



1. Introduction

The present General Terms and Conditions (GTC) govern the contractual relationship between Nightnurse Images Ltd (hereafter "Nightnurse") and its customers (hereafter uniformly the "Clients", collectively the "Parties") if and as long as no other agreements are made.

2. Proposal and Conclusion of Contract

The business proposal as presented by Nightnurse is a binding proposal. The availability of the proposal may be limited in time. The contract is concluded with the acceptance of the proposal by the Client. Acceptance may be via e-mail or in any other form that provides written evidence. The proposal is also considered accepted if the Client provides Nightnurse with the necessary data for the execution of the project, with or without further comment. With the acceptance the proposal, it shall become the binding contract between the Parties.

The scope of the cost accuracy in the proposal is $\pm 10\%$ (hereinafter the «accuracy of cost»).

If a Client only wishes to commission Nightnurse with only select items of the services listed in the proposal, he is required to inform Nightnurse. In this case Nightnurse will create a new proposal. The only case in which no updated proposal is needed, is when the Client chooses not to commission items that were specifically listed as "optional".

3. Scope of services and additional expenses

The scope of services is determined by the items listed in the offer and the correction rounds specified therein. The content and number of correction rounds is stated in the offer and / or additional documents to which the proposal refers.

The offer can refer to further documents, in which the offered services may be defined in more detail. Documents referenced by an offer become part of the contract between the parties.

Additional correction rounds or above-average corrections shall count as additional expenditure. Corrections count as "above-average" when their execution incurs an outlay that exceeds the scope of cost accuracy. Additional expenditure will be communicated by Nightnurse prior to the execution of the corresponding additional work. The Client will be asked to approve the additional expenditure in writing.

Nightnurse is entitled to add subcontractors for the provision of services. These shall not be considered as third party to the contract.

4. Co-operation obligation of the Client

The Client shall provide Nightnurse with the requested data and documents for the agreed date.

The Client shall review the interim results within the scope of individual correction rounds within a reasonable period of time and make the decisions necessary for the continuation of the project. Furthermore the client is required to review the final result immediately after delivery by Nightnurse.

The client undertakes to inform Nightnurse about the progress of the project (start of marketing, publishing the images to the internet, information about the outcome of competitions regardless of the outcome achieved).

The Client shall use the project platform provided by Nightnurse for interaction / communication during the project. Additional outlay resulting from the non-use of the project platform can be charged to the Client.



5. Acceptance

Intermediate results, which are delivered as part of individual correction rounds, shall be considered partial deliveries. After the Client's review and the issuing of change requests for the next correction round, the current partial delivery is to be considered as accepted.

The final acceptance is due after the delivery of the final result. The Client is to review the final result immediately after delivery. Any shortcomings must be reported in writing within five working days of reception.

Without a corresponding complaint, the delivered final result shall be considered accepted. The final result shall also be deemed accepted by the client if the services are being put to use.

A service shall be considered "put to use" if the result is used for publication or a submission for a competition.

The final acceptance cannot be refused by the Client, if partial deliveries have been accepted. Complaints concerning shortcomings, which were already apparent during earlier stages of the project and which could have been treated as part of a correction round, are excluded.

6. Warranty and liability

Nightnurse ensures the provision of services in accordance with the contractual agreements. The services, in particular delivered images, web objects, animations and the like, do not claim to depict reality. In particular, for design reasons, elements can be left out or displayed in a modified form (example: omission of a pillar which obscures the view).

Corrections are generally made within the scope of the correction rounds. After the final acceptance further improvements are chargeable. Other warranty rights, such as reduction or conversion, are excluded.

Nightnurse provides the services within the scheduled dates whenever possible. Liability for damage caused by delay is excluded. In particular, the liability of Nightnurse for delays caused by the Client is excluded.

The liability of Nightnurse is limited to intent and gross negligence. The liability is limited to the respective order sum. Liability for consequential damages and liability for auxiliary persons are excluded.

In a rushed project Nightnurse delivers the result achievable in the available time. In particular, Nightnurse does not guarantee the full number of correction rounds in case of an overly tight deadline. A project counts as rushed, if the time available for the proper execution of the respective project is not sufficient and Nightnurse draws the Client's attention to this circumstance when issuing the proposal. A project can also become rushed, if the Client does not deliver the documents and data necessary for the execution of the project on the agreed date (see section 4).

7. Remuneration and payment terms

The proposed prices represent fixed prices or cost estimates. Prices for all listed items are excluding value added tax (VAT). If VAT is added, it will be shown separately in the proposal. Additional fees will be charged either according to an additional proposal or at a predefined hourly rate, to be found in the proposal.

Nightnurse can demand partial payments at any time or issue partial invoices.

The payment period is 30 days net. After expiry of the payment period, the Client shall be considered in default and charged the statutory default annual interest rate of 5%. In addition, Nightnurse is entitled to suspend the provision of services until full payment of the due amount is received.

It shall be excluded to offset any claims of the Client with claims of Nightnurse.



7.1 Rescission

If a Client withdraws from a contract of two weeks or less before the start of project execution, the respective Client shall owe Nightnurse 25% of the agreed price.

In the event of withdrawal during the execution of the project, the respective Client owes the compensation for the work already performed as well as the full indemnity pursuant to Art. 377 OR.

8. Intellectual Property Rights

All intellectual property rights, in particular copyrights, remain with Nightnurse. The Client receives an unlimited license in respect to time and location to use the final result. The license includes any commercial and non-commercial use of the final results by the customer. However, the granting of a sub-license by the customer to a third party for the commercial use of the final results by such a third party is excluded. The publication in the editorial part of a medium is not considered as commercial use by a third party.

The license is granted under the condition, that the Client agrees to explicitly name the authorship ("Nightnurse Images, Zurich") with every publication of the final results, be it for own- or third-party use. The obligation to designate the copyright must also be imposed on any third party intending to publish the works.

In the event of a breach by the Client of the obligation to name, the Client owes Nightnurse a contractual penalty of CHF 1'000.00 per case. The contractual penalty is also due if the customer fails to impose the obligation in case of publication by a third party.

The customer assures Nightnurse to dispose of the rights of the material provided by him as well as of the consent of any persons recognizable on image material. In the event of claims by third parties, the customer shall completely indemnify Nightnurse and support Nightnurse in any possible litigation. Nightnurse informs the customer immediately if and as soon as third parties assert claims.

Nightnurse, as the rightsholder of the final results, is authorized to make use of all works for own purposes. Nightnurse, however, agrees to publish the works only after the publication of the same by the Client, or, in case of competitions, after the publication of the jury report. If the Client does not comply with his obligation to inform about the progress of the project, Nightnurse is entitled to publish the works six months after delivery.

9. Confidentiality

Nightnurse shall handle all data and documents received from the Client confidentially and shall not pass them on to third parties. Nightnurse is, however, entitled to make use of the resulting works according to section 8. Nightnurse is also authorized to work on several projects for the same competition.

10. Final Provisions

The validity of any terms and conditions imposed by Clients is expressly excluded. Only the present terms and conditions shall apply between the parties.

Exclusive place of jurisdiction is at the seat of Nightnurse. Swiss law applies, excluding the Vienna Sales Convention (CISG).