

Terms and Conditions

1. Copy Delivery & Approval

Copy Delivery and Approval. Advertiser must deliver to The Miller Group, LLC the content of the advertisement Advertiser is contracting The Miller Group, LLC to broadcast (the "Copy") no less than three (3) days prior to the desired email broadcast date. All Copy shall be subject to The Miller Group, LLC's approval. The Miller Group, LLC reserves the right to reject any Copy that advertises or promotes any product or service involving illegal activity, illegal products, illegal product paraphernalia, sexual paraphernalia, adult films or other media, gambling, weapons, illicit activities, chain letters, pyramid fund raising, or similar types of material. By reserving this right, The Miller Group, LLC shall not be legally obligated for any failure to advise Advertiser of the nature of any such Copy. Further, no Pop Up's or Pop Unders may be launched by Advertiser form any hypertext link or URL, which emanates from any Copy. Do to server scheduling we don't provide specific Time of Day "TOD" broadcast.

2. Details of Broadcast

The email messages broadcast by The Miller Group, LLC shall identify the source of the recipient's data collection and shall contain an opt-out feature that allows the recipient to electronically communicate his desire to be removed from the The Miller Group, LLC (or affiliate) database.

3. Hardware, Software and Database

The Miller Group, LLC shall obtain and maintain the computer hardware and software necessary to perform its obligations under these Terms and Conditions. Such hardware and software shall not be dedicated hardware or software. Nothing in these Terms and Conditions shall grant any right, title or interest in or to the The Miller Group, LLC (or affiliate) database, hardware or software.

4. Payment

Advertiser shall pay in full the fees charged by The Miller Group, LLC in the invoice. If Advertiser fails to pay the full amount of the charges detailed in any The Miller Group, LLC invoice within thirty (30) days of such invoice, the unpaid amounts of such invoice shall accrue interest at a rate of 18% per annum. Additionally, Advertiser agrees to pay all cost of collection without limitation, including, but not limited to all cost of collection, legal fees and any and all additional costs incurred for the debt collection of all products and/or services provided. Past due accounts over 30 days delinquent from due date will be charged the full retail value including the full value of promotional or agency discounted services and products as listed on the retail pricing matrix within this website. Collection accounts may at the discretion of The Miller Group, LLC be reported to any or all credit reporting agencies. By your signature on the Broadcast Order form and/or Insertion Order you acknowledge that you personally guarantee both as an individual and officer or authorized agent of your company the full payment of the products and services rendered as indicated.

5. Late Fees, NSF Fees & Credit Card Chargeback's

In addition to the terms described in Section 4, if Advertiser fails to pay the full amount of the charges detailed in any invoice within thirty (30) days of such invoice, Advertiser shall pay a Late Fee of 18% annual interest rate charge, or the highest rate allowed by law.

Returned checks are subject to a \$35 NSF charge per return.

All products including data sales, data appends, email broadcasts and all credit card purchases are final. Credit cards transactions waive any right to charge back for any product or service provided by, or on behalf of The Miller Group, LLC.

6. Indemnification by Client.

Client shall indemnify, defend, and hold harmless The Miller Group, LLC from and against any and all third party claims, suits, and liabilities (including all reasonable costs, expenses, and attorneys' fees actually paid) arising from or in connection with: (a) the products and/or services offered/advertised on the Client Website; (b) the content of the Copy; (c) the content of the Client website; (d) data provided by any third party beyond the control of The Miller Group, LLC for email broadcasting or (e) Client's breach of any of its obligations, representations, or warranties under this Agreement. The Miller Group, LLC shall promptly notify Client in writing of all such claims and shall accommodate Client's reasonable requests for cooperation and information. The Miller Group, LLC shall agree to Client's sole control over the defense and any settlement of such claims.

7. WARRANTIES

The Miller Group, LLC MAKES NO WARRANTY WHATSOEVER AS TO THE EMAIL ADVERTISEMENTS, EXPRESS OR IMPLIED. THIRD PARTIES PROVIDE THE EMAIL ADVERTISEMENTS ON AN "AS IS" BASIS. The Miller Group, LLC EXPRESSLY DISCLAIMS ANY WARRANTIES THAT COULD BE IMPLIED IN CONTRACT, IN LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, COMPLETENESS, RELIABILITY OR PERFORMANCE OR ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL The Miller Group, LLC BE LIABLE FOR INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE LOSS, DAMAGE OR EXPENSE (INCLUDING LOST PROFITS). THE LIMIT OF The Miller Group, LLC's LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) FOR ANY AND ALL CLAIMS RELATED TO THESE TERMS AND CONDITIONS SHALL NOT IN THE AGGREGATE EXCEED THE FEES PAID TO The Miller Group, LLC UNDER THE INVOICE.

