

# **EIM Communications Terms and Conditions of Purchase**

These Communications Terms and Conditions of Purchase (the "Terms and Conditions") shall be the legal and binding agreement between Excellence In Motivation, Inc. ("EIM") and the person or entity ("Vendor") selling finished products or services (collectively referred to as "Work") to EIM with respect to the Purchase Order (the "Purchase Order").

## **1. Quotations/Estimates**

All Work shall be outlined in writing by Vendor prior to the commencement of the production of any Work, which writing shall set forth the manner and time that Vendor shall complete production of the Work ("Quotations") and shall be accompanied by a Production Schedule (as defined below). All Quotations are subject to the prior written approval of EIM. Under no circumstances shall any additional invoices relating to any Quotation for the Purchase Order be issued to EIM without proper written documentation detailing the reasons requiring additional invoices and the prior written approval by EIM. Any subsequent orders submitted to Vendor by EIM for Work shall be set forth on a separate Purchase Order unrelated to the Purchase Order and shall be governed by its own terms and conditions set forth therein.

## **2. Acceptance**

Vendor may accept the Purchase Order on the terms and conditions therein and herein contained by communicating its acceptance in writing to EIM. Vendor acknowledges and agrees that these Terms and Conditions shall be incorporated in the Purchase Order by reference and acceptance of the Purchase Order by Vendor shall constitute acceptance of these Terms and Conditions. These Terms and Conditions shall be the terms and conditions of the Purchase Order.

## **3. Terms and Conditions Proposed by Vendor**

No terms or conditions proposed by Vendor orally or in any writing shall modify or amend any of the terms or conditions of the Purchase Order or form the basis of any contract between Vendor and EIM. EIM hereby specifically objects to and rejects all such terms and conditions proposed by Vendor. The terms and conditions of the Purchase Order shall govern despite any conflicting terms or conditions of any printed acknowledgment or confirmations of the Purchase Order, or any other form used by Vendor in processing EIM's order, unless such conflicting terms and conditions are expressly brought to the attention of EIM and agreed to in writing by EIM.

## **4. Ownership of Work**

Any experimental, test, draft or preliminary services of Vendor related to the production of Work shall be performed only upon EIM's request and any additional costs relating thereto must be agreed to by EIM prior to the commencement of any Work and will be billed to EIM at Vendor's current best rates offered to

its other customers for similar Work. Any Work, whether in final or preliminary form, may not be used, distributed, displayed or otherwise disseminated by Vendor to a third party without the prior written consent of EIM.

All sketches, copies, drafts, outlines, digital files, and all other work of a preliminary nature developed or furnished by EIM, or developed or furnished by Vendor on behalf of EIM in connection with the Purchase Order, is and shall remain the exclusive property of EIM. All Work, whether in final or preliminary form, prepared by Vendor must be secured, archived and protected to prevent the unlawful and/or unauthorized disclosure of the Creative Work to any third party.

## 5. Ownership of Intellectual Property

Vendor hereby grants EIM and EIM's customers the right, without payment of additional compensation, to use, duplicate, operate, process, disclose and sublicense, all data, writings, reports, or other information and items produced and delivered by Vendor to EIM in connection with the Purchase Order. Vendor agrees that all Work and other data, writings, reports, or other information produced hereunder shall be deemed "works for hire" under the Purchase Order. In the event any such Work is determined not to be a "work for hire" under the copyright laws, Vendor hereby assigns to EIM the copyright in Work, data, writings, reports, or other information produced hereunder, including, without limitation, all right, title, and interest therein, in perpetuity.

