

Affiliate Supplier Agreement

Amended and Restated Affiliate Supplier Agreement

This AFFILIATE SUPPLIER AGREEMENT (this “Agreement”) is entered into effective as of _____ (the “Effective Date”) by and between THE SAFETY MARKETING GROUP, INC., a Delaware corporation (“SMG”), and the undersigned Affiliate Supplier of SMG (“Affiliate Supplier”).

WHEREAS, SMG is a purchasing cooperative of industrial safety equipment distributors in North America; and

WHEREAS, Affiliate Supplier is engaged in the manufacture or wholesale supply of safety products and/or equipment, and is primarily engaged in selling through distributors; and

WHEREAS, Affiliate Supplier has been invited by SMG’s Board of Directors to become a Supplier Affiliate of SMG, as that term is defined in SMG’s Bylaws; and

WHEREAS, SMG and Affiliate Supplier entered into an Affiliate Supplier Agreement dated _____ (the “Original Supplier Agreement”); and

WHEREAS, SMG and Affiliate Supplier wish to amend and restate the Original Supplier Agreement as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SMG and Affiliate Supplier agree as follows:

1. Eligibility

During the term of this Agreement, Affiliate Supplier will continue to be engaged in the manufacture or wholesale supply of certain safety products and/or equipment (“Products”), and primarily engaged in selling such Products through distributors, including, without limitation, distributor members of SMG (“Distributors”). Affiliate Supplier status shall be reserved for principal product groups whose products or services appeal to the majority of SMG Distributors. A limited number of Affiliate Suppliers will be accepted for each product category as defined by the Board of Directors.

2. Fees and Reporting Requirements

2.1 Affiliate Supplier shall pay all fees that were agreed upon between SMG and Affiliate Supplier. Affiliate Supplier shall pay SMG a quarterly market allowance fee computed on the agreed upon percentage of Net Sales of Products sold by Affiliate Supplier to Distributors (the “Market Allowance”). The Market Allowance will be due 30 days after the end of each quarter; year end growth rebates will be due 60 days after year end. For purposes of this Agreement, “Net Sales” shall mean Affiliate Supplier’s invoiced sales of Products less fees, freight, related Product returns or rebates. In addition to the Market Allowance, Affiliate Supplier shall pay a Flat Fee Structure payment as negotiated and agreed to by and between SMG and Affiliate Supplier. The Flat Fee is subject to change (yearly) due to purchase levels from our Distributor to our Affiliate Suppliers and Expense and Overhead Budgets for the new Calendar Year. During the calendar year (4th Quarter) SMG may lower the Flat Fee to each Supplier if expense and overhead is below budgeted amount. SMG will not increase the Flat Fee during the Calendar Year. The Flat Fee is due no later than 30 days after the SMG invoice date.

2.2 To provide SMG more “real-time” reporting to facilitate delivering reports to Distributors reflecting MTD / YTD results, Affiliate Supplier shall report monthly Distributor purchases and returns/rebates on the SMG website no later than 15 calendar days after the close of each month (the “Monthly Report”). If the Affiliate Supplier does not consistently complete the Monthly Report within such 15 day period, the Affiliate Supplier may be placed on Probation (as defined below), as determined in the sole discretion of SMG.

2.3 The Market Allowance and the Flat Fee Structure payments hereunder shall be paid to SMG in full within 30 days of the end of the applicable period (as explained in section 2.1 above). Any amounts not paid within such 30 days shall be considered delinquent, and, in addition to all other amounts due SMG hereunder, Affiliate Supplier shall pay a late charge of one percent (1%) per month on all delinquent amounts due SMG until such amounts are paid in full. Consistent delinquent payments of the Market Allowance and/or Flat Fee payments may result in the Affiliate Supplier being placed on Probation (as defined below).

2.4 All Supplier payments must be made via ACH. Where this is not a possibility they must submit payment to a Lock Box location Supplied by SMG Corporate Headquarters.

2.5 New Affiliate Suppliers agree to pay SMG \$2,500.00 for a one time set up fee at the time the Supplier Application is approved by SMG's Board of Directors. All new Affiliate Suppliers must submit previous year (12 months) purchases from Distributors and agree to pay the Flat Fee as negotiated with SMG.

3. Distributor Purchases

3.1 Affiliate Supplier's acceptance of a Distributor's purchase order for Products is based on Affiliate Supplier's judgment of such Distributor's financial ability to pay for such Products. Distributor is fully liable for payment for all Products purchased from Affiliate Supplier. SMG shall have no liability for any amounts owed by Distributor to Affiliate Supplier.

