



AppleMonster Studios

## CONTRACT FOR COMMISSIONING OF ARTWORK

Artist: AppleMonster Studios

Artist Address: Denver, CO

Artist Email: [info@applemonsterstudios.com](mailto:info@applemonsterstudios.com)

CLIENT:

CLIENT Address:

CLIENT Email:

AGREED CONTRACT AMOUNT:

AGREED CONTRACT COMMISSION COMPLETEION DATE:

AGREED CONTRACT COMMISSION DETAILS: See attached design.

## **DEFINITIONS**

- "AMENDMENT" shall mean an agreement that changes the CONTRACT between the CLIENT and the ARTIST.
- "CLIENT" shall mean the individual who commissions the artist through this agreement, or other officials lawfully representing that individual.
- "ARTIST" shall mean that individual, organization, or other entity performing services under this contract.
- "CONTRACT" shall mean the Contract for Commissioning of Artwork.
- "DESIGN" shall mean the description or specifications for, and model and/ or drawings of the WORK.
- "WORK" shall mean the work of art to be designed, executed, fabricated, and shipped under this contract.

This CONTRACT is made and entered into by and between the CLIENT and the ARTIST for the consideration, covenants, and conditions hereinafter set forth, do agree as follows:

### **1. RETENTION OF ARTIST**

The CLIENT does hereby retain the ARTIST to perform the work and services described. The ARTIST shall furnish all supervision, labor, materials, supplies, equipment or use thereof, travel expenses, and all other incidentals, except as specifically provided below, and shall conduct and complete the work in a competent and professional manner.

### **2. TIME SCHEDULE**

The ARTIST shall commence work upon the effective date of this CONTRACT and shall complete the WORK by The agreed date of the CONTRACT. If there is an ADDENDUM to this CONTRACT between the ARTIST and the CLIENT the time for completion may be modified due to circumstances unforeseen by the ARTIST at the time of the signing of this CONTRACT.

The WORK shall be completed by the agreed contract completion date unless modified pursuant to this contract.

### **3. SCOPE OF WORK**

The ARTIST shall complete the design refinements, fabricate and ship the WORK in substantial conformity with the DESIGN for the WORK, conservation review, stamped structural engineering, and as described below and perform all tasks as indicated below. The DESIGN is attached to this CONTRACT as Attachment A, and by this reference, incorporated into this CONTRACT as though set forth fully herein.

### **4. CHANGES TO WORK PRIOR TO COMPLETION**

The CLIENT may request that changes be made to the DESIGN at any point during execution, or fabrication of the WORK. Prior to execution of any significant change to the DESIGN, as described in Section 3 and/ or Attachment A, the following procedure shall be followed:

A. The CLIENT shall present the proposed changes in writing to the ARTIST for further review and approval. The CLIENT must provide a detailed description of any significant changes in the concept, scope, dimensions, materials of the WORK, or any change that will alter the WORK itself.

B. The ARTIST will review the requested change. If the ARTIST approves the requested change(s), written approval in the form of an AMENDMENT to this CONTRACT shall be issued stating the approved change(s) and attached to this CONTRACT, and by this reference, incorporated into this CONTRACT as though set forth fully herein.

C. The CLIENT must obtain written approval of the proposed change from the ARTIST. If the ARTIST does not approve the proposed change(s), the ARTIST will notify the CLIENT in writing and the ARTIST shall continue to fabricate the WORK in conformity with the approved proposal for the WORK.

D. Any changes to the cost of the work resulting from approved changes are the sole responsibility of the CLIENT.

## **5. REVIEW OF WORK IN PROGRESS**

The CLIENT shall have the right at reasonable times to review the progress of the WORK in order to monitor and evaluate performance compliance, and/or quality assurance under this CONTRACT.

The ARTIST will attempt to provide regular updates as to the progress of the WORK via documentation such as photographs. The CLIENT may request, from the ARTIST, documentation of the progress of the WORK during fabrication, prior to shipping. The ARTIST will attempt to provide a timely reply to the request by the CLIENT, but there may be circumstances where an update may not be possible to provide due to travel, illness, or any other unforeseen circumstances. In these situations, the ARTIST will inform the CLIENT of the presence of any circumstance that prevents or delays an update.

## **6. FINAL PROJECT DOCUMENTATION**

The ARTIST shall submit the following documents to the CLIENT prior to the shipment of the WORK.

- A. Photographs showing the final, complete WORK.
- B. Documentation concerning an special handling instructions or assembly instructions.

## **7. PAYMENT**

### **A. Payment for Work Performed**

The ARTIST shall be paid by the CLIENT for completed work and/ or services related to this CONTRACT. Such payment, once the full agreed cost has been paid to the ARTIST, shall be full compensation for all work performed and/ or services rendered to complete the WORK.

