



MSC PERU TERMS AND CONDITIONS

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

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

1. DEFINITIONS

- **MSC** or Carrier: means MSC MEDITERRANEAN SHIPPING COMPANY S.A.,12-14 Chemin Rieu, 1208 Geneva – Switzerland
- **MSC Perú** : means MSC DEL PERU S.A.C., addressed in Alvarez Calderon Avenue 185, San Isidro, Lima, Peru, including all its branch offices in Peru 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.

2. APPLICABILITY

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 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these Agency Terms and Conditions and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill.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

3. QUOTATIONS

- 3.1. MSC PERU acts as agent for and on behalf of MSC MEDITERRANEAN SHIPPING COMPANY S.A. (the "Carrier", "MSC") only. All quotations made by MSC PERU are on behalf of the Carrier.
- 3.2. Quotations made by MSC Peru are not binding until MSC Peru's final booking confirmation has been transmitted in writing to the Merchant. Unless the quotations specify a validity period and the Merchant have accepted it in writing, it will become null and void after 30 days of receipt.

- 3.3. Quoted times and dates for empty positioning and loading are always subject to equipment availability and space. 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.
- 3.4. All charges are "VATOS" (Valid at Time of Shipment). Unforeseeable and additional expenses (such as statutory increase, war risk, congestion, etc.) before, during and after the sea-carriage may at any time be charged by the Carrier to the Merchant.
- 3.5. Alterations caused by the Merchant, for instance release of cargo to alternative third parties, issuance of switch bills of lading etc., are not included in MSC PERU quotations.
- 3.6. Unless stated otherwise and expressly confirmed in writing, each quotation always relates to:
 - 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
 - Cargo shipped and stowed with "deck option"
 - In gauge cargo, if quoted for open top containers, flat racks and platforms
 - Cargo valued below USD 200.000,00 per container, if cargo value is not presented upon quotation-request. For high-value-cargo-containers (exceeding USD 200.000,00 - two hundred thousand US dollar cargo value) the Merchant has to submit a written warning notice upon booking and, unless included in the freight, to pay an additional HVP (high-value-premium).

4. CARRIER'S RESPONSIBILITY IN PERUVIAN JURISDICTION

The Merchant acknowledges and agrees that pursuant to clause 10.3 of the Carrier's Terms and Conditions, the transport contract is subject to English law and the exclusive jurisdiction of the High Court of London, save as otherwise stipulated in clause 10.3.

5. EXPORT AND CROSS-TRADE BOOKING

- 5.1. The MSC Peru Booking Confirmation formalizes the Contract of Carriage between the Merchant and MSC, as a consequence of which both Booking Party and Shipper become jointly and severally contractual partners towards MSC MEDITERRANEAN SHIPPING COMPANY S.A.
- 5.2. The Booking Party and Shipper are responsible for all information provided to MSC concerning description of goods, Dangerous Cargo, Reefer Cargoes and/or out of gauge details whatever apply, as well as for the correctness of declared weights. They must inform MSC or MSC Peru immediately in writing in case of any discrepancies or missing details. Any discrepancies or wrong information at the time of receipt of the goods, especially in respect of the cargo's weight, may lead to substantial risk and costs for account of the Merchant, and might result in short-shipments. In particular, discrepancies may lead to Status Change costs as per quay / terminal tariff.

