

**TERMS AND CONDITIONS OF LEASE
PURCHASE OPTION LEASE**

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1. **LEASE.** Lessor hereby leases to Lessee and Lessee hereby rents from Lessor, the Equipment described above on terms and conditions described above and below (the "Equipment") and for the term indicated above. Commencing on the date (the "Rental Commencement Date") that Equipment is delivered to Lessee, and on the corresponding date of each month thereafter Lessee will make the payments set out in the "Rental Payment". Such payments will be paid each month until the expiration of the "Term of Lease". All payments of rent shall be made at the office of Lessor, at its address, or at such other place as Lessor may designate in writing. Lessee hereby authorizes Lessor to insert in this lease the serial numbers, and other identification data of Equipment when determined by Lessor. If additional equipment is required, Lessee shall enter into a new Lease agreement for said Equipment. Each lease shall constitute a separate, distinct, and independent lease, and contractual obligation of Lessee. Lessor or its assignee shall at all times retain the full legal title to the equipment, it being expressly agreed by both parties that each Lease is an agreement of Lease only.
2. **DELIVERY.** Lessee has the option to either (a) have the leased Equipment picked up at its own cost and expense at Lessor's place of business or (b) have Lessor deliver the Equipment to Lessee, whereupon Lessor shall charge Lessee and Lessee will pay for delivery and round trip trucking charges. Lessee shall inspect Equipment upon its arrival and Lessee will execute and deliver an Acceptance Certificate indicating that the Equipment is in good condition and that Lessee is satisfied with and has accepted Equipment.
3. **NO WARRANTIES BY LESSOR.** LESSEE REPRESENTS THAT LESSEE HAS SELECTED THE EQUIPMENT LEASED HEREUNDER AND LESSEE AGREES THAT THE LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY, INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY OR OTHERWISE OF ANY SUCH UNIT EXCEPT THAT THE EQUIPMENT IS AIRWORTHY. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST THE LESSOR HEREIN FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER. LESSEE LEASES THE EQUIPMENT "AS IS".
4. **SECURITY.** Simultaneously with the execution of this lease, Lessor shall pay to, and deposit with Lessor the sum of \$ _____ as and for security for Lessee's faithful performance of Lessee's covenants and obligations hereunder.
5. **INSURANCE.** Lessee shall keep Equipment insured for the full term of this Lease against all risks of loss or damage from every cause whatsoever for not less than the replacement cost of new Equipment without consideration for depreciation. Lessee further shall carry public liability insurance with personal injury coverage limits of \$250,000.00 per person and \$500,000.00 per occurrence and property damage covering Equipment in the amount of \$100,000.00 per occurrence as well as Contractors and Cargo Liability coverage. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount and with companies satisfactory to Lessor. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor, and all such liability insurance shall include Lessor as an additional named insured.
6. **LOSS AND DAMAGE.** Lessee hereby assumes and shall bear the entire risk of loss of and damage to Equipment from any and every cause whatsoever. No loss of or damage to Equipment or any part thereof shall impair any obligation of Lessee under this lease, which shall continue in full force and effect. In the event of damage of any kind whatsoever to any item of Equipment returned to Lessor, Lessor shall within 10 days from the return date provide Lessee with an estimate for repair. Lessee shall have five business days to inspect the Equipment and arrange for said repairs at its own cost and expense at an FAA certified ULD repair station. Following completion of such repairs, Lessee shall provide Lessor with a "Certificate of Repair". If lessee fails to inspect the Equipment and arrange for repairs as set forth above, then Lessor shall repair the damaged Equipment and Lessee shall reimburse Lessor for the cost of such repairs. If the Equipment is determined by Lessor to be damaged beyond repair, Lessee shall immediately pay Lessor in cash an amount equal to: (i) all rent payments due but unpaid on the date of any loss of the Equipment, plus (ii) all other amounts due under this Lease but unpaid on the date of any loss of the Equipment, plus (iii) all future rent payments to become due under this Agreement discounted to their present value at the greater of a discount rate of 6% or the lowest rate allowed by law, plus (iv) the "Replacement Value Per Unit" of the Equipment together with interest on such amounts from the date of any loss to the date of payment, at the lower of 20% or the highest rate allowed by law. If Lessee fails to pay the "Replacement Value Per Unit, the term of the lease shall be extended and Lessee shall incur additional rent which will continue to accrue until payment of the "Replacement Value Per Unit" has been made.
7. **EQUIPMENT TO REMAIN PROPERTY OF LESSOR.** Each item of Equipment shall at all times remain the property of the Lessor. The Lessor, at its option, shall be permitted to display notice of its security interest in the Equipment by affixing to each item of Equipment an identifying stencil, plate, decalcomania, or any other indicia of its security interest.
8. **TAXES.** The Lessee shall pay all sales taxes, use taxes, excise taxes, personal property taxes, assessments, stamp and documentary taxes, and all other governmental charges, fees, fines, or penalties whatsoever, including filing fees, whether payable by the Lessor or the Lessee or their, on or relating to the Equipment or the use, registration, rental shipment, transportation, delivery or operation thereof. Upon demand the Lessee shall reimburse the Lessor for any such taxes, assessments, charges, fines, or penalties which the

