



# **MSC VIETNAM TERMS AND CONDITIONS**

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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, THE LOCAL AGENCY TERMS AND CONDITIONS AT THE PORTS OF LOADING, TRANSSHIPMENT AND DISCHARGE AND MSC VIETNAM COMPANY LIMITED MULTIMODAL TRANSPORT OPERATOR CERTIFICATE.

## 1. DEFINITIONS

- **MSC or Carrier:** means MSC MEDITERRANEAN SHIPPING COMPANY S.A., 12-14 Chemin Rieu, 1208 Geneva – Switzerland.
- **MSC Vietnam :** means MSC Vietnam Company Limited, Saigon Paragon, 10<sup>th</sup> floor, No3 Nguyen Luong Bang Street, Phu My Hung, District 7, Ho Chi Minh, VIETNAM, 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. APPOINTMENT

It is publicly understood and registered that MSC hereby appoints MSC Vietnam as its local agent in Vietnam to perform all services and provide vessels either owned or chartered and any space or slot charter agreement in Vietnam, including but not limited to the services for the multimodal transport.

## 3. APPLICABILITY

- 3.1 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.
- 3.2 These Agency Terms and Conditions shall be deemed to form part of all contracts between the Merchant and MSC via its local agent MSC Vietnam. Orders and instructions of the Merchant shall be considered as his acknowledgement and acceptance of these Agency Terms and Conditions.
- 3.3 General Conditions of the Merchant will not be applicable and shall in any way be superseded by these Agency Terms and Conditions and the terms and conditions of the MSC Bill of Lading and/or Sea Waybill.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.

## 4. QUOTATIONS

- 4.1 MSC Vietnam acts as agent for and on behalf of MSC MEDITERRANEAN SHIPPING COMPANY S.A. (the "Carrier", "MSC") only. All quotations for the service of carriage, including but not limited to the multimodal transport or port-to-port shipment, made by MSC Vietnam are on behalf of the Carrier. For

avoidance of doubt, there shall be nothing in this Agency Terms and Conditions to be construed as an action for MSC Vietnam's own capacity as a carrier or actual carrier.

- 4.2 Quotations made by MSC Vietnam are not binding until MSC Vietnam'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.
- 4.3 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 / multimodal transport or otherwise. Bookings are always subject to equipment and space availability.
- 4.4 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 carriage may at any time be charged by the Carrier to the Merchant.
- 4.5 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 Vietnam's quotations.
- 4.6 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"; if the carrier and shipper agree that the cargo shall or may be carried on deck, the carrier must insert terms of the said agreement to that effect in the sea waybill / bill of lading or in any document evidencing the contract of carriage of goods by sea, where no bill of lading is issued.
  - 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 200.000,00 - 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).

## **5. CARRIER'S RESPONSIBILITY IN VIETNAM JURISDICTION**

- 5.1 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 Vietnam to apply under the mandatory principle.
- 5.2 Should nevertheless local law of Vietnam 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.

- 5.3 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 Vietnam who shall also be entitled to enforce the same against the Merchant.

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

- 6.1 The MSC Vietnam 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.
- 6.2 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 Vietnam 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.
- 6.3 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.
- 6.4 For security reasons all containers for all destinations must be sealed by the Booking Party and Shipper or their representatives with High Security Bolt Seal or equivalent directly after stuffing. For a detailed instruction about correct placement of seals please see our Sealing Procedure (.pdf). Unsealed and incorrectly sealed containers will be resealed upon arrival at the terminal at the Merchant's costs and responsibility and may be short-shipped. Any resulting costs are for account of the Merchant.
- 6.5 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 Vietnam. "Cargoes are stowed under deck" is not allowed to be shown on Bill of Lading.
- 6.6 Payments of Ocean Freight have to be effected in VND (Vietnamese Dongs) only. Payments made in USD will only be accepted if made from overseas transaction. Any Bank service charges/ transaction costs are for account of the payer.
- 6.7 Unless expressly agreed otherwise, all invoices are payable immediately and without deduction or rights of retention or of set-off whatsoever.
- 6.8 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.
- 6.9 The Merchant declares that all used wooden packing materials comply with ISPM 15 regulations.
- 6.10 In consideration of Carrier issuing, at the booking party or the shipper's request, Sea Waybill instead of Bill of Lading for the contract of carriage of the cargo, the booking party and the shipper hereby indemnify the Carrier for all and any claims, losses, costs, expenses and liabilities of any nature whatsoever that arise in consequence of the use of a Sea Waybill instead of a Bill of Lading. The booking party and the shipper further undertake to ensure that the Consignee designated on the Sea Waybill receives a legible copy of,

