



EQUIPMENT FINANCE CONTRACT

FOR TRANSACTIONS OVER \$100,000

A Foodservices Program Powered by Marlin

Marlin Leasing Corporation
300 Fellowship Road • Mt. Laurel, NJ 08054
phone: 888.479.9111 • fax: 877.305.6756

or Marlin Business Bank
2795 E. Cottonwood Pkwy, Ste 120 • Salt Lake City, UT 84121
phone: 801.453.1722

DESCRIPTION OF LEASED EQUIPMENT (Include quantity, make, model, serial number and accessories. Attach schedule if necessary.)

MUST BE COMPLETED

LEASING CUSTOMER ("YOU")

Company Name (Exact business name): _____
Address: _____
Street City County State Zip
Phone: _____ Fax: _____ Corp. Limited Liability Corp. Partnership Prop.
Equipment Location: _____ State of Incorporation/Organization: _____
Vendor: _____ Address: _____

Lease Term (Mos.)	Total No. of Payments	Amount of Each Payment (plus applicable taxes)	Advance Rentals First & Last month(s)	Payment Frequency <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other:	Purchase Option at End of Lease Term <input checked="" type="checkbox"/> \$1.00
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TERMS OF LEASE

1. REQUEST FOR US TO ACQUIRE EQUIPMENT FOR YOU. You (the Leasing Customer identified above) wish to acquire certain equipment from the equipment vendor identified above. Rather than purchasing it yourself, you have come to us (one of the Lessors identified above) and asked us to purchase it and then lease it back to you. In exchange for our agreement to do this, you have agreed to the terms in this lease agreement (the "Lease"). We have given you an opportunity to discuss and negotiate these terms with us, and the following is the final version of our contract. If there is any information deleted from the above boxes, you give us permission to fill it in. This Lease is not binding on us until we sign it.

2. THE EQUIPMENT. We agree to lease to you, and you agree to lease from us, the equipment identified above and on any schedules attached to this Lease. This Lease also covers any and all replacement equipment, add-ons, substitutions or accessories (collectively referred to as the "Equipment"). The other details of the Lease such as the rental amount, the initial Lease term and other matters are set forth in the boxes above.

3. YOUR SELECTION OF THE EQUIPMENT VENDOR AND THE EQUIPMENT. You hereby acknowledge and agree that:

- (a) YOU SELECTED THE EQUIPMENT VENDOR AND THE EQUIPMENT BASED ON YOUR OWN SKILL AND KNOWLEDGE.
- (b) WE DID NOT SELECT OR INSPECT THE EQUIPMENT, HAVE NEVER SEEN THE EQUIPMENT AND HAVE NO EXPERT KNOWLEDGE REGARDING IT.
- (c) YOU AGREE THAT THIS LEASE IS A FINANCE LEASE AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. IT IS ALSO A "TRUE LEASE," MEANING THAT IT IS NOT A "LEASE INTENDED AS SECURITY," A CONDITIONAL SALE, A LOAN OR A SIMILAR ARRANGEMENT.

(d) PRIOR TO EXECUTING THE LEASE, YOU RECEIVED AND APPROVED THE SUPPLY CONTRACT (IF ANY) BETWEEN US AND THE EQUIPMENT VENDOR, AND YOU HAVE BEEN ADVISED IN WRITING (OR ARE NOW ADVISED HEREBY) THAT YOU MAY HAVE RIGHTS AGAINST THE VENDOR UNDER THE SUPPLY CONTRACT (IF ANY) AND THAT YOU MAY CONTACT THE VENDOR FOR INFORMATION ABOUT WHAT YOUR RIGHTS AGAINST THE VENDOR ARE (IF ANY).

4. NO RIGHT TO CANCEL; OTHER IMPORTANT TERMS OF THE LEASE. YOU AGREE AS FOLLOWS:

(a) **LEASE CANNOT BE REVOKED; NO "TEST PERIOD."** BECAUSE WE ARE PURCHASING THE EQUIPMENT FOR YOU AT YOUR REQUEST AND CANNOT GET A REFUND, THIS LEASE CANNOT BE CANCELLED OR REVOKED BY YOU FOR ANY REASON AT ANY TIME, INCLUDING BUT NOT LIMITED TO EQUIPMENT FAILURE OR DEFECTS, DAMAGE OR LOSS. THE LEASE CANNOT BE PREPAID EXCEPT WITH OUR PRIOR WRITTEN PERMISSION ON TERMS ACCEPTABLE TO US. THERE IS NO "TEST PERIOD" FOR THE EQUIPMENT.

