



## Carolina Containers & Transport Lease Agreement

That the LESSOR lets and leases to the LESSEE and the LESSEE hereby leases and hires from the LESSOR, the following described property, to wit: Any trailer or container, hereinafter called UNIT(S), leased by LESSEE

- 1. TERM** - The terms and conditions of this Agreement shall become effective upon the date of execution of this Agreement. The term "Day" used in this Agreement is a calendar day or any portion thereof.
- 2. DELIVERY AND RETURN OF UNIT(S)**
  - a. Lessee acknowledges receipt of any UNIT(S) in good condition as evidenced conclusively by its execution of a clean UNIT(S) condition report prescribed by Lessor. Lessee agrees to redeliver the UNIT(S) to Lessor in the same condition as received, normal wear and tear excepted, identifying and acknowledging any changes in the condition of the UNIT(S) subsequent to its delivery to Lessee. Changes which could have been prevented by normal maintenance shall not constitute normal wear and tear.
  - b. Unless otherwise specified in this Agreement, Lessor or its agents shall deliver the UNIT(S) to Lessee on the date and at the DELIVERY SITE listed on the DELIVERY RECEIPT, and Lessee will redeliver the UNIT(S) to Lessor at such DELIVERY SITE at the expiration or earlier termination of this lease. Unless otherwise specified in this Agreement, Lessor or its agents will transport the UNIT(S) to and from the DELIVERY SITE. Handling, drayage and associated charges shall be invoiced to Lessee.
  - c. Lessee will let Lessor know when UNIT(S) needs to be picked up. On that date if UNIT(S) is not cleaned out inside and outside and if UNIT(S) is not accessible to driver, a dry run charge equivalent to DELIVERY RATE will be invoiced to Lessee.
- 3. PAYMENT, RENTAL AND OTHER CHARGES**
  - a. Lessee agrees to pay all rental charges in the amounts set forth on any INVOICE and all applicable taxes for the UNIT(S) from the day of the commencement date of any DELIVERY RECEIPT up to and including the day the UNIT(S) is returned to Lessor.
  - b. All rental charges shall be payable by the date on the invoice. If rental is not paid within 10 days of the date due, Lessor may, without prejudice to any other available remedy, charge as additional rental, a late charge of \$50 for each 10 days late.
  - c. Lessee agrees to remit and keep a valid credit card number on file. If invoice is not paid within 30 days from invoice date Lessor reserves the right to make payment for full amount of invoice with credit card on file.
  - d. There will be no proration or return of rent in the event the UNIT(S) is surrendered to Lessor prior to the expiration of the last rental month.
  - e. If any check is returned for insufficient funds, a charge of 50% of the invoiced amount will be assessed against Lessee.
- 4. USE OF THE UNIT(S)**
  - a. Lessor has made no warranties, express or implied, including WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE with respect to the UNIT(S), maintenance or repair work.
  - b. Lessor reserves the right to place upon the UNIT(S) the name and logo of Lessor and registered owner and Lessee agrees not to remove said name and logo.
  - c. Lessee shall not apply to the UNIT(S) any markings or signs of any description whatsoever, unless previously agreed to in writing by Lessor.
  - d. Lessee shall not repair, repaint, remark or modify the UNIT(S) without prior written approval of Lessor.
  - e. Lessee shall not store any hazardous, corrosive, contaminating or radioactive products that will soil, stain, taint, pollute, defile, make foul, infect by contact or association, or expose one to risk or harm of any kind. If the UNIT(S) is determined to have been used to store any such products, Lessee will be required to purchase the UNIT(S) at 100% of the replacement value.
  - f. Lessor shall not be held liable for losses or damages, direct or consequential, to any product left, stored, or loaded in or upon the UNIT(S) and Lessee hereby agrees to indemnify and hold Lessor harmless from all claims arising out of any such loss or damage, including loss of profits or other alleged consequential damages.
  - g. Lessee shall not move the UNIT(S) from the site delivered to without Lessor's prior written consent.
- 5. REPAIR AND MAINTENANCE**
  - a. Maintenance - Upon being notified of any changes in the condition of the UNIT(S) which Lessor, at its sole discretion, shall determine were caused by normal wear and tear, Lessor shall arrange for the necessary repairs and maintenance to be carried out by a repair facility approved by Lessor. Lessee shall provide and/or procure for Lessor's agents reasonable access to the UNIT(S) by Lessor arising out of Lessee's failure to notify Lessor of the need for maintenance of the UNIT(S).
  - b. Damage - Lessor shall inspect the UNIT(S) and notify Lessee of the estimated cost of repairs to the damaged UNIT(S), as estimated by a Lessor approved repair facility. Lessee shall promptly forward to lessor payment in the amount of such estimated repair costs. At Lessor's option, Lessor may either retain such payments without making any repairs to the UNIT(S) or apply such amounts to the repair of the UNIT(S) in accordance with such estimate. In the event the actual cost of such repairs, as invoiced to Lessor by the repairing facility, shall exceed such estimated cost, Lessee shall be obligated to pay such difference on receipt of an invoice for the entire cost for such repair.
  - c. Loss or Total Damage - If the UNIT(S) is lost or destroyed or sustains damage, which in Lessor's sole discretion, renders the UNIT(S) a total loss, Lessor shall issue its invoice to Lessee for the Replacement Value of the lost or destroyed UNIT(S). Rental charges for UNIT(S) shall continue unabated until Lessor receives payment in full of the Replacement Value of the UNIT(S).