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Lessor may be compelled to pay in connection with the Equipment.

9. **POSSESSION, USE, LOCATION, REMOVAL, AND INSPECTION.** So long as Lessee shall not be in default under this

lease, Lessee may possess and use the Equipment in accordance with this Lease. Lessee shall at all times insure that the Equipment is being

properly used for the purpose for which it was manufactured and will not alter or modify the Equipment in any way without prior written approval from Lessor. The Equipment shall be used in the lawful business of Lessee and Lessee shall not, without Lessor's prior written consent, part with possession or control of the Equipment or sell, pledge, mortgage or otherwise encumber the Equipment or any part thereof or assign or encumber any interest under this lease. Lessee shall use the Equipment in compliance with applicable laws.

10. **LESSOR'S INDEMNITY.** The Lessee shall indemnify protect, and save and keep harmless the Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses of whatsoever nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by it), ownership, transportation, manufacture, selection, maintenance, return, disposition or operation of any item of Equipment, regardless of where, how, and by whom operated; or, if the Lessee is in default hereunder, arising out of or resulting from the condition of any item of Equipment sold or disposed of by Lessor pursuant to Section 13 of this Lease. The Lessee shall be liable for the expenses of the defense of the settlement of any suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands, and expenses, and shall pay all judgments entered in any such suit or suits or other legal. The indemnities and assumption of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of this Lease whether by expiration of time, by operation of law, or otherwise. The Lessee is an independent contractor and nothing contained in this agreement shall authorize the Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of the Lessor.

11. **ASSIGNMENT / SUB-LEASE.** Lessor and/or its assignee may, without notice to any party assign, transfer or mortgage this Lease, the Equipment, or any part thereof, and in such event, any such assignee shall have all the rights as Lessor hereunder, but none of Lessor's obligations. Lessee agrees after notice to pay any such assignee any sums that would otherwise be due Lessor, and agrees that the rights of the assignee will not be subject to any claims, defenses or set-offs and agrees, not to assert, as against any such assignee, any claims or counterclaim that Lessee might have with Lessor. Lessee shall not, by function of law or otherwise, sublet, sublease, assign, transfer, suffer liens or attachments, pledge or otherwise dispose of or surrender the Equipment, or this Lease, or any part of or interest in the foregoing without Lessor's prior written consent. Any such purported assignment without written consent of Lessor is void.

12. **REPRESENTATIONS AND WARRANTIES OF LESSEE.** Lessee represents and warrants to Lessor that as of the date of each Lease and of each Certificate of Acceptance:

(a). Lessee has adequate power and capacity to enter into the Lease, any documents relative to the lease of the Equipment leased under such Lease and any other documents required to be delivered in connection with this Lease (collectively, the "Documents"); the Documents have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms; there are no proceedings currently pending or threatened against Lessee which will impair its ability to perform under the Lease; and all information supplied to Lessor is accurate and complete.