## 6. Electronic Media

EIM shall maintain a copy of all original electronic media submissions of materials made by EIM to Vendor. Vendor acknowledges and agrees that EIM is often not the original source of such electronic media submissions. EIM bears no responsibility for any damage to property, persons or otherwise, or injury or expenses incurred, as a result of the use of electronic media supplied by EIM to Vendor. EIM bears no responsibility for the accuracy of information contained on any electronic media furnished by EIM to Vendor. Vendor warrants and represents to EIM that it maintains the capability to accept and work with all forms of electronic media to be submitted by EIM pursuant to the Purchase Order and shall be solely responsible for maintaining adequate virus protection software or other device or software necessary to protect Vendor from any damage, injury or additional expenses that may be incurred by Vendor as a result of accepting and making use of any electronic media provided by EIM. Vendor bears the sole responsibility for all problems, difficulties, issues or liability that may arise from Vendor's acceptance and use of electronic media provided by EIM. In the event that the information contained on any electronic media supplied to Vendor by EIM requires additional coding, translating, editing, or other programming in order to utilize the media and produce Work therefrom, Vendor shall submit a written quote, subject to EIM's prior written approval, of any additional costs related thereto prior to the commencement of such additional efforts on the part of Vendor or its personnel. Any additional costs related to additional coding, translating, editing or other programming shall be charged to EIM at Vendor's best rate charged to its other customers for similar work.

## 7. Inspection

EIM may inspect Work at any time during the production process prior to Vendor sending such Work to final production or shipping if such Work is in completed and finished form. EIM shall be entitled to make corrections, changes or other alterations to any Work still in unfinished form at its sole and absolute discretion. Vendor shall notify EIM when any preliminary and unfinished Work or completed and finished Work is available and ready for EIM's inspection at Vendor's location or any third party's location providing services to Vendor in connection with any Work. In addition, all finished Work shall be received subject to EIM's right to inspect and approve all such Work at destination prior to EIM's acceptance or payment. EIM has the right to: (i) reject any Work which in EIM's opinion is defective or does not conform with the Purchase Order; or (ii) accept such defective Work at a proper reduction in price. EIM has the right to reject any Work which in EIM's opinion is defective or does not conform with the Purchase Order, including but not limited to an incorrect Vendor invoice contained within an otherwise conforming shipment. Vendor shall pay the cost of returning all Work that is rejected. Vendor is solely responsible for all errors in Work undetected by EIM or Vendor and not discovered by either party until following the final production process.

## 8. Color Proofing

EIM acknowledges that different types of equipment, paper, inks, and other conditions between color proofing and production pressroom operations may cause very slight variation in color between the approved color in any preliminary and unfinished Work and the final and completed Work. Vendor will use its best efforts to minimize such variations. Following each run of preliminary Work by Vendor, Vendor shall notify EIM that the Work is available for color proofing. While EIM acknowledges that very slight color variations may occur, EIM shall have final approval of color in its sole and absolute discretion. Vendor agrees that color proofs and a folded dylux proof will be provided for all static print components. The Quotation submitted for the Purchase Order shall include and cover any potential changes made by EIM based on color and such changes shall not be separately charged. Shipping costs for the first set and second set, if required, of color proofs sent to EIM shall be included in the Quotation for the Purchase Order and will not be additionally charged. Shipping costs for any set of color proofs after the second set of color proofs shipped shall be billed to EIM at the actual cost of shipping provided that the most cost-efficient method of shipping that provides prompt delivery is utilized by Vendor.

## 9. Insurance

Vendor shall maintain fire, theft and other casualty and extended coverage insurance, in amounts not less than \$1,000,000 per occurrence, while any Work, finished or preliminary, is directly or indirectly in Vendor's possession. Vendor shall be liable for any loss or damage to preliminary or finished Work stored on its premises or at a different location on behalf of Vendor. Vendor shall provide EIM a copy of certificates evidencing insurance coverage detailing recovery from fire, theft and other damages.

## 10. Shipping Date

Time is of the essence of the Purchase Order. Vendor shall meet each ship by date set forth in the Production Schedule. Vendor shall immediately notify EIM in the event that Vendor's timely performance under the Purchase Order is delayed or likely to be delayed, in whole or in part, and Vendor shall provide EIM with all available information regarding the reasons for such delay. Such notice shall not constitute a waiver by EIM of any of Vendor's obligations under the Purchase Order or hereunder. If only a portion of the Work specified in the Purchase Order is available for shipment to meet the ship by dates set forth in the Production Schedule, Vendor shall, unless EIM instructs otherwise, (i) ship the available Work in time to ensure timely shipment and (ii) ship, at Vendor's own costs, the remaining portion of the Work as soon as such Work becomes available to Vendor. Unless such changes in the Production Schedule are caused solely by EIM delay, Vendor shall deduct ten percent (10%) from its invoice for each day past the scheduled ship by date.

