

# E & J TRAILER SALES & SERVICE, INC.

## TERMS AND CONDITIONS

1. **LEASE TERM.** Lessee is responsible for paying the Monthly Rent (as such may be adjusted pursuant to Section 3) for each month during the Lease Term. Lessee may be subject to cancellation fee if the Lease terminates prior to the expiration of the Lease Term. Lessor shall not be liable to Lessee for any failure or delay in obtaining, delivering or setting up the Equipment.

2. **EQUIPMENT PLACEMENT, RETURN AND CONDITION.** Regardless of the stated Lease Term, Lessee must provide a minimum of 10 business days' prior notice for return delivery of Equipment.

(a) **EQUIPMENT PLACEMENT:** The driver may not have the ability to move the Equipment more than a few feet. Avoid placing the Equipment in low lying areas. Equipment placed on the ground is heavy and therefore subject to dents, depressions, scrapes and scratches. Additional set-up time due to unlevel site conditions may result in extra charges. Lessee is responsible for any and all costs associated with obtaining necessary approval of the site and installation of the Equipment including any required permits. Any costs associated with moving the Equipment will be the responsibility of the Lessee.

(b) **Equipment is leased to Lessee "AS IS". LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION OF ANY EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT, ANY WARRANTY THAT EQUIPMENT IS WATER TIGHT OR AS TO TITLE OR OTHERWISE.**

(c) Lessee acknowledges and agrees to maintain all Equipment in good condition and repair (normal wear and tear excluded) and shall not make any alterations, improvements or additions to Equipment without Lessor's prior written consent. Lessee shall be responsible for any repair costs associated with repairs needed other than those resulting from normal wear and tear. Lessee shall be responsible for weekly inspections of the interior and exterior of the Equipment to assure that it is in good condition. Should Equipment not be in good condition, Lessee shall notify Lessor immediately. Lessee acknowledges that any container or trailer shall be used for personal property only and not for human or animal habitation. Lessee agrees that no hazardous or dangerous materials shall be maintained or stored in or on the Equipment.

(d) **CLEANING:** Unless otherwise noted in the Lease Agreement, Lessor reserves the right to charge up to a \$250 cleaning fee per each piece of Equipment. This fee is refundable only if the Equipment is returned in a cleanliness condition equal to or better than when it was originally shipped.

(f) **PRORATION:** Lessor prorates rent in one-half (1/2) month increments only. Any Equipment on rent beyond the 14th day of a billing cycle, Lessee will be responsible for the full month's rental payment. Under no circumstances will any Lease Term be for less than one (1) month.

3. **HOLDING OVER; LEASE EXTENSION.** If Lessee (a) fails to notify Lessor of the intended return of Equipment, (b) fails to prepare the Equipment for removal as required or (c) fails to pay the charges upon return as required, the Lease Term shall be extended, on a month-to-month basis, beyond the Lease Term stated above. In this event, Lessor may establish a revised rental rate and other charges related to the return of the Equipment may also be revised by Lessor for such extended Lease Term.

4. **ACCESS.** Lessee agrees that Lessor (or its agents, employees or contractors) may, from time to time at any reasonable time, enter upon the premises of Lessee for the purposes of (1) inspecting the Equipment or posting "Notices of Non-Responsibility" or similar notices thereon, or (2) photographing the Equipment, including any items or occupants within or surrounding the Equipment, for promotional or other purposes. If Lessor determines that repairs to the Equipment are needed, Lessee shall grant access for said repairs. Lessor shall bear the expense of any repairs that it determines are needed to ameliorate

normal wear and tear; the expense of all other repairs (including any repairs requested by Lessee) shall be borne by Lessee. If Lessee does not grant access for such repairs between 8:00 a.m. and 5:00 p.m., Monday through Friday, Lessee shall bear the cost of repair rates for labor at the applicable overtime rates.

5. **ASSIGNMENT.** Lessee will not assign, convey, transfer, or hypothecate its interest, or any part thereof, in and to any Lease or the Equipment, whether voluntarily or involuntarily, without the prior written consent of Lessor.

