

STANDARD CONTAINER LEASE AGREEMENT

Part II

Code Name: "CONLEASE"

Subject to the terms and conditions of this Agreement with reference number specified in Box 1, the Lessor named in Box 3 hereby agrees to lease to the Lessee named in Box 4 and the Lessee hereby agrees to lease from the Lessor the Equipment more particularly described in Box 5.	1 2 3 4		
Definitions	5		
Equipment means freight containers as defined by the International Standards Organisation (ISO).	6 7	(ii) International Convention for Safe Containers (CSC) of 1972 or any amendment thereof;	67 68
Master Lease means a lease agreement between Lessor and Lessee whereby Equipment is leased at fixed rates and conditions, but with a variable term and quantity and variable (re)delivery depots.	8 9 10	(iii) Customs Convention on Containers of 1956 and 1972 or any amendment thereof;	69 70
Term Lease means a lease agreement between Lessor and Lessee whereby Equipment is leased at fixed rates and conditions with a predetermined delivery schedule and for a fixed period of time.	11 12 13	(iv) Australian Quarantine Regulations in respect of Timber Component Treatment;	71 72
Sub-lease means a contract by which the Lessee gives the use of Equipment to a third party for a specified period of time, but whereby the Lessee remains responsible for the Equipment under the terms and conditions of its Lease Agreement with the Lessor.	14 15 16 17	(v) Current IICL Standards for Repair and Cleaning.	73
Direct Interchange means the transfer of leased Equipment between two parties both having a Lease Agreement with the same Lessor whereby at the time of transfer the receiving party assumes the responsibility for such transferred Equipment under its own Lease Agreement with the Lessor.	18 19 20 21	(b) The Lessor warrants that the Equipment is delivered free from all liens and encumbrances.	74 75
Replacement Value means the purchase value of new Equipment of the same type on the date of replacement.	22 23	(c) The Lessor warrants that the period of validity of the CSC Safety Approval Plate is 30 months from the date of on-hire, unless the Equipment is CSC controlled under an Approved Continuous Examination Programme (ACEP).	76 77 78
Depreciated Value means the amount agreed to be paid by the Lessee to the Lessor as replacement for Equipment lost or damaged beyond repair and which amount is determined by depreciating the agreed replacement value of the Equipment at an agreed rate per annum to an agreed residual value commencing from the date that the Equipment was manufactured as stated on the CSC plate.	24 25 26 27 28	(d) The Lessee may appoint a surveyor to inspect any Equipment prior to on-hire. The Lessor will make the Equipment available for this inspection. The surveyor will apply the standards set out in the latest edition of the IICL Container Inspection and Repair Manuals. The surveyor's report of the condition of the Equipment at on-hire shall be prima facie evidence of the condition of the Equipment taken on hire.	79 80 81 82 83 84
Latent Defect means any defect that is not, or was not, apparent at the time of on-hire of the Equipment, arising from any event occurring before on-hire, including but not limited to, design, material, manufacture, workmanship, modification or maintenance.	29 30 31 32	4. Title to Equipment, Sub-lease and Direct Interchange	85
Wear and Tear occurs through normal operational use in an industry pattern due to inevitable, continuous deterioration not reasonably avoidable by the user and may affect the cosmetic appearance of the Equipment and by accumulation or degree may eventually affect the integrity of the Equipment. Wear and Tear shall include, but not be limited to:	33 34 35 36 37	(a) The Equipment shall at all times remain the property of the Lessor, and the Lessee shall acquire no title to Equipment by virtue of paying rents, costs of transportation or repairs, registration or licensing fees, taxes (property excise or any other governmental fees or charges) or any other expenses or charges related to or assessed against such Equipment or its operation during the period of this Agreement.	86 87 88 89 90 91
(i) Corrosion of metal components not due to contact with foreign substances;	38	(b) The Lessee shall not, without the Lessor's prior written consent, which shall not be unreasonably withheld, assign any right or interest in or to this Agreement or the Equipment, nor sub-lease Equipment except to a company which is directly or indirectly associated with the Lessee. In case of such assignment or sub-lease, the Lessee will remain responsible for all obligations in accordance with this Agreement.	92 93 94 95 96 97
(ii) Delamination or rot of wooden components, such as general deterioration of floor, including expansion, shrinkage or warping arising out of normal use;	39 40 41	(c) The Lessee may transfer Equipment to a third party in a Direct Interchange, but only with the Lessor's written consent, which shall not be unreasonably withheld. When the third party has confirmed to the Lessor its agreement with such a transfer, the Lessee's obligations to pay rental shall cease and a Direct Interchange fee as stated in Box 8 shall be paid by the Lessee to the Lessor.	98 99 100 101 102 103
