

## Maersk Unlimited Terms 2022

The UNLIMITED is a product for the allocation of space to customers requiring a regular but variable allocation of ocean transport, with significant week-by-week fluctuations in their shipping needs, and at a fixed rate. You and the Carrier agree a baseline requirement for allocated space per week, and each week you may tender between the agreed baseline volume, and a volume 100% greater than the agreed baseline volume.

Where we refer to “you” in these UNLIMITED Terms 2022, we refer to the party entering into the UNLIMITED Terms with the Carrier. A reference to “we” is a reference to the Carrier. A reference to “the Terms” or “these Terms” is a reference to these UNLIMITED Terms 2022.

You and the Carrier are referred to jointly as “the parties” in these Terms, and may be separately referred to as a “party”.

### Defined Terms

The below terms have the following specific meanings in these Terms:

“**Allocation Buffer**” – The Allocation Buffer is a percentage amount, representing the amount by which you and the Carrier have agreed that you shall be entitled to tender cargoes in excess of the Total Nomination. The Allocation Buffer only applies if agreed between the parties and included in the Contract Output.

“**Carrier**” - The Carrier is the carrier named in the Contract Output.

“**Carrier’s Affiliate**” – A Carrier’s Affiliate is a company in the same group-ownership as the Carrier.

“**Contract Output**” - The Contract Output is your commercial agreement with the Carrier. This is the agreed, final documentation provided by the Carrier containing the applicable rates, Corridors, the Fluctuation, and the space nominations (including the Weekly Volume Nomination and/or Total Nomination) under the UNLIMITED product. The Contract Output incorporates these Terms. The Contract Output will include any confirmation letter sent by the Carrier.

“**Corridor**” - A Corridor is a specific shipping ocean route, from a specified load port to a specified discharge port.

“**FFE**” - FFE means a forty-foot equivalent unit.

“**Fluctuation**” - The Fluctuation is a percentage amount, as recorded in the Contract Output, representing the amount by which you and the Carrier have agreed that you shall be entitled to vary the Weekly Volume Nomination from week to week. Unless otherwise specified, the Fluctuation shall be 100%.

“**Forecasted Volume**” - The Forecasted Volume is the weekly nomination of space declared by you to the Carrier from week-to-week, which shall not exceed the Fluctuation multiplied by the Weekly Volume Nomination, as specified in more detail in Clause 3.

“**Share of Wallet**” – Share of Wallet is a percentage amount agreed in the Contract Output representing the portion of the Total Output that you undertake to tender for carriage with the Carrier. Unless otherwise stated the Share of Wallet shall be a minimum of 80%.

**“String”** - A String is one of the Carrier’s liner services, or a liner service provided by one of the Carrier’s Affiliates, incorporating a number of ports in a rotation decided by the Carrier in the Carrier’s sole discretion.

**“Tariff”** - The Tariff is the terms and conditions of the Carrier’s or the Carrier’s Affiliate’s applicable tariffs, freight rate increases applicable to the movement of any commodities, charges, surcharges, rules, obligations, indemnities, regulations, arbitraries/additional or terms), and any subsequent modifications thereto, which are published at [www.maersk.com](http://www.maersk.com) and obtainable from the Carrier upon request, or otherwise obtainable from the Carrier’s Affiliate as applicable.

**“Tendered Volume”** - The Tendered Volume is the amount of space actually used by you, calculated in FFE, under your agreement for the UNLIMITED product from week to week.

**“Term”** - The Term is the period set out in the Contract Output from and including the commencement date to and including the expiration date.

**“Terms for Carriage”** - If the Carrier is the party providing the carriage for a particular shipment, the Terms for Carriage are the terms available at <https://terms.maersk.com/carriage> or otherwise obtainable from the Carrier. If a Carrier’s Affiliate is the party providing the carriage for a particular shipment, the Terms for Carriage may be requested from that Carrier’s Affiliate.

**“Total Nomination”** - The Total Nomination is the baseline total volume as recorded in the Contract Output across the entirety of the Term. The Total Nomination is measured in FFE.

