

# General Business Terms and Conditions for services of artop GmbH – Institute at the Humboldt-Universität zu Berlin

## I. General matters

### 1 Scope, legal nature

- 1.1 These General Business Terms and Conditions apply to the conducting of events of artop GmbH – Institute at the Humboldt-Universität zu Berlin (hereinafter, “artop”), such as seminars, training sessions, workshops, presentations, process facilitations, coaching sessions, and usability/UX projects and training sessions (hereinafter, “Services” or “Events”) and govern the contractual relationship between artop and the participant at artop Events (hereinafter, the “Client”). Applicable to artop Events in the area of continuing education are the “General Business Terms and Conditions for Participation in Events in the Area of Academics”.
- 1.2 Exclusively applicable to all business relationships in the aforementioned sense are these General Business Terms and Conditions. With the engagement of artop, these Terms and Conditions are deemed accepted by the Client. The controlling version is the one that is in effect at the time of contract conclusion.
- 1.3 The Client’s general business terms and conditions are not applicable. They are hereby expressly rejected.
- 1.4 Derogating individual agreements (including side understandings, supplementations, and amendments) have priority over these General Business Terms and Conditions, but they must be expressly agreed upon and confirmed by artop, with confirmation in text form, such as by email or fax, being sufficient.
- 1.5 Unless expressly agreed otherwise, contracts concluded with artop are contracts for services. The subject of the contract is the provision of the contractually agreed Services, not the bringing about of a certain outcome. In particular, artop does not owe any financial outcome.

### 2 Conclusion of contract

A contract comes into effect when in response to an offer by artop, the Client issues an order (acceptance). The offer by artop and the issuance of the order by the Client may be effected through the sending of an email or a fax, through a written order or verbally through a telephonic or personal order.

### 3 Scope of performance

- 3.1 The order issued in a given case is controlling with respect to the nature and scope of the Services to be rendered by artop.
- 3.2 Events are conducted in accordance with artop's event programme or pursuant to separate agreement with the Client. However, artop reserves the ability to make changes, provided that these do not fundamentally alter the objective of the Event.
- 3.3 There is no entitlement to have an Event conducted by a specific lecturer or at a specific instruction location. There is also no entitlement to compensation for a missed Event day.
- 3.4 artop's Services are considered rendered when the required analyses, the conclusions resulting from them, and the recommendations have been prepared and then explained to the Client. artop's personal Services, such as coaching sessions, consultations, and presentations, are considered rendered, in particular, when the agreed appointments/meetings have taken place. It is irrelevant whether or when the Client implements the conclusions and/or recommendations.
- 3.5 artop is entitled to deploy subcontractors for the purposes of rendering the agreed Services.

### 4 Duties of the Client to cooperate

- 4.1 An important and essential factor for the rendering of Services by artop is cooperation by the Client. Every coaching session, process facilitation, consultation, or other artop Service is always based on (preparatory) discussions between the parties. artop's Services are based on mutual trust and cooperation. The Client must support artop to a reasonable extent in, and to the degree necessary for, the rendering of the contractual Services and, in its operating sphere, create in a timely manner all preconditions necessary for proper contract performance. In this regard, artop points out that all of its Services are free, active, and self-dependant processes, and a specific outcome cannot be assured. artop serves as a process facilitator and consultant to assist and support the Client in making his or her own decisions and changes. The actual transformation work is performed by the Client. Therefore, the Client should be willing and open to confront himself or herself and his or her situation and to personally grow in the company or the organisation. Statements and recommendations by artop help the Client to make his or her own decisions, but they are no substitute for them.
- 4.2 artop renders its Services on the basis of data and information provided to it by the Client or its representative. The Client is solely responsible for the material accuracy and completeness of this material. The Client undertakes to ensure that all documents necessary for executing the order are promptly submitted to artop in good time before the start of performance and that it is notified of all events and circumstances of significance for the execution of the order. The foregoing also applies to documents,

events, and circumstances of which the Client first becomes aware during the activity of artop. These must be promptly turned over to or, as the case may be, notified to artop once the Client becomes aware of them. Where so requested by artop, the Client's information must be provided in writing, and information provided verbally must be confirmed in writing.

