

PostMark, Inc.
TERMS AND CONDITIONS

1. The acceptance by POSTMARK, INC. ("PostMark") of any order by the Client or Customer (herein after called the "Client") for the sale of goods and any agreement by PostMark to provide services to the Client, including, but not limited to, those orders and services fulfilled or provided, as applicable, by PostMark pursuant to the estimate from PostMark, shall be subject to the following terms and conditions, unless otherwise agreed to in writing:
2. **ESTIMATE.** An estimate or offer, which shall be written and dated, made by PostMark to supply an order or provide services to Client shall expire within 30 days of PostMark making such estimate or offer to the Client. All prices are based on material costs at the time of the estimate. Any acceptance of an estimate or offer by the Client after such 30-day period shall be deemed a counteroffer and may be accepted or rejected by PostMark in its sole discretion.
3. **POSTAGE ESTIMATE.** An estimate for a postage amount represents PostMark's best approximation of domestic postage costs based on the information supplied and is not a firm commitment. Until the mailing list and materials associated with the mailing are available to be evaluated by PostMark, PostMark makes no representation or warranty that the postage estimate will be the actual amount of the postage. Postage for foreign mail is not included in the estimate unless specifically requested.
4. **CLIENT SPECIFICATIONS.** PostMark's estimates for a Client's order shall be based on the specifications provided by the Client. The Client shall be solely responsible for the accuracy of supplied data and specifications for any order to be fulfilled or services to be provided by PostMark, including any inaccuracy of such data or specifications resulting from the transmission of such data to PostMark, whether or not the Client caused such inaccuracy in transmission to PostMark. In the event that the specifications stated by the Client are inaccurate in any manner, PostMark, in its sole discretion, may terminate, revoke or rescind its estimate or offer to supply Client's order and may re-estimate such order based upon such modified, revised or corrected specifications.
5. **ELECTRONIC MANUSCRIPT OR IMAGE.** The Client shall be solely responsible for retaining any copies of the original files, records, completed work or samples therefrom relating to any order supplied by PostMark, and PostMark shall have no duty or obligation to retain any original or any copy of any order, sample, file, or other materials related to any order supplied by the Client or to the Client. Until the mailing list and materials associated with an order submitted by the Client is evaluated by PostMark, PostMark makes no representation or warranty that PostMark has the capacity or ability to execute such project and PostMark does not assume any obligation or liabilities arising from PostMark's incapacity or inability to perform an order according to such specifications. PostMark will promptly notify the client upon determining any such incapacity or inability. Any and all costs and expenses incurred by PostMark for any special translating, editing, or programming services, equipment, or software reasonably necessary, as determined by PostMark in its reasonable discretion, to access, operate, or use files or comply with the specifications supplied by the Client for fulfillment of an order will be charged to the Client; provided, however, Client shall not be responsible for additional cost or expense unless such additional cost has been approved in writing by the Client.
6. **ALTERATIONS.** Notwithstanding PostMark's rights pursuant to Paragraphs 2 and 5 above, if Client alters, modifies or revises the original specifications requested by the Client and PostMark provides the Client with an estimate of the additional cost or expenses required, which is approved by Client, PostMark shall be authorized to fulfill such services and orders according to such alterations, modifications or revisions and all costs or expenses incurred by PostMark as a result of such alterations, modifications or revisions to the original specifications shall be charged to the Client at PostMark's current rates, at the time such alterations, modifications or revisions are requested by the Client.
7. **PRODUCTION SAMPLES.** PostMark will not furnish the Client with examples or samples of addressing from the production setup unless specifically noted otherwise in the project specifications and estimate. Requests by Client for review and approval of presorted lists and production setup should be included in project planning data and specifications or will be considered a change in project scope, subject to additional charges.

8. **COLOR PROOFING.** The Client acknowledges and agrees that because of differences in equipment, paper, inks, and other conditions between production proofs and production operations, a reasonable variation in color between production proofs and the completed work is to be expected and shall constitute acceptable performance, provided such colors are substantially similar.

9. **FONTS.** The Client may provide screen or printer fonts not owned by PostMark. The Client represents that no screen or printer fonts provided by the Client will violate any third party's copyright, trademark or other rights in or to such screen or printer fonts. The Client must provide PostMark with these screens and printer fonts each time they are required for imaging.

