

# General Conditions applicable to combined transport

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# intercontainer – interfrigo

*Intercontainer-Interfrigo (ICF) SA  
International Company for the  
development of combined and  
temperature-controlled transport*

*Head Office:  
Margarethenstrasse 38  
CH-4008 Basle  
Telephone: +41-61-278 25 25  
Telefax: +41-61-278 24 45  
E-mail: [icf@icfonline.com](mailto:icf@icfonline.com)  
[www.icfonline.com](http://www.icfonline.com)*

## Preamble

- § 1 Intercontainer-Interfrigo (abbreviated to ICF) is a forwarding agent under Belgian law. It organises its activities with the railways, road hauliers, inland waterway or marine shipping companies and suppliers of ancillary services by the intermediary of its local representatives, a list of whom is obtainable on request.
- § 2 These General Conditions apply to combined transport and ancillary services marketed under the name of "Intercontainer".
- § 3 "Combined transport" comprises all transport of UTI (Unité de Transport Intermodal = intermodal transport unit): large containers or swap bodies of all types, containers or swap bodies fitted for controlled temperature (particularly mechanically refrigerated, refrigerated and insulated), similar units, semitrailers, etc.
- § 4 "Ancillary services" comprise in particular:
- terminal services inherent in combined transport (handling and road haulage);
  - provision of UTI;
  - information concerning any irregularity occurring during transport of UTI fitted for controlled temperature;
  - supervision of the working of the machinery and maintenance of the required temperature of mechanically refrigerated UTI during transport.
- § 5 The terms "principal" (party giving the order) and "receiver" (beneficiary) refer to the principal and receiver themselves or to any agent they may appoint.
- § 6 The term "client" denotes the freight payer, who, except with the prior agreement of ICF, can only be the principal or the receiver.

## Article 1: Offers and agreements

- § 7 Unless otherwise stipulated by ICF, its offers shall remain valid for thirty days from the date of sending, subject to the provisions of §§ 9 and 10.  
These offers shall not be binding on ICF unless it has received the express acceptance of the client during the period of validity or the client has handed over a UTI to ICF within the same period, which implies acceptance of the ICF General Conditions by the client.
- § 8 All offers and agreements, even all-inclusive, are based on the tariffs of transport and ancillary services applicable to ICF as well as all other technical and commercial factors prevailing on the date of their compilation.
- § 9 If economic, political or technical circumstances, unforeseeable by ICF at the time of compilation of the offers and agreements and entirely beyond its control, subsequently occur and upset the balance of the above offers or agreements, thus placing an excessive burden on ICF in the discharge of its contractual obligations, ICF may require the client in writing to adjust the offers or agreements, indicating the precise circumstances and giving the reasons for its request. If, in spite of an adjustment of the offers or agreements, it appears economically impossible to maintain them, ICF may cancel them with effect on the seventh day after giving notice of cancellation in writing. This provision does not concern force majeure referred to in § 10.
- § 10 The clause of force majeure of the International Chamber of Commerce (ICC publication No. 421) applies to these General Conditions.

## Article 2: Orders and instructions

- § 11 Before UTI are entrusted to ICF, details of the composition of the consignment (length and weight of the UTI) shall be communicated to the ICF agent in good time, so that he can take the necessary steps for furnishing the services requested (provision of wagons, handling, road haulage, etc.).
- § 12 For each consignment to be entrusted to ICF, the principal shall complete a form entitled "Transfer Note" (obtainable on request from ICF local agents) and attach all the documents required by Customs and other administrative authorities for the transport. The handing over of UTI, accompanied by signed and dated Transfer Note(s), constitutes the transport order.
- § 13 Before completing the Transfer Note, the principal shall ensure that the conditions of acceptance and delivery requested in the Transfer Note can be provided by consulting the "list of terminals and stations open to Intercontainer traffic", obtainable from ICF on request.
- § 14 The principal shall be responsible for entries made by him on the Transfer Note. He shall bear any consequences arising from incorrectness, inaccuracy, incompleteness or absence of such entries. The same grounds for responsibility of the principal as well as delay in handing over the documents shall apply to documents required by Customs and other administrative authorities for transport. Without prior agreement, ICF shall not involve itself in the carrying out of these formalities and shall not be responsible for the erroneous raising of duties, taxes, charges etc. by these authorities.
- § 15 Division of charges and special prepayment provisions are not allowed, and consignments may not be made subject either to declarations of cash on delivery or disbursements.
- § 16 ICF is not required to verify the accuracy of information given on the Transfer Note or in the instructions or other documents submitted separately.
- § 17 Alterations to orders and instructions entered on the Transfer Note shall be accepted only if they are requested in writing from the ICF local agent in good time and in the manner required by ICF ("Request

