



# 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 negligence by us. 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 4,5,7,8 & 9.*

## 1. DEFINITIONS

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

"We"/"us"	means Momart Limited or any associated company, including our servants or agents unless otherwise indicated.
"You"	means the individual, company or entity who contracts for the services.
"Services"	means all services we agree to provide to you, including packing, handling, warehousing, storage, transportation, import or export services.
"Estimate"	means the price(s) and terms we offer for the performance of the Services. All Estimates are deemed to include these Conditions.
"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.
"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.
"Consignee"	means any company or other entity to whom we agree with you to deliver the Goods as part of 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 9. 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) These Conditions 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.
- (c) 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.
- (d) In no circumstances are we to be deemed to be a common carrier.
- (e)
  - (i) 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 to revise our Estimate, prices, charges or rates or withdraw from the Contract pursuant to Condition 3.
  - (ii) Where no Estimate is given, 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 THE SERVICES

- (a) We may engage sub-contractors and/or other agents to perform the Services or any part thereof on our behalf without notice to you. 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. We do not guarantee that delivery of Goods will be effected at any particular time or date, unless expressly agreed in writing by us. 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) We may refuse to deliver up the Goods to any person unless a written delivery order (identifying precisely the Goods to be delivered up and the person to whom they are to be delivered up) has been signed by you and provided to us and all sums due to us have been paid. You must provide us with at least 3 working days' notice before delivery up of the Goods is required.
- (d) We may at any time send you written notice that we require you to take back the Goods and/or that we are terminating the Contract. You shall pay all sums due to us and effect removal of the Goods within 30 calendar days of service of such notice. If that happens we shall give a proportionate refund of any charges paid for any period when Services are not provided.
- (e) 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.
- (f) 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.
- (g) 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. Insofar as we are instructed by you to make any declaration on your behalf, we shall do so only as your agent, and in reliance on the information and instructions which you provide to us.

### 4. INSURANCE OF THE GOODS

- (a) We are not responsible for insuring the Goods and we will not insure the Goods unless specifically agreed by us in writing prior to us accepting delivery of the Goods for performance of the Services. If we do not agree with you that we will arrange insurance for the Goods, then you warrant that the Goods are already insured against loss or damage whilst in our custody or control and that our interest is noted as co-Assured on the policy of insurance.
- (b) If we expressly agree to insure 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 best 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 information supplied to us.

### 5. 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 owner of the Goods or are acting on behalf of the owner of the Goods and are authorised to bind the 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;
  - (vi) Unless we have agreed to obtain insurance, you have insured the Goods with reputable insurers on terms no less wide than all risks for the duration of the Services in compliance with Condition 4(a).
  - (vii) 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.

### 6. 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 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 be liable for interest on any overdue amount, at the Bank of England base rate plus 4%.

- (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 6(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 3(d) 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. 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.

## 7. EXCLUSION OF OUR LIABILITY

- (a) You may request that we vary these Conditions, in accordance with Condition 9.
- (b) You agree that in no circumstances shall we be liable for 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 of the Goods or any other form of loss or damage, unless you prove that such loss or damage was caused by negligence on our part. This exclusion is applicable regardless of whether the loss or damage is covered by a policy of insurance, and regardless of whether you are in breach of any of your warranties under this Contract, and this exclusion is subject always to the provisions of Condition 8 below which imposes a cap on our liability even if it is caused by negligence on our part.
- (c) You agree that in no circumstances shall we be liable, whether in contract, bailment, tort (including negligence), breach of statutory duty or otherwise howsoever, for any loss or damage arising from or in connection with this Contract and/or the Services, insofar as such loss or damage is covered by a policy of insurance effected by you or on your behalf or would have been so covered had you complied with your warranty under Condition 5(a)(vi). 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.
- (d) 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.
- (e) 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, detainment 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").
- (f) 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.
- (g) 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. Nothing in this Condition shall extend any period of limitation provided by law.
- (h) Nothing in these Conditions shall exclude our liability for death or personal injury caused by our negligence.

## 8. LIMITATION OF OUR LIABILITY

- (a) 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), any such compensation or damages shall be calculated by reference to the market value of the Goods at the place and at the time we received them or, in the event of delayed delivery, such direct loss (excluding consequential losses) as you can prove to have been caused by such delay.

- (b) Any such 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.
- (c) In no circumstances shall we be liable whether in contract, bailment tort (including negligence or breach of statutory duty) or otherwise for any indirect or consequential loss of any kind (including but not limited to, loss of profits, business interruption, loss of contracts, or loss of revenue) whatsoever and however arising.

## 9. VARIATION OF THESE TERMS

- (a) The provisions of Conditions 7 and 8 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 9(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.

## 10. INDEMNITY

- (a) You agree to indemnify and hold us harmless against all loss or damage or other consequences arising out of any breach by you or your servants or agents of the warranties contained in Condition 5 and/or arising out of our performance of instructions provided by you. This indemnity is without prejudice to any other rights we may have.
- (b) You agree to indemnify us against all claims and demands made by the owner of the Goods or any third party which is in excess of the liability agreed by us under these Conditions, including any associated costs to us.

## 11. 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 telex or 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.

## 12. VALIDITY AND SEVERANCE

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.

## 13. LAW AND JURISDICTION

The Contract shall be governed by English law. You agree (on behalf of yourself and on behalf of the owner of the Goods if you are not the owner) that any disputes arising in respect of the Contract and/or the Services will be submitted to the exclusive jurisdiction of the English Courts.