(iii) Colour fading or adhesion failure of decals;	42	(d) The Equipment shall have the Lessor's serial numbers and other identifying marks affixed thereto, which shall not be obliterated, altered, concealed or otherwise changed or hidden from view by the Lessee so as to prevent or block access to such numbers or marks without prior written agreement from the Lessor. The Lessee has the option to have its own company logo applied on the Equipment provided that same is to be removed for the Lessee's account upon redelivery of the Equipment.	104 105 106 107 108 109 110
(iv) Loose or missing parts or marking, except those that are normally removable, in the absence of evidence of accompanying damage;	43 44	5. Condition of Equipment on Redelivery	111
(v) General paint failure or fading not due to contamination;	45	(a) The Equipment shall be redelivered in like condition to the condition at on-hire, normal Wear and Tear excepted and unless advised by the Lessor to the contrary in accordance with sub-clause 5(b), the Lessee may assume that the Equipment has been redelivered in undamaged condition.	112 113 114 115
(vi) General wear and deterioration at corner fittings;	46	(b) In the event that Equipment is redelivered in a damaged condition, excepting all normal Wear and Tear, the Lessor shall within the number of working days stated in Box 9 give notice to the Lessee providing a detailed estimate of repairs. If the Lessee does not respond to the Lessor within the number of working days stated in Box 9 of receiving the detailed estimate of repairs, the Lessor shall be entitled to assume that the Lessee agrees with the estimate of repairs and will pay for the said repairs, excepting all normal Wear and Tear, at the amount specified in the estimate, on presentation of an invoice.	116 117 118 119 120 121 122 123 124
(vii) General deterioration at door gasket and fitting, including loose and corroded fittings or loose fittings arising from normal deterioration of doors;	47 48	If the Lessee disagrees with the estimate of repair costs and/or disagrees that any item therein should be for the Lessee's account, he shall detail his objections by notice to the Lessor within the period provided in Box 9.	125 126 127
(viii) Scratches to metal.	49	In the event of a continuing dispute the parties shall within 14 days of the date of the Lessee's notice appoint a joint surveyor who will survey the	128 129
1. Marginal Headings	50		
The marginal headings of this Agreement are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Agreement.	51 52 53		
2. Term of the Agreement	54		
(a) All terms and conditions of this Agreement shall take effect from the date stated in Box 2 and shall remain in force until all Equipment covered by this Agreement has been redelivered.	55 56 57		
(b) The period of lease for the full amount of Equipment stated in Box 5 shall commence on the date stated in Box 6 and shall continue at least until the date stated in Box 7.	58 59 60		
3. Condition of Equipment on Delivery	61		
(a) The Lessor warrant 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 standards detailed hereinafter:	62 63 64 65		
(i) International Standards Organisation (ISO);	66		

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Equipment and review the estimate of repairs. The parties agree to be bound by the decision of the joint surveyor as to the extent of the repairs payable by the Lessee and the reasonable cost thereof and to share the cost of the survey.	130 131 132 133	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 Lessee wishes to use said Equipment; or (ii) which is shown to have latent defects such that it is unsafe or unsuitable for continued use.	193 194 195 196 197 198
All damages will be defined in accordance with the current IICL Inspection Standards and all repairs will be performed in accordance with the current IICL Standards for Repair and Cleaning.	134 135 136	Such Equipment shall be returned to the Lessor as soon as is practicable in accordance with Clause 6(c).	199 200
In the event that an agreed estimate of repairs exceeds the depreciated value of the Equipment as stated in Box 5, the Lessee will pay to the Lessor the depreciated value of the Equipment.	137 138 139	(c) Notwithstanding the stipulations of Clause 2 and sub-clause 6(b) and by giving the number of working days advance notice as stipulated in Box 15, the Lessee shall have the option of terminating the Agreement on any of the dates stated in Box 16. In such case the hire shall be retroactively adjusted in accordance with the appropriate per diem rates entered behind the dates in Box 16.	201 202 203 204 205 206
6. Pick-ups and Drop-offs	140	10. Build-down Period	207
* (a) <u>Master Lease</u> : The Lessee may pick up Equipment at any of the Lessor's depots as may from time to time be mutually agreed. The Lessor shall not unreasonably withhold Equipment from the Lessee and shall use his best endeavours to fulfill the requirements of the Lessee.	141 142 143 144	On the date of termination as stipulated in Clause 2(b) a build-down period shall commence, during which time all the Equipment shall be redelivered to the Lessor. The length and redelivery schedule of the build-down period shall be as set out in Box 17.	208 209 210 211
