

Mizzenit.com terms and conditions

Please read the following terms and conditions carefully.

1. ABOUT THE WEBSITE

- 1.1. Welcome to www.mizzenit.com (**Website**). The Website facilitates interactions between:
 - (a) Shippers of cargo to be transported via sea (**Freight Forwarders** or **you** as applicable); and
 - (b) Carriers of cargo via sea (the **Shipping Lines** or **you** as applicable),and provides software to compare and simplify rate management and to facilitate the process of the procurement and booking of freight between the Freight Forwarder and Shipping Lines (**Services**).
- 1.2. The Website is operated by Mizzen Pty Ltd (ABN 46 603 566 687) (**us, we, Mizzen**). Access to and use of the Website, or any of its associated products or Services, is provided by Mizzen. By using, browsing and/or reading the Website and/or using the Services, you confirm that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must stop using the Website, or any of its products or Services, immediately.
- 1.3. Mizzen reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Mizzen updates the Terms, it will use reasonable endeavours to provide you with notice of same. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

2. ACCEPTANCE OF THE TERMS

- 2.1. You accept the Terms by registering for an Account, using the Services and/or making any payment as required under the Terms for use of the Services. You may also accept the Terms by clicking to accept or agree to the Terms where and if this option is made available to you by Mizzen in the user interface.

3. THE SERVICES

- 3.1. You are able to access and view the Website without registering for the Services. However, in order to access the Services:
 - (a) Freight Forwarders must register for an account through the Website; and
 - (b) Shipping Lines must register for an account through the Website (or directly with us, where permitted);**(Account)**.
- 3.2. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including an email address and/or preferred username, a mailing address, a telephone number and a password.
- 3.3. You warrant that:

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- (a) any information you give to Mizzen in the course of completing the registration process will always be accurate, correct and up to date; and
 - (b) to the extent you provide any information about a third party, that you are duly authorised to provide that information to Mizzen and do so in accordance with all applicable laws including but not limited to the *Privacy Act 1988* (Cth);
 - (c) to the extent that you use the Services to make a Booking or otherwise procure Shipping Line Services for a third party, that you are acting as agent for that party or are otherwise authorised to make that Booking or procure those Shipping Line Services on behalf of that third party.
- 3.4. Once you have completed the registration process you will be a registered member of the Website (**Member**) and agree to be bound by the Terms.
- 3.5. You may not use the Services and may not accept the Terms if:
- (a) you lack legal capacity to form a binding contract with Mizzen and/or a Shipping Line; or
 - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

4. YOUR OBLIGATIONS AS A MEMBER

- 4.1. As a Member, you acknowledge and agree that:
- (a) you will not share your Account with any other person;
 - (b) you will only use the Services for purposes that are permitted by the Terms;
 - (c) you have sole responsibility for protecting the confidentiality of your password and/or email address and use of your password by any other person may result in the immediate termination of your Membership and/or cancellation of the Services;
 - (d) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Mizzen of any unauthorised use of your password or email address or any breach of security of which you have become aware;
 - (e) you must not expressly or impliedly impersonate another Member or use the Account or password of another Member at any time;
 - (f) any content that you broadcast, publish, upload, transmit, post or distribute or procure to be broadcast, published, uploaded, transmitted, posted or distributed on the Website (**Your Content**):
 - (i) will always be accurate, correct and up to date and that you will maintain reasonable records of the same; and
 - (ii) to the extent Your Content includes any third party content, that you are duly authorised to use, disclose and distribute that Content for the purposes of these Terms and that such use will not infringe any third party Intellectual Property Rights;
 - (g) you will not to harass, impersonate, stalk, threaten another Member of the Website (where interaction with other Members is made available to you);

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- (h) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of providing the Services;
- (i) the Website may use an API platform to connect with, share, transfer and transmit information with relevant parties;
- (j) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
- (k) you will comply with all applicable laws and regulations in relation to your use and/or provision of the Services and/or Deliverables;
- (l) you agree that commercial advertisements, affiliate links and other forms of solicitation may be removed from Member Accounts without notice and may result in closure of your Account and/or termination of the Services. Appropriate legal action may be taken by Mizzen for any illegal or unauthorised use of the Website; and
- (m) unless expressly provided otherwise by Mizzen as part of the Services, any automated use of the Website or its Services is prohibited.

