



MSC NEW ZEALAND TERMS AND CONDITIONS

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MEDITERRANEAN SHIPPING COMPANY (AUST) PTY LTD 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 "**BL STANDARD TERMS & CONDITIONS**" OR, IN ALL OTHER CASES SUBJECT TO THE "**SEA WAYBILL TERMS & CONDITIONS**"), THE BOOKING TERMS AND THE LOCAL AGENCY TERMS & CONDITIONS AT THE PORTS OF LOADING, TRANSSHIPMENT AND DISCHARGE.

1. DEFINITIONS

- **MSC or Carrier** means MSC Mediterranean Shipping Company S.A., 12-14 Chemin Rieu, 1208 Geneva, Switzerland.
- **MSCA** means **MEDITERRANEAN SHIPPING COMPANY (AUST) PTY LTD**, 11 Cliff Street, Fremantle, Western Australia, Australia including all its branch offices in New Zealand and acting as agent of MSC Mediterranean Shipping Company S.A. only.
- **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.

2. APPLICABILITY

- 2.1 In case of any inconsistency between these Agency Terms & 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 & Conditions shall be deemed to form part of all contracts between the Merchant and MSC via its local agent MSCA. Orders and instructions of the Merchant shall be considered as his acknowledgement and acceptance of these Agency Terms & Conditions.
- 2.3 General terms and conditions of the Merchant will not be applicable and shall in any way be superseded by these Agency Terms & Conditions and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill. Deviations from these Agency Terms & Conditions and in particular general conditions of the Merchant shall not apply unless this has been explicitly agreed in writing.

3. QUOTATION TERMS AND CONDITIONS

[click here](#) for a copy of the "Freight Rate Confirmation"

- 3.1 A booking against this quotation will only be accepted if space and equipment are available for the nominated sailing(s). This quotation is not a guarantee of space or equipment availability, which should be confirmed at the time of booking.
- 3.2 Subject to clause (3.8.7) below, the validity period of this quotation is strictly as set out in the details section of the Freight Rate Confirmation. An extension of time may be requested but will not automatically be granted.
- 3.3 The service, vessels and dates shown are subject to change without notice. Neither MSCA nor MSC will be liable to any person for any loss that they may sustain because of any change to the information listed or because that information is incorrect or inaccurate in any respect. Failure by the Merchant to truthfully, accurately and sufficiently detailed describe the goods to MSC, whether intentional or otherwise and consistent with the Merchants undertaking under the terms of carriage, will result in the application of a

Mis-Declaration Fee of 5.000 USD. In addition, it is further expressly agreed and accepted that such charge is in addition to any and all costs incurred by the carrier as a consequence of the cargo being mis-declared and in addition to any and all other indemnities available to the Carrier under the terms of carriage.

3.4 Unless stated otherwise and expressly confirmed in writing, each quotation always relates to:

3.4.1 Harmless goods, being made clear that IMDG cargoes are always and strictly subject to the Carrier and Master's final approval at time of loading.

3.4.2 Cargo shipped and stowed with "deck option".

3.4.3 In gauge cargo, if quoted for open top containers, flat racks and platforms.

3.4.4 The Merchants hereby 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 the representation that the cargo value is less than USD 200 000. In the event that the cargo value exceeds the aforementioned sum and the Merchants fail and/or neglect to notify the Carrier in writing prior to their acceptance of the quotation, the Carrier's liability shall be limited to either USD 200 000 or the limitation as provided for in the Contract of Carriage, whichever the lesser.

3.5 High Value Commodity Mis-Declaration Fee - Any cargo with a commercial value exceeding USD 250,000 (two hundred and fifty thousand US Dollars) must be declared to MSC or its agent 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 25,000 USD (twenty five thousand US Dollars), 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 by MSC and the corresponding surcharge paid by the Merchant.

3.6 All rates and conditions for services to and from the United States of America (USA) are subject to the requirements of the laws of the USA. Inland haulage charges and conditions relating thereto in the USA and New Zealand are also subject to these laws. These laws require details to be filed by the carrier with the Federal Maritime Commission (FMC) and then published in a FMC tariff. The law prohibits shipments to be at rates for services and conditions other than those filed with the FMC. We reserve the right to vary the period of validity in clause (3.2) above should this be necessary to comply with the laws of the USA.

3.7 If you wish to proceed with this offer of carriage, you will need to notify MSCA when booking cargo. This is to ensure that the rate MSC has quoted is the rate that you will be charged, as this rate must be filed with the US Government FMC (Federal Maritime Commission). If we cannot match your shipment with the exact rate quoted, higher rates are likely to be applied and under FMC rules, rates cannot be lowered when a shipment has already taken place.

3.8 Certain charges itemised in the MSC quotations are variable and/or beyond MSC's control. In particular:

3.8.1 Certain third party charges, fees, taxes, levies and other imposts (including without limitation port and statutory charges) are beyond MSC's control and are subject to change without notice. The Merchant is at all times liable for such third party imposts in respect of the goods and their carriage and storage. Not all such imposts have been listed in this quotation. The Merchant is always liable for interest on any overdue invoices.

