

RECORDATION NO. 1795 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

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## Conditional Sale Agreement

Dated April 1, 1960

BETWEEN

PACIFIC CAR AND FOUNDRY COMPANY

AND

AMERICAN REFRIGERATOR TRANSIT COMPANY

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## AGREEMENT AND ASSIGNMENT

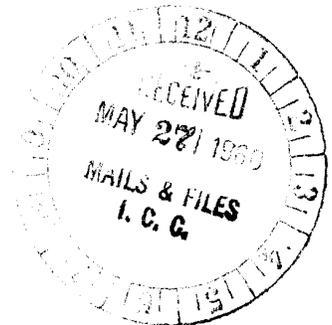
Dated April 1, 1960

BETWEEN

PACIFIC CAR AND FOUNDRY COMPANY

AND

MERCANTILE TRUST COMPANY,  
*As Agent*



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150 Class RBL Insulated Refrigerator Cars

150 Class RP Mechanically Refrigerated Cars

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FILED AND RECORDED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO SECTION 20C OF THE INTERSTATE COMMERCE ACT ON 1960, RECORDATION NO. .

**CONDITIONAL SALE AGREEMENT** dated April 1, 1960, between PACIFIC CAR AND FOUNDRY COMPANY, a Washington corporation (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation (hereinafter called Vendee).

WHEREAS the Builder has agreed to construct or cause to be constructed and to sell and deliver to Vendee, and Vendee has agreed to purchase, the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment); and

WHEREAS the Manufacturer and Vendee have agreed that this Agreement shall exclusively and completely state the rights of the Manufacturer and Vendee with respect to the Equipment and shall supersede all other agreements, oral or written, with (other than as to the Specifications hereinafter referred to for the Equipment) respect to the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. *Construction and Sale.* The Builder will construct the Equipment and will sell and deliver it to Vendee and Vendee will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications heretofore agreed upon between the Builder and Vendee and in accordance with such modifications thereof as may hereafter be agreed upon in writing between Vendee and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design and quality of equipment and material in each unit of Equipment shall conform to all Interstate Commerce Commission requirements and specifications, and all standards recommended by the Association of American Railroads,

interpreted as being applicable to new railroad equipment of the character of such units as of the date of this Agreement.

2. *Delivery.* The Builder will deliver the various units of the Equipment to Vendee F. O. B. Builder's plant at Renton, Washington, or Seattle, Washington, as Vendee may elect, freight charges prepaid, in accordance with the delivery schedule set forth in Schedule A hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of Government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered to and accepted by Vendee on or before November 16, 1960, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion Vendee and the Builder shall execute (a) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered to and accepted by Vendee hereunder and (b) a separate agreement providing for the purchase of such excluded Equipment by Vendee, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale agreement or such other appropriate method of financing the purchase as Vendee and the Builder shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives of Vendee. Upon completion of each unit of the Equipment by the Builder, it shall be presented to such an inspector or representative for inspection at the plant at which such unit was constructed and shall be promptly inspected by such inspector or representative to ascertain whether such unit conforms to the Specifications applicable thereto. If such unit so

conforms, such an inspector or representative shall execute and deliver to the Builder a certificate to that effect in 19 counterparts (17 of which may be conformed copies or reproductions of signed counterparts), and thereafter, when such unit shall be delivered by the Builder to Vendee at the place of delivery designated as hereinabove provided, such an inspector or representative shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) in 19 counterparts (17 of which may be conformed copies or reproductions of signed counterparts) stating that such unit has been accepted by him on behalf of Vendee and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of the Equipment covered thereby has been delivered to Vendee and conforms to the Specifications and is acceptable to Vendee in all details.

On delivery of each of such units hereunder, Vendee will assume with respect thereto the responsibility and risk of loss.

3. *Purchase Price and Payment.* The base prices per unit of the Equipment, exclusive of interest and freight charges, are set forth in Schedule A hereto (which prices are hereinafter called the base prices). The base prices shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "purchase price" as used herein shall mean the base price as so increased or decreased. The term "purchase price" does not include any prepaid freight.

