

*New Ms*  
**ITEL**

1 5676

REGISTRATION NO. \_\_\_\_\_ FILED 1988

May 26, 1988

JUN 9 1988-2 22 AM

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000

Date 6/19/88

Fee 13

**INTERSTATE COMMERCE COMMISSION**

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

ICC Washington, D. C.

Re: Master Lease No. 2212 dated May 10, 1988, between Kalium, Itel Rail Corporation, Itel Railcar Corporation and Kalium Chemicals, Ltd, with Schedule No. 1 dated May 10, 1988, between Itel Railcar Corporation and Kalium Chemicals, Ltd.

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Master Lease under a new recordation number. The parties to the aforementioned instrument are listed below:

Itel Railcar Corporation or  
Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Kalium Chemicals, Ltd. (Lessee)  
2550 Golf Road  
Rolling Meadows, Illinois 60008

This Master Lease covers twenty (20) 4428 cubic foot, 100-ton, Plate C covered hoppers bearing reporting marks (LO) USLX 131001-439797 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

PS:  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

6/16/88

OFFICE OF THE SECRETARY

Patricia Schumacker  
IteI Rail Corporation  
55 Francisco Street  
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/9/88 at 2:30pm, and assigned recordation number(s). 15484-A, 15676,15677

Sincerely yours,

*Narta L. McLee*

Secretary

Enclosure(s)

JUN 9 1988-2 24 AM

INTERSTATE COMMERCE COMMISSION

LOT NO. 2212-00

4/27/88

MASTER LEASE NO. 2212-00

THIS LEASE AGREEMENT ("Agreement") is made as of this Tenth day of May, 1988, by and between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, each a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, severally, as lessors, and KALIUM CHEMICALS, LTD., a Delaware corporation, located at 2250 Golf Road, Rolling Meadows, Illinois 60008, as lessee ("Lessee").

1. Scope of the Agreement

- A. Itel Rail Corporation is lessor hereunder only with respect to all Cars listed on schedules executed by it, and Itel Railcar Corporation is lessor hereunder only with respect to all Cars listed on schedules executed by it. The capitalized term "Lessor" in any context shall refer either to Itel Rail Corporation or to Itel Railcar Corporation or to any subsidiary of either which may execute schedule(s) to this Agreement, whichever is the lessor of the Cars referred to or affected by such reference. The liabilities, obligations, benefits and rights of Itel Rail Corporation and Itel Railcar Corporation and such subsidiary, if any, shall be several, not joint, and shall only apply to each in respect to the Cars for which it is lessor.
- B. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the applicable schedules, a number of items of equipment of the reporting marks, type, construction and other description set forth in any schedules attached hereto and executed by the parties concurrently herewith or hereafter. The words "Schedule" and "Equipment Schedules" as used herein include the Schedules executed herewith and any Schedule(s) and amendments which are subsequently executed with the intention that they be made part of the Agreement. When any such Schedule or Amendment is subsequently executed by both parties, it shall become a part of this Agreement. "Cars" shall mean all items of equipment subject to this Agreement and "Car" shall mean an individual item of equipment subject to this Agreement. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.
- C. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the owner and lessor of all Cars and that no joint venture or partnership is being created. Lessee's interest in the Cars shall be that of a lessee only. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of this Agreement, with respect to the Car(s) listed on each Schedule attached to the Agreement shall be as set forth on such Schedule.

3. Supply Provisions

A. Lessee hereby approves the specifications of the Cars described on the applicable Schedule. If the Cars are to be remarked, Lessor shall, at its expense and subject to any recovery of such expense as allowed for in any Schedule, remark the Cars to the designated reporting marks in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement on the date set forth in the applicable Schedule. From and after Delivery (as defined in the applicable Schedule), Lessee shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of any Car. If Lessor is required to pay any such amount, Lessee shall reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount.