- 4.3 In addition, the Client undertakes to make all premises, materials, and infrastructure services necessary for the proper rendering of artop's Services fully available at no charge promptly following engagement, but not later than 14 calendar days prior to the start of performance. This includes granting artop employees engaged for the rendering of Services with access to the Client's IT systems to the scope necessary for the rendering of Services by artop.
- 4.4 In the case of Services with or on IT systems, the Client must provide artop upon request with a testing environment and testing data in suitable form.
- 4.5 The Client guarantees that all software products and data storage devices that it hands over have will have been checked for viruses or other malware using antivirus protection that is up to date at the time of handover.
- 4.6 Delays caused by the Client failing to meet its duties of information and cooperation on time or in full are for the account of the Client. Agreed completion or performance deadlines are extended appropriately, taking into account the necessary ramp-up time. Additional expenditures of time and effort that this may cause are for the account of the Client.
- 4.7 Where so requested by artop, the Client must designate a responsible contact person who is able to make or bring about decisions. Where so requested by artop, the contact person must document decisions in writing.

## 5 Compensation

- 5.1 In addition to compensation for the agreed Service, artop is entitled to reimbursement of expenses and ancillary costs, such as telephone charges, travel and lodging costs, etc., unless specified otherwise in the contract. Travel costs are charged against receipts or, in the case of travel by car, at a flat mileage rate of EUR 0.30 per kilometre. Where owed, value-added tax is charged separately. All elements of compensation are charged in euros.
- 5.2 Unless agreed otherwise, the compensation is payable against invoice by bank transfer and is due for payment without deduction upon receipt by the Client of the invoice, unless indicated otherwise on the invoice.
- 5.3 Unless a fixed/flat-rate price is expressly agreed upon, the Client owes payment of compensation according to expended effort.

- 5.4 artop may demand reasonable advances against compensation and reimbursement of expenses, and it may make the rendering of its Services dependent on satisfaction of its claims in full. Section 614 sentence 1 of the German Civil Code (BGB) is excluded.
- 5.5 artop may bill individual performance phases within the contract in monthly intervals (partial compensation).
- 5.6 The Client is entitled to set off against artop's claims or to assert rights of retention only if its counterclaim is uncontested or has been reduced to an enforceable judgment.
- 5.7 artop is entitled to assign its claims under the contractual relationship.
- 5.8 If the Client is in default in the payment of compensation, artop is entitled to charge default interest in the currently applicable statutory amount. In such case, artop is moreover entitled to suspend the rendering of the Services until payment in full of due and owing compensation without artop thereby being in default. Agreed performance deadlines are extended in such case by the duration of the payment default, plus necessary ramp-up times.

## **6 Right of revocation for consumers in the case of distance contracts**

In the case of distance contracts (contracts for which the entrepreneur or a person acting in its name or on its behalf and the consumer use exclusively distance communications for contract negotiations and contract conclusion), consumers have a statutory right of revocation. A consumer within the meaning of section 13 BGB means every natural person who enters into a legal transaction for a purpose that is outside of his or her trade, business, or profession.

### **Instruction regarding revocation**

#### **Right of revocation**

You have the right to revoke this contract within 14 days without providing reasons.

The revocation period amounts to 14 days and begins to run on the date of contract conclusion.

In order to exercise your right of revocation, you must notify us (Ms Jacobs, tel.: 030440129950, fax: 030440129921, email: kontakt@artop.de) of your decision to revoke this contract by means of an unambiguous declaration (e.g. a letter sent by mail, a fax, or an email).

The revocation deadline is deemed complied with if you send the notice about the exercise of the right of revocation prior to expiry of the revocation deadline.

#### **Consequences of revocation**

If you revoke this contract, we must refund to you all payments that we have received from you, including delivery costs (other than additional costs incurred as a result of the fact that you chose a form of delivery that is different than the less expensive standard delivery offered by us), without delay and not later than within 14 days of the date on which we received the notice about your revocation of this contract. In making this refund, we will use the same form of payment that you used for the original transaction, unless a different arrangement was expressly agreed upon with you. In no event will you be charged any fees on account of this refund.

