

# EXTENDED PROTECTION

## GENERAL TERMS AND CONDITIONS

### Introduction

The Extended Protection service (“EPR”) is a new service provided by MSC Mediterranean Shipping Company S.A. (“MSC”) and tailor made for its North American customers for their Full Container Load and Less than Container Load shipments with MSC. The EPR is not an insurance program. Instead, the Merchant entering a Contract of Carriage with MSC may enter the EPR for qualified cargo shipments (covering a wide range of goods on terms described below). Where the Merchant enters the EPR, a supplemental level of protection is offered in case of damage during transit to the Merchant’s qualified cargo and for an additional minimum cost based on cargo value (CIF value plus 10%). The General Terms and Conditions (“GTCs”) governing the EPR are set forth below.

- 1) DEFINITIONS
- 2) CONTRACTING PARTIES
- 3) APPLICATION OF SERVICE
- 4) NON-APPLICATION OF SERVICE
- 5) PROCEDURES AND LIMITATIONS
- 6) COMPENSATION PROCESS
- 7) CONDITIONS PRECEDENT, TIME BAR AND JURISDICTION
- 8) SEPARABILITY AND VARIATION OF TERMS

### 1. Definitions

The following definitions shall apply in these GTCs:

“**Approved General Merchandise**” means Goods other than Excluded Cargo and Restricted Cargo.

“**CIF**” means the sum of the cost, insurance, and freight for Goods.

“**Container**” means any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate Goods and any connected or accessory equipment.

“**EPR**” or “**Extended Protection**” means the Extended Protection service.

**“EPR Charge”** means the *ad valorem* charge required to be paid in order to enter into the EPR.

**“Excluded Cargo”** means categories of Goods that do not qualify for the EPR and to which the EPR shall never apply, as more fully described in Section 4.4.

**“Goods”** means the whole or any part of the cargo carried under an MSC Bill of Lading or MSC Sea Waybill.

**“GTCs”** means these General Terms and Conditions which govern the EPR.

**“Merchant”** means the Shipper or Consignee under an MSC Bill of Lading or MSC Sea Waybill, or other holder in due course of an MSC Bill of Lading.

**“MSC”** means MSC Mediterranean Shipping Company S.A. and, for the purpose of these GTCs, specifically includes its agents in the United States of America and Canada.

**“MSC Contract of Carriage”** means an MSC Bill of Lading or an MSC Sea Waybill.

**“Person”** means an individual, corporation, company, or any other legal entity.

**“Qualified Goods”** means Approved General Merchandise, being carried to or from either the United States of America or Canada, for which the Merchant has paid the EPR Charge for entry into the EPR. At MSC’s sole discretion, certain Restricted Cargo may also constitute Qualified Goods under Section 4.5.3. Under no circumstances whatsoever will Qualified Goods ever include Excluded Cargo.

**“Restricted Cargo”** means categories of Goods which are not included in the EPR and to which the EPR does not apply, unless expressly agreed otherwise by MSC in accordance with the procedure set forth in Section 4.5.3.

**“Shipment”** means the carriage Goods under an MSC Bill of Lading or an MSC Sea Waybill.

**“Shipment Value”** means the value of Qualified Goods based on CIF terms, plus 10%.

**“Vessel”** means the vessel named in the MSC Contract of Carriage or any substituted vessel, feeder vessel, lighter, or other watercraft utilized by the carrier for carriage by sea.

## **2. Contracting Parties**

**2.1** These GTCs govern the EPR which the Merchant has purchased from MSC for a Shipment of Qualified Goods.

## **3. Application of Service**

**3.1 Applicable Causes of Loss or Damage: The EPR shall only apply to categories of loss or damage to Qualified Goods during Shipment caused by:**

- (i) Fire;
- (ii) Stranding, grounding, sinking, or collision;
- (iii) Heavy weather events;
- (iv) Acts of God / natural events;
- (v) Wetting damages due to Container holes allowing water infiltration;
- (vi) Stevedore mishandling;
- (vii) Theft or pilferage; or

(viii) Costs for sue and labor directly caused by the foregoing.

Each of the categories listed in Section 3.1 (i) through (viii) above are hereafter referred to as “**Qualified Causes**”.

