

MSC MEDITERRANEAN SHIPPING COMPANY S.A. CONTRACT OF CARRIAGE

Terms and conditions of MSC Mediterranean Shipping Company S.A. Contract of Carriage continued from the front page.

- 1. DEFINITIONS**
The following definitions shall apply in this Sea Waybill.
Carrier: means MSC Mediterranean Shipping Company S.A.
COGSA: means the U.S. Carriage of Goods by Sea Act, 1936.
Combined Transport: arises if the Carrier has indicated a Place of Receipt and/or a Place of Delivery on the front hereof in the relevant spaces. Combined Transport consists of a Port-to-Port carriage and inland Transport.
Container: includes any container, trailer, transportable tank, flat or pallet, or any similar article used to contain Goods and any connected or accessory equipment.
Freight: includes the freight and all charges, costs and expenses whatsoever payable to the Carrier in accordance with the applicable Tariff of this Sea Waybill, including storage, per diem and demurrage.
Goods: includes the whole or any part of the cargo carried under this Sea Waybill, including any packing or any packing materials owned by or for the Merchant.
Hague Rules: means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 with the express exclusion of Article 9.
Hague-Visby Rules: means the provisions of The Hague Rules 1924 as Amended by the Protocol adopted at Brussels on 23 February 1968, and 21st December 1979 (SDR Protocol) where applicable.
Notwithstanding anything to the contrary herein it is expressly agreed that nothing herein shall contravictually apply the Hague-Visby Rules to this Sea Waybill and they shall apply only when compulsorily applicable by the law governing this Sea Waybill.
Inland Transport: means carriage during Combined Transport other than between the Port of Loading and the Port of Discharge.
Merchant: includes the Shipper, Consignee, holder of this Sea Waybill, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Sea Waybill or anyone acting on behalf of this Person.
Person: includes any individual, corporation, company or any other legal entity.
Place of Delivery: means the place at which the Carrier has contracted to deliver the Goods, when such place is other than the Port of Discharge.
Place of Receipt: means the place at which the Carrier has contracted to receive the Goods, when such place is other than the Port of Loading.
Pomerene Act: means the United States Federal Sea Waybill Act, 1916 49 U.S.C. 801 or any amendments thereto.
Port-to-Port carriage: means carriage between the Port of Loading and the Port of Discharge.
Subcontractor: includes but is not limited to the owners, charterers and operators of the Vessel(s) other than the Carrier, as well as stevedores, terminals and groupage operators, road and rail transport operators, warehousemen or other persons or entities engaged by the Carrier in the performance of the carriage, and any direct or indirect Subcontractors, servants and agents thereof, whether in direct contractual privity or not.
Vessel: includes the vessel named herein or any substituted vessel, feeder vessel, lighter or other watercraft utilized by the Carrier for carriage of the Goods.
- 2. CONTRACTING PARTIES AND WARRANTY**
This Sea Waybill is entered into between the Carrier and the Shipper. The Shipper, who is the only party entitled to give the Carrier instructions in relation to this contract of carriage, undertakes to provide the Merchant and in particular the Consignee with a legible copy of the Terms and Conditions of Carriage of this Sea Waybill. The Carrier warrants that the "Merchant" is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with this Sea Waybill and to pay the Freight due under it without deduction or set-off. The Shipper warrants that in agreeing to the terms and conditions of this Sea Waybill, the Shipper is acting on behalf of the Merchant, the authority of the owner of the Goods, or of the Person entitled to the possession of the Goods or of this Sea Waybill, or of the Merchant.
- 3. CARRIER'S TARIFF**
The terms and conditions of the Carrier's applicable Tariff are incorporated into this Sea Waybill. Particular attention is drawn to terms and conditions concerning additional charges including demurrage, per diem, storage expense and legal fees, etc. A copy of the applicable Tariff can be obtained from the Carrier or its agent upon request and the Merchant is deemed to know and accept such Tariff. In the case of any conflict or inconsistency between this Sea Waybill and the applicable Tariff, it is agreed that this Sea Waybill shall prevail.
- 4. SUBCONTRACTING AND INDEMNITY**
4.1 The Carrier shall subcontract on any terms whatsoever the whole or any part of the carriage, including liability to further sub-contract.
4.2 The Merchant undertakes that no claim or allegation whatsoever in respect of contract, bailment, tort or otherwise, shall be made against the Carrier, its servants, agents or Subcontractors, or that the Merchant attempts to impose upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against its costs and expenses therefrom, together with the foregoing, every such servant, agent and Subcontractor shall have the benefit of all terms and conditions of whatsoever nature contained herein or otherwise benefiting the Carrier under this Sea Waybill, as if such terms and conditions were expressly for their benefit. In entering into this contract, the Carrier, to the extent of such terms and conditions, does so on its own behalf and also as agent and trustee for such servants, agents and Subcontractors.
The provisions of clause 4.2, including but not limited to the undertaking of the Merchant contained therein, shall extend to all claims or allegations of whatsoever nature against other Persons chartering space on the Vessel.
