



# **MSC SOUTH AFRICA TERMS AND CONDITIONS**

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**MSC SOUTH AFRICA MEANS MEDITERRANEAN SHIPPING COMPANY /PTY) LTD., MSC HOUSE, 54 DR LANGALIBALELE DUBE STREET, 4001 DURBAN, SOUTH AFRICA, INCLUDING ALL ITS BRANCH OFFICES IN SOUTH AFRICA.**

**THIS AGREEMENT IS REFERRED TO AS THE “AGENCY T&Cs” AND MSC SOUTH AFRICA IS REFERRED TO AS THE “AGENT”.**

**THE AGENT ALWAYS ACTS, ON BEHALF OF AND IN THE NAME OF MSC MEDITERRANEAN SHIPPING COMPANY S.A. (THE “CARRIER”) UNLESS EXPRESSLY INDICATED OTHERWISE.**

**THE AGENCY T&Cs ARE APPLICABLE TO ALL DEALINGS BETWEEN THE AGENT AND ANY COUNTERPARTIES. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY CONTRACTS OF CARRIAGE ENTERED INTO AND ANY SERVICES PROVIDED BY OR ON BEHALF OF THE CARRIER.**

**THE AGENCY T&Cs INCORPORATE ALL THE TERMS AND CONDITIONS IN THE CARRIER’S SEA WAYBILL AS PUBLISHED ON THE CARRIER’S WEBSITE AT THE TIME A CONTRACT IS FORMED (THE “CARRIER’S SEA WAYBILL”).**

**IN RELATION TO ANY CONTRACTS OF CARRIAGE ARRANGED BY THE AGENT, THESE WILL BE SUBJECT TO:**

- 1. THE CARRIER’S SEA WAYBILL, SAVE THAT IF A BILL OF LADING IS ACTUALLY ISSUED BY THE CARRIER, THEN ALL THE TERMS AND CONDITIONS IN THE “CARRIER’S BILL OF LADING” SHALL APPLY INSTEAD OF THE CARRIER’S SEA WAYBILL; AND**
- 2. THE AGENCY T&Cs AT THE PORTS OF LOAD, CALL, TRANSSHIPMENT AND DISCHARGE BUT ONLY TO THE EXTENT THAT THE ISSUE IN DISPUTE RELATES TO MATTERS THAT HAVE OCCURRED AT SUCH PORTS AND THERE ARE SPECIFIC PROVISIONS IN THE LOCAL AGENCY TERMS DEALING WITH THE ISSUES THAT HAVE ARISEN. THESE AGENCY T&CS ARE AVAILABLE AT [WWW.MSC.COM](http://WWW.MSC.COM); AND**
- 3. THE TERMS OF THE BOOKING NOTES AND BOOKING CONFIRMATIONS**

# 1. DEFINITIONS

- 1.1 Carrier or MSC: means MSC MEDITERRANEAN SHIPPING COMPANY S.A., 12-14 Chemin Rieu, 1208 Geneva – Switzerland.
- 1.2 Combined Transport: arises if the Carrier has indicated a Place of Receipt and/or a Place of Delivery on the sea waybill / bill of lading front in the relevant spaces. Combined Transport consists of a Port-to-Port carriage and Inland Transport.
- 1.3 Container: includes any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate Goods and any connected or accessory equipment.
- 1.4 Cut-off date/time: means latest time at which specific information or documents must be sent to MSC or its agent by the Merchant or when the Goods must be delivered at the port of loading.
- 1.5 Freight: includes the freight and all charges, costs and expenses whatsoever payable to the Carrier in accordance with the applicable Tariff and the sea waybill / bill of lading, including storage, per diem and demurrage.
- 1.6 Goods: includes the whole or any part of the cargo, including any packing or packaging materials and Merchant owned or leased Containers.
- 1.7 Hague Rules: means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 with the express exclusion of Article 9.
- 1.8 Hague–Visby Rules: means the provisions of The Hague Rules 1924 as Amended by the Protocol adopted at Brussels on 23 February 1968, and 21st December 1979 (SDR Protocol) where applicable. Notwithstanding anything to the contrary herein it is expressly agreed that nothing herein shall contractually apply the Hague-Visby Rules to the contract of carriage and they shall apply only when compulsorily applicable by the law governing the contract of carriage.
- 1.9 IMDG Cargo: means any classified cargo under the International Maritime Dangerous Goods Code and its amendments.
- 1.10 Inland Transport: means carriage during Combined Transport other than between the port of loading and the port of discharge.
- 1.11 Merchant: includes the booking party, shipper, consignee, holder of a bill of lading, the receiver of the Goods and any Person owning, entitled to or claiming possession of the Goods or the corresponding Bill of Lading or anyone acting on behalf of this Person and every person defined as Merchant is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with the contract of carriage.
- 1.12 Person: includes an individual, corporation, company or any other legal entity.
- 1.13 Place of Delivery: means the place at which the Carrier has contracted to deliver the Goods, when such place is other than the port of discharge.
- 1.14 Place of Receipt: means the place at which the Carrier has contracted to receive the Goods, when such place is other than the port of loading.
- 1.15 Port-to-Port carriage: means carriage between the port of loading and the port of discharge.
- 1.16 Subcontractor: includes but is not limited to the owners, charterers and operators of the Vessel(s) other than the Carrier, as well as stevedores, terminals and groupage operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier performing the carriage, and any direct or indirect Subcontractors, servants and agents thereof, whether in direct contractual privity or not.

- 1.17 Vessel: includes the vessel named herein or any substituted vessel, feeder vessel, lighter or other watercraft utilized by the Carrier for carriage by sea.