(b). Lessee's entering into the Lease and leasing the Equipment does not and will not (i) violate any judgments, order, or law applicable to the Lease, Lessee's certificate of incorporation or by-laws (if Lessee is a corporation) or Lessee's partnership agreement (if Lessee is a partnership), or any agreement binding on Lessee or any of its property; or (ii) result in the creation of any lien, security interest or other encumbrance upon the Equipment.

(c). All financial data of Lessee or of any consolidated group of companies of which Lessee is a member ("Lessee Group"), delivered to Lessor have been prepared in accordance with generally accepted accounting principles applied on a consistent basis with prior periods and fairly present the financial position and results from operations of Lessee, or of the Lessee Group, as of the stated date and period(s). Since the date of the most recently delivered financial data, there has been no material adverse change in the financial or operation condition of Lessee or of the Lessee Group.

(d). If Lessee is a corporation or partnership, it is and will be validly existing and in good standing under laws of the state of its incorporation or organization; the persons signing the Lease are acting with the full authority of its board of directors or partners (if Lessee is partnership) and hold the offices indicated below their signatures, which are genuine.

(e). Lessee shall promptly furnish to Lessor such financial or other statements respecting the condition and operation of Lessee, and information respecting the Equipment as Lessor may from time to time reasonably request.

13. **LESSEE'S DEFAULT.** The following shall constitute default on the part of the Lessee hereunder;

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- 13.1 The failure of Lessor to receive any rent or other amount owed by Lessee to Lessor within five days after it first becomes due.
- 13.2 Any breach or failure of the Lessee to observe or perform any of its obligations hereunder, or any representation is untrue or incorrect.
- 13.3 The making by the Lessee of an assignment for the benefit or creditors.
- 13.4 The insolvency or bankruptcy of the Lessee;
- 13.5 The consent of the Lessee to the appointment of a trustee or receiver, or the appointment without its consent, of a trustee or receiver for the Lessee or of a substantial part of its property; the institution by or against the Lessee of bankruptcy, reorganization, arrangement, or insolvency proceedings.
- 13.6 Sale of Lessee's stock assets or other corporate restructuring without obtaining the Lessor's prior written consent.

At any time after a default, Lessor may declare a default under this or any other Lease or agreement between Lessor and Lessee (or any of its affiliates). Immediately after a default, Lessee will pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the sum of all rents (due or to become due), and other sums (e.g. late charges, indemnification, liens) then due under each Lease, discounted at the greater of 6% or the lowest rate allowed by law together with interest on such sum accruing from the date of default to the date of payment, at the lower of 20% or the highest rate allowed by law. Lessee waives notice of intention to accelerate and notice of acceleration. If Lessee fails to pay such amount Lessor may require that Lessee return the Equipment as required by Section 22. If Lessee does not return the Equipment, Lessor may enter, with or without legal process, on any premises and take and retain possession of the Equipment free of all rights and interests of Lessee without any further liability or obligation to redeliver any of the Equipment to Lessee. Lessee hereby grants Lessor the right to enter upon any premises where any Equipment is located in order to take possession of and remove such Equipment and Lessee expressly waives, and indemnifies Lessor against, any damages in any way relating to or caused by any such entry and/or repossession. If the Lessor intends to sell the Equipment, it may do so in a public or private sale. Lessee agrees that ten (10) days advance notice of any sale is commercially reasonable. The Equipment need not be displayed at the sale. The proceeds of any sale or lease will be applied in the following order of priorities; (1) to pay all of Lessor's expenses in taking, removing, holding, repairing and disposing of Equipment; then (2) to pay any late charges and interest accrued; then (3) to pay unpaid rent, interest and all other due but unpaid sums (including any indemnification and sums due under other Leases or agreements in default). Unless otherwise elected in writing by Lessor, if the proceeds of any sale or lease are not enough to pay the amounts owed to Lessor under this Section, Lessee will pay the deficiency.

