

**Sturm und Drang GmbH | Terms & Conditions**

These Terms and Conditions ("Terms") shall exclusively govern business relationships between Sturm und Drang GmbH, Holzdammm 14, 20099 Hamburg (hereinafter: "SuD" or "we/us") and its/our clients. The most recent version of these Terms governing business relationships with clients shall apply to subsequent orders and services, even if not expressly referred to again in concluding the respective contract. Terms and conditions and contract offers of clients are hereby rejected. These may only be part of a contract with a client if and as specifically agreed on a one-time basis. These Terms do not apply to clients who are not business entities within the meaning of § 14 of German Civil Code (BGB)

**I. Contract bases**

1. A service contract goes into effect upon confirmation by clients of a binding offer or confirmation of proper order execution by us based on a binding client inquiry. The exclusive object of contract is the respectively agreed service.

2. Stated prices do not include VAT, which is charged extra at the applicable rate.

3. While we guarantee professional performance, the suitability of performance results for a particular purpose must be expressly agreed in writing (§ 126b BGB).

4. To the extent consulting and research services are to be provided as part of an order, we shall be free to design these at our prudent discretion unless an express agreement on the manner of execution is implemented. SuD determines methodologies and procedures at its discretion, except as otherwise agreed with clients.

5. We shall not be responsible for any desired economic/financial outcome—only the specific, agreed performance result. We are only responsible for fulfilling legal, regulatory or other requirements beyond the scope of the project content if and as contractually agreed in writing and only if the clients have provided us all information necessary for us to fulfill such requirements without us having to obtain additional qualifications or assistance, such as certifications or legal advice. The clients shall compensate us appropriately for additional work/expense required to fulfill such special requirements.

6. Subsequent changes to the object of contract and scope of performance must be approved by both parties. The clients shall pay an appropriate fee for additional services. Repeated analysis and strategy work and corrections constitute subsequent changes unless performed to remedy defects/deficiencies.

7. The place of performance shall be the location of our registered office. Our responsibility when transmitting data ends at the interface between our systems and the respective transmission network. We assume no liability for transmission networks and information technology systems which are not our responsibility, i.e. not operated by us.

8. Specific schedules agreed with clients are binding. Our written approval is required for the postponement or early termination of orders/contracts. This includes termination on the basis of § 648 BGB. Any approval granted of postponements or of early order/contract termination is contingent upon payment of reasonable compensation for additional expenditure we thereby incur. In case of postponements in particular, clients must reimburse us for resulting expenses and other negative effects/losses such as idle times due to short-notice cancellation. If a project cannot be carried out for reasons for which we are not responsible (including particularly reasons for which the customer is responsible, force majeure events, strikes, lockouts, illness on the part of clients or third parties, administrative acts and legal bans), we shall be entitled to compensation from the clients. The amount of such compensation claim shall be calculated as follows:

- a) if a project is canceled two (2) weeks or more prior to project commencement: 50% of the quoted fee plus non-cancelable third-party costs.
- b) if a project is canceled less than two weeks prior to project commencement: 75% of the quoted fee plus non-cancelable third-party costs.

In particular this shall still apply in case of termination by clients for cause, and also in case of the transaction being rendered without basis ("*Wegfall der Geschäftsgrundlage*"), as long as we are not culpable for such. The clients retain the right however to assert a lower amount of actual losses resulting from cancellation, as we retain the right to assert a higher amount of actual incurred losses, if and as documented in either case.

9. The clients shall reimburse us for additionally resulting expenses in the event a project has to be postponed due to inadequate or deficient cooperation on the part of the clients or other reasons for which we are not responsible, or if an ongoing project has to be interrupted for the above reasons. We will notify clients of the additional expenses incurred at the earliest opportunity.

**II. Special provisions for innovation and consumer culture research**

1. We prepare an offer for clients in the form of a project design proposal outlining the task, the service to be provided in fulfillment, the time required for research and the fee payable by the clients.

Our project proposal is intended exclusively as a basis for the clients' decision-making regarding awarding of the offered project contract. The proposal content may only be published or disclosed to third parties, wholly or in part, by mutual written agreement unless provisions are implemented to the contrary. Any other use of the project design proposal, including particularly the hiring of third parties, is prohibited.

2. Unless stated otherwise, we shall be bound for a period of two calendar months from the date the offer proposal is sent to clients.

3. Except as agreed in writing, SuD affords no guarantee of the exclusivity of specific product fields, research objects or research methods. If exclusivity is agreed, the duration thereof and any additional fee billable shall be specified.