- 3.8.2 MSC shall charge the Merchant a Legal Administration Fee (LAF) covering the extra coordination / organization work and subsequent follow-up necessitated by any situation of damage or risk of damage to the cargo, container, crew and/or vessel caused or generated by the Merchant's negligence, fault or misconduct. This fee will be charged in addition to the costs actually as the result of the situation itself and its remedy. Its amounts will be of:

Tariff will come into effect on 1st January 2016.

FOR COSTS UP TO 500 USD: 40 USD PER CONTAINER

FOR COSTS BETWEEN 500 AND 1000 USD: 80 USD PER CONTAINER

FOR COSTS BETWEEN 1000 AND 2000 USD: 140 USD PER CONTAINER

FOR COSTS OVER 2000 USD: 200 USD PER CONTAINER

Tariff will come into effect on 1st February 2022.

FOR COST UP TO USD 500.00: **USD 50.00** PER CONTAINER

FOR COST BETWEEN USD 500.00 AND USD 1'000.00: **USD 100.00** PER CONTAINER

FOR COST BETWEEN USD 1'000.00 AND USD 2'000.00: **USD 200.00** PER CONTAINER

FOR COST OVER USD 2'000.00: **USD 250.00** PER CONTAINER

The Carrier and its agents are authorized to charge the LAF in any other legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim. Payment is due in 14 days from MSC's invoice.

- a) The number of Containers taken into consideration for invoicing will be the number of Containers involved in the incident / casualty, and not the total number of Containers listed on the Bill(s) of Lading or Sea Waybill.
- b) The costs referred to in clause 3.8.2 consist of repair costs and extra handling costs as charged to MSC or its agents, including all taxes and charges.

3.8.3 The amounts specified in this quotation for Bunker Recovery Charge (BRC) are indicative only. Adjustments will be calculated and charged as at the time of shipment.

3.8.4 Unless specifically stated otherwise, this quotation does not include any ISPS Security Charges, which do not form part of the freight, and which may be additionally payable as levied locally by the loading and discharging port terminals.

3.8.5 Any and all additional charges incurred as a result of or arising from quarantine, Customs or security requirements, including (but not limited to) additional moves, storage, hire, cleaning, and fumigation costs, will be for the account of the Merchant.

3.8.6 Unless otherwise specified, this quotation does not include pre-carriage or on-carriage charges. If you require pre-carriage or on-carriage services from MSC, you must confirm the applicable charges at the time of booking.

3.8.7 Charges may be subject to General Rate Increases (GRI), Overweight Surcharges (OWS) and Peak Season Surcharges. Adjustments will be calculated and charged at the time of shipment.

3.8.8 Freight, Origin and Destination additional and surcharges are subject to change at time of shipment and are not fixed for the validity of the quote.

3.9 All quotations may be subject to change or instant withdrawal in the event of circumstances arising beyond the reasonable control of MSC or MSCA, or in the event of circumstances beyond MSC or MSCA's reasonable knowledge at the time of providing this quotation which materially affect the basis on which the charges were quoted.

3.10 Shipments made in accordance with this quotation are subject to the Carrier's terms and conditions in respect of container release and use, as set out in MSC's Booking Confirmation, Arrival Notice and Bill of

Lading and/or Sea Waybill documents, as applicable. Collection by you of an MSC container will constitute acceptance of the conditions for its use as outlined in these documents.

- 3.11** Containers are the property of MSC, and for your convenience, as an additional service beyond the physical carriage of the goods, and strictly on the terms set out in this document, the Booking Confirmation or Arrival Notice, and the Bill of Lading or Sea Waybill, as applicable, you may make use of MSC's container, free of charge, for the maximum period specified by MSC in its Tariff. This is defined as the "Hire Free Period".
- 3.12** Ultimately containers must be returned to MSC's nominated place of receipt in a clean and undamaged condition. After the elapse of the Hire Free Period, hire charges will apply at the daily rates as specified in the Booking Confirmation or Arrival Notice, and will continue to accrue until the container is returned.
- 3.13** If containers are not returned within the specified time, MSC may elect to proceed with legal action to recover the containers, or the replacement value as recorded in the books of MSC, in addition to all accrued container hire and administration charges. Failure to pay invoiced hire charges and replacement costs may result in legal proceedings. This responsibility, including in respect of legal and court fees and collection expenses, at all times remains jointly and severally with the parties comprising the Merchant under the Bill of Lading and/or Sea Waybill, and with the person by whom or on whose behalf the container is collected, notwithstanding delegation of container collection or transportation to a third party contractor.
- 3.14** The formation of the contract by your acceptance of this quotation is subject to:
- 3.14.1 compliance with sanctions laws applicable to MSC, including but not limited to Swiss, EU and US secondary sanctions; and
 - 3.14.2 approval by MSC of any dangerous goods, hazardous substances or waste cargo to be carried by MSC.
- 3.15** Cargo will be carried in accordance with MSC's BL Standard Terms and Conditions and/or Sea Waybill Terms and Conditions, as applicable.
- 3.16** Declared cargo's weight and overweight cargo
- MSC does not permit its Containers to be used in any manner whatsoever to lift, load, move or carry cargoes that:

- 3.16.1 are wrongly declared, or
- 3.16.2 weigh in excess of the VGM or commercial / manifest weight declared, or
- 3.16.3 weigh in excess of the payload of the equipment.

