



MSC SWAZILAND TERMS AND CONDITIONS

MSC SWAZILAND

AS AGENT ONLY FOR MSC MEDITERRANEAN SHIPPING COMPANY S.A., GENEVA

Sensitivity: Internal

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MEDITERRANEAN SHIPPING COMPANY SWAZILAND (PTY) LIMITED ACTS, UNLESS EXPRESSLY INDICATED OTHERWISE, ALWAYS ON BEHALF AND IN THE NAME OF MSC MEDITERRANEAN SHIPPING COMPANY S.A. (THE "CARRIER").

THE CONTRACT OF CARRIAGE AND ALL SERVICES OF THE CARRIER ARE SUBJECT TO THE CARRIER'S TERMS AND CONDITIONS (EITHER, WHEN A BILL OF LADING IS ISSUED SUBJECT TO THE "[BILL OF LADING STANDARD TERMS AND CONDITIONS](#)", OR, IN ALL OTHER CASES SUBJECT TO THE "[SEAWAYBILL TERMS AND CONDITIONS](#)"), THE BOOKING TERMS AND THE LOCAL AGENCY TERMS AND CONDITIONS AT THE PORTS OF LOADING, TRANSSHIPMENT AND DISCHARGE.

1. DEFINITIONS

- 1.1 Container: means any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate Goods and any connected or accessory equipment;
- 1.2 Goods: means the whole or any part of the cargo carried under the MSC Bill of Lading, including any packing or packaging materials and Merchant owned or leased Containers;
- 1.3 Carrier: means MSC MEDITERRANEAN SHIPPING COMPANY S.A.,12-14 Chemin Rieu, 1208 Geneva – Switzerland;
- 1.4 MSC: means MSC MEDITERRANEAN SHIPPING COMPANY S.A.,12-14 Chemin Rieu, 1208 Geneva – Switzerland and its Agents;
- 1.5 MSC Swaziland: means Mediterranean Shipping Company Swaziland (Pty) Ltd. 1st Floor, Nashua House, Plot 153, 1st Avenue, Matsapha, Swaziland acting as agent of MSC MEDITERRANEAN SHIPPING COMPANY S.A. only.
- 1.6 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 the possession of the Goods or the corresponding Bill of Lading or anyone acting on behalf of this Person and when the context so requires means those persons jointly and severally.
- 1.7 Tariff: means MSC Swaziland's Landside Tariff and Container Utilisation Tariff which shall be made available upon request.

2. APPLICABILITY

- 2.1 In case of any inconsistency between these Agency Terms and Conditions and the Terms and Conditions of the MSC Bill of Lading and/or Sea Waybill, the latter shall prevail.
- 2.2 These Agency Terms and Conditions and Agency Landside Tariff and Container Utilisation Tariff shall be deemed to form part of all contracts between the Merchant and Carrier via its local agent MSC Swaziland. Orders and instructions of the Merchant shall be considered as his/her acknowledgement and acceptance of these Agency Terms and Conditions and Tariff and Container Utilisation Tariff.
- 2.3 General Conditions of the Merchant will not be applicable and shall not in any way supersede these Agency Terms and Conditions, the Tariff and the Carrier's Terms and Conditions. Any deviations from the Agency Terms and Conditions, the Tariff and/or the Carrier's Contract of Carriage, shall be of no force and effect unless explicitly agreed in writing by the Carrier or MSC Swaziland.

