

TERMS OF USE

Palace Industries Public Benefit Corporation dba Rogue Creamery (“Rogue Creamery”, “we”, “us” and “our”) provides the website www.roguecreamery.com (the “Website”) to give you information about us and our products, and to give you the opportunity to order products directly from the Website (the “Purpose”).

Your use of the Website is subject to the following terms and conditions (the “Agreement”). If you do not agree to these terms and conditions, then please do not use the Website.

PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW DISPUTES BETWEEN US ARE RESOLVED, INCLUDING A JURY TRIAL WAIVER AND A CLASS ACTION WAIVER.

For purposes of this Agreement, “you” and “User” mean the person using this Website; if the User is not an individual, then “you” or “User” means the User’s company and its owners, officers, directors, members, agents, successors and assigns. “Products” means products made available on or through the Website.

By using this Website, you indicate that you have read and agree to be bound by all terms and conditions of this Agreement, without limitation or qualification, and by all applicable laws and regulations, as if you had written your name on a contract. Rogue Creamery’s acceptance of your order for Products is conditioned upon your assent to all terms and conditions of this Agreement.

Effective Date: July 1, 2020

1. **User Conduct.** User agrees that all the information accessed by User will be used only to allow the User to use the Website for the Purpose. You may use the Website for lawful purposes only. User will not make any unauthorized use of this Website, or any features available on this Website. You agree that you are responsible for your own use of the Website, for any content you submit to Rogue Creamery, and for any consequences thereof. In addition, you agree not to do any of the following:
 - i. Modify, remove, delete, augment, add to, publish, distribute, participate in the transfer, rental, license or sale of, create derivative works from, or in any way exploit any of the Content (defined below in Section 3), in whole or in part;
 - ii. Manipulate, alter or affect or attempt to manipulate, alter or affect the Website, the Content, any feature or program of the Website or the Content, including searches, results, placements, advertisements, tags, Products, expressions or programs;
 - iii. Interfere with, circumvent, disable or attempt to interfere with, circumvent or disable the Website, the proper working of the Website, security features of the Website, the equipment connected to the Website or any product or service provided on or through the Website;
 - iv. Mirror any Content contained on this Website or any Rogue Creamery server;

- v. Use framing techniques to enclose the Website or any part thereof;
- vi. Use any metatags or any other hidden text incorporating Rogue Creamery's name or trademarks;
- vii. Access or attempt to access the Website or to collect or index information provided to or on the Website using any automated means, such as robots, spiders, scrapers, scripts, harvesting 'bots, or similar means or equivalent manual processes;
- viii. Access an account without permission;
- ix. Provide false or misleading information in connection with any account
- x. Impose an unreasonable or disproportionately large load on the infrastructure of the Website or Rogue Creamery's systems or networks, or any systems or networks connected to the Website or Rogue Creamery;
- xi. Restrict or inhibit any other person from using the Website (including without limitation by hacking or defacing any portion of the Website);
- xii. Solicit, trace or otherwise collect any information from users or visitors of the Website;
- xiii. Reverse engineer, decompile or otherwise extract source code provided on or through the Website;
- xiv. Use the Website for commercial activities such as contests or advertising;
- xv. Create a database by downloading and storing the Content or any part thereof;
- xvi. Upload or transmit viruses, worms or other malicious code to the Website; and
- xvii. Violate any law in connection with your use of the Website, including export laws and privacy laws.

2. Termination. You agree that Rogue Creamery, in its sole discretion, may terminate your access to or use of the Website, at any time and for any reason, including without limitation if Rogue Creamery believes that you have violated or acted inconsistently with the letter or spirit of this Agreement. Upon any such termination, your right to use the Website will immediately cease. You agree that any termination of your access to or use of the Website may be effected without prior notice, and that Rogue Creamery may, but is not required to, delete all information, accounts and files associated with it, and/or bar any further access to such information, accounts or files. You agree that neither Rogue Creamery nor any of its affiliated entities will be liable to you or any third party for any termination of your access to the Website or to any such information or files, or will be required to make such information, accounts or files available to you after any such termination. Upon termination, those provisions of this Agreement that expressly or by their nature survive will continue in full force and effect.

- 3. Intellectual Property.** All content included on the Website, such as text, graphics, designs, logos, images, presentations, videos, data, articles, stories, blog entries, instructions, photographs, graphs, typefaces, sounds, music and software (“Content”) is the property of Rogue Creamery or its licensors. The Content and Website are protected by copyright, trademark and other intellectual property laws.