5. FEES

- 5.1. The Website provides Members with an opportunity to create an Account to access the Services, including to:
 - (a) view shipping schedules and prices for shipment with a variety of Shipping Lines, search for, quote, book and/or provide shipments (as applicable) (**Shipping Line Services**); and
 - (b) upload Rate Sheets to the Website for digitisation and rate analysis, allowing you to view, compare, and enrich Rate Sheet data to create a sell rate, apply against the shipping schedules and distribute this data to other software applications via API (**Rate Management Services**);
- 5.2. As a Member, when you register for an Account and in consideration for access to the Services, you agree to pay the Fees in accordance with clause 5.3 or clause 5.4 (as applicable) (**Fee**).
- 5.3. The Freight Forwarder Fee is payable:
 - (a) monthly (or as otherwise specified on <https://www.mizzenit.com/Help/Pricing> or agreed to by us in writing) in advance by direct debit from your nominated bank account. By registering for an Account, you authorise us to direct debit the Fee from your nominated bank account until such time as your Account is terminated in accordance with these Terms; or
 - (b) within 14 days of receipt by the Freight Forwarder of a valid tax invoice from Mizzen.
- 5.4. The Shipping Line Fee is payable within 14 days of receipt by the Shipping Line of a valid tax invoice from Mizzen. Mizzen will render a monthly tax invoice in respect of all Shipping Line Fees incurred by the Shipping Line in the preceding month.
- 5.5. If a payment becomes overdue under this clause 5, Mizzen may:
 - (a) immediately suspend and/or terminate your Account;

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- (b) charge Interest on any payment owing in respect of your Account from the date on which the payment became overdue until paid in full;
- (c) treat all amounts owing in respect of your Account as immediately due and payable; and
- (d) take action to recover the amount owing (including any interest).

6. USING THE WEBSITE AS THE FREIGHT FORWARDER

6.1. This clause 6 applies to Freight Forwarders in respect of the use of the Services.

Shipping Line Services

6.2. In order to purchase the Shipping Line Services, you must:

- (a) register as a Member;
- (b) search for a voyage that meets your requirements and request rates from shipping lines;
- (c) request to book space and/or equipment via the Website (**Booking Request**); and
- (d) pay the Deposit in cleared funds to the account nominated by Mizzen by electronic funds transfer (or such other method as reasonably required by Mizzen) if you wish your Booking to be guaranteed (**Guaranteed Booking**).

For the avoidance of doubt, the Guaranteed Booking is not available in respect of the "Maersk Spot" product.

6.3. You acknowledge and agree that:

- (a) the information contained on the Website (including any space and equipment listings) constitutes an invitation to treat and is not capable of acceptance by you;
- (b) any Booking Request made by you constitutes an offer to the relevant Shipping Line to purchase the Shipping Line Services (including any space and equipment) specified in the Booking Request (**Deliverables**), subject to any carriage conditions or other terms of service imposed by the relevant Shipping Line;
- (c) that the offer is not accepted and the Booking Request is not confirmed unless and until:
 - (i) where a Deposit is required, the Deposit is received by Mizzen; and
 - (ii) the Shipping Line provides written confirmation (**Confirmation**) that the Booking Request has been accepted (**Booking**); and
- (d) any agreement to obtain and provide the Deliverables specified in the Booking is an agreement entered into between you and the Shipping Line only.

6.4. You acknowledge that at the time of placing the Booking Request, Mizzen may provide information contained in your Account and the Booking Request to the Shipping Lines. This information includes but is not limited to your Account, the vessel sailing and dates for shipping, the rate selected and any specific requirements that you have noted.

6.5. As a Freight Forwarder, you acknowledge and agree that:

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- (a) you are solely responsible for ensuring that the Shipping Line is aware of any specific factors that could be reasonably expected to impact on the provision of the Shipping Line Services and/or Deliverables; and
 - (b) neither the Shipping Lines nor Mizzen will be liable for any loss, cost or damage suffered or incurred as a result of your failure to properly inform the Shipping Lines of these specific factors.
- 6.6. You acknowledge and agree that the Services may be used for Permitted Cargo only and must not be used to arrange transport of any illegal goods or undeclared hazardous goods. In using the Services as a Freight Forwarder, you warrant that you will comply with this clause and any loss or damage suffered by Mizzen or the Shipping Lines as a result of your breach of same will be solely your liability.
- 6.7. As a Freight Forwarder, you acknowledge that where the Booking and/or Confirmation specifies a Transshipment Port, the Booking is only in respect of the First Loading Vessel and does not include any subsequent transshipment vessels. For a Guaranteed Booking the guarantees are only in respect of the First Loading Vessel and do not include any subsequent transshipment vessels.

