



# Terms & Conditions

## SylvrLeaf LLC dba NuGen Packaging, Terms and Conditions for Customers' Purchase of Goods

**Notice.** These terms and conditions are the commercial terms of purchase of goods ("Goods") from NuGen Packaging and apply to all purchases of Goods from NuGen Packaging by any purchaser ("Purchaser") with notice of these terms, however gained, including the use of NuGen Packaging 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 NuGen Packaging in the absence of the express written consent of by an authorized officer; any attempt by Purchaser to add, exclude or modify terms shall be deemed to be material, is objected to and will be of no effect. 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 counter-offer 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 Goods sold to Purchaser. The contract between NuGen Packaging and Purchaser, 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 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 otherwise is based on Purchaser's timely compliance with NuGen Packaging credit approval requirements and timely receipt of a P.O. and complete specifications as well as any necessary export documents and authorizations; any delay will result in delays in shipment.

### 2. Prices/Exclusions/Shipping.

Purchaser 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; NuGen Packaging 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 Purchaser is an existing customer currently purchasing Goods at a certain price, NuGen Packaging 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 NuGen Packaging suppliers will be passed on to Purchaser during whatever period of time

such surcharge might be in effect. Price increases for components purchased by NuGen Packaging on Purchaser's behalf for inclusion in finished Goods shall be passed on to Purchaser without advance notice and due immediately without regard to Purchaser's payment terms or standard payment terms in section 3 below. Unless otherwise agreed, prices do not include: (i) printing plates; (ii) art charges; (iii) colors; (iv) labeling; (v) silk screening; (vi) co-packing; (vii) metalizing; (ix) skids; (x) freight; (xi) warehousing; (xii) brokerage fees; (xiii) up-charges for less than minimum orders or additional services and similar items; (xiv) any applicable excise, value-added, sales, use or similar taxes; or (xv) insurance. All of the foregoing will be billed as separate items and are not subject to discounts. NuGen Packaging reserves the right to: (i) increase quantity ordered to nearest standard shipping unit; (ii) ship Purchaser or end user specific manufactured Goods within a range of plus or minus ten percent (10%); or (iii) both. Unless otherwise specifically agreed by the parties, all shipments are F.O.B. plant of manufacture and FCA (Incoterms 2000) NuGen Packaging will select the carrier unless otherwise agreed in writing for prepaid shipment. Freight costs prepaid by NuGen Packaging shall be subject to an additional administration and handling charge; Purchaser's resulting charges may or may not exceed the charges that Purchaser might incur if Goods are shipped collect. Goods in transit are at Purchaser's risk. Purchaser shall be fully responsible to pay or to reimburse for carrier NuGen Packaging detention charges incurred as a result of delays caused or allowed by Purchaser. If prices include a freight component, prices shall be subject to adjustments effective immediately without notice in the event of a subsequent change in freight rates or the imposition of a fuel or other surcharge. In the case of international sales, unless otherwise agreed, Purchaser shall be fully responsible: (i) to provide NuGen Packaging prior to shipment and in writing, the ultimate destination and identity of the end-user; to pay all duties, taxes and other charges imposed by any government on Goods or on the purchase, exportation or importation of Goods; and (iii) for compliance with applicable legal requirements for exportation and importation of Goods unless otherwise expressly specified.

