

THE MEDIA BUYER



The Media Buyer.com Terms and Conditions

The following are the Terms and Conditions described in the E-mail Promotion Order Form (the "Order Form") entered into by you (the "PROMOTER") and the respective THE MEDIA BUYER office indicated in the Order Form ("THE MEDIA BUYER"). The Order Form and these Terms and Conditions (collectively the "Agreement"), constitute the entire Agreement between the parties with regard to the Promotion set forth in the Order Form (the "Service").

- 1.** All Order Forms submitted by PROMOTER shall: (i) be subject to acceptance by THE MEDIA BUYER; and (ii) incorporated and subject to the terms and conditions of this Agreement, unless otherwise agreed to in writing by both parties.
- 2.** PROMOTER agrees to pay THE MEDIA BUYER for the Service in accordance with the rates set forth in the Order Form, which are exclusive of tax. PROMOTER further agrees to pay THE MEDIA BUYER according to the Payment Terms set forth in the Order Form. PROMOTER shall be responsible for payment of all applicable taxes and duties. Pricing for any Renewal Period is subject to change by THE MEDIA BUYER. Amounts not paid by the due date shall bear interest at a rate of one percent (1%) per month (or the highest rate permitted by law, if less than one percent per month). PROMOTER agrees that prompt payment of the amount due is a material term of this Agreement. In accordance and subject to Section 3 below, PROMOTER agrees that THE MEDIA BUYER may, without breach, terminate this agreement in the event timely payment is not made. As such, PROMOTER is responsible for all expenses (including reasonable attorney's fees) incurred by THE MEDIA BUYER in collection of such amounts.
- 3.** Termination. Either Party may terminate this agreement upon material breach of this Agreement by the other party, provided such breach remains uncured by the breaching party for five (5) calendar days after written notice from the non-breaching party. THE MEDIA BUYER may terminate this Agreement without cause upon five (5) calendar days written notice to the PROMOTER.
- 4.** THE MEDIA BUYER Commitments: (a) THE MEDIA BUYER shall have the right to approve PROMOTER's specifications and selection of products prior to distribution of the Promotion; (b) THE MEDIA BUYER will send the Promotion to the End-user(s) at its own cost; (c) the Promotion shall be sent to the numbers of End-user(s) and the Country specified in the Order Form; and (d) THE MEDIA BUYER shall take commercially reasonable efforts to distribute the Promotion by the estimated Promotion Publication Date specified in the Order Form.
- 5.** PROMOTER Commitments: (a) PROMOTER will prepare the Promotion by creating product offers targeting the description and number of End-users specified in the Order Form (the "End-user(s)"). The Promotion will be specifically designed for the End-users; (b) PROMOTER shall pay THE MEDIA BUYER the Promotion Fee(s) set forth in the Order Form; and (c) PROMOTER agrees to respect the confidentiality of all End-user(s) and that the Promotion shall be free of any defamatory, offensive, sexually implicit or illegal language.
- 6.** THE MEDIA BUYER shall, at its own expense, upon three (3) business days' advance written notice to PROMOTER, have the right to examine the books and records of PROMOTER for the purpose of confirming the accuracy of the reports and payments due under this Agreement and PROMOTER shall not be obligated to disclose any information other than that necessary to confirm the same. Such audit shall be made during PROMOTER's regular business hours. If any examination discloses a deficiency in any payments due THE MEDIA BUYER of more than two and one-half percent (2.5%), PROMOTER shall pay THE MEDIA BUYER any amounts due hereunder plus any fees incurred by THE MEDIA BUYER for conducting such audit.
- 7.** Each party represents and warrants to the other that: (i) it has the right to enter into this Agreement and its obligations are not in conflict with any other of its obligations, and (ii) all services required hereunder will be performed by such party in a timely, competent and professional manner.
- 8.** Any and all End-user(s) information shall remain the sole and exclusive property of THE MEDIA BUYER, as well as, be considered confidential information of THE MEDIA BUYER. The Parties agree that any information independently and directly obtained by PROMOTER from the End-user(s) who purchase products as a result of the Promotion shall remain the property of PROMOTER.
- 9.** EXCEPT AS SPECIFICALLY SET FORTH ABOVE, NEITHER PARTY MAKES ANY OTHER OR DIFFERENT REPRESENTATIONS OR WARRANTIES TO THE OTHER OR TO ANY THIRD PARTY, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE MEDIA BUYER SHALL NOT BE, UNDER ANY CIRCUMSTANCE, LIABLE TO PROMOTER, ITS EMPLOYEES OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUE, DATA OR USE, ARISING OUT OF ANY CLAIM DIRECTLY OR INDIRECTLY RELATED TO THE PROMOTION, UNLESS DUE TO THE MEDIA BUYER'S GROSS NEGLIGENCE.
- 10.** Binding Agreement; Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors. PROMOTER shall assign or transfer the Agreement without the prior written consent of THE MEDIA BUYER, which shall not be unreasonably withheld or delayed. THE MEDIA BUYER may, however, assign the Agreement to its parent, an affiliate or subsidiary.
- 11.** Indemnification. PROMOTER agrees to indemnify and hold THE MEDIA BUYER harmless against any claims of any kind arising out of the Promotion (including, without limitation, any claim of trademark or copyright infringement, libel, defamation, breach of confidentiality, violations of Section 5(c) herein, false or deceptive

