



# MSC EQUADOR TERMS AND CONDITIONS

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MSC CAMEROON 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 Ecuador:** means MSC Ecuador, Avenida Francisco Orellana y Alberto Borges Edif. Centrum Floor 15 suite 2 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 and CONDITIONS and the Terms and Conditions of the MSC Bill of Loading, 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 ECUADOR. 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- 2.3 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these AGENCY TERMS AND CONDITIONS of the MSC Bill of Loading. 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.

## 3. QUOTATIONS

- 3.1 MSC ECUADOR acts as agent for and on behalf of MSC MEDITERRANEAN SHIPPING COMPANY S.A. (the "Carrier", "MSC") only. All quotations made by MSC Ecuador are on behalf of the Carrier.

- 3.2 Quotations made by MSC ECUADOR are not binding until MSC Ecuador's final booking confirmation has been transmitted in writing to the Merchant. Any quotation will become null and void unless the Merchant has accepted it in writing within 15 days after issuance.
- 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 ECUADOR 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 Vessel 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 200.00,00 - 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 ECUADORIAN JURISDICTION**

- 4.1 The Merchant acknowledges and agrees that pursuant to cl 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 in London, save as otherwise stipulated in cl 10.3.
- 4.2 In the case of any dispute relating to freight or other sums due from the merchant to the carrier, the carrier may, at its sole option, bring suit against the merchant in the fora agreed above, or in the countries of the Port of Loading, Port of Discharge, Place of Delivery, or in any jurisdiction where the Merchant has a place of business.

## **5. EXPORT – AND CROSS-TRADE BOOKINGS**

- 5.1 This Booking Confirmation formalizes the transport contract concluded between the Merchant and MSC, as a consequence of which both Booking Party and Shipper become jointly and severally contractual partners of MSC MEDITERRANEAN SHIPPING COMPANY S.A.
- 5.2 The Booking Party and Shipper are responsible for and have to recheck all information provided concerning description of goods, hazardous cargoes, reefer and out of gauge details as well as for the correctness of weights indicated. They must inform MSC or MSC ECUADOR 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, in the transit countries and at destination. They are expressly reminded that overstuffing of containers is not permitted by law and the Carrier 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 their representatives with High Security Bolt Seal or equivalent directly after stuffing. For a detailed instruction about correct placement of seals please see our Sealing Procedure (.pdf). 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. Unsealed or incorrectly sealed containers will release MSC from any liability related to the goods.
- 5.5 Loading and stowage of goods is carried out under sole instructions of the Ship's Command. All goods are stowed "option deck" at Merchant's risk. Requests for "under deck" stowage are subject to written approval and confirmation by MSC or MSC ECUADOR.
- 5.6 Payments of Ocean Freight have to be effected in US dollars only and have to be paid within 6 days after vessel departure. 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 B/L or Shipping Instructions must be submitted EU DECLARATION 72 hours before loading time, rest of cargo 48 hours before loading 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](http://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 immediately upon receipt of loading confirmation and kept at Merchant's disposition at the MSC ECUADOR 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 and neither MSC nor MSC ECUADOR 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 ECUADOR for costs of exchanging a container found with holes or cracks at a later stage.

- 5.13 Booking Party and Shipper are responsible for ensuring that all prior IMO (hazardous goods) placards and labels have been removed from the container before pick-up or latest during stuffing of its non-hazardous cargo. Costs resulting from neglect will be for the account of the Merchant.
- 5.14 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 in atmospheric temperatures whether the cargo was carried on or under deck.
- 5.15 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 ECUADOR for this specific container. Neither MSC nor MSC ECUADOR 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.
- 5.16 The Booking party is responsible to inform and notify on writing MSC Ecuador the DAE (Declaración Aduanera Ecuatoriana de Exportación) number granted by SENA (Servicio Nacional de Aduanas del Ecuador) once submitted the carriage instruction. Any discrepancy or erroneous information given by merchant represents an important risk for the carriage and implicates additional costs to be assumed by merchant. Additionally, it could be possible that the cargo may not be shipped once it has not been granted with authorization (salida autorizada) by SENA. Merchant will assume all costs caused by the inobservance of this clause.
- 5.17 Merchant will be held responsible and shall pay or reimburse any costs incurred by MSC arising because of container detention ordered by local authorities, as consequence specially but not exclusively of drug contamination or any other criminal activity.

