



*Notice. These terms and conditions are the commercial terms of purchase of goods ("Products") from Secure Medication Systems ("SMS") and apply to all purchases of Products from SMS or its affiliates or subsidiaries by any Customer ("Customer") with notice of these terms, however gained, including the use of SMS's website ("Website"). No additional or different terms or attempted exclusions or modifications (by way of purchase order ("P.O."), acceptance, confirmation, communication, course of performance or otherwise, all of which may hereafter be referred to jointly and severally as "Reply") shall be effective against SMS in the absence of the express written consent of SMS. Neither the submission of this document nor anything herein contained shall be construed to be an acceptance or confirmation of any prior or subsequent Reply; this document shall be a rejection and counteroffer with respect to any such Reply. Provisions below that apply only to certain types of goods (e.g., provisions relating to printed orders) only apply to the extent, if any, such provisions are applicable to Products sold to Customer. The contract between SMS and Customer, including these terms, shall be referred to as the "Agreement." Throughout this instrument, the use of the term "include," however conjugated, shall be without limitation; "person" shall include any individual, corporation, LLC, partnership or other entity.*

#### **1. Time.**

All orders are subject to: (i) credit approval; (ii) rejection or modification due to required delivery date or component or raw material availability; and (iii) minimum order quantities. No lead times are guaranteed unless agreed to in writing by both parties. Any delivery date stated in a quotation or Sales Order otherwise is based on Customer's timely compliance with SMS's credit approval requirements, timely receipt of any required initial payments by Customer under the Sales Order and complete specifications as well as any necessary export documents and authorizations; any delay in which may result in delays in shipment.

#### **2. Prices/Exclusions/Shipping.**

Customer acknowledges that prices, whether they appear in the Website, on a price list, or in any other form or medium, are effective only for orders shipped on the date that they appear or as reflected on the Sales Order; SMS may change prices at any time without notice. Prices in quotations are effective for the specific time period stated in the quotation or, if no time period is stated, 30 days. If Customer is an existing customer currently purchasing Products at a certain price, SMS may change its prices at any time upon 30 days' written notice or upon 10 days' written notice in case of a sudden severe increase in materials prices or other costs. Any temporary surcharge imposed by SMS's suppliers will be passed on to Customer during whatever period of time such surcharge might be in effect. Unless otherwise specified in the Sales Order, prices do not include: (i) printing plates; (ii) art charges; (iii) colors; (iv) labeling; (v) silk screening; (vi) co-packing; (vii) metalizing; (viii) skids; (ix) freight; (x) warehousing; (xi) brokerage fees; (xii) upcharges for less than minimum orders or additional services and similar items; (xiii) any applicable excise, value-added, sales, use or similar taxes; or (xiv) insurance. All of the foregoing will be billed as separate items and are not subject to discounts. For international shipments, SMS may, upon Customer request, agree to clear goods for export and all related fees will be charged to the Customer. SMS will select the carrier unless otherwise agreed in writing. In the case of alternate shipping terms, freight costs prepaid by SMS shall be subject to an additional administration and handling charge; Customer's resulting charges may or may not exceed the charges that Customer might incur if Products are shipped collect. Products in transit are at Customer's risk. Customer shall be fully responsible to pay or to reimburse SMS for carrier detention charges incurred as a result of delays caused or allowed by Customer. In the case of international sales, unless otherwise agreed, Customer shall be fully responsible: (i) to provide SMS prior to shipment and in writing, the ultimate destination and identity of the end-user; (ii) to pay all duties, taxes and other charges imposed by any government on Products or on the purchase, exportation or importation of Products; and (iii) for compliance with applicable legal requirements for exportation and importation of Products.

