# MSC FRANCE

# TERMS AND CONDITIONS

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# Table of Contents


1. DEFINITIONS ..... 4
2. APPLICABILITY AND PRIORITY ..... 5
3. QUOTATIONS ..... 5
4. CARRIER'S RESPONSIBILITY IN THE AGENT'S JURISDICTION ..... 8
5. BOOKINGS ..... 9
6. GOODS WEIGHT DECLARATION AND VGM COMPLIANCE ..... 14
7. MILITARY AND/OR PARA-MILITARY CARGO ..... 15
8. CRITICAL CARGO ..... 16
9. HAZARDOUS GOODS AND IMDG CARGO ..... 16
10. WASTE AND SCRAP CARGO ..... 17
11. REEFER AND TEMPERATURE-CONTROLLED GOODS ..... 17
12. CARRIAGE OF VEHICLES AND/OR RO-RO TRANSPORTATION ..... 18
13. EXPORT AND IMPORT LOCAL CHARGES (STORAGE / DEMURRAGE / DETENTIONS / ETC) ..... 19
14. INLAND FORWARDING SERVICES PROVIDED OUTSIDE THE SCOPE OF MSC'S BILL OF LADING OR SEAWAYBILL ..... 20
15. IMPORT REQUIREMENTS FOR RELEASE OF GOODS ..... 25
16. EQUIPMENT RE-USE ..... 26
17. DEPOSIT AND LEGAL ADMINISTRATION FEE ..... 27
18. UNCLEARED AND ABANDONED CARGO FEE ..... 27

ANNEX 1 ..... 28

**MSC FRANCE MEANS MSC FRANCE SAS, COMPANY REGISTRATION NUMBER 390 549 822, WITH ADDRESS AT 23 AVENUE DE NEUILLY, 75116 PARIS, FRANCE, INCLUDING ALL ITS BRANCH OFFICES IN FRANCE.**

**THIS AGREEMENT IS REFERRED TO AS THE "AGENCY TERMS AND CONDITIONS (AGENCY T&CS)" AND MSC FRANCE IS REFERRED TO AS THE "AGENT".**

**THE AGENT ALWAYS ACTS IN ITS OWN NAME, UNLESS EXPRESSLY INDICATED THAT THE AGENT ACTS ON BEHALF OF MSC MEDITERRANEAN SHIPPING COMPANY SA (THE "CARRIER").**

**THE AGENCY T&CS ARE APPLICABLE TO ALL DEALINGS BETWEEN THE AGENT AND ANY COUNTERPARTIES. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY CONTRACT OF CARRIAGE ENTERED INTO AND ANY SERVICE 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 CONTRACT OF CARRIAGE ARRANGED BY THE AGENT, THESE WILL BE SUBJECT TO:**

1ST. **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**

2ND. **THE AGENCY T&CS AT THE PLACES OF BOOKING, ORIGIN, TRANSIT AND DESTINATION 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; AND**

3RD. **THE TERMS OF THE BOOKING NOTES AND BOOKING CONFIRMATIONS.**

# 1. DEFINITIONS

**1.1.** **Carrier** or **MSC:** means MSC MEDITERRANEAN SHIPPING COMPANY SA, 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, detention 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 Protocols adopted at Brussels on 23rd February 1968, and on 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, partnership, association 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 (inclusive MSC local tariff).

**2nd-** 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 to any service provided by the Carrier. 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. Proposed Merchant terms and conditions shall only apply if they are expressly agreed to in writing by senior management of the Agent and such agreement contains an express reference to this clause 2.3.

# 3. QUOTATIONS

**3.1.** When expressly indicated that the Agent acts as agent on behalf of the Carrier, all quotations made by the Agent are given on behalf of the Carrier only.

**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, except if the quotation specifically provides for a different duration. 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 consequential 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 either intentionally or by negligence on the part of the Carrier.

**3.4.** Unless provided otherwise, all charges are quoted on a "Valid At Time Of Shipment" (**VATOS**) basis, meaning that their amount may be adjusted in accordance with rates in force at the time the Goods are shipped. Any additional costs 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.

**3.5.** Inland rate quotations are subject to third party increases or to surcharges valid at time of shipment/arrival and subject to availability of inland carrier at time of booking/arrival.

**3.6.** Agreements regarding a specific named account, commodity or Goods' weight shall only apply to shipments pertaining to the 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 additional fees (as per Annex 1), including but not limited to any fee publicly announced, without prejudice to the recovery of any other cost incurred by the Carrier as a consequence of the breach of this provision.

**3.7.** Fees for change to a shipment or its documentation, 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 the right to charge a fee for any such change as per the locally applicable rates.

**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:

**a.** That the Goods will be harmless Goods. In the event that the Goods consist of hazardous Goods and/or IMDG Cargo, this must be made clear by the Merchant before the booking confirmation is issued. In any event, the carriage of such Goods is always subject to the Carrier and Vessel 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 is under no liability whatsoever, including any costs incurred by the Merchant in bringing the Goods to the port or removing them.

