



**Maiia Commodity Management Private Limited**

## **THE GENERAL TERMS & CONDITIONS**

*Registered Office*

Gr. Floor, Esperanca Building  
Colaba Causeway, SBS Marg,  
Mumbai – 400 036

*Kindly note that these General Terms & Conditions are effective from 01<sup>st</sup> March 2015, and the Company may amend this General Terms & Conditions from time to time. The General Terms & Conditions are available at <http://www.maiia.in>. Customer's use of the Company services confirms Customer's intent to agree to the General Terms & Conditions of the Company, as modified from time to time, unless otherwise specifically agreed upon by the Company.*

## GENERAL TERMS & CONDITIONS

### 1. Definitions

“**Agreement**” will mean any agreement, whether express, implied, written or oral, by which the Company offers and the Customer accepts the provision of the Services, and will include without limitation any written contract and correspondence, including by fax and/or email between the respective authorized representatives of the Company and the Customer;

“**Company**” will mean Maiaa Commodity Management Private Limited, its associates and affiliates which includes but is not limited to those listed in Attachment 1 of this General Terms & Conditions;

“**Customer**” will mean the party to whom the Company will provide the Services pursuant to the Agreement for the purposes so specified therein;

“**General Terms & Conditions**” will mean the terms & conditions related to the services agreed to be provided by the Company and will mean one or any of them;

“**Goods**” will mean the goods in respect of which the Services will be provided by the Company pursuant to the Agreement;

“**Person(s)**” will mean any individual, sole proprietorship, partnership, joint venture, limited liability company, firm, association, corporation, institution or other business entity or government;

“**Price**” will mean the price or charges which will be chargeable by the Company to the Customer for providing of the Services as agreed to in the Agreement;

“**Services**” will mean any and all services provided or to be provided by the Company to the Customer pursuant to the Agreement, including the provision of any advice or information whatsoever;

“**Working Hours**” will mean 0900 hrs to 1700 hrs India time from Monday to Saturday, except those days designated as holidays in India.

Words in the singular include the plural and words in the plural include the singular, as the context requires.

### 2. Incorporation of General Terms & Conditions

- 2.1 The General Terms & Conditions will apply to the Agreement and will be deemed to be incorporated in and form part of the Agreement. The Customer will be deemed to have received the General Terms & Conditions so long as the Company has sent or delivered the Conditions to the Customer by ordinary dispatch, ordinary or prepaid post or fax or Email, or that the Conditions have been drawn attention to or made reference to and/or have been otherwise made available to the Customer, including, by way of example, but not of limitation, by internet access, regardless of whether the Customer expressly acknowledges receipt of the General Terms & Conditions.
- 2.2 Any other terms and conditions (whatsoever called) or forms used by the Customer will not be applicable to or be deemed incorporated into the Agreement unless such terms and conditions or forms have been accepted in writing by the Company.

- 2.3 Any variation to the General Terms & Conditions (including any special terms and conditions agreed between the parties) will not be applicable unless agreed to in writing by the Company. The General Terms & Conditions, expressly limit acceptance to the General Terms & Conditions stated herein, and any additional or different terms or conditions, whether in a proposal, purchase order, acknowledgement, acceptance or otherwise, shall stand rejected and shall not be applicable unless expressly assented to in writing by an

authorized representative of the Company, notwithstanding any contrary language proposed by Customer that any action or failure to act by the Company, constitutes acceptance of any different or additional terms or conditions.

- 2.4 If any legislation is compulsorily applicable to any business or Services undertaken by the Company, the General Terms & Conditions will, as regards such business or Services, be read as subject to such legislation and nothing in the General Terms & Conditions will be construed as a 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 the General Terms & Conditions will to any extent be repugnant to such legislation, such part of the General Terms & Conditions will as regards such business or Services be void to that extent but no further.

### **3. Owner of Goods, Title and Claims to Goods**

The Customer expressly warrants that they are either the owners or acting on behalf of the owners, and further warrants that they accept these General Terms & Conditions not only for themselves but also on behalf of all other Persons who are or may thereafter become interested in the Goods.

### **4. Sub-contracting**

The Company will be entitled to sub-contract its obligations to perform the Services, in whole or in part, wherever so required, in consultation with the Customer, and on such terms and conditions as the Company deems appropriate.

### **5. Documents to be provided to the Company**

The Customer will ensure that all instructions, information and documents required to be provided to the Company for the receipt or storage, or dispatch of the Goods by the Company are accurate and adequate, and are promptly provided to the Company.

