



## Online Advertising Terms and Conditions

The following terms and conditions (the "Standard Terms") shall be incorporated by reference into all Insertion Orders ("IO") submitted to 1105 Media Inc. ("1105") by Advertiser or its advertising agency:

- A. Invoices are rendered at date of publication.
- B. 1105 holds the Advertiser and its advertising agency jointly responsible for paying all duly authorized advertising inserted in or attached to **WEB SITE**. All past due payments may be re invoiced directly to the Advertiser, who will be held fully responsible for payment.
- C. Terms: Invoices are rendered on the publication date of each issue of a printed magazine or e-mail newsletter or digital edition of a magazine, or once per month in arrears for Web site advertising campaigns, and are due upon receipt. Agency commission will be disallowed on all past due invoices. In the event Advertiser's account is placed for collection, Advertiser and agency agree to pay 1105 for all reasonable collection costs and/or attorneys' fees incurred. Advertiser and agency also agree to pay finance charges on the unpaid account balance at the rate of 1-1/2% per month or the maximum permitted by law.
- D. 1105 will not be bound by any terms, conditions or provisions appearing on IOs or copy instructions which conflict with provisions of these Standard Terms, including, without limitation, sequential liability statements from advertising agencies. In the event of any inconsistency between an IO and/or copy instructions and these Standard Terms, the Standard Terms shall control. All advertisements will be reviewed by 1105 and are subject to approval by 1105.
- E. Except as otherwise expressly provided in the IO, positioning of advertisements within an 1105 Web site or on any page is at the sole discretion of 1105. 1105 may redesign or modify the organization, structure and/or look and feel of the Web site or advertising products or at any time and without notice. Further, 1105 does not guarantee that its Web site will be uninterrupted or meet the Advertiser's requirement.
- F. Advertiser shall deliver to 1105 the content, graphic images and other materials for the advertisement in a form and manner to be specified by 1105. 1105 will not be required to publish any advertisement that is not received in accordance with the foregoing and reserves the right, at 1105's sole discretion, to charge Advertiser, at the rate specified in the IO, for inventory held by 1105 pending receipt of acceptable materials from Advertiser, or publish in substitution for any prior advertisement submitted by Advertiser until such time as 1105 can reasonably begin publication of the advertisement set forth in the IO. Each IO shall specify: (a) the type(s) and amount(s) of Inventory to be delivered (e.g. impressions, clicks or other desired actions) (the "Deliverables"); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the IO (if applicable), (d) the start and end dates of the campaign, and (e) the identity of and contact information for any third party ad server ("3rd Party Ad Server"), if applicable. Other items that may be included are but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected. 1105 will make commercially reasonable efforts to notify Advertiser or its Agency, if applicable within two (2) business days of receipt of an IO signed by Advertiser if the specified inventory is not available. 1105 will use commercially reasonable efforts to comply with the IO including all Ad placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO, an Ad to the Site specified on the IO when such Site is called up by an Internet user. Any exceptions must be approved by Advertiser in writing. 1105 will use commercially reasonable efforts to provide Advertiser at least 10 business days, prior written notification of any material changes to the Site that would change the target audience or significantly affect the size or placement of the Ad specified in the affected IO. Should such a modification occur with or without notice, as Advertiser's sole remedy for change or notice, Advertiser may immediately cancel the remainder of the IO w/out penalty within the 10 day notice period. If 1105 fails to provide such notification, Advertiser may cancel the remainder of the IO within 30 days of such modification, and in such case shall not be charged for any affected Ads delivered after such modification. 1105 will submit or otherwise make electronically accessible to Advertiser promptly after acceptance of an IO final technical specifications, as agreed upon by the parties. Ad delivery shall comply with editorial adjacencies guidelines stated on the IO. 1105 shall make reporting available as specified in the IO. 1105 shall monitor delivery of the Ads, and shall notify Advertiser either electronically or in writing as soon as possible if 1105 believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange for make-good consistent with these Terms and Conditions. In the event that actually Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit) Advertiser and 1105 will make an effort to agree upon the conditions of a make-good placement either in the IO or at the time of the shortfall.
- G. All advertisements are accepted and published by 1105 on the representation that the agency and/or Advertiser are properly authorized to publish the entire contents and subject matter thereof.
- H. Advertiser hereby grants 1105 the right and license to use, reproduce, transmit, and distribute all creative materials supplied by or on behalf of Advertiser, including without limitation, all text, graphics, illustrations and photographs (the "Creative"). Advertiser represents and warrants that: (i) it has all the necessary rights in the Creative; (ii) the Creative does not violate any applicable law or regulation; and (iii) the Creative does not violate or infringe upon any third party right in any manner or contain any material or information that is defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or may otherwise result in any tort, injury, damage or harm to any person. Advertiser acknowledges that 1105 is relying on the foregoing representations and warranties. Advertiser agrees to indemnify, defend and hold 1105 and its affiliates, and their respective officers, directors and employees, harmless from and against any and all expenses and losses of any kind (including reasonable attorneys' fees and costs) incurred based upon a breach of any of the foregoing representations and warranties or in connection with any claim arising from or related to any advertisement supplied by Advertiser or its agents and run by 1105.
- I. All contents of advertisements are subject to 1105's approval. 1105 reserves the right to reject or cancel any advertisement, IO, URL link, space reservation or position commitment, at any time, for any reason whatsoever even if the advertising has been published previously by 1105.
- J. 1105 shall not be liable for any omitted, misplaced, or mispositioned advertisements.
- K. All orders are accepted by 1105 subject to change in rate upon notice from 1105.

