

## **General Terms and Conditions**

### **Online Image Printing Services**

These General Terms and Conditions (the "Terms") are applicable to all clients (the "Clients" and each, individually, a "Client") of XLPhotoPrinting.com. ("TGS"). These Terms shall apply to all services and deliveries offered and carried out by XLPhotoPrinting.com, including future services and deliveries, and to services and deliveries negotiated by XLPhotoPrinting.com, including but not limited to providing online image printing services (the "Service").

These Terms shall supersede any different or additional terms in any order forms, confirmation or delivery submitted by Client; any such different or additional terms are hereby rejected. In the absence of written acceptance of these Terms by Client, the uploading of any image to the Service will constitute acceptance of these Terms.

XLPhotoPrinting.com reserves the right to discontinue Service and to revoke or change prices or terms of Service, except when otherwise indicated in these Terms. If, at any time, it becomes necessary to discontinue Service to Client, to revoke or modify any provisions in this schedule, or to allocate distribution of any Service, XLPhotoPrinting.com will take whatever action in its sole and absolute judgment which is fair and appropriate.

#### **1. SUBJECT OF AGREEMENT.**

**1.1** The subject of this Agreement is the production of prints of images submitted by Client to XLPhotoPrinting.com via an online interface and the printing thereof by XLPhotoPrinting.com and subsequent shipment of finished prints to the Client.

**1.2** XLPhotoPrinting.com is entitled and reserves the right to have all or part of the Service performed by third parties.

#### **2. PAYMENT AND DELIVERY TERMS.**

**2.1** All payments to XLPhotoPrinting.com shall be in advance by credit card via XLPhotoPrinting.com online payment system. Client shall pay the entire amount due in advance, including sales taxes. Acceptance of orders is subject to credit approval. No work will proceed on printing until payment is made. No refunds are given once an order has been printed.

**2.2** Shipping and handling are additional unless otherwise expressly indicated at the time of sale. Client must notify XLPhotoPrinting.com within 21 days of the date of shipment if Client believes any part of a delivery to be missing, wrong or damaged.

**2.3** Unless Client provides XLPhotoPrinting.com with a valid and correct tax exemption certificate applicable to Client's purchase, Client is responsible for sales and other taxes associated with any order. Shipping dates are estimates only.

#### **3. COLOR VARIATIONS FROM THE ORIGINAL.**

**3.1** Because of variations in equipment, paper, inks and other conditions, reasonable variations in color between the original submitted digital image and the print produced by XLPhotoPrinting.com must be expected. Prints delivered with variations of his kind shall be considered as acceptable performance.

#### **4. UPLOADING OF IMAGES.**

**4.1** Images must be uploaded to the Service in [jpg, gif or tiff] format. Images uploaded in other formats may need to be converted by XLPhotoPrinting.com and such conversion will be subject to additional charges.

**4.2** It is the Client's responsibility to maintain a copy of the original image file. XLPhotoPrinting.com is not responsible for loss or accidental damage to images uploaded by the Client or for the accuracy or quality of images uploaded for printing. No claims or warranties are made by XLPhotoPrinting.com regarding XLPhotoPrinting.com ability to work with the images submitted by Client in digital format, and no liability is assumed for problems that may arise.

**4.3** XLPhotoPrinting.com will retain a copy of the uploaded image for a period of thirty (10) days on its servers. Thereafter, unless the Client submits orders for additional prints to be prepared from the image, it will be deleted. Orders for additional prints will cause the 10-day retention period to start anew. XLPhotoPrinting.com is not liable for any loss or damage to stored images.

**4.4** If XLPhotoPrinting.com finds that an uploaded image cannot be printed for technical reasons, any amounts charged to Client's credit card shall be refunded.

#### **5. PROHIBITED SUBJECT MATTER AND COPYRIGHT INFRINGEMENT.**

**5.1** Clients may not use the Service to process anything which XLPhotoPrinting.com, at its sole discretion, deems Prohibited Subject Matter. Prohibited Subject Matter, as used herein, includes but is not limited to content or other material that XLPhotoPrinting.com believes:

- (a) Is abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, or otherwise inappropriate;
- (b) Comprises copyrighted material used without the express permission of the owner;
- (c) Violates or encroaches on the rights of others;
- (d) Contains viruses, worms, corrupt files, Trojan horses and other forms of corruptive code, or any other content which may compromise the Service;
- (e) Advocates illegal activity;
- (f) Harms anyone, including minors; or
- (g) Provides a link to any of the above.

**5.2** The Client warrants that the subject matter to be reprinted does not violate the copyright of a third party. Clients also recognize that because subject matter does not have to bear a copyright notice in order to be protected by copyright law, absence of such notice does not necessarily assure Client's right to reproduce an image. Clients further warrant that no copyright notice has been removed from any material submitted to XLPhotoPrinting.com for printing. Client agrees to indemnify and hold XLPhotoPrinting.com harmless for all liability, damages and attorney's fees that may be incurred in any legal action connected with copyright infringement involving the image or images uploaded by the Client or the print produced from such image or images.