10. **COPYRIGHT, TRADEMARK.** The Client represents and warrants that neither the finished goods ordered by Client nor the materials supplied for reproduction or provided to PostMark in connection with the printing of the products or the fulfillment of Client's order will violate any copyright or trademark law or any other law, contract or agreement protecting a third-party's intellectual property or other interests or rights. The Client shall ensure that the Client and PostMark have the necessary rights to use, license, distribute, sell, or otherwise handle, as applicable, the items, materials, and finished work produced by PostMark pursuant to the Client's order, including the rights to use and install software, excerpted text, electronically-generated illustrations, photographs and transparencies supplied for scanning, and digitized artwork supplied on disk or other media. The Client shall be solely liable for any failure to comply with its obligations hereunder. PostMark does not assume any liability arising from PostMark's, the Client's, or any other person or entity's use or misuse of copyrighted, licensed or trademarked items, materials or finished work produced or used by PostMark in connection with a Client's order provided that PostMark does not use the material provided contrary to the Agreement and any written instructions received by the Client. Client shall indemnify and hold harmless PostMark for any damages, costs, attorney's fees, other fees, judgements arising from Client's supplying PostMark with copyright and/or trademark protected material to which Client does not have ownership rights or the right to publish such material.

11. **CLIENT'S PROPERTY.** PostMark will maintain limited fire and extended coverage insurance on the Client property in PostMark's possession. PostMark's liability for any of the Client's property will not exceed the amount recoverable by PostMark from insurance. Clients should maintain their own off site coverage for their materials and property with the Client's insurer. PostMark maintains security at its facility as appropriate for materials that have value only to the Client and ships using the carriers standard insurance. If the materials have value such that there are additional security or insurance needs, those needs must be communicated in writing to PostMark and PostMark must agree with any requested security or insurance changes.

12. **DELIVERY.** Unless otherwise specified, the goods shall be delivered F.O.B. PostMark's Winston-Salem, North Carolina location. The Client shall be responsible for all freight costs and delivery charges incurred in the delivery of the goods from PostMark to the Client or to the Client's designee. Delivery charges shall be charged to the Client at current rates, at the time of delivery. Charges for delivery of materials and supplies from the Client to PostMark or vice versa are not included in estimates unless specified. Title shall be conveyed and transferred to the Client when finished goods are delivered to the Client or Client's designee. Postmark's insurance coverage as set out in Paragraph 11 above shall cease as soon as Client takes delivery or the shipper takes possession and control of the goods.

13. **CUSTOMER-FURNISHED MATERIALS.** Materials furnished by the Client or by other suppliers designated or authorized by the Client on the Client's behalf shall be verified by delivery tickets, and PostMark bears no responsibility or liability for discrepancies between delivery tickets and actual counts. Client-supplied materials must be delivered according to PostMark's and US Postal Service specifications for the planned project including length, width, weight, thickness, pick resistance. Artwork, film, color separations, dies, tapes, disks and any other materials furnished by Client must be usable by PostMark without modification, alteration or repair. Paper supplied for use with PostMark's lasers must be laser compatible including any printing or alterations made to the paper after manufacture. Client shall pay PostMark for any pre-authorized modification, alteration or repair work performed by PostMark on materials supplied by Client at PostMark's current rates.

14. **MAILING LISTS.** The Client acknowledges and agrees that because of US Postal Service (USPS) requirements, USPS databases, and the software used to meet those requirements, the addresses provided for mailing

may be altered in both form and substance. PostMark does not assume any liability arising from the alterations or restructuring of the addresses by the various software or processes required or approved by the USPS.

15. **TERMS/CLAIMS/LIENS.** Net cash 30 days, unless stated otherwise. Service charge of 1.5% per month (18% per annum) will be added on unpaid postal advance 15 days after advance. Service charge of 1.5% per month (18% per annum) will be added on unpaid non-postage balances 30 days after billing date. Reasonable attorney fees and costs of collection shall be added to accounts past due 120 days. Claims for damages or shortages must be made in writing by the Client no later than ten (10) calendar days after PostMark delivers such products to the Client's customers or to the physical possession of Client or Client's designee or shipper at a location other than PostMark's warehouse or business location. PostMark's liability will be limited to the estimated selling price of the defective goods, without additional charge for special or consequential damage or as specified.

