Best Business Practice Guidelines for Terms and Conditions of Sale

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Over the past few years, technology has greatly impacted printers' business practices and relationships with customers and third-party suppliers. Hereafter, supplier will be the term used to connote printers, mailers and other service providers. The information provided here is intended solely as a guideline for use in various business situations and in communications with customers and suppliers.

- This information replaces the previous edition of "best practice guidelines" and is not in- tended to be legally binding but is offered for use in client and supplier communications as determined by each supplier. This revision focuses on Terms and Conditions of sale includ- ing quotations, orders, delivery, production schedules, and other issues.

This material is not intended to be used verbatim. Suppliers should carefully review this material and select which parts of these documents they wish to incor- porate into their specific business practices as they relate to their situation with their customers and prospects.

NOTICE

THESE BEST INDUSTRY PRACTICES, TERMS, AND CONDITIONS OF SALE ARE A VOLUNTARY RESOURCE TO HELP SUPPLIERS AND THEIR CUSTOMERS AVOID MISUNDERSTANDINGS CONCERN- ING THEIR RIGHTS AND OBLIGATIONS. ALL ELEMENTS OF PRICE AND ALL OTHER CONTRACT TERMS ARE A MATTER OF NEGOTIATION AND AGREEMENT BETWEEN THE INDIVIDUAL SUPPLIER AND ITS CUSTOMER. ANY SUPPLIER MAY CHOOSE ITSELF, OR IN NEGOTIATION WITH A CUSTOMER, TO MODIFY THESE BEST PRACTICES AND TERMS BASED UPON THE SUPPLIER'S OR THE CUSTOMER'S INDIVIDUAL SITUATION.

THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE, AND USE OF THIS DOCUMENT IS WITHIN THE DISCRETION OF THE READER. PRINTING UNITED ALLIANCE DISCLAIMS ANY AND ALL LIABILITY WHATSOEVER ARISING FROM THE USE OF THIS DOCUMENT.

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Alterations/Corrections

Prices estimated herein are based upon the supplier's written understanding of the customer specifications submitted. No handwritten alterations to the printed portions of this agreement are valid unless initialed by the supplier and customer. Any changes to the original specifications of this agreement after acceptance by supplier will be billed as extra charges at supplier's usual rates.

Notwithstanding the foregoing, and recognizing both the frequency of change orders and press deadlines, the supplier's written change order sent to customer shall amend the terms of the specific job it is pertinent to without the countersignature of customer, provided that customer does not controvert the change order within 24 hours of receipt thereof by delivery-receipted email, postal mail or facsimile.

Assignment

Supplier may, in its sole discretion, assign this estimate and/or subcontract any and all of the work hereunder. This agreement shall be binding upon and shall inure to the benefit of the successors, and assigns of the customer and the supplier, provided, however, that customer may not assign or transfer this agreement, in whole or in part, except on the prior written consent of supplier.

Brokers and Other Intermediaries

When contracting with an intermediary such as a broker, ad agency or reseller for work on behalf of their customers, suppliers will hold the intermediary fully responsible for timely payment of invoices and for related collection costs, legal fees and interest. This will be done without regard to whether the intermediary has been paid by their customer for services rendered.

Cancellation or Deviation

In the event of cancellation of or deviation from all or part of the work covered hereby, customer shall give the supplier as much notice as reasonably practicable. Customer shall be liable for all costs incurred by supplier resulting from such cancellation or deviation that are not otherwise avoidable by supplier through reasonable commercial efforts, including, with- out limitation, down press and bindery time, materials ordered or inventoried on customer's behalf and not otherwise usable by supplier in the ordinary course of its business within a reasonable period of time at the scheduled plant of production, and related obligations.

Choice of Law and Venue

This agreement is made pursuant to and shall be governed by the law of the state of [state name], and customer consents to jurisdiction of the courts thereof.

Claims

Claims for defects, damages, or shortages must be made by the customer in writing no later than 10 calendar days after delivery. If no claim is made within the specified time period, the supplier and the customer will have mutually acknowledged that the job has been accepted by the customer and that the supplier's performance has fully satisfied all terms, conditions and specifications of the purchase agreement.