### 3. Payment.

A. Payment terms are net 30 days from date of invoice in USD on open accounts to Purchasers with current approved credit unless otherwise agreed in writing by the parties. NuGen Packaging shall not be bound to extend credit: (i) prior to Purchaser's compliance with credit requirements, including approval of NuGen Packaging's signed credit application or (ii) because it has previously done so for Purchaser or others similarly situated. If Purchaser's purchases of Goods are made through a broker, distributor, wholesaler, filler or other intermediary ("Intermediary"), references herein to "Purchaser" shall include such Intermediary as necessary to the context and Purchaser agrees that shall be entitled to make credit decisions concerning sales to the Intermediary in NuGen Packaging discretion and may refuse to make sales on credit as it determines in its discretion. NuGen Packaging, to the extent necessary to protect its interest in receiving payment for Goods, shall be a third-party beneficiary of any purchase contract between the Intermediary and Purchaser. If NuGen Packaging makes sales of Goods to the Intermediary as an accommodation to Purchaser, Purchaser shall remain liable to NuGen Packaging for the cost of Goods sold to the extent that the Intermediary fails or refuses to pay NuGen Packaging for such Goods; Purchaser waives all surety ship defenses. In the event that Purchaser renders payment to NuGen Packaging and/or its agent in a manner purported by Purchaser to serve as payment in full of an invoice, NuGen Packaging 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 NuGen Packaging's right to pursue additional payment of such invoice. Purchaser shall not have the right of set off unless so agreed in writing by NuGen Packaging. If any payment is past due, NuGen Packaging may impose a service charge of the lesser of the maximum amount allowed by applicable law or 1.5% per month and may hold or cease shipments of Goods. Any amounts charged to a credit card are subject to a convenience fee of 3%. Purchaser agrees to pay NuGen Packaging's attorney's fees and expenses and other collection costs in the event collection or other enforcement efforts become necessary or appropriate in NuGen Packaging's discretion. In addition, NuGen Packaging shall have the right to terminate this sale, to stop Goods in transit, and to suspend further performance under these terms and conditions and/or other agreements with Purchaser in the event Purchaser fails to make any payment when due, which other agreements Purchaser and NuGen Packaging hereby amend accordingly.

B. Purchaser agrees that each issuance of a P.O. constitutes a representation that it is solvent and is not presently a debtor in any insolvency or bankruptcy proceeding. In the event of insolvency, NuGen Packaging's invoice shall constitute a demand for reclamation of the Goods identified on the invoice under UCC section 2-702 and United States Bankruptcy Code section 546(c). Purchaser: (i) agrees to promptly notify NuGen Packaging in case of insolvency; (ii) waives any defenses to NuGen Packaging's right of reclamation to the Goods identified in NuGen Packaging's invoice; and (iii) shall promptly return possession of such Goods to NuGen Packaging.

### 4. Cancellation/Claims>Returns.

Purchaser will be responsible to pay the full P.O. price if Goods are manufactured in response to a P.O. cancelled by Purchaser (without NuGen Packaging's fault) prior to shipment. Purchaser shall make prompt inspection of Goods. Rejection of alleged nonconforming Goods must be made in writing 30 days after delivery for non-conformities reasonably discoverable on inspection, and three (3) months after delivery for latent nonconformities; after that time Goods will be deemed accepted and not subject to revocation of acceptance. Failure by Purchaser to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Purchaser's claim for such defects. Purchaser will give NuGen Packaging reasonable opportunity to examine and test Goods that are the basis for any claim. As a condition for replacement, refund or credit, NuGen Packaging may request the return of alleged nonconforming Goods in the same condition as when received, except such part as cannot be returned due to necessary testing. On request, Purchaser shall also return, if possible, tested Goods. No claim against NuGen Packaging shall be made or allowed for Goods returned without NuGen Packaging'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 Goods must be: (i) approved in advance by NuGen Packaging; (ii) of Goods in new condition and not printed or special; (iii) made within 90 days; (iv) shipped at Purchaser'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 NuGen Packaging has agreed to retain an inventory or safety stock of Goods, NuGen Packaging's obligation to produce Goods for inventory shall be subject to Purchaser'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 Goods is discontinued or changed by Purchaser, Purchaser shall purchase and pay for all such Goods that have been manufactured and raw materials for open purchase orders for such Goods. In the event any Goods are maintained in inventory for more than ninety (90) days, Purchaser will either purchase such Goods or order the Goods scrapped and pay the purchase price as if such Goods had been purchased (*NuGen Packaging* will retain the scrap) and, in such cases, payment will be due immediately at the end of the 90 day period without regard to Purchaser's payment terms or standard payment terms above in section 3.