3.2 Affiliate Supplier shall deliver Products to Distributors promptly in accordance with the terms of purchase between Affiliate Supplier and Distributor.

4. SMG and Affiliate Supplier Independent

SMG and Affiliate Supplier are independent contractors, and nothing in this Agreement shall be construed as creating the relationship of seller and purchaser, employer and employee, or partners, between SMG and Affiliate Supplier.

5. Requirements of Affiliate Supplier

5.1 SMG is committed to growing market share and profitability of our members. Affiliate Supplier shall support and be committed to SMG programs.

5.2 Affiliate Supplier shall cooperate with Distributors in completing Joint Marketing Agreements ("JMAs"). Distributors are required to complete and implement 10 JMAs with Affiliate Suppliers every year. Affiliate Supplier shall use its best efforts to develop appropriate marketing programs and sales promotions for Distributors and their end-user customers.

5.3 SMG's Distributors are required to complete Product Category Reports ("PCR") every year. The PCR shows the Distributor purchases in each Product category, including purchases from Affiliate Suppliers and Non-SMG suppliers. This data may be shared with Affiliate Supplier to help gain market share. Distributors are required to purchase a minimum of 25% of all of their purchases from Affiliate Suppliers and must purchase from 60% of all Affiliate Suppliers on a quarterly basis.

5.4 Affiliate Supplier shall use its best efforts to perform at "Best in Class" level, based on the following criteria:

- 5.4.1 Number of Distributors that are purchasing from Affiliate Supplier;
- 5.4.2 Number of Distributors purchasing from Affiliate Supplier from year to year;
- 5.4.3 Level of Distributor purchases from Affiliate Supplier from year to year;
- 5.4.4 Comparison of Affiliate Supplier Market Allowance Program and year-end Growth Program from year to year;
- 5.4.5 Number of JMAs submitted with Distributors;
- 5.4.6 Overall Affiliate Supplier rating on the Annual Survey based on Distributor response;
- 5.4.7 Affiliate Supplier reputation in the marketplace;
- 5.4.8 Competitiveness of Affiliate Supplier's Market Allowance Program, year-end Growth Program, Conversion Program and discounted terms as compared to other similar suppliers in the specific product category. The bottom-line is having a "competitive" Market Allowance Program and Yearend Growth Program for Product Categories.
- 5.4.9 Affiliate Supplier's relationship with Distributors and description of Affiliate Supplier's approach – proactive or reactive;
- 5.4.10 Adequacy and structure of Affiliate Supplier's sales force; and
- 5.4.11 SMG awards/recognition earned by Affiliate Supplier for previous two years.

5.5 Affiliate Supplier shall be credit worthy and carry sufficient product and general liability insurance in such amounts and on such terms as are usual and customary for similar businesses. When requested by a Distributor(s), Affiliate Supplier shall name such Distributor(s) as an additional insured on its general liability insurance and shall provide such Distributor(s) with insurance certificates confirming such coverage.

5.6 Affiliate Supplier shall provide to SMG and Distributors under this Agreement market allowance programs, growth programs, and payment terms that are equal to those offered similar customers the size of the SMG network. (Currently sales of \$900 million per year.) Affiliate Suppliers are not required to provide consistent pricing to all Distributors but it is desired.

5.7 Except with the prior written consent of SMG, Affiliate Supplier shall pay the Market Allowance to SMG on all Net Sales to Distributors regardless of deviated price and or special cost to a Distributor.

6. Participation

6.1 Affiliate Supplier shall use reasonable efforts to support every Distributor, including, without limitation, Distributors located in Canada and Mexico.

6.2 Affiliate Supplier shall respond promptly to all written or electronic requests for information from SMG or a Distributor.

6.3 Affiliate Supplier shall participate in the SMG Annual Survey and shall “grade” Distributors accurately and fairly.

6.4 Affiliate Supplier shall review Distributors’ surveys on Affiliate Supplier in order to improve its performance at a “Best in Class” level.

6.5 Affiliate Supplier shall send at least one member of its “top management/senior personnel” to the SMG Spring Partnership Conference, including the Suite to Suite Meetings at the Spring Partnership Conference.

