



245 West 55th Street • New York, NY 10019
 phone 212-757-4580 (-4581, -4582, -4583, -4584)
 fax 212-333-7647 or 212-977-7448

Customer Order Form

<hr/> CUST. P.O.#	<hr/> DU ART ORDER #	<hr/> DATE	<hr/> ORDER RECEIVED BY
<hr/> BILLING NAME	<hr/> CUSTOMER		
<hr/> PROJECT	<hr/> ADDRESS		
<hr/> METHOD OF PAYMENT: CHECK ____ CASH ____ AMEX ____ VISA/MC ____ ACCOUNT ____		<hr/> CITY	<hr/> STATE
<hr/> CC ACCT # _____ EXP _____		<hr/> PHONE NO.	<hr/> FAX NO.
<hr/> CARDHOLDER'S SIGNATURE _____		<hr/> ATT	
<hr/> PLEASE MAKE CHECKS PAYABLE TO DU ART FILM & VIDEO.		<hr/> EMAIL	
<hr/> DEPOSIT _____ (50% REQUIRED)			

SUBMITTED ELEMENTS:

QUANTITY	DESCRIPTION
_____	_____
_____	_____
_____	_____
_____	_____

SERVICES:

QUANTITY	DESCRIPTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SHIPPING INSTRUCTIONS	PICK UP <input type="checkbox"/>	SHIP VIA _____
<hr/> CUSTOMER		
<hr/> ADDRESS		
<hr/> CITY	<hr/> STATE	<hr/> ZIP
<hr/> ATT	<hr/> PHONE NO.	

The undersigned has examined the above Customer Order Form and acknowledges and agrees that the information and instructions contained therein are true and correct. The undersigned further acknowledges and agrees that the work will be performed subject to the "Terms and Conditions" contained on the DuArt website.

CUSTOMER SIGNATURE _____





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Terms and Conditions

ALL SERVICES ARE ACCEPTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **TERMS AND CONDITIONS:** DU ART FILM & VIDEO (“DU ART”) and the Customer have entered into a service and pricing arrangement (the “Agreement”) to which these Terms and Conditions apply, which sets forth the parties’ mutual understanding and acceptance of all services to be performed by DU ART and the costs to be paid by the Customer for such services. Any verbal or written quotations discussed or submitted by DU ART to the Customer in the past are superseded by the Agreement, including these Terms and Conditions.

2. **ELEMENTS:** The term “Elements” shall mean all audio and visual materials, data and metadata, as well as any equivalent tangible embodiment or medium now known or hereafter devised, containing materials or an equivalent nature to the foregoing including, without limitation, all film materials (negatives, positives, originals, intermediates, reversals, cuts and trims, prints, separations, sound-track optical negatives, sprocketed magnetic film), all videotapes, all audiotapes, subtitled materials, artwork, disks or tapes whether master tapes or duplicates, and all other recorded media, hard drives, DVD’s, Blu-Ray discs, compression materials, solid state computer chips containing audio or visual content, computer data storage media, including discs or tapes, in all cases whether delivered by the Customer or produced by DU ART therefrom.

3. PAYMENT:

a. **Standard Terms:** All work is accepted on a COD basis, unless special Terms for payment or credit have been established in a writing signed by both parties and the Customer is current and within its credit limits. If the Customer applies for credit with DU ART, the Customer authorizes DU ART to verify the information stated by the Customer on the credit application and to obtain any other information DU ART may request. References are hereby authorized and directed to release such information to DU ART. Bills rendered by DU ART are due net thirty (30) days from the date of invoice. All payments must be in U.S. currency. All invoices not paid within the agreed upon Terms will be subject to a late charge of 1.5% per month (18% per annum) on the unpaid balance, provided, however, that the Customer shall not be required to pay a late charge in excess of the maximum charge allowed by law.

b. **Fixed Bid Terms:** In the event that DU ART agrees to provide services under the Agreement on a fixed bid basis, the compensation due DU ART, unless otherwise specified in the Agreement, shall be payable as follows: (a) upon execution of the Agreement, including these Terms and Conditions, the Customer shall provide