#### **3. Payment.**

**A.** Unless otherwise agreed in writing or as specified on the Sales Order, payment terms are fifty percent (50%) of the Sales Order total upon order, and fifty percent (50%) upon shipment, in the currency designated by SMS on open accounts to Customers with current, approved credit. SMS shall not be bound to extend credit: (i) prior to Customer's compliance with credit requirements, including SMS's approval of a signed credit application or (ii) because it has previously done so for Customer or others similarly situated. If Customer's purchases of Products are made through a broker, distributor, wholesaler, filler or other intermediary ("Intermediary"), references herein to "Customer" shall include such Intermediary as necessary to the context and Customer agrees that SMS shall be entitled to make credit decisions concerning sales to the Intermediary in SMS's discretion and may refuse to make sales on credit as it determines in its discretion. SMS, to the extent necessary to protect its interest in receiving payment for Products, shall be a third party beneficiary of any purchase contract between the Intermediary and Customer. If SMS makes sales of Products to the Intermediary as an accommodation to Customer, Customer shall remain liable to SMS for the cost of Products sold to the extent that the Intermediary fails or refuses to pay SMS for such Products; Customer waives all suretyship defenses. In the event that Customer renders payment to SMS and/or its agent in a manner purported by Customer to serve as payment in full of an invoice, SMS and/or its agent's acceptance of such payment (i) shall not act as an accord and satisfaction and (ii) shall be without prejudice to SMS's right to pursue additional payment of such invoice. Customer shall not have the right of set off unless so agreed in writing by SMS. If any payment is past due, SMS may impose a service charge of the lesser of the maximum amount allowed by applicable law or 1½% per month and may hold or cease shipments of Products. Any amounts charged to a credit card are subject to a convenience fee of 3%. Customer agrees to pay SMS's attorney's fees and expenses and other collection costs in the event collection or other enforcement efforts become necessary or appropriate in SMS's discretion. In addition, SMS shall have the right to terminate this sale, to stop Products in transit, and to suspend further performance under these terms and conditions and/or other agreements with Customer in the event Customer fails to make any payment when due, which other agreements Customer and SMS hereby amend accordingly.

**B.** In the event of insolvency, SMS's invoice shall constitute a demand for reclamation of the Products identified on the invoice under UCC section 2-702 and United States Bankruptcy Code section 546(c). Customer: (i) agrees to promptly notify SMS in case of insolvency; (ii) waives any defenses to SMS's right of reclamation to the Products identified in SMS's invoice; and (iii) shall promptly return possession of such Products to SMS.

#### **4. Cancellation/Claims>Returns.**

Customer will be responsible to pay the full P.O. or Sales Order price if Products are manufactured in response to a P.O. or Sales Order cancelled by Customer (without SMS's fault). Rejection of alleged nonconforming Products must be made in writing 30 days after delivery for non-conformities reasonably discoverable on inspection, and 60 days after delivery for latent non conformities; after that time Products will be deemed accepted and not subject to revocation of acceptance. Customer will give SMS reasonable opportunity to examine and test Products that are the basis for any claim. As a condition for replacement, refund or credit, SMS may request the return of alleged nonconforming Products in the same condition as when received,

except such part as cannot be returned due to necessary testing. On request, Customer shall also return, if possible, tested Products. No claim against SMS shall be made or allowed for Products returned without SMS's prior written consent. All claims for loss or damage during transit must be made against the carrier and by notation on freight bill or delivery receipt. All returns of other than nonconforming Products must be: (i) approved in advance by SMS; (ii) of Products in new condition and not printed or special; (iii) made within 90 days; (iv) shipped at Customer's expense; and (v) accompanied by or subject to a twenty-five percent (25%) restocking charge. Credits (other than those for overpayments) expire 180 days after issuance.

#### **5. Inventory.**

If SMS has agreed to retain an inventory or safety stock of Products for Customer, SMS's obligation to produce Products for inventory shall be subject to Customer's continued compliance with this Agreement including timely payment and the responsibility to provide an accurate forecast and comply with applicable lead-times. In the event any item of Products is discontinued or changed by Customer, Customer shall purchase and pay for all such Products that have been manufactured and raw materials for open purchase orders for such Products. In the event any Products are maintained in inventory for more than ninety (90) days, Customer will either purchase such Products or order the Products scrapped and pay the purchase price as if such Products had been purchased (and SMS will retain the scrap) and, in such cases, payment will be due immediately at the end of the 90-day period without regard to Customer's payment terms or standard payment terms above in section 3.