#### 6. Confidential Information.

All nonpublic information conveyed by *NuGen Packaging* regarding *NuGen Packaging's* prices, costs, discounts, inventions, planned and existing products, including the Goods (some of which may also be subject to *NuGen Packaging's* copyright, trademark, or patent rights), packaging, customers and distributors as well as information regarding *NuGen Packaging's* business or finances and production methods, know-how and concepts used by *NuGen Packaging*, is proprietary and confidential ("Confidential Information"). Purchaser agrees that it will not disclose any such Confidential Information to others and will advise its employees and agents of the secrecy of such Confidential Information and take all other steps necessary to protect *NuGen Packaging's* Confidential Information. Purchaser shall not copy, reverse compile, reverse engineer or otherwise duplicate the Goods or any part of those Goods or copy, misuse or misappropriate any Confidential Information belonging to *NuGen Packaging* or any other person. *NuGen Packaging's* logo and brand names belong to *NuGen Packaging* and are protected by trademark and other laws; Purchaser agrees that it will not use or permit any other person to use such logo or brand names without *NuGen Packaging's* prior written consent which may be withheld for any reason. *NuGen Packaging* 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"). Confidential Information shall not include information that: (i) was known to Purchaser before receipt from *NuGen Packaging*; (ii) is or becomes publicly available through no fault of Purchaser; (iii) is rightfully received by Purchaser from a third person not bound by a duty of confidentiality; or (iv) is disclosed by Purchaser with *NuGen Packaging's* prior written approval. \* X-Flex is designated as a Defense Article under the U.S. Munitions List. Technical Data, including samples of X-Flex, is subject to U.S. International Traffic in Arms Regulations ("ITAR") and will be provided only to U.S. citizens or lawful permanent residents pursuant to the ITAR. Export, re export, or transfer outside of the U.S. or to non-U.S. persons inside or outside the U.S. without prior U.S. Government authorization is prohibited. It is the responsibility of the recipient to determine what applicable requirements may be and to obtain all necessary authorizations, licenses or approvals. For information on the ITAR, please refer to the U.S. Department of State web site: <http://pmdtc.state.gov/>.

#### 7. Product Planning.

Any custom descriptions and layouts supplied with a quotation, unless otherwise stated, are preliminary only and *NuGen Packaging* reserves the right to make modifications (after advising Purchaser) if *NuGen Packaging* 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, *NuGen Packaging* will not make such change without Purchaser's prior approval. Purchaser may not reject as nonconforming any Goods based on artwork or copy which Purchaser previously approved.

Artwork, product design, production and packaging methods and other materials, information and IP developed in whole or in part by *NuGen Packaging* shall remain *NuGen Packaging'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 Purchaser specifically buys the rights to such IP and *NuGen Packaging C* makes a written assignment thereof.

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

All Goods are sold on the condition that Purchaser will examine and test samples prior to the initial purchase to determine whether the Goods: (i) meet Purchaser's requirements and (ii) comply with all compatibility and use requirements including those referred to below in sections 10 (Thermoplastic characteristics) and 14 (Miscellaneous). Once *NuGen Packaging* has made samples available, Purchaser's PO for Goods acts as confirmation of such examination and testing. Goods are warranted to:

(i) be substantially free from defects in material and workmanship when sold subject to all time limitations and (ii) comply with *NuGen Packaging's* published specifications within stated tolerances, but it shall be Purchaser's responsibility to assure that such specifications and tolerances will fulfill Purchaser's requirements regardless of *NuGen Packaging* has notice of such requirements. *NuGen Packaging* MAKES THIS LIMITED WARRANTY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY SHALL BE CREATED OR DEEMED TO BE CREATED BY THE USE OF THE WORDS "TAMPER EVIDENT" OR "CHILD RESISTANT" OR WORDS OF SIMILAR MEANING USED IN ANY WRITTEN OR ORAL COMMUNICATION. THERE ARE NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COURSE OF DEALING, USAGE OF TRADE OR NON-INFRINGEMENT OR OTHERWISE ASIDE FROM THE LIMITED WARRANTY ABOVE AND THE DESCRIPTION OF THE GOODS. *NUGEN PACKAGING* 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 GOODS OR REFUND OF THE PURCHASE PRICE UPON TIMELY RECEIPT OF NOTICE REGARDLESS OF WHETHER *NUGEN PACKAGING* HAS OR HAS NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OTHER DAMAGES. UNDER NO CIRCUMSTANCES WILL *NUGEN PACKAGING* BE RESPONSIBLE FOR LOSS OF USE, LOST PROFITS, INTERRUPTION OF BUSINESS, COVER OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF CAUSE. THIS LIMITED WARRANTY IS VOID WITH REGARD TO ANY GOODS ALTERED, MISUSED OR SUBJECT TO NEGLIGENCE OR ACCIDENT. *NUGEN PACKAGING* SHALL NOT BE RESPONSIBLE TO PURCHASER UNDER THIS LIMITED WARRANTY FOR FIT OR OTHER COMPATIBILITY PROBLEMS. ALL ORAL AND WRITTEN ADVICE PROVIDED BY *NUGEN PACKAGING* RELATING TO THE GOODS IS SUBJECT TO THE FOREGOING DISCLAIMER OF WARRANTIES AND LIMITATION OF DAMAGES PROVISION.