16. **EXPRESS WARRANTIES.** PostMark warrants that the goods supplied hereunder shall conform to the descriptions stated in PostMark's proposal and Client's order and in the Agreement and conform substantially to the finished goods previously provided to PostMark by the Client except as may be agreed to by PostMark and the Client. PostMark shall convey good title to the goods supplied hereunder. Client agrees that all sketches, copy, dummies, and preparatory work shown to the Client by PostMark are intended as illustrations of the general type and quality of work and are not intended to represent the actual work performed.

17. **DISCLAIMER/LIMITATION OF LIABILITY.** THERE ARE NO WARRANTIES OF MERCHANTABILITY NOR OF FITNESS OF SAID GOODS FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY OTHER WARRANTY EXPRESSED OR IMPLIED EXCEPT AS HEREINABOVE SET FORTH. POSTMARK'S LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT IS EXPRESSLY LIMITED TO REPLACEMENT BY POSTMARK OF NON-CONFORMING GOODS OR, AT POSTMARK'S OPTION, IF THE NONCONFORMING OR DEFECTIVE GOODS CONSTITUTE NOT MORE THAN TWENTY PERCENT (20%) OF THE GOODS SHIPPED, PAYMENT NOT TO EXCEED THE SUM OF THE PURCHASE PRICE PAID TO POSTMARK FOR THE GOODS OR SERVICES FOR WHICH DAMAGES ARE CLAIMED. POSTMARK SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. No charges or expenses incident to any claims will be allowed unless approved by an authorized representative of PostMark. Goods shall not be returned to PostMark without PostMark's permission.

18. **FINANCIAL CONDITION.** If Client's financial condition (to be determined in the sole discretion of PostMark) at any time does not justify continuance of performance by PostMark hereunder, PostMark may require full or partial payment in advance.

19. **INDEMNIFICATION.** The Client agrees to hold PostMark harmless and to indemnify and otherwise defend PostMark against all claims, demands, actions, proceedings, costs and expenses, including reasonable attorneys' fees arising from (i) the Client's breach of the terms and conditions contained herein, the Agreement or any other contract, agreement or understanding between the Client and PostMark, or (ii) any claim by a third-party relating, directly or indirectly, to PostMark's performance of its obligations under the Agreement or any other contract, agreement or understanding between PostMark and the Client, including, but not limited to, any claim or threatened claim by a third-party that its copyright, trademark or other rights in or to any items, materials or finished work used, produced, or shipped by PostMark in connection with fulfilling an order have been violated or infringed upon. PostMark reserves the right to refuse to engage in the preparation and manufacture of anything it deems as illegal, libelous, scandalous, improper, or in violation of any law or regulation.

20. **TAXES.** All taxes and assessments levied by any government authority are the responsibility of the Client, and PostMark will add all amounts due to the Client's invoice. No tax exemption will be considered operative by PostMark unless an "Exemption Certificate" or other official proof of exemption accompanies the purchase order. If it is determined that additional tax payments are due after the Client has paid an invoice, the Client is obligated to remit the difference to the taxing authority or immediately reimburse PostMark for any additional taxes PostMark remitted on the Client's behalf.

21. **NOTICES.** All notices, requests, demands, and other communications required or desired to be given hereunder shall be in writing and shall be deemed to have been given: (i) if personally delivered to either party or its designee, upon such delivery; (ii) if mailed by certified mail, return receipt requested, postage pre-paid, appropriately addressed for mailing, upon the earlier to occur of actual receipt or three (3) days after such mailing; or (iii) if sent by regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, appropriately addressed for overnight delivery, upon the earlier to occur of actual receipt or the next "business day" (as hereafter defined) after being sent by such delivery. Notices to PostMark shall be addressed to

PostMark, Inc.,
390 Cassell Street
Winston-Salem, NC 27107

and to the Client at the address given on the client's information sheet. Notices delivered by other means shall be deemed given only upon actual receipt. Addresses may be changed by written notice given as provided herein and signed by the party giving the notice.