* (b) <u>Term Lease</u> : The Lessee may pick up Equipment in the minimum quantities per period of time indicated at each of the Lessor's depots stated in Box 10. Save for the provisions of Clauses 9 and 10 such Equipment shall remain on hire for at least the period stipulated in Clause 2(b).	145 146 147 148 149	Equipment still on lease after the build-down period will be charged the per diem rental stated in Box 5 until finally redelivered to the Lessor.	212 213
(c) Subject to the terms of this Agreement, the Lessee may redeliver any of the Equipment, to any of the Lessor'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 Lease Agreement insofar as it relates to the redelivered Equipment.	150 151 152 153 154 155	11. Insolvency (a) Both the Lessee and the Lessor 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.	214 215 216 217 218 219 220
* (a) and (b) are alternatives. Delete whichever is not applicable.	156	(b) If the Lessor terminates this Agreement according to sub-clause 11 (a), the Lessor shall have the right to take immediate possession of all empty Equipment leased to the Lessee under this Agreement.	221 222 223
7. Rental and other Charges, Payment	157	(c) Should the Lessor obtain the right to immediate possession of any empty Equipment covered by this Agreement, then the Lessee must, upon written notice from the Lessor, immediately insofar as he is able to do so, notify the Lessor of the exact location of all Equipment leased to it under this Agreement and promptly redeliver all such empty Equipment to the nearest Lessor's depot unless otherwise mutually agreed.	224 225 226 227 228 229
(a) In consideration for leasing the Equipment from the Lessor, the Lessee shall, as from the pick-up date, be liable to pay to the Lessor, as rent, the per diem leasing rate specified in Box 5, as well as any other charges which may be agreed upon and enumerated in Box 11. The Lessee's obligations to pay rental will cease on the day after redelivery into any of the Lessor's designated depots.	158 159 160 161 162 163	12. Maritime Lien	230
(b) An invoice shall be sent to the Lessee's billing address as stated in Box 12.	164	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 maritime lien securing the obligations under this Agreement may be attached to any Vessel connected in any way with the Lessee.	231 232 233 234 235 236
(c) Payment shall be made by the Lessee to the Lessor's bank account as stated in Box 13, within the number of working days stated in Box 14 of the date of the Lessor's invoice.	165 166 167	The Lessor is relying solely upon the credit of the Lessee in supplying containers under this lease.	237 238
(d) The Lessee shall, within the number of days stated in Box 9, give written notice to the Lessor of any disputed items on the Lessor's invoice. The Lessor will reconcile disputed items within the number of days stated in Box 9 by either 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 Lessee to pay the undisputed portion of any invoice within the number of days stated in Box 14 after receipt.	168 169 170 171 172 173 174	13. Liabilities and Indemnity (a) The Lessee shall be liable to the Lessor for the actual or constructive total loss of, or damage, normal Wear and Tear excepted, to any Equipment occurring during the period of this Agreement.	239 240 241 242
8. Taxes, Fees and Fines	175	The Lessee shall immediately notify the Lessor in writing of any actual or constructive total loss of any Equipment and upon such notice the Lessee's obligations to pay rental shall cease. In the event that such actual or constructive total loss occurs, the Lessee shall be promptly invoiced therefor and pay to the Lessor the agreed Depreciated Value of such Equipment.	243 244 245 246 247
The Lessee 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.	176 177	Should the Lessee later determine that Equipment previously declared lost has been recovered, the Lessor will, at the request of the Lessee, reimburse any previously paid Replacement Value/Depreciated Value less any rental accrued from the date the Equipment was declared lost.	248 249 250 251
Upon the return of any Equipment to the Lessor, and provided it is a permissible return under the conditions of this Lease Agreement, the Lessor shall indemnify the Lessee from any import duties or taxes whatsoever that may be imposed from the time the Equipment was returned to the Lessor provided that the Equipment is redelivered within 60 days of the importation date. The Lessee shall, to the best of its ability, and at the Lessor's request, assist the Lessor to avoid any import duties or taxes by co-operating to the fullest extent in requesting extension of the same as local regulations permit.	178 179 180 181 182 183 184 185	(b) The Lessee shall defend, indemnify and hold the Lessor 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:	252 253 254 255 256
The Lessor 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.	186 187		
9. Termination of Agreement	188		