## **6. PREMISES**

- a. Lessor shall be allowed to enter upon the UNIT(S) Site at any reasonable time to deliver, locate, relocate, recover, inspect, maintain and repair the UNIT(S). If Lessee defaults in this obligation, Lessee shall indemnify Lessor against all loss, damage, costs and expenses which Lessor may sustain due to Lessee's failure to fulfill its obligations under this section.
- b. Lessee warrants that the DELIVERY SITE is suitable for the UNIT(S) and that Lessor's delivery vehicles and UNIT(S) shall have reasonable access to enter and operate safely to deliver and pick up the UNIT(S). Lessee releases and agrees to hold harmless and defend Lessor against any and all claims for damages, costs, claims or liabilities, both direct and indirect, to the roadways, grounds, building and personal property in, on, around or across the DELIVERY SITE location, for any other claim associated with on-site delivery or pickup of the UNIT(S), or for any damages arising from Lessee's failure to provide a suitable site for the UNIT(S). If Lessor's vehicles and UNIT(S) cannot operate safely to deliver the UNIT(S), or if at the time of delivery, the site is found to be an unsuitable location for the UNIT(S), Lessee agrees to pay to Lessor all delivery and pickup charges, and all additional handling costs.
- c. Lessee shall punctually pay or shall procure the payment of all registration charges, license fees, rent, assessments, taxes and any other fees or charges payable in respect to the premises upon which the UNIT(S) may be placed or kept. Upon demand, Lessee will produce to the Lessor the last receipts for all such payments. If Lessee defaults in the foregoing obligations, Lessor may at its discretion make any or all of such payments and recover the amount thereof from the Lessee as additional rent hereunder. If any lien attaches to the UNIT(S), by virtue of Lessee's failure to comply with this provision, Lessee is obligated to immediately discharge such lien, and shall indemnify and hold Lessor harmless from any loss or damage arising out of Lessee's failure to promptly discharge such liens.
- d. Lessee agrees to comply at its own expense with all state, local, or federal laws, regulations, and ordinances, in connection with the use, occupancy, operation, possession, maintenance, location or premises upon which UNIT(S) may be situated, including, without limitation, obtaining all necessary planning consents, placards, licenses, permits, fire and building approvals. Any failure by Lessee to comply with such laws, regulations or ordinances resulting in Lessee's inability to perform under this Agreement will constitute a default by Lessee, and will subject Lessee to the costs and penalties set forth in Paragraph 10 hereunder. Lessor shall have no responsibility for compliance with any such laws, regulations or ordinances on Lessee's behalf.
- e. The Lessee will promptly notify Lessor in writing of any change in Lessee's address from that specified on the final page of this Agreement.

