entered into with the Commercial Remover.
5. **Commercial Remover:** the contractor who has undertaken towards the Employer to perform a commercial removal.
6. **Things:** all things which by their nature form part of the plant, fixtures and fittings of the business. Things are deemed to include stock in trade, insofar as the carriage of the same is performed exclusively under the commercial removal and does not form the subject matter of any commercial transaction that has been concluded.
7. **Dangerous substances:** substances which under Appendix A and Appendix B to the European Convention on the international carriage of goods by road (Treaty Book 1959, 171), including any subsequent amendments of the same, prohibit the international carriage by road or permit such carriage only under certain conditions, with the exception of those substances or objects which are carried in conformity with the conditions of section 1.1.3.
8. **Additional work:** any work for which the Employer has given orders but which was not agreed at the time of entering into the removal contract.
9. **Removal price:** the monetary consideration for the commercial removal.
10. **Acceptance:** the time at which the things are placed at the disposal of the Commercial Remover for packing or (partial) dismantling or for carriage.
11. **Delivery:** the time at which the things, after having been unpacked or re-assembled at destination in accordance with the provisions of article 5, paragraph 5, of these conditions, have been placed in such place as may have been designated.
12. **Force majeure:** means circumstances in so far as a diligent Commercial Remover has been unable to avoid and in so far as such a Commercial Remover has been unable to prevent the consequences thereof.
13. **Delay:** when the things have not been delivered within the stipulated time or, failing such stipulated time, when the actual time required for the commercial removal is in excess of that which should be allowed to a competent Commercial Remover.
14. **CMR:** Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956), as supplemented by the 1978 Protocol.

ARTICLE 2 - SCOPE OF APPLICATION

1. Save for provisions of mandatory law, these general conditions shall apply to commercial removals within the Netherlands.
2. In respect of border-crossing commercial removals, the CMR shall apply, as well as those provisions of these general conditions which do not conflict with the CMR.
3. Without prejudice and supplementary to the provisions of paragraphs 1 and 2, and unless in conflict with these general conditions, the provisions of Book 3, Section 13, Part 4, Contract of Removal, of the Civil Code shall apply, and this notwithstanding the provisions of section 8: 1170, subsection 3, of the Civil Code, irrespective of the nature of the things to be removed.

ARTICLE 3 - OBLIGATIONS OF THE EMPLOYER

It is obligatory on the Employer:

1. To furnish in good time all information and particulars which he knows or ought to know are of importance in respect of the commercial removal, on the strength of which the Commercial Remover is able to form an accurate estimate of the commercial removal in terms of volume, weight and the handling of the things, as well as of the time required. The Commercial Remover shall have the right to check the accuracy of the information furnished.
2. To inform the Commercial Remover in writing concerning the weight of very heavy things, such as safes and machines, and the maximum permissible floor load of the premises in which such things are to be placed, as well as the maximum permissible floor load of the route over which the things are to be moved in the premises.
3. To ensure that all information and documents relating to the intended commercial removal which are required on the part of the Employer under statutory provisions, such as customs regulations and regulations in respect of the carriage and handling of dangerous substances, shall be in possession of the Commercial Remover in good time.
4. To indemnify and hold the Commercial Remover harmless from and against any claims from third parties resulting from nonperformance of the obligations of the Employer arising out of these conditions.
5. And to see to it:
 - a. that the things to be removed shall be at the disposal of the Commercial Remover at the agreed place and time;
 - b. that the Commercial Remover shall be enabled to efficiently perform the commercial removal;
 - c. that all packing material left at destination and belonging to the Commercial Remover shall be returned to the Commercial Remover within the time stipulated in the contract and failing such stipulated time, within one month;
6. And to pay the extra charges, in the event of a thing having been placed in accordance with article 5, paragraph 2, needing to be replaced under the Employer's instructions.