**“Total Output”** – The Total Output is an estimate contained in the Contract Output of the total FFEs that you anticipate will be shipped by your entire business operations (or, if stated in the Contract Output, a particular market group within your business operations), including (unless otherwise stated in the Contract Output) any companies affiliated to you, across the Term by ocean transport.

**“Transport Document”** - A Transport Document is the bill of lading of lading or sea waybill, as the case may be, issued by Carrier or any Carrier’s Affiliate(s).

**“Weekly Volume Nomination”** - The Weekly Volume Nomination is the Total Nomination divided by the number of weeks in the Term, unless otherwise agreed or adjusted under these Terms.

## **1. Your Contractual Relationship with the Carrier**

1.1 These Terms set out the agreement between you and the Carrier in respect of the agreement reached for the UNLIMITED product. These Terms are incorporated into and supplemented by the Contract Output. These Terms and the Contract Output are intended to govern your ongoing relationship with the Carrier with respect to the size of and rate for your weekly allocation of space.

1.2 There are no binding obligations in relation to these Terms, or the Contract Output, until the Contract Output is agreed between you and the Carrier.

1.3 Rates appearing in the Contract Output may be subject to any surcharge(s) resulting from congestion, emergency risks, government mandates, capacity or equipment issues or any other cause whatsoever which causes increased expenditure to the Carrier or the Carrier’s Affiliate in carrying the cargo.

1.4 Along with the rates agreed under the Contract Output, you will be liable to pay amounts based on the Tariff prevailing at the time of making any booking, where such amounts are applicable to any booking made in connection with these Terms and the Contract Output. Amounts payable pursuant to

the Tariff are payable upon receipt of an invoice from the Carrier or any Carrier's Affiliate. By entering into these Terms you agree that you are aware of the Tariff specific to the trades agreed by the Contract Output.

1.5 In order for any booking made under the Contract Output and these Terms to qualify for the rates and terms set out in the Contract Output, you must appear as the named shipper or the named consignee on the applicable Transport Document and you must reference the service contact number provided in the Contract Output on each Transport Document and set of shipping instructions for any such booking.

1.6 The Transport Documents shall be issued by the Carrier or the applicable Carrier's Affiliate for the carriage of the cargo under these Terms, and you shall be bound by the terms of any such Transport Document. In particular, the Terms for Carriage will apply to all individual shipments that are arranged pursuant to these Terms and to the Contract Output.

1.7 Any capitalised words or phrases in these Terms are intended to refer to the definitions adopted by these Terms, the Contract Output or the Terms for Carriage. Where an abbreviation or industry term is used in this Contract Output is available at: <https://www.maersk.com/solutions/shipping/glossaries>.

1.8 These Terms and the other provisions incorporated by these Terms shall prevail over any terms and conditions that are included in any booking sent by you, or in any other communication sent by you in the formation of the Contract Output, these Terms or any booking made pursuant to the Contract Output and these Terms.

1.9 In the absence of any express prior acceptance, the act of making a booking under the Contract Output and these Terms shall be deemed to be your irrevocable acceptance of these Terms and the terms in the Contract Output.

1.10 By agreeing the Contract Output and these Terms, you warrant that you have all due authority to enter into the Contract Output and these Terms and to bind any party names as an affiliate in the Contract Output to these Terms and any terms in the Contract Output. Any such affiliates shall be jointly and severally liable for your obligations under these Terms, the Contract Output, or any booking entered into pursuant to these Terms or the Contract Output.

## **2 . The Duration and Scope**

### *Duration*

2.1 Your agreement with the Carrier remains effective during the Term, unless terminated earlier in accordance with these Terms.

### *Scope*

2.2 These Terms apply solely to ocean transport (container yard to container yard/CY - CY). Nothing contained in these Terms gives rise to any rights as against the Carrier in respect of any other passage of carriage.

2.3 You recognise that these Terms do not apply to any bookings for dangerous or hazardous goods, unless such shipments have been specifically and expressly accepted by the Carrier for carriage. You recognise that the shipment of hazardous goods without the prior notice and approval of the Carrier is extremely serious and potentially may cause you to be liable to the Carrier in damages for any losses arising therefrom, which may be significant.