Content and Refusal of Work

The customer warrants that the work does not contain anything that is libelous, scandalous, or anything that threatens anyone's right to privacy or other personal or economic rights. The supplier, when not acting in an illegal discriminatory manner, reserves the right at his or her discretion to reject any job tendered based on illegal, libelous, scandalous, improper, or unsubstantiated content or based on copyright, trade mark, trade name or service mark infringement related to any elements of the job.

Copyrights

The customer warrants that it has the right to produce the subject matter to be printed, duplicated or distributed. If the subject matter is copyrighted, the customer warrants that it owns the copyright or has express permission of the owner to reproduce the copyrighted subject matter, and that it has not removed any copyright notice from any material to be re- produced without written permission.

Cost and Expense of Legal Action

The prevailing party in any legal action or proceeding brought to enforce this agreement shall be entitled to recover from the other reasonable attorneys' fees, costs and expenses arising out of such legal action brought before a court, mediator, arbitration or private settlement.

Creative Work

The supplier may provide creative work in the form of creative briefs, ideas, concepts, demos, sketches, dummies, storyboards, comprehensive layouts, prototypes or by other means. Creative work may be communicated verbally, visually and/or electronically. This work is the sole property of the supplier and may not be used by the customer in any form or derivation without the supplier's written permission or without customer's payment of compensation as determined by the supplier. Customer's rights to use such creative work shall further be limited to the original agreed-upon purpose and for any time limit specified unless otherwise agreed in writing.

Customer Furnished

Materials: furnished by customers or their representative are verified by delivery tickets. The supplier bears no responsibility for discrepancies between delivery tickets and actual counts. Customer-supplied paper must be delivered according to specifications furnished by the supplier. These specifications will include correct weight, thickness, pick resistance, and other technical requirements. Artwork, film, color separations, special dies, tapes, disks, electronic files or other materials furnished by the customer must be usable by the supplier with- out alteration or repair. Items not meeting this requirement will be identified by the supplier and may be repaired by the customer, or by the supplier at the supplier's current rates.

Labels: Paper labels must be within equipment manufacturers' published specifications for labeling equipment. For paper labels as well as those which are electronically generated, estimated prices assume that label orientation, unwind and placement will be specified by artwork or a prior run of identical or similar material, or will be in the position most advantageous to production speed. Otherwise, additional charges will be billed.

Damages/Limitation of Liability

The supplier's maximum liability, whether by negligence, agreement, or otherwise, will not exceed the amount specified in the agreement.

Except for claims for delay arising out of this agreement, the parties to this agreement mutually agree that supplier's liability for any and all claims whatsoever of any kind and nature arising out of this agreement shall not exceed supplier's price to customer for performing the work (including any services) that is the subject of this agreement or fraction affected, and further mutually agree that replacing the work (including any services) or re-mailing or re-ship- ping a correction or corrected job as soon as possible to rectify the mistake that is the subject of this agreement shall satisfy any and all claims whatsoever of any kind and nature arising out of this agreement.

Notwithstanding the forgoing, to the extent that material submitted by customer does not conform to supplier's specifications, contains clerical or typographical errors, or otherwise does not strictly meet production deadlines as specified in this agreement supplier shall have no liability for claims arising out of this agreement. Supplier's clerical and typographical errors will be corrected without additional charges.

Under no circumstances will the supplier be liable for specific, incidental or consequential damages, including but not limited to lost profits and lost postal discounts, however proximate or foreseeable, arising out of the work, including any services, that is the subject of this agreement.

Customer agrees that the prices in this agreement for the work (including any services) that is the subject of this agreement are consideration for limiting supplier's liability hereunder.

Delivery

Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. supplier's platform. Proposals are based on continuous and uninterrupted delivery of the complete order. If the specifications state otherwise, the supplier will charge accordingly at current rates. Charges for delivery of materials and supplies from the customer to the sup- plier, or from the customer's representative to the supplier are not included in quotations unless specified. Title for finished work passes to the customer upon delivery to the carrier at shipping point, or upon mailing of invoices for the finished work or its segments, whichever occurs first.

Estimate

An estimate not accepted in writing within thirty (30) days may be changed. No discount will be allowed unless specifically set forth in the estimate itself.