Lessor's remedies for default may be exercised instead of or in addition to each other or any other legal or equitable remedies. Lessor has the right to set-off sums received from any source (including insurance proceeds) against Lessee's obligations under each Lease. Lessee waives its right to object to the notice of the time or place of sale or lease and to the manner and place of any advertising. Lessee waives any defenses based on statutes of limitations or laches in actions for damages. Lessor's waiver of any default is not a waiver of its rights with respect to a different or later default.

- 14. **NOTICES, REMEDIES, AND WAIVERS.** All notices relating hereto shall be delivered certified mail, return receipt requested to the addresses set forth on the first page hereof.
- 15. **LEASE IRREVOCABILITY.** THIS IS A NET LEASE AND ALL OBLIGATIONS OF LESSEE HEREUNDER, INCLUDING ITS OBLIGATION TO PAY RENT, SHALL BE ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE AND SHALL NOT BE SUBJECT TO ANY COUNTERCLAIM, OFF-SET, DEFENSE, ABATEMENT OR REDUCTION FOR ANY REASON WHATSOEVER, INCLUDING WITHOUT LIMITATION BY REASON OF ANY DEFECT IN, OR DAMAGE TO THE EQUIPMENT OR ANY INTERFERENCE IN THE LESSEE'S USE THEREOF; OR ANY ACT OR OMISSION OF LESSOR, OR ANY OTHER ENTITY, INCLUDING A DEFAULT BY LESSOR HEREUNDER, OR ANY BANKRUPTCY OR INSOLVENCY OF THE LESSOR. LESSEE WAIVES ALL RIGHTS AND REMEDIES THAT A LESSEE MAY HAVE UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.
- 16. **INTEREST AND EXPENSES.** Should Lessee fail to pay any part of the rent herein reserved or any other sum required to be paid by Lessee to Lessor hereunder, Lessee shall pay Lessor a late payment charge equal to 10% of the monthly payment due plus interest on such delinquent payment at the highest legal rate from the date when such payment was due until paid, and expenses of collection, and attorney's fees of twenty (20%) percent on the balance due.
- 17. **SEVERABILITY.** If any provision of this agreement shall be found by a court of competent jurisdiction to be unreasonable, and therefore unenforceable, in that it imposes a restraint upon the Lessee more extensive than the legitimate interests of the Lessor sought to be protected, the Lessor waives such provision, but only the extent that such provision is found by such court to be unenforceable. The Lessor and the Lessee agree that such provision may be modified by such court so that it becomes reasonable and enforceable and, as modified, will be enforced as any other provision hereof, all the other provisions hereof continuing in full force and effect. Such a modification however,

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will be effective only in the legal proceeding of which it is a part and only on the facts to which it is applied; all provisions herein will be applied as written, to the extent enforceable, in any other legal proceeding or on any other facts.

