

By submitting a purchase order (“Purchase Order”) for goods and services (“Material”) from Encore Info Inc. (“EI”), the buyer (“Buyer”), an individual or an entity, signals Buyer’s agreement to abide by the follow terms of use (“Agreement”). The term “Material” means reports, presentations, graphs, tables, answers to questions, telephone conferences, face-to-face meetings, and any and all contents of special custom research services or any custom consulting services provided by EI.

1. GRANT OF LICENSE.

EI grants Buyer the following non-exclusive rights provided Buyer agrees to and complies with all terms of use of this Agreement:

- (a) Buyer may distribute the Material electronically within one single site, group, or division as specified in the Purchase Order.
- (b) Buyer may extract sections of the Material, without alterations of graphics or written materials, for use in Buyer’s internal-use-only documents. Buyer must include all copyright notices with the extracted Material.
- (c) Buyer may distribute the Material via intranet access, such as from a company server, only if specified in the Purchase Order for which a separate fee will apply.

2. NO ASSIGNMENT OR TRANSFER.

Buyer hereby acknowledges and agrees that the rights granted to Buyer as a result of or in connection with this Agreement are license rights only and that nothing contained in this Agreement constitutes or shall be construed to be an assignment or exclusive license of any or all of EI’s rights in the Material. EI retains ownership of the copyright in the Material. EI reserves the right to terminate this license and this Agreement immediately if Buyer reproduces, distributes, disseminates, discloses, or otherwise makes use of any deliverable in contravention of this Agreement.

3. TERRITORY.

The license granted under this Agreement shall be for a site, group, or division in a single or multiple geographical region(s) as specified in the Purchase Order.

4. RESTRICTIONS.

The license granted in Section 1 above is expressly made subject to and limited by the following restrictions:

- (a) Buyer shall not distribute a complete or partial portion of the Material in paper or electronic form or any other medium to persons or entities external to Buyer including, but not limited to, potential and existing customers, joint ventures, alliance partners, members of Buyer’s organization or alliance, non-EI consultants, financial advisors, affiliated companies, acquired companies, or wholly- or partially-owned subsidiaries.
- (b) Buyer shall not sublicense the Material. Any use that is inconsistent with the limited license provided hereunder shall be a violation of the EI’s copyright and subject to copyright law.
- (c) Buyer shall not copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, sublicense, transfer, assign, rent, sell, or otherwise convey the Material obtained from EI in any way not specifically granted in Section 1 above without the prior written consent of EI.
- (d) Buyer shall not modify the Material in any way and represent it as authored by EI without prior written consent from EI.
- (e) All complete or partial copies of any Material made with EI’s permission must include EI’s copyright notice and any other proprietary rights notices appearing on the original.

- (f) The permission hereby granted is not transferable, not exclusive, and applies only to Material controlled by EI and not to any material cited or quoted by the analyst and incorporated in such Material.

5. FEES

- (a) Prices quoted in the Purchase Order are in United States Currency and do not include duties, export charges, tariffs, governmental charges, or applicable taxes, including, without limitation, excise, sales or use taxes. Buyer's payments shall include applicable taxes and will be made in United States Currency.
- (b) Aside from analyst time and work, EI will bill Buyer at cost for out-of-pocket expenses such as travel, lodging, document production, presentation graphics, handouts, and any other expenses applicable that may be needed to deliver on special requests by Buyer. Such expenses will require Buyer's prior approval before the cost is incurred and will be reviewed and approved in conjunction with Buyer.
- (c) Custom work such as additional support, custom research, presentations, and consulting may be terminated by either party upon thirty (30) days' prior written notice to the other at which time the work already accomplished will be prorated by EI to determine the amount to be refunded if any.
- (d) All fees are non-refundable. However Buyer will be entitled to a prorated refund if EI (but not if Buyer) terminates without Cause, where "Cause" is defined to mean Buyer's material breach, bankruptcy, or insolvency.
- (e) Buyer agrees to indemnify and hold EI harmless for any and all costs, including attorney's fees and cost of collection that may reasonably result from Buyer's failure to make full and timely payment to EI for the products and services provided to Buyer.
- (f) Should EI find that Buyer has distributed the Material in violation of this Agreement, Buyer will be assessed full, non-discounted fees as determined by EI, for the Material and intellectual property that were forwarded to each discrete outside entity.

6. DELIVERY OF MATERIAL.

EI or its agent will deliver a password encrypted electronic version of the Material, in the format(s) specified, and to the Buyer's email address specified in the Purchase Order. The password will be sent in a separate email to the Buyer's email address.

7. REPRESENTATIONS AND WARRANTIES.

- (a) Buyer represents that Buyer has the power and authority to order product(s) and services from EI.
- (b) EI has obtained and produced the Material in accordance with commonly accepted market research methods from statistics and information that is either generally available to the public or released by responsible agencies or individuals and, as such, are subject to limits of statistical error, incompleteness, and analyst judgment.
- (c) All opinions and estimates included in the Material constitute EI's analyst best judgment at the time the Material was created and are subject to change without notice. EI shall have no liability for any claims, loss, or damages resulting from Buyer's use of the Material, consulting, or any other form of communication and Buyer assumes complete responsibility for the use of any data, or any other deliverables provided by the research analyst.
- (d) Subject to the express warranties contained herein, the Material is made available to Buyer hereunder "as is," and without any warranty of any kind, and Buyer disclaims, any and all other

warranties or representations (express or implied, oral or written) with respect to the contents of the Material, including but not limited to implied warranties of merchantability or fitness or suitability for any purpose.

8. LIMITATION OF LIABILITY.

EI's maximum liability for any and all claims arising under this agreement shall not exceed the aggregate amount of the monies paid to EI specified by the Purchase Order to which these terms of use are part. EI's liability shall be limited to direct damages and in no event and under no legal theory, including tort, contract or otherwise, shall EI be liable for any indirect, special, incidental, or consequential damages (including loss of profits or loss of goodwill) or as a result of any claim attributable to errors, omissions or other inaccuracies in the information provided even if advised of the possibility of such damages.

9. INDEMNIFICATION.

Buyer agrees to indemnify and hold harmless EI, its officers, directors, agents, affiliates and employees against all claims, damages, loss, or expenses arising from use or disclosure of the Material outside Buyer's company, and from any use by Buyer of the Material other than in compliance with this Agreement. EI shall not be liable for any costs or expenses incurred without its prior written authorization and shall have no obligation of indemnification or any liability whatsoever if copyright infringement is based on (i) any altered, changed, or modified form of the Material not made by EI or (ii) the laws of any country other than the United States of America or its states.

9. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of California. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled.

10. SEVERABILITY.

Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

11. ENTIRE AGREEMENT.

This Agreement constitutes the final, complete, and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the parties.

12. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.