



Maersk Flexible Contract-FMC Lanes

Shipper / Carrier Definition

This Service Contract (as may be subsequently amended from time to time, hereinafter "Contract") is made by and between (1) Maersk Agency U.S.A., Inc. as agent for Maersk A/S dba Maersk (hereinafter "Carrier") and (2) the party(ies) identified on the Contract/Signatories page hereto (hereinafter "Shipper"), whereby the parties mutually agree as follows.

Fulfilment of Minimum Quantity Commitment

(A) Shipper agrees to tender the MQC of the commodities set forth herein for carriage pursuant to a contract of carriage with Carrier, whether evidenced by a bill of lading or otherwise within the geographic scope of this Contract during the Term of this Contract. For purposes of this Contract, a "bill of lading" means any negotiable bill of lading or any seaway bill of lading.

(B) After the date that Carrier has fulfilled the MQC, Carrier shall have no further obligations under this Contract.

(C) All cargo shipped by Shipper at Tariff prices or agreed rates during the Term shall count towards the MQC.

Service Contract Minimum Quantity Commitment

Shipper's Minimum Quantity Commitment

	<u>20</u>	<u>40</u>	<u>40HC</u>	<u>45</u>	<u>53</u>
Dry	0.5	1	1.125	1.266	1.60
Reefer	0.5	N/A	1	N/A	N/A

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 schedule/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 cargo, whether within the MQC or not, from or to such origin/destination listed herein. In such event, Shipper and Carrier shall negotiate in good faith regarding an amendment to this Contract reflecting the change in service. If the parties are unable to reach agreement on such amendment, then the Shipper's sole remedy shall be to reduce the MQC by calculating an amount based on the volume of cargo shipped to/from such origin/destination as of the date the service is discontinued ("Remaining MQC Portion"). To determine the Remaining MQC Portion, the parties shall multiply the number of days remaining in the Term by the ratio of (x) cargo shipped to/from such origin/destination since the date this Contract was effective until the date of discontinuance over (y) the number of days that have elapsed during such period. Example: If 200 days remain in the Term and 20FFE has been shipped to/from Port A during the first 100 days of the Term, the MQC would be reduced by $200 \times 20/100 = 40FFE$.



Vessel Space

Carrier agrees to make available vessel space adequate to carry the MQC and, solely at Carrier's option, any additional cargo tendered by the Shipper as set out under Appendix 1. Carrier may provide such capacity through equipment it owns, operates, charters, leases or through vessel sharing arrangements with other carriers.

Carrier's obligation to provide vessel space adequate to carry the MQC is based on the MQC spread across evenly on weekly basis throughout the Term and as set out in Appendix 1. Carrier shall not be bound to provide any additional space other than the Weekly Volume Nomination plus the Flexibility in any week. Shipper shall, therefore, plan its weekly volume requirement in a such a way that it will meet its MQC at the end of the Term. Nevertheless, any cargo carried under this Contract shall count towards fulfilment of MQC.

Application of Service Contract Rates and Tariff

The effective date of this Contract and/or the rates of this Contract is as provided for herein. Shipper shall pay the Contract rates set forth in the Contract Output which shall apply until the Contract expiration date unless otherwise stated herein. In addition, except as otherwise provided for in the section of this Contract ("Service Contract Rates - Surcharges") or the Contract Output, shipments under this Contract shall be subject to the Tariffs. The term "Tariffs" means Maersk A/S Transport Document Publication Tariff, Regulated Contract Essential Terms Tariff and any other tariffs (including freight rate increases applicable to the movement of any commodities, charges, surcharges, rules, obligations, indemnities, regulations, arbitraries/additional or terms in the Tariffs published by Carrier and applicable to the carriage of cargo in the trades covered by this Contract as provided in the Contract Output), provided that this Contract shall not be subject to the general rate increases published in the Tariffs. The full texts, including subsequent modifications of such Tariffs, are published at www.maersk.com. The Tariffs and Contract Output are hereby incorporated by reference, including any subsequent modifications. Except in regards to the rates and charges set forth in this Contract, the current terms and conditions of Carrier's standard form of bill of lading covering individual shipments shall in all respects apply to shipments hereunder. If during the Term of this Contract Carrier eliminates a charge or surcharge from the Tariffs that was payable by Shipper hereunder, Shipper agrees that Carrier shall amend the base ocean rates in this Contract to increase such rates by an amount equal to the amount of the eliminated surcharge(s) at the time of its or their elimination from the Tariffs, so that the total amount payable to Carrier by the Shipper with respect to shipments hereunder remains unchanged. If during the Term of this Contract Shipper moves cargo priced at Tariff, Contract terms pertaining to conditions such as Free Time shall apply to such shipments.

