

Standard Terms and Conditions

(revised November 27, 2019)

1. **Incorporation of Terms.** These terms and conditions govern the agreement formed by your acceptance of the estimate given to you by EyeSkyVP & Associates, Inc. ("EyeSkyVP"). These terms are incorporated by reference into the estimate and control over any inconsistent terms in your purchase order or other acceptance.
2. **Services.** Upon acceptance by you, EyeSkyVP will perform the services described in the estimate. Any additional services requested by you and not covered by the estimate will incur additional charges.
3. **Schedule.** The services will be completed, and delivery will be made in accordance with the schedule in the estimate, or as otherwise approved by the parties in writing.
4. **Specifications.** The services will be performed in substantial conformity with the specifications in the estimate, or as otherwise approved by the parties in writing.
5. **Changes.** Changes in the specifications, quantities, schedule or other aspects of the services that are requested or approved by you do not become binding upon EyeSkyVP unless accepted by EyeSkyVP in writing. Any such changes may result in additional or increased charges, and you agree to pay such increased charges.
6. **Charges.** The charges for the services are described in the estimate, subject to adjustment as provided in these terms, and you agree to pay to EyeSkyVP such charges.
7. **Taxes.** You will be responsible for payment of all applicable federal, state and local taxes and assessments (including sales, use and similar taxes) levied on the transaction contemplated by the estimate. No tax exemption will be recognized unless a valid exemption certificate is provided.
8. **Payment Terms.** All invoices for services covered by the estimate are payable within fifteen (15) days after invoice date (i.e. net 15). You are not entitled to an early payment or similar discount.
9. **Late Charges; Interest.** Any invoices not paid by you on or before the due date will bear interest after the due date until the invoice is paid at the lesser of twelve (12%) percent per annum or the highest lawful rate.
10. **Credit Approval.** The estimate is subject to current credit approval.
11. **Limited Warranties and Disclaimer.**
 - a. **Services.** EyeSkyVP warrants that all services comprising part of or incorporated into the services will be performed in a good workmanlike and professional manner in accordance with generally accepted practices in the printing industry.
 - b. **Goods.** EyeSkyVP warrants that all goods comprising part of or incorporated into the services will be of commercially acceptable quality and will in all material respects meet the specifications.
 - c. **EyeSkyVP's Warranty Responsibilities.** You must give EyeSkyVP written notice of any breach of warranty or other non-conformity of or defect in the services within a commercially reasonable time not to exceed ten (10) days after delivery or performance. EyeSkyVP may, at EyeSkyVP's sole option, either repair or replace any defective or non-conforming services at no cost to you, or credit or refund any sums paid by you for the specific portion of the services that is defective or non-conforming, as your sole and exclusive remedy.

d. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPHS (a) THROUGH (c) OF THIS SECTION, THE WORK IS BEING FURNISHED TO YOU "AS IS" AND "WITH ALL FAULTS," AND EYESKYVP HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WORK, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, USAGE OF TRADE AND FITNESS FOR A PARTICULAR PURPOSE.

12. Limitation of Liability. IN NO EVENT WILL EYESKYVP BE LIABLE TO YOU FOR SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES OR GOODWILL, ARISING OUT OF OR RELATING TO THE ESTIMATE OR THE WORK, WHETHER THE CLAIM IS BASED UPON CONTRACT, BREACH OF WARRANTY, TORT OR OTHER THEORY, EVEN IF EYESKYVP IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EYESKYVP'S LIABILITY ARISING OUT OF OR RELATING TO THE ESTIMATE OR THE WORK WILL NOT EXCEED THE SUMS PAID OR PAYABLE BY YOU TO EYESKYVP UNDER THE ESTIMATE.

13. Publicity. You authorize EyeSkyVP to list you as a client of EyeSkyVP on EyeSkyVP's website and on any other internal and external promotional materials and communications.

14. Insurance. EyeSkyVP will keep in full force and effect and maintain at its sole cost and expense during the performance of the services workers' compensation, employers' liability and commercial general liability insurance coverage of the types and limits as are customary for similar service providers.

