



MOMART
Moved by Art

STANDARD TRADING CONDITIONS OF MOMART LTD

VERY IMPORTANT NOTICE: The value of the artworks we handle is high. If we were to insure all those artworks, or to insure the liabilities we might otherwise have for those artworks, our charges would increase. Therefore: (i) we do not insure Customers' goods unless specifically agreed with them in writing; and (ii) we accept only very limited liability to our Customers, even if loss is caused by our negligence. We therefore require our Customers to warrant that they have fully insured their goods and that we are noted as a Co-Assured. If you do not already have adequate insurance of the type we require, we can help arrange insurance. Any Customer may request us to vary these Conditions (including increasing the scope of our liability), although it may be necessary for us to levy a surcharge if we do so. We draw attention, in particular, to Conditions 6, 7, 9, and 12.

If you are a Consumer (as defined below), some of the provisions in these Conditions do not apply to you, and some terms apply that give you additional rights. The Conditions make clear where this is the case. In particular please read Condition 15, which sets out some important additional rights that apply for Consumers.

1. DEFINITIONS

In these Standard Trading Conditions ("these Conditions"):

"Consignee"	means any company or other entity to whom we agree with you to deliver the Goods as part of the Services.
"Consumer"	has the same meaning as 'consumer' in the Consumer Rights Act 2015, being an individual acting for purposes that are wholly or mainly outside that individual's trade, business craft or profession.
"Contract"	means the Contract which we enter into with you for the provision of the Services. The formation of the Contract is deemed to be concluded (i) by your acceptance of our Estimate, or (ii) if no Estimate is issued, at the time you instruct us to provide the services we have offered to provide.
"Estimate"	means our estimate setting out the scope of the Services, the price(s) and any special terms we offer for the performance of the Services. All Estimates are deemed to include these Conditions.
"Force Majeure Event"	means any of the circumstances listed in Condition 9(h).
"Goods"	means the property or goods, including all individual items or components thereof ("Individual Items"), and including packaging if provided by you, in respect of which we are to provide the Services.
"Owner(s)"	means the person or persons who is / are the legal and / or beneficial owner(s) of the Goods.
"Services"	means all services we agree to provide to you, including packing, handling, warehousing, storage, transportation and import or export services.
"Site"	means the place of collection or delivery or installation or de-installation of Goods.
"we"/"us"	means Momart Limited, a company incorporated in England with company registration number 01073437, whose registered address is Exchange Tower, 6th Floor, 2 Harbour Exchange Square, London E14 9GE, or any associated company, including our servants or agents unless otherwise indicated.
"you"	means the individual, company or entity who contracts for the services.

2. BASIS OF THE CONTRACT

- (a) The Services are provided in accordance with these Conditions which are accepted by you. If you wish us to vary any provisions of these Conditions, you must make a request to us in accordance with Condition 11. If you enter into more than one Contract with us, each such Contract shall be subject to these Conditions unless otherwise expressly agreed by us in writing.
- (b) If you are not the Owner(s):
 - (i) you warrant and represent that you are acting as the agent of the Owner(s), and are authorised to enter into the Contract on behalf of the Owner(s);
 - (ii) you enter into the Contract on your own behalf and as agent on behalf of the Owner(s);
 - (iii) any warranties or representations expressed to be given by you in the Contract are given by you on your own behalf and as agent on behalf of the Owner(s);
 - (iv) you and the Owner(s) shall be jointly and severally liable for the warranties and representations you give and for the performance of your obligations under the Contract;
 - (v) if you are not a Consumer then any provisions of these Conditions that are expressed to apply if you are not a Consumer shall apply to you, regardless of whether the Owner(s) is/are a Consumer.

