

clavis berater sozietät Unternehmensberatung GmbH

General Terms and Conditions- August 2022



1. General

Orders placed with us shall only be executed subject to our terms and conditions set out below. By placing an order, the contractual partner (hereinafter referred to as the client) accepts our terms and conditions. Deviations require our express written confirmation. If the client does not agree with the above, he must object in writing. The objection shall be marked as such and asserted separately vis-à-vis us. If no objection is made, the exclusive validity of the following terms and conditions shall be recognised. In commercial transactions, the acknowledgement shall be made at the latest upon acceptance of the offer or upon our first delivery or service. In the event of an objection, we reserve the right to reject the conclusion of the transaction without any claims of any kind being made against us. Our terms and conditions shall also apply to future transactions, even if no express reference has been made to them, insofar as they have only been received by the principal in connection with a transaction already carried out between him and us or reference has been made to them.

2. Form, written form

All contractual agreements as well as their amendments or supplements must be in writing in order to be effective. This formal requirement can only be waived in writing. The written form requirement is satisfied by our letter of confirmation or by our written acceptance of the order.

3. Offers

Our offers are quotations for services and constitute an invitation to submit a contractual offer. They are subject to change without notice unless a commitment is expressly provided for in the offer. Orders received with reference to our offers require our express written acceptance to become effective.

4. Concepts

Unless otherwise agreed, the development of conceptual proposals, drafts, training methods, training materials with the aim of concluding a contract with the client shall only take place against payment of a fee. If agreed in writing, the fee shall be credited against the remuneration for the order. Copyright and property rights to the concepts, strategies and works presented by us within the scope of the presentation shall remain with us even if a presentation fee is charged.

5. Prices an rates

The remuneration to be paid to us shall be subject to agreement in the individual case. Expenses, travel costs, costs for meals and accommodation are to be reimbursed separately in each case. The applicable value added tax shall be paid on the agreed remuneration rates.

6. Delivery

Completion dates, delivery periods, delivery deadlines and time schedules are only binding if they are expressly confirmed by us in writing. If no date or delivery period has been agreed, we undertake to complete/deliver as quickly as possible. Delivery periods shall commence on the date of the order confirmation, but not before the customer has provided the necessary documents, approvals, releases, (material) supplies and, if applicable, agreed cooperation as well as after the agreed advance payments have been made. Agreed delivery dates and deadlines do not constitute a firm deal (exclusion of §§361 BGB, 376 HGB). In the event of a delivery period expressly guaranteed in writing, this shall be deemed to have been complied with if the delivery item has left our business division by the time of its expiry.

If we are in default with the performance to be rendered by us, the customer may withdraw from the contract after the fruitless expiry of a reasonable grace period to be set by him. Further claims are excluded. Circumstances beyond our control which prevent or impede the performance of the service, the procurement or the dispatch/delivery, e.g. force majeure, labour disputes, riots, official measures, energy and material shortages, traffic or operational disruptions, delays in delivery on the part of our suppliers, shall release us from the obligation to deliver or perform for the duration of the existence of these circumstances. If the delivery date or the delivery/service is exceeded or delayed by more than one month due to these circumstances, both parties are entitled to withdraw from the contract without the client being entitled to any compensation claims as a result. This shall also apply if the aforementioned circumstances occur at a time when we are in default. Partial deliveries/partial services are permissible unless the client would be unreasonably disadvantaged.

7. Property

Preliminary and intermediate products and/or work equipment, e.g. programmes, digital data, data sets, files and data carriers produced for the provision of our service, together with comparable media, shall remain our property.

8. Transfer of risk / assumption of risk

Delivery shall be made at the expense and risk of the client. The risk shall pass to the client as soon as the delivery has left our business division. Claims due to delayed postal or other delivery are excluded.

9. Notification of defects / warranty

Delivered items are to be accepted by the client, even if they have insignificant defects, without prejudice to his rights described below. Notices of defects due to incomplete or incorrect delivery or due to recognisable defects must be notified to us in writing within one week of receipt of the delivery. Other defects must be notified to us in writing immediately after discovery. Program errors in software and digital media, e.g. CD-ROM, are unavoidable. We only warrant that programmes and digital media are not afflicted with errors which nullify or considerably reduce the value or the suitability for the use assumed under the contract. Defects in part of the delivery do not entitle the customer to complain about the entire delivery unless the partial delivery unreasonably disadvantages the customer. In the event of justified notices of defect, we shall have the right, at our discretion and to the exclusion of further claims, to rectify the defect or to make a replacement delivery within a reasonable period of time. If the rectification or replacement delivery fails, the client may demand cancellation of the contract or a reduction in price. Warranty claims shall be excluded if notices of defects are not given in due time.

10. Retention of title

We retain title to delivered goods until full payment of the remuneration owed. In the event of behaviour contrary to the contract on the part of the client, in particular in the event of default in payment, we shall also be entitled to take back the goods subject to retention of title and the client shall be obliged to surrender them. The assertion of the retention of title as well as the seizure of the delivery items by us shall not be deemed a withdrawal from the contract, unless the Consumer Credit Act applies. We are entitled to retain documents and items made available to us by the client until the remuneration owed has been paid in full.

