



TERMS AND CONDITIONS for inhouse and consultancy services TÜV SÜD Akademie GmbH

Definitions

In these Terms and Conditions, the following terms shall have the meanings as set out in this Definitions section:

- **Academy** shall refer to the TÜV SÜD Akademie GmbH
- **Consumer** shall have the meaning as set out in section 13 of the German Civil Code [BGB].
- **Contracting Entity** shall refer to the contractual partner of the TÜV SÜD Akademie
- **Entrepreneur** shall have the meaning as set out in section 14 of the German Civil Code [BGB].
- **Events** shall refer to training courses of any kind offered by the Academy. This may include individual sessions, or longer courses that run for several sessions. For the avoidance of doubt, when reference is made to cancellation of an Event, this shall refer to a situation where the entire Event is cancelled, rather than merely an individual session that is a component part of a longer, multi-session Event.
- **Parties** shall refer jointly to the Contracting Entity and the Academy.
- **Services** shall refer to services within the meaning of services provided under a contract for services, as per section 611 of the German Civil Code [BGB].

1 General Description, Scope of Application

- 1.1 These general terms of business shall apply to consultancy, inhouse or similar contracts with the Academy (hereinafter "Services").
- 1.2 The Academy mostly provides Services for Entrepreneurs (Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law. Contracting entities Accordingly, these Terms and Conditions (hereinafter Terms and Conditions) have been drafted principally for dealings with this group of persons, and shall apply in respect of all business relations between the Academy and such Contracting Entities. Notwithstanding the above, these Terms and Conditions shall also apply to the business relations between the Academy and Consumers (Section 13 of the German Civil Code (BGB)). However, in such cases the following provisos shall apply to the Terms and Conditions:
 - Contrary to the stipulation at 3.1 the deadlines given by the Academy shall be binding.
 - Section 5.5 shall not apply.
 - Section 8.1 shall apply with the proviso that the Registered Office of the Academy shall be agreed as place of jurisdiction, where the Contracting Entity's Registered Office, place of residence or place of usual abode is moved outside the remit of the Federal Republic of Germany, or where their Registered Office, place of residence or place of usual abode is unknown at the time a claim is filed.
 - Section 8.2 shall not apply.
 - The Academy does not participate in any alternative dispute resolution procedure before a consumer conciliation body.
- 1.3 These Terms and Conditions shall apply exclusively. Any Terms and Conditions of the Contracting Entity, which run contrary to these Terms and Conditions, or which amend them, shall only become a part of the Agreement, where the Academy has explicitly consented to this. This consent requirement shall apply in all cases, including in situations where the Academy is aware of the Contracting Entity's Terms and Conditions and provides Courses for the without reservation.
- 1.4 Any individual agreements entered into with the Contracting Entity (including any ancillary agreements, amendments or changes) shall have precedence over these Terms and Conditions. The content of any such agreements shall be proven by way of a written contract, or,

as the case may be, the written confirmation of the Academy, subject to proof to the contrary.

2 Implementation

- 2.1 Unless otherwise agreed, the Services shall be rendered in compliance with the provisions applicable thereto at the date of the Contract being entered into. The subject of the contract shall be the provision of the agreed Services offered. There is no guarantee of any particular, measurable success, or for any specific result of the course, nor is there any entitlement to such. The Academy shall be entitled to determine and decide on the method or the type of any inhouse or consultancy assignments as the Academy sees fit in its own reasonable discretion, provided that nothing to the contrary was agreed in textual form, and that there are no mandatory provisions that would demand that a particular approach be taken. The Academy does not accept any responsibility for the correctness of the security programmes or safety regulations, unless this is explicitly agreed in writing.
- 2.2 The Academy shall be entitled to make use of subcontractors to perform the contract. There is no entitlement of the Contracting Entity to any particular speaker/lecturer.
- 2.3 The scope of the Services rendered by the Academy shall be stipulated in writing at the time the order is placed. In the event that it transpires that there is a demand for expanding or otherwise amend the Services while they are being performed, then any such changes must be additionally agreed in writing before any such changes take place. The right to terminate without notice for cause shall remain unaffected by this.