For the purpose of making settlement for the Equipment, the Equipment shall be divided into groups of units of the Equipment delivered to and accepted by Vendee (each such group being hereinafter called a Group), each Group to consist of not less than 50 units of the Equipment, except that the Group in the case of the last settlement for the Equipment may consist of a lesser number of such units; *provided, however*, that, if there shall at any time have been delivered to and accepted by Vendee units of Equipment, and the Builder shall be prevented by any one or more of the

causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 15 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

Vendee hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay in cash to the Manufacturer at the office of the Manufacturer, or at such other place as the Manufacturer may designate, the purchase price of the Equipment and prepaid freight, as follows:

(a) on the Closing Date (as hereinafter defined) with respect to each Group:

(i) the amount if any by which the estimated aggregate purchase price of all units of the Equipment in such Group, as stated in the invoice or invoices for such units (hereinafter called the Group Invoiced Purchase Price), exceeds the lesser of (1) \$20,940 multiplied by the number of units of Class RP mechanically refrigerated cars in the Group plus \$13,715 multiplied by the number of units of Class RBL insulated refrigerator cars in the Group and (2) 80% of the Group Invoiced Purchase Price; and

(ii) the amount, if any, of prepaid freight paid by the Builder in respect of such units upon shipment thereof from the Builder's plant to the place for delivery thereof designated by Vendee;

(b) upon receipt of a final certificate of aggregate purchase price (hereinafter called the Final Certificate) of all the units of the Equipment, the amount, if any, by which the final aggregate purchase price of all the units of the Equipment, as stated in the Final Certificate (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph; and

(c) in 30 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to clause (i) or (ii) of this subparagraph (c) shall not, when divided by 30, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, the lesser of (i) an amount equal to 80% of the Final Invoiced Purchase Price, and (ii) \$5,198,250; *provided, however*, that if the Final Certificate shall not have been delivered on or prior to September 16, 1960, and 80% of the Final Invoiced Purchase Price shall be an amount less than \$5,198,250 (1) the first instalment shall be in the amount of \$173,275, (2) the second through and including the tenth instalment shall each be in the amount of \$173,275 less 1/27th of the difference between \$5,198,250 and 80% of the Final Invoiced Purchase Price and (3) the eleventh through and including the thirtieth instalment shall each be in the amount of 1/30th of 80% of the Final Invoiced Purchase Price.

It is understood and agreed that the Final Invoiced Purchase Price of the Equipment as stated in the Final Certificate may be expressed as not less than a specified amount, and if it is finally determined that the actual final cost of the Equipment exceeds such amount, Vendee shall promptly pay such excess to Builder upon receipt of invoice therefor.

If this Agreement shall have been assigned by the Builder, the obligations of Vendee under subparagraph (b) of the third paragraph and under the preceding paragraph of this Article 3 shall be unsecured obligations and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligations.

The first instalment of the portion of the indebtedness in respect of the purchase price of all the Equipment payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on October 1, 1960, and subsequent instalments shall be payable semiannually thereafter. The unpaid portion of such indebtedness shall bear

interest, payable semiannually on the dates of maturity of instalments of principal as above set forth, from the respective Closing Dates (or, in the case of any portion thereof owing by reason of the fact that the Final Invoiced Purchase Price exceeds the aggregate of the Group Invoiced Purchase Prices, from the tenth business day after delivery of the Final Certificate), regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at the rate of (i) 5% per annum in respect of that portion of the indebtedness represented by instalments of the purchase price payable on or prior to April 1, 1965 and (ii) 5 $\frac{1}{4}$ % per annum in respect of that portion of the indebtedness represented by instalments of the purchase price payable on and after October 1, 1965.

Anything herein contained to the contrary notwithstanding, the Group Invoiced Purchase Prices of all Groups shall be so fixed that the aggregate of such Group Invoiced Purchase Prices shall not exceed the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before November 16, 1960. If the Final Certificate shall not have been delivered on or before November 16, 1960, the term "Final Invoiced Purchase Price" as used in subparagraph (c) of the third paragraph of this Article 3 shall mean the aggregate of the Group Invoiced Purchase Prices.

The term "Closing Date" with respect to any Group shall mean such date, not more than 10 business days following presentation by the Builder to Vendee of the invoice for such Group and the Certificate or Certificates of Acceptance in respect thereof, as shall be fixed by Vendee by written notice delivered to the Manufacturer at least 8 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Vendee will pay, to the extent legally enforceable, interest at the rate of 6% per annum upon all amounts re-

remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

4. *Changes in Prices.* The base prices per unit of the Equipment are subject to increase or decrease in accordance with the Builder's Proposals referred to in Schedule A hereto, as such Proposals shall be from time to time amended.