## **2. APPLICABILITY AND PRIORITY**

- 2.1 In case of any inconsistency or conflict between the **3** sets of terms referred to at the start of this document, the order of priority will be as follows and the terms that rank higher shall prevail over the lower terms to the extent of such inconsistency or conflict but no further.
- 1st - the Carrier's sea waybill or Carrier's bill of lading terms and conditions.
- 2<sup>nd</sup> – the Agency T&Cs.
- 3rd – the terms of the booking notes and booking confirmations.
- 2.2 Orders and instructions of the Merchant and movements of Containers and/or Goods by the Merchant shall be considered as its acknowledgement and acceptance of the Agency T&Cs.
- 2.3 Any terms and conditions of the Merchant will not be applicable. Without prejudice to this, if any such terms were arguably incorporated into the agreement between the Carrier and the Merchant, then they would be superseded and replaced in their entirety by the Carrier's sea waybill and/or the Carrier's bill of lading terms and conditions and/or the Agency T&Cs. The only way for the conditions of the Merchant to apply would be if this was expressly agreed in writing by senior management of the Agent and the agreement must contain an express reference to this clause 2.3.

## **3. QUOTATIONS**

- 3.1 The Agent acts as agent for and on behalf of MSC only. All quotations made by the Agent are on behalf of and only on behalf of the Carrier.
- 3.2 Any quotation will become null and void unless the Merchant has placed the booking in writing within 30 days after receipt of the quotation. At any time during this period MSC or the Agent may, in its sole discretion, withdraw or amend the quotation. In any event, quotations made by MSC or its agents are not binding, even if accepted by the Merchant, until MSC or the Agent has transmitted a booking confirmation in writing to the Merchant, and MSC is under no obligation whatsoever to do this.
- 3.3 Quoted times and dates for the movements of Containers and Goods are always subject to equipment availability and space availability on board Vessel(s). MSC does not make any commitment regarding availability of Containers and/or space of any Vessel. Advertised transit times, sailing and arrival dates are estimated times only; and such schedules may be advanced, delayed or cancelled without notice. In no event shall the Carrier be liable for damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyances used to transport the Goods by sea or otherwise even if caused by negligence on the part of the Carrier.
- 3.4 All Freight and charges agreed between the Carrier and the Merchant are based on the Carrier's estimate of the expenses that will be incurred at the time the Goods are shipped. Such assessment will be made by the Carrier on reasonable grounds and in good faith. Any additional expenses incurred by the Carrier (such as, but not limited to, an increase in war risk insurance or charges due to congestion) before, during or after the carriage of the Containers and Goods may at any time be charged by the Carrier to the Merchant. The Freight and charges can never be lower, even if the actual expenses prove to be less than the Carrier's estimate.

- 3.5 Agreements regarding specific named account, commodity or Goods' weight shall only apply to shipments pertaining to these specific named account, commodity, and Goods' weight. In the event the Carrier discovers that there has been a breach of this provision, the Carrier will be entitled to charge to the Merchant the difference between the price that the Merchant paid and the price the Merchant should have paid. In addition, the Carrier will be entitled to charge an administration fee of USD 250.00 per booking.
- 3.6 Inland rate quotations are subject to third party increases which are valid at time of Vessel arrival.
- 3.7 Alterations caused by the Merchant, for instance release of Goods to alternative third parties, issuance of switch bills of lading, etc., are not included in MSC or its agents' quotations. MSC reserves its right to charge a fee against these requested changes as per the locally applicable tariff.
- 3.8 Unless stated otherwise and expressly confirmed in writing by the Carrier, each quotation issued by the Carrier is based on the following assumptions:
- That the Goods will be harmless Goods. In the event that the Goods consisted of hazardous Goods and/or IMDG Cargo, this would have to be made clear by the Merchant before the booking confirmation was issued and in any event, the carriage of such Goods would always be subject to the Carrier and Master's final approval (in their sole discretion) at the time of loading and in the event that the Carrier and/or Master refuses to carry the Goods then the Carrier would be under no liability whatsoever for any costs incurred by the Merchant in bringing the Goods to the port or removing them.
  - That the Goods will comply with all trade sanctions and/or import/export laws applicable to the Merchant, the Carrier and the Goods including but not limited to Swiss and EU regulations, and, when applicable, US regulations (collectively referred to as "Global Sanctions"). In case of any failure by the Merchant to comply with Global Sanctions, the Merchant shall indemnify, defend and hold the Carrier, its servants and agents harmless from any and all claims, demands, costs, losses, expenses, and liabilities (including attorney's fees and costs). The Merchant is strictly liable to indemnify the Carrier for all costs, losses, damages and consequences whatsoever arising out of any failure by the Merchant to comply with Global Sanctions. The Carrier reserves its right to ensure compliance with Global Sanctions. The Carrier may, at its sole discretion, cancel any booking, refuse loading or discharge or otherwise take any action needed to ensure compliance with sanctions, all such actions to be carried out at the Merchant's costs, risks, and expense.
  - That the Goods may be shipped and stowed on deck or under deck.
  - That the Goods will be in gauge Goods. Any out of gauge Goods must be brought to the attention of the MSC Agent and the MSC Agent will then quote for the Goods accordingly.
  - That the value of the Goods per Container does not exceed the sum of USD 200'000.00 (United States Dollars Two Hundred Thousand), hereafter the "Maximum Limit". In the event that the value of the Goods exceeds the Maximum Limit and the Merchant fails to notify the Carrier in writing prior to the booking party's acceptance of the quotation, the Goods will be deemed to be a non-ordinary commercial shipment made in the ordinary course of trade for the purpose of the Hague/Hague-Visby Rules and the Carrier's liability shall be limited to Maximum Limit or the limitation as provided for in the contract of carriage, whichever is the lesser.
- 3.9 In the event that the booking party wishes to ship Goods that consists of personal effects, exhibition goods and/or used cars, then the booking party must make this clear in writing when it contacts the Carrier and asks the Carrier to quote for the business and a reference to such goods must appear in the booking confirmation issued by the Carrier.
- 3.10 In the event that the final booking requested by the booking party does not conform with the assumptions set out in clause 3.7 and/or the booking party is in breach of clause 3.8, MSC reserves its right to provide a new quotation. Regardless of whether a new quotation is provided or not, the following shall apply:

- Cargo mis-description fee – The Merchant is liable for all resulting increased charges, costs, expenses, losses and damages whatsoever if the description of the Goods provided at the time of booking or as amended thereafter is inaccurate, unless the inaccuracy is a result of an error or omission on the part of the Carrier, its servants or agents. Failure by the Merchant to describe the Goods in a truthful, accurate and sufficiently detailed way to MSC in compliance with the Agency T&Cs or any applicable law or regulation, whether intentional or otherwise, will result in the application of a mis-description fee of USD 5'000.00 (five thousand US Dollars). It is further expressly agreed and accepted that such charge is in addition to any and all claims available to the Carrier under the terms and conditions of carriage.
- High value commodity mis-declaration fee - Any Goods with a commercial value exceeding the Maximum Limit must be brought to MSC's attention or its agents at the time of booking. Failure by the Merchant to inform MSC will result in the application of a high value commodity mis-declaration fee of USD 25'000.00 (twenty-five thousand US Dollars). The Merchant expressly agrees that such information communicated to MSC, whether made at or after the time of booking, shall not be considered as a declaration of value and the documentation so issued will not be deemed ad valorem, unless this has been agreed by MSC in writing and the corresponding ad valorem surcharge paid by the Merchant before the Goods arrive at the port of loading. Furthermore, in the event that the Carrier has issued a bill of lading in respect of the Goods, the bill of lading shall be void ab initio and it shall be replaced by a sea waybill. The Merchant hereby accepts and agrees that but for the misdeclaration and/or failure to declare the value of the Goods, the Carrier would not have agreed to issue a bill of lading.

- 3.11 Any situation generating damage or risk of damage to the Goods, Container, crew, Vessel and/or any third parties' property by reason of the carried Goods not being properly stacked, lashed, packed or braced, or due to any other breach by the Merchant of its obligations under the terms of the contract of carriage, will give rise to a Legal Administration Fee (**LAF**) as per clause 17. The LAF will be charged to and will have to be paid by the Merchant in addition to the costs and expenses incurred by the Carrier or its agents to remedy the situation.
- 3.12 In case of cancellation of the placed booking, a Booking Cancellation Fee (**BCF**) will be applied and charged to the Merchant unless a written notification of the cancellation is received by the Agent at least 10 (ten) days prior to the Vessel's pro-forma sailing as per schedule. The applicable BCF is available from the Agent upon request.
- 3.13 In addition to the BCF, the Carrier may charge one-third of the estimated total Freight for the shipment in case of cancellation of the booking before receipt of the Goods by the Carrier.
- 3.14 In case of cancellation of the booking after receipt of the Goods by the Carrier, all the Freight is deemed earned and due (see clause 16.2 of the Carrier' sea waybill / Carrier's bill of lading).

## **4. CARRIER'S RESPONSIBILITY IN THE AGENT'S JURISDICTION**

- 4.1 The Merchant acknowledges and agrees that pursuant to clause 10.3 of the Carrier's sea waybill / Carrier's bill of lading all contracts are subject to English law and the exclusive jurisdiction of the High Court in London, save as otherwise stipulated in clause 10.3 of the said documents.
- 4.2 Should a court or a tribunal seized of any dispute in relation to the contract of carriage assumes jurisdiction, then in addition to the Carrier's sea waybill / Carrier's bill of lading and to these Agency T&Cs, the following clauses shall also apply:

- The Carrier shall not be responsible for any fault of his servants or the Vessel's crew if damage has occurred as a result of fire or explosion on board, or as a result of any act, neglect or default in the navigation or in the management of the Vessel.
  - The same shall apply in relation to any act, neglect or default of a pilot or any other independent person involved in the navigation or management of the Vessel.
- 4.3 In the case of any dispute relating to Freight or other sums whatsoever due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the port of loading, port of discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.
- 4.4 Without prejudice to the generality of the foregoing provisions, the Carrier and its agents expressly reserve all their rights to rely on every exemption, limitation, condition and liberty, defense, and immunity of whatsoever nature which the Carrier, its agents, servants and Subcontractors are entitled to.

## **5. EXPORT AND CROSS-TRADE BOOKINGS**

- 5.1 The Agent's booking confirmation as sent in writing by the Agent to the Merchant formalizes the contract of carriage concluded between the Merchant and MSC, as a consequence of which all parties that fall within the definition of Merchant as defined in clause 1.11 become jointly and severally contractual partners of the Carrier.

Where the Merchant uses a booking agent, the Merchant warrants that the booking agent has the authority to enter into this contract, receive original bills of lading (if applicable) and provide confirming instructions to the Carrier, until the Merchant advises the Carrier otherwise in writing.

- 5.2 The Merchant is responsible for and shall have to recheck all information provided concerning the description of Goods, hazardous Goods / IMDG Cargo, reefer and out of gauge shipments details as well as for the correctness of weights indicated. The Merchant must inform MSC or its agents immediately in writing in case of any discrepancies or missing details. Any discrepancy or wrong information at the time of receipt of the Goods, especially in respect of the Goods' weight, may lead to substantial risk and costs for the account of the Merchant such as but not limited to the collapse of Container stacks, and it might result in the Goods not being shipped or being off-loaded and/or delayed. In particular, discrepancies may lead to a status change under the applicable quay / terminal tariff and lead to additional costs for the Merchant's account.

