GENERAL TERMS AND CONDITIONS

for Commercial Removals 2020



ERKENDE PROJECT VERHUIZERS

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Terms and Conditions for Commercial Removals (TCCR - AVB 2020)
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The AVB 2020 (TCCR) was established within the AVB sounding board group, which is made up of representatives from the business community, Organisatie voor Erkende Verhuizers (OEV) (Organisation of Approved Movers) and Transport en Logistiek Nederland (TLN) (Netherlands Transport and Logistics).

TERMS AND CONDITIONS FOR COMMERCIAL REMOVALS (TCCR)

ARTICLE 1 - DEFINITIONS

For the purposes of these terms and conditions, the terms below are defined as follows:

1. **TCCR**: the Terms and Conditions for Commercial Removals most recently adopted by the trade association: Organisation of Approved Movers and filed with the Chamber of Commerce Rotterdam under number 40413355.
2. **Company:** any company or institution, whether or not independently established, with or without a profit motive.
3. **Commercial removal:** any contract for a removal, both internal and external, of items ordered by:
   a. a legal entity (company/enterprise);
   b. a (natural) person operating a business or practising an independent profession;
   c. a (government) institution.
4. **Client**: the party ordering the Commercial Remover to perform the commercial removal.
5. **Commercial Remover**: the person who has undertaken towards the Employer to perform a commercial removal.
6. **Items**: all matters that by their nature form part of the company's inventory. These include stocks of goods to the extent their transport takes place exclusively under the commercial removal. Other commercial stocks are not included.
7. **Hazardous substances** are substances prohibited by Appendices A and B of the European Agreement concerning the International Carriage of Goods by Road (Treaty Series 1959, 171), including its subsequent amendments, or permitted only under certain conditions, with the exception of those substances or items carried in accordance with the conditions set out in section 1.1.3.
8. **Ancillary work**: work commissioned, which was not agreed upon when the removal contract was concluded. This is regarded as additional work.
9. **Removal price**: the financial fee for the commercial removal.
10. **Acceptance**: the time at which the items have been placed at the disposal of the Commercial Remover for the purpose of packing or (partial) disassembly or transport.
11. **Delivery**: the time at which the items have been placed at the location where possible indicated for that purpose, after they have been unpacked or assembled at their destination in accordance with Article 5 paragraph 5 of these terms and conditions.
12. **Loss claim**: a (formal) claim for compensation for damage suffered.
13. **Force majeure**: circumstances that a prudent and professional Commercial Remover has been unable to avoid and to the extent such a Commercial Remover has been unable to prevent the respective consequences.
14. **Delay**: when the items have not been delivered within the agreed time or when no time limit has been agreed, when the actual duration of the commercial removal exceeds the time that was expected to be needed by a competent Commercial Remover under normal circumstances.
15. **CMR**: Convention on the Contract for the International Carriage of Goods by Road (Geneva 1956), as supplemented by the Protocols of 1978 and 2008.
16. **Postponement:** the authority of the Client to postpone the performance of the agreed commercial removal to a later time.
17. **Cancellation:** the entitlement of one of the parties to terminate the agreement.

ARTICLE 2 - SCOPE OF APPLICATION

1. Except where mandatory law provides otherwise, these general terms & conditions shall apply to commercial removals within the Netherlands.
2. Cross-border business removals are subject to the CMR Convention and the provisions of these general terms & conditions, which are not contrary to the CMR Convention.
3. Without prejudice to the provisions of paragraphs 1 and 2, the provisions of Book 8, Title 13, Section 4 of the Dutch Civil Code (DCC), which do not conflict with these terms and conditions, shall apply in addition. Contrary to the provisions of Section 1170, paragraph of Book 8 of the Dutch Civil Code, the contract shall be deemed to be a removal contract, irrespective of the nature of the items to be removed.