Rate Management Services

- 6.8. In order to use the Rate Management Services, you must:
- (a) register as a Member;
 - (b) complete the Rate Management Services onboarding process, as advised by Mizzen from time to time; and
 - (c) upload your Rate Sheets via an agreed channel such as MS Excel, API or other such compatible format as Mizzen may advise from time to time.
- 6.9. You acknowledge that:
- (a) the Rate Management Service is designed as a tool to assist in the management of information relevant to freight and Mizzen does not warrant that you will achieve any particular results through the use of this service;
 - (b) that if there are errors in Your Content that is uploaded, used or accessed via the Website, there may be errors in the results produced by the use of the Rate Management Services.
 - (c) you are solely responsible for determining whether Your Content and the information generated by it is accurate, current, complete and sufficient for your purposes;
 - (d) information on the Website may be provided by other Members and third parties and that Mizzen does not independently verify information provided by you, other Members or third party sources (such as Shipping Lines) and does not warrant that information contained on the Website is accurate, complete or up to date.

General

- 6.10. As a Freight Forwarder you acknowledge that you will be interacting with Shipping Lines that may have their own terms and conditions and other requirements that will affect your use of the Services and Deliverables. In using the Services, you warrant that you will have, at the time of the Booking Request, familiarised yourself with the applicable terms and conditions, policies or other relevant documentation provided by the specific Shipping Line that you wish to engage through the

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Deliverables. You acknowledge and agree that Mizzen will not be liable for any loss, cost or damage suffered or incurred by you as a result of your failure to comply with this clause.

- 6.11. You acknowledge that any interaction between you, as a Freight Forwarder and the Shipping Line outside of the Website is not within the scope of the Services provided by the Website and Mizzen. You indemnify Mizzen in accordance with clause 19 of these Terms in respect of any such interaction.
- 6.12. In using the Services and making a Booking Request, Booking or Guaranteed Booking, you acknowledge and agree that:
- (a) Mizzen does not provide Shipping Line Services and is not responsible for any such services or Deliverables which are procured or booked using this Website, your Account or the Services and which may or may not be provided by the relevant service provider;
 - (b) the Shipping Lines provide the Shipping Line Services and Deliverables directly to Freight Forwarders;
 - (c) Mizzen makes no warranty or representation regarding the standard of any Shipping Line Service or Deliverable to be provided by a third party in connection with the Website, your Account or the Services;
 - (d) all Shipping Line Services, Bookings and Deliverables are delivered subject to the terms and conditions of the relevant Shipping Line service provider and, to the extent applicable, these Terms;
 - (e) Mizzen does not control the business operations of any Shipping Line or other service provider; and
 - (f) subject to these Terms, Mizzen make no guarantees or warranties about the services that are provided to you by service providers and/or Shipping Lines.

7. USING THE WEBSITE AS THE SHIPPING LINE

7.1. This clause 7 applies to Shipping Lines in respect of the use of the Services.

7.2. As a Shipping Line, you acknowledge that:

- (a) the Website and the Services provide you with an opportunity to interact with Freight Forwarders who are looking to obtain Shipping Line Services and are interested in engaging you to provide the same; and
- (b) you are given the opportunity to provide a rate quote in response to a Freight Forwarder's request for available Space and Equipment and, where a Booking Request is made, to accept the Booking Request and thereafter, to provide the Shipping Line Services and Deliverables to the Freight Forwarder in accordance with the agreement entered into between yourself and the Freight Forwarder pursuant to clause 6.3(d).

7.3. In order to provide the Shipping Line Services, you must:

- (a) promptly reply to Space and Equipment rate requests and enquiries received via the Website, providing pricing and validity of the rate; and

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- (b) provide any other relevant information that a Shipping Line should reasonably provide a Freight Forwarder in respect of a space and equipment availability request (e.g. the shipping route changes, future delays, empty container release details and container terminal receipt period).
- 7.4. You acknowledge and agree that where Mizzen receives a Booking Request from a Freight Forwarder then:
 - (a) Mizzen will use best endeavours to notify you of the Booking Request within 1 hour of receipt of same from the Freight Forwarder; and
 - (b) you must either confirm or reject the Booking Request within one (1) Business Day.
- 7.5. You acknowledge and agree that, in using the Website and Services:
 - (a) you are not employed by Mizzen in any capacity and, accordingly, you do not have any rights as an employee, agent or independent contractor of Mizzen; and
 - (b) Mizzen is not your agent or representative in respect of the Services, Shipping Lines Services, Deliverables and does not act on your behalf.
- 7.6. You acknowledge and agree that in using the Services, interacting with the Freight Forwarders, providing the Shipping Line Services or Deliverables or anytime thereafter, you will comply with all applicable laws and regulations, and take out, hold and maintain all relevant insurances that may be required for your provision of the Shipping Line Services or Deliverables.