9. Force Majeure

Neither party shall be liable for delays or nonperformance of these Terms and Conditions caused by strike, fire or accidents, nor shall either party be liable for delay or nonperformance caused by lack of availability of materials, fuel or utilities or for any other cause beyond its control.

10. Assignment

Neither party may assign its rights or obligations under these Terms and Conditions without the prior written consent of the other party.

11. Relationship of the Parties

The parties are independent contracting entities, and there is no partnership or agency relationship between them.

12. Entire Agreement

Except as modified or supplemented by a writing executed by both parties, the Terms and Conditions described herein and in the attached invoice, incorporated by reference herein, are the only representations, warranties, and understandings between the parties with respect to the products and/or services described herein.

13. Disputes

Each party hereby waives any right to a trial by jury in the event of any controversy or claim relating to these Terms and Conditions. The law of the State of Massachusetts shall apply to any resulting claim or action, and the exclusive jurisdiction and venue for any proceeding brought pursuant to these Terms and Conditions shall be Bristol County, Massachusetts.

14. Severability

Should any provisions of these Terms and Conditions be found invalid or unenforceable, all such provisions are to be enforced to the maximum extent permitted by law, and beyond such extent shall be deemed severed from these Terms and Conditions without affecting the validity or enforceability of any other provision.

15. Headings

The headings of these Terms and Conditions are for convenience only and shall not be used to construe the meaning of this Agreement.

CPM Terms

1. Definitions.

- (a)** "Acquisition" has the meaning set forth on the Invoice.
- (b)** "Agreement" shall mean these Terms and Conditions together with the Invoice.
- (c)** "Client" has the meaning set forth on the Invoice.
- (d)** "Client Website" means the Internet page at the URL provided by Client to The Miller Group, LLC for inclusion in the Copy.
- (e)** "Confidential Information" means any non-public information provided by one party to the other during the Term. For purposes of this Agreement, Confidential Information shall not include information the receiving party can document: (i) was or has become readily available to the public without restriction through no fault of the receiving party, its employees, or its agents; (ii) was received without restriction from a third party lawfully entitled to possess and disclose such information; (iii) was rightfully in possession of the receiving party without restriction prior to the other party's disclosure of such information to the receiving party; or (iv) was disclosed pursuant to the written consent of the other party.
- (f)** "Copy" means the content of the advertisement that Client provides to The Miller Group, LLC for email broadcast hereunder.
- (g)** "CPM" means Cost Per Thousand e-mails sent.
- (H)** "Invoice" means the The Miller Group, LLC invoice signed by Client, and specifically incorporating these Terms and Conditions therein.

(i) "Opt-In Email Recipient" means a person that has consented to receive promotional information about products and services via e-mail by subscribing at an The Miller Group, LLC or an The Miller Group, LLC affiliate Internet website.

(k) "Privacy Header" means a notice to recipients of the Copy that informs the recipient: (i) of the location of such recipient's subscription to The Miller Group, LLC's or The Miller Group, LLC's affiliate's opt-in database; and (ii) of an electronic method by which such recipient can unsubscribe from future broadcasts. The Privacy Header shall also include a mechanism by which recipients may electronically communicate to The Miller Group, LLC the desire to unsubscribe.

16. Term.

This Agreement shall become effective on the date that Client signs the Invoice and, unless otherwise stated on the Invoice, shall continue in effect for six (6) months.

17. Fulfillment.

The Miller Group, LLC shall deliver an e-mail message to Opt-In Email Recipients on behalf of Client. Such e-mail message shall contain the Copy, including a tracking URL that links to the Client Website, and a Privacy Header. The Miller Group, LLC shall remove recipients that have communicated a desire to unsubscribe from The Miller Group, LLC's database of Opt-In Email Recipients. Except as otherwise expressly provided in the Invoice, the timing and frequency of the Client broadcasts, as well as the number and selection of the Opt-In Email Recipients that will receive such broadcasts, shall be at The Miller Group, LLC's sole discretion.

