

# Terms of use

## General Conditions of Contract

Last update: 05.10.2018

### 1. Applicability

These General Conditions of Contract (GCC) apply to all contracts (creative services) between Wildshot Productions (WP), and the Client.

Wildshot Productions is a brand of Fontus Water Technology GmbH, with official address: Aspangstr. 53/9 A-1030 Vienna.

### 2. Basis for the Collaboration

**2.1** The basis of every contract is the framework (briefing) provided by Client, whose requirements are to be fulfilled by WP. Within the framework of the briefing, freedom of design is allowed in carrying out the commission.

**2.2.** WP is to create the work autonomously, but nevertheless has the right to enlist the services of competent associates or partners.

**2.3.** Any possible consultancy on the part of WP must remain strictly within the area of design and media. The liability for an »expert opinion« shall remain confined to this area, in accordance with the ABGB (Allgemeines bürgerliches Gesetzbuch) [the CivilCode of Austria] (Article 1299).

**2.4.** Client shall ensure that WP receives in good time and in full all documents and details, as well as instructions, that are necessary to optimally fulfil the commission.

### 3. Proprietary Right and Right of Use

**3.1.** Insofar as nothing else has been agreed upon between Client and WP, WP grants Client exclusive use of the work (exclusive right of use), with the exception of any possible programming services

**3.2.** Upon payment of the total fee and additional expenses, Client acquires the agreed-upon right of use to the works created in fulfilment of the commission, in the form in which they are delivered and for the agreed purpose and scope of use. If no agreement has been made as to the purpose and scope of use, the minimum scope necessary to the fulfilment of the commission shall apply. Every other or further future use can only be provided with the concurrence of Designer and against compensation.

**3.3.** Any modification, revision, or imitation of the works conveyed for use is inadmissible, so long as the right to alteration has not been previously granted in writing and against compensation.

**3.4.** The rights granted Client (or in the case of an agent, the agent's customer) may only be conferred on a third party –whether gratuitously or for a consideration – with WP's express consent.

**3.5.** Client acquires no ownership of the designs, creative content, elaborations, or computer data. In the case of a singular succession, all rights and obligations devolve upon the legal successor; however, only within the scope agreed upon by WP, and Client. Any possible expansion of the uses by the legal successor requires under all circumstances the agreement of WP.

**3.6.** A licence for unrestricted right of use is required should Client wish to continue to use in unaltered form the concepts, ideas, or works that were developed or designed after either completion of, withdrawal from, or termination of a contract or service agreement. If said concepts, ideas, or works are to be altered, brought up to date, or utilised as the basis for further development by Client or a third party, the granting of the right to alteration by a third party is additionally required. A further agreement is also obligatory should Client wish to receive and keep the computer data.

#### **4. Compensation for Presentations**

**4.1.** All of WP's services are to be compensated, with the exception of the preparation of service, time, and cost proposals necessary to making the bid.

**4.2.** The invitation issued by Client to prepare a presentation with preliminary sketches shall be regarded as a commission to provide a defined specification of services. The amount of the compensation for the presentation is freely negotiable and comprises half of the usual fee for a design, as deemed appropriate under Articles 1004 and 1152 of the ABGB, provided nothing else has been agreed upon. Once the presentation has been made, the presentation contract is considered as having been awarded, accepted, and fulfilled.

**4.3.** Upon conclusion of the presentation, should Client or the initiator of a presentation competition not award WP or another presentation competitor contract at all, or only one that has been considerably reduced, WP is entitled to full compensation for the design, instead of the (reduced) presentation fee.

**4.4.** The presentation fee includes no granting of rights of use.

#### **5. Service, Services Provided by Third Parties, and Production Monitoring**

**5.1.** A suitable payment in accordance with Articles 1004 and 1152 of the ABGB will be provided as agreed for rendering the desired services, including the submission of the production data. The transfer of development data is only considered part of the service when this has been set forth in writing and an additional fee has been agreed upon.

**5.2.** WP is authorised to either personally perform necessary or negotiated support services in connection with the contract against customary local compensation therefor or to engage a third party on behalf and for the account of Client.

**5.3.** The coordination and monitoring of the reproduction/production (such as colour or print monitoring) may be awarded by Client to external production experts or to WP. Such services require a separate contract and shall be provided against payment.

## **6. Return and Storage**

**6.1.** Client shall receive all documents, intermediate results, designs, conception descriptions, and elaborations in trust. Until Client has acquired the rights of use, as well as in the case of denial (waiver of use), Client may not make copies of them, store them in computer systems, or make them available to third parties either for viewing or further development, unless the third party is an opinion research institute that has been engaged for decision-taking purposes.

