

MHI Terms & Conditions

DEFINITIONS

1. In these conditions

“the Company”

means MHI, Mail Handling International & all other known names under which Mostly Harmless Limited may conduct business.

“Owner”

means the owner of any goods, printed matter (including any packaging or containers or equipment), or routing & distribution information to which any business concluded under these Conditions relates and any other person who is or may become interested in them.

“Customer”

means any person at whose request (whether written, electronic or verbal) or on whose behalf the Company undertakes any business, processing, provides advice, information or services.

“Service”

means the receipt of data, data processing, packaging, intellectual routing of or final distribution & postage of a Customer's goods to the addresses included within either the data previously supplied or for pre-addressed material provided by the Customer.

2. a. Subject to Sub-Paragraph (b) below, all & any activities of the Company in the course of business whether gratuitous or not are undertaken subject to these conditions.
- b. If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as such legislation and nothing in these Conditions shall be construed as surrender by the Company 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 these conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent & no further.
3. The Customer shall ensure that the Owner of any goods which becomes the subject of these conditions accepts the terms & conditions including the limits & exclusions of liability.

THE COMPANY

4. a. Upon request the Company shall provide the Service to a Customer.
- b. The Customers accepts that the Company may wish to procure the services of a Third Party freight carriers to enable the Customers goods to be delivered to an address contained in the address database. The Company reserves the right to acts as either the Customers agents or as contracting principal in respect of the relationship which may exist between the Customer and a particular Third Party.
- c. When the Company is acting as an Agent, direct contractual relationships are established between the Customers & such Third Parties.
- d. The Company shall on demand by the Customer provide evidence of any Contract entered into as Agent for the Customer.
5. When and to the extent that this Company has contracted as Principal for the performance of any of its services, it undertakes to perform and/or in its own name to procure the performance of those services, and subject always to the totality of these Conditions and in particular clauses 28-30 hereof accepts liability of loss of or damage to goods or printed material taken into its charge and the time when the Company is entitled to call upon the intended recipient of the Customer's goods, to take delivery of the goods or printed matter.
6. When and to the extent that the company in accordance with these conditions is acting as an Agent on behalf of the Customer, the Company shall be entitled and the Customer hereby expressly authorises and appoints the Company to enter into Contracts as the Customers agent:-
- a. For the carriage of goods or printed material by any distribution route or means or person;
- b. For the storage, packing, trans-shipment, unloading or handling of the goods or printed material by any person at any place and for any length of time;
- c. For the carriage or storage of goods or printed material in or on transport units as defined in Clause 18 and with other goods or printed material of whatever nature; and
- d. To do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.
7. The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods and printed material.
8. The Company shall be entitled to perform any of its obligations herein by itself or by its parent, subsidiary or associated Companies. In the absence of agreement to the contrary any Contract to which these Conditions apply is made by the Company on its own behalf and also as Agent for and on behalf of any such parent, subsidiary or associated Company, and any such Company shall be entitled to the benefit of these Conditions.
9. (a) Subject to Sub-Clause (b) hereof, the Company shall have a general lien on all goods or printed matter and documents relating to goods or printed material in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to hold, sell or dispose of such

goods, printed material or documents as Agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 7 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the goods, printed material or documents.

(b) When the goods or printed material are liable to perish, deteriorate or any offer or inducement included within said items are liable to pass any given response requirement, the Company's right to hold, sell or dispose of the goods or printed material shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to the Customer's attention it's intention of holding, selling or disposing of the goods or printed material before doing so.

10. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to the Company in its normal course of business.
11. (a) If delivery of the goods or printed material or any part thereof is not taken by the Customer, Consignee or Owner at the time and place when and where the Company is entitled to call upon such person to take delivery thereof, the Company shall be entitled to store the goods or printed material or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the goods or printed material or that part thereof stored as aforesaid shall wholly cease and the cost of such storage, return or disposal of, if paid for or payable by the Company or any Agent or Sub-Contractor of the Company shall forthwith upon demand be paid by the Customer to the Company.
- (b) The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):
- (i) on 21 days notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the goods or printed material; any goods or printed material which have been held by the Company for 90 days and which cannot be delivered as instructed; and
- (ii) without prior notice, goods or printed material which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to Third Parties or to contravene any applicable laws or regulations.
12. (a) No insurance will be effected except upon express instructions given in writing by the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the Policies of the Insurance Company or Underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general Policy held by the Company.
- (b) Insofar as the Company agrees to arrange insurance, the Company acts solely as Agent for the Customer using its reasonable endeavours to arrange such insurance and does so subject to the limits of liability contained in Clause 28 hereof.
13. (a) Except under special arrangements previously made in writing or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of goods or printed material in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Company only as Agents for the Customer where Third Parties are engaged to effect compliance with the instructions.
- (b) The Company shall not be under any liability in respect of such arrangements as are referred to under Sub-Clause (a) hereof save where such arrangements are made in writing.
- (c) In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed that provided for in these Conditions in respect of loss of or damage to goods or printed material.
14. Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other persons relying upon such advice or information.
15. (a) Except under special arrangement previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should any Customer nevertheless deliver any such goods or printed material to the Company or cause the Company to handle or deal with any such goods or printed material otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with such goods or printed material howsoever arising.
- (b) The Company may at any time waive its rights and exemptions from liability under Sub-Clause (a) above in respect of any one or more of the categories of goods or printed material mentioned herein or in any part of any category. If such waiver is not in writing, the onus of proving such waiver shall be on the Customer.
16. Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods or printed