(b) **LESSOR IS NOT RELATED TO MANUFACTURER OR VENDOR; NO CLAIMS TO BE MADE AGAINST LESSOR.** WE ARE NOT RELATED IN ANY WAY TO THE EQUIPMENT MANUFACTURER OR VENDOR. NEITHER THE VENDOR NOR ANYONE ELSE IS OUR AGENT, AND NO STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY MADE BY THE VENDOR OR OTHER PERSON IS BINDING ON US OR WILL AFFECT YOUR OBLIGATIONS TO US. ONLY AN EXECUTIVE OFFICER OF THE LESSOR IS AUTHORIZED TO WAIVE OR ALTER ANY OF THE TERMS OF THIS LEASE, AND THEN ONLY IN WRITING. IF THE EQUIPMENT FAILS TO OPERATE PROPERLY, OR THE VENDOR OR

(Agreement continues on reverse side)

ACCEPTANCE OF LEASE AGREEMENT

THIS IS A BINDING CONTRACT. IT CANNOT BE CANCELED. READ IT CAREFULLY BEFORE SIGNING AND CALL US IF YOU HAVE ANY QUESTIONS.

X
Signature of Leasing Customer _____ Print Name of Signer _____ Title _____ Date _____

Accepted and Signed by the Lessor identified above _____ Print Name of Signer _____ Title _____ Date _____

PERSONAL GUARANTY

IN CONSIDERATION OF MY RECEIVING BENEFIT AND VALUE FROM THE ABOVE LEASE, I (OR WE, IF THERE IS MORE THAN ONE OF US, INDIVIDUALLY, JOINTLY AND SEVERALLY) HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE ALL PAYMENTS AND OBLIGATIONS OWED BY THE LEASING CUSTOMER UNDER THIS LEASE, AND I ALSO AGREE TO PAY THE LESSOR'S LEGAL FEES AND COSTS INCURRED IN ENFORCING THE LEASE AND THIS PERSONAL GUARANTY. I WAIVE NOTICE OF ACCELERATION, DEFAULT, RENEWALS, EXTENSIONS, TRANSFERS, AMENDMENTS AND OTHER CHANGES IN THE TERMS OF THE LEASE AND AGREE THAT I WILL BE BOUND BY ANY AND ALL SUCH CHANGES. I AGREE THE LESSOR MAY PROCEED AGAINST ME SEPARATELY FROM THE LEASING CUSTOMER. I AGREE THAT ANY SUIT RELATING TO THIS LEASE OR PERSONAL GUARANTY SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN PENNSYLVANIA AND I IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND I WAIVE TRIAL BY JURY. I AGREE THAT THIS PERSONAL GUARANTY WILL BE BINDING UPON MY HEIRS AND PERSONAL REPRESENTATIVES. I HAVE AUTHORIZED THE LESSOR AND ITS AFFILIATES AND DESIGNEES TO USE MY CONSUMER CREDIT REPORTS FROM TIME TO TIME IN ITS CREDIT EVALUATION AND COLLECTION PROCESSES, AS WELL AS TO OFFER FUTURE CREDIT PRODUCTS AND SERVICES. I AGREE THAT MY FAXED SIGNATURE SHALL BE CONSIDERED AS GOOD AS MY ORIGINAL SIGNATURE AND ADMISSIBLE IN COURT AS CONCLUSIVE EVIDENCE OF THIS PERSONAL GUARANTY.

GUARANTOR #1 (Print Name) _____

X
Signature (Individually; No Titles) _____ Date _____

GUARANTOR #2 (Print Name) _____

X
Signature (Individually; No Titles) _____ Date _____

ACCEPTANCE OF DELIVERY

I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEHALF OF THE LEASING CUSTOMER. I CERTIFY TO THE LESSOR THAT THE EQUIPMENT HAS BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PROPERLY. I HEREBY AUTHORIZE THE LESSOR TO PAY THE EQUIPMENT VENDOR AND COMMENCE THE LEASE.

