



BOXCHANGE

STANDARD CONTAINER
INTERCHANGE AGREEMENT

PART I

1. Day and year of commencement of Agreement (Cl. 2(a))				
2. Signatory (Supplier/User) (Full name, postal address, e-mail, fax and phone number)			3. Cosignatory (Supplier/User) (Full name, postal address, e-mail, fax and phone number)	
4. Equipment: Currency:				
Type	Replacement Value Cl. 4(b)(iv)	Depreciation Rate Cl. 4(b)(iv)	Residual Value Cl. 4(b)(iv)	Daily Rate (Cl. 6(a) and Cl. 9)
5. State repair criteria (if other than UCIRC/RCIRC) (Cl. 3(a)(v), Cl. 4(a) and (e))				
6. Number of working days notice for repairs (Cl. 4(b), (c), (d) and Cl. 6(d))			7. Lumpsum for repairs per piece of equipment (Cl. 4(b)(iii))	
8. Franchise amount for repairs per piece of equipment (Cl. 4(b)(i))			9. State if depot and handling charges shall be for User's account (Cl. 5(a) and Cl. 6(a))	
10. No. of days for payment (Cl. 6(c) and (d))			11. Build down period (Cl. 9)	
12. Minimum limit of general liability insurance (Cl. 14)			13. Dispute resolution (state 15(a), 15(b) or 15(c); if 15(c) agreed Place of Arbitration must be stated) (Cl. 15)	
14. Additional clauses agreed, if any				

It is mutually agreed between the party stated in Box 2 and the party stated in Box 3 that this Agreement consisting of PART I and PART II as well as Annexes A (Supplier's depots) and B (Supplier's Redelivery Schedule) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I, Annexes A and B shall prevail over those of PART II to the extent of such conflict but no further.

Signatory (Signature)	Cosignatory (Signature)
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1. Definitions

“Depreciated Value” means the amount agreed to be paid by the User to the Supplier as replacement for Equipment lost or damaged beyond repair. Depreciation shall commence from the date that the Equipment was manufactured as stated on the International Convention for Safe Containers (CSC) Safety Approval Plate.

“Direct Interchange” means the transfer of Leased Equipment between the Supplier and User both having a lease agreement with the same Lessor whereby at the time of transfer the User assumes the responsibility for such Equipment under its own lease agreement with the Lessor.

“Equipment” means freight containers as defined by the International Organization for Standardization (ISO) and/or related equipment, such as clip-ons.

“Latent Defect” means any defect that is not, or was not, apparent at the time of interchange of the Equipment, arising from any event occurring before interchange, including but not limited to a defect in the design, material, manufacture, workmanship, modification or maintenance.

“Leased Equipment” means Equipment on lease to the Supplier or the User from a third party Lessor.

“Lessor” means a third party who has entered into a lease agreement with the Supplier and/or User in respect of Equipment.

“Owned Equipment” means Equipment owned by the Supplier and/or User or by any of their affiliated companies.

“Replacement Value” means the purchase value of new Equipment of the same type on the date of replacement.

“Supplier” means the party supplying the Equipment to the other party.

“User” means the party utilizing the Equipment supplied by the Supplier.

“Wear and Tear” means the unavoidable loss or deterioration in value or damage sustained to Equipment in the course of continued normal use and which may affect the cosmetic appearance of Equipment and by accumulation or degree may eventually affect the integrity of Equipment. 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) Colour 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.

2. Duration of the Agreement

- (a) All terms and conditions of this Agreement shall take effect from the date stated in Box 1 and shall remain in force until all Equipment has been redelivered or has been found damaged beyond economical repair (estimate exceeding the Depreciated Value) or has been declared physically lost and the Depreciated Value has been paid

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by the User.