For cross-trade bookings, any instructions given to MSC or its agents by the booking party cancelling, suspending or modifying the booking before issuance of the bill of lading (if applicable) or sea waybill must be confirmed in writing by the shipper.

- 5.3 The booking party, the shipper and their servants, agents and subcontractors are jointly responsible for checking that the empty Container collected at the depot is used for the Goods/shipment booked with MSC or its agents for this specific Container. Neither MSC nor its agents shall be responsible for any costs arising out of swapping of Containers and/or Goods, including but not limited to repatriation, additional on-carriage costs, taxes or charges, whether the mistake happened during the empty pick-up, during stuffing or otherwise.



- 5.4 In case of Merchant's haulage, the Merchant is responsible for inspecting the empty Container for its suitability to carry the specific shipment booked at the time of empty pick up from the depot/terminal either directly or via its subcontractor. Any later refusal of a Container will cause additional costs for the account of the Merchant and neither MSC nor its agents shall be held liable for the costs of changing/replacing a Container accepted during empty positioning unless the defect affecting the Container was not detectable during a reasonably careful inspection; in which case the costs of the Container changing shall be shared equally. Notwithstanding the generality of the above, a light-test (visual verification of any light entry from within the Container with closed doors) is compulsory prior to each empty Container's acceptance and no liability shall be borne by the Carrier or its agents for costs of exchanging a Container found with holes or cracks at a later stage if this could have been detected by a light test.
- 5.5 Unless stated otherwise and expressly confirmed in writing, the Merchant is obliged to ensure that all Goods are properly lashed and secured and fit to withstand the shipment, and all such steps will be carried out at the Merchant's risk and expense.
- 5.6 It is the Merchant's responsibility to ensure that packaging and packing materials, especially timber, used to secure Goods within the Container comply with all applicable requirements (notably but not only in respect to their fumigation) and their import is permitted in the country of destination. The weight of packaging and packing must be included in the total weight declared for each Container.
- 5.7 It is the Merchant's responsibility to provide fumigation and/or phytosanitary certificates in good time for presentation to authorities as required and the Merchant is responsible for all consequences of failing to do so. The Merchant declares that all used wooden packing materials comply with International Standards for Phytosanitary Measures number 15 (ISPM-15) regulations.
- 5.8 Booking party and the shipper are jointly responsible, before pick-up or latest during stuffing of the Goods, for ensuring that the Containers only display the required IMO placards and labels and that other placards or labels from previous shipment are fully removed. Any costs resulting from a breach of the above will be for the Merchant's account.
- 5.9 The use of dry-van Containers in lieu of reefer or temperature-controlled Containers is entirely in the Merchant's discretion and the Carrier shall have no liability or responsibility whatsoever for thermal or condensation loss or damage to the Goods sustained by reason of this choice and/or natural variations in atmospheric temperatures whether the Container was carried on or under deck. Furthermore, the Carrier is under no obligation to give advice to the Merchant regarding the Merchant's decision in this regard.
- 5.10 For security reasons all Containers for all destinations must be sealed by the Merchant or their representatives directly after stuffing with a high security bolt seal or equivalent, compliant with the latest ISO regulations at the time of shipment or with equivalent security requirements. Failure to use compliant seals may lead to additional fee as per locally applicable tariff.

Carrier provided seals - The pin and base of any high security seal provided by MSC to the Merchant shall be used together exclusively. The Merchant commits to keep at all time the MSC seal in secured location, to ensure its traceability and in case of loss or mis-appropriation to inform MSC or its agent in writing without undue delay. Further, the Merchant shall hold the Carrier and its agents harmless against all consequences whatsoever of any breach of these obligations. In the event the Merchant requires provision of a replacement seal and the initial seal provided cannot be returned to MSC, MSC may demand that the Merchant issues a letter of indemnity against the potential misuse of the initial seal before MSC will provide a replacement seal.

In the event the Merchant does not use Carrier provided seals, the Merchant shall indemnify the Carrier against any loss, damage, liability or expenses whatsoever and howsoever arising, caused by the Merchant's use of a seal which does not comply with this provision.

All seals must be correctly placed on Containers' doors ([for a detailed instruction about correct placement of seals, please see our sealing procedure.](#)).

The shipper shall be responsible for declaring the seal number in the shipping instructions confirmed by the shipper to MSC.

Unsealed and incorrectly sealed Containers may be resealed upon arrival at the terminal at the Merchant's costs and responsibility and may be delayed. Any resulting costs are for account of the Merchant.

Any losses or damages or claims to Goods, Vessel, vehicle or third party or any Person arising or in connection thereof or due to an unsealed, improperly sealed or incorrectly sealed Container shall be for the account of Merchant and the Merchant shall be fully liable for any claims, losses and damages that may arise thereof.

