



**iCONTROL SYSTEMS USA, LLC (“iControl”)
TERMS AND CONDITIONS**

UPDATED AS OF September 1, 2011

1.0 Introductory Provisions

Definitions

The term **“Agreement”** means the written agreement between iControl and a Supplier to which these Terms and Conditions are attached.

The term **“Pricebook Management”** means the services rendered by iControl for Retailers to maintain accurate cost, retail and UPC pricing in the Retailers’ point-of-sale registers.

The term **“Proof of Delivery” (“POD”)** means a proof of delivery document, which is a Supplier-generated invoice that bears the Retailer’s store stamp or a Supplier-generated invoice that bears the signature and printed name of a store manager or authorized store employee. This store-stamped and/or store-signed document indicates the store’s acknowledgment of the net billing amounts printed on the invoice and credit document, but shall be considered preliminary and non-binding until and unless approved by the Retailer’s category manager at corporate headquarters.

The term **“Supplier”** means a distributor, manufacturer, manufacturer/distributor, publisher, or a third-party entity hired by a manufacturer to distribute a consumable item bearing a barcode (a **“Product”**) to a business (a **“Retailer”**) which sells Products to Customers; and

The term **“week” or “weekending”** means the 7-day sales period beginning Monday and ending on Sunday.

1.2. Knowledge and Acceptance of Terms and Conditions by a Supplier

It is understood by the Supplier (or by an agent acting on behalf of the Supplier) in the iControl program that the establishment of an account and Supplier identification number (also known as wholesaler identification number) with iControl, as well as the subsequent receipt of payments from iControl, and use of iControl’s website and associated tools shall be deemed to constitute knowledge and acceptance of terms and conditions of the iControl billing consolidation system.

1.3. Relationship of Terms and Conditions to Specific Agreements with a Supplier

The Terms and Conditions set forth below are provided to supplement and clarify the terms of the specific agreements, if any, between the Supplier and iControl Systems USA, which acts as an agent on behalf of the Retailer. In the event of any inconsistency between the Terms and Conditions set forth herein and the provisions of a valid, countersigned, written Agreement between the Supplier and iControl or the Supplier and a Retailer, the Agreement shall govern.

1.4. Right of iControl to Amend the Terms and Conditions

iControl reserves the right to amend its Terms and Conditions from time to time, but no such amendment shall apply to a Supplier if it conflicts with the express provisions of a written Agreement with the Supplier.

1.5 FOR ANY GENERAL QUESTIONS relating to iControl, please phone the iControl Help Desk at 301.816.4490 ext 100, or submit your question via email at info@icontrolusa.com

iControl's Accounts Payable Functions

iControl performs accounts payable functions as an agent of Retailers. The functions include the collection of sales data from Retailers, electronic reporting of Retailer sales data to Suppliers, the collection and comparison of Suppliers' sales data to the Retailer's sales data, and the remittance of funds derived from the sale of products at locations operated by the Retailers. Funds derived from the sale of products at locations operated by the Retailers are disbursed from the Retailer to iControl, and then are disbursed from iControl to the Supplier.

2.0 Retailer determines sales.

The Retailer exclusively determines and approves both the scanned sales and, as needed, any "non-scanned sales" payments to Suppliers. iControl does not determine the sales amounts paid to the Supplier; that is the exclusive domain of the Retailer.

3.0 Account Setup Procedures

Suppliers are responsible for their account setup and ongoing monitoring of account status and information, such as contact name, street address, email, and phone. Suppliers should setup only one supplier account at www.icontrolusa.com, even if the Supplier distributes products to multiple iControl Retailers.

3.1 Upon setup of the account, iControl will provide the supplier with a supplier ID number. Suppliers will be paid for scanned sales of products sold at locations operated by the Retailers. The Retailer exclusively determines and approves both the scanned sales and, as needed, "non-scanned sales" payments to Suppliers.

3.2 Suppliers must inform iControl of any changes to their account that would affect payments in writing with at least 14 days notice (addition or deletions of stores or products). If a Supplier receives a payment in error because of failure to inform iControl of a change, or for any other reason, the Supplier must notify iControl immediately; the Supplier will be liable to return any monies received in error, and will agree to release and hold harmless iControl from any claims. Manufacturers are expected to communicate to both the Retailer and iControl changes in Suppliers that are initiated by the manufacturer so that the correct Supplier is paid for scanned sales.