5. *Taxes.* All payments to be made by Vendee hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or federal taxes (other than income, gross receipts, excess profits and similar taxes) or license fees hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees Vendee assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the Equipment. Vendee will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result in a lien upon any unit of the Equipment; *provided, however,* that Vendee shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect

the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, Vendee shall reimburse the Manufacturer on presentation of an invoice therefor; *provided, further*, that Vendee shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof, or unless Vendee shall have approved the payment thereof.

6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to Vendee hereunder until Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the leasing thereof by Vendee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the purchase price of the Equipment, together with interest and all other payments required hereby, and all Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Vendee without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by Vendee so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to Vendee or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to Vendee at its address specified in Article 24 hereof, and will execute and deliver at the same place, for

record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Vendee to the Equipment and will pay to the Vendee any money paid to the Manufacturer pursuant to Article 8 hereof and not theretofore applied as therein provided. Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of Vendee.

7. *Marking of Equipment.* Vendee will cause each unit of the Equipment delivered to it to be kept numbered with its identifying number as set out in Schedule A hereto, and will cause each side of each such unit to be kept plainly, distinctly, permanently and conspicuously marked, by a metal plate or otherwise, in letters not less than one inch in height, with the name of the Manufacturer followed by the word "Owner" or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. Vendee will not place any unit of the Equipment which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such plate, or renew any such marking, which may be removed, defaced or destroyed. Vendee will not change, or permit to be changed, the numbers of any such units except with the consent of the Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Manufacturer by Vendee and shall promptly be filed and recorded by

Vendee with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided, Vendee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that Vendee may permit the Equipment to be lettered with the name or initials of Vendee or in some other appropriate manner for convenience of identification of the interest of Vendee therein or to indicate the nature of the service furnished thereby, or if the Equipment is sublet, as permitted by Article 13 hereof, the name of such lessee or user of the service to be furnished thereby may be lettered thereon.

8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the purchase price, together with interest thereon and all other payments required hereby, Vendee shall, within ten days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On December 31 in each year, Vendee shall pay to the Manufacturer a sum equal to the value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however*, that from time to time, in any calendar year, when the total value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of which a payment shall theretofore have been made to Manufacturer in such calendar year pursuant to this Article 8) shall exceed \$100,000, Vendee, within 30 days of such event, shall pay to Manufacturer a sum equal to the value of such units. For

all purposes of this Article 8, the value of any units of the Equipment suffering a Casualty Occurrence shall be determined as of the date of the Casualty Occurrence in respect thereof and shall be the higher of the purchase price of such unit or the cost of acquiring a similar unit at the time of such Casualty Occurrence, less, in either case, depreciation (but not any accelerated amortization) at the annual rate approved by the Interstate Commerce Commission (but not in any case in excess of 5% per annum) for such unit for each period of twelve calendar months elapsed since the date of delivery and acceptance of such unit. The cost of acquiring a similar unit at the time of such Casualty Occurrence, and the applicable rate of depreciation, shall be conclusively determined by a certificate of the President, a Vice-President or the Treasurer or Chief Accounting Officer of Vendee filed in 19 counterparts (17 of which may be conformed counterparts) with the Manufacturer at the time of the aforesaid payment.

Any money paid to the Manufacturer pursuant to the preceding paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, be applied, in whole or in part, as Vendee may direct in a written instrument filed with the Manufacturer in 19 counterparts (17 of which may be conformed counterparts), to prepay indebtedness in respect of the purchase price of the Equipment hereunder or to or toward the cost of a unit or units of new standard gauge railroad refrigerator car equipment to replace such unit suffering a Casualty Occurrence as Vendee may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments thereafter falling due in the inverse order of their maturities, but without premium, and whether or not such amount shall be sufficient to repay one or more entire instalments of the purchase price. In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest

date when any of such money was paid to the Manufacturer and Vendee shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer shall be conclusively determined by the certificate of the President, a Vice-President or the Treasurer or Chief Accounting Officer of Vendee to be filed as hereinafter provided.