## **7. INSURANCE**

- a. Lessee will maintain, at its own expense, adequate property insurance covering the UNIT(S) in an insured amount equivalent to 100% of the Replacement Value of all UNIT(S) leased, and third party liability insurance in an amount and on terms which are satisfactory to Lessor. Such insurance shall be issued to Lessee and shall name Lessor as additional insured and direct loss payee. At the request of Lessor, insurance certificate to this effect shall be furnished to Lessor. Said insurance shall be maintained by Lessee until all UNIT(S) leased hereunder is redelivered to Lessor.
- b. LESSEE ACKNOWLEDGES AND UNDERSTANDS THAT LESSOR DOES NOT ALLOW AND WILL NOT INURE OR GUARANTEE AGAINST LOSS OF LESSEE'S PROPERTY STORED IN THE UNIT(S), AND LESSOR HAS NO LIABILITY WHATSOEVER AS TO CLAIMS FOR LOSS OR DAMAGE TO SUCH PROPERTY. LESSEE HEREBY WAIVES ANY CLAIMS WHATSOEVER AGAINST LESSOR FOR LOSS OF AND DAMAGE TO ANY PROPERTY STORED IN UNIT(S) LEASED HEREUNDER.

## **8. ASSIGNMENT, SUBLETTING, LIENS, ETC.**

- a. Lessee shall not sell, assign, sublease, pledge, mortgage, charge, lend, encumber, or part with possession of the UNIT(S) or create or allow to be created any lien on the UNIT(S). In the event of any breach of this provision by Lessee, Lessee shall take all action necessary to have such charge, encumbrance or lien immediately removed and discharged. If Lessee fails to perform its obligations under this section, Lessor may, at its discretion, pay mind to any third party any sum necessary to procure the release of the UNIT(S) from any charge, encumbrance, or lien and to recover such sum from the Lessee forthwith without obligation on Lessor's part to question the reasonableness of the charges assessed against the UNIT(S).
- b. Lessee acknowledges and agrees that all of its rights under this agreement in and to the UNIT(S), including Lessee's right to possession of the UNIT(S), are subordinate, junior and subject to the rights and claims of Assignee, its successors and assigns, against the UNIT(S) under any instrument, lease, mortgage or title retention or other security agreement, whether now existing or hereafter created, including but not limited to the right of Assignee to take possession of the UNIT(S). Lessee consents and agrees to the assignment to Assignee of all (i) monies due or to become due to Lessor under the Lease and (ii) all rights and privileges of Lessor under the Agreement. Lessee promises and agrees to settle all claims against Lessor directly with Lessor and hereby waives, relinquishes and disclaims as to Assignee all counterclaims, rights of set-off, and defenses Lessee may have against Lessor, including any right to withhold payment of or to refrain from paying, any monies that are due or to become due under the terms of the Agreement, except that Lessee shall not be liable to Assignee for monies paid to Lessor in accordance with the terms of the Agreement prior to the time Assignee notifies Lessee to pay Assignee directly. Thereafter, Lessee agrees to pay directly to Assignee all monies owing under the Agreement. Lessee represents that, except as stated in the Agreement, it has not prepaid any rentals or other monies owing under the Agreement, and no deposits have been made. Lessee agrees and acknowledges that Assignee has not assumed and will not have any obligations or liabilities under the Agreement to Lessee or to any other person by reason of the aforementioned assignment or otherwise. Lessee agrees that it will not, without Assignee's prior written consent: (i) prepay rentals or other monies owing under the Agreement, (ii) modify or amend the Agreement, (iii) assign or sublet its rights under the Agreement or in the UNIT(S), (iv) exercise any of its rights under the Agreement which are exercisable only with the consent of Lessor, or (v) return the UNIT(S) to Lessor, Lessee hereby acknowledging and agreeing to hold the UNIT(S) as bailee for Assignee for the purpose of perfecting Assignee's lien, title retention and/or security interest in the UNIT(S) as against Lessor and its creditors. Lessee represents that it has no purchase or renewal option concerning the UNIT(S) other than as stated in the Agreement.

## **9. REDELIVERY OF THE UNIT(S)**

Lessee shall redeliver the UNIT(S) to Lessor empty of all materials and contents, and in good condition, repair and working order, broom clean and suitable for immediate reuse by another lessee, ordinary wear and tear excepted.

Lessor shall inspect the UNIT(S) upon redelivery by Lessee, and shall prepare an UNIT(S) condition report describing the condition of the UNIT(S), which Lessee shall execute. Lessor's UNIT(S) condition report shall be conclusive as to any damage noted thereon with respect to redelivered UNIT(S). If the UNIT(S) is damaged when redelivered to Lessor, Lessee shall pay to Lessor the cost of all damages noted on the UNIT(S) condition report together with additional rental charges for the period necessary to perform related repairs.