**b.** That the Goods will comply with all trade sanctions and/or import/transit/export laws and regulations applicable to the Merchant, the Carrier and/or 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 shall 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 may, at its sole discretion, cancel any booking, refuse loading or discharge or otherwise take any action needed to ensure compliance with Global Sanctions, and all such actions that may be carried out to effect compliance shall be at the Merchant's sole costs, risks, and expense.

**c.** That the Goods may be shipped and stowed on a Vessel's deck or under its deck at Carrier's sole discretion.

**d.** That the Goods will be in gauge Goods (defined as Goods that do not exceed the International Standards Organization (**ISO**) dimensions of Containers). Any out of gauge Goods must be brought to the attention of the MSC Agent and the MSC Agent will then provide an appropriate price quotation if possible.

**e.** That the value of the Goods per Container does not exceed the sum of USD 200'000.00, 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 not to be an 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.** Express written approval by the Carrier is required in the event that the booking party wishes to ship certain Goods, including but not limited to personal effects, exhibition goods and/or used cars (full list is available upon request to the Agent). The booking party must provide a detailed description of such Goods in writing when requesting a quotation to the Carrier and a reference to such goods must appear in the booking confirmation issued by the Carrier for the latter to be valid.

**3.10.** In the event that the final booking requested by the booking party does not conform with the assumptions set out in clause 3.8. and/or the booking party is in breach of clause 3.9, MSC reserves the right to adjust the price quotation. Regardless of whether the quotation is adjusted or not, the following shall apply:

a. **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 (as per Annex 1). 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.

b. **High value commodity mis-declaration fee –** Any Goods with a commercial value exceeding the Maximum Limit must be brought to the attention of MSC 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 (as per Annex 1). 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 is 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 deemed 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 communicate the value of the Goods, the Carrier would not have agreed to issue a bill of lading.

**3.11.** In case of cancellation of the confirmed 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 days prior to the Vessel's pro-forma sailing date as per schedule. The applicable BCF is available from the Agent upon request.

**3.12.** 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.

**3.13.** 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.** 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.

**4.3.** 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.

**4.4.** Should any provision of these Agency T&Cs be deemed invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected and such invalid, illegal or unenforceable provision is to be severed from these Agency T&Cs.

# 5. BOOKINGS

**5.1.** The Agent's booking confirmation as sent in writing by the Agent to the Merchant formalizes the agreement 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 liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant.

Where the Merchant uses a booking agent, both of them warrant that the booking agent has the authority to enter into this contract, receive original bills of lading (if applicable) and provide whatsoever instructions to the Carrier on Merchant's behalf, until the Merchant advises the Carrier otherwise in writing.

**5.2.** The Merchant is responsible for and shall check for correctness all the information mentioned in the booking confirmation issued by MSC, in particular but not limited to the description of the Goods, Hazardous Goods/IMDG Cargo, reefer and out of gauge shipment details as well as the 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. MSC may demand from the Merchant provision of an independent survey report confirming the correctness of all the information mentioned, which findings will not be binding upon MSC.

MSC may require a confirmation in writing by the shipper in the event of the booking party instructing MSC or its agents to cancel, suspend or modify the booking before issuance of the bill of lading (if applicable) or sea waybill.

**5.3.** MSC shall be entitled to impose specific procedures for the approval of any shipment. In addition, MSC may request the provision of a Letter of Indemnity (**LOI**) from the Merchant before accepting any shipment.

**5.4.** Unless the applicable law makes it compulsory, the Carrier shall be under no obligation to check the apparent good order and condition of the Goods, and/or to add a clause to the bill of lading or sea waybill in that respect.

**5.5.** The booking party, the shipper and their servants, agents and subcontractors are jointly responsible for ensuring that the empty Container put at their disposal by or on behalf of the Carrier 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 Container pick-up, during Container stuffing or otherwise.

**5.6.** Regardless as to whether the pre-carriage is performed under Merchant's or Carrier's haulage conditions, Merchant shall inspect the Container for its suitability to carry the specific shipment booked and notify any damage in writing to the Carrier or its agents immediately upon receipt of the Container, in accordance with clause 11 of the sea waybill / bill of lading.

Notwithstanding the generality of the preceding, a light-test (visual verification from within the Container with closed doors that no light enters the Container) 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.

Merchant's attention is drawn to the fact that the actual payload may vary from Container to Container and Merchant must ensure that the actual cargo gross weight does not exceed this payload.

**5.7.** 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 exchanging the Container shall be shared equally by MSC and the Merchant. Any later refusal of an accepted Container by a Merchant for an alleged defect will result in additional costs for the account of the Merchant.