15. Independent Contractor. EyeSkyVP is an independent contractor of you, and nothing in the estimate or these terms will be construed as creating a partnership, joint venture or relationship other than that of independent contractors between you and EyeSkyVP.

16. Termination of Estimate. EyeSkyVP may terminate the estimate and cease performance of the services if you fail to timely pay or perform any obligation imposed upon you under the estimate or these terms, and such failure to pay or perform continues for a period of three (3) business days from the date EyeSkyVP furnishes written notice thereof to you.

Paragraphs 17-22 apply if the services involve print.

17. Over-runs and Under-runs. Unless otherwise stated in the estimate, over-runs or under-runs of up to five percent (5%) will be deemed acceptable delivery, and the charges will be adjusted accordingly.

18. Proofs. You have full and final responsibility for proof approval. By approving the proof for the subject piece, you accept and approve the format, layout, color, copy, type, spelling, text and content of the piece, and accept responsibility for any errors or omissions therein. You will not hold EyeSkyVP responsible or liable for any costs, expenses or other damages resulting from errors or omissions contained in the approved proof, or from your failure to timely approve any proofs.

19. Artwork and Other Materials. Unless otherwise stated in the estimate, you will timely supply all artwork, images, type, copy, film and other materials required for the services. All materials must be submitted in required format; if EyeSkyVP is required to convert to the proper format, you will be charged for the conversion. You represent and warrant to EyeSkyVP that: (a) you have all required copyrights, licenses and permissions to use the materials supplied by you; and (b) the materials supplied by you do not contain any matters that are illegal, libelous, slanderous, or scandalous, or which threaten any person's right to privacy. You agree to indemnify, defend and hold harmless EyeSkyVP and its employees from any and all

third-party claims, whether for copyright infringement, invasion or privacy or otherwise, arising out of such materials.

20. Shipping and Freight. Unless otherwise specified in the estimate, delivery will be made EXW (Incoterms 2010) EyeSkyVP's facility, at which time risk of loss and title will pass to you. All freight, insurance and other shipping expenses, as well as any special packing expenses not included in the estimate, will be paid by you.

21. Price Increases. EyeSkyVP will give you at least thirty (30) days prior written notice of any increases in the charges due to increases in the prices for paper or ink, fuel surcharges, or other non-manufacturing costs. In addition, EyeSkyVP will give you at least ninety (90) days prior written notice of any increases in the charges due to increased manufacturing costs. Services performed before the effective date of any increases will not be subject to the increases.

22. Advance Payment. EyeSkyVP may, in its discretion, pre-invoice you the estimated charges for any project if the estimated charges are \$40,000.00 or greater.

23. Force Majeure. EyeSkyVP will not be responsible for any non-performance, delays or associated costs due to acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, severe weather conditions, or other causes beyond its reasonable control.

24. Governing Law. The estimate and these terms will be interpreted and construed under the laws of the State of Texas, without regard to its conflicts of laws provisions.

25. Venue. Venue of any action to construe or enforce the estimate and these terms will lie in Denton County, Texas.

26. Legal Fees. If either party brings an action or proceeding arising out of the estimate or these terms, or on account of any breach or default thereof, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees, expert witness fees, investigation fees and other related fees, costs and expenses incurred in connection with the proceeding.

27. Miscellaneous Provisions.

a. Amendments. Any amendments to the estimate or these terms will be effective only if in writing and signed by authorized representatives of both parties.

b. Entire Agreement. The estimate and these terms (together with any schedules or exhibits attached) constitute the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersede any previous agreements or understandings, whether oral or written.

c. Waiver. Failure of either party to insist upon strict performance of the estimate or these terms, or to exercise any option herein, will not be construed as a modification or waiver of any provision, right, or obligation under these terms.

d. Headings. Headings used in the estimate or these terms are for reference purposes only and in no way define, limit, construe, or describe the scope or intent of these terms.