



# HIZKIA

## **General Terms and Conditions of HIZKIA Amsterdam B.V.**

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*Note: The General Terms and Conditions of HIZKIA Amsterdam B.V. have been drawn up in Dutch. This English translation is for easy reference only. In the event of any discrepancy between the Dutch text and the English translation of it, the Dutch text shall be decisive at all times.*

### **Introduction and Scope**

1. HIZKIA Amsterdam B.V. is a private company with limited liability, having its registered office in Amsterdam, the Netherlands, registered in the commercial register of the Chamber of Commerce in Amsterdam under no. 34069278, also trading under the name of HIZKIA Amsterdam, hereinafter referred to as "HIZKIA". Unless a specific case from the context proves otherwise, the term "assignment" as used in these General Terms and Conditions will be taken to mean the agreement concluded between HIZKIA and the Client.
2. These General Terms and Conditions will apply to all and any offers made, agreements concluded, and services provided, by HIZKIA. Any derogation from these General Terms and Conditions will require the prior written confirmation of HIZKIA. Unless expressly agreed otherwise, the applicability of any general terms and conditions used by the Client will be excluded.
3. HIZKIA engages, as do the other entities of the HIZKIA group (hereinafter to be called "Group Entities"), mainly in the provision of logistic and other services in respect of art objects, including arranging - as a freight forwarder - transport of such objects, packaging art objects, storage, road transport, removal, leasing out storage space, arranging of restoration work, designing and producing packaging for the shipment of art objects, representation in tax matters and customs services, consultancy, project coordination, and executive project work, at its own premises or elsewhere, as applicable. Every form of service will be on the basis of an obligation to perform applying commercially reasonable efforts ("*inspanningsverplichting*"). Achievement of the desired result, such as meeting deadlines, is not guaranteed.
4. HIZKIA will be entitled to engage subcontractors and Group Entities for the performance of the assignment and/or related work. Employees, subordinates, subcontractors and Group Entities of HIZKIA may also invoke the liability provisions (including, but not limited to, those limiting or excluding liability), the indemnification provisions and the time bar and expiration provisions of these General Terms and Conditions.

### **Agreement and Performance**

5. Irrespective of the form in which they are issued, all offers made by HIZKIA are without obligation. Any derogation from offers will require HIZKIA's written confirmation.
6. It is expressly agreed that, in respect of transport, HIZKIA binds itself to act as a freight forwarder (as referred to in Section 8:60 of the Dutch Civil Code ("*BW*")) only, irrespective of the nature of, or notices in, any issued or other document. Only if and to the extent HIZKIA or a Group Entity carries out road transport with its own means of transport, the same can be regarded as the carrier for the route concerned. Transport does not include loading and unloading. Irrespective of any reference in the consignment note, national road transport will never be governed by the provisions of the CMR Convention.
7. HIZKIA will not be responsible for the security of any objects entrusted to it. HIZKIA will arrange security only if the Client so requests in writing and in advance. The security service will then be engaged at the Client's expense and risk. If HIZKIA does so in its own name, it will be obliged only to transfer its entitlements to the security service to the Client on request. HIZKIA does not warrant the performance or the result of the security.

