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13  
14 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 COMMERCE PLANET, INC., a  
19 corporation,

20 and

21 MICHAEL HILL, CHARLES  
22 GUGLIUZZA, and  
23 AARON GRAVITZ, individually and as  
officers of COMMERCE PLANET, INC.,

24 Defendants.  
25

Case No. SACV-09-01324 CJC  
(RNBx)

**FIRST AMENDED  
COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF**

26 1. Plaintiff Federal Trade Commission ("FTC") brings this action under  
27 Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), to secure a  
28 permanent injunction, rescission or reformation of contracts, restitution,

1 disgorgement of ill-gotten gains and other equitable monetary relief against  
2 Defendants for engaging in unfair or deceptive acts or practices in violation of  
3 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction over the FTC's claims  
6 pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and  
7 1345.

8 3. Venue in the Central District of California is proper under 15 U.S.C.  
9 § 53(b) and 28 U.S.C. § 1391(b) and (c).

10 **PLAINTIFF**

11 4. The FTC is an independent agency of the United States Government  
12 created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the  
13 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices  
14 in or affecting commerce.

15 5. The FTC may initiate federal district court proceedings, through its  
16 own attorneys, to enjoin violations of the FTC Act and to secure such other  
17 equitable relief, including rescission or reformation of contracts, restitution,  
18 disgorgement of ill-gotten gains and other equitable monetary relief, as may be  
19 appropriate in each case. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

20 **DEFENDANTS**

21 6. Commerce Planet, Inc. is a Utah corporation with its headquarters and  
22 principal place of business, at all times material to this Complaint, at 30 South La  
23 Patera Lane, Goleta, California. Commerce Planet, Inc. was named NeWave, Inc.  
24 from January 30, 2004 until June 22, 2006. Prior to January 15, 2004, the  
25 company was known as Utah Clay Technologies, Inc. At all times material to this  
26 Complaint, Commerce Planet conducted business through operating subsidiaries,  
27 including, *inter alia*, Online Supplier, Inc., Legacy Media Group LLC and  
28 Consumer Loyalty Group LLC.

1           7.     Online Supplier, Inc. (“Onlinesupplier.com”) is a Nevada  
2 corporation. At all times material to this complaint, Onlinesupplier.com’s  
3 headquarters and place of business was located at 30 South La Patera Lane,  
4 Goleta, California. At all times material to this Complaint, Onlinesupplier.com  
5 was a wholly owned subsidiary of Commerce Planet.

6           8.     Consumer Loyalty Group LLC (“Consumer Loyalty Group”) is a  
7 California limited liability company. At all times material to this Complaint,  
8 Consumer Loyalty Group’s headquarters and principal place of business was  
9 located at 30 South La Patera Lane, Goleta, California. Consumer Loyalty Group  
10 is a wholly owned subsidiary of Commerce Planet.

11          9.     Legacy Media LLC (“Legacy Media”) is a California limited liability  
12 company. At all times material to this Complaint, Legacy Media’s headquarters  
13 and principal place of business was located at 30 South La Patera Lane, Goleta,  
14 California or 345 Chapala Street, Santa Barbara, California. Legacy Media is a  
15 wholly owned subsidiary of Commerce Planet.

16          10.    For purposes of this Complaint, “Commerce Planet” means  
17 Commerce Planet, Inc., its predecessors (including but not limited to NeWave,  
18 Inc.), its subsidiaries (including but not limited to Onlinesupplier.com, Inc.,  
19 Consumer Loyalty Group LLC and Legacy Media LLC), unincorporated divisions,  
20 operations under fictitious names, affiliates, joint ventures and partnerships. This  
21 Court on November 17, 2009, approved a settlement in this case of the FTC’s  
22 allegations against Commerce Planet, Inc. (*See* Final Judgment and Order for  
23 Permanent Injunction and Settlement of Claims for Monetary Relief Against  
24 Defendant Commerce Planet, Inc. (Case No. SACV–09-01324 CJC (RNBx)) (Dkt.  
25 #8).)

26          11.    Michael Hill was CEO and a director of Commerce Planet. At all  
27 times material to this Complaint, acting alone or in concert with others, he  
28 participated in and had the authority to control the acts and practices of Commerce

1 Planet alleged herein and knew or should have known that such practices were  
2 unfair or deceptive. Mr. Hill resides in Santa Barbara County, California. This  
3 Court on November 17, 2009, approved a settlement in this case of the FTC's  
4 allegations against Mr. Hill. (*See* Final Judgment and Order for Permanent  
5 Injunction and Settlement of Claims for Monetary Relief Against Defendant  
6 Michael Hill (Case No. SACV-09-01324 CJC (RNBx)) (Dkt. #9).)

7 12. Aaron Gravitz was president of Commerce Planet's subsidiary  
8 Legacy Media LLC. At all times material to this Complaint, acting alone or in  
9 concert with others, he participated in and had the authority to control the acts and  
10 practices of Commerce Planet alleged herein and knew or should have known that  
11 such practices were unfair or deceptive. Mr. Gravitz resides in Santa Barbara  
12 County, California. This Court on November 17, 2009, approved a settlement in  
13 this case of the FTC's allegations against Mr. Gravitz. (*See* Final Judgment and  
14 Order for Permanent Injunction and Settlement of Claims for Monetary Relief  
15 Against Defendant Aaron Gravitz (Case No. SACV-09-01324 CJC (RNBx)) (Dkt.  
16 #7).)

17 13. Charles Gugliuzza, the remaining defendant in this case, was, at  
18 various times between July 1, 2005 and November 5, 2007, president, consultant,  
19 attorney, shareholder and director of Commerce Planet. At all times material to  
20 this Complaint, as set forth more fully in Paragraph 43, *infra*, acting alone or in  
21 concert with others, he participated in and had the authority to control the acts and  
22 practices of Commerce Planet alleged herein and knew or should have known that  
23 such practices were unfair or deceptive. Mr. Gugliuzza resides in Orange County,  
24 California.

25 **COMMERCE**

26 14. At all times material to this Complaint, Defendants have maintained a  
27 substantial course of trade in or affecting commerce, as "commerce" is defined in  
28 Section 4 of the FTC Act, 15 U.S.C. § 44.

1                                    **COMMERCE PLANET’S BUSINESS PRACTICES**

2            15.    Beginning in or around January 2004, and continuing until at least  
3 March 2008, Commerce Planet engaged in the marketing and sale of various  
4 business opportunities, including but not limited to OnlineSupplier, a program  
5 advertised as giving members the ability to create, operate, maintain and manage  
6 their own internet business.

7            16.    Commerce Planet marketed its products using a variety of means,  
8 including print advertisements, commercial email, internet advertisements, pop-up  
9 ads, job boards and radio advertisements. Prior to September 2005, most sales of  
10 Commerce Planet products were made by telemarketers employed by the  
11 company.

12                                    **Commerce Planet’s Deceptive Internet Marketing of OnlineSupplier**

13            17.    Beginning in or around July 2005, Commerce Planet created and  
14 began operating webpages, also known as “landing pages” or “sign-up pages,” that  
15 offered a Free Online Auction Kit. Commerce Planet attracted potential customers  
16 by placing advertisements similar to Exhibit 1 on internet job boards and internet  
17 classified advertising sites. Commerce Planet also used “affiliate marketers” to  
18 drive traffic to its landing pages. Affiliate marketers used a variety of different  
19 means to market OnlineSupplier, including but not limited to sending commercial  
20 emails such as those depicted in Exhibit 2 and placing banner ads or pop-up  
21 advertisements on popular websites.

22            18.    Consumers who clicked on links in the advertisements were taken  
23 directly to OnlineSupplier sign-up pages similar to those in Exhibits 3 and 5.  
24 Commerce Planet used sign-up pages similar to those in Exhibit 3 from about July  
25 2005 to February 2007 (“Version 1”). Commerce Planet used revised sign-up  
26 pages similar to those in Exhibit 5 from approximately February 2007 to March  
27 2008 (“Version 2”).

1           19.    The first sign-up page (the “Address Form”) contained an offer for an  
2 “Online Auction Starter Kit” that claimed to provide valuable tools on how to sell  
3 goods on the internet. This first page presented the offer as “free” or costing only  
4 shipping and handling (*e.g.*, “Where do we ship your FREE KIT?” . . . “Just pay  
5 S/H” . . . “GET YOUR ONLINE AUCTION STARTER KIT TODAY FREE!”).  
6 (Exhibit 3 at 28; Exhibit 5 at 42)

7           20.    This first sign-up page also contained information boxes for the  
8 consumer’s name, shipping address and phone number. In Version 1, the typical  
9 computer screen then showed a “Ship My Kit!” submit button at the bottom of the  
10 visible page. (Exhibit 3 at 28) No scrolling was required to execute the  
11 instruction. Further items, below the fold, included a “NOW FREE!” statement;  
12 links to “Privacy Policy” and “Terms Of Membership”; and several other items.  
13 In Version 2, the “Ship My Kit!” button was just below the fold, requiring a small  
14 amount of scrolling. (Exhibit 5 at 42)

15           21.    Consumers who clicked the “Ship My Kit!” button were taken to a  
16 second sign-up page (the “Payment Page”). (Exhibit 3 at 29; Exhibit 5 at 43) This  
17 page specified a cost for the first time – but only \$1.95 for regular shipping. The  
18 page included further information boxes for credit card information to pay for this  
19 shipping. Immediately below this form, there appeared the final “Ship My Kit!”  
20 submit button. In a typical computer screen presentation, this submit button  
21 appeared at or near the bottom of the screen, followed by little or no visible  
22 pertinent information. (Exhibit 3 at 29; Exhibit 5 at 43)

23           22.    Once consumers clicked on the “Ship My Kit!” button, the website  
24 transmitted the consumer’s credit card information to Commerce Planet so that the  
25 consumer’s credit card could be charged.

26           23.    Unbeknownst to many consumers, Commerce Planet treated  
27 consumers’ request for the free Starter Kit as authorization to charge consumers  
28 \$39.95 to \$59.95 a month for membership in OnlineSupplier’s negative option

1 continuity plan (“negative option plan”). This plan purported to give consumers  
2 access to all the supplies and services they needed to start their own business  
3 selling products on eBay or other internet auction sites. Commerce Planet  
4 continued to automatically impose monthly charges until the consumer contacted  
5 the company and affirmatively canceled the negative option plan.

6       24. In numerous instances, Commerce Planet also charged consumers for  
7 additional “upsell” products and services that also had not been mentioned on the  
8 first or second sign-up pages. (Exhibit 3 at 30; Exhibit 5 at 44–45) Often,  
9 Commerce Planet presented these upsells on a subsequent page (the “Upsell  
10 Page”) with the consumer’s acceptance “pre-clicked” as a “yes.” In that sense  
11 these offers also were sold as negative options.

12       25. In numerous instances, consumers first became aware that they had  
13 been enrolled in a negative option plan when they received a credit card statement  
14 showing charges imposed for this plan. Many consumers called the  
15 OnlineSupplier customer service telephone number or contacted the company by  
16 email to try to cancel and obtain refunds. Many had difficulty in doing so. For  
17 example, consumers often had difficulty reaching customer service  
18 representatives. Consumers often were told there were no refunds. Consumers  
19 often had to call multiple times to cancel.

20       26. In numerous instances, consumers were able to cancel only after  
21 threatening to contact an attorney, the Better Business Bureau, or government  
22 authorities. In numerous instances, consumers were able to stop the charges only  
23 by contacting their credit card companies to reverse charges or by canceling their  
24 credit cards. In some instances, it took consumers several months to identify the  
25 source of the charges and to extricate themselves from Commerce Planet’s  
26 negative option plan. As a result, numerous consumers paid unauthorized charges  
27 of up to several hundred dollars.