**5.8.** Unless stated otherwise and expressly confirmed in writing, the Merchant shall 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. MSC may demand from the Merchant provision of an independent survey report confirming the proper lashing and securing and fitness to withstand the shipment, which findings will not be binding upon MSC. If MSC surveys the Container itself, it will be at the Merchant's expense. MSC may refuse to handle any Container that it considers unsafe. Such Container may be returned to the place of origin and any additional costs incurred will be for the Merchant's account.

**5.9.** The Merchant shall be responsible for the proper packing, packaging and securing of the Goods within the Container, including any materials used to prevent leakage, spillage or escape of the Goods, or any part thereof. All such packing, packaging and securing shall comply with all applicable laws and regulations, including those related to environmental protection, fumigation and import requirements, and shall be fit for their intended purpose through the carriage. The weight of all packing and packaging materials shall be included in the declared gross weight of the Container. The Merchant shall indemnify the Carrier against all loss, damage, liability, costs or expenses, including but not limited to environmental losses and clean-up costs, arising out of or in connection with any failure to comply with this clause.

**5.10.** 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.

**5.11.** The Merchant is responsible, before pick-up or latest during stuffing of the Container, for ensuring that the Containers only display the required International Maritime Organization (**IMO**) placards and labels and that other placards or labels from previous shipment are fully removed. Any costs resulting from a breach of this requirement will be for the Merchant's account.

**5.12.** 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.

**5.13.** For security reasons all Containers for all destinations must be sealed by the Merchant or its representatives immediately 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 rates.

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 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 (**LOI**) 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 guidance about correct placement of seals, please see this sealing procedure: https://www.msc.com/global-document-library/msc-germany/pdf/terms-conditions/sealing-procedure-germany).

The shipper shall be responsible for declaring all seal numbers in his shipping instructions 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.

**5.14.** Loading and stowage of Containers and/or Goods on board the Vessel is carried out under the sole instructions of the Vessel's Master. All Goods and Containers may be stowed on deck without notice to the Merchant, at Merchant's risk. Requests for "under deck" stowage are subject to prior written approval by MSC or its agents.

**5.15.** All Freight (including local charges) shall be paid in the currency indicated on the invoice. Requests from the Merchant to pay in another currency must be submitted in writing and is subject to MSC's written approval and conditions. Freight is deemed earned on receipt of the Goods by the Carrier. Freight 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, unless the Merchant has been granted in writing more favourable credit terms by MSC or its agents. Any bank service charges/ transaction costs are for account of the payer.

**5.16.** Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or right of retention or of any set-off whatsoever.

**5.17.** The Merchant shall enquire with MSC or its agents in respect of the Cut-off dates/times applicable to the booked shipment.

**5.18.** For shipments to countries/areas requiring an Advanced Manifest System (**AMS**)-filing or comparable procedures, special deadlines for the submission of shipping instructions shall apply. The Merchant is responsible for enquiring about any specific deadline applicable to its shipment. The Merchant shall furnish correct shipping instructions for AMS-filing or comparable procedures. These filing 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 required may be made only after payment by the Merchant of a manifest corrector (and/or security manifest amendment) fee. Required changes may be allowed subject to the feasibility of such changes.

**5.19.** 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.

**5.20.** The Merchant shall retain no right to ask for the issuance of a Telex Release. Notwithstanding the foregoing, in the event that the Merchant requests a Telex Release and if the Carrier agrees to this request, then this shall be in Carrier's sole discretion.

**5.21.** Any request referred in clauses 5.19. or 5.20. must be submitted sufficiently in advance to enable the Carrier to properly process the amendment and to inform the destination agency and any other relevant parties.

The Carrier shall have no obligation to accept or implement any late request for amendment.

Furthermore, any risk, liability, cost or consequence arising directly or indirectly from the amendment of the shipping documentation, including but not limited to any risk of misdelivery, wrongful release of cargo, fraud, delay, detention, or claims from third parties, shall remain solely for the Merchant's account.

The Merchant shall indemnify, defend and hold the Carrier harmless from and against any and all losses, damages, liabilities, claims, costs and expenses arising out of or in connection with such amendment.

**5.22.** 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. 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 him 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.

**5.23.** Sea waybills or bills of lading will be issued after the Goods are loaded on board the Vessel and kept at Merchant's disposal at the Agent's local office. Transfer and dispatch of documents (by post or courier) will only be done on Merchant's request and after payment of Freight and all other sums due to the Carrier, at Merchant's sole risk, expense and responsibility and such documents shall be deemed issued to the Merchant upon sending.

**5.24.** The shipment reference as confirmed by the Agent to the Merchant (e.g. booking number, electronic entry order or any other relevant reference) 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 shipment reference 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 shipment reference.

# 6. GOODS WEIGHT DECLARATION AND VGM COMPLIANCE

**6.1.** The Merchant must check and ensure that the actual payload per Container complies with all country-specific legal regulations or requirements at origin, in transit and at destination countries, including but not limited to any inland transport regulations. The Merchant's attention is drawn to the fact that seasonal restrictions may apply, including but not limited to spring thaw weight restrictions. 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 the weight 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.