Suppliers must complete the setup of their account by providing detailed information for every participating Retailer location, including but not limited to, stores serviced, products delivered, UPC codes in UPC-A, UPC-E or EAN format, cost to the store, retail price (MSRP), and estimated units, delivered by day of week (frequency). It is understood that the quantities distributed may change from week to week in response to sales trends.

Suppliers that are authorized by their manufacturers to distribute product within certain geography may add product to its iControl account and become the "supplier of record" of those product(s) to particular store(s). The Supplier must submit in writing at least 14 days in advance of the on-sale date (or start date of the Retailer's program with iControl):

- Supplier's iControl account ID number
- Product name
- Cost price per unit
- Retail price per unit

- Valid UPC barcode
- StoreID – retailer’s store number and/or location (eg, CVS1234)

3.4 Setup information must be submitted to iControl using the registration file located on the iControl website (found under the Setup Stores section). The registration file must be downloaded, completed, and emailed to setup@icontrolusa.com. Failure to provide at least 14 days notice may result in the Retailer’s failure to properly retail the product to consumers; failure on the part of the Suppliers to submit complete information in a timely fashion may result in non-payment to Suppliers.

Suppliers can verify account setup by logging into their accounts at www.icontrolusa.com. If the Retailer is unable to sell the product at the correct retail price to its consumers due to insufficient notice by the Supplier, the Retailer will not be able to disburse payments for sales claimed by the Supplier.

As part of the setup process, Suppliers must provide iControl with at least one historical invoice for that chain that shows the product name, unit costs, and delivery amounts and distribution frequency prior to the start of the program. Suppliers should also provide a certificate of insurance naming Retailer as additional insured, if required by the Retailer.

4.0 Changes to retail or cost

Any proposed changes by Suppliers to cost and/or MSRP/retail must be received in writing via email to iControl at pricebook@icontrolusa.com, along with the cost and/or retail changes, the affected product name, stores, and UPC code in 12 digit UPC-A format. Prices should be communicated using only two decimal places (no fractions of pennies). **Suppliers must provide 28 calendar days advance notice prior to the proposed effective date of the price change.** Retailers reserve the right to negotiate the Supplier’s proposed cost or reject the Supplier’s proposal outright.

4.1 A Supplier’s failure to provide sufficient lead time or sufficient detail (cost, retail, product name, full 12-digit UPC code, and affected stores,) prior to the proposed date of change may result in delayed payments, or payments made at the old (incorrect) cost basis.

The Retailer will reserve the right to reject claims for payment at the new cost if the Supplier fails to provide adequate notice and details as described above. iControl shall be held harmless by the Supplier for any such occurrence on payment at the incorrect rate based on the Supplier’s failure to provide advance notice.

4.2 Approval by Retailers of Certain Proposed Price Changes. Any price change proposals that impact the Retailer’s gross margin will be subject to pre-approval by the Retailer.

5.0 Delivery and Distribution

Suppliers should deliver product to Retailer according to the delivery method requested by the Retailer.

Suppliers must provide Retailers credit for unsold and/or damaged merchandise. Suppliers may not distribute non-returnable product under any circumstances without the express written consent of the Retailer in a separate Agreement that explicitly outlines the arrangement as it relates to the iControl program.

5.1 The distribution of unauthorized product (as determined exclusively by the Retailer), or Products where the “credit” cost differs from the “invoice” cost is also prohibited. Exceptions will be granted only

in cases where the Supplier provides iControl with written authorization from the Category Manager (not the store manager) based at the Retailer's corporate headquarters.

5.2 Retailers require that products delivered to the stores by Suppliers must bear a valid UPC code that is printed in such a way that it may be scanned using the Retailer's point-of-sale barcode reading machines. Products that do not bear pre-printed UPC barcodes may not be distributed at the Retailer's stores; there are no exceptions to the UPC requirement. Retailers reserve the right to request that Suppliers not deliver any products that lack standard UPC-A, UPC-E, or EAN formatted barcodes. For more information on barcodes, Suppliers should consult GS1 at <http://www.gs1.org>, or contact pricebook@icontrolusa.com for more information.

5.3 Retailers may request Suppliers deliver a certain quantity based on sales history and store inventory levels.

6.0 Distribution of Periodicals

Specifically relating to periodicals, Suppliers may pick up unsold copies of daily-frequency publications from Retailer within 7 days from the end of the on sale week (the weekending date shall be defined as the Sunday date of each calendar week), or the Retailer may discard them, at which time the Supplier will be paid for scanned sales only for the time period for which no returns were picked up (as further detailed below).

