

MSC MYANMAR

TERMS AND CONDITIONS

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MSC MEDITERRANEAN SHIPPING MYANMAR COMPANY LIMITED 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 Mediterranean Shipping Myanmar Company Limited:** means MSC Mediterranean Shipping Myanmar Company Limited, an independent company incorporated in Myanmar, with address in Myawaddy Bank Luxury Complex, No(1004), Tower(B),10th Floor, Corner Of Wardan Road and Bogyoke Aung San Road, Lanmadaw Township, Yangon, Myanmar, including all its branch offices in Myanmar 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 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 Mediterranean Shipping Myanmar Company Limited 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- 2.3 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these AGENCY TERMS AND CONDITIONS and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill.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 and to the extent only this has been explicitly agreed in writing by MSC.

3. QUOTATIONS

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

- 3.2 Quotations made by MSC Mediterranean Shipping Myanmar Company Limited are not binding until MSC Mediterranean Shipping Myanmar Company Limited'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 on board vessels. 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 Mediterranean Shipping Myanmar Company Limited 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 per container, if cargo value is not presented upon quotation-request. For high-value-cargo-containers (exceeding USD 200.000 - 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).

3.7 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.

NOTA BENE:

The basis for our invoicing being the 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.

4. CARRIER'S RESPONSIBILITY IN MYANMAR 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 the local law of Myanmar to apply under the mandatory principle.
- 4.2 Should nevertheless local law of Myanmar be applied by any court or tribunal assuming jurisdiction in respect of the Carrier's responsibility, then, in such event, the following shall apply in addition to the Carrier's Terms and Conditions:
- The Carrier shall not be responsible for any fault of his servants or the ship's crew if damage has occurred as a result of fire or explosion on board, or as a result of willful act or negligence or error in navigation or in management of ship whether committed by the master, mariner, pilot or the carrier's servants.
 - The same shall apply in relation to any act, neglect or default of a pilot or any other independent person involved in the navigation or management of the ship.
- 4.3 Without prejudice to the generality of the foregoing provisions, the above exclusions, every exemption, limitation, condition and liberty contained herein, and every right, every exemption to liability, defense and immunity whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder, including but not limited to the right to litigate in any jurisdiction, shall also be available and shall extend to MSC Mediterranean Shipping Myanmar Co. Ltd., who shall also be entitled to enforce the same against the Merchant.

5. EXPORT- AND CROSS-TRADE BOOKINGS

- 5.1 The MSC Mediterranean Shipping Myanmar Company Limited 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 Mediterranean Shipping Myanmar Company Limited 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.
- 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. *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.
- 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 Mediterranean Shipping Myanmar Company Limited.

- 5.6 All Freight is earned and due upon the Goods are loaded and the vessel has started the voyage, whether the Freight is prepaid or collect and the Carrier shall be entitled to all Freight due under all circumstances, ship and/or cargo lost or not lost or the voyage abandoned. All Freight shall be paid when due without any set-off, counter claim, or deduction.
- 5.7 Payments of all Freight and Charges have to be effected within 48 hours after vessel departure unless Merchant has previously credit condition agreed with MSC or MSC Mediterranean Shipping Myanmar Company Limited. Any Bank service charges/ transaction costs are for account of the payer.
- 5.8 Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever.
- 5.9 Shipping Instructions must be submitted to MSC Mediterranean Shipping Myanmar Company Limited 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.
- 5.10 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 The Merchant declares that all used wooden packing materials comply with ISPM 15 regulations.
- 5.12 Shipping documents will be issued 48 hours after vessel departure and kept at Merchant's disposition at the MSC Mediterranean Shipping Myanmar Company Limited 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.
- 5.13 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 Mediterranean Shipping Myanmar Company Limited 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 Mediterranean Shipping Myanmar Company Limited for costs of exchanging a container found with holes or cracks at a later stage.
- 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 of 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 Mediterranean Shipping Myanmar Company Limited for this specific container. Neither MSC nor MSC Mediterranean Shipping Myanmar Company Limited 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 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 its agent shall be responsible for any costs linked with the declaration of incorrect container weights.
- 5.17 Equipment re-use: occurs whenever an empty container is re-used for a new shipment by the same Merchant without first being returned to an MSC nominated container depot for inspection and maintenance. Such re-use has to be authorized by MSC in advance and a changeover date (e.g. from import to export shipment) will be agreed. The Merchant accepts to pay to MSC a re-use fee agreed between the parties. Re-use is tolerated for the sole benefit and convenience of the Merchant, who shall accordingly bear any and all risks associated with the re-use and shall keep the Carrier and MSC as Agent of MSC SA fully indemnified (including reasonable legal expenses) against any claim that would be raised by any party in that connection. The Merchant shall inspect the container for suitability and bear any expense (including without limitation, re-positioning of the re-used unit to a MSC depot and delivery costs of a replacement container) in the event the container is not fit for the intended carriage.

