

## Terms and Conditions of Lease

**1. LEASE TERM.** The term of lease ("Term") is for the minimum period set forth herein and begins on the date the Trailer is delivered to Lessee ("Delivery Date"). After the minimum period, the Term shall continue on a daily basis until the Trailer is redelivered to Lessor in accordance herewith ("Return Date"). Lessor may require Lessee to return the Trailer at any time by written notice in which event Lessee shall promptly return the Trailer to Lessor, but in no event later than 7 days after receipt of such notice. Lessor may, in its sole discretion, increase all or any of the charges for the Trailer by written notice, with each such increase being effective as of the next billing cycle date.

**2. ACCEPTANCE.** Except as noted on the face page hereof, Lessee's or its agent's execution hereof constitutes Lessee's acceptance of the Trailer in proper repair, mechanical condition and running order, in good and satisfactory condition and acceptable for Lessee's intended use.

**3. PAYMENTS.** Lessee shall pay Lessor all rent, mileage and refrigeration charges and other amounts due hereunder ("Payments") within 30 days of invoice date, without set-off or deduction. Any amount not paid when due shall be subject to a late charge of the lesser of 18% per annum or the maximum legal rate.

**4. MAINTENANCE.** ON A DAILY BASIS, LESSEE SHALL CHECK AND MAINTAIN CORRECT AIR PRESSURE AND ALL OIL, FUEL AND COOLANT LEVELS. Lessor will provide tire and brake replacement for normal wear and tear provided that if this Lease is designated a "net lease", Lessee shall be responsible for tire and brake maintenance and replacement. Lessee shall be solely responsible for delivering the Trailer to Lessor at Lessor's designated location for timely tire and brake replacement. At its sole expense Lessee shall maintain the Trailer, including without limitation any refrigeration unit, in good operating condition and in compliance with applicable local, state and Federal laws, guidelines and regulations, including without limitation Department of Transportation Federal Motor Carrier ("DOT") and state vehicle safety regulations. Lessee's maintenance obligation includes, without limitation, lights, lubrication, brake adjustment, tire rotation and, with respect to refrigeration units, all manufacturers' recommended pre-trip and 90 day preventative maintenance requirements. Lessee shall reimburse Lessor for excessive tire and brake wear and damage or loss due to improper inflation, impact breaks, running flat, or theft. All Trailer maintenance and repair shall be completed to Lessor's reasonable satisfaction in accordance with Lessor's specifications. All replacement or substitution parts shall become part of the Trailer. All tire replacements shall be of like kind, quality and condition. Lessee shall notify Lessor immediately if any hubodometer or refrigeration unit hour clock is removed, damaged or malfunctioning.

**5. INSURANCE.** Lessee shall at its sole cost keep in full force and effect from the Delivery Date until the Return Date, valid and pre-paid Commercial Auto Liability insurance and Commercial Auto Physical Damage or Trucker's Liability insurance and Trucker's physical damage policies satisfactory to Lessor with coverage for: (a) hired autos (trailers) for bodily injury and property damage liability, with a minimum combined single limit of one million dollars per occurrence; (b) hired autos (trailers) for physical damage providing collision and comprehensive coverage with limits equal to the fair market value of the Trailer, as determined by Lessor ("FMV") with Lessor as loss payee and a deductible not exceeding \$2,500; and (c) Commercial General Liability for contractual liability coverage for hold harmless agreements, with a minimum combined single limit of one million dollars per occurrence. Each of policy shall name Lessor as loss payee or as additional insured, as applicable. Lessor will not be liable for loss of, or damage to, any goods, cargo or property transported left in or upon the Trailer. Lessee agrees to hold Lessor harmless from any claims, demands, and liabilities resulting from injury to any person or loss of, or damage to any cargo or property, which arises, from loading, unloading, or for any other reason.

**6. RISK OF LOSS.** From the Delivery Date until Return Date, Lessee shall be solely responsible for all risk of physical damage and/or loss, howsoever caused. Lessor shall have no responsibility for emergency road service of any type. Lessee shall give Lessor immediate notice of and fully cooperate with Lessor in locating the Trailer which has been lost or stolen. In the event a Trailer cannot, in Lessor's opinion, be satisfactorily repaired or was stolen or destroyed, Lessee shall pay to Lessor at such time, an amount equal to 125% of the FMV as of the date of payment. Until paid in full in accordance herewith, this Lease, including Lessee's Payment obligations, shall continue to accrue and remain in full force and effect.

**7. ACCIDENTS.** Lessee agrees to notify Lessor immediately by telephone and by facsimile within 3 days of the occurrence of an accident involving the Trailer, and/or an event that may give rise to claims against Lessor, and to provide Lessor with a detailed written report of the accident, along with copies of all reports, including police reports, in Lessee's possession or control. Lessee shall render all assistance requested by Lessor and the insurance carrier in the investigation, prosecution and/or defense, or litigation of any claims or suits and shall do nothing to impair or invalidate any applicable insurance coverage.