**3.2 Additional Enhancements:** The EPR also provides the following additional enhancements for certain categories of loss or damage to Qualified Goods, or, as the case may be, costs directly related to such losses:

(i) **Airfreight replacement:** In the event of loss or damage caused by a Qualified Cause listed in Section 3.1, the EPR will also apply to airfreight costs arising directly from (a) the shipping of damaged parts to manufacturers for repair or replacement, and (b) such airfreight costs incurred for the return with the option for Merchant to elect routing the return to the destination of Shipment instead.

(ii) **Customs damage:** In the event of loss or damage to Qualified Goods caused by the actions of Government agents performing their customs inspection duties, the EPR will also apply to such losses or damages.

(iii) **Debris removal:** In the event of loss or damage caused by a Qualified Cause listed in Section 3.1, the EPR also applies to the expenses of removal and/or disposal of debris from Qualified Goods, except that the EPR shall not apply to: (a) any expenses incurred in consequence of, or to prevent or mitigate, pollution or contamination, or any threat of, or liability, therefore; or (b) the cost of removal of cargo from any vessel or connecting watercraft. In no event shall MSC be liable for debris removal or disposal in an amount greater than 10% of the value of the Qualified Goods.

(iv) **Fumigation loss or damage:** In the event of loss or damage to Qualified Goods caused by fumigation while Qualified Goods are in the custody and control of MSC, the EPR will also apply.

(v) **Returned/refused shipment:** If a consignee refuses or is unable to accept delivery of Qualified Goods, the EPR’s applicability to the Qualified Goods will be extended while the Qualified Goods are re-routed, but, such extension of the EPR shall automatically expire on the thirty (30) day following the date on which the consignee should have accepted delivery of the Qualified Goods unless carriage for a re-routing Shipment has commenced within such period of thirty (30) days.

(vi) **General Average contributions:** In the event of a General Average being declared, the EPR will provide for posting of the General Average guarantee on behalf of Merchant with respect to Qualified Goods and pay for the loss or damage to the Qualified Goods, together with the contribution required for the General Average loss.

(vii) **Reefer temperature variation:** For Qualified Goods constituting perishable items shipped in refrigerated Containers, the EPR will apply to loss, damage, or deterioration due to, or caused by, derangement, breakdown, or stoppage of refrigeration machinery, provided such derangement, breakdown, or stoppage continues for not less than 12 consecutive hours.

Each of the categories listed in Section 3.2 (i) through (vii) is hereafter referred to as “**Additional Enhancement Causes or Costs**”.

#### **4. Non-Application of Service**

**4.1 Causes of loss of Damage the EPR Does Not Apply to:** Notwithstanding anything else to the contrary, the EPR shall never apply to losses or damages caused to Qualified Goods by the following categories of causes which shall never be deemed Qualified Causes or Additional Enhancement Causes or Costs:

(i) Loss or damage attributable, in any way whatsoever, to the willful or intentional misconduct of Merchant, Merchant’s agent, subsidiary or subcontractor, or any other Person acting on behalf of Merchant;

(ii) Delay;

- (iii) Inherent defect, quality or vice;
- (iv) Insufficient or improper packaging;
- (v) Temperature or atmospheric pressure changes;
- (vi) Ordinary leakage, loss in weight, or wear and tear
- (vii) Geopolitical events (including sanctions on countries, entities, individuals or on any Goods; capture; seizure; arrest; warlike operations; strikes; riots; or civil commotion);
- (viii) Any chemical, biological, bio-chemical, or electromagnetic weapon (whether used as such or collaterally causing any loss or damage);
- (ix) Radioactive contamination;
- (x) Cyber risk;
- (xi) Terrorism; or
- (xii) Nuclear incidents.

**4.2 Geographical Exclusions:** The EPR shall never apply to Shipments, or any carriage of any Goods whatsoever, from or to or through the following excluded countries, territories or regions: Afghanistan; Angola; Balkans; Belarus; Burma (Myanmar); Burundi; Central African Republic; Cuba; DRC Congo (Zaire); Iran; Iraq; Ivory Coast (Cote d'Ivoire); Kenya; Lebanon; Liberia; Libya; Mali; Nicaragua; Nigeria; North Korea; Sierra Leone; Somalia; South Sudan; Sudan and Darfur; Syria; Ukraine; Venezuela; Yemen; Zimbabwe.