- (c) These Conditions and the Estimate contain the entire agreement between you and us in relation to the provision of the Services and supersede any earlier conditions and/or any representations by us concerning the provision of the Services. These Conditions override any terms stipulated by anyone inviting us to provide any Estimate or any services.
- (d) You warrant that you have not entered into the Contract in reliance on, and shall have no remedy in respect of, any representation or statement that is not expressly set out in these Conditions or the Estimate.
- (e) Except where expressly provided by Condition 3(a), nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of these Conditions. Your rights and our rights to vary or rescind the Contract are not subject to any third party rights.
- (f) In no circumstances are we to be deemed to be a common carrier.
- (g) Any Estimate is based on information supplied by you and on prevailing rates of expenses such as freight charges, exchange rates, tax rates and administration costs. We reserve the right at any time prior to entering into the Contract to revise our Estimate, prices, charges or rates or withdraw the Estimate.
- (h) Where no Estimate is given, or you ask us to provide Services beyond the scope of our Estimate, our charges will be those for comparable services carried out by us at the time the Services are provided and we reserve the right at any time to vary those charges.

3. OUR PERFORMANCE OF SERVICES

- (a) We may engage sub-contractors and/or other agents to perform the Services or any part thereof, including (without limitation) local customs clearance agents, specialist manufacturers of packing cases and other equipment, airlines and shipping lines. All such sub-contractors and agents shall have the benefit of these Conditions and shall have no greater liability to you than we do.
- (b) We reserve a reasonable discretion as to the means, facilities, routes and procedures by which we perform the Services. If you stipulate the means, facilities, routes or procedures to be followed and we agree your stipulation, you will be liable for any loss or damage or other consequences resulting from our compliance or attempts to comply with such stipulations.
- (c) You must ensure that any information you provide to us in connection with the Services is accurate and that you promptly provide us with any information that we reasonably request in connection with the Services.
- (d) We may refuse to deliver up the Goods to any person unless you have authorised us in writing to deliver the Goods up to that person and provided to us and all sums due to us have been paid.
- (e) We are entitled to retain and be paid all brokerage, commission, allowances and other remunerations from shipping and forwarding agents or freight forwarders and/or carriers and/or insurance brokers.

4. ART TRANSPORT AND INSTALLATION

- (a) This Condition 4 applies if the Services include delivery or collection or installation or de-installation of the Goods.
- (b) We shall use reasonable endeavours to achieve any timescales specified in the Estimate. For the purposes of the Contract, collection takes place when the Goods are placed at our disposal at the place of collection, and delivery takes place when we place the Goods at the disposal of you or your Consignee at the place of delivery.
- (c) You must ensure that:
 - (i) the Goods and the Site match any description that you have provided to us, including (without limitation) as regards their dimensions;
 - (ii) we are provided with access to the Site at the relevant times;
 - (iii) the Site is in a fit condition and able to accommodate the Goods and any equipment and personnel that may reasonably be required to load or unload the Goods or carry out the installation or de-installation works;
 - (iv) in the case of collection, unless packing is agreed as part of the Services the Goods are packed and ready for collection at the specified time;
 - (v) in the case of a delivery, that the person authorised by you in writing to take delivery is present at the place of delivery at the specified time;
 - (vi) in the case of installation, that the Goods are ready at the Site at the relevant time, unless we have agreed to deliver the Goods to the Site immediately prior to installation.
- (d) You may cancel or postpone a delivery, collection, installation or de-installation by notifying us using the contact details we provide when we confirm your order has been accepted. If you notify us less than seven days before the agreed date for those services you shall pay us a cancellation fee to cover any costs we have already incurred at the point you notify us and the value of any resources that we have allocated to provide the services at the agreed time and which we are unable to allocate to an alternative job. You shall pay this fee no later than 30 days after the date of our invoice. **If you are a consumer this does not affect your right to cancel under clause 15.**
- (e) If you do not fulfil your obligations under Condition 4(c) and as a result we are unable to provide the Services within the relevant timescales, we may store the Goods (if we already hold them) and use reasonable endeavours to agree an alternative time for completing the Services. If we do, we may (at our discretion) charge
 - (i) a cancellation fee in accordance with clause 4(d) above,
 - (ii) a storage fee calculated at our then current weekly rate for each week or part of a week during which we store the Goods and
 - (iii) a fee for completing the Services at the alternative time we agree with you. These fees will be calculated at our then current rates. If we charge these fees you shall pay them no later than 30 days after the date of our invoice.
- (f) For the purposes of any declaration required concerning customs, taxes, duties, consular or other purposes, you remain solely responsible for ensuring that you meet all of your legal obligations, including (without limitation) the obligation to pay any customs, taxes, or duties.
- (g) Insofar as we are instructed by you to make any customs declaration on your behalf;
 - (i) you authorise us to act as your agent on your behalf in your name as your direct representative;
 - (ii) you authorise us to delegate tasks to a sub-agent to act on your behalf in your name as your direct representative;
 - (iii) we shall only act as your direct representative, except where the Customs Freight Simplified Procedures administered by HM Revenue and Customs are used in which case we shall act as your indirect representative;
 - (iv) we (or the sub-agent) shall complete the declaration using the information provided by you and in accordance with your instructions and you warrant that such information and instructions are accurate and complete;
 - (v) if we or the sub-agent incurs any liability to pay any customs, taxes, or duties in connection with the Goods you shall pay to us as a debt the amount of such liability no later than 30 days after the date of our invoice.
- (h) Unless we expressly agree to assume responsibility for health and safety at the Site, you agree to ensure that the Site is (so far as reasonably practicable) free from risks to the health and safety of our staff and contractors.