- (b) Unless otherwise agreed by the Parties, the Equipment is to be used on a 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 and shall have been designed, manufactured, tested and maintained in compliance with the regulations and standards detailed hereinafter:

- (i) International Organization for Standardization (ISO) - Specifications and Classification Series 1 Freight Containers;

- (ii) International Convention for Safe Containers (CSC) of 1972 or any amendment thereof;

- (iii) Customs Convention on Containers of 1956 and 1972 or any amendment thereof;

- (iv) Australian Quarantine Regulations in respect of Timber Component Treatment;

- (v) Unified Container Inspection and Repair Criteria/Refrigerated Container Inspection and Repair Criteria (UCIRC/RCIRC) or any amendments thereto or as may otherwise be agreed in Box 5.

- (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).
- (d) The User may appoint a surveyor to inspect the Equipment prior to the interchange. The Supplier shall make the Equipment available for this inspection. The surveyor shall apply the standards set out in the latest edition of UCIRC/RCIRC or as may otherwise be agreed in Box 5. The surveyor's report of the condition of the Equipment prior to the interchange shall be prima facie evidence of the condition of the Equipment at the time of the interchange.
- (e) In the event of mis-picks or interchange of loaded Equipment, this Equipment shall be interchanged on "as is" basis and sub-clause 3(a)(v) shall not apply.

4. Condition of Equipment on Redelivery

- (a) The Equipment shall be redelivered in UCIRC/RCIRC condition or as may be otherwise agreed in accordance with in Box 5, Wear and Tear excepted, and unless advised by the Supplier to the contrary in accordance with sub-clause 4(b), the Equipment shall be deemed to have been redelivered in undamaged condition.

Except for Equipment interchanged loaded with cargo, the User shall be responsible for cleaning Equipment prior to redelivery or for the costs of cleaning. The User shall not be responsible for internal damage to Equipment interchanged loaded with cargo.

- (b) In the event Equipment is redelivered in a damaged condition, the Supplier shall within the number of working days stated in Box 6 give notice to the User by providing a detailed estimate of repairs.
 - (i) In the event the repairs are covered by franchise the amount of which shall be stated in Box 8, the repair costs exceeding the franchise shall be paid by the User or
 - (ii) When there is no franchise the repair costs shall be based on a repair estimate of each piece of Equipment or
 - (iii) If the repairs are covered by a lumpsum per piece of Equipment the amount for each piece of Equipment shall be stated in Box 7 or
 - (iv) In the event that repair costs exceed the Depreciated Value the User shall pay to the Supplier the

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Depreciated Value. Using the appropriate values stated in Box 4, the Depreciated Value for Owned Equipment shall be the amount determined by depreciating the Replacement Value by the Depreciation Rate per annum. The Depreciated Value shall be no less than the Residual Value. For Leased Equipment the User or Supplier shall reimburse the Depreciated Value as calculated by the third party, unless otherwise agreed.

- (c) If the User does not respond to the Supplier within the number of working days stated in Box 6 of receiving the detailed estimate of repairs, the User shall pay for the said repairs, at the amount specified in the estimate, which shall not exceed the Depreciated Value as calculated in accordance with Sub-clause 4(b).
- (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 his objections by notice to the Supplier within the period stated in Box 6. In the event of a continuing dispute the parties shall within 10 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 repairs payable by the User and the reasonable cost thereof and to share the cost of the survey.
- (e) All damages shall be defined in accordance with the latest Inspection and Repair Criteria as per UCIRC/RCIRC or as may otherwise be agreed in accordance with Box 5 and all repairs shall be performed in accordance with the Institute of International Container Lessors (IICL) Repair Manual.

5. Delivery and Redelivery Procedures

- (a) The User shall pick up Equipment from any of the agreed Supplier's depots. All depot and handling charges shall be for the Supplier's account, unless otherwise agreed in Box 9.

Any transport cost or charges for transport from or to the Supplier's depot are for the User's account. At the request of the Supplier or the User, an Equipment Interchange Receipt (EIR) shall be signed evidencing the delivery or redelivery of the Equipment. Pre-trip inspection on the delivery of Reefer Equipment shall be conducted by a surveyor appointed and paid for by the User. Post-trip inspections on the redelivery of Reefer Equipment shall be conducted by a surveyor appointed and paid for by the Supplier.

