

Customer Order Terms of Agreement

Advertiser understands there is not, nor has there ever been, a joint ownership, association, or affiliation between Frontiers Yellow Pages Multimedia directory, formerly known as the Gay and Lesbian Community Yellow Pages, and the Essential Gay & Lesbian Directory, Inc.

1. **SERVICES.** The Essential Gay & Lesbian Directory, Inc. ("TEGLDI") delivers a telephone directory to then Southern California community annually, however, a given directory may be for a period greater than or less than (12) twelve months without any offset or reimbursement of the price of advertising therein. Although TEGLDI currently has a corresponding Internet Website directory, such Website may be terminated at any time without notice and without any offset or reimbursement of the price of advertising therein.
2. **ACCEPTANCE.** This agreement ("Agreement" or "Customer Order") will become an agreement and contract between TEGLDI and Advertiser's signature on this Customer Order, and thereafter, TEGLDI signature on this customer order evidencing acceptance of advertiser's advertising order.
3. **PAYMENT.** Advertiser will pay the Purchase Price (plus tax, if any) designated on the reverse side of this Customer Order upon the terms and within the time period designated therein. Any payment not received within thirty (30) days of the due date will bear interest at the rate of one and one half percent (1 1/2%) or the maximum amount allowed by law, whichever is greater, until paid in full.
4. **CANCELLATION.** Advertiser may cancel a Customer Order in writing (but not orally) no later than five (5) days after Advertiser submits a Customer Order signed by Advertiser to TEGLDI for acceptance, in which case any deposit, or other payment delivered to TEGLDI pursuant to that Customer Order will be refunded to Advertiser. Notwithstanding the foregoing, specialty items must be cancelled no later than two (2) days after submitting a Customer Order signed by Advertiser, to TEGLDI for acceptance, but any deposit or other payment received by TEGLDI for such specialty items will not be refundable. Notwithstanding anything to the contrary contained herein, in no event may any Customer Order be cancelled after the closing date for the given directory (i.e. the date the directory goes to print).
5. **DEFAULT/REMEDIES.** In the event TEGLDI does not receive any payment due within five (5) days of the due date. TEGLDI may declare Advertiser in default and declare the entire balance owed by Advertiser to TEGLDI under this and/or any other agreement between TEGLDI and Advertiser immediately due and payable. Should Advertiser be in default, Advertiser hereby authorizes TEGLDI (in its discretion) to charge any balance due to Advertiser's checking account and/or credit card. In the event of any such default, TEGLDI may elect to not publish Advertiser's advertising in the given directory. The remedies herein are in addition to and not in lieu of any remedies available at law or in equity. In the event TEGLDI fails to include Advertiser's advertisement in a given directory, the same shall not be deemed a default under this Agreement if such failure was done, in whole or part, to Advertiser's failure to deliver Advertiser's advertisement on or before the delivery deadline (as provided on the reverse of this Agreement).
6. **INTELLECTUAL PROPERTY RIGHTS.** Advertiser is solely responsible for obtaining any and all licenses, releases and/or other rights in and to Advertiser's advertising materials (including without limitation, permission to use all artwork, photographs, maps, illustrations, designs, and/or written materials) necessary or appropriate for Advertiser placing the advertising in TEGLDI'S directory.
7. **ADVERTISEMENT (ARTWORK/COLOR/ETC.).** TEGLDI DOES NOT GUARANTEE THAT ADVERTISER'S ADVERTISING WILL HAVE ANY SPECIFIC POSITION ON THE PAGE. TEGLDI DOES NOT GUARANTEE THE APPEARANCE OF ADVERTISING IN ANY PARTICULAR SEQUENCE WITHIN THE HEADING. TEGLDI DOES NOT GUARANTEE THAT THE COLOR SHOWN TO ADVERTISER ON ANY "PROOF" WILL BE CONSISTENT WITH THE COLOR ULTIMATELY USED IN THE GIVEN DIRECTORY FOR ADVERTISER'S ADVERTISING; THE COLORS USED IN ANY ADVERTISING ARE AT THE SOLE AND ABSOLUTE DISCRETION OF TEGLDI. TEGLDI RESERVES THE RIGHT TO MODIFY CAMERA-READY OR "SPEC" ART THAT DOES NOT COMPLY WITH TEGLDI'S SPECIFICATIONS (SEE TEGLDI'S AD SPECIFICATIONS) AND/OR DOES NOT MEET TEGLDI'S STANDARDS OR THE LAW.
8. **REPRESENTATIONS AND WARRANTIES.** The person entering into this Agreement for Advertiser warrants that he/she is authorized by Advertiser to do so, and on behalf of Advertiser represents and warrants: (a) that Advertiser is in compliance with all applicable laws, including requirements; (b) that Advertiser is a duly authorized agent for the product or service to be advertised; and (c) Advertiser has the right to use any trademark, service mark, trade name, artwork, photographs, illustrations and/or copyrighted material appearing in the advertising text supplied by Advertiser. Advertiser agrees that it will same and hold TEGLDI harmless from and against any and all claims and demands asserted against TEGLDI by reason of the falsity of the foregoing representations, breach of the foregoing warranties, or by reason of the falsity of any portion of said advertising or the name of copyrighted material therein, and agrees to notify TEGLDI immediately in writing of any changes in such ownership or authorization. Advertiser shall indemnify and hold TEGLDI harmless from all liabilities and costs, including attorney's fees, incurred in connection with Advertiser's breach of any of the foregoing representations and warranties or for any claim made on account of TEGLDI publication or the advertising text supplied by Advertiser to TEGLDI, including without limitation, and without limiting the generality of the foregoing, claims of false advertising or infringement on the intellectual property or rights of third parties.
9. **LIMITATIONS OF LIABILITY:** TEGLDI SHALL NOT BE LIABLE FOR ADVERTISER FOR DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, AND/OR CONTINGENT DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFIT(S) ARISING OUT OF ANY ERROR, OMISSION AND/OR OTHER BREACH HEREIN. WHETHER BASED ON CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT THE FOLLOWING SHALL CONSTITUTE ADEQUATE, FULL, AND COMPLETE PAYMENT FOR DAMAGES RELATED TO THE FOLLOWING ERRORS AND/OR OMISSIONS:

10% ADJUSTMENT OF THE ITEM'S FOR:

- TYPOGRAPHICAL ERRORS
- INCORRECT/OMITTED LOGO
- LAYOUT ISSUES (BORDERS, APPEARANCE, FONT)
- INCORRECT E-MAIL OR URL ADDRESS

25% ADJUSTMENT OF THE ITEM(S) FOR:

- INCORRECT ALTERNATE PHONE NUMBER
- INCORRECT BUSINESS NAME/ADDRESS
- INCORRECT ILLUSTRATION/PHOTOGRAPH

ADJUSTMENT EQUAL TO THE VARIANCE IN COST OF IETM(S) FOR:

- OMISSION OF COLOR/HIGHLIGHT
- 100% ADJUST OF THE ITEM(S) FOR:
- OMISSIONS OF ADVERTISING ITEM(S)
- INCORRECT MAIN TELEPHONE NUMBER

NO ADJUSTMENTS WILL BE GIVEN FOR THE FOLLOWING ITEMS:

- PLACEMENT/POSITION
- INACCURACIES WITH FREE LISTINGS OR FREE ADVERTISING ITEMS
- NO PROOF OF ADVERTISING RECEIVED
- COLOR

THE REMEDIES SET FORTH ABOVE SHALL BE ADVERTISER'S SOLE AND EXCLUSIVE REMEDY FOR THE LISTED ITEMS, FURTHER, ADVERTISER'S REMEDY AND/OR REFUND HEREIN DESCRIBED IS STRICTLY CONTINGENT UPON ADVERTISER PROVIDING TEGLDI WITH WRITTEN NOTICE OF ANY SUCH ERROR OR OMISSION NO LATER THAN NINETY (90) DAYS AFTER THE PUBLICATION OF THE DIRECTORY IN WHICH THE ERROR OR OMISSION OCCURRED. ADVERTISER ACKNOWLEDGES AND AGREES THAT TEGLDI HAS RELIED ON THE FOREGOING LIMITATION OF LIABILITY IN ESTABLISHING ITS ADVERTISING RATES, AND THIS LIMITATION OF LIABILITY MAY ONLY BE WAIVED UPON THE PAYMENT OF ADDITIONAL CONSIDERATION BY ADVERTISER IN SUCH AMOUNT AND UPON SUCH TERMS AS MAY BE EVIDENCED BY A WRITTEN AGREEMENT BETWEEN THE PARTIES, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN. TEGLDI LIABILITY TO ADVERTISER FOR ERRORS AND/OR OMISSIONS OR OTHERWISE RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE TOTAL AMOUNT OF THE PAYMENTS RECEIVED BY TEGLDI FROM ADVERTISER RELATED TO THIS AGREEMENT.

10. **ARBITRATION:** In the event of any dispute arising from and/or concerning this Agreement in any respect whatsoever, including, without limitation, any dispute as to the scope, enforceability or construction of this Agreement, the property rights between the parties at any time and/or any claim for compensatory or punitive damages, or other relief, which claim is encompassed by this Agreement, any such disputes shall be resolved by binding arbitration. The parties, and each of them, irrevocably waive any right to a trial by judge or jury and/or other judicial proceeding which they may have had absent to this Agreement. If the party wishing to have a claim arbitrated does not make a written demand for arbitration of the claim within the limitations period applicable to the claim under the applicable federal or state law, that party will have irrevocably waived its right to raise that claim in any forum. In the event of any such dispute which the parties, or either of them, wish to submit to arbitration, the parties shall select a mutually acceptable arbitrator from arbitrators offered by the Judicial and Mediation Services (JAMS), Los Angeles, California, or another mutually acceptable arbitration service. In the event that the parties are unable to agree on an arbitrator within thirty (30) days of service of a demand for arbitration, unless extended by agreement of the parties, each of the parties shall then select an arbitrator; the two arbitrators shall then select a third arbitrator; and the arbitrator shall be conducted by a panel consisting of the three (3) arbitrators. The decision of the arbitrator(s) shall be final and binding on the parties. Arbitration proceedings shall be conducted in Los Angeles, California, unless otherwise agreed by the parties. The parties retain the right to conduct all discovery as provided in the Code of Civil Procedure, and the arbitrator(s) shall have the power to decide any discovery disputes between the parties. The arbitrator(s) shall entertain and decide motions by either party for summary disposition as provided by applicable state law. The arbitrator(s) award shall decide all issues submitted by the parties, or either of them, and the arbitrator(s) may not decide any issue not submitted. The arbitrator(s) shall be permitted to award only those remedies in law or equity which are requested by the parties, or one of them, and allowed by law. The arbitrator(s)' award shall be in writing, shall set forth the essential findings and conclusions upon which the award is based and shall be sufficient to allow a court to exercise that standard of judicial review, if any, the allowed by law in light of the terms of this Agreement. So long as allowed by law and so long as the equal sharing of such fees does not impose an undue hardship on either of the parties, initially the parties shall equally share the fees, if any charged by the arbitrator(s). In the event that the arbitrator(s) determine that the equal sharing would impose an undue hardship on either of the parties, the arbitrator(s) shall determine an alternative arrangement. This arbitration provision shall be subject to and governed by the provisions of Code of Civil Procedure Sections 1280, et seq. Any award made shall be subject to the provisions of Code of Civil Procedure Sections 1285, et seq. The prevailing party shall be awarded attorney's fees costs incurred in any arbitration arising from or concerning this Agreement.
11. **NOTICES:** All notices under this Agreement will be in writing. Notice will be considered, received, delivered and effective three (3) days following posting when mailed, postage prepaid, by registered or certified United States mail, return receipt requested, address to the party to be notified. If delivered in person, notice will be considered received, delivered and effective the date so delivered. For purposes of notice, the addresses of the parties, until changed as herein provided, will be as provided on the reverse side of this Customer Order.
12. **NO RULE OF STRICT CONSTRUCTION.** This agreement was jointly negotiated and jointly drafted by the parties, and it will not be interpreted in favor or against any party on the ground that said party drafted the Agreement.
13. **ASSIGNMENT.** Advertiser shall not assign or transfer this Agreement or all or any part of its rights and/or obligations hereunder to any person, firm, corporation or entity without the prior written consent of TEGLDI. This Agreement may be assigned by TEGLDI without limitation. This Agreement is binding upon and inure to the benefit of the parties hereto and their successors, representatives and assigns forever.
14. **MODIFICATION AGREEMENT.** This Agreement may not be altered, modified, or amended except by an instrument in writing signed by all of the parties hereto. This Agreement (and any and all exhibits attached hereto) constitutes the entire agreement between the parties and Advertiser has not relied and will not in any way rely upon any prior or contemporaneous oral agreements between the parties.
15. **LEGALITY.** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law and wherever there is any conflict between any provisions of this Agreement and any material statute, law, ordinance or regulations contrary to which the parties have no legal right to contract, then the latter shall prevail; provided, however, that in any such event the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to bring them within applicable legal requirements.
16. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same.
17. **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of California.