

Terms and Conditions

Digital Photo Systems BV

Article 1 Definitions

1. In these terms:
 - **DPS** means: *DPS Digital Photo Systems BV*, registered with the Dutch Chamber of Commerce under number 34109998 and located in Hilversum, the Netherlands at the Franciscusweg 219.
 - **Customer** means: The counter-party of DPS. The natural or legal person who has closed an Agreement with DPS or to whom DPS has sent a quotation.
 - **Agreement** means: the Agreement between a Customer and DPS.
 - **Product** means: all Products that DPS offers including but not limited to software, ID photo systems and/or ID photo studios.
 - **Service** means all services that DPS offers including but not limited to training, support and online services.
 - **Terms and Conditions**: these Terms and Conditions.
 - **Website** means: the websites of DPS including but not limited to:
<http://www.photomatic.nl/>, <http://www.idstation.eu> , <http://www.photomatic.eu> ,
<http://www.fastid.photo> and <http://www.selfidstation.com>.
 - **Must**: implies a legal obligation on a party.
 - **May**: implies a choice to act or not, or a promise of a possibility for a party.

Article 2 Applicability of the Terms and Conditions

1. These Terms and Conditions apply to all offers, quotations and/or Agreements between DPS and a Customer, unless expressly agreed upon by DPS in writing.
2. These Terms and Conditions also apply to any Agreement for which DPS requires the assistance of third-parties for fulfillment of said Agreement.
3. These Terms and Conditions supersede and replace any terms or conditions of the Customer or third-party.
4. Severability: If any provision of these Terms and Conditions is found to be invalid under any applicable law, such provisions must be deleted without affecting the remaining provisions herein. DPS retains the right to replace an invalid provision with new a provision which will conform as closely as possible to the now invalid provision.
5. Situations that are not covered by these Terms and Conditions should be assessed 'in the spirit of' these Terms and Conditions.
6. If DPS does not require strict compliance with these Terms and Conditions, it does not follow that these Terms and Conditions do not apply, or that DPS loses the right to demand strict compliance with these Terms and Conditions in other cases.

Article 3 Offers and quotations

1. An offer and quotation is non-binding ("vrijblijvend" as per article 219.2 of book 6 of the Dutch civil law code), unless otherwise stated in said offer or quotation.
2. An offer or quotation expires 30 ("thirty") days after the date of said offer or quotation.
3. If no expiration date is specified in an offer or quotation, article 3.2 applies.

4. If a Customer accepts an offer or quotation, DPS has the right to revoke the offer within five business-days after acceptance.
5. If the Customer accepts an offer while stipulating a deviation from said offer, DPS will not be bound to said deviation. Rather, the Agreement between DPS and Customer will conform to the offer as drafted by DPS.
6. A DPS offer is inseparable. If a Customer accepts only part(s) of an offer, DPS is not obliged to fulfill such a partial offer.
7. Offers and quotations rely on information provided by the Customer. The Customer warrants that all relevant information has been supplied to the best of Customer's knowledge and in good faith. If the information is incorrect or incomplete, DPS has the right to change the quotation, offer or Agreement.
8. DPS is not bound by any obvious mistakes in an offer, quotation or Agreement.
9. Quotations or offers are not applicable to future Agreements.
10. Deadlines in an offer or quotation are non-binding. If DPS exceeds a deadline, the Customer has no right to terminate the Agreement nor has any right for compensation, unless the parties have expressly agreed so in writing.

Article 4 Establishment of Agreements

1. An Agreement between DPS and a Customer is established at the time the Customer accepts the offer, quotation, order confirmation or Agreement and DPS confirms the signed quotation, offer, order confirmation or Agreement.
2. Otherwise, an Agreement is established if DPS on Customer's request starts with the fulfillment of an offer, quotation, order confirmation or Agreement.
3. Agreements or commitments can be established in writing only. Verbal commitments are non-binding.
4. If an understanding is reached by telephone or otherwise verbally, the Agreement is established only after written confirmation by DPS.
5. DPS reserves the right to refuse an Agreement and may do so without further explanation.
6. All data, information, materials and documents, provided by DPS prior to signing the Agreement are part of the Agreement, unless the parties have agreed otherwise in writing.
7. If an Agreement stipulates payment of a deposit, no Agreement is establishment until said deposit has been received by DPS. DPS reserves the right to suspend the Agreement until payment has been received by DPS.

