



## MALCA-AMIT® FINE ART TERMS AND CONDITIONS

### 1. Definitions and Interpretations

- 1.1 In these T&Cs, the following words shall have the following meanings:
- 1.1.1 **Authority** means a competent state, country, international or governmental authority (including customs), agency, body or organisation;
  - 1.1.2 **Condition Check** refers to a written report with photographs describing the physical condition of the Goods and identifies any visible damage, flaws or similar on the Goods;
  - 1.1.3 **Confidential Information** means these T&Cs and all information in any form or medium which is secret or otherwise not publicly available (either in its entirety or in part including the configuration or assembly of its components) including the business, affairs, customers, clients or suppliers of either party, commercial, financial, marketing or technical information, know-how, trade secrets, business methods and other information in any form or medium whether disclosed orally or in writing, together with any reproductions of such information in any form or medium or any part(s) of this information;
  - 1.1.4 **Consignee** means in relation to a Shipment that is not an Inbound Shipment the person or entity designated by Customer to receive the Shipment;
  - 1.1.5 **Customer** refers to the person or entity that has submitted an Estimate to Malca-Amit for the provision of Services;
  - 1.1.6 **Cyber Attack** means 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;
  - 1.1.7 **Declared Value** means the full and actual value of the Goods as declared by Customer on the Estimate;
  - 1.1.8 **Estimate** refers to the estimate submitted by Customer, whether on a pre-printed Malca-Amit form or on the MyMalca online portal, and accepted by Malca-Amit, that details the Goods and Services to be performed pursuant to these T&Cs;
  - 1.1.9 **Force Majeure** means, in relation to a party, without limitation, (i) any acts of God, flood, drought, earthquake or other natural disaster, compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority (including without limitation 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, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations, piracy, fire, explosion, collapse of buildings, criminal acts, computer viruses, severe weather conditions, epidemic, pandemic, nuclear chemical or biological contamination or sonic boom, and (ii) lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), shortages of labour, materials and services and inability or delay in obtaining supplies resulting from (i), and (iii) other events, circumstances or causes beyond that party's reasonable control;
  - 1.1.10 **Goods** refers to 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, collectible and graded trading cards (e.g., sports cards), collectible and graded comics books, collectible and graded video games, collectible or numismatic banknotes (not including currency in circulation) and all other works of art or rarity, historic value or artistic merit of whatsoever nature or any other type of property specifically approved by Malca-Amit; in each case tendered to Malca-Amit for Services under the MA-Contract;
  - 1.1.11 **Human Rights** means internationally recognised human rights understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work;
  - 1.1.12 **Inbound Shipment** means a Shipment tendered for transportation to a designated Secure Facility;
  - 1.1.13 **Liabilities** means all costs (including the reasonable costs of investigating and defending any claims), expenses, claims, losses, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered;
  - 1.1.14 **Loss** means physical loss, mis-delivery or destruction of, or damage to the Goods arising out of any single act, error, omission or event or series of related, continuous or repeated acts, errors, omissions or events which shall be treated as a single act or event when related by cause and occurring during the Period of Responsibility;
  - 1.1.15 **MA-Contract** refers to the agreement entered into between Customer and Malca-Amit with respect to the Services, which comprises of (a) the particulars and terms set out in an Estimate; (b) these T&Cs; and (c) any Rider;
  - 1.1.16 **MA Group** means the employees, servants, agents, subcontractors (including the Malca-Amit Network), insurers, insurance brokers and re-insurers of Malca-Amit;
  - 1.1.17 **Malca-Amit** refers to the specific member of the Malca-Amit Network specified as "Malca-Amit" in the Estimate. Malca-Amit is an independent company and is not liable for the debts or obligations of any other member of the

Malca-Amit Network. No member of the Malca-Amit Network is authorised to accept service of legal process for or on behalf of any other member of the Malca-Amit Network;