18. Tracking and Reporting.

Except as otherwise expressly provided in the Invoice, Client shall provide to The Miller Group, LLC a monthly report, certified by signature of an officer of Client, detailing the number of Acquisitions. Client shall keep, in its usual place of business, books of accounts and other documents relating to its receipt and fulfillment of Acquisitions that may be necessary or proper to conveniently ascertain the amounts payable to The Miller Group, LLC under the terms of this Agreement. Client shall permit an The Miller Group, LLC authorized representative to inspect such books of accounts and other documents during regular business hours upon ten (10) days' notice from The Miller Group, LLC. Such inspection shall be at The Miller Group, LLC's sole expense, unless the inspection reveals that the amounts due The Miller Group, LLC exceed the amounts actually reported as due by Client ("Discrepancy") by five percent (5%) or more, in which case Client shall pay to The Miller Group, LLC the costs of the inspection revealing the Discrepancy. For any Discrepancy, Client shall pay to The Miller Group, LLC the full amount of the underpayment, together with interest thereon at the rate of eighteen percent (18%) per annum.

19. Unjust Enrichment; Liquidated Damages.

Client agrees that it shall seek to benefit from the Client broadcast only: (a) to increase exposure of the Client Website, the products and/or services advertised in the Copy, and Client's marks; and (b) to generate Acquisitions. Accordingly, Client warrants that during the Term of this Agreement, the Client Website shall not contain popup windows, banner or other advertisements, sweepstakes registration boxes, newsletter subscription boxes, phone numbers, hyperlink(s) to a web page containing any of the foregoing, or any other method of gathering e-mail addresses or generating sales (that do not qualify as Acquisitions hereunder) from recipients of the Client broadcast. Clients supplying data for broadcasting shall be monetarily liable for all damages including legal fees and the cost of collection that The Miller Group, LLC may occur due to improperly obtained data or data that contains "spam Traps" or in anyway causes an adverse effect to the daily business of TMG, LLC.

20. Maintenance of the Client Website.

Client shall make a good faith effort to ensure the Client Website remains fully operational and accessible to recipients of the Client broadcasts during the Term of this Agreement. Further, during the Term of this Agreement, Client shall make no changes to the Client Website or to the products and services offered on the Client Website that would likely result in a reduction of compensation payable to The Miller Group, LLC hereunder without The Miller Group, LLC's express prior written consent.

21. Confidentiality.

For a period of three (3) years, beginning on the date client signs the Invoice, each party will keep strictly confidential all Confidential Information disclosed by the other party, except to the extent an applicable governmental law, order, decree, regulation, rule, or process requires disclosure. In the event of such required disclosure, the receiving party shall provide written notice thereof to the disclosing party as soon as reasonably possible, and shall reasonably cooperate with the disclosing party in resisting the disclosure of or obtaining confidential treatment for such Confidential Information.

22. Applicable Law, Jurisdiction, and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to principles of conflict of laws. The exclusive jurisdiction and venue for any proceeding brought pursuant to this Agreement shall be Broward County, Florida.

23. Entire Agreement.

Except as expressly modified or supplemented by a writing executed by both parties on or after Client signs the Invoice, the provisions of these Terms and Conditions and the Invoice are the only representations, warranties, and understandings between the parties with respect to the products and/or services described in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right or of any subsequent breach or default.

24. Severability.

Should any provision of this Agreement be found invalid or unenforceable, all such provisions are to be enforced to the maximum extent permitted by law, and beyond such extent shall be deemed severed from this Agreement without affecting the validity or enforceability of any other provision.

25. Headings.

The headings and captions in these Terms and Conditions are for convenience only and are not to be used to construe the meaning of the provisions of these Terms and Conditions.

26. Time restrictions for broadcasting.

Unless otherwise specified within the Insertion Order all email broadcasts must be broadcasted within 60 days following the date of the first broadcast. Broadcasts that exceed the 60 day time frame will be forfeited without recourse.

eMail Append Terms

1. Append Services

Within three (3) days of executing the The Miller Group, LLC invoice (hereinafter the "Invoice"), by reference herein, Client shall deliver to The Miller Group, LLC the Customer Database, defined as a compilation of records, each consisting of the first and last name and full physical address of a customer of Client. The Miller Group, LLC shall provide an email address, when available, matching each corresponding record, and shall return the Customer Database to Client in a commercially expeditious manner, or as otherwise specified in the Invoice. The Miller Group, LLC shall not transfer the Customer Database to any third party, nor use the Customer Database, for any purpose other than as provided in these Terms and Conditions or the Invoice.