Should MSC be made aware, prior or during carriage, that its Containers have been used in breach of any of the above prohibitions, the container(s) concerned may be refused for loading, kept onboard for return to origin, discharged at the next convenient port and/or corrective measures such as, but not limited to, restuffing into other containers may be taken at MSC's sole discretion and at the Merchant's sole risks and expenses.

Merchant shall be liable towards 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.

Any extra work generated due to a breach of any of the above prohibitions shall give rise to an ad hoc surcharge and MSC reserves its rights to exercise its lien over the infringing cargo and/or any other cargo carried on behalf of the Merchant until the costs due to MSC, including surcharge, have been fully paid. The above applies *mutatis mutandis* to Merchant's owned or operated Containers or equipment tendered to the Carrier for shipment

- 3.17 If any provision of these Quotation Terms and Conditions is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from these Quotation Terms and Conditions.

4. BOOKING CONFIRMATION TERMS AND CONDITIONS

[click here](#) for a copy of the "Booking Confirmation"

4.1 Parties and Contract Terms

This Booking Confirmation forms a contract between the Carrier and the Merchant.

4.2 Description of Goods (see clauses 14 and 15 of the Contract of Carriage)

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 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 truthfully, accurately and sufficiently detailed describe the goods to MSC, whether intentional or otherwise and consistent with the Merchants undertaking under cause 4.17, 4.18, 4.28, 4.29, 4.31 and 4.32 will result in the application of a Mis-Declaration Fee of 5.000 USD. In addition, it is further expressly agreed and accepted that such charge is in addition to any and all costs incurred by the carrier as a consequence of the cargo being mis-declared and in addition to any and all other indemnities available to the Carrier under the terms of carriage.

4.3 Goods, Packing and Container Weights:

- a) Dangerous or hazardous Goods have been accepted by the Carrier in reliance of the Merchant's notice of their full and true nature. The Merchant's dangerous or hazardous goods declarations must be in the format required by all applicable regulations.
- b) Goods include any packaging and any packing materials used to secure the cargo in the Container. It is the Merchant's responsibility to ensure that packaging and packing materials, especially timber, comply with all applicable requirements and their import is permitted in the country of destination. The weight of packaging and packing must be included in the total weight declared for each Container.
- c) Incorrectly declared weights of Goods directly affect the safety of the Vessel and all persons involved in the transportation of the Goods and the Merchant must take care to properly evaluate the weight of the Goods.
- d) Overloaded Containers are not permitted to be carried by law and the Merchant must not exceed the maximum weight limit indicated on each Container. If the Merchant fails to comply with these provisions the Carrier, acting reasonably, may deal with such Goods as it sees fit including but not limited to not loading the Goods, stopping Goods in transit, discharging at the next port and/or repacking them and levying extra charges, and the Merchant is strictly liable to indemnify the Carrier for all costs, losses, delays, damages, fines, increased charges and any other consequences whatsoever arising.

4.4 Freight and Charges

Freight and charges are based on the instructions provided at the date of this Booking Confirmation and may change if the shipper's instructions change. Unless otherwise agreed in advance, the applicable tariff for freight and charges for the Goods is the tariff in effect as at the date the Carrier takes possession of the Goods. The applicable tariff from time to time may be requested from your local MSCA office. The Carrier reserves the right to amend the freight and charges if the Carrier's tariff changes after the date hereof up until the Carrier takes possession of the Goods, but if the Carrier increases the freight or charges the Merchant may cancel the booking and terminate this Booking Confirmation without penalty. The Merchant will remain liable to pay any charges already incurred before cancelling the booking, including container hire charges, which will continue to apply until the Container(s) is returned empty to MSC. The Merchant is liable for interest on any overdue invoice.

4.5 Use of Booking Agents

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

4.6 Shipping Documents

Shipping documents will be issued immediately upon receipt of loading confirmation and kept at Merchant's disposition at MSCA's local office. Transfer and dispatch of documents (by registered mail or courier) will only be effected upon receipt of the Merchant's order confirmation and at his sole, risk, expense and responsibility and shall be deemed remitted to the Merchant upon sending.

4.7 Damage to Cargo Due to Atmospheric Conditions

Save where Goods are carried in an operating refrigerated Container, the Carrier has no liability whatsoever for loss or damage to the Goods caused by variations in atmospheric conditions (e.g., temperature, humidity).

4.8 Container Seal(s)

Notwithstanding the provision of Container seal(s) by the Carrier, it is the Merchant's responsibility to ensure the type of Seal affixed to the Container(s) is in compliance with all applicable regulations. In the event the Merchant does not use Carrier's seals, the Merchant shall use seals which are compliant with the latest ISO regulations or with equivalent security requirements. The Merchant shall indemnify 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.

4.9 Fumigation / Phytosanitary

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.

4.10 Extra Charges

The Merchant is advised that extra charges may be levied by local authorities in addition to the freight and charges listed on the Freight Rate Confirmation or described in the Carrier's tariff and payable before the Goods can be delivered. The Carrier may be required to collect the extra charges on behalf of the local authorities.

4.11 Legal Administration Fee.

MSC shall charge the Merchant a Legal Administration Fee (LAF) covering the extra coordination / organization work and subsequent follow-up necessitated by any situation of damage or risk of damage to the cargo, container, crew and/or vessel caused or generated by the Merchant's negligence, fault or misconduct. This fee will be charged in addition to the costs actually as the result of the situation itself and its remedy. Its amounts will be of:

Tariff will come into effect on 1st January 2016.