### **3. Volume Forecast, Space Allocation, Bookings and Cost**

#### *Space Allocation and Cost*

3.1 You and the Carrier have agreed the Total Nomination. The Total Nomination is divided by the total weeks in the Term to give the Weekly Volume Nomination.

3.2 You shall exercise reasonable endeavours to ensure that the Tendered Volume taken across the Terms is equal to the Total Nomination. For the purposes of this clause, you agree that if you nominate reduced Forecasted Volumes with the Carrier so as to load your cargoes on competing carriers' services, that will not equate to reasonable endeavours.

3.3 If you have purchased the Allocation Buffer, then you shall be entitled to tender for carriage at the rates agreed in the Contract Output a total amount of cargo equal to the Total Nomination as varied by the Allocation Buffer. To the extent that you tender an amount of cargo in excess of the Total Nomination (adjusted by the Allocation Buffer if applicable) during the Term, the Carrier shall have no obligation to carry such excess cargoes at the agreed rate. An increased rate may be payable on any increase and the Carrier specifically reserves the right to charge a fixed peak season surcharge on any additional volume.

3.4 You may, from week to week, nominate a Forecasted Volume. The Forecasted Volume must not exceed the Weekly Volume Nomination as varied by the Fluctuation. The Forecasted Volume is the volume that you wish for the Carrier to make available to you from week to week.

3.5 A Forecasted Volume in respect of any allocation week must be received by the Carrier (via your sales representative or specified support colleagues) by not later than two weeks before the estimated time of departure (ETD) of the first ocean going vessel for carriage of the first container(s) from the port of loading to which the Forecasted Volume relates. If the Forecasted Volume is not received by the Carrier by that time, the Forecasted Volume for any such allocation week shall be deemed to be the Weekly Volume Nomination.

3.6 The Carrier bases its global capacity on its agreements with its various customers, including your agreement with the Carrier under these Terms and the Contract Output. On the basis of that global capacity, the Carrier anticipates without guarantee that it is likely to be able to provide space on its vessels or on the vessels of any Carrier's Affiliate, in an amount equal to the Weekly Volume Nomination and any Forecasted Volume. However, these Terms and the Contract Output are not a binding commitment by the Carrier to provide space in an amount equal to the Weekly Volume Nomination or any Forecasted Volume.

3.7 The Carrier may provide capacity through equipment and vessels that the Carrier owns, operates, charters, leases or through vessel sharing arrangements with other carriers.

3.8 The rate payable by you to the Carrier shall be the rate agreed in the Contract Output per FFE multiplied by the Tendered Volume. That rate is without limitation to any surcharges, the Tariff, any amounts due in respect of an Emissions Regulation as defined below, or any other amounts due under these Terms or the Terms for Carriage or any other applicable terms governing any booking.

3.9 The Carrier reserves the right to increase the rates payable by you under these Terms and the Contract Output in an amount equal to any reduction of any surcharge routinely applied to bookings under these Terms and the Contract Output, provided always that once the rate is increased to account for some or all of such surcharge reduction, such part of the surcharge that is incorporated into the rate will no longer be applied to any bookings thereafter.

### *Share of Wallet*

3.10 You warrant that at the time of entering into these Terms, the Total Output represents your best estimate of the of the total FFEs that will be shipped by your entire business operations (or, if stated in the Contract Output, a particular market group within your business operations), including (unless otherwise stated in the Contract Output) any companies affiliated to you, across the Term by ocean transport.

3.11 By giving a Total Output, you warrant that the Total Output is your best estimate of the total FFEs shipped by your entire business operations (or, if stated in the Contract Output, a particular market group), including (unless otherwise stated in the Contract Output) any companies affiliated to you as recorded in the Contract Output, across the Term by ocean transport.