- 5.3. The Booking Party and Shipper have to check and ensure that the maximum payload complies with all country-specific legal regulations or requirements at origin, during transit and at destination. They acknowledge that overweighted containers are not permitted by law and may result in severe injuries and casualties for which the Merchant will be held fully liable.
- 5.4. For security reasons all containers for all destinations must be sealed by the Booking Party and Shipper or its representatives with High Security Bolt Seal or equivalent, directly after stuffing. Unsealed and incorrectly sealed containers will be resealed upon arrival at the terminal at the Merchant's costs and responsibility and may be short-shipped. Any resulting costs are for account of the Merchant.
- 5.5. Loading and stowage of goods is carried out under sole instructions of the Vessel's Command. All goods are stowed "option deck" at Merchant's risk. Requests for "under deck" stowage are subject to written approval and confirmation by MSC or MSC Peru.
- 5.6. Payments of Ocean Freight have to be effected in USD only. Payments of the freight and of all charges have to be effect previous the handout of the Bill of Lading. Any Bank service charges/ transaction costs are for account of the payer.
- 5.7. Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever.
- 5.8. Shipping Instructions must be submitted to MSC Peru latest at Stacking closing time. For shipments to countries/areas requiring an AMS-filing or comparable procedures, special deadlines shall apply. The Booking Party and Shipper are responsible to enquire the specific deadline applicable to their shipment.
- 5.9. The Merchant declares that all used wooden packing materials comply with ISPM 15 regulations.
- 5.10. In consideration of Carrier issuing, at the booking party or the shipper's request, Sea Waybill instead of Bill of Lading for the contract of carriage of the cargo, the booking party and the shipper hereby indemnify the Carrier for all and any claims, losses, costs, expenses and liabilities of any nature whatsoever that arise in consequence of the use of a Sea Waybill instead of a Bill of Lading. The booking party and the shipper further undertake to ensure that the Consignee designated on the Sea Waybill receives a legible copy of, by fax or e-mail, and agrees to abide by, the terms, conditions, exceptions and limitations contained in the Carrier Sea Waybill as freely accessible under www.msc.com and to inform the Consignee that a formal letter of acceptance of the MSC Sea Waybill Terms and Conditions will be requested from him at destination prior to delivery, being made expressly clear that oversight from MSC or its agent to obtain such a letter of acceptance prior release of the cargo shall not be deemed in any way as a waiver by MSC of its rights to rely upon, nor as a non-acceptation by the Consignee, of these Terms and Conditions.
- 5.11. Shipping documents will be issued 24 hours after vessel departure and kept at Merchant's disposition at the MSC Peru 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.
- 5.12. In case of Merchant's Haulage, the Booking Party and Shipper are responsible for inspecting the empty container for its suitability to carry the specific shipment booked at the time of empty pick up from the depot/terminal either directly or via their truckers. Any later refusal of container will cause additional costs for account of the Merchant. Neither MSC nor MSC Peru shall be held liable for the costs of changing/replacing a container accepted during empty positioning, unless the vice affecting the container was not detectable during a summary check; in which case the costs of the container changing shall be equally shared. Notwithstanding the above, a light-test is compulsory prior to each empty container's acceptance and no liability shall be borne by the Carrier or MSC Peru for costs of exchanging a container found with holes or cracks at a later stage.

- 5.13. The use of dry-van containers in lieu of reefer or temperature-controlled containers is left to the sole Merchant's appreciation and decision, and the Carrier shall have no liability or responsibility whatsoever for thermal or condensation loss or damage to the goods sustained by reason of natural variations of atmospheric temperatures whether the cargo was carried on or under deck.
- 5.14. The Booking Party, the Shipper and their trucker are jointly responsible to check that the empty container picked up at the depot is used for the booking confirmed by MSC Peru for this specific container. Neither MSC nor MSC Peru shall be responsible for any costs linked to the repatriation or additional on-carriage costs of wrongly swapped cargoes carried within correct containers due to a mistake during the empty pick-up.
- 5.15. 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 MSC Peru shall be responsible for any costs linked with the declaration of incorrect container weights.

6. HAZARDOUS GOODS / IMDG CARGOES

- 6.1. The Merchant engaged in the transport of dangerous goods intended to be transported by sea must have been trained in the contents of dangerous goods provisions commensurate with their responsibilities and must comply with the provisions of IMDG Code and its amendments.
- 6.2. Hazardous cargo bookings are only accepted together with a dangerous goods declaration (DGD)
- 6.3. The signed "Multimodal Dangerous Goods Form / Packing Certificate" needs to be presented at the latest 72 hours prior cargo stacking closing at Terminal.
- 6.4. Even if a hazardous cargo booking is accepted by MSC in the first instance, MSC reserves the right to reject the shipment as per Vessel's Master discretion.
- 6.5. The Booking Party and Shipper are responsible to enquire the specific deadline applicable to Hazardous Cargo containers and its documentation.

7. WASTE AND SCRAP CARGOES

The Merchant is responsible to ensure that each booking of waste and/or scrap cargo complies absolutely with the requirements of EU-Regulation 1013/2006 of 14th June 2006 on shipment of waste - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1013> and with the local requirements of the Port of Discharge.