**5.3** XLPhotoPrinting.com reserves the right to use its discretion in refusing to deliver to Client any prints that XLPhotoPrinting.com deems to be Prohibited Subject Matter. Because XLPhotoPrinting.com does not pre-inspect images submitted for printing via its online interface, Client shall remain fully liable for the cost of printing even when XLPhotoPrinting.com refuses to deliver any print it deems Prohibited Subject Matter.

## **6. INDEMNIFICATION.**

**6.1** Client agrees to indemnify, defend and hold XLPhotoPrinting.com its officers, directors, employees, agents, licensors and suppliers harmless from and against all claims, liabilities, losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from (i) any violation of these Terms, including but not limited to violations of the provisions of Section 5 above, or any activity related to Client's use of the Services (including negligent or wrongful conduct) by Client or any other person accessing or using the Service using Client's account and/or (ii) a claim that an image submitted to and printed by XLPhotoPrinting.com is Prohibited Subject Matter or infringes third party intellectual property rights.

## **7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

**7.1** ALL SERVICES PROVIDED BY XLPHOTOPRINTING.COM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED.

**7.2** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, XLPHOTOPRINTING.COM EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. XLPHOTOPRINTING.COM MAKES NO WARRANTY THAT ITS SITE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, OR THAT THIS SITE OR ITS SERVER IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. XLPHOTOPRINTING.COM MAKES NO WARRANTY REGARDING ANY SOFTWARE, GOODS, SERVICES, SPECIAL OFFERS, OR THE DELIVERY, QUALITY, ACCURACY, TIMELINESS, COMPLETENESS OR RELIABILITY OF ANY SOFTWARE, GOODS OR SERVICES, PURCHASED, ACCESSED OR OBTAINED THROUGH XLPHOTOPRINTING.COM SITE OR ADVERTISED THROUGH XLPHOTOPRINTING.COM 'S SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM XLPHOTOPRINTING.COM OR THROUGH THE SITE OR SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

**7.3** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL XLPHOTOPRINTING.COM BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF XLPHOTOPRINTING.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THAT RESULT FROM YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, XLPHOTOPRINTING.COM SITE OR SERVICES, FROM ANY CHANGES TO THIS SITE OR ITS SERVICES, OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR SUBMISSIONS OR DATA, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT XLPHOTOPRINTING.COM IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH CLIENT. FURTHER, XLPHOTOPRINTING.COM WILL HAVE NO LIABILITY TO CLIENT OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED THROUGH THE SITE OR THROUGH THE SERVICE. CLIENT AGREES THAT THE AGGREGATE LIABILITY OF XLPHOTOPRINTING.COM TO CLIENT FOR ANY AND ALL CLAIMS ARISING FROM THE USE OF THE SITE OR SERVICE IS LIMITED TO THE AMOUNTS CLIENT HAS PAID TO XLPHOTOPRINTING.COM FOR ACCESS TO AND USE OF THE SITE OR SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE FOREGOING LIMITATIONS MAY NOT APPLY.

## **8. MISCELLANEOUS.**

**8.1** Claims. Any action hereunder must be brought, if at all, within one (1) year from the accrual of the cause of action. The parties agree that these Terms and any claims hereunder shall be governed by and subject to the state and federal laws of the state of New Mexico, without regard to its conflict of law provisions, and hereby consent to jurisdiction and venue in the courts of New Mexico located in Albuquerque, New Mexico.

**8.2** Enforceability. If any provision contained herein is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

**8.3** Force Majeure. XLPhotoPrinting.com shall not be liable to Client or any other person for any failure or delay in the performance of any obligation under these Terms due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in these Terms, acts or regulations or priorities of the federal, state or local governments.

**8.4** Modification of Terms. XLPhotoPrinting.com may amend these Terms at any time, for any reason, and without notice, including the right to terminate the Service or any part of the Service.

**8.5** Entire Agreement. These Terms constitute the entire agreement between Client and XLPhotoPrinting.com governing Client's use of the Service. In the case of inconsistencies between these Terms and any information included or provided in off-line materials (for example, promotional materials and mailers), these Terms will always control. No waiver, alteration or modification of these provisions or any terms will be valid unless made in writing and signed by an officer or other authorized representative of XLPhotoPrinting.com. In the event of any discrepancy between any order accepted by XLPhotoPrinting.com and these Terms, these Terms shall govern.

**8.6** No Waiver. The failure of XLPhotoPrinting.com to exercise or enforce any Term will not constitute a waiver of such Term. If any Term is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect.

**8.7** Relationship of the Parties. The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, employment or agency relationship between the parties.

**8.8** Headings. Paragraph headings are inserted for convenience of reference only and do not form part of these Terms.