FOR COSTS UP TO 500 USD: 40 USD PER CONTAINER

FOR COSTS BETWEEN 500 AND 1000 USD: 80 USD PER CONTAINER

FOR COSTS BETWEEN 1000 AND 2000 USD: 140 USD PER CONTAINER

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FOR COST BETWEEN USD 1'000.00 AND USD 2'000.00: **USD 200.00** PER CONTAINER

FOR COST OVER USD 2'000.00: **USD 250.00** PER CONTAINER

- a) The Carrier and its agents are authorized to charge the LAF in any other legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim. Payment is due in 14 days from MSC's invoice.
- b) The number of Containers taken into consideration for invoicing will be the number of Containers involved in the incident / casualty, and not the total number of Containers listed on the Bill(s) of Lading or Sea Waybill.
- c) The costs referred to in clause 3.8.2 consist of repair costs and extra handling costs as charged to MSC or its agents, including all taxes and charges.

4.12 Sanctions and Import/Export Control Laws.

It is the Merchant's responsibility to ensure that the Goods the subject of, and the transactions contemplated by, this Booking Confirmation comply with all trade sanctions and import/export control laws applicable to the Merchant (Sanctions). The Merchant is strictly liable to indemnify the Carrier for all costs, losses, damages and consequences whatsoever arising out of any failure by the Merchant to comply with Sanctions. Carrier reserves the right to ensure compliance with Sanctions applicable to the Carrier.

4.13 Sending of Bills of Lading and Sea Waybills.

Bills of Lading or Sea Waybills will be available for the Merchant to collect from MSCA's office, but should the Merchant request them to be sent, this shall be at the Merchant's own risk and expense. Carrier and MSCA accept no liability whatsoever.

4.14 Vessel and Voyage Number.

The information provided in these fields is anticipated at the time of the booking. Carrier reserves the right to change any of them.

4.15 Late Customs Declaration Fines.

When it is the Merchant's responsibility to file customs declarations and the Carrier is fined in consequence of the Merchant's late, incomplete or erroneous filing the Merchant shall indemnify the Carrier for the fine and for all costs, losses and expenses whatsoever incidental thereto.

4.16 Contract of Carriage.

The information furnished on this Booking Confirmation will be used to issue the Contract of Carriage.

In this document "you" means the Booking Party and the Shipper, jointly and severally. The Booking Party warrants to MSC that it has authority to enter into this contract on behalf of the Shipper. You remain bound by the terms of the contract, and responsible for all liabilities arising in connection with this booking, the carriage of the goods and the use of MSC's container or other equipment, despite any later variation or purported supersession of the contract, including the nomination of a different shipper for the purposes of the Bill of Lading and/or Sea Waybill.

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.

As per the SOLAS Convention (Safety of Life at Sea) it is mandatory for shippers to verify weights of packed containers, regardless of who packed the container. The verification of actual container weight must be obtained on-shore, and provided to the vessel operator and the port terminal facility prior (to VGM cut off) to the vessel loading process. Neither MSC nor MSCA shall be responsible for any costs incurred by the declaration of incorrect container weights.

4.17

The weight shown on the Bill of Lading and/or Sea Waybill is as declared by you. MSCA and its principal, MSC does not accept any liability for any inaccuracy.

4.18 Declared cargo's weight and overweight cargo

MSC does not permit its Containers to be used in any manner whatsoever to lift, load, move or carry cargoes that:

- 4.18.1 are wrongly declared, or
- 4.18.2 weigh in excess of the VGM or commercial / manifest weight declared, or
- 4.18.3 weigh in excess of the payload of the equipment.

Should MSC be made aware, prior or during carriage, that its Containers have been used in breach of any of the above prohibitions, the container(s) concerned may be refused for loading, kept onboard for return to origin, discharged at the next convenient port and/or corrective measures such as, but not limited to, restuffing into other containers may be taken at MSC' sole discretion and at the Merchant's sole risks and expenses.

Merchant shall be liable towards 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.

Any extra work generated due to a breach of any of the above prohibitions shall give rise to an ad hoc surcharge and MSC reserves its rights to exercise its lien over the infringing cargo and/or any other cargo carried on behalf of the Merchant until the costs due to MSC, including surcharge, have been fully paid.

The above applies *mutatis mutandis* to Merchant's owned or operated Containers or equipment tendered to the Carrier for shipment