- 5.11 Loading and stowage of Goods is carried out under the sole instructions of the Vessel's Master. All Goods and Containers may be stowed on deck and without notice to the Merchant, at Merchant's risk. Requests for "under deck" stowage are subject to written approval and confirmation by MSC or its agents.
- 5.12 Unless otherwise requested by the Agent at time of booking, all Freight and local charges must be paid in USD only or in EUR for shipments sailing from or to European ports. Requests from the Merchant to pay in another currency must be submitted in writing and is subject to MSC's written approval. Freight is deemed earned on receipt of the Goods by the Carrier. All Freight and local charges must be paid prior to receipt of the Goods by the Carrier, unless the Merchant has been granted in writing more favourable credit terms by MSC or its agents. "Payable elsewhere" or "Collect" freight must be previously approved in writing by MSC or its agents and no release of cargo at destination will be allowed until freight has been paid and received in the relevant Agent's bank accounts. Any bank service charges/ transaction costs are for account of the payer.
- 5.13 Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever.
- 5.14 Shipping instructions must be submitted latest by 4.30 p.m. on a working day, failing which they will be treated as having been received on the next working day. For shipments to countries/areas requiring an Advanced Manifest System (**AMS**)-filing or comparable procedures, special deadlines shall apply. The Merchant is responsible for enquiring about any specific deadline applicable to their shipment. The Merchant shall furnish correct shipping instructions for AMS-filing or comparable procedures. These filling procedures will be finalized on the basis of the shipping instructions and Advance Cargo Declaration (**ACD**). MSC shall not be under any obligation to send a draft of the bill of lading or sea waybill for the confirmation of the Merchant. Any correction requirement will be chargeable and will be made only after receipt of manifest corrector and security manifest amendment fees. The changes may be allowed subject to feasibility of such changes requested at the port of discharge and within the time frame confirmed, upon request of the Merchant, by the MSC Agency at place of booking.
- 5.15 Irrevocable choice of the type of contract of carriage – The Merchant is given at the time of booking a shipment the choice between covering the carriage under (1) a bill of lading or (2) a sea waybill (sometimes referred as an "express bill of lading" or "express release bill"). Notwithstanding anything to the contrary in the Carrier's terms and conditions, the Merchant's election to use (1) or (2) shall be deemed irrevocable and the Merchant shall retain no right to ask for the issuance of another type of contract other than the one initially chosen. Notwithstanding the foregoing, in the event that the Merchant does request a different contract of carriage and in the event that the Carrier does agree to this request, then this shall be in Carrier's sole discretion.

- 5.16 In consideration of the Carrier issuing a sea waybill, the booking party and the shipper undertake to ensure that the consignee designated on the sea waybill receives a legible copy of the sea waybill and agrees to abide by the Carrier's sea waybill terms and conditions as freely accessible under [www.msc.com](http://www.msc.com). The booking party and the shipper shall inform the consignee that a formal letter of acceptance of the Carrier's sea waybill terms and conditions may be requested from them at destination prior to delivery, it being made expressly clear that failure by MSC or its agents to obtain such a letter of acceptance prior to release of the Goods shall not be deemed in any way as a waiver by MSC of its rights to rely upon the Carrier's sea waybill terms and conditions, and the consignee accepts that it is bound by the terms and conditions in the Carrier's sea waybill even if the booking party or shipper has failed to provide a copy. In case of any failure by the booking party and the shipper to comply with those obligations or refusal by the consignee to abide by the terms and conditions of Carrier's sea waybill, the booking party and the shipper will be jointly and severally liable to indemnify the Carrier for any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with such failure or refusal.
- 5.17 Shipping documents will be issued upon receipt of loading confirmation and kept at Merchant's disposition at the at the Agent's local office. Transfer and dispatch of documents (by registered mail or courier) will only be completed upon Merchant's request and after payment of Freight and all other sums due to the Carrier, and at Merchant's sole risk, expense and responsibility and shall be deemed remitted to the Merchant upon sending.
- 5.18 The booking number as confirmed by the Agent to the Merchant must be provided to the terminal's gate at port of loading upon gate-in of the full Container. The Merchant and/or its servants, agents and subcontractors are jointly responsible to ensure proper communication of the booking number during gate-in and MSC shall in no circumstances whatsoever be liable for any consequence arising from or in connection with improper or incomplete communication of such booking number.
- 5.19 All MSC operated Vessels sail in a regular liner service. Upon receipt of a written request from the Merchant, MSC may in its sole discretion, elect to supply a classification certificate and/or regular liner attestation.

## **6. GOODS WEIGHT DECLARATION AND VGM COMPLIANCE**

- 6.1 The booking party and shipper must check and ensure that the actual payload per Container complies with all country-specific legal regulations or requirements, including but not limited to any inland transport regulations, at origin, at port of loading, in transit countries, at port of discharge, and at destination. They are expressly reminded that loading Goods in excess of the maximum payload of Containers is not permitted by law and this may result in severe injuries and casualties for which the Merchant will be held fully liable.

As per the Safety of Life at Sea (SOLAS) Convention, it is mandatory for shippers to verify weights of packed Containers, regardless of who packed the Container. The verification of actual Container weight must be performed onshore and must be confirmed to the Vessel operator and the port terminal facility prior to Verified Gross Mass (**VGM**) Cut-off date/time. Neither MSC nor its agents shall be responsible for any costs arising out of or related to the declaration of incorrect Container weights.

If the Merchant fails to comply with these provisions the Carrier reserves its right to deal with such Goods as it sees fit, including but not limited to not loading the Goods, stopping Goods in transit, discharging at the next port and/or repacking them and levying extra charges, and the Merchant is strictly liable to indemnify the Carrier for all costs, losses, delays, damages, fines, increased charges and any other consequences whatsoever arising from the shipment of overloaded Containers.

- 6.2 All VGM declarations must be submitted to MSC prior to the VGM Cut-off date/time, failing which Containers may not be planned on the scheduled Vessel. All costs, and consequences for any delay in submitting VGM declarations, non-submission of VGM declarations and/or for any noncompliance with VGM statutory guidelines shall be for the Merchant's account. MSC does not permit its Containers to be used in any manner whatsoever to lift, load, move or carry Goods that:
- are wrongly declared, or
  - weight in excess of the declared VGM or commercial / manifest weight declared, or
  - weight in excess of the payload of the equipment.
- 6.3 Should MSC be made aware, prior to or during carriage, that its Containers have been used in breach of any of the above prohibitions, the Container(s) concerned may be refused for loading, kept onboard for return to origin, discharged at the next convenient port and/or corrective measures such as, but not limited to, restuffing into other Containers. All such steps may be taken in MSC's sole discretion and shall be done at the Merchant's sole risks and expense, including but not limited to additional Freight.
- 6.4 The Merchant shall be liable to MSC and its agents for all losses, claims, fines, demands, suits and actions of any kind whatsoever including in respect of death and personal injury, legal and court expenses, whether directly or indirectly resulting from or connected to such unauthorized use of the MSC's Containers.
- 6.5 Any extra work generated due to a breach of any of the above prohibitions shall give rise to an ad hoc surcharge and MSC reserves its rights to exercise a lien over the infringing Goods and/or any other Goods carried on behalf of the Merchant until the costs due to MSC, including the surcharge and any costs incurred in exercising the lien, have been fully paid.
- 6.6 The above applies mutatis mutandis to Merchant's owned or operated Containers or equipment tendered to the Carrier for shipment.