3.12 You regularly (and at least monthly) review your total shipments to assess if the Total Output remains a best estimate and you warrant that it continues to do so. In the event that there is, or there would reasonably be estimated to be, a significant difference between the Total Output figure and the figure of cargoes actually shipped. A “*significant difference*” means a variation of at least 10%.

3.13 If the total number of cargoes shipped by you (and your affiliates) is significantly different from the Total Output, the Carrier shall have the right, at the Carrier’s sole option, to increase the Total Nomination in accordance with the amount by which the actual amount of cargoes shipped deviates from the Total Output.

### *Geographical Flexibility*

3.14 Each Total Nomination, Weekly Volume Nomination and Forecasted Volume is made for a specific Corridor. The Carrier, in its sole discretion, will assign that Corridor to a specific String. You may agree with the Carrier a number of different Total Nominations for different Corridors and this agreement will be recorded in the Contract Output.

3.15 In order to provide you with greater flexibility, where under these Terms you and the Carrier have agreed a Weekly Volume Nomination or a Forecasted Volume in respect of two or more Corridors that are assigned to the same String, you will be entitled to move the space allocated under each Weekly Volume Nomination or Forecasted Volume within that same String. We refer to **Example A** below.

#### **Example A**

Weekly Volume Nomination for Corridors are as per below:

Weekly Volume Nomination 1 – Corridor: 50FFE for CNSGH (Shanghai) - BEANT (Antwerp)

Weekly Volume Nomination 2 – Corridor: 50FFE CNSGH (Shanghai) - NLROT (Rotterdam)

Both of these Corridors may be allocated to the same Geographical Service String. Here, for example, both Corridors may be allocated to the AE10 String.

The customer may therefore benefit from space of up to 100 FFE / week on the AE10 Geographical Service String, rather than 50 FFE in each Corridor, provided the total Weekly Volume Nomination remains the same.

3.16 You acknowledge and recognise that the Carrier shall be entitled at all times throughout the Term to determine in their sole discretion how the String(s) are formed and assign any Total Nomination, Weekly Volume Nomination, Forecasted Volume in respect of a Corridor to a particular String.

#### *Equivalencies*

3.17 The Total Nomination, the Weekly Volume Nomination, the Forecasted Volume shall be based on the space allocated in terms of the number of FFEs which shall follow equivalencies as set out in the below table:

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

*In this table, HC refers to “High Cube Containers” and NOR refers to a non-operating refrigerated container.*

#### *Cut-off Times for Booking and Delivering Cargo*

3.18 A booking within your Weekly Volume Nomination or Forecasted Volume can be made at any time, provided that the booking is made and the cargo is delivered into the custody of the Carrier before the relevant cut off time for the load port as determined by that load port.

3.19 The Carrier’s web-booking platform provides information as to the cut-off times applicable to the load port for each Corridor. That information is indicative only and without guarantee, and the Carrier shall not be liable if a booking is made late on the basis of such information. The Carrier shall not be liable for any issues in making a booking through third-party booking platforms. The Carrier shall not be liable for any issues in making a booking through the Carrier’s web-booking platform in the event of malware attack or any outage whatsoever of the Carrier’s web-booking platform.

3.20 Each booking will be allocated to a specific week in the Carrier’s system. You recognise that the relevant week for the purposes of this allocation is the week on which the relevant vessel commences the relevant String. Accordingly, the week during which the cargo is loaded onto the relevant vessel in respect of any booking is not necessarily the week to which that booking will be allocated for the purposes of establishing the Tendered Volume.

#### *Weekly Allocations – Booking Explanation*

It may assist you to consider the distinction between the “departure week” and the “allocation week” for each booking.

Using the examples below, a cargo departing Colombo in Week 23 will be allocated to the week two weeks prior, being Week 21. Therefore, a booking assigned to the AE1 String and made for loading at Colombo in Week 23, will be a part of the Week 21 Tendered Volume.

Details of your remaining allocation, as well as the String to which your Corridors are assigned, are available at <https://www.maersk.com/portaluser/login>.