Rate Management Services

- 7.7. In order to use the Rate Management Services, you must:
 - (a) register as a Member;
 - (b) complete the Rate Management Services onboarding process, as advised by Mizzen from time to time; and
 - (c) upload your Rate Sheets via an agreed channel such as MS Excel, API or other such compatible format as Mizzen may advise from time to time.
- 7.8. You acknowledge that:
 - (a) the Rate Management Service is designed as a tool to assist in the management of information relevant to freight and Mizzen does not warrant that you will achieve any particular results through the use of this service;
 - (b) that if there are errors in Your Content that is uploaded, used or accessed via the Website, there may be errors in the results produced by the use of the Rate Management Services.
 - (c) you are solely responsible for determining whether Your Content and the information generated by it is accurate, current, complete and sufficient for your purposes;
 - (d) information on the Website may be provided by other Members and third parties and that Mizzen does not independently verify information provided by you, other Members or third party sources (such as Shipping Lines) and does not warrant that information contained on the Website is accurate, complete or up to date.

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8. CANCELLATION OR FAILURE TO COMPLETE

- 8.1. This clause applies where a Guaranteed Booking has been made.
- 8.2. A Freight Forwarder or Shipping Line who will not complete a Guaranteed Booking due to Cancellation or Failure to Complete (whether in part or in full) (**Cancelling Party**) must notify the other party (**Non-Cancelling Party**) in writing copied to Mizzen as soon as is practicable.
- 8.3. Upon receipt of a notice under clause 8.2 above, Mizzen will remit the Deposit in accordance with clause 9.3(a) or 9.3(b) (as applicable).
- 8.4. Where a Cancellation or other Failure to Complete a Guaranteed Booking occurs and the Cancelling Party has failed to notify the Non-Cancelling Party and Mizzen in accordance with clause 8.2 above the Non-Cancelling Party shall give notice of the Cancellation or Failure to Complete to the Cancelling Party copied to Mizzen. Mizzen will remit the Deposit in accordance with clause 9.3(a) or 9.3(b) (as applicable) 2 Business Days after receipt of the notice.

9. DEPOSIT REFUND POLICY

- 9.1. This clause applies where a Deposit has been paid for a Guaranteed Booking.
- 9.2. You acknowledge and agree that Mizzen:
 - (a) is only a facilitator in introducing the Freight Forwarder to the Shipping Lines;
 - (b) will not be liable to the Freight Forwarder or Shipping Line directly or indirectly in respect of the Shipping Line Services or Deliverables; and
 - (c) will not refund any payments or Deposits made in the use of Services, except as otherwise set out in this clause 9.
- 9.3. Where the Freight Forwarder pays the Deposit to Mizzen in accordance with clause 6 and:
 - (a) the Freight Forwarder subsequently and for any reason Cancels or otherwise Fails to Complete the Booking (whether in part or in full), the Deposit will be forfeit and Mizzen will release the Deposit to the Shipping Line's nominated account within 5 Business Days of notification in accordance with clause 8.2. or
 - (b) the Shipping Line subsequently and for any reason Cancels or otherwise Fails to Complete the Booking (whether in part or in full), Mizzen will refund the Deposit to the Freight Forwarder's nominated account within 5 Business Days of notification in accordance with clause 8.2 and the Freight Forwarder will be entitled to, and the Shipping Line will provide, an account credit for use in respect of future Shipping Line Services with the Shipping Line in an amount equivalent to the Deposit (**Credit**).
- 9.4. Where the Booking is completed with no Cancellation or Failure to Complete (**Completed**) the Freight Forwarder will give written confirmation of Completion to the Shipping Line copied to Mizzen.
- 9.5. Mizzen will refund the Deposit to the Freight Forwarder 5 Business Days after receipt of a Notice under clause 9.4.

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9.6. You acknowledge and agree that:

- (a) Mizzen is authorised to release or refund the Deposit in accordance with clause this 9; and
- (b) for the purposes of clause 9.3 and 9.4, where a Booking is completed in part but not in full, the Deposit and/or Credit (as applicable) will be applied in an equivalent proportion (i.e. on a per completed container basis).

Example: Space and Equipment Booking reserved 10 containers. Freight Forwarder only delivers 8 containers to Shipping Line. On completion of shipping, 80% of the Deposit is refunded to the Freight Forwarder and 20% of the Deposit is forfeit to the Shipping Line.

Example: Space and Equipment Booking reserved 10 containers. Shipping Line only completes shipping of 5 containers. 100% of the Deposit is released to the Freight Forwarder and Freight Forwarder receives a Shipping Line credit equivalent to 50%.

