

## eCon-Network Interchange Agreement Part 2

### (Interchange General Terms and Conditions)

Scope: Supplier has the right to possess and operate Equipment, has surplus and deficit of Equipment in its operating locations and wishes to inform user of such surplus and deficit by eCon-Network Platform; User has made, or intends to make, Agreement substantially the same as this Agreement to enable the Interchange of Equipment between suppliers. In respect of the foregoing, User and Supplier agree as follows:

#### 1. MAIN TERMS AND DEFINITIONS

- a) **“Platform Company”** means eCon-Network platform linked with [www.eCon-Net.com](http://www.eCon-Net.com).
- b) **“Equipment”** is freight containers as defined by the International Organization for Standardization (ISO)
- c) **“Supplier”** is a Lessor who provides Equipment to other party via Platform Company.
- d) **“User”** is a Lessee who takes Equipment received from a Supplier via Platform Company.
- e) **“Agreement A”** means the text field with the respective number within the (supplier-specific) Part I of this interchange agreement.
- f) **“eCon-Network Form”** means the online document provided by eCon-Network to negotiate and record each individual transaction on Platform Company.
- g) **“Cargo Worthy Condition (CW)”** means second hand or used containers that can be surveyed (if not survey) and certified to be structurally suitable for the export cargo. The container with CW can be used for marine transportation, wind and watertight will be more than sufficient and strong enough to keep out the elements of nature and any unwanted vermin.
- h) **“Condition of Equipment”**: At time of Interchange, the cargo worthy standard of the Supplier will be applicable, or as otherwise agreed by

Platform Company.

- i) **“Prior Consultation”** In event of agreement between Supplier/User by eCon-Network, Supplier/User have to discuss the booking cancellation to the other party by eCon-Network within the number of working days stated in 15days after accept the booking.

If the Supplier/User does not respond to the other party within the number of working days stated or the Supplier/User requests the cancel on the platform, the Supplier/ User shall pay for the cancellation fee to other party by eCon-Network platform.

- j) **“Pick-up charge”** is User pay pick-up fee to Supplier. One time charge for the pick-up of each container that it is picked up.

**“Pick-up credit”** is Supplier pay pick-up fee to User. One time charge for the return of each container that it is returned.

- k) **“Cancellation fee”** are stated in eCon-Network Form.
- l) **“Leased Equipment”** means Equipment on lease to the user from the supplier.
- m) **“Replacement Value”** means the value of Equipment of the same type and Equipment conditions on the date of replacement. Replacement Value is stated in **Agreement A** for each Supplier.

For Equipment owned by Supplier/User is responsible for Replacement Value listed in **Agreement A**

In the event of a conflict of conditions, the provisions of the Interchange Terms from **eCon-Network Form** shall prevail over those of PART I

- n) **“Interchange Terms/One Way Lease Term”** means the terms specific to an individual interchange transaction on Platform Company.
  - I. Condition of Equipment: At time of Interchange, the cargo worthy standard of the Supplier will be applicable, or as otherwise agreed.
  - II. Surveys: Supplier will not survey Equipment prior to interchange. If User Surveys Equipment prior to Interchange, User shall pay survey and any depot-handling costs directly to the Supplier’s facility (Depot, Container Yard).

- III. Safety: All containers supplied by Supplier through platform company shall comply with applicable container provisions of ISO, CSC, ACEP, PES and Customs Convention, and shall be within acceptable safety inspection dates as stipulated (if any) in above-mentioned provisions.
- IV. Equipment Interchange Receipt (EIR): Supplier/User will conclude an EIR at time of Interchange (from Supplier to User and vice versa), which will evidence the Interchange of Equipment and the condition of Equipment at time of Interchange.
- o) **"Redelivery Schedule"** means a list of permissible return locations for the Supplier's equipment as published on Platform Company.
- o) **"Wear and Tear"** is damage that naturally and inevitably occurs as a result of normal wear or aging. It is used in a legal context for such areas as warranty contracts from manufacturers, which usually stipulate that damage from wear and tear will not be covered. Wear and Tear shall include, but not be limited to:
- I. Corrosion of metal components not due to contact with foreign substances;
  - II. Delamination or rot of wooden components, such as general deterioration of floor, including expansion, shrinkage or warping;
  - III. Color fading or adhesion failure of decals;
  - IV. Loose or missing parts or marking, except those that are normally removable, in the absence of evidence or accompanying damage;
  - V. General paint failure or fading not due to contamination;
  - VI. General wear and deterioration at corner fittings;
  - VII. General deterioration at door gasket and fitting, including loose and corroded fittings or loose fittings arising from normal deterioration of doors;
  - VIII. Scratches to metal. In addition to the above, Wear and Tear for reefer Equipment shall include but not be limited to:

- IX. General deterioration of kazoos(a part of reefer container), to include age hardening;
- X. General electrolytic corrosion from dissimilar metals in contact with each other in an electrolyte such as salt water;
- XI. Flooring de-laminations resulting from routine cargo loading and unloading cycles;
- XII. Failures and/or malfunctions of machinery components although machinery has been maintained according to manufacturer's recommendations.
- XIII. De-lamination to panels not attributable to any ascertainable impact.

## 2 Duration of the Agreement

(a) For each signatory, all terms and conditions of this Agreement shall take effect from the date stated in **Agreement A** and shall remain in force until all Equipment has been redelivered or has been found damaged beyond economical repair or has been declared physically lost and the Replaced Value has been paid by the User.

(b) Unless otherwise agreed by the parties, the Equipment is to be used on one trip basis to counter-balance the mutual Equipment demand and surplus situation.

## 3 Condition of Equipment on Delivery

(a) The Supplier warrants that at the time of delivery the Equipment shall be in a good and serviceable condition for the export cargo.

(b) The Supplier warrants that the Equipment is delivered free from all liens and encumbrances.

(c) The Supplier warrants that all Equipment delivered is operated under CSC Approved Continuous Examination Programme (ACEP) or Periodic Examination Scheme (PES).

(d) In the event Equipment is redelivered in a damaged condition, the Supplier shall give notice to the user within 10 working days by providing a detailed estimate of repairs.

- I. In the event the repairs are covered by DPP the amount of which shall be specified in the Interchange Terms (**eCon-Network Form**) the repair costs exceeding DPP shall be paid by the User, or
- II. When there is no DPP the repair costs shall be based on a repair estimate of each piece of Equipment, or
- III. In the event those repair costs exceed the Replacement Value the User shall pay to the Supplier the Replacement Value. Using the appropriate values stated in the Interchange Terms (eCon-Network Form). For Leased Equipment, the User or Supplier shall reimburse the Replacement value as calculated by the third party, unless otherwise agreed.
- IV. In event of any delay for agreement, eCon-Network will mediate repair costs between user and supplier.

e) The User shall provide information to the supplier before accepting the booking if the equipment is damaged easily by cargo such as unpackaged stones, coal, wood, iron scraps, garbage, and the odor that can't get out easily.

#### 4 Condition of Equipment on Redelivery

(a) In the event Equipment is redelivered in a damaged condition, the Supplier shall notice the user within 5 working days by providing a detailed estimate of repairs.

(b) The Equipment shall be redelivered in the standard set out by agreed on Platform Company

(c) If the User does not respond to the Supplier within the number of working days stated in Sub-clause 4(a) of receiving the detailed estimate of repair, The user is agreeing to estimated repair fee and the User shall pay for the said repair fee within 5 working days.

(d) If the User disagrees with the estimate of repair costs or disagrees that any item therein should be for the User's account, the User shall detail its objections by notice to the Supplier within the period stated in Sub-clause 4(a)

(e) In the event of a continuing dispute the parties shall within 5 working days of the date of that notice appoint a joint surveyor who will survey the Equipment and review the estimate of repairs. The Supplier and User agree to be bound by the decision of the joint surveyor as to the extent of the repair's payable by the User and the reasonable cost thereof and the user pay the cost of the survey unless otherwise agreed.

(f) All damages shall be defined in accordance with the standards set out by agreed on Platform Company and all repairs shall be performed in accordance with the Institute of International Container Lessors (eCon-Network Form) Repair Manual unless otherwise agreed between User and Supplier on a case-by-case basis.

## 5. Redelivery Procedures

(a) Subject to the terms of this Agreement, the User may redeliver any Equipment to any of the Supplier's depots specified in the Interchange Terms (**eCon-Network Form**) which may contain permissible redelivery quota, or as may from time to time be mutually agreed. Redelivery will terminate this Agreement insofar as it relates to the redelivered Equipment.

(b) The Supplier shall:

- I. Nominate the depot or terminal in the location where the User shall redeliver the Equipment as per the Interchange Terms (**eCon-Network Form**);
- II. Inform the depot about the intended redelivery of the Equipment by the User; and
- III. Provide the User as well as **eCon-Network** with respective turn-in references.