B. With respect to each Car not subject to a fixed rental, Lessee shall load such Car prior to loading any similar equipment leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, purchased by Lessee subsequent to the date of this Agreement, or interchanged from other railroads. Lessee shall use its best efforts to maximize the off-line utilization of such Cars.

C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with similar equipment upon not less than ten (10) days prior written notice from Lessor to Lessee.

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4. Record Keeping

A. The party designated on the applicable Schedule shall prepare and file all documents relating to the registration, maintenance and record keeping functions normally performed with respect to railroad equipment of the type subject to this Agreement including, but not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars.

B. The party designated on the applicable Schedule shall perform all record keeping functions relating to the use of the Cars by Lessee and railroads, including but not limited to car hire

reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules. If Lessor performs such record keeping functions, it shall immediately upon receipt from any railroad of any revenues in the form of a draft, check or other instrument payable to Lessee, be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such revenues as are set forth in the rental section of this Agreement or the applicable Schedule. All record keeping performed hereunder and all records of payments, changes and correspondence related to the Cars shall be separately recorded and maintained in a form suitable for reasonable inspection by the other party from time to time during regular business hours. Upon Lessor's request, Lessee shall supply Lessor with telephone reports of the number of Cars in Lessee's possession and control.

5. Maintenance

A. This Subsection 5.A. shall apply only with respect to those Car(s) for which Lessee is, in Schedule(s) attached hereto, designated to perform or cause to be performed maintenance and to pay all costs and expenses associated therewith. Lessee shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars. Any parts, replacements or additions made to any Car are deemed accessions to such Car and title thereto shall vest immediately in Lessor. In the event that Lessor performs any repair work for Lessee, all sums due Lessor for such repair work shall be reimbursed to Lessor as additional rental hereunder. "Repair Work" is defined as all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with the Interchange Rules, as amended from time to time, and all preventive maintenance necessary to keep and maintain the Cars in good working order and repair. Lessor has the right to inspect the Cars at any time to ensure that they are in compliance with AAR regulations.

B. Subsections 5.B. and 5.C. shall apply to those Cars for which Lessor is designated in Schedules attached hereto as responsible for maintenance. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event that it (i) was occasioned by the fault of Lessee; (ii) results from loading, unloading or use other than permitted under this Agreement; (iii) is for the purpose of repairing, replacing or maintaining interior lading equipment, special interiors and linings or removable parts; (iv) relates to damage resulting from any commodity or material loaded in any Car; or (v) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the

loss, damage, destruction or liability requiring such Maintenance. If Lessee shall choose to apply or have applied special interior linings and/or exterior protective coating to the Cars, the application maintenance, renewal and removal of such linings and/or coatings shall be performed by, and at the expense, of Lessee. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall not make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing or by telephone (in such case, to be followed up in writing) of any Maintenance required including, when available, the time, place and nature of any accident or other bad order condition and shall identify the last contents of any Car affected. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property without prior approval from Lessor. All such repairs shall be performed under the direction and control of Lessor.

- C. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessor shall have the right to perform Nonroutine Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee or at a contract repair facility. Repairs ("Nonroutine Repairs") shall be defined as repairs of a type that Lessor determines Lessee would not normally perform or of a type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Nonroutine Repairs.

6. Tax and Insurance

- A. Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and

shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

- B. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.
- C. Responsibility for taxes for the Cars shall be as set forth on the applicable Schedule hereto. Lessee shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Car.

7. Storage

In the event that any Car(s) are not in use while subject to this Agreement, Lessee shall be responsible for all costs associated with storing such Car(s). If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such costs within ten (10) days after receiving an invoice from Lessor for such costs.

8. Rent

- A. During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule.
- B. Unless otherwise specified in the applicable Schedule hereto, rental payments shall not abate if any Car is out of service for any reason whatsoever.

