

**INTERMODAL BILL TRANSPORT BILL OF LADING**

**INTRODUCTION**

Notwithstanding the heading "Intermodal Transport Bill of Lading," the provisions set out and referred to in this document shall also apply if the transport as described on the face of the Bill of Lading is performed by one mode of transport only. These provisions constitute a contract between Merchant and Carrier. This is the entire bill of lading between the parties.

**(1) APPLICABILITY OF BILL OF LADING:**

The following terms and conditions govern the contractual relationship between Carrier and Shipper with respect to the goods. All prior agreements or freight engagements for the shipment of the goods are superseded by the Bill of Lading. If required by Carrier, a signed Original Bill of Lading, duly endorsed, must be surrendered to the Carrier on delivery of the goods. The absence of signatures of either Carrier or Shipper or both shall not affect the applicability or enforceability of this Bill of Lading. Any Bill of Lading not presented to Carrier on or before the 180<sup>th</sup> day after its issuance shall be null and void as a negotiable instrument, and ownership of any cargo covered thereby shall be determined in accordance with applicable law.

**(2) CLAUSE PARAMOUNT:**

All carriage under this Bill of Lading to or from the United States shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, 46 U.S.C. sections 1300-1315 (hereafter, "COGSA"). All carriage to and from other States shall be governed by the law of any state making the Hague Rules or Hague-Visby Rules compulsorily applicable to this Bill of Lading or if there be no such law, in accordance with the Hague Rules. The provisions of applicable law as set forth above shall apply to carriage of goods by inland waterways and reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways. Except as may be otherwise specifically provided herein, said law shall govern before the goods are loaded on and after they are discharged from the vessel whether the goods are carried on deck or under deck and throughout the entire time the goods are in the custody of the carrier.

**(3) DEFINITIONS:**

- 3.1 "Ship" means the vessel named in this Bill of Lading, or any conveyance owned, chartered, towed or operated by Carrier or used by Carrier for the performance of this contract.
- 3.2 "Carrier" means IContainers (USA) Inc., a Nonvessel Operating Common Carrier, on whose behalf this Bill of Lading has been issued.
- 3.3 "Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the Holder of this Bill of Lading, their Principals and any person having a present or future interest in the Goods or any person acting on behalf of any of the above-mentioned persons.
- 3.4 "Package" shall include any piece, shipping unit, machine or article of any description,

whether or not enclosed or boxed in whole or in part, except goods shipped in bulk, provided, however, that a container, van, trailer, rail car, or rolling equipment is a package when such is listed on the face of the Bill of Lading under the column "number of trailers/containers/packages" regardless of the method used to describe the shipment in the description column on the face. Governmental documents such as Shipper's Export Declarations shall not be considered as an expression of intent of the parties' definition of package as herein defined.

- 3.5 "Container" includes any container, trailer, transportable tank, lift van, flat, pallet, drum or any similar article of transport used to consolidate goods.
- 3.6 "Carrier's container or carrier's equipment" includes containers or equipment owned, leased or used by Carrier in the transportation of Merchant's goods.
- 3.7 "Goods" mean the cargo described on the face of this Bill of Lading and, if the cargo is packed into container(s) supplied or furnished by or on behalf of the Merchant, include the container(s) as well.

**(4) SUBCONTRACTING/HIMALAYA CLAUSE:**

Carrier shall be entitled to subcontract directly or indirectly on any terms the whole or any part of the handling, storage, or carriage of the goods and all duties undertaken by Carrier in relation to the goods. Every servant, agent, subcontractor (including sub-subcontractors), or other person whose services have been used to perform this contract shall be entitled to the rights, exemptions from, or limitations of, liability, defenses and immunities set forth herein. For these purposes, Carrier shall be deemed to be acting as agent or trustee for such servants, agents, subcontractors, or other persons who shall be deemed to be parties to this contract.

