

Malca-Amit® Global Shipping Instruction (GSI) - Terms and Conditions

1. **“MA-Contract”** refers to the agreement entered into between Customer and Network Agent with respect to the Services, which comprises of (a) the particulars and terms set out in a Global Shipping Instruction and these Terms and Conditions (collectively, the **“GSI”**); and (b) any Rider. **“Global Shipping Instruction”** refers to the shipping instructions given by Customer to Network Agent for each Shipment, whether on a pre-printed Malca-Amit form or on the MyMalca online portal, and accepted by the Network Agent identified therein (and for Shipments from India, the Global Shipping Instruction refers to the *House Airwaybill (Not Negotiable)*). **“Rider”** refers to a signed rider to the GSI which may (i) vary the terms of the GSI, 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 Network Agent, 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 Network Agent; and (3) the GSI, 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 the Global Shipping Instruction shall have the same meaning in these Terms and Conditions.
2. **“Network Agent”** refers to the specific member of the Malca-Amit International Network™ specified in the Global Shipping Instruction. Each Network Agent is (a) an independent company and is not liable for the debts or obligations of any other member of the Malca-Amit International Network™; and (b) a private, contract carrier and not a common carrier under this MA-Contract. No Network Agent is authorised to accept service of legal process for or on behalf of any other Network Agent. **“Parcel”** means any distinctively and securely sealed parcel, container or box, said to contain property described in the Global Shipping Instruction (**“Property”**), tendered for Services under the MA-Contract. **“Shipment”** means any Parcel(s) tendered to Network Agent for transportation from one Pickup Location to one Delivery Location.
3. **“Services”** refers to the services provided or to be provided by Network Agent pursuant to the MA-Contract.
4. The **“Period of Responsibility”** commences for: (1) Airport to Door (**“ATD”**), when the air carrier or ground handling agent (as applicable) takes physical possession of the Shipment at the airport of departure and a written or electronic receipt (**“Receipt”**) has been issued; or (2) any other Shipment, when Network Agent takes physical possession of the Shipment and a Receipt has been issued by an authorised representative of Network Agent. Subject to the Service option selected in the Global Shipping Instruction, Network Agent’s Period of Responsibility terminates for: (a) Door to Door (**“DTD”**) and ATD upon delivery to the physical possession of the Receiving Party; (b) Door to Airport (**“DTA”**) upon delivery by the air carrier or ground handling agent (as applicable) to the physical possession of the Receiving Party at the airport of destination; or (c) Door to Touch Down (**“DTT”**) when the belly doors of the aircraft are opened at the parking space for the aircraft at the airport of destination, however, not later than 24 (twenty four) hours after arrival of the aircraft at the airport of destination, whichever first occurs.
All Shipments from India shall be performed DTD, which is the only available Service option.
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 Network Agent. 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 Network Agent, then (i) Network Agent’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) Network Agent’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”**: Network Agent shall be liable for physical loss, destruction, mis-delivery of or damage to the Shipment (**“Loss”**), occurring during the Period of Responsibility, subject to the Liability Option selected by Customer in the Global Shipping Instruction and the exclusions and limitations stated in the MA-Contract.
 - (a) **Limited Liability Option**: Network Agent shall only be liable for Loss resulting from the **Gross Negligence or wilful misconduct** of Network Agent occurring while the Shipment is in the actual physical possession or control of Network Agent, to the exclusion of any period whilst the Shipment is in the care, custody or control of (i) appraisers, customs authorities, diamond office, assay office or an authority; and (ii) any air carrier when Network Agent is not in control of the Shipment and is only acting as a forwarding agent. **“Gross Negligence”** under this GSI shall not refer to minor negligence but instead to a standard requiring a party to act in a manner more fundamental than mere failure to exercise proper skill and/or care, and hence shall require conduct undertaken with actual appreciation of the risks involved and a reckless disregard of or indifference to an obvious risk.
 - (b) **Full Liability Option**: Network Agent shall be liable for Loss resulting **from any cause whatsoever**, including any period whilst the Shipment is not in the care, custody or control of Network Agent during the applicable Period of Responsibility.
All Shipments from India, Thailand and Belgium shall be carried out pursuant to the Full Liability Option, which is the only available Liability Option.
7. **Exclusions from Liability**: Irrespective of the Liability Option selected, Network Agent 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 Network Agent 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) Network Agent acting in accordance

