

# Best Industry Business Practices, Terms and Conditions of Sale

The Trade Customs have been in use by America's printers since 1921. These customs are designed to create better working relationships between our industry and its customers.

## What are Digital Files?

A digital file is any file that is created by a computer and stored by a computer related device. It can be as simple as a text file or as complex as an entire animated video including sound and other generated visuals. It can be a small file it stored or saved on a simple floppy disk or a complex graphic and sound file stored on a server, digital tape or computer storage media. Any digital file, no matter how simple, should be named according to an agreed upon standard by all parties in the workflow, and archived on a computer or some removable media if it is intended to be saved or reused.

## What is a "Digital Asset"?

A digital asset is a digital file or form of digital media that has some commercial value, production value, "intellectual property" value or identification value. A digital asset's commercial value might be a photograph or illustration, a file with production value might be a graphics file for an ad or brochure, a text file for a phone directory, a price list, or metadata. A file with intellectual property value might be a manuscript for a book or play, or a legal brief. A file with identity value might be a company's logo, trademark or an icon like a flag. All digital assets have value, however their value may be determined by their ability or inability to be replaced. The value of a digital asset may not emerge until some time after creation and may exist because of a relationship to other values. A business letter if erased can readily be recreated if a hard copy of the file was saved. A digital photo if stored and lost or erased, may be replaceable.

## Who is a client and who is a supplier?

A client is the end user of digital assets and buys or receives these digital files or that of the organization they represent. The supplier creates and manipulates, provides, or sells these files to the client. A client may work for the same organization or company as a supplier, may be a purchaser of the supplier's materials, or they may have a "virtual relationship." The client and supplier may be formal or informal, or a combination. Examples: If a secretary creates a digital file of a letter and provides it to their superior; The secretary is the supplier and the superior is the client. If a corporate purchasing manager or production manager provides materials to their marketing department, the marketing dept. is the client and the production manager is the supplier. If an art director downloads photographs from a stock photography web site; The photographer is the client and the stock agency is the supplier. If the same art director uses those photos in an ad and supplies them digitally with an ad to the agency's account executive for the agency's use; The account executive and the agency are the clients and the art director is the supplier. Return to Top

## Digital Asset Management Guidelines and Practices

1. Formal purchase agreements, use of rights agreements, or archive agreements should accompany any digital file. A sample of what is requested or hard copy of that file should also accompany the file. The client should note the costs for the use of the file, the period of time the file should be saved or archived, and the ownership of the file in its original and final form. If a formal written agreement is not customary in your business then some informal understanding of expectations should be communicated.

1. Archiving: Practices for archiving should be contracted or negotiated. Certain files may need to be archived for shorter or longer periods of time. Archiving should be defined for materials such as general office files, working files, final commercial value files, and identity value files. Some suppliers will archive files for a fee as an amendment to their usual business agreements. In those cases the period of time is dictated by the terms of the contract between supplier and client.

1. Versions: All files should be clearly named or clearly dated with relation to their use. All old versions or unnecessary files should be deleted or erased from any storage or transportable media intended for use by a commercial supplier. Properly sized and marked hard copies or laser proofs of those files should accompany the project. Costs incurred by the mistaken use of improperly outdated files may be the responsibility of the provider of those files. If a poorly labeled or inadequately named file provided by a client is mistaken for a live file and used by a supplier, it is customary in the industry to charge for recreating the work.

## The supplier should check the supplied file against any supplied proof for accuracy.

If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged. If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged. If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged. If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged.

1. The setting and communicating of copyright guidelines and usage guidelines for an original image or a file are the responsibility of a client. An indemnification clause is recommended.

1. The copy of the original file given by a client to a supplier remains the property of the client. All other files created or amended by the supplier are the property of the supplier. It is recommended that the supplier make a copy of the file provided.

1. The amended file created by a supplier to achieve an end result or product remains the property of the supplier.

## Production or Technical Issues

Some files created on different operating platforms may be mutually incompatible. Some files created by different versions of the same software may be unusable. Resolve compatibility issues before electronic mechanicals are output by an imprinter. An Adobe Illustrator file created on a Mac will not be able to be opened on a PC. A MS Word document created in Word 6 will not open on a computer loaded with WORD 5.1 or may not be recognized properly as an e-mail attachment. Macintosh computers can, however save files in PC format.

1. Large image files may take hours to transmit through commercially available access lines. A 150 MB image file might take several hours to successfully transmit through an electronic communications line. The time needed to receive and access an unusually large transmitted file may be billable to a project. It is customary in the industry to charge for the time and materials provided by a supplier to correct these images.

