

**TERMS AND CONDITIONS
ECLIPSE MARKETING SERVICES, INC.**

1. **Scope of Agreement.** Eclipse Marketing Services, Inc and/or its third party vendors (herein identified as "EMS") will perform the work described in the Specifications at the prices agreed in the Pricing Proposal negotiated with Customer.
2. **Payment Terms.** Customer will pay the net amount of each invoice within thirty (30) days of the date of invoice, unless otherwise established by "EMS" in writing on the face of the quotation or elsewhere, without making any deductions or setoffs. Customer will pay interest on overdue accounts from the thirty-first day at the rate of 1.5% per month (18% per year) or prime plus 2%; or the maximum rate allowed by law. The event of charging interest does not constitute extension of credit beyond the thirty-first (31) day. As security for payment of any sum due or to become due under terms of any agreements. "EMS" shall have the right to retain possession of and shall have a lien on all Customer property in "EMS's" possession including work in process and finished work. The extension of credit or acceptance of notes, trade acceptances or guarantees of payment shall not affect such security interest and lien. Customer represents that Customer is solvent and is capable of meeting its debts as they come due and acknowledges that "EMS" has relied upon this representation in performing work for Customer on credit. Customer remakes this representation upon every new order for work.
3. **Production Schedule.** Production Schedules will be established and adhered to by customer and EMS, provided that neither shall incur any liability or penalty for delays due to state of war, riot, civil disorder, fire, strikes, accidents, action of Government or civil authority and acts of God or other causes beyond the control of customer of EMS. In such cases, schedules will be extended by an amount of time equal to delay incurred. EMS will make every reasonable effort to accommodate customers, but any delay caused by customer in supplying any required artwork, logos, copy edits or final approvals and print quantities, etc. will jeopardize the customer's slot in the production schedule at the designated print partner location. Customer shall accept any delays caused by Customer's failure to meet agreed schedules and will pay applicable charges resulting from such delays, including but not limited to overtime if applicable of which Customer will be advised in advance in writing that additional charges will be required due to Customer delays.
4. **Final Approvals.** Customer shall accept work done according to electronic PDF proofs, which have been reviewed and approved in writing by Customer. "EMS" shall not be liable for errors in work done according to proofs reviewed and approved by Customer, or Customer's instructions to proceed without submission of proofs. Final printing will not proceed until written approval is received by Customer. No verbal approvals will be accepted. Unless specifically provided in EMS quotation and production schedule, press proofs and/or matchprints will not be provided for final copy and color approval.
5. **Price.** Customer recognizes that the prices are exclusive of storage charges and sales and other taxes. Any taxes imposed on "EMS" by federal, state, or local taxing authorities shall be added to the price paid by Customer. Postage and shipping is not included in proposal, but may be included as estimated costs for the project.
6. **Postage.** Postage and/or applicable freight and handling charges used for mail programs will be billed in advance and are due PRIOR to any applicable mail drops. Any advanced postage money received by EMS that is not used for actual mailing will be credited toward the final EMS print and production management invoice.
7. **Production Variance.** Customer will accept and pay for quantities up to three percent (3%) less than or greater than the quantity ordered unless otherwise specified in writing.
8. **"EMS" Express Warranty.** "EMS" warrants that the work shall meet the requirements set forth in the Pricing Proposal, and shall meet acceptable standards of the printing industry. Customer accepts reasonable variation of color, ink, paper and other variations between the proof and production process. "EMS" DISCLAIMS ANY OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE REGARDLESS OF ANY KNOWLEDGE OF "EMS" OF THE INTENDED USE OF THE WORK.
9. **Title to Preparatory and Final Materials.** All artwork, sketches, copy, dummies, design, final print files and any and all items supplied and developed by EMS for the creation and execution of the project shall remain the exclusive property of EMS and no use of same shall be made, nor any ideas obtained there from be used, unless otherwise agreed in writing and except upon compensation to be determined by EMS. Customer agrees to the licensing use of all creative, copy and design for the specific project contracted in the Pricing Proposal.
10. **Delivery.** Unless otherwise specified, the price quoted is F.O.B. "EMS's" plant. Proposals shall be based on one single continuous and uninterrupted delivery of complete order. Title for finished printed work shall pass to Customer upon delivery to the carrier. Transportation expenses shall be paid by Customer unless otherwise specified in writing.
11. **Force Majeure.** "EMS" shall not be liable to pay Customer for any damages that result from delay in performance or non-performance, directly or indirectly caused by circumstances beyond the control of "EMS", including but not limited to, acts of God, fire explosion, flood, war, act or regulation of government, accident, labor trouble, strike, or shortage, inability to obtain material, equipment, containers, or transportation at commercially reasonable prices. If any such event affects less than the total quantity of product ordered by Customer, the affected quantities shall be eliminated from the contract without liability to "EMS" and the agreement shall remain otherwise unaffected.