### **6. Accuracy of Descriptions of the Goods and Quality of the Goods**

- 6.1 The Customer warrants and is bound by the accuracy of all descriptions, values and other particulars and/or information furnished to the Company in respect of the Goods.
- 6.2 The Company shall carry out sampling, inspection and/or testing for quality of the Goods and issue such relevant report to the Customer. Results stated in such report are derived on the basis of (a) the information & instruction provided by the Customer as stated in Clause 8.1 herein, and/or (b) standard parameters.
- 6.3 The Customer acknowledges and accepts that all reports are issued, whether through the Company or its agent or sub-contractor, are to the best of the Company's knowledge and ability, at the given point of time.
- 6.4 The results of and information contained in reports reflect the Company's findings to the extent of and at the time of its intervention only.

## **7. Tallying / Weighing / Measuring /Inspection etc. of the Goods**

All operations such as sampling, quality checking, inspection, tallying, weighing, measuring, reporting etc., and warehousing, receiving and delivery/dispatch of the Goods, will be undertaken only on the Customer's specific written down instructions.

## **8. Payment of Price, Freight, Duties, etc.**

- 8.1 The Customer will pay the Price to the Company within ten (10) days of its receipt of an invoice in respect of the Price or Service Charges payable to the Company.
- 8.2 Any discrepancy in the Invoice must be informed to the Company within five (05) working days from the date of submission of Invoice. In case the discrepancy is not informed within five (05) working days, the Invoice will be construed to be correct and due for payment.
- 8.3 The Company will be entitled to charge the Customer a reasonable amount of coordination fee, in addition to the Price for any operations out the scope of work of the Company, or may be of an unusual nature, and/or which requires additional time or effort to carry out.
- 8.4 In the event that the Customer fails to pay any amounts which are due and payable hereunder, or upon invoicing/notification thereof by the Company, interest will be additionally payable on such amounts at the rate of 2% per month.
- 8.5 In the event that the Company resorts to any legal proceedings or other means for the recovery of any amounts due and payable by the Customer hereunder (the "Indebtedness"), the Customer will, in addition to the Indebtedness and interest payable under **Clause 8.4**, be liable to the Company for all expenses which may be incurred by the Company in resorting to such proceedings or other means.

## **9. Insurances**

- 9.1 The Company will not be obliged to take out any insurance on the Goods for any risks whatsoever, unless specifically agreed to by the Company with any Customer. All insurances on the Goods as may be required by the Customer, will be taken out at the Customer's sole expense and risk, and will be subject to the usual exceptions and conditions of the policies of the relevant insurance company or underwriters.
- 9.2 The insured value of the Goods will be the value stated in writing by the Customer or the Company's estimate of the current value of the Goods, as determined by the Company through the resources available to it at the given point of time and the place.

## **10. Liability of the Parties**

- 10.1 The Company will not be liable to the Customer in respect of any damage to the Goods unless such damage is proven to have been caused intentionally by the deliberate act of any employee of the Company.
- 10.2 The Company will not be liable for any loss of the Goods or any part thereof, for any non-delivery or mis-delivery of the Goods or any part thereof unless such loss, non-delivery or mis-delivery is proven to have occurred whilst such Goods or part thereof were in the actual custody of the Company and under its actual control and that such loss, non-delivery or mis-delivery was due to the gross negligence or willful misconduct of the Company.

10.3 The Company will not be liable for the non-compliance with any instructions given to it, unless it is proven that the same was due to gross negligence or willful misconduct on the part of the Company, and provided that such instructions have been conveyed to the Company in writing by Letter, Fax or Email, within the time available for taking action.

10.4 Except as herein provided, or agreed to by the Company will not be liable for any matters whatsoever and however arising, whether in respect of or in connection with the Goods, the Services, any instructions, business, advice, information or otherwise. Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer will defend, indemnify and hold harmless

the Company for all liability, loss, damage, costs and expenses arising out of any other Person relying on such advice or information.

10.5 The Company shall not be liable for any loss or damages to the storage facility, whether a godown, warehouse or an open storage area, as the case may be, or loss or damages to the goods stored therein on behalf of the Customer, if such loss or damage is due to the structural inadequacies or defects, or attributable to the type / quality of construction of such a storage facility, whether externally obvious or otherwise.

## **11. Limitation of Liability and Time Bar**

**11.1 THE COMPANY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE GOODS OR SERVICES.**

11.2 Notwithstanding anything set forth herein to the contrary, the Company will have no liability to Customer or to any other Persons and the Company will be discharged from any and all liability whatsoever to the Customer unless:

- (i) in respect of any damage to the Goods or any part thereof, a notice in writing by the Customer is received by the Company within seven (7) days immediately after the Customer or its nominee has taken delivery of the Goods.
- (ii) in respect of any loss/shortage or non-delivery of the Goods or any part thereof, a notice in writing by the Customer is received within fourteen (14) days of the date when the Goods or such part thereof have been delivered by the Company to the Customer or its nominee.
- (iii) in respect of any damage, loss/shortage or non-delivery of the Goods or any part thereof, a notice in writing by the Customer is received within two (2) days of the date when the Goods or such part thereof have been handed over by the Company to the Customer or its nominee.