by fax or e-mail, and agrees to abide by, the terms, conditions, exceptions and limitations contained in the Carrier Sea Waybill as freely accessible under [www.msc.com](http://www.msc.com) and to inform the Consignee that a formal letter of acceptance of the MSC Sea Waybill Terms and Conditions will be requested from him at destination prior to delivery, being made expressly clear that oversight from MSC or its agent to obtain such a letter of acceptance prior release of the cargo shall not be deemed in any way as a waiver by MSC of its rights to rely upon, nor as a non-acceptation by the Consignee, of these Terms and Conditions.

- 6.11 Shipping documents will be issued immediately upon receipt of loading confirmation and kept at Merchant's disposition at the MSC Vietnam's 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.
- 6.12 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 Vietnam 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 Vietnam for costs of exchanging a container found with holes or cracks at a later stage.
- 6.13 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.
- 6.14 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.
- 6.15 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 ports Hamburg and Bremerhaven it is mandatory to state the correct vessel name.
- 6.16 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 Vietnam for this specific container. Neither MSC nor MSC Vietnam 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.
- 6.17 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 Vietnam shall be responsible for any costs linked with the declaration of incorrect container weights.

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

- 7.1 Hazardous cargo bookings are only accepted together with a dangerous goods declaration (DGD).
- 7.2 The signed "Container Packing Certificate" needs to be presented at the latest 24 hours prior cargo closing at Terminal.
- 7.3 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.

## **8. WASTE & SCRAP CARGOES**

- 8.1 The Merchant is responsible to ensure that each booking of waste and/or scrap cargo from or to the Europe Union 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>.
- 8.2 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.

## **9. REEFERS AND TEMPERATURE CONTROLLED CARGOES**

- 9.1 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 Vietnam export desk.
- 9.2 Booking Party, Shipper and its representatives are responsible to check the pre-settings of the container temperature and the appropriate procedures prior to stuffing, and MSC or MSC Vietnam shall not be held liable for temperature damages generated by hot stuffing, non-disputed wrong pre-settings or inappropriate stuffing.

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

The Merchant is asked to check MSC Vietnam Export Local Charges at <https://www.msc.com/vnm/country-guides/vietnam/export-local-requirements>. For charges in other countries, please visit the webpage in [MSC Vietnam's country guides section](#).

# 10. IMPORT BOOKINGS

10.1 The provisions and under clauses 4 to 9 above apply mutatis mutandis to the Import bookings.

# 11. IMPORT REQUIREMENTS FOR RELEASE OF CARGO

- 11.1 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.
- 11.2 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/vnm/contract-of-carriage>.
- 11.3 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 Vietnam shall not entertain any claim for waiting time or fault-freight if this obligation is neglected.
- 11.4 In case of on-carriage, the Merchant's delivery instruction must reach MSC Vietnam at least four working days prior estimated time of arrival (ETA) at discharge port in order to arrange the positioning. MSC and MSC Vietnam shall not be held liable for delay and additional costs generated due to a disrespect of this obligation.
- 11.5 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.
- 11.6 Invoices must be paid in VND (Vietnamese Dongs) without deduction or set-off prior the release of cargo.
- 11.7 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.



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

The Merchant is invited to check the MSC Vietnam Import Local

Charges at: <https://www.msc.com/vnm/country-guides/vietnam/import-local-requirements> . For charges in other countries, please visit the webpage in [MSC Vietnam's country guides section](#).

## **12. EQUIPMENT RE-USE**

MSC Vietnam does not accept that an empty container is re-used for a new shipment by the Merchant without first being returned to an MSC nominated depot for inspection and maintenance.

## **13. 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/MS agents, including all taxes and charges.

# **14. 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.