



# 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 here in below shall apply to all supplies and services, both for and without consideration, provided by the contract partner named in the order form (hereinafter referred to as "Contractor") to Rabcat Computer Graphics GmbH (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 form and these General Terms and Conditions of Business. Where any order form of Principal comprises provisions deviating from these General Terms and Conditions of Business, such other provisions shall be deemed to have been agreed.
- 1.3 A contract shall be deemed to be concluded either (i) by the Principal's confirmation of an order, which shall then define the mutual rights and obligations of the parties, or (ii) by the signing of an order form by both parties.
- 1.4 Any general terms and conditions of business of Contractor in conflict herewith shall apply only if Principal 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 form 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. Supplies/services

- 2.1 Principal commissions Contractor on the basis of individual written orders pursuant to the relevant order form, which shall regulate the details of the contractual relationship and shall, if required, be updated on an ongoing basis and approved by Principal to confirm his agreement and added as a schedule to the original individual order. Unless agreed otherwise, any and all schedules shall become a material part of the contract. The material parts of each individual order shall include in particular descriptions of services, concepts and sets of specifications. These shall be prepared by Contractor on the basis of the documents and information provided to him without giving rise to any additional remuneration, unless agreed otherwise. Descriptions of services, concepts and sets of specifications shall be reviewed by Contractor for correctness, completeness and conclusiveness.
- 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 shall forthwith notify Principal thereof. In such case the parties shall create the prerequisites for facilitating performance largely in compliance with the order. Contractor shall have the right to withdraw from the order only if (i) such impossibility cannot be removed by any reasonable change of the order and (ii) no fault whatsoever is attributable to Contractor in regard of the cause of such impossibility. Only if these prerequisites are complied with Principal shall be obliged to reimburse the costs and expenses incurred up to such time in connection with Contractor's activities.
- 2.3 Unless agreed otherwise, Contractor shall perform the contractual services at Principal's premises. The selection of the employees who shall perform the contractual services shall be at Contractor's sole discretion, unless the parties have expressly agreed otherwise. Contractor shall not be permitted to employ subcontractors in the performance of his contractual obligations without Principal's written approval.
- 2.4 Any dispatch of data carriers, documentation and service descriptions shall be at Contractor's risk and expense. Such risk shall include the risk of any loss of data and/or programs.
- 2.5 Any and all supplies and services are to be accepted in accordance with the provisions of this section 2.5: Contractor shall provide the supplies/services to Principal by the agreed date. Within four weeks Principal shall inspect the supplies/services to verify their compliance with the agreed specifications. Acceptance must be confirmed in writing by Principal and requires a successfully completed operational test, which is deemed to have been achieved only if the supplies/services possess the qualities specified in the relevant individual order and meet the requirements as stipulated. In case of non-compliance Principal shall specify the existing defects and refuse acceptance within the aforesaid period. In such case the identified defects are to be remedied within ten working days, failing which Principal may enforce any rights he is entitled to under law. If Principal does not confirm acceptance within four weeks despite the prerequisites being met, Contractor shall submit a request to Principal that he either confirm acceptance or refuse acceptance within one week of receipt of such request. If this period also expires without success, the supplies/services shall be deemed to have been accepted.
- 2.6 Even after the order has been placed Principal may request changes to the agreed scope of services at any time; Contractor shall comply with such requests for changes without additional charges to the extent such compliance is reasonable for Contractor. Where such compliance is unreasonable Contractor shall explain the same and submit a relevant new regulation to Principal within a period of 14 days, failing which the requested changes shall be deemed to become part of the original order.

## 3. Rights of use

- 3.1 Principal shall have the right to use and exploit the supplies/services, whether modified or not, in any manner without limitation. A transfer to third parties is permitted.