**4.3 Geographical Restrictions** Notwithstanding anything in these GTCs to the contrary, the EPR shall, for all purposes whatsoever, immediately cease to apply upon discharge of the Qualified Goods from the carrying Vessel in the following restricted countries, territories or regions: Armenia; Azerbaijan; Bolivia; Dominican Republic; Ecuador; Estonia; Former CIS; Georgia; Latvia; Lithuania; Mexico; Mongolia; Pakistan; Papua/New Guinea; Russia; Solomon Islands; and, in addition to those expressly listed in this Section 4.3, all other former Soviet Republics (but never including Belarus or Ukraine which are excluded from the EPR for all purposes).

**4.4 Excluded Cargo:** The EPR shall never apply to the following Excluded Cargo (and no such cargo shall, under any circumstances, be deemed to constitute Qualified Goods): bank notes; bullion; contraband; currency; documents; evidence of debt; hazardous goods from Canada; lottery tickets; live plants or animals; manuscripts; money, bills, or coins; negotiable instruments; passports; precious metals; precious stones; records; securities; stamps, including food stamps; weapons or ammunition; unlawful, illicit, or in any way prohibited Goods, including but not limited to drugs, illegal substances, stowaways, contraband of war, and/or any Goods prohibited or in violation of any port rules or regulations.

#### **4.5 Restricted Cargo**

**4.5.1** The following are Restricted Cargo:

- (i) Alcoholic beverages;
- (ii) Antiques and/or artwork;
- (iii) Autos and/or motorcycles;

- (iv) Bagged commodities;
- (v) Boats and/or yachts;
  
- (vi) Breakables;
- (vii) Hazardous goods (US Only);
- (viii) Household goods and/or personal effects;
- (ix) Jewelry or watches of value;
- (x) Lumber;
- (xi) On-deck bills of lading merchandise;
- (xii) Scrap;
- (xiii) Steel/iron - sheets/coil/pipe/rod/wire;
- (xiv) Used and/or refurbished merchandise.

**4.5.2** The EPR does not apply to Restricted Cargo unless expressly authorized in writing by MSC pursuant to the procedure set forth in Section 4.5.3.

**4.5.3** The EPR may be made applicable to Restricted Cargo, with the effect of treating a specific type of Restricted Cargo as Qualified Goods, by Merchant obtaining a written and executed "Restricted Cargo Inclusion Addendum" from MSC, specifying the certain type of Restricted Cargo and the Shipment for which application of the EPR is requested to be made. To make a request for a "Restricted Cargo Inclusion Addendum," the Merchant shall contact its MSC booking agent. The conditions and approval of any request under this Section are in the sole discretion of MSC, and an *ad valorem* charge (the amount of which shall be determined by MSC in its sole discretion) shall be payable to effect application of the EPR under any "Restricted Cargo Inclusion Addendum" issued and executed by MSC.

**4.6** The EPR shall not be deemed to apply to the extent application would cause MSC to make any payment which would violate or expose MSC to possible sanction, prohibition, or restriction under United Nations resolutions or the trade or economic sanctions, laws, or regulations of the European Union, the United Kingdom, or the United States of America.

**4.7** Any statutory, contractual, or other defense not expressly excluded by these GTCs is expressly reserved.

## **5. Procedures and Limitations**

**5.1** Where a Merchant is the shipper and wishes to enter into the EPR, that Merchant must declare the total invoice value of the Shipment of Qualified Goods under the relevant Contract of Carriage for such Qualified Goods. Pricing, as further set forth in Sections 5.2 and 5.3 (for purposes of Approved General Merchandise being the Qualified Goods), will be based on Shipment Value. The EPR Charge will be charged through MSC's dedicated charge code (designated as EPR) on the freight manifest. At the booking stage, MSC will require information including place of origin, port of loading, port of discharge, commodity(ies) category, and equipment type. In the event the Merchant wishes to enter into the EPR *after* having placed its booking for carriage with MSC, the Merchant will need to provide its booking number and the CIF value of the Qualified Goods. **After the Shipment leaves its place of origin and the Shipment has commenced, the Merchant cannot change its service level and cannot enter into the EPR.**

**5.2 For Dry Goods:** For any claim under the EPR for loss or damage to Qualified Goods (not including Qualified Goods in refrigerated Containers) caused by Qualified Causes, or by the Additional Enhancement Causes set forth in Sections 3.2(ii)