**(5) METHOD OF TRANSPORT:**

Carrier is entitled to perform the transport in any reasonable manner and by any reasonable means, methods and routes. The Ship shall have the liberty, either with or without the goods on board, to at any time, adjust navigational instruments, make trial trips, dry dock, go to repair yards, shift berths, take in fuel or stores, embark or disembark any persons, carry contraband and hazardous goods, sail with or without pilots and save or attempt to save life or property. Delays resulting from such activities shall not be deemed a deviation.

**(6) HINDRANCES AFFECTING PERFORMANCE:**

- 6.1 Carrier shall use reasonable endeavors to complete transport and to deliver the goods at the place designated for delivery.
- 6.2 If at any time the performance of this contract as evidenced by this Bill of Lading in the opinion of Carrier is or will be affected by any hindrance, risk, delay, injury, difficulty or disadvantage of any kind, including strike, and if by virtue of the above it has rendered or is likely to render it in any way unsafe, impracticable, unlawful, or against the interest of Carrier to complete the performance of the contract, Carrier, whether or not the transport is commenced, may without notice to Merchant elect to: (a) treat the performance of this contract as terminated and place the goods at Merchant's disposal at any place Carrier shall deem safe and convenient, or (b) deliver the goods at the place of

delivery.

In any event, Carrier shall be entitled to, and Merchant shall pay, full freight for any goods received for transportation and additional compensation for extra costs and expenses resulting from the circumstances referred to above.

- 6.3 If, after storage, discharge, or any actions according to sub-part 6.2 above Carrier makes arrangements to store and/or forward the goods, it is agreed that he shall do so only as agent for and at the sole risk and expense of Merchant without any liability whatsoever in respect of such agency.
- 6.4 Carrier, in addition to all other liberties provided for in this Article, shall have liberty to comply with orders, directions, regulations or suggestions as to navigation or the carriage or handling of the goods or the ship howsoever given, by any actual or purported government or public authority, or by any committee or person having under the terms of any insurance on the Ship, the right to give such order, direction, regulation, or suggestion. If by reason of and/or in compliance with any such order, direction, regulation, or suggestions, anything is done or is not done the same shall be deemed to be included within the contract of carriage and shall not be a deviation.

**(7) BASIC LIABILITY:**

- 7.1 Carrier shall be liable for loss of or damage to the goods occurring between the time when it takes goods into its custody and the time of delivery but shall not be liable for any consequential or special damages arising from such loss or damage.
- 7.2 If it is established that the loss of or damage to the goods occurred during sea carriage or during carriage by land in the United States, liability shall be governed by the legal rules applicable as provided in Section 1 of this Bill of Lading.
- 7.3 Notwithstanding Section 1 of this Bill of Lading, if the loss or damage occurred outside of the United States not during sea carriage and it can be proved where the loss or damage occurred, the liability of Carrier in respect of such loss or damage shall be determined by the provisions contained in any international convention or national law, which provisions:
- (a) cannot be departed from by private contract to the detriment of Merchant, and
  - (b) would have applied if Merchant had made a separate and direct contract with Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable,
  - (c) where (a) or (b) above do not apply, any liability of Carrier shall be limited to the amount provided in accordance with Section 7.1 of this Bill of Lading.
- 7.4 If it cannot be determined when the loss of or damage to the goods occurred, liability shall be governed as provided in Section 7.2 above.
- 7.5 Carrier does not undertake that the goods shall be delivered at any particular time or for any particular market and shall not be liable for any direct or indirect losses caused by any

