



(308) 382-TOBA (8622) – info@tobafoods.com

Form: Equipment Lease Agreement

AGREEMENT made as of the
day of

,
between Toba, Inc., hereinafter called the "Lessor," and

,
hereinafter called the "Lessee."

1. Lease Agreement. The Lessor hereby leases to the Lessee, and the Lessee hereby rents from the Lessor, the machinery, equipment, and other personal property, all hereinafter referred to as the "equipment," described in the Equipment Service and Warranty Agreement attached hereto, upon the terms and conditions set forth in this Agreement, and the attached schedule of equipment, which indicates a description of such item of equipment, the date and place of delivery, the rental period, the monthly rental payment, the first payment date, and such other information deemed necessary or relevant (hereinafter, "Schedule of Equipment"). Whenever reference is made herein to "this Agreement," it shall be deemed to include, as required, the Schedule of Equipment identifying all items of equipment or the appropriate schedule or schedules identifying one or more particular items of equipment.
2. Terms of Agreement. This Agreement shall remain in effect with respect to each item of leased equipment for the period set forth in the Schedule of Equipment and shall continue on a month-to-month basis thereafter until this Lease is terminated by Lessee's delivering a notice in writing to Lessor at least thirty (30) days in advance of the proposed termination date, and Lessee's redelivery of equipment to Lessor.
3. Rental Payments. The Lessee will pay and the Lessor will accept, as rental for the use of equipment, monthly payments during each month of the period of the rental agreement, as agreed upon by the Lessor and the Lessee in the Schedule of Equipment.
4. Title to Equipment. Title to the equipment leased hereunder shall remain with the Lessor during the term of the period of rental. The Equipment shall at all times be and remain personal property, regardless of whether or not it may be affixed to the realty. The Lessor shall be permitted to display notice of its ownership of the equipment by affixing to each item of equipment an identifying stencil or plate or any other indicia of ownership.
5. Removal, Inspection and Return of Equipment. The equipment shall not be removed from the premises of the Lessee to which originally delivered without the prior written consent of the Lessor. The Lessor shall have the right, upon reasonable prior notice of the Lessee and during the Lessee's regular business hours, to inspect the equipment at the premises of the Lessee or wherever the equipment may be located.



2-15-18



6. **Maintenance and Repair.** The Lessor will pay all installation costs with respect to each item of equipment. To the extent provided for in the Schedule of Equipment, the Lessor will maintain the equipment, and all additions, attachments, and accessories in good mechanical condition and running order at all times of this Agreement. Except to the extent provided for in the Schedule of Equipment, the Lessor shall have no responsibility for the maintenance of any item of equipment after it is delivered to and accepted by the Lessee and before it is redelivered to the Lessor as herein provided. The Lessor, however, shall deliver to the Lessee a copy of any warranty agreement it may receive from the manufacturer on any item of equipment, and the Lessee shall comply with all the conditions of such warranty required to be performed by the Lessor. All additions, attachments, accessories, and repairs at any time made to or placed upon the equipment shall become part of the equipment and shall be and remain the property of the Lessor.
 7. **Risk of Loss Insurance.** All risk of loss or damage to each item of equipment shall be borne by the Lessor
 8. **Taxes and Insurance.** The Lessor shall pay, or cause to be paid, all sales taxes, use taxes or excise taxes. Lessee shall pay, or cause to be paid, all personal property taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines, or penalties whatsoever, whether payable on or relating to the equipment or the use, registration, rental, shipment, transportation, delivery or operation thereof, and on or relating to this Agreement and Schedule of Equipment executed in connection with this Agreement, and shall file or cause to be filed, all returns required therefore. Lessee, at its sole cost and expense, shall also purchase and maintain one or more policies of insurance, insuring the equipment against loss, damage or destruction from fire or other casualty, and shall cause Lessor to be a named insured on each such policy to the full extent of its interest in said equipment.
 9. **Lessor's Indemnity.** The Lessee shall indemnify, protect, and save and keep harmless the Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatever nature, arising out of the Lessee's use, condition (including, but not limited to, latent and other defects and whether or not discoverable by it), or operation of any item of equipment, regardless of where, how and by whom operated; or, in the event the Lessee shall be in default hereunder, arising out of or resulting from the condition of any item of equipment sold or disposed of after use by the Lessee. The Lessee, at its sole cost and expense, shall assume the defense of any suit or other proceeding brought to assert or enforce any all such losses, damages, injuries, claims, demands, and expenses, and shall pay all settlements or judgments entered in connection with any such action, suit or proceeding. The indemnities and assumptions of liabilities and obligations herein provide for shall continue in full force and effect, notwithstanding the termination of this Agreement, whether by expiration of time, by operation of law, or otherwise. The Lessee is an independent contractor and nothing contained in this Agreement shall authorize the Lessee or any other person to operate any item of equipment so as to incur or impose any liability or obligation for or on behalf of the Lessor.
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10. Assignment and Sublease. The Lessee may not, without the prior written consent of Lessor, sublet any item of equipment, except to any of its present or future subsidiaries or affiliated companies, but every such sublease shall be subject to the terms of this Agreement and shall in no event relieve the Lessee of its obligation hereunder. Lessee shall not assign this Agreement without the prior written consent of the Lessor.
11. Lessor's Warranties/Limitations of Warranties. As to each item of equipment to be leased hereunder, the Lessor warrants that it is and will be sole and absolute owner thereof, that it has the right to lease the same to the Lessee, and that it will, except as specifically provided for herein, do nothing to disturb the Lessee's full right of possession and enjoyment thereof and the exercise of all of the Lessee's rights with respect thereto as provided by this Agreement. LESSOR EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, AND, EXCEPT AS HEREIN EXPRESSLY STATED, LESSOR AND LESSEE AGREE THAT LESSEE ACCEPT SAID EQUIPMENT AS IS, WITHOUT ANY WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE.
12. Lessor's Default. In the event the Lessor fails or is unable to perform its obligation hereunder; or in the event the Lessor's interest in any item of equipment shall be levied upon, or taken in execution, or subjected to encumbrances; or in the event the Lessor becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or a receiver, or a trustee or receiver is appointed for the Lessor or a substantial part of its property without its consent, or if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings are instituted by or against the Lessor, then, and in any such event, the Lessee shall have the option, either (a) to terminate this Agreement, or (b) notwithstanding such default or insolvency, to continue rental payments until the expiration of the term of the lease for each item of equipment.
13. Lessee's Default. The following events shall constitute defaults on the part of the Lessee hereunder: The failure of the Lessee to pay any installment of rental within fifteen (15) days after the date on which the same shall become due, breach or failure of the Lessee to observe or perform any of its obligations hereunder and the continuance of such default for fifteen (15) days after notice in writing to the Lessee of the existence of such default; the insolvency or bankruptcy of the Lessee or the making by Lessee of an assignment for the benefit of creditors, or the consent of the Lessee to appointment of a trustee or receiver, or the appointment without its consent, of a trustee or receiver for the Lessee or for a substantial part of its property; the institution by or against the Lessee of bankruptcy, reorganization, arrangement, or insolvency proceedings. Upon the occurrence of any such default, the Lessor may, at its option and without notice to or demand on the Lessee, declare this agreement in default and thereupon all equipment and all rights of the Lessee therein shall be surrendered to the Lessor. The Lessor may, by the Lessor's agents, take possession of the equipment wherever found, with or without process of law, and for this purpose may enter upon any premises of the Lessee without liability

