

**TERMS AND CONDITIONS OF CONTRACT**  
**For Bulk Marketing Materials Orders**

1. **Parties and Contract.** These Terms and Conditions are incorporated into, and are a part of, the Advertising Contract. Accordingly, as used herein, the term “this Contract” includes (i) the document titled “Advertising Contract” and (ii) these Terms and Conditions. In the event of a conflict between the document titled “Advertising Contract” and these Terms and Conditions, these Terms and Conditions shall govern. This Contract also includes the terms of any accompanying addendum. “We,” “our” or “us” means AGI Publishing, Inc., a California corporation doing business as: The Buy Local Media Group, Valley Yellow Pages, and myyp.com. “You” or “your” means the person or other legal entity shown after “Advertiser.” This Contract is not binding on us until accepted by our management, which may be conditional.
  
2. **Payment and Delivery.** Full payment for your order is due at the time the order is placed. The order will not be processed unless and until we receive full payment. Once your order is processed, the Marketing Materials will be shipped to you approximately 30 days after you give final approval of artwork. However, delivery dates are a rough estimate and depend in part on events outside our control. We will not be liable if the Marketing Materials are delivered to you later than expected.
  - a. **Late Fees and Interest.** In the event your payment fails or is not completed for any reason at the time of your order, and we nonetheless process your order anyway, the following will apply. You remain obligated to pay for your order in full. In addition, it is agreed that it would be extremely difficult or impractical to fix actual damages resulting from a late payment; therefore, you agree to pay us a late charge of \$20.00 for the cost of administering the late payment. In addition, interest of 1.65% per month (19.8% Annual Percentage Rate) or the highest rate allowed by law will be charged on all past due principal amounts.
  
3. **Marketing Materials Content.**
  - a. **Providing Content.** You must provide us with advertising content for your Marketing Materials. If we (or a vendor on our behalf) create or supply any artwork, illustrations, photographs, text or other content, we (or the vendor) retain ownership of copyrights and all other intellectual property interests in such materials. You may not use any content supplied by us or our vendor for any purpose other than the Marketing Materials purchased from us.
  
  - b. **Our Right to Reject/Alter Content.** We may, at any time, reject or alter any content for your Marketing Materials which we, in our sole discretion, believe to be inappropriate, offensive, or unlawful.
  
  - c. **Your Representations and Warranties about Content.** You represent and warrant that any content you supply (or authorize for use) will not violate any copyrights, trademark, service mark, trade name, or any other rights of any third party, and that your advertising will contain only information that is truthful, lawful, and authorized for use. You also represent and warrant that you and any individuals listed in your Marketing Materials have all required licenses to provide the goods and/or services advertised.
  
  - d. **Individual Publicity Rights.** If the name, image or likeness of any individual(s) are identifiable as part of the content you supply for the Marketing Materials, you represent and warrant that you have all necessary permissions from such individual(s).

**e. Co-op Advertising Disclaimer.** Any co-op advertising arrangement is between you and the manufacturer, distributor, etc. A failure to receive any expected co-op reimbursement does not relieve you of your financial obligations to us.

6. **No Guarantee of Business.** We do not guarantee and you expressly disclaim any reliance on any statements, representations, or estimates not contained in this Contract. These include, without limitation, any statements, representation, or estimates about the performance of your Marketing Materials and/or the number of phone calls, clicks, sales, customers, or any other business benefit that may result from your Marketing Materials.
7. **Choice of Law; Venue; Legal Fees.** California substantive law governs this Contract without regard to the conflict of law provisions. This Contract will be performed in Fresno County, CA. Venue for any legal disputes will be in Fresno County, CA. Both parties waive any rights to participate in any class or representative legal action related to this Contract. In any legal action to collect amounts owing to us under this Contract, the prevailing party will be entitled to reasonable attorneys' fees, court and/or arbitration costs (including the fees of the arbitrator) and costs of collections, in addition to any other relief awarded.
8. **No Waiver.** Any waiver of our rights under this Contract must be in writing and will not constitute a waiver of any similar or future rights. Our acceptance of partial or delinquent payments or our failure to exercise any right to late charges will not be considered a waiver of any rights herein. Additionally, we may apply any payment made by you to any past due debt then owed by you to us whether under this Contract or otherwise. You waive the provisions of the Civil and Commercial Codes relating to accord and satisfaction. No acceptance of any payment or any instrument marked with any restricted covenant or other limited or conditional endorsement will be deemed a waiver of our rights under this Contract.
9. **Indemnification.** You agree to indemnify, defend and hold us and any of our shareholders, directors, officers, employees, agents, representatives, vendors, contractors, and assigns harmless from and against all claims, demands, damages, losses, expenses, costs of defense, attorneys' fees, and liabilities arising out of or in any way caused by or connected with this Contract or the provision of your Marketing Materials. Any legal defense provided by you to us under this paragraph shall be performed by counsel satisfactory to us.
10. **Assignment.** You may not assign or transfer any rights or obligations under this Contract without our express written consent, which may be granted or withheld in our sole discretion. Subject to the foregoing, this Contract is binding upon and shall inure to the benefit of each party's successors and permitted assigns. We may sell, assign or transfer our rights and obligations under this Contract (or any portion thereof) to any person or entity at any time.
11. **Entire Agreement.** This Contract is the entire and final agreement between you and us. We are not bound by any agreement, representation or understanding not expressed herein. If any part of this Contract is held to be unenforceable, the enforceability of the remainder of this Contract shall not be impaired.

