

# Terms and Conditions of SOPHIST GmbH

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# I. General Terms and Conditions

The following general terms and conditions apply to all our services:

## §1 General clauses - area of application

- (1) These terms and conditions apply to all business relations between us - SOPHIST GmbH - and our customers. Our offer conditions apply only to entrepreneurs within the meaning of § 14 BGB (German Civil Code). This means that "customers" in the sense of our offer conditions are exclusively natural persons or legal entities or partnerships with legal capacity who act in the exercise of a commercial or independent professional activity.

Our terms and conditions have exclusive validity. They shall also apply to future orders of the customer. The version of our offer conditions valid at the time of conclusion of the contract (also available online at <http://www.sophist.de/infopool/angebotskonditionen/>) shall be applicable. Any terms and conditions of the customer that conflict with or deviate from these offer conditions shall not be recognised unless we explicitly agree to their validity.

- (2) Our terms and conditions shall also apply if we perform our services without reservations despite knowledge of terms and conditions of the customer that conflict with or deviate from our terms and conditions.

## §2 Offers - Documents / Copyright

- (1) Generally, our offers are only binding within the acceptance period (binding offer period) specified by us in the offer. The order of the customer is always binding. We are entitled to accept the contract offer of the customer contained in the binding order within two weeks after receipt - if necessary, also only by telephone. Acceptance can also be declared in textual form (e-mail) or by delivery to the customer.
- (2) Our documents (training documents, standard documents, etc.) and other materials made known to the client and the client's participants may only be used within the framework specified by us and may not be made accessible to third parties without our explicit consent. All our documents/materials are protected by copyright. We reserve all rights to our documents/materials - in particular reproduction/copying, processing (also using electronic systems), distribution and translation.

**§3 Our confidentiality, treatment of handed over business documents**

- (1) We commit ourselves and the employees we deploy - if necessary, in accordance with a separate non-disclosure agreement (NDA) - to secrecy regarding all company and business secrets and personnel data of our client that come to our attention as a result of the business relationship.
- (2) We shall return any business documents handed over from our client at the time of termination of our activity without being asked to do so.

**§4 Clients obligations to cooperate, list of references**

- (1) The customer commits to providing the information and tools necessary for our performance of service in good time and free of charge. In particular, providing tools or licences necessary for the use of the tools is the responsibility of the customer, as far as the use of the tools is part of the contract and we do not have the corresponding licences. If necessary, we shall request these.
- (2) Unless agreed otherwise, we are entitled to include our client in our list of references (possibly also in the context of our internet presence).

**§5 Prices - Additional costs - Terms of payment**

- (1) The price offer contained in the binding order of the customer is mandatory.
- (2) For our services that arise on weekends or public holidays, surcharges will be invoiced as follows: Saturday 50%, Sunday and public holiday: 75%.
- (3) Unless agreed otherwise, travel times of our employees deployed within Germany shall not be invoiced as work hours.
- (4) No travel expenses will be invoiced for trips made by our employees in the Nuremberg-Fürth-Erlangen area. Besides, the following applies within Germany: travel costs are invoiced from the starting point of the actual journey of the employee deployed. Travel costs for the departure will only be invoiced if the employee returns to our head office or to his/her home office. In these cases, the journey will be invoiced as follows:

Vehicle use	0,60 €/ kilometer
Rental car	Total cost for an upper middle class vehicle
Tolls/parking fees	the amount of the fee(s)

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Railway	1 <sup>st</sup> class including EuroCity surcharge, reservation costs if applicable
Flight	Normal or business fare (not 1 <sup>st</sup> class)
Taxi	Travel to and from respectively the train station/airport/hotel
Overnight stays	Local rates, not first class or according to the rate in the client's company agreement with the respective hotels. Private overnight stays will be charged at the rate of the fee. If the client specifies a maximum price or a fixed price for the travel costs, the client is obliged to approve higher prices or to make a hotel contingent available in the event of extraordinary circumstances (e.g. trade fair)
Additional catering expenses	According to the maximum rates recognised for tax purposes

- (5) If we send material (training materials, technical equipment, etc.) to the customer, we pass on the transport costs - and in the case of technical equipment, the costs of appropriate transport insurance, if applicable - to the customer.
- (6) Statutory value added tax is not included in our prices. It accrues separately at the statutory rate and will be shown accordingly in the invoice.
- (7) Our remuneration is due for payment without deduction within 14 days of receipt of our invoice. If the payment deadline is exceeded, we are entitled to charge maturity interest to merchants (§ 353 HGB). The statutory regulations shall apply in the event of delay in payment.
- (8) The deduction of a cash discount for early payment requires special agreement.
- (9) The customer shall only be entitled to set-off rights if his claims have been legally established, are undisputed or have been recognised by us. The customer is only entitled to exercise a right of retention if his claim is based on the same contractual relationship.