Article 5 Fulfillment of Agreements

1. DPS will fulfill all Agreements in good faith, to the best of her knowledge, and in a workmanlike manner.
2. DPS Products and Services are provided "as is", without warranty of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and non-infringement.
3. DPS reserves the right to have third parties fulfill the Agreement in whole or in part.
4. DPS reserves the right to fulfill the Agreement in phases and to invoice the already fulfilled phase(s) separately. If DPS fulfills in phases she has the right to suspend the fulfillment of a subsequent phase until the Customer has accepted the work of the preceding phase in writing.
5. If DPS or a sub-contractor of DPS must work at location of the Customer or a location designated by

the Customer, the Customer must provide access to said location and must be responsible for workmanlike conditions on said location. Customer must do so free of charge to DPS or DPS's sub-contractors.

6. Given the nature of the Products and Services, DPS may be subject and bound by rules, guidelines, policies and technologies of third-parties, including but not limited to DPS suppliers or government. DPS may change or adjust her Products and Services to comply with said rules, guidelines, policies and technologies. Such changes or adjustment do not entitle the Customer to terminate or annul the Agreement. Nor will Customer be entitled to any compensation.
7. DPS will endeavor to fulfill the Agreement before the agreed deadline. However, fulfillment of the Agreement may be affected by conditions for which DPS is not responsible. These conditions include, but are not limited to the quality of the information required by DPS, the assistance (or lack thereof) rendered by the Customer or a third-party. Therefore, time cannot be of the essence.
8. Time is *not* of the essence for deliveries or fulfillment of Agreements by DPS. If a deadline is exceeded by DPS, the Customer must give notice in writing. After receipt of such notice, DPS may fulfill the Agreement before a reasonable deadline.

Article 6 Customer obligations and warranties

1. The Customer must provide DPS in full and on time with all information that DPS requests for the fulfillment of the Agreement or which the Customer could reasonably expect to be required both on commencement and during the fulfillment of the Agreement. If the information required for the work is not provided to DPS on time or in full, DPS may suspend the work and/or charge the Customer with extra costs incurred because of the delay at the current market rates.
2. Customer warrants the correctness, completeness and reliability of the information and / or materials the Customer provides to DPS.
3. The Customer is responsible for the correctness, completeness and reliability of the information and / or materials the Customer provides to DPS.
4. The Customer must ensure that the provided information, materials or information are free of copyright or other proprietary rights. Customer indemnifies DPS to that end.
5. DPS is not liable for any kind of damages, caused by inaccurate and / or incomplete information provided by the Customer, unless DPS may be expected to be aware of said inaccuracy or incompleteness of information.
6. The Customer may involve third-parties in the fulfillment of an Agreement only after written permission from DPS. DPS is not responsible or liable for the acts or omissions of said third-parties.

Article 7 Delivery of Products

1. The delivery of Products is "ex works" of DPS.
2. If the delivery is based on the "Incoterms", then the Incoterms at the time of establishing the Agreement will apply.
3. The Customer must receive the delivery when DPS delivers the Product, or has the Product delivered. If the Customer fails to receive the delivery or fails to provide information or instructions that are necessary for delivery, DPS may store the Products at the expense and risk of the Customer.
4. DPS may charge costs of delivery to the Customer. Said costs may be invoiced separately.
5. When and where applicable, additional costs (including, but not limited to import duties or customs fees) may be charged to the Customer. DPS has no influence over said additional costs and they are incurred entirely on behalf of the Customer.