#### **6. Confidential Information.**

All nonpublic information conveyed by a party ("Disclosing Party") to the other party ("Receiving Party") regarding prices, costs, discounts, inventions, planned and existing products, including the Products (some of which may also be subject to SMS's copyright, trademark, or patent rights), packaging, customers and distributors as well as information regarding a party's business or finances and production methods, know-how and concepts used by a party, is proprietary and confidential ("Confidential Information"). Receiving Party agrees that it will not disclose any such Confidential Information to others and will advise its employees, officers, directors, consultants and legal and tax advisors, of the secrecy of such Confidential Information and take all other steps necessary to protect Confidential Information. Receiving Party shall not copy, reverse compile, reverse engineer, or otherwise duplicate the Confidential Information or copy, misuse, or misappropriate any Confidential Information. SMS's logo and brand names belong to SMS and are protected by trademark and other laws; Customer agrees that it will not use or permit any other person to use such logo or brand names without SMS's prior written consent which may be withheld for any reason. The parties hereto acknowledge that any breach of the provisions of this section would cause irreparable harm and therefore non-breaching party shall be entitled to all legal and equitable rights and remedies available under state and federal law and otherwise to protect its Confidential Information, trademarks, trade secrets and intellectual property of all kinds (all of which may be referred to hereafter as "IP"), including without limitation injunctive and other additional relief available under the Colorado Uniform Trade Secrets Act, including attorney's fees, even if the Confidential Information under consideration does not amount to a trade secret under that act. Confidential Information shall not include information that: (i) is or becomes publicly available other than as a result of a disclosure by the receiving party; (ii) is or becomes available to the receiving party on a non-confidential basis from a source (other than the Disclosing Party) which is not prohibited from disclosing such information to the receiving party by a legal, contractual or fiduciary obligation; (iii) is developed by the receiving party independently of the confidential or proprietary information of disclosing party; or (iv) is information that was already known by the receiving party so long as the receiving party can demonstrate, by written records, that such information had been in the receiving party's possession prior to such disclosure of the information.

#### **7. Customization & Intellectual Property.**

Any custom descriptions and layouts supplied with a quotation, unless otherwise stated, are preliminary only and SMS reserves the right to make modifications (after advising Customer) if SMS determines that the modifications will result in increased efficiency of production or use. At any time that any such contemplated modification may result in any substantial change in appearance or function, SMS will not make such change without Customer's prior approval. Customer may not reject as nonconforming any Products based on artwork or copy which Customer previously approved. Artwork, product design, production and packaging methods and other materials, information and IP developed in whole or in part by SMS shall remain SMS's property and subject to all IP protections, including those in the preceding section on Confidential Information and IP, unless the parties enter into a written contract under which the Customer specifically acquires the rights to such IP and SMS makes a written assignment thereof.

#### **8. Limited Warranty/Limitation of Damages.**

All Products are sold on the condition that Customer has examined samples prior to the initial purchase to determine whether the Products: (i) meet Customer's requirements; (ii) are appropriate for the Customer's intended use; and (iii) comply with all compatibility and use requirements including those referred to below in sections 10 (Thermoplastic characteristics) and 14 (Miscellaneous). Once SMS has made samples available, Customer's PO for Products or a SMS Sales Order acts as confirmation of such examination and testing. Products sold are warranted to: (i) be substantially free from defects in material and workmanship when sold and (ii) comply with any SMS specifications, but it shall be Customer's responsibility to assure that such specifications will fulfill Customer's requirements regardless of whether SMS has notice of such requirements. OTHER THAN THE EXPRESS WARRANTIES AND REPRESENTATIONS MADE IN THIS SECTION 8, SMS MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE OR NON INFRINGEMENT, OR THAT MIGHT OTHERWISE ARISE FROM ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SMS OR FROM ANY DESCRIPTION OR SAMPLE OF ANY PRODUCTS. NO WARRANTY SHALL BE CREATED OR DEEMED TO BE CREATED BY THE USE OF THE WORDS "PILFER RESISTANT" "TAMPER EVIDENT," "TAMPER RESISTANT," "CHILD RESISTANT," OR WORDS OF SIMILAR MEANING USED IN ANY WRITTEN OR ORAL COMMUNICATION. SMS'S LIABILITY FOR ITS ALLEGED BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, RECALL LIABILITY, NEGLIGENCE OR OTHER CAUSE OR THEORY IS LIMITED TO REPLACEMENT OF DEFECTIVE PRODUCTS OR REFUND OF THE PURCHASE PRICE UPON TIMELY RECEIPT OF NOTICE REGARDLESS OF WHETHER SMS HAS OR HAS NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OTHER DAMAGES. THIS LIMITED WARRANTY IS VOID WITH REGARD TO ANY PRODUCTS ALTERED, MISUSED OR SUBJECT TO NEGLIGENCE OR ACCIDENT. SMS SHALL NOT BE RESPONSIBLE TO CUSTOMER UNDER THIS LIMITED WARRANTY FOR FIT OR OTHER COMPATIBILITY PROBLEMS WHEN THE PRODUCTS ARE USED WITH GOODS OF ANOTHER MANUFACTURER. ALL ORAL AND WRITTEN ADVICE PROVIDED BY SMS RELATING TO THE PRODUCTS IS SUBJECT TO THE FOREGOING DISCLAIMER OF WARRANTIES AND LIMITATION OF DAMAGES PROVISION. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE RESPONSIBLE FOR LOSS OF USE, LOSS OF CUSTOMERS, LOST PROFITS, INTERRUPTION OF BUSINESS, COVER OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF CAUSE. PRODUCTS AND SERVICES SOLD HEREUNDER ARE NEITHER FOR USE IN ANY NUCLEAR OR RELATED APPLICATIONS, NOR FOR USE AS COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS INTENDED FOR SURGICAL IMPLANT INTO THE BODY OR INTENDED TO SUPPORT OR SUSTAIN LIFE, WITHOUT SMS'S PRIOR WRITTEN CONSENT. Customer accepts the Products with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers, customers or users and to defend, indemnify and hold harmless SMS as set forth in Paragraph 9.