Unless otherwise expressly provided herein, all Work shipped to EIM shall be F.O.B. EIM's address set forth in the Purchase Order without charge to EIM for crating and storage. Vendor shall bear all risk of damages to or loss of such Work, and title thereto shall not pass to EIM, until delivery of such Work to EIM at EIM's destination.

## 11. Production Schedules

Upon acceptance of the Purchase Order by Vendor, a schedule for the production of the Work will be established by EIM (the "Production Schedule") and Vendor and must be followed by Vendor.

## 12. Invoices

All shipments of Work to EIM shall contain an invoice for the Work contained therein. EIM shall have ten (10) days following delivery of any Work to inspect and accept or reject any shipment of Work. All Vendor invoices are subject to a discount of 2% if paid within fifteen (15) days; otherwise the net amount is due in forty-five (45) days (2/15, net 45). All Vendor invoices shall contain the following information as applicable: the order number set forth on the face of the Purchase Order, item number, descriptions of all Work, quantities, unit prices, destination, routing information, and any other information required by other provisions of the Purchase Order.

## 13. Inventory

Vendor will retain in its inventory all intermediate materials used by Vendor until thirty (30) days after the related end-product has been allocated per shipment. When required by EIM, Vendor shall track its inventory by means of a real-time inventory tracking system. This inventory tracking system must be

shared by Vendor with EIM and be made available to EIM 24 hours a day, 7 days a week. In the event inventory cannot be retrieved electronically via said tracking system, a fully itemized inventory report will be sent to EIM within 24 hours of request by EIM. When requested by EIM, Vendor must maintain adequate reserves of inventory. Vendor must advise EIM of defects, damages, or shortages in inventory immediately after discovery of such defects, damages or shortages if such may cause a delay in the Production Schedule.

#### 14. Data/Confidentiality

Any information, including without limitation mailing lists, contacts, data and images (whether in written or any other tangible form, including magnetic or electronic media, or in any intangible form (including oral or visual) furnished by EIM to Vendor under or in connection with the Purchase Order ("Confidential Information") shall be and remain the property of EIM. Vendor agrees that, except to the extent reasonably necessary to perform its obligations under the Purchase Order and hereunder: (i) Vendor and its personnel shall keep the Purchase Order and its contents and the Confidential Information strictly confidential, (ii) neither Vendor nor its personnel will disclose the Purchase Order or its content or the Confidential Information to any third person in any manner whatsoever, and (iii) neither Vendor nor its personnel will use the Purchase Order or any Confidential Information for any purpose whatsoever. All Confidential Information in tangible form shall be returned to EIM promptly at its request. All data provided by EIM is the sole property of EIM. At no time should data be shared, displayed, disseminated or be made vulnerable to sharing, display or dissemination to a third party. Electronic Confidential Information will only be transferred between EIM and Vendor via a designated, secure ftp web site with encryption. Vendor shall provide all necessary protection against the loss or damage to EIM's mailing list. Vendor is not responsible for ensuring that the data or mailing lists supplied by EIM are accurate; provided, however, Vendor shall notify EIM immediately if Vendor becomes aware of any inaccuracies in the mailing list or data supplied by EIM. Vendor shall provide adequate backup procedures and security for all files and programs containing Confidential Information. Upon the request of EIM, Vendor shall enter into a separate confidentiality agreement with EIM, with terms proposed by EIM that are separate and distinct from, and in addition to, the confidentiality obligations set forth in these Terms and Conditions. Vendor agrees to execute such confidentiality agreement by February 1 of each calendar year in which EIM places orders to Vendor for Work under any Purchase Order. In the event that EIM and Vendor enter into a separate confidentiality agreement, the terms and conditions of these Terms and Conditions or such separate confidentiality agreement, whichever provides the greatest protection to EIM's Confidential Information, shall govern.