6.1 Suppliers that distribute periodicals with weekly, monthly or annual frequencies are not allowed to invoice or "pre-bill" for the entire quantity delivered; invoicing for weekly, biweekly, monthly or annual titles shall be paid by scanned sales, unless a separate, countersigned written Agreement exists between the Retailer and the Supplier which explicitly details how the Supplier will invoice after the off-sale date and include credits for returned, unsold, or damaged items.

6.2 Suppliers acknowledge that a failure to pick up unsold periodicals within the prescribed time period may result in the Retailer's destruction of the unsold product. In the event that unsold periodicals are not picked up upon this prescribed timeline, payment will be based exclusively on the Retailer's sales data. Retailers will reject any non-scan claims from Suppliers that are based on failure to pick up unsold periodicals within the prescribed time period.

7.0 Unsold or Damaged Product

By default, Retailers will return unsold or damaged product to Suppliers. Retailers may elect (but are never required) to provide mastheads, or affidavit returns based on other bilateral arrangements in effect between the Supplier and individual store management. If a Retailer fails to provide Supplier with unsold or damaged product upon request, the Supplier shall immediately notify iControl in writing for resolution by emailing help@icontrolusa.com. Failure to notify iControl in writing shall constitute a waiver for the Retailer for any time period for which no notice was provided.

7.1 Suppliers are strictly prohibited from submitting invoices with zero credits due to the Supplier's failure to pickup or accept returned, unsold, or damaged items.

8.0 Comparison to Scanned Sales

Suppliers may submit sales data for the purpose of producing a comparison to scanned sales. The submission of supplier sales data must occur within 30 days of the weekending date [Sunday] of the sales activity.

8.1 At the Retailer's discretion, if a Supplier's calculation of "Net Sales" (i.e., units delivered minus unsold units) differs from the Retailer's calculation of Net Sales (i.e., scanned sales), the Retailer may, at its sole discretion, choose to issue additional payment to Supplier. This payment for **non-scanned sales** is sometimes referred to as a "DCR" or "Discrepancy Credit Request." A Retailer may elect not to issue additional payment for non-scanned sales, in which case iControl shall be held harmless by the Supplier. iControl does not, in any way, determine payments for either scanned or non-scanned sales; the Retailer exclusively determines and approves both the scanned sales and, as needed, any non-scanned sales payments to Suppliers.

9.0 Proof of Delivery

The submission of a store-stamped or store-manager signed invoice, (known as proof-of-delivery or "POD") by the Supplier is a mandatory prerequisite for the Retailer to consider making an additional payment for non-scanned sales. If the Supplier fails to provide a store-signed or store-stamped POD, the Retailer will pay on their scanned sales only. The Supplier understands and accepts that a POD is not a commitment to pay by the Retailer, but rather an agreement to consider.

9.1 Any invoices submitted to iControl that lack the store stamp or the store manager's signature and printed name may be returned to the supplier, unprocessed.

9.2 The Retailer may require a Supplier to produce the POD document for verification of any non-scanned sales claim. The timeline for submission is to be determined by the Retailer (normally 7 calendar days to fulfill request). Suppliers should keep POD documents on file for at least one year.

9.3 In the event that a Supplier fails to provide the supporting POD document, the Retailer reserves the right to either deny the Supplier's request to be paid for any non-scanned sales or reverse payments made for any unsupported non-scanned sales payments. In either case, iControl shall be held harmless by the Supplier for any such occurrence.

10.0 Data Entry of Supplier Invoice Data by iControl (optional)

Suppliers may elect to submit POD documents for data entry by iControl staff via mail, fax or scan. Each invoice must detail the Supplier's iControl identification number, store number, delivery week (deliveries and credits must be from the same date ranges, and should be broken down as a Monday-Sunday delivery week), product name, cost, retail, 12 digit UPC, and quantities (delivered and unsold) for each product, as well as the store stamp and/or store manager's signature and printed name. Supplier invoices can be sent to iControl for data entry via mail PO Box 447, Rockville, MD 20848, fax to (800) 380-5088 or emailed to ap@icontrolusa.com.