#### 9. Indemnification.

PURCHASER SHALL HOLD HARMLESS AND INDEMNIFY *NUGEN PACKAGING* FROM AND AGAINST ANY EXPENSES, Rev Jan 2011. CLAIMS OR CAUSES OF ACTION (INCLUDING *NUGEN PACKAGING'S* ATTORNEY'S FEES AND EXPENSES) AS A RESULT OF (i) DEATH, BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF PURCHASER'S MARKETING, ADVERTISING, SALE, DISTRIBUTION OR USE OF THE GOODS (INCLUDING ANY CLAIMS OR CAUSES OF

ACTION BASED ON ITEMS FOR WHICH OR WITH WHICH THE GOODS ARE USED) EXCEPT TO THE EXTENT CAUSED SOLELY BY *NUGEN PACKAGING* GROSS NEGLIGENCE; (ii) PURCHASER'S VIOLATION OF ANY APPLICABLE LAW OR STANDARD IN THE MARKETING, ADVERTISING, LABELING (OR IMPROPER OR INADEQUATE LABELING), SALE, DISTRIBUTION OR USE OF THE GOODS OR THE ITEMS WITH WHICH OR FOR WHICH THE GOODS ARE USED; (iii) ANY ALLEGED PATENT, TRADEMARK, TRADE DRESS, COPYRIGHT, TRADE SECRET OR OTHER IP INFRINGEMENT BASED ON PURCHASER'S SAMPLES, MOCK-UPS OR SPECIFICATIONS; (iv) ANY ILLEGAL, FALSE, MISLEADING OR DECEPTIVE INFORMATION THAT PURCHASER INSTRUCTS *NUGEN PACKAGING* TO PRINT ON OR OTHERWISE APPLY TO OR USE WITH THE GOODS; 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 PURCHASER'S USE OF ANY GOODS REGARDLESS OF CAUSE, INCLUDING PURCHASER'S NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION. PURCHASER WARRANTS THAT CUSTOM GOODS ORDERED BASED ON PURCHASER'S SAMPLES, MOCKUPS OR SPECIFICATIONS DO NOT INFRINGE ANY TRADE DRESS, COPYRIGHT, TRADE SECRET OR OTHER IP RIGHTS OF OTHERS OR ANY LETTERS PATENT GRANTED BY ANY COUNTRY. *NUGEN PACKAGING* RESERVES THE RIGHT (BUT SHALL HAVE NO DUTY) TO DISCONTINUE DELIVERIES OF ANY GOODS, 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.

#### 10. Thermoplastic Characteristics.

To obtain expected benefits and service from thermoplastics (including Goods) and minimize potential complications, AND PRIOR TO THE ISSUANCE OF A P.O., Purchaser 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 Goods, 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 PURCHASER'S RESPONSIBILITY TO: (1) EVALUATE COMPATIBILITY WITH FILLED OR FINISHED PRODUCT; (2) EVALUATE COMPATIBILITY WITH ANY OTHER MANUFACTURER'S PRODUCTS WITH WHICH THE GOODS 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.

At Purchaser's request, *NuGen Packaging* may furnish such technical assistance,

information and safety advice as it has available with respect to the use of the Goods. *NuGen Packaging* assumes no obligation or liability for any technical assistance, information or safety advice it furnishes concerning the Goods, the parties agreeing (unless otherwise specifically agreed to in writing by *NuGen Packaging*), that all such advice is given without charge or warranty and accepted by Purchaser at Purchaser's risk and Purchaser assumes sole responsibility for the results obtained in reliance thereon.