#### 15. Templates for Work

Programming and templates for Work established by Vendor on behalf of EIM or by EIM for any EIM program related to the Purchase Order shall be designed at the outset of all work under the Purchase Order relating to such program and is and shall remain the exclusive property of EIM. There will be no additional charge by Vendor for the initial template setup by Vendor. Revisions to templates, not within

the scope of the Purchase Order, shall be charged at Vendor's best rates charged by Vendor to its other customers for similar work.

## 16. Shipping Charges

Except as otherwise provided herein or in the Purchase Order, EIM shall pay all initial shipping costs of conforming Work. All charges for shipping costs for which EIM is responsible shall be included in the initial Quotation. All charges for overnight packages, express and courier services, and deliveries, not otherwise included and covered in the Quotation for the Purchase Order, shall be charged to EIM at the actual cost to Vendor and shall be itemized on each Vendor invoice contained within the next shipment of Work following the incurrence of such expenses. If Vendor incurs such expenses following the final shipment of Work to EIM, Vendor shall prepare a separate invoice to EIM detailing such costs.

## 17. Changes and Alterations by EIM

All material alterations and changes in Work specifications and/or instructions made by EIM other than as a result of Vendor's breach, fault or error, will be made known by EIM to Vendor as soon as possible. Any additional charges relating to such changes and alterations will be advised by Vendor to EIM within 24 hours of Vendor's determination of such additional charges. In the event that a substantial change in EIM's specifications and/or instructions upon which the original Quotation for the Purchase Order was based, results in additional costs, such additional costs will be billed at Vendor's best rates charged to its other customers for similar work.

## 18. Extras

All extra charges of any kind, including without limitation insurance, packing, and crating, will be borne by Vendor unless otherwise expressly provided in the Purchase Order or unless otherwise agreed in writing by EIM.

## 19. Termination

EIM may terminate the Purchase Order, in whole or in part, at any time, by written, telephone, facsimile or electronic mail notice to Vendor, with or without cause. Upon termination with cause due to Vendor's breach of the Purchase Order, EIM shall retain the right to any and all Work developed by Vendor pursuant to the Purchase Order and shall be relieved of any and all liability, claimed by or owed to Vendor for services performed with respect to the Purchase Order, and Vendor shall be liable to EIM as set forth in Sections 28 and 29 of these Terms and Conditions for any damages to EIM as a result of the event giving rise to cause to terminate the Purchase Order. Upon termination without cause, EIM will pay to Vendor, upon Vendor's submission to EIM of a claim for such amounts incurred by Vendor for any Work already

performed and completed that conform to EIM's specifications and instructions upon which the initial Quotation for the Purchase Order was based, Vendor's costs incurred in producing such conforming Work prior to the date of termination plus an additional twenty percent (20%) of Vendor's costs (the "Termination Fee"); provided, however, that in no event shall the Termination Fee exceed the total price for the Work set forth in the Purchase Order. Failure to submit a claim for the Termination Fee within six (6) months of the date of termination will constitute Vendor's waiver of all claims against EIM and release all of EIM's liability arising out of the termination. Upon termination without cause, Vendor will, to the extent and at the times specified by EIM, stop work, if requested by EIM, and protect all property in which EIM has or may acquire an interest, and transfer title and make delivery to EIM of all articles, materials, work in process, and other things held or acquired by Vendor in connection with the terminated portion of the Purchase Order. Vendor will proceed promptly to comply with EIM's instructions respective of each of the foregoing without awaiting settlement or payment of any termination claim it may have against EIM. Further, upon termination by EIM without cause, non-refundable deposits will not be refunded to EIM.

## 20. Assignment

Vendor shall not have the right to assign the Purchase Order or any rights or obligations of Vendor under the Purchase Order or hereunder without the prior written consent of EIM; any such assignment by Vendor without EIM's consent shall be void. No such assignment without EIM's consent shall relieve Vendor from any of its obligations or liabilities under the Purchase Order or hereunder.