## Departure Week vs. Allocation Week



### *Change to the Service*

3.21 The Carrier may, in the Carrier's sole discretion, discontinue its service for any of the Corridor(s) referred to in the Contract Output. If the Carrier discontinues its services, the Carrier shall be under no obligation to carry any cargo affected by such continuance of service.

## 4. Requirement for Additional Volume

4.1 If you wish to load volume in excess of: (a) across the Term, the Total Nomination (including the Allocation Buffer, if applicable); or (b) in any week within the Term, the Weekly Nomination as adjusted by the Fluctuation, from time to time then any such additional volume shall fall outside of the scope of these Terms.

4.2 At any time during the Term you may request, by notice to the Carrier, an increase in the Weekly Volume Nomination for a particular week. Agreement to any such request is at the sole and exclusive discretion of the Carrier and the Carrier has no obligation to accommodate any such request. In particular, an increased rate may be payable on any increase in your Weekly Volume Nomination and the Carrier specifically reserves the right to charge a fixed peak season surcharge on any additional volume.

## 5. Review

5.1 The Carrier may, in the Carrier's sole discretion and not earlier than three months into the Term, perform a review of the Tendered Volume as compared to the Weekly Volume Nomination. Such review will take into account the Tendered Volume across the three-month period preceding the review.

5.2 Following any such review, if the Tendered Volume is 85% of or less than the cumulative Weekly Volume Nomination for that three-month period, the Carrier may, in the Carrier's sole discretion, (i) notify you that it is necessary to re-negotiate the rates provided for in the Contract Output; and (ii) terminate these Unlimited Terms immediately, including where the re-negotiations do not arrive at an agreement for a revised rate.

5.3 For the purpose of this Clause 5 only, if you have placed a valid booking for space within the Weekly Volume Nomination or the Forecasted Volume (as applicable), which the Carrier has been unable to meet, any such requested space shall be deemed to have been a part of the Tendered Volume and the Tendered Volume shall be increased accordingly.

### Example 2

	Month 1	Month 2	Month 3	Three Month Total
<b>Total monthly nomination (based on the Weekly Volume Nominations within each month)</b>	1500 FFE	1500 FFE	1500 FFE	<b>4500 FFE</b>
<b>Tendered Volume</b>	1000 FFE	1400 FFE	600 FFE	<b>3000 FFE</b>

In this example, only 3000 FFE were tendered, against total of 4500 FFE that ought to have been tendered on the basis of the cumulative Weekly Volume Nominations across that three month period. That is a total of 67% of the total space allocation across the three months.

In this example, the Carrier may (i) notify you for negotiation of a rate adjustment amendment to these Unlimited Terms, or (ii) terminate these Unlimited Terms immediately.

If the customer had tendered 3833 FFEs or more across this period, the customer would have tendered 85% or more of the cumulative Weekly Volume Nomination across the three-month period. In those circumstances, the Carrier would not be entitled to trigger the re-negotiation or termination provisions at Clause 5.2.

5.4 You will be able to track your Tendered Volume and your Weekly Volume Nomination at <https://www.maersk.com/allocations/>.

## **6. Remedies**

### *Remedies for the Carrier*

6.1 If the Tendered Volume is less than the Weekly Volume Nomination or the Forecasted Volume from week to week, then save for where there is a breach of your reasonable endeavours obligation at Clause 3.2 in which case Carrier shall be entitled to pursue remedies for damages and any other remedies available to it pursuant to English law, the Carrier's sole and exclusive remedy for your failure to tender the entire Weekly Volume Nomination or the Forecasted Volume is the review mechanism set out at Clause 5 of these Terms. The Carrier shall not have a claim in damages against you for any failure to tender the entire Weekly Volume Nomination or the Forecasted Volume.

6.2 Clause 6.1 above is without prejudice to any other rights or claims that may arise out of or in connection with these Terms, including without limitation any rights or claim that may arise in connection with or in relation to the carriage of any cargo booked and loaded pursuant to these Terms, including the Terms for Carriage or the Contract Output.