4.19 If you or your servants or agents pack the container, you are responsible for properly positioning and securing the goods. This is important for a number of reasons, including without limitation ensuring even weight distribution, ventilation and air circulation and avoiding shifting. For refrigerated cargo it is your responsibility to pre-cool the goods before stuffing the container, and to prepare the container with the required temperature and ventilation settings. You are also responsible for providing temperature instructions to MSC at the time you make the booking. MSC and its agents rely on the details you provide in this Booking Confirmation to care for, and to arrange for the carriage of the goods. In the event that you provide later temperature instructions in writing ("Temperature Instructions"), then the Temperature Instructions will supersede the relevant information in the Booking Confirmation, even if that information has been incorporated into the bill of lading and MSC will follow the Temperature Instructions. You agree that MSC and its agents will maintain the container set point at the temperature specified in the Booking Confirmation (or Temperature Instructions if applicable), plus or minus 2°C. It is your responsibility to ensure that the information contained in the Booking Confirmation (or Temperature Instructions if applicable) is accurate and that the container temperature and ventilation settings at the time the container is presented at the export terminal are consistent with the information contained in the Booking Confirmation (or Temperature Instructions if applicable). MSC and its agents will not be liable for any loss or damage arising or resulting from the inclusion in the Booking Confirmation (or Temperature Instructions if applicable) of information which is incorrect or inconsistent with any other information or instruction given to MSC, or inconsistent with the temperature or ventilation settings of the container at the time of delivery to the export terminal. You agree to indemnify MSC and its agents against all liabilities arising from reliance on the information contained in the Booking Confirmation (or Temperature Instructions if applicable) by any party. Further, MSC and its agents will not be liable for any loss or damage arising from your failure to pre-cool the cargo or the container, or for any variation in the carrying temperatures caused by this failure to pre-cool. Refrigerated containers are not designed to cool or freeze cargo which has been loaded in a container at a temperature higher than its designated carrying temperature. MSC shall not be responsible for the consequences of the cargo being loaded at a higher temperature than that required for carriage. MSC has the right but not the obligation to refuse to accept any container where the cargo is not or has not been loaded into the container within plus or minus 2°C of the contracted carrying temperature.

4.20 Containers are the property of MSC. For your convenience, as an additional service beyond the physical carriage of the goods and strictly on the terms set out in this document, MSC offers you the free use of

the booked container(s) (release numbers mentioned in the Booking Confirmation) for a period of a maximum of 9 calendar days from the time:

- 4.20.1 you collect it from MSC's depot, or
- 4.20.2 of the release of the container(s) by MSC's container depot to you or your nominee; or
- 4.20.3 it is delivered to you by the road transport operator, if the container(s) is the subject of Triangulation (see clause 4.23), as the case may be (being the "Hire Free Period")

4.21 After the Hire Free Period ends, and subject to clause 4.23, you will be charged container hire costs at the daily rates (excl. GST) specified below (per container):

- 4.21.1 until the container is presented for shipment at the terminal and is subsequently loaded on the booked voyage;
- 4.21.2 if the booked voyage is cancelled as a result of the act or omission of the Carrier, its servants or agents, until the date of that cancellation;
- 4.21.3 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;
- 4.21.4 if, at the request of the Merchant, 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

EXPORT CONTAINER HIRE RATES

Container Type	Free Day	1 st Period	Container Hire Rate
20ft Dry	8 Calendar Days		NZ\$50 per Calendar Day
40ft Dry	8 Calendar Days		NZ\$100 per Calendar Day
40ft High Cube Dry	8 Calendar Days		NZ\$100 per Calendar Day
20ft Special*	8 Calendar Days		NZ\$60 per Calendar Day
40ft Special*	8 Calendar Days		NZ\$120 per Calendar Day
20ft Reefer	8 Calendar Days		NZ\$90 per Calendar Day
40ft Reefer	8 Calendar Days		NZ\$180 per Calendar Day

*Special Equipment -Flat Rack, Open Top, Bolsters, etc.

4.22 A "calendar day" is a day, calculated from midnight to midnight (or any part of that day) including, without limitation, weekends and holidays.

4.23 Triangulation refers to an empty container(s) being transported from the consignee of a previous import shipment directly to (and used by) the shipper of a new export shipment, without being returned to MSC's container depot. The purpose of Triangulation is to save on transport costs for the Merchant. If you use Triangulation, you must inspect the container(s) for damages, cleanliness and for its suitability for carriage of goods at the time when the container(s) is delivered to you by the road transport operator. If you accept delivery of the empty container, you acknowledge and accept that it is undamaged, clean and suitable for carriage of goods. If the container(s) is deemed by you as unsuitable for carriage of goods, you must refuse delivery of the container and instruct the road transport operator to return it to MSC's nominated container depot.

4.24 On completion of the booked voyage (or within the Hire Free Period if you do not proceed with the booked voyage), the empty container must be returned to MSC's nominated container depot clean, undamaged and completely free of cargo residues, chemicals, Dangerous Goods labels (in accordance with applicable regulations), fumigation labels, stowage aids and lashings. Failure to comply with this requirement may

result in the container being rejected by the depot, or in action being taken against you to recover the costs of repairs, cleaning and disposal of residue/contamination, any fine, interest and administration charges. If the container(s) is not presented for shipment or returned to the depot within 30 calendar days, MSC may notify you of your obligation to return the container(s) to MSC's nominated container depot by a specified date (the **Final Return Date Notice**). If you fail to comply with the Final Return Date Notice, you will be liable to pay the replacement value of the container(s) as recorded in the books of MSC, in addition to all accrued hire and administration charges. Failure to pay invoiced hire charges and/or the replacement costs may result in MSC taking legal action against you. Collection by you, or release by the depot for transport to your nominated place of collection, of an MSC container will constitute acceptance of the terms for its use as outlined in this document.