- 1.1.18 **Malca-Amit Network** means the companies that form the Malca-Amit International Network™;
- 1.1.19 **Nail Services** refers to any of the following services: (i) removing, uninstalling, taking down or similar, (ii) issuing a Condition Check, (iii) Packing Services, and (iv) unpacking, installing, fixing, mounting, placing, hanging or similar at the Delivery / Release Location;
- 1.1.20 **Outbound Shipment** means a Shipment tendered for transportation from a Secure Facility to the Consignee;
- 1.1.21 **Owner** means the owner of the Goods and any other person who is or may become interested in them;
- 1.1.22 **Package** refers to a sealed crate, pallet, container or box containing Goods;
- 1.1.23 **Packing Services** refers to the professional packing of Goods in accordance with industry standards;
- 1.1.24 **Period of Responsibility** has the meaning given to it in Clause 5;
- 1.1.25 **Prohibited Items** means any item which, by reason of any Sanctions or other applicable laws, may not at the relevant time lawfully be handled and/or transported;
- 1.1.26 **Receiving Party** means a person or entity designated by (i) the Consignee (including the Consignee itself) to accept delivery of the Goods or (ii) Customer as authorised to collect or take delivery of the Goods;
- 1.1.27 **Rider** refers to a signed rider to the MA-Contract which may vary the terms of these T&Cs;
- 1.1.28 **Sanction** means any sanction, prohibition restriction (including an unfulfilled requirement for an import or export license or other consent or permission) or penalty (or any risk of sanction, prohibition, restriction or penalty) whatsoever imposed by any Authority;
- 1.1.29 **Secure Facility** refers to a vault, safe or such other secure place at a facility controlled by Malca-Amit for the secure handling and storage of Packages by Malca-Amit, which facility does not provide a climate-controlled environment unless otherwise agreed by Malca-Amit in writing;
- 1.1.30 **Services** refers to those services requested in the Estimate, which may include Nail Services, Packing Services, Shipping Services and Storage Services;
- 1.1.31 **Shipment** means any Package(s) tendered to Malca-Amit for transportation at any one time from one Pick Up / Drop Off Location to one Delivery / Release Location.
- 1.1.32 **Shipping Services** means arranging for the transportation of a Shipment from the Pick Up / Drop Off Location and delivery at the Delivery / Release Location as specified in the Estimate;
- 1.1.33 **Storage Services** means accepting and keeping safe Package(s) at a Secure Facility designated in the Estimate;
- 1.1.34 **T&Cs** means these terms and conditions.
- 1.2 Capitalised terms not otherwise defined in these T&Cs shall have the same meanings as set out in the Estimate.
- 1.3 In these T&Cs, unless the context requires otherwise: (i) words in the singular shall be deemed to include the plural and vice versa; (ii) references to persons shall include bodies of persons whether corporate or incorporate; (iii) the words "include(s)" or "including" shall be deemed to have the words "without limitation" following them; (iv) the words "howsoever arising" shall be deemed to have the words "including from negligence, tort, bailment, breach of contract, breach of statutory duty or otherwise" following them; (v) "signed" or "signature" includes digital signature; and (vi) reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time.
- 1.4 If any legislation, including regulations and directives, and including any international legislation or conventions 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), is compulsorily applicable to any of the Services, the MA-Contract shall, as regards such Services, be read as subject to such legislation, and nothing in the MA-Contract shall be construed as a surrender by Malca-Amit of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of the MA-Contract be repugnant to such legislation to any extent, such part shall as regards such Services be overridden to that extent and no further. For the avoidance of doubt, nothing in the MA-Contract is intended to exclude or limit any liability which by law may not be excluded or limited. 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.
- 2. Insurance**
- 2.1 In Malca-Amit's capacity as a logistics provider, freight forwarder and warehouse operator, Malca-Amit shall take out and maintain adequate insurance for the duration of the Services on its own behalf to appropriately cover the Liability assumed by Malca-Amit under these T&Cs. For the avoidance of doubt, Malca-Amit is neither an insurer nor an insurance intermediary nor an insurance broker.
- 2.2 Where the **Limited Liability Option** (as defined in Clause 6.1.1(a)) is selected in the Estimate:
  - 2.2.1 Customer warrants and represents that it has and shall maintain throughout the term of this MA-Contract, at its own expense, a comprehensive insurance policy covering the full value of the Goods;
  - 2.2.2 Customer agrees to provide Malca-Amit with an evidence of insurance, evidencing that their insurance policy is in effect; and
  - 2.2.3 Customer agrees to notify Malca-Amit of any substantive changes to or cancellations of their policy at least 30 (thirty) days prior to any such changes or cancellations. In the event of such change or cancellation, Malca-Amit may terminate this MA-Contract forthwith.