6. When specified by DPS, the costs of delivery are always approximate. The actual and final costs of delivery are known only when the Product is ready to ship. Differences between the approximate and the actual costs of delivery are borne by the Customer based and may be charged separately.
7. If DPS requires information from the Customer, the delivery period commences after the Customer has provided said information to DPS.
8. When specified by DPS, a delivery period is always approximate. If a deadline is exceeded by DPS, the Customer must give notice in writing. After receipt of such notice, DPS may fulfill the Agreement before a reasonable deadline.
9. DPS may deliver Products in installments. DPS has the right to invoice the partially delivered Products separately.

Article 8 Samples and models

1. If the Customer has been shown or have received a sample or a model, then said sample or model is a mere indication of the final Product, unless DPS has confirmed in writing that the Product will fully correspond with said sample or model.

Article 9 Amendments to the Agreement

1. If during the fulfillment of the Agreement it becomes apparent that it is necessary to make amendments or additions to the work or Agreement, the parties must amend the Agreement accordingly in a timely fashion.
2. Amendments or additions to the Agreement are possible only with the express and written consent of DPS.
3. DPS has the right to refuse a request to amend or supplement the Agreement. Said refusal will not constitute default on the part of DPS. DPS remains entitled to payment for the work done for the original Agreement.
4. If the Agreement is amended and / or supplemented, the time of completion of the Agreement can be affected. DPS will inform the Customer as soon as reasonably possible.
5. DPS will inform the Customer if the change and / or supplement to the Agreement has financial and / or qualitative consequences.
6. If a fixed fee has been agreed, DPS will indicate to what extent the amendment or supplement to the Agreement modifies the fixed fee.
7. If DPS bears responsibility for the amendment or supplement to the Agreement, DPS will not charge Customer for said amendment or supplement.
8. If the Customer bears responsibility for the amendment or supplement to the Agreement, DPS may to change the Agreement and charge additional costs to the Customer.
9. If there are any unforeseen circumstances that prevent fulfillment of the Agreement, DPS may to amend the Agreement in such a manner that fulfillment becomes possible.

Article 10 Duration of the Agreement

1. The Agreement between DPS and the Customer is established for an undetermined time, unless the nature of the Agreement dictates otherwise.

Article 11 Termination and annulment of the Agreement

1. DPS reserves the right to suspend, terminate or annul the Agreement if:
 - A Customer fails to meet the obligations following from the Agreement or following from these Terms and Conditions in part or in full;
 - After establishing the Agreement, circumstances arise from which DPS may presume that the Customer will meet his obligations in part or not adequately. The suspension is only

- permitted if justified by the shortcoming;
 - The Agreement stipulates that the Customer provide security for the fulfillment of his obligations and the Customer fails to provide said security or said security is insufficient. DPS reserves the right to suspend the Agreement until such security has been provided;
 - If the Agreement stipulates a deposit and DPS has not received payment for such deposit in time or in full;
 - One of the parties dies;
 - One of the parties terminates her activities.
1. DPS may annul the Agreement if circumstances arise that make fulfillment of the Agreement impossible or if continuation of the Agreement cannot reasonably be expected.
 2. If the Agreement is annulled, the claims of DPS on the Customer become immediately due and payable.
 3. If DPS suspends the Agreement, DPS retains her rights by law and under the Agreement.
 4. In case of cessation of business, suspension of payments, bankruptcy or receivership of the Customer, or other circumstances where Customer loses control of his business, DPS may terminate the Agreement without being liable for damages.
 5. DPS always reserves the right to sue for damages.