Estimates are based on the supplier's written understanding of the customer specifications and the accuracy of the specifications provided to the supplier by the customer. The supplier has the option to re-estimate a project at the time of submission by customer if project does not conform to the information on which the original estimate was based.

Estimates are based on the cost of services, labor and materials on the date of the estimate. If changes occur in cost of materials, labor, or other costs prior to acceptance, or if the customer requires changes in specification, quantities, designs, or the production schedule subsequent to acceptance, or in the event of foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the goods or services purchased hereunder, supplier reserves the right to change the price estimated. Subsequent orders will be subject to price revision if required.

Estimates do not include applicable taxes, shipping costs or deliveries unless specifically stated in the estimate.

If there is a change in specifications or instructions to the original estimate and these changes result in additional costs, the supplier will inform the customer, in writing, what these additional costs will be. The work performed will be billed at the current rates as agreed, and the completion date may be delayed.

Experimental and Preliminary Work

Experimental and preliminary work performed at customer's request shall not be used with- out the supplier's written consent.

Express Warranties

The supplier warrants that the final work product will fully meet all of the requirements of the purchase agreement in all material respects as agreed to by the supplier and the customer. Additionally, the supplier and the customer mutually acknowledge that all preliminary work, including but not limited to sketches, copies, dummies, etc., are only intended to illustrate the general type and quality of the final work product, and are not intended nor are they required to meet fully all of the requirements of the purchase agreement as agreed to by the supplier and the customer.

Finance Charge, Acceleration, Collection Cost, Suspension of Work, Liens

Unless otherwise specified or regulated, a finance charge of _____ (___) percent per month (_____ percent per annum) will be charged on all past due balances until paid.

Customer shall execute financing statement(s) on request and irrevocably authorizes sup- plier to execute and file same.

Supplier and customer mutually agree that time is of the essence in this agreement, and if customer defaults in the payment of any part hereof the entire amount of the agreement shall immediately become due and payable without notice at the option of the supplier together with all costs of collection, including reasonable attorney's fees if collected by law or through an attorney.

In the event customer defaults in making any payment under this or any other agreement currently being performed for customer by supplier, supplier may suspend performance under this agreement.

As security for payment of any sum due under the terms of this agreement, the supplier has the right to hold and place a lien on all of the customer's property in the supplier's procession.

Indemnification

Customer represents and warrants that neither the execution, delivery or performance, nor consummation of the transactions contemplated by this Agreement will result in actual or alleged infringement of any proprietary right (including, but not limited to, trademark, trade secret, patent or copyright rights), or any actual or alleged misuse of personally identifiable information, or violation of any other laws and regulations applicable, or a violation or breach of, or default under any provision of the charter, by-laws or any material agreement to which it is a party. At all times customer's performance under this Agreement will be in compliance with any and all other rights arising from or in connection with the products or services produced by the supplier at the direction of the customer

Customer agrees to indemnify and save supplier harmless from any and all losses, claims, or damages (including legal costs and reasonable attorney fees) that supplier may suffer in connection with a claim related to any actual or alleged breach of the representations and warranties described above.

Insurance, Risk of Loss

All stock and materials belonging to a customer will be held and stored only at the customer's risk, and the customer shall be responsible for insurance on their material. Customer retains title to and the insurable interest in its materials. Because of this, the supplier is held harm- less for acts not of its doing that create losses.

All files, software, programs, paper, film, plates, or other materials not supplied by customer but used to perform the services hereunder shall remain the exclusive property of the supplier unless otherwise agreed in writing. The supplier shall carry insurance to protect against acts or negligence on the part of its employees in the normal course of business. If specific additional insurance coverage is desired, such coverage must be specified by agreement or by separate insurance rider and premium. In such instances, the liability for losses will be limited to the agreed upon insurance amount.

Moreover, the supplier will only maintain fire and extended coverage on property belonging to the customer while the property is in the supplier's possession. The supplier's liability for this property will not exceed the amount recoverable from the insurance. Additional insurance coverage may be obtained if it is requested in writing, and if the premium is paid to the supplier.