### 3. Customer's Acknowledgments, Warranties, Representations and Undertakings

#### 3.1 Customer acknowledges and agrees, that:

- 3.1.1 Malca-Amit shall have full liberty to (i) perform the Services itself or using any member of the Malca-Amit Network, (ii) subcontract on any terms whatsoever, the whole or any part of the Services, provided that in the event of Malca-Amit subcontracting the performance of some or all of the Services, Malca-Amit shall remain solely liable for the performance of those Services; and (iii) decide as to the means, route, location and procedure to be followed in the performance of any Service;
- 3.1.2 Malca-Amit may freely, and at its sole discretion, move the Goods within a Secure Facility and transfer the Goods to any other Secure Facility without notice to Customer, provided that (i) the other Secure Facility benefits from similar levels of security; and (ii) where transferring Goods from a Secure Facility located within a free zone or similar value added tax or duty exempt area, the Goods may only be transferred to a Secure Facility within another free zone or value added tax or duty exempt area;
- 3.1.3 Malca-Amit shall be under no obligation whatsoever to ascertain, check or confirm the authenticity of any Goods;
- 3.1.4 unless Malca-Amit is providing Packing Services, Packages are accepted on a said-to-contain basis and Malca-Amit will not have independent knowledge of the contents of the Packages;
- 3.1.5 in the event Customer has selected the **Limited Liability Option** (as defined in Clause 6.1.1(a)), Customer understands and agrees that Malca-Amit assumes no Liability whatsoever for Loss unless due to Malca-Amit's **Gross Negligence** (as defined in Clause 6.1.1(a) below) or wilful misconduct;
- 3.1.6 Malca-Amit may, without notice to Customer, provide any Authority with any information about the Goods or the Services, should such disclosure become necessary for Malca-Amit to comply with any requirements imposed by such Authority, including but not limited to Sanctions, and anti-money laundering and counter-terrorism financing legislation;
- 3.1.7 the Goods may be the subject of controls and checks, including security controls, by any Authority having legal jurisdiction over the relevant matter, which may involve the Authority opening the Packages and inspecting the Goods and that Malca-Amit will submit to all required controls and checks;
- 3.1.8 in the event that Malca-Amit is instructed to clear Goods through customs:
  - (a) Malca-Amit shall do so in the name of and on behalf of Customer (and on request from Malca-Amit, Customer shall provide a letter of authority confirming Malca-Amit's empowerment to act in the name of and on behalf of Customer); and
  - (b) Customer shall be liable for any duty, tax, fee, levies, charge or outlay of whatsoever nature levied by any Authority for or in connection with the Goods or the Services and shall indemnify Malca-Amit against any Liability incurred or sustained by Malca-Amit in connection therewith;
- 3.1.9 unless Malca-Amit is performing Packing Services, Malca-Amit assumes no responsibility whatsoever for the adequacy of the packing of the Goods and Customer acknowledges that any additional pouches, packing material and the like used by Malca-Amit is not meant to provide any protection of the Goods whatsoever, which protection is understood by the parties to be adequately provided by Customer's own packaging. For the avoidance of doubt, when Malca-Amit is not providing Packing Services Malca-Amit shall be entitled to rely on the adequacy of Customer's packing of Goods;
- 3.1.10 with respect to air carriage, Malca-Amit will not declare a value for carriage to the air carrier unless specifically instructed to do so by Customer, and Customer pays an additional charge.

#### 3.2 Customer warrants and represents that:

- 3.2.1 it is either (a) the Owner of the Goods; or (b) acting as agent of the Owner of the Goods and authorised by the Owner to contract with Malca-Amit on these T&Cs in respect of the Goods and Services;
- 3.2.2 it shall execute all documents, provide all requested information, do all acts and things reasonably required and hold all necessary licenses and authorisation required for the transportation, exportation or importation of the Goods in order to enable Malca-Amit to (i) arrange and/or safely perform the Services, and (ii) comply with all laws, regulations and conditions applicable to the Goods and Services within all actual and potential countries of dispatch, storage, receipt and transit;
- 3.2.3 it shall promptly provide Malca-Amit with (i) accurate and full description and particulars of the Goods, including information concerning the nature, Declared Value, quantity, weight and characteristics of the Goods; and (ii) appropriate manner and method of storage, handling and transportation of the Goods and relevant health and safety information relating to the same;
- 3.2.4 all Goods will be safe for transportation, storage and handling and that no Goods comprise, contain or are packaged in any dangerous, noxious or illegal substance. If in the sole opinion of Malca-Amit the Goods become a hazard, then (i) Malca-Amit may refuse to carry the Goods and/or shall act in accordance with the advice of an Authority, which actions shall be deemed to constitute due performance by Malca-Amit of all of its obligations in respect of those Goods and (ii) Malca-Amit may, at its sole discretion, elect to terminate the MA-Contract, with immediate effect without prior notice and without incurring any liability to Customer;
- 3.2.5 the Services, activities and operations requested by Customer under the MA-Contract are not related to money laundering or terrorist activities, and in the event Customer is not the sole Owner of the Goods, Customer is in

compliance with applicable anti-money laundering and counter-terrorism financing legislation and has performed adequate due diligence on the Owner(s);