3 Deadlines, Delay, Force Majeure, Frustration

- 3.1 Any deadlines given by the Academy shall be non-binding, unless they are explicitly agreed in textual form to be binding.
- 3.2 Where an Event is cancelled due to the speaker being ill there is no entitlement to have that Event performed. The Contracting Parties shall agree an alternative date. Where an Event is cancelled without an alternative date being provided, any attendance fees paid already shall be refunded. This shall not give rise to any further claims either by the Contracting Entity, or the participants.
- 3.3 In the event that either party is unable to perform its obligations to the other party in whole or in part or not in a timely manner due to an unusual and unforeseeable event beyond the control of that party (force majeure event), the affected obligations of the party relying on the force majeure event shall be suspended for as long as the force majeure event and its consequences persists; any obligations of the other party to provide consideration during this time shall lapse. Claims of the other party, in particular claims for damages, shall not arise in this respect. The party invoking force majeure shall, however, be obliged to inform the other party without delay in textual form of the event, the suspended performance obligations and the expected duration of the suspension of the performance obligations. The same shall apply if, by observing a reasonable duty of care, the party invoking force majeure recognizes, whilst the performance obligations are suspended, that the notified probable duration of the suspension will change significantly. If the force majeure event lasts longer than six months from the first information to the other party, both parties shall be entitled to withdraw from the contract. The right of withdrawal shall be replaced by a right of termination for continued obligations. The suspension of a payment obligation - except in scenarios prescribed by law or if such payment obligation represents a consideration within the meaning of sentence 1 - cannot be based on force majeure. Section 287 sentence 2 of the German Civil Code (liability for coincidence during default of the debtor) shall remain unaffected.
- 3.4 Where the Contracting Entity grants the Academy a reasonable grace period after the Service having become due, and where the Academy fails to comply with this grace period, or where it has become impossible for the Academy to perform these Services, then the Contracting Entity shall be entitled to rescind the Contract and, where the Academy is at fault, to claim damages instead of the Services. Sections 281 and 323 of the German Civil Code - BGB shall remain unaffected.



- 3.5 After entering into the Contract, the Contracting Entity shall be entitled to cancel free of charge up to two weeks prior to the course commencing. Any such notice of cancellation must be given in textual form. In the event that any cancellation or request to reschedule the date is made less than two weeks before the commencement of the Event, 50% of the fee, plus VAT, shall fall due as cancellation fee. Where an Event is rescheduled or cancelled less than one week before it was due to commence, then the full fee plus VAT shall fall due. The definitive date shall be the date of receipt of the post at the Academy.

4 Withdrawal, Delay

4.1 Withdrawal

The Contracting Entity may withdraw from a registration or an order. The Academy must be notified of the withdrawal in text form. If notice of withdrawal is received up to two weeks before the start of the event, the obligation to pay the price is waived, after which the full price will be charged.

4.2 Delay

If the Contracting Entity requests a delay, the Academy must be informed in text form. A delay up to two weeks before the start of the event at the latest is free of charge. In the event of a delay less than two weeks before the start of the event, the Contracting Entity shall – regardless of the reason for the delay requested by the Contracting Entity – be invoiced with the actual costs incurred by the delay (e.g. trainer cancellation fee, hotel and travel costs)

4.3 Deadlines

With regard to meeting deadlines, the date of the postmark or the email that was sent to the contact named in the offer is decisive.

5 Contracting Entity's Obligation to Participate

The Contracting Entity shall support the Academy in the performance of the Event as commissioned, to the extent required. In particular, the Contracting Entity shall provide necessary information and materials in good time and free of charge, and shall make available the requisite rooms and technological environments free of charge. The Contracting Entity's obligation to participate shall form a material part of the Contract.

6 Liability

- 6.1 Unless these Terms and Conditions, including the following provisions, stipulates otherwise, the liability of the Academy shall be governed by the relevant statutory provisions.
- 6.2 Irrespective of the legal basis, the Academy shall be liable on the basis of fault-based liability in cases of intent or gross negligence. In cases of conduct that is merely negligent, and subject to more favourable, statutory provisions (e.g. for due care in one's own affairs), the Academy shall only be liable for (i) losses arising from death, personal injury or damage to health, or (ii) for losses arising from a significant breach of an essential contractual obligation (an obligation, the performance of which is essential in order to properly perform the contract, and the compliance with which the contractual partner can reasonably rely on); in the latter case, however, the Academy's liability is limited to those losses as were typically foreseeable at the time of entering into the contract.
- 6.3 The limitation on liability as per section 5.2 shall also apply in cases where there an obligation is breached by, or, as the case may be, in favour of persons whose actions the Academy is statutorily responsible for, or in cases where organs of the company, experts or other employees of the Academy are personally liable, if applicable. It shall not apply where the Academy, or, as the case may be, the abovementioned person deceitfully failed to disclose a defect, or in cases of a specifically agreed quality guarantee, or in respect of claims as per the German Product Liability Act (ProdHaftG).
- 6.4 Any losses for which the Academy is to be held liable must be notified to the Academy in writing and without delay by the Contracting Entity.
- 6.5 Any claims to damages that are limited pursuant to this section 5 shall become statute barred one year after the statutory period of limitation begins to run, unless they are subject to the limitation provisions stipulated in section 438 (1)(2) or section 634a (1)(2) of the German Civil Code [BGB].