Article 12 Termination of the Agreement

1. Either party can terminate an Agreement at any time but only in writing.
2. If the Agreement is terminated by the Customer, DPS is entitled to compensatory damages, unless the termination is necessitated by facts or circumstances attributable to DPS. Furthermore, the Customer is required to pay for the invoices for the work that DPS has already completed. Preliminary results of the work done so far will also be made available to the Customer.
3. If the Agreement is terminated by DPS, she will, in consultation with the Customer, transfer the work to third parties, unless the termination is necessitated by facts or circumstances attributable to the Customer.
4. If the transfer of the work (as per paragraph 3 of this article) results in additional costs, these will be borne by Customer.
5. Each party may terminate the Agreement in writing, with a notice period of four weeks, if it is obvious the Agreement cannot be fulfilled according to the agreed specifications. Such a termination is allowed only after the parties have consulted each other in good faith about the continuation or modification of the Agreement.
6. Upon termination of the Agreement, the Customer must fully compensate the already performed work and the actual costs. The Customer is not entitled to compensation or reimbursement of expenses.

Article 13 Prices

1. For offers and/or Agreements with a fixed price the paragraphs 2, 5 and 6 t / m 11 of this article apply. If no fixed price is agreed the paragraphs 3 t / m 4 of this article apply.
2. The parties can agree to a fixed price.
3. If no fixed price has been agreed, the price will be determined based on the actual hours. The price is calculated per the usual hourly rate of DPS, applicable to the period in which the work is performed, unless a different hourly rate has been agreed in writing.
4. All prices are exclusive of VAT and additional costs including but not limited to travel and accommodation costs, shipping and / or administration costs.
5. For Agreements with a duration of more than three months, the costs will be charged monthly at the end of each month.
6. If parties agreed a fixed fee, DPS may raise this fixed fee if DPS considers this necessary for example due to any change in circumstances causing the effective costs of Product or Service to increase.

7. DPS has the right to pass on price increases to the Customer.
8. The Customer is not entitled to terminate the Agreement if the increase is a result of government stipulations.
9. DPS will inform the Customer in writing of the intention to increase its rates. DPS will mention the amount and the date on which the increase will go into effect.
10. All prices are with a proviso for printing-errors. DPS cannot be held liable for printing errors.

Article 14 Payment and collection fees

1. Payment must have been received within 7 days after receipt of the Product in the manner specified by DPS and in the currency specified on the invoice. Any objections to the amount of the invoice do not suspend the obligation to pay.
2. DPS has the right to demand a deposit. The deposit must have been received within 7 days after accepting the quotation, the order confirmation or the Agreement.
3. DPS has the right to send her invoices electronically, for example per email.
4. If the Customer does not pay on time, the Customer is liable for the payment of interest of 1% per month. The interest over the payable amount is calculated from the due date of the invoice until the time of full and final settlement.
5. All costs (reasonably incurred) of extrajudicial collection of the claim must be borne by the Customer.
6. The extrajudicial costs are 15% of the invoice amount. If DPS has incurred actual costs higher than 15%, these will also be borne by the Customer, as well as judicial and execution costs.
7. The Customer is also liable for interest on the collection costs.
8. DPS reserves the right count payments made by the Customer firstly to all interest and (extra)judicial costs and in the secondly to the longest outstanding invoices. DPS has the right to refuse full payment, if not also the outstanding and accrued interest and costs will be paid.
9. In case of a jointly commissioned Agreement, the Customers are individually liable for payment of the full invoice.
10. If Customer is delinquent with payments, DPS will cease her work until the Customer has paid the full outstanding amounts including the interest and extrajudicial costs.

Article 15 Retention of title

1. All Products delivered by DPS, including but not limited to designs, sketches, drawings, opinions, movies, software and / or (electronic) files etc., remain the property of DPS until the Customer has fulfilled all obligations under the Agreement and these Terms and Conditions.
2. The Customer is not authorized to pledge or encumber in any other way the Products covered by retention of title.
3. In the event of third-parties seizing or distraining Products delivered under retention of title or setting out to establish or invoke any rights on said Products, the Customer is obliged to notify DPS as soon -but within 3 days- as may reasonably be expected.
4. The Customer is obliged to insure Products delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft and to issue the insurance policy for inspection on demand.
5. Products delivered the retention of title may only be resold in the context of normal business activities and must never be used as barter or collateral.
6. In the event of DPS wishing to exercise her property rights as provided for in this article, the Customer hereby gives unconditional and irrevocable permission, now and for then, for DPS or

third-parties engaged by DPS to enter the places where the Product is located and to repossess that Product.