- 3.2.6 neither the receipt, the handling nor the delivery of the Goods (including any insurance arranged by or on behalf of Malca-Amit) nor any payment or other transaction in relation to the Goods will or might expose Malca-Amit or any member of the MA Group to any Sanction (or risk of Sanction). If it appears, in the reasonable judgment of Malca-Amit, that there may have been a breach of any of the warranties in this Clause, or that the Goods (or any activities in respect of the Goods by Malca-Amit or any other person) may expose Malca-Amit or any member of the MA Group to any Sanction or risk of Sanctions then (i) Malca-Amit may refuse to carry the Goods, or surrender the Goods to an Authority, which actions shall be deemed to constitute due performance by Malca-Amit of all of its obligations in respect of those Goods; and (ii) Malca-Amit may, at its sole discretion, elect to terminate the MA-Contract, with immediate effect and without incurring any liability to Customer. With respect to sanctions against diamonds originating from Russia, Customer explicitly warrants that it complies with (i) the United States of America's Executive Order 14068 of March 11, 2022, (ii) the OFAC Determination pursuant to Section 1 (a)(i)(B) of Executive Order 14068, (iii) the OFAC Determination pursuant to Sections 1 (a)(i)(A) and 1 (a)(i)(D) of Executive Order 14068 and (iv) the EU Council Regulation (EU) 2023/2878 of 18 December 2023, amending Regulation (EU) No 833/2014, and any related, subsequent or similar laws and regulations of the G7 countries and Switzerland);
- 3.2.7 neither Customer, nor Owner nor any person Customer trades with in relation to or in connection with the Goods, is or is owned or controlled by or is acting on behalf of a person which is included on any list of individuals or entities with whom transactions are currently prohibited or restricted (except where such restriction is complied with) under any Sanction, including but not limited to the consolidated list of financial sanctions targets in the United Kingdom or the US list of Specially Designated Nationals;
- 3.2.8 the Goods do not include any Prohibited Items;
- 3.2.9 it is in compliance with all applicable Human Rights, anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force;
- 3.2.10 Customer shall promptly indemnify Malca-Amit against any and all Liabilities **howsoever arising** and howsoever assumed, incurred or suffered by Malca-Amit or the MA Group as a result of or in connection with: (i) any breach by Customer of any of the warranties or undertakings given by Customer in the MA-Contract including in this Clause 3.2 and Clause 3.3 of these T&Cs; or (ii) Malca-Amit acting in accordance with Customer's instructions where Malca-Amit is not otherwise at fault.

### 3.3 Customer undertakes:

- 3.3.1 to only tender items defined as Goods to Malca-Amit, to the exclusion of any other items;
- 3.3.2 to maintain a complete written record of all Goods included in any Package;
- 3.3.3 save for when Malca-Amit is performing Packing Services, to package all Goods tendered for Services in accordance with the customs of the trade and in such a manner that the Goods shall not be susceptible to damage, tampering or other interference during the performance of the Services;
- 3.3.4 to ensure that Consignee is available to accept delivery of a Shipment at the designated Delivery / Release Location at the anticipated date of delivery;
- 3.3.5 that no claim or allegation in respect of the Goods and/or Services **howsoever arising** shall be made against any member of the MA Group. Without prejudice to the generality of the foregoing, each member of the MA Group shall have the benefit of, and be entitled to rely on, every exemption, defence, immunity, limitation, warranty, indemnity, liberty and rights contained in the MA-Contract (including the law and jurisdiction clause) and which benefit Malca-Amit or to which Malca-Amit is entitled as if such provisions were expressly for its benefit, and in entering into the MA-Contract, Malca-Amit (to the extent of such provisions) does so on its own behalf, and also as agent and trustee for each member of the MA Group.