(c) The User shall endeavor to give advance notice to the Supplier of the intended redelivery date and time prior to the redelivery of the Equipment.

- The User must notify the Supplier of the exact location of all Equipment leased to the User under this Agreement after free use days.

(d) If requested by the User, an Equipment Interchange Receipt (EIR) shall be signed by the Supplier evidencing the redelivery of the Equipment.

(e) Pre-trip/Post-trip inspections on the redelivery of reefer Equipment shall be conducted by a surveyor appointed by the Supplier.

(f) The Supplier/The user shall within 24 hours after redelivery of the Equipment provide the User as well as Platform company with a gate-in report of the Equipment stating location, depot or terminal, container number and type, date and time of gate-in move, turn-in references, and other information required by local authorities.

## 6. Delivery and Redelivery Costs and Charges

(a) All depot and handling charges shall be under Supplier's account.

(b) Any transport cost or charges for transport to or from the Supplier's depot shall be under User's account.

(c) Costs or charges for issuance of Equipment Interchange Receipts (EIR) shall be paid by the party requesting such receipt.

(d) Pre-trip/Post-trip inspections on the redelivery of reefer Equipment shall be for the Supplier's account.

## 7. Payment of Rent and other Charges

(a) In consideration for interchange of the Equipment from the Supplier, the User shall pay rent and any other charges as specified in the Interchange Terms (**Agreement A 5/ eCon-Network Form**) as from the pick-up date less any free days as defined in the Interchange Terms (**eCon-Network Form**). The User's obligations to pay rent will cease on the day after redelivery into any of the Supplier's designated depots.

(b) An invoice shall be sent monthly by 25<sup>th</sup> to the User's e-mail address.

(c) Payment shall be made by the User within 7 working days of the date of the invoice.

(d) The User shall, within the number of days stated in Sub-clause 4(a), give written notice to the Supplier of any disputed items on the Supplier's invoice. The Supplier will reconcile disputed items within 7 running days of the date of the invoice providing supporting documents for such items or by issuing an appropriate adjustment of the invoice. Notification of disputed items shall not prejudice the obligation of the User to pay the invoices in full within the number of days stated in Sub-clause 7(c).

## 8. Taxes, Dues and Charges

The User shall pay all taxes, dues and charges levied on or against the Equipment arising out of or in connection with the use of the Equipment.

The Supplier shall pay all taxes, dues and charges levied on or against the Equipment arising out of or in connection with the ownership of the Equipment.

## 9. Withdrawal from this Agreement and Termination of specific Interchange Transactions

(a) Any signatory to this multiparty agreement may withdraw from the Agreement at any time in writing. From the time of such withdrawal, the signatory will no longer submit or accept requests for transactions under this Agreement.

(b) The User may terminate any specific interchange transaction in writing with immediate effect insofar as it relates to any Equipment

- I. The use of which shall have been curtailed or obstructed by any legislation or regulation of any government or statutory body of any country where the User wishes to use said Equipment, or
- II. which is shown to have Latent Defects such that it is unsafe or unsuitable for continued use. Such Equipment shall be returned to the Supplier as soon as is practicable in accordance with Clause 5(a).

## 10. Build-down Period

On the first day of the month following withdrawal from the Agreement by any signatory as per Sub-clause 9(a), a build-down period of 12 months

shall commence, during which time all the Equipment interchanged under this Agreement shall be redelivered to the respective Supplier.

For Equipment still being used after the build-down period, the Supplier may at its discretion either increase the daily rate as per the Interchange Terms (**Agreement A 5/ eCon-Network Form**) or invoice the User for the Replace Value of the Equipment.

## 11. Insolvency

(a) Both the User and the Supplier shall be entitled to terminate each specific interchange transaction in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if the other party suspends payment, ceases to carry on business or makes any special arrangement with their creditors.

(b) If the Supplier terminates a specific interchange transaction according to Sub-clause 11(a), the Supplier shall have the right to take immediate possession of all empty Equipment supplied to the User under this Agreement.

(c) Should the Supplier obtain the right to immediate possession of any empty Equipment covered by this Agreement, then the User must notify the Supplier of the exact location of all Equipment leased to the User under this Agreement and promptly redeliver all such empty Equipment to the nearest Supplier's depot unless otherwise agreed.

## 12. Lien

The Equipment is supplied for the purpose of intermodal operations in international trade and may be used for the carriage of lawful goods by sea as well as in inland transport including the handling at terminals and inland depots and freight stations. The Equipment is not designated for use on any particular vessel and consequently no lien, maritime, statutory, and possessory or otherwise, securing the obligations under this Agreement may be attached to any vessel connected in any way with the User.