(Customs damage), 3.2(iv) (Fumigation loss or damage), or 3.2(vi) (General Average contributions), MSC's maximum liability shall be the lesser of: (a) the actual monetary amount of loss or damage to the Qualified Goods, less any salvage; or (b) the Shipment Value, as declared by the Shipper and identified on the MSC Contract of Carriage. Further, Shipments of Qualified Goods eligible to be included in the EPR must have Shipment Values falling within one of the following six tranches on which the EPR Charge will be based as indicated:

#### 5.2.1 FCL Cargo:

- Tranche 1: From USD 1 to USD 15,000 per Shipment (EPR Charge per Shipment USD 30)
- Tranche 2: From USD 15,001 to USD 30,000 per Shipment (EPR Charge per Shipment USD 60)
- Tranche 3: From USD 30,001 to USD 70,000 per Shipment (EPR Charge per Shipment USD 125)
- Tranche 4: From USD 70,001 to USD 100,000 per Shipment (EPR Charge per Shipment USD 170)
- Tranche 5: From USD 100,001 to USD 150,000 per Shipment (EPR Charge per Shipment USD 240)
- Tranche 6: From USD 150,001 to USD 300,000 per Shipment (EPR Charge per Shipment USD 500)
- Tranche 7: From USD 300'001 to USD 500'000 per shipment (EPR Charge per Shipment USD 1000)
- Tranche 8: From USD 500'001 to USD 1'000'000 per shipment (EPR Charge per Shipment USD 2000)

In the immediately preceding list of Tranches 1 through 8, all references to "Shipment" mean the Shipment of Qualified Goods. Additionally, nothing set forth in the foregoing tranches, or statements of EPR Charges for such tranches, shall be applicable in the event that Merchant requests that the ERP be made applicable to any Restricted Cargo.

**5.2.2 LCL Cargo Only:** \$1.5 per every \$100 shipment value (CIF + DUTIES + 10%) with \$25 minimum.

**5.3 For Reefer Goods:** For any claim under the EPR for loss or damage to Qualified Goods (where such Qualified Goods are in refrigerated containers) caused by Qualified Causes, or by the Additional Enhancement Causes set forth in Sections 3.2(ii) (Customs damage), 3.2(iv) (Fumigation loss or damage), 3.2(vi) (General Average contributions), or 3.2(vii) (Reefer temperature variation), MSC's maximum liability shall be the lesser of: (a) the actual monetary amount of loss or damage to the Qualified Goods, less any salvage; or (b) the Shipment Value, as declared by the Shipper and identified on the MSC Contract of Carriage. Further, Shipments eligible to be included in the EPR must have Shipment Values falling within one of the following three tranches on which the EPR Charge will be based as indicated:

- Tranche 1: From USD 1 to USD 20,000 per reefer Shipment (EPR Charge per Shipment USD 70)
- Tranche 2: From USD 20,001 to USD 60,000 per reefer Shipment (EPR Charge per Shipment USD 200)
- Tranche 3: From USD 60,001 to USD 100,000 per reefer Shipment (EPR Charge per Shipment USD 350)

In the immediately preceding list of Tranches 1 through 3, all references to "Shipment" mean the Shipment of Qualified Goods. Additionally, nothing set forth in the foregoing tranches, or statements of EPR Charges for such tranches, shall be applicable in the event that Merchant requests that the ERP be made applicable to any Restricted Cargo.

## **6. Compensation Process**

**6.1 Who handles claims:** Merchant's claims for compensation under the EPR shall be handled directly with MSC pursuant to, and always subject to, the provisions set forth in Section 6.2.

**6.2 What to do in the event of loss of damage:** With respect to any claims by Merchant under the EPR, the following provisions shall apply:

(i) **Time for giving notice and submitting claims:** Merchant shall identify, and give notice to MSC, of any apparent loss or damage before or at the time of delivery or, as to loss or damage which is not apparent, within three days immediately following delivery.

(ii) **Inspect Container and Qualified Goods immediately:** When delivery is made by Container, Merchant shall ensure that the Container and its seals or locks are examined immediately. If the Container is delivered damaged, or with seals or locks broken or missing, or with seals or locks other than as stated in the shipping documents, then Merchant shall document the delivery receipt accordingly, stating assumed loss or damage, and retain all defective or irregular seals and locks for subsequent identification.

(iii) **Where loss or damage is apparent:** Where loss or damage to Qualified Goods is apparent, Merchant shall, before or at the time of taking delivery of the Qualified Goods, document the delivery receipt accordingly, stating assumed loss or damage, and retain all packing materials for further inspection. Merchant shall also take pictures of any damaged packages and items.