9.7. If for any reason, Mizzen has not received the notices required in order for it to refund or remit the Deposit in accordance with clause 8 and/or 9 within 60 days of the scheduled date for Completion, and having made reasonable efforts to contact the relevant party to obtain that notice, Mizzen may refund the Deposit to the Freight Forwarder.

10. FORCE MAJEURE

10.1. If a Freight Forwarder or Shipping Line (as applicable) is wholly or partly unable to carry out any obligation under this agreement because of a Force Majeure Event and that party:

- (a) gives the other party and Mizzen prompt notice of the Force Majeure Event including reasonably full particulars of the event relied on and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable diligence to remove or remedy that Force Majeure Event as quickly as possible;

that obligation is suspended, to the extent it is affected by the continuation of the Force Majeure, and the Deposit will be refunded to the Freight Forwarder's nominated account within 5 Business Days of written notification to Mizzen.

11. INTELLECTUAL PROPERTY

11.1. Nothing in this Agreement constitutes a transfer of title in any Intellectual Property Rights.

11.2. You acknowledge and agree that:

- (a) Mizzen owns all Intellectual Property Rights in the Website, the Services and all of the related products of Mizzen;
- (b) unless otherwise indicated, all Intellectual Property Rights in the Services and content of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, code, scripts, design elements and interactive features) are owned or controlled for these purposes, and are reserved by Mizzen or its contributors or licensors; and
- (c) you will not directly or indirectly do anything that would or might invalidate or put in dispute Mizzen's title in the Website, the Services or related products of the Mizzen.

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11.3. You grant to Mizzen:

- (a) whilst you are a Member, a non-exclusive, royalty-free, irrevocable, worldwide licence to broadcast, republish, up-load to a third party, transmit, post, distribute, adapt or modify Your Content for the purpose of providing the Services; and
- (b) a non-exclusive, royalty-free, irrevocable, worldwide licence to broadcast, republish, up-load to a third party, transmit, post, distribute, adapt or modify Your Content in an aggregated and de-identified form for the purpose of industry benchmarking, data compilation, research and improving the Services;

11.4. Mizzen does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights, title and interest in the Website, Services and related products of Mizzen are expressly reserved by Mizzen.

11.5. Nothing you do on or in relation to the Website or the Services will transfer any:

- (a) interest in or right to use or exploit any business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

11.6. You must not, without the prior written permission of Mizzen and the permission of any other relevant rights owners, broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website which are freely available for re-use or are in the public domain.

12. PROMOTION OF THE SERVICES

12.1. This clause 12 applies to Shipping Lines in respect of the Services.

12.2. You acknowledge and agree that Mizzen is entitled to promote the Shipping Line Services, including the Space and Equipment listed by you on the Website from time to time, including by newsletters, direct mail and direct marketing, online search engine marketing and optimisation practices and third party channels.

12.3. By registering for an Account, you grant Mizzen a non-exclusive, royalty-free, worldwide licence to use your brand, logo and/or service descriptions for its reasonable marketing and promotional purposes. This licence will cease immediately upon termination of this agreement and the cessation of your Membership.

12.4. You acknowledge that Mizzen will be entitled to market and promote similar services offered by other shipping lines that may operate in the same or similar market as you.

12.5. You warrant that you have obtained the required approvals, authorisations and/or permissions and that by exercising its rights in accordance with this clause 12, Mizzen will not infringe any third party Intellectual Property Rights.

13. PRIVACY

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- 13.1. Mizzen takes your privacy seriously. Any personal information provided to Mizzen through your use of the Website, Account and/or Services will be handled in accordance with our Privacy Policy.
- 13.2. These Terms include and incorporate our Privacy Policy and by accepting these Terms, you consent to the use of your personal information in accordance with that Policy.

14. ACCURACY OF WEBSITE CONTENT

- 14.1. The Shipping Line Services and the information regarding those Services are provided by third parties, not Mizzen. While we try to ensure that all content displayed on the Website is current and correct we cannot and do not guarantee or warrant that:
- (a) the information regarding the Shipping Lines Services (including the availability and cost of Space and Equipment) is accurate, up-to-date or free from error; or
 - (b) that the Shipping Line Services (including any Space and Equipment) will always be available or meet your expectations;
- 14.2. All Shipping Line Services (including the availability of Space and Equipment) displayed on the Website are subject to availability, indicative only and subject to change or removal without notice.
- 14.3. Mizzen accepts no liability in relation to the accuracy or completeness of content displayed on the Website or for the modification or removal of Shipping Line Services from the Website.

