

A&M Cold Storage, LLC dba A&M Cold Storage & Trailer Leasing  
Standard Equipment Interchange, Terms and Conditions

Agreement # \_\_\_\_\_

**1. Term.** This transaction is a rental agreement and not a sale. The parties understand and agree that Lessee does not acquire hereunder, by payment of said rental, any right, title, or interest in or to said equipment, except the right to possess and use said equipment, provided Lessee shall not be in default of performance hereunder. If the owner of the equipment is other than the Lessor, then the Lessee under this Agreement shall become sub-lessee and be subject and subordinate to the rights of the owner or Lessor of the equipment, including the owner's rights of repossession. Lessor reserves to itself the right to place upon each unit of equipment leased hereunder the name of the Lessor and owner, and Lessee agrees not to remove said words or permit or suffer any other person to do so.

**2. Insurance.** Lessee agrees, at its own expense, to provide and maintain at all times during the term of this Agreement: **GENERAL LIABILITY:** This coverage is required with a limit of not less than \$2,000,000 each occurrence limit with Lessor named as Additional Insured. Waiver of Subrogation in favor of the Lessor is also required. Lessee will be responsible for and will indemnify, defend and hold Lessor harmless from any and all claims, costs, expenses, damages and liabilities (including strict liability) arising from or pertaining to the possession, ownership, maintenance, condition, use or operation of the equipment, whether or not covered by insurance and/or in excess of the limits above. The occurrence limit may be satisfied by the primary policy alone or by the combination of the primary policy limit and the umbrella or excess policy limit. **AUTO LIABILITY** (Required if the trailer is moved, hauled, or operated anywhere other than the original location) : Auto liability insurance covering the equipment with a limit of not less than \$2,000,000 for bodily injury and property damage resulting from any one accident, except that in the event Lessee transports any substances which are classified as hazardous substances by the United States Department of Transportation, the minimum amount of insurance required hereunder shall be \$5,000,000 for bodily injury and property damage resulting from any one accident with Lessor named as Additional Insured. Waiver of Subrogation in favor of the Lessor is also required. Contingency coverage will not be accepted under any circumstances. Lessee will be responsible for and will indemnify, defend and hold Lessor harmless from any and all claims, costs, expenses, damages and liabilities (including strict liability) arising from or pertaining to the possession, ownership, maintenance, condition, use or operation of the equipment, whether or not covered by insurance and/or in excess of the limits above. The occurrence limit may be satisfied by the primary policy alone or by the combination of the primary policy limit and the umbrella or excess policy limit. **PHYSICAL DAMAGE** (Required but can either be purchased from a third party or through Lessor and the cost will be built into the monthly rate): Lessee agrees, at its own expense, to provide and maintain at all time during the term of the Agreement, physical damage insurance covering the equipment for loss, destruction, collision, fire, theft and causes customarily covered by comprehensive physical damage and combined additional coverage insurance, for the stipulated loss value of the equipment. Lessor shall be named as Loss Payee with respect to the leased equipment. Lessee will be responsible for and will indemnify, defend and hold Lessor harmless from any and all physical damage to or loss of the equipment from any cause whatsoever, regardless of the care, custody and control of the equipment or whether such loss or damage is covered by insurance and/or in excess of the limits above. In the event of loss or irreparable damage, Lessee's responsibility shall include the towing and storage of the damaged equipment, together with the stipulated loss value of the equipment in the pre-casualty condition of the equipment and all of Lessor's costs and expenses relating thereto. Lessee shall provide Lessor with prompt, within 24 hours, written notification of any accident or other event involving the Vehicle that may give rise to claims against Lessor.

**CERTIFICATE OF INSURANCE:** Lessee shall supply Lessor a copy of the valid insurance certificate showing evidence of coverage listed above. If an umbrella or excess policy is used to meet the General Liability and Auto Liability limit requirements, the Additional Insured and Waiver of subrogation requirements apply to the umbrella coverage as well. If any such policy shall be cancelled or materially changed, such cancellation or change will not be effective until thirty (30) days after written notice thereof to the Lessor. Lessor needs to be listed as Certificate Holder on such certificate as follows: A & M Cold Storage LLC dba A & M Cold Storage & Trailer Leasing, PO Box 86, Minster, OH 45865.