#### **9. Indemnification.**

Customer shall defend, indemnify and hold harmless SMS and its affiliates, related companies, and their respective directors, officers, shareholders, employees and agents from and against any actual and potential legal, equitable, statutory or administrative claims, causes of action, liens, fines, penalties, investigations, recalls and other costs and expenses (including without limitation, reasonable fees and expenses of an attorney of SMS's choosing), and direct, indirect or consequential losses (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of goodwill and similar losses) arising from or as a result of (i) death, bodily injury, personal injury or property damage arising out of

customer's marketing, advertising, sale, distribution, handling, use or recall of the products (including any claims or causes of action based on items for which or with which the products are used) except to the extent caused solely by SMS's gross negligence; (ii) Customer's violation of any applicable law, regulation or standard in the marketing, advertising, labeling (or improper or inadequate labeling), sale, distribution, handling, or use of the products or the items with which or for which the products are used; (iii) any alleged patent, trademark, trade dress, copyright, trade secret or any other IP infringement of any kind based on Customer's samples, mock-ups or specifications; (iv) any illegal, false, misleading or deceptive information that customer instructs SMS to print on or otherwise apply to or use with the products; and (v) any environmental pollution, contamination or damage (including, in addition to the above, fines and penalties to the extent allowed by law, clean-up and other remedial or containment costs and legal, technical or similar fees and expenses) arising out of such pollution, contamination or damage to the environment or natural resources occurring in connection with customer's use of any products regardless of cause, including customer's negligence, strict liability, or other act or omission. Customer warrants that custom products ordered based on customer's samples, mockups or specifications do not infringe any patent, trademark, trade dress, copyright, trade secret or any other IP infringement of any kind granted by any country. SMS reserves the right (but shall have no duty) to discontinue deliveries of any products, the manufacture, sale or use of which might: (i) infringe any trade dress, copyright, trade secret, patent or other IP rights; or (ii) violate any foreign, federal, state or local law, regulation or order. SMS shall defend, indemnify and hold harmless Customer and its affiliates, related companies, and their respective directors, officers, shareholders, employees and agents from and against any actual and potential legal, equitable, statutory or administrative claims, causes of action, liens, fines, penalties, investigations, recalls and other costs and expenses (including without limitation, reasonable fees and expenses of an attorney of Customer's choosing), and direct, indirect or consequential losses (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of goodwill and similar losses) arising from or as a result of (i) death, bodily injury, personal injury or property damage arising out of SMS's marketing, advertising, sale, distribution, or handling, except to the extent caused by Customer's gross negligence; (ii) SMS's violation of any applicable law, regulation or standard in the marketing, advertising, labeling (or improper or inadequate labeling), sale, or distribution; and (iii) any alleged patent, trademark, trade dress, copyright, trade secret, or any other IP infringement of any kind in relation to SMS's stock products.