## **§6 Time of performance, Compensation for damages in the event of withdrawal**

- (1) Compliance with our performance obligation requires the timely and proper fulfilment of the customer's cooperation obligations. We reserve the right to plead non-performance of the contract.
- (2) The time of performance shall be agreed on individually or stated by us upon acceptance of the order.
- (3) If the customer is in delay of acceptance or if he/she culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims.
- (4) Events of force majeure which make the performance of a service or obligation significantly more difficult or impossible shall entitle the affected party to postpone the performance of this service or obligation by the duration of the hindrance and a reasonable start-up time. If, due to the nature of the impediment, it is not to be expected that the performance will be rendered within a reasonable period of time, each party shall be entitled to withdraw from the contract in whole or in part due to the part of the performance not yet fulfilled.
- (5) Default in payment, the application for the opening of insolvency proceedings, the demand for a statement of assets in accordance with § 807 of the German Code of Civil Procedure (ZPO), the occurrence of payment difficulties or the discovery of a significant deterioration in the financial circumstances of the customer shall entitle us to immediately discontinue our services and to refuse the fulfilment of current contracts. At the same time, we are entitled to immediately call due any claims against the customer that are not yet due.

## **§7 Rights of the client in the event of defects (regarding a contract for work and services)**

- (1) If the contract concluded with the customer is legally a contract for work and services, we are, initially at our discretion, - insofar as there is a defect in our performance - entitled to subsequent performance in the form of rectification of the defect (subsequent improvement) or to the delivery of a new defect-free item (replacement delivery). We are obliged to bear all expenses necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs.
- (2) If the supplementary performance fails, the customer may, at his/her discretion, demand a reduction of the remuneration (abatement) or cancellation of the contract (withdrawal) as well as compensation for damages. However, in the event of only a minor breach of contract, in

particular in the event of only minor defects, the customer shall not be entitled to withdraw from the contract. If the customer chooses compensation for damages, the liability limitations of § 8 apply.

- (3) The limitation period of defects claims is one year from the passing of risk, with the exception of damage claims for compensation of injury to life, body or health due to a defect for which we are responsible or due to intent or culpable negligence on our part or on the part of our vicarious agents. In this respect, the statutory period of limitation shall apply. The period for the limitation in the case of a delivery regress according to §§ 478, 479 BGB remains unaffected.
- (4) The customer does not receive any guarantees in the legal sense from us.
- (5) Claims against us may neither be relinquished nor pledged by the customer. § 354a of the German Commercial Code (HGB) remains unaffected.

## **§8 Limitations of liability**

- (1) We are liable to our customers in the event of gross negligence and intentional breaches of duty by us, our legal representatives and vicarious agents. In the event of minor negligence, we shall be liable - limited to the foreseeable damage typical for the contract - only if we, our legal representatives, or vicarious agents violate a major contractual obligation ("cardinal obligation"). In the event of a breach of an insubstantial contractual obligation, we shall not be liable in the event of minor negligence. The above limitations of liability do not apply to claims under the Product Liability Act. Furthermore, they do not apply in the case of damage to life, body and health attributable to us.
- (2) As far as liability towards us is excluded or limited, this shall also apply with regard to the personal liability of our employees, legal representatives and vicarious agents.

## **§9 Mutual loyalty agreement**

- (1) The client is aware that we have comprehensive and exceptionally extensive know-how with regard to, among other things, requirements engineering, requirements management, systems engineering, agile systems development, object-oriented analysis and object-oriented design, as well as carefully selected and trained personnel in this regard. The parties therefore commit themselves to mutual loyalty during the ongoing contractual relationship. It is intended that one party will not disloyally exploit the know-how of the other.