**3. Regulations.** Lessee agrees to comply with all laws and regulations of all state, federal or local governments or agencies which affect the use, operation or maintenance of the equipment, and to indemnify and hold harmless Lessor or Lessor's assignee from any and 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 or by any other person, or that may result from the use, possession, operation or condition, of any of the equipment. Lessee further agrees to indemnify and save harmless Lessor and Lessor's assignee from any and all claims, liens or liability arising from work performed or materials supplied in connection with the operation or maintenance of any of the equipment and from loss of or damage thereto and from and against all loss, penalties, and expenses, including attorney's fees, however arising because of, but not limited to the storage, maintenance, use, repair, loading, unloading or operation, or alleged use or operation, of any of the equipment therein or thereon. Lessee further agrees to indemnify and save Lessor harmless from any loss, cost or expense of any nature, and from any liability (including strict liability) to any person on account of any damage to person or property arising out of any failure of Lessee to comply in any respect with and perform any of the requirements and provisions of this Agreement.

**4. Taxes.** In addition to payment of rentals, and any other charges, Lessee agrees to pay all: (a) Taxes levied against or based upon the value of the equipment leased hereunder or its use, based upon the amount of rentals to be paid hereunder. The term "taxes" includes all taxes, charges, and fees (except income taxes) (b) Costs and expenses (including attorney fees where recovery of same is not prohibited by law) incurred by Lessor in enforcing any of the terms, provisions, covenants, and indemnities provided in this Agreement. Interest will be due and payable at 18 percent per annum or the maximum legal amount, whichever is less, for all amounts unpaid after twenty (20) days from the invoice date. In the event Lessee shall fail to pay Lessor any amount due under this Agreement within twenty (20) days from the invoice date, Lessor shall have the immediate right to discontinue, without notice to Lessee, all maintenance, inspection, and repair responsibilities otherwise required of Lessor pursuant to this Agreement.

**5. License.** Any trailer leased hereunder contains a valid license for the state indicated thereon. Lessee assumes all responsibility for any and all licenses, titles, permits and other certificates as may be required by law or otherwise for Lessee's lawful operation of said equipment hereunder in any state except the state in which equipment is already licensed. Lessee agrees that all certificates of title or registration applicable to the equipment leased hereunder shall reflect Lessor's ownership thereof.

**6. Warranties.** Lessee has inspected the equipment as indicated on the reverse side hereof, and Lessee agrees that the condition of the equipment is satisfactory to the Lessee for the Lessee's use. LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, FITNESS OR MECHANICALITY OF ANY EQUIPMENT RENTED HEREUNDER, NOR AS TO ANY REPAIRS OR MAINTENANCE THERETO.

**7. Optional Equipment.** The term "Vehicle" shall include all Optional Equipment rented hereunder. Lessee assumes all risk of use and loss in connection with Optional Equipment. At its sole cost, Lessee shall at all times during the lease term, maintain and keep Optional Equipment in the same condition as when delivered to the Lessee (normal wear excepted). All repairs to Optional Equipment shall conform to the manufacturer's standards and be made with new parts. Notwithstanding anything herein to the contrary, Lessor shall have no obligation to inspect or maintain Optional Equipment.

**8. Safety Inspection.** Lessee shall be solely responsible for ensuring that the vehicle is in compliance with all required safety regulations. Lessee shall pay for all required safety inspections and perform the required daily DOT inspections and shall maintain proper documentation evidencing such inspections. Lessee will immediately notify Lessor of any defects and not allow unsafe equipment to be operated. Lessee shall indemnify and hold Lessor harmless from and against any fines, forfeitures or penalties which may arise from Lessee's noncompliance with the provisions of this Section.