7 Conditions for Remuneration and Payment

- 7.1 The invoice amount shall fall due for payment immediately upon invoicing, but in any event no later than the date specified, provided that no other agreement has been reached. Section 286 of the German Civil Code - BGB shall remain unaffected by this.
- 7.2 The Academy shall be entitled to demand reasonable advances and/or invoice for part-payments in respect of Services rendered already. Invoices for part-payment do not need to be described as such. Receipt of an invoice shall not mean that this constitutes the full and final amount the Academy is charging in respect of that job.
- 7.3 Unless agreed otherwise, any travel expenses, travel times, disbursements and overnight expenses shall be additionally invoiced.

8 Export control and embargoes

- 8.1 TÜV SÜD does not have the obligation to provide services in due time to the extent that and for as long as such provision of services would result in violations of export control and embargo restrictions. In such a case, TÜV SÜD agrees to notify the customer without undue delay in textual form (as defined in the German Civil Code, BGB) about the fact that services may not be provided (impediment to performance).
- 8.2 In the event that TÜV SÜD is prevented from timely provision of services because permits, licenses or other official procedures imposed by restrictions under export control and embargo law need to be obtained, the delivery and completion deadlines agreed by TÜV SÜD and the customer with binding effect shall be adequately extended by the duration of the delay caused thereby. In such a case, TÜV SÜD agrees to notify the customer without undue delay in textual form about the delay.
- 8.3 Where the impediment to performance pursuant to Section 8.1 or the delay pursuant to Section 8.2 lasts longer than six months beyond the date of initial notification of the customer by TÜV SÜD, either party has the right to rescind the contract (Rücktritt). In case of contracts for the performance of continuing obligations, either party has the right to terminate the contract (Kündigung) instead. The customer may not assert any additional claims based on Sections 8.1 and 8.2, including, but not limited to, claims for damages.
- 8.4 The customer has the obligation to observe the export control and embargo law restrictions, as applicable and in effect at the time, when making use of or passing on services provided by TÜV SÜD. The customer has the obligation to obtain any permits or licenses that may have to be obtained from the competent authorities, if and where necessary. In case of a violation of export control and embargo restrictions by the customer, TÜV SÜD has the right to rescind the contract. In case of contracts for the performance of continuing obligations, TÜV SÜD has the right to terminate the contract (Kündigung) instead
- 8.5 To the extent requested to do so, the customer has the obligation to provide TÜV SÜD, without undue delay, with any and all information on the intended use, final recipient and end use of the services to be provided by TÜV SÜD, including, without limitation, the obligation to issue or provide what is referred to as end-user certificates (EUC).
- 8.6 The customer agrees to indemnify TÜV SÜD to the full extent against any and all claims that may be asserted against TÜV SÜD by authorities or other third parties on the grounds of intentional or negligent violations of export control and embargo restrictions by the customer and undertakes to indemnify TÜV SÜD for and against any and all losses sustained, damage suffered and expenses incurred as a result.

9 Confidentiality, Copyright, Data Protection

- 9.1 The copyright in any and all materials, results, calculations, etc. produced by the Academy shall be explicitly reserved to the Academy. Any reproduction, publication, passing onto third parties, or other use by the Contracting Entity or by the Participants shall only be permissible with the prior, written consent of the Academy. Differing agreements regarding the transfer of rights of use and the granting of licences may be entered into in separate, individual contracts.
- 9.2 Where materials from third parties are used as part of performing a job, then the copyright in any such materials shall remain with those third parties.



- 9.3 In cases as per sections 7.1 and 7.2 neither the Contracting Entity nor third parties may amend the materials, even in excerpts, either as far as the content is concerned, or to make any editorial changes, or indeed use any amended versions, reproduce the materials, make them publicly available, or forward them, upload them to the internet or other networks, whether for a fee or free of charge, imitate them, sell them, or use them for any other purposes than contractually agreed. Copyright notices, identifying markings, or trademarks must not be removed.
- 9.4 The Academy shall not disclose or utilise any business or trade secrets of which it becomes aware in the course of performing the job, beyond using it in order to perform that job, unless authorised to do so.
- 9.5 The Academy processes the customer's personal data for the proper performance of the order and otherwise only for permissible purposes.
- 9.6 Amongst others, the Academy uses automated data processing machines for this. The Academy complies with all applicable data protection requirements in its data processing.

10 Place of Jurisdiction, Place of Performance, Applicable Law

- 10.1 In as far as the prerequisites outlined in Section 38 of the Code of Civil Procedure have been fulfilled, party to the contract the registered office of TÜV SÜD (general venue according to Section 17 of the German Code of Civil Procedure, ZPO) is agreed to be the place of jurisdiction for the assertion of claims by either party to the contract.
- 10.2 The place of performance for all obligations arising from the Contract shall be the place of the Registered Office of the Academy.
- 10.3 The contract and any legal relationship arising therefrom shall be governed exclusively by the laws of the Federal Republic of Germany, and excluding the conflict of law provisions of international private law (IPR) and of the UN Convention on the International Sale of Goods (CISG).