

Eagle Direct Marketing
Standard Terms and Conditions Of List Purchase And Trading

1. Application of Conditions

- a) In these conditions the "supplier" means Eagle Mailing Limited t/a Eagle Direct Marketing, the "Buyer" means the individual firm, company or other party with whom the Supplier contracts. "The Materials" shall mean the lists, articles or things or any of them comprised in the Contract between the Supplier and the Buyer.
- b) Any agreement made between the Supplier and the Buyer for the sale or use of materials by the Supplier to the Buyer (the Contract) shall only be subject to these Terms and Conditions according to their provisions; any representation or warranty made by or on the behalf of the Supplier prior to the Contract whether orally or in writing is hereby expressly excluded and shall be of no effect.
- c) Unless otherwise agreed in writing by the Supplier, these conditions shall override any Terms and Conditions stipulated, incorporated or referred to by the Buyer in its order or any other document or during pre-contract negotiations. In the event of the Supplier entering into the Contract without having submitted a written quotation but in circumstances when the Buyer has had prior notice of these Conditions, then all materials supplied shall be subject to these conditions.
- d) The Supplier reserves the right to assign, sub-contract or sub-let the fulfilment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the consent in writing of the Supplier.
- e) The Supplier will not be prejudiced by any forbearance granted to the Buyer, and no waiver by the Supplier of any future breach.

2. Delivery and Time

- a) Whilst the Supplier shall make every effort to complete the Contract within the time quoted, time shall not be of the essence of the Contract unless specifically agreed by the Supplier in writing.

3. Suppliers Rights and Obligations

- a) Quotations of the number of names and addresses included in a list are approximate only.
- b) A small percentage of dummy names and addresses shall be included in all lists to enable the Supplier to monitor usage.
- c) Lists are not built up from any personal knowledge of any particular trade, and the Supplier relies upon the description of a list accorded to it by the list owner. No warranty is therefore given as to the accuracy of any list and the accuracy of any list is not a condition of Contract. Without prejudice to the foregoing, allowance must be made by the Buyer when the Buyer has requested expedited delivery of the materials.
- d) Whilst every effort is made by the Supplier to supply accurate information on the list, the Supplier does not guarantee the result of any mailing or accept liability in the event of failure.
- e) The Supplier guarantees a minimum of 92% deliverability in accordance with the Direct Marketing Association Standards, for Compiled Lists. However, in specific list classifications there is some degree of instability. Please check prior to ordering. Refunds of postage will be made in excess of 8% of the addresses sent on an order, provided that all the undeliverables are returned for list correction within 60 days after list despatch date. Where more than one copy of a list is supplied, guarantee applies to undeliverable pieces of mail from the first mailing only.
- f) Where lists have been supplied with telephone numbers and other information, no guarantee can be given to the accuracy due to the changes which occur covering telephone numbers and named contacts etc. However, the Supplier makes every effort to aim for a degree of accuracy which is at least 60% at named contact level by constantly updating lists from published sources.
- g) Liability is not accepted by the Supplier for any loss resulting from non-delivery of mail.
- h) Information concerning postal regulations will be given by the Supplier at the Request of the Buyer, but on the strict understanding that no responsibility is accepted by the Supplier for the accuracy of such information. The Buyer should refer to the Post Office guide.
- i) Damages for consequential loss or otherwise in respect of any claim by the Buyer arising out of or in connection with the materials or their supply or any breach of Contract by the Supplier shall, in any event, be limited to the price of the Contract. See also Term and Conditions 6

4. Buyers Rights and Obligations.

- a) The Buyer shall not be entitled to pass on, disclose or otherwise communicate the list or any part thereof or information extracted for purposes of resale to or use by any third party for promotional purposes. Whether or not the Supplier shall have seen copies of the items to be mailed by or on behalf of the Buyer, the Buyer warrants that such items contain nothing which infringes copyright or is defamatory, obscene, indecent, or otherwise illegal or unlawful, and shall keep the Supplier fully indemnified against losses, costs, charges and expenses of whatsoever nature arising out of or in connection with a claim that such items infringe copyright, are defamatory, indecent or otherwise illegal or unlawful whether or not such claim is upheld or justified.
- b) The Buyer shall be liable for loss or misuse of a list whilst in his care, or in the care of his agent, mailing bureau, computer bureau, etc. It will be deemed a misuse of a list if the list is supplied to a third party for promotional purposes or for resale.

5. Materials Supplied

- a) After completion of order the Supplier will destroy any surplus material after a period of 15 days unless either instructions are received for further storage or the Buyer advises that collection has been arranged at the Buyers cost.
- b) The Supplier reserves the right to charge storage of Buyer materials beyond 30 days from material receipt.
- c) The Buyer is liable for all risk insurance whilst storing at the Suppliers premises.

6. Guarantee (rider)

- a) If at any time the Supplier shall give a written guarantee as to the price and for the numbers of names and addresses included on a list, such guarantee shall be subject to an allowable discrepancy of 5% more or less.

7. Force Majeure

- a) The Supplier shall not be liable for any loss suffered or incurred by the Buyer as a result of the Supplier being unable to perform the Contract by reason of any act of God, war, lockout, strike, fire, Flood, delay in transit postal delay, riot or any other unexpected or exceptional cause or circumstance beyond the Supplier's control, in which case the Supplier shall be entitled to cancel the Contract or delay the performance thereof for as long as reasonably necessary.

8. Enforceability

- a) If at any time one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable under any law or is held by a court to be invalid, illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9. Jurisdiction

- a) These Conditions and each and every Contract pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England, and the Supplier and the Buyer hereby agree to submit to the jurisdiction of the English Court.