Bunker Adjustment Factor ("BAF")

Notwithstanding anything to the contrary in this Contract, the Carrier and Shipper may agree on a Bunker Adjustment Factor ("BAF") which shall follow a mechanism set out below:

BAF as filed in the Tariff shall be applied either as (i) a separate surcharge; or (ii) rolled into the Basic Ocean Freight ("BAS"). If the BAF is rolled into the BAS, the BAS rate will automatically change according to the BAF published in Carrier's Tariff from time to time. For E.g. If the BAF published in Carrier's Tariff increases by USD50 effective April 1st, the BAS will automatically increase by USD50 effective from April 1st.

For any BAF following the Tariff as set out in (i) and (ii) above then any change in BAF will follow Carrier's Tariff quarterly cycle. Notwithstanding the foregoing, Carrier reserves the right to carry out any ad-hoc reviews for BAF in its sole discretion in case of any exceptional event(s) and in such cases any changed BAF shall come into effect by one month pre-notice to the Shipper.



Carrier and Shipper may agree to have a Bunker Adjustment Factor (“BAF”) calculated as per customer specific terms. Any customer specific terms need to be clearly described and accepted by the Carrier.

Low Sulphur Surcharge (“LSS”)

Notwithstanding anything to the contrary in this Contract, the Carrier and Shipper may agree on a Low Sulphur Surcharge (“LSS”) which shall follow a mechanism set out below:

LSS as filed in the Tariff shall be applied either as (i) a separate surcharge; or (ii) rolled into the Basic Ocean Freight (“BAS”). If the LSS is rolled into the BAS, the BAS rate will automatically change according to the LSS published in Carrier’s Tariff from time to time. For E.g. If the LSS published in Carrier’s Tariff increases by USD50 effective April 1st, the BAS will automatically increase by USD 50 effective from April 1st.

For any LSS following the Tariff as set out in (i) and (ii) above then any change in LSS will follow Carrier’s Tariff quarterly cycle. Notwithstanding the foregoing, Carrier reserves the right to carry out any ad-hoc reviews for LSS in its sole discretion in case of any exceptional event(s) and in such cases any changed LSS shall come into effect by one month pre-notice to the Shipper.

Carrier and Shipper may agree to have a Low Sulphur Surcharge (“LSS”) calculated as per customer specific terms. Any customer specific terms need to be clearly described and accepted by the Carrier.

Emissions Regulation Clause

(A) Shipper accepts and acknowledges that during the Term of this Contract 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’s emissions, or any other regulation whatsoever relating to de-carbonisation or any other environmental concern (each an “Emissions Regulation”).

(B) 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 this agreement. Specifically, and without limitation, Shipper agrees that each of the following will be considered to be an Emissions Regulation under this Contract:

- i. 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”;
- ii. 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
- iii. The FuelEU Maritime Initiative, which is proposed to be phased in beginning in the year 2025.

(C) 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 business cost of complying with that or with those Emissions Regulation(s) in performing this Contract.

Flag Requirement

Unless otherwise indicated within this Contract, rates set forth in this Contract do not apply to:



(1) Any cargo being moved pursuant to an US government-related program, which includes but is not limited to US Military, USAID, International Department of Development, US State Department, US Department of Agriculture, US Government Household Goods and US Foreign Military Sales cargo.

(2) Project Cargo which is construction, building, manufacturing materials or supplies or any other materials for a Government-impelled named project.

(3) Any cargo that must be carried on an US Flagged vessel as required by Cargo Preference Laws.

Right of Carrier to reduce, exempt or extend rates

Carrier has the right to i) reduce one or more rates, ii) to exempt shipments hereunder from one or more tariff surcharges, and/or iii) to extend one or more contract rates for a time period specified by Carrier (but in no event longer than 90 days) without the written agreement from Shipper. Carrier shall provide Shipper a copy of such amendment within ten (10) days of filing with the FMC. If Shipper provides written notice to Carrier that it objects to such amendment within five (5) days after receiving filing confirmation, Carrier shall amend the Contract to remove such reduction, exemption or extension and provide Shipper written evidence that it has taken such action.

Tendering as Acceptance

If Carrier sends Shipper a written offer to add a new rate, or replace an expiring rate (which rate would be less than Tariff) to this Contract for a specific origin/destination/commodity/container size/type, Shipper shall be deemed to have accepted such offer by (i) providing Carrier written acceptance of such offer or (ii) the action of Shipper tendering cargo to Carrier after the date of Carrier's rate offer for the same origin/destination/commodity/container type/size.

Damages for Carrier's Non-performance

Damages for Carrier's Non-Performance are set out in Appendix 1 to this Contract.

Damages for Shipper's Non-performance

(A) If at the end of the Term Shipper has not met the MQC, Shipper shall be liable to Carrier for liquidated damages. The parties agree that the measure of such liquidated damages for Shipper's non-performance shall be: \$1000 per FFE of dry cargo committed, but not shipped and \$2000 per FFE of refrigerated cargo committed, but not shipped.

(B) Notwithstanding the foregoing, Shipper's damages to meet its Weekly Volume Commitment shall be exclusively governed by Appendix 1.

Service Contract Number Reference

Shipper shall reference the service contract number upon cargo booking, on each bill of lading and set of shipping instructions for shipments tendered pursuant to this Contract. If Shipper fails to reference the proper service contract number on each bill of lading, Carrier may elect to reduce the WVC by the shipment covered by such bill of lading.