- delay.
- 7.6 Carrier shall not be liable for any loss, damage, delay or failure in performance hereunder occurring at any time, including before loading on or after discharge from the Vessel or during any voyage, arising or resulting from the happening and/or threat and/or after effects of one or more of the following: act of God, act of war, force majeure, quarantine restrictions, embargo, acts of public enemies, thieves, pirates, assailing thieves, arrest or restraint of princes, rulers or people, seizure under legal process, act or omission of Shipper, its agent or representative, strikes or lockouts or stoppage or restraint of labor from whatever cause, partial or general, riots or civil commotions, act, neglect or default of the master, pilots, mariners or other servants of Carrier in the navigation or management of the Vessel, barratry, ice, fire unless caused by the actual fault or privity of the Carrier, explosion, collision, stranding, perils, dangers and accidents of the sea or other navigable waters, wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods, insufficiency of packing, insufficiency or inadequacy of marks, bursting of boilers, breakage of shafts or any latent defect in hull, equipment, machinery, hawsers or lines, unseaworthiness unless caused by want of due diligence on the part of Carrier to make the Vessel seaworthy or to have her properly manned, equipped and supplied, saving or attempting to save life or property at sea or any deviation in rendering such service, loss of or material damage to the Vessel, or any other similar or dissimilar cause beyond the control of Carrier.
- 7.7 When Carrier pays claims to Merchant, Carrier shall automatically be subrogated to all rights of Merchant against all others, including Inland Carriers, on account of the losses or damages for which such claims are paid.
- 7.8 The defenses and limits of liability provided for in this Bill of Lading shall apply in any action or claim against Carrier relating to the goods, or the receipt, transportation, storage or delivery thereof, whether the action be founded in contract, tort or otherwise.

**(8) COMPENSATION FOR LOSS AND DAMAGE:**

- 8.1 Unless otherwise mandated by compulsorily applicable law, Carrier's liability for compensation for loss of or damage to goods shall in no case exceed the amount of US\$500 per package or per customary freight unit, unless Merchant, with the consent of Carrier, has declared a higher value for the goods in the space provided on the front of this Bill of Lading and paid extra freight per Carrier's tariff, in which case such higher value shall be the limit of Carrier's liability. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. Where a container is stuffed by Shipper or on its behalf, and the container is sealed when received by Carrier for shipment, Carrier's liability will be limited to US\$500 with respect to the contents of each such container, except when the Shipper declares the value on the face hereof and pays additional charges on such declared value as stated in Carrier's tariff. The freight charged on sealed containers when no higher valuation is declared by the Shipper is based on a value of US\$500 per container. However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim. Carrier shall have the option of replacing lost goods or repairing damaged goods.

- 8.2 In any case where Carrier's liability for compensation may exceed the amounts set forth in Section 8.1 above, compensation shall be calculated by reference to the value of the goods, according to their current market price, at the time and place they are delivered, or should have been delivered, in accordance with this contract.
- 8.3 If the value of the goods is less than US\$500 per package or per customary freight unit, their value for compensation purposes shall be deemed to be the invoice value, plus freight and insurance, if paid.
- 8.4 Carrier shall not be liable to any extent for any loss of or damage to or in connection with precious metals, stones, or chemicals, jewelry, currency, negotiable instruments, securities, writings, documents, works of art, curios, heirlooms, or any other valuable goods, including goods having particular value only for Merchant, unless the true nature and value of the goods have been declared in writing by Merchant before receipt of the goods by the Carrier or Inland Carrier, the same is inserted on the face of this Bill of Lading and additional freight has been paid as required.
- 8.5 Carrier will not arrange for insurance on the goods except upon express instructions from the Merchant and then only at Merchant's expense and presentation of a declaration of value for insurance purposes prior to shipment.

**(9) DESCRIPTION OF GOODS AND INFORMATION FOR U.S. CUSTOMS:**

Carrier is responsible for transmitting information to U.S. Customs prior to lading of the Goods including, without limitation, precise commodity descriptions, numbers and quantities of the lowest external packaging unit, the shipper's complete name and address, the consignee's or the owner's or owner's representative's complete name and address, hazardous materials codes, and container seal numbers. For this, and other purposes, Carrier relies on information provided by Merchant in a timely fashion. Merchant warrants to Carrier that all particulars of the goods, including, without limitation, the precise descriptions, marks, number, quantity, weight, seal numbers, identities of shipper and consignee and hazardous materials codes furnished by Merchant are correct and Merchant shall indemnify Carrier against all claims, penalties, losses or damages arising from any inaccuracy. Carrier is not acting as a Customs Broker.