6. **PAYMENTS.** Lessee agrees to pay to Lessor (at Lessor's Payment Address or to such other person or at such other place as Lessor may from time to time designate to Lessee in writing) each payment specified herein on a net invoice basis without demand by Lessor on or before the Due Date. All payments due from Lessee pursuant to the terms of the Lease shall be made by Lessee without any abatement or setoff of any kind whatsoever. Payments which are not received by Lessor by the Due Date shall accrue interest at 1.5% per month until paid. Returned checks shall be assessed a fee of \$50.00.

7. **TAXES AND LIENS.** Lessee agrees to keep the Equipment free of all levies, liens or encumbrances. Lessee shall, in the manner directed by Lessor, (a) make and file all declarations and returns in connection with all charges, fees and taxes (local, state and federal) levied or assessed either upon Lessee or Lessor, or upon the ownership, leasing, rental, sale, possession, use, or operation of the Equipment, and (b) pay all such charges, fees and taxes. However, Lessor shall pay all income taxes relating to the Lease. If Lessee fails to pay taxes and charges as required by this Section, Lessor shall have the right, but not the obligation, to make such payments. In the event that Lessor makes any such payments, Lessee shall reimburse Lessor for such costs as deemed appropriate by Lessor and as invoiced by Lessor.

8. **LOSS OR DAMAGE.** Until the Equipment is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment. Subject to Section 10(b), should any Equipment damaged be capable of repair, the Lease shall not terminate, but Lessee shall cause the Equipment to be repaired and restored to its condition existing prior to such damage, at Lessee's sole expense. Lessee shall be entitled to the benefit of the proceeds from any insurance recovery received by Lessor, up to an amount equal to that paid to Lessor.

9. **INSURANCE.**

Lessee shall provide, maintain, and pay all premiums for insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value thereof, naming Lessor as loss payee and additional insured. Should Lessee fail to procure and maintain such Insurance, Lessee shall indemnify Lessor to the extent Lessor suffers or incurs loss, damage, liability or expense as a consequence of such failure. **INSURANCE (INCLUDING FIRE, HUMIDITY MOISTURE, MOLD OR OTHER DAMAGE) FOR EQUIPMENT CONTENTS (LESSEE'S PERSONAL OR OTHER PROPERTY OR OTHER CONTENTS IN, AROUND OR ABOUT EQUIPMENT) IS THE RESPONSIBILITY OF LESSEE. UNDER NO CIRCUMSTANCES SHALL LESSOR PROVIDE ANY INSURANCE WHATSOEVER OR BE LIABLE FOR ANY DAMAGES TO LESSEE'S PERSONAL OR OTHER PROPERTY.**

10. **WAIVER AND INDEMNIFICATION.**

(a) **Lessor shall not be responsible or liable for any loss or damage upon or about the Equipment in Lessee's possession, any loss or damage of any kind whatsoever to any personal property or other items stored in or about the Equipment or any injuries to Lessee, Lessee's agent and third parties. Under no circumstances shall Lessor be liable to Lessee for any special, incidental or consequential damages of any kind (including, but not limited to damages for loss of use, or profit, by Lessee or for any collateral damages), whether or not caused by Lessor's negligence or delay, resulting from the Lease or the manufacture, delivery, installation,**

removal or use of the Equipment, or in connection with the services rendered by Lessor hereunder, even if the Lessee has been advised of the possibility of such damages.

(b) Lessee agrees to indemnify and hold harmless Lessor from and against any and all losses, liabilities, costs, expenses (including attorney fees), claims, actions, demands, fines, forfeitures, seizures or penalties (collectively, "Claims") arising out of Lessee's negligence in the maintenance, possession or use of the Equipment by Lessee, its employees, agents or any person invited, suffered or permitted by Lessee to use or be in, on or about the Equipment, and any theft or destruction of, or damage to, the Equipment including but not limited to any damage resulting from leaks, moisture or humidity build-up, mold or water intrusion or absorption from any source whatsoever.

#### 11. EVENTS OF DEFAULT.

(a) Each of the following shall constitute an "Event of Default": (1) default by Lessee in making required payment(s) hereunder and the continuance of such default for ten (10) consecutive days; (2) any default or breach by Lessee (3) default by Lessee in the performance of any non-payment obligation, covenant or liability contained in the Lease or any other agreement or document with Lessor and the continuance of such default for ten (10) days after written notice, thereof by Lessor to Lessee; (4) loss, theft, damage, destruction or the attempted sale or encumbrance by Lessee of any of the Equipment, or any levy, seizure or attachment thereof or thereon; or (6) Lessee's dissolution, termination of existence, discontinuance of business, insolvency, or business failure; or the appointment of a receiver of any part of, the assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, reorganization or arrangement laws by or against, Lessee.

