

## LEASE AGREEMENT

This Lease Agreement ("Lease") is entered in to this \_\_\_ day of \_\_\_\_\_, 2003, by and between Smart Shipper, LLC, an Ohio corporation located at 2887 Columbia Trail, Loveland, OH 45140 ("Smart Shipper") and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ ("Customer").

### Recitals

- A. Smart Shipper has developed and supplies temperature-sensitive shipping containers.
- B. Customer desires to use Smart Shipper's containers under the terms and conditions set forth in this Lease.

### Agreement

Customer and Smart Shipper agree to the following terms to govern the leasing and use of containers by Customer:

1. Lease of Equipment - Smart Shipper agrees to lease to Customer its temperature-sensitive shipping containers according to the terms and conditions set forth in this Lease. Ownership of the containers shall at all times remain with Smart Shipper. Upon performance of its obligations under this Lease, Customer shall have the right to possess and control the containers for the term of the Lease.
2. Number and Term - Smart Shipper shall provide the number of containers specified below for the term set forth.
  - A. Number of Containers - \_\_\_\_\_.
  - B. The Lease shall run for \_\_\_ months, beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.
3. Payment - Customer shall pay Smart Shipper \$ \_\_\_\_\_ (the "Lease Amount") per container for the entire Lease term, which shall be payable in equal installments. The installments shall be calculated by dividing the Lease Amount for each container by the number of months in the term of the Lease, as set forth in paragraph 2(B) of the Lease. The price does not include any tax of any kind, which shall be the responsibility of the Customer. The Lease Amount installments shall be paid according to the following schedule:
  - A. One installment per container shall be paid upon execution of this Lease.
  - B. The second installment shall be due upon delivery of the containers.

C. Each subsequent installment shall be paid on or before the first of each following month until the total Lease Amount has been paid in full.

D. A service charge of 1 and 1/2 percent per month shall be charged to any payments that are not made in accordance with these terms.

4. Warranties - Smart Shipper warrants that the Smart Shipper container has been constructed in accordance with specifications to allow the shipment and storage of products within designated temperature ranges. However, since Smart Shipper is not responsible for the packing, sealing and/or shipping of its containers, it cannot guarantee the performance of its containers. If the Customer can demonstrate: (a) that a container did not maintain the required temperature range for reasons unrelated to the packing, sealing and/or shipping of the container; or (b) that a container has any other defect in manufacture, the Customer shall be entitled to the remedy set forth in paragraph 5, provided the Customer complies with the return policies and procedures set forth in this Lease. **THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

5. Customer's Remedies and Limitation of Smart Shipper's Liability - SMART SHIPPER (INCLUDING ITS CONTRACTORS AND SUPPLIERS) SHALL NOT BE LIABLE UNDER ANY THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) FOR ANY DAMAGES OR REMEDY WHATSOEVER (INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR CLAIMS OF CUSTOMERS OF THE CUSTOMER) OTHER THAN THE TWO SPECIFIC REMEDIES SET FORTH IN THIS PARAGRAPH. The only remedies available to Customer for any reason shall be: (a) return of the payment made by Customer to Smart Shipper for the use of the container for the shipment in question; and/or (b) a replacement container to be used for the remainder of the Lease Term. The remedies of the Customer set forth herein are exclusive and the liability of Smart Shipper with respect to any contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale, maintenance, repair or use of the Containers covered by or furnished under the contract, whether in contract, in tort (including negligence) or otherwise, shall not exceed the price charged by Smart Shipper for the Containers.

6. Customer's Obligations

A. Customer shall be solely responsible for determining that the containers meet its performance requirements and other criteria.

B. Customer shall be responsible for all shipping charges in connection with its use of the containers.

C. Customer shall be responsible for cleaning and maintaining the containers in compliance with all applicable regulations.

D. Customer shall use the containers in conformance with all instructions and specifications of Smart Shipper.

E. Customer shall not tamper with or disassemble the container or its components.

F. At the end of the Lease Term Customer shall return all containers to Smart Shipper in good, workable condition, ordinary wear and tear excepted. The charge for any lost containers or containers which are not returned at the end of the Lease Term shall be \$ \_\_\_\_\_.

G. Customer shall be responsible for any and all liability related to the use of the containers, including but not limited to biohazard claims.

7. Return Procedure - In the event Customer believes a container is defective in manufacture or has failed to maintain the required temperature range for reasons unrelated to the packing, sealing and/or shipping of the container, Customer shall follow the following procedure to seek replacement of the container.

A. Notify Smart Shipper of the problem and obtain prior approval from Smart Shipper for the return of the container.

B. Return the container to Smart Shipper consistent with instructions provided by Smart Shipper.

C. Allow a reasonable time for Smart Shipper to review and evaluate the container. In the event Smart Shipper determines that the container is defective, it will promptly provide a replacement container and will reimburse Customer for any reasonable ground rate transportation charges. Customer will be responsible for any extra charges associated with expedited shipping.

8. Indemnification - Customer shall defend and indemnify Smart Shipper (and its officers, directors, employees and agents) from any and all claims of any kind asserted by any third party that relate in any way to the use of the containers.

9. Termination - Smart Shipper shall have the right to terminate the Lease for any of the following reasons: (a) any default or breach by Customer of any of its obligations under the Lease; (b) bankruptcy or insolvency of Customer; or (c) entry of any decree from a court or governmental agency that relates in any way to the operation of Customer's business or use of the containers.

10. Miscellaneous Provision

A. The Lease shall be governed by the laws of the State of Ohio.

B. Customer and Smart Shipper submit to jurisdiction in the State of Ohio and designate the Court of Common Pleas of Hamilton County, Ohio as the exclusive court for any actions or proceedings relating to the Lease. They irrevocably consent to this choice of courts, jurisdiction and venue and waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceedings initiated in the Court of Common Pleas of Hamilton County, Ohio.

C. Notices shall be sent to the addresses provided by the parties to one another and shall be sent by any mode of delivery that requires written acknowledgement of receipt.

D. The Lease can only be amended or changed in a writing signed by the party against whom the amendment is sought to be enforced.

AGREED:

**CUSTOMER**

**SMART SHIPPER, LLC**

\_\_\_\_\_  
name: \_\_\_\_\_  
title: \_\_\_\_\_

\_\_\_\_\_  
name: \_\_\_\_\_  
title: \_\_\_\_\_