

TERMS AND CONDITIONS

VERSION 6.0

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POLICY INFORMATION

ORGANISATION

Arthaus Visual Communications Limited
+44 (0)1491 913 867
arthaus.co.uk

POLICY OPERATIONAL DATE

Version 4.0: 04 January 2019

Version 4.1: 05 January 2020

Version 4.2: 09 January 2021

Version 5.0: 06 February 2023

Version 6.0: 11 September 2023

POLICY PREPARED BY:

Becky Carter – Director

Claire Watson – Security Policy Officer

Approved by the Management Committee – 11 September 2023

POLICY REVIEW DATE

30 January 2025



POLICY DETAILS

1. DEFINITIONS:

- 1.1 Agreement: the agreement (of which this document forms a part) formed between Arthaus and the Client for the provision of Services;
- 1.2 Applicable Rate: the hourly charge applicable to the Work in question as agreed in writing between Arthaus and the Client;
- 1.3 Client: the other party to this agreement as identified in the order;
- 1.4 Conditions: the terms set out in this document;
- 1.5 Estimate: a document prepared by Arthaus which indicates an estimate of the time which will be required to carry out work;
- 1.6 Order Confirmation: an acceptance by the Client of any Quote or other offer to carry out work by Arthaus;
- 1.7 Project: the development which is the subject of an agreement between Arthaus and the Client;
- 1.8 Quote: a document prepared by Arthaus and communicated to the Client which offers to carry out certain work for a specified cost;
- 1.9 Arthaus: Arthaus Visual Communications Limited;
- 1.10 Third Party: Any person or legal entity not a party to this Agreement;
- 1.11 Third Party Software: Any software or code component which is the property of a Third Party;
- 1.12 Work: any time spent by Arthaus on the Project including but not limited to onsite visits, writing specifications, general advice, consultancy project management and programming;
- 1.13 Writing: the term "in writing" includes by email.

2. INTERPRETATION:

- 2.1 In the event of a conflict between any part of these Conditions and any Quote, offer or Order Confirmation, these Conditions shall have precedence;
- 2.2 This Agreement (as varied in accordance with its terms) forms the entire understanding

3. WORK:

- 3.1 The terms of this Agreement apply to all present and future contracts entered into between the Client and Arthaus;
- 3.2 Before commencing a piece of Work, Arthaus will provide a Quote or an Estimate detailing what Work is to be carried out.
- 3.3 In the case of a Quote, the Client will be charged the amount specified in the Quote for the work carried out in accordance with it, regardless of the time actually taken to complete that work.
- 3.4 In the case of an Estimate, the Client will be charged on a "time & materials" basis for the time taken and costs incurred in carrying out the work in accordance with the Estimate, whether this is higher or lower than the estimated price.
- 3.5 Arthaus reserves the right to amend any specification where the effect will be to maintain or enhance the overall performance of the Goods or Services;
- 3.6 Quotations are valid for 30 days from the date of delivery but may be varied by Arthaus (by written notice) at any time prior to acceptance by the Client;

- 3.7 Arthaus will use its best endeavours to complete work in accordance with delivery dates specified. However, the client recognises that these dates are estimates only and the agency shall not be responsible for any loss or damage as a result of a failure to meet any such dates;
- 3.8 Any deficiencies in the product or service delivered by Arthaus must be notified to Arthaus in writing within 10 working days of delivery.
- 3.9 The Client shall provide to Arthaus all information, products, data and facilities reasonably required by Arthaus in order to perform services under this Agreement.
- 3.10 Should work be required on the Client's site, the Client shall provide safe working conditions for the representative(s) of Arthaus.

4. CHARGES

- 4.1 Subject to clause 4.2, below, any work carried out by Arthaus shall be charged at the Applicable Rate unless an alternative rate is agreed in writing;
- 4.2 No rate below the Applicable Rate may be agreed other than in writing by a Director of Arthaus;
- 4.3 Subject to prior notification in writing, Arthaus reserves the right to vary the Applicable Rate at any time;
- 4.4 Except where Work is being carried out pursuant to a Quote, any change in the Applicable Rate shall apply to the remainder of the Work carried out on any Project;
- 4.5 Onsite visits will be charged at the Applicable Rate for the Project including travel time plus reasonable travel expenses. Subject to prior written notification, Arthaus reserves the right to vary this charge at any time;
- 4.6 Our charges for expenses cover all reasonable out-of-pocket costs.
- 4.7 All charges and prices quoted are subject to and exclusive of VAT at the standard rate.

5. PAYMENT TERMS

- 5.1 For projects lasting less than two months we invoice all fees on completion. For projects lasting over two months we will invoice 50% after two months and the remaining 50% on completion. Alternatively, we may invoice parts of the job as they are completed, depending on agreement with the client;
- 5.2 All invoices are due for payment within 30 days from the date shown on the invoice unless otherwise agreed in writing by a Director;
- 5.3 Payment must be made in sterling unless otherwise agreed in writing by a Director;
- 5.4 Interest will be applied to any sum not paid by the due date at the rate of 3% over base rate per month or part thereof until the date on which payment is received;
- 5.5 No deduction may be made in respect of set-off or counter-claim;
- 5.6 Payment may be made in the following ways only:
 - a. By BACS Direct Credit – a simple, secure and reliable service, which enables organisations of all sizes to make payments by electronic transfer directly into a bank or building society account. Charges will apply to any payment not made in UK sterling.
 - b. Cheque: Charges will apply to any foreign cheques other than drawn on a UK bank account in sterling.