If Lessee fails to remove its property or to clean the UNIT(S) prior to redelivery to Lessor, Lessor may remove any property left by Lessee in the UNIT(S), place such property in storage at the risk and expense of Lessee, and clean the UNIT(S). Any additional costs incurred by Lessor to remove, store, or clean the UNIT(S), will be for Lessee's account and may be deducted by Lessor from the Security Deposit, or immediately collected from the Lessee.

Any costs or expenses incurred by Lessor in removing property stored in the UNIT(S) prior to pickup and transfer of possession, including any additional UNIT(S) charges and labor, may be deducted by Lessor from any security deposit or immediately collected from the Lessee.

## **10. DEFAULTS AND REMEDIES**

a.If Lessee 1) fails to pay any sum when due hereunder or under any other lease agreement between Lessor and Lessee, 2) fails to perform any other covenant, condition or any other obligation under this Lease or under any other Lease agreement between Lessor and Lessee, 3) suffers any distress, execution or other legal process which has the effect of a levy on any UNIT(S) leased hereunder, or 4) ceases doing business as an ongoing concern, becomes insolvent, commits an act of bankruptcy or becomes the subject of any proceedings under any state or federal legislation for the protection of debtors, Lessor may, without notice and without relieving Lessee of its obligations hereunder, without terminating this Agreement, declare the balance of the rental to be due and payable, deny Lessee access to the use of the UNIT(S) (Lock Up) free of any claims of Lessee, and charge appropriate fees associated with the Lock Up and resolution of the Lock Up until such time as the Lessee remedies the item(s) listed above (points 1 to 4) to Lessor's satisfaction.

b.If Lessee 1) fails to pay any sum when due hereunder or under any other lease agreement between Lessor and Lessee, 2) fails to perform any other covenant, condition or any other obligation under this Lease or under any other Lease agreement between Lessor and Lessee, 3) suffers any distress, execution or other legal process which has the effect of a levy on any UNIT(S) leased hereunder, or 4) ceases doing business as an ongoing concern, becomes insolvent, commits an act of bankruptcy or becomes the subject of any proceedings under any state or federal legislation for the protection of debtors, Lessor may, without notice and without relieving Lessee of its obligations hereunder, terminate this Agreement, declare the balance of the rental to be due and payable, demand and retake possession of the UNIT(S), using any force deemed necessary, free of any claims of Lessee, and avail itself of any other remedies available to it by contract, at law or in equity.

c.If this Agreement is terminated under breach of section 10 DEFAULTS AND REMEDIES, Lessee shall no longer be in possession of the UNIT(S) with Lessor's consent, and the rental charges due hereunder shall increase to twice the spot lease rates charged by the Lessor at the time of termination. Lessor may, without notice, repossess the UNIT(S), and for that purpose, Lessor, its agents or employees may, without previous notice, enter the premises on which the UNIT(S) is believed by the Lessor to be situated and retake possession of the UNIT(S) leased hereunder. Lessee hereby waives any and all rights to a judicial hearing prior to Lessor's repossession of the UNIT(S).

d.Lessee shall continue to pay rental charges for the UNIT(S) until (i) the UNIT(S) is redelivered in the same condition as received, normal wear and tear excepted, or (ii) the UNIT(S) is repaired and fit for subsequent rental, or (iii) settlement for the UNIT(S) is made. If Lessor retakes possession of the UNIT(S), Lessee authorizes Lessor to: 1) take possession of any property in, on or attached to such UNIT(S) which is not the property of Lessor, and Lessor may without liability for its care or safekeeping, place such property in storage at risk and expense of Lessee or 2) remove any property in, on or attached to such UNIT(S) which is not the property of Lessor, and Lessor may without liability for its care or safekeeping, place such property on the ground at the UNIT(S) Site.

e.Termination shall not relieve Lessee of any liabilities or obligations incurred prior to such return, repair or settlement and Lessee shall at all times remain fully liable for reasonable damages as provided by law, and for all costs and expenses incurred by lessor on account of such default, including all costs to recover the UNIT(S), legal costs and reasonable attorneys' fees. Nothing in this paragraph shall be construed to waive any legal, contractual or equitable remedy or relief available to Lessor.

f.Without in any way limiting the obligations of Lessee under this Agreement, Lessee hereby irrevocably appoints Lessor as the agent and attorney in fact of Lessee, with full power and authority, at any time when Lessee is obligated to delivery possession of any leased UNIT(S) to Lessor, to demand and take possession of such UNIT(S) in the name and on behalf of Lessor, from whomever shall be at the time in possession of such UNIT(S).