8. REEFERS AND TEMPERATURE – CONTROLLED CARGIES

- 8.1. Booking Party, Shipper and/or its representatives are responsible to CHECK THAT THE TEMPERATURE CONTROLS ON THE CONTAINER ARE AT THE REQUIRED CARRYING TEMPERATURE AND THE VENTILATION IS PROPERLY SET PRIOR STUFFING THE GOODS. The Merchant's use of the Container shall be prima facie evidence

of its being sound and suitable for use. MSC or MSC Peru shall not be held liable for temperature damages generated by non-disputed wrong settings.

8.2. The Merchant must take note that refrigerated Containers are not designed:

- To cool or freeze Goods which have been loaded into a Container at a temperature higher than their designated carrying temperature. The Carrier shall not be responsible for the consequences of the Goods being loaded at a higher temperature than that required for the carriage; nor
- To monitor and control humidity levels, even if a setting facility exists, and because humidity is influenced by many external factors the Carrier does not guarantee and is not responsible for the maintenance of any intended level of humidity inside any Container.

9. EXPORT LOCAL CHARGES (STORAGE/DETENTION/DOCUMENTATION ETC.)

The Merchant is invited to check the MSC Peru Export Local Charges directly at <https://www.msc.com/per/country-guides/peru/export-local-requirements>. For any local charges in other countries, please visit webpage of the local MSC office.

10. IMPORT BOOKINGS

10.1. Collect Freight must be previously approved by MSC Peru.

10.2. In addition to the above, the following Form / List must be properly filled out with all corresponding information and provided to MSC Peru for any / all Import Bookings:

- Pre-carriage (if any)
- POL
- POD
- On carriage (if any)
- Volume
- Commodity
- Shipper
- Freight Forwarder (for export from USA only)
- Origin (for export from USA only)
- Consignee
- Notify

- Notify 2 (if any)
- Rate reference
- Agreed Ocean/Sea-Freight
- Ocean/Sea-freight payable at
- D-THC and local charges payable at
- B/L type
- Estimated time of shipment

11. IMPORT REQUIREMENTS FOR RELEASE OF CARGO

- 11.1. No release of cargo/ container(s) will be authorized until the MSC Original Bill of Lading has been duly accomplished / fully executed by presentation and endorsement.
- 11.2. The Merchant always has and is solely responsible to check container(s) availability in respect of release and/or transportability with the Terminal Interchange before taking delivery to avoid failure trucking and waiting time. MSC and MSC Peru shall not entertain any claim for waiting time or fault-freight if this obligation is neglected.
- 11.3. The empty container has to be returned to the container depot designated by MSC in a clean, undamaged condition and completely free of cargo residues, with all chemicals, dangerous goods (in accordance with applicable regulations), and fumigation labels removed. Failure to comply with this requirement may result in additional costs for account of the cargo.
- 11.4. All freight and local charges must be paid without deduction or set-off prior the release of cargo.
- 11.5. Delivery
- 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.
 - Shall the Merchant fail to take delivery of the Goods within fifteen (15) 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.
- 11.6. 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.
- 11.7. 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.

12. IMPORT LOCAL CHARGES (STORAGE/ DEMURRAGE/ DOCUMENTATION ETC.)

The Merchant is invited to check the MSC Peru Import Local Charges directly at <https://www.msc.com/per/country-guides/peru/import-local-requirements> or on the agency website under www.msc.com. For any local charges in other countries, please visit webpage of the local MSC office.

13. 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:

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

The Carrier and its Agent are authorised to charge the Legal Administration Fee in any other legal currency locally.

14. CARGO WEIGHT DECLARATION AND VGM COMPLIANCE, SUBMISSION'S DEADLINE.

ALL VGM MUST BE SUBMITTED ELECTRONICALLY OR TRANSMITTED TO MSC PRIOR LOADING, FAILING WHICH CONTAINERS WILL NOT BE PLANNED ON THE SCHEDULED VESSEL. ALL COSTS, CONSEQUENCES SHALL BE ON SHIPPER'S ACCOUNT FOR ANY DELAY IN SUBMITTING VGM, NON-SUBMISSION OF VGM AND/OR FOR ANY NONCOMPLIANCE TO VGM STATUTORY GUIDELINES.

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

- a. are wrongly declared, or
- b. weigh in excess of the VGM or commercial / manifest weight declared, or

- c. 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 it 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.