6. INSOLVENCY:

- 6.1 If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, Arthaus without prejudice to any other remedy shall:
- a. Be under no obligation to proceed further with any Work under any agreement with the Client;
 - b. Be entitled to immediate payment for all Work already carried out (whether completed or not) and materials purchased for the Client;
 - c. Have a general lien on all goods and property of the Client in the possession of Arthaus whether related to the Project or not to the value of any sum due under this Agreement and shall be entitled on the expiration of 14 days notice to dispose of such goods or property in such manner and at such price as Arthaus thinks fit and to apply the proceeds of such disposition towards any sums due;
 - d. Have the right to obtain payment from the directors of the Client company who will become personally liable for all the outstanding debts of the customer.

7. TERMINATION

- 7.1 The Client may terminate this Agreement at any time providing they give Arthaus reasonable written notice to cancel the contract, in which circumstances the client shall be liable to pay Arthaus' fees and costs for all completed stages plus any fees and costs related to work that has been committed on the client's behalf. Arthaus may, by serving written notice on the client to that effect, terminate the contract in the event of the client failing to meet any of the terms and conditions set out or in the event of insolvency on the part of the client. In such circumstances the client shall be liable to pay Arthaus for all work completed or committed by Arthaus, such payment to be made forthwith upon termination of the contract
- 7.2 However, notwithstanding any termination of this Agreement under Clause 7.1 or otherwise:
- a. The terms of this Agreement shall continue to apply to any Work carried out under or in relation to any contract entered into prior to the expiry of the 30 days notice;
 - b. The terms of this Agreement relating to Confidentiality (Clause 11) shall continue to apply;
 - c. The terms of this Agreement relating to Non-solicitation (Clause 16) shall continue to apply.

8. LIMITATION OF LIABILITY

- 8.1 Arthaus' liability in the event of any breach of contract or tortuous act shall be limited to the amount paid by the Client under the relevant Agreement for the Work in question;
- 8.2 Arthaus shall under no circumstances be liable for any loss or damage arising which is indirect or consequential in nature.

9. THIRD PARTY SOFTWARE

- 9.1 Any Third Party Software is supplied subject to the third party's licence terms, a copy of which is available from Arthaus on request. By placing an order the Client accepts those third party licence terms.

10. ILLEGALITY

- 10.1 Arthaus shall be under no obligation to print, reproduce or publish (or to facilitate any of the above) any material which in their reasonable opinion:
- a. Is or may be illegal, defamatory or tortuous;
 - b. Would or may infringe the proprietary rights of Arthaus or any third party.
- 10.2 The Client agrees to indemnify Arthaus in respect of any claims, costs and expenses (including reasonable legal expenses) arising out of any breach of this Agreement by the Client;
- 10.3 This indemnity shall include any amount reasonably paid on legal advice in settlement of any claim.

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2 below each Party must (unless otherwise required by law):
- a. Keep confidential all information obtained from the other Party (the “Disclosing Party”) under or in relation to this Agreement (“Information”);
 - b. Not disclose any Information to any Third Party without the prior written consent of the other Party other than to such persons and to such extent as may be strictly necessary for the performance of the Agreement;
 - c. Not use any information otherwise than for the purposes of this Agreement.
- 11.2 The provisions of clause 11.1 do not apply to information which:
- a. Is or becomes public knowledge (otherwise than by a breach of this clause); or
 - b. Was in the possession of the party concerned without restriction as to its disclosure before it was received from the Disclosing Party;
- 11.3 The provisions of clause 11.1 do not apply to disclosures of Information for a proper purpose to any public authority, regulatory body or a court of law in legal proceedings or to either Party’s senior management, auditors, bankers, lawyers or professional advisers.
- 11.4 The provisions of this clause 11 shall continue to apply notwithstanding termination of the Agreement.

12. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 12.1 All creative ideas, designs and visuals remain the sole intellectual and physical property of Arthaus until all associated invoices have been paid in full. Until that time creative ideas, designs and visuals can not be used as a whole or in part by the Client (or any other company) without the consent of Arthaus. If these concepts are used or developed, either by Arthaus or another agency, a full creative fee will be applied.
- 12.2 Any Project completed for the Client under this Agreement along with the IPR shall become the property of the Client when all associated invoices have been paid in full, save that:
- a. Due to the nature of its business Arthaus builds reusable software components. These components remain the property of Arthaus. The Client gains no proprietary rights in any code or Work apart from the completed Project;
 - b. Any Third Party Software or component provided to the Client by Arthaus remains the property of that Third Party. Any rights obtained by the Client in relation to such software are limited to those set out in the relevant licence agreement, a copy of which is available from Arthaus upon request.

c. Third party has supplied materials (e.g. photo library rights managed images) that are used within a project that have their own intellectual Property Rights or copyright. In this case the rights are vested in the agency unless otherwise agreed with the client.