### **B. Payment Schedule**

Payments for the WORK will commence after this agreement is signed AND when the ARTIST asks for the STAGE 1 payment.

The initial payment for the WORK at STAGE 1 (below) reflects the purchasing of materials for the WORK. This initial payment is 30% of the total agreed cost of the WORK and is an advance payment that is NOT refundable.

Upon completion of 50% of the work (calculated based upon the total cost of the WORK as outlined in the DESIGN) the ARTIST will contact the CLIENT in writing to inform them that the WORK has reached this stage. The CLIENT will then have fifteen (15) days to submit payment to the ARTIST. The CLIENT may request documentation of the WORK's current state as assurance of performance.

Before the WORK is shipped, the full agreed cost in the amount of \$\_\_\_\_\_.00 amount must be paid to, and received by the ARTIST. This payment must be made within thirty (30) days **before** the agreed completion date.

*Payments will be made upon the basis of completion schedule as set forth below:*

STAGE 1: Initial down payment. NON-REFUNDABLE

\$XX,XXX

STAGE 2: Upon completion of 50% of the WORK.

\$XX,XXX

FINAL STAGE: Final payment for completed WORK. Must be paid thirty days **before** completion date.

\$XX,XXX

### **C. PAYMENT METHOD**

The CLIENT and the ARTIST will agree as to the method of payment. The payment method will remain the same through the execution of this contract unless modified by agreement by both parties.

### **8. LICENSE COPYRIGHT AND REPRODUCTION RIGHTS**

The CLIENT grants to the ARTIST license to use reference material of the CLIENT's copyrighted character, artwork, or other elements as reflected in the DESIGN to complete this particular WORK. This license extends to the completion of this WORK only and is revoked at the time of completion of this WORK.

The ARTIST shall retain all rights under copyright law to which the WORK, preliminary studies, drawings, specifications, and models may be subject. The ARTIST represents and agrees that the ARTIST is the sole creator of the WORK.

In view of the intention that the WORK shall be unique, the ARTIST shall not make any additional exact duplicate editions of the WORK. However, nothing shall prevent the ARTIST from creating future artwork in the ARTIST's manner and style of artistic expression.

The ARTIST grants to the CLIENT and its assigns an irrevocable license to make and use graphic reproductions of the WORK including ARTIST-provided two-dimensional graphic reproductions, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or similar publications (including reproductions in all graphic media now known or later developed, digital or otherwise, and including the Internet, social media, and the World Wide Web) provided that these rights are exercised in a tasteful and professional manner.

The CLIENT is not responsible for any third party infringement of the ARTIST's copyright and is not responsible for protecting the intellectual property rights of the ARTIST. It is understood that the WORK may be photographed by the public.

### **9. OWNERSHIP OF DOCUMENTS AND MODELS**

ARTIST-prepared materials under this CONTRACT shall be retained by the ARTIST to safekeeping and for purposes of public information, education, exhibition, and/ or publication. Materials may include copies of all preliminary studies, drawings, specifications, and photographs of models related to the WORK submitted to the CLIENT by the ARTIST. Should the CLIENT exhibit or sell the originals of the preliminary studies the following attribution should be attached to the WORK: "Preliminary study, drawing, or model of artwork originally created by AppleMonster Studios."

## **10. RISK OF LOSS**

The responsibility for and risk of damage to or loss of the WORK during fabrication and through installation shall be solely that of the ARTIST. The ARTIST shall take such measures as are reasonably necessary to protect the WORK from loss or damage during the creation, storage, transportation of the WORK. The ARTIST shall purchase insurance through the chosen third party shipping company for the full value of the WORK.

Upon delivery of the WORK, the responsibility for and risk of damage to or loss of the WORK shall no longer be the responsibility of the ARTIST. Upon installation, the CLIENT will be responsible for protecting the WORK against loss, theft, mutilation, vandalism, or other damage.

## **11. INDEMNIFICATION**

The CLIENT shall indemnify and hold harmless the ARTIST from all claims, costs, damages, or expenses arising out of the negligence of the CLIENT.

## **12. WARRANTY AGAINST DEFECTS**

the ARTIST shall remedy any loss or damage resulting from faulty materials or workmanship that occurs or appears within a period one (1) month after completion and delivery of the WORK.

The CLIENT shall give written notice with reasonable promptness to the ARTIST regarding observed defects in the WORK. The responsibility for the determination of the ARTIST'S liability for faults or defects in the WORK during the one month period shall be solely that of the CLIENT. Failure to agree with such determination by the CLIENT shall be a dispute within the meaning of Section 16 of this CONTRACT.

