

South Dakota School of Mines & Technology
NON-EXCLUSIVE COLLEGIATE LICENSING AGREEMENT

NON-EXCLUSIVE LICENSE

Whereas, South Dakota School of Mines & Technology (hereafter called the "University") is the owner of all rights, titles, and interests in and to certain designations comprising designs, trademarks, and service marks, logo types, seals, and certain logo graphics and/or symbols that have come to be associated with the University (hereinafter called "Licensed Marks"; and

WHEREAS _____ (hereinafter called "Licensee"), desires to make use of one of more of said Licensed Marks.

WHEREAS, the University has exercised its rights of ownership with respect to said Licensed marks in the United States.

THEREFORE, in consideration of the premises and mutual promises and covenants herein contained, the parties hereto agree as follows:

I. DEFINITIONS

1. "Licensed Marks" means the designs, trademarks, service marks, logo graphics, and/or symbols that are associated with the University.

2. "Licensed Articles" means the articles of merchandise or products using one or more Licensed Marks.

3. "Retail Sales" means the sale of licensed articles directly to the ultimate consumer at retail outlets, or through mail order or catalogs.

4. "Wholesale Sales" means the sale of licensed articles to any organization other than the ultimate consumer.

5. "Net sales" means the gross wholesale invoice amounts billed customers less quantity discounts actually allowed and taken by the customer and any credits for returns actually made as supported by credit memos issued to customers. No costs incurred in the manufacturing, selling, advertising, or distributing the goods, or an indirect expenses shall be deducted, nor shall any deduction be made for uncollectible accounts, cash discounts, or similar allowances.

6. "Premium" means any article given free or sold at less than the usual selling price for the purpose of increasing the sale of, or publicizing any other product or service, or for any other giveaway or promotional purposes.

II. GRANT OF LICENSE

1. Subject to the terms and conditions of this Agreement, University hereby grants to the Licensee a non-exclusive license to use the Licensed Marks on and in conjunction with marketing, promotion, and sale of the Licensed Articles in the United States and Canada.

2. Licensee shall have no right to sublicense others to use the Licensed Marks.

3. No License is granted under this Agreement for the use of Licensed Marks in connection with Premium programs. Premium programs using Licensed Marks must have the approval of the University Licensing Director.

III. ROYALTY PAYMENTS AND REPORTS

1. Rate. Licensee agrees to pay the University a royalty of ten percent (10.0%) of all net sales (**excluding items sold to the University Bookstore**) of all Licensed Articles sold during the term of this agreement and any renewals thereof.

2. Initial Licensing Fee: The University will invoice the licensee for the initial fee of \$100. The agreement is in effect upon payment.

3. Annual Licensing Fee. Licensee will be invoiced for the renewal fee of fifty dollars (\$50.00) due by January 31st of each subsequent calendar year. Non-payment of the renewal fee will terminate the licensing agreement.

4. Reports and Records. Licensee shall provide quarterly reports to the University within thirty (30) days following the last day of the months of March, June, September, and December (calendar quarter) on all items manufactured, distributed, and sold. Licensee agrees to keep full and accurate records to show the basis for calculation or royalties and such records, including sales invoices and Licensee's general accounting records shall be open to inspection by the University's representative at reasonable times, and within normal business hours. A University representative shall report to University only on the accuracy of the reports rendered.

5. Royalty Payments. For purposes of determining royalty payments, sale shall be deemed to have been consummated at the time of invoicing or billing for said Licensed Articles or at the time of delivery thereof, whichever is earlier. Payments shall be made quarterly during the month following each calendar quarter to South Dakota School of Mines & Technology and sent to the Licensing Director, Rocker Shop, 501 East Saint Joseph Street, Rapid City, SD 57701-3995.

6. Delinquent Payments. All delinquent amounts not paid may be charged the maximum rate of interest permitted under applicable state law, not to exceed one and one-half percent (1 and 1/2%) per month on any portion thereof during which said amounts remain delinquent.

7. Multiple Royalty Payments. The University recognizes that the licensee may be subject to other license agreements which together with this agreement would subject certain Licensed Article to one or more additional royalty payments. The University may

agree to a reduced royalty subject to written approval of the University Licensing Director.

IV. TERM

The initial term of this Agreement shall be until December 31 of the year it is initiated and the agreement shall be automatically renewed for additional one year terms unless terminated by either party giving to the other not less than thirty (30) days written notice prior to the expiration of any one year period. Upon such termination, all rights granted to Licensee herein shall cease, except that Licensee may sell all products on hand in inventory at the time of termination provided that Licensee shall pay to University the royalties and provide reports as required in section III.

V. PRODUCT QUALITY

Licensee agrees to maintain high standards of quality and workmanship on the licensed products sufficient to maintain the goodwill attached to the Licensed Marks which are the subject of this agreement. University reserves the right to approve the quality and propriety of items carrying the Licensed Marks. All items are subject to approval by the University Licensing Director prior to licensing.

VI. INDEMNITY

Licensee agrees to hold the University harmless from any and all liability, of whatever the nature or description, arising out of or relating in any manner to the items produced or sold by the Licensee. Approval by the University of a particular product shall not be deemed as an endorsement by the University of the usefulness or safety of the product bearing the Licensed Marks, nor shall such approval be deemed in any manner a guaranty or warranty of any nature with respect to the items approved. Proof of adequate liability or product insurance will be provided to University upon request.

VII. EVENT OF DEFAULT

Without prejudice to any other rights, the University shall have the right to terminate this agreement upon written notice to Licensee at any time if Licensee shall fail to make payment due hereunder or to deliver any of the reports herein referred to and if such default shall continue for a period of 10 days after written notice of default is given by the University.

VIII. ENFORCEMENT

The University will endeavor to investigate unauthorized use by others of the Licensed Marks brought to its attention by Licensee. However, nothing in this agreement shall require the University to bring suit or take action for infringement of any of the Licensed Marks.

IX. ASSIGNMENT

This agreement and any rights herein granted are personal to the Licensee and the University and shall not be assigned, sublicensed or encumbered, except to a subsidiary of the Licensee, without the written consent of the University which shall not be reasonably withheld.

X. INTEGRATION

This agreement constitutes the entire agreement between the parties as to the licensed items, and no modifications or revisions hereof shall be of any force or effect unless the same are in writing and executed by both parties hereto. This agreement shall be construed in accordance with the laws of the State of South Dakota.

Signed:

South Dakota Mines Licensing Director:

Date:

Licensee:

Date:



SOUTH DAKOTA MINES™