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- 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 Network Agent'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
- (g) Loss to (i) items that are not defined as Property (including any packing, watch boxes, shipping materials, certificates and documents); or (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, glassware, marble, 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) Network Agent 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, Network Agent is only liable for damage to fragile articles and fine art when the Parcel shows visible signs of damage or tampering).
8. Provided the **Shipment is subject to the Full Liability Option**, Network Agent agrees to extend its liability for (1) shortage, damage or disappearance of Property directly caused by or resulting from the Parcel being opened and Property inspected by appraisers, customs authorities, diamond office or other authority; (2) total physical loss of Property occurring whilst the Property is in the possession of an assay office for the purpose of hallmarking the Property (for clarity, Network Agent is not liable for any damage or destruction to the Property whilst at the assay office); (3) Loss of Property directly caused by Cyber Attack targeted at Network Agent where the motive is to inflict harm solely on (or upon) Network Agent or Network Agent's property; and (4) Loss of Property directly caused by or resulting from War, Terrorism and/or Confiscation to the extent that Network Agent is insured against such a Loss (for clarity, if Network Agent is unable to obtain such insurance coverage then Network Agent is not liable for War, Terror and/or Confiscation).
9. **Limitations of Liability:** To the extent Network Agent is liable for Loss pursuant to the terms of the MA-Contract, Network Agent'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 Global Shipping Instruction ("**Declared Value**"). For Shipments from India, the "*declared value for liability purpose*" shall be deemed to be the Declared Value and shall not exceed the "*value approved by customs*" as stated in the Global Shipping Instruction plus 10%, unless a higher value is approved by Network Agent in writing at the time of booking the export shipments.
10. **Conventions:** If any international legislation governing the international carriage of goods (including but not limited to the Warsaw Convention, Hague Protocol, Montreal Convention (including respective amendments), and the Convention on Contract for the International Carriage of Goods by Road) (collectively the "**Conventions**") is compulsorily applicable to the Services, this MA-Contract shall be read as subject to such Conventions, and nothing in this Agreement shall be construed as a surrender by Network Agent of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such Conventions, and if any part of this MA-Contract be repugnant to such Conventions to any extent, such part shall as regards such Services be overridden to that extent and no further. With respect to air carriage, Customer acknowledges that Network Agent will not declare a value for carriage to the air carrier unless instructed to do so. Notwithstanding the aforementioned, 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), Network Agent's liability for the affected Property shall never exceed the lesser of (a) the actual Loss sustained; (b) the Declared Value; (c) the Invoice Value if no Declared Value has been provided; (d) USD 10,000 (ten

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thousand) if neither a Declared Value nor an Invoice Value have been provided; and (e) 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 Global 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 Network Agent for any and all liabilities and costs incurred as a result of the incorrect or lack of Declared Value, including but not limited to any administrative, litigation, legal or investigatory costs.

- 12. Acknowledgments:** Customer acknowledges that: (a) Network Agent 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 Network Agent is entitled; (c) Network Agent may, in its absolute discretion, hold the Shipment in transit in its vault, while waiting for commencement, continuation or completion of Services, without prejudice to the liability of Network Agent throughout the Period of Responsibility until actual Delivery; (d) the Shipment may be consolidated by Network Agent with other shipments destined to the same destination or Consignee; (e) Network Agent shall be under no obligation whatsoever to ascertain or check the contents of any Parcel; (f) any transit bag, box, container or other receptacle provided by Network Agent is not designed to protect the Property included in a Parcel from the rigors of transportation; (g) Customer is responsible for verifying the correctness of any document issued pursuant to the MA-Contract; (h) 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 Network Agent will submit to all required controls and checks; (i) Network Agent is required to maintain copies of documents issued in relation to the MA-Contract in accordance with applicable laws; (j) 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; (k) Network Agent is granted a general lien on the Shipment for sums due at any time from Customer to Network Agent, and Network Agent shall be entitled to retain possession of the Shipment and suspend Services without incurring liability until all sums owing to Network Agent have been paid; (l) 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 Network Agent pays any Duties, Customer shall promptly reimburse, indemnify and hold Network Agent harmless from all Duties and incurred liabilities together with reasonable expenses (including attorney’s and legal fees); (m) the Declared Value of the Property has an effect on (i) the service fees charged by Network Agent for its Services and (ii) the security measures Network Agent adopts in performance of its obligations under the MA-Contract; and (n) Network Agent 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 Network Agent, 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; (g) provide whatever further information may reasonably be required by Network Agent or any governmental organisation with respect to the Shipment and Parcels; and (h) secure and provide all necessary permits, franchises, licenses or other authorisations required to lawfully effect the exportation or importation of the Property, and in the event Network Agent is instructed to clear a Shipment through customs, Customer hereby appoints Network Agent to perform customs clearance and authorises Network Agent or its designee to complete 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. For Shipments from India: (i) Customer undertakes to arrange, through Customer’s own customs house agent, for customs examination and deposit the customs sealed parcel with the custodian appointed by customs, and Network Agent shall arrange for transportation of the Parcel only after receipt of the customs-approved *House Airwaybill (Not Negotiable)* bearing the C.C. No. issued by customs as per prevailing customs practices/procedures.
- 15. Indemnification:** Customer shall hold harmless and promptly indemnify Network Agent against any and all damages, losses, expenses (including attorney fees), penalties, fines, liabilities and/or claims howsoever assumed, incurred or suffered by Network Agent, 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 Network Agent’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.

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- 16. Insurance:** Network Agent is neither an insurer nor an insurance intermediary nor an insurance broker. At all times during the performance of the MA-Contract, Network Agent 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, (including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent), war or national emergency, riots, civil commotion, acts of terrorism, imposition of sanctions, embargo, breaking off of diplomatic relations, 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, Network Agent remains liable for Loss subject to the terms of this MA-Contract.
- 18. Claims:** Customer must notify Network Agent 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 Network Agent 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 Network Agent, 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, Network Agent 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 Network Agent 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 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 Network Agent, Network Agent 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, Network Agent, acting as a data controller, collects, uses, discloses, transfers and otherwise processes personal data about Customer. Unless otherwise specifically agreed in writing, Network Agent 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 Network Agent'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 Network Agent 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. Network Agent 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) Network Agent 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 Network Agent, in accordance with applicable data protection and privacy laws, such that Network Agent 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 Network Agent. The parties irrevocably agree that the courts of the country of incorporation of Network Agent (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.