ARTICLE 3 - OBLIGATIONS OF THE CLIENT

The client is obliged:

1. To furnish in good time all information and particulars which he knows or ought to know are relevant to the Commercial Remover. This shall enable the Commercial Remover to form an accurate picture of the commercial removal in terms of volume, weight, handling of the items, length of time, applicability of special regulations and necessary security measures. The Commercial Remover shall have the right to examine the accuracy of the information provided.
2. To inform the Commercial Remover in writing of the weight of very heavy items, such as safes and machines, and of the maximum permissible floor load of the premises in which such an object is to be placed. This shall also apply to the maximum permissible floor load of the sections across which the item must be moved in the building.
3. To ensure that the Commercial Remover shall be in possession of all data and documents relating to the intended commercial removal in good time, which are required of the Client as a consequence of statutory regulations, such as customs regulations and regulations relating to the carriage and handling of hazardous substances.
4. To indemnify the Commercial Remover against claims by third parties resulting from the non-performance of his/her obligations under these conditions.
5. To ensure that:
    a. the items to be removed shall be placed at the disposal of the Commercial Remover at the agreed time and place.
    b. the Commercial Remover is enabled to carry out the commercial removal efficiently.
    c. the place of destination is easily accessible before the commencement of the commercial removal and the necessary facilities (such as electricity and lifts) are available at both the place of departure and the place of destination and can be used in the performance of the commercial removal.
    d. the packing material left behind by the Commercial Remover at destination is returned to the Commercial Remover within the period provided for in the contract, and in its absence, within a period of one month.
6. Pay the (additional) costs, if:
    a. an item placed in accordance with Article 5 paragraph 2 must be reinstated on the instructions of the principal.
    b. the commercial removal under article 4, paragraph 6, is postponed or otherwise changed, and the Commercial Remover will be indemnified accordingly.

ARTICLE 4 - LIABILITY OF THE CLIENT

1. The Client shall, in addition to his civil liability under Book 6, Sections 170 and 171 of the Civil Code, be liable for the acts and omissions of all persons whose services he makes use of for the performance of the commercial removal, to the extent such persons are acting within the scope of their activities.

2. If the Client has failed to comply with his obligations under article 3, he shall compensate the Commercial Remover for the resulting loss or damage.
3. Subject to the provisions of paragraph 2 of this article, the Commercial Remover may terminate the commercial removal contract if the Client has entirely failed to perform his obligations under article 3 paragraph 5 subsection a. Such termination may not take place until the Commercial Remover has set the Client a final term in writing and the Client has not yet fulfilled his obligations by the time of the expiry of such final term. If setting a time limit would disrupt the operation of his business in a disproportionate manner, the Commercial Remover may also terminate the contract without setting a time limit.
4. Notice of termination based on the preceding paragraph must be given in writing and the agreement shall terminate upon receipt of such notice.
5. If at the agreed time and place, the Client has placed only part of the items to be removed at the Commercial Remover's disposal, the Commercial Remover shall, at the Client's request, remove the items provided against payment of the removal price already agreed.
6. If, at the Client's request, the removal is postponed or the contract of commercial removal is otherwise amended, the Client shall compensate the Commercial Remover for all necessary costs and disadvantages resulting from the postponement or amendment of the commercial removal contract. The desired modification must be practicable for the Commercial Remover and must not disrupt the business operations of the Commercial Remover.
7. For postponement as referred to in paragraph 6, a new removal date must be agreed, which shall be no more than three months after the original removal date. If the commercial removal does not take place within this period, the contract shall be deemed to have been terminated. In that event the Client shall owe the same compensation as set out in section 10 of these conditions in the event of termination within 0 - 5 days prior to the scheduled date of removal.
8. If the Client has not fulfilled his obligation as mentioned in article 3 paragraph 5 sub c, then the new value of the packaging material is considered to be the damage mentioned in paragraph 2 of this article.

ARTICLE 5 - OBLIGATIONS OF THE COMMERCIAL REMOVER

The Commercial Remover is obliged:

1. to take delivery of the goods to be removed at the agreed time and place. The provisions of paragraph 5 of this article shall be taken into account;
2. to deliver the goods to be removed at the destination, at the place and in the condition indicated by the Client, in which they have been placed at the Commercial Remover's disposal for packing or disassembly or for transport pursuant to paragraph 5 of this article.;
3. to load and unload the items to be moved;
4. to complete a commenced commercial removal without delay;
5. if agreed in writing, the items which, in view of their nature and/or the manner of transport, should be taken apart and/or packed, should be taken apart and/or packed and unpacked and/or put together at destination;
6. to carry out all ancillary activities against payment of the resulting additional costs, unless this would disrupt the operation of his business in a disproportionate manner;
7. inform the Client of the way in which the goods must be offered for transport;
8. to inform the Client to the best of his ability about the customs regulations in force and other formalities to be completed for the performance of the commercial removal;
9. to place the packaging material necessary for the commercial removal at the Commercial Remover's disposal;
10. to apply reasonable care with regard to the handling of the documents and papers received by him, on the understanding that the Commercial Remover shall not be obliged to examine the accuracy and completeness of such documents and papers;
11. to request instructions from the Client, if for any reason whatsoever the performance of the commercial removal is or becomes impossible. In the absence of such instructions he may, as a

