

MAILING & FULFILLMENT SERVICE ASSOCIATION FULFILLMENT TRADE CUSTOMS

(1) Introduction: These trade customs have been compiled by the Mailing & Fulfillment Service Association, a not-for-profit trade association organized in 1920 under the name of the Mail Advertising Service Association. Many of these customs have a shared history with those of the mailing side of the mailing and fulfillment industry. MFSA, and before that MASA, has been the custodian of these customs for much of its history. The customs described herein are the association's description of what it believes is generally the case across the industry. Practices between the client and the fulfillment company will vary depending on the agreement reached at the outset of the relationship. It is always best, and usually the practice, for client and the fulfillment company to have a written contract that outlines the critical variables in their commercial relationship. By listing here the normal "customs" of the industry MFSA hopes that it can provide some context within which clients and fulfillment companies can discuss those elements of their relationship that have not been included specifically in a written contract that characterizes their relationship. These Fulfillment Trade Customs are voluntarily adopted by each member and are non-enforceable by the Mailing & Fulfillment Service Association.

(2) Fulfillment Defined: Fulfillment is the receipt, storage, assembly and shipment or transmission of product and/or data for another party.

(3) Proposals: Not binding unless accepted within 30 days. Proposals are based on program specifications provided by the client and agreed to by the fulfillment company on the date of the proposal. Specification changes, prior to the acceptance of the proposal or during the completion of work, entitles the fulfillment company to adjust pricing accordingly. Proposals may include charges for freight, packing materials, postage, telephone company charges, communication transmissions, taxes, pickups or deliveries, or credit card processing fees and other activity related fees that are required to complete the client application.

(4) Termination: On termination of a program, the fulfillment company will be compensated in full for any work or services performed through the date that services are terminated, plus costs involved in scrapping or preparing the material for shipment, the cost of preparing a final inventory, and the cost of any goods or services purchased prior to termination. Fulfillment projects may be canceled by the client at any time by notice in writing or via e-mail with the understanding that the fulfillment company will be compensated in full for any work or services performed prior to cancellation, plus the cost of any goods or services purchased for the fulfillment program. It is understood that the fulfillment company has the right to hold all inventory until all outstanding invoices have been satisfied.

(5) Postage/Freight Payments: Clients provide postage and freight charge advances, prior to mailing and shipping, based on mutually agreed to estimates of

anticipated needs and as stipulated in the proposal. Fulfillment companies may either mark-up or provide discounts to published shipping prices based on the term stipulated in the signed proposal.

(6) Bank Fees, Processing Charges and Retention: When caging, cashiering and merchant accounts are involved in a fulfillment program the client is responsible for all bank charges and fees including, but not limited to, deposit fees, check clearing fees, check verification fees, merchant account fees, and credit card processing fees and other fees to service client's orders. In instances where the fulfillment company uses its own merchandising account, the fulfillment company may retain or require deposit of funds in a sufficient amount and for a reasonable period, up to 120 days, to honor credit card charge-backs, refund requests, returns, etc.

(7) Right of Refusal: The fulfillment company may refuse at any time to handle or distribute any copy, photographs or illustrations of any kind that in the fulfillment company's sole judgment is an invasion of privacy, is degrading, libelous, unlawful, profane, obscene, pornographic, tends to ridicule or embarrass, or is in bad taste, or which in the fulfillment company's sole judgment is an infringement on a trademark, or trade name, or service mark, or copyright belonging to others, or is in violation of the FTC Mail or Telephone Order Merchandise Trade Regulation Rules.

(8) Databases: A client's databases in the fulfillment company's possession, for storage or otherwise, are the exclusive property of the client and shall be used only at the client's instructions. The fulfillment company shall provide reasonable and prudent protection against the loss of a client's data, in much the same manner that the client would itself. A minimum suggested security program shall contain utilization of anti-virus software, firewall protection and other current technologies; a security training programs for specific employees, and a current security policy. Additional security measures will be negotiated and stipulated in the proposal. This includes adequate backup procedures for all files and programs. The fulfillment company shall pay for the cost of transferring a copy of a replacement file in the event of systems failure, loss by fire, vandalism, theft, or other such causes (excluding destruction of the data due to client's negligence or willful misconduct), provided that the client has duplicate data files or has the source material from which the client can compile replacement data. The fulfillment company shall not be liable for compiling such data nor for any intangible or special value attached thereto.