1 27. Commerce Planet in the period from July 2005 through March 2008  
2 obtained over \$45 million from over 500,000 consumers. In most instances,  
3 consumers received nothing of value because they had never desired, or  
4 knowingly consented to, the purchase of the OnlineSupplier negative option plan.

5 **Commerce Planet's Purported Disclosures**

6 28. Commerce Planet's sign-up pages contained purported disclosures  
7 referring to the negative option plan. Commerce Planet's presentation of these  
8 disclosures made it unlikely that consumers would notice or understand them.

9 29. One such purported disclosure was "below the fold" on the Payment  
10 Page, the webpage where consumers indicated their final acceptance of the Starter  
11 Kit. (Exhibit 3 at 29; Exhibit 5 at 43) The area of the webpage viewable above  
12 the fold contained no reference to any negative option plan. However, Version 1  
13 of Commerce Planet's sign-up pages contained the following language in small  
14 font below the "Ship My Kit!" button and below the fold (Exhibit 3 at 29):

15 Your Online Auction kit will ship out within the next 2-3 business days.  
16 Your kit is the perfect tool to start a home-based auction business. You will  
17 also enjoy a free trial membership to Onlinesupplier.com, where you can  
18 buy thousands of name brand products at up to 50% off and have your very  
19 own webstore. Click here for the complete terms and conditions of the trial  
20 membership. By submitting this application, you agree to the Privacy Policy  
21 of this Web Site, the Onlinesupplier.com free trial, and to the following  
22 statement: "I UNDERSTAND THAT THIS CONSUMER TRANSACTION  
23 INVOLVES A NEGATIVE OPTION, AND THAT I MAY BE LIABLE  
24 FOR PAYMENT OF FUTURE GOODS AND SERVICES UNDER THE  
25 TERMS OF THIS AGREEMENT FOR \$39.95 PER MONTH IF I FAIL TO  
26 NOTIFY THE SUPPLIER NOT TO SUPPLY THE GOODS OR  
27 SERVICES DESCRIBED.["]



1 30. Version 2 of Commerce Planet’s sign-up pages presented a similar  
2 paragraph of text. (Exhibit 5 at 43) This purported disclosure, though shorter and  
3 presented in a more contrasting color, also appeared in small font below the “Ship  
4 My Kit!” button and below the fold.

5 31. These purported disclosures in many instances failed to effectively  
6 inform consumers that Commerce Planet would impose monthly charges for the  
7 OnlineSupplier program. These disclosures appeared below the fold and were  
8 viewable only if the consumer – already invited to hit the “Ship My Kit!” button –  
9 scrolled down below the fold and well below the submit button. Further  
10 deficiencies included, among other things, the inconspicuous presentation of the  
11 disclosure paragraph (*e.g.*, blue text on blue background in the Version 1); the  
12 mode of expression (densely packed legalese); and the placement of the most  
13 critical information – cost – near the end of the text or after items of lesser interest.

14 32. A second purported disclosure was not contained in any of the sign-  
15 up pages, but rather in a separate, linked Terms of Membership webpage. On the  
16 first sign-up page – well below the “Ship My Kit!” button – there was a reference  
17 in small type to two links entitled “Privacy Policy” and “Terms Of Membership.”  
18 (Exhibit 3 at 28; Exhibit 5 at 42) In Version 1, the Terms of Membership webpage  
19 – itself a document over 4,000 words long – refers to the negative option plan in  
20 subsection 4 (Exhibit 4 at 34):

21 If you subscribe to a service on this site that requires payment of a  
22 fee, you agree to pay all fees associated with such service, including  
23 the activation fee and the monthly web hosting fee of \$39.95. For all  
24 charges for services on this site, we will bill your credit card or  
25 checking/savings account provided to us at activation. Recurring  
26 charges will be billed to the account you have provided us at the time  
27 of activation and will be billed every 30 days thereafter unless you  
28 contact customer service to cancel your membership.

1           33. Commerce Planet’s Version 2 employed the same approach. This  
2 “Terms of Membership” webpage presented a similar paragraph of text regarding  
3 the monthly charges, now in the third paragraph. (Exhibit 6 at 48)

4           34. These purported disclosures in numerous instances also failed to  
5 effectively inform consumers that Commerce Planet would impose monthly  
6 charges for the OnlineSupplier program. First, there was no conspicuous or  
7 informative reference to the linked web page. In both versions, the reference  
8 appeared well below the “Ship My Kit!” button with distracting, more prominent  
9 references in between (*e.g.*, “Now FREE!). (Exhibit 3 at 28; Exhibit 5 at 42)  
10 Second, the Terms of Membership web page itself presented the key information  
11 in inconspicuous fashion. Defects included, among other things, that the relevant  
12 text was placed in a lengthy document (of over 4000 words) that appeared to  
13 contain general legal notices.

14           35. Commerce Planet executives knew or should have known that the  
15 purported disclosures were not effectively communicating to consumers that they  
16 were committing themselves to a continuity plan with monthly charges. Aside  
17 from the defects obvious from a facial examination of the sign-up pages,  
18 executives knew, among other things, that the OnlineSupplier program was  
19 generating complaints to the Better Business Bureau, to state attorneys general and  
20 directly to Commerce Planet; that most paying customers never used the services  
21 provided in the OnlineSupplier negative option plan; and that Commerce Planet  
22 was generating an exorbitant number of credit card chargebacks and demands for  
23 refunds.

24           36. Commerce Planet, under pressure from merchant account providers  
25 and others due to a high number of chargebacks, experimented with modest  
26 changes to the language and placement of disclosures, and discovered that sales  
27 dropped significantly when Commerce Planet made its disclosures more  
28 noticeable.

1           37. For example, in or around November 2006, Commerce Planet  
2 experimented with adding a “check box” on the second sign-up page. The check  
3 box would have required consumers to affirmatively indicate that they agreed to  
4 the terms and conditions of the membership offer. The results of that experiment  
5 were documented in an internal report to senior Commerce Planet executives,  
6 including to Defendant Gugliuzza, that stated: **“We did a split test on Online  
7 Supplier adding in a check box on the billing page.** On a sample size of about  
8 12,000 clicks from the same media source during the same time period, we saw a  
9 decrease in conversion from 4% that didn’t have the check box to 3% that did have  
10 the check box. There is no way that we can experience a 25% decrease in  
11 conversion and keep publishers pushing our offer. **This is not a viable solution.”**  
12 (emphasis in original)

13           **Defendant Gugliuzza’s Role in the Marketing and Sale of Online Supplier**

14           38. From approximately July 1, 2005 through November 5, 2007,  
15 Gugliuzza, acting alone or in concert with others, formulated, directed, controlled,  
16 had the authority to control, or participated in the acts and practices of Commerce  
17 Planet and its affiliates, including the acts and practices set forth in this Complaint.

18           39. Gugliuzza’s relationship with Commerce Planet began in or around  
19 May 2005, when he was retained at the direction of Commerce Planet’s board of  
20 directors to conduct an analysis of the company’s operations. On June 14, 2005,  
21 Gugliuzza produced a written “performance assessment” for the company’s board  
22 of directors.

23           40. On June 28, 2005, Gugliuzza entered into a “Corporate Consulting  
24 Agreement” with the company. The agreement describes Gugliuzza as  
25 “experienced in matters regarding ecommerce, direct marketing and general  
26 business operating procedures.” The agreement states that Gugliuzza “shall assist  
27 the Company in implementing operating strategies and procedures as prescribed  
28 by the Company’s Board of Directors, and pursuant to the Consultant’s Company

1 Performance Assessment Report dated June 14, 2005.” On or around March 24,  
2 2006, Gugliuzza entered into an “Executive Compensation Agreement,” the stated  
3 purpose of which is “to provide a one-time bonus to Executive separate from and  
4 in addition to Executive’s existing compensation package.”

5 41. While this consulting contract was in force, Gugliuzza not only  
6 served as a consultant, but also exercised executive authority at Commerce Planet  
7 similar to that of a Chief Operating Officer. This contract lasted until  
8 approximately September 2006.

9 42. On or around September 11, 2006, Commerce Planet issued a press  
10 release announcing that Gugliuzza had been appointed president of the company.  
11 The announcement stated, in part, that Gugliuzza “has played a key role in the  
12 turnaround and success of Commerce Planet’s [*sic*] over the past year.” Gugliuzza  
13 served in the position of president of Commerce Planet until about November 5,  
14 2007.

15 43. Gugliuzza, acting alone or in concert with others, not only  
16 participated in and had the authority to control the acts and practices of Commerce  
17 Planet but also knew or should have known that such practices were unfair or  
18 deceptive. Among other things:

19 a. Gugliuzza’s duties as consultant and *de facto* Chief Operating Officer  
20 included overseeing many of the company’s day-to-day operations,  
21 including tracking profit and loss (“P&L”), monitoring the success of  
22 Commerce Planet’s marketing efforts and participating in the hiring  
23 and firing of employees;

24 b. Gugliuzza from the beginning had reason to question the truthfulness  
25 of Commerce Planet’s marketing. His consulting report referred to  
26 the views of some company personnel that Commerce Planet had  
27 been selling “crap in a box” and that “the [company’s] customer base  
28 is comprised of low level individuals that will buy anything, as long

1 as it is presented properly”;

2 c. Gugliuzza received reports about the excessive number of customer  
3 complaints, refund requests and chargebacks in connection with  
4 OnlineSupplier;

5 d. Gugliuzza also personally negotiated or supervised and directed the  
6 negotiations of contracts and disputes with vendors and others on  
7 behalf of the Commerce Planet operating subsidiaries;

8 e. Gugliuzza managed marketing expenditures and received regular  
9 reports on the marketing and sale of OnlineSupplier. He therefore  
10 was in a position to know what techniques were driving or inhibiting  
11 sales;

12 f. Gugliuzza also personally reviewed – and edited – the OnlineSupplier  
13 sign-up pages and associated marketing materials, and thus was in a  
14 position to see from facial examination that the purported disclosures  
15 therein were facially inadequate;

16 g. Gugliuzza, despite the foregoing signals that the Commerce Planet  
17 webpages were unfair and deceptive, advised against a number of  
18 specific proposed improvements. On or around December 21, 2006,  
19 Gugliuzza received an email suggesting that Commerce Planet deal  
20 with the high level of chargebacks by placing an “I agree to the terms  
21 and conditions” check box above the “Ship My Kit!” button. On or  
22 around December 24, 2006, Gugliuzza responded by stating: “Let’s  
23 be very careful in changing our order sign up process. Every barrier  
24 we place to the order process will decrease our conversion rate. . . .  
25 Do not change anything without my prior approval.” As a result of  
26 Gugliuzza’s direction, Commerce Planet did not revise the  
27 OnlineSupplier sign-up process to include a check box or other  
28 mechanism requiring consumers to affirmatively agree to the negative

1 option plan;

2 h. Gugliuzza is an attorney and member of the California Bar and, in  
3 addition to his other duties, acted as lead in-house attorney for  
4 Commerce Planet. In that capacity, Gugliuzza, in or around March  
5 2007, also rejected the advice of a subordinate in-house attorney that  
6 the sign-up pages may violate the FTC Act. As result, that attorney  
7 did not press for further revisions to the OnlineSupplier sign-up  
8 process.

9 44. Even as a consultant, Gugliuzza had an “Executive Compensation  
10 Agreement” giving him compensation equivalent to or greater than the  
11 compensation of the CEO. Gugliuzza received salary, fees, stock options and  
12 other compensation worth more than \$3 million for his performance at Commerce  
13 Planet during the period July 1, 2005, through November 5, 2007.

14 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

15 45. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
16 deceptive acts or practices in or affecting commerce.” Misrepresentations or  
17 deceptive omissions of material fact constitute deceptive acts or practices  
18 prohibited by Section 5(a) of the FTC Act.