If you requested that the Services are to begin during the revocation period, you must pay us a reasonable amount that corresponds to the proportion that the Services already rendered up to the date on which you notified us of the exercise of the right of revocation with respect to this contract bears to the total scope of the Services envisioned in the contract.

### End of instruction regarding revocation

## 7 Reporting, verbal information, lecture content, seminar documents

- 7.1 Unless agreed otherwise, all reports, appraisals, results of studies, etc. are provided by artop in text form.
- 7.2 Verbal declarations and information given by artop employees are binding only after confirmation by artop.
- 7.3 Events are carefully and diligently prepared and conducted by the consultants.
- 7.4 artop assumes no liability for whether seminar documents are accurate, complete, and up to date.

## 8 Rights to performance results

- 8.1 artop retains copyright to the works created by artop and its employees and engaged third parties (including concepts, bids, reports, analyses, appraisals, organisational plans, programmes, performance descriptions, drafts, calculations, drawings, data storage devices, etc.). The Client is not permitted to reproduce the concepts or documents, either in whole or in part, without written permission and/or to make same accessible to third parties. Publication is prohibited, including excerpts. An audio and/or video recording of Events is permissible only with the written consent of artop. In no event is artop liable to third parties as a result of an unauthorised reproduction/dissemination of the work, including, for instance, for the accuracy of the work.
- 8.2 Handed-out documents, software, and other media provided to the Client for the purpose of the Event (whether in printed or electronic form) are protected by copyright and are intended solely for personal use by the Client for learning purposes, unless agreed otherwise. This right is not assignable to third parties. Reprinting, reproduction,

reprocessing, transfer, and other use of the documents or parts thereof are expressly prohibited.

- 8.3 Any use of word/figurative marks of artop that goes beyond the conferred certificate or the issued attestation or reporting requires the express written consent of artop.

## 9 Confidentiality

- 9.1 Each of the parties undertakes to maintain in confidence all information of the other party of which it becomes aware in connection with this contractual relationship that is labelled as confidential or should be considered confidential in view of the circumstances. That applies, in particular, to all information that is designated as confidential or is recognisable as a business secret. Both parties must ensure through suitable technical and organisational measures and corresponding contractual agreements that such information is made accessible only to those employees or subcontractors to whom disclosure is required. This applies also to companies that may be affiliated with the parties. In addition, both parties must ensure that unauthorised third parties cannot obtain access to such information. This obligation of confidentiality also permanently survives the ending of the contract.
- 9.2 In derogation from the foregoing provisions of this Section, artop is entitled to use the fact of the engagement relationship and its specific activity as a reference.

## 10 Data protection and data security

- 10.1 artop processes the Client's personal data for proper fulfilment of the order and for its own purposes. To accomplish this, artop makes use of automated data-processing programmes. When processing data, artop complies with all applicable requirements of data protection law.
- 10.2 The Client's name, address, telecommunications data, and email address are needed for contract performance. Personal data are used by artop solely for the purposes of contract performance. The Client may at any time request information about the data stored about him or her. artop treats this information confidentially and does not disclose it to third parties, other than to partners and partner companies that need the data for performing the contract. In addition, reference is made to artop's data protection policy.

## 11 Warranty

- 11.1 artop is obligated to render its Services properly and in conformity with the contract. The Client is aware that every analysis, consultation, or evaluation implies a number of imponderables. Therefore, artop is not liable, in particular, for whether the Services rendered to the best of its ability will lead to the outcome that might be desired by the Client. In addition, artop provides no warranty and is not liable for the (entrepreneurial)

objectives that are to be achieved or realised with the consultation or the making available of the work product forming the subject of the contract. artop is also not liable if and insofar as any consultation errors, performance deficiencies, and/or defects in a Service carried out by artop are based on the fact that the Client failed to meet its duties of cooperation, failed to do so in full, or failed to do so in a timely manner. In the event of a dispute, the Client bears the burden of proving that duties of cooperation were met on time and in full.

- 11.2 If the Client is an entrepreneur, it must promptly inspect the Services or parts of Services rendered by artop and promptly object in writing to identifiable breaches of duty, but not later than 12 days after the rendering of the Service. Objections must contain a description of the defect that is detailed to the best of the Client's ability. If an objection is not made in the proper form or by the proper time, all of the Client's claims for breach of duty based on defective performance are excluded.