3. QUOTATIONS

- 3.1 Unless otherwise stated, MSC Swaziland acts as agent for and on behalf the Carrier, and quotations are made by MSC Swaziland on behalf of the Carrier.
- 3.2 Quotations made by MSC Swaziland are not binding until MSC Swaziland has issued a final booking confirmation and same has been transmitted, in writing, to the Merchant. Any quotation will automatically be null and void unless the Merchant accepts the quotation **(in writing)** within 30 calendar days after receipt of the quotation.
- 3.3 Quoted times and dates for empty positioning and loading are always subject to equipment availability and space, therefore, MSC cannot/does not provide any guarantees to the Merchant. Advertised transit times, sailing and arrival times are estimates only; and such schedules may be advanced, delayed or cancelled without notice and at MSC's sole discretion. In no event shall MSC be liable for damages for any delay in scheduled departures or arrivals of any vessel or other conveyances used to transport the Goods by sea or otherwise.
- 3.4 All charges are "VATOS" (Valid at Time of Shipment), however, the Merchant is advised that unforeseeable and unavoidable additional costs may result, due to no fault of the MSC, and which costs shall be for the account of the Merchant.
- 3.5 Inland rate quotations are subject to third party increases which are valid at time of vessel arrival.
- 3.6 Any alterations to the quote made by the Merchant shall render the quotation invalid, unless such alteration is accepted in writing by MSC Swaziland.
- 3.7 Unless stated otherwise and expressly confirmed in writing by MSC Swaziland, each quotation always relates to harmless Goods.
- 3.8 The nature of all other goods which are not deemed to be harmless, must be specifically declared to MSC Swaziland when requesting a quote. Such goods include but are not limited to:
- 3.8.1 IMDG cargo;
 - 3.8.2 Any Military cargo and/or cargo consigned to any military and/or government entities;
 - 3.8.3 Personal effects, used clothing, exhibition Goods and/or used cars;
 - 3.8.4 Out of Gauge cargo;
 - 3.8.5 Arms and Ammunition;
 - 3.8.6 Weapons of any nature.
 - 3.8.7 Pharmaceuticals
- 3.9 The Merchants represent that the cargo value per Container load, does not exceed the sum of USD 200 000.00 and they acknowledge that the quotation is based on this representation. In the event that the cargo value exceeds the aforementioned sum, and the Merchants fail and/or neglect to notify MSC in writing prior to their acceptance of the quotation, such misrepresentation shall be deemed a material breach of the Contract of Carriage and MSC's liability shall be limited to USD 200 000.00. **The Merchants further acknowledge and agree that as a result of such material breach, he/she shall not be afforded the protection of any limitation prescribed by an international shipping convention(s) and/or regulation(s).**
- 3.10 **In the event that the booking does not correspond to the details specified in the quote request and/or the requirement as set out above, the original quotation shall be voidable at the instance of MSC and a new quotation may be required.**

4. CARRIER'S RESPONSIBILITY IN SWAZILAND JURISDICTION

- 4.1 The Merchant acknowledges and agrees that pursuant to clause 10.3 of the Carrier's Contract of Carriage, the Parties' contractual relationship is subject to English law and the exclusive jurisdiction of the High Court in London, save as otherwise stipulated in clause 10.3. Notwithstanding the aforementioned, should Swaziland law be applied by any court or tribunal, assuming jurisdiction in respect of the Carrier's obligations/liability, then in such event the following shall apply in addition to the terms of the Carrier's Contract of Carriage:
- 4.1.1 **The Carrier shall not be responsible for any fault of its servants or the ship'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 ship, other than predominantly carried out in the interest of the cargo.**
- 4.2 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 ship.

5. EXPORT- AND CROSS-TRADE BOOKINGS

- 5.1 MSC Swaziland's Booking Confirmation formalizes the transportation contract concluded between the Merchant and MSC. As a direct consequence of the aforementioned, the Merchants become jointly and severally responsible to MSC, for the due and punctual performance of their obligations in terms of these Agency Terms and Conditions, the Tariff, and the Carrier's Contract of Carriage.
- 5.2 It shall be the Merchant's sole responsibility to ensure the accuracy of all information provided to MSC. Should any discrepancies be noted by the Merchant, the Merchant shall be obliged to immediately inform MSC, in writing. Any discrepancies or inaccurate information provided by the Merchant to MSC, may lead to substantial risks, costs and/or damages for the account of the Merchant and MSC's rights remain fully reserved.
- 5.3 The Merchant is obliged to check and ensure that the maximum payload complies with all country-specific legal regulations and/or requirements at origin, in the transit countries and at destination. Should Goods be refused entry **at any point** for whatever reason, same will be returned to origin port at the expense of the Merchant and at MSC's sole discretion. The Merchant is hereby reminded that overstuffing of Containers is not permitted by law and may result in severe injuries and casualties for which the Merchant will be held fully liable.
- 5.4 For security reasons, all Containers must be sealed by the Merchant directly after stuffing and before leaving the packhouse, with a High Security Bolt Seal or equivalent. The Merchant's failure to properly seal the Container shall be at the Merchant's sole risk. Unsealed and incorrectly sealed Containers may (if noticed) be resealed upon arrival at the terminal and at the Merchant's sole risk and cost.
- 5.5 The Loading and stowage of Goods is carried out under the sole instructions of the Ship's Command. All Goods are stowed "option deck" at Merchant's risk. Requests for "under deck" stowage are subject to written approval and confirmation by MSC.
- 5.6 Unless expressly agreed otherwise, all invoices are payable immediately, without deduction or rights of retention and/or set-off.
- 5.7 For shipments to countries/areas which require an Automated Manifest System-filing or comparable procedure, special deadlines shall apply. It shall be the Merchant's sole responsibility to enquire about the specific deadline and/or the costs applicable to their shipment (if any).