Shipper's Qualification

In order for cargo to qualify for the rates and terms set forth in this Contract, including without limitation, counting towards the MQC, the Shipper or affiliated concern must appear as shipper or consignee on the applicable bill of lading; provided however, that in instances where Shipper appears



as "First Notify Party" on the bill of lading, and Carrier determines that there is sufficient evidence permitting it to conclude that the cargoes are owned by or consigned to the Shipper, such cargo shall also qualify under the rates and terms set forth herein.

Supporting Shipment Records

Carrier's bills of lading/manifest Data and Electronic Data Processing reports, the Shipper's statements of cargo shipped under this Contract, and written communications issued by Carrier regarding such statements shall constitute the records supporting performance under this Contract. The address, telephone number and title of the Carrier representative who will respond to request under 46 CFR, 530.15 is provided under the Section titled "Written Notice".

Force Majeure - Definition and Occurrence

Upon any Force Majeure conditions occurring, the parties shall be excused from their obligation (other than the obligation of the Shipper to pay money owed in connection with the performance of this Contract) under this Contract to the extent and for the duration of the Force Majeure conditions. Neither party shall be obligated to settle any strike, lockout or other labor disturbance or disputes with governmental entities in a manner contrary to its interest, which shall be determined in the affected party's sole discretion. Upon the reinstatement of the Contract obligations after a Force Majeure Event, the Shipper's MQC applicable to the origins/destinations affected by such Force Majeure Event will be reduced by a percentage equal to the (i) duration in calendar days of the Force Majeure event divided by (ii) the duration in calendar days of the Term.

The term "Force Majeure" as used herein shall mean any and all events beyond the reasonable control of a party including, without limitation, strikes, congestion, 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, governmental actions (whether informal or formal government acts) or other similar disruptions or interference with trade, marine disaster, fire and or other casualty.

Amendments

After Carrier and Shipper signed this Contract and it has been filed with the Federal Maritime Commission, the parties may enter into subsequent amendments to this Contract by each party's mutual agreement in writing and may be exchanged by original signature, fax signature or via an exchange of e-mails. Such amendment shall not be effective until filed with the FMC. Except for technical corrections and revisions reflecting adjustments provided for in this Contract, no modifications of the Contract or waiver of any of its terms or conditions shall be of any force or effect unless made in writing expressly stating that it is intended by both parties to modify this Contract and signed by the parties. Shipper hereby consents to a maintenance amendment to the Contract without Shipper's approval for the purposes of reflecting non substantive change.

Applicable Law

As set out under Appendix 1 to this Contract.

Assignment

The Shipper may not assign this Contract, including any or all its rights or liabilities hereunder, or otherwise permit any other person or entity, directly or indirectly to utilize services, rates, or other terms provided by Carrier under this Contract, without prior consent of Carrier. Carrier may assign or novate



this Contract, including any or all its rights or liabilities hereunder to any company or other entity within the A.P. Moller-Maersk Group by giving public notice or in other way informing the Shipper.

Confidentiality

Except upon written consent of the other party, or 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, neither party shall disclose the terms and conditions of this Contract to third parties other than to affiliates who agree to be bound by the same confidentiality provisions. Carrier may disclose to a third party terms and conditions of this Contract for the purposes of performing this Contract or collecting outstanding charges related hereto, including, but not limited, to ocean freight, demurrage and detention. In the event Shipper breaches its confidentiality obligations hereunder, Carrier shall be entitled (but not required) to terminate this Contract with immediate effect by providing written notice of termination to Shipper.

Counterparts

This Contract 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.

Invoice Dispute Time Bar

In case of a dispute arising under or relating to this Contract for the payment of freight and charges, such dispute shall be handled pursuant to the law and jurisdiction clause in the Carrier's bill of lading. In the event the Shipper disputes an item invoiced by the Carrier or requires additional supporting documentation, the Shipper shall notify the Carrier in writing thereof within thirty (30) calendar days from the date of invoice, specifying the disputed item and requesting the Carrier to issue a credit note for the unaccepted part or whole of the invoice as applicable. In any event the Shipper shall in such circumstances be obliged to pay only the undisputed part of a disputed invoice. If Carrier disagrees with the Shipper's decision regarding the disputed item, the Carrier shall inform the Shipper in writing accordingly within 30 calendar days after receipt of the Shipper's statement. In the event this dispute is resolved in favor of the Carrier, Shipper shall be responsible for immediate payment of the full invoice value.

Shipper shall be deemed to have accepted any Carrier invoice and waived any rights to dispute if Shipper fails to submit a dispute in writing within one (1) year from the date of Carrier's invoice. Carrier shall be deemed to have been paid in full by Shipper and waived any rights to request payment for an undercharge if not submitted to Shipper in writing within one (1) year from the date of Carrier's initial invoice related to such undercharge. Any extension of this time bar must be granted by either Carrier and Shipper in writing as the case may be.

