



# HIZKIA VAN KRALINGEN

## **General Terms & Conditions of Van Kralingen B.V., also trading under the name of Hizkia van Kralingen.**

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### **Introduction and Scope**

1. Van Kralingen B.V. is a private company with limited liability, having its registered office in The Hague, the Netherlands, registered in the commercial register of the Chamber of Commerce in The Hague under no. 27140435, also trading under the name of Hizkia van Kralingen, hereinafter referred to as "Van Kralingen". 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 Van Kralingen and the Client.
2. These General Terms and Conditions will apply to all and any offers made, agreements concluded, and services provided, by Van Kralingen. Any derogation from these General Terms and Conditions will require the prior written confirmation of Van Kralingen. Unless expressly agreed otherwise, the applicability of any general terms and conditions used by the Client will be excluded.
3. Van Kralingen engages 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, 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 to the best of one's ability ("*inspanningsverplichting*"). Achievement of the desired result, such as meeting deadlines, is not guaranteed.
4. Van Kralingen will be entitled to engage subcontractors for the performance of the assignment and/or related work. Employees and subcontractors of Van Kralingen may also invoke the provisions of these General Terms and Conditions.

### **Agreement and Performance**

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

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9. If Van Kralingen 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 Van Kralingen'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 time or effort, an additional fee – to be determined in all fairness – may be invoiced.
10. The Client will be obliged to take out a goods in transit insurance for all objects covered by the assignment. The insurance agreement is to provide that Van Kralingen is also covered as an insured party and that all rights of recourse have been waived for the benefit of Van Kralingen. Van Kralingen will not take out any goods in transit or other insurance of any nature whatsoever on behalf of the Client in respect of the objects covered by the assignment, unless the Client requests it to do so in writing well in advance. The premium will be charged to the Client. If Van Kralingen 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. Van Kralingen will in no event be responsible for the choice of insurer and its solvency.
11. Provision to Van Kralingen of data required for the performance of customs formalities, will mean an assignment to perform the same, unless agreed otherwise in writing.
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 Van Kralingen's option, whereby the latter may at all times accept 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 Van Kralingen possession in good time. Van Kralingen 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 Van Kralingen 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 Van Kralingen 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 Van Kralingen if Van Kralingen is held liable for payment by any third party engaged by it in connection with the agreement.
16. Van Kralingen 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 Van Kralingen now and/or in the future. The Client will be obliged to provide such security on Van Kralingen's 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 Van Kralingen with the security requested, Van Kralingen will be entitled to suspend its performance, without prejudice to any rights ensuing from the law or the agreement. Van Kralingen 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 or 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 Van Kralingen, irrespective of their basis, will become immediately due and payable. Van Kralingen may in any event, at its option, dissolve the agreement or terminate the agreement with immediate

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effect, if the Client is ordered to file for bankruptcy, 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 Van Kralingen, discontinues its business or – in the event of a legal entity or company – is dissolved.

18. In the event that Van Kralingen 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. Van Kralingen 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 Van Kralingen on any basis and for any purpose whatsoever, for all and any of its current or future claims against the Client and/or owner. Van Kralingen 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 Van Kralingen in connection with the aforesaid 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 Van Kralingen for any damage as a result of - the nature of - objects, and their packaging, covered by the assignment. Furthermore, the Client will be liable towards Van Kralingen 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 Van Kralingen. In the event that Van Kralingen is held liable by any third party in connection with the work performed, the Client will be obliged to indemnify Van Kralingen in that respect to the extent Van Kralingen would not have been liable if said claim had been lodged by Client.
22. Van Kralingen is liable for damage only if and to the extent such damage is the result of the negligence of Van Kralingen, 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, Van Kralingen 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 Van Kralingen performs work in respect of objects without it physically receiving such objects, the aforesaid period of liability will commence at the moment that Van Kralingen 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, within 5 working days of surrender, to notify Van Kralingen in writing of the damage allegedly suffered by the objects as a result of performance of the agreement by Van Kralingen, failing which it can no longer invoke the alleged defect in Van Kralingen's performance. The Client will then be obliged to retain the relevant packaging and to surrender it to Van Kralingen on the latter's demand.
25. Van Kralingen 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

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damage, lost profits or any financial loss, ensuing from or related to Van Kralingen'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 Van Kralingen, 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 Van Kralingen itself, any liability on the part of Van Kralingen 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 assignments involved.

### Other Provisions

28. Every claim against Van Kralingen 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 ("*verjaringsstermijn*") 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 Van Kralingen will at all times remain the property of Van Kralingen, 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 be remain the property of Van Kralingen. This information will not be copied, revealed to, disclosed to, or used by third parties, save for purposes of performance of the agreement without the written consent of Van Kralingen.
30. The legal relationship between the Client and Van Kralingen, 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 TAMARA regulations (available from Stichting TAMARA, PO Box 23158, 3001 KD Rotterdam, the Netherlands, and on [www.tamara-arbitration.nl](http://www.tamara-arbitration.nl)). Nevertheless, Van Kralingen 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. Van Kralingen 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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