ARTICLE 4 - LIABILITY OF THE EMPLOYER

1. The Employer shall be responsible, in addition to the liability under the law pursuant to sections 6: 170 and 6: 171 of the Civil Code, for the acts and omissions of all persons of whose services he makes use for the performance of the commercial removal, insofar as such persons are acting within the scope of their employment.
2. If the Employer has failed to perform his obligations under article 3, the Employer shall compensate the Commercial Remover for any loss, resulting from such failure.
3. The Commercial Remover may terminate the contract of commercial removal, subject to the provisions of paragraph 2 of this article, in the event of the Employer having completely failed to perform his obligations under article 3, paragraph 5, letter a. Such termination shall be permitted only after the Commercial Remover shall have allowed the Employer in writing or verbally a maximum term within which to remedy his default, and on the expiry of such term the Employer continues to default in the performance of his obligations. In the event of the allowing of such maximum term causing a disproportionate interruption of his business operations, the Commercial Remover may also proceed to terminate the contract of commercial removal without allowing the Employer such maximum term.
4. Termination pursuant to the provisions of the preceding paragraph shall be effected means of a verbal or written notification, and the contract shall end at the time such notification has been received.
5. If the Employer at the agreed place and time has placed at the disposal of the Commercial Remover only part of the things to be removed, the Commercial Remover shall, when so requested by the Employer, remove the things placed at his disposal against payment of the removal price already agreed, after deduction of the costs saved by the Commercial Remover

6. If the Employer has failed to perform, his obligations as referred to in article 3, paragraph 5, letter c, the loss shall, for the purposes of paragraph 2 of this article, be deemed to be the new value of the packing material.

ARTICLE 5 - OBLIGATIONS OF THE COMMERCIAL REMOVER

It is obligatory on the Commercial Remover:

1. To accept the things to be removed, subject to the provisions of paragraph 5 of this article, at the agreed place and time;
2. To deliver the things to be removed at destination at the place designated the Employer and this in the state in which they have been placed at the disposal of the Commercial Remover for packing or dismantling, under the provisions of paragraph 5 of this article, or for carriage;
3. To load and unload the things to be removed;
4. To proceed with and to complete without delay a commercial removal which has been commenced.;
5. If such has been agreed in writing, to dismantle or to pack those things which, in view of their nature and/or the mode of carriage, should be dismantled and/or packed, and to unpack and/or re-assemble the same at destination;
6. To carry out all extra work, against payment of the additional costs arising therefrom, unless this would cause a disproportionate interruption of his business operations;
7. To inform the Employer concerning the manner in which the things must be presented for carriage;
8. To inform the Employer to the best of his ability concerning the customs requirements and other formalities requiring fulfilment for the performance of the commercial removal;
9. To make available the packing material necessary for the commercial removal;
10. To employ reasonable care in respect of the handling of the documents received by him, it being understood that the Commercial Remover shall not be under the obligation to check the accuracy and completeness of these documents;
11. To request instructions from the Employer it for whatever reason the Commercial Remover is or becomes prevented from carrying out the commercial removal, and in the absence of such instructions to take such steps as he, as a careful Commercial Remover, may consider to be in the best interests of the Employer . Any additional costs arising therefrom shall be borne by the party on whose account the reason for such prevention has arise;
12. At the request, for the account and for the benefit of the Employer to take out a separate insurance policy covering those risks for which the Commercial Remover is not liable;
13. To indemnify and hold the Employer harmless from and against any claims from third parties resulting from performance of his obligations arising out of these conditions, unless such claims from third parties cannot reasonably be attributed to non-performance by the Commercial Remover of his obligation.