**8. LICENSING.** Lessor will maintain licensing and registration in the state in which the Trailer was licensed as of the Delivery Date. Lessee assumes all responsibility and expense for any additional licenses, registrations, titles, permits and certificates required to operate the Trailer. Lessor will have the right to pay any fines or discharge any liens or encumbrances asserted against Lessor or the Trailer or resulting from Lessee's failure to pay any traffic citation, assessment or charge for licenses, permits or taxes for which the Lessee is responsible under this Lease and Lessee will reimburse Lessor for such payments and Lessor's reasonable administrative fees.

**9. USE.** Lessee shall cause all persons using the Trailer to comply with manufacturer's recommended loading limitations and shall prevent excessive and undue impact and concentrated loading. Lessee shall not: (i) permit the Trailer to be used in violation of any applicable law, regulation, order or rule ("Applicable Law"), (ii) permit the Trailer to be used in any manner which would deprive Lessor of the benefit of any insurance or (iii) permit the Trailer to be used for the transportation or storage of unprotected corrosive substances, hazardous wastes or products, high density, badly secured materials, bulk or unpacked commodities including grains or seeds which may corrode, oxidize, dent, puncture, contaminate, stain or damage the Trailer in any manner. Lessee shall not use the Trailer to transport or store any cargo or material for which Lessee does not have operating authority and/or cargo and liability insurance. Lessee agrees to purchase from Lessor the Trailer used for any of the purposes prohibited by this paragraph at 125% of the FMV of comparable equipment in good condition. Lessee warrants that only employees or qualified agents of Lessee will operate the Trailer, that all such operators have valid licenses to operate the Trailer and that all such operators are drug and alcohol free. Lessee agrees to indemnify and hold harmless Lessor and its assigns from any and all losses or liabilities of any nature whatsoever, including attorneys' fees, that may arise from use or possession of the Trailer in violation of Applicable Law or otherwise, which obligation shall survive termination. Lessee agrees to use any Trailer designated as a storage trailer for storage purposes only.

**10. OWNERSHIP.** This Lease is a lease and not a sale and Lessee shall not by payment of rent acquire any right, title or equitable interest in the Trailer. Lessee shall not create, incur, assume or suffer to exist any liens or encumbrances on the Trailer for any reason including on account of repair, storage, or any other service or transaction whatsoever. Lessor reserves the right to permanently display, and Lessee agrees not to remove, identification of Lessor or its assigns. Lessee shall provide Lessor and its agents free access to the Trailer and to Lessee's records relating to the Trailer wherever located at all reasonable times for the purpose of inspection and for any other purpose contemplated in the Lease.

**11. RETURN.** Lessee shall return the Trailer during normal working hours to the delivery location or such other location within 50 miles thereof as Lessor may direct ("Return Location"). The Trailer shall be returned in good operating condition, with no damage or improper repairs, free and clean of all debris, signage and markings, ordinary wear only excepted. If Lessee fails to return the Trailer to the Return Location in the required return condition, Lessee shall pay to Lessor its the actual or

estimated repair and repositioning costs, as reasonably determined by Lessor. A Trailer requiring repair or repositioning will remain on lease and subject to rent until repaired and/or repositioned. If the hubodometer or refrigerated van clock has failed to function properly, mileage and/or refrigerated running charges will be based on the higher of Lessee's prior history with Lessor or 300 miles/day and 12 hours/day. If upon the return of a refrigerated Trailer the fuel level is less than at delivery, Lessee shall pay Lessor a refueling charge equal to such deficiency times 125% of then current market rates. All tire replacements shall be of like-kind and quality.

**12. DEFAULT.** Each of the following is a "Default": (a) Lessee fails to pay any amount when due, (b) Lessee fails to maintain insurance in accordance herewith, or (c) Lessee fails to perform any of its other obligations or breaches any representation, covenant or warranty under this Lease or in any other agreement with Lessor, and such failure continues for 10 days after notice. Upon Default, Lessor may: (a) cancel or terminate this Lease or any or all other agreements with Lessee without terminating Lessee's obligations thereunder; (b) pay all amounts required to be paid or perform or cause to be performed all obligations required to be performed by Lessee hereunder and charge Lessee as additional rent the amount paid or the reasonable value of all services performed therefore together with interest thereon at the late charge rate; (c) require Lessee to deliver the Trailer to Lessor at the Return Location or such other location as Lessor shall reasonably require; (d) peacefully repossess the Equipment without court order and Lessee waives any claims against for damages or trespass or any other reason; and (e) exercise any other right or remedy available at law or in equity. Lessee agrees to pay Lessor's costs of enforcing this Lease, including attorneys' fees and costs. All remedies are cumulative, are in addition to any other remedies provided for by law or equity and may be exercised either concurrently or separately. Any failure or delay by Lessor to exercise any right shall not operate as a waiver of any right, other or future rights or to modify the terms of this Lease. If Lessor takes possession of the Trailer with other property contained in, upon or attached thereto, Lessor may take possession of such property and sell, release or otherwise dispose of the Trailer, whether or not in Lessor's possession, in a commercially reasonable manner at public or private sale with notice to Lessee, with the right of Lessor to purchase and apply the net proceeds of such disposition to Lessee's obligations, with Lessee remaining liable for any deficiency.