5. ART STORAGE

- (a) If the Services include storing Goods this Condition 5 shall apply.
- (b) If you require us to deliver up the Goods you must provide us with at least 3 working days' notice. Unless expressly agreed otherwise we shall deliver up the Goods by placing them at the disposal of the person authorised in writing by you to take delivery at the storage location at the agreed time.
- (c) We may at any time send you written notice that we require you to take back the Goods. You shall pay all sums due to us and effect removal of the Goods within 30 calendar days of service of such notice. Provided that you do so we shall give a proportionate refund of any charges paid for any period when Services are not provided, less any costs we have incurred in advance in relation to that period.

6. INSURANCE OF THE GOODS

- (a) We are not responsible for insuring the Goods and we shall not insure the Goods unless specifically agreed by us in writing prior to us accepting delivery of the Goods for performance of the Services.
- (b) If we do not agree with you that we will arrange insurance for the Goods;
 - (i) you must ensure that the Goods are insured with a reputable insurer against any loss or damage occurring to the Goods whilst in our custody or control (including loss or damage arising out of or in connection with our negligence);
 - (ii) you must ensure that our interest as co-assured is noted in the insurance policy;
 - (iii) you must not cause the insurance policy to be invalidated or the amount of any insurance payment to be reduced.
- (c) If we expressly agree to arrange insurance for the Goods then:
 - (i) That insurance will be subject to the exceptions and conditions of the policies of the insurers accepting the risk;
 - (ii) Unless otherwise agreed in writing, we shall not be under any obligation to effect a separate insurance on the Goods, but may declare them on any open or general policy held by us;
 - (iii) Insurance of the Goods arranged by us may note our interest as a co-assured;
 - (iv) In arranging any insurance we act solely as your agent and will use our reasonable endeavours to arrange such insurance;
 - (v) Any insurance effected will be based on information (including as to the value of the Goods) supplied by or on behalf of you.
We accept no liability for any consequences of inaccurate or incomplete information supplied to us.
- (d) Where we agree to arrange insurance for the Goods our fees for doing so will be set out in our Estimate. We may also charge you additional fees for administering the insurance policy, for instance if you ask us to arrange a new policy, make a mid-term adjustment, cancel or renew the policy, or arrange for replacement or duplicate documents to be provided for you. We will confirm these fees to you in writing before asking you to confirm that you want us to do anything that would incur an additional fee of this sort. In addition to any fees we charge you, the insurer that issues the policy may pay us part of the insurance premium as a commission or rebate.