Should it emerge after order placement that research cannot be conducted for methodological reasons unforeseeable by either the clients or by SuD that are beyond both parties' control, SuD shall inform the clients immediately. If no other method of execution has been agreed with the clients, we will fulfill the order by means of relevant methods of consumer, opinion and social research.

4. Should it emerge after order placement that research cannot be conducted for methodological reasons unforeseeable by either the clients or SuD that are beyond both parties' control, SuD shall inform the clients immediately. If the contract parties are unable to jointly arrive at a methodological solution to the problem, SuD shall be entitled to cancel the contract due to infeasibility.

5. Any involvement by the clients in research and reviewing research execution and results must be regulated under a separate agreement with the clients. Any additional costs thereby accruing shall be borne by the clients. SuD is obligated in such case – as in general – to preserve the anonymity of survey respondents and/or test subjects vis-a-vis the clients.

**III. Special terms for consulting services**

1. We provide consulting services exclusively on the basis of information provided by the clients. Any third-party data which has to be referenced for consulting services is utilized in the name of and on behalf of the clients unless otherwise agreed.

2. While we guarantee professional performance of consulting services with respect to the requirements outlined in the order contract, we offer no assurance of any specific consulting outcome.

**IV. Product testing and evaluation**

1. The clients shall indemnify us for and from any claims asserted against us, our employees or our vicarious agents for damages caused by a product to be tested or by supplemental materials or information of the clients, or by third parties acting on the clients' behalf. The clients shall reimburse us for costs and expenses incurred due to product defects to the clients' own products or products of a third party used in accordance with the order contract.

2. The clients shall bear responsibility for ensuring that all necessary chemical, medical, pharmaceutical or other technical testing/research/analyses of the test product have been performed. The clients shall bear responsibility for ensuring that the products are suitable for testing to be conducted, including if a necessary review (see above) was conducted which yielded no indication that the products can cause damage of any kind. The clients bear responsibility for ensuring that all information required by law or regulation and/or necessary for use of the products is provided to SuD for distribution to testing subjects.

3. The Product Liability Act furthermore applies.

**V. Third parties**

1. We may employ third parties for the provision of services at our prudent discretion. Our responsibilities under our contractual obligations remain thereby unaffected.

2. If the client requires particular subcontractors, SuD shall not be liable for the accuracy, completeness or quality of those subcontractors' work, barring breach of duty by SuD within the meaning of section XI.

**VI. Cooperation requirements**

1. Clients must provide us all information of material relevance to the order concerned and promptly notify us of any problems or change requirements arising. Instructions must be given sufficiently in advance to allow an appropriate amount of time for implementation. Instructions and information must be provided promptly so as to ensure an appropriate period of time for implementation remains.

2. Clients must notify us of all requirements and provide all background information relevant to the tasks assigned. Clients shall have no claims

over performance deficiencies if shortcomings in our performance could have been avoided through the provision of such information. We will inform clients of any information gaps which we identify.

3. Clients are to only to provide us documents and materials which may be used and edited in conformance with contract without violating any laws or third-party rights. Clients shall indemnify us for and from any resulting claims, assertions of third-party rights, damages, expenses and costs.

4. Clients must review products, services and preliminary and interim results provided without delay upon receipt in order to verify contract conformity, thereupon promptly accepting these. We are entitled to require interim acceptance of individual completed work elements/phases. Work results shall be deemed accepted unless rejected by the clients within seven (7) days stating compelling reasons, or if the clients use the work results. Complaints lodged thereafter shall be deemed subsequent change requests. Acceptance may not be refused on design or artistic-related grounds if no deviation is in evidence from a design outcome agreed in writing.

5. Service contract law applies to our innovation and cultural research and consulting services unless a work contract is agreed in writing for a specific case.

#### **VII. Dates**

1. Delivery/performance dates and deadlines are agreed based on SuD's projected capacity and are non-binding and subject to the occurrence of unforeseen circumstances and hindrances, including particularly force majeure events and non-delivery, wrong delivery or late delivery for which we are not at fault.

2. For increased expenditure due to factors within the clients' sphere of responsibility we may demand appropriate compensation in the amount of our actually incurred additional expense.

#### **VIII. Licenses**

0. Work results are available to clients for internal use only unless SuD agrees to their full or partial disclosure to third parties or their publication, or if SuD releases such due to the nature of the results or due to copyright or ownership (see section IX). These may not be reproduced, printed or saved, processed or distributed in documentation or information systems of any kind for the purposes of disclosure to third parties or publication without prior consent from SuD.