### *Your Remedies*

6.3 You acknowledge and accept that, by these Terms the Carrier does not guarantee that the Carrier shall make the space or equipment to meet the Weekly Volume Nomination or the Forecasted Volume available to you. In the event that the Carrier does not provide sufficient space to meet the Weekly



Volume Nomination or the Forecasted Volume, or in the event that the Carrier does not provide any space whatsoever, you shall have no claim against the Carrier whatsoever, including in damages or in any other remedy.

6.4 Clause 6.3 above is without prejudice to any other rights or claims that may arise out of or in connection with these Terms, including any rights or claim that may arise in connection with or in relation to the carriage of any cargo loaded pursuant to these Terms, including the Terms for Carriage or the Contract Output.

#### *Excluded Losses*

6.5 Notwithstanding anything herein to the contrary, neither Party shall be responsible for or liable to the other for any loss of profit, loss of revenue, loss of business or goodwill, loss or denial of opportunity, loss of access to markets, loss of business reputation or future reputation or publicity. Further, neither Party shall be responsible or liable to the other for any consequential, punitive, indirect, remote, abnormal loss or damages or any similar loss. These waivers shall apply whether foreseeable or in the reasonable contemplation of the parties at the time of execution of your agreement with the Carrier set out in the Contract Output and these Terms or even if such claim or liability were to be based upon any breach by a Party of its obligations (whether fundamental or otherwise) under these Terms or any negligent act, fault or omission by a Party; provided however, nothing herein shall waive any specific payment obligations of either Party set forth in your agreement with the Carrier.

## **7. Termination**

7.1 Your agreement with the Carrier set out in the Contract Output and these Terms may be terminated at any time during the Term by mutual agreement in writing between you and the Carrier.

7.2 If either you or the Carrier 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 then the other party may terminate the agreement set out in the Contract Output and these Terms immediately.

7.3 If the Carrier decides to terminate these Terms in accordance with the review mechanism set out at Clause 5.2 of these Terms, the agreement set out in the Contract Output and these Terms will be deemed immediately terminated.

7.4 The Carrier may terminate these Terms and the agreement evidenced in the Contract Output immediately on written notice to you in the event that the Carrier's performance under these Terms and the Contract Output would be in breach of the sanctions laws of the European Union, United States, as promulgated by the United Nations Security Council and of any country to, from or through which the goods may be carried or in the event of any breach of your confidentiality obligations under Clause 12 of these Terms.

7.5 The termination rights provided for in this Clause 7 are without prejudice to the accrued rights and liabilities of the parties as at termination and the continuation of any provision surviving termination, which shall not be affected by termination.

## **8. Entire Agreement**

8.1 These Terms, including the Contract Output and any other terms incorporated into these Terms or prescribed by these Terms to apply to any booking made under these Terms, represent the entire

agreement of the parties which supersede all prior agreements, representations, and understandings of the parties and which may not be modified except by written amendment signed by both parties.

## **9. No Waiver**

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

## **10. Law and Jurisdiction**

10.1 These Terms shall be governed by and construed in accordance with English law and all disputes arising hereunder shall be determined by the English High Court of Justice in London to the exclusion of the jurisdiction of the courts of another country. Alternatively, and at the Carrier's sole option, the Carrier may commence proceedings against you at a competent court wherever you have a place of business.

## **11. Sanctions & Export Controls**

11.1 With respect to any booking made under these Terms and the Contract Output, you shall be responsible for and you warrant compliance with all applicable laws, rules and regulations, including, but not limited to, the sanctions laws of the European Union, United States, as promulgated by the United Nations Security Council and of any country to, from or through which the goods may be carried, and the export control laws of any country to, from or through which the goods may be carried.

11.2 You warrant that you have obtained all necessary export, re-export, and/or import licenses or permits and the Carrier or Carrier's Affiliate is not required to obtain any special license or permit in connection with the Carrier or the Carrier's Affiliate's performance hereunder.