**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.

Unless agreed otherwise with the Agent, all VGM information must be submitted via an MSC approved EDI or API channel, such as myMSC.com.

MSC reserves the right to apply a surcharge in case of any manual VGM data transfer.

**6.3.** MSC does not permit its Containers to be used in any manner whatsoever to lift, load, move or carry Goods:

(1) that are wrongly declared, or

(2) that weigh in excess of the declared VGM or commercial / manifest weight declared, or

(3) that weigh in excess of the payload of the equipment, or

(4) which weight is not evenly distributed.

**6.4.** MSC shall not bear any liability due to any discrepancy between the VGM and the commercial weight provided for sea waybill / bill of lading manifesting purposes.

**6.5.** Should MSC be made aware, prior to or during carriage, that its Containers have been used in breach of any of the provisions of this section, the Containers concerned may be refused for loading, kept onboard for return to origin, held in transit, discharged at any convenient port and/or corrective measures may be taken by the Carrier such as, but not limited to, restuffing into other Containers. All such steps may be taken in the Carrier's sole discretion and shall be done at the Merchant's sole risks and expense, including but not limited to additional Freight and extra charges, and the Merchant is liable to indemnify the Carrier for all costs, losses, delays, damages, fines, increased charges and any other consequences whatsoever arising from the breach of any of the above prohibitions.

**6.6.** 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.

**6.7.** In the event of any breach of the provisions of this section, included but not limited to late submission of the VGM or submission of an incorrect VGM, MSC shall be entitled to charge additional fees (in addition to the LAF referred to in section 17 hereunder) as per Annex 1 and MSC shall have a lien over any Goods carried on behalf of the Merchant until all amounts due to MSC, including any additional fee charged and any costs incurred in exercising the lien, have been fully paid.

**6.8.** 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, as well as sport-weapons and military exhibition related 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 digits, full details of the manufacturer and end user of such cargo, technical or safety data sheet of the Goods, copy of the import license and/or export license of the importer/ exporter of such cargo, any other relevant authorisation, final destination of the Goods.

**7.2.** The Merchant must specifically notify any military or para-military shipment to the Carrier before the release of the Carrier's equipment. 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. In addition, MSC may request the provision of a Letter of Indemnity (**LOI**) from the Merchant before accepting such shipments.

**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.

**7.4.** The Merchant shall indemnify the Carrier against any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with the failure to comply with those provisions.

**7.5.** MSC shall be entitled to apply a charge (as per Annex 1) for any misdeclaration in relation to military and/or para-military shipment, including but not limited to misdeclaration of any commodity listed on the US Munitions List or on the Wassenaar Arrangement Dual List Categories. This charge shall be levied without prejudice to the cargo mis-description fee under clause 3.10 above and any other applicable charges.

# 8. CRITICAL CARGO

**8.1.** Critical cargoes are Goods which properties MSC reckons may create specific risks but are not classified under the IMDG code and its amendments. Such critical cargoes include without limitation flexitanks, heavy cargoes such as coils and stone blocks, glass, self-combustible commodities such as charcoal and its derivatives, shredded rubbers, fish meal, cotton, lithium batteries.

**8.2.** MSC shall be entitled to impose specific procedures for the approval of the shipment of such critical cargoes. In addition, MSC may request the provision of a Letter of Indemnity (**LOI**) from the Merchant before accepting such shipments.

**8.3.** The Merchant shall indemnify the Carrier against any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with the failure to comply with those provisions.

**8.4.** MSC shall be entitled to apply a charge (as per Annex 1) for any misdeclaration in relation to critical cargoes, without prejudice to the cargo mis-description fee under clause 3.10. above and any other applicable charges.

# 9. HAZARDOUS GOODS AND IMDG CARGO

**9.1.** 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, and any other applicable regulations.

**9.2.** 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.

**9.3.** MSC shall be entitled to impose specific procedures for the approval of the shipment of such hazardous Goods and IMDG Cargo. In addition, MSC may request the provision of a Letter of Indemnity (**LOI**) from the Merchant before accepting such shipments.

**9.4.** Hazardous Goods and IMDG Cargo bookings are only accepted together with a Dangerous Goods Declaration (**DGD**).

**9.5.** The signed "Container Packing Certificate" must be presented at the latest 48 hours prior to the export Cut-off date/time. The Merchant shall enquire with MSC or its agents in respect of the Cut-off dates/times applicable to the booked shipment.

**9.6.** Even if a hazardous Goods and IMDG Cargo booking is accepted by MSC in the first instance, MSC shall be entitled to reject the shipment in the Vessel's Master discretion.

**9.7.** The Merchant shall indemnify the Carrier against any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with the failure to comply with those provisions.

**9.8.** MSC shall be entitled to apply a charge (as per Annex 1) for any misdeclaration in relation to hazardous Goods and IMDG Cargo, without prejudice to the cargo mis-description fee under clause 3.10 above and any other applicable charges.