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MHI is a trading name of Mail Handling International Limited

material of a dangerous or damaging nature, nor with goods or printed material likely to harbour or encourage vermin or other pests, nor with goods or printed material liable to taint or affect other goods or printed material. If such goods or printed material are accepted pursuant to a special arrangement and then in the opinion of the Company they constitute a risk to other goods or printed material, property, life or health, the Company shall where reasonably practicable contact the Customer, but reserves the right at the expense of the Customer to remove or otherwise deal with the goods or printed material.

17. Where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, no declaration of value where optional will be made except under special arrangements previously made in writing.

THE CUSTOMER

- 18.1 The Customer will ensure that:
- the description and particulars of any goods or printed material furnished by or on behalf of the Customer are full and accurate.
 - All goods or printed material have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the goods or printed material and the characteristics of the goods or printed material.
 - Where the Company receives the goods or printed material from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods or printed material by land, sea or air (each hereafter individually referred to as "the transport unit") the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods or printed material loaded therein or thereon.
- 18.2 All the material accepted for processing is subject to any other published regulations of the Company relating to printed material and published from time to time by the Company. Any such regulations are deemed incorporated herein and are available for inspection by the Customer upon request.
- 18.3 The Customer shall ensure the Company is provided with such information as it may require so as to enable the Company to despatch the correct quantity and type of material to a Third Party. Such information must be accurate and include the weight and volume of material and the contents of any database containing delivery addresses. The Customer shall ensure that any information contained in a database or other means of electronic storage is compatible with the Company's computer equipment as notified to the Customer from time to time. In the event that such information is corrupted during transmission to the Company (otherwise than as a result of the Company's negligence) or is inaccurate or sufficient the Customer will indemnify the Company in full for all costs, claims, expenses, postage and freight charges and liability incurred by it as a result of the Company relying upon such inaccurate information.
19. Should the Customer otherwise than under special arrangements previously made in writing as set out in Clause 16 above deliver to the Company or cause the Company to deal with or handle goods or printed material of a dangerous or damaging nature, or goods or printed material likely to harbour or encourage vermin or other pests, or goods or printed material liable to taint or affect other goods or printed material, he shall be liable for all loss or damage arising in connection with such goods or printed material and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods or printed material may be dealt with in such manner as the Company or any other person in whose custody they may be at any relevant time shall think fit.
20. The Customer shall save harmless and keep the Company indemnified from and against:
- All liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods or printed material) arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of the terms of Clause 18.1 or from the negligence of the Customer, and
 - Without derogation from Sub-Clause (a) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has become liable or may become liable to any other party, and
 - All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company its Servants, /sub-Contractors or Agents, and
 - Any claims of a General Average nature which may be made on the Company.
21. (a) Credit accounts may be opened subject to satisfactory credit references being obtained, in the Company's sole discretion.
- (b) The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- (c) In respect of all sums which are overdue the Customer shall be liable to pay to the Company interest charged at the rate stated in the Late Payment of Commercial Debts (Interest) Act 1998.
- (d) In the event of there being any default by the Customer in making payment as aforesaid the entire balance of the said account shall be payable forthwith and the Company shall be entitled to charge interest thereon in accordance with Sub-Clause (c) hereof.
22. Despite the acceptance by the Company of instructions to collect freight, duties, charges of other expenses from the Consignee or any other person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of

evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such Consignee or other person when due.

23. The Customer shall ensure that all material delivered or caused to be delivered to the Company and accepted for processing:
- will be printed papers fit to be stored and/or posted and/or despatched in the condition in which they are delivered to the Company.
 - will not consist of nor contain any matter or thing which may be considered offensive, defamatory, indecent, obscene, blasphemous or which will be in anyway illegal in the ultimate destination of the material or in any state or country through which the material will or may pass en route to its ultimate destination.
 - the Client warrants that the contents of any mail or package shall not contravene any legislation of any country that the mail may be routed from, to or through in pursuance of the clients instruction, including the country of origin, destination and routing.
 - The Client indemnifies MHI for professional costs, fines or any other costs howsoever incurred by the clients breach of the 23 c.
24. Where liability for General Average arises in connection with the goods or printed material, the Customer shall promptly provide security to the Company or to any other party designated by the Company in a form acceptable to the Company.