competent and professional Commercial Remover, take all measures which he considers to be in the interest of the Client. The resulting additional costs shall be borne by the person responsible for part the reason for the inability to perform the commercial removal;

12. to take out, at the Client's request and for the Client's benefit, a separate insurance policy covering the risks for which the Commercial Remover shall not be liable. The costs of such insurance shall be borne by the Client;
13. to indemnify and hold the client harmless for claims of parties (third parties) other than the parties to the contract, which claims are the result of the failure to fulfil his obligations arising from these terms and conditions. This shall not apply if claims of third parties cannot reasonably be attributed to non-fulfilment by the Commercial Remover of his obligations.

ARTICLE 6 - THE LIABILITY OF THE COMMERCIAL REMOVER

1. If the Commercial Remover fails to perform his obligations incumbent upon him under article 5 of these conditions, the Commercial Remover shall be liable for the resulting loss or damage. This shall not apply in the case of force majeure and in so far as otherwise provided elsewhere in this article.
2. The Commercial Remover shall not avoid liability under the preceding paragraph by appealing to:
    a. the deficiency of the vehicle used for the commercial removal;
    b. the deficiency of the material which he uses in the execution of the order, unless this has been provided to him by the Client; material shall not be understood to mean a ship, an aircraft or a railway wagon in which the removal van used for the commercial removal is situated;
    c. the inadequacy of support points used for the attachment of hoisting equipment;
    d. any accident to the removal items caused by third parties whose actions are not at the client's expense.
3. Without prejudice to 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 resulting loss or damage, in so far as such failure to perform is due to the special risks inherent in one or more of the following circumstances:
    a. the packing or dismantling, or the unpacking or assembly of removal items by the Client or with the help of any person or means provided by the Client for this purpose of his own accord;
    b. the Client's choice – even though the Commercial Remover offered him another option - of a method of packing or performance of the contract of commercial removal which differs from the customary methods used for the agreed commercial removal;
    c. the presence among the removal of items in respect of which the Commercial Remover, had he been aware of their presence and their nature, would have taken special measures;
    d. the nature or condition of the removal items themselves, which are exposed to total or partial loss or to damage as a result of causes related to such nature or condition, such as:
        – live animals;
        – plants dying off;
        – money, monetary papers, jewels, jewels made of precious metal or other precious objects, unless the Client handed over the items mentioned to him separately and stating the quantity and value before the commencement of the commercial removal;
        – failure or malfunction of electrical, electronic or mechanical equipment;
        – damage to or loss of personal property of the client's employees;
4. Where the Commercial Remover proves that, having regard to the circumstances of the case, the non-performance of the obligations incumbent upon him under article 5, paragraphs 2 and 4, of these conditions may have resulted from one or more of the special risks mentioned in paragraph 3 of this article, it shall be presumed that the non-performance is caused by this.

