

[Consignment Inventory Distribution Agreement--This agreement addresses the rights and responsibilities of the manufacturer placing goods with a consigner and the obligations and rights of the consignee.]

CONSIGNMENT DISTRIBUTION AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and between SMITH INC. (“SMITH”), a Delaware corporation, having its principal place of business at [Address] and DEF, Inc., a _____ corporation including its subsidiaries and affiliates (each, and collectively, “Vendor”), having its principal place of business at _____ . The effective date (“Effective Date”) of this Agreement shall be the date of the last signature set forth below.

This Agreement sets forth the parties’ understanding and agreement with respect to (a) SMITH’s management of Vendor’s product inventory, and (b) the purchase of such products by SMITH for resale to its customers.

SMITH and Vendor agree as follows:

1. TRUE CONSIGNMENT

1.1 Definitions. For the purposes of this Agreement, the following terms, when capitalized, will have the meanings defined below.

“Bin Location” shall mean a pallet space with the following dimensions: Length – 48”, Width – 42”, Height 96”.

“Casepack” shall mean a carton containing a uniform number of units of the same SKU that is shippable with the attachment of an outbound shipping label.

“Casepack Multipack” shall mean a carton containing a uniform number of multiple Casepacks of the same SKU that is shippable with the attachment of an outbound shipping label.

“Conveyable Standards” shall mean Product packaging that is conveyable and does not exceed the following maximum dimensions: Length 34”, Width 34”, Height 34”.

“Facility or Facilities” shall mean SMITHU.S. distribution centers as designated by SMITH.

“Full Pallet” shall mean a uniform number of units of the same SKUs stored on a pallet with the following dimensions: Length (44” - 48”), Height (60” - 96”), Width (40” - 42”).

“Managed Inventory” shall mean products produced or offered by Vendor and consigned by Vendor to SMITH hereunder.

“Mixed Carton” shall mean a carton containing more than a single SKU.

“Mixed Pallet” shall mean multiple SKUs stored on a pallet.

“PO” shall mean a purchase order issued by SMITH to Vendor following sale of Managed Inventory by SMITH to its customers.

“Products” shall mean any SKUs manufactured, produced or supplied by Vendor, whether or not such SKUs are consigned to SMITH.

“SKU” or “Stock Keeping Unit” shall mean a uniquely identifiable and numbered type of a Product.

“Stock Order” shall mean an order identifying physical delivery of Product to a Facility as a result of a request for delivery of Product. A Stock Order is not and shall not be deemed a commitment to purchase the Products even if it is referred to as a Purchase Order.

“Territory” shall mean the fifty United States and the District of Columbia, and all U.S. Territories, Possessions, U.S. Military Bases (APO/FPO addresses) and Embassies outside of the U.S.

1.2 Description. Vendor agrees to deliver and SMITH agrees to accept the Managed Inventory for the purpose of sale by SMITH to its customers. Each shipment of Managed Inventory by Vendor to SMITH shall include a complete listing of products including description, quantity, Vendor SKU and Vendor-established value per unit (“Unit Value”). Vendor grants to SMITH, and SMITH accepts, the exclusive right to distribute all Products and Managed Inventory to its customers in the Territory. SMITH shall keep all Managed Inventory free and clear of any liens, claims, security interests and other encumbrances affecting its assets.

1.3 True Consignment. To the extent that Vendor delivers the Managed Inventory to SMITH or places it under SMITH's control, this is a true consignment agreement. Vendor warrants, covenants and agrees that the Managed Inventory is owned by Vendor, that there are no liens, judgments or other encumbrances against such Managed Inventory and that Vendor has full right of transfer or sale of such Managed Inventory. Title to Managed Inventory shall at all times remain exclusively with Vendor until SMITH purchases and pays for the Managed Inventory at the time of sale to its customers. All purchases by SMITH shall be under Vendor's standard terms and conditions set forth on its purchase order form.

2. TERM AND TERMINATION

2.1 Term. The initial term of this Agreement is one (1) year from the Effective Date. Thereafter the Agreement will automatically renew for successive one-year terms, unless either party provides written notice of its intent not to renew this Agreement at least thirty (30) days prior to the anniversary date.

2.2 Termination. Either party may terminate this Agreement without cause by giving ninety (90) days prior written notice to the other party. Either party may immediately terminate this Agreement with written notice if the other party: materially breaches any term of this Agreement and such breach continues for fifteen (15) days after written notification thereof; or ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under any Bankruptcy Act or any other federal or state statute relating to insolvency or the protection of rights of creditors.

3. INVENTORY MANAGEMENT AND FEES

3.1 SKU Set-Up. SMITH shall assign SMITH SKU numbers to Vendor's Products, up to a maximum of 25 SKUs at no charge. Additional SKUs may be assigned for an additional cost as specified in Section 3.5 below.

3.2 Inventory Management. SMITH shall store and manage the Managed Inventory. All Products shall be delivered to SMITH on a consignment basis. SMITH and Vendor shall mutually agree on which Products will be consigned to SMITH under this Agreement before the Products are delivered to the Facility or Facilities.

3.3 Space Allocation. SMITH shall store the Managed Inventory at the Facility or Facilities. SMITH reserves the right to store the Managed Inventory at other SMITH facilities or at a third party warehouse location, provided that it advises Vendor of where the Managed Inventory is located. Vendor may request that Managed Inventory be located at additional SMITH facilities; provided that SMITH may accept or reject any such request in its sole discretion, and Vendor shall bear all costs associated with relocating such Managed Inventory. SMITH shall segregate all Managed Inventory

and shall not co-mingle any such Managed Inventory with any of its own goods. SMITH shall also clearly and conspicuously label and tag the Managed Inventory so that it is clearly marked as the property of Vendor.

3.4 Inventory Level Maintenance. SMITH shall then issue a Stock Order to Vendor for the quantity and type of Product to be consigned. Vendor understands and agrees that a Stock Order (even if the order document is entitled or referred to as a “zero dollar Purchase Order”) is only a request for delivery of consigned Products to SMITH and shall not be deemed to be a commitment to purchase the Products.