



MSC TOGO

TERMS AND CONDITIONS

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MSC TOGO S.A. 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 TOGO S.A.:** means MSC MEDITERRANEAN SHIPPING COMPANY TOGO S.A., Zone Portuaire Route A3 d'Akodessewa. 01 B.P. 3457 Lomé 01, including all its branch offices in Togo 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 Togo. 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- 2.3.** General Conditions of the Merchant will not be applicable and shall in any way be superseded by these AGENCY TERMS AND CONDITIONS and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill.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 MSC TOGO acts as agent for and on behalf of MSC MEDITERRANEAN SHIPPING COMPANY S.A. (the "Carrier", "MSC") only. All quotations made by MSC TOGO are on behalf of the Carrier.**
- 3.2** Quotations made by Togo are not binding until MSC Togo'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 30 days after 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 Togo 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 200.00,00 - 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 TOGO 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. Should nevertheless ever German 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.
- 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 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 The MSC TOGO 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 Togo 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. MSC has launched a secure portal allowing to our customers and vendors 24/7 to access to their operational and financial information.

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 the full containers, the sealing of containers is performed by the shipper. For the empties containers at export, Terminal has the duty to verify if the empty seal is place on the container, before loading on Vessel. 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 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 Togo.

5.6 Payments of Ocean Freight have to be effected in local currency which is West African CFA only. Payments of Ocean Freight made in USD or other currencies are not accepted by MSC Togo.

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 latest at 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 case of Sea Waybills, Shipper and Consignee named on Sea Waybill automatically agree to be party to the Contract of Carriage and accept the Terms and Conditions mentioned on page 1 and 2 of the MSC

MEDITERRANEAN SHIPPING COMPANY SA Sea Waybill and under www.msc.com. The Shipper is further responsible to inform the designated 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.

- 5.11** Shipping documents will be issued immediately upon receipt of loading confirmation and kept at Merchant's disposition at the MSC Togo 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 and expense.
- 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 Togo 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 Togo 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** 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 its trucker are jointly responsible to ensure proper communication during Gate-In. For container delivery to the foreign ports, it is mandatory to state the correct vessel name.
- 5.16** 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 Togo for this specific container. Neither MSC nor MSC Togo 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.

IMPORTANT NOTICE

The Togolese authorities of transport have introduced since the 1st July 2016 a new regulation about the Verified Gross Mass (VGM) on which all export goods must be weighed before loading. Also, the Verified Gross Mass document must follow the export container from Lome Port to his final destination.

Since 15/08/2016, MSC Togo began by applying the Terminal Handling Charges (THC) at import and for export as follows: **Eur95/USD105/20'DV & Eur140/USD155/40'DV-40'HC. (At present, the application of THC in Togo is provisionally suspended).**

6. HAZARDOUS GOODS / IMDG CARGOES

- 6.1 Hazardous cargo bookings are only accepted together with a dangerous goods declaration (DGD)
- 6.2 The signed "Container Packing Certificate" needs to be presented at the latest 24 hours prior cargo closing at Terminal.
- 6.3 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 Togolese requirements and all countries in which cargo is shipped.
- 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 miss-declaration.

8. REEFERS AND TEMPERATURE-CONTROLLED CARGOES

- 8.1 Reefer cargo bookings are only accepted together with our special reefer booking form, which must be duly filled out and is available upon request at the MSC Togo export desk.
- 8.2 Booking Party, Shipper and its representatives are responsible to check the pre-settings of the container temperature prior to stuffing, and MSC or MSC Togo shall not be held liable for temperature damages generated by hot stuffing or non-disputed wrong pre-settings.

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

The Merchant is asked to check MSC Togo Export Local Charges at their Export desk or contacting MSC Togo Office at **00228 22 23 76 76**. Concerning local charges for ports in other countries, please visit the webpage of the MSC offices at www.msc.com

10. IMPORT BOOKINGS

10.1. The provisions and under clauses 4 to 7 above apply *mutatis mutandis* to the Import bookings

10.2. In addition to the above, the following Form / List must be properly filled out with all corresponding information and provided to MSC Togo 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 time of shipment

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

Insofar as MSC TOGO 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 TOGO still acts in the name of the Carrier.

However, MSC Togo is not registered as a land forwarding, then his logistical branch Medlog Togo could assure this part service if requested by shipper or receiver at destination.

The Merchant is obliged upon placing the order to explicitly draw attention to MSC TOGO regarding the value of the cargo if such value exceeds the aforesaid maximum liability amount, in order to enable the Carrier to arrange for appropriate safety measures during the carriage.

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/tg/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 TOGO 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 must reach MSC TOGO at least four working days prior estimated time of arrival (ETA) at discharge port in order to arrange the positioning. MSC and MSC Togo 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 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 only in West African CFA franc without deduction or set-off prior the release of cargo.

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

The Merchant is invited to check the MSC TOGO Import Local Charges by contacting the Import Desk directly at **00228 22 23 76 76**. For any local charges in other countries, please visit webpage of the local MSC office.

ELECTRONIC RELEASE AT LOME, TOGO

This service of MSC is not available in Lome Port at present.

13. EQUIPMENT RE-USE

- 13.1** 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 authorized by MSC in advance and status changeover date ending the import demurrage period will be agreed. Merchant accepts to be charged with re-used fee.

13.2 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 Togo 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.

14. LEGAL ADMINISTRATION FEES (L.A.F)

MSC shall charge 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 amount is: **100 Euros = XOF 65 596 + VAT 18 Euros= 11 807.**

The carrier and its Agent are authorized to charge the LAF in any other legal currency locally.

NOTE: The basis for our invoicing being the number of container involved in the incident/casualty, not the number of container 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/MS agents, including all taxes and charges.

15. 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.