



# 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 herein by reference and shall apply to all individual shipments carried under these Maersk Block Space Plus Terms (hereinafter referred to as the "**Block Space Plus Terms**" or "**Terms**"). The definitions set out in the Terms for Carriage and the Service Contract Terms are adopted for these Terms. The term "Contract" as used herein means the service contract signed between the parties for filing with the U.S. Federal Maritime Commission ("FMC").

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

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

1.2 The contract output specifies the geographic scope, commodities, rate related information and the Monthly Volume Commitments ("**Contract Output**") which forms a part of these Terms as set out above. Rates appearing in the Contract Output may be subject to surcharge(s) resulting from emergency risks, government or supranational mandates, congestion, or capacity or equipment issues arising outside of the reasonable control of the Carrier.

## 2. DURATION AND SCOPE

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

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

## 3. SHIPPER'S COMMITMENT

3.1. Shipper agrees to tender and ship with Carrier a minimum quantity of Forty Foot Equivalent Units ("**FFE**s") per month, apportioned evenly on a week-by-week basis, as



specified in the Contract Output during the Term (“**Monthly Volume Commitment**” or “**MVC**”).

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

	20’	40’ HC/NOR	45’
Dry	0.5 FFE	1 FFE	1 FFE

As used herein, “HC” refers to high cube containers and “NOR” refers to “non-operating reefer containers”.

3.2. The Shipper agrees to place booking(s) before the cut-off time(s) indicated on the Carrier’s web-booking or third-party booking platforms. Shipper further agrees to properly tender the cargo to the custody of the Carrier for shipment before the cut-off time(s) indicated in the initial booking confirmation or any subsequent booking confirmation issued pursuant to these Terms.

3.3. The weekly and monthly calculations stated throughout these Terms are based on the Proforma Departure Dates and not on calendar weeks and months.

## 4. CARRIER’S SERVICE COMMITMENT

4.1. Carrier’s service commitment is set forth as follows.

### Carrier’s Service Commitment

**Applicability** Applies to volumes within the MVC

**Service** Carrier shall make available the vessel capacity and equipment to carry (a) the MVC specified in the Contract Output apportioned evenly on a week-by-week basis and (b) at Carrier’s option, any additional cargo

**Commitment** tendered by Shipper. This commitment is subject to the schedules and service patterns of the Carrier.

The MVC shall be split into weekly allocation grouping(s). The allocation is available to see at <https://www.maersk.com/allocations>.

**Allocation Grouping(s)** Shipper acknowledges that the allocation grouping(s) may be impacted by network and/or operational constraints (including but not limited to reduced capacity to or from any port) and may therefore be subject to changes. In such event, Carrier will exercise reasonable endeavours to reallocate the impacted volume to 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 Monthly Volume Commitment equal to the impacted volume for the affected time period without any further liability for damages from either party.

**Equipment Availability** Subject to Clause 4.2, Carrier agrees to provide the equipment indicated in the booking confirmation or a reasonable alternative to the Shipper.

4.2.

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

i. Special grade containers, including food/dairy, flexitank, open tops, flat racks and scrap-grade containers;

ii. Equipment picked up at a different location from the default 'Empty Container Depot' stated in the booking confirmation; and/or

iii. Equipment picked up on a date earlier than the equipment 'Release Date' stated in the booking confirmation.

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

(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.

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

## 5. REMEDIES

5.1. In case Shipper, for any reason whatsoever, fails to tender 90% of the MVC in any month during the Term apportioned evenly on a week-by-week basis, the Shipper shall be liable for liquidated damages in an amount specified in the Contract Output per FFE for any shortfall below the 90% threshold ("**Liquidated Damages**").

Example:

Monthly Volume Commitment = 20 FFEs

Week 1: 4 FFEs tendered

Week 2: 3 FFEs tendered

Week 3: 5 FFEs tendered

Week 4: 5 FFEs tendered

Total volume actually tendered during the month: 17 FFEs 90% of the MVC = 18 FFEs

Shortfall below 90% threshold = 1 FFE (18 FFEs – 17 FFEs)

In the above example, Shipper is liable for Liquidated Damages for a shortfall of 1 FFE.

