



Fine Art - Terms and Conditions of MA-Express Shipping Services

These Terms and Conditions (“**T&Cs**”) shall apply to any and all MA-Express shipping services relating to fine art provided by Malca-Amit Far East Limited (“**Malca-Amit**”) for Customer and no other terms shall apply. By Customer signing the acknowledgement box at the end of these T&Cs, Customer represents that it has read the T&Cs, and acknowledges and agrees that the T&Cs will become immediately binding upon Customer.

1. Definitions and Interpretations: Definitions of terms used in these T&Cs are as follows:

- a. “**Commencement Date**” means the date Customer signs these T&Cs.
- b. “**Consignee**” refers to the consignee designated by Customer.
- c. “**Courier**” shall mean a courier company (such as FedEx, UPS and DHL) approved by Malca-Amit.
- d. “**Customer**” means the company identified in the acknowledgement box at the end of these T&Cs.
- e. “**Declared Value**” means the value declared to Malca-Amit on the Shipping Instruction for the Property.
- f. “**Destination**” refers to the Consignee’s address as designated by Customer.
- g. “**Liabilities**” means Loss, claims, losses, liabilities, including but not limited to those arising from Loss, and costs (including the reasonable costs of investigating and defending any claims), expenses, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature.
- h. “**Loss**” means physical loss, destruction of, damage to, or mis-delivery of Property, occurring during the Period of Responsibility.
- i. “**Maximum Liability Limit**” means, unless otherwise agreed in writing, for (A) **any one Shipping Box** USD 50,000 (fifty thousand); and (B) **any one Shipment** (which can comprise multiple Shipping Boxes) sent to a single Destination on any one day USD 100,000 (one hundred thousand).
- j. “**Property**” refers to fine art and antiques of every description, including clocks, 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, marbles, antique furniture, video artwork and all other works of art or rarity, historic value or artistic merit of whatsoever nature.
- k. “**Receipt**” refers to a written or an electronic receipt acknowledging receipt of a Shipment/Property.
- l. “**Receiving Party**” refers to:
 - (i) a person or entity designated by the Consignee as authorized to accept delivery of a Shipment; or
 - (ii) any apparent representative of the Consignee (including a concierge, doorman, front desk clerk, security guard, residential occupant, or any mailroom clerk), or
 - (iii) a common or private or contract carrier; or
 - (iv) a governmental postal authority, appraiser, customs authority, diamond office or other authority.
- m. “**Services**” means services as set forth in clause 2 for which a Shipping Instruction is issued.
- n. “**Service Fees**” means the fees notified to Customer by Malca-Amit.
- o. “**Shipment**” refers to one or more Shipping Boxes shipped from one location to a single Destination at any one time.
- p. “**Shipping Box**” refers to the properly and securely sealed outer shipping box provided by the Courier (or other type of packing or box explicitly approved in writing by Malca-Amit prior to tendering the Shipment to the Courier) which is said to contain Property.
- q. “**Shipping Instruction**” refers to information and details provided by Customer on a shipping manifest as agreed between the parties.

