



## TERMS AND CONDITIONS

1. Du Art Film and Video (hereby referred to as ("Du Art") shall not be liable to Customer or others for loss or damage of any kind whatsoever due to theft, Acts of God, strikes or other labor stoppages, fire, failure of transportation agencies or public utilities, the elements, war, shortages of labor or material, government regulation, damage or accident to or failure of machinery or equipment, injury or damage to or loss of film, tapes and other property (film, tapes and other property being hereinafter collectively referred to as "property") delivered to Du Art, or due to any other cause whether or not similar to any of the foregoing causes or whether or not the injury, loss or damage occurs while in Du Art's custody or "while in transit."
2. Du Art will not insure any of Customer's property in the possession of Du Art or while in transit and all such property delivered to Du Art are accepted upon the express understanding and condition that they are fully insured by Customer against all loss or damage from any cause whatsoever, including negligence, whether suffered while in Du Art's possession or control, or otherwise, and the Customer waives all rights of subrogation and the Customer agrees that such insurance does not and will not give the insurer any recourse, or rights of subrogation against Du Art. Notwithstanding the foregoing, in the event or loss, damage or destruction of any such property as a result of Du Art's negligence, Du Art will voluntarily, without admission to liability or responsibility, reimburse Customer for the cost of the raw stock or tape. In no event shall Du Art be liable for any consequential damage. Any claim for such reimbursement must be made by written notice to Du Art within 30 days after delivery of such property to customer or its designee or notice of its loss or damage, whichever is the sooner, and any suit must be instituted within 1 year thereafter. All property delivered to Du Art may be moved to or kept at such place or places as Du Art may deem desirable, there being no agreement or representation, express or implied, that such property delivered for any purpose will be retained or kept at its premises or at any other designated place.
3. If the work requested by customer requires the property to be delivered to a third party for performance of services in connection therewith, Customer authorizes Du Art to deliver such property to such third party but Du Art shall have no liability for any loss or damage resulting from the negligence of such third party or occurring while the property is in transit to and from such third party.
4. All prices are F.O.B. Du Art's place of business. Unless Du Art receives written instructions from the customer as to the method of transportation and as to the amount of insurance coverage, Du Art will ship all property by such method of transportation and with such insurance coverage as Du Art in its sole discretion may determine with shipping expenses and insurance cost payable by the Customer.
5. Prices are subject to adjustment due to any change in the cost of raw stock, materials or taxes thereon, and/or union labor costs, retroactive to the effective date thereof. All prices are subject to any applicable federal, state or local excise, sales or use taxes.
6. Du Art may, by written notice sent to Customer's last known address, require any Customer to retake a possession of any property held for Customer. If such property is not removed within (3) months after the mailing of such notice, Du Art may either send the same to a public warehouse to be held by the warehouse in the name and at the expense of the Customer or Du Art may destroy such property without any liability of any kind to Customer by reason thereof.
7. Anything contained in the previous sentences hereof to the contrary notwithstanding, Du Art, without notice to customer, may charge storage fees with respect to any materials held by Du Art for the customer, the fees to be in the amount established by Du Art from time to time. All such charges are to be secured by Customer's rights in and to such property and Du Art shall have a lien thereon to secure payment of such charges.
8. Du Art shall have the right to charge interest at the maximum legal rate in New York State on all invoices not paid when due, and if placed for collection, (Customer agrees to pay all costs of collection, Whether or not suit is instituted, an attorney's fee of 25% of the amount owed shall be deemed a reasonable attorney's fee) and the amount shall be deemed added to amount due and all charges shall be secured by all property held for Customer and whether or not services were rendered by Du Art with respect to such property, including, but not limited to copyrights, patents and trademarks whether issued under the laws of the United States or otherwise.
9. If materials (prints, preprint material video or audio tapes) are manufactured, or services performed thereon are found to be defective or shipped or labeled in error, Du Arts's sole liability by reason thereof will be to replace such defective material, or correct such error in shipment at its expense, provided written notice of such defects or such error in labeling or shipment is given to Du Art within ten(10) days after its arrival at destination. Customer shall return such material to Du Art if it shall so request. In no event, including negligence, shall Du Art be liable for any consequential damage.
10. Prices are for materials and services deemed by Du Art to require standard manufacturing, processing and handling. Old shrunken or damaged negatives or pre-print materials, or those which are not in a normal or usual photographic or physical condition are accepted for printing and work, service and labor with the understanding that a charge will be made for the additional time and/or materials which are required to comply with any orders submitted, but in no event will Du Art guarantee satisfactory results from such negatives or pre-print materials. Since color film dyes may change in time, reorders for prints from old color negative may yield unsatisfactory color balance requiring a new answer print. Du Art will attempt at all times to notify Customer before entering orders requiring additional charges.
11. The customer assumes all liability under the copyright laws and under any other laws, both Federal and state, arising out of the work, labor and services performed and materials furnished by Du Art for the account of the customer, who agrees to indemnify and hold Du Art free and harmless of any and all suits, claims damages, liabilities, and expenses (including attorney's fees) which may arise directly or indirectly from the performance of work, labor and services by Du Art for the Customer.
12. The exercise by Du Art of any right or remedy hereunder shall not preclude its right to enforce any one or more other remedies. Nothing contained herein shall be deemed to limit or prejudice the rights of Du Art under the Lien Law of the State of New York or any other state or territory in which Du Art renders services, processes Prints and furnishes materials. Customer agrees that if Du Art shall enforce its rights under any Lien Law, it or any other party acquiring title to any film at public or private sale shall have and is hereby granted an unrestricted license to distribute, exhibit and otherwise exploit such film by all media for its own account.
13. Any increase in a previous order must be on a new purchase order. When Customer reduces an order, the instructions must be in writing. All services and/or materials already performed or manufactured at the time of receipt of such reduction will be chargeable to Customer. Reductions necessarily cause delays in completion of orders. Upon cancellation of an order, Customer agrees to pay Du Art its charges for services and materials furnished up until the time of such cancellation.
14. Customer acknowledges that all orders and/or contracts are made in the State of New York. All actions against Customer will be brought in the State of New York and Customer expressly consents to the jurisdiction of the Courts of the State of New York.
15. If any order placed by Customer is guaranteed by a third party and the guarantee is terminated for any reason whatsoever, than Du Art shall have the right to refuse to complete any order then being processed.
16. Customer's materials may be held by Du Art for period of 10 days after the receipt of the Customer's check for all moneys owed to Du Art by Customer unless such check has been certified by a bank located in New York, New York.
17. No waiver, alteration or modification of these Terms and Conditions shall be binding unless in writing and signed by a corporate officer of Du Art. Du Art has made no representations warranties or agreements, express or implied, except as specifically set forth in these "Terms and Conditions."
18. The information contained in Du Art's credit application form may, at Du Art's sole discretion, be made available to the National Association of Credit Management or other third parties.