

ENGINEERED CARBONS, INC.

P.O. BOX 667
1215 MAIN STREET
PORT NECHES, TEXAS 77651

RECORDATION NO. **20163** FILED 1425

JUL 1 1996 - 11 30 AM

STATE COMMERCE COMMISSION

June 21, 1996

Mr. Vernon Williams
Surface Transportation Board (DOT)
1201 Constitution Blvd. Rm # 2311
Washington, D.C. 20423

Dear Sir:

Enclosed is an Interim Use Agreement executed between Thrall Car Manufacturing Company and Engineered Carbons, Incorporated regarding our acquisition of fifty (50) covered hopper cars. Pursuant to the terms of the agreement we are required to file said agreement with your division of the Department of Transportation.

In addition to an executed original and copy of the agreement, please find a check in the amount of \$21.00 to cover the filing cost.

Sincerely,



Brian B. Bommer

Controller - Engineered Carbons, Inc.

JUL 1 11 27 AM '96
RECEIVED
SURFACE TRANSPORTATION
BOARD

7/1/96

Brian B. Bommer
Engineering Carbons, Inc.
P. O. Box 607
1215 Main Street
Port Neches, Texas 77651

Sir:
Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of
the Interstate Commerce Act, 49 U.S.C. 11303, on 7/1/96 at 11:30AM, and
assigned recordation number(s) 20103.

Sincerely yours,
Vernon A. Williams

Vernon A. Williams
Secretary

Enclosure(s)

\$ 21.00
The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature *Jamie M. Fort*

20163

1996

INTERIM USE AGREEMENT

Interim Use Agreement dated June 17, 1996 between Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street Chicago Heights, IL 60411 ("Thrall"), and Engineered Carbons, Incorporated, a Delaware corporation with its principal offices located at 1215 Main Street, Port Neches, TX 77651 ("Customer").

WHEREAS, Thrall and Customer have entered into Purchase Order No. 95-928 dated September 15, 1995, as modified September 29, 1995 and by the letter dated March 20, 1996 (collectively, the "Purchase Agreement") pursuant to which Thrall will manufacture and sell to Customer fifty (50) 4727 cu.ft. covered hopper railcars bearing car numbers ECQX 47001 through ECQX 47050 inclusive (the "Cars"); and

WHEREAS, Customer intends to finance its purchase of the Cars but the financing arrangements will not be completed by the scheduled delivery date for the Cars; and

WHEREAS, Customer desires to utilize the Cars before the financing arrangements are completed, and Thrall is willing to grant temporary possession of the Cars to Customer on the terms and conditions hereinafter provided,

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Customer agrees to accept possession of the Cars, solely as bailee, when they are delivered by Thrall FOT Chicago Heights, Illinois pursuant to the Purchase Agreement. Upon delivery of each Car Customer or its representative shall execute a Certificate of Conformance in the form of Exhibit A attached hereto.
2. Customer's rights hereunder shall commence with respect to each Car on the date of delivery by Thrall and end when the purchase price therefor is paid by Customer or its financing source (the "Termination Date") without further action of the parties.
3. Until the Termination Date for each Car, title and ownership shall remain with Thrall and Customer's rights therein shall be solely that of possession, use and custody as bailee. Transfer of title shall occur only pursuant to a Bill of Sale duly executed and delivered by Thrall. The lien created by this Agreement shall automatically terminate with respect to each Car upon delivery of a Bill of Sale.

4. Customer shall pay to Thrall \$70,945 for each Car payable on or before Friday, June 28, 1996, for all Cars delivered, by wire transfer of federal funds to the following account:

Thrall Car Manufacturing Company
Account No. 78-58167
Bank of America Illinois
ABA No. 0710-0003-9
Chicago, Illinois 60693

If Customer's financing source takes title to a Car then the Customer's payment shall be refunded to Customer, and if Customer takes title to a Car then the Customer's payment shall be credited to Customer.

5. Customer shall have risk of loss of all Cars delivered pursuant to this Agreement. Customer shall, at its expense, maintain in force public liability and property damage insurance with respect to the Cars in such amounts and with such terms as are comparable with those generally applicable to other railcars owned or leased by Customer.

