

**CONTAINER SALE QUOTATION AND AGREEMENT  
TERMS AND CONDITIONS**

1. **SALE.** Seller sells to Buyer, and Buyer purchases from Seller, the equipment ("**Equipment**") listed on the Container Sale Quotation and Agreement executed by Buyer, on the terms and conditions set forth herein (the Container Sale Quotation and Agreement and the terms and conditions set forth herein are collectively, the "**Sale Agreement**"). Each such Sale Agreement, together with the terms and conditions set forth herein, shall constitute a separate and independent Sale Agreement for the Equipment listed in such Sale Agreement under "Product Information". All capitalized words used and not otherwise defined in these terms and conditions shall have the same meanings and definitions as those used in the applicable Sale Agreement.

2. **TIME PAYMENT; TITLE RETENTION.**

(a) **PURCHASE PRICE.** The aggregate amount of the purchase price (the "**Purchase Price**") is set forth in the Sale Agreement. Unless otherwise agreed to by Buyer and Seller in writing, Buyer agrees to pay Seller one hundred percent (100%) of the Purchase Price before the Equipment is scheduled to be delivered. In addition to the Purchase Price, Buyer shall pay such charges as are attributable to circumstances related to the delivery, drop-off and relocation of Equipment. If any payment under the Sale Agreement is not made on the date when due and payable (including without limitation pursuant to this Section or as indicated on the Sale Agreement), Buyer shall pay Seller interest, at the rate of eighteen percent (18%) per annum (or at the maximum rate permitted by applicable law), on the amount of such overdue payment, until received.

(b) **TITLE/RETENTION.** Title to the Equipment shall not pass to Buyer before the entire Purchase Price has been paid to Seller. Upon Seller's receipt of payment in full of the Purchase Price, title to the Equipment shall transfer to Buyer, free and clear of all encumbrances arising by or through Seller. All payments due from Buyer pursuant to the terms of the Sale Agreement shall be made without any abatement or set off of any kind, arising from any cause.

3. **CANCELLATION.** All sales are final and non-refundable upon delivery of the Equipment to Buyer's site location. Any requests to cancel or reschedule orders prior to delivery may or may not be accepted in Seller's sole discretion and must be agreed upon by Seller in writing. Without waiving any of its rights, Seller is entitled to recover its costs incurred and profits lost as a result of Buyer's cancellation or rescheduling of an order. A cancellation fee may be assessed against Buyer. In no event shall such fee exceed the full value of the Sale Agreement. If Buyer has made down payment(s) to Seller prior to cancellation and the cancellation fee is less than the amount(s) already paid, Seller shall deduct the amount of the cancellation fee from any refund that may be owed to Buyer. If down payment amount(s) already made are less than the cancellation fee, Seller shall apply the full down payment amount(s) to the payment of the cancellation fee and Buyer will pay the remaining cancellation fee balance within ten (10) business days after receiving written notice of the balance due. If no down payment has been made by Buyer at the time of cancellation, Buyer shall pay to Seller the entire cancellation balance within ten (10) business days of receipt of written notice from Seller stating the cancellation fee balance that is due.

4. **TIME AND PLACE OF DELIVERY.** Seller agrees to deliver the Equipment to the site location listed on the Sale Agreement (the "**Site**"). Buyer represents and warrants that that it has exercised due diligence and care in selecting a suitable site for the Equipment, shall clearly mark the site of placement and shall direct Seller on exact placement and orientation of the Equipment. Upon request from Buyer and for an additional fee, Seller will perform a site visit and make recommendations on placement as it relates to site accessibility and layout. Buyer further warrants that the Site will have safe access free from encumbrances. Buyer is responsible for all necessary city, county or local permits, utility hookups, and Site preparation. Any additional set-up time due to unlevel site conditions may result in extra charges being applied against Buyer. Buyer is responsible for any and all costs associated with obtaining necessary approval of the site and installation of the Equipment including any permits subject to jurisdiction where Equipment will be located. Any costs associated with moving the Equipment will be the responsibility of the Buyer.

