

MERCHANDIZER LEASE AND ICE DELIVERY STANDARD TERMS AND CONDITIONS

These terms and conditions (the “Terms and Conditions”) apply to each Merchandizer Lease and Ice Delivery Agreement (the “Lease Agreement”) with terms defined therein, between Empire Cooler Service, LLC (the “Company”) and the Lessee. By signing each Lease Agreement the Lessee agrees to incorporate these Terms and Conditions into the Lease Agreement and to be additionally bound by all the terms and conditions listed herein:

1. **Services.** Company agrees to deliver and remove Equipment and to deliver and place bagged ice into the Equipment in quantities and at prices specified in the Lease Agreement.

2. **Location and Accessibility.** Lessee agrees the equipment location site will be of level-grade and accessible by delivery truck. Lessee further agrees equipment will be available and accessible at the time bagged ice is delivered. Any inaccessible locations or denial of delivery will result in a \$85 per trip fee in addition to any other fees on the Fee Schedule in the Lease Agreement.

3. **Lease Price, Billing and Payment Terms.** The price of Services is those listed in the Lease, but do not include taxes. Applicable taxes will be added at the time of invoice. At its sole option, the Company will invoice Lessee monthly for equipment and either monthly or per-delivery of bagged ice. Payment will be made by Lessee by the method indicated in the Lease. Taxes will be added to invoices as applicable.

4. **Delivery Schedule.** Upon execution of the Lease Agreement, Company will promptly contact the Lessee to schedule an acceptable date to deliver Equipment, including the initial quantity of bagged ice as determined in the Lease Agreement. Subsequent ice deliveries will be made in the quantity indicated in the Lease Agreement upon reasonable notice from the Lessee. Delivery will be on a best-efforts basis, and all efforts will be made to deliver bagged ice within 24 hours. The Company reserves the right to extend the time based on truck routing schedules and daily ice demand.

5. **Termination.** Company may cancel all or any part of this Lease Agreement at any time for any reason. The Lessee may only terminate this agreement on the Lease end date (“End Date”) specified in the Lease Agreement. If the Lease Agreement is terminated before the End Date the Lessee acknowledges Company is due and will be paid the balance of the Lease within five (5) business days.

6. **Risk of Loss; Title.** Until Termination and removal of equipment by Company, Lessee bears all risk of loss or damage to Equipment provided by Company in satisfaction of the Lease Agreement.

7. **Indemnification.** Lessee agrees to indemnify, defend and hold Company, and its employees, agents, owners, officers and affiliates harmless from and against all suits, actions, claims, demands, liabilities, losses, or costs (including, without limitation, reasonable attorneys' fees) associated with this Lease Agreement.

8. **Governing Law; Remedies.** The Company and Lessee hereby agree that (a) any legal action arising under this Lease Agreement will be brought in the state or federal courts situated in or having jurisdiction over Chicago, Illinois, (b) in the event of any litigation arising under any Order, or for any reason whatsoever, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party.

9. **Limitation of Damages.** Company's liability to Lessee is limited to the market value of the equipment leased. In no event shall Company be liable to Lessee for any indirect, special, incidental, consequential, or punitive damages, including liability for damages caused by the negligence or willful misconduct or misuse by Lessee of leased equipment.

10. **Entire Agreement; Headers.** These Terms and Conditions and amendments if any, constitute the entire agreement between the parties and supersede all prior agreements and understandings, whether written or oral, relating to the subject matter of these Terms and Conditions. The heading for any clause is added only for the sake of reference facilitation and does not affect the meaning of the clauses themselves.

11. **Severability and Waiver.** In the event that any provision of this Lease Agreement or the Terms and Conditions shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.