**(10) CARRIER'S CONTAINERS:**

If goods are not received by Carrier already in containers, Carrier may pack them in any type container. Merchant shall be liable to Carrier for damage to Carrier's containers or equipment if such damage occurs while such equipment is in control of Merchant or his agents. Merchant indemnifies Carrier for any damage or injury to persons or property caused by Carrier's containers or equipment during handling by or when in possession or control of Merchant.

**(11) CONTAINER LOADED BY MERCHANT:**

If Carrier receives the goods already packed into containers:

1. This Bill of Lading is prima facie evidence of the receipt of the particular number of containers set forth, and that number only. Carrier accepts no responsibility with respect to the order and condition of the contents of the containers;

2. Merchant warrants that the stowage and seals of the containers are safe and proper and suitable for handling and carriage and indemnifies Carrier for any injury, loss or damage caused by breach of this warranty;
3. Delivery shall be deemed as full and complete performance when the containers are delivered by Carrier with the seals intact; and
4. Carrier has the right but not the obligation to open and inspect the containers at any time without notice to Merchant, and expenses resulting from such inspections shall be borne by Merchant; and
5. Merchant shall inspect containers before stuffing them and the use of the containers shall be prima facie evidence of their being sound and suitable for use.

**(12) DANGEROUS GOODS:**

- 12.1 Merchant may not tender goods of a dangerous nature without written application to Carrier and Carrier's acceptance of the same. In the application, Merchant must identify the nature of the goods with reasonable specificity as well as the names and addresses of the shippers and consignees.
- 12.2 Merchant shall distinctly and permanently mark the nature of the goods on the outside of the package and container in a form and manner as required by law and shall submit to Carrier or to the appropriate authorities all necessary documents required by law or by Carrier for the transportation of such goods.
- 12.3 If the goods subsequently, in the judgment of Carrier, become a danger to Carrier, the Ship, or other cargo, Carrier may dispose of the goods without compensation to Merchant and Merchant shall indemnify Carrier for any loss or expenses arising from such action.

**(13) DECK CARGO:**

Carrier has the right to carry the goods in any container under deck or on deck. Carrier is not required to note "on deck stowage" on the face of this Bill of Lading and goods so carried shall constitute under deck stowage for all purposes including General Average. Except as otherwise provided by any law applicable to this contract, if this Bill of Lading states that the cargo is stowed on deck, then Carrier shall not be liable for any non-delivery, misdelivery, delay or loss to goods carried on deck, whether or not caused by Carrier's negligence or the ship's unseaworthiness.

**(14) HEAVY LIFT:**

- 14.1 Single packages with a weight exceeding 2,240 pounds gross not presented to Carrier in enclosed containers must be declared in writing by Merchant before receipt of the packages by Carrier. The weight of such packages must be clearly and durably marked on the outside of the package in letters and figures not less than two inches high.
- 14.2 If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the goods, persons or property, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure and Merchant shall

indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of such failure.

- 14.3 Merchant agrees to comply with all laws or regulations concerning overweight containers and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of Merchant's failure to comply with such laws or regulations.

**(15) DELIVERY:**

Carrier shall have the right to deliver the goods at any time at any place designated by Carrier within the commercial or geographic limits of the port of discharge or place of delivery shown in this Bill of Lading. Carrier's responsibility shall cease when delivery has been made to Merchant, any person authorized by Merchant to receive the goods, or in any manner or to any other person in accordance with the custom and usage of the port of discharge or place of delivery. If goods should remain in Carrier's custody after discharge from the ship and possession is not taken by Merchant, after notice, within the time allowed in Carrier's applicable tariff, the goods may be considered to have been delivered to Merchant or abandoned at Carrier's option, and may be disposed of or stored at Merchant's expense. Carrier shall not be liable for any loss or damage to cargo while in the care of custody of any governmental entity including but not limited to port authorities, customs, and any free trade zone.