5. **INSPECTION AND ACCEPTANCE.** Prior to the delivery of the Equipment, Buyer may inspect the Equipment at its own expense and provide immediate written notice to Seller specifying any defects. If Buyer fails to provide such notice prior to delivery, then it shall be deemed and conclusively presumed between Buyer and Seller that all the Equipment is in conformance with the Sale Agreement and has been accepted by Buyer.

6. **WARRANTY. BUYER ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS BEING SOLD TO BUYER "AS-IS". SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION THEREOF, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OR AS TO TITLE OR OTHERWISE.**

7. **BUYER AGREEMENTS.** Buyer agrees that Seller may insert in the Sale Agreement the serial number and other identification data relating to the Equipment when ascertained by Seller.

8. **LOSS OR DAMAGE.** All risk of loss or damage to the Equipment shall transfer to Buyer upon delivery of the Equipment to the site location.

9. **INSURANCE.** Buyer 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. This coverage will extend to all property of Seller located at the delivery site during the delivery of the Equipment. Further, until title to the Equipment has transferred to Buyer pursuant to Section 2(b), Buyer will name Seller as loss payee of the proceeds. Upon receipt of the proceeds of any insurance, Seller will refund to Buyer any amounts in excess of the balance due Seller by the Buyer in fulfilling the obligations specified herein.

10. **WAIVER AND INDEMNIFICATION.**

(a) Buyer hereby waives and releases all claims against Seller for (i) loss of or damage to all property, goods, wares and merchandise in, upon or about the Equipment and (ii) injuries to Buyer, Buyer's agents and third persons. Seller shall not be liable for any consequential, incidental, or special damages of any kind (including, but not limited to damages for loss of use or of profit by Buyer or any other party; or for any collateral damages), whether or not caused or continued by Seller's negligence or delay, which may result from or arise in connection with the manufacture, delivery, installation, checkout or use of the Equipment or in connection with the services rendered by Seller hereunder.

(b) Buyer shall indemnify and hold Seller (and its agents and employees) harmless from and against any and all claims, actions or proceedings and any and all damages, liabilities, losses, costs and expenses (including attorney fees) arising out of or in connection with the Sale Agreement, including all damages, liabilities, losses, costs and expenses arising from Seller's negligence. If the foregoing obligation is not enforceable against Buyer under applicable law, Buyer agrees to indemnify and hold Seller harmless from damages, liabilities, losses, costs and expenses to the maximum extent permitted by applicable law.

11. **TERMINATION FOLLOWING BREACH.** In the event (a) of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer voluntarily or involuntarily, under the provisions of the Bankruptcy Code of the United States, for the appointment of a receiver or trustee or any assignment for the benefit of creditors of Buyer, or (b) that Buyer fails to make timely payments, or perform any of its other obligations, under the Sale Agreement, and such failure or default is not cured within ten (10) days after written notice of such failure or default is provided by Seller, the Sale Agreement automatically shall be terminated in the case of any event described in clause (a) above and may be terminated by Seller in the case of any event described in clause (b) above and, upon such termination, full payment pursuant to the terms of the Sale Agreement shall become immediately due and payable from Buyer. In the event of any such breach or termination, Seller shall have all rights provided by law and under the terms and conditions of the Sale Agreement, including but not limited to: repossession and disposal of the Equipment (and, if any personal property shall remain located in the Equipment at such time, Buyer consents to Seller's possession and disposal or destruction of such personal property without notice or accounting to Buyer) and recovery of attorney's fees and other reasonable costs and expenses associated with any breach or termination (including any such disposal or destruction), shall be reimbursed by Buyer on demand of Seller.

12. **GOVERNING LAW.** Buyer and Seller agree that the Sale Agreement shall be governed in all respects by, and interpreted in accordance with the laws of, the State of California, without regard to its conflicts of laws provisions.

13. **JURISDICTION.**

(a) If the law of the State of Maryland or Virginia shall apply to the Sale Agreement, it is agreed that the venue for a legal action relating to the Sale Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 10, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

(b) If the law of any State other than Maryland shall apply to the Sale Agreement, the Federal District Courts located within the State of California shall have non-exclusive jurisdiction over any lawsuit brought by Buyer or Seller as a result of any dispute regarding matters arising in connection with the Sale Agreement. Further, it is agreed that the venue for a legal action relating to the Sale Agreement shall be proper if brought in Alameda County, State of California. Subject to Section 10, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs, whether or not the action proceeds to judgment.