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 Booking Party and Shipper are responsible for ensuring that all prior IMDG (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.
- 6.3 Hazardous cargo bookings are only accepted together with a dangerous goods declaration (DGD).
- 6.4 The signed "Container Packing Certificate" needs to be presented at the latest 24 hours prior cargo closing at Terminal.
- 6.5 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.
- 6.6 The Booking Party and Shipper are responsible to enquire the specific deadline applicable to Hazardous Cargo containers and its documentation.

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 EU-Regulation 1013/2006 of 14th June 2006 on shipment of waste - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1013>.

- 7.2 Any wrong declaration or missing documentation will lead to a misdeclaration Fee of USD 500 per container for account of the Merchant in addition to the liability exposed under the Contract of Carriage for any other charges, costs or penalties that may arise for the Carrier due to miss-declaration.

8. REEFERS AND TEMPERATURE - CONTROLLED CARGOES

- 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 Mediterranean Shipping Myanmar Company Limited 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 Mediterranean Shipping Myanmar Company Limited Export Local Charges at <https://www.msc.com/arg/country-guides/myanmar> or on the agency website under www.msc.com. For any local charges in other countries, please visit webpage of the local MSC office.

10. IMPORT BOOKINGS

- 10.1 The provisions and under clauses 4 to 7 above apply mutatis mutandis to the Import bookings
- 10.2 Collect Freight must be previously approved by MSC Mediterranean Shipping Myanmar Company Limited
- 10.3 In addition to the above, the following Form / List must be properly filled out with all corresponding information and provided to MSC Mediterranean Shipping Myanmar Company Limited for any / all Import Bookings:
- Client reference (if any)
 - 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

11. FORWARDING SERVICES PROVIDED OUTSIDE THE SCOPE OF MSC BILL OF LADING / SEA WAYBILL

In those cases where the Merchant requests MSC Mediterranean Shipping Myanmar Company Limited for land forwarding services in addition to the voyage expressly covered by the Carrier's Bill of Lading/Sea Waybill (or in cases where no transport documents have been issued, by the Carrier's initial freight quotation or Booking Confirmation), including but not limited to the procurement of pre- or on-carriage, then that agreement will be between MSC Mediterranean Shipping Myanmar Company Limited and the Merchant and will not involve or include the Carrier. Under this land forwarding service agreement, the Merchant is obliged upon placing the order, to explicitly draw attention to MSC Mediterranean Shipping Myanmar Company Limited regarding the value of the cargo, in order to enable MSC Mediterranean Shipping Myanmar Company Limited to arrange for appropriate safety measures during the respective carriage and, where needed, request the arrangement of a special cargo insurance cover.

12. IMPORT REQUIREMENTS FOR RELEASE OF CARGO

- 12.1 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.
- 12.2 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/tur/contract-of-carriage>.
- 12.3 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 Mediterranean Shipping Myanmar Company Limited shall not entertain any claim for waiting time or fault-freight if this obligation is neglected.

- 12.4 In case of on-carriage, the Merchant's delivery instruction, together with all required documents, must reach MSC Mediterranean Shipping Myanmar Company Limited at least four working days prior estimated time of arrival (ETA) at discharge port in order to arrange the positioning. Non-respect of such obligation can lead to important costs, amid others, of storage, monitoring and plugging costs and/or D&Ds and MSC / MSC Mediterranean Shipping Myanmar Company Limited shall not be held liable for delay and additional costs generated due to a disrespect of this obligation.
- 12.5 The empty container has to be returned to the container depot designated by MSC in a clean, undamaged condition and completely free of cargo and dunnage 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.
- 12.6 All freight and local charges must be paid without deduction or set-off prior the release of cargo.
- 12.7 Delivery
1. 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.
 2. 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.
 3. 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.
 4. 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.

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

The Merchant is invited to check the MSC Mediterranean Shipping Myanmar Company Limited Import Local Charges directly at <https://www.msc.com/arq/country-guides/myanmar> or on the agency website under www.msc.com . For any local charges in other countries, please visit webpage of the local MSC office.