



**MSC AGENCY AG SWITZERLAND**

**TERMS AND CONDITIONS**

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MSC AGENCY AG, BASEL / SWITZERLAND 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 TANDARD 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 Basel: means MSC AGENCY AG, Steinentorstrasse 39, 4002 Basel, Switzerland 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 Basel. 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- 2.3 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these Agency Terms and Conditions and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill.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.

## 3. QUOTATIONS

- 3.1 All quotations are made on behalf of our principals MSC S.A.
- 3.2 Quotations made by MSC Basel are not binding until MSC Basel's final booking confirmation has been transmitted in writing to the Merchant. Validity of base Oceanfreight: 30 days (if no other validity is mentioned), after any quotation will become null and void.
- 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 rates are subject to origin and destination THC, VGM, ISPS + other local additional if any. Furthermore, all charges are subject to various applicable surcharges and contingency costs at time of shipment.

- 3.5 Inland rate quotations are subject to third party increases valid at time of shipment/arrival, subject to any fuel surcharges valid at time of shipment/arrival, subject to weight limitations and weight distribution requirements in accordance with the local and national rules and regulations of the country/countries of transit, subject to availability of inland carrier at time of booking/arrival.
- 3.6 Once the booking has been confirmed, any amendment to the contract of carriage requested by Merchant (such as, but not limited to, change of consignee, change of routing, change in cargo description, etc.) shall be left to carrier's discretion and shall be subject to extra-charges.
- 3.7 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 thereafter 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 in compliance with carrier's Terms and Conditions of carriage (including without limitation the present MSC Agency Terms & Conditions) or any applicable law or regulation, whether intentional or otherwise, will result in the application of a Mis-Declaration Fee of USD 5'000.-. It is further expressly agreed and accepted that such charge is in addition to any and all indemnities available to the carrier under the Terms and Conditions of carriage.
- 3.8 The freight rate is quoted based on the information provided to the carrier at the time of the quotation request and may change once additional information is made available.
- 3.9 Unless stated otherwise and expressly confirmed in writing, quotations provided only relate to:
- Non-hazardous goods
  - Cargo to be shipped and stowed on or under deck at Carrier's option
  - "In gauge" cargo, i.e. shipments fitting within the dimensions of standard ISO shipping containers
  - Cargo valued below USD200'000 per container for pharmaceutical goods and below USD500'000 per container for non-pharmaceutical goods (see clause 5.20)
  - Non-military goods.
  - For any intended booking regarding the shipment of Military and/or Para-Military cargo (defined in the broadest sense as cargo which has or might have a Military purpose and/or cargo that is destined to or originating from Military or Para-Military authorities, including so-called Dual-Use cargo), it is mandatory to submit the following documents to MSC prior to any possible acceptance of such booking: Packing List, Commercial Invoice, HS Codes consisting of minimum 6 digits, full details of the manufacturer and end user of such cargo, copy of the import license and/or export license of the importer/exporter of such cargo, final destination of the goods. In any case no booking of Military / Para-Military cargo can be accepted without MSC having received the prior approval from the relevant authorities. Furthermore, compliance policy requirements of MSC will have to be adhered to. Any quotation obtained on the basis of incomplete or inaccurate information as to the nature or value of the goods shall not be binding on MSC and/or shall be considered a material breach of contract, entitling MSC to suspend, modify or cancel the transportation at merchant's sole risk and expenses, and without prejudice to any other remedy available to the carrier.
  - Cargo that do not require a specific license, special permit, special insurance, special procedures, special care, etc.

Personal effects, exhibition goods and/or used cars require the express acceptance of the Carrier.

- 3.10 In case of low water of the River Rhine, a low-water-surcharge will be applicable in case the water level drops below the Pegel Kaub mark of 1.50 m ([local water levels](#)). The actual amount of the low-water-surcharge can be advised upon request.

- 3.11 Shipments can be refused by MSC due to/based on weight restrictions. Supplementary charges due to weight regulations are always for account of the Merchant.
- 3.12 All terms and conditions of the MSC bill of lading are applicable to subject quotation form, unless specified otherwise.
- 3.13 Metal cargo can only be accepted if cargo is palletized and packed. MSC cannot accept loose metal scrap. Any scrap or waste products must fully comply with EC Regulations number 1013/2006 dated 12th of July 2006.
- 3.14 All quotations made by MSC are subject to space availability on board of their vessels. MSC cannot/does not make any commitment for a defined guaranteed availability of space on their vessels for booking made pursuant to and based on quotations sent by MSC. Shipments to be made upon availability of space to be decided at the sole discretion of MSC.