19 46. Acts or practices are unfair under Section 5 of the FTC Act if they  
20 cause substantial injury to consumers that consumers cannot reasonably avoid  
21 themselves and that is not outweighed by countervailing benefits to consumers or  
22 competition. 15 U.S.C. § 45(n).

23 47. Individuals can be held liable for injunctive relief when, acting alone  
24 or in concert with others, they formulated, directed, controlled or had the authority  
25 to control company practices that violate the FTC Act. Such individuals,  
26 furthermore, can be held jointly and severally liable for monetary relief for such  
27 corporate misconduct if they had actual knowledge of the company’s material  
28 misrepresentations, were recklessly indifferent to the truth or falsity of such

1 misrepresentations or had an awareness of a high probability of fraud along with  
2 an intentional avoidance of the truth. In addition, individuals can be held liable for  
3 injunctive relief and jointly and severally liable for monetary relief when, acting  
4 alone or in concert with others, they participated in practices that violate the FTC  
5 Act.

6 **COUNT 1 – Deceptive Practices**

7 48. In numerous instances in connection with the marketing of its  
8 negative option plan, Commerce Planet represented, directly or by implication,  
9 that consumers could obtain an “Online Auction Starter Kit” for free or for the  
10 payment of a nominal shipping and handling fee.

11 49. Commerce Planet failed to disclose, or to disclose adequately, the  
12 material terms and conditions of the offer, including but not limited to:

- 13 a. The fact that Commerce Planet would automatically enroll  
14 consumers in a negative option plan that required consumers to  
15 affirmatively cancel to avoid additional charges;  
16 b. The fact that Commerce Planet would use consumers’ credit  
17 card information to periodically charge them for the negative  
18 option plan;  
19 c. The costs associated with the negative option plan;  
20 d. When consumers must cancel to avoid further charges; and  
21 e. The means consumers must use to cancel.

22 50. In light of the representation set forth in Paragraph 48, the failure of  
23 Commerce Planet to disclose, or to disclose adequately, the material information  
24 in Paragraph 49 constitutes deceptive acts or practices in violation of Section 5(a)  
25 of the FTC Act, 15 U.S.C. § 45(a).

26  
27 **COUNT 2 – Unfair Practices**

28 51. In numerous instances in connection with the marketing of its



1 negative option plan, Commerce Planet assessed monthly charges against  
2 consumers' credit cards without obtaining the express, informed consent of the  
3 consumers to assess such charges.

4 52. Commerce Planet's practice of assessing monthly charges against  
5 consumers' credit cards without obtaining the express, informed consent of the  
6 consumers caused or was likely to cause substantial injury to consumers that was  
7 not reasonably avoidable by consumers themselves and was not outweighed by  
8 countervailing benefits to consumers or competition.

9 53. Therefore, Commerce Planet's practice as alleged in Paragraph 51  
10 was unfair in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **CONSUMER INJURY**

12 54. The violations of Section 5 of the FTC Act as set forth above have  
13 caused substantial injury to consumers. Absent injunctive relief by this Court,  
14 Defendants are likely to continue to injure consumers.

15 **THIS COURT'S POWER TO GRANT RELIEF**

16 55. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this  
17 Court to grant injunctive and such other relief as the Court may deem appropriate  
18 to halt and redress violations of the FTC Act. The Court, in the exercise of its  
19 equitable jurisdiction, may award other ancillary relief, including but not limited  
20 to rescission or reformation of contracts, restitution, disgorgement of ill-gotten  
21 gains and other equitable monetary relief as may be appropriate in each case, to  
22 prevent and remedy injury caused by the alleged violations of law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15  
25 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

1 1. Permanently enjoin Defendants from violating Section 5 of the FTC  
2 Act as alleged in this Complaint;

3 2. Award such relief as the Court finds necessary to redress injury to  
4 consumers resulting from the alleged violations of Section 5 of the FTC Act,  
5 including but not limited to rescission of contracts and restitution, and the  
6 disgorgement of ill-gotten gains by Defendants; and

7 3. Award Plaintiff the costs of bringing this action, as well as such other  
8 and additional relief as the Court may determine to be just and proper.

9  
10 Dated:

Respectfully submitted,

11 WILLARD K. TOM  
12 General Counsel

13 /s/ David M. Newman

14 DAVID M. NEWMAN  
15 ERIC D. EDMONDSON  
16 EVAN ROSE  
17 KERRY O'BRIEN  
18 Federal Trade Commission  
19 901 Market Street, Suite 570  
20 San Francisco, CA 94103  
21 P: 415-848-5100/F: 415-848-5184  
22 dnewman@ftc.gov; eedmondson@ftc.gov;  
23 erose@ftc.gov; kobrien@ftc.gov

19 RAYMOND E. MCKOWN  
20 Federal Trade Commission  
21 10877 Wilshire Blvd., Suite 700  
22 Los Angeles, CA 90024  
23 P: 310-824-4343/F: 310-824-4380  
24 rmckown@ftc.gov

25 Attorneys for Plaintiff  
26 Federal Trade Commission  
27  
28

# Exhibit 1

SantaBarbaraCountyHelpWanted.com



onlinesupplier.com

## eBay Resellers Needed

### ebay Online Jobs

Internet/New Media

Retail

Work from Home/ Business Opportunity

**Start earning money immediately.** For years, we have offered one of the most successful opportunities available on the Internet. Our service is GREAT for people who want to supplement or build terrific incomes for themselves working from home, a local office, or on the Internet!

**Start working today!** Work at home anytime of the day or night on the Internet or by telephone, you choose.

**Just go to the Web link above for more information.**

This service is PERFECT for people who want to work from home or enjoy telecommuting.

***Our opportunity offers the following benefits:***

100% Internet

No cold calling

Work from home, any-time, any-place

No MLM

Work on the Internet and/or work on the telephone

Dedicated support help

**This offer is on a first-come, first-serve basis, only!**

**Just go to the Web link above for more information.**

***Recently received success story highlights:***

“...I did not think making this much money was that easy. I would recommend this company to anyone who has the drive to succeed. Thanks for giving me the opportunity...”

-Mike G

“I have a seventeen month old son and another baby on the way, so being able to make a real financial contribution to our family budget and be at home as a mom is very important to me...In just a couple hours a week, I am able to meet our financial goals, leaving me plenty of time to do the things that are really important to me in life...”

Ruth G

“Simply put, your program makes a lot of dreams possible...I have never been able to spend this much time with my family.”

Timothy H

“I didn’t have to quit my current job to begin making money.”

Todd S

“Get started now. I promise you’ll be pleased with the results.”

-Rosemary S

**Just click the "Apply to this Job Online" button to reply and get more information.**

Company Name:	<b>OnlineSupplier.com</b>
Apply Online:	<a href="#">Employer's Website</a>
Location:	Santa Barbara, CA
Available:	Immediately
Posted:	2/1/2008



Visit: [Employer's Website](#)  
to learn more about **OnlineSupplier.com**.

# Exhibit 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



-----Original Message-----

From: eBay Jobs [mailto: [REDACTED]]  
Sent: Monday, April 09, 2007 8:06 AM  
To: Subscriber  
Subject: eBay Workers Needed...WILL TRAIN

Come Work Online With eBay

[http://w \[REDACTED\]](http://w [REDACTED])

- \* Use Your Home Computer
- \* No Experience Necessary
- \* Cash Daily
- \* Growth Opportunity

This is a limited time opportunity to try this proven and profitable system

\*Work Online With eBay...to find out more information click on the following link.\*

<http://wheeldaisy.com/t/r3od3avjqb/71300>

Read what a few satisfied customers have to say:

"This is a simple way to make money from your home. I was skeptical at first...I made money. I couldn't believe it. I didn't even have to run to the post office. I am a wife and stay at home mother of two wonderful children so I don't have a lot of time to sit in front of a computer. I really made money from my home and didn't have to take a lot of time out from my family! This is great for stay at home moms/dads, retired people or anyone who just wants an extra income."

- Nicole K., Rockford, IL

"I didn't have to quit my current job to begin making money.

-Todd S, Ann Arbor, MI

"I have a seventeen month old son and another baby on the way, so being able to make a real financial contribution to our family budget and be at home as a mom is very important to me. In just a couple hours a week, I am able to meet our financial goals, leaving me plenty of time to do the things that are really important to me in life."

-Ruth G., Rexburg, ID

Join Nicole, Todd, Ruth, and others. Make money in the comfort of your own home.

\*For more information click on the following link\*

[http:// \[REDACTED\]](http:// [REDACTED])

---

**From:** Confirmation Department[Confirmation [REDACTED]]  
**Sent:** Tuesday, March 07, 2006 5:53 AM  
**To:** [REDACTED]  
**Subject:** Ebay Workers Needed

The Auction Success Kit provides detailed instructions to maximize profits, using little known but proven strategies on eBay®. It shows you what works and why eBay® is the best place to make huge profits with little effort.

Visit  
[http://\[REDACTED\]](http://[REDACTED])

To cease future mailings from this advertiser, please visit below or write to:

Online Supplier 30 S La Patera Unit 7 Goleta,  
CA 93117 or email [unsubscribe@onlinesupplier.com](mailto:unsubscribe@onlinesupplier.com)

To unsubscribe from this Advertisement, go to:  
[http://\[REDACTED\]](http://[REDACTED])

or, send a blank message  
[mailto:r.ConfirmationDept@\[REDACTED\]](mailto:r.ConfirmationDept@[REDACTED])

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Friday, December 30, 2005 3:45 AM  
**To:** [REDACTED]  
**Subject:** eBay Workers Needed

Subject: eBay Workers Needed

- \* Use Your Home Computer
- \* No Experience Necessary
- \* Cash Daily
- \* Growth Opportunity

\*Work Online Using eBay...to find out more information click on the following link.\*

http://[REDACTED]

This is a limited time opportunity to try this proven and profitable system

Read what a few satisfied customers have to say:

This is a simple way to make money from your home. I was skeptical at first...I made money. I couldn't believe it. I didn't even have to run to the post office. I am a wife and stay at home mother of two wonderful children so I don't have a lot of time to sit in front of a computer. I really made money from my home and didn't have to take a lot of time out from my family! This is great for stay at home moms/dads, retired people or anyone who just wants an extra income."  
- Nicole K., Rockford, IL

"I didn't have to quit my current job to begin making money."  
-Todd S, Ann Arbor, MI

"I have a seventeen month old son and another baby on the way, so being able to make a real financial contribution to our family budget and be at home as a mom is very important to me. In just a couple hours a week, I am able to meet our financial goals, leaving me plenty of time to do the things that are really important to me in life."  
-Ruth G., Rexburg, ID

Join Nicole, Todd, Ruth, and others. Make money in the comfort of your own home.

\*For more information click on the following link\*

http://[REDACTED]

[REDACTED]  
Long Beach, CA 90802  
To be removed, email unsubscribe@onlinesupplier.com

To unsu

or, sen  
mailto:

# Exhibit 3

Version 1, Address Form (Check-out Page 1) on a 1024 x 768 screen (Blue)



Work From Anywhere  
Using Your Computer!

**OVER \$3.2 BILLION WAS MADE  
ON eBay LAST YEAR!**



JOIN OVER 724,000 AMERICANS MAKING A LIVING ON EBAY! HURRY THIS IS A LIMITED TIME OFFER!



CBS News published a story about people making a living on eBay! [CLICK HERE TO READ ABOUT IT](#)

### ONLINE AUCTION ..... STARTER KIT!

The Online Auction Starter Kit includes everything you need to get started right away. We show you what works. eBay is the best place to sell virtually anything and make huge profits with little effort.

The Online Auction Starter Kit provides detailed instructions to maximize profits, using little known but proven strategies.