### 3.4 In the event Customer is not the Owner, the following provisions shall apply:

- 3.4.1 Customer undertakes that it shall enter into a binding written contract with the Owner, and that such contract shall contain provisions which (i) give Customer the liberty to subcontract any Services in respect of the Goods to a subcontractor on any terms whatsoever; (ii) state that no claim or allegation in respect of the Goods whether arising in contract, bailment, tort, breach of express or implied warranty, breach of duty or otherwise shall be made against any third party (including subcontractors), and (iii) give all third parties (including subcontractors) the benefit of any exemption and limitation clause contained in such contract.
- 3.4.2 Without prejudice to Customer's right to initiate recovery against Malca-Amit for Loss, Customer shall be responsible for all claims and allegations made by the Owner in respect of the Goods and/or the Services **howsoever arising** (even if such Liability arises wholly or partly from the acts or omissions (including negligence) of Malca-Amit or any member of the MA Group) ("**Owner's Claims**"). Customer shall handle, defend and/or settle all Owner's Claims at its own expense. If any Owner's Claim shall nevertheless be made against Malca-Amit or any member of the MA Group, Customer shall, without prejudice to Customer's right to initiate recovery against Malca-Amit for Loss, take over the conduct and defence of the Owner's Claim and settle the same at its own expense, obtaining (where appropriate) releases in joint names. Customer shall further reimburse Malca-Amit or the MA Group Member (as applicable) for any legal fees (including attorney's fees) incurred by Malca-Amit or the MA Group in relation to an Owner's Claim.



3.5 Malca-Amit shall have a general lien on the Goods (including the right, at Customer's expense, to sell the Goods, without notice or liability to Customer, by public auction or private treaty) for all sums whatsoever due at any time to Malca-Amit under the MA-Contract. Malca-Amit may exercise its lien at any time and at any place in its sole discretion, whether the Services are completed or not with or without further notice. In any event any lien shall extend to cover the cost of enforcing the lien and recovering any sums due.

#### 4. Service Fees

4.1 Invoices in respect of the service fees must be paid by Customer within 30 (thirty) days of the invoice date, in full without any set-off or withholding and without any deduction in respect of bank charges. Overdue sums will attract interest at the lesser of (a) 4% per year calculated daily; and (b) the highest rate permissible under applicable law. All service fees and payments 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. For the avoidance of doubt, Customer acknowledges and agrees that the service fees stated in the Estimate may just be an estimation and may be different from the final service fees billed by Malca-Amit, which shall be based on final weight and dimensions of the Goods as confirmed by Malca-Amit upon receipt.

#### 5. Periods of Responsibility

##### 5.1 In respect of Shipping Services

5.1.1 The Period of Responsibility shall commence in respect of:

- (a) an Outbound Shipment: when same has physically left the Secure Facility;
- (b) a Nail Service-To-Nail Service (**NTN**), Nail Service-To-Door (**NTD**), Nail Service-To-Airport (**NTA**) or Nail Service-To-Touchdown (**NTT**) Shipment: when Malca-Amit commences physical handling of the Goods;
- (c) an Airport-To-Door (**ATD**) or Airport-To-Nail Service (**ATN**) Shipment: 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 has been issued; or
- (d) any other Shipment: when Malca-Amit takes physical possession of the Shipment and a written or electronic receipt has been issued;

5.1.2 The Period of Responsibility shall end in respect of:

- (a) an Inbound Shipment: upon physical delivery at the Secure Facility for Storage Services, at which time the Period or Responsibility in respect of the Storage Services shall commence and Clause 5.2 will apply;
- (b) a NTN, Door-To-Nail Service (**DTN**), or ATN Shipment: when Malca-Amit has completed the Nail Services;
- (c) a NTA or Door-To-Airport (**DTA**) Shipment: 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;
- (d) a NTT or Door-To-Touchdown (**DTT**) Shipment: when the belly doors of the aircraft are opened at the designated parking space of aircraft at the airport of destination, however not later than 24 hours after the arrival of the aircraft at the airport of destination, whichever first occurs; or
- (e) any other Shipment: when the Receiving Party takes physical possession of the Shipment.

5.1.3 Malca-Amit 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 Malca-Amit throughout the Period of Responsibility until delivery.

##### 5.2 In respect of Storage Services

5.2.1 The Period of Responsibility shall commence when Malca-Amit takes physical control of the Package for Storage Services at a Secure Facility and shall end:

- (a) if Nail Services are performed at the end of the Storage Service, when Malca-Amit has completed the Nail Services; or
- (b) when the Package(s) have been physically released from the Secure Facility and either (i) a written or electronic receipt is signed by the Receiving Party, or (ii) the Estimate includes an Outbound Shipment instruction, in which case the provisions of Clause 5.1 will apply (as applicable).

##### 5.3 In respect of standalone Nail Services

The Period of Responsibility shall commence when Malca-Amit commences physical handling of the Goods and shall end when Malca-Amit has completed the Nail Services.

