

# General Conditions of Contract Design Austria (GCC DA)

## 1.

### Applicability

These General Conditions of Contract (GCC) apply to all design contracts (creative services) between Designer, DA, and Designer's Client. They may not be used for the sale of originals or for commercial services.

## 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 Designer. Within the framework of the briefing, freedom of design is allowed in carrying out the commission.

2.2. Designer is to create the work autonomously and in person, but nevertheless has the right to enlist the services of competent associates or partners.

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

2.4. Client shall ensure that Designer 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 Designer, Designer 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 Designer's express consent.

3.5. Client acquires no ownership of the designs, 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 Designer, DA, and Client. Any possible expansion of the uses by the legal successor requires under all circumstances the agreement of Designer, DA.

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 Designer'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 Designer or another presentation competitor contract at all, or only one that has been considerably reduced, Designer 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. Designer 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 Designer. 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 Designer in an undamaged state for the risk and account of Client.

## **7. Liability**

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

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

7.3. Designer bears no responsibility for the legal admissibility – in particular with regard to competition, trademark, and administrative legislation – of the designs and elaborations. Designer 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 Designer 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 subcontractors of Designer, DA.

7.5. The documents provided by Client (photos, texts, models, patterns, etc.) shall be used by Designer 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 Designer under Article 86 of the Austrian Copyright Act [Urheberrechtsgesetz (UrhG)] in the amount of twice the appropriate fee for this use, inasmuch 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, Designer is entitled to affix his or her name, pseudonym, company name, or logo to each of the works/products Designer 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, Designer retains the right to employ for promotional purposes printed images of the works/products he or she has designed, or to make these images available in the World Wide Web for the same purposes.

8.3. In the case of three-dimensional objects, Designer 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, Designer is entitled to a minimum of five copies of the works he or she has designed.

## **9. Withdrawal and Cancellation**

9.1. After submission of the first presentation, Client and Designer are each entitled to withdraw from the contract without stating reasons. However, the presentation fee, according to Point 4.2 of the GCC DA, 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 Designer 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, Designer 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 Designer retains all rights.

## **10. Final Provisions**

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

10.2. Exclusively Austrian law shall apply. The site of fulfilment and court of jurisdiction is Designer's place of business.