Disputes

As set out under Appendix 1 to this Contract.

Entire Contract

As set out under Appendix 1 to this Contract.

Severability



Any provision hereof which is prohibited or unenforceable in any jurisdiction shall not invalidate or render unenforceable any other provision of this Contract.

Shipper's Warranty

The Shipper warrants that it has all due authority to enter into this Contract and to bind such affiliates to the Contract terms and that such affiliates shall be jointly and severally liable for the Shipper's obligations under this Contract.

Shipper hereby certifies it and the entity(ies) declared in this Contract as affiliate(s) have either (a) a common entity that directly or indirectly owns at least one (1) percent of both Shipper and such affiliate(s) or (b) Shipper directly or indirectly owns at least one (1) percent of such affiliate(s). If not otherwise provided in this Contract, Shipper hereby agrees that it will provide the business addresses of each of the contract listed affiliates to Carrier five (5) business days of a written request for the same from Carrier.

Application of Store Door Rates

Store door rates may be subject to, but not limited to, Overweight, Triaxle and Hazardous charges and shall include the cost for a round trip drayage of a loaded and empty container. Any additional drayage expense over one round trip from the destination interchange terminal to the Shipper's facility and/or additional trucker waiting time over the time allowed per tariff or contract shall be for the account of the Shipper. If at any time, the number of empty containers at the Shipper's facility exceeds the number of full loads to be delivered to or picked up from the Shipper's facility over the next 14 calendar days, then Carrier will pick up the excess empty containers and bill the Shipper for an additional round trip drayage charge as per Carrier's inland tariff. Shippers will have the option to return the empty equipment within 7 calendar days at their cost once notified by Carrier. For all lanes in which Carrier has committed to store door delivery via truck, the Carrier shall execute the transport moves committed. Provision of store door deliveries in excess of Carrier's commitment will be subject to mutual agreement.

Maersk Provided Trucker rate index (applicable to U.S. locations only)

The parties agree that costs for store door service (truck or rail) provided by Maersk Provided Trucking (MPT) will increase or decrease throughout the duration of this Contract to include items in regard to congestion premiums or line hauls changes based on the condition of the respective inland operating environments. In such case, if there is an increase of 5% or more in the CASS Freight Index for linehaul truckload prices (<https://www.cassinfo.com/freight-audit-payment/cass-transportation-inde...>) against a baseline index as published at the corresponding date of the initial quotation of the contract tender, then the rates under this Contract shall increase or decrease by the CASS Freight index change which triggered the rate adjustment will become the new baseline for any future rate increase or decreases. Carrier will cover associated chassis rental expenses from Carrier-designated market chassis pool up to the number of days separately agreed as Detention Free Time, but makes no commitment in the guarantee of chassis availability. In the event of an operational change to the designated market chassis pool, Carrier will provide written notice to customer (via customer advisory) stating that there are incremental cost increases related to providing chassis, and as a result, Shipper must negotiate a new chassis charge with Carrier or will pay Carrier's Tariff rate for such charge.

Intermodal Fuel Surcharge/ Export Fuel Surcharge (IFS/EFS)

Import/ Export Inland Fuel Surcharge (IFS/EFS) Import/ Export Inland Fuel Surcharge (IFS/EFS) is a fuel cost recovery surcharge in addition to inland trucking for incremental fuel costs. Notwithstanding anything to the contrary in this Contract, the Carrier and Shipper shall agree on an Import/ Export Inland Fuel Surcharge (IFS/EFS) which shall follow a mechanism set out below: At Carrier's discretion,



IFS/EFS as filed in the Tariff shall be applied either as (i) a separate surcharge; or (ii) rolled into the Basic Ocean Freight (“BAS”). If the IFS/EFS is rolled into the BAS, the BAS rate will automatically change according to the IFS/EFS published in Carrier’s Tariff from time to time. For any IFS/EFS following the Tariff as set out in (i) and (ii) above then any change in IFS/EFS will follow Carrier’s Tariff quarterly cycle. Carrier will use the average fuel price for the prior 13 weeks published by the U.S. Energy Information Administration (EIA) to determine the IFS/EFS index for the quarter. The calculation of cost will be based on fuel change published in EIA and corresponding Maersk fuel surcharge percentage. If there is an increase USD \$0.10 or more in the prior 13-week period compared to Carrier’s baseline fuel retail price trigger of USD \$2.52, an increase will be triggered. Notwithstanding the foregoing, Carrier reserves the right to carry out any ad-hoc reviews for IFS/EFS in its sole discretion in case of any exceptional event(s) and in such cases any changed IFS/EFS shall come into effect by one month pre-notice to the Shipper.