**9. Assignment.** Lessee shall not have the right to assign this Agreement or to sublet, rent, or otherwise hire out, or part with possession of, any of the equipment to any person, firm, partnership, association or corporation other than Lessor, without the prior written consent of Lessor thereto. Lessor shall have the right to assign this Agreement and/or the rentals reserved hereunder. In the event of an assignment of this Agreement by Lessor, the assignee shall acquire thereby all rights and remedies possessed by or available to Lessor. Lessee agrees that any trailer rented hereunder will not be operated by any person other than Lessee or agents or employees of Lessee, each of whom Lessee warrants to be a careful, dependable operator having a currently valid license to operate said equipment, and the power equipment used therewith, as required by law.

**10. Maintenance.** Lessor will perform all preventative maintenance and federal inspections, and all brake and tire replacements due to normal usage and wear. Items not covered by Lessor which are Lessee's responsibility, financially and otherwise, include any physical damage items; all mud flap replacements; all light bulb replacements, brake adjustments, and maintenance of proper fluid levels and tire pressures between preventative maintenance services; and repair of flat tires, road hazards, and physically damaged tires. Lessee will make each unit of equipment available to Lessor for a minimum of 4 hours during each 120 days of the term of this Agreement or any extension thereof, during Lessor's normal business hours, for preventative maintenance and service, and at such time will report in writing any adjustments or repairs needed on the equipment. Lessor will not provide substitute equipment during these periods of schedules service. Lessee agrees not to cause or permit any party other than Lessor or parties expressly authorized by Lessor to make repairs or adjustments to any equipment, and when such repairs are necessary, Lessee will promptly notify Lessor by the fastest means of communication available. Lessee further agrees that all repairs should be completed to Lessor's satisfaction. If any equipment is mechanically disabled, Lessor will repair the equipment within a reasonable time after notice from Lessee. All ordinary maintenance of the equipment (i.e. maintenance required for equipment to meet minimum USDOT/Fed. Hwy. Adm. Standards) will be at Lessor's cost and expense unless Lessee assumes responsibility for ordinary maintenance under a Schedule "N" to this Agreement or unless the need for repair is (i) caused by Lessee's negligence, improper use of the equipment or violation of this Agreement, or (ii) the result of unauthorized repair, alterations, or modifications. Lessee shall, however, assume responsibility for all preventative, ordinary and other maintenance immediately upon Lessee's failure to make a unit of equipment available to Lessor for preventative maintenance and service as required in this Paragraph 8, time being of the essence. Such assumption of responsibility by Lessee shall not result in the reduction of any charges payable by Lessee to Lessor under this Agreement. All repairs to the equipment (other than ordinary maintenance as specified above) will be at Lessee's cost and expense.

Whenever Lessee is obligated to pay for loss or damage due to accident, fire, theft, vandalism and like causes, Lessee shall pay to Lessor the current retail prices for parts and labor rates then being charged by Lessor that would be incurred to repair the equipment and restore it to good repair, condition and working order (regardless of whether Lessor elects to make such repairs). Lessor shall not be responsible for any repairs or service performed while the trailer is away from Lessor's facility unless expressly authorized by Lessor.

Initials: \_\_\_\_\_

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Lessee shall return to Lessor, at Lessee's expense, all parts and tires authorized by Lessor for replacement, and if such parts or tires are not so returned, Lessee shall remain responsible for the cost of such replacement parts and tires. If Lessee seeks reimbursement for authorized repairs or adjustments, Lessee shall furnish Lessor with a dated original receipt showing the cost, the specific equipment repaired, the date of repair and (if applicable) the hub odometer reading and the time of repair, along with the signature of Lessee's driver. Lessee shall immediately notify Lessor if any hub odometer or refrigerated van hourly meter of any equipment has been removed or fails to function properly. If for any period of time the hub odometer or refrigerated van hourly meter of any such trailer fails to function, or if Lessee fails to report the information as required herein, the mileage and/or refrigeration hours usage applicable during that time period shall be the higher of the mileage or hours usage indicated by Lessor's records for Lessee from prior transactions or one hundred (100) miles per day and twelve (12) refrigeration hours per day. If upon the return of any equipment or upon the replacement of any tire by Lessor tread wear exceeds 1/32nd inch per tire for each 6000 miles traveled for equipment with bias ply tires or 12,000 miles for equipment with radial tires, Lessee shall pay Lessor a charge, based upon the then current tire price, for each 1/32nd inch or fraction thereof of tread wear in excess of such allowances. If upon the return of any unit of equipment or replacement of brakes by Lessor brake wear is in excess of 1/8th inch per wheel position for each 25,000 miles traveled, Lessee shall pay, Lessor a charge, based upon the then current price for a brake reline service for each 1/8th inch or fraction thereof of lining wear in excess of such allowance. Lessee shall be responsible for the replacement cost for cracked or scored brake drums.

