

# EIM Merchandise Terms and Conditions of Purchase

These Merchandise 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 Merchandise or services (collectively referred to as "Merchandise") to EIM with respect to the Purchase Order (the "Purchase Order").

## 1. Acceptance; Terms and Conditions of Purchase Order

The Purchase Order constitutes an offer on the part of EIM, and, upon acceptance by Vendor, becomes a contract constituting the entire agreement between the parties. The Purchase Order should be acknowledged promptly in writing by Vendor, and, if accepted by Vendor, such written acknowledgment and acceptance should indicate the first available shipping date for the Merchandise.

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 constitute the Terms and Conditions of the Purchase Order. No terms or conditions proposed by Vendor orally or in any order, proposal, acknowledgement, confirmation, invoice or other writing shall modify or amend any of the terms or provisions 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.

## 2. Prices and Changes

If the price for Merchandise submitted in response to the Purchase Order is incorrect or omitted, Vendor must immediately notify EIM by written notice of the correct price and EIM must agree on such price prior to production and shipment of Merchandise. EIM shall have the right to make changes in the Purchase Order, but no additional charges by Vendor will be permitted as a result thereof unless authorized in writing by EIM prior to incurring and charging such additional charges to EIM. If such changes of EIM affect the Production Schedule (as defined below) and timely shipment of the Merchandise or the amount to be paid by EIM, Vendor shall immediately notify EIM upon its determination of delayed shipment or price increase and may request a later ship by date or an equitable price adjustment, whichever is applicable, either of which may be granted in EIM's sole and absolute discretion.

## 3. Inspection

EIM may inspect and/or test Merchandise during manufacture. In addition, Merchandise shall be received subject to EIM's right to inspect, test and approve all such Merchandise at destination before acceptance

or payment. EIM has the right to: (i) reject any Merchandise which in EIM's opinion is defective or does not conform with the Purchase Order; or (ii) accept such defective Merchandise at a proper reduction in price. Vendor shall pay the cost of returning all Merchandise that is rejected.

#### 4. Invoices/Payment

Vendor shall promptly mail invoices for each shipment of Merchandise to the attention of: Accounts Payable Department, Excellence in Motivation, Inc., 6 North Main Street, Suite 370, Dayton, Ohio 45402. Alternately, Vendor may promptly fax invoices to the Accounts Payable Department at 937-824-8391 or e-mail an (Adobe Acrobat or similar) electronic pdf. file to [ap@eim-inc.com](mailto:ap@eim-inc.com). Invoices sent electronically to EIM shall not be deemed received by EIM unless and until Vendor receives confirmation of receipt. Unless otherwise agreed to by EIM prior to sending such invoice, terms to apply NET in forty-five (45) days of the invoice date. All Vendor invoices shall contain the following information as applicable: the Purchase Order number set forth on the face of the Purchase Order, item number, descriptions of all Merchandise, quantities, unit prices, destination, weights, routing information, and any other information required by other provisions of the Purchase Order.

#### 5. Pricing and Images

Vendor will provide EIM with accurate information and electronic images. EIM expects Vendor to notify EIM, in writing, of any changes in pricing or information relevant to EIM's purchase of Merchandise during the period in which EIM is purchasing Merchandise under the Purchase Order. Vendor also warrants that the subject matter to be printed is not copyrighted by a third party.

#### 6. Indemnification

Vendor will hold harmless and save, indemnify, and otherwise defend EIM against all 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 of the Purchase Order. 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.

#### 7. 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 the Merchandise that, (i) when received

by EIM or an EIM customer from Vendor, the Merchandise shall be free from defects in design, material and workmanship, (ii) the Merchandise will conform to the documentation and to the applicable specifications, drawings, samples, or to the descriptions set forth in the Purchase Order, (iii) if the Merchandise is services such services will be performed in a professional and workmanlike manner, (iv) the Merchandise will be suitable for the purposes for which the Merchandise is intended, (v) Vendor has good, unencumbered titled to the Merchandise and has conveyed such good, unencumbered title to EIM, and (vi) all Merchandise 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 Merchandise 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 Merchandise by repair or replacement at no charge to EIM, (ii) return such defective or non-conforming Merchandise to Vendor at Vendor's expense and recover from Vendor all amounts paid therefore, (iii) correct the defective or non-conforming Merchandise 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 Merchandise, or (v) utilize the defective Merchandise 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.

## 8. Production Schedules

Upon acceptance of the Purchase Order by Vendor, a schedule for the production and shipment of the Merchandise will be established by EIM and Vendor (the "Production Schedule") and must be followed by Vendor. If EIM and Vendor fail to agree on the Production Schedule, the dates of production and/or shipment set forth on the Purchase Order, if any, shall constitute the Production Schedule, and if there are no dates of production and/or shipment on the Purchase Order, the dates of production and shipment determined by EIM shall constitute the Production Schedule.

## 9. Shipping Delays

Time is of the essence of the Purchase Order. Vendor shall meet each ship by date set forth in the Purchase Order or 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 hereunder. If only a portion of the Merchandise specified in the Purchase Order is available for shipment to meet the ship by dates set forth in the Purchase Order or Production Schedule, Vendor shall, unless EIM instructs otherwise, (i) ship the available Merchandise in time to ensure timely shipment and (ii) ship, at Vendor's own costs, the remaining portion of the Merchandise as soon as such Merchandise becomes available to Vendor. Unless

such changes in the Purchase Order or 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.