for Modification to the Instructions of the Transfer Note"). Only written acceptance of this request shall mean that ICF will endeavour to carry it into effect, taking into account the capabilities and regulations of each carrier. Only the principal shall be authorised to modify the instructions. However, these may also be modified by the receiver if the receiver is also a client of ICF for the transport in question and provided that the new station of destination is situated in the same country of destination. The client shall bear the costs arising from such alterations.

## Article 3: Dangerous goods

- § 18 Before entrusting consignments of dangerous goods to ICF, it is mandatory to give at least 24 hours' notice.
- § 19 For consignments of dangerous goods, the principal is required to make all the necessary declarations and to comply with all the conditions prescribed by the prevailing national and international regulations, particularly the RID, ADR and CSC international conventions, with a view to taking the special measures required for this type of transport.
- § 20 The principal shall bear all the consequences for failure to make such declarations and non-compliance with these conditions. Furthermore, he shall be responsible for any loss or damage, any delays or costs that may result from the acceptance of these goods, their transport and any related service.

## Article 4: Provision of UTI

- § 21 ICF shall endeavour to meet orders for UTI necessary for transport. Without a formal undertaking on its part, ICF shall assume no responsibility if UTI are unavailable or are provided late or if they are refused in accordance with § 22. Provision of UTI shall entitle ICF to raise a charge or is subject to special conditions determined in each case.
- § 22 The user (principal or ordinary hirer or legally entitled parties) shall inspect the UTI before loading. This inspection must also include checking the working of the refrigerating system of UTI fitted for controlled temperature.  
The equipment may be refused if it is defective or unfit for conveyance of the merchandise to be loaded therein. Failing such refusal, the equipment supplied shall be deemed in good condition and fit for the transport in question. If the refusal is not communicated in the 24 hours (Sundays and public holidays excluded) following the supply of the equipment, the user shall be liable for possible demurrage charges as well as a daily compensation based on the daily rent applicable to this type of UTI, and if applicable, on the daily wagon standage charge.
- § 23 The user shall be responsible for the careful treatment of the equipment placed by ICF at his disposal. He shall be responsible to ICF for any damage to said equipment while it is in his custody or in the custody of entitled parties, and he shall be required to compensate ICF for the replacement value of the UTI in the event of its destruction or loss.  
Any UTI not returned within three months of the date of provision or by the end of the period of hire shall be considered lost. The aforementioned damages comprise direct damage to the equipment and loss of income due to repairs.
- § 24 The user shall make every effort to return the UTI to ICF in good condition, cleaned and, if necessary, disinfected or deodorised, with the motors stopped and the doors closed, either by the receiver after unloading or by the user at the end of the period of hire. If the user fails to comply, ICF shall have the aforementioned work undertaken at the user's expense. A daily compensation corresponding to the daily rent applicable to this type of UTI shall be payable to ICF for late restitution of UTI.

## Article 5: Use of wagons

- § 25 If the principal requires a specific type of wagon or placing of UTI on wagons in a particular fashion, ICF shall endeavour to satisfy such requests without formal undertaking.
- § 26 If the principal or the receiver loads or unloads the UTI from the wagon himself, he shall be required to comply with all the railway regulations and to bear all the consequences of inadequate loading or unloading.
- § 27 If the loading or unloading periods allowed by the tariffs of the railways are exceeded before or after railway transport, the party responsible (principal or receiver) shall pay "demurrage charges" directly to the railways for their wagons or to the wagon owner for privately owned wagons.  
If demurrage charges are debited to ICF by the railways or other wagon owner, because ICF appears as consignor/consignee in the consignment note, ICF shall pass them on to the client.
- § 28 On the other hand, when transport is effected with wagons from the ICF fleet and the loading and unloading periods mentioned in § 27 are exceeded, or if such wagons are delayed in transit through the fault of the principal or the receiver, ICF shall invoice "private wagon standage charges", the rates of which will be communicated to the principal on request.  
Demurrage charges for wagons parked on railway lines shall be based on the prevailing tariffs of the railways.