**13. DISCLAIMER.** LESSOR IS NOT A SELLER, SUPPLIER, MANUFACTURER, DEALER, OR AGENT THEREOF. LESSOR HAS NOT MADE, AND HEREBY DISCLAIMS LIABILITY FOR, AND LESSEE HEREBY WAIVES ALL RIGHTS AGAINST LESSOR RELATING TO, ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH RESPECT TO THE TRAILER OR ITS CONDITION, EITHER EXPRESS OR IMPLIED, ARISING BY APPLICABLE LAW OR OTHERWISE, INCLUDING ANY OF THE SAME RELATING TO OR ARISING IN OR UNDER (a) MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE, (b) COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, OR (c) TORT (WHETHER OR NOT ARISING FROM THE ACTUAL, IMPLIED OR IMPUTED NEGLIGENCE OF LESSOR OR STRICT LIABILITY) OR APPLICABLE LAW, INCLUDING FREEDOM FROM LATENT DEFECTS (WHETHER OR NOT DISCOVERABLE), CONDITION, MANUFACTURE, DESIGN, SERVICING OR COMPLIANCE WITH APPLICABLE LAW. EXCEPT AS PROVIDED IN SECTION 2, EACH TRAILER IS LEASED "AS IS". Lessor is not responsible for any direct, indirect, incidental or consequential damage to or losses resulting from the possession, operation or use of the Trailer including without limitation, cargo loss or damage, loss of driver's time, loss or interruption of or damage to business or profits, or for other damages of any nature caused by interruption in availability of the Trailer.

**14. INDEMNIFICATION.** Unless caused solely by Lessor's gross negligence, Lessee will indemnify and hold harmless Lessor, its officers, directors, agents, servants and employees from any and against all tickets, fees, claims, liens, suits, proceedings, costs, losses, expenses, damages and liabilities, including but not limited to attorneys' fees and court costs, arising in connection with this Lease or the Trailer, including without limitation any damage caused by latent and/or other defects whether or not discoverable by Lessor or Lessee. Such indemnification shall survive the termination or expiration of the Lease. Lessee will on demand reimburse Lessor for all tickets and fees paid by Lessor plus Lessor's standard administrative charge.

**15. CREDIT.** Lessee hereby authorizes Lessor to conduct a personal financial investigation of Lessee and to obtain any information required for the purpose of a credit check from any sources and each such source is hereby authorized to provide such information.

**16. TAXES.** Lessee shall pay when due or reimburse Lessor for all taxes, fines, and penalties relating to the use or ownership of the Trailer or to this Lease, now or hereafter imposed, or assessed by any taxing authority, which obligation shall survive termination.

**17. MISCELLANEOUS.** This Lease is binding on the parties, their successors, legal representatives and permitted assigns. Lessee shall not assign, sublet or transfer this Lease or the Trailer and any purported assignment or subletting shall be void. Lessor may assign this Lease in part or in whole. This Lease shall be governed by the laws of Pennsylvania (without regard to the conflict of laws principles). Lessee consents to the non-exclusive jurisdiction of any local, state or federal court located in Chester County or the Eastern District of Pennsylvania as applicable. **THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS LEASE.** This Lease constitutes the entire agreement between the parties and supersedes all prior agreements. If any provision of this Lease is unenforceable, illegal or invalid, the remaining provisions shall continue to be effective. This Lease may not be modified or amended except by a writing signed by Lessee and an officer of Lessor. Lessee agrees, however, that Lessor is authorized, without notice, to supply missing information or correct obvious errors in the Lease Schedule. All notices shall be in writing and shall be delivered to the appropriate party personally, by private courier, by confirmed facsimile transmission or by mail, postage prepaid, at its address shown herein or to such other address as directed in writing by such party. Time is of the essence in this Lease.

**18. FIRE, THEFT & COLLISION DAMAGE WAIVER ("CDW").** If Lessee purchased CDW by initiating the CDW section on the face page, subject to the terms of this Section, Lessee shall not be responsible to Lessor for fire, theft or collision damage to the trailer in excess of the deductible, unless such damage or loss results from non-compliance with this Lease. CDW shall only be available if Lessee notifies Lessor in writing of the loss within 48 hours of occurrence, provides Lessor with a copy of the police report and such other information as Lessor may request and has paid all past due invoices. Rent shall not be abated until each of the foregoing conditions is satisfied and the deductible has been paid to Lessor. Exclusions: CDW does not cover tire theft, driver negligence or intentional misconduct, trailer abuse, improper loading, unrelated damage, collision with objects other than motor vehicles, criminal conduct, or towing, storage, clean-up or load transfer. CDW is a release from damage liability, is limited to trailer value and does not constitute insurance. Lessor may modify or cancel CDW on 10 days written notice, in which event Lessee shall provide casualty insurance in accordance with Section 5 hereof.