## **7. MILITARY AND/OR PARA-MILITARY CARGO**

- 7.1 For any intended booking regarding the shipment of military and/or para-military cargo (defined in the broadest sense as cargo which has or might have a military purpose and/or cargo that is or might be destined to or originating from military or para-military authorities or their suppliers, including so-called dual-use cargo), it is mandatory to submit the following documents to MSC prior to any possible acceptance of such booking: packing list, commercial invoice, HS codes consisting of minimum 6 (six) digits, full details of the manufacturer and end user of such cargo, copy of the import license and/or export license of the importer/ exporter of such cargo, final destination of the Goods.
- 7.2 In any case no booking of military / para-military cargo can be accepted without MSC having received the prior approval from the relevant authorities. Furthermore, the compliance policy requirements of MSC must be adhered to.
- 7.3 Any quotation obtained on the basis of incomplete or inaccurate information as to the nature or value of the cargo shall not be binding on MSC and/ or shall be considered a material breach of contract, entitling MSC to suspend, modify or cancel the transportation at the Merchant's sole risk and expenses, and without prejudice to any other remedy available to the Carrier.

## **8. HAZARDOUS GOODS AND IMDG CARGO**

- 8.1 The Merchant and all its subcontractors engaged in the transport of hazardous Goods and IMDG Cargo intended to be transported by sea must have been trained in the contents of hazardous Goods and IMDG Cargo provisions, commensurate with its responsibilities, and must comply with all provisions of the IMDG Code and its amendments.
- 8.2 The Merchant is responsible to ensure that relevant IMO labels are affixed on the Containers carrying hazardous Goods and IMDG Cargo in such a manner that they are visible to all and stay intact and in place from the moment the Container leaves the place of stuffing and until Container is physically delivered to the final receiver. The Merchant shall be liable for any subsequent liabilities, costs or consequences arising out of a breach of the above responsibility.
- 8.3 Hazardous Goods and IMDG Cargo bookings are only accepted together with a dangerous goods declaration (DGD).
- 8.4 The signed "Container Packing Certificate" needs to be presented at the latest 48 hours prior to the export Cut-off date/time at terminal.
- 8.5 Even if a hazardous Goods and IMDG Cargo booking is accepted by MSC in the first instance, MSC reserves its right to reject the shipment in the Vessel's Master discretion.
- 8.6 The booking party and shipper are responsible to enquire with MSC or its agents as to the Cut-off date/time applicable to hazardous Goods and IMDG Cargo containers and its documentation.

## **9. WASTE AND SCRAP CARGO**

- 9.1 The Merchant is responsible to ensure that each booking and shipment of waste and/or scrap cargo is properly and fully declared to MSC and all applicable authorities, and that the shipment complies with all laws and regulations applicable to the shipment throughout its entire carriage. This obligation includes but is not limited to, compliance with all laws and regulations applicable to shipments of waste and/or scrap cargo, as may be amended from time to time, including but not limited to local law and customs regulations in the Agent's jurisdiction on the shipment of waste, EU Regulation 1013/2006 of 14th June 2006 on shipment of waste as amended from time to time, the 1989 Basel convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposals, and any subsequent regulation of similar scope.
- 9.2 Any wrong declaration or missing documentation will result in a mis- or improper declaration fee of USD 1'000.00 (one thousand US Dollars) per Container being levied by the Carrier and this is payable within 14 days of MSC's written demand. This mis- or improper declaration fee shall be payable to MSC irrespective of whether the Merchant becomes liable to pay an administrative fine imposed by authorities. The Merchant is also obliged to indemnify MSC in respect of any liability that MSC or its agents may incur due to the mis- or improper declaration, and the Merchant is not permitted to off-set such a claim by reference to the mis- or improper declaration fee that it has paid or should pay.

## **10. REEFER AND TEMPERATURE-CONTROLLED GOODS**

- 10.1 A special reefer booking form shall be provided duly filled out for each reefer booking request, a template being available upon request at the Agent's export desk.

- 10.2 The Merchant is solely responsible for ensuring that the Container temperature is set at the required carrying temperature, and that the ventilation and humidity control, if such a setting facility exists, are properly set prior to stuffing of the Goods. The Merchant's use of the Container shall be prima facie evidence of its being sound and suitable for use. MSC or its agents shall not be held liable for damages generated by hot stuffing or wrong pre-settings.
- 10.3 For reefer shipments, the Merchant is responsible for ensuring that the setting parameters (including temperature, humidity and ventilation) given to the Carrier in the corresponding booking form match the shipping instructions. Any consequence arising from any discrepancy and/ or inconsistency in declarations will be the sole responsibility of the Merchant, and the Carrier will be under no liability whatsoever in that regard.
- 10.4 The maximum load line appearing on the reefer Container panels shall not be exceeded under any circumstance, as this would impair the correct circulation of the cooling air. Neither MSC nor its agents shall accept any liability due to a breach of this term.
- 10.5 The Merchant must take note that refrigerated Containers are not designed:
- To cool or freeze Goods which have been loaded into a Container at a temperature higher than their designated carrying temperature. The Carrier shall not be responsible for the consequences of the Goods being loaded at a higher temperature than that required for the carriage; nor
  - to monitor and control humidity levels, even if a setting facility exists, and because humidity is influenced by many external factors the Carrier does not guarantee and is not responsible for the maintenance of any intended level of humidity inside any Container.