**GET YOUR KIT NOW FOR FREE!**

**Our Starter Kit includes the following benefits:**

1. Step-by-step Quick Start Guide.
2. No experience required.
3. Advanced training for experienced auctioneers.
4. Up to 50% discounts on 1,000's of name brand products.
5. And thats just to start...

— SUCCESS STORIES —



"For as long as I can remember, I wanted a run a retail home based business from my computer. But with no substantial financial backing, and no space at home to store products, it seemed impossible... Now my dream has come true. I own and operate my own profitable business at home and I couldn't be happier! Get started now—I promise you'll be pleased with the results.. YOU will be a success story too!"

-Rosemary S., Brandenburg KY



"I have a seventeen month old son and another baby on the way, so being able to make a real financial contribution to our family budget AND be at home as a mom is very important to me... In just a couple of hours a week I am able to meet our financial goals, leaving me plenty of time to do the things that are really important to me in life. Thank you..."

-Ruth G., Rexburg, Idaho

This Offer will end in **14:46** Minutes!

**Where do we ship your FREE KIT?**

First Name:

Last Name:

Address:

City:

State:

Zip Code:

Phone:

Email:

**Ship My Kit!**

GET YOUR ONLINE AUCTION STARTER KIT TODAY FREE!

WAS ~~19.95~~ NOW **FREE!**

(limited time offer)

By submitting this form you are accepting and agreeing to the [Privacy Policy](#) and [Terms Of Membership](#) of this Web Site.

**BONUS**

Your kit includes a **FREE 14-DAY TRIAL** to YOUR VERY OWN WEBSTORE!

**GUARANTEED SECURE TRANSACTION**

**SUBSCRIBE TO OUR NEWSLETTER!**

Area viewable in web browser without scrolling ("above the fold")

"below the fold"

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Version 1, Payment Page (Check-out Page 2) on a 1024 x 768 screen (Blue)

The screenshot shows a payment page with the following elements:

- Header:** eBay logo, "Work From Anywhere Using Your Computer!", and "AS SEEN ON TV" badge.
- Left Side:** A circular image of a woman at a computer with a callout box: "You are **ONE CLICK AWAY** from receiving the most up-to-date information for making money on eBay!"
- Form Fields:**
  - Choose Your Shipping Method: Shipping Method: Regular - \$1.95
  - Choose Your Payment Method: Logos for VISA, MasterCard, Discover, and American Express.
  - Card Type: (Select Your Card)
  - Credit Card #: [input field]
  - Exp. Date: 04 / 2008
  - Name on Card: [input fields]
  - Enter security code located on card: [input field] [What is this?](#)
- Buttons:** "Ship My Kit!"
- Text:** "Charges will appear as Online Supplier (Please click the submit button only once. Processing may take several minutes)." and a "GUARANTEED SECURE TRANSACTION" badge.
- Bottom Section:** A block of fine print text starting with "Your Online Auction kit will ship out within the next 2-3 business days..."

A dashed horizontal line separates the top section (labeled "Area viewable in web browser without scrolling ('above the fold')") from the bottom section (labeled "below the fold").

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Version 1, Upsell Page (Check-out Page 3) on a 1024 x 768 screen (Blue)

## Come Work Online Using Ebay!



**Congratulations! Your order has been processed.**

Your Order ID is:

Please, expect your kit within 3 to 7 business days.  
[Print this page for your records](#)

**Would you like risk FREE one-on-one OSActionline COACHING?**

Yes  No

The following is important information about your code to get \$250 in free products and our OSActionline service...

With OSActionline, you will have unlimited access to your own personal coach that will help you execute the techniques of our most successful online marketers and develop a custom action plan. Online Supplier is currently offering a special 14-day risk free trial to our OSActionline service. [Click Here](#) for Terms and Conditions.

A \$1 activation fee will be charged to the card you provided today to start your 14-day trial. After the 14-day trial period, OSActionline will automatically charge \$59.95 per month to the credit card you used today. If you decide the service is not for you simply call 1-800-831-3952 anytime during your 14-day trial and you'll never be charged again. But remember, any and all of the information and services you've received are yours to use. Along with the acceptance of this trial you will receive your \$250 redeemable code for [www.freegiftsamerica.com](http://www.freegiftsamerica.com).

---

**Would you like access to BUYDISCOUNT.com which offers name brand products up to 60% off retail?**

Yes  No

As a member of BuyDiscount, you will receive savings up to 60% on over 20,000 brand name products like Sony, Panasonic, HP, and more. With BuyDiscount you will greatly increase the number of products that you can offer to your customers. An activation fee of \$1.00 will be charged to your account and a monthly membership fee of \$29.95 will be automatically charged to your account after your 30-day trial. [Click Here](#) for Terms and Conditions.

---

**Would you like a NEW Computer with a FREE Color Inkjet Printer?**

Yes  No

MyComputerClub allows members to finance quality computers while also rebuilding their credit. An annual membership fee of \$89.00 will be automatically charged to your account after your Free 21-day trial. [Click Here](#) for Terms and Conditions.

Area viewable in web browser without scrolling ("above the fold")

"below the fold"

Version 1, Confirmation Page (Check-out Page 4) on a 1024 x 768 screen (Blue)



**Come Work Online Using Ebay!**

Join Over 724,000 Americans...  
Making a Living On Ebay!

We'll even set you up with  
\$250 of FREE Products to start!

You have completed the order process...

The advertisement banner features a woman in an orange shirt working at a computer. To the right of the woman are several small images: a red car, a blue printer, a pair of sunglasses, and a pair of shoes. The text is in blue and red, with a white background for the main banner area.

Area viewable in  
web browser

# Exhibit 4

## TERMS AND CONDITIONS

Customer Service Toll-Free Number: 1-800-831-3952

### 1. User's Acknowledgment and Acceptance of Terms

**Online Supplier** (referred to as "us" or "we") provides the [www.onlinesupplier.com](http://www.onlinesupplier.com) site and various related services (together referred to as this "site") subject to your compliance with all the terms, conditions, and notices contained or referenced herein (the "Terms of Use"), as well as any other written agreement between us (or your company). In addition, when using particular services or materials on this site, users shall be subject to any posted guidelines or rules applicable to such services or materials that may contain terms and conditions in addition to those in these Terms of Use. All such guidelines or rules are hereby incorporated by reference into these Terms of Use.

BY COMPLETING THE REGISTRATION PROCESS AND/OR USING THIS SITE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF USE, PLEASE EXIT THE SITE NOW. YOUR REMEDY FOR DISSATISFACTION WITH THIS SITE, OR ANY PRODUCTS, SERVICES, CONTENT, OR OTHER INFORMATION AVAILABLE ON OR THROUGH THIS SITE, IS TO STOP USING THE SITE AND/OR THOSE PARTICULAR PRODUCTS OR SERVICES. YOUR AGREEMENT WITH US REGARDING COMPLIANCE WITH THESE TERMS OF USE BECOMES EFFECTIVE IMMEDIATELY UPON COMMENCEMENT OF YOUR USE OF THIS SITE.

These Terms of Use are effective as of August 20, 2003. We reserve the right to change these Terms of Use from time to time without notice to you. You acknowledge and agree that it is your responsibility to review this site and these Terms of Use periodically and to be aware of any modifications. Your continued use of this site after such modifications will constitute your acknowledgement of the modified Terms of Use and agreement to abide and be bound by the modified Terms of Use.

As used in these Terms of Use, references to our "Affiliates" include our owners, subsidiaries, affiliated companies, officers, directors, suppliers, partners, sponsors, and advertisers, and includes (without limitation) all parties involved in creating, producing, and/or delivering this site and/or its contents.

### 2. Description of Services

We make various services available on this site including, but not limited to, online auction training, wholesale product distribution, website generation, merchant banking services and tax services. Fees for the various services are set out in the membership and service fees described elsewhere in this site. You are solely responsible for providing, at your own expense, all equipment necessary to use the services, including a computer and modem; and your own Internet access (including payment of telephone service fees associated with such access).

We reserve the sole right to either modify or discontinue the site, including any features therein, at any time with or without notice to you. We shall not be liable to you or any third party should we exercise such right. Modifications may include, but are not limited to, changes in the pricing structure, the addition of fee-based services, or changes to limitations on allowable file sizes. Any new features that augment or enhance the then-current services on this site shall also be subject to these Terms of Use.

You understand and agree that temporary interruptions of the services available through this site may occur as normal events. You further understand and agree that we have no control over third party networks you may access in the course of the use of this site, and therefore, delays and disruption of other network transmissions are completely beyond our control.

You understand and agree that the services available on this site are provided "AS IS" and that we assume no responsibility for the timeliness, deletion, mis- delivery or failure to store any user communications or personalization settings.

### 3. Registration Data and Privacy

In order to access some of the services on this site, you will require a separate account and password that can be obtained by completing our online registration form, which requests certain information and data ("Registration Data") and maintaining and updating your Registration Data as required. By registering, you agree that all information provided

in the Registration Data is true and accurate and that you will maintain and update this information as required in order to keep it current, complete and accurate.

You also grant us the right to disclose to third parties certain Registration Data about you. The information we obtain through your use of this site, including your Registration Data, is subject to our Privacy Policy, which is specifically incorporated by reference into these Terms of Use.

#### **4.Payment of Fees**

If you subscribe to a service on this site that requires payment of a fee, you agree to pay all fees associated with such service, including the activation fee and the monthly web hosting fee of \$39.95. For all charges for services on this site, we will bill your credit card or checking/savings account provided to us at activation. Recurring charges will be billed to the account you have provided us at the time of activation and will be billed every 30 days thereafter unless you contact customer service to cancel your membership. You agree to provide us with accurate and complete billing information, including valid credit card/checking/savings account information, your name, address and telephone number, and to provide us with any changes in such information within 10 days of the change.

If, for any reason, your credit card company refuses to pay the amount billed for the service, you agree that we may, at our option, suspend or terminate your subscription to the service and require you to pay the overdue amount by other means acceptable to us. We may charge a fee for reinstatement of suspended or terminated accounts.

You agree that until your subscription to the service is terminated, you will continue to accrue charges for which you remain responsible, even if you do not use the service.

In the event legal action is necessary to collect on balances due, you agree to reimburse us for all expenses incurred to recover sums due, including attorney fees and other legal expenses.

#### **5.Conduct on Site**

Your use of the site is subject to all applicable laws and regulations, including Netiquette, and you are solely responsible for the contents of your communications through the site. By posting information in or otherwise using any communications service, chat room, message board, newsgroup, software library, or other interactive service that may be available to you on or through this site, you agree that you will not upload, share, post, or otherwise distribute or facilitate distribution of any content -- including text, communications, software, images, sounds, data, or other information -- that:

1. Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates our rules or policies;
2. Victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
3. Infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
4. Constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
5. Contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; or
6. Impersonates any person or entity, including any of our employees or representatives.

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In addition, you may not use your account to breach security of another account or attempt to gain unauthorized access to another network or server. Not all areas of the site may be available to you or other authorized users of the site. You shall not interfere with anyone else's use and enjoyment of the site or other similar services. Users who violate systems or network security may incur criminal or civil liability.

You agree that we may at any time, and at our sole discretion, terminate your membership without prior notice to you for violating any of the above provisions. In addition, you acknowledge that we will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in investigating suspected criminal violations.

## **6.Third Party Sites and Information**

This site may link you to other sites on the Internet or otherwise include references to information, documents, software, materials and/or services provided by other parties. These sites may contain information or material that some people may find inappropriate or offensive. These other sites and parties are not under our control, and you acknowledge that we are not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of the content of such sites, nor are we responsible for errors or omissions in any references to other parties or their products and services. The inclusion of such a link or reference is provided merely as a convenience and does not imply endorsement of, or association with, the site or party by us, or any warranty of any kind, either express or implied.

