

MPX TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (“Terms”) apply to your purchase, as the “Client”, of products or services from MPX (“MPX”).

TERMS AND ENTIRE AGREEMENT: These Terms, together with the *MPXonline.com* Terms and Conditions of Use, Privacy Policy and Terms of Sale applicable to online purchases, and the provisions in any written quotation, purchase order acknowledgement or other document issued or executed by MPX, shall constitute the entire agreement between MPX and Client concerning the sale and furnishing of products and services to Client regardless of whether or not Client or MPX expressly make reference to these Terms in any documentation related to any such sale. Client’s issuance of any purchase order to MPX or acceptance of any products or services supplied by MPX shall constitute Client’s acceptance of these Terms. If MPX is deemed to have made an offer to Client, acceptance shall be limited to the terms offered in writing by MPX, including these Terms, and MPX objects to any additional, omitted or inconsistent terms submitted or proposed by Client. If Client is deemed to have made an offer to MPX, MPX’s acceptance is expressly conditioned upon Client’s assent to any additional, omitted or inconsistent terms (from the terms in Client’s offer) contained in MPX’s written acceptance, including these Terms. No change to these Terms shall be binding upon MPX, unless signed by its authorized representative. If these Terms conflict with the terms of any Client purchase order or other document submitted by Client to MPX, these Terms shall control.

PRICES: Unless otherwise specifically agreed to by MPX in writing, prices do not include any shipping charges or postage, which shall be prepaid, and do not include applicable federal, state, local sales or excise taxes or other surcharges.

PAYMENTS: MPX’s payment terms are net thirty (30) days from date of invoice, unless otherwise specified in writing by MPX. Remittances must be made to: MPX, 2301 Congress Street, Portland, ME 04102. If Client’s financial condition or credit at any time shall, in the sole judgment of MPX, not warrant shipment of products to Client on the payment terms set forth herein, MPX may terminate any order upon written notice to Client or require that Client pay cash before shipment. In such event, MPX shall have no liability to Client for such termination or prepayment requirement. A monthly service charge equal to 1.5% of Client’s unpaid balance will be added to Client’s account on invoices not paid when due. Additionally, if Client fails to pay any invoice when due, then at MPX’s discretion, all sums owing by Client to MPX shall at once become due and payable, regardless of the payment terms. The foregoing remedies are not exclusive, but are in addition to all other remedies available to MPX under applicable law.

SHIPMENT AND DELIVERY: MPX will endeavor to ship Client’s products on schedule, but shall not be liable for any damages or loss caused by any failure of, or delay in, delivery. All shipments are F.O.B. MPX or the point of origin. The responsibility for products lost or damaged in transit rests with Client and any recourse Client may have is to the carrier. Damage to the Client’s product in transit is not just cause for delayed or partial payment by Client of MPX’s invoice.

POSTAGE: With respect to mailing projects requested by Client, all related postage to be incurred by MPX must be paid, by check made payable to MPX, at least twenty-four (24) hours prior to the scheduled mailing by MPX. In no event shall MPX be obligated to mail any product or other item unless Client has prepaid postage as set forth above.

ACCEPTANCE: Any order by Client placed pursuant to a quotation or otherwise is subject to acceptance and acknowledgement in writing by MPX. Acceptance of any order shall be subject to credit approval by MPX.

WARRANTY; LIABILITY: MPX warrants to Client that the products and services provided and sold by MPX to Client will substantially conform to any written description or specifications for the products or services in any quotation provided by MPX, purchase order accepted by MPX, or in any purchase order acknowledgement provided by MPX. MPX further warrants that any products will be substantially free from defects in materials and workmanship and will be delivered free of all liens and encumbrances. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).**

Client agrees that any and all claims that Client has or may have against MPX for corrections or deductions relating to products must be made by Client within ten (10) days after delivery of the products to Client, otherwise such claims shall be deemed waived by Client.

