



# Handmade Digital Art

- SINCE 2001 -

General Terms and Conditions of Business of Rabcat Computer Graphics GmbH from April 28th, 2006

## 1. Scope of application, bases

- 1.1 The General Terms and Conditions of Business of Rabcat Computer Graphics GmbH set out hereinbelow shall apply to all supplies and services, both for and without consideration, provided by Rabcat Computer Graphics GmbH (hereinafter referred to as "Contractor") to its contract partners (hereinafter referred to as "Principal").
- 1.2 The mutual rights and duties of the parties shall be defined exclusively pursuant to the content of the order and these General Terms and Conditions of Business.
- 1.3 A contract shall be deemed to be concluded either (i) by Contractor's confirmation of an order or (ii) by the signing of an order form by both parties.
- 1.4 Any general terms and conditions of business of Principal in conflict herewith shall apply only if Contractor has expressly accepted such terms and conditions in writing. There are no additional oral agreements in place. Any changes and amendments hereto and/or to the contract concluded on the basis hereof and of the order shall only be valid if made in writing. This shall also apply to a waiver of the requirement of written form and to the termination of the contract for whichever reason.

## 2. Scope of services

- 2.1 The scope of services depends on the relevant individual written order, which shall, if required, be updated on an ongoing basis and approved by both parties and added as a schedule to the original individual order. Unless agreed otherwise, any and all schedules shall become material parts of the contract and shall in case of doubt prevail over these General Terms and Conditions of Business. Where Contractor is involved in the specification of the scope of services and the preparation of an individual order respectively Contractor may, in the absence of any explicit regulation, invoice a special remuneration based on the principle "time and material" for services performed by him in connection with the preparation of the individual order.
- 2.2 If it should be found during the performance of the works that the performance of the order in accordance with the description of services is factually or legally impossible, Contractor- to the extent he is aware of such circumstance- shall notify Principal thereof. In such case the parties shall create the prerequisites for facilitating performance largely in compliance with the order; the provision of section 4.2 shall apply mutatis mutandis. If any such change should be impossible or unreasonable, Principal shall reimburse the costs and expenses incurred up to such time in connection with Contractor's activities and shall pay to Contractor the remuneration for all services performed, including any activities required for re-establishing the original condition.
- 2.3 Unless agreed otherwise, Contractor shall perform the contractual services at Contractor's premises. The selection of the employees and subcontractors, if any, who shall perform the contractual services shall be at Contractor's sole discretion, unless the parties have expressly agreed otherwise.
- 2.4 Any dispatch of data carriers, documentation and service descriptions shall be at Principal's risk and expense. Such risk shall include the risk of any loss of data and/or programs.

## 3. Duty to co-operate

- 3.1 Principal undertakes to provide Contractor with all required information and materials and to submit the same in due time to enable Contractor to consider them within the framework of the performance of the contract. Principal shall keep Contractor continuously informed on any and all circumstances relevant for the performance of the contract.
- 3.2 If Principal fails to comply with his duty to co-operate Contractor shall have the right to amend the agreed schedule of time and costs in accordance with the delay caused by the relevant culpable non-compliance with the duties set out in section 3.1.

## 4. Acceptance, changes

- 4.1 Any and all supplies and services are to be accepted in accordance with the provisions of this section 4.1: Within two weeks of Contractor's announcement that any supplies/services are ready for acceptance Principal shall inspect the same to verify their compliance with the agreed specifications. During such inspection Principal shall keep minutes documenting the individual tests and relevant results. Acceptance shall be confirmed in writing by Principal within three weeks of the announcement that supplies/services are ready for acceptance. If the said period expires without a statement being issued and/or the Principal giving notice of material defects by submitting a detailed written list of defects, the relevant supplies/ services are deemed to have been accepted.
- 4.2 If Principal requests that subsequent to the placing of the order the agreed scope of services be changed, Contractor shall comply with such request for changes to the extent it is reasonable for him to do so and shall submit an offer to Principal setting out the costs to be expected as a result of the changes. Upon Principal's acceptance of such offer the order shall be deemed to have been amended