# 10. WASTE AND SCRAP CARGO

**10.1.** The Merchant shall 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 at origin, in transit and at destination countries, including but not limited to local law and customs regulations, EU Regulation 1013/2006 of 14th June 2006 on shipment of waste, and the 1989 Basel convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposals.

**10.2.** MSC shall be entitled to impose specific procedures for the approval of the shipment of such cargoes. In addition, MSC may request the provision of a Letter of Indemnity (**LOI**) from the Merchant before accepting such shipments.

**10.3.** The Merchant shall indemnify the Carrier against any and all claims, losses, costs, expenses and liabilities of any nature whatsoever arising from or in connection with the failure to comply with those provisions.

**10.4.** MSC shall be entitled to apply a charge (as per Annex 1) for any misdeclaration or missing documentation in relation to waste and scrap cargoes, without prejudice to the cargo mis-description fee under clause 3.10 above and any other applicable charges.

# 11. REEFER AND TEMPERATURE-CONTROLLED GOODS

**11.1.** A special reefer booking form shall be provided duly filled out for each reefer booking request, a template being available upon request.

**11.2.** 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.

**11.3.** In case of pre-carriage or on-carriage of reefer equipment arranged through MSC, the Merchant is solely responsible for instructing MSC whether a genset or clip-on is required or not.

**11.4.** 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.

**11.5.** 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.

**11.6.** MSC or its agents shall not be held liable for damages generated by any breach of the above provisions.

# 12. CARRIAGE OF VEHICLES AND/OR RO-RO TRANSPORTATION

**12.1.** Should the Merchant request MSC to transport vehicle(s) or any similar cargo, MSC shall not be liable for:

**a.** 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.

**b.** pilferage and/or damage to personal effects and accessories, equipment, removable fittings, cargo and/or other possessions left onto or inside the Goods carried.

**12.2.** The Merchant warrants that the vehicle(s) or any similar cargo shipped under the sea waybill / bill of lading, including anything left onto/inside it, are gas free and do not contain used refrigerators, freezers, air-conditioning equipment or any other prohibited Goods banned for import or export and cannot be considered toxic or harmful/hazardous waste under the legislation applicable at the countries of the port of loading and/or the port of discharge.

**12.3.** 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 and contents provided to MSC at the time of booking.

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

**13.1.** The Merchant is required to check the applicable export and import local charges and Container free times, by contacting directly the local Agent.

**13.2.** Container hire costs may apply in addition to all other applicable export local charges in the following circumstances:

(1) if Container free time has expired, until the Container is presented for shipment at the terminal and/or until the Container is loaded on board of the carrying Vessel;

(2) if the voyage is cancelled as a result of any event beyond the Carrier's control, until the date of that cancellation, being agreed and understood that a change in vessel or delay of the tentative voyage does not *per se* constitute such a cancellation;

(3) if loading of the Container on board the booked voyage is cancelled as a result of the act or omission of the Merchant, until the Container is returned to MSC's nominated container depot in accordance with clause 14.9. of the Carrier's sea waybill / bill of lading terms and conditions;

(4) if, at the request of the Merchant, including at transhipment port, loading of the Container on board the booked voyage is deferred, changed or alternative arrangements are made (including but not limited to holding the cargo in storage), until the Container is ultimately loaded on board a vessel for carriage by sea by MSC, notwithstanding when the Container was delivered into the terminal and into MSC's care and custody.

# 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.

*Dans la mesure où un agent MSC accepte de fournir, en plus du voyage expressément couvert par le contrat de transport (connaissement maritime / lettre de transport maritime) du Transporteur (ou dans les cas où aucun document de transport n'a été émis, par la cotation initiale du Transporteur ou sa confirmation de booking), des services de transport intérieur, y compris mais sans s'y limiter des services de pré ou post acheminement, alors cet accord portant sur ces services de transport intérieur (et non sur le transport de port à port / le transport maritime) sera conclu entre l'Agent MSC et le Merchant directement. Le Transporteur ne pourra en aucun cas être considéré comme partie à cet accord.*

**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 USD 200'000.00 per Container, 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.

*Dans le cadre de ce contrat de service de transport intérieur, le Merchant est tenu lors de sa commande de transport d'explicitement mentionner à l'agent MSC la valeur des marchandises si cette valeur dépasse 200'000.00 USD par conteneur, afin de laisser à l'agent MSC l'opportunité, sans pour autant aucune obligation pour l'agent MSC de le faire, de proposer des mesures de sécurité appropriées pendant le transport et de détailler les coûts de telles mesures. Tous ces services sont fournis aux conditions proposées par l'agent MSC.*

**14.3.** Inland forwarding services provided outside the scope of MSC's sea waybill or bill of lading shall also be subject to MSC local tariff.

*Ces services de transport intérieur sont soumis au tarif local de MSC.*

**14.4.** These inland forwarding services shall be subject to the provisions of the standard contract of freight forwarding, as set out in appendix of article D.1432-3 of the French Transport Code, to all legal and regulatory provisions applicable to the chosen mode of transport, except for the below derogating provisions, and to the MSC France' tariff and conditions for inland services, valid at the time of the conclusion of the contract.

