

## Domestic Secured Service - Terms and Conditions

1. **“MA-Contract”** refers to the agreement entered into between Customer and MA, with respect to the Services, which comprises of (a) the particulars and terms set out in a Domestic Shipping Instruction and these Terms and Conditions (collectively, the **“DSS-SI”**); and (b) any Rider. **“Domestic Shipping Instruction”** refers to the shipping instructions given by Customer to MA for each Shipment, whether on a pre-printed Malca-Amit form or on the MyMalca online portal, and accepted by MA. **“Rider”** refers to a signed rider to the DSS-SI which may (i) vary the terms of the DSS-SI, or (ii) set out terms and conditions for a special service. The MA-Contract constitutes the entire agreement between the parties with respect to the Services and supersedes all prior or contemporaneous offers (whether written or oral), negotiations, promises, exceptions, understandings, and any terms and conditions included in any shipping documents issued by an agent or subcontractor of MA, or by Customer, shall not apply; provided however that in the event of a conflict between (1) a Rider; (2) a separate agreement between Customer and MA; and (3) the DSS-SI, the aforementioned documents will take precedence in descending order, with (1) taking priority. Any modification of the MA-Contract cannot be made orally and must be agreed in writing. Definitions used in the Domestic Shipping Instruction shall have the same meaning in these Terms and Conditions.
2. **“MA”** refers to the entity specified as **“Malca-Amit”** in the Domestic Shipping Instruction. MA is a private, contract carrier and not a common carrier under this MA-Contract. **“Parcel”** means any distinctively and securely sealed parcel, container or box, said to contain property described in the Domestic Shipping Instruction (**“Property”**), tendered for Services under the MA-Contract. **“Shipment”** means any Parcel(s) tendered to MA for transportation from one Pickup Location to one Delivery Location.
3. **“Services”** refers to the services provided or to be provided by MA pursuant to the MA-Contract.
4. The **“Period of Responsibility”** commences when MA takes physical possession of the Shipment and a written or electronic receipt has been issued acknowledging receipt of the Shipment (**“Receipt”**) by an authorised representative of MA, and terminates upon Delivery to the physical possession of the Receiving Party (as defined below).
5. **“Delivery”** of a Shipment shall be evidenced by a signed Receipt being given by the Consignee, Shipper (if returned) or their respective designee (collectively referred to as **“Receiving Party”**). If at the time of Delivery, the Receiving Party does not make a notation on the Receipt of loss, damage or tampering to the Shipment, then (a) lack of such notation shall be **conclusive proof** that any Parcel included in the Shipment was delivered intact, with seals intact, in good order and condition, and without shortage, damage or loss; and (b) the Receipt shall constitute final and absolute release of all undertakings, obligations and liabilities of MA. If a Shipment cannot be delivered within 30 (thirty) days of arrival at destination, and cannot be returned to the Shipper for whatever reason without fault of MA, then (i) MA’s responsibility for the Shipment (or any undeliverable part thereof) shall cease and the Shipment shall be held at the sole risk and expense of Customer; and (ii) MA’s liability, if any, shall not exceed the lesser of (1) USD 10,000 (ten thousand) and (2) the actual value of the Property.
6. **“Liability”**: MA shall be liable for physical loss, destruction, or mis-delivery of or damage to the Shipment (**“Loss”**), occurring during the Period of Responsibility, subject to the exclusions and limitations stated in the MA-Contract.
7. **Exclusions from Liability**: MA shall **not be liable under any circumstances** whatsoever for any of the following:
  - (a) delay; or
  - (b) loss of profit, loss of sales, loss of business, loss of goodwill or reputation, product recall, product liability, third party claims (in each case whether direct or indirect) or for any indirect, exemplary, special, incidental, punitive or speculative or consequential loss of any nature, whether or not foreseeable and whether or not MA has been advised of the possibility of such damages; or
  - (c) Loss caused by or resulting from: (i) shortage or mysterious disappearance of Property said to be included in a Parcel, with seals intact and when the Parcel bears no evidence of having been opened or tampered with; (ii) damage to Property said to be included in a Parcel, when the Parcel bears no visible signs of damage or tampering; (iii) MA acting in accordance with Customer’s instructions; (iv) negligence, wilful misconduct, breach, or failure of Customer, its employees and/or agents to comply with or fulfil any obligations, undertakings and/or warranties under the MA-Contract; (v) fraud and/or dishonesty on the part of Customer, Shipper, Consignee and/or Receiving Party or any of their employees and/or agents, including but not limited to credit card fraud, cheque fraud, collect on delivery fraud and mail fraud; (vi) ordinary leakage, ordinary loss in weight or volume, shrinkage, or ordinary wear and tear; (vii) pre-existing condition, inherent vice, defect or nature of the Property; (viii) incorrect or insufficient description or valuation of the Property, whereby MA’s liability is reduced or extinguished; or (ix) illegal items or contraband; or
  - (d) Loss caused by or resulting from: (i) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or (iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or (iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter (the exclusion in this sub-clause (iv) does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes); or (v) any chemical, biological, bio-chemical or electromagnetic weapon; or
  - (e) Loss caused by or resulting from a **Cyber Attack**, meaning use or operation, as a means of inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system; or
  - (f) Loss caused by or resulting from: (i) **War**, meaning war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, derelict mines, torpedoes, bombs or other derelict weapons of war; or (ii) **Terrorism**, meaning any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted, or any person acting from a political, ideological or religious motive; or (iii) **Confiscation**, meaning nationalisation, confiscation, seizure, appropriation, expropriation, requisition for title of use or wilful destruction of the Shipment, or portion thereof by, or under the order of, any government (whether civil, military or de facto) and/or public authority; or