##### 5.4 Release and delivery of Goods

5.4.1 Release or delivery shall be evidenced by a written or electronic receipt signed by the Receiving Party. Malca-Amit shall be deemed conclusively to have delivered or released the Goods undamaged and in full unless notice of loss of or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to Malca-Amit or to its representative at the time and place at which the Goods have been delivered or released into the custody of the Receiving Party.

5.4.2 In the event that Malca-Amit has provided a Packing Service, Customer undertakes to ensure that the **Receiving Party shall open all Packages** received and examine the Goods immediately upon release or delivery. Customer acknowledges and agrees that **in the event Receiving Party does not so open Packages and examine Goods immediately upon release/delivery, Customer hereby irrevocably waives its right to claim for Loss.**

5.4.3 If a Shipment cannot be delivered within 30 (thirty) days of arrival at Delivery / Release Location, and cannot be returned to the Customer for whatever reason without fault of Malca-Amit, then (a) Malca-Amit'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 (b) Malca-Amit's liability, if any, shall not exceed the lesser of (i) USD 10,000 (ten thousand) and (ii) the actual value of the Goods.

## 6. Liability

### 6.1 Liability for Loss

6.1.1 Malca-Amit shall be liable for Loss occurring during the Period of Responsibility, subject to the Liability Option selected by Customer in the Estimate and the exclusions and limitations stated in the MA-Contract.

(a) **Limited Liability Option:** Malca-Amit shall only be liable for Loss resulting from the **Gross Negligence or wilful misconduct** of Malca-Amit occurring while the Goods are in the actual physical possession or control of Malca-Amit, to the exclusion of any period whilst the Goods are in the care, custody or control of (i) appraisers, customs authorities, assay office or any other Authority; and (ii) any air carrier when Malca-Amit is not in control of the Shipment and is only acting as a forwarding agent. "**Gross Negligence**" under this MA-Contract 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:** Malca-Amit shall be Liable for a Loss **resulting from any cause whatsoever** including any period whilst the Package is not in the care, custody or control of Malca-Amit during the applicable Period of Responsibility.

### 6.2 Limitation of Liability

6.2.1 Malca-Amit's Liability in respect of any one Loss shall be the lesser of (i) the fair market value of the Goods at the time of the Loss, and (ii) the cost and expense of restoration, conservation, mitigation or stabilization, plus any resulting depreciation; and (iii) the Declared Value for the affected Goods, unless there is no value declared, in which case the Declared Value for the purpose of this Clause 6.2.1 shall be deemed to be USD 10,000 (ten thousand).

6.2.2 Malca-Amit's aggregate liability for all matters arising or incurred in relation to the MA-Contract (save for liability in respect of Loss as assumed under Clause 6.1 and limited under 6.2.1, and subject to Clause 6.8) shall in no event exceed USD 10,000 (ten thousand).

### 6.3 Exclusions from Liability

6.3.1 Irrespective of the Liability Option selected, Malca-Amit shall have **no liability whatsoever and howsoever arising under any circumstances** for any of the following:

(a) delay;

(b) loss of profit, loss of sales, loss of business, loss of goodwill or reputation, 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) Loss caused by or resulting from: (i) shortage or mysterious disappearance of the Goods said to be contained in any sealed Package with seals intact, and which bears no evidence of having been opened or tampered with; (ii) damage to Goods said to be included in a Package, when the Package bears no visible signs of damage or tampering; or (iii) Packages which are not sealed; (in each case save for when Malca-Amit has performed Packing Services);

(d) Loss caused by or resulting from: (i) Malca-Amit acting in accordance with Customer's instructions; (ii) negligence, wilful misconduct of, breach or failure of Customer, its employees and/or agents to comply with or fulfil any of Customer's obligations, undertakings and/or warranties under the MA-Contract; (iii) 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;

(e) Loss caused by or resulting from: (i) Goods which have not been (A) properly and sufficiently prepared, (B) packed in such a manner as will prevent damage, tampering or other interference with the Goods, and (C) labelled and/or marked (in each case, save for when Malca-Amit has performed Packing Services, but always subject to Customer providing accurate information); and (ii) incorrect or insufficient description or valuation of the Goods;

(f) Loss caused by or resulting from: (i) gradual deterioration, insects, inherent defect or any pre-existing condition; (ii) ordinary leakage, ordinary loss in weight or volume, shrinkage or ordinary wear and tear; (iii) spoilage, contamination, deterioration, freezing, oxidation or rusting, electrical or mechanical failure; or (iv) work done in the course of refinishing, renovating, repairing, restoring, reframing or similar process;