**(16) NOTICE OF CLAIM:**

Written notice of claims for loss of or damage to goods occurring or presumed to have occurred while in the custody of Carrier must be given to Carrier at the port of discharge before or at the time of removal of the goods by one entitled to delivery. If such notice is not provided, removal shall be prima facie evidence of delivery by Carrier. If such loss or damage is not apparent, Carrier must be given written notice within 3 days of the delivery.

**(17) EARNED FREIGHT AND LIEN OF CARRIER:**

Full freight demurrage and other charges hereunder to destination shall be considered complete and irrevocably earned upon commencement of loading at the port of loading or place of receipt shown on the face hereof whether the freight be stated or charges due hereunder whether actually paid or not and to receive and retain them irrevocably under all circumstances whatsoever, the Vessel and/or goods lost or not lost or the voyage broken up or abandoned.

Freight shall be payable on actual gross intake weight or measurement or at Carrier's option on actual gross discharge weight or measurement. Freight may be calculated on the basis of the particulars of the goods furnished by Shipper but Carrier may at any time open the packages and examine, weigh, measure, and value the goods. In case Shipper's particulars are found to be erroneous and additional freight is payable, Shipper and the goods shall be liable for any expense incurred for examining, weighing, measuring, and valuing the goods.

Freight, demurrage, and other charges shall be paid to Carrier in United States currency, without discount or setoff of any kind, including any claim for loss or damage to the goods, at such place and in such manner as the Carrier may direct. Such charges shall be paid in full regardless of any

claim by Shipper that a tariff applies other than that under which Carrier has assessed charges, or that the charges are unreasonable or unlawful under applicable law. Any such claim shall instead be pursued by a separate action before the Federal Maritime Commission, Interstate Commerce Commission, or other agency where the tariff sought to be applied by Carrier has been filed. Carrier shall be entitled to recover all costs of collection, including reasonable attorneys fees and expenses.

Carrier shall have a lien on the goods for any charges payable to Carrier under this contract. Where permitted by law, Carrier's lien hereunder also covers any charges payable to Carrier by Shipper under any other bill of lading issued by Carrier. Carrier shall have the right to sell the goods by public auction or private treaty without notice to Shipper, and Shipper shall remain responsible for payment of such sums due hereunder. Payment of ocean freight and charges to a freight forwarder, broker, or anyone other than Carrier or its authorized agent shall not be deemed payment to Carrier and shall be made at payer's sole risk.

**(18) TIME BAR:**

Carrier shall be discharged from all liability for loss of or damage to goods unless suit is brought within one (1) year after delivery of the goods or the date when the goods should have been delivered.

**(19) GENERAL AVERAGE:**

- 19.1 General Average shall be adjusted at New York, or any other port at Carrier's option, according to the York-Antwerp Rules of 1994. The General Average statement shall be prepared by adjusters appointed by Carrier.
- 19.2 In the event of accident, damage, danger or disaster after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for the consequence of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Carrier in General Average to the payment of any sacrifice, loss or expense of a General Average nature that may be made or incurred, and shall pay salvage or special charges incurred in respect of the goods. If a salving vessel is owned or operated by Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

**(20) BOTH-TO-BLAME COLLISION CLAUSE:**

If the ship comes into collision with another vessel as a result of negligence of the other vessel and any negligence or fault on the part of Carrier or its servants or subcontractors, Merchant shall indemnify Carrier against all loss or liability to the other or non-carrying vessel or her owners, insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Merchant paid or payable by the other or non-carrying vessel or her owners to Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or her owner. This provision shall apply as well where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault with respect to a collision or contact.