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(g) Loss to (i) items that are not defined as Property (including any packing, watch boxes, shipping materials, certificates and documents); (ii) fragile articles or fine art (including antiques of every description, clocks, decorative items, photographs, paintings, pictures etchings, drawings, lithographs, rare books and manuscripts, rare stamps, collectible autographs, collectible coins, medals, fabrics, rugs, tapestries, sculpture, ceramics, pottery, statuary, bronzes, porcelains, marble, glassware, bric-a-brac antique furniture, video artwork and all other works of art or rarity, historic value or artistic merit of whatsoever nature), unless (1) MA specifically agreed to accept such Property for Services prior to acceptance of the Shipment and (2) additional charges have been paid (for avoidance of doubt MA is only liable for damage to fragile articles and fine art when the Parcel shows visible signs of damage or tampering).

8. MA agrees to extend its liability for Loss of Property directly caused by Cyber Attack targeted at MA where the motive is to inflict harm solely on (or upon) MA or MA's property.

9. **Limitations of Liability:** To the extent MA is liable for Loss pursuant to the terms of the MA-Contract, MA's maximum liability shall not in any event exceed the lesser of (a) the actual Loss sustained; and (b) the declared value for the Shipment stated in the Domestic Shipping Instruction ("**Declared Value**").

10. **Compulsory rules and regulations:** Services provided by MA shall be subject to the compulsory rules and regulations for private contract carriers applicable for the transportation by road and air. Customer agrees that the Carmack Amendment relating to motor carriers transporting cargo in the United States of America is excluded and shall not apply to the Services.

11. **No or Inaccurate Declared Value:** In accordance with clause 14(b), Customer undertakes to correctly declare the value of the Property said to be included in a Shipment. Customer therefore expressly agrees to be estopped and/or barred from asserting for any purpose whatsoever, including in any legal proceedings, that the value of the Property is greater than the Declared Value. In the event Customer has failed to declare or mis-declared the value of the Property said to be included in a Parcel and/or Shipment (including without fault of Customer), MA's liability for the affected Property shall never exceed the lesser of (a) the actual Loss sustained; (b) the Declared Value; (c) USD 10,000 (ten thousand) if no Declared Value has been provided; and (d) in the event of a partial Loss to a Shipment comprising several Parcels, the average value per Parcel calculated by dividing the Declared Value in the Domestic Shipping Instruction with the total number of Parcels included in the entire Shipment. Customer waives any claim it may have that the value of the Property is greater than the Declared Value and Customer shall hold harmless and promptly indemnify MA for any and all liabilities and costs incurred as a result of the incorrect or lack of Declared Value, e.g. including but not limited to any administrative, litigation, legal or investigatory costs.