#### **10. Thermoplastic Characteristics.**

To obtain expected benefits and service from thermoplastics (including Products) and minimize potential complications, AND PRIOR TO THE ISSUANCE OF A P.O. or the execution of a Sales Order, Customer must: (i) be familiar with and allow for the working characteristics of thermoplastics and print on thermoplastics; (ii) determine and allow for the impact of environmental conditions and chemical substances on the appearance, durability, stiffness, and other attributes and uses of the Products, as well as the effects of permeability, transmission rates and other compatibility factors and the effects of contact or use with hydrocarbons, oxidizing acids and essential oils; (iii) determine and implement proper handling and storage techniques; and (iv) establish and implement suitable environmental and time parameters for (a) exposure to sunlight in particular and weather in general; (b) exposure to artificial light; and (c) temperature, pressure, vacuum, and other ambient factors as they may vary during or as the result of transportation, storage, stacking, handling and filling. IT IS RECOMMENDED THAT DOUBLE-FACED PALLETS BE USED. IT IS CUSTOMER'S RESPONSIBILITY TO: (1) EVALUATE COMPATIBILITY WITH FILLED OR FINISHED PRODUCT AND INTENDED USE; (2) EVALUATE COMPATIBILITY WITH ANY OTHER MANUFACTURER'S PRODUCTS WITH WHICH THE PRODUCTS ARE INTENDED TO FIT OR BE USED; (3) DETERMINE MAXIMUM LOAD CAPABILITY WITH FILLED PRODUCT BEFORE STACKING; AND (4) CONSIDER THE EFFECT OF REAL WORLD USE AND ENVIRONMENTAL FACTORS.

#### **11. Technical Advice & Training.**

At Customer's request, SMS may furnish such training, technical assistance, information and safety advice as it has available with respect to the use of the Products. SMS assumes no obligation or liability for any technical assistance, information or safety advice it furnishes concerning the Products. The parties agree (unless otherwise specifically agreed to in writing by SMS) that all such advice is given without charge or warranty, does not alter the limited warranty and limitation of damages in Paragraph 8 herein, is accepted by Customer at Customer's risk, and Customer assumes sole responsibility for the results obtained in reliance thereon.

#### **12. Force Majeure.**

If SMS or Customer is prevented from or delayed in performing by a force majeure event, it shall not be liable or responsible for its failure to timely perform, but shall perform as soon as possible after the force majeure event ceases. References to force majeure shall refer to circumstances that are beyond a party's control and that affect production or transportation, including acts of God, acts of war, acts of government, terrorism, riots, labor strikes, labor lockouts, interruption in telecommunication transmission or product transportation, materials shortages or delays or sudden severe increases in materials prices or other costs, accident, fire, water damage, flood, earthquake, windstorm, other natural disasters and catastrophes, and compliance by a party with any order, action, direction or request of any governmental officer, department, agency, authority, or committee thereof. This provision is intended to be interpreted to expand rather than limit the application of the Uniform Commercial Code ("UCC") section 2-615.

#### **13. Laws.**

The Agreement shall be interpreted under Colorado law without regard to choice of law principles and shall not be governed in whole or in part by the United Nations Convention on Contracts for the International Sale of Goods; as allowed by that convention, the parties specifically disclaim its application. Any and all disputes between the parties shall be prosecuted solely and exclusively in the federal or state courts located in Colorado, and Customer consents to personal jurisdiction of those courts and waives all defenses based on inconvenient forum; provided, however, that SMS may institute an action for equitable relief in a different jurisdiction at the site of an alleged wrong. For all matters not covered by the terms of the Agreement, the UCC shall control. Each party waives any right to trial by jury in enforcement of this Agreement. Until receiving payment in full, SMS shall have all rights of a seller under the UCC in addition to those in the Agreement and otherwise, including rights of a secured party (under article 9 of the UCC) and rights of reclamation (under the UCC and the U.S. Bankruptcy Code). All remedies are intended to be cumulative and in addition to all other remedies available at law and in equity.

**A. Exports.** Customer will be responsible to comply with all applicable laws and regulations, including the export control laws in effect in the United States, Canada and Europe which may be issued from time to time concerning the exporting, importing and re-exporting of Products. Customer acknowledges that shipments of Products are subject to the export laws of the United States, including United States Department of State and Department of Commerce regulations (including but not limited to the U.S. Arms Export Control Act (22 U.S.C. 2778 et seq.), the International Traffic in Arms Regulations (22 CFR 120- 130), the Export Administration Regulations (15 CFR 730-774) and the International Emergency Economic Powers Act (50 U.S.C. 1701 – 1706) and that a license from the Department of State or the Department of Commerce may be required prior to export of Products. Customer agrees to comply with all applicable licensing requirements. Customer also agrees to comply with the United States Foreign Corrupt Practices Act, and shall indemnify SMS for any failure to comply or violation of such act. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of activities under the Agreement. Additionally, for U.S. export licensing purposes, Customer shall provide to SMS any and all documentation required to complete any and all applicable United States of America State Department or Commerce Department license applications. It will further be Customer's responsibility to inform SMS of the applicability of and compliance with testing and legal requirements (including local laws) with respect to any P.O. or Sales Order.