LIABILITY AND LIMITATION

25. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.
26. The Company shall not be liable for any loss or damage if and to the extent that such loss or damage is caused by:
- strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence.
 - any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.
27. Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods or printed material.
28. (a) Subject to Clause 2(b), 26, 28 & 29 the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed:
- in the case of claims for loss or damage to goods or printed material (a) the cost of any goods or printed material lost or damaged, or (b) a sum at the rate of two Special Drawing Rights as defined by the International Monetary Fund (hereinafter referred to as SDR's), per kilo of gross weight of any goods or printed material lost of damaged, whichever shall be the least.
 - in the case of all other claims (a) the cost of the goods or printed material the subject of the relevant transaction between the Company and its Customer, or (b) a sum at the rate of two SDR's per kilo of the gross weight of the goods or printed material the subject of the said transaction, or (c) 75,000 SDR's in respect of any one transaction, whichever shall be the least.

For the purpose of Clause 28(a) the cost of the goods or printed material shall be their cost when they were or should have been shipped. The value of SDR's shall be calculated as at the date when the claim is received by the Company in writing.

(b) Subject to Clause 2(b) above and Sub-Clause (d) below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of goods or printed material in a reasonable time or (where there is a special arrangement under Clause 27) to adhere to agreed departure or arrival dates shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant transaction.

© Save in respect of such loss or damage as is referred to at Sub-Clause (b) and subject to Clause 2(b) above and Sub-Clause (d) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.

(d) By special arrangement agreed in writing, the Company may accept liability in excess of the limited set out in Sub-Clauses (a) to (c) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

29. (a) Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably possible for him to do so.

(b) Notwithstanding the provisions of Sub-Paragraph (a) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer of which the Company has undertaken to provide unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

(c) The Company shall be under no liability to the Customer, anyone claiming through the Customer or to any party in respect of loss, damage or injury to the material or to any other property of the Customer occasioned by or arising from theft, fire, vandalism, act of God, or other act or omission beyond the control of the Company.

(d) The Company shall not in any circumstances be liable for:

- (i) loss of a particular market or Customer or the general business reputation of the Customer.
- (ii) Indirect or consequential loss or fro any loss to the Customer arising from third party claims occasioned by or arising from neglect or default of the Company, its Servants or Agents except for any claims for damages for death or personal injury arising as a consequence of the negligence of the Company.
- (iii) (subject to and without prejudice to the generality of these Conditions) loss, damage or delay proved by the Company to have caused by or to have arisen from riots, civil commotion, strikes, lockouts, stoppages, restraint of labour from whatever cause whether partial or general whether or not the same may have been carried out or caused by or invoice or in any way relate to the Company its Servants or Agents.

INDEMNITY

30. The Customer will indemnify and keep indemnified the Company from and against all or any liability in respect of nay loss, injury, damage, actions, proceedings, claims, demands, costs and/or expenses of whatever nature in respect of:
- (a) any alleged or actual defamatory, obscene, blasphemous, indecent, illegal and/or offensive matter contained in or forming all or any part of the material.
 - (b) Any injury to or death of any person or damage to any property movable or immovable arising by reason from any act, omission or default of the Customer or its personal injury arising as a consequence of the negligence of the Customer.

ARBITRATION

31. Any dispute, question of difference arising from the operation of the processing service as to the rights and/or duties of the Customer and/or the Company shall be referred to arbitration by a single arbitrator who shall be barrister or a solicitor to be agreed between the parties (or in default of agreement to be appointed on application of either party by the president for the time being of the Law Society) and such arbitrator shall act as an expert and his decision shall be binding on the Company and the Customer. The terms of the Contract shall be interpreted and construed in accordance with English Law.

EXCHANGE RATE, FUEL & RAW MATERIAL VARIANCE

32. All rates & tariffs are based upon the prevailing conditions at point of tendering from MHI. MHI reserve the right to alter, amend or withdraw services and/or quotes should market conditions change so as to make any forma/informal offer unviable. Variances affecting exchange rates, fuel/oil charges, security surcharges and/or any other factor not defined. In extremis any variation in excess of 2% will be judged as reviewable.

TERMINATION & NOTICE

33. Three months' notice of withdrawal from using MHI services are required in writing failing which the Company retain the right to charge in full for all services that would normally be carried out during that period. In the event of any breach by the Customer of its obligations under the Contract which (if in the opinion of the Company is capable of rectification) has not been rectified by the Customer within 28 days of notification of such breach to it by the Company or in the event that the Customer shall commit any act of insolvency
34. One months' notice of withdrawal/change of charges/services will be provided by MHI to the Customer and any quotations/indications are valid for a limitation of this period of time; measured as from point of initial submission. This clause does not alter MHI rights detailed at (33) above.

GENERAL

35. (a) In the event of any discrepancy between these trading conditions and any trading conditions submitted by the Customer, the provisions of these trading conditions shall prevail.
- (b) Subject as provided in these trading conditions and any other written agreement between the Company and the Customer, all warranties, conditions and other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.