Vendee will cause any replacing unit to be plated or marked as provided in Article 7 hereof and, if of the same character as the unit being replaced, to be numbered with the same number as such replaced unit. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and Vendee shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements.

Whenever Vendee shall file with the Manufacturer, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of new standard gauge railroad refrigerator car equipment, Vendee shall file therewith two executed and 17 conformed counterparts of

(1) a certificate of the President, a Vice-President or the Treasurer or Chief Accounting Officer of Vendee certifying that such replacing unit is new standard gauge railroad refrigerator car equipment and has been plated or marked and numbered as required by the provisions of this Article 8 and certifying the cost of such replacing unit and the amount which such replacing unit would

have cost if acquired on the earliest date when any such money was paid to the Manufacturer; and

(2) an opinion of counsel for Vendee that title to such replacing unit is vested in the Manufacturer free and clear of all liens and encumbrances, and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, any money paid to the Manufacturer pursuant to this Article 8 shall, if Vendee shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, maturing in not more than five years from the date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as Vendee may in writing direct, and any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the purchase price if such application is requested by Vendee as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest or earned discount received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon any sale of any Government Securities, the proceeds thereof, plus any interest or earned discount received by the Manufacturer thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturer for application pursuant to this Article 8, and any excess shall be paid to Vendee. If such proceeds (plus such interest or earned discount) shall be less than such cost, Vendee will promptly pay to the Manufacturer an amount equal to such deficiency. Vendee will pay all expenses incurred by the Manufacturer

in connection with the purchase and sale of Government Securities.

In the event that any moneys paid to, or held by, the Manufacturer pursuant to this Article 8 are applied to the prepayment of indebtedness in respect of the purchase price, Vendee will pay to the Manufacturer on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 (including for this purpose Government Securities and interest and earned discount thereon) shall be applied by the Manufacturer as if such money were money received upon the sale of the Equipment pursuant to Article 19 hereof.

9. *Maintenance and Repair.* Vendee will at all times maintain the Equipment in good order and repair at its own expense.

10. *Builder's Warranty of Material and Workmanship.* The Builder warrants that the Equipment will be built in accordance with the Specifications and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by Vendee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Article 10 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to Vendee, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of the Builder, except for its obligations under Article 16 hereof, and the Builder

neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

11. *Compliance with Laws and Rules.* During the term of this Agreement Vendee will comply, and will cause the lessees or users of the Equipment to comply, in all respects with all laws of the jurisdiction in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, Vendee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

12. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1961, Vendee will furnish to the Manufacturer two signed and 17 conformed copies of a statement showing, as at the preceding December 31, the amount, description and numbers of all units of the Equipment having suffered a Casualty Occurrence during the preceding calendar year, and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request. Together with such statement, Vendee will also furnish to the Manufacturer, two signed and 17 conformed copies of a statement executed by an authorized officer of Vendee stating that, in the case of all Equipment repaired during the preceding calendar year, the plates or other markings required by Article 7

hereof have been preserved, replaced or renewed. The Manufacturer shall have the right, by its agents, to inspect the Equipment and Vendee's records with respect thereto once in every year.

13. *Possession and Use.* Vendee, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and also to lease the Equipment to, or permit its use under the terms of car contracts by, packers and other users of refrigerator cars, but only upon and subject to all the terms and conditions of this Agreement.

14. *Prohibition against Liens.* Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under Vendee or its successors or assigns (including any lessee or user) which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

15. *Vendee's Indemnities.* Vendee agrees to indemnify and save harmless the Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment or out of the use and operation thereof by Vendee or any other person during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price and the conveyance of the Equipment, as provided in Article 6 hereof,

or the termination of this Agreement in any manner whatsoever.

Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment; *provided, however*, that the Builder shall not be relieved from its warranty covering material and workmanship hereinbefore in Article 10 set forth.

16. *Patent Indemnities.* Except in cases of designs, articles and materials specified by Vendee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless Vendee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Vendee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right; and Vendee likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material specified by Vendee and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to Vendee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by Vendee and not manufactured by the Builder and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design,

article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to Vendee, or its assigns, all and every such further assurance as may be reasonably requested by Vendee, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to Vendee of any claim known to the Builder from which liability may be charged against Vendee hereunder, and Vendee will give notice to the Builder of any claim known to Vendee from which liability may be charged against the Builder hereunder.