- 4.25** You are liable for and shall indemnify MSC for all costs, loss and damages arising from any accidents or incidents involving the container provided to you under this agreement which cause injury or death of persons or loss of or damage to property, provided any such costs, loss and damages are not caused directly by a negligent or wrongful act or omission by MSC, its servants or agents.
- 4.26** In addition to the provisions quoted above in this document, failure to submit Customs Export Delivery Orders ("CEDO") 48 hours prior to vessel arrival may result in delays to shipment and associated costs until New Zealand Customs Service requirements have been fulfilled. You will be liable for any costs or charges incurred, due to MSC or a third party, in the event of any failure to lodge an accurate CEDO.
- 4.27** Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by law.
- a) Nothing in this agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Merchant by the Consumer Guarantees Act 1993 (NZ), the Fair Trading Act 1986 (NZ) or any other applicable law that cannot be excluded, restricted or modified by agreement.
 - b) To the fullest extent permitted by law, the liability of the Carrier for a breach of a non-excludable guarantee referred to in clause 4.27(a) is limited, at the Carrier's option, to, in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.
 - c) Where the services provided by the Carrier or its agents or subcontractors pursuant to these terms are acquired by the Merchant "in trade" the Consumer Guarantees Act 1993 (NZ) and sections 9, 12A and 13 of the Fair Trading Act 1986 (NZ) shall not apply.
- 4.28** If you are shipping dangerous or hazardous goods, you must obtain a written certificate of declaration (issued in accordance with the applicable laws of both the ports of loading and discharge) proving that the goods (including the container etc.) are properly marked, labelled and packed and that the correct technical name, nature and class of goods is clearly stated. It is also your responsibility to ensure that break-bulk goods are distinctly and permanently marked. The certificate of declaration must be provided a minimum of 48 hours prior to general cargo cut-off, otherwise MSC will not accept the goods for shipment and you will be liable for all additional charges that are incurred. MSC and its agents rely on the information contained in the certificate of declaration and on the labels and markings and will not be liable for any loss or damage arising from reliance on this information. You agree to indemnify MSC and its agents against all liabilities arising from such reliance, and/or from a failure to provide the certificate of declaration before the specified deadline.
- 4.29** If your booking is for out-of-gauge cargo, this booking is conditional on the dimensions as stated by you being confirmed by a survey of the consignment as presented for shipment at the load port or at another place with MSC's consent. If your booking is for in-gauge cargo in or on flat-rack or platform containers, this booking is conditional on the adequacy of the lashing and securing being confirmed by a survey of the consignment as presented for shipment at the load port or at another place with MSC's consent. You appoint MSCA as your agent to arrange the survey on your behalf and at your expense, and you release

MSC and MSCA from any liability in connection with the selection of the surveyor, the performance of the survey and the content of the survey report. MSC may elect whether or not it accepts the content of the survey.

- 4.30** Containers transported by road are subject to Chain of Responsibility. MSC reminds you of your obligations to ensure containers are safe for road transport, including but not limited to complying with mass, dimension and load restraint requirements and speed and fatigue management.
- 4.31** Unless stated otherwise and expressly confirmed in writing, each quotation always relates to:
- 4.31.1 Harmless goods, being made clear that IMDG cargoes are always and strictly subject to the Carrier and Master's final approval at time of loading.
 - 4.31.2 Cargo shipped and stowed with "deck option".
 - 4.31.3 In gauge cargo, if quoted for open top containers, flat racks and platforms.
 - 4.31.4 The Merchants hereby 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 the representation that the cargo value is less than USD 200,000. In the event that the cargo value exceeds the aforementioned sum and the Merchants fail and/or neglect to notify the Carrier in writing prior to their acceptance of the quotation, the Carrier's liability shall be limited to either USD 200,000 or the limitation as provided for in the Contract of Carriage, whichever the lesser.
- 4.32** High Value Commodity Mis-Declaration Fee - Any cargo with a commercial value exceeding USD 250,000 (two hundred and fifty thousand US Dollars) must be declared to MSC or its agent 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 25,000 USD (twenty five thousand US Dollars), 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 by MSC and the corresponding surcharge paid by the Merchant.
- 4.33** If any provision of these Booking Confirmation Terms and Conditions is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from these Booking Confirmation Terms and Conditions.

5. ARRIVAL NOTICE TERMS AND CONDITIONS

[click here](#) for a copy of the "Arrival Notice"

- 5.1** It is the joint and several responsibility of the Consignee and the party to whom this Arrival Notice is issued to ensure that the Customs Clearance is obtained, and any Ministry of Primary Industries hold and Shipping Line hold has been removed at the wharf or rail head before sending transport to take delivery of the cargo. Should the transport be sent prior to the Customs Clearance being obtained, and any Ministry of Primary Industries hold and Shipping Line hold removed at the wharf or rail head having been obtained, all costs howsoever arising, due to MSC or any third party, will be for the account and risk of the Consignee.
- 5.2** In accordance with MSC's Standard BL Terms and Conditions or Sea Waybill Terms and Conditions (as applicable), MSCA notifies you of the impending arrival of cargo. This information is of commercial nature only and shall in no case be considered as an obligation of the Carrier or its agent. The actual arrival date of the vessel may change without further notification.
- 5.3** Please note that cargo will not be released until all freight and/or charges have been paid and until one original Bill of Lading, duly endorsed, has been surrendered. 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 <https://www.msc.com/nzl/contract-of-carriage/seawaybill-terms-conditions> 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.