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8. All prices stated by HIZKIA are exclusive of VAT and are based on the situation and basic principles as applicable at the time of such statement. In the event of a change to one or more of these factors, including any subsequent increase in one or more cost price factors – purchase prices, wage costs, taxes, social security contributions, freight costs, insurance costs, change in exchange rates, etc., – HIZKIA will be entitled, with retroactive effect, to adjust the price originally offered or agreed accordingly.
9. If HIZKIA charges all-inclusive or flat-rate fees, respectively, such rates must be deemed to include all and any costs that, in the ordinary performance of the assignment, are generally at HIZKIA's expense. Unless stipulated otherwise, all-inclusive or flat-rate fees will in any event not include: duties, taxes and levies, consular and attestation fees, costs of drawing up bank guarantees and insurance premiums. For special services, extraordinary work, work that is very time consuming or that involves a great deal of effort, an additional fee – to be determined in all fairness – may be invoiced.
10. The Client will be obliged to take out a goods insurance for all objects subject of the assignment. The insurance agreement is to provide that HIZKIA is also covered as an insured party and that all rights of recourse have been waived for the benefit of HIZKIA and Group Entities. HIZKIA will not take out any goods or other insurance of any nature whatsoever on behalf of the Client in respect of the objects subject of the assignment. If the Client requests it to do so in writing well in advance and provides the necessary details, HIZKIA will request an insurance broker to examine whether a goods insurance on behalf of the Client or owner can be taken out. The premium will then be charged to the Client. If HIZKIA has taken out insurance in its own name, it will be obliged only to transfer - on request - its claims against the insurer to the Client. HIZKIA will in no event be responsible for the nature and content of the insurance, the choice of insurer and its solvency.
11. Provision to HIZKIA of data required for the performance of customs formalities, will mean an assignment to perform the same, unless agreed otherwise in writing. However, HIZKIA is never obliged to accept an order to carry out customs formalities. If HIZKIA becomes familiar with information or conditions which would indicate that the Client has provided incorrect and/or incomplete information and/or documents, HIZKIA is at all times entitled to end this order and not carry this out (any further), which may or may not be set out in an additional agreement and/or authorisation, without any obligation to pay damages.
12. If the Client has not given any instructions in that respect upon issuing the assignment, the method of shipment and the route will be at HIZKIA's option, whereby the latter may at all times accept and/or sign the documents that are customary at the businesses contracted by it for the performance of the agreement.
13. The Client will be obliged, inter alia, to ensure that the objects are available at the agreed place and at the agreed time. Furthermore, the Client will be obliged to ensure that the documents required for receipt and for shipment, as well as instructions, are in HIZKIA's possession in good time. The Client guarantees that the information and documents that it provides are correct and complete and that all instructions and goods that are made available comply with current legislation. HIZKIA will have the right, but not the obligation, to investigate whether any statements given to it are correct and complete.

## Payment and Security

14. Unless agreed otherwise, the Client will be obliged to pay invoices within 14 days of the date of the invoice. If the full invoice amount has not been received by HIZKIA within such term, the Client will be in default by operation of law and it will owe statutory commercial interest on the principal sum, from the due date of the invoice to the date of payment in full. The Client will not be entitled to offset or suspend payment.
15. The Client will at all times be obliged, in connection with the assignment, to compensate HIZKIA for any amounts to be collected or to be claimed later by any government as well as any related penalties. The said amounts must also be compensated by the Client to HIZKIA if HIZKIA is held liable for payment by any third party engaged by it in connection with the agreement.

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16. HIZKIA will be entitled, before commencing performance of the agreement as well as during any subsequent stage of the work, to demand sufficient security from the Client for any amount owed to HIZKIA now and/or in the future. The Client will be obliged to provide such security on HIZKIA's first demand. This provision will also apply if the Client itself has already provided security in connection with the amount(s) due. As long as the Client has not provided HIZKIA with the security requested, HIZKIA will be entitled to suspend its performance, without prejudice to any rights ensuing from the law or the agreement. HIZKIA will not be obliged to provide security from its own resources for the payment of freight, duties, levies, taxes and/or other costs, should this be required. All consequences from the failure to (promptly) fulfil an obligation to provide security will be borne by the Client.
17. In the event of dissolution ("*ontbinding*") or termination ("*opzegging*") of the agreement, all amounts that the Client owes to HIZKIA, irrespective of their basis, will become immediately due and payable. HIZKIA may in any event, at its option, dissolve the agreement or terminate the agreement with immediate effect, if a petition for bankruptcy of the Client is filed, the Client applies for a moratorium or otherwise loses free control of its assets, offers its creditors a composition, is in default in the performance of any financial obligation towards HIZKIA, discontinues its business or – in the event of a legal entity or company – is dissolved.
18. In the event that HIZKIA collects the amounts due, either by judicial action or otherwise, all related costs, including the extrajudicial costs, will be at the Client's expense.
19. HIZKIA has, towards any party who claims surrender thereof, a right of pledge and a right of retention in respect of all objects, documents and moneys held by or to be held by HIZKIA on any basis and for any purpose whatsoever, for all and any of its current or future claims against the Client and/or owner. HIZKIA will also be entitled to exercise the aforesaid right of pledge and/or retention in respect of all and any amounts due by the Client and/or owner to HIZKIA in connection with previous assignments. All consequences of the exercise of the right of pledge and/or retention will be at the expense and risk of the Client and/or owner.