Customer shall bear all risk of loss to finished Work upon delivery of the work by supplier or its subcontractor, as applicable, to a common or contract carrier or to the U.S. Postal Service mail unit, F.O.B. supplier's or its subcontractor's shipping dock. The risk of loss for property furnished and/or owned by customer and for partially-finished work before or after the manufacturing process and while in transit to or from the supplier's premises shall be borne by customer. Title to finished and partially-finished work shall pass at the same time the risk of loss for such work passes to customer.

Integration

This agreement contains the entire agreement of the parties and no inducements, representations, promises, agreements, of understandings, oral or in writing between the parties, not embodied herein or subsequently made a part hereof by a properly executed addendum or amendment hereto as herein provided, shall be of any force or effect.

No addendum to or amendment in the provisions of this agreement shall be effective or binding upon a party hereto unless embodied in a written instrument executed on behalf of such party buy an authorized representative.

Mailing Lists

Customer's mailing list(s) in the supplier's possession, for storage or otherwise, is the exclusive property of the customer and shall be used only at the customer's instructions. The supplier shall provide reasonable and prudent protection against the loss of a customer's list, in much the same manner that the customer would itself. This includes adequate backup procedures for all files and programs.

The supplier shall provide reasonable and prudent security to protect the customer's data from access by non-essential personnel while in the possession of the supplier.

The supplier shall pay for the cost of replacing such lists in the event of systems failure, loss by fire, vandalism, theft, or other such causes (excluding destruction of the list due to customer's negligence or willful misconduct), provided that the customer has a duplicate list or has the source material from which the list was compiled, and then only to the extent of the costs involved in replacing the lost list. Unless otherwise provided, the supplier shall not be liable for compiling such lists nor for an intangible or special value attached thereto.

The supplier is not responsible for the accuracy or integrity of lists or other data supplied by the customer or a list broker. Unless otherwise specified in writing in advance, all rented mailing lists are provided on a one-time use basis.

Supplier shall destroy all one-time use lists in accordance with the standard procedures for same.

Orders

Orders shall be effective upon acceptance by supplier. Acceptance by supplier may be either by notification to customer or by commencing to produce work on the goods or services ordered.

Acceptance of orders is subject to credit approval and other causes enumerated under Production Schedules.

The work is to be performed according to specifications expressly set forth in the agreement and in any of supplier's specifications relating to particular portions of the work, as provided to customer. If the customer furnishes its own paper for any work hereunder, the provisions of supplier's furnished paper rider shall apply. If for any reason, other than solely supplier's error, all or any part of the work must be redone, an additional charge will be made at current rates. An additional charge at current rates may also be made for work requested by the customer that is different from or in addition to the work, as specified in the estimate.

Outside Purchases

Unless otherwise agreed in writing, all outside purchases as requested or authorized by the customer, are chargeable. Customer is responsible for payment for any paper which supplier has been authorized by the customer to purchase, including paper remaining on hand as the result of customer changing suppliers, discontinuing publication, or changing paper requirements. The supplier reserves the right to substitute comparable paper of a manufacturer different than that designated unless specified otherwise in the agreement.

Overruns, Underruns, Spoilage

Overruns or Underruns: will not exceed ten (10) percent of the quantity ordered, unless specified otherwise in the agreement. The supplier will invoice for the actual quantity delivered within this tolerance. If the customer requires a guaranteed quantity, the percentage of tolerance must be stated at the time of estimate. In the case of a fulfillment agreement, fulfillment supplier is not responsible for normal spoilage of material that occurs naturally during processing.

Spoilage: All direct mail handling and processing involves spoilage. Spoilage of up to three (3) percent of customer's material is typical. Allowances for spoilage should be taken into consideration in ordering material. Every effort will be made to handle customer's material with frugality and to prevent undue spoilage. Nevertheless, the supplier cannot accept responsibility for shortages of material as a result of normal spoilage in processing.

Verified Quantities: Outside manufacturer delivery tickets must accompany the material delivered and should show the number of rolls, skids or cartons, the quantity per skid or car- ton and the total delivery quantity. Each incoming carton or skid must bear an identity, item code, quantity and a sample clearly visible. Each skid should have only one material version, unless clearly marked and separated. Multiple items should not be included within a single carton, skid or container unless noted thereon and on accompanying paperwork. The supplier will apply a surcharge for any rework necessary for materials received not meeting these specifications.