7. YOUR WARRANTIES

- (a) At the time of concluding the Contract you warrant as follows, and you warrant further that you will advise of a change in circumstances which affects your ability to provide these warranties or the validity of these warranties:
 - (i) You are either the lawful owner of the Goods or are acting on behalf of the lawful owner of the Goods and are authorised to bind the lawful owner to these conditions;
 - (ii) The Goods including all individual items have been fully and accurately listed by you and you maintain and update that list at all times and will provide us with that list on request;
 - (iii) Full and accurate written disclosure and instructions have been given to us of all matters relating to the Goods which might reasonably influence our decision as to whether and how we provide the Services;
 - (iv) The Goods are not of such a type or in such condition as to cause damage or injury to any person or other property whatsoever;
 - (v) Unless packing is agreed as part of the Services, the Goods are properly and securely packed, labelled and addressed and able to withstand the normal incidents of the Services;
- (b) You will make full payment for and are liable in respect of all duties, customs charges, taxes, imports, levies, dues, deposits or outlays of any kind whatsoever in connection with the Goods and the Services

8. PAYMENT, LIEN AND SALE

- (a) We reserve the right to require payment in advance of the provision of any Services. Unless otherwise agreed in writing by us, you agree to pay our charges within 30 days of the date of any invoice.
- (b) You understand that where the Services consist only of warehousing or storage, our charges do not include the costs of packing, handling or transportation.
- (c) If we agree to collect freight, duties, charges or any expenses whatsoever from the Consignee or any other person, you shall remain responsible and shall make payment for all such amounts, to the extent that they are not otherwise paid, within 30 days of the date of our written demand.
- (d) If any sums due to us are not paid upon the due date, you shall pay interest on any overdue amount, at the Bank of England base rate plus 4% per annum.
- (e) We shall have a lien on the Goods for all debts whatsoever due from you. If any debts are not satisfied within 30 days of falling due, you agree that we may at our absolute discretion open, examine and sell the Goods.
- (f) In addition to Condition 8(e), we may at our absolute discretion open, examine and sell the Goods where:
 - (i) the Goods are not removed by you in accordance with the provisions of condition 5(c) above; or
 - (ii) transportation Services cannot be completed either because the Goods are insufficiently packed, labelled or addressed or because they are not collected or accepted by the Consignee; or
 - (iii) the Services include transportation of perishable Goods which are not taken up by the Consignee immediately.
- (g) Where we sell the Goods under these Conditions, we may apply the proceeds of sale towards of all debts due by you including the costs incidental to the lien and sale. After making these deductions we shall pay the balance of the sale proceeds to you without interest. Any outstanding debts still not recovered shall remain payable by you. Save for accounting without interest to you for any balance, we shall, upon sale, be released from all liabilities whatsoever in relation to the Goods and the Services.
- (h) We may at our discretion set off, against any charges which might otherwise be due to you, any sums due to us from you in relation to the Contract or any other Contract between you and us.
- (i) You shall pay any sums due to us without deduction, set-off, or counter-claim.