1. Some images created by illustrator programs may take an excessive amount of time to output or transmit. An illustrator file with many repetitive blends, although appearing to be a small file, may take many hours above the normal processing times to output or to transmit. It is customary in the industry to charge for the time needed to transmit an excessively large file.

1. Software: Files used by clients for production work may be created and saved in the latest accepted industry version. Many clients or suppliers may be using older or outdated working versions of software. Different versions can cause compatibility problems that affect output. A supplier may only want to use the latest updated version of a working program. If that supplier uses that version to correct or edit a client supplied older version original, that document may take on the characteristics of the newer version and may only be opened by the latest version of the program. If a client uses a brand new or beta version of a program, it is wise to check with suppliers and clients if they have that latest version before sending them files. Everyone should be working on the same version so that opening the document will not change its integrity.

1. "High end prepress computer equipment" may not be able to provide the quality of low resolution original images.

2. Sophisticated image manipulation software and hardware have limited abilities to sharpen, correct, or reasonably correct poor or low resolution images. It is customary in the industry to charge for the time and materials provided by a supplier to correct these images.

1. Corrupt files: A corrupted file, or a file that can't be read or laser printed by a client may not be able to be used or accessed by a supplier. Sophisticated image manipulation software and hardware may have limited abilities to correct and utilize corrupted files. It is customary in the industry to charge for the time spent by a supplier and media provided to correct these files.

1. Use of techniques or illustrations is dictated by a rights agreement or negotiated ownership agreement. Subtle changes to those images using computer-generated photographs or changes in their final format may infringe on the artist's rights and contractual agreements.

1. If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged. If a client has contracted with a supplier to archive their files for a defined period of time, that supplier is responsible to recreate or supply those files if they are lost or damaged.

1. An image or file downloaded from the web and used or repurposed for a commercial application, may infringe on the rights of the creator or originator of that image or file. Several map publishers have legal teams searching print documents and internet sites for illegal copyright infringement of their product for commercial uses.

1. It is customary in the industry to charge for the time or materials used by a supplier to recreate an original file into a usable file for production or for a client. A supplier may recreate a client's original program into a usable file for production or for a client. An additional time may be billable to a project, if a client needs a "working file" for other uses or projects, the supplier may have to spend additional time or resources to create it. It is customary in the industry to charge for these services.

1. It is customary in the industry to charge for storage or archiving of images or files by a supplier.

Any charges for these services should be contracted at the beginning of a project. Some suppliers charge on an hourly basis, a per page or image basis, or on a contracted monthly or yearly fee basis.

1. It is customary in the industry to charge for special digital retouching or image manipulation to photographic or illustrative images. It is customary in the industry to charge for the supplier's time and material cost to match the color, as close as commercially possible and any time spent, or proofs pulled, to change colors or manipulate the image away from its original form.

1. It is customary in the industry to charge for uploading or copying a file to transportable or transmittable media.

Those costs include the time needed to find the archived file, the time to copy the file, the storage media if any, and a delivery fee, if any.

1. Transmission of some digital files through commercial e-mail or Internet service providers may be limited. Attachments to those files may also be limited in quality to text or to small image files.

An attached and compressed transmission through America Online or other commercial Internet providers attachments may be limited in size.

1. Media: Popular storage media can get quickly outdated. Keep track of where files are stored and have them copied to the newer form of media used. Suppliers may be responsible for this if they have been contracted by a client for archiving services.

10 years ago the 512K floppy was the common storage media for PCs. Few PC's have capabilities to read those discs today. In 1995 the 44 - 88 MB SyQuest was the preferred storage media for Macintosh; SyQuest is now out of business and few industries are using those formats for storage or archiving. Apple Computer is no longer designing floppy drives in their computers, and the ZIP is slowly being outmoded as the costs for CD writers have come down. It would be difficult to retrieve an important document such as a will if it was archived in an outdated storage format. Return to Top

## Operational Issues

1. Some transportable media, if dropped or passed through certain magnetic fields, may become corrupted or unusable. These files may have to be copied or recreated by the client in order to be usable.

1. Some graphic or business software applications should only be used for desktop or low resolution creative or design work. A written specification of the program intended to be used for a project should be agreed upon.

1. Programs such as PowerPoint are difficult to use for high-end creative work. Additional time and resources may be needed to repurpose these programs for other than their specific use. It is customary in the industry to charge for these services.

1. Programs such as MS Word, WordPerfect or Excel are essentially word processing or spreadsheet programs and should not be used for sophisticated design or high resolution printing or output work. They are not readily able to be used for printing impositions and their font and image management tools are limited. The additional time needed to recreate these files in more sophisticated design software may be billable to a project.