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Certain of the ideas, software and processes incorporated into the Online Supplier service that is available on this site are protected by patent applications pending in the United States, and we intend to prepare and file additional patent applications in selected foreign jurisdictions.

## **8.User's Materials**

Subject to our Privacy Policy, any communication or material that you transmit to this site or to us, whether by electronic mail or other means, for any reason, will be treated as non-confidential and non-proprietary. While you retain all rights in such communications or material, you grant us and our designated licensees a non-exclusive, paid-up, perpetual, and worldwide right to copy, distribute, display, perform, publish, translate, adapt, modify, and otherwise use such material for any purpose regardless of the form or medium (now known or not currently known) in which it

used.

Please do not submit confidential or proprietary information to us unless we have mutually agreed in writing otherwise. We are also unable to accept your unsolicited ideas or proposals, so please do not submit them to us in any circumstance.

We respect the intellectual property of others, and we ask you to do the same. If you or any user of this site believes its copyright, trademark or other property rights have been infringed by a posting on this site, you or the user should send notification to our Designated Agent (as identified below) immediately. To be effective, the notification must include:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed
2. Identification of the copyrighted work claimed to have been infringed;
3. Information reasonably sufficient to permit us to contact the complaining party, such as address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted;
4. Identification of the material that is claimed to be infringing or to be subject to infringing activity and that is to be removed and information reasonably sufficient to permit us to locate the materials;
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, agent, or the law; and
6. A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringing.

Pursuant to the Digital Millennium Copyright Act, 17 U.S.C. Sec. 512(c), our Designated Agent for Notice of claims of copyright infringement can be reached as indicated below. Service of repeat infringers of copyright or of users about whom repeat claims of copyright infringement are received will be terminated.

Designated Agent for Claimed Infringement:

General Counsel Jeffrey S. Conrad

301 East Ocean Blvd., Suite 640, Long Beach, CA 90802, ph: (562) 983-0660, e-mail: jconrad@efundcapital.net

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Before purchasing products and services on or through this site, review our Sales Terms and Conditions, which are incorporated by reference into these Terms of Use.

Content available through this site often represents the opinions and judgments of an information provider, site user, or other person or entity not connected with Online Supplier. We do not endorse, nor are we responsible for the accuracy or reliability of, any opinion, advice, or statement made by anyone other than an authorized Online Supplier spokesperson speaking in his/her official capacity. Please refer to the specific editorial policies posted on various sections of this site for further information, which policies are incorporated by reference into these Terms of Use.

In addition, the materials on this site may include sample or form agreements, letters or other documents, including financially or legally significant documents such as contracts and other items ("Forms"). These Forms are provided solely as examples of typical documents of their kind, and the delivery and use of Forms does not constitute legal, accounting or other professional advice. Under no circumstances will Online Supplier or its Affiliates be liable for any loss or damages caused by your reliance on information or advice obtained through this site, including your use of any of the Forms. It is your responsibility to evaluate the accuracy, completeness, or usefulness of any information, opinions, advice, Forms or other content available on or through this site. In particular, you are urged to consult an appropriate professional licensed in your jurisdiction before using any Forms or otherwise relying on any legal, accounting, or other professional advice or information obtained on or through this site.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **10.Limitation of Liability**

Your exclusive remedy and our entire liability, if any, for any claims arising out of these Terms of Use and your use of this site shall be limited to the amount you paid us for the services on the site during the one month period before the act giving rise to the liability.

IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS SITE OR OF ANY WEB SITE REFERENCED OR LINKED TO FROM THIS SITE.

FURTHER, WE SHALL NOT BE LIABLE IN ANY WAY FOR THRID PARTY GOODS AND SERVICES OFFERED THROUGH THIS SITE OR FOR ASSISTANCE IN CONDUCTING COMMERCIAL TRANSACTIONS THROUGH THIS SITE, INCLUDING WITHOUT LIMITATION THE PROCESSING OF ORDERS.

SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **11.Indemnification**

Upon a request by us, you agree to defend, indemnify, and hold us and our Affiliates harmless from all liabilities, claims, and expenses, including attorney's fees, that arise from your use or misuse of this site. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

#### **12.Participation in Promotions**



From time to time, this site may include advertisements offered by third parties. You may enter into correspondence with or participate in promotions of the advertisers showing their products on this site. Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such correspondence or promotions, are solely between you and the advertiser. We assume no liability, obligation or responsibility for any part of any such correspondence or promotion.

### **13. Email Services**

We may make email services available to users of our site, either directly or through a third-party provider.

We will not inspect or disclose the contents of private email messages except with the consent of the sender or the recipient, or in the narrowly-defined situations provided under the Electronic Communications Privacy Act, or as other required by law or by court or governmental order. Further information is available in our Privacy Policy.

We may employ automated monitoring devices or techniques to protect our users from mass unsolicited mailings (also known as "spam") and/or other types of electronic communications that we deem inconsistent with our business purposes. However, such devices or techniques are not perfect, and we will not be responsible for any legitimate communication that is blocked, or for any unsolicited communication that is not blocked.

Mailboxes may have a limited storage capacity. If you exceed the maximum permitted storage space, we may employ automated devices that delete or block email messages that exceed the limit. We will not be responsible for such deleted or blocked messages.

### **14. Use of Site and Storage of Material**

You acknowledge that we may establish general practices and limits concerning use of the services available on our site, including without limitation the maximum number of days that uploaded content will be retained on the site, the maximum disk space that will be allotted on our servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the services in a given period of time. You agree that we have no responsibility or liability for the deletion or failure to store any content maintained or transmitted on or through this site. You acknowledge that we reserve the right to log off accounts which have not paid a subscription fee that are inactive for an extended period of time. You further acknowledge that we reserve the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

We provide storage space and access for material through our site. For purposes of these Terms of Use, "material" refers to all forms of communication that we may allow, including narrative descriptions, graphics (including photographs, illustrations, images, drawings, logos), executable programs, video recordings, and audio recordings. You may not use this site to publish material that we determine, at our sole discretion, to be unlawful, indecent, or objectionable, or which violates the restrictions described in "Your Conduct on the Site" above. We will not routinely monitor the contents of your online portfolio. You are solely responsible for any information contained in your online portfolios. However, if complaints are received regarding language, content, or graphics contained in your online portfolio, we may, at our sole discretion, remove the images hosted on our servers and terminate your Web hosting service. We may also suspend the account, restrict access to it, or remove content from it if necessary or appropriate.

The accounts of our users operate on shared resources. Excessive use or abuse of these shared network resources by one user may have a negative impact on all other users. Misuse of network resources in a manner that impairs network performance, including excessive consumption of CPU time, memory, disk space, and session time, is prohibited and may result in termination of your account or limitation of your activities.

This site is not designed or intended to be used as a disaster recovery facility or as an emergency data storage facility. Although we take reasonable precautions to preserve and protect the material you upload to the site, you should not rely on the site as your only storage facility. You should preserve backup copies of any digital data, information or other materials that you have uploaded. You agree not to hold us for any damage to, any deletion of or any failure to store your files, data or Registration Data.

### **15. Security and Password**

You are solely responsible for maintaining the confidentiality of your password and account and for any and all statements made and acts or omissions that occur through the use of your password and account, including any mail sent and any charges incurred. Therefore, you must take steps to ensure that others do not gain access to your password and account. Our personnel will never ask you for your password. You may not transfer or share your

account with anyone, and we reserve the right to immediately terminate your account in the event of any unauthorized transfer or sharing thereof.

## **16.Export Controls**

Software available on or through this site is subject to United States Export Controls. No software from this site may be downloaded or exported (a) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country which the United States has embargoed goods; or (b) anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders. By downloading or using the software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

## **17.International Use**

Although this site may be accessible worldwide, we make no representation that materials on this site are appropriate or available for use in locations outside the United States, and accessing them from territories where their contents are illegal is prohibited. Those who choose to access this site from other locations do so on their own initiative and are responsible for compliance with local laws. Any offer for any product, service, and/or information made in connection with this site is void where prohibited.

## **18.Termination of Use**

You agree that we may, in our sole discretion, terminate or suspend your access to all or part of the site with or without notice and for any reason, including, without limitation, breach of these Terms of Use. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities.

Upon termination or suspension, regardless of the reasons therefore, your right to use the services available on this site immediately ceases, and you acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or this site. We shall not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection therewith. Sections 1, 3, 5-11, 14, and 18-20 of these Terms of Use, as well as your liability for any unpaid fees, shall survive any termination.

## **19.Governing Law**

This site (excluding any linked sites) is controlled by us from our offices within the State of California United States of America. It can be accessed from all 50 states, as well as from other countries around the world. As each of these places has laws that may differ from those of California by accessing this site both of us agree that the statutes and laws of the State of California, without regard to the conflicts of laws principles thereof and the United Nations Convention on the International Sales of Goods, will apply to all matters relating to the use of this site and the purchase of products and services available through this site. Each of us agrees and hereby submits to the exclusive personal jurisdiction and venue of the Superior Court of Los Angeles County and the United States District Court for the Central District of California with respect to such matters.

## **20.Notices**

All notices to a party shall be in writing and shall be made either via email or conventional mail. Notices to us must be sent to the attention of Customer Service at memberservices@osprocessing.com, if by email, or Online Supplier, 404 East First St., P.O. Box 1345, Long Beach, CA 90802 if by conventional mail. Notices to you may be sent either to the email address supplied for your account or to the address supplied by you as part of your Registration Data. In addition, we may broadcast notices or messages through the site to inform you of changes to the site or other matters of importance, and such broadcasts shall constitute notice to you.

Any notices or communication under these Terms of Use will be deemed delivered to the party receiving such communication (1) on the delivery date if delivered personally to the party; (2) two business days after deposit with a commercial overnight carrier, with written verification of receipt; (3) five business days after the mailing date, if sent by US mail, return receipt requested; (4) on the delivery date if transmitted by confirmed facsimile; or (5) on the delivery date if transmitted by confirmed email.

## **21.Entire Agreement**

These terms and conditions constitute the entire agreement and understanding between us concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect thereto. These Terms of Use may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for products or services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by you and us. To the extent that anything in or associated with this site is in conflict or inconsistent with these Terms of Use, these Terms of Use shall take precedence.

## **22.Miscellaneous**

In any action to enforce these Terms of Use, the prevailing party will be entitled to costs and attorneys' fees. Any cause of action brought by you against us or our Affiliates must be instituted with one year after the cause of action arises or be deemed forever waived and barred.

You may not assign your rights and obligations under these Terms of Use to any third party, and any purported attempt to do so shall be null and void. We may freely assign our rights and obligations under these Terms of Use.

You agree not to sell, resell, reproduce, duplicate, copy or use for any commercial purposes any portion of this site, or use of or access to this site.

In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of products and services available through our site arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above.

If any part of these Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

Any failure by us to enforce or exercise any provision of these Terms of Use or related rights shall not constitute a waiver of that right or provision.

## **23.Contact Information**

Except as explicitly noted on this site, the services available through this site are offered by Online Supplier a Nevada corporation, located at 404 East First St., P.O. Box 1345, Long Beach, CA 90802. Our telephone number is (800) 831-3952. If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information. The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 404 R. Street, Suite 1080, Sacramento, CA 95814 or by telephone at (800) 952-5210. If you notice that any user is violating these Terms of Use, please contact us at [memberservices@osprocessing.com](mailto:memberservices@osprocessing.com)

Close Window

# Exhibit 5

Version 2, Address Form (Check-out Page 1) on a 1024 x 768 screen (Blue)

## Work From Home! Don't Miss Out

*March 15th, 2011* **Special Bonus!!!**  
Limited Time Offer! \$250 in Free  
Products to sell on eBay.  
Just Pay S/H



# OVER \$52 BILLION WAS MADE ON eBay LAST YEAR!

JOIN OVER 724,000 AMERICANS MAKING A LIVING ON EBAY! HURRY THIS IS A LIMITED TIME OFFER!



