

Acutrack's Fulfillment Service agreement

1.Engagement of Services.

1.1. Project Assignment. Subject to the terms of this Agreement, Acutrack will render certain services and develop certain materials, information and/or reports (the "Deliverables").

1.2. Acceptance of Deliverables. All Deliverables, and Client's obligation to pay for such Deliverables, shall be subject to Client's review and acceptance of such Deliverables, such acceptance not to be unreasonably withheld. In the event that Client rejects any Deliverables, Client will inform Acutrack of the reasons for such rejection, and Acutrack will use commercially reasonable efforts to promptly modify such Deliverables in accordance with Client's instructions and will redeliver such Deliverables to Client for testing and/or verification in accordance with the provisions of this section. Unless Client otherwise notified Acutrack that it has rejected any Deliverables, Client shall be deemed to have accepted the Deliverables upon the earlier of (a) Client providing notice to Acutrack that it has accepted the Deliverables, and (b) the thirty (30) calendar day anniversary of the receipt of the Deliverables by Client..

1.3. Client hereby grants to Acutrack the limited right and license to use Client's trademarks only regarding the fulfillment of this contract.

2. Compensation. The client will pay Acutrack a fee for services rendered as set forth in Acutrack Fulfillment agreement.

2.1. If a Project Assignment or Purchase Order expressly permits reimbursement of expenses by Client incurred in connection with that Project Assignment and/or Purchase Order, Acutrack will be reimbursed for those

2.2. Acutrack will maintain and will cause Acutrack Resources to maintain accurate books and records associated with the Services, including without limitation, timesheets, work specifications, invoices, and receipts. Such records will be maintained for a period of four (4) years following completion of the Services (as defined in the Project Assignment or PO) to which they relate.

2.3. All invoices are Net 15.

2.4. All fulfillment invoices are generated at the end of the month. since we incur the upfront cost associated with postage, these fulfillment invoices are due immediately from invoice receipt.

2.5. You have an option to pay via ACH, credit card, PayPal, wire transfer or mail the check. Credit card or PayPal requires a 3% convenience fee.

3. Order Processing Time. Acutrack offers the following service level agreement.

3.1 Expedited FedEx (Next day & 2 day Service): Orders sent to the warehouse by 8:00 AM (local time) will be available for carrier pick up the same day. For orders submitted past the cut-off for Same Day Shipping, all orders will be shipped within a 24 hour time period.

3.2 Standard orders (Ground service, first class, media mail): Orders sent to the warehouse by 8:00 AM (local time) will be available for carrier pick up within 48 hours. All orders will be shipped within a 72 hour time period.

3.3 Shipments made during “Peak Season” dates including the first week of December, Mondays during December, December 12th-25th and New Year’s Eve. During Peak Season dates Acutrack will endeavor to maintain our shipping service level; however, we cannot offer the service level guarantees due to unforeseeable spikes in shipping volume.

3.4 If any order needs urgent attention, you must use the “Submit a support ticket” in Acutrack’s Customer portal

4. Copyright and Ownership. All title to and ownership of all intellectual property rights in and to Content, trademarks are the exclusive property of the person or entity that owns them. To the best of its knowledge, a Client supplied product does not violate the privacy or intellectual property rights of individuals or entities and Client has the legal right to grant Acutrack the license to carry out its obligations as defined in this Agreement.

4.1 Except as expressly provided herein, Acutrack shall not copy, modify in any way, reproduce, display, decompile, reverse engineer, store, translate, sell, lease or otherwise transfer, or otherwise use the products. All rights not specifically granted herein to Acutrack are expressly reserved to Client

4.2 Client represents and warrants that, with respect to the Content or any information or materials furnished to Acutrack under this Agreement, it has the necessary rights and authority to allow performing the services requested under this Agreement so as not to result in an infringing of any trademark, copyright, patent, trade secret, contract, property right, or third party rights of any kind, whether statutory, legal or equitable. Client further represents and warrants that having Acutrack perform the services requested will not violate any legal statute, lawful order, or regulation, including, but not limited to, those regarding copyright, obscenity, and national security. The client will indemnify, defend, and hold harmless Acutrack from any claim action or proceeding instituted against Acutrack with respect to any threatened or actual legal action, whether administrative, civil or criminal, resulting from Client’s at least negligent breach of this agreement

4.3 Acutrack will defend, indemnify, and hold Client harmless from and against any and all claims, damages, costs and expenses, including reasonable legal fees and expenses, arising out of or in connection with: (i) Acutrack’s use of Products in a manner not authorized by Client; or (ii) Acutrack’s performance of its obligations under this Agreement

5. Term and Termination.

5.1 Term. This Agreement will continue for twelve (12) consecutive calendar months from the execution of this Agreement, thereafter (“Term”) and shall automatically renew for successive twelve (12) month terms unless canceled in writing by either party at least sixty (60) days prior to the end of that term.

5.2 Either party may terminate this Agreement if the other party materially breaches a term or condition of this Agreement and fails to cure such breach within twenty (20) days of written notice specifying the breach.

5.3 If your account remains unpaid for a period greater than 60 days, then Acutrack reserves the right, at its sole discretion to reclassify your Account as an “Abandoned Account.” Additionally, any Account that remains unpaid for greater than 120 days will automatically be deemed an Abandoned Account. Upon an Account becoming an Abandoned Account, all rights to ownership of the Account Balance and inventory would then immediately be forfeited by you. Inventory will become immediately and irrevocably unavailable to you, and liquidation proceedings would begin. You agree the inventory would be free and clear of liability, and that you would assume any liability therefore. You would have no rights to the liquidation proceeds. You would also remain liable for any pending Usage Fees above and beyond the liquidation proceeds.

6. Confidentiality. Except as expressly and unambiguously allowed herein, each party will hold in confidence and not use or disclose any Confidential Information and will similarly bind its employees and contractors in writing.

7. Personal Data Protection. In respect of the End User’s privacy, Acutrack will treat the End User’s personal data (such as name, address or e-mail) as strictly confidential pursuant to relevant laws of data protection.

7.1 Acutrack will only collect, store, or use the End User’s personal data to the extent necessary to fulfill the contractual obligations towards the Client.

7.2 Acutrack will not use End User’s personal data for any further or different purpose such as marketing or market research. Acutrack will not sell or forward the personal data of End User’s to any third party.

7.3 Acutrack may not assign, sublicense, transfer, encumber or otherwise dispose of this Agreement without the prior written approval of Client. Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties successors and lawful assigns.

7.4 No party shall be deemed in default hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control as described by the applicable law.

7.5 No waiver or modification of the relations between the parties, including a course of dealing or of performance, shall be effective unless ratified in writing and signed by both parties. Any failure or delay by either party in exercising any right or remedy in one or many instances will not prohibit a party from exercising it at a later time or from exercising any other right or remedy.

8. Miscellaneous. The laws of the State of California shall govern this Agreement without reference to its conflicts of law principles. Venue for any proceedings to enforce this Agreement shall be in the state or federal courts of Alameda County, California, and each party hereby consents to the exclusive personal jurisdiction of such courts.

THIS AGREEMENT (the "**Agreement**") is made between **Acutrack, Inc.** a California corporation with offices at 350 Sonic Avenue, Livermore, CA 94551 ("**Acutrack**") and company doing business with Acutrack ("**Client**")