**6.2.** As soon as the original sketches and computer data are no longer necessary for the agreed application, they shall either be sent back or handed over to WP in an undamaged state for the risk and account of Client.

## **7. Liability**

**7.1.** WP shall not be liable for slight negligence. In the case of gross negligence, WP must assume liabilities up to the amount of its fee (excluding additional expenses and value added tax).

**7.2.** WP must be notified of any deficiencies, with a request for their rectification, within three weeks time, immediately after the receipt of services. Any costs arising from the engagement of a third party to remedy a deficiency despite WP's willingness to carry this out personally must be borne by Client. All claims to rectification lapse after a period of two months.

**7.3.** WP bears no responsibility for the legal admissibility – in particular with regard to competition, trademark, and administrative legislation – of the designs and elaborations. WP is also not liable for the correctness of texts and images when the works have been approved by Client or when the documents have at least been offered to Client for inspection.

**7.4.** Insofar as WP enlists the necessary or agreed-upon services of others on behalf and for the account of Client, the respective contractors shall not be considered as sub contractors of WP.

**7.5.** The documents provided by Client (photos, texts, models, patterns, etc.) shall be used by WP under the presumption that Client is entitled to their use and that in developing or using them, no rights of any third party are being infringed upon. For every kind of unlawful use, Client is liable to WP under Article 86 of the Austrian Copyright Act [Urheberrechtsgesetz (UrhG)] in the amount of twice the appropriate fee for this use, in as much as such use has at least been enabled through Client's negligence or tolerance of it.

## **8. Identification and Reference Copy**

**8.1.** Under Article 20 of the Austrian Copyright Act, WP is entitled to affix his or her name, pseudonym, company name, or logo to each of the works/products WP has created, as well as to the advertising materials for or publications about them. The form and duration of the labelling may be arranged with Client.

**8.2.** Under Article 26 of the Austrian Copyright Act, WP retains the right to employ for promotional purposes printed and digital images and videos of the works/products it has designed, and to make

these images/videos available in the World Wide Web for the same purposes. WP reserves the right to publish all works it has created on their website and all company related social media and marketing channels. This right extends to the individuals involved in the production of named works.

**8.3.** In the case of three-dimensional objects, WP is entitled to the gratuitous use of visual images of the objects that were produced with the aid of his or her design solution, and also should receive a reference copy, so long as the latter does not involve disproportionately high costs. In the case of printed works, WP is entitled to a minimum of five copies of the works it has designed.

## **9. Withdrawal and Cancellation**

**9.1.** After submission of the first presentation, Client and WP are each entitled to withdraw from the contract without stating reasons. However, the presentation fee, according to Point 4.2 of the GCC, shall nevertheless be paid by Client.

**9.2.** Should Client cancel the contract during the design or elaboration phase or within a valid framework agreement for reasons for which WP is not responsible, or if Client reduces the scope of the contract, Client is obliged to remunerate the design fee plus the support services and expenses that have accrued to date.

**9.3.** Irrespective thereof, WP is entitled to compensation for provided but not used work capacity and to charge Client for any possible damage suffered therefrom. Compensation for use does not apply, and WP retains all rights.

## **10. Corrections and delivery**

**10.1.** Unless agreed upon otherwise, Client is entitled to a maximum of two (2) corrections upon delivery of requested work. WP shall fulfil these corrections without additional charge until a maximum of four (4) work hours. Any correction requiring more than four hours of work shall be subject to additional compensation. WP reserves the right to refuse corrections if these deviate strongly from the initial briefing.

**10.2.** In the creative world, unwanted delays may happen easily. WP has the right to deliver the requested order after a maximum of 30 days past the agreed delivery date without being subject to compensation. If the causes for a delay are known, WP will notify Client immediately and present Client with a new delivery time estimate in written.

## **11. Additional costs**

**11.1.** All travel expenses that arise from a collaboration shall be covered by the Client. Travel expenses include transportation costs, accommodation costs, Visas, admission tickets and all other costs that are in reasonable relation to the collaboration.

**11.2.** Unplanned expenses arising from a collaboration are to be presented to Client with due justification. If these costs hinder the completion of the agreed assignment, they are to be covered by Client or the final project goal (briefing) must be adapted.

## **12. Payment modalities**

**12.1.** Unless agreed otherwise, payments shall be made as follows: 30% upon receipt of order confirmation and 70% upon final delivery. All invoices are payable within 14 days upon date of invoice.

## **13. Final Provisions**

**13.1.** This GCC, as well as all framework agreements, cannot be modified or amended except in a written instrument.

**13.2.** Exclusively Austrian law shall apply. The site of fulfilment and court of jurisdiction is Vienna, Austria.