DU ART a purchase order for the full amount of the Agreement and pay DU ART a deposit of 1/2 the total Agreement amount as advance of any monies payable hereunder for DU ART services; (b) a progress payment of 1/4 shall be made when DU ART informs the Customer in writing that one-half of the services have been performed; and (c) a final payment of 1/4, plus any overages, shall be due when the completed products are ready to be received by the Customer. All deliverables (as defined in the Agreement) will be billed separately and invoiced at the time when those deliverables are ready for delivery.

c. **Third Party Payment:** DU ART shall have no obligation to accept work submitted by the Customer to be billed to a third party. If DU ART accepts such work, the Customer and the third party are jointly and severally liable for payment to DU ART.

d. **Shipping:** All prices are FOB the place of business where the services are furnished. A handling charge may be added to all prepaid shipments.

e. **Taxes:** Any and all applicable local, state, federal or other governmental charges for sales, manufacturing, personal property, and like taxes or duties shall be added to the billed charges. The Customer will pay or reimburse DU ART for taxes or duties (including interest and penalties) levied against DU ART or that DU ART pays pursuant to any present or future law by reason of the Customer’s use of DU ART’ premises, facilities, or services including, without limitation, sales, use and other like taxes and duties.

f. **Overtime:** The Customer acknowledges that the rates in DU ART’s price list or in the Agreement are based on use and operation of DU ART’s facilities, equipment, and employment of personnel during normal working hours, and are subject to increase, on notice to Customer, for work performed on Saturdays, Sundays, holidays or otherwise outside normal working hours. Overtime charges shall be billable to the Customer at the rates contained in the current DU ART rate card.

g. **Cancellation Fees:** In the event that the Customer cancels services ordered, the following charges will apply: (a) if the Customer cancels any services less than seventy two (72) hours but more than twenty four (24) hours before the services are scheduled to begin, the Customer will be charged fifty percent (50%) of the agreed upon price for those services; and (b) if the Customer cancels any services less than twenty four (24) hours before the services are scheduled to begin, the Customer will be charged one hundred percent (100%) of the agreed price for those services.



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h. Price Changes: In the event that the price of film, video or audio stock, laboratory fees or third-party materials being used by DU ART, direct costs of manufacturing, or the cost of labor (which shall include fringe benefits) to DU ART are increased above those in effect on the date of this Agreement, then the prices to be paid by the Customer may be increased to reflect such changed prices to the extent that they are not already included on the current DU ART rate card. DU ART shall give prompt notice to the Customer of any cost increase, but any delay in notice shall not affect the effective date of the price increase.

i. Collection Fees: The Customer agrees to pay all costs and expenses (including but not limited to attorneys' fees, collection agency costs and court costs) incurred by DU ART in connection with the enforcement of DU ART' rights hereunder. Any claim for adjustment in connection with an invoice must be presented to DU ART in writing within thirty (30) days from the date of the invoice in question. The Customer hereby waives any claim for adjustment in billing that is not presented to DU ART in a timely fashion according to the provisions for this section.

4. ADDITIONAL SERVICES: If the Customer requests additional services or changes to the services in the Agreement, DU ART shall advise the Customer whether DU ART will be able to provide these additional services or changes in the time and in the manner desired. However, DU ART shall not be obligated to allocate time or provide additional services that are beyond the scope of the services contemplated in the original Agreement, provided, however, that DU ART shall use reasonable good faith efforts to make itself available for any requested change or addition that is that is technically able to provide. If Customer and DU ART agree upon a supplement to the Agreement reflective of the additional services, the Customer shall provide DU ART a revised or additional purchase order for the supplemental services. In all other respects, these Terms and Conditions shall govern the additional services

5. TRANSPORTATION: After receipt of written instructions from the Customer, DU ART shall use reasonable efforts to transport the Elements to the destination requested, all at Customer's expense and risk. In the absence of written instructions identifying the carrier or means of shipment, DU ART shall have the right to make all shipments of Elements via carrier or other methods of transportation as it sees fit, and any scheduled times for pick-ups and deliveries shall be estimates only. Unless requested by the Customer in writing, DU ART will not insure shipments through the carrier selected. The Customer acknowledges that DU ART is not a common carrier.