US Trade Control Compliance

The Shipper shall comply with all applicable laws, rules and regulations, including, but not limited to, the export laws and government regulations of any country (“Laws”) to, from, or through which the Goods may be carried. The Shipper hereby also warrants that the Goods do not require Carrier to obtain any special license or permit for transportation, exportation or importation of the Goods and, to the extent required by law or regulation, the Shipper has obtained all necessary export, reexport, and/or import licenses or permits. The Shipper also warrants that transportation, importation or exportation of the goods is not prohibited by any applicable law or regulation, including comprehensive economic and/or trade sanctions maintained by the United States. To the extent applicable, the Shipper further warrants that it or any party that the Shipper trades with is not a party identified on the U.S. Commerce Department’s Denied Persons List or Entity List; the U.S. Treasury Department’s list of Specially Designated Nationals and Blocked Persons; The U.S. State Department’s Debarred List; or any other similar list of prohibited or denied parties maintained by any other country.

The Shipper shall indemnify and hold Carrier harmless to the full extent of any loss, damage, cost, expense, or liability to Carrier including attorney’s fees and court costs for any failure or alleged failure of Shipper to comply with Laws and regulations of any country or specially granted licenses from relevant authority permitting export of the Goods supplied to Carrier for transportation. Carrier assumes no liability to Shipper or any other person for any loss or expense - including, but not limited to, fines and penalties – in connection with the Shipper’s failure to comply with Laws or licenses granting the transaction.

Written Notice

Written notice shall be deemed to have been duly served on the Shipper if delivered in person or by registered mail, courier or by facsimile (fax) or e-mailed to the Shipper’s address on the signature page of this Contract or, if such has been changed subsequent to the execution of this Contract, to the last business address provided to Carrier. Written notice shall be deemed to have been duly served on Carrier if delivered in person or by registered mail, courier or by facsimile (fax) or e-mailed to Regulatory Affairs, Maersk Agency U.S.A. Inc. 180 Park Avenue, Florham Park, NJ 07932, fax: 973-514-5214.

APPENDIX 1 TO THE CONTRACT - MAERSK FLEXIBLE TERMS

1. CARRIER’S TERMS FOR SERVICE AND CARRIAGE

1.1. 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 by reference and shall apply to all individual shipments performed under these Maersk Flexible Terms (hereinafter



referred to as “**Flexible Terms**”) and further the definitions set out therein are adopted for these Flexible Terms.

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

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

1.2 All rates, fees and scope including other details are set out in the contract output (“**Contract Output**”) which forms part of these Flexible Terms as set out above. 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 in carrying the cargo.

2. DURATION AND SCOPE

2.1 These Flexible Terms shall come into effect on the Commencement Date as provided in Contract Output or the earliest date permitted by the Shipping Act and shall expire on the Expiration Date as stated in the Contract Output (the “**Term**”), unless terminated earlier. The Shipper’s and Carrier’s respective commitments towards Weekly Volume Commitment under these Flexible Terms shall only apply for a scope stated in the Contract Output.

2.2 (A) Whilst these Flexible Terms may cover inland transportation services and/or store door delivery(s), Carrier’s commitments stated under these Flexible Terms only applies to transport via ocean (CY-CY) and not extend any further.

For clarity, all transport modes other than ocean such as rail, road, air and/or barge are excluded from the scope Carrier’s commitments made under these Flexible Terms.

2.2 (B) The commitments/promises covered under these Flexible Terms shall not apply to any bookings related to refrigerated cargoes.

2.3 In addition and without prejudice to the requirements stated under clause 21 of the Terms for Carriage, when tendering dangerous and/or hazardous goods for carriage, Shipper or its affiliates shall provide requisite documentation and declare to Carrier the nature of the danger and indicate, if necessary, the precautions to be taken. Carriage of dangerous and/or hazardous goods shall be at Carrier’s sole discretion. The commitments/promises covered under these Flexible 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 a shipment of minimum quantity of Forty Foot Equivalent Units/FFE (the “**Total Nomination**”) during the Term. The Total Nomination shall be equally divided by the total number of weeks during the Term which gives a weekly nomination of shipment Shipper shall be tendering with Carrier for carriage (“**Weekly Volume Nomination**”) plus the percentage of any weekly volume stated in the Contract Output (“**Flexibility**”).

For purposes of 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.

*For E.g.

Total Nomination from Shanghai to Rotterdam = 5200 FFEs

Term: 52 Weeks

Weekly Volume Nomination= 100 FFEs (5200/52)

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

Weekly Volume Nomination plus the Flexibility= 110 FFEs

4. FLEXIBLE COMMITMENTS

4.1 Shipper's and Carrier's volume commitments prior to the Estimated Date of Departure ("ETD") shall be as set out in the below table:

	Shipper	Carrier
Greater than (>) 14 days prior to the ETD	Weekly Volume Nomination	Weekly Space Allocation
	Weekly Volume Nomination is provided at the time of contracting and is a non-binding indication of weekly shipments that Shipper may tender for carriage with the Carrier at the contracted rates.	Carrier will provide allocation at the contracted rates agreed for the Weekly Volume Nomination and the Flexibility provided at the time of contracting ("Weekly Space Allocation").
	The Shipper may book shipments, anytime up until 14 calendar days in advance of ETD. Booked volume can be lesser than the Weekly Volume Nomination or in excess which must be within the Flexibility offered.	
Less than or equal to (≤) 14 days prior to the ETD	Volume commitment	Vessel Space commitment
	Any booked volume up until 14 calendar days prior to the ETD which is within Weekly Volume Nomination plus the Flexibility becomes Shipper's weekly	Carrier shall be bound to provide vessel space sufficient to carry the Weekly Volume Commitment. Carrier's non-compliance with this space commitment is subject to