All registered and/or unregistered trademarks and service marks used or referred to on the Website are the property of Rogue Creamery, unless otherwise noted. User may not use, copy, reproduce, republish, upload, post, transmit, distribute or modify any such marks in any way without Rogue Creamery’s prior written permission. Your use of any of marks found on this Website without express permission of the owner is strictly prohibited.

- 4. Limited License.** Rogue Creamery grants you a limited, nonexclusive, non-transferable, personal license to access, display and copy the Content for personal, non-commercial use only, subject to the restrictions provided in this Agreement. You agree not to alter or remove any copyright or other proprietary notices contained on the Content. This limited license is conditioned on your continued compliance with the Agreement. Except as provided in this limited license or otherwise specifically permitted by us in writing, you may not access, display or copy the Content.
- 5. Submissions and Reviews.** If you submit or post to the Website or Rogue Creamery any reviews, ideas, suggestions, information, designs, images, advertisements, data or proposals (“Submissions”), you agree that such Submissions will be treated as non-confidential and non-proprietary. You hereby grant to Rogue Creamery a nonexclusive, perpetual, worldwide license to use, copy, modify, display, perform, distribute and create derivative works from the Submissions for any purpose in any medium without any compensation or credit to you whatsoever. You acknowledge that Rogue Creamery may, but is not obligated to, review, modify and remove any review. Rogue Creamery will have no obligations with respect to such Submissions.
- 6. Promotions.** The Website may, from time to time, include contests, promotions, sweepstakes or other activities (“Promotions”) that require you to submit material or information concerning yourself. Promotions may be governed by separate rules that contain certain eligibility requirements, such as restrictions as to age or geographic location. It is your responsibility to read all Promotions rules to determine whether or not you are eligible to participate. If you enter any Promotion, you agree to abide by and to comply with all Promotions rules.
- 7. Rogue Creamery’s Rights.** Rogue Creamery reserves the following rights:

- i. To terminate the use of the Website and the account of anyone who violates this Agreement;
- ii. To change the Website, the Content, and the Products or services provided through the Website, at any time without notice;
- iii. To honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code, incentive offer or other promotion;

- iv. To refuse to provide any user or customer with any product or service;
- v. To review, modify, filter, delete and remove any and all content, orders and information from the Website;
- vi. To update and download any software provided on or through the Website;
- vii. To display advertising and promotions, which may be targeted to certain users or sections of the Website based upon queries made or preferences indicated, and may not be identified as paid advertisements or promotions; and
- viii. To provide you with notices, including those regarding this Agreement, your account and your orders, by email, postings to your account or by other means.

You agree that the foregoing are Rogue Creamery's rights, but not its obligations.

8. Copyright Claims. Rogue Creamery respects the intellectual property rights of others. If you believe that your copyrighted work has been copied or posted on or through the Website in a way that constitutes copyright infringement, then please contact us at legal@sbmsincusa.com and provide the following information:

- i. A description of the copyrighted work that you believe has been infringed;
- ii. A description of what the allegedly infringing work is;
- iii. A description of the location where the allegedly infringing work is located on the Website;
- iv. An address and telephone number where you can be contacted, including an email address if possible;
- v. A statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law;
- vi. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright; and
- vii. A statement, made under penalty of perjury, that the above information in the notice is accurate and that the signatory is the copyright owner or is authorized to act on behalf

9. Links to Third Party Sites. At times, the Website may contain links to third-party Websites, which are not under the control of Rogue Creamery. Rogue Creamery makes no representations whatsoever about any other Website to which User may have access through the Website. When User accesses another Website, User does so at User's own risk and acknowledges that Rogue Creamery is not responsible or liable for any content, advertising, products or other materials available from such third-party sites. User also agrees that Rogue Creamery shall not be liable for any loss or damage of any sort incurred as the result of using any third party's

Website. Mention of third-party companies and websites on the Website is for informational purposes only and does not constitute an endorsement or recommendation.