**11. Non-Liability for Contents.** Lessor shall not be liable for any loss or damage, direct, inconsequential, or consequential, to any product left, stored, loaded, or transported in or upon any equipment leased or rented hereunder. Lessee hereby agrees to indemnify and expressly waive any and all claims and demands for said loss or damage and hold Lessor free and harmless against any and all such claims and demands arising out of any such loss or damage, including, but not limited to loss of profits, or other alleged incidental or consequential damages against the Lessor. No right of Lessor under this Section 11 may be waived unless in writing and signed by an officer of Lessor.

**12. Termination.** At any time following expiration of the minimum period of this Agreement upon seven (7) days prior written notice to Lessee, Lessor may request the Lessee to return all the equipment to the location designated by the Lessor or change the rate(s) for the equipment rental. If Lessor terminates this Agreement as stated above, said termination shall become effective only when the Lessee has returned all such equipment to the location described herein, and has paid Lessor all unpaid rents and charges allocable to the returned equipment. In the event Lessor is required to make repairs to the equipment in order to return it to the same condition as when received by Lessee, normal wear excepted, the Lessee shall be obligated to continue paying the same rental, mileage and refrigeration charges as previously billed until all such repairs have been completed. At the termination of this Agreement for any reason whatsoever if Lessee delivers said equipment to a location other than that stated herein, Lessee shall be billed for any cost incurred in returning the equipment to the designated location in an amount not to exceed \$2,000.00 per unit of equipment. The equipment leased hereunder shall be used only in the United States.

**13. Waiver.** The failure of Lessor to insist upon Lessee's punctual performance of its responsibilities hereunder, Lessor's failure to exercise any right or remedy available under this Agreement, any failure of Lessor to require payment as and when due, of any sum owing hereunder or any extension of credit or forbearance on the part of Lessor, shall not constitute a waiver of any subsequent default hereunder. All demands for payment and performance and all notices of nonpayment under this Agreement are hereby waived by Lessee.

**14. Mileage Charges.** Lessee agrees that any estimated mileage stated represents the number of miles that a unit of equipment will be driven during the stated period. It is further understood that the Lessor has computed the rental rate contained herein based on this information. If upon return of the equipment the actual mileage is less than this estimate by 10% or more, Lessee shall pay to Lessor such additional mileage charges as would be due had the actual mileage equaled the estimated mileage. If upon return of the equipment the actual mileage exceeds this estimate, Lessee shall pay an additional one-half cent (\$.005) per axle per mile for non-refrigerated equipment, and one and one-half cents (\$.015) per axle per mile for refrigerated equipment.

**15. Rental Day.** As used in this Agreement, the term "Rental Day" is a calendar day or any portion thereof.

**16. Modifications.** Lessee shall not make, suffer, or permit any unlawful use or handling of the equipment. Lessee shall not without Lessor's prior written consent thereto make or suffer any changes, alterations, or improvements in or to the equipment or remove therefrom any parts, accessories, attachments, or other equipment.