- 5.8 Exports to certain countries are subject to sanctions and/or restrictive measures which are imposed by the EU, UN and/or other international or local authorities. It is the Merchant's sole responsibility to ensure complete compliance with all applicable trade sanctions and import/export control laws. The Merchant is strictly liable to indemnify MSC for all costs, losses and damages of whatever nature, arising out of any failure by the Merchant to comply with such sanctions. MSC reserves the right to ensure compliance with the applicable sanctions.
- 5.9 The Merchant declares that all packing materials utilised by the Merchant, comply with the International Standards for Phytosanitary Measures.
- 5.10 *In consideration of Carrier issuing, at the booking party or the shipper's request, Sea Waybill instead of Bill of Lading for the contract of carriage of the cargo, the booking party and the shipper hereby indemnify the Carrier for all and any claims, losses, costs, expenses and liabilities of any nature whatsoever that arise in consequence of the use of a Sea Waybill instead of a Bill of Lading. The booking party and the shipper further undertake to ensure that the Consignee designated on the Sea Waybill receives a legible copy of, by fax or e-mail, and agrees to abide by, the terms, conditions, exceptions and limitations contained in the Carrier Sea Waybill as freely accessible under www.msc.com and to inform the Consignee that a formal letter of acceptance of the MSC Sea Waybill Terms and Conditions will be requested from him at destination prior to delivery, being made expressly clear that oversight from MSC or its agent to obtain such a letter of acceptance prior release of the cargo shall not be deemed in any way as a waiver by MSC of its rights to rely upon, nor as a non-acceptation by the Consignee, of these Terms and Conditions.*
- 5.11 The Bills will be issued immediately upon receipt of loading confirmation and kept at the Shipper's disposition, at MSC Swaziland's offices, and will be made available for collection by the Shipper or his/her duly authorised representative, provided all applicable charges have been paid.
- 5.12 The Merchants are jointly responsible for: -
- 5.12.1 Inspecting the empty Container for its suitability to carry the specific commodity booked at the time of empty pick up, and the Merchant's use of the Container shall be prima facie proof of its suitability for carriage. Any subsequent refusal of the Container will cause additional costs for the account of the Merchant, and MSC shall not be held liable for the costs of changing/replacing a Container accepted during empty positioning;
- 5.12.2 Ensuring that all labels have been removed from the Container before pick-up, or latest, during stuffing of the Goods. Costs resulting from failure to do so will be for the account of the Merchant.
- MSC shall not be responsible for any costs resulting from the Merchant's failure to comply with its obligations as stated above.
- 5.13 As per the SOLAS Convention (Safety of Life at Sea) it is mandatory for shippers to verify the weight of packed Containers, regardless of who packed the Container. The verification of actual Container weight must be obtained on-shore, and provided to the vessel operator and the port terminal facility prior (VGM cut off) to the commencement of the vessel loading process. MSC shall not be responsible for any costs linked to the mis-declaration of Container weight and the Merchant shall fully indemnify MSC against any costs, claims and damages which may result, due to such mis-declaration.
- 5.14 High Value Commodity Mis-Declaration Fee - Any cargo with a commercial value exceeding USD 200,000 must be declared to MSC 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 per Container load, being expressly agreed that such information to MSC shall not be considered as a declaration of value and the documentation so issued will not be deemed ad valorem unless this has been formally agreed to by MSC in writing and the corresponding surcharge paid by the Merchant.
- 5.15 Failure by the Merchant, either intentionally or negligently, to accurately describe the Goods at the time of booking or as amended thereafter, will result in the Merchant being held liable for all increased charges,

costs, expenses, losses and/or damages whatsoever arising therefrom, as well as payment of a mis-declaration penalty, as determined in the Tariff. The Merchant further expressly agrees and accepts that such charges are in addition to any and all indemnities available to the Carrier in terms of the law and/or Contract of Carriage.