	<p>volume commitment (“Weekly Volume Commitment” or “WVC”).</p> <p>Shipper’s non-compliance with this WVC is subject to fees set out in clause 5.</p>	<p>Compensation Fee set out in clause 6.1.</p>
		<p>Carrier shall be free to release the unused Weekly Space Allocation (“Unused Space”) in case where:</p> <p>(i) the WVC is less than the Weekly Volume Nomination; or</p> <p>(ii) the booked but not tendered volume is less than the WVC.</p>
<p>Always Space</p>	<p>If Shipper requires any additional space (i) over and above the Weekly Volume Nomination plus the Flexibility; and/or (ii) requires a space after release of Unused Space in any week during the Term, then Carrier will exercise its reasonable endeavours to accommodate such space requests via:</p>	
	<ul style="list-style-type: none"> • Maersk.com. as per the rates directly powered by Maersk SPOT; or • Always Space option by which Carrier provides additional space for volume(s) not exceeding 20% of Weekly Volume Nomination in any given week during the Term. 	
	<p>The applicable floating rates for Always Space option are published every month by the Carrier and, if applicable, be filed with the FMC. Shipper shall be deemed to have accepted such floating rates as published by Carrier by using the Always Space option and booking the cargo for carriage under such option.</p>	
	<p>Any volume(s) booked under Always Space option shall also become part of the Weekly Volume Commitment and all commitments of Shipper and Carrier shall apply including but not limited to credit period and freetime applicable to the Weekly Volume Commitment shall also apply to such volume(s).</p>	

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

4.3 Freetime terms and conditions of a Flexible Terms will be applicable as per those effective at the time of Flexible Terms Effective Date and be available to Shipper or its affiliates at the time of booking for the same Origin/Destination/Container Size/Type and commodity booked.

4.4 Shipper’s option for Delivery Promise:

At the time of providing booking notice, Shipper shall also inform the Carrier which delivery promise should apply to the shipment out of Standard Delivery Promise and Essential Delivery Promise. In case where Shipper fails to inform Carrier about the option selected, then Carrier shall be free to apply the delivery promise agreed at the time of contracting under Contract Output for such shipment(s). [Note: This feature is currently not available, and Carrier will soon make this feature available].

5. DAMAGES FOR SHIPPER’S NON-PERFORMANCE



5.1 In accordance with the WVC, Shipper must tender the containerised goods for shipment by the Carrier before the cut-off time(s) as indicated in the booking confirmation.

5.2 Cancellation Fee

If the Shipper wishes to cancel shipment of part of or all the containerised goods out of the WVC any time after 14 days prior to the ETD, then the Shipper shall pay the Carrier a fee of USD 200 per container cancelled (“**Cancellation Fee**”). Notwithstanding the foregoing, effective from 1st of August 2021, the bookings made on the floating rate will only be subject to Cancellation Fee if cancellation is made later than 24 hours after booking confirmation.

5.3 No-show Fee

If the Shipper does not notify the Carrier of cancellation of part or all containerised goods in accordance with clause 5.2 above, or otherwise fails to deliver part or all of the containerised goods for shipment out of the WVC any time after 14 days prior to the ETD, then the Shipper shall instead pay a no-show fee of USD 200 per container (“**No-show Fee**”).

5.4 Amendment Fee

If any booking amendment as set out under Schedule I is requested by Shipper any time after 14 days prior to the ETD, then such amendment shall be subject to a fee of USD 200 per container (“**Amendment Fee**”). Notwithstanding the foregoing, effective from 1st of August 2021, the bookings made on the floating rate will only be subject to Amendment Fee if the change(s) are made later than 24 hours after booking confirmation.

5.5 Subject to clause 6.3, in case Carrier fails to make available the equipment agreed and indicated in the booking confirmation or a suitable alternative, the Shipper shall not be liable for any Cancellation and/or No Show Fee.

5.6 Notwithstanding the foregoing, if the failure by the Shipper to tender the containerised goods 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. vessel or alternative vessel is not available for Shipper to book due to blank sailing. Blank sailing as used herein would mean the term as accepted broadly in shipping services.

then Shipper shall not be liable to pay any fee(s) set out in this clause 5, subject to the Shipper providing evidence(s) thereof to the satisfaction of the Carrier.