1. Publications naming SuD in relation to competitors is only permitted with the express consent of SuD following approval by SuD of the specific text to be published.

2. The use of research findings in preparation for formal legal proceedings (litigation, arbitration, administrative proceedings) is not permitted without the prior written consent of SuD – subject to overriding laws, administrative rules or court decisions.

3. If the clients wish to quote all or part of a research report, the text must be identifiable as quoted, citing the company SuD as author.

4. The clients release SuD for and from all claims asserted against SuD due to the clients' intentional or negligent illegal use of properly obtained results, including particularly through illegal or false advertising.

5. The clients must comply with usage restrictions applicable to any third-party material we provide to clients (e.g. stock photos the rights to which are held by third parties). We shall not be liable for usage right violations by clients.

6. Copyright marks on our works may not be removed. Appropriate reference shall be made to our authorship in all cases for any use of our works, in whole or in part.

7. - Even if exclusive usage rights - are granted, we are entitled to use the work results and related drafts/designs for our own promotional purposes, and to participate in competitions, including on the internet, in which client names are stated for reference and other purposes. Our obligation to uphold confidentiality remains unaffected.

#### **IX. Copyright**

1. SuD retains all rights accruing to SuD under the Copyright Act. Clients acknowledges that SuD is the exclusive holder of copyright and all other rights/protections to/on research concepts, proposals, methods, procedural techniques, graphic and visual representations developed by SuD. Clients' copyright to documents produced by them remains unaffected.

2. SuD is owner of materials and data generated in contract fulfillment, including for example storage media of any kind, questionnaires and other written documentation, unless otherwise agreed. The anonymity of surveyed individuals and test subjects may not be compromised by virtue of such an agreement.

3. SuD undertakes to retain data gathering documents for a period of one year and data carriers for a period of two years after delivery of the research report unless expressly agreed otherwise. Liability on our part is excluded for the destruction or deletion of data unless we are culpable

of willful intent.

4. SuD and clients agree to treat as strictly confidential all information/data shared between the parties in the course of order completion/contract fulfillment and to utilize such information/data exclusively for purposes of order contract performance. Employees are to be bound to such obligation accordingly. This obligation extends to the period after order completion/contract fulfillment. The obligation does not apply to information which the respective counterparty can demonstrate was known prior to its receipt or became publicly known after its receipt through no fault of the receiving party.

#### **X. Fees and billing**

1. Fees are as agreed for the specific contract in question.

2. Costs and expenses for travel necessary in connection with the contract are payable by clients at actually incurred cost.

3. Clients are also responsible for costs for implementing clients' specific requirements which were not agreed upfront as part of contract awarding, including particularly involvement in certifications, compliance measures, training sessions, providing information and documentation required for regulatory compliance by clients and in client audits, including activities performed by partner firms whom we have legitimately involved in the provision of services. Our fees include the expenses we incur through such client activities and our internal time and staff cost (internal staff costs as actually accrued subject to a minimum person-hour rate of EUR 150.00 plus VAT). We shall only be required to implement clients' requirements and/or participate in client activities if these are agreed as part of contract fulfillment or thereafter if we have committed to do so.

4. All prices and fees stated are net, i.e. VAT is charged extra at the applicable rate.

5. We are entitled to require reasonable fee installments payable at order placement and during the performance period, especially when interim acceptance is agreed for service segments/work portions with interim invoicing. In the event the clients remain in arrears with payment of invoices after receiving a demand notice or we should become aware of circumstances casting significant doubt as to the clients' liquidity (e.g. filing for insolvency proceedings, negative credit rating from a recognized business credit agency), we shall be entitled to bill for all services provided up to that point and withhold performance until all of our claims connected with business relationship are completely fulfilled. We are furthermore entitled to make continuation of performance contingent upon payment of an appropriate installment in the amount of projected outstanding fees and expenses payable.

6. Our invoices shall be due and payable in full within 14 business days of invoice receipt. An invoice shall be deemed accepted if the clients do not reject it in writing within 30 days of invoice receipt, stating objective, verifiable reasons. The due date remains thereby unaffected.

7. If we are unable to completely fulfill order contracts for reasons not our fault (including particularly termination by the clients as per § 649 BGB – as permissible), the clients shall owe us compensation for services not renderable in the amount of 75% of the fees that would have been payable for the specific service elements concerned. Saved expenses will be deducted from the amount if the expenses in question are expressly an element of service provision and were actually saved (such as travel costs).

8. Offsetting is only permitted for claims which are uncontested by us or have been upheld by legal judgment. Rights of withholding are only permissible if the respective counter-claim stems from the same contractual relationship.