- (2) Having said this, the parties commit themselves, during and up to two years after the termination of the contractual relationship between them, not to entice away any employees of the other party directly, i.e. by directly approaching the respective employee and actively enticing him/her away regardless the reason behind the end of the contract. This obligation does not apply to the marginally employed, temporary workers and similar "easily replaceable" workers.
- (3) In the event of a breach of § 9, clause 2 of this agreement, the contractual penalty shall amount to one gross annual salary of the employee enticed away in relation to the last calendar year before the enticement.
- (4) The customer and we ourselves may also claim further damages against the other party. The contractual penalty shall be offset against the total damage incurred.
- (5) § Section 9 No. 3 of this agreement shall apply in particular, but not exclusively, to the extent that the enticing party purposefully hinders the other party by enticing away one or more employees within the meaning of § 4 No. 4 UWG.
- (6) Since only the enticing party is responsible for active, direct enticement, the parties agree that the alleged enticing party shall bear the burden of proving that it did not actively, directly entice the respective employee (reversal of the burden of proof).

## **§10 Applicable law - place of jurisdiction - place of performance**

- (1) The law of the Federal Republic of Germany shall apply with the exception of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) The contractual language is German. This shall also apply if the contracting parties exchange contractual documents that are written in a foreign (i.e. not german) language. If disputes arise as to the content and interpretation of the contracts concluded between the contracting parties, the contracts shall be interpreted in accordance with the common linguistic usage of the German language.
- (3) If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, it is agreed in accordance with § 38 of the German Code of Civil Procedure that the place of jurisdiction for all disputes between the customer and us is our

registered office in Nuremberg. The same applies if the customer has no general place of jurisdiction in Germany. We are also entitled to sue the customer at the court which has jurisdiction over his place of business or the registered office of the branch concluding the contract.

- (4) Unless otherwise agreed, our registered office in Nuremberg shall be the place of performance.

## §11 Partial nullity clause

- (1) Should individual parts of these terms and conditions be legally invalid, this shall not affect the validity of the remaining provisions.

# II. Special offer conditions "Inhouse Training"

In addition to the aforementioned general terms and conditions, the following special terms and conditions shall apply to Inhouse Trainings:

## § 1 Our services

In addition to the presentation of the content of the respective training by the trainer, our service includes:

- Continuous professional development of the training module(s);
- Coordination and conducting the organisation;
- Technical consultation between the trainer and the client's contact person;
- Preparation of the training documents and digital provision; print of the training documents only against surcharge (200,00 € flat rate per training for all participants);
- Holding of the in-house training at the location requested by the customer;
- Training follow-up with mailing of supplementary technical documents, online feedback for the participants and feedback evaluation (mailing on request).

## § 2 Performance specification

- (1) The description of the training contents (service description) and the execution corresponds to the status at the time of the generation of the digital training documents. We reserve the right to make changes as a result of the updating and further development of our training courses.
- (2) Furthermore, we reserve the right to use a trainer other than the one named in the service description as a substitute.



### **§ 3 Surcharge for more participants**

Our trainings are designed for 12 participants. For more than 12 participants, a surcharge of 100.00 € net will be invoiced per training day and per additional participant.

### **§ 4 Duties of cooperation of the customer**

The client commits to providing the training room and its technical equipment. Required: Projector, flipchart, moderation material ("moderation case").

### **§5 Training date - Cancellation by SOPHIST**

#### **Disclaimer for follow-up costs**

- (1) The specific training date will be named by the client, coordinated with us and offered by us (cf. I. General Terms and Conditions, there § 2 para. 1).
- (2) If a training has to be postponed after the client's binding order for reasons we are responsible for, the client has the right to withdraw from his/her order within one week after notification of our wish to postpone. If he/she does so, we shall refund the remuneration already paid back to the customer.
- (3) In the case of paragraph 1, we shall not be liable for any internal subsequent costs of our cancellation for the customer.

### **§ 6 Cancellation by the customer**

- (1) The binding order can be canceled free of charge up to 30 days before the event.
- (2) Up to 14 before the event we charge a 50% cancellation fee.
- (3) If the binding order is canceled later, the cancellation fee is 100%.