- 5.16 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 destined to or originating from military or para-military authorities, including so-called dual-use cargo), it is mandatory to submit the following documents to MSC Swaziland prior to any possible acceptance of such booking: packing list, commercial invoice, HS codes consisting of a minimum of 6 digits, full details of the manufacturer and end user of such cargo, a copy of the import license and/or export license of the importer/ exporter of such cargo, final destination of the Goods. 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, MSC's compliance policy requirements will have to be adhered to. Any quotation obtained on the basis of incomplete or inaccurate information as to the nature or value of the Goods, 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 Merchant's sole risk and expenses, and without prejudice to any other remedy available to the Carrier.
- 5.17 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.
- 5.18 In case of a booking cancelation, a Booking Cancellation Fee (BCF) will be applied in accordance with the Tariff.
- 5.19 In addition to the Booking Cancellation Fee referred to in clause 5.18 above, should a booking be cancelled before receipt of the Goods by the Carrier, the Carrier may charge one-third of the total freight charges. In the event that the booking is cancelled after receipt of the Goods by the Carrier, all freight charges shall fall due owing and payable to the Carrier (see clause 16.2 of the Carrier's Contract of Carriage).

6. HAZARDOUS GOODS / IMDG CARGOES

- 6.1 Hazardous cargo bookings are only accepted together with a dangerous Goods declaration (DGD)
- 6.2 The signed "Container Packing Certificate" must be presented to MSC Swaziland on the first day of stack.
- 6.3 The Merchant is responsible for obtaining and affixing all necessary placards to the Container.
- 6.4 Notwithstanding the acceptance of a hazardous cargo booking by MSC, MSC reserves the right to reject the shipment, since final approval rests with the Vessel's Master.
- 6.5 In the event that a Container is booked and loaded as non-hazardous, and it is subsequently found to contain hazardous cargo (or vice versa), a minimum penalty will be applied as per the Tariff.

7. WASTE & SCRAP CARGOES

- 7.1 It shall be the Merchant's sole responsibility to ensure that each booking of waste and/or scrap cargo, complies with all applicable legislation and/or regulations (as amended from time to time).

- 7.2 Any misdeclaration, missing documentation and/or non-compliance with any laws will lead to a penalty more fully described in the Tariff, and the Carrier hereby reserves its right to hold the Merchant liable for any costs and/or damages which may result.

8. REEFERS AND TEMPERATURE-CONTROLLED CARGOES

- 8.1 It shall be the Merchant's sole responsibility to check the setpoint temperature and vent setting of the Container prior to stuffing in accordance with clause 12 of the Carrier's Contract of Carriage. MSC shall not be held liable for temperature damages generated by incorrect pre-setting of the Vents and Setpoint Temperature.

9. IMPORT AND EXPORT LOCAL CHARGES

- 9.1 The Merchant is invited to peruse and familiarise himself with MSC Swaziland's Import and Export Local Charges which shall be made available on request. The Merchant is also invited to request the Import and Export Local charges of other countries, which shall be made available on request.

10. IMPORT BOOKINGS

- 10.1 Clauses 4 to 8 of these terms and conditions apply mutatis mutandis to the Import bookings.
- 10.2 In addition to the above, the following forms and/or lists must be properly completed by the Merchant, and the Merchant shall be obliged to provide accurate corresponding information to MSC Swaziland, for any and 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;
 - Bill of Lading type;
 - Estimated time of shipment.
- 10.3 The Merchant expressly agrees that a 'delivery order' shall include any document intended to allow us to take delivery of the Goods. The Merchant shall keep MSC fully indemnified and holds MSC harmless against any loss, claims, damages and/or expenses of whatsoever nature, arising out of or in connection with the misappropriation of such means of delivery, after the delivery order is issued to the Merchant.

11. SERVICES PROVIDED OUTSIDE THE SCOPE OF MSC BILL OF LADING / SEA WAYBILL

- 11.1 In the event that MSC Swaziland undertakes to procure additional services on behalf of the Merchant, (which services are not covered by the Carrier's Bill of Lading/Sea Waybill) then such services shall be performed by MSC Swaziland, independently from the Carrier, and subject to clause 11.2 below.
- 11.2 MSC Swaziland's liability shall be limited by the terms and conditions of its nominated sub-contractor, which terms and conditions shall be made available to the Merchant upon request.