*Ces services de transport intérieur sont soumis aux dispositions du contrat type de commission de transport, figurant en annexe de l'article D1432-3 du Code des Transport Français, outres toutes les dispositions légales et réglementaires applicables au mode de transport choisi, et applicables au moment de la conclusion du contrat.*

**14.4.a.** **Availability of the truck for stuffing or unstuffing –**

Truck's availability period, from the identification on site to the handing over of relevant documents to the trucker, is as follows:

- Two (2) hours for stuffing or unstuffing of a 20'DV Container
- Three (3) hours for stuffing or unstuffing of a 40'DV or 40'HC Container

Should the period exceeded for any reason not attributable to MSC France or its Subcontractor, MSC France shall be entitled to change an idling fee calculated per full and indivisible hour, according to the rates provided by MSC France's tariff and conditions for inland services.

***Mise à disposition du véhicule en vue du chargement ou du déchargement –***

*La durée totale de mise à disposition du véhicule, de l'identification sur site à la remise au transporteur des documents émargés, est de :*

- *Deux (2) heures pour le chargement ou le déchargement d'un conteneur 20'DV ;*
- *Trois (3) heures pour le chargement ou le déchargement d'un conteneur 40'DV ou 40'HC.*

*En cas de dépassement de ces durées non imputable à MSC France ou son substitué, une indemnité forfaitaire d'immobilisation du véhicule et/ou du conducteur sera due à MSC France, calculée par heure entière et indivisible selon le tarif et les conditions de MSC France pour les services de transport intérieur.*

**14.4.b.** **Cancelation of inland transport services –**

In the event of a cancellation of the transport, MSC France shall be entitled to charge the Merchant with a compensation, according to the rate provided by MSC France's tariff and conditions for inland services.

***Annulation du transport –***

*En cas d'annulation du transport, une indemnité forfaitaire sera due à MSC France par le Merchant, selon le tarif et les conditions de MSC France pour les services de transport intérieur.*

**14.4.c. Method or means of transport –**

MSC France does not promise or undertake to transport the Goods by any specific method or means of transport. Any designation of the method or means of transport is purely indicative. MSC France may at any time, and without notice to the Merchant, modify the method or means of transport, without revising agreed price or giving right to any indemnity.

***Mode ou moyen de transport –***

*MSC France ne s'engage pas à transporter les Marchandises par un mode ou moyen de transport déterminé. Toute désignation du mode ou du moyen de transport est purement indicative. MSC France peut à tout moment et sans information, ni préavis, au Merchant modifier le mode et/ou le moyen de transport indiqué, sans que cela puisse donner lieu à révision du prix convenu ou à indemnité.*

**14.4.d. Liability –**

In the event of proven damage attributable to MSC France or its Subcontractor, MSC France shall only be liable for damages which could have been expected at the time of the conclusion of the contract and which only include what is a material, immediate and direct consequence of the non-performance within the meaning of articles 1231-3 and 1231-4 of the Civil Code. It is expressly agreed that MSC France shall not be liable for any consequential damages and immaterial losses.

MSC France's liability shall in no event whatsoever exceed the following limitations:

***Responsabilité –***

*En cas de préjudice prouvé imputable à MSC France ou à son substitué, MSC France n'est tenu que des dommages et intérêts qui pouvaient être prévus lors de la conclusion du contrat et qui ne comprennent que ce qui est une suite matérielle, immédiate et directe de l'inexécution au sens des articles 1231-3 et 1231-4 du Code Civil. Il est expressément convenu que MSC France ne sera pas responsable des dommages indirects et des pertes immatérielles.*

*La responsabilité de MSC France ne pourra en aucun cas dépasser les limitations suivantes :*

**i. MSC France liability for subcontractor's act:**

Any limitation and exception available to its Subcontractor in accordance with any international convention, national law or regulation compulsorily applicable to the service provided by the Subcontractor.

Where the said Subcontractor's right to limit its liability is unknown, do not exist or do not result from any legal or regulatory provisions applicable to the chosen mode of transport, then it is contractually agreed that MSC France's liability for any Subcontractor's acts shall in no event whatsoever exceed the limitations set up for its personal liability.

***i. Responsabilité du fait des substitués :***

*Toute limitation et exception dont dispose son sous-traitant conformément à toutes les Conventions Internationales, lois nationales, ou règlementations applicables au services fournis par le sous-traitant.*

*Lorsque les limitations de responsabilité dudit sous-traitant ne sont pas connues, sont inexistantes ou ne résultent pas de dispositions impératives légales ou réglementaires applicables au mode de transport choisi, il est alors convenu contractuellement que la responsabilité de MSC France pour tout acte de son sous-traitant ne pourra en aucun cas excéder les limitations dont MSC France peut se prévaloir pour sa responsabilité personnelle.*

### ii. MSC France personal liability:

For loss or damage to the Goods, to the lower of either:

- EUR 14.00 per kilogram of gross weight of the missing or damaged Goods,
- EUR 2’300.00 per metric ton of gross weight of the carried Goods, or
- A maximum of EUR 50’000.00 per event.

