



Digital Post Services

TERMS AND CONDITIONS

All orders accepted by Digital Post Service, Inc. ("DPS") are subject to the following terms and conditions by which the Client agrees to and is bound:

1. **PRICES:** Client agrees to pay for all services rendered and materials ordered at DPS's prices in effect at the date of delivery of services and materials to Client. All Prices are subject to change without notice.
2. **TAXES:** Digital Post Services prices do not include sales, use, manufacturing, excise, processing and other taxes either presently existing or which may be imposed in the future. Client agrees to pay such taxes.
3. **DELIVERY:** Delivery dates are approximate. Client's orders will be filled as rapidly as possible, taking into consideration the delivery of materials by the Client, the services and materials ordered, DPS's obligations to other clients, and DPS's capacity at the time. DPS shall not be liable to the client or any other persons for any losses or for any loss or damages arising out of delay of delivery of services and materials. Nor shall DPS be liable for failure to give client notice of such delay.
4. **LIMITATION OF LIABILITY:** Client's materials are delivered to, used, processed and stored at DPS at Client's sole risk. DPS shall not be liable for any loss, destruction or damage thereto from any source whatsoever, including consequential damages, with the sole exception of loss, destruction or damages caused by willful acts of DPS personnel acting within the scope of their authority or the gross negligence of DPS, in which event DPS's liability shall be limited to the replacement thereof in the case of videotape with a similar quantity of new, unused tapes. DPS makes no warranty, express or implied with respect to the materials and services provided by it, and DPS assumes no responsibility for the character or quality of materials and services provided by it. DPS expressly disclaims all warranties express or implied, statutory or otherwise, including any implied warranty of merchantability or fitness for a particular purpose.
5. **CLIENT'S AUTHORITY:** Client represents and warrants that it owns all materials delivered to DPS and has the authority and right to engage DPS to provide the services and materials requested by Client, and that Client will fulfill its obligations to DPS.



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6. **TERMS OF PAYMENT:** Client agrees to pay DPS for all services and materials furnished for Client or for the account of Client. Client may purchase services and materials on open account only upon approval by DPS. If services and materials are furnished to Client on open account, Client shall pay DPS the amount invoiced to Client in any calendar month on or before the tenth day of the following month. Any claims for adjustment in connection with an invoice must be presented to DPS in writing within thirty days from the date of the invoice in question or such claim shall be deemed waived by Client. Client agrees to pay DPS a late charge of one and one-half percent (1.5%) per month on all amounts which are not paid when due, such charge to accrue from the date payment is due. Client agrees to pay DPS all cost and expenses (including legal fees) incurred by DPS in connection with the collection of amount owed by Client.
7. **RIGHTS:** In addition to all rights DPS may have at law or under any other agreement with Client, Client grants DPS a lien on all films and videotapes and other materials delivered to DPS by Client, and such lien will be retained by DPS until Client pays in full amounts owed.
8. **STORAGE AND REMOVAL OF MATERIALS:** DPS will store Client's film, videotape and other materials without charge during the time of transfer, duplication or processing, and for a reasonable period thereafter not to exceed three months. Thereafter, Client agrees to pay DPS a storage charge of \$1.00 (one dollar) per element, per month, for all elements stored by DPS. Any materials held for the account of Client may be kept at such place or places as DPS may determine, there being no promise or representation that any materials will be stored by DPS at any particular location. At any time DPS may require Client to retake possession of any or all Client's materials. Upon failure of Client to remove such materials at DPS's request, DPS, in its sole discretion after thirty days written notice to Client at Client's last known recorded address, may either (i) send materials to a public warehouse or to a storage company to hold in the name of, for the account of, at the risk of Client, at a rate obtained in good faith by DPS, or (ii) destroy or make other disposition of such materials.



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9. **WARRANTIES AND INDEMNIFICATION:** Client represents and warrants that the film, videotape, software, and other materials and the content therein delivered to DPS in its use or exhibition, will not in any defame, violate, infringe or invade any right of privacy or publicity, or any other civil right, copyright, trademark, or any other right of any person or business. DPS will not be required to duplicate or deliver any materials which it deems to be obscene or otherwise violates State or Federal laws. Client agrees to indemnify and defend DPS, its directors, officers, shareholders, employees and agents and hold each of them harmless from any and all claims, damages, cost and expenses of any nature, including legal fees and costs, incurred by DPS by reason of any breach or alleged breach of any representation, warranty or agreement herein made by Client. Client shall indemnify and hold DPS harmless from all claims, liabilities, costs and damages arising out of DPS's disposition or destruction of Client's materials. Client instructs DPS to retain and store at Client's sole expense and liability any materials submitted by Client, which materials become the subject of a claim of rights by any other party until such time as the rights are adjudicated by a competent court.
10. **MODIFICATION:** Only a written instrument signed by an authorized representative of DPS can modify the terms and conditions.
11. **NO OTHER PROVISIONS:** The terms and conditions herein constitute all of the terms and conditions agreed upon by Client and DPS in connection with the furnishing of services and materials to client. In addition, these terms and conditions supersede any prior terms and conditions, any provisions contained in any purchase order previously or hereafter submitted by Client, and any prior agreement inconsistent with these terms and conditions.
12. **NO WAIVER:** Failure of DPS to insist upon the Client's performance of any of the Client's obligations hereunder, shall not be constructed as a waiver of the breach of any other obligation of Client or of any subsequent breach of such obligation. The failure of DPS to exercise any right of remedy which DPS may have hereunder or under the law shall not be construed as a waiver of any other right or remedy which DPS may have hereunder or under the law.
13. **PARTIAL INVALIDITY:** In the event any portion of these terms and conditions shall be held to be invalid or unenforceable, the remaining terms and conditions shall nevertheless, remain in full force and effect as though the invalid or unenforceable provision were not included.



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14. GENERAL TERMS: This agreement shall be governed by the laws of the State of California applicable to agreements to be entirely performed therein. In any action to enforce the provisions of this agreement, DPS shall be entitled to recover costs and reasonable legal fees. Shipping dates are approximate. DPS shall not be liable to Client or any other person for any loss, damage, liability or delay in delivery, nor for failure to give notice of delay, and such delay shall not constitute grounds for cancellation. DPS shall not be liable for any delay due to causes beyond its reasonable control or inability to obtain the necessary labor, materials or facilities, or for delay due to the elements, acts of God, acts of Client, acts of civil or military authorities, fires, floods, epidemics, quarantine, restrictions, wars, riots, strikes, labor difficulties, accidents, breakdown of machinery, shortages, delay in transportation and reasons of force mayor beyond the control of DPS. In such event, the delivery date shall be deemed extended for a period equal to the delay.