## Article 6: Condition, loading, storage of UTI

- § 29 UTI shall undergo inspection before they are handed over to ICF by the principal. This is a purely external inspection carried out from the ground with the doors closed. Consequently, ICF is under no obligation to detect possible roof or floor damage or to examine the loading of the goods in the UTI.
- § 30 The principal shall be liable for any consequences arising from the inadequate condition or overloading of the UTI. He shall guarantee to ICF that the UTI and its loading comply with all the applicable standards and regulations and that it is resistant enough to satisfy the requirements both of transport safety and handling.
- § 31 The principal shall bear any consequences of inadequate loading of the UTI or packing of its contents. UTI loaded with goods subject to special regulations or packaging techniques must comply with these regulations or techniques.
- § 32 The principal shall bear any consequences, even indirect, in the event of loss, shortage or theft of goods arising from failure to lock and seal the UTI properly or from a defect in the locks or seals.
- § 33 If UTI are left by the receiver on the installations or wagons after delivery, typically in the case of delivery on a private siding, immediate instructions for their reforwarding shall be given. Storage charges for UTI arising from the absence of instructions shall be passed on by ICF to its client.

## Article 7: UTI fitted for controlled temperature

- § 34 This concerns transport of insulated, refrigerated or mechanically refrigerated UTI. Such transports can be effected with or without temperature supervision and with or without transport supervision. It is understood that the transport of the UTI without temperature or transport supervision is assimilated to the transport of UTI not fitted for controlled temperature.  
The provisions of §§ 29 to 33 shall apply by analogy.
- § 35 Concerning transport of UTI with temperature and transport supervision, this service comprises:
- transport by fast and priority services,
  - supervision of the working of the machinery and level of the temperature required,
  - informing the principal of any irregularity occurring during transport.
- This service applies to:
- all mechanically refrigerated UTI of the self-refrigerating type for which temperature supervision has been requested.
- This service presupposes:
- the possibility of reading the control instruments by a person standing beside the wagon,
  - sufficient mechanical autonomy for the whole duration of the transport.
- § 36 Concerning transport of UTI without temperature supervision but with transport supervision, this service comprises:
- transport by fast and priority services,
  - informing the client of any irregularity occurring during transport.
- This service applies to:
- any insulated, refrigerated or mechanically refrigerated UTI for which transport supervision has been requested.
- § 37 The principal must ensure that
- the machinery is switched on,
  - there are sufficient fuel and additives for the whole duration of the transport, and
  - the temperature is correctly adjusted.

## Article 8: Impediments to transport and delivery

- § 38 If circumstances prevent continuation of transport according to instructions received from the principal, ICF shall take any steps it considers useful or expedient. In all cases, such steps shall be considered as having been taken with the principal's consent. Any additional costs, particularly those incurred in protection or preservation of UTI and their contents, shall be charged to the principal.
- § 39 If impediment to delivery arises, ICF shall notify the principal who, on his own responsibility, must issue instructions to ICF without delay as to the steps to be taken (reforwarding, measures for preserving the goods, etc.). All resultant costs shall be charged to the client.

## Article 9: Responsibility

- § 40 The responsibility of ICF begins with the handing over of the UTI and ends with the unqualified acceptance of the UTI by the receiver. Assessments of damage or loss are only binding on ICF to the extent that ICF has been duly summoned to participate in them.
- § 41 If damage to/loss of UTI and/or goods or detriment occurs and can be localized on the **rail-based portion** of the journey of a combined (multimodal) shipment, the liability of ICF is subject, as the case may be, to the provisions of
- the Berne Convention concerning the International Carriage of Goods by Rail (CIM),
  - the SMGS Agreement between several Central and Eastern European and Asian States concerning international shipments of goods by rail,
  - the national legislation applicable to the railway company, for national rail shipments.