## 12 Limitations of liability

- 12.1 Unless provided otherwise in these General Business Terms and Conditions, including the following provisions, artop is liable for breaches of duties in accordance with statutory provisions.
- 12.2 artop is liable for compensation of damages – irrespective of the legal basis – in accordance with fault-based liability in the event of wilful misconduct or gross negligence. In the case of simple negligence, and subject to a less severe standard of liability in accordance with statutory provisions (e.g. for duty of care in one's own affairs), artop is liable only (i) for damages from loss of life, from bodily injury, or to health and (ii) for damages from the breach of a material contractual duty (duty whose fulfilment is essential for the proper performance of the contract and on whose compliance the contracting partner normally relies and may rely), whereby in the latter case, artop's liability is limited to the compensation of damage that was foreseeable at the time of contact conclusion and is typically incurred. In all other respects, artop's liability is excluded.
- 12.3 The limitation of liability pursuant to Section 12.2 also applies to breaches of duty by or for the benefit of persons whose fault is the responsibility of artop in accordance with statutory provisions, as well as to any personal liability of artop's governing bodies, experts, and other employees. It does not apply where artop or the aforementioned persons fraudulently concealed a defect, nor does it apply to claims under a guarantee of quality or to claims under the German Product Liability Act (*Produkthaftungsgesetz*).
- 12.4 The Client must give artop prompt written notice of any damages for which artop is to be held liable.
- 12.5 A reversal of the burden of proof is not associated with the foregoing arrangements.

## 13 Client documents

Documents and other materials provided by the Client are handed over and returned at the Client's risk and expense. Unless agreed otherwise, artop is obligated to retain these materials for 30 days after performing the agreed Service.

## 14 Prescription

If the Client is an entrepreneur, the Client's contractual claims and claims for compensation of damages are prescribed one year after the claim arose. Exempt from the foregoing are claims for compensation of damages from loss of life, from bodily injury, or to health and/or claims for compensation of damages as a result of damages caused by artop wilfully or with gross negligence. In this regard, the statutory prescription periods apply.

## 15 Final provisions

- 15.1 Verbal side agreements are binding only when confirmed in writing. Amendments and supplementations to the contract, including to this clause, must be made in writing.
- 15.2 If the Client is a merchant, a legal person under public law, or a special fund under public law, the place of performance and the place of jurisdiction of contracts that are concluded under inclusion of these General Business Terms and Conditions is the registered office of artop.
- 15.3 The law of the Federal Republic of Germany is applicable.



## II. Special provisions for individual consultations/coaching sessions

### 1 Subject

artop conducts individual consultations, coaching sessions, presentations, mediations, and other corresponding Services.

### 2 Appointments, duration, cancellation

- 2.1 In general, appointments are binding. That also applies to any preliminary meeting that is agreed to be free of charge. The time and location of coaching sessions are to be set by the parties by mutual agreement and according to mutual availability. The Client undertakes to appear at all meetings on time.
- 2.2 Depending on the concern, coaching can range from a one-time coaching discussion to a process taking several months.
- 2.3 Appointments may be cancelled or postponed up to two days in advance at no charge. Thereafter, as well as in the case of unexcused absences, the agreed compensation is due in full.

### 3 Impediments to the rendering of Services

artop is entitled to postpone appointments in the event of force majeure, which includes impediments to the rendering of Services that are caused by illness, accident, or the like. In such case, artop will immediately notify the Client and offer a substitute appointment. In any event, artop will also notify the Client in writing (by SMS or email is sufficient) if the Client cannot be reached by phone. The Client bears the risk of unreachability. There is no claim to reimbursement of fruitless expenses.

### 4 Ending of the contractual relationship

If the Client decides that he or she no longer wishes to make use of the artop Service, he or she may end the contract at any time through written declaration. Irrespective of the foregoing, Services already utilised must be paid for. For scheduled appointments, Section II.2 (3) applies mutatis mutandis.