## **LIMITATION OF LIABILITY**

12. **Limitation of Liability.** Our liability for any cause of action arising out of or related to this Contract, including for errors or omissions by us, will be limited to a pro rata adjustment of the charges in the same proportion that the effectiveness of your Marketing Materials has been reduced. If the effectiveness of your Marketing Materials has not been reduced, then we will not be liable for any such cause of action. In no event will we be liable for any loss of your business, revenues or profits, your cost of other forms of advertising, or special, consequential, indirect or punitive damages of any nature. No refund by us to you will exceed the price of the Marketing Materials stated on this Contract. The foregoing provisions apply to the fullest extent permitted by law, regardless of whether your claim is based on contract, tort, statute, regulation, or otherwise. The recovery

allowed herein constitutes our sole liability to you and your exclusive remedy against us in the event of such error, omission, or other breach of duty to you. However, if you do not desire to waive such claim for loss or damages, you may negotiate to pay additional charges upon contract signing, with our President's written approval, so that our liability will not be limited as stated herein. These additional charges will be based on the type of business, the installment bill, and other factors of risk. If you are interested in obtaining additional information about this option, you must call our customer service manager at 800-350-8887. Whether or not additional charges are paid, all claims based on any errors or omissions in connection with Marketing Materials must be made during the 12-month period following the date the error or omission was or should have been discovered (whichever is earlier). All claims not made within this time period are waived and may not be asserted in any lawsuit or arbitration proceeding. For the purposes of this paragraph, "we," "our," and "us" also includes our employees, officers, directors, vendors, contractors and agents.

## **BINDING ARBITRATION**

- 13. Binding Arbitration.** You and we agree to binding arbitration of all disputes, claims or controversies between you and us, except as set forth in this paragraph. For purposes of this paragraph, "we," "our," and "us" also includes our employees, officers, directors, vendors, contractors, and agents. For purposes of this paragraph, "you" or "your" also includes your employees, officers, directors, agents, partners, shareholders, members, heirs, executors and assigns. This arbitration agreement includes any dispute, claim or controversy arising out of or relating to any aspect of the relationship between you and us, whether based in contract, tort, statute, regulation, fraud, misrepresentation or any other legal theory, including but not limited to, any provision of this Contract or the performance or breach of this Contract, and including but not limited to, all disputes, claims or controversies that arose before this Contract or any prior agreement, or which may hereafter arise, and claims that may arise after the termination of this Contract. This arbitration agreement shall survive the termination of this Contract. Either you or we may initiate arbitration by sending to the other, by certified mail, a written demand for arbitration (the "Demand"). If you initiate arbitration, the Demand must be sent to AGI Publishing, Inc., 1850 N. Gateway Boulevard, Fresno, California 93727, Attention: Legal Department. If we initiate arbitration, the Demand must be sent to you at the address listed for Advertiser in the Advertising Contract. The Demand must describe the nature and basis of the dispute, claim or controversy and set forth the relief sought. Any dispute, claim or controversy shall be resolved by binding arbitration before a single arbitrator administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules then in effect, as modified by this Contract. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by telephoning (800) 778-7879. The arbitration shall take place in Fresno, California. If the claim is for Ten Thousand Dollars (\$10,000) or less, you may choose whether the arbitration shall be conducted solely based on documents submitted to the arbitrator, through a telephonic or videoconference hearing, or by an in-person hearing. Each party shall initially bear its own filing, administrative and arbitrator fees and costs, subject to any later reimbursement the party may be entitled to pursuant to this Contract or applicable law. The decision of the arbitrator shall be binding and conclusive on all parties, and there shall be no right of appeal therefrom, and judgment may be entered upon the decision of the arbitrator by any court of competent jurisdiction. You recognize that, in agreeing to arbitration, among other differences, there is no judge or jury in arbitration, discovery is more limited than in court, and court review of an arbitration decision is limited. **You and we agree that any dispute, claim or controversy may be conducted only on an individual basis and not on a class, consolidated or representative basis;** neither you nor we shall be a member in a class, consolidated or representative proceeding; and the arbitrator is only authorized to award relief on an individual basis. **You may choose to pursue your dispute, claim or controversy in court and not by arbitration if you opt out of this arbitration agreement within the "Opt-Out Deadline".** The Opt-Out Deadline is thirty (30) days from the date on which you sign the Advertising Contract. You may opt out within the Opt-Out Deadline by sending a written notice by certified mail to AGI Publishing, Inc., 1850 N. Gateway Boulevard, Fresno, California 93727, Attention: Legal Department indicating that you wish to opt out of arbitration.