17. *Assignments.* Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by Vendee, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 10 and 16 hereof, or relieve Vendee of its obligations under Articles 15 and 16 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assign-

ment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

Vendee recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of purchase price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee against and only against the Builder.

In the event of any such transfer or assignment, or successive transfers or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, Vendee will, whenever requested by such transferee or assignee, change, or cause to be changed, the name plates or other marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such plates or

other marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such plates or other marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of obtaining and attaching any series of such plates or changing any other marking in the event of any transfer or assignment of title to not less than all of the Equipment at the time covered by this Conditional Sale Agreement shall be borne by Vendee, and, in the event of any transfer or assignment of title to less than all of such Equipment, such cost shall be borne by the transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, Vendee will, in connection with each settlement for a Group of Equipment, deliver to the assignee or transferee of the Equipment included in such Group at least 8 business days prior to the Closing Date with respect thereto, 19 counterparts (except for the bill of sale for such Group, an original and 18 conformed or reproduction copies of which shall be delivered and except that 17 counterparts of the remaining documents may be conformed copies or reproductions of signed counterparts) of all documents required by the terms of such transfer or assignment (other than any opinion of counsel for the assignee or transferee) to be delivered to such assignee or transferee in connection with such settlement.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify Vendee of such event and if such payment shall not have been previously paid by the assignee, Vendee will, not later than 60 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate amount not so paid, together with interest from the date such payment was due to the date of payment by Vendee at the rate of 6% per annum.

Vendee further agrees, in the event of any such transfer or assignment, to pay to the Manufacturer (i) on each Closing Date, a fee on  $66\frac{2}{3}\%$  of that portion of the Group Invoiced Purchase Price of the Equipment not payable on such Closing Date by Vendee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, at the rate of one-half of one per cent per annum from March 7, 1960, to such Closing Date, and (ii) on the tenth business day after delivery of the Final Certificate, or December 1, 1960, whichever is the earlier, a fee computed as aforesaid to the earlier of such dates, on the amount of the excess, if any, of \$3,465,500 over  $66\frac{2}{3}\%$  of that portion of the purchase price of the Equipment payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof. Such fee shall be calculated on the basis of a 360-day year of twelve 30-day months.

18. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) Vendee shall fail to pay in full, when due and payable hereunder, any sum payable by Vendee as herein provided for indebtedness in respect of the purchase price of the Equipment or for interest thereon and such failure shall continue for more than 30 days; or

(b) Vendee shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Manufacturer for such compliance; or

(c) Any proceedings shall be commenced by or against Vendee for any relief which includes, or might result in, any modification of the obligations of Vendee hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements,

compositions, or extensions, and, unless such proceeding shall within 30 days from the filing or effective date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the purchase price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 6% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of Vendee wherever situated.

The Manufacturer may at its election waive any such event of default and its consequences and rescind and annul

any such declaration by notice to Vendee in writing to that effect. If at any time after such declaration all sums which shall have become due and payable by Vendee hereunder (other than indebtedness which shall have become due and payable solely by reason of such declaration) shall be paid by Vendee (with interest at the rate of 6% to the extent legally enforceable) before any sale or lease of any of the Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Manufacturer, or provision deemed by the Manufacturer to be adequate shall be made therefor, then, and in every such case, the Manufacturer shall waive any such event of default and its consequences and rescind and annul any such declaration. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

19. *Remedies.* If Vendee shall make default as hereinbefore provided, then at any time after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of Vendee or any lessee or user of the Equipment.

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of any railroad or the premises of Vendee for the delivery of the Equipment to the Manufacturer, Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any lines of any railroad or premises of Vendee until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose Vendee agrees to furnish, without charge to Manufacturer for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to Vendee. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against Vendee requiring specific performance hereof. Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If Vendee shall make default as hereinbefore provided, then and at any time thereafter during the continuance of such default Manufacturer may proceed to exercise one or more, or all, of Vendee's rights and remedies under any lease or contract relating to the use of any of the Equipment, and in such event may collect the rentals and other payments due thereunder. Treating any lease or car contract as continuing in effect and continuing to collect the rentals and other payments thereunder shall not be deemed to be an election of remedies so as to prevent Manufacturer from thereafter (during the continuance of such default) declaring such lease or car contract terminated, or exercising any

other remedy available to Manufacturer. If Manufacturer shall so terminate any lease or car contract relating to the use of any of the Equipment it shall be entitled to collect all unpaid rentals or other sums due and payable to Vendee, and may lease or license the use of the Equipment or any units thereof upon such terms, in such manner and to such persons as it shall see fit, without notice to or consent by Vendee, and collect all rentals and other sums payable under such lease or license.