6. OWNERSHIP OF ELEMENTS:

a. Customer Warranty: The Customer warrants and represents that it is the sole owner or duly authorized representative of all owners of the Elements delivered to DU ART and all intellectual property contained in or represented by the Elements.

b. Authority: The Customer further warrants and represents that it has the legal right and authority to enter into the Agreement and to engage DU ART to perform all work under the Agreement, and that all facts stated in any document comprising the Agreement are true and complete.

c. Transfer: As long as the Customer is indebted to DU ART, the Customer agrees not to sell, assign, pledge, loan or otherwise encumber or purport to transfer all or any interest or proprietary rights in any of the Elements or any right therein without prior written notice from DU ART. DU ART shall retain ownership of all digital Elements, intermediate Elements, video, audio and computer tapes, hard drives, film separations, and the like used to generate the deliverable product for the Customer, except that title to the deliverable products shall pass to the Customer upon payment in full.

d. Indemnity: The Customer will defend, indemnify and hold harmless DU ART, its officers, directors, members, employees, subcontractors, agents and affiliates from any and all liability arising out of or in connection with the publication, processing, use, distribution, contents or exhibition of Elements delivered to DU ART, including without limitation any alleged liability for libel, slander, defamation, invasion of privacy or infringement of patent, copyright, trademark or other proprietary rights.

e. Claim: DU ART shall have no obligation to investigate the validity of any claim adverse to the Customer or DU ART by any third party with regard to ownership, right to possession or control of the contents of the Elements or any other matter. The Customer shall indemnify, defend and hold DU ART harmless from any and all actual or potential DU ART liability that may result from action taken by the Customer as a result of any such claim.

f. Response: Within forty eight (48) hours after DU ART provides notice of a claim to the Customer, the Customer shall notify DU ART in writing of the response the Customer proposes. Thereafter, DU ART at its sole discretion shall have the option to take any reasonable action it deems appropriate to protect its interests, including but not limited to, releasing or otherwise dealing with any and all of the Elements as requested in the claim, rejecting the claim in whole or in part, restricting access to the Elements or



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interpleading the Elements. Customer shall indemnify, defend and hold harmless DU ART from all actual or potential liability arising out of or in connection with any such action.

7. RIGHT TO REFUSE PERFORMANCE:

a. Generally: Without liability to DU ART, DU ART has the right to refuse to provide services with respect to any Element that DU ART, in its sole discretion deems to (i) be unlawful, pornographic or degrading; (ii) tends to incite prejudice or passion; (iii) or have the possibility of subjecting DU ART, its officers, directors, members, employees, agents or affiliates to criminal or civil process or liability of whatever nature. If DU ART determinates that any such risk exists, DU ART shall have the right to stop further work, entirely or in part, and retain possession of Elements until the Customer has paid in full for work performed.

b. Imperfect or Old Elements: DU ART in its sole discretion may refuse to accept aged or deteriorated Elements showing any imperfection or having an unusual photographic or other physical condition including, but not limited to shrinkage, mold, tape shedding, or vinegar syndrome. In the event that such Elements are accepted for services of any kind, DU ART shall not be responsible for quality problems resulting from such Element Conditions or any resulting additional time requirements. The Customer will promptly pay any additional charge for additional processing time or additional materials used, whether or not a satisfactory Element is ultimately produced by DU ART.