- (b) The Supplier shall inform the depot of the intended delivery to the User.
- (c) Subject to the terms of this Agreement, the User may redeliver any Equipment to any of the Supplier's depots designated in Annex A which may contain permissible redelivery quota and drop-off charges, or as may from time to time be mutually agreed. Redelivery will terminate this Interchange Agreement insofar as it relates to the redelivered Equipment.
- (d) The User shall endeavour to give advance notice to the Supplier of the intended redelivery of the Equipment.
- (e) The Supplier shall nominate the depot in the place where the User shall redeliver the Equipment as per the Supplier's Redelivery Schedule in Annex B.

6. Payment of Rent and other Charges

- (a) In consideration for interchange of the Equipment from the Supplier, the User shall, as from the pick-up date, pay to the Supplier, as rent, the daily rate specified in Box 4, as well as any other charges which may be agreed upon and enumerated in Box 9. 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 to the User's address.
- (c) Payment shall be made by the User within the number of running days stated in Box 10.
- (d) The User shall, within the number of days stated in Box 6, give written notice to the Supplier of any disputed items on the Supplier's invoice. The Supplier will reconcile disputed items within 30 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 Box 10 after receipt.

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7. 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.

8. Termination of Agreement

(a) Either party may terminate this Agreement at any time in writing.

(b) The User may terminate this Agreement 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(c).

9. Build-down Period

On the first day of the month following termination of the Agreement as per Clause 8(a) the build-down period as per Box 11 shall commence, during which time all The Equipment shall be redelivered to the Supplier. For Equipment still being used after the build-down period, the Supplier may at his discretion either increase the daily rate as per Box 4 or he may invoice the User for the Depreciated Value of the Equipment.

10. Insolvency

(a) Both the User and the Supplier shall be entitled to terminate this Agreement 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 this Agreement according to sub-clause 10(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, upon written notice from the Supplier, notify the Supplier of the exact location of all Equipment leased to him under this Agreement and promptly redeliver all such empty Equipment to the nearest Supplier's depot unless otherwise agreed.

11. 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, 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.

12. Liabilities and Indemnity

(a) 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 Depreciated Value of

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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/Depreciated 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:
- (i) any failure of the User and/or Supplier to comply with its obligations under this Agreement;
 - (ii) The User shall indemnify the Supplier for any claim, 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.
 - (iii) The Supplier shall indemnify the User for any claim, 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.

13. Direct Interchange

The User shall take over all Equipment owned by commercial third party Lessors after 365 days from the date of interchange by Direct Interchange in accordance with the User's Master-Lease contracts.

14. Insurance

The User and Supplier agrees to procure and maintain in full force and effect during the term of this Agreement, at their sole cost, general liability insurance to a minimum limit as stipulated in Box 12 for any one occurrence, to cover third party bodily injury and property damage. Any and all deductibles under the terms of the foregoing insurances shall be for the Supplier and/or Users' own account. On request, 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.

15. BIMCO Dispute Resolution Clause

- *(a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party

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accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- *(b) This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- *(c) This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

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- (e) If Box 13 in PART I is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause 15(d) shall apply in all cases.

* Sub-clauses 15(a), 15(b) and 15(c) are alternatives; indicate alternative agreed in Box 13.

16. Notices

- (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing.
- (b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

Sample copy

ANNEX A (SUPPLIER'S DEPOTS)
BIMCO STANDARD CONTAINER INTERCHANGE AGREEMENT
CODE NAME: BOXCHANGE

Sample copy

ANNEX B (SUPPLIER'S REDELIVERY SCHEDULE)
BIMCO STANDARD CONTAINER INTERCHANGE AGREEMENT
CODE NAME: BOXCHANGE

Redelivery Schedule										
City	20' Equipment					40' Equipment				
	In	rf	dc	ot	fr	rf/rh	dc	ot	fr	hc
<p>X = unlimited redelivery _ = return subject to approval C = closed for redelivery</p> <p>Other types/redelivery locations are subject to approval</p>										