- L. Orders may be cancelled by Advertiser within ten (10) business days of the effective date of a change of advertising rates without the imposition of a short-rate adjustment on Advertiser, provided that as of the date of cancellation Advertiser has published a sufficient number of ads to entitle Advertiser to the contract rate set forth on the applicable rate card.
- M. Advertiser will be short-rated if, within a 12-month period from the date of the first insertion, Advertiser does not use the amount of space upon which its billings has been based. Advertiser will be rebated if, within a 12-month period from the date of the first insertion, Advertiser has used sufficient additional space to warrant a lower rate than that at which it has been billed.
- N. Costs incurred by 1105 for production work on advertisements will be charged to the Advertiser regardless of whether or not the ad runs. Advertiser will be charged for any artwork, separations, halftone, shipping, or typography provided by 1105.
- O. 1105 will not be held responsible for consequential costs or other damages due to loss or damage of digital ad materials, art, proofs or transparencies.
- P. Reader response inquiries are provided as a service. 1105 disclaims all liability and responsibility for inaccuracies. Except as otherwise expressly provided in an IO accepted by 1105, 1105 makes no guarantee with respect to usage statistics or levels of impressions for any advertisement. An "impression" means each occurrence of a display of an advertisement.
- Q. 1105 expressly disclaims any and all warranties, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose with regard to its advertising services, including any and all oral and written information communicated about such services. To the maximum extent permitted by applicable law, in no event shall 1105 be liable for any consequential, incidental, direct, indirect, special, punitive, or other damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of this agreement, even if 1105 has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to advertiser. In no case, and under no theory of law, shall 1105's liability for any error exceed the amount due or paid for the advertisement giving rise to aforementioned error. Notwithstanding the foregoing, 1105 shall have no liability for (i) any failure or delay resulting from conditions beyond 1105's control; or (ii) errors in content or omissions in any creative or advertising materials provided by Advertiser. In the event of a breach by Advertiser, 1105 may terminate this Agreement immediately without notice or cure period, without liability to 1105. Either party may terminate this Agreement for convenience, with or without cause, upon thirty (30) days written notice to the other party. In the event of any termination, Advertiser shall remain liable for any amount due under an IO for advertisement delivered by 1105 and such obligation to pay shall survive any termination of this Agreement.
- R. Applicable if 3rd Party Server is used. 1105 will track delivery through its ad server and Advertiser will also track delivery through its proprietary or subcontracted 3rd Party Ad Server whose identity is set forth in the IO. Advertiser may not substitute the 3rd Party Ad Server specified in the IO without 1105's prior consent. Advertiser and 1105 agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, provide weekly placement-level activity reports to each other. In the event that 1105's ad server measurements are higher than those produced by the Advertiser's 3rd Party Ad Server by more than 10% over the invoice period, Advertiser will facilitate a reconciliation effort between 1105 and 3rd Party Ad Server. Agency/client will pay 1105 based on agency 3rd Party Ad Server reported data, plus a 10% upward adjustment to delivery. Where Advertiser utilizes a 3rd Party Ad Server 1105 will not bonus more than 10% above the Deliverables specified in the IO without prior written consent from the Advertiser. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for 3rd Party Ad served activity. Advertiser will not be charged by 1105 for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Advertiser notifies 1105 that the guaranteed or capped levels stated in the IO have been reached, 1105 will use commercially reasonable efforts to suspend delivery. When applicable, 3<sup>rd</sup> Party Ad Server tags shall be implemented so that they are functional in all aspects.
- S. These Standard Terms, together with IOs submitted by Advertiser, (i) shall be governed by and construed in accordance with the laws of the State of California and the United States, without giving effect to principles of conflicts law; (ii) may be amended only by written agreement executed by an authorized representative of each party; and (iii) constitute the complete and entire expression of the agreement between the parties, and shall supersede any and all other agreements regarding the subject matter hereof, whether written or oral, between the parties. Failure by either party to enforce any provision of these Standard Terms shall not be deemed a waiver of future enforcement of that or any other provision. Advertiser may not resell, assign, or transfer any of its rights hereunder.

### **Commission**

Accredited advertising agencies receive a 15% commission provided invoices are paid within 30 days. Production charges are not subject to agency commission.

### **Late Creative:**

If advertising materials are late, advertiser is still responsible for the media purchased pursuant to the IO. In the absence of a mutually acceptable resolution negotiated between the media company and an agency or advertiser, if the advertising material is late, the media company may elect to enforce the following: the advertiser is still responsible for the media purchase pursuant to IO and media company may run other paid advertising campaigns, public service announcements and/or house promotions until creative is received.

### **Cancellation Policy**

At anytime prior the serving of the first impression of the IO, agency/advertiser may cancel the IO with 30 days prior written notice without penalty. First impression shall be interpreted for ROS campaigns and sponsorships and other arrangements involving content association or integration such as Topic Microsite as the first day that ads are to be served according to the IO, for newsletters as the date of publication for that newsletter, and for Webcasts and E-seminars as the date of first promotional element (30 days prior to live event).