CBS News published a story about people making a living on eBay! [CLICK HERE TO READ ABOUT IT](#)

### ONLINE AUCTION ..... STARTER KIT!

The Online Auction Starter Kit includes everything you need to get started right away. We show you what works. eBay is the best place to sell virtually anything and make huge profits with little effort.




The Online Auction Starter Kit provides detailed instructions to maximize profits, using little known but proven strategies.

**GET YOUR KIT NOW**

**Our Starter Kit includes the following benefits:**

1. Step-by-step Quick Start Guide.
2. No experience required.
3. Advanced training for experienced auctioneers.
4. Up to 50% discounts on 1,000s of name brand products.
5. And thats just to start...

#### — SUCCESS STORIES —



"I have the ability in one week to earn as much as I can make in a month in the fire department. That's putting in very little effort and I can do as much or as little as I want."

**-Michael Morisi, Sterling, VA**



"One of the things that I wanted to do was work for myself and become my own boss. Online Supplier has been there. They've guided me, they've trained me, and they've encouraged me. I've been a part of their team since October 2003."

**-Lillian Hill, Sport, LA**

This Offer will end in  Minutes!

**Where do we ship your FREE KIT?**  
Just Pay S/H

First Name:

Last Name:

Country:

Address:

City:

State:

Zip Code:

Mobile Phone:

Phone:

Email:

**Ship My Kit!**

GET YOUR ONLINE AUCTION STARTER KIT TODAY FREE!

~~WAS 19.95~~ **NOW FREE!**  
(limited time offer)

**Just Pay S/H**

By submitting this form you are accepting and agreeing to the [Privacy Policy](#) and [Terms Of Membership](#) of this Web Site as well as receiving email offers from us & trusted third-party partners.

**BONUS**  
Your kit includes a **7-DAY TRIAL** to **YOUR VERY OWN WEBSTORE!**

**GUARANTEED  
SECURE TRANSACTION**

**SUBSCRIBE TO  
OUR NEWSLETTER!**

Area viewable in web browser without scrolling ("above the fold")

"below the fold"

We do not intend to offer employment, a career or job with Online Supplier or with eBay, Inc. eBay is a registered trademark of eBay, Inc and is not affiliated with or operated by Online Supplier. Copyright (c) 2003-2007 Online Supplier Inc. All Rights Reserved.

Version 2, Payment Page (Check-out Page 2) on a 1024 x 768 screen (Blue)

The screenshot shows a payment page for 'Online Supplier'. At the top, it says 'Work From Anywhere Using Your Computer!' and 'onlinesupplier.com'. On the left, there is a circular image of a woman working at a computer. A callout box next to it says 'You are ONE CLICK AWAY from receiving the most up-to-date information for making money on eBay!'. Below the image is a 'GUARANTEED SECURE TRANSACTION' logo. The main form area on the right has a 'Choose Your Shipping Method:' dropdown menu with 'Regular - \$1.95' selected. Below that is a 'Choose Your Payment Method:' section with 'VISA' and 'MasterCard' logos. The 'Card Type:' dropdown is set to '(Select Your Card)'. There are input fields for 'Credit Card #:', 'Exp. Date:' (set to 04 / 2008), and 'Name on Card:'. A 'Ship My Kit!' button is prominent. Below the button, it says 'Charges will appear as Online Supplier' and '(Please click the submit button only once. Processing may take several minutes.)'. At the bottom of the form, there are logos for 'VERIFIED by VISA' and 'MasterCard SecureCode.' with a note: 'You can make eligible purchases in Verified by Visa or MasterCard SecureCode. After submitting this form, you may be prompted for your payer authentication password to complete your purchase.'

Area viewable in web browser without scrolling ("above the fold")

"below the fold"

By submitting this form, you agree to the [Privacy Policy](#) of this Web Site, the Onlinesupplier.com free trial including the complete [Terms and Conditions](#) of the trial membership, the ~~\$1.95~~~~\$7.95~~ shipping and handling, and to the following statement: "I UNDERSTAND THAT THIS CONSUMER TRANSACTION INVOLVES A NEGATIVE OPTION, AND THAT I MAY BE LIABLE FOR PAYMENT OF FUTURE GOODS AND SERVICES UNDER THE TERMS OF THIS AGREEMENT FOR ~~\$49.95~~ PER MONTH IF I FAIL TO NOTIFY THE SUPPLIER NOT TO SUPPLY THE GOODS OR SERVICES DESCRIBED." Your Online Auction kit will ship out within the next 2-3 business days. Your kit is the perfect tool to start a home-based auction business. You will also enjoy a free trial membership to Onlinesupplier.com, where you can buy thousands of name brand products at up to 50% off and have your very own webstore.

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Version 2, Upsell Page (Check-out Page 3) on a 1024 x 768 screen (Blue)

**Work From Anywhere  
Using Your Computer!** onlinesupplier.com

**Congratulations! Your order has been processed.**  
You will receive your Order ID by email in the next 48 hours  
[Print this page for your records](#)

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Would you like risk FREE one-on-one OSActionline COACHING?

Yes  No

The following is important information about your code to get \$250 in free products and our OSActionline service...

With OSActionline, you will have unlimited access to your own personal coach that will help you execute the techniques of our most successful online marketers and develop a custom action plan. Online Supplier is currently offering a special 7-day risk free trial to our OSActionline service. [Click Here](#) for Terms and Conditions.

A \$1.95 activation fee will be charged to the card you provided today to start your 7-day trial. After the 7-day trial period, OSActionline will automatically charge \$59.95 per month to the credit card you used today. If you decide the service is not for you simply call 1-866-622-9983 anytime during your 7-day trial and you'll never be charged again. But remember, any and all of the information and services you've received are yours to use. Along with the acceptance of this trial you will receive your \$250 redeemable code for [www.freegiftsameric.com](http://www.freegiftsameric.com)

---

Would you like a FREE\* guide to real estate INVESTING and access to hundreds of thousands of foreclosures and distressed properties nationwide?

Yes  No

Investing in Success is the ultimate "how to" real estate program for both the beginning and experienced investor. Smart investors are picking up property for pennies on the dollar and now so can you!

\* A non refundable shipping fee of \$1.95 will be charged to the credit card you provided today. After the 7-day trial you will be billed the monthly fee of \$49.95. If you decide the service is not for you simply call 1-800-726-0549 anytime during your 7-day trial and you'll never be charged again. You may even keep the investment guide as our special gift to you. [Click Here](#) for Terms and Conditions.

**Note:** Your trial membership to Investing In Success also makes you eligible for risk FREE one-on-one ActionLineRE COACHING!

**Yes, add ActionLineRE coaching to my Investing In Success order**

A PERSONAL COACH can make ALL the difference with your success in real estate investing. ActionLine RE gives you all you need to succeed with:

1. A risk free 7-Day FREE TRIAL
2. Unlimited access to your own Personal Real Estate Coach
3. Expert help in developing and executing a custom action plan
4. Profit from the tried and true techniques of successful real estate gurus

Without a plan, it's tough to reach your goals. With a plan, THE SKY'S THE LIMIT! Take advantage of this limited-time offer today and give yourself the edge you deserve! [Click Here](#) for Terms and Conditions.

A \$1.95 activation fee will be charged to the card you provided today to start your 7-day trial. After the 7-day trial period, Actionline RE will automatically charge \$59.95 per month to the credit card you used today. If you decide the service is not for you simply call 1-800-706-1805 anytime during your 7-day trial and you'll never be charged again. But remember, any and all of the information and services you've received are still yours to use.

Would you like access to BUYDISCOUNT.com which offers name brand products up to 60% off retail?

Yes  No

As a member of BuyDiscount.com, you will receive savings up to 60% on over 20,000 brand name products like Sony, Panasonic, HP, and more. Whether you're shopping for yourself, for gifts or for your business, BuyDiscount.com is the one stop source for all your electronic needs. An activation fee of \$1.95 will be charged to your account and a monthly membership fee of \$29.95 will be automatically charged to your account after your 14 day trial. [Click Here](#) for Terms and Conditions.

Would you like to FIND exactly what you're looking for at the LOWEST available PRICE?

Yes  No

As a member of Search Discount In-Store you can stop taking the salesperson's word for it and get the information you need, at the store! Just call us toll-free, 7-days a week to get the best prices and reviews on millions of brand name products from computers and appliances to jewelry, clothing and much more. Just think, you'll never have to overpay again! An activation fee of \$1.95 will be charged to your account and a monthly membership fee of \$19.95 will be automatically charged to your account after your 14 day trial. [Click Here](#) for Terms and Conditions.

Would you like a NEW Computer with a FREE Color Inkjet Printer?

Yes  No

eClubUSA allows members to immediately finance new computers, electronics and even Plasma and LCD TV's by offering up to a \$5,000 credit line and a 21-day free trial. If you decide to keep the service you'll be charged a one time Membership fee of only \$89.00 and a \$9.95 monthly fee. [Click Here](#) for Terms and Conditions.

Would you like to try MY SMILE PRO to Whiten Teeth and Fresher Breath?

Yes  No

Created by Beverly Hills Dentist, Dr. Rudy, My SmilePro whitens teeth in just 7 days with an easy brush-on application. Unlike ordinary "teeth whiteners", My SmilePro™ not only whitens teeth, but it is also a breath freshener that leaves you with a fresh and minty taste. My SmilePro with Salisan® selectively targets and kills anaerobic bacteria that causes bad breath. The purifying power of Salisan® goes to work to neutralize bacterial bi-products so bad breath is eliminated and you're left with a whiter smile!

Get your FREE trial kit now! (just pay S&P) Order today and your FREE trial includes a 30 day supply of My SmilePro teeth whitening application, 1 oz. bottle of My SmilePro fresh breath spray, 16 oz. bottles of SmilePro mouth rinse, 1 - tongue scraper. After an initial 7-day trial offer of \$4.97 for S&P and that you will be liable for the remaining first month balance of \$79.82 if you do not cancel during the 7-day trial period by notifying the supplier, at 1-866-407-1024, not to supply the goods described. Future shipments can be canceled at any time. [Click Here](#) for Terms and Conditions.

Would you like to try HOODIA to start losing weight now quickly and naturally?

Yes  No

"THE ULTIMATE APPETITE SUPPRESSANT!"  
LOSE THAT EXTRA WEIGHT NOW! SAFELY AND NATURALLY!

You have seen this miracle supplement on TV.

HOODIA is taking America by storm, because it is the safest, fastest acting weight-loss supplement in the world...now you can get a bottle on us! HOODIA is clinically proven to be able to reduce daily calorie intake by 1000 calories per day in some patients! We are so confident in our 100% pure HOODIA that we let you try our NO-COST BOTTLE! Just pay \$4.97 Shipping and Handling for your FREE\* Trial Bottle. Upon ordering your 7-Day supply Trial of Pure Health Labs Hoodia™, you will be automatically enrolled in our 60-Day Masters Program. In the 60-day Pure Health Labs Hoodia™ Masters Program, you will automatically be billed and shipped a 60-day supply of Pure Health Labs Hoodia™ and billed \$99.41 to your card. [Click Here](#) for Terms and Conditions.