15. NO AGENCY

- 15.1. Mizzen is not an agent for the Freight Forwarder or the Shipping Line.
- 15.2. Mizzen facilitates bookings of Shipping Line Services between Freight Forwarders and Shipping Lines.
- 15.3. You acknowledge and agree that:
- (a) any Shipping Line Services or Deliverables which are procured via the Website or Services are not provided by Mizzen; and
 - (b) any agreement to obtain or provide Shipping Line Services or Deliverables is an agreement entered into between you and the Shipping Line or Forwarder Freightier (as applicable) only and is governed by the terms of that agreement.

16. EXCLUSIONS

- 16.1. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 16.2. Subject to this clause, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
 - (b) Mizzen will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services

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or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- 16.3. Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you “as is” and “as available” without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Mizzen make any express or implied representation or warranty about the Services or the content on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (b) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
 - (c) costs incurred as a result of you using the Website (including the API), the Services or any of the products of Mizzen; and
 - (d) the Services or operation in respect to links which are provided for your convenience.
- 16.4. You acknowledge that the Website and the Services are only intended to facilitate the interactions between the Freight Forwarder and the Shipping Line and does not offer any services other than the Services and Mizzen holds no liability to you as a result of any conduct of the Members or the misuse of Your Content by any party (including other Members).
- 16.5. Mizzen does not warrant that you will have continuous access to the Website or to the API. Mizzen will attempt to notify you if it becomes aware of any scheduled maintenance to the Website that will have a material effect on the availability of the Website. Mizzen shall not be liable in the event that the Website or any API is unavailable to you.

17. LIMITATION OF LIABILITY

- 17.1. Mizzen excludes all liability for all loss, cost or damage suffered or incurred as a result of or in connection with the Services or Website, including but not limited to:
- (a) the provision or failure to provide the Deliverables;
 - (b) the provision of Your Content to the Website; and
 - (c) any licence and permissions granted by you under clauses 11 and 12.
- 17.2. You acknowledge and agree that Mizzen (and Personnel) will not be liable or responsible to you for any loss of revenue or business, direct, indirect, consequential, special or incidental loss, cost or damage suffered or incurred by you arising out of or in connection with these Terms or the Services, whether in contract, tort, equity or otherwise. This exclusion applies even if those damages or losses may reasonably be supposed to have been in contemplation of both parties as a probable result of any breach at the time they entered into this agreement. This shall include, but

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is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

- 17.3. You acknowledge and agree that Mizzen holds no liability for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you as a result of providing Your Content to the Website.
- 17.4. Where liability cannot be excluded, Mizzen's total aggregate liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

18. TERMINATION OF CONTRACT

18.1. If you want to terminate your Account in accordance with these Terms, you:

- (a) may do so by providing Mizzen with fourteen (14) days' notice (**Termination Period**) of your intention to terminate by sending written notice of the same to Mizzen via the '[Contact Us](#)' link on our homepage; and
- (b) in respect of:
 - (i) Freight Forwarders, any Freight Forwarder Fees which are prepaid in respect of the Termination Period are forfeit and will not be refunded; and
 - (ii) Shipping Lines, Mizzen will promptly issue an invoice in respect of any Shipping Line Fees which may have accrued, payable in accordance with clause 5.4.

18.2. Mizzen may terminate these Terms and your Account immediately on written notice if:

- (a) you breach any provision of the Terms or Mizzen has reasonable grounds to suspect that you intend to breach any provision;
- (b) you experience an Insolvency Event;
- (c) Mizzen is required to do so by law;
- (d) Mizzen is transitioning to no longer providing the Services to Members in the country in which you are resident or from which you use the service; or
- (e) the provision of the Services to you by Mizzen is, in the opinion of Mizzen, no longer commercially viable.

18.3. In addition to clause 18.2, Mizzen reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct adversely impacts Mizzen's name or reputation or violates the rights of those of another party.

18.4. When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Mizzen have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

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19. INDEMNITY

- 19.1. You agree to indemnify and keep indemnified Mizzen (and its Personnel, contributors, third party content providers and licensors) from and against:
- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with:
 - (i) any breach by you or your Personnel of these Terms or any warranty;
 - (ii) any negligent, reckless or intentional act or omission or wilful misconduct by you or your Personnel;
 - (iii) any damage to or loss or destruction of any property, or personal injury, illness or death to any person, arising out of or in connection with your obligations under these Terms;
 - (iv) any breach of any applicable law by you or your Personnel;
 - (v) any claim, arising out of or in connection with the use by you or Mizzen (or any of their Personnel) of the Website (including Your Content) or the Services, regarding the infringement or alleged infringement of Intellectual Property Rights of any person; and/or
 - (vi) your use of the Services or access to the Website.
 - (b) Each indemnity in these Terms is a continuing obligation separate and independent from your other obligations and survives termination of these Terms and your Account.
 - (c) It is not necessary for Mizzen to incur expense or make payment before enforcing a right of indemnity conferred by these Terms.