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- 3.2 Contractor grants to Principal the irrevocable and exclusive right, without limitation as to time, territorial or factual scope, to use in any manner copyrights and related proprietary rights that constitute the subject matter of an individual order. The granting of such right shall include in particular the authority of Principal to use the rights in any manner in Austria and abroad, e.g. by duplication, distribution, transmission, performance and any kind of public reproduction. Principal shall further have the right to revise or otherwise modify at his discretion the supplies/services without Contractor's consent and to exploit the products created thereby in the same manner as the original versions of the supplies/ services.
- 3.3 Where the supplies/services result in the creation of inventions eligible for patent or design protection, Contractor shall grant to Principal the right to have them registered in Principal's name and use them on an exclusive basis. Contractor is not entitled to a right of joint use. Where the aforementioned inventions were created by employees of Contractor and an obligation to pay remuneration applies in respect of such employees pursuant to statutory provisions, in particular under the Patent Act, Principal shall pay such remuneration in the amount required by law.
- 3.4 Contractor shall grant to Principal a non-exclusive right of use in respect of works or parts of works that had already been available at Contractor; any such works or parts of works shall be specifically listed in the relevant individual orders. The same shall apply to any use of third parties' accomplishments (e.g. photographs, standard software).
- 3.5 Principal shall have the right, without having to obtain any further consent from Contractor, to transfer the aforesaid rights of use to third parties in part or in full or grant relevant rights to third parties.
- 3.6 Principal is not under any obligation to name the author.
- 3.7 After acceptance Contractor shall hand over to Principal any and all originals and copies of programs (including source programs), documentation and other documents.
- 4. Granting of rights in the source code**
- 4.1 Contractor grants to Principal an exclusive right of use in the source code of the supplies/services. Where Principal is granted a non-exclusive right of use in works or parts of works in accordance with section 3.4 he shall also be granted a non-exclusive right of use in the relevant source code.
- 4.2 Principal shall have the right, without having to obtain any further consent from Contractor, to transfer the aforesaid rights of use to third parties in part or in full or grant relevant rights to third parties.
- 5. Right of use**
- 5.1 Contractor is liable that the work products are free from proprietary rights of third parties and that no other rights exist that restrict or preclude their use by Principal.
- 5.2 Contractor shall hold harmless and indemnify Principal from and against any claims that may be raised by third parties in connection with the infringement of intellectual property rights. The parties shall forthwith inform each other in writing if any claims are raised against either party in connection with the infringement of proprietary rights.
- 6. Payment**
- 6.1 Unless expressly stipulated otherwise, any and all prices are given in Euros exclusive of value-added tax. They apply exclusively to the relevant order.
- 6.2 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.
- 6.3 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.
- 6.4 It is not permitted to set off any counterclaims of Contractor against claims of Principal.
- 6.5 Claims against Principal must not be assigned without express written consent.
- 7. Date of delivery**
- 7.1 Strict compliance with the deadlines agreed for the performance of the contractual obligations undertaken by Contractor to Principal is of essential importance
- 7.2 In order to facilitate compliance with the above, Principal shall provide Contractor with continuing support and with the information required for enabling proper performance, in each case within the customary scope. Contractor shall in turn inform Principal on the current status in the performance of the order at any time upon request. In case of non-compliance with the agreed deadlines Contractor shall be liable to pay a penalty of 0.1% of the amount contracted for for each calendar day on which the default continues, which penalty shall apply irrespective of fault; this shall not affect any further claim to damages to which Principal may be entitled.



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### **8. Warranty**

- 8.1 Contractor warrants that the supplies/services shall be free from defects.
- 8.2 The warranty period shall be 12 months and shall commence upon final acceptance in respect of all supplies/services. It shall be extended by the number of days on which the supplies/services could not be used in accordance with their purpose for more than 12 hours as a result of defects.
- 8.3 Contractor shall forthwith remedy defects at his expense. Until the defects have been remedied completely Contractor shall provide a provisional solution, to the extent this is possible and reasonable in view of the consequences triggered by the defect.
- 8.4 Upon request Principal shall make available to Contractor, to the extent this is deemed to be reasonable, documents and information required by Contractor for evaluating and remedying the defect/defects.
- 8.5 No warranty shall apply to the extent the cause of any defect is due to a modification of the work products by Principal or by a third party upon Principal's instruction without Contractor's consent.

### **9. Data protection, confidentiality**

- 9.1 Contractor shall ensure that his employees comply with the provisions of the Data Protection Act.
- 9.2 Both parties undertake that they shall keep confidential any and all information obtained in the performance of the order at 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.
- 9.3 The contracting parties shall exchange important information relating to the subject matter of the contract on an ongoing basis. If any circumstances should become identifiable to one of the parties that might jeopardise the performance of the contract in accordance with its provisions, the other party shall be forthwith informed in writing of such circumstances and any action to be considered by such other party.

### **10. Final provisions**

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.