Submit

cont'd from previous page



Version 2, Confirmation Page (Check-out Page 4) on a 1024 x 768 screen (Blue)

The screenshot shows a confirmation page from 'onlinesupplier.com'. The header features the text 'Work From Anywhere Using Your Computer!' and the website URL. The main content area is enclosed in a dashed black box. Above the horizontal line of the dashed box, the text reads: 'Congratulations! Your order has been processed and your materials are on the way!'. Below this line, there is a link to print the page, a warning about fraud monitoring, and transaction details: 'Your IP Address: [redacted] Date: 04/10/2008 Time: 01:41 PM'. A form with fields for 'First Name', 'Last Name', 'Address', 'City', 'State', 'Zip Code', 'Phone', and 'Email' is also visible. Below the dashed box, the text includes 'Online Supplier 7-day Trial Membership \$1.95', 'Order ID' information, customer service contact details, and an 'Additional Info' section with a link to terms and conditions. A vertical arrow on the right side of the dashed box points downwards, with the text 'Area viewable in web browser without scrolling ("above the fold")' above it and '"below the fold"' below it.

# Exhibit 6

## Online Supplier Terms and Conditions

Customer Service Toll-Free Number: 1-800-831-3952

For international orders the telephone numbers are:

UK: 00-800-3333-0012

Australia: 0011-800-3333-0012

New Zealand: 00-800-3333-0012

South Africa: 09-800-3333-0012

All other international callers may dial (805) 567-0113.

**By signing up for our free trial offer, you agree to pay the shipping and handling fee described in the offer. These charges will be immediately billed to the credit card or debit card you provided us.**

**Further, by signing up for this free trial offer, you will automatically be registered for a free 7-day trial membership in OnlineSupplier.com. This membership allows you to buy thousands of name brand products at up to 50% off and have your very own webstore.**

**If you do not contact our customer service to cancel your OnlineSupplier.com membership within 14 days, you will automatically be charged a monthly membership fee of \$49.95, and you will be charged this monthly fee every 30 days thereafter until you cancel your membership. We will bill the credit card or checking/savings account you provided to us at sign-up for the free trial offer.**

### 1. User's Acknowledgment and Acceptance of Terms

**Consumer Loyalty Group, Inc.** (referred to as "us" or "we") provides the [www.onlinesupplier.com](http://www.onlinesupplier.com) site and various related services (together referred to as this "site") subject to your compliance with all the terms, conditions, and notices contained or referenced herein (the "Terms of Use"), as well as any other written agreement between us (or your company). In addition, when using particular services or materials on this site, users shall be subject to any posted guidelines or rules applicable to such services or materials that may contain terms and conditions in addition to those in these Terms of Use. All such guidelines or rules are hereby incorporated by reference into these Terms of Use.

BY COMPLETING THE REGISTRATION PROCESS AND/OR USING THIS SITE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE. IF YOU DO NOT WISH TO BE BOUND BY THE THESE TERMS OF USE, PLEASE EXIT THE SITE NOW. YOUR REMEDY FOR DISSATISFACTION WITH THIS SITE, OR ANY PRODUCTS, SERVICES, CONTENT, OR OTHER INFORMATION AVAILABLE ON OR THROUGH THIS SITE, IS TO STOP USING THE SITE AND/OR THOSE PARTICULAR PRODUCTS OR SERVICES. YOUR AGREEMENT WITH US REGARDING COMPLIANCE WITH THESE TERMS OF USE BECOMES EFFECTIVE IMMEDIATELY UPON COMMENCEMENT OF YOUR USE OF THIS SITE.

These Terms of Use are effective as of August 20, 2003. We reserve the right to change these Terms of Use from time to time without notice to you. You acknowledge and agree that it is your responsibility to review this site and these Terms of Use periodically and to be aware of any modifications. Your continued use of this site after such modifications will constitute your acknowledgement of the modified Terms of Use and agreement to abide and be bound by the modified Terms of Use.

As used in these Terms of Use, references to our "Affiliates" include our owners, subsidiaries, affiliated companies, officers, directors, suppliers, partners, sponsors, and advertisers, and includes (without limitation) all parties involved in creating, producing, and/or delivering this site and/or its contents.

### 2. Description of Services

We make various services available on this site including, but not limited to, online auction training, wholesale product distribution, website generation, merchant banking services and tax services. Fees for the various services are set out in the membership and service fees described elsewhere in this site. You are solely responsible for providing, at your own expense, all equipment necessary to use the services, including a computer and modem; and your own Internet access (including payment of telephone service fees associated with such access).

We reserve the sole right to either modify or discontinue the site, including any features therein, at any time with or without notice to you. We shall not be liable to you or any third party should we exercise such right. Modifications may include, but are not limited to, changes in the pricing structure, the addition of fee-based services, or changes to limitations on allowable file sizes. Any new features that augment or enhance the then-current services on this site shall also be subject to these Terms of Use.

You understand and agree that temporary interruptions of the services available through this site may occur as normal events. You further understand and agree that we have no control over third party networks you may access in the course of the use of this site, and therefore, delays and disruption of other network transmissions are completely beyond our control.

You understand and agree that the services available on this site are provided "AS IS" and that we assume no responsibility for the timeliness, deletion, mis- delivery or failure to store any user communications or personalization settings.

### **3.Registration Data and Privacy**

In order to access some of the services on this site, you will require a separate account and password that can be obtained by completing our online registration form, which requests certain information and data ("Registration Data") and maintaining and updating your Registration Data as required. By registering, you agree that all information provided in the Registration Data is true and accurate and that you will maintain and update this information as required in order to keep it current, complete and accurate.

You also grant us the right to disclose to third parties certain Registration Data about you. The information we obtain through your use of this site, including your Registration Data, is subject to our Privacy Policy, which is specifically incorporated by reference into these Terms of Use.

### **4.Payment of Fees**

You agree to pay all fees associated with this service, including the activation/shipping and handling fee and the monthly web hosting fee of \$49.95. For all charges for services on this site, we will bill your credit card or checking/savings account provided to us at activation. Activation/shipping and handling charges will be billed to the account you have provided us at the time of activation and reoccurring charges will be billed after your 7-day trial and every 30 days thereafter unless you contact customer service to cancel your membership. You agree to provide us with accurate and complete billing information, including valid credit card/checking/savings account information, your name, address and telephone number, and to provide us with any changes in such information within 10 days of the change.

If, for any reason, your credit card company refuses to pay the amount billed for the service, you agree that we may, at our option, suspend or terminate your subscription to the service and require you to pay the overdue amount by other means acceptable to us. We may charge a fee for reinstatement of suspended or terminated accounts.

You agree that until your subscription to the service is terminated, you will continue to accrue charges for which you remain responsible, even if you do not use the service.

In the event legal action is necessary to collect on balances due, you agree to reimburse us for all expenses incurred to recover sums due, including attorney fees and other legal expenses.

### **5.Conduct on Site**

Your use of the site is subject to all applicable laws and regulations, including Netiquette, and you are solely responsible for the contents of your communications through the site. By posting information in or otherwise using any communications service, chat room, message board, newsgroup, software library, or other interactive service that may be available to you on or through this site, you agree that you will not upload, share, post, or otherwise distribute or facilitate distribution of any content -- including text, communications, software, images, sounds, data, or other information -- that:

1. Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's

- privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates our rules or policies;
2. Victimized, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
  3. Infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
  4. Constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
  5. Contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; or
  6. Impersonates any person or entity, including any of our employees or representatives.

We neither endorse nor assume any liability for the contents of any material uploaded or submitted by third party users of the site. We generally do not pre-screen, monitor, or edit the content posted by users of communications services, chat rooms, message boards, newsgroups, software libraries, or other interactive services that may be available on or through this site. However, we and our agents have the right at their sole discretion to remove any content that, in our judgment, does not comply with these Terms of Use and any other rules of user conduct for our site, or is otherwise harmful, objectionable, or inaccurate. We are not responsible for any failure or delay in removing such content. You hereby consent to such removal and waive any claim against us arising out of such removal of content. See "Use of Your Materials" below for a description of the procedures to be followed in the event that any party believes that content posted on this site infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party.

In addition, you may not use your account to breach security of another account or attempt to gain unauthorized access to another network or server. Not all areas of the site may be available to you or other authorized users of the site. You shall not interfere with anyone else's use and enjoyment of the site or other similar services. Users who violate systems or network security may incur criminal or civil liability.

You agree that we may at any time, and at our sole discretion, terminate your membership without prior notice to you for violating any of the above provisions. In addition, you acknowledge that we will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in investigating suspected criminal violations.

## **6.Third Party Sites and Information**

This site may link you to other sites on the Internet or otherwise include references to information, documents, software, materials and/or services provided by other parties. These sites may contain information or material that some people may find inappropriate or offensive. These other sites and parties are not under our control, and you acknowledge that we are not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of the content of such sites, nor are we responsible for errors or omissions in any references to other parties or their products and services. The inclusion of such a link or reference is provided merely as a convenience and does not imply endorsement of, or association with, the site or party by us, or any warranty of any kind, either express or implied.

## **7.Intellectual Property Information**

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All Rights Reserved.

For purposes of these Terms of Use, "content" is defined as any information, communications, software, photos, video, graphics, music, sounds, and other material and services that can be viewed by users on our site. This includes, but is in no way limited to, message boards, chat, and other original content.

By accepting these Terms of Use, you acknowledge and agree that all content presented to you on this site is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws, and is the sole

property of Consumer Loyalty Group, Inc. and/or its Affiliates. You are only permitted to use the content as expressly authorized by us or the specific content provider. Except for a single copy made for personal use only, you may not copy, reproduce, modify, republish, upload, post, transmit, or distribute any documents or information from this site in any form or by any means without prior written permission from us or the specific content provider, and you are solely responsible for obtaining permission before reusing any copyrighted material that is available on this site. Any unauthorized use of the materials appearing on this site may violate copyright, trademark and other applicable laws and could result in criminal or civil penalties.

Neither we or our Affiliates warrant or represent that your use of materials displayed on, or obtained through, this site will not infringe the rights of third parties. See "Use of Your Materials" below for a description of the procedures to be followed in the event that any party believes that content posted on this site infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party.

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Certain of the ideas, software and processes incorporated into the Online Supplier service that is available on this site are protected by patent applications pending in the United States, and we intend to prepare and file additional patent applications in selected foreign jurisdictions.

## **8. Copyright Infringement Policy**

### **Infringement Notification**

We respect the intellectual property of others, and we ask you to do the same. If you or any user of this site believes its copyright has been infringed by a posting on this site, you or the user should send notification to our Designated Agent (as identified below) immediately. To be effective, the notification must include:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed
2. Identification of the copyrighted work claimed to have been infringed;
3. Information reasonably sufficient to permit us to contact the complaining party, such as address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted;
4. Identification of the material that is claimed to be infringing or to be subject to infringing activity and that is to be removed and information reasonably sufficient to permit us to locate the materials;
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, agent, or the law; and
6. A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringing.

Pursuant to the Digital Millennium Copyright Act, 17 U.S.C. Sec. 512(c), our Designated Agent for Notice of claims of copyright infringement can be reached as indicated below. Service of repeat infringers of copyright or of users about whom repeat claims of copyright infringement are received will be terminated.

Upon receipt of appropriate email notification from the Complaining Party according to the above, we will remove or disable access to the material that is claimed to be infringing.

Further, if the Complaining Party provides us with appropriate email notification, including information reasonably sufficient to permit us to locate and remove or disable the material in question, or includes information concerning repeat infringement, then we will forward the Complaining Partys written notification to such alleged Infringer and shall take reasonable steps promptly to notify the Infringer that it has removed or disabled access to the material.

### **Counter Notification Policy**

If you have received a notice of copyright or trademark infringement, you may provide Counter Notification by

contacting our Designated Agent (see below) and including the following:

1. An electronic signature of the Infringer.
2. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
3. A statement under penalty of perjury that the Infringer has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
4. The Infringers name, address, and telephone number, and a statement that the Infringer consents to the jurisdiction of the Federal District Court for the Central District of California or if the Infringers address is outside of the United States, and that the Infringer will accept service of process from the Complaining Party or an agent of such Party.