## **4. CARRIER'S RESPONSIBILITY IN SWISS 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 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 any act, neglect or default in the navigation or in the management of the ship other than predominantly carried out in the interest of the cargo.
- 4.3 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.
- 4.4 Should nevertheless ever Swiss law 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: AGB SPEDLOGSWISS [http://www.spedlogswiss.com/pdf/ab\\_spe\\_e.pdf](http://www.spedlogswiss.com/pdf/ab_spe_e.pdf)

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

- 5.1 The MSC Basel Booking Confirmation formalizes the transportation contract as 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 relevant Harmonized System code(s) consisting of minimum 6 characters shall be provided completely and truthfully at the time of booking.
- 5.3 The Booking Party and Shipper are responsible for and shall double-check 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 Basel immediately in writing in case of any discrepancy or missing detail. Any discrepancy or incorrect information discovered at the time of receipt of the goods, especially in respect of the cargo 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.

- 5.4 Merchant shall check and ensure that the shipment's gross-weight 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 nor by the Carrier and may result in severe injuries and casualties for which the Merchant will be held fully liable (see clause 16 here below).
- 5.5 For security reasons, all containers irrespective of their destinations must be sealed by or on behalf of the Booking Party and Shipper with a High Security Bolt Seal or equivalent immediately after stuffing. Unsealed and incorrectly sealed containers will be resealed upon arrival at the terminal at Merchant's costs and responsibility and may be short shipped. Any resulting costs are for account of the Merchant.
- 5.6 Loading and stowage of goods on board of the vessels are carried out at the discretion 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.
- 5.7 Payments of Ocean Freight must be effected in quoted currency only.
- 5.8 Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever at invoiced currency.
- 5.9 B/L or Shipping Instructions must be submitted latest at the advised closing time. For shipments to countries/areas requiring an AMS-filing and/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 All wooden packing materials shall comply with ISPM 15 regulations.
- 5.11 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, and agrees to abide by, the terms, conditions, exceptions and limitations contained in the Carrier Sea Waybill Terms and Conditions as freely accessible at [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.
- 5.12 Shipping documents will be issued only upon receipt of loading on board confirmation and kept at Merchant's disposal at the MSC Basel local office. Transfer and dispatch of documents (by registered mail or courier) will only be effected upon express instruction from the Merchant and at his sole risk, expense and responsibility and shall be deemed remitted to the Merchant upon sending.
- 5.13 In case of pre-carriage in Merchant's Haulage, the Booking Party and Shipper are responsible for inspecting the empty container at the time of empty pick up from the depot/terminal for its suitability to carry the specific shipment. Any later refusal of container will cause additional costs for account of the Merchant and neither MSC nor MSC Basel shall be held liable for the costs of changing/replacing a container accepted during empty positioning.
- 5.14 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.
- 5.15 The use of dry-van containers in lieu of reefer or temperature-controlled containers is left to the sole discretion of the Merchant 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.

- 5.16 Container's full redelivery to the port prior to loading is only possible by stating the provided delivery reference to the Terminal Interchange and the Merchant and/or his trucker are jointly responsible to ensure proper communication during Gate-In. Various Ports require correct vessel name as well.
- 5.17 The Booking Party, the Shipper and their appointed haulier are jointly responsible to check that the empty container picked up at the depot is used for the booking confirmed by MSC Basel for this specific container. Merchant shall be solely responsible for any and all additional costs caused by his pickup and use of an incorrect container or for his swapping of containers between two different bookings.
- 5.18 It is the Merchant's responsibility to ensure that the Shipment complies with all applicable trade Sanctions and import/export control laws ("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 sanction programs. Carrier reserves the right to ensure compliance with Sanctions applicable to the Carrier.
- 5.19 Any cargo with a commercial value exceeding USD 250'000.- 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 USD 25'000.-, 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.