**(21) CARRIERS' TARIFFS:**

The goods carried under this Bill of Lading are also subject to all the terms and conditions of tariff(s) published pursuant to the regulations of the United States Federal Maritime Commission or any other regulatory agency which governs a particular portion of the carriage and the terms are incorporated herein as part of the terms and conditions of this Bill of Lading. Copies of Carriers' tariffs may be obtained from Carrier or its agents or from Carriers' web site, the address of which is set forth at- give information on tariff company on the U.S. Federal Maritime Commission's web site at [cchchangchangwww.fmc.gov](http://cchchangchangwww.fmc.gov).

**(22) NO VALUABLE:**

Shipper agrees not to ship bank bills, coins or currency, deeds, drafts, notes or valuable papers of any kind, jewelry other than costume or novelty jewelry, postage stamps or letters or packets of letters with or without postage stamps affixed, United States Postal Service mail of any class, precious metals or articles manufactured therefrom, precious stones, revenue stamps, antiques, or other related or unrelated old, rare or precious articles of extraordinary value.

**(23) LIVE ANIMALS:**

Live animals, birds and fish are received, kept and carried solely at Shipper's risk of accident, disease or mortality and without warranty or undertaking whatsoever by Carrier.

**(24) RUST:**

It is agreed that superficial rust, oxidation or any like condition due to moisture is not a condition of damage but is inherent in the nature of the goods, and acknowledgment of receipt of the goods in apparent good order and condition is not representation that such conditions or rust, oxidation and the like did not exist on receipt.

**(25) PERISHABLE CARGO:**

- 25.1 Goods of a perishable nature shall be carried in ordinary containers without special protection, services or other measures unless there is noted on the reverse side of this Bill of Lading that the goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specially equipped container or are to receive special attention in any way. Carrier shall not be liable for any loss of or damage to goods in a special hold or container arising from latent defects, breakdown, or stoppage of the refrigeration, ventilation or heating machinery, insulation, ship's plant, or other such apparatus of the vessel or container, provided that Carrier shall before or at the beginning of the transport exercise due diligence to maintain the special hold or container in an efficient state.
- 25.2 Merchant undertakes not to tender for transportation any goods that require refrigeration without given written notice of their nature and the required temperature setting of the thermostatic controls before receipt of the goods by Carrier. In case of refrigerated containers packed by or on behalf of Merchant, Merchant warrants that the goods have been properly stowed in the container and that the thermostatic controls have been adequately set before receipt of the goods by Carrier.
- 25.3 Merchant's attention is drawn to the fact that refrigerated containers are not designed to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature. Carrier shall not be responsible for the consequences of cargo tendered at a higher temperature than that required for the transportation.
- 25.4 If the above requirements are not complied with, Carrier shall not be liable for any loss of or damage to the goods whatsoever.

**(26) SEVERABILITY:**

The terms of this Bill of Lading shall be severable, and, if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof.

**(27) AMENDMENTS OF THE CONTRACT:**

Any amendment of the contract shall be in writing.

**(28) SEVERABILITY:**

The terms of this Bill of Lading shall be separate and, if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof. Nothing contained in this Bill of Lading shall be deemed a surrender, waiver or reduction by the Carrier, or operate to deprive the Carrier, of any of its rights, immunities, exemptions, limitations or liberties, or an increase of any of its responsibilities or liabilities under the aforementioned laws or any other laws.

**(29) JURISDICTION AND VENUE:**

The state and federal courts of Miami-Dade County, Florida shall have exclusive jurisdiction over any dispute arising from the carriage evidenced by this Bill of Lading. Merchant and Carrier each hereby agree to the personal jurisdiction of the forum having jurisdiction over their disputes under this clause. Except as otherwise provided in this Bill of Lading, the laws of the United States and the State of Florida shall apply.

**(30) HEADINGS FOR CONVENIENCE ONLY:**

The headings of the clauses are for the convenience of reference only and shall not affect the interpretation of the terms of this Bill of Lading.