10.1 Suppliers are solely responsible to ensure that the invoices submitted contain the aforementioned details to ensure acceptance by the Retailer for processing by iControl staff and consideration of payment for non-scanned product sales. Invoices that lack the proper information, do not compare deliveries and credits from the same date range, or do not break down into weekly segments may be returned or rejected by iControl.

10.2 The data entry cost for iControl staff to data enter invoice information on the Supplier's behalf is equal to 50 cents per invoice, per store, per week. iControl reserves the right to assess or waive this fee at its discretion.

10.3 Submission of Supplier data is optional; Suppliers always retain the right to elect to be paid on scanned product sales as reported by the Retailer.

11.0 Electronic Submission of Supplier Invoice Data

Suppliers may also submit their sales data to iControl by:

- Entering the invoice and credit quantities onto the Excel spreadsheet titled “[SupplierID]_Sales File[weekending date].xls” that is sent to the Supplier via email with subject line “Preliminary Invoice Pending Physical Audit Results” on Thursdays each week; or
- Providing sales information via the iControl Uniform Supplier Interface (file format requirements can be requested by emailing data@icontrolusa.com)

11.1 A Supplier may submit claims for non-scanned sales only once for a given store and weekending date. The data may not be restated or amended without prior authorization from the Retailer. Suppliers shall submit data in one of the formats prescribed above.

11.2 A store-stamped and/or store-manager signed (with printed name) proof of delivery (POD) document shall be required. The only exceptions would be:

- The Retailer’s authorized representative at the store location (back door receiver or inventory specialist) signs, dates and prints their name and title on the invoice; or
- The Retailer provides Supplier (or iControl) with a copy the store’s corporate-issued tracking log as an acceptable POD, listing each day’s invoice (delivered) and credit (unsold) units; or
- The Supplier’s request for a store stamp is refused by the Retailer without cause and communicated by the Supplier in writing at dcr@icontrolusa.com within 7 days of the occurrence for further research; or
- The Supplier provides iControl a letter generated by the Retailer’s category manager explaining that the Retailer failed to keep returns/unsolds, and the Retailer accepts responsibility and agrees to disburse additional payment for that particular week.

A Supplier may request consideration for a process that varies from the above, it being understood that consideration for any alternative procedures shall be at the discretion of each Retailer and that iControl can only facilitate consideration by the Retailer; **iControl management or staff may not authorize, approve or guarantee acceptance of any alternative procedures.**

12.0 Timing of Submission of Supplier Sales Data

A Supplier must submit sales data no more than thirty (30) calendar days from the Sunday weekending date that the sale occurred in order for payment claims for non-scanned sales to be accepted by iControl and considered by the Retailer.

Any claims for payment for non-scanned sales that are submitted more the 30 days after the weekending date will be rejected and not considered. In rare cases, a Supplier may request a special consideration by contacting iControl and detailing the extenuating circumstances of the situation, along with copies of the proof of delivery (POD) documentation. The Retailer will decide if an exception will be made due to extenuating circumstances.

12.1 Submission of Supplier sales data is optional; Suppliers always retain the right to elect to be paid on scanned product sales as reported by the Retailer.

12.1 The Retailer reserves the right to reject any and all claims for additional payments for non-scanned sales that are made beyond 30 days of the weekending date.

13.0 Supplier Inquiries about payments

Any questions from by Suppliers relating to aged receivables or balances owed can be submitted, via mail, by iControl within 45 days of the weekending date via mail to iControl Systems USA, Attn: AP Care, PO Box 447, Rockville, MD 20848, or via email to apcare@icontrolusa.com (with supporting backup documentation in PDF format). This submission shall include a summary table with columns detailing:

- store number
- weekending date
- net dollar amount invoiced
- payments received to date
- difference claimed

The payment summary table shall be accompanied by store-stamped/store-signed copies of POD documents as described above.

13.1 Any claims relating to aged receivables that fail to meet either the aforementioned 45 day claim guideline, the invoice detail guidelines, or the proof-of-delivery standards above will be rejected by the Retailer. The decision to review or reject is the Retailer's discretion exclusively.

A Supplier shall retain POD documents from the Retailer's stores on file for at least one year and shall, upon request and without warning, provide iControl for hardcopies of specific documents that are requested by the Retailer for review. Upon request, the hardcopy shall be mailed, faxed, or emailed as PDF/TIF within seven (7) calendar days.