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

- 6.1 Hazardous cargo bookings are only accepted together with a valid dangerous goods declaration (DGD). All the required cargo-related documentation including the signed "Container Packing Certificate" needs to be presented at the latest 48 hours prior to Container arrival in the port. If this deadline is not complied, container may not be loaded/discharged, and any penalty imposed by local Authorities shall be on account of the Merchant. Container must be properly labelled. Wrongly or missing labels will be charged to merchant as per outlay with a handling fee.
- 6.2 MSC reserves the right to cancel a shipment at its sole discretion even if a hazardous cargo booking has been accepted by MSC in the first instance. Merchant is reminded that vessel Masters have the final say as to whether a particular consignment can be loaded on board.

## **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 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 misdeclaration.

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

- 8.1 Booking Party, Shipper and its representatives are responsible to check the pre-settings of the container temperature prior to stuffing, and MSC or MSC Basel shall not be held liable for temperature damages generated by hot stuffing or non-disputed wrong pre-settings.
- 8.2 In case of pre-carriage or on-carriage of reefer equipment arranged through MSC, it is the responsibility of the booking party to instruct MSC whether a genset or clip-on is required or not.

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

The Merchant is invited to check MSC Export Local Charges at [www.msc.com](http://www.msc.com).

For some loading ports, late or missing submission of required documents, booking changes or cancellations can result in Late Cancellation Fee on account of merchant.

## **10. IMPORT BOOKINGS**

- 10.1 For Import bookings please refer from clause 4 to 8.

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

Insofar as MSC Basel accepts to procure, 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), land forwarding services including but not limited to the procurement of pre- or on-carriage, then MSC Basel acts as freight forwarder. These specific (and no other) services, however, are subject to the Terms and Conditions of the SPEDLOGSWISS Verband schweizerischer Speditions- und Logistikunternehmen AB SPEDLOGSWISS always in its latest edition.

<http://www.spedlogswiss.com/deCH/verband/ab-spedlogswiss.htm>

## **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>
- 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 Basel shall not entertain any claim for waiting time or wasted haulage if this obligation is neglected.

- 12.4 In case of on-carriage arranged by MSC or MSC Basel, the Merchant's delivery instruction, together with all necessary documents for the performance of such transport, must reach MSC Basel at least four working days prior estimated time of arrival (ETA) at discharge port in order to arrange the positioning. MSC and MSC Basel shall not be held liable for delay and additional costs generated by Merchant's non-compliance with this requirement.
- 12.5 The empty container shall be returned to the container depot designated by MSC in a clean, odourless, 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.
- 12.6 Invoices 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, delays or hinders the discharge or the delivery of the Goods, any costs, expenses or liability so resulting shall be for its full and sole account.
5. Merchant expressly agrees that in the context of any MSC contract of carriage, Delivery Order (which may include the use of a PIN Code), shall include any means, whether electronic or not and/or whether nominative or not and/or whether cancellable or not, aiming at allowing us to take delivery of the goods. Merchant shall keep the carrier indemnified and fully harmless against any loss, claim, damage or expense of whatsoever nature arising out or in connection with the Mis-Appropriation of such means of delivery after same is issued to the merchant.

## 13. IMPORT LOCAL CHARGES (STORAGE/DEMURRAGE/DETENTION ETC.)

The Merchant is invited to check the MSC Import Local Charges directly at <https://www.msc.com>.

For any local charges in other countries, please visit the webpage.

## 14. EQUIPMENT RE-USE

Equipment re-use: occurs whenever an empty container is re-used for a new shipment by the Merchant without first being returned to an MSC nominated container depot for inspection and maintenance.

Such re-use has to be authorised by MSC in advance and a status changeover date ending the import demurrage period will be agreed.

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 Basel 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 (internally & externally) 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.

## 15. LEGAL ADMINISTRATION FEE

MSC or MSC Basel shall charge the Merchant a Legal Administration Fee (LAF) covering the extra coordination / organisation 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 cost actually incurred 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 authorised 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.

## 16. CARGO'S WEIGHT AND VGM COMPLIANCE

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. All VGM must be submitted electronically or transmitted to MSC prior vessel loading in due time.

Any non-compliance with VGM statutory guidelines resulting in costs & consequences shall be on Shipper's account.

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

- a. is wrongly declared, or
- b. weight in excess of the VGM or commercial / manifest weight declared, or
- c. weight 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, re-stuffing 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.