8. STORAGE AND DISPOSITION OF ELEMENTS:

a. Backups During Project: The term "Backup" shall mean the maintaining of a timely, on-site, file-based duplicate of a project in progress in the event of a system malfunction such as a drive crash. Whenever possible, DU ART maintains Backups of projects. DU ART does not maintain Backups of work with very large files and those that are in house for very brief periods of time.

i. Video Backups: Due to the large size of video files, DU ART does not maintain video Backups. If your project requires an ongoing Backup, the Customer may arrange it with the video department for an additional fee.

ii. Sound Editing and Mix Work: DU ART maintains a Backup for seven days after completion of sound editing and mix work.

iii. Audio Projects Supervised by DU ART: DU ART maintains a Backup for 30 days after completion of sound work.

iv. Audio Transfers: DU ART does not maintain a Backup of audio transfers.

v. Erasure of Data: Upon expiration of stated times, Customer data is erased from DU ART drives and storage systems.

b. Digital Picture and Sound Archiving: The term "Archive" means creating a file-based copy or non-file-based copy such as a master tape, film print or inter-negative for use at some future date. Archiving is the responsibility of the Customer. Due to the many factors involved, DU ART makes no guarantee, express or implied, that Archived Elements will be retrievable, functional or otherwise useful at some future date. Upon payment of final balance, the Customer may copy any related files to Customer supplied hard drive or other storage media. The rate for Archival copying shall be the same as the hourly rate agreed upon for the session.

c. Vault: At Customer's written request and sole risk, DU ART will store Elements free of charge during the time services are rendered and for an additional thirty (30) days after the completion of services contemplated in the Agreement. The Customer shall have the sole responsibility to ensure that the Elements are vaulted under the proper customer name. If any Elements are vaulted in the name of a third party, DU ART may release the Elements to the third party or a representative thereof without notice to the Customer or liability. DU ART reserves the right to request from the Customer a signed written authorization for the release of any and all vaulted Elements. DU ART, unless instructed otherwise in writing by the Customer, shall be entitled to pack or repack or otherwise rearrange any or all of the Elements while these are in DU ART custody.

d. Removal: Thirty (30) days after the completion of the services contemplated in the Agreement and provided that DU ART has been paid in full for all of its charges, Elements must be picked up by the Customer or DU ART may move such Elements to a satellite location for temporary storage until further required, at the Customer's expense.

e. Storage: Any Elements remaining under DU ART' control more than thirty (30) days after the completion of services shall be subject to a reasonable storage charge of \$2.00 per Element or such other rate as DU ART then charges for storage. DU ART reserves the right to store such Elements at any place or places it deems appropriate, still at the Customer's risk and expense. At any time, DU ART may require the Customer to retake possession of any or all of Customer's Elements.

f. Disposition: Six (6) months after completion of services and after written notice is sent to the Customer's last known address as it appears in DU ART' records, the Customer



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shall, at Customer's sole expense, remove all Elements in storage. If the Customer fails to do so, DU ART retains the right to destroy, reuse or make any disposition of the Elements. The Customer will defend, indemnify and hold harmless DU ART, its officers, directors, members, employees, subcontractors, agents and affiliates from all liability arising out of or in connection with DU ART' destruction or disposition of Elements as provided in this section. DU ART will attempt to notify the Customer and provide a reasonable period, not in excess of one week, to cure any breach of this Paragraph 8 before exercising its rights to destroy, reuse or otherwise dispose of such Elements.

9. REMEDIES AND LIENS:

a. Security Interest: In addition to any other lien, right or remedy available to DU ART under the Agreement, these Terms and Conditions or applicable law, the Customer hereby grants, assigns and transfers to DU ART a security interest in and lien on any and all Elements in DU ART' possession or control, including all Elements made by DU ART, as security for the payment of any and all services and materials furnished to the Customer by DU ART. This security interest is subject to all preexisting security interests and rights, but shall take precedence over all subsequent interests or rights. If the Elements are voluntarily restored or delivered to the Customer or some third person prior to payment to DU ART for its materials and services, DU ART' lien and security interest shall not be extinguished but shall survive, and upon request by DU ART, the Customer shall execute such documents, including a UCC-1 Financing Statement, as may be required to protect and perfect such security interest.