The Supplier is relying solely upon the credit of the User in supplying Equipment under this Agreement.

### 13. Liabilities and Indemnity

(a) Total loss shall be declared if units are 90 days overdue from free days defined by contract or interchange platform. (**eCon-Network Form**).

The User shall be liable to the Supplier for the actual or constructive total loss of, or damage to any Equipment occurring during the period of this Agreement.

The User shall immediately notify the Supplier in writing of any actual or constructive total loss of any Equipment and upon such notice the User's obligations to pay rent shall cease. In the event that such actual or constructive total loss occurs, the User shall be promptly invoiced therefor and pay to the Supplier the Replacement Value of such Equipment which constitutes the transfer of ownership of said Equipment.

Should the User later determine that Equipment previously declared lost has been recovered, the Supplier will, at the request of the User, reimburse any previously paid Replacement Value less any rent accrued from the date the Equipment was declared lost if the recovery date is within twelve months of the total loss declaration.

(b) The Supplier and/or User shall defend, indemnify, and hold the other party harmless for any and all claims, losses, expenses, costs or damages (including without limitation all reasonable expenses in defending any claim or suit or enforcing this indemnity, such as court costs, attorney's fees, and other expenses) arising or alleged to arise directly or indirectly or incidentally out of any failure of the User and/or Supplier to comply with its obligations under this Agreement.

The User shall indemnify the Supplier for any claim which is legally confirmed without any disputes from either party, whether private or governmental, for injury or death to persons (including employees of the Supplier) and for loss of or damage to property, cargo and/or vessels and/or means of transport, arising out of or incident to the possession, leasing, operation, control or use of the Equipment by the User.

The Supplier shall indemnify the User for any claim which is legally confirmed without any disputes from either party, whether private or governmental, for injury or death to persons (including employees of the User) and for loss of or damage to property, cargo and/or vessels and/or

means of transport, arising out of or incident to the ownership, manufacture, design, or supply of the Equipment.

(c) Each party undertakes to give to the other party immediate notice of claims or actions arising under this Clause, and to assist in the handling of any, and all such claims or actions.

#### 14. Track and Tracing and Remote Control

If the container is fitted with a transponder or other electronic device used to track its geographical position; and/or with devices that monitor or remotely control reefer temperatures and machinery; and/or CA components fitted to the container, the User may utilize such devices but shall not be entitled to permanently modify any technical features of such devices or to read or download any data originating from any period prior to the date of interchange.

#### 15. Insurance

The User and Supplier agree to procure and maintain in full force and effect during the term of this Agreement, Any and all deductibles under the terms of the foregoing insurances shall be for the Supplier and/or Users' own account. On request, if opined necessary and agreed by whom be requested, the Supplier and/or Users shall provide evidence of the insurances.

Should a party fail to procure or maintain any of the required insurances, or by act or omission vitiate or invalidate any of such insurances, that party shall indemnify the other party to the extent the other party suffers or incurs loss, damage, liability, or expense as a consequence of such failure, act or omission.

#### 16. Governing Law

This agreement shall be governed by and construed in accordance with the Hong Kong law, and any action to resolve any dispute arising hereunder shall be finally settled by arbitration.

## 17. Dispute Resolution Clause

- a. Any dispute which may arise at any time between the Parties to this Agreement shall be referred to the decision of a single arbitrator to be agreed upon between the Parties to the dispute.
- b. The complaining party shall notify the other party in writing of the dispute, disagreement or claim. Within thirty (30) days of such notice, representatives of both parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration.
- c. If the parties cannot agree on the arbitration within fourteen (14) days of any party notifying the other(s) of the need to appoint an arbitrator, the arbitrator shall be appointed at the request of any of the parties by the chief executive officer for the time being of the Hong Kong Institute of Arbitrators.
- d. The demand for arbitration shall be made within a reasonable time after the dispute in question has arisen, and in no event shall it be made after two years from when the aggrieved party knew or should have known of the dispute, disagreement, or claim.
- e. The arbitration shall be conducted in Hong Kong.

## 18. Notices

Whenever any notice, demand, request, consent, approval, or communication of either party is required hereunder, service shall be made in writing and either served personally, by email or facsimile, by overnight carrier or by registered or certified mail, return receipt requested. Notice shall be deemed effective only upon receipt by the party. All notices shall be sent to the addresses listed above unless changed by written notice pursuant to the terms of this section.