2. **Available Services:** Malca-Amit is under no obligation to provide Services. Customer may request any of the Services described below:
- a. **Drop-Off Service:** Customer shall tender the Shipment to Malca-Amit at a Malca-Amit service desk for transportation to Consignee by Courier.
 - b. **Pick-Up Service:** Malca-Amit shall pick-up the Shipment from the pick-up location designated by Customer for transportation by Courier to Consignee.
 - c. **Remote Service:** Customer shall directly tender the Shipment to Courier for transportation to Consignee, and Customer shall prior to tendering the Shipment to Courier (i) submit the required Shipping Instruction to Malca-Amit; and (ii) not tender the Shipment to Courier until Malca-Amit has accepted the Shipping Instruction in writing.
 - d. **Packing Service:** Upon specific request by Customer, Malca-Amit shall professionally pack the Property in accordance with industry standards (for the avoidance of doubt Packing Service is not available for Remote Service).
3. **Period of Responsibility:**
- a. Malca-Amit's Period of Responsibility commences for:
 - (i) for **Drop-Off Service, Pick-Up Service and Packing Service:** When Malca-Amit has taken physical possession of the Shipment/Property and issued a Receipt; and
 - (ii) **Remote Service:** When (A) Malca-Amit has accepted the Shipping Instruction as per clause 2.c; and (B) the approved Courier has taken physical possession of the Shipment and issued a Receipt. In the event that the Shipping Instruction has not been accepted by Malca-Amit in writing or a Receipt has not been issued, Malca-Amit shall have no Liability whatsoever or howsoever arising (including for negligence) for such Shipment (without prejudice to the generality of the foregoing, Malca-Amit's Liability arising from or relating to such Shipment shall be limited to the lesser of USD 100 (one hundred) and the actual Loss sustained).
 - b. Malca-Amit's Period of Responsibility shall terminate for all Services when the Receiving Party has accepted physical delivery of the Shipment and signed a Receipt. "**Delivery**" of a Shipment shall be conclusively evidenced by a signed Receipt being given by the 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 (i) lack of such notation shall be conclusive proof that the Shipment was delivered intact, with seals intact, in good order and condition and without shortage, damage or loss; and (ii) the Receipt shall constitute final and absolute release of all undertakings, obligations and Liabilities of Malca-Amit.
 - c. Notwithstanding clause 3.b, in the event that a Shipment is deposited at Destination, based upon a release signature on file with Courier, and hence no signature is obtained from the Consignee, then (i) Malca-Amit's Period of Responsibility shall terminate upon deposit of the Shipment at Destination or at any other location authorized under the release signature, and (ii) the Shipment shall be deemed an intact Delivery as provided in clause 3.b.
4. **Liability for Loss:**
- a. Subject to the remainder of this Clause 4, Malca-Amit shall be liable for Loss occurring during the Period of Responsibility resulting from any cause whatsoever.
 - b. Malca-Amit shall **not be liable for Loss under any circumstances** whatsoever for any of the following:
 - (i) Loss to items that are not defined as Property (including any packing, watch boxes, shipping materials, certificates and documents); or

- (ii) Loss caused by or resulting from: (A) shortage or mysterious disappearance of Property said to be included in a Shipping Box, which Shipping Box has seals intact and bears no evidence of having been opened or tampered with; or (B) damage to Property said to be included in a Shipping Box, which Shipping Box bears no visible signs of damage or tampering (save for when Malca-Amit is providing a Packing Service); or (C) Malca-Amit acting in accordance with Customer's instructions; or (D) 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 these T&Cs; or (E) 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; or (F) ordinary leakage, ordinary loss in weight or volume, shrinkage, or ordinary wear and tear; or (G) pre-existing condition, inherent vice, defect or nature of the Property; or (H) incorrect or insufficient description or valuation of the Property, whereby Malca-Amit's liability is reduced or extinguished; or (I) illegal items or contraband; or
 - (iii) Loss caused by or resulting from: (A) ionizing radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or (B) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or (C) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or (D) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter (the exclusion in this sub-clause (D) 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 (E) any chemical, biological, bio-chemical or electromagnetic weapon; or
 - (iv) Loss caused by or resulting from: (A) **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 (B) **Terrorism**, meaning any act of terrorism being an act of any person acting on behalf of, or in connection with, any organization 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 (C) **Confiscation**, meaning nationalization, 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.
- c. In relation to any international shipment, Malca-Amit agrees to extend its liability for Loss caused by or resulting from War, Confiscation or Terrorism, but only to the extent that Malca-Amit is insured for any of such Loss.

5. Force Majeure and General Liability:

- a. Malca-Amit shall not be liable to Customer for any delay or non-performance of its obligations under this Agreement to the extent such delay or non-performance is due to circumstances beyond the reasonable control of Malca-Amit.
- b. Malca-Amit shall under no circumstances whatsoever be liable for 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 Malca-Amit has been advised of the possibility of such damages.
- c. Malca-Amit shall have no Liability arising from or in connection with Cyber Attack, except for a Loss for which Malca-Amit would otherwise be liable under these T&Cs. "**Cyber Attack**" means any use or operation, as a means for inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or computer process or any other electronic system.