ARTICLE 6 - THE LIABILITY OF THE COMMERCIAL REMOVER

1. In the event of the Commercial Remover failing to perform the obligations resting on him under article 5, he shall be liable, subject to the provisions contained elsewhere in this article and save for force majeure, for the loss resulting from such non-performance.
2. The Commercial Remover shall not have the right to free himself from his liability under the provisions of the preceding paragraph, by pleading:
 - a. the defectiveness of the vehicle used for the commercial removal;
 - b. the defectiveness of the material used by him for the commercial removal, unless the material; has been made available to him by the Employer; material shall be under-stood not to include a vessel, aircraft or railway wagon carrying the vehicle used for the commercial removal;
 - c. he defectiveness of the supporting points used for the fixing of hoisting equipment;
 - d. any accident having happened to the things removed through the fault of others for whose acts the Employer is not responsible.

3. Without prejudice to the provisions of paragraphs 6 and 7 of this article, the Commercial Remover who fails to perform his obligations under the contract of commercial removal, shall nevertheless not be liable for the loss or damage arising therefrom, insofar as such non-performance is the result of the special risks attached to one or more of the following circumstances:
 - a. the packing or dismantling, or the unpacking or re-assembling of the things to be removed by the Employer or with the aid of any person or any means made available to this end by the Employer on the latter's own accord;
 - b. the opting by the Employer - in spite of an alternative suggested the Commercial Remover - for a manner of packing or a manner of performing the contract of commercial removal differing from what is customary for the commercial removal agreed;
 - c. the presence among the things to be removed of things in respect of which the Commercial Remover, had he been aware of their presence and their nature, would have taken special steps or precautions;
 - d. the nature or the state of the things to be removed themselves which through causes inherent in such nature or state exposed them to total or partial loss or to damage, such as:
 - livestock;
 - money, documents having a monetary value, jewels, valuables made from precious metals or other precious objects, unless the Employer has handed the things mentioned above to him separately, stating the quantity and value prior to the commencement of the commercial removal;
 - the non-functioning or not properly functioning of electrical, electronic or mechanical equipment or appliances;
 - damage to or loss of personal property of the Employer's employees.
4. When the Commercial Remover proves that, having regard to the circumstances of the case, the non-performance of his obligations under the provisions of paragraphs 2 and 4 of article 5, could be attributed to one or more of the special risks referred to paragraph 3 of this article, it shall be presumed that the nonperformance was so caused.
5. In the case of delay, as referred to in article 5, paragraph 4, the Commercial Remover shall be liable, if the person entitled proves that the loss or damage resulted therefrom, to pay such compensation for the loss or damage as shall be agreed, which compensation shall not exceed the removal price.
6. The Commercial Remover shall, apart from his statutory liability pursuant to the provisions of sections 6: 170 and 6: 171 of the Civil Code, be responsible for the acts and omissions of all persons of whose services he makes use for the performance of the commercial removal, insofar as such persons are acting within the scope of their employment.
7. The Commercial Remover shall not be responsible for the acts and omissions of any persons, other than those mentioned in paragraph 6 of this article, who at the time of the commercial removal are present in the business premises, if such presence has resulted in damage to the things or delay in the performance of the commercial removal.
8. The compensation payable the Commercial Remover on account of his failure to perform his obligations under the provisions of paragraph 2 of Article 5, shall be limited:
 - a. the case of a commercial removal exclusively within one and the same building, to the sum of € 45.378;
 - b. in all other cases within the Netherlands to a sum of € 45.378 per lorry consignment;
 - c. in the case of commercial removals subject to the CMR convention, the liability of the Commercial Remover shall be limited to 8 1/3 special drawing rights for each kilogram of gross weight missing.
9. The Employer may, provided that the Commercial Remover has given his consent thereto and against payment of a surcharge to be agreed upon, declare in writing a value for the things exceeding the limit referred to in paragraph 8 of this article, and in that