Upon receipt of a Counter Notification as described in Section 1 above, we shall promptly provide the Complaining Party with a copy of the Counter Notification, and inform such Party that it will replace the removed material or cease disabling access to it in 10 business days. We will replace the removed material and cease disabling access to it in not less than 10, nor more than 14, business days following receipt of the Counter Notification, unless we first receive notice from the Complaining Party that such Complaining Party has filed an action seeking a court order to restrain the Infringer from engaging in infringing activity relating to the material on our system or network.

Designated Agent for Claimed Infringement:

CLG Copyright Infringement Officer  
30 S. La Patera Lane, Suite 7  
Goleta, CA 93117  
Tel: 805-567-0131  
E-mail: [privacy@commerceplanet.com](mailto:privacy@commerceplanet.com)

### **Termination of Repeat Infringers**

Notwithstanding the above, we will terminate the account of any user who repeatedly infringes copyrighted materials or about whom repeat claims of copyright infringement we receive.

You acknowledge and agree that upon receipt of a notice of a claim of copyright infringement, we may immediately remove the identified materials from our site without liability to you or any other party and that the claims of the complaining party and the party that originally posted the materials will be referred to the United States Copyright Office for adjudication as provided in the Digital Millennium Copyright Act.

### **9.Disclaimer of Warranties**

ALL MATERIALS AND SERVICES ON THIS SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (A) THE SERVICES AND MATERIALS WILL MEET YOUR REQUIREMENTS, (B) THE SERVICES AND MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR MATERIALS WILL BE EFFECTIVE, ACCURATE OR RELIABLE, OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU FROM THE SITE FROM US OR OUR AFFILIATES WILL MEET YOUR EXPECTATIONS OR BE FREE FROM MISTAKES, ERRORS OR DEFECTS.

THIS SITE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE MATERIALS AND SERVICES AT THIS SITE, INCLUDING THE PRICES AND DESCRIPTIONS OF ANY PRODUCTS LISTED HEREIN, AT ANY TIME WITHOUT NOTICE. THE MATERIALS OR SERVICES AT THIS SITE MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE SUCH MATERIALS OR SERVICES.

THE USE OF THE SERVICES OR THE DOWNLOADING OR OTHER ACQUISITION OF ANY MATERIALS THROUGH THIS SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT



YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES.

Through your use of the site, you may have the opportunities to engage in commercial transactions with other users and vendors. You acknowledge that all transactions relating to any merchandise or services offered by any party, including, but not limited to the purchase terms, payment terms, warranties, guarantees, maintenance and delivery terms relating to such transactions, are agreed to solely between the seller or purchaser of such merchandise and services and you. WE MAKE NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH, OR IN CONNECTION WITH THIS SITE, AND YOU UNDERSTAND AND AGREE THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT YOUR OWN RISK. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY PRODUCTS, SERVICES, MATERIALS, OR INFORMATION AVAILABLE ON OR THROUGH THIS SITE FROM A THIRD PARTY IS PROVIDED SOLELY BY SUCH THIRD PARTY, AND NOT BY US OR ANY OTHER OF OUR AFFILIATES.

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SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **10.Limitation of Liability**

Your exclusive remedy and our entire liability, if any, for any claims arising out of these Terms of Use and your use of this site shall be limited to the amount you paid us for the services on the site during the one month period before the act giving rise to the liability.

IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS SITE OR OF ANY WEB SITE REFERENCED OR LINKED TO FROM THIS SITE.

FURTHER, WE SHALL NOT BE LIABLE IN ANY WAY FOR THRID PARTY GOODS AND SERVICES OFFERED THROUGH THIS SITE OR FOR ASSISTANCE IN CONDUCTING COMMERCIAL TRANSACTIONS THROUGH THIS SITE, INCLUDING WITHOUT LIMITATION THE PROCESSING OF ORDERS.

SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **11.Indemnification**



Upon a request by us, you agree to defend, indemnify, and hold us and our Affiliates harmless from all liabilities, claims, and expenses, including attorney's fees, that arise from your use or misuse of this site. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

## **12.Participation in Promotions**

From time to time, this site may include advertisements offered by third parties. You may enter into correspondence with or participate in promotions of the advertisers showing their products on this site. Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such correspondence or promotions, are solely between you and the advertiser. We assume no liability, obligation or responsibility for any part of any such correspondence or promotion.

## **13.Email Services**

We may make email services available to users of our site, either directly or through a third-party provider.

We will not inspect or disclose the contents of private email messages except with the consent of the sender or the recipient, or in the narrowly-defined situations provided under the Electronic Communications Privacy Act, or as other required by law or by court or governmental order. Further information is available in our Privacy Policy.

We may employ automated monitoring devices or techniques to protect our users from mass unsolicited mailings (also known as "spam") and/or other types of electronic communications that we deem inconsistent with our business purposes. However, such devices or techniques are not perfect, and we will not be responsible for any legitimate communication that is blocked, or for any unsolicited communication that is not blocked.

Mailboxes may have a limited storage capacity. If you exceed the maximum permitted storage space, we may employ automated devices that delete or block email messages that exceed the limit. We will not be responsible for such deleted or blocked messages.

## **14.Use of Site and Storage of Material**

You acknowledge that we may establish general practices and limits concerning use of the services available on our site, including without limitation the maximum number of days that uploaded content will be retained on the site, the maximum disk space that will be allotted on our servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the services in a given period of time. You agree that we have no responsibility or liability for the deletion or failure to store any content maintained or transmitted on or through this site. You acknowledge that we reserve the right to log off accounts which have not paid a subscription fee that are inactive for an extended period of time. You further acknowledge that we reserve the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

We provide storage space and access for material through our site. For purposes of these Terms of Use, "material" refers to all forms of communication that we may allow, including narrative descriptions, graphics (including photographs, illustrations, images, drawings, logos), executable programs, video recordings, and audio recordings. You may not use this site to publish material that we determine, at our sole discretion, to be unlawful, indecent, or objectionable, or which violates the restrictions described in "Your Conduct on the Site" above. We will not routinely monitor the contents of your online portfolio. You are solely responsible for any information contained in your online portfolios. However, if complaints are received regarding language, content, or graphics contained in your online portfolio, we may, at our sole discretion, remove the images hosted on our servers and terminate your Web hosting service. We may also suspend the account, restrict access to it, or remove content from it if necessary or appropriate.

The accounts of our users operate on shared resources. Excessive use or abuse of these shared network resources by one user may have a negative impact on all other users. Misuse of network resources in a manner that impairs network performance, including excessive consumption of CPU time, memory, disk space, and session time, is prohibited and may result in termination of your account or limitation of your activities.

This site is not designed or intended to be used as a disaster recovery facility or as an emergency data storage facility. Although we take reasonable precautions to preserve and protect the material you upload to the site, you should not

rely on the site as your only storage facility. You should preserve backup copies of any digital data, information or other materials that you have uploaded. You agree not to hold us for any damage to, any deletion of or any failure to store your files, data or Registration Data.

#### **15.Security and Password**

You are solely responsible for maintaining the confidentiality of your password and account and for any and all statements made and acts or omissions that occur through the use of your password and account, including any mail sent and any charges incurred. Therefore, you must take steps to ensure that others do not gain access to your password and account. Our personnel will never ask you for your password. You may not transfer or share your account with anyone, and we reserve the right to immediately terminate your account in the event of any unauthorized transfer or sharing thereof.

#### **16.Export Controls**

Software available on or through this site is subject to United States Export Controls. No software from this site may be downloaded or exported (a) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country which the United States has embargoed goods; or (b) anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders. By downloading or using the software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

#### **17.International Use**

Although this site may be accessible worldwide, we make no representation that materials on this site are appropriate or available for use in locations outside the United States, and accessing them from territories where their contents are illegal is prohibited. Those who choose to access this site from other locations do so on their own initiative and are responsible for compliance with local laws. Any offer for any product, service, and/or information made in connection with this site is void where prohibited.

#### **18.Termination of Use**

You agree that we may, in our sole discretion, terminate or suspend your access to all or part of the site with or without notice and for any reason, including, without limitation, breach of these Terms of Use. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities.

Upon termination or suspension, regardless of the reasons therefore, your right to use the services available on this site immediately ceases, and you acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or this site. We shall not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection therewith. Sections 1, 3, 5-11, 14, and 18-20 of these Terms of Use, as well as your liability for any unpaid fees, shall survive any termination.

#### **19.Governing Law**

This site (excluding any linked sites) is controlled by us from our offices within the State of California United States of America. It can be accessed from all 50 states, as well as from other countries around the world. As each of these places has laws that may differ from those of California by accessing this site both of us agree that the statutes and laws of the State of California, without regard to the conflicts of laws principles thereof and the United Nations Convention on the International Sales of Goods, will apply to all matters relating to the use of this site and the purchase of products and services available through this site. Each of us agrees and hereby submits to the exclusive personal jurisdiction and venue of the Superior Court of Los Angeles County and the United States District Court for the Central District of California with respect to such matters.

#### **20.Notices**

All notices to a party shall be in writing and shall be made either via email or conventional mail. Notices to us must be

sent to the attention of Customer Service at memberservices@osprocessing.com, if by email, or Online Supplier, 30 S. La Patera Lane, Suite 7, Goleta, CA 93117 if by conventional mail. Notices to you may be sent either to the email address supplied for your account or to the address supplied by you as part of your Registration Data. In addition, we may broadcast notices or messages through the site to inform you of changes to the site or other matters of importance, and such broadcasts shall constitute notice to you.

Any notices or communication under these Terms of Use will be deemed delivered to the party receiving such communication (1) on the delivery date if delivered personally to the party; (2) two business days after deposit with a commercial overnight carrier, with written verification of receipt; (3) five business days after the mailing date, if sent by US mail, return receipt requested; (4) on the delivery date if transmitted by confirmed facsimile; or (5) on the delivery date if transmitted by confirmed email.

## **21. Entire Agreement**

These terms and conditions constitute the entire agreement and understanding between us concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect thereto. These Terms of Use may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for products or services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by you and us. To the extent that anything in or associated with this site is in conflict or inconsistent with these Terms of Use, these Terms of Use shall take precedence.

## **22. Miscellaneous**

In any action to enforce these Terms of Use, the prevailing party will be entitled to costs and attorneys' fees. Any cause of action brought by you against us or our Affiliates must be instituted with one year after the cause of action arises or be deemed forever waived and barred.

You may not assign your rights and obligations under these Terms of Use to any third party, and any purported attempt to do so shall be null and void. We may freely assign our rights and obligations under these Terms of Use.

You agree not to sell, resell, reproduce, duplicate, copy or use for any commercial purposes any portion of this site, or use of or access to this site.

In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of products and services available through our site arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above.

If any part of these Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

Any failure by us to enforce or exercise any provision of these Terms of Use or related rights shall not constitute a waiver of that right or provision.

## **23. Contact Information**

Except as explicitly noted on this site, the services available through this site are offered by Consumer Loyalty Group, Inc. a California corporation located at 30 S. La Patera Lane, Suite 7, Goleta, CA 93117. Our telephone number is (800) 831-3952. If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information. The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 404 R. Street, Suite 1080, Sacramento, CA 95814 or by telephone at (800) 952-5210. If you notice that any user is violating these Terms of Use, please contact us at memberservices@osprocessing.com

## **23. Electronic Disclosures and Communications**

By agreeing to these Terms of Use and our services, you consent to receiving communications from us electronically instead of on paper. These communications will include notices about your account (e.g., shipping and receiving e-mails and other transactional information); important disclosures and information concerning our service. You also agree that any notice, agreements, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

Close Window