**17. Default.** Each of the following events shall constitute an event of default hereunder; (i) Lessee fails to pay when due any installment of rental, mileage, or refrigeration charges or any other amount due hereunder; (ii) Lessee otherwise fails to perform any of the covenants, conditions, provisions or terms of this Agreement or any schedule relating thereto; (iii) Lessee shall suffer a material adverse change in its financial condition from the date hereof, and as a result thereof Lessor deems itself or any of the equipment to be insecure; (iv) Lessee defaults under any other obligation Lessee owes to Lessor; (v) Lessee or any guarantor of this Agreement or any partner of Lessee if Lessee is a partnership shall cease doing business as a going concern or make an assignment for the benefit of creditors; (vi) Lessee or any guarantor of this Agreement or any partner of Lessee if Lessee is a partnership shall voluntarily file or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or of all or a substantial part of its assets; (vii) Lessee or any guarantor of any Lessee's obligations hereunder shall be in breach of or in default in the payment or performance of any obligation owing to any bank, lender, lessor or financial institution, howsoever arising, or (viii) any individual Lessee, guarantor of this Agreement, or partner of Lessee if Lessee is a partnership shall die, Lessor shall thereafter have the right, without any notice or demand to declare all unpaid rentals and other charges due and payable forthwith and to retake and retain equipment free of all rights of Lessee without any further liability or obligation to redeliver the same to Lessee, and without, to any extent, releasing Lessee from Lessee's covenants, obligations and indemnities provided hereunder including, but not limited to Lessee's obligation for the payment of the rental provided herein. Lessee releases Lessor from any requirement to post a bond or surety regarding any repossession or disposition of the equipment.

**18. Repossession.** If Lessee fails or refuses to promptly return the vehicle to the Lessor after demand thereof, or if the Event of Default has occurred and is continuing, Lessor shall be deemed Lessee's agent and have the right to enter upon any premises where the vehicle is located and take immediate possession of and remove the vehicle. If Lessor takes possession of the vehicle with other property contained in, upon or attached thereto, Lessor may take possession of such property and hold it in Lessor's possession or in public storage for the account and at the expense of Lessee or dispose of such property with no further liability.

**19. Agreed Legal Forum.** Any claim or controversy relating to this Agreement shall be resolved only before a state or federal court in OH and nowhere else. Lessee expressly agrees that such courts shall have personal jurisdiction over Lessee and Lessee expressly consents to such courts exercise of that jurisdiction. Lessee hereby intentionally and knowingly waives any defense of lack of jurisdiction, improper venue, inconvenient forum, and benefit of any other law permitting it to avoid the forum selection provision of this paragraph. Lessee acknowledges that its agreement to the provisions of this paragraph is a specific inducement for Lessor to enter into this Agreement and that Lessor will rely upon inducement. But for the inclusion of this forum selection provision, Lessor would not enter into this Agreement and Lessee should not enter into this Agreement if it does not intend to honor the provisions of this paragraph. Lessee's initiation of legal proceedings in any other forum shall be a material breach of this Agreement. Lessee agrees to indemnify Lessor against and hold it harmless from any cost or expense, including reasonable attorney's fees, resulting from Lessee's commencement of any legal action, or proceeding other than in a state or federal court in OH.

**20. Jury Waiver.** Lessee hereby waives any right to a jury trial with respect to any matter arising under or in connection with this Agreement.

**21. Entire Agreement.** This instrument contains the entire agreement between the parties pertaining to the subject matter thereof. No agreement, representations, or understanding not specifically contained herein shall be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby. The terms, covenants, conditions, and other provisions of this Agreement may hereafter be changed, amended, or modified only by an instrument in writing specifically purporting so to do and signed by the parties to be bound thereby. Any amendment, modification, or addendum to this Agreement to be binding on Lessor must be signed by the President, Vice President, Secretary or Treasurer of Lessor.

**22. Severability.** This agreement is intended for general use in the United States and, in the event that any of the terms and provisions hereof are in violation of or prohibited by any law, regulation, rule, ordinance or order, such terms and conditions shall be deemed to be amended to conform thereto without invalidating any other terms or conditions of this agreement. Lessee's indemnification obligations under this Agreement include attorney's fee and costs and shall survive the termination of this Agreement.

Accepted and agreed to by:

Print Name \_\_\_\_\_ Company & Title \_\_\_\_\_

Sign Name \_\_\_\_\_ Date \_\_\_\_\_

Initials: \_\_\_\_\_