For all other damages, including in the event of delay, to the lower of either:

- The amount of the inland freight (duties, taxes and miscellaneous costs excluded) or to that of the service that caused the damage, or
- A maximum of EUR 50’000.00 per event.

### iii. MSC France liability relating to specific matters:

For any customs matters or indirect contribution, whether carried out by MSC France or by those of its sub-contractors, EUR 5’000.00 per declaration, without in any case exceeding EUR 50’000.00 per year of adjustment or per notification of adjustment.

### *ii. Responsabilité personnelle de MSC France :*

*Pour les pertes ou dommages aux marchandises, au plus bas des deux montants suivants :*

- *14.00 EUR par kilogramme de poids brut des marchandises manquantes ou endommagées,*
- *2'300.00 EUR par tonne de poids brut des marchandises transportées, ou*
- *Un maximum de 50'000.00 EUR par évènement.*

*Pour tous les autres dommages, y compris en cas de retard, au plus bas des deux montants suivants :*

- *Le montant du prix du transport intérieur (droits, taxes et frais divers exclus) ou à celui de la prestation ayant causé le dommage, ou*
- *Un maximum de 50'000.00 EUR par évènement.*

### *iii. Responsabilité de MSC France dans les cas spécifiques :*

*Pour toute opération en matière de douane ou de contribution indirecte, qu’elle soit effectuée par MSC France ou par ses sous-traitants, 5'000.00 EUR par déclaration sans pouvoir en aucun cas dépasser 50'000.00 EUR par année de redressement ou par notification de redressement.*

**14.4.e.** **Time-bar –**

In any event, MSC France shall be discharged from all liability if suit is not commenced within one (1) year from the date of the alleged breach of the contract, or, for claims related to loss or damage, from the date of delivery of the Goods or the date that the Goods should have been delivered or, for claims related to a posteriori collected duties and taxes, from the date the adjustment notification was served.

***Prescription –***

*En tout état de cause, MSC France sera déchargé de toute responsabilité si l'action n'est pas engagée dans un délai d'un (1) an à compter de la date de l'exécution de la prestation litigieuse du contrat, ou pour les litiges liés aux pertes ou dommages, à compter de la date à laquelle les marchandises ont été livrées ou auraient dû être livrées ou, pour les litiges en matière de droits et taxes recouvrés a posteriori, à compter de la date de la notification du redressement.*

**14.4.f.** **Jurisdiction clause –**

In the event of any dispute in relation to these inland forwarding services, the Commercial Court of Le Havre will have sole jurisdiction, even in the case of plurality of defendants or warranty claims. French law shall exclusively apply.

***Clause attributive de juridiction –***

*En cas de litige concernant les services de transport intérieur, le Tribunal des Activités Economiques du Havre sera seul compétent, même en cas de pluralité de défendeurs ou d'appels en garanties.*

**14.4.g.** Should any part or all derogating provisions hereabove be deemed invalid or unenforceable to any extend or incomplete, it shall be replaced to that extend or completed by the suitable term or provision of the standard contract of freight forwarding, as set out in appendix of article D.1432-3 of the French Transport Code and by all legal and regulatory provisions applicable to the chosen mode of transport valid at the time of the conclusion of the contract. This Article 14 is written in two versions: French and English. The French version shall prevail in case of any discrepancy between the version, or any interpretation difficulties should arise.

*Si l'une ou l'autre des dispositions dérogatoires ci-dessus est jugée nulle, inapplicable dans une certaine mesure ou incomplète, elle sera remplacée dans cette mesure ou complétée par la clause ou la disposition approprié du contrat type de commission de transport tel que défini dans en annexe de l'article D.1432-3 du Code des Transports français, et par toutes les dispositions légales et réglementaires applicable au mode de transport choisi en vigueur au moment de la conclusion du contrat. Cet Article 14 est écrit en deux versions : Française et Anglaise. Seule le version Française prévaudra en cas de divergence entre les versions ou de difficulté d'interprétation quelconque.*

# 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, without any deduction or set-off, to the Carrier or its agents, unless the Merchant has been granted in writing more favourable credit terms by MSC 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 to as an "express bill of lading" or as an "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.

**15.6.** MSC may require consignee's agent for collection to be duly authorized through a letter of authority which shall be provided upon request. MSC may require such agent to provide a letter of undertaking to pay all accrued charges (including, but not limited to, demurrage, storage, plug-in charges, customs inspection) as a pre-requisite to actual delivery.

**15.7.** Before attempting to collect a Container, the Merchant shall ensure that the Container is available for delivery at the terminal and suitable for further transportation. MSC and its agents shall not entertain any claim for waiting time or additional trucking costs or any other additional costs if the Merchant fails to do so.