## Liability

20. The Client will be liable towards HIZKIA for any damage as a result of - the nature of - the objects, and their packaging, subject of the assignment. Furthermore, the Client will be liable towards HIZKIA for any incorrect, inaccurate, incomplete and/or late instructions and data, failure to make objects and/or documents available (in good time) at the agreed place and at the agreed time, as well as for any damage as a result of carelessness or negligence in general by the Client, its employees and/or any third parties engaged by or working for it.
21. All acts and work shall be at the Client's expense and risk. Any liability claims - on the basis of any ground whatsoever - may be instituted by the Client only within the scope of the agreement concluded with HIZKIA. In the event that HIZKIA is held liable by any third party in connection with the work performed, the Client will be obliged to indemnify HIZKIA in that respect at first request, to the extent HIZKIA would not have been liable if said claim had been lodged by Client.
22. HIZKIA is liable for damage only if and to the extent such damage is the result of the negligence of HIZKIA, its employees and/or agents, to be proven by the Client, with due observance of the restrictions and limits stated below.
23. In the event of any objects entrusted to it, HIZKIA will only be liable (with due observance of the foregoing article) for damage arisen during the period that such objects were physically in its custody, i.e. until the moment they are handed over to, for instance, the carrier or to the Client, or to the party designated for that purpose by the Client. The Client will at all times be responsible for proving that the damage has arisen during such period. If HIZKIA performs work in respect of objects without it physically receiving such objects, the aforesaid period of liability will commence at the moment that HIZKIA physically performs work in respect of such objects and will end each time that such work is interrupted or has ended.
24. If objects are surrendered in a packed condition to the Client or to the party designated for that purpose by the Client, the Client will be obliged to notify HIZKIA in writing, within 5 working days of surrender, of

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the damage allegedly suffered by the objects as a result of performance of the agreement by HIZKIA, failing which it can no longer invoke the alleged defect in HIZKIA's performance. The Client will then be obliged to retain the relevant packaging and to surrender it to HIZKIA on the latter's demand.

25. HIZKIA will never be liable for any damage other than damage to or loss of the objects with which it has been entrusted or which it has handled. Consequently, liability for any other damage, including non-material damage, lost profits or any financial loss, ensuing from or related to HIZKIA's performance of the agreement concluded with the Client, will be excluded.
26. Damages will be capped at the reasonable costs for the restoration required to return the relevant objects to their condition immediately prior to the event resulting in liability on the part of HIZKIA, to be proven by the Client. If, based on experts' judgement, restoration is not possible, the scope of the damage will be established by arbitration based on expert evidence in accordance with article 31 hereof.
27. Save in the event of an intentional act or wilful recklessness on the part of HIZKIA itself, any liability on the part of HIZKIA will in any event be limited to EUR 10,000 per event or series of events with the same cause of damage, irrespective of the number of objects involved and/or the number of Client's assignments involved.

## Other Provisions

28. Every claim against HIZKIA will become time-barred ("*verjaren*") by the mere lapse of nine months and will expire ("*vervallen*") by the mere lapse of one year. The period of limitation ("*verjaringstermijn*") or the expiry period ("*vervaltermijn*") where applicable, will run from the day following that on which the objects were, or should have been, delivered, or, in the absence thereof, the day following the first of the following days: a) the day on which the claim has become due and payable, b) the day that the damage came to the injured party's knowledge, or c) the day on which the agreement between the parties has ended.
29. Any drawings, designs, calculations, descriptions, tools, software etc., produced or provided by HIZKIA will at all times remain the property of HIZKIA, even if costs have been charged in that respect. Any information, knowledge and experience incorporated therein, or forming the basis of any packaging and methods of manufacture or production, will at all times remain the property of HIZKIA. This information will not be copied, revealed to, disclosed to, or used by third parties without the written consent of HIZKIA, save for purposes of performance of the agreement.
30. The legal relationship between the Client and HIZKIA, including any agreements concluded between them, will be governed by Dutch law.
31. Any disputes ensuing from or relating to the agreement will exclusively be subject to arbitration in Amsterdam or Rotterdam in accordance with the UNUM arbitration regulations (available and to be downloaded at [www.unum.world](http://www.unum.world)) from Stichting UNUM (Anna van Buerdenplein 41, 2595 DA The Hague). Nevertheless, HIZKIA will be free to submit any claims in respect of due and payable sums of money, for which liability to pay has not been disputed in writing by the Client within four weeks of the due date of the relevant invoice(s), to the District Court of Rotterdam. HIZKIA will also be free to submit claims of an urgent nature to preliminary relief proceedings with the preliminary relief judge of the District Court of Rotterdam.

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