12. **Liability.** Customer waives all claims against "EMS" for defective work, erroneous charges, shortages, and other claims unless Customer makes such claims in writing within fifteen (15) days of delivery or the date "EMS" advises Customer the work is ready for shipment, whichever is earlier. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that they fully comply with terms, conditions and specifications. EMS's liability shall be limited to stated selling price of any defective goods, and shall in no event include special or consequential damages, including profits (or profit lost). EMS's maximum liability, whether by negligence, contract or otherwise, will not exceed the return of the amount invoiced for the work in dispute for project management, design and/or printing services. EMS shall have no liability for client postage expenses incurred nor any errors or delays in mail delivery as a consequence of the USPS or otherwise specified delivery agents.
13. **Indemnification.** The customer shall indemnify and hold harmless EMS from any and all loss, cost, expense and damages, including attorney's fees and expenses, on account of any and all manner of claims, demands, actions and proceedings that may be instituted against EMS on grounds alleging that the said printing and creative violates any copyright or any proprietary right of any person, or that it contains any matter that is libelous or scandalous or invades any person's right to privacy or other personal rights, except to the extent that EMS has contributed to the matter. This will apply regardless of responsibility for negligence. The customer also recognizes that because subject matter does not have to bear a copyright notice in order to be protected by copyright law, absence of such notice does not necessarily assure a right to reproduce. The Customer further agrees to indemnify and hold harmless EMS for any claims, demands or actions resulting from Customer's consumer offer(s) or product benefit and usage claims used in the promotional pieces. The customer agrees to, at the customer's own expense, promptly defend and continue the defense of any such claim, demand, action or proceeding that may be brought against EMS, provided that EMS shall promptly notify the customer with respect thereto, and provided further that EMS shall give to the customer such reasonable time as the exigencies of the situation may permit in which to undertake and continue the defense thereof. EMS reserves the right to use its sole discretion in refusing to print anything EMS deems illegal, libelous, scandalous, improper, or infringing upon copyright law.
14. **Exclusive Remedy.** Customer's sole and exclusive remedy for "EMS's" negligence, breach, or any other claim arising out of or connected with this Agreement shall be the return of the selling price paid for that portion of the work which is non-conforming. In no event shall "EMS" be liable for incidental, special, indirect, punitive, or consequential damages.
15. **Cancellation.** In the event of cancellation, before an order is on press, Customer shall be responsible for the entire amount related to creative work developed, materials and outside work purchased or ordered for the job. Customer shall also be charged for the press time, bindery hours, plateroom hours, etc., that have been scheduled for the order. If the order is cancelled within five (5) business days of scheduled press date, Customer shall be responsible for the entire order price.
16. **Applicable Terms.** Notwithstanding any different or additional terms that may be contained in any purchase order of the Customer to which "EMS" objects, "EMS's" agreement to perform the work is expressly conditional upon the Customer's assent to the terms and conditions contained in this Agreement. Customer accepts the terms and conditions of this Agreement by accepting the work which may be shipped or by failing to object to these terms and conditions within fifteen (15) days of the date of this Agreement.
17. **Assignment.** Customer may not assign this Agreement without "EMS's" prior written consent.
18. **Terms – Modification.** The terms and conditions of this Agreement and the related schedules shall constitute the entire agreement of Customer and "EMS" relating to the work to be performed under this Agreement and shall supercede all previous discussions, negotiations, and agreements of the parties and their respective agents and employees. No modification or amendment shall be binding on "EMS" unless identified as a modification or amendment of this Agreement and signed by an Officer of "EMS". Utilization of, reference to or acceptance of Customer's purchase order or purchase order number shall not constitute a modification of this Agreement.
19. **Waiver.** Waiver of any default of Customer by "EMS" shall not be a waiver of any other default or future default.
20. **Applicable Law.** The laws of the state of New Jersey shall apply to the interpretation and enforcement of this Agreement.
21. **Severance.** If any Court shall rule that any terms or conditions of this Agreement are unenforceable, invalid, or contrary to public policy, such terms shall be deemed to be removed from this Agreement by the mutual consent of the parties and all other terms and conditions shall remain in full force and effect.
22. **Enforcement.** Customer shall pay all reasonable expenses, including legal fees, expenses and court costs, and collection costs incurred by "EMS" in connection with the enforcement of the terms of this Agreement or defending against the Customer's claims, including negotiations and counseling, whether or not actual legal proceedings result.
23. **Cumulative Remedies.** All remedies of "EMS" hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.
24. **Notices.** All notices relating hereto shall be in writing and delivered in person to an officer of the party to which such notice is being given or mailed by certified mail, return receipt requested, to such party at the address specified in this document, or at such other address specified by like notice by either party to the other.