4.4 The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier or any Person who has attempted to impose upon the Carrier any liability whatsoever in connection with the Goods or the carriage of the Goods other than in accordance with the terms and conditions of this Sea Waybill, whether or not arising out of negligence or misdelivery on the part of the Carrier or its servants, agents or Subcontractors or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.
- 5. CARRIER'S RESPONSIBILITY**
5.1 Port-to-Port carriage – If carriage under this Sea Waybill is Port-to-Port:
(a) The period of responsibility of the Carrier for any loss of or damage to the Goods shall commence only at the moment that the Goods are loaded on board the Vessel and shall end when the Goods have been received from the Vessel.
(b) This Sea Waybill shall be subject to the Hague Rules unless the governing law makes the Hague or the Hague-Visby Rules compulsorily applicable in which case the said Hague or Hague-Visby Rules will apply to this Sea Waybill and the provisions of the Pomerene Act shall not be applicable.
(c) Notwithstanding the above, in case and to the extent that the governing law, or a contractual arrangement, or custom and practice, or any court or tribunal decision extends the Carrier's period of responsibility whether in contract, tort, bailment or otherwise to all or any part of the period before loading, or the period after discharge, or both, then the Carrier shall have the benefit of the right of defence, immunity, limitation and liability provided for in the Hague Rules during such additional period of responsibility, notwithstanding that the loss, damage or misdelivery did not occur during the period by sea.
5.2 Combined Transport – The Carrier's liability for Combined Transport shall be as follows:
5.2.1 Where the loss or damage occurred during the Port-to-Port section of the carriage, the liability of the Carrier is in accordance with clause 5.1 above.
5.2.2 Where the loss or damage occurred during Inland Transport, the liability of the Carrier shall be determined:
(a) by the provisions contained in any international convention, national law or regulation applicable to the mode of transport utilized, if such convention, national law or regulation would have been compulsorily applicable in the case where a separate contract had been made in respect to the particular stage of transport concerned, or
(b) where no international convention, national law or regulation would have been compulsorily applicable, by the contract of carriage issued by the Subcontractor carrier for that stage of transport, including any limitations and exceptions contained therein, which contract the Merchant and the Carrier shall incorporate by reference. If it is agreed that the Carrier's rights and liabilities shall be the same as those of the Subcontractor carrier, but in no event whatsoever shall the Carrier's liability exceed GBP 100 sterling legal tender per package, or
(c) if no court shall be found to have made a compulsory application, national law or regulation would have been compulsorily applicable and that the Carrier may not determine its liability, if any, by reference to the applicable Subcontractor's contract of carriage or where said Subcontractor carrier does not have a contract of carriage, then it is contractually agreed as between the Merchant and the Carrier that the Carrier's liability shall be determined in accordance with the provisions of the Hague Rules for Port-to-Port section of carriage as provided at 5.1 above, but in no event whatsoever shall the Carrier's liability exceed GBP 100 sterling legal tender per package.
5.2.3 Where the loss or damage is established by the Merchant, then the loss or damage shall be presumed to have occurred during the Port-to-Port section of carriage and the Carrier's liability shall be determined as provided at 5.1 above.
5.2.3 Any transport that the Carrier arranges for the Merchant which is not part of the carriage under this Sea Waybill is deemed to be under the Merchant's own responsibility, time, risk and expense and the Carrier acts as agent only for the Merchant.
5.3 Delivery to Customs or Port Authorities – Where any law or regulation applicable at the Port of Loading or Place of Discharge requires the delivery of the Goods to the Merchant to be effected by the customs or port authorities at the Port of Discharge or Place of Delivery, notwithstanding anything to the contrary herein, delivery of the Goods by the Carrier to such customs or port authorities shall be deemed to be in accordance with the provisions of the Pomerene Act and the Carrier shall not be liable for any loss of or damage to the Goods which occurs for any reason whatsoever after delivery of the Goods by the Carrier to the customs or port authorities.
5.4 Notwithstanding the application to this Sea Waybill of the Hague Rules, or the Hague-Visby Rules, or of any similar convention or legislation, THIS SEA WAYBILL IS NOT A DOCUMENT OF TITLE TO THE GOODS.
- 6. U.S. TRADE CLAUSE**
6.1 Notwithstanding the provisions of clause 5, for carriage to or from any port of the United States, its territories or possessions, or if suit is brought in the United States, this Sea Waybill shall have effect to the provisions of the United States Federal Sea Waybill Act, 1916, as amended, or may be effected by the customs or port authorities at the Port of Discharge or Place of Delivery, notwithstanding anything to the contrary herein, delivery of the Goods by the Carrier to such customs or port authorities shall be deemed to be in accordance with the provisions of the Pomerene Act and the Carrier shall not be liable for any loss of or damage to the Goods which occurs for any reason whatsoever after delivery of the Goods by the Carrier to the customs or port authorities.