b. Cumulative Rights: **ALL LIENS, RIGHTS AND REMEDIES OF DU ART SHALL BE DEEMED CUMULATIVE AND NOT EXCLUSIVE OF ONE ANOTHER. THE EXERCISE BY DU ART OF ANY RIGHT OR REMEDY SHALL NOT PRECLUDE ASSERTION OF OTHER RIGHTS. PAYMENT TO DU ART AS A RESULT OF ANY PUBLIC OR PRIVATE SALE SHALL NOT ELIMINATE THE CUSTOMER'S OBLIGATION TO PAY WHATEVER DEFICIENCY MAY BE DUE AFTER THE PROCEEDS ARE APPLIED TO PAYMENT OF THE INDEBTEDNESS, INCLUDING, WITHOUT LIMITATION, ALL LEGAL AND OTHER COSTS, EXPENSES AND CHARGES INCURRED IN THE COLLECTION, SALE, DELIVERY OR PRESERVATION OF THE ELEMENTS.**

c. Title: The Customer agrees that if DU ART shall enforce its rights under the law, it or any other party acquiring any right, title or interest in or to any Elements at public or private sale, shall have and is hereby granted, all right, title, and interest to the Customer, including, without limitation,

and to the extent available given preexisting liens or rights, the unrestricted license to distribute, exhibit and otherwise exploit such Elements by all media for its own account. DU ART will notify the Customer and provide a reasonable period, not in excess of one week, to cure any breach before exercising its rights to sell, distribute, exhibit or otherwise exploit such Elements

10. PUBLICITY: In connection with its publicity or promotional activities, DU ART may use the name of the Customer and the name of the Customer's project after DU ART has been engaged to perform services. In addition, DU ART may use a single image or a sequence of less than thirty (30) seconds in duration from the Customer's project, with or without superimposing DU ART' trade names or logos, at any time at least one week after initial release of the Customer's project.

11. CREDITS: The Customer will exhibit or obtain all necessary right to have the exhibitor exhibit in the end credits of each project the appropriate DU ART logo as provided by DU ART. DU ART shall supply to the Customer the specific nature of the credit DU ART is to receive and any necessary artwork.

12. SYNCHRONIZATION: The Customer must supply source Elements with standard leaders bearing clear proper synchronization marks. Any error in synchronization shall be the responsibility of the Customer and DU ART shall bear no liability. The Customer will defend, indemnify and hold harmless DU ART its officers, directors, members, employees, subcontractors, agents and affiliates from any liability arising out of or in connection with any error in synchronization.

13. LIMITATION ON LIABILITY:

a. Acknowledgement: DU ART undertakes to render its services in a good and workmanlike manner, but the Customer acknowledges that DU ART' services involve creativity and the use of unique and complex systems and procedures, and DU ART prices are based on the assessment of the value of its goods and services and not on the value of the Elements or the content thereof.

b. Damage or Loss: The Customer's Elements are received, processed, and stored by DU ART solely at the Customer's risk and DU ART shall not be responsible for loss, damage or destruction of such Elements even if due to the simple or gross negligence of DU ART or its employees. **IN THE EVENT THAT THE ELEMENTS OF THE CUSTOMER DELIVERED TO OR DEPOSITED WITH DU ART ARE LOST, DESTROYED OR DAMAGED BY REASON OF ANY ACT OR OMISSION OF DU ART, ITS OFFICER, DIRECTORS, MEMBERS, EMPLOYEES,**



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SUBCONTRACTORS, AGENTS OR AFFILIATES, DU ART' LIABILITY SHALL BE LIMITED TO THE REPLACEMENT OF THE LOST OR DESTROYED ELEMENTS WITH FRESH TAPE, UNEXPOSED FILM STOCK OR OTHER RAW MEDIA, AS APPROPRIATE.