1. Resolution: Different image file resolutions are needed for proper use with different media. All participants in the production workflow should be aware of file sizes as delivered and expected with regards to anticipated use. A 72 dpi photographic image will be acceptable for use on a video monitor or internet uses. A 150-dpi image will be acceptable for use in a newspaper ad. A 250-dpi image may be acceptable for a magazine ad. A 300 - 600 dpi image may be acceptable for use in a traditional printed brochure or outdoor billboard.

1. Enlargements: A "high resolution file" remains high resolution only if it is used at close to the same size in which it was created. A 600 dpi scanned image 4" x 5" becomes 300 dpi if used at 8" x 10". That image would "look better" if it had been scanned at 300 dpi for 8" x 10".

1. Some graphic files, if not compressed properly for transmission, may output only as text files. Some graphic files if compressed using the latest version of a compression program may not expand or open if that latest version is not used by the recipient of that file. Some compressions may also lose data.

1. Designs or illustrations created electronically can only be proofed properly by using some form of high resolution output and proof devices. Illustrations created by Adobe Illustrator and similar programs can only be proofed for color accuracy and fidelity by outputting the file and creating a high resolution digital or analog proof or low resolution proof or laser devices may not show accurate colors and details. Return to Top

## Section 2: Terms and Conditions of Sale

This section covers terms and conditions of sale for quotations, orders, delivery, scheduling and other issues. The priorities covered are listed in alphabetical order.

### Accuracy of Specifications:

Quotations are based on the accuracy of the specifications provided. The supplier can quote a job at time of submission if copy, film, tapes, disks, or other input materials do not conform to the information on which the original quotation was based.

### Alterations/Corrections:

Client alterations include all work performed in addition to the original specifications. It is customary in the industry to charge for these services.

### Color Proofing:

A color proof is used to simulate how the printed piece will look. Because of differences in equipment, paper, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job is to be expected. When variation of this kind occurs, it will be considered acceptable performance and the proof becomes a contract between the client and supplier.

### Creative Work:

No use shall be made, except by written permission of the supplier for all use of this work and for any derivation of ideas from it and compensation (if any) to be determined by the supplier.

### Client-Furnished Materials:

Materials furnished by clients or their representative are verified by delivery tickets. The supplier bears no responsibility for discrepancies between delivery tickets and actual counts. Client-supplied paper must be delivered according to specifications furnished by the supplier. These specifications will include correct weight, thickness, pick resistance, and other technical requirements. Artwork, film, color separations, special dies, tapes, disks, or other materials furnished by the client must be usable by the supplier without alteration or repair. Items not meeting this requirement may be repaired by the client, or by the supplier and may be billable.

### Client's Property:

The supplier will only maintain fire and extended coverage on property belonging to the client while the property is in the supplier's possession. The supplier's liability for this property will not exceed the amount recoverable from the insurance. Additional insurance coverage may be obtained if it is requested in writing, and if the premium is paid to the supplier.

Delivery: Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. supplier's platform. Proposals are based on continuous and uninterrupted delivery of the complete order. If the specifications state otherwise, the supplier will charge accordingly at current rates. Charges for delivery of materials and supplies from the client to the supplier, or from the client's representative to the supplier, are not included in quotations unless specified. Title for finished work passes to the client upon delivery to the carrier at shipping point, or upon mailing of invoices for the finished work or its segments, which ever occurs first.

### Electronic Manuscript or Image:

It is the client's responsibility to maintain a copy of the original file. The supplier is not responsible for accidental damage to media supplied by the client or for the accuracy of furnished input or final input. Until digital input can be evaluated by the supplier, no claims or promises are made about the supplier's ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize client-supplied files may be billable.

### Experimental Work:

It is customary in the industry to charge for experimental or preliminary work performed at client's request. This work cannot be used without the supplier's written consent.

### Indemnification:

The client agrees to protect the supplier from economic loss and any other harmful consequences that could arise in connection with the work. This means that the client will hold the provider harmless and save, indemnify, and otherwise defend him/her against claims, demands, actions, and proceedings on any and all grounds. This will apply regardless of responsibility for negligence.

**Copyrights:** The client warrants that the subject matter to be printed is not copyrighted by a third party. The client also recognizes that because subject matter does not have to be copyrighted in order to be protected by copyright law, absence of such notice does not necessarily assure a right to reproduce. The client further warrants that no copyright notice has been removed from any material used in preparing the subject matter for reproduction. To support these warranties, the client agrees to indemnify and hold the supplier harmless for all liability, damages, and attorney fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided. Personal or economic rights: The client also warrants that the work does not contain anything that is libelous or scandalous, or anything that threatens anyone's right to privacy or other personal or economic rights. The client, will, at the client's sole expense, promptly and thoroughly defend the supplier in all legal actions on these grounds as long as the supplier promptly notifies the client of the legal action and gives the client reasonable time to undertake and conduct a defense. The supplier reserves the right to use his or her sole discretion in refusing to print anything he or she deems illegal, libelous, scandalous, improper, or infringing upon copyright law.