9. OUR LIABILITY

- (a) You may request that we vary these Conditions, in accordance with Condition 11.
- (b) This Condition 9 sets out the extent of our liability to you and (if you are not the Owner(s)) to the Owner(s) arising out of or in connection with the Contract, whether such liability arises in tort (including negligence and misrepresentation), contract or in any other way.
- (c) Nothing in the Contract shall exclude or limit our liability for death or personal injury caused by our negligence.
- (d) We shall not be liable for any loss or damage to the extent that such loss or damage is covered by a policy of insurance effected by you or on your behalf or would have been covered if you had complied with Condition 6(b). For the avoidance of doubt, we shall also not be liable for any losses arising by reason of any insurance excess or deductible or any shortfall in the amounts payable under such policy.
- (e) We shall not be liable for any loss of profits, business interruption, loss of contracts, or loss of revenue, or any indirect or consequential loss of any kind whatsoever and however arising.
- (f) **If you are a Consumer** our liability whether in contract, bailment, tort (including negligence or breach of statutory duty) or otherwise howsoever arising shall be limited to the following maximum limits:
- (i) in the event of loss of, damage to, delayed delivery of or any other loss or damage arising from any one individual item, a maximum of £3,000 in respect of all such loss or damage; or
 - (ii) in the event of loss of, damage to, delayed delivery of or any other loss or damage arising from more than one individual item, a total maximum of £6,000 in respect of all such loss or damage where such loss, damage or delayed delivery was caused or arose out of the same (or substantially the same) event or occurrence; or
 - (iii) the amount of the fees payable for the Services, if that amount is more than the limit under 9(i)(i) or 9(i)(ii).
- For the avoidance of doubt, this limit is applicable to all Goods delivered to us by you or on your behalf and/or in respect of which we are providing Services, irrespective of whether such Goods were delivered to us pursuant to more than one Contract.
- (g) **If you are not a Consumer** the following Conditions 9(h) to 9(l) also apply. If you are a Consumer those clauses do not apply.
- (h) You agree that in no circumstances shall we be liable for any loss, damage or delay arising from:
- (i) Act of God, flood, tempest or other adverse weather conditions;
 - (ii) War whether declared or not, insurrection, civil disturbances, sabotage or terrorism;
 - (iii) Compliance with any acts, regulations, bye laws, orders or restrictions of government or authority (public or local) or any capture, seizure, arrest, restraint, detention or quarantine restrictions imposed by any government or such authority;
 - (iv) Theft (unless involving complicity by ourselves or our servant acting in the course of employment);
 - (v) Fire, whether started deliberately or accidentally (unless caused deliberately by ourselves or that of our servant whilst acting in the course of employment)
 - (vi) Strikes, lockouts, or other industrial action;
 - (vii) Any inherent or latent defect or quality of the Goods or natural deterioration or damage arising from any inadequate packing of the Goods (where packing was not part of the Services);
 - (viii) Moth, insect, vermin
 - (ix) Leakage from any container;
 - (x) Changes in atmospheric conditions or humidity levels;
 - (xi) Contamination by radioactivity;
 - (xii) Attempts by us or our agents to save life or property in the event of an emergency (such as under the principle known as "General Average").
- (i) Our liability whether in contract, bailment, tort (including negligence or breach of statutory duty) or otherwise howsoever arising shall be limited to the following maximum limits:
- (i) in the event of loss of, damage to, delayed delivery of or any other loss or damage arising from any one individual item, a maximum of £3,000 in respect of all such loss or damage;
 - (ii) in the event of loss of, damage to, delayed delivery of or any other loss or damage arising from more than one individual item, a total maximum of £6,000 in respect of all such loss or damage where such loss, damage or delayed delivery was caused or arose out of the same (or substantially the same) event or occurrence.
- For the avoidance of doubt, this limit is applicable to all Goods delivered to us by you or on your behalf and/or in respect of which we are providing Services, irrespective of whether such Goods were delivered to us pursuant to more than one Contract.
- (j) If we do become liable to pay compensation or damages, whether in contract, bailment, tort (including negligence or breach of statutory duty), and whether under the provisions of these Conditions or howsoever, in respect of any loss or damage arising from or in connection with this Contract and/or the Services (including loss of or damage to the Goods, losses arising from any non-delivery, mis-delivery, or delay or any other form of loss or damage), and such compensation or damages are calculable by reference to the value of the Goods, such value shall not exceed the market value of the Goods at the place and at the time we received them.
- (k) In no circumstances shall we be liable for any loss or damage arising from any advice or representations provided by us in connection with this Contract and/or the Services, save insofar as we have expressly accepted liability for the same in writing.
- (l) You shall have no claim for innocent or negligent misrepresentation or misstatement in relation to any statement in these Conditions or the Estimate.

10. NOTIFYING US OF A CLAIM

- (a) **This Condition 10 does not apply if you are a Consumer.**
- (b) In any event, any claim by you or the owner of the Goods against us must be made in writing and notified to us within 30 calendar days of:
- (i) the date on which the Goods were delivered or ought to have been delivered or,
 - (ii) if the date of delivery is not yet due the date on which you or your agent first become aware of the event or occurrence alleged to give rise to any cause of action. Any claim not so notified shall be deemed to be waived and absolutely barred.
- (c) Without prejudice to the application of any other Condition, we shall in any event be discharged of all liabilities, however they arise, unless proceedings are brought in the English Courts within 12 months from the later of:
- (i) the date of the event or occurrence alleged to give rise to any cause of action, and
 - (ii) the date, on which you (including your servants or agent) first become aware or ought to have become aware of the event in question.
- (d) Nothing in this Condition shall extend any period of limitation provided by law.