(g) 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; (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter, nuclear installation or any, reactor or other nuclear assembly or nuclear component thereof; (iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; (iv) the radioactive, toxic, explosive or other hazardous or contaminating property 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); or any chemical, biological, bio-chemical or electromagnetic weapon;

- (h) Liability caused by or resulting from: **“Cyber Attack”**, meaning 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;
- (i) Loss caused by or resulting from: **“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;
- (j) Loss caused by or resulting from: **“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;
- (k) Loss caused by or resulting from: **“Confiscation”**, meaning nationalization, confiscation, seizure, appropriation, expropriation, requisition for title of use or wilful destruction of the Goods, or portion thereof, by/or under the order of any Authority or
- (l) physical loss, mis-delivery or destruction of, or damage to items tendered to Malca-Amit that are not defined as Goods, including any packing and shipping materials, certificates and documents.

6.3.2 In case of an international Shipment subject to the Full Liability Option only: Malca-Amit agrees to extend its liability for (i) **shortage, damage or disappearance** of Goods directly caused by or resulting from the Package being opened and Goods inspected by appraisers, customs authorities, or other Authority; (ii) **total physical loss** of Goods occurring whilst the Goods are in the possession of an assay office for the purpose of hallmarking the Goods (for clarity, Malca-Amit is not liable for any damage or destruction to the Goods whilst at the assay office); and (iii) Loss of Goods directly caused by or resulting from **War, Terrorism and/or Confiscation** to the extent that Malca-Amit is insured against such a Loss (for clarity, if Malca-Amit is unable to obtain such insurance coverage then Malca-Amit is not liable for War, Terror and/or Confiscation).

6.3.3 In case of any Shipment subject to the Full Liability Option only: Malca-Amit agrees to extend its liability to cover Loss of Goods directly caused by **Cyber Attack** targeted at Malca-Amit where the motive is to inflict harm solely on (or upon) Malca-Amit or Malca-Amit’s property or property in the possession of Malca-Amit.

6.4 **True and Accurate Declaration:** In accordance with Clause 3.2.3, Customer warrants to correctly declare the value of the Goods tendered to Malca-Amit. 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 Goods is greater than the Declared Value. In the event the Customer has mis-declared the value of the Goods said to be included in a Package and/or Shipment (including without fault of Customer), Customer waives any claim it may have that the value of the Goods is greater than the Declared Value and Customer shall hold harmless and promptly indemnify Malca-Amit for any and all Liabilities incurred as a result of the incorrect or lack of Declared Value, including but not limited to any administrative, litigation or investigatory costs.

6.5 **Indemnity:** Customer shall promptly and continually indemnify Malca-Amit against any and all Liabilities **howsoever arising** and howsoever assumed, incurred or suffered by Malca-Amit and/or any member of the MA Group to the extent such claim exceeds Malca-Amit’s liability to Customer under this MA-Contract.

6.6 **Entire Liability:** Save as set out in this Clause 6, Malca-Amit shall not be liable for any Liability **howsoever arising**. Having regard to the nature of the Services and the availability to the parties of suitable insurance the parties have agreed that the risks respectively borne by them are reasonable.

6.7 **Application of defences, limits and exclusions of liability:** The defences, limits and exclusions of liability provided for in these T&Cs shall apply in any action against Malca-Amit arising out of or in connection with this MA-Contract (including loss or damage to Goods and delay) and whether the action be founded in contract, bailment, tort, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of negligence, wilful misconduct or fundamental breach of contract.

6.8 Nothing in this MA-Contract is intended to exclude or restrict Malca-Amit’s liability for death or personal injury caused by its negligence or any other act or omission, liability for which may not be excluded or limited under applicable law.

## 7. Claims

7.1 The party discovering an incident which may give rise to a claim shall as soon as practicable notify the other party in order to commence investigative procedures. Any claim against Malca-Amit must be made in writing and notified to Malca-Amit within a reasonable time, but in no event later than 14 (fourteen) days from the date upon which Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim.

7.2 Customer agrees to (i) promptly undertake reasonable efforts to minimise the loss or damage, (ii) assist and cooperate with Malca-Amit and/or its insurers in all ways pertaining to the investigation (including assisting and pursuing claims against responsible third parties), and (iii) maintain and preserve all evidence and rights of recovery.