## **11. RO-RO TRANSPORTATION AND CARRIAGE OF VEHICLES**

Should the Merchant request MSC to transport vehicle(s) or any similar cargo, the following conditions shall apply:

- 11.1 MSC shall not be responsible for:
- scratches, dents, bumps, rusty spots, damaged upholstery fittings and/or engine/mechanical malfunctions/breakdowns on used/second-hand Goods nor for any consequence whatsoever resulting therefrom.
  - pilferage and/or damage to personal effects and accessories, equipment, removable fittings, cargo and/or other possessions left onto or inside the Goods carried.

- 11.2 The Merchant warrants that the vehicle(s) or any similar cargo shipped under the bill of lading / sea waybill, including anything left onto/inside it, are gas free and do not contain used refrigerators, freezers or air-conditioning equipment and cannot be considered toxic or harmful/hazardous waste or any other prohibited Goods banned for import or export under the legislation applicable at the country of the port of loading and/or the port of discharge.
- 11.3 The Merchant agrees to be fully responsible for and to indemnify and hold MSC harmless against any inaccuracy in the Goods details such as, but not limited to, chassis/VIN number, age, weight, measure, marks, number, quality, contents etc. furnished at the time of booking to MSC.

## **12. EXPORT AND IMPORT LOCAL CHARGES (STORAGE / DEMURRAGE / DETENTIONS / ETC)**

- 12.1 The Merchant is required to check the applicable export and import local charges to be paid by contacting directly the local Agent or by going to [www.msc.com](http://www.msc.com), visiting the MSC Agent country guides' page.

## **13. IMPORT BOOKINGS**

- 13.1 The provisions set out in these Agency T&Cs apply mutatis mutandis to import bookings as well as the export bookings.
- 13.2 In addition to the above, the following form / list must be properly filled out with all corresponding information and provided to MSC or its agents for any / all import bookings:
- Client reference (if any)
  - Pre-carriage (if any)
  - POL
  - POD
  - On carriage (if any)
  - Volume
  - Commodity
  - Shipper
  - Freight Forwarder (for export from USA only)
  - Origin (for export from USA only)
  - Consignee
  - Notify
  - Notify 2 (if any)
  - Rate reference
  - Agreed Ocean/Sea-freight
  - Ocean/Sea-freight payable at

- D-THC and local charges payable at
- Type of carriage document (if a choice is allowed by MSC)
- Estimated time of shipment



## **14. INLAND FORWARDING SERVICES PROVIDED OUTSIDE THE SCOPE OF MSC'S BILL OF LADING OR SEAWAYBILL**

- 14.1 Insofar as an MSC agent agrees to procure, in addition to the voyage expressly covered by the Carrier's bill of lading / sea waybill (or in cases where no transport documents have been issued, by the Carrier's initial freight quotation or booking confirmation), inland forwarding services including but not limited to the procurement of pre- or on-carriage, then that agreement dealing with inland forwarding services (but not the port to port / ocean carriage) will be between the MSC Agent and the Merchant directly. The Carrier shall in no circumstances whatsoever be considered as a party of such agreement.
- 14.2 Under this inland forwarding services agreement, the Merchant is obliged upon placing of the order to explicitly draw the MSC agent attention to the cargo value, if such value exceeds USD200'000.00 (two hundred thousand US dollars), in order to give MSC Agent the opportunity, without any obligation on MSC's part, to propose appropriate safety measures during the respective carriage and to explain the costs of these measures. Any such forwarding services are provided on terms as proposed by MSC's Agent.

## **15. IMPORT REQUIREMENTS FOR RELEASE OF GOODS**

- 15.1 Goods / Container(s) will not be authorized for release until all outstanding Freight and charges as well as any costs accrued in connection with the transportation of such Goods (including but not limited to costs of inspection in transit or the consequence thereof and local charges) are fully paid to the Carrier or its agents. Delivery of the Goods before such payment shall not be deemed as a waiver of such costs whatsoever and MSC shall remain entitled to claim all sums owed in full.
- 15.2 By surrendering of the original bill of lading, the Consignee confirms its acceptance of the Carrier's bill of lading terms and conditions and might be required to sign the bill of lading's back.
- 15.3 In case the bill of lading is issued "to order" or "to order of" a named consignee, a readable and complete chain of endorsements is necessary to proceed with the release.
- 15.4 When a telex release is requested, the consignee shall also confirm in writing its acceptance of the Carrier's bill of lading terms and conditions before MSC is obliged to release the Goods.
- 15.5 When a sea waybill (sometimes referred as an "express bill of lading" or "express release bill") has been issued, Goods/Container(s) will not be authorized for release until the consignee has signed a letter as per MSC's standard wordings which acknowledges consignee's acceptance of the Carrier's sea waybill terms and conditions, including the law and jurisdiction clause. A sample letter is available at [www.msc.com](http://www.msc.com).
- 15.6 Before the Merchant sends a truck to collect a Container, the Merchant shall contact the terminal interchange to check the Container's availability in respect of release and/or transportability. MSC and its agents shall not entertain any claim for waiting time or additional trucking costs if the Merchant fails to take this step and act accordingly.
- 15.7 In case of Inland Transport from the port of discharge, the Merchant's delivery instruction, together with all required documents, must reach the Agent at least 4 (four) working days prior to the estimated time of arrival (ETA) of the Vessel at the port of discharge. Failure by the Merchant to comply with this obligation may result in the Carrier or its agent incurring additional costs, such as but not limited to extra storage, monitoring and plugging costs and/or detention and demurrages, which will be for sole account of the Merchant, and neither MSC nor its agents shall be held liable for any delay and/or additional costs caused by a breach of such obligation.