6. **Inaccurate Declared Value:** In accordance with clause 10.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 mis-declared the value of the Property said to be included in a Shipping Box and/or Shipment (including without fault of Customer), 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 Malca-Amit for any and all liabilities and costs incurred as a result of the incorrect or lack of the Declared Value, including but not limited to any administrative, litigation or investigatory costs.
7. **Limitations of Liability:** Notwithstanding clause 6, Malca-Amit's Liability for Loss for the affected Property shall never exceed the lesser of:
- a. the actual Loss sustained; and
 - b. the Declared Value; and
 - c. the invoice value if no Declared Value has been provided; and
 - d. the Maximum Liability Limit (as applicable); and
 - e. USD 1,000 (one thousand) if neither a Declared Value nor an invoice value has been provided; and
 - f. in the event of a partial Loss to a Shipment which comprises of multiple Shipping Boxes and no value can be evidenced for each individual Shipping Box, the average value per Shipping Box which is calculated by dividing the Declared Value for the entire Shipment with the total number of Shipping Boxes included in the Shipment.
8. **Acknowledgments:** Customer acknowledges that:
- a. Malca-Amit 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 these T&Cs, including every limitation and defence to which Malca-Amit is entitled;
 - c. Malca-Amit shall be under no obligation whatsoever to ascertain or check the contents of any Shipping Box packed by Customer. Further, in the event Malca-Amit is performing a Packing Service Malca-Amit does not confirm the authenticity and/or condition of the Property;
 - d. the Shipment 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 Shipping Boxes, and that Malca-Amit will submit to all required controls and checks;
 - e. Malca-Amit is required to maintain copies of documents issued in relation to the Shipment in accordance with applicable laws;
 - f. 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;
 - g. it 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 Malca-Amit pays any Duties, Customer shall promptly reimburse and hold Malca-Amit harmless from all Duties and incurred liabilities together with reasonable expenses (including attorney's and legal fees); and
 - h. Malca-Amit assumes no obligations of any kind other than expressly set forth in these T&Cs.
9. **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 these T&Cs 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 these T&Cs;
- c. Property shall only consist of the specified types of Property set out in clause 1.j;
- d. 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;
- e. none of the activities or operations requested by Customer under these T&Cs are in any way linked to money laundering or terrorist activities; and
- f. neither the receipt, nor the handling, nor the delivery of the Property exposes Malca-Amit, its employees, agents, or subcontractors to any sanction, prohibition or penalty (or risk thereof) imposed by any governmental organization or relevant authority.

10. 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. provide Malca-Amit and/or Courier with any document required to comply with customs laws and regulations for the export or import of the Property said to be included in a Shipment;
- d. save for when Malca-Amit is performing a Packing Service, properly pack all Property in accordance with the customs of the trade so that the Property shall withstand the rigours of transportation and not be susceptible to damage, tampering or other interference during the performance of the Services (for the avoidance of doubt, Malca-Amit is entitled to rely on the adequacy of Customer's packing and Malca-Amit will not check or approve Customer's packing of the Property);
- e. maintain a complete written record of all Property included in any Shipping Box;
- f. correctly and distinctively label, complete and address all shipping documents, labels and supporting documentation (such as invoices, custom clearance authorizations, and any documents required by Malca-Amit or Courier);
- g. ensure that no reference is made in the shipping documents and labels to suggest that the Shipment contains valuable goods (for the avoidance of doubt, Property should instead be described using harmonized codes - if possible);
- h. only tender Shipments for Services to Couriers specified and approved by Malca-Amit;
- i. not tender Shipping Boxes and Shipments, which exceed the Maximum Liability Limit;
- j. keep the original Receipts issued by the Courier for any Shipment;
- k. ensure that Consignee is available to accept delivery of a Shipment at Destination at the anticipated date of delivery;
- l. provide whatever further information may reasonably be required by Malca-Amit or any governmental organization with respect to the Shipment; and
- m. secure and provide all necessary permits, franchises, licenses or other authorizations required to lawfully effect the exportation or importation of the Property.

11. Indemnification: Customer shall hold harmless and promptly indemnify Malca-Amit against any and all damages, losses, expenses (including attorney fees), penalties, fines, liabilities and/or claims howsoever assumed, incurred or suffered by Malca-Amit, its employees, agents or subcontractors as a result of or in connection with (i) any claim made by 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 Malca-Amit's liability to Customer as stated under these T&Cs; and (ii) a breach by Customer of any terms of the T&Cs, including the aforementioned representations, warranties and undertakings.