## **6. HAZARDOUS GOODS / IMDG CARGOES**

- 6.1 Hazardous cargo bookings are only accepted together with a dangerous goods declaration (DGD) jointly with the "Container Packing Certificate" and needs to be presented at the latest 72 hours prior loading time cargo closing at Terminal.
- 6.2 Even if a hazardous cargo booking is accepted by MSC in the first instance, MSC reserves the right to reject the shipment, since final approval is with the Vessel's Master.

## **7. WASTE & SCRAP CARGOES**

- 7.1 The Merchant is responsible to ensure that each booking of waste and/or scrap cargo complies absolutely with the requirements of Ecuadorian and respective POD regulations.
- 7.2 All documentation is responsibility of the merchant, and any misdeclaration will make him liable to any costs or penalties according to the contract of carriage.

## **8. REEFERS AND TEMPERATURE-CONTROLLED CARGO**

- 8.1 Booking Party, Shipper and its representatives are responsible to check the pre-settings of the container temperature prior to stuffing, and MSC nor MSC ECUADOR shall not be held liable for temperature damages generated by hot stuffing or non-disputed wrong pre-settings. Usage of the container will be enough evidence of its good condition and workability.
- 8.2 Reefers are not designed to cool or freeze goods at higher temperatures than those designated. Carrier will not be held responsible for any damages to goods consolidated at higher temperatures than those required.

## **9. EXPORT LOCAL CHARGES (STORAGE / DEMURRAGE / DETENTION)**

For all local charges please check with MSC ECUADOR office and concerning local charges for ports in other countries, please visit the webpage of the MSC offices at [www.msc.com](http://www.msc.com)

## **10. IMPORT REQUIREMENTS FOR RELEASE OF CARGO**

- 9.1 No release of cargo/ container(s) will be authorized until the MSC Original Bill of Lading has been duly accomplished / fully executed (including endorsement) at MSC Ecuador office.
- 9.2 In case of Sea Waybill / Telex Release, no release of cargo/container(s) will be authorized until a Letter of Indemnity / Undertaking has been signed and stamped by the Consignee through which it acknowledges its acceptance of the MSC Bills of Lading Terms and Conditions. For the ease of reference, the MSC Terms and Conditions are to be found under <https://www.msc.com/ecu/contract-of-carriage>.
- 9.3 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 Ecuador shall not entertain any claim for waiting time or fault-freight if this obligation is neglected.
- 9.4 Regarding ground carriage service, MSC Ecuador should receive instructions from merchant and all necessary documents at least 24 working hours before the service is intended to be done. Neither MSC nor MSC Ecuador will be held liable for any delays or charges caused from the non-compliance of this requirement.
- 9.5 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 1) 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.
- 9.6 The empty container has to be returned to the container depot designated by MSC in a clean, undamaged condition, completely free of cargo residues and free of odors, and if the cargo was dangerous goods same must be cleaned in accordance with applicable regulations, and free of any labels. Failure to comply with this requirement may result in additional costs for account of the cargo.
- 9.7 Invoices must be paid in USD without deduction or set-off prior the release of cargo.

## **11. IMPORT LOCAL CHARGES**

For all local charges the Merchant is requested to check with MSC Ecuador office, by contacting the Import Desk directly.

## **12. ELECTRONIC RELEASE AT GUAYAQUIL, ECUADOR**

The TERMINAL will receive via EDI FILE the information of the containers authorized for delivery by MSC ECUADOR.

## **13. 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 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.

## **14. LEGAL ADMINISTRATION FEE**

MSC or MSC Croatia shall charge the Merchant a Legal Administration Fee (LAF) covering the extra coordination / organization work and subsequently 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 cost actually as the result of the situation itself and its remedy. Its amounts will be:

For cost up to 500 USD:	40 USD per container
For cost between 500 and 1000 USD:	80 USD per container
For cost between 1000 USD and 2000 USD:	140 USD per container
For cost over 2000 USD:	200 USD per container

The carrier and its agent are authorized to charge the Legal Administration Fee in any other legal currency locally.

The basis for our invoicing being number of containers involved in the incident / casualty, not the number of containers listed on the Bill(s) of Lading.

The extra handling costs to be taken into account for the determination of the LAF being the final amount charged to MSC / MSC agents, including all taxes and charges.