If the Merchandise shipped by Vendor is in excess of amounts stated, unless previously agreed upon, on the Purchase Order or is shipped more than five (5) business days prior to the scheduled ship by date, unless authorized in writing, EIM may either reject such Merchandise and return the shipment to Vendor or accept the Merchandise. Such shipments will be held at Vendor's risk and expense including reasonable storage charges while awaiting Vendor's shipping instructions. Return shipping charges will be at Vendor's expense. Material for which return shipping instructions are not received within a reasonable time, may be destroyed or sold by EIM at public sale or private sale, and the proceeds, if any, applied toward storage charges.

Unless otherwise expressly provided herein, all Merchandise 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. Notwithstanding anything herein to the contrary, shipping costs will be paid in accordance with Section 16 of these Terms and Conditions. Vendor shall bear all risk of damages to or loss of such Merchandise, and title thereto shall not pass to EIM, until delivery of such Merchandise to EIM at EIM's destination.

#### 10. Cost and Ownership of Merchandise

Any experimental, test, preliminary or other services or actions taken by Vendor to prepare Vendor for production of the Merchandise, including, but not limited to upgrade or purchase of machinery, computer hardware and/or software, or additional personnel, shall be borne by Vendor and performed at no additional costs. Any test, draft or preliminary Merchandise that is created and/or developed by Vendor on behalf of EIM during the production process of the Merchandise, may not be used, distributed, displayed or otherwise disseminated by Vendor to a third party without the prior written consent of EIM and shall remain the exclusive property 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, including but not limited to programming and templates for the Merchandise, which must be designed at the outset of all work under the Purchase Order, is and shall remain the exclusive property of EIM, and, if in Vendor's possession, must be secured, archived and protected by Vendor to prevent the unlawful and/or unauthorized disclosure to any third party. There will be no additional charge by Vendor for the initial template setup, if any, by Vendor required for production of the Merchandise. Revisions to templates, if any, 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.

#### 11. Termination

EIM may terminate the Purchase Order, in whole or in part, at any time prior to shipment of the Merchandise, with or without cause, or at any time after shipment of the Merchandise, with cause, without cost to EIM, by written, telephone, facsimile or electronic mail notice to Vendor. EIM may terminate the

Purchase Order, in whole or in part, at any time after shipment of the Merchandise, without cause, by written, telephone, facsimile or electronic mail notice to Vendor; provided, however, that EIM shall pay to Vendor the price set forth in the Purchase Order associated with any shipped, conforming Merchandise. Upon termination with cause due to Vendor's breach of the Purchase Order, EIM shall retain the right to any and all Merchandise 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 Section 6 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 with or without cause, Vendor will, to the extent and at the times specified by EIM, stop work, if requested by EIM, assign to EIM all of Vendor's rights, titles and interests under terminated subcontracts and orders, settle all claims hereunder (after obtaining EIM's written approval), 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. Failure to submit a claim relating to EIM's termination within six (6) months will constitute Vendor's waiver of all claims against EIM and release all of EIM's liability arising out of the termination. Non-refundable deposits will not be refunded to EIM and the cost of any work performed for the Purchase Order shall remain the responsibility of EIM; provided, however, that Vendor submits a claim for such amounts and that any work already performed conforms to EIM's specifications and instructions upon which the initial Quotation for the Purchase Order was based.

## 12. Patents and Copyrights

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 the Merchandise 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 attorneys' 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.

## 13. 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 Merchandise 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 the Merchandise, data, writings, reports, or other information produced hereunder, including without limitation all right, title, and interest therein, in perpetuity.

#### 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 Merchandise 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. 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. Upon request, Vendor agrees to issue certificates certifying compliance with any laws or regulations as may be applicable to the Merchandise 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 sole and absolute discretion.

#### 16. Shipping Instructions

Vendor agrees to ship all Merchandise as stated on the Purchase Order, or, if not so provided, the most cost-efficient method of shipping that will ensure prompt delivery of Merchandise to EIM. EIM shall pay all initial shipping costs of Merchandise. Except as otherwise provided in Section 9, Vendor shall pay any and all subsequent shipping costs, whether incurred when shipping Merchandise back to Vendor or when Vendor re-ships conforming Merchandise to EIM or an EIM customer, that are incurred and necessitated by Vendor's shipment of nonconforming Merchandise or EIM's or EIM's customers' rejection of Merchandise, for whatever reason and in their sole discretion. Each shipment of Merchandise by Vendor shall be accompanied by a packing list showing the Order Number set forth on the face of the Purchase Order and the exact quantity and description of all Merchandise shipped. Vendor shall mark all containers with necessary lifting, handling, and shipping information. All Merchandise shall be suitably prepared and packed for shipment. EIM will not be responsible for extra charges for packing, cartage, or anything else unless otherwise stated in the Purchase Order.

#### 17. 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.

#### 18. Insurance

Vendor shall procure and maintain adequate policies (or policy) of products liability insurance in amounts not less than \$1,000,000 per occurrence and shall furnish to EIM certificates evidencing such insurance in

connection with the Purchase Order. Vendor shall maintain fire and extended insurance coverage while any Merchandise, finished or preliminary, is directly or indirectly in Vendor's possession. Vendor shall be liable for any loss or damage to preliminary or finished Merchandise 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.

## 19. 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 upon discovery of such defects, damages or shortages if such may cause a delay in the Production Schedule.

## 20. 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.

## 21. Assignment

Vendor shall not have the right to assign the Purchase Order or any rights or obligations of Vendor 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.

## 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 provision 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. 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.

### 24. 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.

### 25. 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).

### 26. 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.

### 27. Entire Agreement

The Purchase Order, including 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 Merchandise by Vendor to EIM under the Purchase Order. Any prior understandings, agreements and representations, oral or written, shall be deemed superseded and merged into the Purchase Order.

## 28. 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 Merchandise (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.

## 29. 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 year following the date hereof.

## 30. EIM Not Vendor 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.