(iv) **Where loss or damage is not apparent:** Where loss or damage is not apparent, Merchant shall, immediately upon discovery of said loss or damage, document the loss or damage and notify MSC with details of the discovery, specifically noting any missing items, and the estimated claim amount. Merchant shall not discard packing or damaged items.

(v) **Lloyd's surveyor at MSC's cost:** In all events, Merchant shall immediately notify MSC to schedule and organize a survey of the Qualified Goods with a Lloyd's surveyor, at MSC's cost, and to whom Merchant shall grant access to the Qualified Goods for purposes of the survey.

(vi) **Required documents to support a marine cargo claim & time for claim submission:** In order to make any claim for compensation under the EPR, the Merchant shall, in addition to giving timely notice to MSC of loss or damage (as set forth in Section 6.2(i) through Section 6.2(v)), Merchant shall submit to MSC (pursuant to the procedure set forth in Section 6.2(vii)) a full set of claim documents concerning the Qualified Goods and the loss or damage, and such full set of claim documents shall include, at least, the following particular documents: (a) the MSC Bill of Lading, MSC Sea Waybill, or other contracts of carriage or storage; (b) the commercial invoice; (c) the packing list; (d) the letter of protest with claim amount; and (e) the delivery receipt noting exceptions upon delivery ("**Supporting Documents**"). MSC reserves its rights to require additional documents if the situation necessitates that, and the Merchant shall comply with such requests. **In no circumstances whatsoever will any claim for compensation under the EPR be considered by MSC unless Merchant submits, and MSC receives, such claim and all Supporting Documents within thirty (30) days from delivery of the Qualified Goods or, for Qualified Goods which are lost, within thirty (30) days from the date when the Qualified Goods should have been delivered.**

(vii) **Where to submit claims:** The Merchant shall submit all claims and Supporting Documents to [USA-EPR@MSC.COM](mailto:USA-EPR@MSC.COM) (for carriage of Qualified Good to or from the United States of America) or [CANADA-EPA@MSC.COM](mailto:CANADA-EPA@MSC.COM) (for carriage of Qualified Goods to or from Canada).

## **7. Conditions Precedent, Time Bar and Jurisdiction**

**7.1 Time bar:** As set forth in Section 6.2(vi) above, in no circumstances whatsoever will any claim for compensation under the EPR be considered by MSC unless Merchant submits, and MSC receives, such claim and all Supporting Documents within thirty (30) days from delivery of the Qualified Goods or, for Qualified Goods which are lost, within thirty (30) days from the date when the Qualified Goods should have been delivered. The Merchant's submission of a claim with Supporting Documents within such thirty (30) day period shall be a condition precedent to the commencement of any suit relating to the EPR. In any event, MSC shall be discharged from all liability whatsoever under this EPR if suit is not commenced within the shorter of: (a) one (1) year from delivery of Qualified Goods, or for Qualified Goods which are lost, one (1) year from the date when the Qualified Goods should have been delivered; or (b) the time bar for commencing suit set forth in the MSC Contract of Carriage.

**7.2 Jurisdiction:** It is hereby specifically agreed that any suit relating to the EPR by the Merchant shall be filed exclusively in the United States District Court for the Southern District of New York. In the event that the aforementioned federal court lacks subject matter jurisdiction, then any claim relating to the EPR shall be filed in a court of general jurisdiction in the State of New York located in the County of New York. The Merchant waives any objection to the personal jurisdiction over the Merchant in the above agreed fora. The general maritime law of the United States of America, without regard to any choice of law principles, shall apply to any claims relating to the EPR. In the event the general maritime law of the United States of America is, for any reason, determined to be inapplicable to any issue or claim, then the laws of the State of New York, without regard to any choice of law principles, shall apply. The Merchant agrees that it shall not institute suit in any court other than as stated in this Section 7.2. The Merchant shall be responsible for MSC's attorney's fees and costs for any breach of this Section 7.2.

## **8. Separability and Variation of Terms, Final Contract**

These GTCs shall be separable and, if any term or provision hereof or any part of any term or provision shall be invalid to any extent, it shall be invalid to that extent, but no further, and such circumstance shall not affect the validity or enforceability of any other term or provision hereof. These GTCs are the final contract between the parties regarding the EPR Service and supersede any prior agreement or understanding, whether in writing or verbal, on this subject matter.