14. **SELLER'S EXPENSES** Buyer shall pay Seller all costs and expenses, including attorney fees, incurred by Seller in exercising any of the terms, conditions or provisions of the Sale Agreement.

15. **LICENSE AND TRANSFER FEE(S).** If so listed on the Sale Agreement, the Purchase Price includes license and/or transfer fees. Buyer will be billed directly by the State for future annual license fees where applicable.

16. **COMPLIANCE WITH LAW.** Buyer assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Buyer's lawful operation, use, possession and occupancy of the Equipment. Buyer agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the Equipment; and to indemnify and hold Seller harmless from any and all fines, forfeitures, seizures, penalties or other liabilities that may arise from any infringement or violation of any such law, rule, regulation or order.

17. **FINANCING STATEMENT.** At the request of Seller, Buyer will file financing statements pursuant to the applicable

Uniform Commercial Code and execute and file such other instruments or assurances as Seller deems necessary to protect Seller's interest in the Equipment. Buyer authorizes Seller and Seller's assignee or transferee and each subsequent assignee or transferee to file financing statements in any jurisdiction.

**18. MISCELLANEOUS.**

(a) **BUYER SOLVENCY.** Buyer represents and warrants that the fair value of the assets of Buyer exceed its liabilities; Buyer is able to pay its debts and liabilities as they become due; and Buyer does not have an unreasonably small amount of capital with which to conduct the business in which it is engaged, as such business is now conducted and is proposed to be conducted.

(b) **MODIFICATIONS AND AMENDMENTS.** Representations and warranties made by any person, including agents and representatives of Seller, which are inconsistent or conflict with the Sale Agreement (including the terms and conditions set forth herein) shall not be binding upon Seller unless reduced to writing and approved by an officer of Seller. No amendment, supplement or modification to the terms of the Sale Agreement shall be valid unless made in a writing signed by both parties hereto, and no waiver of any provision of the Sale Agreement shall be valid unless made in a writing signed by the waiving party. Notwithstanding the foregoing, from time to time, Buyer or Seller may request modifications to the scope of work hereunder, which at the sole option of the Seller may be accepted and thus alter the final price stipulated herein. These changes in scope will be deemed approved by Buyer when evidence of work performance is presented by Seller.

(c) **BUYER FORMS.** Buyer's purchase orders, work orders, field tickets, bills of lading, forms for receipt, acknowledgments, quotes, invoices, terms of service or sale, and/or similar documents ("**Buyer Forms**"), and the terms and conditions of such Buyer Forms (without regard to how such form is titled or captioned) shall not amend, modify, supplement, waive, or release any term or condition of the Sale Agreement (including, without limitation, the terms and conditions set forth herein), even if any such Buyer Form is signed by an agent or representative of Seller. The terms and conditions of the Sale Agreement (including, without limitation, the terms and conditions set forth herein) shall prevail over any Buyer Form, and any inconsistent or additional terms or conditions in any Buyer Form shall be deemed void ab initio and of no force or effect.

(d) **NO WAIVER.** Failure of Seller to enforce any term or condition of the Sale Agreement shall not constitute waiver of any rights stipulated herein, nor shall it in any manner affect the rights of Seller to enforce any of the provisions stated herein. Waiver by Seller of any provision of the Sale Agreement shall be valid only as provided in subsection (b) above and only with respect to the specific matter to which such waiver relates.

(e) If the law of the State of North Carolina shall apply to the Sale Agreement, the Sale Agreement does not constitute a "construction contract" or otherwise relate to the improvement of real estate or the design, planning, construction, alteration, repair or maintenance of a building, structure or appurtenance.

**19. ENTIRE AGREEMENT.** The Sale Agreement constitutes the entire agreement between Seller and Buyer regarding the subject matter hereof. If any part of the Sale Agreement is found to be invalid or illegal, Buyer and Seller agree that only the invalid or illegal portion of the Sale Agreement will be eliminated.

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