### Liability:

Disclaimer of Express Warranties: The supplier warrants that the work is as described in the purchase order. The client understands that all sketches, copy, dummies, and preparatory work shown to the client are intended only to illustrate the general type and quality of the work. They are not intended to represent the actual work performed.

Disclaimer of Implied Warranties: The supplier warrants only that the work will conform to the description contained in the purchase order. The supplier's maximum liability, whether by negligence, contract, or otherwise, will not exceed the amount specified in the contract. Under no circumstances will the provider be liable for specific, individual, or consequential damages.

### Order:

Acceptance of order shall not be effective until acceptance by supplier. Acceptance by supplier may be either by notification to client or by commencing to produce work on the merchandise ordered. Canceled orders require compensation for incurred cost and related obligations.

### Outside Purchases:

Unless otherwise agreed in writing, all outside purchases as requested or authorized by the client are chargeable.

### Over-runs or Under-runs:

Over-runs or under-runs will not exceed the percentage specified in the contract. The supplier will bill for actual quantity delivered within this tolerance. If the client requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.

### Preparatory Materials:

Artwork, type, plates, negatives, positives, tapes, disks, and all other items supplied by the supplier remain the supplier's exclusive property.

### Prepress Proofs:

The supplier will submit prepress proofs along with original copy for the client's review and approval. Corrections will be returned to the supplier on a "master set" marked "OK," "OK With Corrections," or "Revised Proof Required" and signed by the client. Until the master set is received, no additional work will be performed. Supplier will not be responsible for undetected production errors if: proofs are not required by the client; the work is printed per the client's OK; requests for changes are communicated orally.

### Press Proofs:

Press proofs will not be furnished unless they have been required in writing in the supplier's quotation. A press sheet can be submitted for the client's approval as long as the client is present at the press during makeready. It is customary in the industry to charge for any press time lost or alterations/corrections made because of the client's delay or change of mind.

### Production Schedules:

Production schedules will be established and followed by both the client and the supplier. There will be no liability or penalty for delays due to state of war, riot, civil disorder, fire, strikes, accidents, action of government or civil authority, acts of God, or other causes beyond the control of the supplier. In such cases, schedules will be extended by an amount of time equal to delay incurred.

### Quotation:

A quotation not accepted within 30 days may be changed.

### Storage:

The supplier will retain intermediate materials until the related end product has been accepted by the client. If requested by the client, intermediate materials will be stored for an additional period for additional charge. The provider is not liable for any loss or damage to stored material beyond what is recoverable by the supplier's fire and extended insurance coverage.

### Taxes:

It is customary in the industry to charge for all amounts due for taxes and assessments and are the responsibility of the client. No tax exemption will be granted unless the customers' "Exemption Certificate" (or other official proof of exemption) accompanies the purchase order. If, after the client has paid the invoice, it is determined that more tax is due, then the client must promptly remit the required taxes to the taxing authority, or immediately reimburse the supplier for any additional taxes paid.

### Telecommunications:

Unless otherwise agreed, it is customary in the industry to charge the client for all transmission charges. The supplier is not responsible for any errors, omissions, or extra costs resulting from faults in the transmission.

### Terms/Claims/Liens:

It is customary in the industry that payment is net cash in calendar days from date of invoice as specified. Claims for defects, damages, or shortages must be made by the client in writing no later than a specified number of calendar days after delivery. If no such claim is made, the supplier and the client will understand that the job has been accepted. By accepting the job, the client acknowledges that the supplier's performance has fully satisfied all terms, conditions, and specifications. It is customary in the industry that the supplier's liability will be limited to the quoted selling price of defective goods, without additional charge for special or consequential damage or as specified. As security for payment of any sum due under the terms of an agreement, the supplier has the right to hold and place a lien on all client property in the supplier's possession. This right applies even if credit has been extended, notes have been accepted, trade acceptances have been made, or payment has been guaranteed. If payment is not made, the client is liable for all collection costs incurred.

### Section 3: Refusal to Print

What rights and obligations do printers have in refusing work? The following information from PIA Management Portfolio, September 2002, Business Management Advisory provides guidance on this issue:

#### Political printing

A political candidate your company does not agree with or support offers a print job. Do you have to accept it? No. Printers may have political beliefs or positions and are free to associate and do business with any political party while excluding others.