**B. "Children's Products."** Customer will be responsible to provide notice to SMS if Customer intends that any Products will be "Children's Products" as defined by the federal Consumer Product Safety Act (15 U.S.C. 2051 et seq.), as amended, including the Consumer Product Safety Improvement Act

("CPSIA"), and will provide immediate notice to SMS if any Products are subject to CPSIA but not obvious by the nature or appearance of the Products as ordered. If Customer fails to provide such notice and fails to comply with CPSIA with respect to any Products that are: (i) not obvious by their nature or appearance as subject to CPSIA or (ii) modified by Customer so as to be subject to CPSIA, Customer will indemnify SMS as provided in Section 9 above for such failure. Products that are subject to CPSIA can be found at the Consumer Product Safety Commission website: [www.cpsc.gov/businfo/reg1.html](http://www.cpsc.gov/businfo/reg1.html). Additional information is available at: [www.cpsc.gov/ABOUT/Cpsia/faq/103faq.html](http://www.cpsc.gov/ABOUT/Cpsia/faq/103faq.html).

**C. PRODUCTS AND SERVICES SOLD HEREUNDER ARE NEITHER FOR USE IN ANY NUCLEAR OR RELATED APPLICATIONS, NOR FOR USE AS COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS INTENDED FOR SURGICAL IMPLANT INTO THE BODY OR INTENDED TO SUPPORT OR SUSTAIN LIFE, WITHOUT SMS'S PRIOR WRITTEN CONSENT.** Customer accepts the Products with the foregoing understanding, agrees to communicate the same in writing to any subsequent Customers or users and to defend, indemnify and hold harmless SMS from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action is based in tort, contract or otherwise, including allegations that SMS's liability is based on negligence or strict liability.

#### **14. Miscellaneous.**

Either party may immediately terminate this Agreement upon the occurrence of any of the following: (a) if the other party commits a material breach of any of the provisions of this Agreement and does not cure such breach within thirty (30) days after receipt of written notice thereof; (b) if the other party is unable to obtain or renew any permit, license or other governmental approval necessary to carry on the transactions contemplated under this Agreement; (c) in the event that proceedings in bankruptcy or insolvency are instituted by or against the other party, or a receiver is appointed, or if any substantial part of the assets of the other party is the object of attachment, sequestration or other type of comparable proceeding, and such proceeding is not vacated or terminated within thirty (30) days after its commencement or institution. The Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns but is non-assignable by Customer in the absence of SMS's express written consent. The parties agree that their relationship is that of independent contractors; nothing contained in the Agreement shall be construed to make the parties partners or joint venturers. Any waiver(s) of Customer's noncompliance with these terms shall not be binding on SMS with respect to any continuing or subsequent noncompliance. SMS reserves the right to display samples of any Products it produces, decorated or undecorated. To the extent necessary to preserve the parties' rights, all terms of the Agreement shall survive acceptance of and payment for Products sold as well as cancellation, termination or expiration of the Agreement, including the provisions of sections 3, 6, 7, 8, 9, 10, 11, 13 and 14 of these terms and conditions. There shall be no third party beneficiaries of the Agreement unless the parties specifically identify such beneficiaries in writing. Section headings are inserted for convenience and shall not add to or detract from the Agreement. The Agreement may be amended or altered only in a written document executed by both parties. SMS shall not be contractually bound to any provision except as agreed in a writing executed by an authorized officer of SMS. The invalidity of any provision of the Agreement shall not affect the force or validity of the remaining provisions. In the event that SMS has possession of a mold or other equipment owned by Customer, SMS's maintenance and repair obligations shall be limited to those to which it has agreed in writing. Notwithstanding anything to the contrary in the Agreement, SMS shall be entitled to disclose the terms of the Agreement to its auditors, financial institutions, accountants, lawyers and consultants. SMS shall be entitled to recover its reasonable attorneys' fees and expenses in the event it is the prevailing party in any litigation to enforce this Agreement.

