



EMINENT COMMUNICATIONS INC.

1118 S Keats Street, Anaheim, CA 92806

Phone: (714) 743-8100

Fax: (714) 772-0807

Email: CustomerService@myeminent.com

Terms and Conditions:

1. **OFFER AND ACCEPTANCE** Unless otherwise agreed in a separate written agreement signed by Eminent Communications Inc. ("Eminent") and Buyer, Eminent offers to sell products ("Products") and/or provide services ("Services") solely on these terms and conditions (these "Terms") and any acceptance is expressly limited to these Terms. If Buyer has ordered Products or Services from Eminent and such order is deemed to be an offer by Buyer, Eminent's acceptance of such offer is expressly conditional on Buyer's assent to these Terms. Any additional, different, or conflicting Terms proposed by Buyer in any offer, acceptance, or confirmation (including any Buyer purchase order or specifications) are requests for material alterations of these Terms, are hereby rejected, and will not be binding in any way on Eminent. Buyer is hereby notified of Eminent's objection to all such additional, different, or conflicting terms and conditions. Acceptance of or payment for any Products or Services by Buyer will constitute Buyer's assent to and acceptance of these Terms.
2. **PRICE – TAXES** The prices for Products and Services covered by these Terms are those in Eminent's quote to Buyer or, if there is no such quote, on Eminent's applicable price list. If taxes are collected they will be for California State Sales Tax only. Prices, fees and charges shown on the order may not include sales tax. Buyer is responsible for paying any Sales or Use Tax required by their respective State Sales Tax Commission.
3. **TERMS OF PAYMENT**
 - (a) Subject to Eminent's credit approval and unless Eminent otherwise specifies, all payments are due and payable in full thirty (30) days from the date of invoice. Eminent requires the disclosure and evaluation of Buyer's financials to extend credit to Buyer hereunder. Eminent, at its sole discretion, may change or withdraw Buyer's credit. All amounts past due will incur a late payment charge at the rate of 1.5% per month or the highest rate permitted by law, whichever is less. Buyer will make payments at the address specified in Eminent's invoice. If Products or Services covered by these Terms are not delivered or performed at one time, Buyer will pay for the quantity of Products delivered or Services performed. Each order will be considered a separate and independent transaction.
 - (b) Eminent's shipments, deliveries, and performance of work at all times will be subject to Eminent's approval of Buyer's credit. As part of this credit approval, Eminent may decline to make any shipments or deliveries or perform any work, and/or impose such other terms or conditions or security arrangements as Eminent, in its sole discretion, deems appropriate.
 - (c) Eminent reserves and Buyer hereby grants and will grant to Eminent a first priority security interest (which will be considered a fixed charge) and mortgage in any Products sold for the period commencing on the date the Products are duly delivered by Eminent to Buyer until the date that payment of the invoiced amount has been made in full. Buyer will not, without Eminent's prior written consent, relocate, sell, lease, or create additional liens other than the security interest and mortgage described herein over the products until it has paid the invoiced amount in full. If Buyer defaults under any obligation hereunder, Eminent may pursue all remedies of a secured creditor provided under the U.C.C. or other applicable law; furthermore, Buyer agrees to make Products available so that Eminent can repossess the Products without a breach of the peace and otherwise foreclose the mortgage, as applicable under relevant law. Eminent may file such financing statements and amendments thereto as Eminent deems necessary to protect its interest in the Products and to effectuate the purposes of this subsection (c). If Buyer defaults under any obligation, Buyer will make Products available so that Eminent can repossess them without a breach of the peace. Eminent may file a copy of the invoice with appropriate authorities at any time as a financing statement. Upon Eminent's request, Buyer will execute any documents to perfect Eminent's security interest in any Products.
4. **TITLE AND DELIVERY**
 - (a) For products shipped, Title and risk of loss or damage to Products will pass to Buyer upon delivery to the carrier at Eminent's facility.
 - (b) For products delivered by Eminent the Title and risk of loss or damage to Products will pass to Buyer upon delivery to Buyer's facility.
 - (c) Buyer may not cancel, push-out, or reschedule any purchase order placed with Eminent, except with Eminent's written consent.
5. **RESALE PRODUCTS ACCEPTANCE AND WARRANTY** Any Product Eminent sells or provides will be deemed accepted by Buyer upon delivery. "Resale Products" are those goods that are sold and are not manufactured by Eminent. Eminent's sole responsibility for Resale Products is limited to reasonable commercial efforts to arrange for procurement and shipping of Resale Products. To the extent that such Resale Products are sold to Buyer with an express warranty offered by the manufacturer, these warranties, including those expressly set forth in manufacturer's literature, are in lieu of all other warranties. Warranty, if available, may be obtained by contacting the manufacturer. Should Eminent assist Buyer in procuring extended warranty or maintenance support from the manufacturer, Eminent shall in no way be responsible for any aspect of the fulfillment of the manufacturer's obligations thereunder. Such obligations rest solely with the manufacturer. Notwithstanding anything to the contrary in this Agreement, Eminent shall have no obligations or liabilities to Buyer for Resale Products other than as stated in this Section. Should manufacturer become, for any reason, unable to fulfill its obligations under the applicable warranties and/or maintenance support services provided to Buyer, Eminent shall have no liability, obligation or responsibility as to the fulfillment of any manufacturer's warranty or maintenance obligations, in any form, applicable to any Resale Products.
6. **SERVICES ACCEPTANCE AND WARRANTY** Any Services Eminent sells or provides will be deemed accepted by Buyer upon performance. For a period of ten (10) days following the performance of the Services, Eminent warrants to the Buyer that the Services provided were provided as requested. Eminent's sole liability for any error or omission in the Services provided shall be limited to (a) correction or completion of the Services provided or (b) issuance of a prorated credit to the Buyer for the nonconforming services. It shall be within the sole discretion of Eminent to select which of the above warranty remedies to utilize concerning any warranty claims. The above warranty excludes coverage for affected Products which were subject to misuse, abuse, improper installation or application, improper maintenance, alteration, accident or negligence in use, improper temperature, humidity or other environmental conditions.
7. **LIMITATION OF LIABILITY**
 - (a) To the extent permitted under applicable law and notwithstanding anything to the contrary contained herein, Eminent will in no event be liable to buyer or any third parties for consequential, incidental, indirect, exemplary or special damages or for lost profits or loss of business, whether in an action based on contract, tort, or any other legal theory, arising from or related to the transaction contemplated hereunder, even if Eminent is apprised of or should have known the likelihood of such damages occurring.
 - (b) Notwithstanding anything to the contrary in these terms, in no event will Eminent's total liability, including any attorneys' fees and costs incurred, arising out of or related to the transaction contemplated hereunder (including but not limited to any warranty or indemnity claims), regardless of the forum and regardless of whether any action or claim is based on contract, tort or otherwise, exceed the total amount buyer paid to Eminent for the Products or Services actually giving rise to such liability (Determined as of the date of any final judgment in such action or if there is no action the date the buyer was first placed on notice of the claim giving rise to the liability). This limitation is cumulative with all payments made to Buyer for any claims or damages being aggregated to determine satisfactions of the limit. The existence of one or more claims will not enlarge the limit.
 - (c) Buyer may not bring any claim, suit or action against Eminent more than one year after the events giving rise to the cause of action occur.
 - (d) Buyer acknowledges that Eminent has set its prices and fees and agreed to sell Products and Services to Buyer in reliance upon the limitations of liability, disclaimer of warranties, exclusion of damages and exclusive remedies set forth herein, and that the same form an essential basis of the bargain between parties, without which Eminent would have not agreed to sell Products and Services to Buyer. Such provisions will survive and apply notwithstanding any failure of essential purpose.
 - (e) Notwithstanding any provision herein to the contrary, Eminent will not under any circumstances be liable for any excess costs or procurement.
8. **BREACH** Any one of the following acts by Buyer is a material breach of Buyer's obligations:
 - (a) Buyer fails to make payment for any Products or Services in full when due;
 - (b) Buyer fails to accept conforming Products or Services supplied under these Terms; or
 - (c) the filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceeding in insolvency or bankruptcy (including reorganization) against Buyer, Buyer's insolvency, or an assignment for the benefit of creditors of Buyer.In the event of Buyer's material breach, Eminent (in addition to any other rights or remedies provided herein or at law or in equity), may terminate any of its obligations by written notice to Buyer, without incurring any liability. Buyer will pay all costs, including reasonable attorney's fees, Eminent incurs in any action Eminent brings to collect payments owing or otherwise enforce its rights.
9. **FORCE MAJEURE** Eminent will not be liable for any failure or delay in furnishing Products and Services resulting from any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, terrorism, sabotage, labor disputes, yield problems, governmental actions. In the event of any such delay, the date of delivery or performance hereunder will be extended by a reasonable period of time.