(9) Client-Provided Materials: The fulfillment company assumes that all materials provided will meet manufacturers' specifications as stipulated in the proposal referenced in paragraph (3) above. Materials which do not meet manufacturers' specifications may be subject to pricing at special rates. Client will be notified when a deficiency is discovered and approval will be obtained for handling at special rates before proceeding with work, and a new delivery schedule may result.

(a) Client is expected to provide the fulfillment company with sufficient inventory or adequate sources of supply to meet anticipated demand. The client is asked to provide

advanced notification to the fulfillment company for incoming shipments. Cost for backorders, delay notices, canceled orders and increased client service resulting from out of stock conditions will be billed to client.

(b) Collect shipments are accepted only if client obtains prior written clearance from the fulfillment company and, in such event, a service charge may be added to the actual freight charges.

(c) Each incoming carton or skid must bear an identity, item code, quantity and a sample clearly visible. Each skid must have only one material version, unless clearly marked and separated. Multiple items should not be included within a single carton, skid or container unless noted thereon and on accompanying paperwork.

(d) All items must be clearly and accurately coded. The fulfillment company shall not be responsible for picking and packing errors which result from the erroneous marking of items or the client's failure to code them.

(e) Delivery tickets must accompany the material delivered, and should show the number of skids or cartons, the quantity per skid or carton, the corresponding item number, and the total delivery quantity.

(f) If the client asks that shipper counts on incoming material be accepted until processing, the fulfillment company is not responsible for shortages discovered at that time.

(10) Spoilage, Counts, and Shrinkage: The fulfillment company is not responsible for normal spoilage of material that occurs naturally during processing.

There are three categories of shrinkage allowances typical in the fulfillment industry:

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

(b) If the fulfillment company performs test counts, spot checks and weight counts, the industry standard for shrinkage is 5% to 10% of the printed material received and 2% to 3% of products received.

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

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

opportunity.

(11) Packaging: Unless otherwise agreed upon, prices quoted assume usage of the fulfillment company's standard cartons, envelopes, and packaging materials. Custom or specified materials may involve additional materials and handling charges and longer lead times.

(12) Excess Materials: Absent specific instructions from the client on the disposition of excess materials, the fulfillment company may collect reasonable storage charges. If the client fails to respond to a disposition request and fails to pay applicable storage charges the fulfillment company may, after 60 days, destroy the stored material.

(13) Order Processing and Delivery Schedules: The fulfillment company is not responsible for failure to meet agreed on processing schedules if such failure can be traced to fire, accidents, acts of God, mechanical breakdown, acts of terrorism, failures on the part of the U.S. Postal Service or other common carriers, or other events that are outside the control of the fulfillment company.

(14) Insurance: Client retains title to and the insurable interest in its materials. The fulfillment company is responsible only for losses that are the direct result of its own willful or negligent acts.

(15) Errors in Fulfillment: The fulfillment company is responsible to correct misdirected or erroneous shipments provided the errors were the fault of the fulfillment company. Its liability is limited to the cost of re-shipping a corrected order and, if the client requests, retrieval or remanufacture of the material shipped in error. The fulfillment company is not liable for loss of business or incidental or consequential damages or costs.

(16) Delinquent Invoices: If money is owed the fulfillment company it may, at its option, hold up the order processing and shipping process until past due payment has been received. It may also hold the client's data, materials, or other property against payment of delinquent invoices. "Delinquent" is defined as "past the agreed or specified payment date."

(17) Verbal Orders: Final specifications for verbal orders are those understood by the fulfillment company at the time the work was completed.

(18) Hold Harmless: The client defends and holds the fulfillment company harmless from and against all damages, costs, expenses (including reasonable attorneys' fees), liabilities, or losses arising out of or resulting from (a) the fulfillment company's acting as client's agent and (b) the fulfillment company's performance of the fulfillment function on behalf of or in accordance with specifications established and agreed upon by the client.

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