## 12. Force Majeure.

If *NuGen Packaging* 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 *NuGen Packaging'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 *NuGen Packaging* with any order, action, direction or request of any governmental officer, department, agency, authority, or committee thereof. A force majeure event shall also include Supplier's suspension of operation or closure of a facility that produces Goods because the operation of, or Goods from, that facility fails to comply with, or becomes uneconomical because of compliance with, any applicable law or governmental regulation, order, decree or request. This provision is intended to be interpreted to expand rather than limit the application of the Uniform Commercial Code ("UCC") section 2-615, as adopted by the law of the applicable jurisdiction set forth in the governing law provision in the Agreement or if there is no such agreement or provision, as adopted in the State of New Jersey.

## 13. Laws.

A. The Agreement shall be interpreted under New Jersey 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. Purchaser consents to jurisdiction of state and federal courts in New Jersey and venue of Essex County to resolve any dispute between the parties; provided, however, that *NuGen Packaging* 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, *NuGen Packaging* 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. The parties shall not contest the validity or enforceability of any electronic transmissions based on the provisions of the statute of frauds; such transmissions will be governed by the New Jersey Uniform Electronic Transactions Act.

B. Purchaser will be responsible to comply with all applicable laws, including the export control laws in effect in the United States, Canada and Europe and applicable regulations which may be issued from time to time concerning the exporting, importing and re-exporting of Goods. Purchaser acknowledges that shipments of Goods 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 USC 2778 et seq.), the International Traffic in Arms Regulations (22 CFR 120-130), the Export Administration Regulations (15 CFR Parts 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 Goods. Purchaser agrees to comply with all applicable licensing requirements. Purchaser also agrees to comply with the United States Foreign Corrupt Practices Act and shall indemnify *NuGen Packaging* for any failure to comply or violation of such act. Purchaser 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, Purchaser shall provide to *NuGen Packaging* 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 Purchaser's responsibility to inform *NuGen Packaging* of the applicability of and compliance with testing and legal requirements (including local laws) with respect to any P.O.

C. Purchaser will be responsible to provide notice to *NuGen Packaging* if Purchaser intends that any Goods will be "Children's Products" as defined by the federal Consumer Product Safety Act of 1972 (15USC2051 et seq.), as amended, including the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), and will provide notice to *NuGen Packaging* if any Goods are subject to CPSIA but not obvious by the nature or appearance of the Goods as ordered. If Purchaser fails to provide such notice and fails to comply with CPSIA with respect to any Goods that are: (i) not obvious by their nature or appearance as subject to CPSIA or (ii) modified by Purchaser so as to be subject to CPSIA, Purchaser will indemnify *NuGen Packaging* 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).

D. GOODS 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 *NUGEN PACKAGING'S* PRIOR WRITTEN CONSENT. Purchaser accepts the Goods with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless *NuGen Packaging* 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 *NuGen Packaging's* liability is based on negligence or strict liability.

## 14. Miscellaneous.

*NuGen Packaging* may terminate the Agreement immediately on Purchaser's bankruptcy or other insolvency. The Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns but is non-assignable by Purchaser in the absence of *NuGen Packaging's* express written consent. Nothing contained in the Agreement shall be construed to make the parties partners or joint ventures. Any waiver(s) of Purchaser's noncompliance with these terms shall not be binding on *NuGen Packaging* with respect to any continuing or subsequent noncompliance. *NuGen Packaging* reserves the right to display samples of any Goods 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 Goods sold as

well as cancellation, termination or expiration of the Agreement, including the provisions of sections 3, 6, 7, 8, 9, 10, 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. *NuGen Packaging* shall not be contractually bound to any provision except as agreed in a writing executed by an authorized officer of *NuGen Packaging*. The invalidity of any provision of the Agreement shall not affect the force or validity of the remaining provisions. In the event that *NuGen Packaging* has possession of a mold or other equipment owned by Purchaser, *NuGen Packaging's* maintenance and repair obligations shall be limited to those to which it has agreed in writing. The prevailing party in any litigation to enforce the Agreement shall be entitled to recover its reasonable attorneys' fees and expenses.