for suit, action or other proceeding by the Lessee and remove the same. The Lessor may hold, use, sell, lease or otherwise dispose of the equipment or any item of equipment or keep any of them idle if the

14. Lessor so chooses, without affecting the obligation of the Lessee as provided in this paragraph. If the Lessee fails to deliver any item of equipment, as provided in this paragraph, or converts or destroys any item of equipment, the Lessor may hold the Lessee liable for a sum equal to all of the rental due and to become due under this Agreement for such items of equipment, which the Lessee shall forthwith pay the Lessor. With respect to equipment returned to the Lessor or repossessed by the Lessor, the Lessor shall be entitled in addition to the net amounts realized by the Lessor through the sale, lease or other disposition thereof, to all gains and all profits prevented or damages sustained, including claim in any insolvency proceedings as follows: (1) all sums due and unpaid; and (2) all sums to become due as rentals to the end of the respective rental periods of all items of equipment, had they not been terminated by the Lessor, less the re rental or other value thereof which, except for computer equipment which is twelve (12) months old or older and which shall be valued at zero percent (0%), the parties agree shall be 25% of such sums to become due to the end of the respective rental periods. The parties acknowledge that in determining these liquidated damages they have considered the Lessor's investment, the uncertainties of leasing to others, the cost incurred while the items of equipment may remain idle, or if the same are sold, the uncertainty of the sale price, the commissions and legal and other expenses of sale, and the parties have also given due consideration in calculating such liquidated damages to any savings resulting from the fact that the Lessor need no longer furnish, any services to the Lessee hereunder. Should the Lessor, however, estimate its actual damages to exceed the amounts above set forth, the Lessor may, at its option, take such steps as it deems advisable to establish its actual damages in lieu of its reliance upon this provision for liquidated damages. Any repossession or resale of any item of equipment shall not bar any action for a deficiency as above provided, and the bringing of an action or the entry of judgment against the Lessee shall not bar the Lessor's right to repossess any or all items of equipment.
15. Invalid Provision. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without validating the rest of this Agreement.
16. Complete Agreement. This Agreement, the Equipment Service and Warranty Agreement and the Equipment Contract executed by the parties contain the entire understanding of the parties, and such understanding may not be modified or terminated except in writing signed by the parties and by any proper sublessee or assignee.
17. Nebraska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.



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IN WITNESS WHEREOF, the Lessor and the Lessee have caused these presents to be duly executed.

"Lessor"
TOBA, Inc.

By _____
President / General Manager

"Lessee"

By _____