11. VARIATION OF THESE TERMS

- (a) The provisions of Condition 9 contain important exclusions and limitations of our liability to you. These are fundamental to our business, but you may request us to agree to vary these Conditions and/or to waive or increase the exclusions or limitations of liability provided by these Conditions.
- (b) Any request made in accordance with Condition 11(a) must be made to us in writing and agreed by us prior to the formation of the Contract, failing which there shall be no variation. Upon receipt of such a request, we will have an absolute discretion as to whether to agree and if so, upon what terms and at what additional price. These Conditions can only be waived or varied upon the written confirmation by one of our Company Directors, making express reference to this Condition.

12. INDEMNITY

- (a) **If you are not a Consumer** you agree to indemnify and hold us harmless against all loss, damage, costs (including legal costs) and claims (including third party claims) that we may incur arising out of or in connection with any breach by you or your servants or agents of your warranties in these terms and/or arising out of or in connection with our compliance with your instructions. This indemnity is without prejudice to any other rights we may have.
- (b) **If you are not a Consumer** then, subject to Condition 12(a), you agree to indemnify us against all loss, damage, costs (including legal costs) in excess of £3000 in respect of any individual item or £6000 in aggregate, which we may incur arising out of or in connection with any claims or demands made by the Owner(s) (if you are not the Owner(s) or any third party in relation to the Goods or the Services agreed by us under these Conditions, including any associated costs to us.
- (c) You agree to indemnify and hold us harmless against any customs, duties, or taxes that we may become liable to pay as a result of acting as your direct or indirect representative in accordance with Condition 4(g). This indemnity is without prejudice to any other rights we may have.

13. NOTICES

- (a) Any notice mentioned in these Conditions shall be deemed to be duly served two days after the date sent to the appropriate address if posted, and on the same day if transmitted by fax or e-mail.
- (b) The appropriate address for any notice served by us on you is the last address provided by you in writing. We accept no responsibility for the consequences of failure by you to update us, in writing, of your contact details.

14. VALIDITY AND SEVERANCE

- (a) If any of these Conditions is held to be illegal or unenforceable, in whole or in part, under any enactment or rule or law, then that provision shall to the extent necessary and insofar as permitted by law:
 - (i) be deemed not to form part of these Conditions (or part of any relevant Contract); and
 - (ii) be deemed to be replaced by such provision as is valid and enforceable and which is as close as permissible to the invalid or unenforceable provision. The validity and enforceability of the remainder of these Conditions shall not be affected

15. ADDITIONAL RIGHTS FOR CONSUMERS

- (a) This Condition 15 applies only if you are a Consumer. If there is any conflict between this Condition 15 and the rest of these Conditions, this Condition 15 takes precedence.
- (b) You may cancel the Contract by giving us notice of cancellation within the fourteen days following the date on which we confirm that we will provide the services (the "Cancellation Period"). To exercise your right to cancel, you must inform us of your decision to cancel this contract by a clear statement (eg a letter sent by post, fax or email). You can use the following model cancellation form set out below, but it is not obligatory:

*To Momart Limited, Exchange Tower, 6th Floor, 2 Harbour Exchange Square, London E14 9GE or enquiries@momart.co.uk:
I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/the supply of the following service [*], Ordered on [*]/received on [*],
Name of consumer(s),
Address of consumer(s),
Signature of consumer(s) (only if this form is notified on paper), Date
[*] Delete as appropriate*

- (c) To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.
- (d) Subject to Condition 15(e), if you cancel the Contract in accordance with this Condition 15 we will reimburse you all payments we have received from you under the Contract.
- (e) If you ask us to begin performing the Services during the Cancellation Period and you then notify us during the Cancellation Period that you wish to cancel the Contract you will be obliged to pay us an amount that is proportionate (based on the total price for the Contract) to the amount of the Services that we have supplied at the time you notify us of your wish to cancel. **If you ask us to begin performing the Services during the Cancellation Period you will lose your right to cancel once we have completed performing the Services.**

16. LAW AND JURISDICTION

- (a) The Contract and any disputes or claims (including non-contractual claims connected with the Contract) shall be governed by English law, and any disputes arising in connection with the Contract and/or the Services will be submitted to the exclusive jurisdiction of the English Courts.