5. In the event of delay as referred to in article 5, paragraph 4, of these conditions, the Commercial Remover shall be obliged - if the rightsholder proves that this has caused loss or damage - to pay compensation for such loss or damage, to be agreed upon, which compensation shall not exceed the removal price.
6. The Commercial Remover shall, in addition to his civil liability pursuant to Book 6, Sections 170 and 171 of the Civil Code, also be liable for the acts and omissions of all persons engaged by him in the performance of the commercial removal, in so far as such persons are acting within the scope of their employment.
7. The Commercial Remover shall not be liable for the acts and omissions of persons other than those mentioned in paragraph 6 of this article, present on the business premises at the time of the commercial removal, if such acts and omissions cause damage to the items or delay in the performance of the commercial removal.
8. The compensation due by the Commercial Remover as a result of his failing to perform his obligations under article 5, paragraph 2, of these conditions shall be limited:
    a. in the case of a commercial removal exclusively within a building up to an amount of € 50,000 per commercial removal;
    b. in all other cases within the Netherlands up to an amount of € 50,000 per transport vehicle consignment;
    c. in the case of commercial removals subject to the CMR Convention, the liability of the Commercial Remover under article 23 of the CMR shall be limited to 8 1/3 Special Drawing Rights (SDR) for each kilogramme of gross weight missing.
9. The Client may, subject to the Commercial Remover's consent and against payment of a fee to be agreed (such as a premium for the insurance to be taken out by the Commercial Remover), declare in writing a value of the removal goods exceeding the maximum stated in paragraph 8 of this article. In that case, the amount declared shall replace this maximum. In any event, this amount may not exceed the actual value of the items.
10. If the Commercial Remover fails to perform his obligations under article 5, paragraphs 1, 3, 5 and 8, the Client may terminate the commercial removal contract. Such termination may take place only after he has allowed the Commercial Remover a time limit in which his obligations must be performed and if after such time the Commercial Remover has still not performed his obligations.
11. After termination, the Commercial Remover shall be obliged to compensate the Client for the additional costs which the latter proves to have incurred as a result of the termination. In any event, such compensation shall not exceed the agreed removal price.
12. If the Commercial Remover fails to perform his obligations under article 5, paragraphs 6, 9 and 10, of these conditions, the Commercial Remover shall compensate the Client for the loss or damage which the latter proves to have suffered. In any event, such compensation shall not exceed the agreed removal price.
13. If the Commercial Remover fails to comply with his obligation referred to in article 5, paragraph 11, of these conditions, the Commercial Remover shall be liable on the same basis as a contractor (Book 7, Section 400 et seq. of the Civil Code) for the consequences of the loss or improper handling of the documents handed over to him. In any event, the compensation due by him shall not exceed the compensation due in case of loss of the items.

Note:
Article 6 of these terms & conditions increases the liability of the Commercial Remover in respect of his liability as laid down in Book 8, Section 1095 of the Civil Code.
By virtue of Book 8, Section 1102 of the Civil Code, this increase of liability is null and void, unless article 6 of these terms & conditions is laid down in a separate document containing the commercial removal contract. It is advised to enclose these terms & conditions each time again to the commercial removal contract, by attaching them to the contract and/or by sending them along with the contract in an e-mail.

ARTICLE 7 – CLAIM NOTIFICATION AND LOSS CLAIM

1. If the items are delivered by the Commercial Remover with apparent damage or loss, and the Client does not communicate any reservation in writing to the Commercial Remover upon or immediately after acceptance of the items, the Commercial Remover shall be deemed to have delivered the items in the same condition as in which he received them. The claim notification must state the general nature of the loss or damage.
2. If there is no visible damage or loss and the Client does not, within one week after acceptance of the items, make a reservation in writing stating the general nature of the damage or the loss to the Commercial Remover, then also in this case, it shall be presumed that the Commercial Remover has delivered the items in the same condition as in which he received them.
3. A claim must be submitted in writing or electronically to the Commercial Remover.

ARTICLE 8 - REPAIR OF DAMAGE

1. Repair of damage or replacement of lost items may only take place after agreement has been reached by or on behalf of the parties on the amount of the damage or solution for the damage.
2. Where, under the provisions of the present conditions, the Commercial Remover is obliged to pay compensation for total or partial loss of the items, such compensation shall be calculated pursuant to the value which the items would have had at the time and place where they should have been delivered.*
3. The value of the goods shall be determined according to the stock market price or, failing that, according to the prevailing market price. And if this is absent, according to the usual value of goods of the same type, quality or age.
4. In the event of a dispute about the value of an item, the value shall be determined by an independent appraiser appointed by mutual agreement, and the associated costs shall be shared by both parties.

** In the case of commercial removals subject to the CMR Convention, contrary to Article 8, paragraph 2, the value of the items shall be calculated pursuant to the value of the items at the time and place of their receipt by the Commercial Remover (sender's value).*

ARTICLE 9 - RIGHTSHOLDER

1. Only the Client or his agent shall have the right in respect of the Commercial Remover to deliver the items in accordance with the obligations incumbent upon the Commercial Remover.