- C. Lessor has the right to offset against Lessee's revenue sharing portion set forth in the rental section of the Schedule(s) hereto any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.
- D. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car ("Casualty Car") will be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rules 7 and 8.
- E. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car ("Casualty Car"), Lessee shall notify Lessor of the occurrence of such damage as set forth in the AAR Interchange Rules. If Lessee fails to notify Lessor within sixty (60) days of the damage date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage and such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- F. Lessor may, at its expense, replace any Casualty Car with similar equipment ("Replacement Car") upon prior written notice from Lessor to Lessee.
- G. Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 8.

9. Possession and Use

- A. Throughout the term of this Agreement and so long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars (i) in accordance with the terms of this Agreement; (ii) in conformity with all Association of American Railroads ("AAR") Interchange Rules; (iii) in compliance with the terms and provisions of this Agreement; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada and Mexico; and (v) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train." However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any

financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Lessee acknowledges that there may be more than one such secured party, and that the Cars on each Equipment Schedule are severable and each Equipment Schedule constitutes a separate lease interest of separate secured parties. In the event of a default by Lessor under such financing agreement(s), Lessee agrees to take the aforesaid actions as directed by each secured party with respect to the Cars subject to such secured party's interest. For the purposes of the exercise by any secured party, of any Lessor's rights or remedies provided hereunder or otherwise arising, Lessee agrees that each secured party can exercise such rights and remedies independently and severally with respect to those Cars subject to such secured party's interest, and such exercise shall not affect or impair the rights and remedies of Lessor or any other secured party, and shall not terminate or otherwise affect the rights, duties or obligations of Lessee, with respect to any other Cars.

- B. Lessee agrees that the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with all rules established by the AAR; provided, however, that either Lessor or Lessee may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party.
- C. At Lessor's election Cars may be marked to indicate the rights of Lessor, or an assignee, mortgagee, trustee, pledgee or security holder of Lessor, or of a lessor to Lessor. Except for renewal and maintenance of the aforesaid markings or lettering indicating that the Car is leased to Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request and approved in writing by Lessor.
- D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through or under it, on, or with respect to the Cars or any interest therein, or the

revenues earned thereby, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 9.A. hereinabove. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security, interest, or claim if the same shall arise at any time. If Lessee fails to take action as described in the previous sentence, Lessor may, at Lessee's expense, take such action and Lessee shall pay such cost within ten (10) days of receiving an invoice from Lessor for such expense.

10. Default

A. The occurrence of any of the following events shall be an event of default:

- (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;
- (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after receipt of notice of such breach.
- (iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of or extensions of indebtedness;
- (iv) The subjection of a portion of Lessee's property that would affect Lessee's obligations herein to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option:

- (i) Terminate this Agreement and recover damages, and/or:
- (ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

- (iii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof, and/or
- (iv) Without terminating this Agreement, repossess the Cars, and relet the same or any part thereof to others upon such terms as Lessor desires. The proceeds of any such reletting shall first be applied to the expense (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee(s) and then to the payment of rent due under this Agreement. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be obligated to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election of Lessor to relet the Cars and the acceptance of a new lessee shall not release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Agreement and the retaking of the Cars.

11. Expiration or Termination

- A. Upon the expiration or termination of the Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:
  - (i) Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Agreement shall be (i) in the same or better condition, order and repair as when delivered to Lessee, (ii) in interchange condition in accordance with AAR and Federal Railroad Administration regulations, and (iii) suitable for loading and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee.
  - (ii) Lessee shall at Lessee's expense return such Cars to Lessor by delivering the same to Lessor at such maintenance facility, storage or terminal facility as Lessor designates to Lessee in writing.

(iii) If the Cars were initially remarked to accommodate Lessee, Lessee shall bear the costs associated with remarking each Car at a facility selected by Lessor. Remarkings, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Lessee; b) complete cleaning of the area where new marks are to be placed subsequent to the removal of marking and company logos as designated by Lessor; c) application of new mandatory markings; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

B. Until the Cars are delivered to Lessor pursuant to this Section, Lessee shall continue to be liable for and shall pay all rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Agreement as though such termination or expiration had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or termination of this Agreement with respect to such Car.