X
Authorized Signature _____ Name and Title (Please Print) _____ Equipment Delivery Date _____

TERMS OF LEASE (continued)

ANY OTHER PERSON FAILS TO PROVIDE ANY INSTALLATION, MAINTENANCE, OR OTHER SERVICE, YOU WILL MAKE ANY COMPLAINT ONLY AGAINST THE VENDOR OR OTHER PERSON AND NOT AGAINST US (EITHER BY WAY OF A CLAIM, COUNTERCLAIM, DEFENSE OR EXCUSE TO PAYMENT).

(c) **LESSOR MAKES NO WARRANTIES.** THE EQUIPMENT IS LEASED BY US TO YOU "AS IS," "WHERE IS" AND WITH ANY AND ALL FAULTS. WE HAVE MADE NO STATEMENT, REPRESENTATION, OR WARRANTY REGARDING THE EQUIPMENT. WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE SHALL TRANSFER TO YOU ALL EXPRESS WARRANTIES, IF ANY, MADE BY THE EQUIPMENT VENDOR TO US, BUT THIS DOES NOT IMPLY THAT THERE ARE ANY SUCH WARRANTIES. YOU MAY CONTACT THE VENDOR TO GET A STATEMENT OF ALL WARRANTIES, IF ANY.

(d) **BARGAINED FOR WAIVER OF RIGHTS.** YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES YOU HAVE UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, INCLUDING SECTIONS 508 THROUGH 522 THEREOF.

(e) **DISCLAIMER OF LIABILITY.** WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING LOST PROFITS, SPECIAL DAMAGES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES) OR INJURY TO YOU, YOUR EMPLOYEES OR ANY OTHER PERSON OR PROPERTY CAUSED BY THE EQUIPMENT.

5. RENTAL AMOUNT; LATE FEE; DOCUMENTATION FEE. The monthly or other periodic rent you have agreed to pay is stated above. The rental amount is based on the estimated cost of all the Equipment and it may be adjusted higher or lower if the actual cost of the Equipment is higher or lower than the estimate. If we do not receive your payment by its due date, there will be a late fee equal to the greater of \$25.00 or 15% of the late amount (or, if less, the maximum amount allowable under applicable law), which you agree is a reasonable estimate of the costs we incur with respect to late payments and is not a penalty. Upon your request, we will waive the first assessed late charge. We may charge you a one-time documentation fee up to \$250. You agree to pay a charge of \$30 if any payment made by ACH or check is dishonored or returned.

6. LEASE COMMENCEMENT AND TERM. This Lease will commence when the Equipment is delivered to you and will continue for the entire Lease term plus any interim rent period. The monthly (or other periodic) due date will be established by us. The due date for the first regular rental payment will also be established by us; however, it will not be greater than 30 days from the date on which the Equipment was delivered to you.

7. ADVANCE PAYMENT(S). You have paid us one or more advance payments in the amount(s) indicated above. If the Lease does not commence for reasons other than our own negligence, we may retain such monies to compensate us for our credit and other administrative costs.

8. EQUIPMENT DELIVERY. You understand and agree that we are not responsible for packaging, delivery, installation or testing of the Equipment. You (and/or the Vendor, if you have made such arrangements with the Vendor) are responsible for all such matters. You agree that you will not have any complaint against us if the Vendor or any other person improperly packages the Equipment or delays in delivering or installing it.

9. USE OF THE EQUIPMENT. YOU REPRESENT TO US THAT THE EQUIPMENT WILL BE USED ONLY FOR COMMERCIAL, BUSINESS OR AGRICULTURAL PURPOSES, AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. In addition, you agree not to attach the Equipment to any realty or otherwise permit to become a "fixture" to real estate or a structure thereon, nor will you trade it in, make alterations to it, sell or dispose of it without our prior written permission. You shall not allow any liens or encumbrances (for example, a mechanic's lien) to be placed on the Equipment. You will keep and use the Equipment only at the address listed above and will not move it or return it prior to the end of the Lease term.

10. MAINTENANCE AND SERVICE. You agree that we are not responsible for installation, maintenance, repairs or service to the Equipment. You agree to use the Equipment strictly in the manner for which it is intended by the manufacturer, and you shall maintain the Equipment in good operating order.