## **13. ACCEPTANCE OF THE WORK**

Once the WORK is completed by the ARTIST, documentation of the WORK will be sent to the CLIENT for inspection. The CLIENT will have ten (10) days to respond in writing whether the WORK has been completed in accordance with the DESIGN.

If the WORK has been completed and the CLIENT has made sufficient payment to the ARTIST to comply with Section 7 of this CONTRACT. This response and payment by the CLIENT will constitute acceptance of the WORK as presented. No changes will be made to the WORK after this point.

If the CLIENT feels that the WORK has not been completed in accordance to the DESIGN after completion of the WORK the ARTIST and CLIENT will follow Section 4 of this CONTRACT to determine whether any changes will be made and whether the total cost of the WORK will be modified.

## **14. MATERIAL CHANGES AFTER ACCEPTANCE OF WORK**

Upon delivery of the work the CLIENT may make changes or alterations to the WORK without notification to the ARTIST. If the CLIENT requests material alterations of the WORK after acceptance and delivery a new negotiation will take place at the discretion of the ARTIST for a new, separate agreement.

A. Changes to the WORK by someone other than the ARTIST

If any material change occurs to the WORK after transfer to the CLIENT before the one month period in Section 12 of this CONTRACT has expired that portion of the work that was materially changed will no longer be covered under the terms of that section, and any warranty pertaining to that portion of the WORK that was materially changed will be DISCLAIMED.

#### **15. SEVERABILITY**

The provisions of this CONTRACT are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the CONTRACT.

#### **16. DISPUTE RESOLUTION**

Except as otherwise provided in this CONTRACT, when a dispute arises between the CLIENT and the ARTIST and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties.

The parties will equally share the costs of the mediation service, but each party will bear its own costs, including but not limited to attorney fees, in conjunction with the mediation proceeding. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this CONTRACT shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a dispute resolution board, or arbitration.

#### **17. TERMINATION FOR CAUSE**

In the event that the CLIENT determines the ARTIST has failed to comply with the conditions of this CONTRACT, the CLIENT has the right to suspend or terminate the CONTRACT. Before suspending or terminating the CONTRACT, the CLIENT shall notify the ARTIST in writing of the need to take corrective action. If corrective action is not taken within 30 days, the CONTRACT may be terminated or suspended.

Likewise, if the ARTIST determines the CLIENT has failed to comply with the conditions of this CONTRACT, the ARTIST has the right to suspend or terminate the CONTRACT. Before suspending or terminating the CONTRACT, the ARTIST shall notify the CLIENT in writing of the need to take corrective action. If corrective action is not taken within 30 days, the CONTRACT may be terminated or suspended.

#### **18. TERMINATION FOR DEATH OR INCAPACITY**

If the ARTIST becomes unable to complete this CONTRACT due to death or incapacitation, such death or incapacitation will not be deemed a breach of this CONTRACT. However, nothing in this section shall obligate the CLIENT to accept the WORK.

A. In the event of incapacity, the CLIENT may elect to terminate this CONTRACT.

B. In the event of the death of the ARTIST, this CONTRACT shall terminate effective the date of death. Should the CLIENT accept the partially completed WORK, the ARTIST'S executor shall deliver to the CLIENT the WORK in whatever form or degree of completion it may be at the time. Title of the WORK shall then transfer to the CLIENT. However, the WORK shall not be represented to be the completed WORK of the ARTIST unless the CLIENT is otherwise directed by the ARTIST'S estate.

## **19. TERMINATION PROCEDURE**

Upon termination of this CONTRACT, the CLIENT, in addition to any other rights provided in this CONTRACT, may require the ARTIST to deliver to the CLIENT the WORK in whatever state it may be.

The CLIENT shall pay the ARTIST for services performed and goods delivered prior to the effective date of termination, consistent with the schedule of payments set forth in Section 7 of this CONTRACT.

## **20. AMENDMENT**

This CONTRACT may be amended by mutual agreement of the parties. Such AMENDMENTS shall not be binding unless they are in writing and signed by both the ARTIST and CLIENT or personnel authorized to bind each of the parties.

## **21. ENTIRE AGREEMENT**

This CONTRACT, including referenced attachment and ADDENDUM, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral shall be deemed a part hereof.

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**Authorized Signature for CONTRACT FOR COMMISSIONING OF ARTWORK FOR:**

**ARTIST**

\_\_\_\_\_

*Print Name*

\_\_\_\_\_

*Signature & Date*

**CLIENT**

\_\_\_\_\_

*Print Name*

\_\_\_\_\_

*Signature & Date*

(Revised July 11,2016)

**DRAFT COPY**