## 21. Compliance with Laws

Vendor represents and warrants that in performance of all work under the Purchase Order Vendor shall comply with all applicable federal, state, local and foreign laws and ordinances including, but not limited to all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority, as well as any other regulations pertaining to any orders and federal regulations governing affirmative action programs and all laws restricting the use of convict labor. Vendor represents and warrants that in performance of work under the Purchase Order, Vendor has complied with all laws, regulations, statutes and ordinances of all governmental entities including, local, state, federal and foreign, now or hereafter enacted, which regulate any material because it is radioactive, toxic, hazardous or otherwise relates to health, reproduction or the environment and similar laws, rules, statutes, treaties or orders and international understandings. Vendor further agrees to comply with all applicable laws regarding requirements for small business and small disadvantaged business and women-owned small business concerns, if appropriate. Upon request, Vendor agrees to issue certificates certifying compliance with any laws or regulations as may be applicable to the Work furnished under the Purchase Order.

In the event of Vendor's noncompliance with any of the said rules, regulations, or orders, the Purchase Order may be cancelled, terminated, or suspended, in whole or in part, at EIM's discretion.

## 22. Waiver

Acceptance by EIM of any performance less than required by the Purchase Order shall not be deemed to be a waiver of the rights of EIM to enforce all of the terms and provisions hereof. No waiver by EIM of any term or provision of the Purchase Order shall be deemed to be or shall constitute a waiver of any other term or provision hereof, whether or not similar, nor shall any such waiver constitute a waiver or any subsequent failure, delay or breach by Vendor.

## 23. Inserting Sequence/Quality Control

When preparing and packaging Work for shipment to EIM, Vendor shall insert material in the sequence required to meet or exceed all quality control requirements of EIM.

## 24. Interpretation and Setoff

The headings contained herein are for convenience and reference purposes only and shall not affect the interpretation hereof. No rule of construction providing that ambiguities in agreements be construed against the party controlling the drafting thereof shall be applicable hereto. EIM may credit and setoff any amount, which Vendor owes to EIM under the Purchase Order, hereunder or under any other agreement, based upon any other claim or right, against any amount that EIM owes to Vendor under the Purchase Order.

## 25. Taxes

Tax exemption will be granted to EIM for all Work related to an outside client per EIM's "Exemption Certificate." In the case that EIM is the actual "client" and end-user, EIM will advise Vendor of sales tax requirements. In that situation, Vendor is responsible for remitting taxes to the proper taxing authorities.

## 26. Warranty

Vendor warrants to EIM and its customers for the longer of Vendor's normal warranty period or for one (1) year following the date of EIM's or EIM's customers' acceptance of Work that, (i) when received by EIM or an EIM customer from Vendor, Work shall be free from defects in design, material and workmanship, (ii) Work will conform to the documentation and to the applicable specifications, drawings, samples, or to the descriptions set forth in the Purchase Order, (iii) if Work is services such services will be performed in a professional and workmanlike manner, (iv) Work will be suitable for the purposes for which Work is intended, (v) Vendor has good, unencumbered titled to Work and has conveyed such good, unencumbered title to EIM, and (vi) all Work is new and unused, unless otherwise agreed to in writing by EIM. The

foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, acceptance or payment by EIM.

If any Work delivered by Vendor does not meet the warranties specified herein or otherwise applicable, EIM may, at its option, (i) require Vendor to correct any defective or non-conforming Work by repair or replacement at no changes to EIM, (ii) return such defective or non-conforming Work to Vendor at Vendor's expense and recover from Vendor all amounts paid therefore, (iii) correct the defective or non-conforming Work itself and charge Vendor the cost of such correction, (iv) obtain a refund from Vendor for all amounts paid for any defective or non-conforming Work, or (v) utilize the defective Work and require an appropriate reduction in price. The foregoing remedies are in addition to all other remedies at law and in equity or under the Purchase Order for damages or otherwise, and shall not be deemed to be exclusive. All warranties shall run to EIM and to its customers.

## 27. Force Majeure the Purchase Order

EIM shall not be liable for any delay or failure to keep or perform any of its obligations under the Purchase Order to the extent that such delay or failure is caused by fire, explosions, floods, storms, earthquakes, tidal waves, acts of God, national emergency, terrorism, strikes, lock-outs, governmental laws, regulations, rules, or orders, or any other cause outside EIM's reasonable control.