12. **Acknowledgments:** Customer acknowledges that: (a) MA may, in its absolute discretion, choose to subcontract the whole or any part of the Services on any terms whatsoever; (b) every employee, agent or subcontractor performing Services is entitled to benefit from the terms and conditions of the MA-Contract, including every limitation and defence to which MA is entitled; (c) the Shipment may be consolidated by MA with other shipments destined to the same destination or Consignee; (d) MA shall be under no obligation whatsoever to ascertain or check the contents of any Parcel; (e) any transit bag, box, container or other receptacle provided by MA is not designed to protect the Property included in a Parcel from the rigors of transportation; (f) Customer is responsible for verifying the correctness of any document issued pursuant to the MA-Contract; (g) the Parcels may be the subject of controls and checks, including security controls, by any governmental authority or other agency having legal jurisdiction over the relevant matter, which may involve such governmental authority or other agency opening and inspecting the Parcels and that MA will submit to all required controls and checks; (h) MA is required to maintain copies of documents issued in relation to the MA-Contract in accordance with applicable laws; (i) civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements relating to the Property or any person who has or may have an interest in the Property or for the violation of certain applicable laws; (j) MA is granted a general lien on the Shipment for sums due at any time from Customer to MA, and MA shall be entitled to retain possession of the Shipment and suspend Services without incurring liability until all sums owing to MA have been paid; (k) Customer retains ultimate responsibility and liability for all taxes, freight, duties, charges and other expenses, as well as any penalties, relating to the Shipment (collectively referred to as "**Duties**") and agrees that in the event MA pays any Duties, Customer shall promptly reimburse, indemnify and hold MA harmless from all Duties and incurred liabilities together with reasonable expenses (including attorney's and legal fees); (l) the Declared Value of the Property has an effect on (i) the service fees charged by MA for its Services and (ii) the security measures MA adopts in performance of its obligations under the MA-Contract; and (m) MA assumes no obligations of any kind other than expressly set forth in the MA-Contract, and if an arbitral tribunal and/or a court with jurisdiction determines that a bailment relationship exists between the parties, then such bailment relationship shall be governed in accordance with the MA-Contract.

13. **Warranties and Representations:** Customer warrants and represents that: (a) Customer is either the owner or the authorised agent of the owner of the Property; (b) Customer is authorised to accept the MA-Contract not only for itself, but also as agent for, and on behalf of all other persons or entities who are or become interested in the Property, and to bind each of said interested persons or entities to the MA-Contract; (c) the Property does not constitute illegal items or contraband and its transport or handling is not prohibited by any applicable laws (including federal, state, provincial, municipal and local) or treaties, nor is the Property dangerous, corrosive or otherwise capable of causing damage of any type; (d) none of the activities or operations requested by Customer under the MA-Contract are in any way linked to money laundering or terrorist activities; and (e) neither the receipt, nor the handling, nor the Delivery of the Property exposes MA, its employees, agents, or subcontractors to any sanction, prohibition or penalty (or risk thereof) imposed by any governmental organisation or relevant authority.

14. **Undertakings:** Customer undertakes to: (a) properly and accurately describe and never conceal or misrepresent any fact or circumstance concerning the Property; (b) declare the Property's full actual value as the Declared Value; (c) maintain a complete written record of all Property included in any Parcel; (d) properly pack the Property in accordance with the custom of the trade to withstand the rigors of transportation, and so as not to be susceptible to damage during transit by land, sea or air; (e) distinctively and securely seal each Parcel; (f) clearly address each Parcel or otherwise identify or provide reference to the Consignee or Delivery Location; and (g) provide whatever further information may reasonably be required by MA or any governmental organisation with respect to the Shipment and Parcels.

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**15. Indemnification:** Customer shall hold harmless and promptly indemnify MA against any and all damages, losses, expenses (including attorney fees), penalties, fines, liabilities and/or claims howsoever assumed, incurred or suffered by MA, its employees, agents or subcontractors as a result of or in connection with (a) any claim made by Customer or any third party (including the owner of the Property, any other person who is or may become interested in the Property, or any authority) arising from or in connection with the Services, to the extent such claim exceeds MA's liability to Customer under the MA-Contract; and (b) a breach of any terms of the MA-Contract by Customer, including the aforementioned representations, warranties and undertakings.

**16. Insurance:** MA is neither an insurer nor an insurance intermediary nor an insurance broker. At all times during the performance of the MA-Contract, MA agrees to maintain insurance in such amounts and against such risks as shall adequately cover (a) the liability for Loss under the MA-Contract; and (b) any legal liability.