### **§7 Participation Conditions**

No previous knowledge is required for the in-house trainings, with the following exceptions:

- For participation in the certification within the scope of a "Certified Professional for Requirements Engineering - Advanced Level" training, certification in the "Foundation Level" is a prerequisite, otherwise the participant cannot take part in the certification.

### **§7 No subcontracting of our in-house training to third parties**

Our in-house trainings are individually tailored. The client is therefore not entitled to pass on an in-house training or a training seat to a third party.

### III. Special offer conditions "Consulting / Operational Support"

In addition to the aforementioned general terms and conditions, the following special terms and conditions of offer shall apply in the case of consulting or operational support:

#### **§ 1 Place of work**

The regular place of work of our consultant is Nuremberg. In other respects, we provide our services through our consultants wherever it is necessary for the fulfilment of the task or at the location specified by the client; in this case, the (physical) workplace and work equipment are provided by the client.

#### **§ 2 Time fee - quotas – dates**

- (1) We receive remuneration for our consultants according to the time spent ("time fee"). We keep an exact record of the time spent (via a performance record).
- (2) If we have offered an hourly quota / the client has ordered an hourly quota, there is no obligation on the part of the client to buy. We only invoice for the time actually spent by our consultants in accordance with the performance record.
- (3) The concrete appointments of the consultant(s) are agreed upon with the customer's contact person(s).

### IV. Special offer conditions "Open Trainings"

In addition to the above general terms and conditions, the following special terms and conditions of offer apply to our "Open Trainings" (cf. also § 6 Participation Conditions Inhouse Trainings), which we offer on a regular basis:

#### **§ 1 Our services**

In addition to the presentation of the content of the respective training by the trainer, our service includes:

- Continuous professional development of the training module(s).
- Preparation of the training materials and at the least making them available in digital form.
- Within the scope of the possibilities of the conference venue:
  - Conference drinks;
  - Catering during coffee breaks;
  - Lunch;
- Hotel suggestions, if desired; travel and hotel costs are to be covered by the client.

## § 2 Performance specification

The description of the training contents (service description) and the execution corresponds to the status at the time of the generation of the digital training documents. We reserve the right to make changes as a result of the updating and further development of our training courses.

## § 3 Registrations - Minimum number of participants - Illness of the trainer, the client

- (1) In deviation from the General Terms and Conditions, the registration constitutes the offer on the part of the customer/participant; the advertisement of the "Open Training" on our website is for information purposes only. With regard to the binding registration of the customer/participant, however, a rebooking free of charge is possible in consultation with us if applicable.
- (2) Registrations for an "Open Training" must be made in writing, by fax or via our online registration form at <https://www.sophist.de/trainings/offene-trainings/>. The client will immediately receive a written preliminary confirmation of registration for the participant concerned.
- (3) Participant registrations for an "Open Training" are considered in the order in which they are received. Our preliminary confirmation of registration is the acceptance of your offer, thus a contract is concluded.
- (4) Our announcement of the respective "Open Training" contains information on the minimum number of participants required in each case. If we do not have enough participants at least 14 days before the start of the "Open Training", we reserve the right to cancel the "Open Training". As soon as it is certain that the minimum number of participants will be reached and the training will take place, we will issue the corresponding invoice.

- (5) Furthermore, we reserve the right to cancel the "Open Training" in the event that the trainer is unable to attend due to illness. In the event of cancellation, we will refund the participation fee already paid to the client. At the request of the client, a rebooking to another date is also possible. The client has no further claims.
- (6) If the client/participant falls ill, we will grant an alternative date.

#### § 4 Cancellation by the customer

- (1) The binding order can be canceled free of charge up to 14 days before the event.
- (2) Up to 7 days before the event we charge a 50% cancellation fee.
- (3) If the binding order is canceled later, the cancellation fee is 100%.

However, you can nominate a replacement participant at any time free of charge. Cancellations and registrations must be made in writing.

#### § 5 "Money-back promise"

- (1) **One-day training:** If the participant decides to discontinue participation in the course of the first 4 hours, he/she will receive a net refund of the participation fee within 14 days after completion of the training, less a service fee of € 77.00 net.
- (2) **Multi-day training:** If the participant decides to discontinue participation during the first 8 hours, he/she will receive a refund of the participation fee within 14 days after completion of the training, less a service fee of € 77.00 net.