## 28. Indemnification

Vendor will hold harmless and save, indemnify, and otherwise defend EIM against claims, demands, actions and proceedings on any and all grounds resulting from or relating to Vendor's, intentional, unintentional, willful or negligent breach or threatened breach of any of the terms and conditions stated directly in the Purchase Order and these Terms and Conditions. Vendor shall indemnify EIM for all damages, including, but not limited to, incidental, special, consequential, punitive and compensatory damages, caused as a result of Vendor's failure to perform its obligations set forth in the Purchase Order or any subsequent agreement between the parties that may alter or amend the responsibilities of Vendor, or for any actual or threatened breach hereof and thereof.

## 29. Copyright

According to Copyright laws of the United States (title 17, US Code, Section 1206) the Copyright Act provides EIM the exclusive right and authority to:

- Reproduce the copyrighted work
- Prepare derivative works based upon the copyrighted work
- Distribute copies of the copyrighted work to the public per such agreement

Vendor shall protect and indemnify EIM from any and all liability resulting from any suit for infringement of any patents and the posting of images on any web site, including without limitation reasonable attorneys' fees and all expenses of defending such suit, arising from the sale or use by EIM, or any of EIM's customers, of Work furnished by Vendor under the Purchase Order. Vendor shall protect and indemnify EIM against all claims, suits, proceedings, losses, judgments, costs and expenses (including without limitation reasonable attorney fees) or other liability arising from infringement or alleged infringement of any patent, copyright, trademark, or other proprietary rights ("Intellectual Property"), or claims of unfair trade or unfair competition, resulting from or relating to EIM's use, possession, sale, or delivery of any Intellectual Property of an EIM customer delivered to Vendor under the Purchase Order. Vendor shall defend or settle at its own expense any proceeding brought against EIM for such infringement or unfair trade or competition provided Vendor is notified promptly of the commencement of such proceeding and is given reasonable authority, information, and assistance by EIM for the defense or settlement of such proceeding.

### 30. Entire Agreement

These Terms and Conditions, any price list, and the Production Schedule, and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Work by Vendor to EIM. Any prior understandings, agreements and representations, oral or written, shall be deemed superseded and merged into the Purchase Order.

### 31. Notices

Any notice, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if mailed by registered or certified mail, postage prepaid, or delivered by overnight courier services with tracking capabilities to the respective addresses of the parties as set forth in the Purchase Order (or such other addresses a party may designate by ten (10) days prior written notice).

### 32. Severability

The provisions of the Purchase Order are severable. If any provision of the Purchase Order shall be adjudged to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the Purchase Order shall otherwise remain in full force and effect and enforceable.

### 33. Governing Law, Venue and Language

The validity, performance, and all other matters relating to the interpretation and effect of the Purchase Order shall be governed by the laws of the State of Ohio, USA without regard to its conflict of law principles. EIM and Vendor agree that the proper venue for all actions arising in connection herewith shall be deemed exclusively proper only in state court in Montgomery County, Ohio or in the federal court for the Southern District of Ohio, Western Division, and the parties agree to submit to such jurisdiction. Further, the United Nations Convention on the International Sale of Goods (1980) (as amended from time to time) shall not apply to the Purchase Order or any transactions relating thereto. EIM and Vendor acknowledge that the Purchase Order may be translated from English (United States) into another language. In the event there is any ambiguity in a translation or any conflict between the terms contained in a translation and the Purchase Order, the English (United States) version of the Purchase Order shall in all cases govern.

### 34. Most Favored Customer

Notwithstanding any other provision of these Terms and Conditions, all of the prices, warranties, benefits and terms granted by Vendor to EIM hereunder are warranted by Vendor to be comparable to, or more favorable to EIM than, the equivalent prices, warranties, benefits and terms that (a) have been offered by Vendor to any of its other buyers during the period beginning one (1) year prior to the date hereof and through the date hereof; and (b) are being and will be offered by Vendor to any of its other buyers during the period beginning on the date hereof and through the date which is one (1) year following the date hereof.

### 35. Vendor Not Customer

In the event the Purchase Order is not entered into by EIM, but rather is entered into by a customer of EIM, all protections afforded to EIM hereunder shall be conferred upon such customer and shall become the terms of any contract entered into by such EIM customer and Vendor.