- 5.4** Your goods, shipped under the Bill of Lading referred to in this Arrival Notice (please refer in particular to the Clauses in relation to "Description of Goods and Merchant's Responsibility" and "Notification and Delivery"), are or shortly will be available for collection at the Container Place of Availability noted in same. If your goods are not collected within three (3) calendar days of the date of availability, MSC reserves the right to place them in bond storage at your risk and expense. You must then pay all storage and associated charges before taking delivery of your goods. If you fail to take delivery of the Goods within ten (10) calendar days of the date of availability, such delays shall be deemed to be unreasonable within the meaning of clause 20 of the MSC Bill of Lading and Sea Waybill Terms and Conditions and the Carrier shall not thereafter have any further responsibilities of liability in respect of these goods. If after 30 calendar days from the date of availability the goods have not been collected, MSC may finally notify you of your collection obligations (**Uncleared & Abandoned Cargo Notice**). If you fail to comply with an Uncleared & Abandoned Cargo Notice within five (5) calendar days, or 48 hours for chilled reefer cargo, MSC may exercise its rights under the Bill of Lading and/or Sea Waybill to dispose of the goods to recover any outstanding charges. If, whether by act or omission, the Merchant directly or indirectly prevents, delays or hinders the discharge of the delivery of the Goods, any costs, expenses or liability so resulting shall be for its full and sole account.
- 5.5** For your convenience, as an additional service beyond the physical carriage of the goods, and strictly on the terms set out in this document and the Bill of Lading and/or Sea Waybill, as applicable, except insofar as inconsistent with this agreement, you may make use of MSC's container, free of charge, for the maximum period set out below, commencing on and including the day of discharge as the first free day. This is defined as the "Hire Free Period". Your collection of the container will signify your acceptance of the terms of the offer contained in this document for the use of the container.
- 5.6** Ultimately, except when used for Triangulation (see Clause 5.7), the empty container must be returned to the container depot nominated by MSC, clean, undamaged, and completely free of cargo residues, chemicals, Dangerous Goods labels (in accordance with applicable regulations), fumigation labels, stowage aids and lashings. Failure to comply with this requirement may result in the container being rejected by the depot, or an action being taken against you to recover the costs of repairs, cleaning, disposal of residue/contamination and any other costs arising as a result, including fines imposed by authorities, recovery costs and interest.
- 5.7** Triangulation refers to an empty container(s) being transported from the consignee of a previous import shipment directly to (and used by) the shipper of a new export shipment, without being returned to MSC's Container depot. The purpose of Triangulation is to save on transport costs for the Merchant. If you use Triangulation, the empty container must be made available to the road transport operator in a clean and undamaged condition, and completely free of cargo residues, chemicals, Dangerous goods labels (in accordance with applicable regulations), fumigation labels, stowage aids and lashings. If the container(s) does not comply with this requirement, it must not be used for Triangulation. Instead, the container must be returned to the container depot nominated by MSC (in accordance with Clause 5.6). Failure to comply with this requirement may result in the container being rejected by the road transport operator and/or the new shipper, and/or an action being taken against you to recover the costs of repairs, cleaning,

disposal or residue/ contamination, transport and any other costs arising as a result, including fines imposed by authorities, recovery costs and interest.

5.8 You are liable for and shall indemnify MSC for all costs, loss and damages arising from any accidents or incidents involving the container provided to you under this agreement which cause injury or death of persons or loss of or damage to property, provided any such costs, loss or damages are not caused directly by a negligent or wrongful act or omission by MSC, its servants or agents.

5.9 Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by law.

- a) Nothing in this agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Merchant by the Consumer Guarantees Act 1993 (NZ), the Fair Trading Act 1986 (NZ) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- b) To the fullest extent permitted by law, the liability of the Carrier for a breach of a non-excludable guarantee referred to in clause 5.9 (a) is limited, at the Carrier's option, to, in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.
- c) Where the services provided by the Carrier or its agents or subcontractors pursuant to these terms are acquired by the Merchant "in trade" the Consumer Guarantees Act 1993 (NZ) and sections 9, 12A and 13 of the Fair Trading Act 1986 (NZ) shall not apply.

5.10 After the Hire Free Period, you have the option of retaining the container, and the container hire charges as set out below will apply. If after 30 calendar days from the date of discharge the container has not been returned to the location nominated by MSC in the Arrival Notice, MSC may: (a) demand the immediate return of the container; and / or (b) elect to proceed with legal action to recover the container, or the replacement value as recorded in the books of MSC, in addition to all accrued container hire and administration charges. Failure to pay invoiced container hire charges and replacement costs may result in legal proceedings. This responsibility, including in respect of legal and court fees and collection expenses, at all times remains jointly and severally with the parties comprising the Merchant under the Bill of Lading and/or Sea Waybill, and with the person by whom or on whose behalf the container is collected, notwithstanding delegation of container collection or transportation to a third party contractor.

5.11 Please note containers are the property of MSC and that time is of the essence in relation to the return of empty containers.

5.12 A total of 8 (eight) free calendar days including the day of discharge (day one) is allowed for all containers. The empty container must be returned clean and undamaged to the return location nominated on this notice. After 8 days container hire charges will apply. The applicable charges (exclusive of GST - Goods and Services Tax) are:

IMPORT CONTAINER HIRE RATES

Tariff will come into effect on 8th March 2020 until 31st December 2021. The first free day will be the discharge date of the containers.