- 15.8 All Freight and local charges must be paid without deduction or set-off prior the release of Goods. Delivery of Goods should not be considered as a waiver whatsoever of these Freight and charges.
- 15.9 Delivery
1. Delivery of the Goods is always subject to the Carrier's applicable Tariff referred to in Clause 3 of terms and conditions of the MSC bill of lading and/or sea waybill.
  2. Should the Merchant fail to take delivery of the Goods within 10 (ten) days from the date of discharge or alternative terms of delivery defined in the Carrier's applicable Tariff, such delay shall be deemed as unreasonable for the purpose of clause 20 of the Carrier's sea waybill / bill of lading terms and conditions, and the Carrier shall not thereafter have any further responsibilities or liability in respect of these Goods, even if such loss or damage is caused by negligence on the part of the Carrier.
  3. Notwithstanding the above, the Carrier shall be entitled, without notice, to unpack the Goods and/or to store the Goods ashore, afloat, in the open or under cover, at the sole and entire risk of the Merchant and such storage shall constitute due delivery and the costs of such storage (if paid or payable by the Carrier or any agent or sub-contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.
  4. If, whether by act or omission, the Merchant directly or indirectly prevents, delay or hinder the discharge or the delivery of the Goods, any costs, expenses or liability that results shall be for the Merchant's sole account.
  5. Paperless delivery order - The Merchant expressly agrees that in the context of any MSC contract of carriage, a delivery order shall include and may be validly established by any means, whether in electronic form or not and/ or whether nominal or not and/or whether revocable or not, authorizing the Merchant or its agents to take delivery of the goods. The Merchant shall keep the Carrier fully indemnified and hold the Carrier harmless against any loss, claim, damage, or expense of whatsoever nature arising out of or in connection with the loss, misplacement or misappropriation of such a delivery order or any of the information contained in it, after the same is issued or communicated to the Merchant.
- 15.10 The empty Container must be returned to the Container depot designated by MSC in a clean, undamaged condition and completely free of Goods, and any residues of Goods, and any residues from chemicals used to clean the Container, with fumigation labels and all other labels relating to Goods removed. Failure to comply with this requirement may result in additional costs for account of the Merchant.

## **16. EQUIPMENT RE-USE AND TRIANGULATION**

- 16.1 Equipment re-use occurs whenever an empty Container is re-used for a new shipment by the Merchant without first being returned to an MSC nominated Container depot for inspection and maintenance. Such equipment re-use must be authorised by MSC in advance and a status changeover date ending the import demurrage period will be agreed. The Merchant agrees to be charged with a re-use fee as set out in the Carrier's applicable Tariff.
- 16.2 Equipment re-use is tolerated for the sole benefit and convenience of the Merchant, who shall accordingly bear any and all risks associated with the re-use and shall keep the Carrier and its agents fully indemnified (including reasonable legal expenses) against any claim that is raised by any party caused by the re-use of the Container. The Merchant shall inspect the Container (internally & externally) for suitability and bear any expense (including without limitation, re-positioning of the re-used unit to a MSC depot and delivery costs of a replacement Container) in the event the Container is not fit for the intended carriage.

- 16.3 Should an Importing Merchant elect to triangulate a Container to another client (Exporting Merchant), the Importing Merchant shall first: -
- (a) obtain MSC South Africa's written authorization, and
  - (b) produce the Exporting Merchant's written acceptance of the triangulation.
- MSC South Africa will then issue a status changeover date, which will end the import demurrage period for which the Import Merchant shall be duly invoiced. The Exporting Merchant shall inspect the Container (internally & externally) for suitability. In the event that the Container is not fit for the intended carriage then the Exporting Merchant shall bear the cost for, inter alia, the delivery costs of a replacement Container, re-positioning costs of the re-used etc. The Exporting Merchant also undertakes and agrees to: -
- 16.3.1 be charged a triangulation fee as prescribed by the MSC South Africa Tariff.
  - 16.3.2 fully indemnified MSC and MSC South Africa against any claims and/or damages that may arise as a result of the triangulation.

## 17. LEGAL ADMINISTRATION FEE

- 17.1 MSC or its agents shall charge the Merchant a Legal Administration Fee (**LAF**) covering the extra coordination / organization work, and subsequent follow-up necessitated by any situation of damage or risk of damage to the Goods, Container, crew, Vessel and/or any third parties' property caused or generated by the Merchant's negligence, fault or misconduct. This fee will be charged in addition to any cost actually incurred by MSC as the result of the situation itself and steps taken to remedy the problem. The amounts that MSC will be entitled to charge are:
- For cost up to USD 500.00 (five hundred US Dollars): USD 40.00 per Container
  - For cost between USD 500.00 (five hundred US Dollars) and USD 1'000.00 (one thousand US Dollars): USD 80.00 per Container
  - For cost between USD 1'000.00 (one thousand US Dollars) and USD 2'000.00 (two thousand US Dollars): USD 140.00 per Container
  - For cost over USD 2'000.00 (two thousand US Dollars): USD 200.00 per Container
- 17.2 The Carrier and its agents are authorized to charge the LAF in any other legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim. Payment is due in 14 days from MSC's invoice.
- 17.3 The number of Containers taken into consideration for invoicing will be the number of Containers involved in the incident / casualty, and not the total number of Containers listed on the Bill(s) of Lading or Sea Waybill.
- 17.4 The costs referred to in clause 17.1 consist of repair costs and extra handling costs as charged to MSC or its agents, including all taxes and charges.