

## COM Express Source Standard Terms of Sales

### 1. Terms and Conditions

The terms and conditions in this Agreement govern all online advertising sales by COM Express Source ("Seller"). Terms and conditions in any other document by Seller or Buyer are expressly excluded. By executing any online advertisement purchase on the COM Express Source web site, Buyer acknowledges to have read this entire Agreement and agrees to abide by its entire content.

### 2. Pricing

Pricing for all advertisements shall be as listed on the COM Express Source web site. Seller reserves the right to change pricing on the web site at any time. Seller shall honor the price as published on the COM Express Source web site at the time of purchase by Buyer.

### 3. Payments

By executing an online purchase, Buyer agrees to make the appropriate payments at the time of purchase. It is Buyer's sole responsibility to ensure that it has the necessary funds available at the time of purchase. Should processing of the payment fail due to insufficient funds by Buyer, then Seller reserves the right to cancel Buyer's purchase immediately and unconditionally without prior notice. All sales shall be final with the placement of the purchased advertisement. Seller shall in no manner be obligated to refund Seller upon placement, except in the case where Seller fails to place the advertisement as spelled out in Clause 4, Placement.

### 4. Submission and Placement of Advertising Content

Submission. Buyer shall submit its advertising material in the formats prescribed on the COM Express Source web site. Buyer is solely responsible for the quality and

appearance of its material. Buyer must submit its material at the time of purchase or risk delay in placement of its advertisement.

Placement. Seller reserves the right to refuse placement of Buyer's materials in case a) no payments have been received from Buyer, and/or b) Seller determines that submitted content is inappropriate in anyway, including but not limited to language or imagery that may be offensive or controversial in nature. Accepted material will be placed in the month following the month in which the material was received, provided the material was received at least fourteen (14) calendar days before the end of the month. If received within fourteen (14) days of the end of the month, placement will occur in the second month following the month of submission, provided that Seller accepted the material. Seller shall maintain the placement for one (1) year from date of first appearance. Beyond this time period Seller has the right to maintain the placement at its sole discretion.

### 4. Copyrights and Indemnification

Buyer shall maintain all its copyrights to submitted content. Buyer shall be solely responsible for any copyright violations or other claims, including but not limited to offensiveness or controversy arising from this content. Buyer shall defend, indemnify, and hold harmless Seller from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any third party claims, suits, or proceedings arising out of or relating to the use, distribution, or sale of the products, unless proximately caused by the sole gross negligence or willful misconduct of Seller.

### 5. Limited Warranty

Seller shall make any provisions within reason to warrant online access to the COM Express Source web site for its subscribers for at least 20 calendar days per month. Any

circumstances, without exception, beyond Seller's control fall outside the scope of this warranty.

**6. Disclaimer of Warranties**

EXCEPT AS PROVIDED IN CLAUSE 5, SELLER MAKES NO WARRANTIES OR CONDITIONS REGARDING BUYER PURCHASES FROM SELLER, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SELLER SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

**7. Limited Liability**

Seller's liability and Buyer's remedies arising out of or related to this Agreement shall not exceed the Purchase Price paid by Buyer to Seller giving rise to such liability. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE MATERIALS, LOST PROFITS OR BUSINESS OPPORTUNITIES OR ANY OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR RELIANCE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. THESE LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**8. Governing Law and Jurisdiction**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without reference to

conflicts of law principals. Any dispute arising out of this Agreement shall be brought in, and the parties consent to personal and exclusive jurisdiction of and venue in the state and federal courts within Santa Clara County, California.

**9. Force Majeure**

Except for payment obligations, neither party shall be liable for damages for any delay arising out of causes beyond their reasonable control, including without limitation Acts of God, disputes, riots, wars, etc.

**10. Assignment**

Neither party may assign or delegate this Agreement or any of its licenses, rights or duties under this Agreement without the prior written consent of the other party, provided that Seller may assign this Agreement to a person or entity into which Seller has merged or which has otherwise succeeded to all or substantially all of Seller's business or assets and provided that Seller may assign rights to receive payments from Buyer to a third party.

**11. Partial Invalidity**

If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and will be interpreted to reflect the original intent of the parties.

**12. Waiver**

The failure of either party to enforce at any time the provisions of this Agreement shall in no way constitute a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.