### III. Special provisions for seminars, training sessions, organisational consultation, and other projects

#### 1 Subject, scope of performance

- 1.1 artop conducts closed company seminars, training sessions, organisational consultations, usability/UX projects, workshops, and other similar projects and Events.
- 1.2 artop's activity is primarily a consultative, supportive activity in connection with the contractually agreed range of Services. The Client is solely responsible for making an evaluation of entrepreneurial expediency and cost effectiveness and for deciding about entrepreneurial implementation.

#### 2 Termination, ending of the contractual relationship

- 2.1 In general, this contract ends with the conclusion of the project. Either party may terminate it with one month's notice, effective at the end of a calendar year (termination with notice). That applies to contracts concluded for a definite as well as an indefinite period of time.
- 2.2 The right of either contracting party to terminate for cause (termination without notice) remains unaffected. Prior to terminating, the contracting partner exercising the right must give the other contracting partner the opportunity to comment, unless it cannot be reasonably expected to do so in the specific case. Cause entitling termination without notice is considered to exist where
  - (i) the Event or other Service has to be cancelled for reasons for which artop is not responsible. This is the case, for example, in the event of illness/accident or other short-term unavailability of the lecturer or force majeure. In such case, compensation that has already been paid for unrendered Services will be refunded in full. More extensive claims are excluded, including claims for reimbursement of travel and lodging expenses as well as absence from work, unless such expenses are incurred as a result of grossly negligent conduct or wilful misconduct by artop,
  - (ii) the Client is illiquid or insolvency proceedings are commenced in respect of the assets of the other party or are discontinued for lack of assets,
  - (iii) the provisions of these General Business Terms and Conditions were wilfully infringed, or
  - (iv) a contracting partner breaches material contractual obligations.

- 2.3 If the Client fails to cooperate as required of it under Section I.4 (Duty of the Client to cooperate) or otherwise, or if it fails to do so sufficiently or on time, artop is entitled to rescind the contract after expiry of a reasonable deadline. If the customer culpably breaches a duty of cooperation, it must bear the resulting consequences, such as added effort or delays on the basis of the agreed standard compensation rates of artop. More extensive rights of artop remain unaffected. During this time, artop is released from the performance obligations under the contract for services and these General Business Terms and Conditions, insofar as on account of the non-fulfilment or only insufficient fulfilment of the duties of cooperation, the respective Services cannot be rendered or can be rendered only with unreasonable effort.
- 2.4 Where the Client terminates without notice, artop is entitled to demand the agreed compensation. However, it must set off the amount of expenses that it saves as a result of cancellation of the contract or the amount it earns, or wilfully fails to earn, through other use of its work effort. The Client's claims in the event that artop is responsible for termination remain unaffected. The Client must reimburse artop's expenses that result from commitments, including for personnel costs, that were entered into in connection with the contract and cannot be annulled prior to termination becoming effective.
- 2.5 If artop terminates for reasons for which the Client is responsible, artop is entitled to compensation of performance damages. In such case, artop has a claim to at least 50% of the compensation to which it is entitled for performance of the entire order, unless it is entitled to a higher compensation claim for Services already rendered. Both parties have the ability to demonstrate lower or higher damage or the suffering of no damage whatsoever.
- 2.6 Termination requires written form.

### 3 Cancellation by the Client

- 3.1 artop offers the Client the ability to rescind the contract (cancellation). Cancellation is possible under the following conditions: In the event of cancellation up to six weeks prior to the start of the Event, a cancellation fee of €50 is owed. In the event of cancellation up to four weeks prior to the start of the Event, 25% of the compensation is owed, and up to two weeks in advance, 50%. In the event of cancellation less than two weeks prior to the agreed start of the Event, artop charges 100% of the agreed compensation, based on the planned Event. The Client is at liberty to demonstrate that artop suffered no damage or lower damages.
- 3.2 In addition, in the event of cancellation, the Client must reimburse the fruitless expenses already incurred by artop, such as travel costs, literature expenses, etc.
- 3.3 In the event of failure to appear at the start of the seminar or Event, the full compensation is owed, unless the Client rescinded the contract in a permissible manner.

- 3.4 If – other than where the prerequisites required under Section III.4.2 are met for effective cancellation – a Client does not utilise the full Service, there is also no claim to a refund for the unused portion.
- 3.5 Cancellation is possible only in writing. The controlling point in time for cancellation by the Client is the point in time at which the declaration is received by artop.

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