12. Indemnities

- A. Lessee shall defend, indemnify and hold Lessor harmless from and against any loss, damage, destruction or liability (including reasonable attorneys' fees) with respect to the Cars which is occasioned by the fault of Lessee, or which occurs while the Cars are in Lessee's possession or control, or in those instances in which the interchange rules would assign responsibility for such loss, damage, destruction, or liability to Lessee.
- B. Except as provided in Subsection 12.A., and except for those claims, causes of action, damages, liabilities, costs or expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall defend, indemnify and hold Lessee harmless against any and all loss, damage or destruction of or to the Cars, usual wear excepted.
- C. The indemnities and assumptions of liability herein contained shall survive the expiration or termination of this Agreement.

13. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

- A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold

under lease its properties and to perform its obligations under this Agreement.

- B. The entering into and performance of this Agreement by Lessee has been duly authorized by all necessary corporate authority and will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C. There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Lessee or the ability of Lessee to perform its obligation under this Agreement.

14. Inspection

Lessor shall have the right to enter, at any time during normal business hours, any premises where the Cars may be located for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder. Lessee shall, upon the request of Lessor, but not more than once every year, furnish to Lessor its inventory of all Cars then covered by this Agreement.

15. Miscellaneous

- A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent by Lessee.

- C. Lessee shall not enter into any agreement with any other party with respect to the Cars ("Third Party Agreement(s)") without Lessor's prior written approval.
- D. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- E. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in this Agreement.
- F. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- G. Lessee shall furnish to Lessor promptly upon its becoming available an annual report or audited financial statements, or unaudited financial statements with audited financial statements of its parent company.
- H. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to: <sup>F</sup>

Lessor: Itel Railcar Corporation  
55 Francisco Street  
San Francisco, CA 94133  
Attn: President

or

Itel Rail Corporation  
55 Francisco Street  
San Francisco, CA 94133

Lessee: Kalium Chemicals, Ltd.  
2550 Golf Road  
Rolling Meadows, IL 60008  
Attn: President

or at such other addresses as Lessor or Lessee may from time to time designate.

- I. The terms of this Agreement and all rights and obligations hereinunder shall be governed by the internal laws of the State of California and exclusive jurisdiction of any action with respect to this Agreement shall be in the courts located in the City and County of San Francisco, California.
- J. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- K. This Agreement represents the entire Agreement. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- L. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.

ITEL RAIL CORPORATION

KALIUM CHEMICALS, LTD.

By:   
Title: President  
Date: May 10, 1988

By:   
Title: Vice President-Sales  
Date: May 2, 1988

ITEL RAILCAR CORPORATION

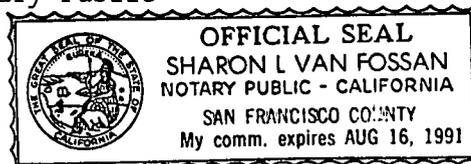
By:   
Title: President  
Date: May 10, 1988

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 10th day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan

Notary Public



STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 10th day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Railcar Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan

Notary Public



STATE OF Illinois )  
 ) ss:  
COUNTY OF Cook )

On this 16 day of May, 1988, before me personally appeared John W. Huber, to me personally known, who being by me duly sworn says that such person is Vice President Sales of Kalium Chemicals, Ltd., that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Darlene Inauds

Notary Public

4/27/88

SCHEDULE NO. 1 TO MASTER LEASE NO. 2212-00

THIS SCHEDULE NO. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of May 10, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and KALIUM CHEMICALS, LTD., as lessee ("Lessee") is made this 10th day of May, 1988, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All terms defined in the Agreement shall have the meanings defined therein when used in Schedule No. 1.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech. Design.	Description	Reporting Marks and Numbers	Length	Dimensions Inside Width	Height	Door Width	Number of Cars
LO	4428 c.f. capacity 100-Ton Plate C Covered Hoppers	USLX 131001- <del>131057</del> (nonsequential)	49'6"	10'1"	---	---	20
				439797 			