11.3 You warrant that you or any party that you endorse any Transport Document to is not a party subject to any prohibition or restriction pursuant to the sanctions laws of the European Union, United States, as promulgated by the United Nations Security Council and of any country to, from or through which the goods may be carried, including any party identified on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or any other list of prohibited or denied parties maintained by the European Union, United States, United Nations Security Council or any other country. You also warrant that the goods are not intended to be used in the design, development or production of nuclear, chemical or biological weapons or in violation of the arms control laws of any country to, from or through which the goods may be carried. You shall indemnify and hold the Carrier and any Carrier's Affiliate harmless to the full extent of any loss, damage, cost, expense, or liability to the carrier including lost profits, attorney's fees and court costs for any failure or alleged failure of you to comply with applicable export and import laws and regulations of any country.

11.4 You agree that the Carrier and any Carrier's Affiliate may take any action under Article 20 of the Terms for Carriage or return any cargo carried pursuant to these Terms to the Port of Loading at full cost to you in the event of any risk that you are in violation of the provisions of this section.

11.5. The Carrier and any Carrier's Affiliate assume no liability to you or any other person for any loss or expense arising from your failure to comply with the provisions of this section.

## **12. Confidentiality**

12.1 Except to the extent required by law, or by request of a competent government entity, agency, court or tribunal thereof, or as otherwise necessary to comply with governmental requirements, these

Terms and the Contract Output may not be disclosed to third parties other than to any Carrier's Affiliate as necessary for performance of these Terms and the Contract Output, or any other affiliates who agree to be bound by the same confidentiality provisions.

12.2 The Carrier may disclose to a third party terms and conditions of these Terms and the Contract Output for the purposes of performing these Terms or the Contract Output or collecting outstanding charges related hereto, including, but not limited, to ocean freight, demurrage and detention. Disclosure of confidential information by persons formerly employed by the Carrier or any Carrier's Affiliate, after their employment with the Carrier or any such Carrier's Affiliate, shall not constitute a breach of the Carrier's confidentiality obligations above.

### **13. Assignment**

13.1 You may not assign the Contract Output or these Terms, including any or all of the rights, obligations or liabilities hereunder, or otherwise permit any other person or entity, directly or indirectly to utilize services, rates, or other terms provided by the Carrier or any Carrier's Affiliate under these Terms, without the prior written consent of the Carrier or the Carrier's Affiliate as applicable.

13.2 The Carrier may assign or novate the Contract Output and these Terms, including any or all of its rights and/or liabilities hereunder to any Carrier's Affiliate by giving public notice or informing you in any other way.

### **14. No encumbrance**

14.1 You agree that any breach of the Contract Output or of these Terms or of any terms governing the carriage of any booking made under these Terms or the Contract Output by the Carrier or any Carrier's Affiliate shall not create any lien or encumbrance on any vessel or other equipment owned, operated, leased or chartered by the Carrier or any Carrier's Affiliate, or their affiliates or contracting parties. You expressly and irrevocably waive any right that you may have in law, equity, admiralty or otherwise to arrest or otherwise detain any such vessel or other equipment.

### **15. Severability**

15.1 Any provision hereof which is prohibited or unenforceable in any jurisdiction shall not invalidate or render unenforceable any other provision of these Terms or the Contract Output.

### **16. Emissions Regulation**

16.1 You accept and acknowledge that during the Term the Carrier or any Carrier's Affiliate 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 the Carrier's or such Carrier's Affiliate's emissions, or any other regulation whatsoever relating to de-carbonisation or any other environmental concern (each an "**Emissions Regulation**").

16.2 You accept and acknowledge that an Emissions Regulations may arise in any jurisdiction in which the Carrier or any Carrier's Affiliate 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 this agreement. Specifically and without limitation, you agree that each of the following will be considered to be an Emissions Regulation under this agreement:

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

16.2.2 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

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

16.3 Where the Carrier or any Carrier's Affiliate is subject to one or more Emissions Regulation(s), you shall pay to the Carrier or such Carrier's Affiliate 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 this Agreement.

## **17. Written Notices**

17.1 Any written notice that you wish to send to the Carrier in connection with these Terms or the Contract Output shall be sent to the Carrier's email or physical address stated in the Contract Output.