11. LEASE ASSIGNMENT; SUBLEASE OF EQUIPMENT. THIS LEASE WAS MADE TO YOU BASED ON YOUR OWN CREDIT. THEREFORE YOU AGREE THAT YOU MAY NOT ASSIGN, TRANSFER OR SELL ANY OF YOUR RIGHTS OR INTERESTS UNDER THE LEASE TO ANY OTHER PERSON OR ENTITY, NOR MAY YOU SUBLEASE OR RENT ANY OF THE EQUIPMENT TO ANY OTHER PERSON OR ENTITY. HOWEVER, YOU AGREE THAT WE MAY ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ANY OR ALL OF OUR RIGHTS AND INTERESTS UNDER THIS LEASE (INCLUDING OUR RIGHTS AND INTERESTS IN THE EQUIPMENT) TO ANY OTHER PERSON OR ENTITY (INCLUDING A BANK OR OTHER SECURED PARTY OR A BUYER) (COLLECTIVELY, A "THIRD PARTY") WITHOUT PRIOR NOTICE TO YOU. SUCH THIRD PARTY MAY ALSO ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ITS RIGHTS AND INTERESTS. IN THIS EVENT, YOU AGREE THAT SUCH THIRD PARTY, OR ITS ASSIGNEE OR TRANSFEREE, WILL RECEIVE ALL THE RIGHTS AND INTERESTS WE HAD UNDER THE LEASE BUT NONE OF OUR OBLIGATIONS OR LIABILITIES, IF ANY. WE WILL CONTINUE TO BE RESPONSIBLE FOR ALL SUCH LIABILITIES AND WILL RETAIN AND HONOR ALL SUCH OBLIGATIONS, IF ANY. YOU PROMISE AND AGREE THAT YOU WILL NOT ASSERT ANY CLAIMS, COUNTERCLAIMS, DEFENSES OR SETOFFS AGAINST SUCH THIRD PARTY. YOU HEREBY ACKNOWLEDGE THAT ANY TRANSFER OF OUR RIGHTS AND/OR INTERESTS TO A THIRD PARTY WOULD NOT MATERIALLY CHANGE YOUR OBLIGATIONS UNDER THE LEASE OR INCREASE YOUR RISKS.

12. DAMAGE TO EQUIPMENT; RISK OF LOSS OF EQUIPMENT; INSURANCE. You agree that we are not liable or responsible for any damage to the Equipment, or any loss of or casualty to the Equipment from any cause whatsoever. NO SUCH DAMAGE, CASUALTY OR LOSS WILL AFFECT YOUR RESPONSIBILITIES AND OBLIGATIONS UNDER THE LEASE. You must maintain acceptable public liability insurance naming us as "additional insured". You must keep the Equipment insured against all risks of loss in an amount equal to the replacement cost and have us listed on the policy as "loss payee." If you do not give us proof of the required insurance within 30 days after the Lease commences, then depending on the original cost of the Equipment we may either (i) obtain insurance to cover our interests and charge you a fee for such coverage

(including a monthly administration fee and a profit to us) or (ii) charge you a monthly non-compliance fee up to \$50 (which provides no insurance benefit). You can cancel the insurance coverage fee or non-compliance fee at any time by delivering the required proof of insurance.

13. TAXES AND CERTAIN FEES RELATING TO THE LEASE OF THE EQUIPMENT. You agree and understand that the amounts we are charging you to lease the Equipment do NOT cover taxes, governmental fees and similar types of costs. Accordingly, you agree to pay us upon demand for all taxes (including but not limited to sales, property, use and other taxes), administrative costs and other charges and fees relating to this Lease or to the use or ownership of the Equipment. We may adjust this Lease and the monthly (or other periodic) payment amount to finance for you any taxes due at Lease inception. We may bill you based on our estimate of the taxes. We may charge you an annual property tax administration fee up to \$25. We may require you to file all personal property tax returns.

14. TITLE TO THE EQUIPMENT. You agree that the Equipment is and will remain throughout the term of the Lease solely our property. We will have title to the Equipment throughout the term, and this is a "true lease." You hereby grant us a first priority security interest in the Equipment and you authorize us and our agents to file Uniform Commercial Code Financing Statements recording such security interest (in case this is later determined not to be a "true lease").