22. **GOVERNING LAW.** The terms and conditions contained herein, the Agreement and any other contract or agreement between PostMark and the Client shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of North Carolina and shall be deemed to have been delivered in the State of North Carolina. PostMark and the Client agree and hereby consent to the non-exclusive jurisdiction of any state or federal court for any geographical area which includes the City of Winston Salem, North Carolina, with respect to any proceedings hereunder and waive any objection to any such proceedings based on improper venue or forum non conveniens.

23. **CAPTIONS.** Captions are used herein for purposes of reference only and shall not limit or otherwise affect the provisions contained herein.

24. **WAIVER.** The waiver of any right under the terms and conditions contained herein, the Agreement or any other contract or agreement between PostMark and the Client in any particular instance or instances must be in writing and shall not, unless so specified in writing by such party, be construed as a continuing waiver.

25. **FORCE MAJEURE.** In the event of fire, accidents, government acts, strikes or other labor disputes, acts of God, war, riots, acts of war, acts of terrorism, and other civil disturbances, or any other conditions beyond either party's reasonable control which prevents manufacture, transportation, delivery, or acceptance of the goods or services provided by PostMark, the affected party may, without any liability or penalty, delay performance, delivery, manufacture, transportation or acceptance by written notice, until such event and the consequences of such event of force majeure shall have terminated. Said notice of an event of force majeure shall contain the reason for any delay which the notifying party considers to be an event of force majeure under the provisions of this paragraph.

26. **SEVERABILITY.** The terms and conditions contained herein are severable and if any term, condition or portion of any term or condition is stricken or declared illegal, invalid or unenforceable for any reason whatsoever, the legality, validity or enforceability of the remaining items and conditions shall not be affected thereby.

27. **CONFIDENTIAL INFORMATION.** PostMark recognizes and acknowledges that the Client may disclose to PostMark certain business and technical information that has an actual or potential commercial value (hereinafter referred to as "Client Trade Secrets"). Such Client Trade Secrets are hereby acknowledged to include, without limitation, design concepts, artwork, text, program materials and ancillary materials, and all variations and outgrowths thereof, which relate to the products to be printed, mailed, and produced by PostMark for Client. PostMark agrees that all Client Trade Secrets shall be the sole property of Client and its successors and assigns. PostMark hereby acknowledges that the items listed above illustrate items which are Client Trade Secrets and understands that Client presently may own or hereafter acquire or develop Client Trade Secrets other than those listed above, which shall be subject to the same restrictions upon use and disclosure as the Client Trade Secrets listed above. PostMark agrees that, except as may be necessary to facilitate PostMark's production, mailing, and printing of products for Client, PostMark will not use or disclose to third parties any Client Trade Secrets for any reason or purpose whatsoever, or make use of any Client Trade Secrets for its own purposes or for the benefit of any person. Immediately upon request from Client, PostMark will deliver to Client all materials (and all copies thereof

excluding copies maintained in PostMark's archive/backup procedures), computer disks and any other information stored by computer hard drive or by electronic means related to Client's business, Client's products or Client's Trade Secrets furnished to PostMark. Written notice from Client is required requesting PostMark exclude Client's data or electronic files from the archive/backup procedures used by PostMark during the normal course of its operations. Without such written notice, Client data and electronic files will be included in PostMark's archival/backup system which includes storage in facilities other than PostMark's and from which data and electronic files can not be eliminated individually.

28. **BINDING EFFECT.** All of the terms of the terms and conditions contained herein, the Agreement and other contracts, agreements or understanding shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as may be applicable, of PostMark and the Client.

29. **ASSIGNMENT.** None of the rights or obligations of PostMark or the Client may be assigned or delegated without the prior written consent of the non-assigning party.

30. **AMENDMENT.** The terms and conditions may be amended or supplemented only by an instrument in writing signed by PostMark and the Client.

31. **ENTIRE AGREEMENT.** The terms and conditions contained herein embodies the entire agreement and understanding between PostMark and the Client with respect to the matters contemplated herein.

32. **RELEASE OF INFORMATION TO PUBLIC.** PostMark shall not, without the prior written consent of Client, make any public release of information concerning the goods and services to be provided nor use the name of Client or its products in any advertising or publicity.