3. A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date and at the location such Car is delivered pursuant to Section 4 and shall continue as to all of the Cars described in this Schedule through and including June 30, 1989 (the "Initial Term").
- B. At the expiration of the Initial Term, Lessee shall be given the opportunity to extend the Agreement with respect to the Cars on this Schedule under such terms as shall then be mutually agreed upon, assuming that the parties can agree on the terms. Such extension shall be called the "Extended Term."
4. Each Car shall be deemed delivered and subject to the terms and provisions of the Agreement and this Schedule at 12 noon on the date such Car is delivered to Burns Harbor, Indiana, the initial delivery point for such Car ("Delivery"). Upon the Delivery of the final Car, Lessor shall deliver to Lessee an executed Certificate of Delivery in the form of Exhibit A attached hereto with respect to all Cars.

5. Lessor shall perform the registration and record keeping described in Section 4 of the Agreement.
6. Lessor shall perform or cause to be performed and pay all costs and expenses associated with the maintenance of the Cars described in this Schedule. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor shall be liable at all times for and shall pay all federal, state, or other governmental property taxes assessed or levied against the Cars. Lessee shall be liable for all sales, income, use or gross receipt taxes imposed upon the Cars during the term of this Schedule.
8. Rent
  - A.
  - B. "Accounting Period" shall be defined as any consecutive twelve-month period or applicable portion thereof commencing with the date of this Schedule through any period during which this Agreement with respect to this Schedule shall expire or terminate. Since the Cars bear private reporting marks and numbers owned by Lessor, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of Lessor, but Lessor shall credit time and mileage payments actually received by it during an Accounting Period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under the Agreement with respect to Cars covered by this Schedule during such Accounting Period; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee during such Accounting Period. Any credit unused at the end of such Accounting Period with respect to such Cars shall be the property of Lessor. Lessee agrees to reimburse Lessor for all sums paid to any party or railroad prior to, during, or after termination of this Schedule under applicable railroad tariffs on account of all excess empty mileage incurred by reason of the movement of Cars during the term of the Agreement.
  - C. In the event Lessor receives time and mileage payments on the Cars in any Accounting Period or applicable portion thereof that equal less than the total Fixed Rent due on the Cars for such period, then Lessee shall, within ten (10) days of receiving an invoice from Lessor, pay Lessor the difference between such payments received by Lessor and the total Fixed Rent due.

- 9. Except as expressly modified by this Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
- 10. This Schedule may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

KALIUM CHEMICALS, LTD.

By: *AP Hayes*  
Title: *President*  
Date: *May 10, 1988*

By: *J. J. J.*  
Title: Vice President-Sales  
Date: May 2, 1988

EXHIBIT A

Exhibit A to Schedule No. 1 dated as of \_\_\_\_\_ to Lease dated \_\_\_\_\_, by and between ITEL RAILCAR CORPORATION ("Lessor") and KALIUM CHEMICALS, INC. ("Lessee").

CERTIFICATE OF DELIVERY

The following Cars have been delivered to Lessee pursuant to the terms of the Agreement:

Car Marks and No.

Date Delivered

The last day of the Initial Term for the above referenced Cars shall be \_\_\_\_\_.

ITEL RAILCAR CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 10th day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.

Sharon L. Van Fossan

Notary Public



STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 16 day of May, 1988, before me personally appeared John W. Huber, to me personally known, who being by me duly sworn says that such person is Vice President of Kalium Chemicals, Ltd., that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said of corporation.

Darlene Inwards

Notary Public

My Commission Expires Aug. 9, 1989

EXHIBIT B  
Covered Hoppers

<u>Running Repairs</u>	<u>Running Repairs Continued</u>
Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plates (Not Replacement)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gate Repair (Not Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement)
Brake Beams	
Truck Springs	