## **11. LIMITATION OF WARRANTIES AND LIABILITY**

a. The UNIT(S) is leased as is. As long as Lessee is not in default of this Agreement, Lessee shall have quiet possession of the UNIT(S). Except as to quiet possession, Lessor gives no warranties of any kind whatsoever with respect to the UNIT(S), its condition or performance, its merchantability, or its fitness for a particular purpose.

b. Lessee's obligations under this Agreement are absolute and shall not be affected by any circumstance or event beyond Lessee's control of whatever nature.

c. Under no circumstances shall Lessor be liable, in contract, tort or otherwise, for any direct, indirect, special, consequential or incidental loss or damage arising from breach or non-performance of any of its obligations under this Agreement, or from the supply or use of the UNIT(S).

d. Lessor shall under no circumstances be liable for loss or damage of any kind to Lessee's property stored within the UNIT(S) while in the care, custody and control of Lessee.

## **12. INDEMNITY**

Lessee agrees to indemnify and hold Lessor harmless against any loss or damage Lessor may sustain as a result of any damage to or loss of the UNIT(S) due to collision, fire, lightning, theft, explosion, flood, windstorm or Act of God, or any loss, property damage or bodily injury sustained by any other person arising, in whole or in part, from the use or condition of the UNIT(S) while in the possession of Lessee, or the

failure of Lessee to maintain the UNIT(S) as provided under this Agreement. Lessee agrees to indemnify and hold Lessor harmless from all claims, lien or liability arising from work performed or for materials supplied in connection with Lessee's maintenance of the UNIT(S) and from any loss of or damage thereto and from any loss, penalty and expense, including attorney's fees and disbursement, resulting from work performed or for materials supplied in connection with Lessee's operation or maintenance of the UNIT(S) and from any loss of or damage thereto and from any loss, penalty and expense, including attorney's fees and disbursement, resulting from, but not limited to, the storage, maintenance, use, repair, loading, or unloading of the UNIT(S) and to indemnify and hold Lessor harmless from all fines, forfeitures, seizures, penalties and liabilities that may arise from any infringement or violation of any such law or regulation by lessee or its employees.

**13. NOTICES**

All billings, payments and written notices from either party to the other shall be given in writing.

**14. TAXES, FEES AND FINES**

Lessee assumes all responsibility for, and promptly will pay when due all sales and use taxes and other direct taxes imposed by the U.S. Government, any state government, county, city or other taxing authority for property, excise and gross receipts, license and registration fees assessed or assessable by a taxing authority and/or allocated by Lessor on either an individual or prorated basis for the UNIT(S) based on purchase price, value, possession, use situs, rentals, delivery or operation thereof, but excluding any federal or state taxes relating to Lessor's income. In addition, Lessee shall pay all costs (including attorney's fees and disbursements) incurred by Lessor in enforcing any of the terms, provisions, covenants and indemnities provided hereunder.

**15. GENERAL**

- a. This lease is binding upon the parties, their successors and assigns and shall be construed and interpreted with the laws of the State of North Carolina.
- b. Lessee waives the exercise of any and all existing and future rights of set-off or counterclaims against the rental charges or other payments due to Lessor under this Agreement, regardless of the rights and claims which the Lessee may have against the Lessor or any other party, which rights Lessee agrees to assert in separate proceedings.
- c. If any part or provision of this Agreement is found to be invalid or unenforceable, the invalidity or unenforceability of such part or provision shall not affect the remaining parts or provisions of this Agreement, which shall continue in full force and effect.
- d. Any forbearance by Lessor to enforce its rights under the Agreement in the event of a default by Lessee hereunder shall not constitute a waiver of Lessor's rights, nor shall forbearance waive Lessor's rights with respect to any other failure by Lessee to comply strictly with the terms of the Agreement.
- e. This agreement contains the entire agreement between the parties and may only be amended, modified or changed by written agreement, specifically purporting to amend this agreement executed by duly authorized representatives of parties hereto.

Lessee Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Carolina Containers & Transport

3608 S. Wilmington Street, Raleigh, NC 27603