## **12. Declaration**

The Company will be under no obligation whatsoever to make any declaration which may be required under any statute, convention or contract with regards to the nature or value of the Goods or with regards to any special requirements relating to the delivery of the Goods unless expressly instructed by the Customer in writing and the Company agrees in writing to make such declaration or expresses such agreement by making such declaration.

## **13. Force Majeure**

13.1 The Company will not be liable for any loss, damage to or destruction of the Goods, or for any delay in the performance or non-performance of any of the terms set forth herein that arise in whole or in part to any cause not within the control of the Company, whether now or hereafter existing, including without limitation, the following:

- (a) war, terrorism, threat of war, official action, quarantine, civil disturbance, sabotage, strike, lock-out;
- (b) storm, fog, lightning, fire, flood, high and low tide, frost, freezing, ice, heat, acts of God;
- (c) subsidence and/or collapse of the ground and/or any storage facility, water leakage or seepage, dampness, odour, stench, worms and rodents, damage through rats, mice, insects and other creatures;
- (d) the natural properties of the Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, combustion, explosion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating;
- (e) all other causes which are beyond the control of the Company.

13.2 In the event of Force Majeure, the Agreement will remain in force. The Company's obligations will however, be suspended for so long as the force majeure event subsists.

13.3 All additional costs which may be incurred as a result of a Force Majeure event, including but not limited to transportation and storage charges, warehouse or yard rentals, demurrage for trucks, charges in respect of delivery from warehouses, will be borne by the Customer and will form part of the debt due and owed to the Company by the Customer, mentioned in Clause 11 hereof along with interest chargeable thereon, if any.

#### **14. Governing Law and Jurisdiction**

14.1 The Agreement will be governed by and will be construed in accordance with the prevalent laws of India, unless otherwise provided in the Agreement or required compulsorily in applicable national law.

14.2 Unless otherwise provided in the Agreement, the Customer agrees that any claim, dispute or matter arising under or in connection with the Agreement or its enforceability, including, without limitation, any contractual claim, dispute or matter shall be discussed and resolved amicably between the parties and if not resolved, the dispute shall be referred to and finally resolved by arbitration in Mumbai, India and the Customer irrevocably agrees to:

- (a) submit to the Indian Arbitration and Conciliation Act 1996 in India for the time being in force;
- (b) consent to service of process by registered mail or in any other manner permitted by relevant law; and
- (c) be bound by any award delivered by the arbitration in Mumbai, India where the Company may take proceedings in.

14.3 Without prejudice to the generality of the Clause 14.2, in the event any applicable national law stipulates otherwise, causing the submission to arbitration in India inapplicable or unenforceable, the Customer agrees that any legal action or proceedings arising out of or in connection with the Agreement will be brought in the court where the Company is domiciled.

#### **15. Miscellaneous**

15.1 Customer is duly authorized to enter into the Agreement and these General Terms & Conditions and to perform its obligations under the Agreement and these General Terms & Conditions, and possesses all licenses, permits, consents and approvals required by Law to conduct all business which it conducts with respect to the Goods.

- 15.2 If any provision of the Agreement or these General Terms & Conditions, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remainder of the Agreement and General Terms & Conditions shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of these General Terms & Conditions.
- 15.3 The failure by the Company to insist, in any one or more instances, upon the performance of any of the terms or conditions of the Agreement or these General Terms & Conditions, or to exercise any right or remedy hereunder, shall not be construed as a waiver of the future performance of any such terms or conditions or the future exercise of such right or remedy.
- 15.4 The Warehousing Conditions will be deemed to be incorporated in and form part of the Agreement. All transactions between the Company and the Customer shall be governed by these General Terms & Conditions together with the Agreement. In the event of any conflict between the terms of the Agreement and these General Terms & Conditions, the terms of the Agreement shall prevail. In the event of anything not mentioned to the contrary in the Agreement, the General Terms & Conditions shall govern.
- 15.5 The headings used herein are for convenience only and do not form a substantive part of these General Terms & Conditions.
- 15.6 By requesting that the Company perform the Services and/or by executing the booking confirmation and/or other documentation to which these General Terms & Conditions are attached, Customer covenants and agrees to be bound by the terms hereof and represents and warrants the truth and accuracy of the matters set forth herein to be represented and/or warranted by Customer.

## **16. Termination**

- 16.1 Notwithstanding anything herein to the contrary, the Company may at any time terminate the Agreement by written notice to the Customer, effective immediately if:
- (a) the Customer goes into liquidation or is unable to pay its debts or commits an act of bankruptcy under the laws of its relevant jurisdiction of incorporation, or if a receiver is appointed over any of its assets.
  - (b) the Company retains the right to terminate the contract, if the service fee payable to the Company is unpaid for more than 90 days.
- 16.2 In the event that the Customer terminates the Agreement unilaterally, the Company will be entitled to a reasonable compensation for the loss it suffers as a result of the termination of the Agreement.

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