13.2 The Retailer reserves the right to amend the requirements for DCR submission or POD documentation standard. The Retailer also reserves the right to instruct iControl to request invoice or POD documents on its behalf from Suppliers. Changes to this process may be made from time to time at the Retailer's discretion.

13.3 Suppliers agree to bear the cost of development of any internal processes related to the submission of data to support payment of non-scanned claims, or for the submission of PODs, or gathering of unsold product, or reconciliation of payments, or using generally accepted media (phone, fax, mail, email and internet) to communicate with iControl, or for unlimited data storage of sales and payment information. Suppliers with weekly sales (cost) volume between \$250-\$1500 will be charged \$1.99 per week for data storage; suppliers with weekly sales volume between \$1500-\$2500 will be charged \$2.99 per week for data storage; suppliers with weekly sales volume above \$2500 will be charged \$2.99 per chain per week for data storage.

Submission of Supplier data is optional; Suppliers always retain the right to elect to be paid on scanned product sales as reported by the Retailer.

13.4 Any deviations from the iControl program terms must have explicit, written approval from at least two (2) of the following iControl employees: the COO, President, or CEO. Any other approval will be deemed as unauthorized; moreover, any Supplier or other party that initiates an unauthorized program (e.g., non-returnable sales) at a Retailer without such approval is specifically forfeiting their right to be paid for sales.

14.0 Timing of Payment by Retailers. The time of disbursement of funds by a Retailer is based on a schedule that is determined by Retailer and may be changed by the Retailer at the Retailer's discretion from time to time. Generally speaking, most Retailers operate in a net 14 payment environment from the end of the week (Sunday) for scanned sales. Money is disbursed by the Retailer to iControl, is reconciled by iControl, and then is disbursed to the Supplier. Payments made based on DCRs or non-scanned sales may take longer due to data entry, research, review of POD documentation, and reconciliation by the Retailer.

15.0 Retailer Determines Payments to Suppliers. The Retailer is the sole party that determines the payment issued to the Supplier. Scanned sales, service fees, interest or administrative fees, or any additional discrepancy payments that are supported by adequate proof of delivery ("**POD**") as outlined below, are determined solely by the Retailer, not by iControl management or iControl staff members.

16.0 Suppliers Obligations of Indemnification, etc. of iControl

Suppliers are obligated to indemnify, defend and hold harmless iControl for any data entry errors made by iControl in good faith on behalf of the Supplier.

16.1 Choice of Law. This Agreement and all matters relating to the this Agreement shall be governed and construed in accordance with the law of the State of Florida, without respect to its conflict of interest principles, as if all parties were Florida residents.

16.2 Agreement to Mediate. All claims or disputes arising out of or in any way relating to this Agreement or any of the parties' respective rights and obligations arising out of this Agreement, the parties agree that before proceeding to litigation they will first submit the claim or dispute to nonbinding mediation by a single mediator in the Tampa, Florida area under the auspices of (1) the American Arbitration Association (the "AAA"), in accordance with the AAA's "Commercial Mediation Rules" then in effect, or, of the parties so agree, (2) under the auspices of Judicial Arbitration and Mediation Services ("**JAMS**") or (3) another mediation service.

A party to this Agreement having a claim or dispute subject to paragraph may not institute any legal action against any other party to this Agreement unless the mediation proceedings have been terminated as a result of a written declaration of the mediator that further mediation efforts are not worthwhile

16.3 Expenses of Mediation. The fees of the AAA or other mediation service and the mediator shall be borne equally by the parties to the mediation.

16.4 Enforceability

A party's right to mediation may be specifically enforced by said party.

16.5 Certain Limitations

All statements, promises, offers, views and opinions made or communicated by any party in the mediation proceeding will be secret and confidential in all respects, and will not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding between the parties. However, evidence otherwise discoverable or admissible will not be excluded from discovery or admission as a result of its use in the mediation proceeding.

16.6 Jurisdiction; Service of Process

Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Florida, Pinellas County; or if it has or can acquire jurisdiction, in the United States District Court for the district in which Florida, Pinellas County is located; and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in such court and agrees not to bring any proceeding arising out of or relating to the Agreement in any other court.

The parties agree with either or both of them may file a copy of this section with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum.

Process in any proceeding may be served on any party anywhere in the world.

FOR ANY GENERAL QUESTIONS relating to iControl, please phone the iControl Help Desk at 301.816.4490 ext 100, or submit your question via email at info@icontrolusa.com

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