6. CARRIER’S EQUIPMENT, LOADING AND DELIVERY COMMITMENT

6.1 Carrier’s Equipment and Delivery Commitment comprises of two options, i.e. (i) **Standard Delivery Promise**; and (ii) **Essential Delivery Promise**:

	Standard Delivery Promise	Essential Delivery Promise
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Applicability	Applies to volume within WVC and any additional volume if accepted by Carrier.	
Delivery promise	Carrier commit that the vessel arrival time at final discharge port shall be no later than three (3) days after the scheduled Estimated Date of Arrival (“ETA”) as booked and confirmed in the initial booking confirmation.	Carrier commit that the vessel arrival time at final discharge port shall be no later than ten (10) days after the scheduled Estimated Date of Arrival (“ETA”) as booked and confirmed in the initial booking confirmation.
Port Pair(s)	<p>The applicable port pairs where Standard and/or Essential Delivery Promise are available can be found here. These port pair(s) are subject to change on a monthly validity basis and covers shipments for which the ETD falls under that applicable month.</p> <p>For E.g. Shanghai-Rotterdam is on Standard Delivery Promise for 1 January to 31 January and it applies to the shipments for which the ETD falls under January.</p>	
Load as Booked	<p>Where Shipper books a cargo for Standard Delivery Promise but the selected port pair(s) is not listed for Standard Delivery Promise then Carrier agrees to load the tendered volume within the WVC onboard the original first leg ocean going vessel listed in the booking confirmation.</p> <p>In the event the Carrier requires to load the container on an alternative vessel, then the Carrier shall load the container onboard an alternative vessel no earlier or later than three (3) days before or after the scheduled ETD as confirmed in the booking confirmation.</p>	<p>Where Shipper books a cargo for Essential Delivery Promise but the selected port pair(s) is not listed for Essential Delivery Promise then Carrier agrees to load the tendered volume within the WVC onboard the original first leg ocean going vessel listed in the booking confirmation.</p> <p>In the event the Carrier requires to load the container on an alternative vessel, then the Carrier shall load the container onboard an alternative vessel no earlier or later than ten (10) days before or after the scheduled ETD as confirmed in the booking confirmation.</p>
Allocation Grouping(s)	<p>The Shipper’s Weekly Volume Commitment and Carrier’s space and equipment commitments may be split into allocation grouping(s) separately agreed. Such allocation grouping(s) indicates the geographical distribution of the Weekly Volume Commitment.</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 cases, Carrier will exercise its reasonable endeavours 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>	
Exception	In the event Shipper requests any changes in the confirmed initial booking, the scheduled ETA (Standard/Essential Delivery Promise) or ETD (Load as Booked) in the subsequent revised booking confirmation will apply in those cases. Carrier’s	

	<p>commitment shall automatically extend as per the rescheduled ETA or ETD in such subsequent revised booking confirmation.</p> <p>In the event the Carrier initiates any service changes resulting in a revised ETA or ETD then the original scheduled ETA or ETD as confirmed in the initial booking confirmation shall nevertheless apply.</p>
Equipment Availability	Subject to clause 6.3, Carrier agrees to provide the equipment agreed and indicated in the booking confirmation or suitable alternative to the Shipper.
Damages	<p>Subject to contingencies stated in clause 6.2, Carrier shall pay USD 200 per container (“Compensation Fee”), if it fails to comply with delivery or loading (as the case may be) commitments.</p> <p>This includes Carrier’s failure to provide equipment or the vessel space which may result in non-compliance with delivery or loading commitments.</p> <p>The Carrier shall only be liable for one Compensation Fee in total for the same FFE.</p>

6.2 Notwithstanding the foregoing, the commitments set out under clause 6.1 shall not apply in below cases:

- i. late or non-provision of documents or incorrect declarations by Shipper;
- ii. late gate-in of the goods;
- iii. containerised goods not in compliance with measurement restrictions including weight restrictions or limitations;
- iv. any default or breach of these Flexible Terms or the Service Contract terms or the Contract for FMC lanes or the Terms for Carriage on part of the Shipper or anyone acting on behalf of Shipper which may result or create any hindrance in compliance with the Carrier’s commitment stated herein;
- v. Force Majeure event, the term “Force Majeure” as used herein shall mean any and all events beyond the reasonable control of a Carrier 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
- vi. Port Omission - for the purpose of these terms ‘Port Omission’ shall mean the omission of a scheduled call at any relevant port affecting the voyage due to operational reasons beyond the reasonable control or anticipation of the Carrier.

6.3(A) As a part of the Carrier’s commitments, the Carrier shall provide the equipment agreed and indicated in the booking confirmation or a suitable alternative. Excluded from this commitment are:

- 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.



6.3(B) Some equipment grades shall 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.

6.3(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.

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

7. DAMAGES FOR CARRIER'S NON-PERFORMANCE

7.1 Notwithstanding any separate agreement between Shipper and Carrier, Shipper hereby explicitly agrees and accepts that the Compensation Fee stated under clause 6.1 above shall constitute its sole and exclusive remedy for Carrier's failure meet its commitments stated under these Flexible Terms.

7.2 Notwithstanding any other provision to the contrary in these Flexible 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, liquidated or punitive and/or other extraordinary damage suffered by the Shipper. The foregoing limitation shall apply regardless of the form of action, whether the damages or other relief sought are based on 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 of 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

8.2 The Carrier shall conduct the quarterly review of performance under these Flexible Terms and ascertain the liabilities of each party.