Article 16 Due diligence and complaints

1. The Customer is obliged to perform due diligence on delivered Products immediately upon receipt, and never later than 5 business-days after delivery. Due diligence includes the quality and quantity of the delivered Products, and whether said Products comply with agreed standards.
2. Visible defects must be reported to DPS within 3 days after delivery. Non-visible defects must be reported to DPS within three weeks after discovery but no later than 12 months after delivery.
3. If a Customer protests in accordance with the above paragraph, The Customer remains obliged to accept and pay for the purchased Products. If the Customer wants to return a defect Product, he only does this after the written consent of DPS. Shipping costs of Product returns are borne by the Customer.
4. A complaint about the fulfillment of the Agreement, services, software, training or invoice must be submitted in writing with reasons to DPS within 5 days of the faults being discovered or of the invoice date.
5. If the complaint period, referred to in paragraph 1 and 4 has expired, the Customer will have waived all rights to Product returns.
6. A complaint does not suspend the Customer's (payment) obligation other than if and insofar as DPS has informed the Customer in writing that DPS regards the claim as being well founded.
7. If the Customer complaint is well founded, DPS may repay a proportion of the invoice, improve or re-execute the work, or re-implement all or part of the Agreement or work.

Article 17 Warranties

1. DPS warrants that the Products meet the usual requirements and standards and are free from defects.
2. The same warranty, mentioned under paragraph 1, applies to Products for the use abroad.
3. The warranty mentioned under 1 is valid for a period of 12 months after delivery.
4. If the delivered Products do not meet the warranted standards, DPS will, within a reasonable time after receipt or if return is not reasonably possible at the discretion of DPS, replace or repair the Products. When a Product is replaced, the Customer returns the replaced Product to DPS and herewith transfers the ownership back to DPS.
5. DPS is never liable for the suitability of the Products for each individual application by the Customer.
6. The warranty does not apply if:
 - (a). The delivered Products have been repaired and/or modified by the Customer or by a third party.
 - (b). The delivered Products are exposed to unusual circumstances or otherwise treated carelessly or contrary to the instructions of DPS and/or to the instructions on the packaging.
 - (c). The defect is wholly or partly the result of rules that the Government has imposed or will impose on the nature or quality of the materials used.
7. If the Product that was produced by a DPS-supplier (manufacturer), the DPS-warranty is limited to the warranty of the manufacturer.

Article 18 Liability

1. Any liability of DPS is limited to what is explicitly mentioned in these Terms and Conditions.
2. DPS is not liable for damages resulting from inaccurate or incomplete information supplied by the Customer.

3. The Customer remains liable for his application or use of opinions, reports and materials from DPS.
4. DPS is not liable for damage or losses caused by acts or omissions of third parties engaged by the Customer. Customer indemnifies DPS from such liability.
5. DPS is not liable for changes in its operations or services if these changes are a result of a change in the technology, Policies or guidelines of third parties.
6. DPS is not liable for damage caused by the improper use of its services or Products, not by failure to follow instructions and/or manuals.
7. DPS is not liable for indirect damage, including but not limited to:
 - Not realized profits;
 - Not realized savings;
 - Consequential damages;
 - Reputational damages;
 - Disappointed expectations or results;
 - Losses caused by business stagnation.
8. If and to the extent that DPS is liable for failure, untimely or improper fulfillment of the Agreement her liability is limited to a maximum of two times the amount of the fee charged by DPS to the Customer for the performance of the work that has caused the loss, with a maximum of € 2000, - ("TwoThousandEuro"). Furthermore, The liability of DPS is limited to the amount of the damages covered by the insurer.
9. Notwithstanding the above paragraph, for Agreements that have a duration of more than 6 months the liability is limited to the invoiced amount that DPS has charged to the Customer in the previous 6 months, with a maximum of € 2000, - ("TwoThousandEuro").
10. Any liability of DPS expires after one year.
11. DPS is not liable in case of Force Majeure.