#### Antitrust laws

Printers and publishers are under no legal duty to do business with everyone who asks. However, a printer or publisher who dominates a particular market in circulation and advertising could violate federal antitrust laws by refusing work. For instance, a publisher could be seen as establishing a monopoly by refusing to accept advertisements from a customer because that customer advertises with the publisher's competitors.

#### Discrimination

May a printer refuse a job because the customer is part of a specific minority group or of a certain national origin, a particular religion, creed, or other protected category? No. State laws and public policy forbid discrimination on these grounds. Printers have a right to select customers as they please, but this right is not unlimited and may, in many jurisdictions, be limited by state anti-discrimination statutes. Printers may reject a job as long as the reasons are not based on discriminatory grounds. You should not refuse to bid or print a job based on the customer's characteristics. Seek legal advice before refusing to bid on or print any job where discrimination might be claimed.

#### Conscientious objection

What if a printer disagrees with the message or content of the material to be printed? PIA believes that a printer's decision about what to print is protected by the First Amendment's freedom of speech and press provisions. However, this area hasn't been fully addressed by the courts, so seek experienced legal counsel before using these grounds to refuse a job that could bring a complaint or legal challenge based on discrimination. Even when the real reason for refusing to print a job is that the printer finds the material itself objectionable, rather than any racial, ethnic, or other bias against the customer, a substantial risk remains that the courts might find the printer liable of prohibited bias against the customer. Again, act cautiously and seek legal advice before refusing business in circumstances that might impact anti-discrimination statutes.

Printers who refuse a job because they object to its content should be on good standing because First Amendment interests should prevail over any applicable anti-discrimination statutes or ordinances, even before the federal courts. It's advisable to establish written policies reserved the right to refuse to print certain material. Such policies alert customers about the potential for refusal and should help defend against lawsuits based on alleged "implied" contractual obligations to provide service. Also, the existence of an established, published policy should strengthen a printer's claim of editorial discretion under the First Amendment's protection against "compelled speech." A written right-to-choose policy might also help defend against claims that the printer's real reason was not, in fact, objection to the content but bias against the individual customer.

#### Nonpayment

Suppose a new customer places a big job. According to the credit report, it seems worthy to extend credit, but even after 90 days the customer still hasn't paid the bill. Then the customer submits another large job. Do you have to accept and print the job? Generally, no. While it is a pure business decision to extend extra credit to this customer, you don't have to accept the second job until you receive payment for the first one. You may want to demand at least partial payment before beginning the second job.

#### Copyright

A job comes in with questionable photographs, text, illustrations, or other content that doesn't have appropriate credit or any indication that reprint permission has been granted. Do you have to print the job? No. While printing business practices (formerly called trade customs) indicate that the customer should ensure that copyright clearance has been secured, this doesn't shield printers from copyright law liability. Printers may require customers to sign a special release stating that they take full responsibility for all copyright liability. This release may still not protect the printer. You are best protected by asking for written proof that the customer has permission (written) to reprint the material.

#### Union label

Suppose you are a union-free printer and a customer requests you to reprint a job containing the union label. Should you? No! Only unionized printers with a specific agreement to print the union label may do so. The union may obtain through court order damages equal to three times your profits for the job, possibly more. What if yours is a combination shop and only part of your production facility is unionized? Can you print the union label? No. The union label means that all operations to produce the goods bearing the label were handled by the members of a union, or those unions who are affiliated with a particular trades council. Only printers with a specific agreement with the union may print the union label. Only employees who are part of the collective bargaining unit may work on a union label job. Can you print the union label if you are a completely unionized printer but have no union label agreement? No. You can print the union label only if you have a union label agreement. The union label agreement is often separate from your collective bargaining agreement. What if you are a quick print shop and a customer comes in with preprinted letterhead containing the union label. The customer only wants you to photocopy a letter onto the preprinted letterhead. May you print the job? Yes, as long as you are not manipulating the union label or binding it. The Graphic Communications International Union (GCIU) has allowed union-free binderies to work on union label jobs when no union binderies are within a reasonable geographic distance. However, this has happened rarely and probably only on the authority of the local union president or trades council.

#### Sexual content

What if a customer wants you to print a job that includes pornography. Do you have to print it? No. The First Amendment does not require a printer to print a job. What if one of your employees refuses to print a job containing pornography? The employee may claim religious grounds or a hostile work environment under Title VII of the 1964 Civil Rights Act. While it may be wise to maintain the morale and respect of your employees by reassigning the job to another worker, a printer maintains the right to conduct business no matter what the content.