12. IMPORT REQUIREMENTS FOR RELEASE OF CARGO

- 12.1 No release of the Goods will be authorized until the Original Bill of Lading has been duly accomplished / fully executed by presentation and endorsement.
- 12.2 In case of a Sea Waybill or Telex Release, no release of the Goods will be authorized until a Letter of Indemnity has been signed and stamped by the Consignee, acknowledging its acceptance of the Carrier's Terms and Conditions, and undertaking to fully indemnifying MSC for the release of such Goods.
- 12.3 It remains the Merchant's sole responsibility to establish the Container's availability, in respect of the release and/or transportation before taking delivery so as to avoid futile trips and unnecessary costs. MSC and MSC Swaziland shall not be liable for the costs of any futile trips and/or costs and/or damages which may result due to the Merchant's failure to comply with this obligation.
- 12.4 The empty Container must be returned to the Container depot designated by MSC in a clean, undamaged condition and completely free of cargo residues, chemicals, dangerous Goods (in accordance with applicable regulations), and all labels must be removed. Failure to comply with this obligation will result in additional costs for the account of the Merchant.
- 12.5 In the case of Carrier Haulage, the Merchant's delivery instruction, together with all documentation necessary to perform the transportation service must be delivered to MSC Swaziland at least **five working days** prior to the estimated time of vessel arrival (ETA) at discharge port. MSC and MSC Swaziland shall not be liable for any delays and/or additional costs incurred due to the Merchant's failure to comply with this obligation, and the Merchant shall be solely responsible for the payment of the additional charges and/or damages (if any).

12.7 Delivery

- 12.7.1 The Merchant shall take delivery of the Goods within the time provided in the Carrier's applicable tariff referred to in Clause 3 of the MSC Bill of Lading and Sea Waybill Terms and Conditions.
- 12.7.2 Should the Merchant fail and/or neglect to take delivery of the Goods within ten (10) days of the Container being made available for collection, such delay shall be considered unreasonable, in accordance with clause 20 of the Carrier's Contract of Carriage, and MSC shall not thereafter have any further responsibilities and/or liability in respect of these Goods.
- 12.7.3 Notwithstanding the above, the MSC 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 shall forthwith be paid by the Merchant to the MSC.
- 12.7.4 Should the Merchant directly or indirectly prevent, delay or hinder the discharge and/or delivery of the Goods, then any costs, damages and/or claims shall be for the account of the Merchant.

13. EQUIPMENT RE-USE AND TRIANGULATION

- 13.1 Equipment re-use occurs whenever an empty Container is re-used for a new shipment by the Merchant without first being returned to a MSC nominated Container depot for inspection and maintenance. Such re-use **must** be authorised in advance by MSC Swaziland, and MSC Swaziland shall: -
- (a) issue a status changeover date;
 - (b) end the import demurrage period;
 - (c) invoice the Merchant for any outstanding charges then due to MSC.
- 13.2 The re-use of a Container is tolerated for the sole benefit and convenience of the Merchant, who shall accordingly bear any and all risks associated with such re-use and shall keep the MSC fully indemnified (including legal expenses) against any claim that may be raised by any party as a result of the re-use. The Merchant is obliged to inspect the Container (internally & externally) for suitability for carriage and shall bear any expense, including but not limited to the re-positioning of the re-used unit, delivery costs of a replacement Container.

Triangulation

- 13.3 Should an Importing Merchant elect to triangulate a Container to another client (Exporting Merchant), the Importing Merchant shall first: -

- (a) obtain MSC Swaziland's written authorization, **and**
- (b) produce the Exporting Merchant's written acceptance of the triangulation.

MSC Swaziland 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:

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- 13.3.1 be charged a triangulation fee as prescribed by the MSC Swaziland Tariff.

13.3.2 fully indemnified MSC and MSC Swaziland against any claims and/or damages that may arise as a result of the triangulation.

14. DECLARED CARGO'S WEIGHT AND OVERWEIGHT CARGO

- 14.1 In the following circumstances, MSC does not permit its Containers to be lifted, loaded, moved or carried by whatever means, if: -
- a. the Goods are mis-declared.
 - b. the weight of the Goods is in excess of the VGM or commercial / manifest weight declaration.
 - c. the weight of the Goods is in excess of the payload of the equipment.
- 14.2 Without any limitation to the rights which MSC may have in terms of the law, should MSC at any time become aware that its Containers have been used in breach of any of the above prohibitions, the Container(s) concerned may be, at MSC sole discretion: -
- (a) refused for loading,
 - (b) kept onboard the vessel for return to origin,
 - (c) discharged at the next convenient port,
 - (d) take corrective measures, the cost of which shall be for the Merchant's account.
- 14.3 The Merchant shall be liable for inter alia; any loss, claims, fines, demands, applications and/or actions of whatever nature, whether directly or indirectly resulting from or in connection with the unauthorised use of MSC's Container(s).
- 14.4 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 it right to exercise its lien over the infringing Goods and/or Goods carried by the Carrier on behalf of the Merchant, until all charges and/or damages due have been fully paid.
- 14.5 The above applies mutatis mutandis to Merchant owned or operated Containers or equipment tendered to the Carrier for shipment.