If Vendee shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all Vendee's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by Vendee may be retained by the Manufacturer as compensation for the use of the Equipment by Vendee; *provided, however,* that, if Vendee, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the purchase price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due by Vendee under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in Vendee; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of

Vendee, or of any other party claiming by, through or under Vendee, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to Vendee by telegram or registered or certified mail addressed to Vendee as provided in Article 24 hereof, at any time during a period of 30 days after the entire indebtedness in respect of purchase price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such requirements of law, provided that Vendee shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered or certified mail addressed to Vendee as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law,

the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to Vendee (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from Vendee hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, Vendee shall pay the amount of such deficiency to the Manufacturer upon demand, and, if Vendee shall fail to pay such deficiency, the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against Vendee. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to Vendee.

Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in

such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, Vendee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to Vendee shall not otherwise alter or affect the Manufacturer's rights or the obligations of Vendee hereunder. The Manufacturer's acceptance of any payment after

it shall have become due hereunder shall not be deemed to alter or affect the obligations of Vendee or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

22. *Recording.* Vendee will cause the Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto, to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and Vendee will promptly furnish to the Manufacturer certificates or other evidence of such filing and recording satisfactory to the Manufacturer.

23. *Payment of Expenses.* Vendee will pay all reasonable costs, charges, and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of purchase price due hereunder. In addition, Vendee will pay all reasonable costs, charges and expenses, including fees and expenses of counsel, and including stamp and other taxes, if any, of the first assignee of this Agreement, including the fees of an agent, if the first assignee is an agent, and of any parties acquiring interests in such first assignment incurred in connection with

such first assignment and payments to the Builder by such first assignee. For the purpose of this Article 23, if the first assignee is an agent, then any successor agent to such agent shall be considered the first assignee.

24. *Notice.* Any notice hereunder to Vendee shall be deemed to be properly served if delivered or mailed to Vendee at 1218 Olive Street, St. Louis 3, Missouri, or at such other address as may have been furnished in writing to the Manufacturer by Vendee. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at its offices at Renton, Washington, or at such other address as may have been furnished in writing to Vendee by the Builder. Any notice hereunder to any assignee of the Manufacturer or of Vendee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to Vendee or the Manufacturer, as the case may be, by such assignee.

25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and Vendee.

27. *Law Governing.* This Agreement shall be construed in accordance with the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

28. *Definitions.* The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Pacific Car and Foundry Company and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, Pacific Car and Foundry Company and any successor or successors for the time being to its manufacturing properties and business.

29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated April 1, 1960, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto

affixed and duly attested, all as of the day, month, and year first above written.

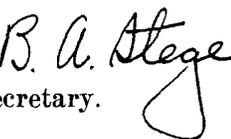
PACIFIC CAR AND FOUNDRY COMPANY,

By   
Vice President.

Attest:   
~~Assistant~~ Secretary.

AMERICAN REFRIGERATOR TRANSIT COMPANY,

By   
President and  
General Manager.

Attest:   
Secretary.

STATE OF WASHINGTON, }  
 COUNTY OF KING } ss.:

On this *19th* day of May, 1960, before me personally appeared *T. B. Monson*, to me personally known, who, being by me duly sworn, says that he is a Vice President of Pacific Car and Foundry Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Lucille White*  
 Notary Public.

My Commission Expires *July 1, 1961*

STATE OF MISSOURI, }  
 CITY OF ST. LOUIS, } ss.:

On this        day of May, 1960, before me personally appeared T. E. Fox, to me personally known, who, being by me duly sworn, says that he is President and General Manager of American Refrigerator Transit Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public.