(a) Either party may terminate this Agreement by giving the other party written notice of termination at least the number of working days stated in Box 15 prior to the date stated in Box 7 or any later date agreed to by the parties.	189 190 191		
(b) The Lessee may upon written notice cancel this Agreement with immediate	192		

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(i) any failure of the Lessee to comply with its obligations under this Agreement;	257 258		
(ii) any claim, whether private or governmental, for bodily injury or death to persons (including employees of the Lessor) 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 Lessee.	259 260 261 262 263		
(c) The Lessor shall defend, indemnify and hold the Lessee harmless for any and all claims, losses, expenses, costs or damages (including without limitation all reasonable expenses in defending any claim or suit such as court costs, attorney's fees, and other expenses) arising or alleged to arise directly or indirectly or incidentally out of:	264 265 266 267 268		
(i) any failure of the Lessor to comply with its obligations under this Agreement;	269 270		
(ii) any claim, whether private or governmental, for bodily injury or death to persons (including employees of the Lessee) 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.	271 272 273 274 275		
(d) 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.	276 277 278		
14. Insurance	279		
(a) The Lessee agrees to procure and maintain in full force and effect during the term of this Agreement, at its sole cost and expense, the following insurances:	280 281 282		
(i) Insurance to cover physical loss or damage to the Equipment for not less than the full Depreciated Value stipulated in Box 5.	283 284		
(ii) General liability insurance to a minimum limit as stipulated in Box 18 for any one occurrence, to cover third party bodily injury and property damage. Such insurance shall be primary insurance.	285 286 287		
Any and all deductibles under the terms of the foregoing insurances shall be for the Lessee's account. On request, the Lessee will provide the Lessor with evidence of the insurances.	288 289 290		
(b) The Lessor agrees to procure and maintain in full force and effect during the term of this Agreement, at its sole cost and expense the following insurance:	291 292 293		
(i) General liability insurance to a minimum limit as stipulated in Box 18 for any one occurrence, to cover third party bodily injury and property damage.	294 295 296		
Any and all deductibles under the terms of the foregoing insurance shall be for the Lessor's account. On request, the Lessor will provide the Lessee with evidence of the insurance.	297 298 299		
Should a party fail to procure or maintain any of the required insurances, or by act or omission vitiate or invalidate any of such insurance, 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.	300 301 302 303		
15. Law and Arbitration	304		
*(a) This Lease Agreement shall be governed by and construed in accordance with English law and any dispute arising out of this Lease Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.	305 306 307 308 309 310 311 312 313 314 315		
For disputes where the total amount claimed by either party does not exceed the amount stated in Box 20** the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.	316 317 318 319		
		*(b) This Lease Agreement shall be governed by and construed in accordance with Title 9 of the United States Code as well as by the maritime law of the United States, or if this Lease Agreement is not deemed to be a maritime contract, then by the law of the State of New York and should any dispute arise out of this Lease Agreement, the matter in dispute 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 purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	320 321 322 323 324 325 326 327 328 329
		For disputes where the total amount claimed by either party does not exceed the amount stated in Box 20** the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.	330 331 332 333
		*(c) Any dispute arising out of this Lease Agreement shall be referred to arbitration at the place indicated in Box 19, subject to the procedures applicable there. The laws of the place indicated in Box 19 shall govern this Lease Agreement.	334 335 336 337
		(d) If Box 19 in Part I is not filled in, sub-clause (a) of this Clause shall apply.	338
		* (a), (b) and (c) are alternatives; indicate alternative agreed in Box 19.	339
		** Where no figure is supplied in Box 20 in Part I, this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.	340 341 342
		16. Notices	343
		Any notice or notification or advice or communication of any kind to be served or given hereunder and/or any extension, variation, amendment, cancellation or deletion of any of the terms hereof shall (save in emergency) be in writing and sent or delivered to the registered office for the time being of the Lessor or the Lessee (as the case may be).	344 345 346 347 348
		At the request of the Lessee the Lessor shall provide relevant information in electronic format.	349 350
		17. Overriding Agreement	351
		The terms and conditions set forth in this Agreement and attached exhibits shall constitute the only and total Agreement between the Lessor and the Lessee.	352 353