6.6 Affiliate Supplier shall use reasonable efforts to participate in SMG’s Supplier Advisory Council (“SAC”), including, and without limitation, the SAC’s task forces and committees. SMG shall assign an SAC advocate to Affiliate Supplier.

6.7 The supplier shall name a designated “champion” for the overall relationship with SMG to act as both a contact and advocate within his company. This should be a member of upper management.

7. Prior Arrangements

This Agreement shall not alter or otherwise affect any existing buying arrangement between Affiliate Supplier and any Distributor.

8. Non-Solicitation

Affiliate Supplier shall not, directly or indirectly, on behalf of itself or any other entity or individual, solicit, recruit or hire any Distributors’ employees, including but not limited to, sales persons, trainers, technical consultants, or customer service and purchasing personnel without the express written consent of the Distributor. Affiliate Supplier understands and agrees that monetary damages alone would be insufficient to protect a Distributor’s legitimate business interests in the case where Affiliate Supplier breaches this paragraph. Affiliate Supplier, therefore, agrees that such a Distributor may seek all appropriate injunctive relief to prevent Affiliate Supplier from in any way violating this paragraph. Distributor Members also will respect the Affiliate Supplier Employees in the same way as listed above. Communication by Supplier and Distributor is a key element in regards to this Non-Solicitation paragraph.

9. Termination; Resignation

9.1 Term

The initial term of this Agreement shall be two (2) years (the “Initial Term”). This Agreement shall renew automatically following the Initial Term from year to year (each, a “Renewal Term”) unless either party terminates this Agreement as provided herein. The Initial Term and any Renewal Terms shall be referred to herein collectively as the “Term.”

9.2 Termination Without Cause

After the expiration of the Initial Term, this Agreement may be terminated without cause by either party upon ninety (90) days’ prior written notice to the other party.

9.3 Termination For Cause

If either party (the “Dissatisfied Party”) is dissatisfied with the performance of the other party (the “Non-Performing Party”) and desires to terminate this Agreement, the Dissatisfied Party shall deliver a written notice (the “First Notice”) to the Non-Performing Party describing the reasons for such dissatisfaction and the manner in which the Non-Performing Party may cure such dissatisfaction. If the Non-Performing Party fails to cure such dissatisfaction within 30 days following delivery of the First Notice, the Dissatisfied Party shall send the Non-Performing Party another written notice (the “Second Notice”) within 60 days after delivery of the First Notice, stating that the dissatisfaction has not been cured and that the Dissatisfied Party desires to terminate this Agreement. If the Non-Performing Party fails to cure the dissatisfaction within 30 days after delivery of the Second Notice, then this Agreement shall terminate at the end of the current quarter.

9.4 Obligations

Following Termination. Notwithstanding the termination of this Agreement for any reason, Affiliate Supplier shall timely pay all funds due to SMG through the effective date of the termination of this Agreement, including all Market Allowance and Flat Fee Payments due to SMG.

9.5 Probation

For purposes of this Agreement, an Affiliate Supplier shall be placed on probation (“Probation”) when such Affiliate Supplier is past due on submitting Distributor purchases on time and not paying any fees due SMG on time. If the Affiliate Supplier is put on Probation twice in one year, SMG will start the Termination process as described above.

10. Notice

Any notice permitted or required hereunder shall be given in writing, and shall be deemed to have been duly delivered (i) when delivered by personal delivery, (ii) three days after being deposited in a United States postal service letter box for mailing by first class mail, postage prepaid, certified mail, with return receipt requested (regardless of whether the return receipt is subsequently received), or (iii) one business day after being deposited with a nationally recognized courier service for overnight delivery; and in each case addressed by the sender to the recipient at the address for such party listed on the signature page to this Agreement, or to such other address as a party may notify the other party in writing in conformity with the provisions of this section.

11. Binding Effect

This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective successors and assigns, and any reference to a party to this Agreement shall also be a reference to its successors and assigns.

12. Governing Law; Venue

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. The parties consent and agree that Hernando County, Florida, shall be the exclusive, proper, and convenient venue for any legal proceeding in federal or state court relating to this Agreement, and each party waives any defense, whether asserted by motion or pleading, that Hernando County, Florida, is an improper or inconvenient venue.

Prospective Supplier Member

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date hereof.

Safety Marketing Group:

Affiliate Supplier:

Date

Type or Print Name

5660 W. Cypress Street
Bay West, Suite 5660-GB
Tampa, FL 33607

Address 1

Signature

Title

Date

Address 1

Address 2