My Commission Expires    My Commission Expires Aug. 10, 1960

### SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Specifications</u>	<u>Vendee's Car Numbers</u>	<u>Unit Base Price</u>	<u>Delivery</u>
Class RP, 50 ft. 70 ton mechanically refrigerated cars (Builder's Proposals dated September 4, 1959, as amended).	150	Vendee's Specification No. 18, dated July 15, 1959, as modified.	RMAX 175 to RMAX 324, both inclusive.	\$26,597*	Commencing June, 1960
Class RBL, 50 ft. 70 ton insulated refrigerator cars (Builder's Proposals dated September 4, 1959, as amended).	150	Vendee's Specification No. 19, dated July 15, 1959, as modified.	MODX 2200 to MODX 2299, both inclusive and WADX 3350 to WADX 3399, both inclusive.	\$17,421**	Commencing July, 1960

\*Including all changes to 12/18/59  
\*\*Including all changes to 10/2/59

AGREEMENT AND ASSIGNMENT dated April 1, 1960, between PACIFIC CAR AND FOUNDRY COMPANY, a Washington corporation (hereinafter called the Builder), and MERCANTILE TRUST COMPANY, a Missouri corporation, acting as Agent under an Agreement dated April 1, 1960 (hereinafter called the Finance Agreement), a copy of which has been delivered to the Builder (said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation (hereinafter called Vendee), have entered into a Conditional Sale Agreement dated April 1, 1960 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by Vendee of the railroad equipment referred to in Schedule A to the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of One Dollar (\$1) and other good and valuable considerations paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the fourth paragraph of Article 3 thereof and in the penultimate paragraph of Article 17 thereof,

and the right to reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by Vendee to the Builder under the Conditional Sale Agreement on account of Vendee's indebtedness in respect of the purchase price of the Equipment and interest thereon, and in and to any other sums becoming due from Vendee under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder for or on account of the failure of Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); *provided, however*, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve Vendee from its obligations to the Builder under Articles 2, 4, 10, 15 and 16 (except that the Assignee shall also be entitled to the benefit of Vendee's obligations under Articles 10, 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to Vendee in respect of the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by Vendee with the terms

and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and Vendee that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of Vendee under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of Vendee thereunder.

3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of Vendee arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or under Articles 10 and 16 of the Condi-

tional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by the Builder. Any and all such obligations shall be and remain enforceable by Vendee against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right, except for any design, article or material specified by Vendee and not manufactured by the Builder.

In no case shall Builder be liable under the indemnity agreements set forth in the first paragraph of this Section 3 unless Builder shall have been notified in writing of the nature of the claim, demand, defense, setoff, counterclaim or recoupment in respect of which indemnification may be sought within a reasonable time after the assertion thereof, but failure so to notify Builder shall not relieve it from any liability which it may otherwise have than on account of such indemnity agreements. Builder shall be entitled to participate at its own expense in any litigation with respect to which indemnification may be sought or, if it so elects within a reasonable time after the receipt of such notice, to assume the conduct of such portion of such litigation as relates to the indemnification which may be sought against it, including the employment of counsel and the payment of all expenses with respect thereto. In the event that Builder elects to conduct such portion of such litigation, Assignee shall nonetheless have the right to employ sepa-

rate counsel with respect thereto and to participate in the conduct thereof, but the fees and expenses of such counsel shall be at the expense of Assignee. Builder shall not be liable for any settlement of such portion of such litigation in respect of which such indemnification may be sought effected without its consent.

4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to Vendee, there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

“MERCANTILE TRUST COMPANY, AGENT, OWNER”

5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment which interest has been extinguished or transferred to Assignee prior to the date of such request.

6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3), shall pay to the Builder an amount equal to that portion of the Group Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by Vendee pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 8 business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) a Bill of Sale from the Builder to the Assignee, evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to Vendee that at the time of delivery to Vendee the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of Vendee under the Conditional Sale Agreement;

(b) a certificate or certificates signed by an inspector or other authorized representative of Vendee stating that the units of the Equipment in such Group have been delivered to Vendee in accordance with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of Vendee and further stating that there was plainly, distinctly, permanently and conspicuously placed and fastened on each side of each of such units at the time of its acceptance a metal plate bearing the following legend, or that such legend was otherwise plainly, distinctly, permanently and conspicuously marked on each side of each of such units, in either case in letters not less than one inch in height:

“MERCANTILE TRUST COMPANY, AGENT, OWNER”;