ARTICLE 10 - TERMINATION OF COMMERCIAL REMOVAL CONTRACT

1. Before the items are placed at the disposal of the Commercial Remover, the Client shall have the right to terminate the contract in writing. He shall be obliged to pay the Commercial Remover the agreed removal price in accordance with the following graduated percentage:

Cancellation before the scheduled removal date within the following number of working days:	**Percentage of the agreed removal price due:**
0 - 5 working days	100 %

6 - 10 working days	75 %
11- 19 working days	50 %
20 working days and more	20 %

ARTICLE 11 - INVOICING AND TERMS OF PAYMENT

1. The Commercial Remover shall each time, in accordance with the arrangements made, submit an invoice for the services rendered, or, if no further arrangements have been made in this respect, after the commercial removal ordered has been performed, or, in the case of long-term instructions (longer than one month), on a monthly basis, or at the latest one month after work has been performed in connection with such instructions. In this connection the Commercial Remover shall be entitled to invoice electronically.
2. The Client shall be under the obligation to pay the removal price, and anything due and payable under any other arrangements relating to the commercial removal, or to pay further agreed costs relating to the removal items, within fourteen days from the date of invoice.
3. If the amounts referred to in paragraph 2 of this article have not been paid at the time referred to in that paragraph, the Client shall be obliged to pay the statutory interest thereon pursuant to Book 6, Section 119a of the Dutch Civil Code, and with effect from the day on which these payments should have been made up to and including the day of payment.
4. The Commercial Remover shall have the right to charge all extrajudicial and judicial costs necessarily incurred for the collection of the removal price and other amounts as referred to in paragraph 2 of this article to the party owing the removal price and/or other costs. The extrajudicial collection costs shall be due from the moment the debtor is in default. The extrajudicial collection costs shall be calculated on the basis of the Compensation for Extrajudicial Collection Costs Decree (Bulletin of Acts and Decrees 2012/141) or the latest version of that Decree.
5. The full removal price, the costs due on the basis of other agreements relating to the commercial removal and further costs relating to the items to be removed shall also be due if the items to be removed are not or only partly delivered or delivered damaged at destination.
6. Any appeal to offsetting claims for payment of the removal price, of costs due under other agreements relating to the commercial removal or of further costs involved in the removal items against claims based on another reason, shall not be permitted.
7. If, at the time of settlement, a dispute arises about the amount due or if its determination requires a calculation that cannot be carried out swiftly, the party claiming delivery shall be obliged to pay forthwith the part for which the parties do not dispute the amount due and to provide security for the payment of the part or part of the amount that is disputed by him or her, the amount of which has not yet been determined.
8. The Commercial Remover may proceed to warehousing or storage if the provision of security as provided for in paragraph 6 of this article is refused. Storage shall take place under the applicability of the Dutch Storage Conditions, latest version, filed at the office of the Clerk of the District Court in Rotterdam on 15 November 1995.

ARTICLE 12 - SECURITIES

1. The Commercial Remover shall have a right of lien on items and documents in his possession in connection with the commercial removal contract in respect of any person requiring their delivery. He shall not have such right if, at the time when he received the removal items, he had reason to doubt the authority of the Client to place the removal items to his disposal.
2. The Commercial Remover may furthermore exercise the right of lien against the Client in respect of anything still due to him in connection with previous commercial removal contracts.
3. All the items, documents and monetary value in possession of the Commercial Remover in connection with the commercial removal contract shall serve him as a lien for all claims which he has against the Client pursuant to regulations.

4. Except in the cases where the Client 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 rescheduling scheme for natural persons, the Commercial Remover shall never have the right to sell the pledged item without the permission of the court of justice as provided for in Book 3, Section 248 paragraph 2 of the Civil Code.

ARTICLE 13 - CHOICE OF LAW

1. All agreements based on these Terms & Conditions for Commercial Removals (TCCR) shall be governed by Dutch law.
2. All disputes between the parties concerning these Terms and Conditions (TCCR) shall be submitted for settlement to the sub-district court or the district court of the jurisdiction of the place of domicile or place of business of the Commercial Remover.

These Terms and Conditions have been translated from Dutch to English. The Dutch text is leading. Errors are reserved.