**15.8.** 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 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 the Merchant's sole account, and neither MSC nor its agents shall be held liable for any delay and/or additional costs caused thereby. Any delay and additional costs due to public holidays and known congestion times will be for the Merchant's sole account.

**15.9. Delivery**

**a.** Delivery of the Goods is always subject to the Carrier's applicable tariff referred to in Clause 3 of the MSC sea waybill / bill of lading terms and conditions.

**b.** Should the Merchant fail to take delivery of the Goods within 10 days after expiry of the free time (as defined in clause 14.8. of the Carrier's sea waybill / bill of lading terms and conditions), 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.

**c.** 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.

**d.** If, whether by act or omission, the Merchant directly or indirectly prevents, delays or hinders the discharge or the delivery of the Goods, any costs, expenses or liability arising out of such act or omission shall be for the Merchant's sole account.

**e.** 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 nominative or not and/or whether revocable or not, authorizing the Merchant or its agent~~s~~ 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 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 place designated by MSC in accordance with clause 14.9. of the Carrier's sea waybill / bill of lading terms and conditions, free of 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. The carrier shall be entitled to request a deposit before authorizing the delivery of the Container. Such deposit shall be returned upon the redelivery of the empty Container in accordance with the above-mentioned requirements and payment of all outstanding charges.

# 16. EQUIPMENT RE-USE

**16.1.** Equipment re-use occurs whenever an empty Container is 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 per the Carrier's applicable rates.

**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 may be raised by any party caused by or in connection with the re-use of the Container. The Merchant shall inspect the Container (internally and 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.

# 17. DEPOSIT AND LEGAL ADMINISTRATION FEE

**17.1.** In the event of any situation of damage or perceived risk of damage to the Goods, Container, crew, Vessel and/or any third party properties caused, generated or suspected to have been caused or generated by the Merchant's negligence, fault or misconduct, MSC or its agents shall be entitled to request the Merchant to post a cash deposit covering the anticipated costs and expenses of any action deemed required, at Carrier's sole discretion, to remediate such situation or prevent such risk, before such action is actually taken.

**17.2.** MSC or its agents shall be entitled to charge the Merchant a Legal Administration Fee (**LAF**) covering the extra coordination / organization work, and subsequent follow-up required by any situation of damage or perceived risk of damage to the Goods, Container, crew, Vessel and/or any third party properties caused or generated by the Merchant's negligence, fault or misconduct, without prejudice to any other sum of money MSC is entitled to claim in contract or in law as a consequence of same. This fee will be charged in addition to any expense or loss incurred by MSC as a consequence of Merchant's negligence, fault or misconduct. The amounts that MSC will be entitled to charge are as per Annex 1.

**17.3.** The Carrier and its agents are authorized to charge the LAF in any legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim.

# 18. UNCLEARED AND ABANDONED CARGO FEE

**18.1.** MSC or its agents shall be entitled to charge the Merchant a Uncleared and Abandoned Cargo (**UAC**) fee (as per Annex 1), covering the extra coordination / organization work, and subsequent follow-up necessitated by any Container remaining uncleared and/or uncollected in accordance with clause 20. of the Carrier's sea waybill / bill of lading terms and conditions.

# ANNEX 1

| FEE / CHARGE | AMOUNT |
|---|---|
| **Additional fees of clause 3.6.** | USD 1’000.00 |
| **Cargo mis-description fee of clause 3.10.** | USD 5’000.00 per Container |
| **High value commodity mis-declaration fee of clause 3.10.** | USD 25’000.00 per Container |
| **Additional fees of clause 6.7.** | USD 1’000.00 per Container |
| **Military and/or para-military misdeclaration charge of clause 7.5.** | USD 5’000.00 per Container |
| **Critical cargo misdeclaration charge of clause 8.4.** | USD 5’000.00 per Container |
| **Hazardous and IMDG Cargo misdeclaration charge of clause 9.8.** | USD 15’000.00 per Container |
| **Waste and scrap Cargo misdeclaration or missing documentation charge of clause 10.4.** | Non-hazardous waste & scrap: USD 5’000.00 per Container<br>Hazardous waste & scrap: USD 20’000.00 per Container |
| **Legal Administration Fee (LAF) for expenses / losses incurred up to USD 500.00** | USD 50.00 per Container |
| **Legal Administration Fee (LAF) for expenses / losses incurred between USD 500.00 and USD 1’000.00** | USD 100.00 per Container |
| **Legal Administration Fee (LAF) for expenses / losses incurred between USD 1’000.00 and USD 2’000.00** | USD 200.00 per Container |
| **Legal Administration Fee (LAF) for expenses / losses incurred over USD 2’000.00** | USD 250.00 per Container |
| **Uncleared and Abandoned Cargo (UAC) fee** | USD 100.00 per sea waybill / bill of lading |