(c) duplicate invoice or invoices for the Equipment in such Group accompanied by or having endorsed thereon a certification by Vendee as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is

a valid and binding instrument enforceable in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the Equipment in such Group is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of Vendee under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (vi) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America and (vii) the Finance Agreement has been duly authorized, executed and delivered by the Assignee, and that the certificates of interest to be issued thereunder have been duly authorized and, when executed and delivered by the Assignee, will be valid and binding in accordance with their terms;

(e) an opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its

terms, *(iv)* the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, and *(v)* title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to Vendee, were free of all claims, liens and encumbrances except only the rights of Vendee under the Conditional Sale Agreement;

*(f)* a favorable opinion of counsel for Vendee covering the matter referred to in subdivisions *(i)* through *(vi)* of paragraph *(d)* of this Section 6, and stating that Vendee is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and

*(g)* unless payment of that portion of the Group Invoiced Purchase Price for such Group payable pursuant to subparagraph *(a)* of the third paragraph of Article 3 of the Conditional Sale Agreement is made by the Assignee through the use of funds furnished to it for the purpose by Vendee, a counterpart of a receipt from the Builder acknowledging such payment.

Within 10 business days after delivery to the Assignee of the Final Certificate (as defined in the Conditional Sale Agreement) accompanied by or bearing thereon a certification by Vendee as to the correctness of the stated price, the Assignee shall pay to the Builder the amount (hereinafter called the Final Payment), if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable pursuant to subparagraph *(c)* of the third paragraph of Article 3 of the Conditional Sale Agreement shall exceed the amounts theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. The Final Certificate shall be delivered on or before November 16, 1960.

The obligation of the Assignee hereunder to make payment for any Group of Equipment or to make the Final Payment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group or the Final Payment, as the case may be, or, if any of such parties default in furnishing such funds, the prior receipt by the Assignee from Vendee of such funds as provided in the Finance Agreement; and, in the event of failure of any such party to furnish any such funds with respect to any Group of Equipment or the Final Payment, as the case may be, the Closing Date in respect of such Group or the date in respect of which the Final Payment is due, as the case may be, shall be postponed for 4 business days. To the extent that Vendee shall pay to the Assignee, in accordance with the Finance Agreement, any amount or amounts on account of the purchase price of any Group of Equipment or the Final Payment, as the case may be, Vendee shall be relieved of its indebtedness in respect of the purchase price of the Equipment under subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement to the extent of the amount or amounts so paid by Vendee. By any such payment, however, Vendee shall not acquire any rights under this Agreement and Assignment.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

Any of the opinions hereinabove in this Section 6 referred to, delivered on any Closing Date after the first Closing Date, may, in respect of any matters covered by an

earlier opinion of the same counsel, confirm such earlier opinion without restating the contents thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from Vendee thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by Vendee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon the Builder and Vendee in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

9. This Agreement and Assignment shall be construed in accordance with the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to Vendee. Although this Agreement and Assignment is dated April 1, 1960, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

PACIFIC CAR AND FOUNDRY COMPANY,

By

*T. P. Mannon*

Attest: *T. W. Sudder*

Vice President.

Secretary.

MERCANTILE TRUST COMPANY,

as Agent,

By

*R. G. Martin*

Attest:

*O. A. Johnson*  
Assistant Secretary.

Vice President.

STATE OF WASHINGTON, }  
COUNTY OF KING, } ss.:

On this 19<sup>th</sup> day of May, 1960, before me personally appeared T. B. Monson, to me personally known, who, being by me duly sworn, says that he is a Vice President of Pacific Car and Foundry Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Russella White*  
Notary Public.

My Commission Expires July 1, 1961

STATE OF MISSOURI, }  
CITY OF ST. LOUIS, } ss.:

On this 26<sup>th</sup> day of May, 1960, before me personally appeared R. N. ARTHUR, to me personally known, who, being by me duly sworn, says that he is a Vice President of Mercantile Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Ernest J. Balthus*  
Notary Public.

Notary for the County of St. Louis  
which adjoins the City of St. Louis

My Commission Expires August 11, 1962

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

American Refrigerator Transit Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment.

AMERICAN REFRIGERATOR TRANSIT COMPANY,

By  .....

President and General Manager.

Dated: May 26, 1960