2. Payment

Client shall pay in full the fees set forth in the Invoice. Such fees shall be calculated by multiplying the indicated rate by the number of email addresses The Miller Group, LLC matches and appends to the Customer Database. If Client fails to pay the full amount of the charges detailed in any Invoice by the earlier of fifteen (15) days after receipt of such Invoice or the time specified on the Invoice, the unpaid amounts of such Invoice shall accrue interest at a rate of 18% per annum or, if less, the maximum permitted by law. Additionally, Client agrees to pay all of The Miller Group, LLC's cost of collection of such charges, including without limitation The Miller Group, LLC's reasonable attorneys' fees.

3. Late Fees

In addition to the terms described in Section 2, above, if Client fails to pay the full amount of the charges detailed in any Invoice within fifteen (15) days of receipt of such Invoice, Client shall pay The Miller Group, LLC a Late Fee in the amount of 5% of the charges detailed in such Invoice.

4. Indemnification

a. By Client – Client shall indemnify, defend, and hold harmless The Miller Group, LLC against all third party claims, actions, and liabilities (including all reasonable costs, expenses, and attorneys' fees) arising from or in connection with: (i) Client's sale or resale of, promotion of, or misrepresentation about the Client Database; (ii) Client's breach of any of its obligations, representations, or warranties under these Terms and Conditions (including those set forth in the Invoice); and (iii) any allegation that the Customer Database and/or any communication with the Customer Database violates any third party's Intellectual Property Rights or privacy rights. The Miller Group, LLC shall promptly notify Client in writing of all such claims and shall accommodate Client's reasonable requests for cooperation and information.

b. By The Miller Group, LLC – The Miller Group, LLC shall indemnify, defend, and hold harmless Client against all third party claims, actions, and liabilities (including all reasonable costs, expenses, and attorneys' fees) arising from or in connection with: (i) The Miller Group, LLC misuse of the Client Database in violation of these Terms and Conditions; and (ii) The Miller Group, LLC breach of any of its obligations, representations, or warranties under these Terms and Conditions. Client shall promptly notify The Miller Group, LLC in writing of all such claims and shall accommodate The Miller Group, LLC reasonable requests for cooperation and information.

5. WARRANTIES

The Miller Group, LLC MAKES NO WARRANTY WHATSOEVER AS TO THE EMAIL ADDRESSES, EXPRESS OR IMPLIED. The Miller Group, LLC EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES THAT COULD BE IMPLIED IN CONTRACT, IN LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, COMPLETENESS, RELIABILITY, OR PERFORMANCE OR ARISING FROM USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.

6. LIMITATION OF LIABILITY

IN NO EVENT SHALL The Miller Group, LLC BE LIABLE FOR INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE LOSS, DAMAGE, OR EXPENSE (INCLUDING LOST PROFITS). THE LIMIT OF The Miller Group, LLC'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE, OR OTHERWISE) FOR ANY AND ALL CLAIMS RELATED TO THESE TERMS AND CONDITIONS OR THE INVOICE SHALL NOT IN THE AGGREGATE EXCEED THE FEES PAID TO The Miller Group, LLC UNDER THE INVOICE.

eMail Campaign Creative Guidelines and Procedures

- 1. Text version of the campaign - should be in an ASCII text format (.txt).**
- 2. HTML version of the campaign - should be in a HTML format *.html or *.htm.
(we do not accept HTML files created in MS-Word)**
- 3. If the HTML has an images in it, then all images must be in the email with the text & HTML files.**
- 4. Approval test will be sent within 24hrs after we receive complete creative.**
- 5. Live Broadcast will be sent within 24hrs after test is approved by client.**
- 6. Email creative weight should not exceed 50kb**
- 7. Creative Images are to be provided as GIF / JPG or PSD formats**
- 8. Effective deliverability results of creative(s) provided by client or third parties
outside the control of TMG is the sole responsibility of client.**

Data Sales

- 1. All Data sales are final and are non-refundable.**
- 2. All Data sales are licensed only to the end user for a period of one year from the date of purchase. Agencies and any other 3rd party shall have no rights to data purchased for or on behalf of any of their client(s).**
- 3. All Data sales include random seeded records.**
- 4. Any unauthorized sale or distribution of data supplied by The Miller Group, LLC is strictly prohibited. Each unauthorized data used or sale shall constitute an additional purchase of the same data at full list price as listed on this websites pricing matrix for each use.**
- 5. Possession and/or unauthorized used of data sold to specific client(s) shall constitute criminal theft and will be reported to appropriate law enforcement as such for criminal and/or civil prosecution.**
- 6. The Miller Group, LLC does not warrant the deliverability of email data broadcasting from third parties outside the control of The Miller Group, LLC**