13. COMPLIANCE WITH THE DATA PROTECTION ACT

13.1 In performing its obligations under this Agreement, each party shall comply with the requirements of all legislation in force including, without limitation, the Data Protection Act 1998.

14. ENTIRE AGREEMENT

14.1 This document contains the entire agreement between the parties and supercedes all prior or contemporaneous understandings and agreements relating to the subject matter of this Agreement whether oral or in writing. Neither party was induced by any representation to enter into this Agreement. There are no provisions, representations, undertakings, agreements or collateral agreements other than as set out in this document;

14.2 No addition, deletion or modification to this Agreement may be made other than in writing signed and dated by the Client and a Director of Arthaus.

15. CHOICE OF LAW

15.1 This Agreement was concluded in England;

15.2 This Agreement is governed exclusively by English law;

15.3 Any disputes whatsoever relating to or arising under this Agreement shall be decided according to English law;

15.5 This Agreement and any matter arising in relation to this Agreement shall be subject to the exclusive jurisdiction of the English courts.

16. NON-SOLICITATION

16.1 For the purposes of this Clause 16:

a. "Former Employee" means any former employee of the relevant Party whose employment with that Party terminated in the preceding 12 months;

b. "any Contract" means any contract whatsoever, regardless of whether it incorporates the terms of this Agreement or is otherwise covered by this Agreement;

16.2 During, and for a period of 12 months following termination of, any Contract between Arthaus and the Client:

a. Neither Party shall seek to entice away from the other's employment any Employee of that other Party;

b. Neither Party shall offer employment to any Employee of the other party;

c. Neither Party shall seek to entice away any Third Party client of the other Party.

16.3 During, and for a period of 12 months following termination of, any Contract between Arthaus and the Client, neither Party shall offer employment to any Former Employee of the other Party;

16.4 Either Party shall be entitled to seek an injunction to prevent any breach of this Clause 16;

16.5 In the event of breach of this Clause 16, the Party in breach shall be liable for all resulting losses of the other Party, including (but not limited to):

- a. Lost business;
- b. Costs of finding a replacement employee, including (but not limited to):
 - i All recruitment agency fees;
 - ii Time spent by Arthaus in finding a replacement (at the Applicable Rate);
- c. Costs of training a replacement employee, including (but not limited to):
 - i Time spent by Arthaus training the new employee (at the Applicable Rate);
 - ii External training course fees;
 - iii Losses resulting from the decreased productivity of the new employee.

16.6 The measure of damages in the event of breach of this Clause (being a reasonable estimate of the loss stated in clause 16.3 above) shall be fifty per cent (50%) of the starting salary of the Employee in his new employment with the Party in breach or £25,000, whichever is greater.

17. WAIVER

17.1 The failure by Arthaus to enforce at any time any one or more of these Conditions shall not amount to a waiver of any such Condition and shall not prevent Arthaus from enforcing such Condition at any future time.

18. SEVERANCE

18.1 Should any provision of this Agreement or part thereof be or become inconsistent with or invalid or unenforceable under any applicable law such provision shall be construed as limited to the minimum extent necessary in order to be consistent with and fully enforceable under the relevant law. Such inconsistency, invalidity, unenforceability or limitation shall not affect in any way the validity or effect of the remainder of that provision or of any other provision of this Agreement.

19. THIRD PARTIES

19.1 No person or entity who is not a party to this Agreement shall have any rights in relation to this Agreement as a result of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20. ETHICS, ANTI-BRIBERY AND CORRUPTION

20.1 The Client and Arthaus warrant and represent to each other that they shall:

- a. Comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“the Relevant 8 Requirements”) in performing their obligations under this Agreement;
- b. Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- c. Have and maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, and will carry out the appropriate risk-analyses, training, audits, to ensure compliance by both companies and their associated companies with the Relevant Requirements and clauses (a) and (b) above, and enforcement (including disciplinary action) where appropriate.

21. NOTICE

- 21.1 The 'postal rule' is declared not to apply to any notices given under this Agreement;
- 21.2 For the avoidance of doubt any notice given by one party to the other party (the "Recipient") must in fact be communicated to that Party;
- 21.3 Any notice delivered to the address given in this document for the relevant party shall be deemed to be delivered at the time of actual delivery if during business hours or if otherwise then at the commencement of the following business day.
- 21.4 Should either party notify the other party in writing of a change of address, then Clause 20 (3) shall refer to that new address instead of the address specified in this document.

22. FORCE MAJEURE

- 22.1 Force Majeure is defined as circumstances beyond the reasonable control of either party including acts of God, acts of governmental or supranational authority, war or national emergency, riots, civil disorder, fire, network failure, systems faults, explosion, flood, epidemic, strikes and other industrial disputes, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable material and currency restrictions;
- 22.2 Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of this Agreement and which arises by reason of Force Majeure.

23. APPROVAL

- 23.1 The client is responsible for any errors or omissions in artwork, illustrations, photographs, proofs etc. which have been accepted by the client.