7.3 In the event of a claim, Customer undertakes to (i) provide all such documentation and evidence required to prove the condition of the Goods prior to the Goods coming into Malca-Amit’s custody, including but not limited to Customer producing any and all Condition Checks, condition reports performed by industry experts, provenance documents,

invoices, certificates, evaluations, packing specifications and the like, and (ii) in the event the value and extent of a Loss is disputed by the parties, Customer will together with Malca-Amit and its insurer appoint a joint expert to determine the same.

7.4 Notwithstanding the provisions of Clause 7.1, Malca-Amit shall in any event be discharged of all liability whatsoever and **howsoever arising** in respect of any Service provided, or which Malca-Amit has undertaken to provide, including a claim for Loss, unless legal proceedings are brought, and written notice thereof are given, to Malca-Amit within one (1) year from the date of discovery of the event or occurrence alleged to give rise to such claim.

## 8. Force Majeure

8.1 Subject to the remaining provisions of this Clause 8, neither party shall be liable to the other for any delay or non-performance of its obligations to the extent that such delay or non-performance is due to a Force Majeure.

8.2 In the event of 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 commencement date and extent of delay or prevention, the cause thereof and its estimated duration; (ii) endeavour to mitigate the effects of such delay or prevention on the performance of its Services, which may involve moving the Goods to another secure facility; and (iii) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

8.3 If Malca-Amit is prevented by Force Majeure from providing the Services for a period exceeding 40 (forty) days, either party may terminate the MA-Contract immediately by serving ten (10) days written notice on the other.

8.4 During any period of Force Majeure Customer shall continue to pay the Service Fees for such part of the Services which are unaffected by Force Majeure. If Malca-Amit incurs any additional costs in providing the Services in connection with a Force Majeure, Customer shall pay the same to Malca-Amit.

## 9. Non-Disclosure

9.1 The parties undertake that they shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by Clause 9.2.

9.2 Each party may disclose the other party's Confidential Information:

9.2.1 to its employees, officers, agents, representatives or professional advisers and in the case of Malca-Amit, to members of the MA Group, who need to know such information for the purposes of carrying out the party's obligations under the MA-Contract; and

9.2.2 as may be required by the law, court order or any Authority.

9.3 If either party breaches this Clause 9, the other party shall have the right to immediately seek an injunction to prevent the further disclosure of any Confidential Information, in addition to any other right it may have at law or otherwise.

9.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the MA-Contract.

## 10. Personal Data

10.1 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.

10.2 As an integral part of providing Services under the MA-Contract, 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 the MA-Contract. 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 the MA-Contract 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 in line with the separate information provided therein.

10.3 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.

10.4 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 authorisation, or otherwise processed in violation of the applicable data protection laws.

10.5 Customer warrants that it has provided the necessary notifications (including this Clause 10 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 10 and the Privacy Policy.

## 11. Private Individuals

This Clause 11 shall only apply where Customer under this MA-Contract is a private individual. Upon notification of Customer's death and until a grant of probate, letter of administration or similar document is obtained from a court or other authority having jurisdiction over the estate of the Customer, the authority of all of Customer's authorised representatives shall automatically expire and Malca-Amit may at its sole discretion refuse to permit access to Goods.



## **12. Miscellaneous**

- 12.1 Customer acknowledges that it does not rely on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of the MA-Contract and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 12.2 The members of the MA Group shall have the benefit of, and the right to enforce the MA-Contract in accordance with applicable laws. The rights of either party to agree to rescind, amend or otherwise vary or to waive the terms of this MA-Contract or to settle any dispute or other matter arising out of or in connection with this MA-Contract on such terms as they shall in their absolute discretion think fit, shall not be subject to the consent of any member of the MA Group. Except as stated in this Clause 12.2, a person who is not a party to the MA-Contract may not enforce, or otherwise have the benefit of, any provision of the MA-Contract.
- 12.3 It is the intention of the parties, that Malca-Amit shall be deemed an independent contractor of Customer for all purposes with respect to the Services provided pursuant to these T&Cs. Nothing in these T&Cs shall be construed or interpreted to constitute a partnership, association or joint venture between the parties, or to make one party an agent or representative of the other party.
- 12.4 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 and understandings. Any terms and conditions included in any shipping or service documents issued by an agent or subcontractor of Malca-Amit, or by Customer, shall not apply.
- 12.5 Any modification of the MA-Contract cannot be made orally and must be agreed in writing.
- 12.6 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 Malca-Amit. The parties irrevocably agree that the courts of the country of incorporation of Malca-Amit (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 12.6 and shall NOT be filed to any other arbitration / mediation / court / institute.
- 12.7 If any provision of these T&Cs (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, 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.