9. The clients shall be responsible and bear costs for any amounts or contributions payable to collecting societies and the German Artists Social Security Fund.

#### **XI. Liability**

1. We are no longer responsible in any way for the correctness of documents once they have been approved by the clients. We shall not be liability for errors overlooked by clients.

2. We shall not be not liable for faulty analysis due to the use of incomplete or incorrect data unless we are responsible for such incompleteness or inaccuracy. When data analysis permits more than one result, our selected alternative does not represent a deficiency unless we should culpably bring out an objectively incorrect result. We shall not be liable for new empirical evidence, scientific knowledge or research findings becoming generally known after contract conclusion.

3. We shall not be liable for the permissibility or registerability of work results with respect to competition or trademark law, nor for the suitability thereof for accruing intellectual property or other protective rights.

4. SuD shall not be liable for the infringement of any third-party intellectual property rights through SuD work results and use thereof, in particular for the clients' business purposes, unless research concerning

prohibitive protective rights with validity in the respective area has become part of the order contract and has been paid for separately.

5. Clients must notify us immediately in writing upon identifying a deficiency in our performance, explaining the problem in an understandable way and specifically outlining all circumstances relating thereto, and shall grant a reasonable period for remediation thereof. Clients shall only have claim to contract withdrawal or damages for legitimate defect claims reported as agreed after two failed attempts at remediation or after our final refusal to provide remediation.

## **XII. Other liability**

Our liability in cases of intent or gross negligence shall be governed by the statutory provisions. Our liability to clients otherwise is limited to cases of breach of a primary contractual obligation (cardinal obligation), of loss of life or bodily injury/harm, health, and of non-fulfillment of any extended warranties/guarantees. Primary contractual obligations are obligations which must be fulfilled for the contract purpose to be realized, and which the clients as contract party may generally rely on being fulfilled. In case of slight negligence in breach of cardinal obligations, our liability shall be limited to the typical and foreseeable amount of damage, capped at the total amount of remuneration payable under the contract for which liability exists. Liability for lost profits is excluded. The foregoing liability limitations shall also apply for the benefit of our employees, vicarious agents, board members and statutory company representatives, as well as to expense reimbursement claims.

## **XIII. Confidentiality and Data Protection**

1. We agree to uphold non-disclosure regarding business and operational secrets of the clients and any information/data designated as confidential of which we become aware in connection with contract fulfillment.

2. SuD performs services in conformance with the General Data Protection Regulation (GDPR) and other applicable data protection laws. Except as otherwise agreed in writing, there are no obligations to disclose the identity of test subjects, experts, research participants or to provide material which renders such individuals identifiable (e.g. film or video recording). Even if a corresponding agreement is in place, disclosure must always be in conformity with applicable legal requirements, including particularly the holding of necessary official permits. A relationship of trust with our survey partners is of key importance to our work. Clients agree, in the event we should disclose the identity of a test subject/expert/research participant in an individual case or if the clients should become aware of the identity of such persons in connection with our work, not to contact such persons directly without our prior consent granted in text form.

3. The clients shall compensate us for additional expenses accruing in order to accommodate a request by the clients to provide or make available personal data in a manner requiring the amendment of existing agreements (such as additional costs to obtain consent and conclude necessary agreements). If SuD is to process personal data on behalf of clients as per Art. 28 GDPR, the clients shall be responsible for concluding a corresponding processing agreement. Upon request by clients SuD will provide a suitable model agreement, for which SuD however assumes no liability regarding its legal validity.

4. Clients are responsible for ensuring that all natural persons they involve in the contractual and service relationship as per Art. 13 GDPR are informed of the processing of personal data by SuD and of the identity of SuD.

## **XIV. Concluding provisions**

1. Where written form or a written agreement are required for declarations by the parties under these Terms & Conditions, electronic form (text form), such as e-mail, shall suffice.

2. The law of the Federal Republic of Germany applies; the United Nations Convention on Contracts for the International Sale of Goods (CISG) is disappplied.

3. The invalidity of individual provisions of these Terms & Conditions shall not affect the validity of the remaining provisions.

4. The place of performance and of jurisdiction for business entities, legal persons under public law and clients without a general place of jurisdiction in Germany shall be Hamburg.

These Terms & Conditions were last amended in February 2022.

**STURM und DRANG GmbH**, Holzdamm 14, 20099 Hamburg  
Hamburg, Commercial Register record HRB 98372 kept by Hamburg  
Local Court

Managing Directors: Stefan Baumann, Europa Bendig