15. YOUR REPRESENTATIONS TO US. The person signing this Lease on behalf of the leasing customer hereby represents and warrants to Lessor that: This Lease has been authorized by any and all action required of the corporation, partnership, limited liability company or other form of business (whichever applies in your case), and no consent of any other person or entity is necessary; the lessee entity has complete power to enter into this Lease, and the person signing on behalf of the lessee has been authorized to do so; the Lease is a legal, valid and binding obligation of the lessee entity, and enforceable against the lessee in accordance with its terms; all factual statements made in this Lease and all other information supplied to us by the lessee entity or your representatives, is accurate and complete in all material respects. All prior conversations, agreements and representations relating to this Lease or the equipment are integrated herein.

16. DEFAULT DEFINED. You will be in default under this Lease if any of the following events occur: (a) you fail to make any rental payment or pay any other amount due under this Lease by its due date; (b) you fail to comply with any other term or condition of this Lease or any other agreement between us, or fail to perform any obligation imposed upon you relating to this Lease or any such other agreement; or (c) you become deceased (if the lessee entity under this Lease is one or more natural persons), go out of business, admit your inability to pay your debts as they fall due, become insolvent, make an assignment for the benefit of your creditors, file (or have filed against you) a petition in bankruptcy, a trustee or receiver of your business assets is appointed, or you sell all or substantially all of such assets.

17. OUR REMEDIES UPON DEFAULT. In the event you default under this Lease, as defined above, we will have the right to take ANY OR ALL of the following actions, in addition to any and all other remedies that may be available to us under law:

(a) terminate the Lease without prior notice or warning to you;

(b) directly debit (charge) your bank account(s) and/or file a lawsuit against you to collect all past due rent AND ALL RENT THAT WILL BECOME DUE IN THE FUTURE DURING THE UNEXPIRED TERM, plus the "residual value" of the Equipment as determined by us in our sole but reasonable judgment, plus all other fees, charges or amounts that are then due. You agree to pay all of our reasonable legal costs, including but not limited to reasonable attorney's fees, and reasonable overhead for employee time spent on preparing for suit or attempting to collect payments; and/or

(c) repossess the Equipment or apply to a court for an order allowing repossession. In this event, you agree that, after the Equipment is repossessed, you will have no further rights in the Equipment, and you agree we may resell, re-lease or otherwise remarket the Equipment without notice to you. You agree (and you waive any rights that may provide to the contrary) that we will NOT be required to repossess, resell, re-lease or otherwise remarket the Equipment at any time, and that our failure to do so will not affect our other rights of collection and other rights under this Lease or under law.

18. PERSONAL JURISDICTION OVER YOU IN PENNSYLVANIA, AND PLACE FOR ANY LAWSUIT. You hereby acknowledge that this Lease was accepted by us in Pennsylvania, where we maintain an office, and it did not take effect until we received the executed legal documents in our Pennsylvania office. Accordingly, YOU AGREE THAT THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. YOU AGREE THAT ANY SUIT RELATING TO THIS LEASE SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN PENNSYLVANIA, AND YOU IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL. You irrevocably waive, to the fullest extent you may effectively do so, any objection that you may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been in an inconvenient forum. Any action by you against us must be commenced within one year after the cause of action arises or be forever barred.

19. You understand that we have no control over your use of the Equipment and, in any event, for the amount of rent we are charging we cannot agree to accept any financial, liability or other risks relating to the use or ownership of the Equipment. Accordingly, you agree to hold us harmless, indemnify (pay or reimburse) and defend us against all claims, liabilities, losses, suits, proceedings, damages, costs (including reasonable legal fees) relating to this Lease or to the use or ownership of the Equipment, including but not limited to claims for death or injury to persons and claims for property damage. This duty to indemnify shall survive the termination of this Lease.

20. FAXED SIGNATURES. As a convenience to you (the leasing customer) and to further expedite this transaction for you, we (the lessor) and you have agreed that a photocopy or facsimile of this lease which includes a photocopy or a facsimile of the signatures of both parties shall be as valid, authentic and legally binding as the original version for all purposes and shall be admissible in court as final and conclusive evidence of this transaction and of the execution of the document.