## *Handmade Digital Art*

- SINCE 2001 -

### **5. Right of use**

- 5.1 Unless any individual order expressly provides for a different agreement, Contractor shall grant to Principal- subject to the condition precedent that the entire amount contracted for be paid in full- a non-exclusive license to use the program components that constitute the subject matter of the individual order, irrespective of whether these were designed specifically for Principal or had already been available at Contractor. Unless agreed otherwise in the relevant individual order, any programs supplied on data carriers (i) may only be copied for backup purposes, (ii) may only be used on such number of workstations as corresponds to the number of data carriers supplied, and (iii) may only be used for commercial purposes within the scope of Principal's business. Any other use, such as in particular decompilation, modification, duplication or making accessible to third parties or persons within the company (other than on licensed workstations), shall be precluded. The transfer or sublicensing of such rights shall not be permitted.
- 5.2 On each copy of any programming produced by Contractor Principal shall name Contractor as the author in a place and in a typeface and type size as are customary in the industry, and shall attach thereto or make visible thereon the word/figurative mark "Rabcat Computer Graphics" in the form as will be announced to him and in a place as is customary in the industry; Principal undertakes to provide for the attachment of the notice © [year] Rabcat Computer Graphics GmbH.
- 5.3 Any programs or program components by third parties that are provided by Contractor and/or are required for technical reasons for the proper use of the supplies/services, shall be listed in the relevant individual order; except where any deviating agreement is contained in the individual order, Principal shall be solely responsible for ensuring that such programs or program components will be licensed directly to Principal by the relevant owner of the rights. Contractor assumes no liability whatsoever in relation to such programs or program components as regards the lawfulness of their use.
- 5.4 Unless any individual order expressly provides for a different agreement, no rights in the source code will be granted (and the source code will not be supplied).

### **6. Freedom from third party rights**

- 6.1 Contractor is liable that the supplies/services are, to the best of his knowledge, free from proprietary rights of third parties and that no other rights exist which restrict or preclude their use by Principal. Contractor is not subject to any liability in relation to programs or program components by third parties.
- 6.2 Any obligations to exploitation companies within the framework of the use of the supplies/services in accordance with the contract, shall be performed by Principal.
- 6.3 Principal shall not be liable for the unrestricted usability of any title and/or trademark rights created by him.

### **7. Payment**

- 7.1 Unless expressly stipulated otherwise, any and all prices are given in Euros exclusive of value-added tax. They apply exclusively to the relevant order.
- 7.2 In case of library (standard) programs the list price applicable on the day on which the order is placed shall apply, unless the relevant individual order provides for a different agreement.
- 7.3 The invoices and partial invoices issued by Contractor shall be payable inclusive of value-added tax within two weeks of receipt of the invoice.
- 7.4 It is not permitted to set off any counterclaims of Principal against claims of Contractor.
- 7.5 Claims against Contractor must not be assigned without express written consent.

### **8. Date of delivery**

- 8.1 Contractor shall endeavour to comply with the agreed deadlines. In order to facilitate compliance therewith Principal shall provide Contractor with continuing support and with such information as is required for enabling proper performance.
- 8.2 If a delay in delivery should occur and responsibility therefor is solely attributable to Contractor Principal shall have the right to rescind the contract after setting an adequate grace period of not less than eight weeks. Any delays in delivery that are due to labour disputes, force majeure, transport embargoes or insufficient co-operation by Principal, shall not entitle Principal to rescind the contract.

### **9. Warranty and liability**

- 9.1 Principal shall ensure- in particular prior to the lapse of the warranty period- that any malfunctions of the components supplied by Contractor shall be notified as soon as they become identifiable.
- 9.2 Contractor is liable for defects in supplies and services and for damage due to the operation of supplies and services respectively, exclusively within the scope of this section 9.



