

Terms and Conditions

1. Ownership of Copyright/Copyright License

1.1 The copyright in all images (“Artwork”) created by Harry B. Smith (“HBS” or “the Artist”) shall remain with the Artist and any reproduction of Artwork shall require the Artist’s specific agreement as set out below.

1.2 You (“Client”) or the Client’s customers (where the Client is acting as an intermediary) is granted a license to reproduce the Artwork solely for the purposes set out by agreement with HBS.

1.4 Where use of the Artwork is restricted, the Artist will normally grant the Client or the Client’s customers a license for other purposes subject to payment of a further fee in line with current licensing rates to be mutually agreed between the Artist and the Client.

1.5 The license hereby granted to use the Artwork is contingent upon all sums due under this agreement having been paid in full.

1.6 The license hereby granted is personal to the Client or the Client’s customers and the rights may not be assigned or sub-licensed to third parties without the Artist’s consent.

1.7 Modifications to Artwork or Images: Client agrees to get the written permission from the Artist in order to make any alterations, modifications or changes to the Artwork.

2. Moral Rights

2.1 The Artist asserts his rights to be identified as the creator of the work whenever any photograph or other image of the work is published by the Client with the permission of the Artist.

2.2 Unless otherwise agreed the Artist shall be entitled to receive not less than one proof or printed copies of such work.

3. Payment: Estimate and Cancellation

3.1 If a commission is cancelled by the Client, the Client shall pay a cancellation fee as follows:

- i 25% of the agreed fee if the commission is cancelled before delivery of roughs;
- ii 33% of the agreed fee if the commission is cancelled at the rough stage;
- iii 100% of the agreed fee if the commission is cancelled on the delivery of artwork;

iv. Pro-rata if the commission is cancelled at an intermediate stage.

3.2 In the event of cancellation, ownership of all rights granted under this Agreement shall revert to the Artist unless the Artwork is based on the Client's visual or, it is otherwise agreed.

3.3 Artist's invoices are "due on receipt."

3.3.1 The Artist is not a bank; invoices unpaid for thirty (30) or more days are subject to ten (10) percent interest, compounded annually, on the outstanding balance.

3.3.2 All payments to Harry B. Smith, now and in the future, are earned-when-paid nonrefundable and immediately become the property of Harry B. Smith.

3.3.3 The fees suggested in the estimate provided by the Artist are minimum fees. Final fees and expenses shall appear in a final invoice. The Artist shall get written approval for an increase in fees that exceed ten (10) percent of the estimate.

4. Delivery

4.1 The Artist shall use his best efforts to deliver the Artwork to the Client by the agreed date. The Artist shall notify the Client of any anticipated delay at the first opportunity. The Client shall make best efforts to timely communicate the lead-time, which is the time required to produce the Artwork in anticipation of the due date.

4.1.1 Delay: In the event of delay caused by the Artist, Client may be entitled to a fee reduction. In the event of delay caused by Client, including but not limited to failure to communicate lead-time, all applicable fees shall apply.

4.2 The Artist shall not be liable for any consequential loss or damages arising from late delivery of Artwork.

4.3 The Client shall make an immediate objection upon delivery if the Artwork is not in accordance with the Artist and Client's agreement. If such objection is not received by the Artist within 5 days of delivery of Artwork, it shall be conclusively presumed that the artwork is acceptable.

5. Approval/Rejection

5.1 Should the artwork fail to satisfy the Client, it may reject the Artwork upon payment of a rejection fee as follows:

i 25% of the agreed fee if the artwork is rejected at the rough stage;

ii 50% of the agreed fee if the artwork is rejected on delivery.

5.2 In the event of rejection, ownership of all rights granted under this Agreement shall revert to the Artist unless the Artwork is based on the Client's visual, or it is otherwise agreed.

6. Changes

If the Client changes the requirements of the Artwork and requires subsequent changes, additions or variations, the Artist may require additional sums for such changes. The Artist may refuse to carry out changes, additions or variations, which substantially change the nature of the commission.

7. Warranties

7.1 Except when Artwork is based on reference material or visuals supplied by the Client or when otherwise agreed, the Artist warrants that the Artwork is original and does not infringe any existing copyright.

7.2 The Client warrants that any necessary permissions have been obtained for the agreed use of reference material or visuals supplied by the Client or its customers and shall indemnify the Artist against any and all claims and expenses, including legal fees arising from the Artist's use of any materials provided by the Client or its customers.

8. Ownership of Artwork

8.1 The Artist shall retain ownership of all Artwork, including roughs and materials, delivered to the Client.

8.2 The Artist shall retain ownership of the assets used to create the Artwork, including but not limited to the three dimensional models, textures, materials, computer hardware and software.

8.2 The Artist's original Artwork shall not be intentionally destroyed, damaged, altered, retouched, modified or changed in any way whatsoever without the written consent of the Artist.

8.5 The Artist shall not be liable for any consequential loss or damages arising from loss or damage to the artwork.

8.6 The Client agrees to copy-protect the Artwork, using best practices available.

9. Modifications

All changes to this Agreement must be in writing.

10. Governing Law

10.1 These terms and conditions are governed by the laws of the State of Arizona. The parties hereto submit to the exclusive jurisdiction of the State of Arizona, County of Maricopa.

10.2 Should a disagreement arise between the Artist and Client, whatever the nature, that relates to this agreement, the Artist and the Client agree to submit their dispute to binding arbitration. The arbitrator shall be an attorney, licensed by the Arizona Supreme Court. The arbitration shall take place in Maricopa County in the State of Arizona, U.S.A.

10.3 By accepting the Artist's estimate, in whatever manner the technology provides, the Client agrees to be bound by these terms and conditions.

10.4 These terms and conditions are subject to change without notice.

11. Severability

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect: the validity or enforceability in that jurisdiction of any other provision of this Agreement; or the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

12. Headings, paragraph titles, structure and arrangement

The headings, paragraph titles, paragraph structure and arrangement used in this agreement are for convenience only and shall not be deemed to be a part of this agreement for purposes of construction.