Client’s exclusive remedy for any breach of MPX’s limited warranties, failure of delivery or delivery of any defective or non-conforming product or services shall be, at MPX’s option: (a) MPX’s replacement of the non-conforming product or re-performance of the services; or (b) MPX shall refund or credit to Client an amount equal to the sales price paid for such product or services. In no event shall MPX’s cumulative liability exceed the price paid by Client for any defective or nonconforming product or services.

MPX SHALL NOT BE LIABLE TO CLIENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RELATING TO ANY PRODUCT OR SERVICES PROVIDED BY MPX, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOST REVENUE OR ANY OTHER DAMAGES OR LOSSES, WHETHER SUCH PRODUCTS AND SERVICES ARE PROVIDED PURSUANT TO ANY PURCHASE ORDER, SERVICES AGREEMENT BETWEEN CLIENT AND MPX OR OTHERWISE, EVEN IF MPX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

With respect to any media or data provided by Client to MPX, there shall be no liability on the part of MPX for loss, destruction or damage by breakage, corruption, theft or otherwise. Client is responsible for maintaining proper backup of source material sent to MPX. MPX shall have no liability for damages resulting or claimed to have resulted from erroneous or incomplete processing or transmission of information or data.

Client agrees to indemnify, defend and hold harmless MPX from and against all claims, lawsuits, damages, costs, expenses (including reasonable attorneys’ fees), liabilities or losses arising out of or resulting from MPX’s use of any media or data provided by Client or from the performance of the mailing or fulfillment functions performed by MPX on behalf of or in accordance with specifications established and agreed upon by Client.

FORCE MAJEURE: The parties will be excused from their respective performances under this agreement (except Client’s payment obligations for products and services delivered or produced pursuant to Client’s orders) if performance is prevented or delayed by any acts of God, fire, explosion, flood, unusually severe or abnormal weather, riots or other civil disturbances, wars, acts of terrorism, actions of governments, voluntary or involuntary compliance with any law or request of any governmental authority, strikes, lockouts or other labor difficulties, failure of usual sources of raw materials or other sources of supply, failure of computer systems to operate properly, destruction or loss of electronic records or data, failure of equipment or sources of supply normally used by a party for obtaining, producing, handling or delivering products or services, plant shutdowns, any necessity to not operate or to reduce operation of equipment in order to protect the safety of people or to protect the environment, or any circumstances beyond the reasonable control of the party seeking excuse from performance (each, a “force majeure condition”). Promptly after a party determines that a force majeure condition exists, that party will notify the other in writing of the circumstances and consequences claimed and will use reasonable means to remove the cause(s) in question. Neither party will be obligated to settle any demands of, or disputes with, laborers; nor will Client be excused from paying monies due or complying with MPX’s credit terms.

MODIFICATION; GOVERNING LAW: No modification, addition to, or waiver, of any of these Terms shall be binding upon MPX, except by written consent of an authorized officer of MPX. The validity, performance and construction of MPX’s sales or services, orders, sales, transactions and agreements with Client shall be governed by the substantive laws of the State of Maine, without regard to principles of conflicts of law. Any claim or dispute arising between MPX and Client shall be brought exclusively in the state or federal courts located in the State of Maine and Client submits to the jurisdiction of any of said courts. Client shall pay all reasonable expenses, including legal fees, expenses and other costs, and collection costs incurred by MPX in connection with the enforcement of these Terms or any agreement between the parties or in collecting sums due from Client or in defending against Client’s claims, whether or not actual legal proceedings result.

NO THIRD PARTY BENEFICIARIES: Any agreement or transaction between MPX and Client shall not be for the benefit of or enforceable by any third party.

SEVERANCE: If any court shall rule that any provision of these Terms are unenforceable, invalid, or contrary to public policy, such provision shall be deemed to be removed by the mutual consent of the parties and all other provisions of these Terms shall remain in full force and effect.