17.2 The Carrier shall be deemed to have satisfied all requirements relating to service of any written notice including service of process, provided that such notice is sent to you at the email or physical address included by you in the Contract Output, or to any email address used by you in negotiating and agreeing the Contract Output and these Terms. If any such physical or email address has been changed after the execution of this Contract, service may be made to the last business address provided to Carrier.

## **18. Time Bar**

Any and all claims by you arising under these Terms or the Contract Output shall be time barred, extinguished and deemed waived unless suit is brought within twelve months of the date on which the alleged cause of action arose.

## **19. Federal Maritime Commission Regulation Terms**

19.1 It may be necessary for the Contract Output and these Terms to be filed with the United States Federal Maritime Commission (the "FMC"). If the Carrier, in the Carrier's sole discretion, considers that it is necessary for the Contract Output and these Terms to be filed with the FMC, the following terms of this Clause 19 shall apply. If the Carrier does not determine that a filing with the FMC is necessary, the remainder of this Clause 19 shall not apply.

### *Minimum Cargo Quantity*

19.2 Notwithstanding anything to the contrary in these Terms, you shall be obliged to tender for carriage and the Carrier shall be obliged to accept a minimum cargo quantity of 1 FFE under these Terms.

### *Effective date of these Terms*

19.3 If, for any reason whatsoever, the Contract Output and these Terms (including, if there is an amendment agreed by you and the Carrier to these Terms or the Contract Output, any amendment) are not filed with the FMC and validated by the FMC, the Carrier reserves the right to terminate the Contract Output and these Terms, effective immediately. These Terms and the Contract Output shall automatically terminate if they are not filed with the FMC in accordance with FMC guidelines.

### *Documents supporting performance*

19.4 Any of the following may constitute records supporting performance of these Terms and the Contract Output and may be shared with the FMC if requested:

19.4.1 Any Transport Document;

19.4.2 Any manifest data;

19.4.3 Any electronic data processing reports;

19.4.4 Any statements prepared by you relating to the cargo shipped under these Terms, the Contract Output or any booking made pursuant to these Terms and the Contract Output; and

19.4.5 Any written communications issued by Carrier regarding any of the above.

*46 CFR 530.15*

19.5 The address, telephone number and title of the Carrier representative who will respond to a request made pursuant to 46 CFR, 530.15 is provided in the Contract Output.

*Law and Jurisdiction for FMC contracts*

19.6 These Terms shall be subject to the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 and shall otherwise be construed and governed exclusively by the laws of the State of New York without regard to principles of conflicts or choice of law. Any provision to the contrary (including Clause 10 of these Terms) shall be disregarded.

19.7 In case of a dispute arising under or relating to the Contract Output or these Terms, where this Clause 19.7 applies and other than disputes related to the payment of freight, which shall be handled pursuant to the law and jurisdiction clause in the Carrier's or Carrier's Affiliate's Transport Document, you and the Carrier each agree to submit the matter under dispute to arbitration in the City of New York. Either you or the Carrier may call for arbitration by giving notice to the other party's notice address set out in these Terms. The arbitration shall be before a single arbitrator to be appointed on the mutual agreement of both you and the Carrier. If you and the Carrier are unable to agree on a sole arbitrator within 30 days after notice of the dispute, either party may apply to the President of the Society of Maritime Arbitrators, Inc. ("SMA") at New York for the appointment of the arbitrator, and the SMA President shall select the arbitrator from the SMA roster of members.

19.8 The decision of the arbitrator shall be binding on the parties. The arbitration shall be held under and pursuant to the terms and procedures of the United States Arbitration Act and in accordance with the rules of the SMA. The award made in pursuance to this Section may include attorney's fees and expenses and judgment may be entered upon any award hereunder in a court of competent jurisdiction. The failure to proceed with any dispute in accordance with this arbitration clause shall constitute a breach of this Contract and all costs, expenses and fees, including attorney fees, incurred in enforcing compliance with the arbitration clause shall be fully recoverable in the arbitration.

19.9 These Terms may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement, and all signatures need not appear on any one counterpart.