6. Until the Termination Date for each Car, Customer shall keep and maintain the Car in good order and running condition, normal wear and tear excepted, and Customer shall at its option promptly repair, replace or pay to Thrall the purchase price if a Car is damaged or destroyed. Customer shall not modify any Car, with the exception of the application of lining, sample spouts and outlet gates, without the prior written approval of Thrall, and Customer shall immediately replace or restore any markings which are removed, destroyed or defaced.

7. Customer shall not permit any liens or encumbrances of any kind, other than the usual interchange of traffic rules and the lien of this Agreement, to attach to any Car prior to the Termination Date for such Car.

8. Customer shall operate the Cars in accordance with all applicable laws, rules and regulations so long as Customer has possession pursuant to this Agreement.

9. Customer acknowledges and agrees that Thrall's execution of this Agreement and its delivery of Cars hereunder does not relieve Customer of its obligation to make payment in full for the Cars in accordance with the Purchase Agreement. If the Termination Date for any Car has not occurred before June 28, 1996, Customer's right of possession under this Agreement shall terminate and Customer shall on that date pay to Thrall the purchase price for such Car. Thrall may enter upon the premises of Customer and take immediate possession of any Cars for which payment in full has not been received on such date, in addition to exercising all other remedies available to it under law or in equity.

10. Prior to delivery of any of the Cars Customer shall at its expense file a copy of this Agreement with the Surface Transportation Board of the Department of Transportation and take such other actions to protect Thrall's interest as Thrall shall reasonably request. Simultaneously with its delivery of a Bill of Sale for each Car Thrall shall deliver to Customer or its financing source for filing a Termination of Agreement with respect to such Car in the form of Exhibit B attached hereto.

11. Customer shall indemnify and hold Thrall harmless from and against any and all claims, expenses, costs or liabilities, including but not limited to reasonable attorneys' fees, arising out of or in connection with Customer's possession, use or custody of the Cars pursuant to this Agreement or Customer's violation of any provisions of this Agreement or the Purchase Agreement. Customer shall pay all taxes (excluding any taxes measured by the net income of Thrall), fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or upon Thrall as owner of the Cars while Customer has possession, use or custody pursuant to this Agreement.

12. Customer acknowledges that it takes possession of the Cars subject to the provisions of the Purchase Agreement, including those relating to warranties, remedies and limitation of liability. The warranty period and any other time period set forth in the Purchase Agreement shall commence on the date of execution of a Certificate of Conformance.

13. Customer and Thrall each represent and warrant to the other that (i) the execution and delivery of this Agreement have been authorized by all necessary corporate action and do not and will not contravene or constitute a default under the provisions of any agreement or instrument binding upon it or any of its property, (ii) this Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general principles of equity and (iii) all governmental authorizations, approvals or exemptions required of it for the execution and delivery of this Agreement or for the validity and enforceability of this Agreement against it have been obtained. Customer represents and warrants to Thrall that the rights of Thrall contained in this Agreement and the title of Thrall to the Cars are, and will be through the Termination Date, senior to the lien of any mortgage, security agreement or other instrument binding upon Customer or any of its property.

14. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law principles thereof.

15. This Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL CAR MANUFACTURING
COMPANY

By 
Title Vice President Finance

[CUSTOMER]

By 
Title PRESIDENT

STATE OF IL)
) ss:
COUNTY OF COOK)

On the 18th day of June, 1996 before me personally appeared Robert A. Walk, to me known who, being by me duly sworn, stated that he is VP Finance of Shall Co, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

Delphine C. Brands
Notary Public

My commission expires: 12/5/97



STATE OF TEXAS)
) ss:
COUNTY OF Jefferson)

On the 18th day of JUNE, 1996 before me personally appeared W.D. SPENCE, to me known who, being by me duly sworn, stated that he is PRESIDENT of ENGINEERED CABINS, INC. that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.



Nancy M. Harvey
Notary Public

My commission expires: 10-20-97