- case the amount of the value stated shall be substituted for that limit. The amount of the declared value shall, however, not exceed the actual value of the things.
10. In the event of the Commercial Remover failing to perform his obligations referred to in article 5, paragraphs 1, 3, 5 and 8, of these conditions, the Employer shall have the right to terminate the contract of commercial removal, after the Employer shall have allowed the Commercial Remover a maximum term within which to remedy his default, and on the expiry of such term the Commercial Remover continues to default in the performance of his obligations.
 11. After termination the Commercial Remover shall reimburse the Employer for the extra costs which the latter proves he has incurred as a result of the termination. Such reimbursement shall however not exceed the agreed removal price.
 12. In the event of the Commercial Remover failing to perform his obligations under article 5, paragraphs 6, 9 and 10, of these conditions, the Commercial Remover shall be liable to compensate the Employer for the loss the latter proves he has incurred. Such compensation shall however not exceed the agreed removal price.
 13. In the event of the Commercial Remover failing to perform his obligation mentioned in article 5, paragraph 11 of these conditions, the Commercial Remover shall be liable, on the same footing as a mandatory (section 7:400 ff of the Civil Code) for the consequences of loss or incorrect handling of the documents which have been handed to him. The compensation payable shall, however, not exceed the amount payable in the case of loss of the things.

Explanatory note:

Article 6 of these conditions increases the liability of the Commercial Remover in relation to his liability as laid down in section 8: 1095 of the Civil Code. On the basis of section 8:1102 of the Civil Code such increase in liability is void, unless the provisions of article 6 of these conditions are laid down in a separate document embodying the contract of commercial removal. It is recommended that these conditions each time be attached to the contract of commercial removal.

ARTICLE 7 - REPORTING OF LOSS OR DAMAGE

1. If the things are delivered by the Commercial Remover with apparent damage or loss without the Employer having informed the Commercial Remover in writing, upon or immediately after acceptance of the things, of a reservation stating the general nature of the damage or the loss, the Commercial Remover shall be deemed to have delivered the things in the same state as that in which he has received them.
2. If the damage or the loss is not apparent and the Employer has not informed the Commercial Remover in writing, within one week of the acceptance of the things, of a reservation stating the general nature of the damage or the loss, the Commercial Remover shall be deemed to have delivered the things in the same state as that in which he has received them.
3. All reporting of loss or damage must be in writing.

ARTICLE 8 - REPARATION OF DAMAGE

1. The reparation of damaged things or the replacement of lost things may not take place until agreement has been reached by or on behalf of the parties concerning the amount of the damage.
 2. When, under the provisions of these conditions, the Commercial Remover is liable for compensation in respect of total or partial loss of the things, such compensation shall be calculated by reference to the value which the things would have had at the time and place at which they should have been delivered. *
- * In the case of commercial removals subject to the CMR, the value of the things shall be calculated by reference to the value of the things at the place and time at which they were accepted for carriage.

3. The value of the things shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of things of the same kind, quality or age.

ARTICLE 9 - PERSON ENTITLED

1. Only the Employer or the person expressly authorised by the Employer shall be entitled vis-à-vis the Commercial Remover to the delivery of the things in accordance with the obligations incumbent upon the Commercial Remover.

ARTICLE 10 - TERMINATION OF CONTRACT OF COMMERCIAL REMOVER

1. The Employer may terminate the contract by means of a notification in writing, before the things have been put at the disposal of the Commercial Remover. The Employer shall pay to the Commercial Remover the agreed removal price, after deduction of the costs saved by the Commercial Remover.
2. In the event of the contract being terminated more than five working days before the agreed date of commencement of the carriage, the amount of the removal price referred to in paragraph 1 shall be reduced by 10% for each working day by which the term of five working days is increased, however, with a maximum of 50%.