10. Linking to the Website. You may not link to the Website without the express written consent of Rogue Creamery.

11. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, USER EXPRESSLY UNDERSTANDS AND AGREES THAT ROGUE CREAMERY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE (INDIRECT, PUNITIVE, ACTUAL, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPT OR OTHERWISE) ARISING OR RESULTING FROM (1) THIS AGREEMENT OR YOUR PURCHASE OF PRODUCTS, (2) YOUR USE OF OR INABILITY TO USE THE WEBSITE OR ANY OF THE CONTENT, SERVICES OR INFORMATION PROVIDED ON OR THROUGH THE WEBSITE, (3) ANY PRODUCTS, SERVICES OR INFORMATION OFFERED, SOLD OR DISPLAYED ON OR THROUGH THE WEBSITE, (4) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS AND/OR ANY AND ALL INFORMATION CONCERNING YOU STORED THEREIN, (5) ANY INTERRUPTION OR CESSATION OF THE WEBSITE OR TRANSMISSIONS TO OR FROM THE WEBSITE, AND (6) ANY BUGS, VIRUSES, TROJAN HORSES OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY. THESE LIMITATIONS APPLY REGARDLESS OF WHETHER ROGUE CREAMERY OR ANY OF ITS PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ROGUE CREAMERY'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIM ARISING FROM OR RELATING TO THE WEBSITE, CONTENT OR PRODUCTS, SERVICES OR INFORMATION OFFERED, SOLD OR DISPLAYED ON OR THROUGH THE WEBSITE WILL BE THE LESSER OF (A) THE AMOUNT OF MONEY YOU HAVE SPENT ON PURCHASES THROUGH THE WEBSITE DURING THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY, OR (B) \$50.00.

12. Your Representations and Warranties. By using the Website, you represent, covenant and warrant that:

- i. You are 18 years of age or older, an emancipated minor or the parent or guardian of a minor whom you are authorizing to use the Website;
- ii. Are authorized to sign for and bind the person or entity using the Website;
- iii. You have the right to use any credit card(s) or other payment means used to initiate any order or other transaction through the Website;
- iv. You will provide only true, accurate, complete and current information to the Website and to Rogue Creamery;
- v. In the event that the Website sends messages to your mobile device, you are solely responsible for any rates and fees charged by your mobile carrier and you will update

your mobile device account information within 48 hours of any deactivation of a mobile device so that a person who acquires your old number will not incur charges or receive your messages; and

- vi. You will not impersonate any person or entity, misrepresent any affiliation with another person, entity, or association, use false headers, or otherwise conceal your identity from Rogue Creamery or in any information that you provide to Rogue Creamery.

13. Disclaimer of Warranties.

To the maximum extent permitted under applicable law, you use the Website, Content and Products at your own risk.

To the maximum extent permitted under applicable law, Rogue Creamery makes no representations or warranties of any kind, express or implied, that the Website, Content or Products will meet User's requirements or that the Website, Content or Products will be uninterrupted, timely, secure or error free; or as to the results that may be obtained from the use of the Website, Content or Products or as to the accuracy, completeness or reliability of any information obtained through the Website. Further, Rogue Creamery does not warrant, to the maximum extent permitted by applicable law, the reliability of, or guarantee or endorse any advice, opinion, statement or other information displayed or distributed through the Website. Rogue Creamery is not responsible in any way for any transaction between you and another user of the Website. Rogue Creamery has no obligation to make any corrections to the Website or Content.

Rogue Creamery provides the Website, Content and Products "As Is" and on an "As Available" basis.

Rogue Creamery disclaims all warranties, of any kind, either express or implied, to the maximum extent allowable by law with respect to any of the Content, Products, services and information provided on or through the Website, including warranties of quality, performance, non-infringement, merchantability, accuracy, title, and fitness for a particular purpose.

- 14. Indemnification.** User agrees, at User's expense, to indemnify, defend and hold harmless Rogue Creamery, its officers, directors, employees, agents, affiliates, distributors and licensees from and against any judgment, losses, deficiencies, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with or arising from any claim, demand, suit, action or proceeding arising out of or related to User's (i) breach of this Agreement, (ii) use of this Website or any product or service related thereto, or (iii) violation of any law or regulation or violation of any proprietary or privacy right. For the avoidance of doubt, this indemnification does not apply to claims caused by Rogue Creamery's negligence.

15. Dispute Resolution.

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

You and Rogue Creamery agree to arbitrate any claim, dispute, or controversy, including all statutory claims and any state or federal claims, that may arise out of or relating to use of the Website or this Agreement, except that Rogue Creamery may seek injunctive, equitable or other appropriate relief in any state or federal court for situations where you have violated or threatened to violate Rogue Creamery’s intellectual property rights (for example, trademark, copyright or trade secret rights). You agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within the State of Delaware for court cases related to Rogue Creamery’s intellectual property rights. By agreeing to arbitration, each party understands and agrees that it is waiving its rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes.

