



# MSC VENEZUELA TERMS AND CONDITIONS

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**MSC VENEZUELA 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 Venezuela:** means MSC (VENEZUELA) C.A., Avenida Arturo Uslar Pietri, Torre Metálica, Piso 15, Oficinas A y B. Chacao 1060, Caracas – Venezuela including all its branch offices in Venezuela 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 Venezuela. Orders and instructions of the Merchant shall be considered as his acknowledgement and acceptance of these Agency Terms and Conditions.
- 2.3 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these Agency Terms and Conditions and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill. Deviations from these Agency Terms and Conditions and in particular general conditions of the Merchant shall not apply unless this has been explicitly agreed in writing by MSC.

### **3. QUOTATIONS**

- 3.1 MSC VENEZUELA acts as agent for and on behalf of MSC MEDITERRANEAN SHIPPING COMPANY S.A. (the "Carrier", "MSC") only. All quotations made by MSC VENEZUELA are on behalf of the Carrier.
- 3.2 Quotations made by MSC Venezuela are not binding until MSC Venezuela'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 Venezuela 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.

### **4. CARRIER'S RESPONSIBILITY IN VENEZUELAN JURISDICTION**

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

## 5. EXPORT- AND CROSS-TRADE BOOKINGS

- 5.1 The MSC Venezuela 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 Venezuela 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 overweighed 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.
- 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 Local Charges have to be effected within 48 hours after vessel departure unless Merchant has previously credit condition agreed with MSC or MSC Venezuela. Any Bank service charges/ transaction costs are for account of the payer.
- 5.8 Shipping Instructions must be submitted to MSC Venezuela latest at Stacking closing time. For shipments to countries/areas requiring an AMS-filing or comparable procedures, special deadlines shall apply. The Booking Party and Shipper are responsible to enquire the specific deadline applicable to their shipment.
- 5.9 The Merchant declares that all used wooden packing materials comply with ISPM 15 regulations.

- 5.10 In 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 Venezuela 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 Venezuela for costs of exchanging a container found with holes or cracks at a later stage.
- 5.11 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.
- 5.12 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 Venezuela for this specific container. Neither MSC nor MSC Venezuela 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.
- 5.13 As per the SOLAS Convention (Safety of Life at Sea) it is mandatory for shippers to verify weights of packed containers, regardless of who packed the container. The verification of actual container weight must be obtained on-shore, and provided to the vessel operator and the port terminal facility prior (to VGM cut off) to the vessel loading process. Neither MSC nor MSC Venezuela shall be responsible for any costs linked with the declaration of incorrect container weights. <https://www.msc.com/ven/country-guides/venezuela/solas-vgm-information-venezuela>

## **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 48 hours prior cargo stacking 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 Venezuela 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 Venezuela Export Local Charges at <https://www.msc.com/ven/country-guides/venezuela> or on the agency website under [www.msc.com](http://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 Venezuela.
- 10.3 In addition to the above, the following Form / List must be properly filled out with all corresponding information and provided to MSC Venezuela 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. IMPORT REQUIREMENTS FOR RELEASE OF CARGO**

- 11.1 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 Venezuela shall not entertain any claim for waiting time or fault-freight if this obligation is neglected.
- 11.2 The empty container has to be returned to the container depot designated by MSC in a clean, undamaged condition and completely free of cargo residues, with all chemicals, dangerous goods (in accordance with applicable regulations), and fumigation labels removed. Failure to comply with this requirement may result in additional costs for account of the cargo.
- 11.3 All freight and local charges must be paid without deduction or set-off prior the release of cargo.
- 11.4 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.

## **12. RELEASING OF CARGO WITHOUT PRESENTATION OF OBL.**

Existing legal regulations in Venezuela do not allow for Terminals to delay any dispatch of goods when Clients have completed the Customs' processes (Customs are also handled by Venezuelan Government), not even if there's proof of debts to Shipping Lines or Third Parties. Once the customs process is finished (even w/o OBLs), the consignee or his customs broker can proceed with cargo delivery. MSC Venezuela will not be liable for cargo release w/o OBLs neither be held liable for legal disputes between shipper and consignee due to this situation.

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

The Merchant is invited to check the MSC Venezuela Import Local Charges directly at <https://www.msc.com/ven/country-guides/venezuela> or on the agency website under [www.msc.com](http://www.msc.com). For any local charges in other countries, please visit webpage of the local MSC office

## **14. 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:

WHEN	TARIFF
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<b>COSTS UP TO 500 USD</b>	40 USD PER CONTAINER
<b>COSTS BETWEEN 501 USD AND 1000 USD</b>	80 USD PER CONTAINER
<b>COSTS BETWEEN 1001 USD AND 2000 USD</b>	140 USD PER CONTAINER
<b>COSTS OVER 2001 USD</b>	200 USD PER CONTAINER

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

NOTE: 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.

## **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:

are wrongly declared, or

weigh in excess of the VGM or commercial / manifest weight declared, or

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.