Counts: Suppliers accept outside manufacturers' count until processing and assume no responsibility for shortages discovered at that time. Additional charges will apply if customer requires the supplier to verify outside manufacturer's counts prior to processing. Customer is expected to provide supplier with sufficient inventory or adequate sources of supply to meet anticipated demand. Cost for backorders, delay notices, canceled orders and increased customer service resulting from out of stock conditions will be billed additional to customer.

Collect shipment will be accepted by the supplier only if clearance is obtained in advance, and a service charge will be added to the actual freight charges. Supplier is not responsible for the condition of shipped overs, unless customer has been billed for packing and/or shipping.

Shrinkage: Three categories of shrinkage allowances are typical in the fulfillment industry:

(a) If the fulfillment supplier is not authorized to perform counts of the literature or products received from customer, nor is there independent verification, then no realistic shrinkage expectations can be developed and the fulfillment supplier is not responsible for inventory shrinkage.

(b) If the fulfillment supplier performs test counts, spot checks and weight counts, the industry standard for shrinkage is five (5) to ten (10) percent of the printed material received and two (2) to three (3) percent of products received.

(c) If the fulfillment supplier has been paid to count/verify valuable items on receipt and to maintain the counted material in a special secured environment, the standard shrink- age allowances do not apply, and the fulfillment supplier is responsible for losses that could have been prevented by exercising reasonable and prudent care.

Any liability for losses that the fulfillment supplier assumes is limited to the cost of the materials ONLY and does not include indirect or consequential claims, such as loss of sales or opportunity.

Payment

Unless otherwise specified herein, payment for services shall be net cash due thirty (30) days from invoice date and payment for freight shall be net cash, due 10 days from invoice date. Unless otherwise agreed, invoice date will be the date any of the work is first available for shipment.

Postage

Estimates do not include postage. The supplier will notify the customer in writing including by facsimile or by delivery-confirmed e-mail of the required postage as soon as this amount is known and will notify the customer of the date when the postage is needed in order to complete the mailing prior to the agreed upon mailing date. While the supplier will make every effort to provide the customer with an accurate estimate of required postage, the supplier is not responsible for additional postage charges if the rate of postage changes for reasons beyond supplier control.

Payment of postage in advance is required on all orders and is the responsibility of the customer. The supplier reserves the right to hold mailings for which sufficient postage has not been paid or until postage payment has been verified. The customer will provide the postage payment in adequate time for the supplier to complete the mailing prior to the previously agreed upon mail date.

Prepress, Preparatory and Proofing

A color proof is used to simulate how the printed piece will look prior to production on the printing press (offset or digital). Due to differences between the proofing substrates, equipment, and other conditions the proof may present a “reasonable” variation in color between the proof and printed piece. A “reasonable” variation in color between color proofs and the completed job may be expected. When variations of this kind occur, it will be considered acceptable performance

It is the customer’s responsibility to maintain a copy of the original data submitted to the supplier. The supplier is not responsible for accidental damage to material, data or media sup- plied by the customer or for the accuracy of furnished input or final input. Until the customer’s data or media can be evaluated by the supplier, no claims or promises are made about the provider’s ability to work with the material submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at prevailing rates.

All materials and data created by the supplier, including, but not limited to, artwork, plates, dies, film, data, and digital output files, shall remain the supplier’s exclusive property.

The supplier will submit prepress proofs along with original copy for the customer’s review and approval. Corrections will be communicated electronically or returned to the supplier on a “master set” marked “OK,” “OK With Corrections,” or “Revised Proof Required” and electronically authorized or signed by the client. Until the master set is received, no additional work will be performed. Supplier will not be responsible for undetected production errors if:

- Proofs are not required by the customer;
- The work is printed per the customer’s OK;
- Requests for changes are communicated orally.

When proofing color, a reasonable variation between color proofs or electronic renderings and the final product is to be expected. This is due to differences in viewing conditions, equipment, paper, inks, and toner between the color proofing process and print production.

Press proofs will not be furnished unless they have been requested by the customer and presented in the supplier’s quotation. A press sheet can be submitted for the customer’s approval as long as the customer is present at the press during makeready. Any manufacturing time lost or alterations/corrections made because of the customer’s delay or change of mind will be charge- able at the supplier’s current rates.