5.2 Any additional cargo accepted by the Carrier at Carrier's sole discretion may be counted toward the Shipper's MVC.

5.3 The Shipper may also book any excess volume above the MVC with the Carrier and at Carrier's option, Carrier may accept such additional cargo tendered by Shipper. In the event any additional volume of cargo is accepted by Carrier which exceeds the MVC by month's end, Shipper shall be eligible to receive a rebate equal to the amount specified in the Contract Output applicable to each such additional FFE properly tendered and accepted by Carrier under these Terms. The Shipper's eligibility to receive the rebate shall be contingent upon Shipper's payment of freight and any other amounts due to the Carrier under these Terms or otherwise.

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

i. any Force Majeure event (the term "Force Majeure" as used herein shall mean any and all events beyond the reasonable control of the 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

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

then Shipper shall not be liable for the payment of Liquidated Damages, provided that evidence thereof is demonstrated to the satisfaction of the Carrier.

5.5 If the Shipper has placed a valid booking for shipment under these Terms which the Carrier has been unable to carry or has otherwise rejected for the Carrier's own reasons, any such volume so booked but not carried shall count toward the MVC. For avoidance of doubt, the Carrier shall not be liable for any damages or losses whatsoever for Carrier's failure to provide vessel space and/or equipment.

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

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

6.1 The Carrier shall conduct a monthly review of performance under these Terms.

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

i. Invoices for any Liquidated Damages due will be submitted monthly in arrears by Carrier to Shipper in an agreed format.

ii. The invoiced amount shall reflect the amount of any Liquidated Damages due by Shipper minus the amount due by Carrier for any rebate described in Clause 5.3.

iii. Carrier shall follow a self-billing process and at its sole discretion, either by (i) issuing a credit note in the name of Shipper; or (ii) refunding any amounts due to Shipper where the amount of the rebate payable by Carrier exceeds the Liquidated Damages amount payable by the Shipper during any month.

iv. Should Carrier issue a credit note to the Shipper in accordance with Clause 6.2 (iii) above, then such credit note shall be adjusted following the monthly review. Such credit note may be used to offset any amounts due by the Shipper to the Carrier either for any Liquidated Damages or for any outstanding freight charges. Shipper shall not claim any credit from Carrier until the credit note is actually issued to Shipper following the monthly review. No credit notes will be issued to Shipper if any overdue outstanding amounts for Liquidated Damages and freight consist of more than 10% of the Shipper's total outstanding amounts.

6.3 If Shipper believes that there is any discrepancy in Carrier's invoice, Shipper must notify Carrier of such, outlining the basis for contesting the invoice, within 7 days from the date of the invoice.

Any invoices that are not contested in accordance with this provision shall be deemed to be valid and undisputed.

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

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

6.6 The invoices generated pursuant to this Clause 6 will be issued in accordance with the details contained on the invoice. Shipper shall wire transfer the amount invoiced to the bank account stated on the invoice.

## **7. FAILURE TO PAY INVOICES**

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

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

## 8. SCHEDULE/SERVICE PATTERN CHANGES

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

## 9. EMISSION REGULATION CLAUSE

9.1. 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**").

9.2. 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 Terms:

- 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";



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

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

## **10. TERMINATION**

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

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

## **11. ENTIRE AGREEMENT**

Notwithstanding anything herein to the contrary, these Terms, including the Contract Output, Carrier's Terms for Carriage and the Tariff together constitute the entire agreement and understanding between the parties pertaining to the subject matter contained in these Block Space Plus Terms, and these Terms supersede all prior agreements, representations, and understandings of the parties pertaining to the subject matter. It is agreed by the parties that, the parties may, by way of mutual agreement in writing, update, revise and change these Terms. Any update, revision and change to these Terms for FMC trade lanes shall be effective once filed with the FMC. Notwithstanding the foregoing, Shipper hereby consents to an amendment to these Terms without Shipper's approval for the purposes of reflecting non substantive change.

## **12. WAIVER**

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

## **13. LAW AND JURISDICTION**

For shipments to or from the U.S., any dispute relating to the Contract (for FMC lanes) and these Terms shall be governed by and subject to U.S. law and the United States District Court



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for the Southern District of New York shall have exclusive jurisdiction to hear all disputes in respect thereof. In all other cases, these Terms shall be governed by and construed in accordance with English law and any dispute arising shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association Terms current at the time of commencement of arbitration proceedings.