20. DISPUTE RESOLUTION

- 20.1. **Compulsory:** If a dispute arises out of or relates to the Terms, neither party may commence any Arbitration or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sort).
- 20.2. **Notice:** A party to the Terms claiming a dispute (**Dispute**) has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.
- 20.3. **Resolution:** On receipt of that notice (**Notice**) by that other party, the parties to the Terms (**Parties**) must:
- (a) Within seven (7) days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
 - (b) If for any reason whatsoever, twenty-one (21) days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Society of New South Wales or his or her nominee;
 - (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

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(d) The mediation will be held in Sydney, Australia.

- 20.4. **Confidential:** All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.
- 20.5. **Termination of Mediation:** If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

21. ARBITRATION AND LEGAL PROCEEDINGS

- 21.1. In the event that the Dispute is not resolved at the conclusion of the mediation, both parties are prohibited from instituting legal proceedings concerning the subject matter of the Dispute and the Dispute, controversy or claim arising out of, relating to or in connection with these Terms, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one. This clause 21 may be used as a bar to legal proceedings issued in any Court in any country which has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

22. NOTICES

- 22.1. Any notice, demand, consent, approval or communication under this agreement must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) hand delivered or sent by prepaid post to:
 - (i) for Freight Forwarders and Shipping Lines, the address specified in their Account; and
 - (ii) for Mizzen, the address specified on the Website.

23. MISCELLANEOUS

- 23.1. **Entire agreement:** Subject to these Terms, this agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between the parties, whether orally or in writing.
- 23.2. **Jurisdiction and Governing Law:** The Terms are governed by the laws of New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.
- 23.3. **Successors:** The Terms are binding to the benefit of the parties hereto and their successors and assigns.
- 23.4. **Independent Legal Advice:** The parties acknowledge and agree that the provisions of the Terms are fair and reasonable and that they have had the opportunity to obtain independent legal advice.
- 23.5. **Severance:** If any part of these Terms is found to be void, unenforceable, invalid or illegal, it is to be read down to make it valid and legal, so far as possible. If not possible, that part shall be severed from this agreement without affect the rest of the Terms which shall remain in force.

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- 23.6. **Waiver:** A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 23.7. **Further assurances:** Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this agreement.
- 23.8. **Consents or approvals:** If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be delayed, conditioned or withheld at that party's absolute discretion unless otherwise provided for in this agreement. Any consent or approval must be given in writing at the Address for Service.
- 23.9. **Assignment:** A party must not assign its rights or benefits under this agreement to any person without the prior written consent of the other party (which may be delayed, conditioned or withheld at that party's sole discretion).
- 23.10. **Relationship of parties:** Nothing in this agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties. No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

24. DEFINITIONS

24.1. In these Terms, the following terms have the meaning given below:

- (a) **Account** has the meaning given in clause 3.1;
- (b) **API(s)** means the Application Programming Interface(s) contained within the Mizzen system and used to facilitate communications between customer or customer API agents and the Mizzen System.
- (c) **Booking** has the meaning given in clause 6.3(c);
- (d) **Booking Request** has the meaning given in clause 6.2;
- (e) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received;
- (f) **Cancellation or Cancels** means where the Freight Forwarder or the Shipping Line (as applicable) cancels the Booking;
- (g) **Completion or Completes** has the meaning given in clause 9.4.
- (h) **Confirmation** has the meaning given in clause 6.3(c)(ii);
- (i) **Credit** has the meaning given in clause 9.3(b);
- (j) **Deliverables** has the meaning given in clause 6.3(b);
- (k) **Deposit** means the amount specified in the Booking Request and payable to Mizzen in accordance with clause 6.3;
- (l) **Dispute** has the meaning given in clause 20.2;