Confidential Insertion Order

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advertising or sales practices) and/or any material of PROMOTER to which any End-user(s) can link through the Promotion.

12. Notices. Except as otherwise permitted herein, any notices or consents required or permitted under this Agreement shall be made in writing and delivered in person or by registered or certified mail, postage prepaid, return receipt requested, or by a reputable courier delivery service, or by facsimile or e-mail during regular business hours (provided that a confirmation copy follows by first-class US Mail or another method of delivery permitted under this Section), as follows unless such address is changed by written notice hereunder. Such notice shall be deemed given for purposes of this Agreement on the day that such writing is sent to the intended recipient set forth in the Order Form.

13. The Media Buyer will replace prospects under the following conditions:

a.) Data transmitted does not permit consumer to make contact with the prospect after reasonable attempts, either because the data does not contain a correct telephone number or email address. b.) Data was entered by a minor applicant, under the age of 18 or a person that is not legally capable of making a contract/loan. c.) Data does not contain the necessary assets, debts, or otherwise to be capable of making a contract/loan. d.) Data with false identity/contact. All returned applicants must specify one of the above conditions and be returned to the Media Buyer within a grace period of no longer than five (5) business days upon receiving applicant data.

14. Independent Contractors. Neither party is an agent, representative, or partner of the other party. Neither party shall have any right, power or authority to enter into an agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party.

15. Confidentiality. The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of two (2) years after the termination of this Agreement. "Confidential information" shall be limited to the programs, the terms and pricing under this Agreement, and all information clearly identified as confidential. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third parties unless expressly agreed to in writing by the other party. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

16. General. No waiver shall be deemed a waiver of any other provision of this Agreement, and no waiver of a breach hereunder shall be deemed a waiver of any other or subsequent breach of this Agreement. In the event of any inconsistency between the Insertion Order and this Agreement, the Agreement shall control and be binding. This Agreement is or, upon execution and delivery thereof, shall be governed by, and construed in accordance with the laws of the country where the respective THE MEDIA BUYER office indicated in the Order Form is located (in the case of the US, Florida law applies, except for its conflict of laws provisions and the United Nations Convention on the International Sale of Goods). All disputes or controversies shall be settled in the city where the respective THE MEDIA BUYER office indicated in the Order Form is located (in the case of the US, it shall be Miami, Florida). These terms and conditions may not be modified except by written amendment by the parties. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force. This Agreement (including the Exhibits, Schedules, documents and instruments referred to herein) constitutes the entire agreement and understanding of the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all other prior agreements and understandings, either written or oral, between such parties with respect to any matter contemplated by this Agreement.

Executed by Promoter:

Authorized Signature

Print Name

Title

Date

Executed by The Media Buyer:

Authorized Signature:

Print Name

Title

Date