Article 19 Indemnification

1. Customer must defend and indemnify and hold harmless DPS and its directors, officers, employees, agents, stockholders, affiliates, subcontractors and other customers from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to or result from the fulfillment of the Agreement. If the Customer fails to defend DPS, then DPS, without notice, has the right to defend itself; while all expenses and damages are for the account and risk of the Customer.
2. Customer must defend and indemnify and hold harmless DPS and its directors, officers, employees, agents, stockholders, affiliates, subcontractors and other customers from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to or result from the application of DPS Products or Services.

Article 20 Force Majeure

1. A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

2. Force Majeure includes but is not limited to circumstances beyond the DPS's control which prevent the fulfillment of an Agreement. This includes but is not limited to strikes suffered by DPS or her suppliers.
3. DPS may assert Force Majeure if such circumstance occurs after the due date of fulfillment..
4. Parties may suspend fulfillment during the period of Force Majeure. If the period of Force Majeure lasts for longer than two months, either party may terminate the Agreement without being liable for any compensation or damages to the other party.
5. If DPS at the time of the Force Majeure has already partially fulfilled her obligations, DPS has the right to invoice the performed or fulfilled work and the Customer is obliged to pay this invoice as if it were a separate Agreement.

Article 21 Intellectual Property Rights and copyrights

1. DPS reserves for itself all rights following from the Dutch Copyright Act ("Auteurswet").
2. The Customer must not make any changes to the goods, unless agreed in writing or unless the nature of the provided goods require said changes.
3. All copyright and other intellectual property rights remain with DPS, including but not limited to designs, sketches, drawings, films, software, (electronic) files which have been made available to the Customer.
4. When DPS makes available to the Customer designs, sketches, drawings, films, software, documents and other materials or (electronic) files this constitutes a right to use said materials or files. Without prior written consent from DPS, said materials or files may not be duplicated or publicized by the Customer.
5. DPS may use the acquired knowledge for other purposes, provided such does not make public confidential information.

Article 22 Confidentiality and acquisition of staff

1. Both parties are obliged to protect the confidentiality of all confidential information that they obtain from each other or from other sources into the context of their Agreement. Information is confidential if the party has communicated this or if this results from the nature of the information.
2. If DPS coerced by government or a legal court to disclose confidential information, DPS is not liable for damages following from said disclosure. Nor is the Customer entitled to terminate the Agreement.
3. During the Agreement and 1 year after termination, the Customer must not hire or contract (neither directly nor indirectly) employees of DPS.

Article 23 Jurisdiction and applicable law

1. The court in DPS's domicile has exclusive competent jurisdiction. DPS reserves the right to the bring suit to the any competent court as appointed per the law.
2. Parties will not bring suit before they have done their utmost to resolve the dispute in mutual consultation.
3. All Agreements and disputes are governed by the laws of the Netherlands, even if a Customer is established or residing in abroad.
4. The so-called Vienna Sales Convention ("Weens Koopverdrag") does not apply.

5. The English version of these Terms & Conditions are a translation of the Dutch General Conditions ('Algemene Voorwaarden'). In case of any differences between the Dutch and the English General conditions, the (latest version of the) Dutch General conditions will prevail.

Article 24 Amendment and location of the Terms and Conditions

1. These Terms and Conditions have been deposited with the Dutch Chamber of Commerce. Applicable is the latest registered version or the version valid at the time of the execution of the Agreement.
2. DPS has the right to change or supplement these Terms and Conditions (unilaterally). Changes will be communicated as soon as possible. The Customer agrees to be bound by the amended Terms and Conditions, if he used the service Agreements, Products etc. after said notification.
3. Amendments which are necessary about the rules, policies, terms and / or may at any time be made by DPS. Such changes are necessary to optimally deliver the services and Products.