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- (m) **Guaranteed Booking** has the meaning given in clause 6.2(d);
- (n) **Failure or Fails to Complete** means:
 - (i) for Freight Forwarders, the container(s) specified in the Booking are not received at the nominated port of loading terminal within the container yard receival period specified in the Confirmation or as otherwise notified to the Freight Forwarder by the Shipping Line in accordance with the Shipping Line's terms and conditions; or
 - (ii) for Shipping Lines, the container(s) specified in the Booking, having been received by the Shipping Line at the nominated port of loading terminal within the container yard receival period specified in the Confirmation or as otherwise notified to the Freight Forwarder by the Shipping Line in accordance with the Shipping Line's terms and conditions, are not loaded onto the vessel specified in the Booking;
- (o) **Fee** means the Freight Forwarder Fee and/or Shipping Line Fee (as applicable);
- (p) **First Loading Vessel** means the Vessel specified in the Booking and onto which the containers are loaded at the nominated port of loading;
- (q) **Force Majeure Event** means any act of God, extreme weather events, war, sabotage, riot, insurrection, civil commotion, national emergencies, strikes, lock-outs or other industrial disturbance, accidents, communications or network failure, or the effect of any applicable laws, orders, rules or regulations, and any other matters beyond the reasonable control of the party claiming force majeure;
- (r) **Freight Forwarder Fee** means the relevant fee(s) (as applicable to Freight Forwarders) detailed at <https://www.mizzenit.com/Help/Pricing> or otherwise agreed in writing by the parties, as varied from time to time in accordance with these Terms;
- (s) **Freight Forwarders** has the meaning given in clause 1.1;
- (t) **Insolvency Event** includes the winding up, dissolution or cessation of business, the appointment of an administrator, liquidator, receiver or an official manager, an assignment for the benefit of creditors, scheme of arrangement with creditors, insolvency and bankruptcy of a party or any similar procedure;
- (u) **Interest** means 2% above the cash rate as determined by the Reserve Bank of Australia from time to time;
- (v) **Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, know-how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;
- (w) **Member** has the meaning given in clause 3.4;
- (x) **Mizzen** has the meaning given in clause 1.1;
- (y) **Notice** has the meaning given in clause 20.3;
- (z) **Permitted Cargo** means dry and/or refrigerated goods, and such other goods as specified on the Website from time to time or otherwise permitted by Mizzen;
- (aa) **Personnel** means any officers, employees, agents, representatives, affiliates and subcontractors of a party);

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- (bb) **Privacy Policy** means the Mizzen's privacy policy available at <https://www.mizzenit.com/Help/PrivacyPolicy>, as amended from time to time.
- (cc) **Rate Management Services** has the meaning given in clause 5.1(b);
- (dd) **Rate Sheet** means the pricing guidelines issued by a Shipping Line, Non Vessel Operating Common carrier, Agent or service provider, and including information such as carrier name, charge name, item codes, currency, charge value, effective dates, origin, destination, port pair and equipment size or type;
- (ee) **Services** has the meaning given in clause 1.1 and includes the Shipping Line Services, Rate Management Services and any other services provided under this agreement;
- (ff) **Shipping Lines** has the meaning given in clause 1.1;
- (gg) **Shipping Line Fee** means the relevant fee (as applicable to Shipping Lines) detailed at <https://www.mizzenit.com/Help/Pricing>, or otherwise agreed in writing by the parties, as varied from time to time in accordance with these Terms;
- (hh) **Shipping Lines Services** has the meaning given in clause 5.1(a);
- (ii) **Termination Period** has the meaning given in clause 18.1;
- (jj) **Terms** means these terms and conditions, as amended by Mizzen from time to time in accordance with clause 1.3;
- (kk) **Transshipment Port** means any port utilised for the purpose of transferring the containers from one vessel to another vessel in order to reach their final destination, unlike a direct service from the port of loading to port of discharge;
- (ll) **Website** has the meaning given in clause 1.1; and
- (mm) **Your Content** has the meaning given in clause 4.1(f).

24.2. In these Terms, unless the context clearly indicates otherwise:

- (a) a reference to **this agreement** or **these Terms** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (c) **clause headings** are for convenience only and do not form part of this agreement;
- (d) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (e) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (f) a reference to a **corporation** includes its successors and permitted assigns;
- (g) a reference to a **right or obligation of a party** is a reference to a right or obligation of that party under this agreement;

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- (h) an **obligation** or **warranty** on the part of two or more persons binds them jointly and severally and an obligation or warranty in favour of two or more persons benefits them jointly and severally;
- (i) **including** and **includes** are not words of limitation;
- (j) a reference to a **time** is to that time in Sydney, New South Wales;
- (k) a word that is **derived from a defined word** has a corresponding meaning;
- (l) monetary **amounts** are expressed in Australian dollars;
- (m) the **singular** includes the plural and vice-versa; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a **Business Day**, the obligation must be performed or the event must occur on or by the next Business Day and if an act occurs after 5pm on a day it is taken to occur on the next Business Day.

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