c. Delay in Delivery: Orders will be filled as rapidly as practicable taking into consideration the order of delivery to DU ART of Elements by the Customer, Elements by all other customers, DU ART' obligations to other customers, and DU ART' equipment and plant capacity. Delivery dates and/or shipping dates are approximate, based on the dates of delivery to DU ART as specified in the Agreement, and may be subject to delays. DU ART shall not be liable to the Customer or any third party for any loss or damage (incidental or consequential) directly or indirectly arising from DU ART' delay in delivery or shipping, nor for any failure to give notice of delay; such delay shall not constitute grounds for cancellation by the Customer. DU ART will also not be responsible for any damages or loss caused by any failure to deliver Elements to DU ART on a timely basis.

d. Defects in Delivery: If an Element produced by DU ART is erroneously labeled or shipped or if nonconforming services or materials are furnished by DU ART, DU ART' liability shall be limited to the correction of the errors in shipment or labeling or the providing of conforming services or materials at DU ART' expense; provided that the defective Element is returned and written notice of such imperfection or error is given DU ART within twenty one (21) days after shipment. DU ART shall not be responsible for any discrepancy whatsoever that might result from or be caused by any deficiency in the condition or quality of the Customer's Elements.

14. INSURANCE: The Customer will insure fully, at its own expense, Elements delivered to or deposited with DU ART against all insurable risks including damage or loss or destruction of such Elements by DU ART, its officers, directors, members, employees, subcontractors, agents and affiliates, or by the transportation of any Element to or from DU ART. Such insurance shall insure against any and all losses (including incidental and consequential losses). The Customer agrees that such insurance is available. The policy of insurance will name DU ART as an additional insured, will provide fifteen (15) days advance notice before modification or cancellation, and will provide that the insurer waives all claims of subrogation against DU ART and its officers, directors, members, employees, subcontractors, agents and affiliates. The Customer shall provide a certificate

of insurance in conformity with these requirements upon DU ART' request. **DU ART SHALL IN NO EVENT BE LIABLE FOR ANY LOSS OR DAMAGE THAT WAS, OR COULD HAVE BEEN, COVERED BY INSURANCE.**

15. INDEMNITY: The Customer waives and releases DU ART, its officers, directors, members, employees, subcontractors, agents and affiliates from any and all liabilities, claims, demands, actions, causes of action, loss, costs, damage and expenses arising out of or based upon the use of DU ART services or products (including but not limited to subrogation claims against DU ART by the Customer's insurance carrier or others), or the present or future fitness, quality, condition, merchantability or performance of DU ART services or products, or of the material or workmanship thereof, no matter how caused or occasioned, including but not limited to the simple or gross negligence of DU ART, its directors, members, employees, subcontractors, agents and affiliates. The Customer will defend, indemnify and hold harmless DU ART, its officers, directors, members, employees, subcontractors, agents or affiliates from and against any and all liabilities, claims, demands, actions, causes of action, loss, costs, damage and expenses brought or made against or suffered or incurred by them or any of them arising out of or based upon the present or future fitness, quality, condition, merchantability or performance of the services or products provided under the Agreement

16. WARRANTIES: The Customer agrees that DU ART has not made and does not make any representation or warranty and has not assumed and does not assume any liability or responsibility as to the character or quality of the materials or services furnished by it or as to the results of any of its undertakings. **EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, DU ART MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, CHARACTER, OR OTHERWISE WITH RESPECT TO THE SERVICES OR PRODUCTS PROVIDED BY DU ART.**

17. NO CONSEQUENTIAL DAMAGES: **IN NO EVENT SHALL DU ART, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, FUNCTIONING OR USE OF ANY GOOD OR SERVICE HEREUNDER, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), INDEMNITY OR OTHERWISE,**



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EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

18. CONFIDENTIAL INFORMATION: Except as provided above in "PUBLICITY", neither party shall disclose or permit the disclosure of any term of the Agreement, these Terms and Conditions or of any other confidential and proprietary information relating to any other party hereto (collectively, "Confidential Information"); provided that such disclosure may be made (i) to any person who is a partner, officer, director, employee or affiliate of such party or counsel to or accountants of such party, provided, however, that such persons are notified of the party's confidentiality obligations hereunder, (ii) pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official, with prompt notification to the other party thereof and (iii) to enforce rights under the Agreement, including these Terms and Conditions.