8.2 Following the quarterly review, the invoice procedure stated below shall apply for all invoices generated pursuant to these Flexible Terms:

- i. invoices for Cancellation Fee, No-Show Fee and Amendment Fee will be submitted quarterly in arrears by Carrier to Shipper in an agreed format.
- ii. the invoiced amount would be the result of the total amount of Cancellation Fee, No-Show Fee and Amendment Fee for Shipper minus the amount Compensation Fee for Carrier, if any.
- iii. In the event that the amount of Compensation Fee payable by the Carrier is more than the total amount of Cancellation Fee, No-Show Fee and Amendment Fee payable by the Shipper during any quarter, the Carrier shall follow a self-billing process and at its sole discretion (i) issue a credit note in the name of the Shipper for the difference in amount; or (ii) if on the request of the Carrier, the Customer has provided their nominated banking details to the Carrier in accordance with that request and prior to the Commencement Date as provided in the Contract Output, refund the difference in amount to that nominated bank account.
- iv. if any credit note granted to the Shipper as per clause 8.2(iii) above, such credit note shall be adjusted after the quarterly review and in any amount payable by the Shipper to the Carrier either on account of the total amount of Cancellation Fee, No-Show Fee and Amendment Fee or for freight for shipments under these Flexible Terms. Shipper cannot claim any credit from Carrier until the credit note is issued in Shipper's favor after the quarterly review. Provided



further that, the credit note will not be issued in favor of Shipper if any overdue outstanding amount for Shipper is more than 10% of the Shipper's total outstanding amounts.

8.3 If Shipper believes that there is any discrepancy in invoice raised, Shipper must give notice along with justification within 7 days from the date of an invoice. The invoice raised shall be deemed to be valid and undisputed in case where Shipper fails to raise the dispute within such 7 days' period.

8.4 Shipper shall make the payment as per the separate credit agreement between the parties.

8.5 All associated cost of 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 cost of tax or any other mandatory charges, fines, penalty, fees etc.

8.6 The invoices generated pursuant to clause 5 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 IN PAYMENT OF INVOICES

Shipper undertake to settle all payments in accordance with the credit agreement. In the event that Shipper does not settle 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 amount under these Flexible Terms, including collection and reminder fees and expenses, are settled.
- ii. Suspend or terminate the provision of credit and/or immediately withdraw from or terminate any and all the legal transaction(s) existing with Shipper including but not limited to these Flexible Terms and also cancel all negotiations with Shipper without any condition.
- iii. Suspend or terminate any special benefit and/or privilege whatsoever provided to the Shipper under these Flexible Terms and/or any other transaction with the Carrier or with any company or other entity within A.P. Moller Maersk Group.
- iv. Exercise any applicable right of lien over any cargo and stop providing or arranging services.
- v. Apply with a prior notice a fixed charge and/or an appropriate interest as authorized under applicable law on the outstanding overdue amounts.
- vi. Commence collection proceedings. Any expenses and fees incurred in collecting overdue amounts are to be covered by the Shipper.

10. SCHEDULE/SERVICE PATTERN CHANGES

The provision of the services from or to the origins/destinations set forth in the Contract Output and/or [here](#) is subject to changes in Carrier's schedule/service patterns. Should Carrier for any reason discontinue service to/from any origin/destination referenced in the Contract Output and/or [here](#), it shall not be required to continue to carry 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 Flexible 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 Flexible Terms and the Contract (for FMC lanes) as per clause 12.

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, Shipper agrees that each of the following will be considered to be an Emissions Regulation under these Flexible 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 Flexible Terms.

12. TERMINATION

12.1 After carriage of at least 1 FFE, these Flexible 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 Flexible Terms and the Contract (for FMC lanes) immediately.

12.2 Provided that 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 else to the contrary, these Flexible Terms, including the Contract Output, the current bills of lading and the Tariff together constitute the entire agreement and understanding between the parties pertaining to the subject matter contained in these Flexible Terms, and these Flexible Terms supersedes 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 and change these Flexible Terms for non-FMC lanes by way of public notice or any other way informing the Shipper. Save for clause 10 above, any update, revision and change to these Flexible Terms for FMC lanes shall be subject to mutual agreement and FMC filing.

14. WAIVER

Any failure by either party in exercising any right, power or privilege under these Flexible 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 USA any dispute relating to the Contract (for FMC lanes) and these Flexible Terms shall be governed by U.S. law and the United States Federal Court of the Southern District of New York is to have exclusive jurisdiction to hear all disputes in respect thereof. In all other cases, these Flexible 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 the goods (except by combining bookings without impacting on the FEE 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 or all goods in accordance with clause 5 or fails to deliver part 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 Amendment Fee applies
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 Amendment Fee applies



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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. Amendment Fee applies. DIT follows COD on water process
7	Equipment amendment	Shipper requests change to equipment size/type	Subject to repricing of the amended equipment, Amendment Fee applies.
	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.