18. **ENTIRE AGREEMENT; WAIVER.** This instrument constitutes the entire agreement between the parties. No employee or agent is authorized to bind or modify any term hereof. No waiver by Lessor of any provision hereof shall constitute a waiver of any other matter and all waivers will be in writing and executed by an officer of Lessor.
19. **SECURITY INTEREST - UNIFORM COMMERCIAL CODE FINANCING STATEMENT.** Lessee grants Lessor a first priority security interest in the Equipment to secure Lessee's obligations. Lessee irrevocably authorizes Lessor to execute and file any UCC statement in Lessee's name which relate to the Equipment leased hereunder or this Lease, and Lessee agrees to pay Lessor the actual fee for such filing.
20. **WAIVER OF TRIAL BY JURY; COUNTERCLAIMS.** LESSEE HEREBY WAIVES A TRIAL BY JURY AND THE RIGHT TO INTERPOSE ANY COUNTERCLAIM OR OFFSET OF ANY NATURE OR DESCRIPTION IN ANY LITIGATION BETWEEN LESSEE AND LESSOR WITH RESPECT TO THIS LEASE OR SCHEDULES ATTACHED HERETO, THE PROPERTY COVERED HEREUNDER AND THE REPOSSESSION THEREOF.
21. **STIPULATION THAT AGREEMENT IS A LEASE UNDER NEW YORK LAW; VENUE OF LITIGATION.** It is stipulated by and between the Lessor and Lessee that this agreement shall be deemed to be a lease. It is further stipulated that this Lease was made in Nassau County, New York, regardless of the order in which the signatures of the parties shall be affixed hereto, and said Lease shall be interpreted and the rights and liabilities of the parties here determined in accordance with the laws of the State of New York. As part of the consideration for the Lessor's executing this lease, Lessee hereby agrees that all actions or proceedings arising directly or indirectly from this lease shall be litigated only in courts located within the State of New York, and Lessee hereby consents to the jurisdiction of any court located within the State of New York, and waives the personal service of any and all process upon the Lessee herein.
22. **RETURN OF EQUIPMENT:**
- A. Upon termination in any manner whatsoever of the lease hereby granted or any extension thereof, the Lessee shall forthwith deliver freight prepaid, the Equipment to the Lessor or an address to be designated by Lessor, complete and in good order and condition, and shall pay to the Lessor all amount due pursuant to the terms hereof. The Lessee shall also pay to the Lessor such sum as may be necessary to cover replacement at the regular prices established by the Lessor for all damaged, broken, or missing parts of the property.
- B. If Lessee fails to return the Equipment to the designated location, Lessor may at Lessee's expense (1) pick up and ship the Equipment to proper location (2) continue to charge rent until such time as Equipment reached the proper return point.
23. **FAILURE TO RETURN PROPERTY AS EXTENSION OF LEASE.** In the event that Lessee does not return the Equipment pursuant to Section 22, then the Equipment shall continue to be held and leased under and in accordance with the conditions of this agreement contained, and this agreement shall thereupon be extended indefinitely as to term, but thereafter (a) Either the Lessor or Lessee upon **five** days notice in writing to the other may terminate the lease, whereupon the Lessee shall forthwith deliver the Equipment to the Lessor (b) Lessee may submit on "Intention to Terminate Lease" indicating termination date and specific date of delivery of the leased equipment to the Lessor. (c) Equipment retained by Lessee beyond expiration of the term or in the event of a default shall be invoiced, and shall be based upon the daily demurrage rate as set forth in the IATA ULD Control Manual in effect at the time of default, extension or early termination, for the type of equipment as leased hereunder, which shall be calculated commencing on the first day applicable to any outstanding invoice.
24. **OPTION TO PURCHASE.** At the expiration of the lease term hereof, and provided that the Lessee is in full compliance with all of the terms of this lease, and if Lessee has paid in full all rentals owing, and be not then in default, Lessee shall have the option to purchase all but not less than all, the equipment herein described upon giving written notice not less than 30 days prior to the expiration of the term thereof. The Purchase Price shall be \$ _____ per unit and shall be payable upon expiration of the lease term.
25. **COUNTERPARTS AND RECORDING.** This lease may be executed in any number of required counterparts, each counterpart constituting an original. The parties are to execute, acknowledge and deliver such further counterparts of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a copy hereof in any public office of the United States, any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Lessor, if any in effecting such recording or filing.

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26. **ENTIRE AGREEMENT.** This instrument constitutes the entire agreement between parties. No employee or agent is authorized to bind or modify any term hereof. No waiver by Lessor of any provision hereof shall constitute a waiver of any other matter and all waivers will be in writing and executed by an officer of Lessor.

ACCEPTED BY

AIRLINE CONTAINER LEASING, INC.

Name of Lessee : _____

By: _____
Authorized Signature (title)

By: _____
Authorized Signature (Title)

Print Name: _____

Date Executed by Lessee: _____

STATE OF _____ : COUNTY OF _____
On the _____ day of _____, _____ before me personally appeared _____, to me known and known to me to be the individual described in and who executed the within Agreement, and he/she acknowledged to me that he/she did in fact execute same in the capacity of _____ on behalf of _____.

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