- § 42 If damage to/loss of UTI and/or goods or detriment occurs and can be localized on any other **non-rail-based portion of the journey** (road, non-CIM shipping line, etc.) of a combined (multimodal) shipment, the liability of ICF is subject to the provisions of the Geneva Convention concerning international shipments of goods by road (CMR). The same applies when the portion of the journey in which damage to/loss of UTI and/or goods or detriment have occurred **cannot be determined**.
- § 43 ICF as a forwarding agent under Belgian law is responsible for ensuring that the order issued by the principal in the Transfer Note is executed properly.  
In the event of a **purely financial loss** directly involving the liability of ICF through proven fault in the execution of the aforementioned order, ICF shall be liable for compensation only to a maximum of EUR 100,000 for each proven and documented financial loss.
- § 44 If a delivery period for an entire **multimodal** shipment is guaranteed by a special written agreement, the provisions of the CMR shall apply should the delivery period be exceeded.

## Article 10: Financial provisions

- § 45 All amounts due to ICF are payable on presentation of an invoice. During a period of twelve months from the principal invoice, ICF reserves the right to send an additional invoice for costs unknown at the time of the principal invoice. All taxes, duties and charges applicable to the services provided by ICF shall be stated on the invoice.
- § 46 Except by special agreement, invoices shall be issued in EURO and payable in Basle.  
The bank transfer charges are payable by the client.  
The currency conversions necessary for invoicing are based on the exchange rates applied by the Swiss Federal Railways on the date of the invoice.
- § 47 Invoices are payable without discount or deduction within 30 days of the date of issue.  
Any default in settling within this period shall lead to the invoicing of interest on arrears calculated at the rate of 12 % per annum.  
Any delay in settling shall cause the agreed period to lapse, and all the amounts invoiced shall become payable immediately.  
Setting off claims against payment is not permitted.
- § 48 Without prejudice to § 6, the principal is jointly liable with any freight payer designated by him, and in the event of default in settling by the last mentioned, ICF reserves the right to recover its debt from such principal.
- § 49 ICF reserves at all times the right to require the freight payer designated by the principal or the principal himself to give a guarantee for payments due and to stipulate the form and amount of this guarantee.
- § 50 ICF has a lien on all property, documents and monies handed to it for carriage or other operations, for all debts due from the freight payer designated by the principal, from the principal himself or the owner of the goods.

## Article 11: Claims

- § 51 All claims for damage/loss/detriment shall be submitted within six months of delivery to the receiver.  
All claims for exceeding the delivery period affecting the purely rail-based portion of the journey are to be submitted within 6 weeks of delivery to the receiver.  
These claims should be quantified and submitted in writing, clearly indicate the object of the claim and include a copy or the number of the Transfer Note.  
ICF reserves the right to a six-month period for handling such claims.
- § 52 All claims concerning invoices must be submitted within six weeks of the date of each invoice. ICF shall issue a credit or debit note or a new invoice for any invoice amendment.
- § 53 The submission of a claim does not dispense with settlement of the invoice.

## Article 12: Final provisions

- § 54 The principal is deemed to act validly on his own behalf and on behalf of the legally entitled parties. He expressly recognizes the General Conditions in force at the time of the consignment, which are assumed to be known to and accepted by the client.
- § 55 In the event of non-compliance with these General Conditions, particularly article 10, ICF reserves the right to cancel all offers and agreements and demand payment of all charges, invoices, fees and indemnities due, with effect on the date when notification of such action is sent by ICF.
- § 56 No derogation of these General Conditions shall be binding on ICF unless it is based on a written agreement signed by two Directors of ICF.
- § 57 These General Conditions are governed by Belgian law. Only the courts in the country of the defendant's domicile or registered office shall be competent.
- § 58 These General Conditions are published in Dutch, English, French and German and each version shall have equal validity.

# **intercontainer – interfrigo**

*Intercontainer-Interfrigo (ICF) SA  
Limited Company  
R.C. Brussels No. 342546  
Registered Office:  
Rue de France 85, B-1060 Brussels*

*Head Office:  
Margarethenstrasse 38  
CH-4008 Basle  
Telephone: +41-61-278 25 25  
Telefax: +41-61-278 24 45  
E-Mail: [icf@icfonline.com](mailto:icf@icfonline.com)  
[www.icfonline.com](http://www.icfonline.com)*