5.4 Notwithstanding the application to this Sea Waybill of the Hague Rules, or the Hague-Visby Rules, or of any similar convention or legislation, THIS SEA WAYBILL IS NOT A DOCUMENT OF TITLE TO THE GOODS.
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5.4 Notwithstanding the application to this Sea Waybill of the Hague Rules, or the Hague-Visby Rules, or of any similar convention or legislation, THIS SEA WAYBILL IS NOT A DOCUMENT OF TITLE TO THE GOODS.
- 7. COMPENSATION AND LIABILITY PROVISIONS**
7.1 Subject always to the Carrier's right to limit liability as provided for herein, if the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the invoice value of the Goods, plus Freight and insurance if paid. If there is no invoice value of the Goods or if any such invoice is not bona fide, such compensation shall be calculated by reference to the market value of the Goods at the time and place where the loss or damage occurred, plus Freight and insurance to the Merchant. The market value of the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and/or quality.
7.2 Save as is provided in clause 7.3:
7.2.1 (a) If and to the extent the Hague Rules (or the Hague-Visby Rules) are compulsorily applicable to this Sea Waybill by virtue of clauses 5.1, 5.2.1 or 5.2.2 (c) or (d) or otherwise, the Carrier's liability for breaches or wrongs occurring during such period of compulsory application shall in no event whatsoever exceed the amount provided in the Hague Rules or Hague-Visby Rules, whichever are compulsorily applicable.
(b) If and to the extent the Hague Rules apply only contractually pursuant to clause 5, the Carrier's maximum liability shall in no event whatsoever exceed GBP 100 sterling legal tender per package or unit.
7.2.2 Where COGSA applies by virtue of clause 6, neither the Carrier nor the Vessel shall in any event be liable for more than the amount provided in the U.S. Federal Sea Waybill Act, 1916, as amended.
7.3 The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods. Higher compensation than that provided for in this Sea Waybill may be claimed only when, with the written confirmation of the Carrier, the value of the Goods declared by the Shipper upon delivery to the
- Carrier has been stated by the Carrier in the box marked "Declared Value" on the front of this Sea Waybill and ad valorem charges paid. In that case, the amount of the Declared Value shall be substituted for the limits provided in this Sea Waybill. Any partial loss or damage shall be adjusted pro rata on the basis of the Declared Value and the actual value of the Goods.
7.4 Nothing in this Sea Waybill shall operate to limit or deprive the Carrier of any statutory protection, defence, exemption or limitation of liability authorised by any applicable laws, statutes or regulations of any country in which it would be liable to sue or be sued, including but not limited to off-dock storage.
7.5 The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of the Vessel.
7.5 When any claim is paid by the Carrier to the Merchant, the Carrier shall be automatically subrogated to the rights of the Merchant against any third party. The Merchant shall sign a subrogation receipt, release and indemnity immediately when requested by the Carrier.
- 8. SCOPE OF VOYAGE, DELAY, CONSEQUENTIAL DAMAGES**
The scope of voyage herein contracted for may or may not include inland or customary or advertised ports of call whether named in this Sea Waybill contract or not and may include transport of the Goods to or from any facilities used by the Carrier as part of the voyage, including but not limited to off-dock storage. The Carrier does not promise or undertake to load, carry or discharge the Goods on or by any particular Vessel, date or time. Advertised sailings and arrivals are only estimated times, 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. If the Carrier should nevertheless be held legally liable for any such direct or indirect or consequential loss or damage caused by such alleged delay, such liability shall in no event exceed the Freight paid for the carriage.
- 9. METHODS AND ROUTES OF CARRIAGE**
9.1 The Carrier may at any time and may at any time and without notice to the Merchant:
(a) use any means of transport or storage whatsoever;
(b) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(c) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(d) use any means of transport or storage whatsoever;
(e) use any means of transport or storage whatsoever;
(f) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(g) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(h) use any means of transport or storage whatsoever;
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(k) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(l) use any means of transport or storage whatsoever;
(m) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
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(o) use any means of transport or storage whatsoever;
(p) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(q) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(r) use any means of transport or storage whatsoever;
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(t) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(u) use any means of transport or storage whatsoever;
(v) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(w) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(x) use any means of transport or storage whatsoever;
(y) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(z) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(aa) use any means of transport or storage whatsoever;
(ab) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
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(ar) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(au) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(av) use any means of transport or storage whatsoever;
(aw) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(ax) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(ba) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(bd) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(cp) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(cq) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(cr) use any means of transport or storage whatsoever;
(cs) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(ct) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(cu) use any means of transport or storage whatsoever;
(cv) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(cw) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(cy) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(cz) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(da) use any means of transport or storage whatsoever;
(db) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
(dc) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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(df) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
(dg) use any means of transport or storage whatsoever;
(dh) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, and/or for transshipment or forwarding of the Goods by such means may in no event have been contemplated or provided for herein;
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(ea) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advised route) at any time and may at any time and without notice to the Merchant;
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