- 12. Insurance:** Malca-Amit is neither an insurer nor an insurance intermediary nor an insurance broker.
- 13. Claims:**
- a. Customer shall under no circumstances submit any claim directly to a Courier.
 - b. Any notice of claim must be made in writing to Malca-Amit upon discovery of any Loss, immediately without undue delay, but in no event more than 14 (fourteen) days from the date the Shipment was delivered or should have been delivered.
 - c. Customer hereby authorises Malca-Amit or its designated representatives to handle any and all matters relating to a claim for Loss of a Shipment pursuant to these T&Cs with the responsible Courier and Customer shall execute any documentation required to effectuate this authorisation.
 - d. A lawsuit must be brought against Malca-Amit within six (6) months after either Malca-Amit or the Courier (as the case may be) received the Shipment at the place of departure. If such notice of claim is not made, and lawsuit is not commenced within six (6) months, then any claim for Loss relating to the affected Shipment shall be deemed waived and Malca-Amit is forever released from any such claim for Loss.
- 14. Service Fees:**
- a. Malca-Amit may amend the service fees in writing to Customer upon 14 (fourteen) days' notice.
 - b. Invoices in respect of service fees will be raised by Malca-Amit and shall be paid by Customer within the period set out therein (in the event that no period is specified, Customer shall pay the invoice within 30 (thirty) days of the invoice date), in accordance with the payment terms set out herein.
 - c. All payments due from the Customer under these T&Cs shall be made in full without any set-off, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counterclaim. Overdue sums will attract interest at the rate specified in the applicable legislation.
 - d. All service fees and payments referred to in these T&Cs are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority and are subject to the addition of value added tax and such other tax, duty, fee or charges at the appropriate rate.
- 15. Data Protection**
- a. The parties agree that the protection of personal data is very important. If Customer discloses personal data to Malca-Amit, Malca-Amit 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 these T&Cs, Malca-Amit acting as a data controller, collects, uses, discloses, transfers and otherwise processes personal data about Customer. Unless otherwise specifically agreed in writing, Malca-Amit shall only process personal data for the purposes of and to the extent necessary for providing the Services under these T&Cs. Customer may read more about for what purposes and how its personal data is collected and processed in Malca-Amit's Privacy Policy ("Privacy Policy"), which is available at <https://www.malca-amit.com>. The Privacy Policy does not form part of these T&Cs and may be amended at any time. For the avoidance of doubt, when Malca-Amit 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. Malca-Amit 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. Malca-Amit 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 authorization, or otherwise processed in violation of the applicable data protection laws.

- e. Customer warrants that it has provided the necessary notifications (including this clause 15 and the Privacy Policy) to and obtained the necessary consents from any individuals whose personal data is provided to Malca-Amit, in accordance with applicable data protection and privacy laws, such that Malca-Amit is not in breach of relevant laws in using such information as described in this clause 15 and the Privacy Policy.

16. Miscellaneous:

- a. Entire Agreement: These T&Cs comprise the complete and exclusive agreement between the parties, and supersede and replace any previous agreement for Services between the parties (which previous agreement is hereby terminated). These T&Cs can only be modified or amended in writing, signed by both parties hereto.
- b. Waiver: The failure to insist upon strict compliance by either party with respect to any of these T&Cs shall not be deemed a waiver or relinquishment of any such term or condition, nor shall any failure to exercise any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times.
- c. Severability: If any provision contained or referred to herein is declared by a competent court 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.
- d. Law and Jurisdiction: (i) These T&Cs and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Hong Kong; and (ii) the parties irrevocably agree that the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with these T&Cs or their subject matter or formation (including non-contractual disputes or claims).

I CONFIRM THAT I HAVE READ AND UNDERSTOOD THE ABOVE T&CS, WHICH INCLUDE LIMITATIONS AND EXCLUSIONS FROM LIABILITY, AND I AM AUTHORIZED TO ACCEPT THESE T&CS ON BEHALF OF CUSTOMER. I ACKNOWLEDGE AND AGREE THAT THESE T&CS WILL APPLY TO ANY SHIPMENT PERFORMED BY MALCA-AMIT WITH RESPECT TO THE SERVICES.	
Customer:	
Address:	
Date:	
Print Name and Title:	Signature: