



Maersk Quarterly Flexible Terms

## 1. CARRIER'S TERMS FOR SERVICE AND CARRIAGE

1. The Carrier's Service Contract Terms available at <https://terms.maersk.com/service> ("**Service Contract Terms**") are incorporated herein for non-FMC lanes, the Contract terms apply for FMC lanes and further the Carrier's Terms for Carriage available at <https://terms.maersk.com/carriage> ("**Terms for Carriage**") or otherwise obtainable from the Carrier upon request, are incorporated herein by reference and shall apply to all individual shipments carried under these Maersk Flexible Quarterly Terms (hereinafter referred to as "**Flexible Quarterly Terms**" or "**Terms**"). The definitions set out in the Terms for Carriage and Service Contract Terms are adopted for these Flexible Quarterly Terms. The term "Contract" as used herein means the service contract signed between the parties for filing with the U.S. Federal Maritime Commission ("FMC").

In the event of any conflict, the order of precedence shall be as follows:

- i. these Flexible Quarterly Terms including Contract Output;
- ii. the Terms for Carriage; and
- iii. the Service Contract Terms (for non-FMC lanes) and the Contract (for FMC lanes), as applicable.

1.2 The contract output specifies the geographic scope, commodities, rates and the Total Nomination ("**Contract Output**") which forms a part of these Terms as set out above. Rates appearing in the Contract Output may be subject to surcharge(s) resulting from congestion, emergency risks, government or supranational mandates, capacity or equipment issues or any other cause whatsoever which causes increased expenditure to the Carrier in carrying the cargo.

## 2. DURATION AND SCOPE

2.1 These Terms shall come into effect on the Commencement Date as provided in the Contract Output or the earliest date permitted by the U.S. Shipping Act and shall expire on the Expiration Date as stated in the Contract Output (the "**Term**"), unless terminated earlier in accordance with the termination provisions hereunder. The Weekly Volume Commitment under these Terms shall only apply to the scope stated in the Contract Output.

2.2 Carriage of dangerous and/or hazardous Goods shall be subject to Clause 21 of the Terms for Carriage and acceptance thereof shall be subject to Carrier's sole discretion. The commitments/promises covered under these Terms shall not apply to any bookings of dangerous and/or hazardous Goods unless such shipments are accepted by Carrier for Carriage.

## 3. SHIPPER'S FORECAST OF VOLUME

3.1 Shipper forecasts shipment of a minimum quantity of Forty Foot Equivalent Units ("FFE's") during the Term (the "**Total Nomination**"). The Total Nomination shall be equally divided by the total number of weeks during the Term, resulting in a weekly nomination of shipments Shipper shall tender to Carrier for carriage ("**Weekly Volume Nomination**"), plus the percentage of any additional weekly volume agreed to in the Contract Output ("**Flexibility**").

For purposes of the WVC calculations, the following equivalencies shall apply:

	<u>20'</u>	<u>40' HC/NOR</u>	<u>45'</u>
Dry	0.5 FFE	1 FFE	1.266 FFE

“HC” means high cube containers.

“NOR” means non-operating reefer containers.

\*Example given for purposes of calculating the WVN:

Total Nomination from Shanghai to Rotterdam = 1300 FFEs

Term: 13 Weeks

Weekly Volume Nomination = 100 FFEs (1300/13)

Flexibility = 10% of Weekly Volume Nomination, i.e., 10 FFEs

Weekly Volume Nomination plus Flexibility= 110 FFEs

#### 4. FLEXIBLE COMMITMENTS

4.1 The Flexible commitments prior to the Estimated Date of Departure (“ETD”) are set forth as follows:

	Shipper	Carrier
<b>Greater than (&gt;) 14 calendar days prior to the ETD</b>	<b>Weekly Volume Nomination</b>	<b>Weekly Space Allocation</b>
	Weekly Volume Nomination is provided at the time of contracting and is a non-binding indication of the weekly cargo volumes that Shipper may tender for shipment with the Carrier at the contracted rates.	Carrier shall exercise reasonable endeavors to provide allocation at the contracted rates agreed for the Weekly Volume Nomination and the Flexibility provided at the time of contracting (“Weekly Space Allocation”), subject to the schedules and service patterns of the Carrier, and at Carrier’s option, any additional cargo tendered by Shipper.
	The Shipper may book shipments any time up until 14 calendar days in advance of the ETD. The volume booked may be less than the Weekly Volume Nomination or in excess of the WVN, but in any event within the Flexibility offered.	
	<b>Volume commitment</b>	

<b>Less than or equal to (≤) 14 calendar days prior to the ETD</b>	Any volume booked up until 14 calendar days prior to the ETD which is within the Weekly Volume Nomination plus the Flexibility becomes the Shipper's weekly volume commitment (" <b>Weekly Volume Commitment</b> " or " <b>WVC</b> ").  Shipper's non-compliance with the WVC is subject to the fees contained in Clause 5.	
--	---	--

4.2 The weekly calculation stated herein is based on the Proforma Departure Date and not on calendar weeks.

4.3 Free time terms and conditions under these Flexible Quarterly Terms shall be in accordance with those effective at the time of the Commencement Date and shall be made available to Shipper and/or its affiliates at the time of booking for the Origin/Destination, container size/type and commodity booked.

## **5. DAMAGES FOR SHIPPER'S NON-PERFORMANCE**

5.1 In accordance with the WVC, Shipper agrees to tender Goods for shipment with the Carrier before the cut-off time(s) as indicated in the booking confirmation.

### *5.2 Cancellation Fee*

Should the Shipper wish to cancel a shipment of a part of or all of the containerised Goods from the WVC at any time after 14 calendar days prior to the ETD, then the Shipper shall pay to the Carrier a fee of USD 200 per container that is cancelled ("**Cancellation Fee**").

### *5.3 No-Show Fee*

If the Shipper fails to notify the Carrier of a cancellation of a part of or all of the containerised Goods in accordance with Clause 5.2 above, or otherwise fails to deliver a part of or all of the containerised Goods for shipment from the WVC at any time after 14 days prior to the ETD, then the Shipper shall pay a "no-show" fee of USD 200 per container ("**No-Show Fee**").

5.4 In the event the Shipper has placed a valid booking for shipment under these Terms which the Carrier has been unable to carry or has otherwise rejected for the Carrier's own reasons, any such volume so booked but not carried shall count towards the WVC and the Shipper shall not be liable to Carrier for any Cancellation and/or No-Show Fee(s).

5.5 Notwithstanding the foregoing, if the failure by the Shipper to properly tender the Goods to Carrier is due to:

i. any Force Majeure event (the term "Force Majeure" as used herein shall mean any and all events beyond the reasonable control of a Shipper including, without limitation, strikes, work stoppages, lockouts or circumstances arising from the threat thereof; acts of God, states or a public enemy, terrorism, cyber-attack, war, hostilities, riots, civil disorder, insurrection, embargo, pandemic, governmental actions (whether informal or formal government acts) or other similar disruptions or interference with trade, marine disaster, fire and or other casualty); or

ii. the unavailability of a vessel or alternative vessel due to blank sailing

then Shipper shall not be liable for the payment of any fee(s) set out in this Clause 5, provided that evidence thereof is demonstrated to the satisfaction of the Carrier.

## 6. CARRIER'S SERVICE COMMITMENT

6.1 The Carrier's service commitment is set forth as follows.

<b>Applicability</b>	Applies to volumes within the WVC and any additional volume, if accepted by Carrier.
<b>Service Commitment</b>	Carrier shall exercise reasonable endeavors to make available vessel capacity and equipment adequate to carry the WVN and the Flexibility provided at the time of contracting, and at Carrier's option, any additional cargo tendered by Shipper. This commitment is subject to the schedules and service patterns of the Carrier.
<b>Allocation Grouping(s)</b>	<p>The MVC may be split into allocation grouping(s) as may be separately agreed. Such allocation grouping(s) indicates the geographical distribution of the Weekly Volume Commitment. The allocation is available to see at <a href="https://www.maersk.com/allocations">https://www.maersk.com/allocations</a>.</p> <p>Shipper acknowledges that the allocation grouping(s) may be impacted by network and/or operational constraints (including but not limited to reduced capacity to or from any port) and may therefore be subject to changes. In such event, Carrier will exercise reasonable endeavors to reallocate the impacted volume to the unaffected port pair(s) from the same or different allocation grouping(s) for the relevant period. In any event and failing feasible alternatives, Carrier reserves the right to reduce the Weekly Volume Commitment equal to the impacted volume for the affected time period without any further liability for damages from either party.</p>
<b>Equipment Availability</b>	Subject to Clause 6.2, Carrier agrees to provide the equipment indicated in the booking confirmation or a reasonable alternative to the Shipper.

6.2(A) Carrier shall provide the equipment indicated in the booking confirmation or a reasonable alternative, subject to the following exclusions:

- i. Special grade containers, including food/dairy, flexitank, open tops, flat racks and scrap-grade containers;
- ii. Equipment picked up at a different location from the default 'Empty Container Depot' stated in the booking confirmation; and/or
- iii. Equipment picked up on a date earlier than the equipment 'Release Date' stated in the booking confirmation.

6.2(B) Some equipment grades may also be subject to additional charges, details of which can be found on <https://www.maersk.com/local-information> under country specific local information or by contacting the relevant local Carrier office.



6.2(C) Additional charges may apply if the location for equipment pick up/drop off requested by the Shipper is different from the origin/destination locations stated in the booking confirmation.

6.2(D) 45' equivalent units and NORs are only included if confirmed by the Carrier in the booking confirmation. The Carrier also reserves the right to substitute 45' equivalent units and NORs with 40' equivalent units and/or 40'HC equivalent units.

## **7. REMEDIES**

7.1 Shipper acknowledges and accepts that under these Terms the Carrier does not guarantee that the Carrier shall make available the space or equipment to meet the WVC. In the event the Carrier does not provide sufficient space and equipment to meet the WVC, or in the event the Carrier does not provide any space and equipment whatsoever, Shipper shall have no claim against the Carrier whatsoever, including in damages or in any other remedy.

7.2 Notwithstanding any other provisions to the contrary in these Terms or any separate agreement between Shipper and Carrier, Carrier shall in no event be liable whether directly or indirectly to the Shipper for any special, consequential, indirect (including, but not limited to, lost profits, lost sales, loss of reputation, loss of market share, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and lost opportunity costs, etc.), multiple, exemplary, or punitive and/or other extraordinary damages claimed by the Shipper. The foregoing limitation shall apply regardless of the form of action, whether the damages or other relief sought are based on a theory of breach of warranty, breach of contract, tort (including negligence), strict product liability or any other legal or equitable theory, even if the Carrier has been advised of the possibilities of such damages. The prohibition on the foregoing types of damages shall also apply whether the damages are characterized as "contract damages", "tort damages" or otherwise.

## **8. REVIEW, INVOICING AND PAYMENT**

8.1 The Carrier shall conduct a quarterly review of performance under these Terms.

8.2 Following the quarterly review, the invoice procedure set forth below shall apply to all invoices generated pursuant to these Terms:

i. Invoices for Cancellation Fees and No-Show Fees will be submitted quarterly in arrears by Carrier to Shipper in an agreed format.

ii. The invoiced amount shall reflect the total amount of any Cancellation Fees and No-Show Fees due by Shipper.

8.3 If Shipper believes that there is any discrepancy in Carrier's invoice, Shipper must notify Carrier of such, outlining the basis for contesting the invoice, within 7 days from the date of the invoice. Any invoices that are not contested in accordance with this provision shall be deemed to be valid and undisputed.

8.4 Shipper shall make its payments in accordance with the credit agreement agreed to between the parties.

8.5 Any and all costs related to tax or any other mandatory charges, fines, penalty, fees, etc. as required by law or regulation will be borne by the respective party legally liable to pay for such costs.

8.6 The invoices generated pursuant to this Clause 8 will be issued as per the details mentioned on the invoice. Shipper shall wire transfer the amount invoiced to the bank account stated on the invoice.

## 9. FAILURE TO PAY INVOICES

Shipper shall settle all payments in accordance with the credit agreement. In the event that Shipper does not settle any outstanding amounts accordingly, Carrier reserves the right to take any or all of the following actions:

- i. Withhold original documents including transport documents and/ or cargo until all outstanding amounts due under these Terms, including the costs of collection efforts, are settled.
- ii. Suspend or terminate the provision of credit privileges and/or immediately withdraw from or terminate any and all agreements existing with Shipper including but not limited to these Terms and also cancel all negotiations with Shipper without any consequence.
- iii. Suspend or terminate any special benefit and/or privilege whatsoever provided to the Shipper under these Terms and/or any other agreement with the Carrier or with any company or other entity within the A.P. Moller Maersk Group.
- iv. Exercise any applicable right of lien over any cargo and discontinue any services.
- v. Upon notice, assess a fixed charge and/or interest permissible under applicable law on the outstanding overdue amounts.
- vi. Commence collections proceedings to recover all amounts due and outstanding. Any expenses and fees incurred in collection efforts shall be recoverable from the Shipper.

## 10. SCHEDULE/SERVICE PATTERN CHANGES

The provision of the services from or to the origins/destinations set forth in the Contract Output is subject to changes in Carrier's schedules and service patterns. Should Carrier for any reason discontinue service to/from any origin/destination referenced in the Contract Output, it shall not be required to continue to carry the cargo, whether within the WVC or not, from or to such origin/destination. In such event, Shipper and Carrier shall negotiate in good faith regarding an amendment to these Terms reflecting the change in service. If the parties are unable to reach agreement on such amendment within thirty (30) days from such service change, then either party may terminate these Terms and the Contract (for FMC lanes).

## 11. EMISSIONS REGULATION CLAUSE

11.1 Shipper accepts and acknowledges that during the Term the Carrier may be subject to regulatory or other industry-wide requirements relating to emissions, fuel bunker content requirements or a requirement to purchase allowances or otherwise make payments calculated by reference to Carrier emissions, or any other regulation whatsoever relating to de-carbonisation or any other environmental concern (each an “**Emissions Regulation**”).

11.2 Shipper accepts and acknowledges that an Emissions Regulations may arise in any jurisdiction in which Carrier performs activities with any of its customers and that an Emissions Regulation may not yet be envisaged, implemented or in full force and effect as of the date of agreeing to these terms. Specifically and without limitation, you agree that each of the following will be considered to be an Emissions Regulation under these Terms:

11.2.1 Amendments to MARPOL Annex VI, introducing an Energy Efficiency Design Index for existing ships (EEXI) and Carbon Intensity Indicator (CII), anticipated to enter force in 2022 and 2023, respectively, and known in the industry as “the IMO 2023 regulations”;



11.2.2 The expansion of the European Union Emissions Trading System (ETS) to include the shipping industry, which is proposed to be phased in beginning in the year 2023; and

11.2.3 The FuelEU Maritime Initiative, which is proposed to be phased in beginning in the year 2025.

11.3 Where Carrier is subject to one or more Emissions Regulation(s), Shipper shall pay to Carrier an amount assessed by the Carrier in the Carrier's sole discretion as being the Carrier's business cost of complying with that or with those Emissions Regulation(s) in performing these Terms.

## **12. TERMINATION**

12.1 After carriage of at least 1 FFE, these Terms, the Contract Output and the Contract (for FMC lanes) may be terminated at any time during the Term by mutual agreement in writing between the parties. Save and except that, in case either party becomes insolvent, enters into liquidation (apart from solvent liquidation for the purposes of amalgamation or reconstruction) or is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or a substantial part of its assets or enters into an arrangement with its creditors or takes or suffers similar action the other party may terminate these Terms and the Contract (for FMC lanes) with notice immediately.

12.2 In the event of termination, the accrued rights and liabilities of the parties as at termination and the continuation of any provision surviving termination, shall not be affected.

## **13. ENTIRE AGREEMENT**

Notwithstanding anything herein to the contrary, these Terms, including the Contract Output, Carrier's Terms for Carriage and the Tariff together constitute the entire agreement and understanding between the parties pertaining to the subject matter contained in these Flexible Quarterly Terms, and supersede all prior agreements, representations, and understandings of the parties pertaining to the subject matter. It is agreed by the parties that, the Carrier reserves the right to update, revise or change these Terms for non-FMC lanes by way of public notice or any other way informing the Shipper. Any update, revision or change to these Terms for FMC trade lanes shall be subject to mutual agreement and effective once filed with the FMC.

## **14. WAIVER**

Any failure by either party in exercising any right, power or privilege under these Terms and/or the Contract shall not constitute a waiver, nor shall any single or partial exercise preclude any further exercise of any such right, power or privilege.

## **15. LAW AND JURISDICTION**

For shipments to or from the U.S., any dispute relating to the Contract (for FMC lanes) and these Terms shall be governed by and subject to U.S. law and the United States District Court for the Southern District of New York is to have exclusive jurisdiction to hear all disputes in respect thereof. In all other cases, these Terms shall be governed by and construed in accordance with English law and any dispute arising shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association Terms current at the time of commencement of arbitration proceedings.

**SCHEDULE 1: BOOKING CANCELLATION AND AMENDMENT DETAILS**

Sr. No.	Booking Amendment/Cancellation	Description	Fee Details
1	Cancellation	If the Shipper wishes to cancel shipment of part of or all of the Goods (except by combining bookings without impacting the FFE volume originally booked) after the booking confirmation has been issued	Cancellation Fee applies
2	No-Show (part or all)	If the Shipper fails to notify the Carrier of cancellation of part of or all of the Goods in accordance with Clause 5 or fails to deliver part of or all of the Goods for shipment	No Show Fee Applies
3	Change of Destination (COD) Pre-gate in	Shipper requests to amend the destination/delivery before a container is gated in at the port of origin	Subject to repricing for ocean and inland
4	Change of Destination (COD) Post-gate in	Shipper requests to amend the destination/delivery after a container is gated in at the port of origin	Subject to repricing  COD Fee applies  DIT follows COD on water process
5	Change of Origin (COO)	Shipper requests change of origin to an origin stated at the time of contracting	Subject to repricing for ocean and inland
6	Change of Vessel (COV)	Shipper requests to change shipment to a different vessel/voyage than the one on the original booking confirmation	Subject to repricing  DIT follows COD on water process
7	Equipment amendment	Shipper requests change to equipment size/type	Subject to repricing of the amended equipment
8	Equipment addition or amendment resulting in booking total FFE unchanged, or increasing	Shipper requests to add same size/type equipment, or to change equipment size/type which as a result doesn't change, or increases the booking total FFE	Subject to repricing of the amended and/or added equipment