Production Schedules

Production schedules shall be established and followed by both the customer and the supplier. There will be no supplier liability or penalty for delays due to customer delays, state of war, riot, civil disorder, fire, flood, terrorism, unavailability or shortages of materials, equipment failures, acts or defaults of the work of a subcontractor, delays in transportation, strikes, accidents, action of government or civil authority, acts of God, or other causes beyond the control of the supplier. In such cases, schedules will be extended by an amount of time equal to delay incurred.

The prices in this agreement are based upon full compliance with said schedule and any deviation from the agreed upon schedule on the part of the customer may result in a revised delivery date or additional charges for downtime or overtime incurred by supplier due to said deviation from the schedule. In any case, no additional work will be performed by the supplier until such revised schedule and/or pricing is approved by the customer.

Shipping

All prices are for a single shipment, without storage, F.O.B. customer's place of business within [named] County, [State], or F.O.B. supplier's plant, [City], [State] for customers located outside [named] County, [State], unless otherwise specifically set forth on the face side hereof.

Storage, Overages

Intermediate Materials: The supplier will retain intermediate materials until the related end product has been accepted by the customer. If requested by the customer, intermediate materials will be stored for an additional period for additional charge. The supplier is not liable for any loss or damage to stored material beyond what is recoverable by the supplier's fire and extended insurance coverage.

Paper Storage: Only in the event that supplier stores paper on behalf of the customer the following is agreed. The supplier will provide storage for the customer's paper chargeable at supplier's current rates and based on the quantity of paper on hand the first day of the month. If storage charges remain unpaid for 90 days, supplier shall have the right to demand that customer remove the paper from supplier's storage. If customer fails to remove the paper after 20 days' notice, supplier may sell the paper and remit the proceeds to customer less storage costs and costs of sale. Supplier shall also have the right to purchase the paper for its own account at market rates.

Material Storage: Only in the event that supplier stores materials on behalf of the customer the following is agreed. Storage of finished goods, inserts, covers, cartons, and all other mate- rial will be free for up to 30 days prior to, and 30 days after, the originally scheduled print date. Finished goods and other material received earlier than 30 days prior to, or remaining in storage 30 days after the originally scheduled print date will be chargeable at supplier's current rates. Skids may not contain more than 2,000 pounds of material. If there is no activity, storage charge, or request by the customer for return of stored material for 3 months after the initial agreement storage period, supplier has no liability if it chooses to dispose of, or destroy, the stored material.

Overages: The customer must advise the supplier, in advance of the job, the disposition of overs. Overs may be returned to the customer, stored or destroyed. If items are stored or re- turned, applicable storage and delivery charges will be added. Additionally, at the supplier's option and without liability to the supplier, material may be automatically destroyed after 60 days if customer has failed to respond to a disposition request or failed to pay for storage starting 30 days after the mail date. Premium storage rates may be applied to old materials or materials for which disposition has not been designated.

Subsequent Work

To facilitate and expedite the parties' dealings on future printing jobs, it is agreed that the terms set forth in this agreement shall apply to all future printing jobs unless amended or contradicted in writing signed by both parties.

Taxes

All taxes and assessments levied by any governmental authority are the responsibility of the customer. All amounts due for taxes and assessments will be added to the customer's invoice. No tax exemption will be granted unless official proof of the customer's exemption is on file with the supplier or such documentation accompanies the order. If, after the customer has paid the invoice, it is determined that more tax is due, the customer must promptly remit the required taxes to the taxing authority or immediately reimburse the supplier for any additional taxes paid.

Telecommunications

Unless otherwise agreed, the customer will pay for all transmission charges. The supplier is not responsible for any errors, omissions, or extra costs resulting from faults in transmission.

Waiver

No waiver by either party of any default by the other in the performance of or compliance with any provision, condition, or requirement herein shall be deemed to be a waiver of, or any manner release such other party from compliance with any provision, condition, or requirement in the future, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter. Any matter arising under this Agreement that creates a right of action in either party against the other party, or the enforcement of any obligation or undertaking by one party against the other, shall survive any termination or expiration of this Agreement.