11. Payments

Unless otherwise agreed, payments shall be made net cash immediately upon receipt of the invoice. Payments can only be made with debt-discharging effect to us or to persons expressly provided by us with a written power of attorney for collection. Payment must be made without deduction of any discount. Discounts must also be expressly agreed in terms of amount. In the event of default in payment, we shall be entitled to charge default interest in the amount of 5% above the respective Bundesbank discount rate. Further rights are expressly reserved.

12. Property rights and copyrights of use

Subject to any agreement to the contrary, we retain ownership of concepts, training methods, materials and documents, programmes, digital data and files, etc. and, insofar as permissible under copyright law, all rights of use and exploitation under copyright law. Ownership, rights of use and exploitation of our services shall not pass to the client until the remuneration owed has been paid in full. The rights of use and exploitation of our services under copyright law shall only pass to the client to the extent that this is necessary for the purpose agreed at the time of conclusion of the contract. Any further exploitation must be agreed with us in writing and is subject to remuneration. The transfer of rights of use by the client to third parties requires our prior written consent. The transfer of an exclusive right of use to the client for services to be provided by us requires a separate agreement. Insofar as the client provides us with documents as well as other materials to which copyrights may exist for further processing, the client guarantees that the materials provided are free of third-party rights or that the client has the necessary transferable rights of use and exploitation. He shall indemnify us against all possible claims by third parties.

13. Corrections, examination in case of further usage

Products and services manufactured by us shall be checked for errors by the client and released. Errors for which we are responsible shall be corrected immediately and free of charge. Any corrections must be checked again by the client for errors before further use. We shall not be liable for errors overlooked by the client after release. The costs for corrections initiated by the client which do not constitute error correction shall be charged to the client. It is the client's duty to check our deliveries before further use by him. We do not accept any liability if services released to us are further used with errors or other defects, even if compensation is claimed by the client from a third party.

14. Liability

- (1) We shall only be liable - irrespective of the legal grounds - if damage (a) has been caused by culpable breach of an essential contractual obligation (cardinal obligation) in a manner that jeopardises the achievement of the purpose of the contract or (b) is attributable to gross negligence or intent.
- (2) If we are liable pursuant to paragraph (1) letter (a) for the breach of an essential contractual obligation without gross negligence or intent, the liability shall be limited to the extent of the damage which we typically had to expect at the time of the conclusion of the contract on the basis of the circumstances known to us at that time.
- (3) The limitation of liability pursuant to paragraph (2) shall apply in the same way to damage caused by gross negligence or intent on the part of our employees or agents.
- (4) In the cases of paragraphs (2) and (3), we shall not be liable for indirect damage, consequential damage caused by a defect or loss of profit/production.
- (5) The typically foreseeable extent of damage shall in no case exceed the amount of the contract sum of our corresponding business with the client, so that the liability in cases of our justified claims shall be limited to this amount.
- (6) We shall also only be liable for losses of data and programmes and their recovery within the scope set out in paragraphs (1) to (4) and only to the extent that such loss could not have been avoided by reasonable precautionary measures on the part of the client, in particular the daily making of back-up copies of all data and programmes.
- (7) The limitations of liability in paragraphs (1) to (6) shall also apply mutatis mutandis in favour of our employees and agents.

15. Additional Terms and Conditions for Online Services

(Disruption/interruption of communication networks) Within the scope of our Internet services, we are subject to the provisions of the operators of the providers, telephone and other communication networks and are dependent on the provision of the communication networks by the operators. We will use our best endeavours to ensure technically faultless operation of the communication networks and, in the event of technical or other faults/interruptions which impair or temporarily or permanently prevent the operation of our services, to rectify the same. However, we do not accept any liability for losses incurred by the principal as a result of technical faults or interruptions in the communication networks, irrespective of the actual or legal cause to which they are attributable. The exclusion of liability applies irrespective of any fault, but not in the case of gross negligence or intent. (Loss of data) We endeavour to store the information and data we receive within the scope of the Internet services properly and professionally and to make it available to the client in accordance with the contract. We accept no liability for data/file losses caused by hardware, programme or programming errors, accidental deletion, viruses or external influences. The exclusion of liability shall apply irrespective of any fault, but not in the event of gross negligence or intent.

16. Custody

We shall keep the documents handed over to us by the client for the execution of the order with due diligence. We are entitled to destroy such documents two years after completion of the order, unless the client has reserved the right to take them back in writing at the time of handover.

17. Transfer of rights, compensation

The transfer of rights and obligations of the client arising from the contractual relationship to third parties requires our prior written consent. The client may only offset our claims against claims that are undisputed or have been legally established.

18. References, self-promotion

We are entitled to use our services for the client for reference purposes and self-promotion by naming and illustrating them.

19. Place of performance, place of jurisdiction, applicable law, effectiveness

Place of performance is the registered office of clavis. For all disputes arising from the business relationship, if the client is a fully qualified merchant, a legal entity under public law, a special fund under public law or if the client does not have a general place of jurisdiction in Germany, the action is to be brought before the court which has jurisdiction for our head office. However, we shall also be entitled to bring an action at the principal place of business of the client. German law shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods. Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions.



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