19. ENTIRE CONTRACT, SEVERABILITY AND NON-WAIVER: These Terms and Conditions apply to all DU ART work performed, services rendered and material furnished for the account of the Customer until rescinded, terminated or modified by a subsequent written agreement signed by an officer of DU ART. They, along with the Agreement, constitute all the Terms and Conditions relating to the services to be performed for the Customer that are the subject of the Agreement and all matters incidental to such services. These Terms and Conditions and the Agreement together supersede all prior written or oral agreements with respect to their subject matter, including all prior bid quotations or proposals. In the event of any inconsistency between the Agreement and these Terms and Conditions, the Terms of the Agreement shall apply. No modification or waiver hereof shall be valid unless in writing and signed by an officer of DU ART. The invalidity or unenforceability of any one or more Terms or Conditions shall not affect the validity of enforceability of the remaining Terms and Conditions. The failure of DU ART in any one or more instances to insist upon performance of any of these Terms or Conditions or to exercise any right or privilege given to DU ART in these Terms and Conditions shall not be construed as a waiver of the breach of any other term, condition, right or privilege set forth in this Agreement, including these Terms and Conditions.

20. SUBCONTRACTING AND ASSIGNMENT: DU ART reserves the right, exercisable in its sole discretion, to subcontract all or any part of its obligations hereunder to any party it deems appropriate without either notice to or the consent of the Customer.

21. FORCE MAJEURE: DU ART shall not be liable for any loss, injury, or damage whatsoever, arising from DU ART being delayed or hindered in or prevented from the performance of any of its obligations under this Agreement by reason of strikes, labor troubles, inability to procure materials or services, power failures, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, acts of God, acts of the Customer, or any other cause whatsoever beyond DU ART's reasonable control.

22. CLAIMS: The Customer shall notify DU ART in writing of any claim or potential claim related to or arising out of the services provided under this Agreement within ninety (90) days after the earliest of shipment or the date the Customer knew or the date the Customer should have known of such claim. Any claim that the Customer fails to provide written notice of within this time shall be deemed to be waived, released and permanently barred.

23. ARBITRATION; ATTORNEYS FEES: The parties will arbitrate any and all disputes arising out of or relating to the Agreement, including these Terms and Conditions, or their performance thereunder before one neutral arbitrator in the County of New York City, New York pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator in this decision shall apportion the cost of arbitration. The prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses from the other party.

24. GOVERNING LAW: The Agreement, including these Terms and Conditions, shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements made and entirely to be performed in New York by its citizens.

25. SUCCESSORS AND ASSIGNS: These Terms and Conditions shall apply to and bind the heirs, executors, administrators, successors and assigns of the Customer and shall inure to the benefit of DU ART, its successors and assigns.

26. NOTICES: All notices and communications required or permitted hereunder to DU ART shall be sent to the following address: DU ART FILM & VIDEO, 245 West 55th Street, New York, New York 10019 Attention: CEO and COO, unless DU ART notifies the Customer otherwise in writing. All notices and communication to the Customer shall be sent to the Customer at any address shown as an address of the Customer in DU ART' records. Any notice or communications required and permitted hereunder shall be given in writing



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and shall be deemed to have been duly given 72 hours after deposit in the United States Mail, as certified mail, return receipt requested with postage pre-paid.

27. SIGNATORIES: The Customer represents and warrants that the representations made by the Customer in this Agreement are true and correct, and that the Customer has read the foregoing Terms and Conditions and agrees that all Elements submitted to DU ART, and work performed and services rendered for the account of Customer, shall be governed by the Agreement and these Terms and Conditions.

 Company Name (Customer)

 Signature

 Street Address

 Print Name

 City, State, Zip

 Title

 Phone

 Date