**17. Force Majeure:** Neither party shall be liable to the other party for any non-performance of its obligations under the MA-Contract to the extent such non-performance is due to a "Force Majeure", meaning any circumstance not within a party's reasonable control, including but not limited to any acts of God, flood, earthquake or other natural disaster, compliance with any law, order, rule or regulation of any government or public authority, war or national emergency, riots, civil commotion, acts of terrorism, imposition of sanctions, piracy, fire, explosion, computer viruses, severe weather conditions, epidemic, pandemic, lock-outs, strikes and other industrial disputes, and non-performance by suppliers or subcontractors. In the event of a Force Majeure, the affected party shall: (i) give notice in writing of the Force Majeure to the other party as soon as reasonably possible, stating the extent of prevention, the cause thereof and its estimated duration; (ii) endeavour to mitigate the effects of the Force Majeure; and (iii) resume performance of its obligations as soon as reasonably possible after the removal of the cause or prevention. During any period of Force Majeure, MA remains liable for Loss subject to the terms of this MA-Contract.

**18. Claims:** Customer must notify MA in writing immediately after discovery of any Loss. Customer shall make a written substantiated claim for Loss no later than 14 (fourteen) days after Delivery or anticipated Delivery and any claim for Loss shall be deemed to have been waived by Customer unless a claim is made within this time limit. Nothing in the clause is intended to or shall limit mandatorily applicable notification periods, which may not be limited in accordance with applicable laws. Customer agrees that any claim against MA shall expire and be forever barred unless arbitral proceedings are commenced within one (1) year after the date upon which the Shipment was received by MA, or where mandatorily applicable such time period as may not be limited in accordance with applicable laws. In the event of settlement of any claim, including claims for Loss, MA or its insurers shall become subrogated to the extent of such payment to all of the Customer's rights of recovery against any responsible party with respect to such Loss. Customer undertakes to execute and deliver all documents required by MA or its insurers, and to cooperate with them and assist them fully in connection with exercising their rights, including the maintenance of any legal proceeding in the Customer's name. Customer further undertakes that neither it nor its agents shall do anything to prejudice these rights.

**19. Data Protection:** (a) The parties agree that the protection of personal data is very important. If Customer discloses personal data to MA, MA shall comply with applicable data protection laws and regulations, including but not limited to the General Data Protection Regulation (EU) 2016/679; (b) As an integral part of providing Services under the MA-Contract, MA, acting as a data controller, collects, uses, discloses, transfers and otherwise processes personal data about Customer. Unless otherwise specifically agreed in writing, MA shall only process personal data for the purposes of and to the extent necessary for providing the Services under the MA-Contract. Customer may read more about for what purposes and how its personal data is collected and processed in MA's privacy policy ("**Privacy Policy**"), which is available at <https://www.malca-amit.com>. The Privacy Policy does not form part of the MA-Contract and may be amended at any time. For the avoidance of doubt, when MA collects an individual's personal data from Customer under any separate forms, such personal data shall be processed exclusively in line with the separate information provided therein; (c) Confidentiality obligations shall apply to personal data. MA shall (i) limit access to personal data to those employees and other persons who need access for the provision of the Services, and (ii) ensure that all employees and other persons authorised to process the personal data have committed themselves to confidentiality; (d) MA undertakes to implement appropriate technical and organisational measures to prevent that personal data is accidentally or unlawfully destroyed, lost or altered, disclosed or made available without authorisation, or otherwise processed in violation of the applicable data protection laws; (e) Customer warrants that it has provided the necessary notifications (including this clause 19 and the Privacy Policy) to and obtained the necessary consents from any individuals whose personal data is provided to MA, in accordance with applicable data protection and privacy laws, such that MA is not in breach of relevant laws in using such information as described in this clause 19 and the Privacy Policy.

**20. Governing Law and Dispute Resolution:** The MA-Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are exclusively governed by and exclusively construed in accordance with the laws of the place of incorporation of MA. The parties irrevocably agree that the courts of the country of incorporation of MA (in the case of the United States, federal courts) shall have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this MA-Contract or its subject matter or formation (including non-contractual disputes or claims). For the avoidance of doubt, any and all disputes, suits, actions, and claims related to or arising out of this MA-Contract shall be resolved exclusively pursuant to this clause 20 and shall NOT be filed to any other arbitration / mediation / court / institute.

**21. Miscellaneous:** If any provision contained or referred to herein is declared by an arbitration tribunal and/or a court with jurisdiction to be contrary to applicable law or otherwise invalid or unenforceable, the validity and enforceability of the remaining provisions contained or referred to herein shall not be affected thereby and shall remain in full force and effect. The word "including" shall be read as "including, but not limited to." The word "or" shall be read as "and/or." References to "whatsoever" shall be read as "whatsoever, including negligence". These Terms and Conditions have originally been drafted in the English language. In the event the Terms and Conditions are provided in a language other than English, the English language version of the Terms and Conditions shall prevail.