Arbitration is a less formal process and generally faster and less expensive than a lawsuit in court to resolve disputes. A neutral arbitrator will hear the case instead of a judge or jury. Under this arbitration provision, the case also has to be heard on its own and not as part of a class action. The arbitrator has the power to award damages and other types of relief.

Arbitration under this Agreement will be conducted by Judicial Arbitration & Mediation Services, Inc. (“JAMS”) pursuant to its commercial arbitration rules & procedures. The arbitrator’s award will be binding and may be entered as a judgment in any court of competent jurisdiction. To the maximum extent permitted by applicable law, no arbitration under this Agreement will be joined to any other case or party. The arbitrator shall award attorneys’ fees and costs to the prevailing party, except as prohibited by law.

Disputes under this Agreement may be resolved only on an individual basis, meaning arbitration between you and Rogue Creamery. NEITHER YOU NOR ROGUE CREAMERY MAY BRING A CLAIM AS A PLAINTIFF OR A CLASS MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT ALLOWED.

YOU AND ROGUE CREAMERY EACH WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. INSTEAD, YOU AND ROGUE CREAMERY ELECT TO HAVE ALL CLAIMS AND DISPUTES RESOLVED BY ARBITRATION. For any disputes that are heard in a court, YOU AND ROGUE CREAMERY EACH WAIVE ALL RIGHTS TO A JURY TRIAL AND ELECT INSTEAD TO HAVE SUCH DISPUTE HEARD BY A JUDGE.

Arbitration under this Agreement will take place in the State of Delaware. The arbitrator will apply Delaware law.

WE ADVISE YOU TO CONSULT WITH AN ATTORNEY IN DECIDING TO ACCEPT THIS ARBITRATION PROVISION. You may decline the arbitration terms of this Section 15 by sending an email to legal@sbmsincusa.com and including, your name, your address and phone number, the URL to this Agreement, a clear statement that you do not accept the arbitration terms provided in this Section 15. You must send us this email within sixty (60) days of the date this Agreement is effective or the date you start using the Website, if you start using the Website after this Agreement becomes effective.

If any provision of this Section 15 is found unenforceable, that provision will be removed and all remaining provisions of this Section 15 will be enforced.

- 16. Entire Agreement and Modifications.** The purchase, delivery and other terms applicable to the sale of our products through this Website (“Terms of Sale”) appear in the answers to our FAQs. This Agreement, together with the Terms of Sale, Privacy Policy and any additional Rogue Creamery terms and conditions, is the entire agreement between Rogue Creamery and you, and supersedes all prior or contemporaneous communications and proposals in any medium between you and Rogue Creamery, unless such agreement expressly provides that it shall not be superseded by the terms of this Agreement.
- 17. Waiver and Severability.** The waiver by either party of a breach or right under this Agreement will not constitute a waiver of any subsequent breach or right. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from the remainder of this Agreement, which will otherwise remain in full force and effect.
- 18. Modifications.** This Agreement may change between your visits to the Website. Rogue Creamery reserves the right, but has no obligation, to make changes to the Website and to these terms and conditions at any time. Any such modifications will become effective upon the date they are first posted to the Website. It is your responsibility to return to this Agreement from time to time to review the most current terms and conditions. Rogue Creamery does not and will not assume any obligation to notify you of changes to this Agreement.
- 19. Geographic Scope of Use.** Rogue Creamery makes no representation that the Website or the Content is appropriate or available for use at locations outside of the United States. Access to the Website and the Content from territories where they are illegal is prohibited. You may not use the Website or export the Content or any Products in violation of U.S. export laws and regulations. If you access the Website from locations outside of the U.S., then you are responsible for compliance with all local laws.
- 20. Governing Law.** This Agreement and the relationship between User and Rogue Creamery shall be governed by and construed in accordance with the laws of the State of Delaware. Any controversy or claim arising out of or relating to this Agreement or relating to use of

this Website and the material contained in this Website shall be resolved in a court in the State of Delaware State or the Federal Courts situated in such state.

21. Reservation of Rights. Any rights not expressly granted herein are reserved.

22. Questions. For any questions, please contact info@roguecreamery.com.