Container Type	Free Days	1st Period	Rate per day	Rate Thereafter
20ft Dry	8 Calendar Days	7 Calendar days	NZ\$80	NZ\$120
40ft Dry	8 Calendar Days	7 Calendar days	NZ\$145	NZ\$225
40ft High Cube Dry	8 Calendar Days	7 Calendar days	NZ\$145	NZ\$225
20ft Special*	8 Calendar Days	7 Calendar days	NZ\$95	NZ\$185
40ft Special*	8 Calendar Days	7 Calendar days	NZ\$150	NZ\$310
20ft Reefer	7 Calendar Days	6 Calendar days	NZ\$120	NZ\$210
40ft Reefer	7 Calendar Days	6 Calendar days	NZ\$190	NZ\$425

*Special Equipment -Flat Rack, Open Top, Bolsters, etc.

Tariff will come into effect on 1st January 2022. The first free day will be the discharge date of the containers.

Container Type	Free Days	1st Period	Rate per day	Rate Thereafter
20ft Dry	8 Calendar Days	7 Calendar days	NZ\$85	NZ\$125
40ft Dry	8 Calendar Days	7 Calendar days	NZ\$160	NZ\$240
20ft Special*	8 Calendar Days	7 Calendar days	NZ\$115	NZ\$235
40ft Special*	8 Calendar Days	7 Calendar days	NZ\$190	NZ\$390
45ft HC	8 Calendar Days	7 Calendar days	NZ\$160	NZ\$240
20ft Reefer	7 Calendar Days	6 Calendar days	NZ\$130	NZ\$220
40ft Reefer	7 Calendar Days	6 Calendar days	NZ\$210	NZ\$445

*Special Equipment -Flat Rack, Open Top, Bolsters, etc.

5.13 The above rates and/or policy may be varied at MSC's discretion and will incur GST. For any enquires please contact your local port agent.

5.14 In circumstances where MSC wishes to vary the above rates and/or policy while a container(s) is already the subject of a container hire arrangement with a Merchant:

- a) MSC will provide to the Merchant reasonable notice in writing of the variation, and;
- b) the Merchant is entitled immediately to terminate the container hire arrangement without penalty by returning the container(s) as required under this agreement, and the Merchant's liability will be capped accordingly to the rates above.

5.15 A "calendar day" is a day, calculated from midnight to midnight (or any part of that day) including, without limitation, weekends and holidays.

MSC shall charge the Merchant a Legal Administration Fee (LAF) covering the extra coordination / organization work and subsequent follow-up necessitated by any situation of damage or risk of damage to the cargo, container, crew and/or vessel caused or generated by the Merchant's negligence, fault or misconduct. This fee will be charged in addition to the costs actually as the result of the situation itself and its remedy. Its amounts will be of:

Tariff will come into effect on 1st January 2016.

FOR COSTS UP TO 500 USD: 40 USD PER CONTAINER

FOR COSTS BETWEEN 500 AND 1000 USD: 80 USD PER CONTAINER

FOR COSTS BETWEEN 1000 AND 2000 USD: 140 USD PER CONTAINER

FOR COSTS OVER 2000 USD: 200 USD PER CONTAINER

Tariff will come into effect on 1st February 2022.

FOR COST UP TO USD 500.00: **USD 50.00** PER CONTAINER

FOR COST BETWEEN USD 500.00 AND USD 1'000.00: **USD 100.00** PER CONTAINER

FOR COST BETWEEN USD 1'000.00 AND USD 2'000.00: **USD 200.00** PER CONTAINER

FOR COST OVER USD 2'000.00: **USD 250.00** PER CONTAINER

- a) The Carrier and its agents are authorized to charge the LAF in any other legal currency that is legal tender in the place where the Carrier is seeking to enforce this claim. Payment is due in 14 days from MSC's invoice.
- b) The number of Containers taken into consideration for invoicing will be the number of Containers involved in the incident / casualty, and not the total number of Containers listed on the Bill(s) of Lading or Sea Waybill.

- c) The costs referred to in clause 3.8.2 consist of repair costs and extra handling costs as charged to MSC or its agents, including all taxes and charges.

5.16 In case of on-carriage, the Merchant's delivery instruction, together with all required documents, must reach MSCA at least 48 hours before the estimated time of arrival (ETA) at discharge port in order to arrange the positioning. Failing to comply with this obligation can lead to significant costs, including container hire, storage, monitoring, plugging and power costs. MSC and MSCA shall not be held liable for delay or additional costs generated due to a failure of the Merchant to comply with this obligation.

5.17 Containers transported by road are subject to Chain of Responsibility compliance. MSC reminds you of your obligations to ensure containers are safe for road transport, including but not limited to complying with mass, dimension and load restraint requirements and speed and fatigue management.

5.18 Delivery

- a) 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.
- b) Shall the Merchant fail to take delivery of the Goods within ten (10) days of the delivery becoming due under a) above, such delay shall be considered as unreasonable in the meaning of the clause 20 of the MSC Bill of Lading and Sea Waybill 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, delay or hinder the discharge or the delivery of the Goods, any costs, expenses or liability so resulting shall be for its full and sole account.

5.19 If any provision of these Arrival Notice Terms and Conditions is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from these Arrival Notice Terms and Conditions.