(b) Upon Lessee's default, (1) Lessor has the right to accelerate all payments due hereunder; (2) terminate the Lease as to any or all items of the Equipment; (3) take possession of the Equipment wherever found, and for this purpose enter upon any premises of Lessee and remove the Equipment, without any liability for suit, action or other proceedings by Lessee; (4) direct Lessee at its expense to promptly prepare the Equipment for pickup by Lessor; (5) take such action that is permitted at law or under equity. Any property remaining in such Equipment upon its return will be deemed abandoned by Lessee subject to Section 17 below.

12. **OWNERSHIP AND MARKING OF EQUIPMENT.** Title to the Equipment shall remain in Lessor. Excepting only as may be granted in a separate writing signed by Lessor, no option or other right to purchase the Equipment is granted or implied by the Lease to Lessee or any other person. The Equipment shall remain and be deemed to be personal property of Lessor, whether attached to realty or not, and upon termination of the Lease or the occurrence of an Event of Default, Lessee shall have the duty and Lessor shall have the right to remove the Equipment whether or not affixed to any realty or building without any liability to Lessor for damage to the realty or building caused by the removal of the Equipment. Any replacement, substitutes, accessories or parts, whether placed in or upon the Equipment or not, whether made a component part thereof or not, shall be the property of Lessor and shall be included under the terms of the Lease.

13. **COMPLIANCE WITH LAW.** Lessee assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Lessee's lawful operation, use, possession and occupancy of the Equipment. Lessee agrees to fully comply with all laws, rules, regulations and orders of all governmental authorities which in any way relate to the Equipment. Lessee shall pay the cost of all license and registration fees and renewals thereof.

14. **GOVERNING LAW.** Lessee and Lessor agree that the Lease shall be governed in all respects by, and interpreted in accordance with the laws of the State of Ohio, without regard to its conflicts of laws provisions.

15. **JURISDICTION/ATTORNEY'S FEES.** It is agreed that the venue for a legal action relating to the Lease shall be proper if brought in the State Courts and not Federal Courts in Hamilton County,

Ohio. If Lessee violates any term of this Agreement and Lessor employs an attorney to pursue any violation or breach of this Agreement, Lessee shall be liable for all attorney fees, collection costs, court and legal costs incurred by Lessor, whether or not litigation is commenced by Lessor.

16. **CREDIT CARD AUTHORIZATION.** Lessee hereby gives authorization to Lessor to charge against credit card provided all amounts billed for this transaction including applicable taxes, shipping and handling charges.

17. **LESSEE'S PERSONAL PROPERTY.** In the event that Lessee defaults on a payment or does not remove its personal property from the Equipment (as required herein), Lessee grants to Lessor a lien on Lessee's personal property stored in Equipment, to secure rent or other Lessee obligations under this Agreement which shall grant Lessor the right to dispose of personal property left in the Equipment at the end of the Lease Term or an Event of Default. At the end of the Lease Term, Lessee shall, at its expense, prepare the Equipment for pick-up which includes but is not limited to placing the Equipment in broom-clean condition and removing all personal property of Lessee from the Equipment provided that, if any personal property shall remain located in the Equipment for thirty (30) days after Lessor retrieves the Equipment, Lessee consents to Lessor's possession and disposal or destruction of such personal property without notice or accounting to Lessee, the costs and expenses of which disposal or destruction shall be reimbursed by Lessee and Lessee shall be responsible for rent as provided in Section 3 herein.

18. **MISCELLANEOUS.** Time is of the essence of each and every provision of the Lease. Failure of Lessor to enforce any term or condition of the Lease shall not constitute a waiver of subsequent defaults by Lessee, nor shall it, in any manner, affect the rights of Lessor to enforce any of the provisions hereunder. The invalidity or unenforceability of any provision of the Lease shall not affect the validity or enforceability of any other provision.

19. **ENTIRE AGREEMENT.** The Lease supersedes all prior agreements between the parties and constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and, except for provisions that may be updated by Lessor from time to time in its sole discretion, may not be amended, altered or modified except by a writing signed by both parties.