## *Handmade Digital Art*

- SINCE 2001 -

- 9.3 Contractor warrants that the supplies and services shall be free from defects if used in accordance with the contractual agreements. Principal is aware that where software components are concerned and in accordance with the state of the art, it is impossible to produce a program that is completely free from errors. In this context only such errors shall be deemed to be defects that are to be regarded as such in accordance with the state of the art.
- 9.4 Any defects within the meaning of section 9.3 shall be notified in writing by Principal to Contractor within three months of acceptance, failing which Principal's rights under section 9.3 shall be deemed forfeited. Any defects present at the time of acceptance but identified only at a later time shall be notified by Principal to Contractor forthwith by submission of a detailed written list of defects, however, not later than within three months of acceptance, otherwise the relevant rights will be deemed forfeited. Contractor shall remedy at his expense any defects notified within three months of acceptance. Any further claims of Principal shall be precluded. Upon Contractor's request Principal shall forthwith provide Contractor with documents and information required by Contractor for evaluating and remedying the defect. Contractor shall have the right to provide an adequate provisional solution to the extent this can be deemed reasonable.
- 9.5 Principal undertakes
- to forthwith inform Contractor of any defect that occurred; any such notice shall be complete and include any and all information that might be useful to Contractor for identifying the cause of the defect, e.g. time of occurrence, type of error, condition of the system at the time the problem occurred, and suspected cause; notice of defect must be given by telephone and in writing
  - to grant Contractor access to the affected equipment at any time for facilitating the removal of the defect
  - to provide Contractor with the name of an employee trained in the application of software in connection with the use of the defective object of performance, who shall act as contact person for Contractor.
- 9.6 In relation to defective software and/or hardware Principal shall inform Contractor whether the defect
- impairs the efficiency of the system (error category 1); this includes all defects that go beyond error category 2, i.e. loss or substantial impairment of functions that cannot be replaced by other functions, or malfunctions that substantially reduce the efficiency of the entire system
  - hampers the efficiency but affects the usability of the system only to a minor extent (error category 2), e.g. loss or substantial impairment of functions that can be replaced by other functions
  - affects the efficiency of the system only to a minor extent (error category 3), e.g. impairment of user convenience or similar, but without affecting functions.
- 9.7 Contractor shall forthwith commence efforts for remedying the defect, however, not later than
- within 48 hours of the notice of defect in case of defects of error category 1; if notice of defect is given between 7.00 p.m. and 7.00 a.m. or during Sundays or holidays, such 48-hour period shall be deemed to commence at 9.00 a.m. on the next working day
  - within 3 working days of the notice of defect in case of defects of error category 2
  - within an adequate period in case of defects of error category 3, which period is to be promised with binding effect within 14 days of the notice of defect.
- 9.8 No warranty shall apply
- to the extent Principal himself modifies the supplies/services or has them modified by third parties
  - where the defect is due to a non-compliance or faulty compliance with the duty to co-operate imposed on Principal
  - where the defect is due to any non-compliance with installation requirements of which Principal had been informed.
- 9.9 Contractor is liable for damage only where it is due to intent or gross negligence. Liability for damage due to slight negligence is precluded. Liability for indirect damage, e.g. lost profit, consequential harm caused by a defect or damage not foreseeable as a rule at the time the contract was concluded, shall be precluded irrespective of the legal grounds, to the extent this is permitted by law. However, any liability applicable in accordance with this provision can in no event exceed the total amount contracted for.
- 9.10 Where any loss of data or programs is attributable to Contractor, he shall be liable only up to the amount of the expenditure incurred for restoration, provided Principal has made backups on a regular basis, at least at 24-hour intervals, in order to ensure that lost data can be restored by exerting reasonable efforts.
- 9.11 Contractor shall not be subject to any liability
- to the extent Principal himself modifies the supplies/services or has them modified by third parties
  - where the defect is due to a non-compliance or faulty compliance with the duty to co-operate imposed on Principal
  - where the defect is due to any non-compliance with installation requirements of which Principal had been informed.



## *Handmade Digital Art*

- SINCE 2001 -

### **10. Data protection, confidentiality**

- 10.1 Contractor shall ensure that his employees comply with the provisions of the Data Protection Act.
- 10.2 Both parties undertake that they shall keep confidential any and all information obtained in the performance of the order by either party or from IT systems or other documents of a party, unless a party releases the other party in writing from such obligation in respect of a specific situation or the relevant information is known to the public. Moreover, the parties undertake that, in the event they should employ third parties for performing their services, they shall impose such confidentiality obligation in writing on all third parties employed by them for performing their services, failing which they shall be liable for damages. Both parties shall comply with any and all statutory confidentiality obligations and shall employ only such employees and agents on whom a confidentiality obligation has been imposed expressly in writing. Where any documents are specifically marked as being "confidential" or with an equivalent designation, the parties shall comply with the safety standards as notified in each case.

### **11. Final provisions**

- 11.1 These General Terms and Conditions of Business and the contracts concluded on the basis hereof shall be governed by Austrian law, whereby the parties preclude the application of the UN Convention on Contracts for the International Sale of Goods.
- 11.2 Any and all disputes arising out of these General Terms and Conditions of Business and of the contracts concluded on the basis hereof, including disputes relating to their conclusion, validity, termination or nullity, shall be subject to the exclusive jurisdiction of the Vienna Commercial Court.
- 11.3 Before instituting court proceedings both parties shall enter into negotiations and endeavour to reach an out-of-court settlement of the dispute. If any party fails to comply with the duty to first enter into negotiations out of court- and unless there is danger in delay- such party shall bear the entire cost of the court proceedings irrespective of their outcome.
- 11.4 If any one or more provisions of these General Terms and Conditions of Business or of the contracts concluded on the basis hereof, should turn out to be invalid in whole or in part, or if any loophole should exist, the validity of the remaining provisions of these General Terms and Conditions of Business and of the contracts concluded on the basis hereof shall not be affected. In the place of the invalid provision or in order to tighten the loophole, both contracting parties shall be obliged to agree on a valid regulation which as closely as possible reflects the intended content of the agreement.