ARTICLE 11 - CONDITIONS OF PAYMENT

1. It is obligatory on the Employer to pay the removal price and any costs to be paid on any other account in respect of the commercial removal or any further agreed costs relating to the things to be removed, within fourteen days of the invoice date.
2. If the amounts referred to in paragraph 1 have not been paid within the period stipulated in said paragraph, the Employer shall owe the legal interest on these amounts according to section 6: 119 of the Civil Code accruing as from the day these amounts should have been paid until the day of payment in full.
3. The Commercial Remover shall have the right to charge all expenses necessarily incurred in and out-of-court in connection with the collection of the removal price and any other amounts as referred to in paragraph 1, to the party who is under the obligation to pay the removal price and/or other costs. Out-of court collection expenses shall be owing from the time that the debtor was in default and the collection of the debt has been placed out of hands.
4. The full removal price, costs to be paid on any other account in respect of the commercial removal and further costs relating to the things to be removed, shall also be owing in the event of the things to be removed not, or only partially, or in a damaged condition, being delivered at destination.
5. Pleas for set-off (compensation) of claims for payment of the removal price, or of costs to be paid on any other account in respect of the commercial removal, or of any further costs relating to the things to be removed, against claims on any other account shall not be permitted.
6. In the event of a dispute arising at the time of settlement concerning the amount due or in the event of a calculation being necessary which cannot be speedily carried out, the party demanding delivery shall be obliged to forthwith pay the part of the indebtedness on which the parties are in agreement and provide security for the payment of the part disputed by such party or the part for which the amount has not yet been determined.
7. The Commercial Remover may proceed to suitable storage if the providing of security as referred to in paragraph 6 is refused.

ARTICLE 12 - SECURITY

1. The commercial remover has a right of lien on goods and documents in his possession in connection with the contract of commercial removal against any person who demands delivery of same. This right does not fall to him if, at the moment of receipt of the goods

- for commercial removal, he had reason to doubt the right of the principal to make the goods available for commercial removal to him.
2. The commercial removal may also exercise the right of lien against the principal for reason of what is yet due to him in connection with previous contracts of commercial removal.
 3. All the goods, documents and currency values in possession of the commercial remover in connection with the contract of commercial removal serve him as pawn for all claims which he has against the principal.
 4. Except for the cases in which the principal is in a state of bankruptcy or in which he has been granted suspension of payment or in which he has been declared subject to a debt reorganization scheme for natural persons, the commercial remover has never the right to sell the objects in pawn without permission by the court of justice in accordance with section 3:248 paragraph 2 of the Civil Code.

ARTICLE 13 - COMPETENT COURT OF JUSTICE / ARBITRATION

All disputes arising between the parties concerning these General Conditions for Commercial Removals (ABV), shall, to the exclusion of any other authority whatsoever, be submitted for settlement to the lower district court or the district court of the jurisdiction of the place where the Commercial Remover is resident or has his place of business or subordinated to arbitration as referred to in article 14 of these conditions.

ARTICLE 14 - ARBITRATION

All disputes arising between the parties in connection with the present contract of commercial removal may be solved in accordance with the Reglement of the Stichting Arbitrage voor Logistiek (rules of the foundation arbitration in logistics), domiciling at The Hague, the Netherlands.

Clarification

The Stichting Arbitrage Logistiek (SAL) offers the possibility for arbitration of disputes concerning transport of goods or related logistic activities.

If the parties wish to avail themselves of the services of this arbitration court for the solution of disputes arising from contracts to which the General Conditions for Commercial Removals apply, they should insert the following arbitration clause in their contract of this kind:

“All disputes arising between the parties in connection with the present contract shall be submitted for solution to arbitration in accordance with the Rules of the Stichting Arbitrage voor Logistiek (foundation arbitration in logistics), domiciling at The Hague, the Netherlands. In so far as the present contract concerns international transport of goods by road, the arbitrators will apply the CMR Treaty accordingly”.

Parties choosing for SAL follow a qualitative procedure having benefits above court procedures.

- *Arbitrators are experts and experienced in transport law;*
- *Verdicts of arbitrators are not published. Your dispute remains confidential*
- *Lower charges; because legal assistance may be given by any legal counsel or advisor*
- *On the average proceedings are rather quick.*

In addition to the normal arbitration proceedings there is the possibility of summary proceedings as well.

For starting arbitration proceedings you can contact the administrator of SAL, (Postbus 24023, 2490 AA Den Haag).