

General Terms & Conditions of Business for Training & Consulting Services



General Terms and Conditions of Business (GTCs) of baramundi software GmbH, Forschungsallee 3, 86159 Augsburg, Germany, hereinafter referred to as "baramundi", for the provision of training and consulting services.

§ 1 General

(1) The following General Terms and Conditions of Business shall apply to the business relationship between baramundi and the Customer, where baramundi provides training and consulting services for the Customer. Other services, such as the provision or individual adaptation of software or other services, shall not form part of this contractual relationship. If baramundi offers such services, they must be separately agreed. The version valid at the time of contract conclusion shall be authoritative in each case.

Even if repeat reference is not made to these GTCs when similar contracts are concluded, baramundi's General Terms and Conditions of Business in the version provided to the Customer when the Customer submits its declaration shall apply exclusively, unless otherwise expressly agreed between the contracting partners.

(2) For the purpose of these General Terms and Conditions of Business, "entrepreneur" means any natural or legal persons or partnerships with legal personality which, when concluding the legal transaction, are acting in the exercise of their commercial or independent professional activity. For the purpose of these General Terms and Conditions of Business, customers are exclusively entrepreneurs.

(3) Individual contractual agreements shall take precedence over these General Terms and Conditions of Business. Divergent, opposing or supplementary general terms and conditions of business shall not become part of the contract unless their validity is expressly approved.

§ 2 Contract conclusion

(1) The Customer may commission baramundi to provide training or consulting services by e-mail, by fax or in writing. The contract shall be entered into when the Customer places the order with baramundi and baramundi confirms acceptance of the order.

(2) In placing the order the Customer shall make a binding declaration that it wishes to obtain training or consulting services.

(3) Unless otherwise separately agreed between the parties, baramundi shall be entitled to accept the contractual offer contained in the order placement within one week of receipt. Acceptance may as a whole be declared by means of a written declaration of acceptance or by another form of declaration through which the willingness to accept the order which has been placed is discernible. As a rule, a legal obligation shall materialize when a contract is signed by both parties or when baramundi issues a written order confirmation.

(4) Separate contracts must be concluded for other types of deliveries and services (e.g. provision of software, software maintenance).

§ 3 Object of the contract

(1) The object of the order placed with baramundi is the agreed activity within the framework of training and consulting services, not the achievement of specific personal or economic success.

Where the Customer uses baramundi software within the context of Software Asset Management (SAM, e.g. baramundi's bLicense solution), it is explicitly pointed out that no advice shall be provided concerning the legally correct or commercially viable licensing of the Customer's software assets.

As a result of the order being placed and its acceptance, baramundi shall undertake to provide consulting, supply training material including any planned work resources, in the agreed scope, to monitor training success, where applicable, and to give the Customer all instructions which it recognizably requires in order to benefit from the training or consulting offer.

(2) Unless a separate agreement has been made, the order shall in principle be placed with baramundi, not with a certain employee of baramundi. Selection of the employees who provide the services shall be at baramundi's discretion. During the clerical process, the respective employees shall be assigned by baramundi in accordance with the company's internal organization. Based on its own internal company organization, baramundi shall endeavor to comply with the customer's wishes for the order to be executed by certain employees. However, the Customer shall not have any entitlement in this respect. In addition, baramundi may – where it considers this necessary – use qualified subcontractors. The Customer may only demand that baramundi no longer uses a subcontractor for which it has already given its consent for further individual orders if it states an objective reason. The Customer herewith gives its consent, which shall be revocable at any time, to use a subcontractor.

(3) baramundi may be obligated to take account of the Customer's requests for changes with regard to implementation of the training or with regard to the consulting service if this is reasonable for it in terms of its operational capacities, its professional orientation, especially as regards the time and effort involved and scheduling, and also taking into account the Customer's interests.

Where a review of possible changes or realization of the required changes affects the contractual terms, especially as regards baramundi's effort and expense or the time schedule, the parties shall agree an appropriate adjustment of the contractual terms, especially as regards remuneration and scheduling. Unless otherwise agreed and provided there are no direct associated detrimental effects for the Customer, baramundi shall in such cases continue its activities in the original scope while safeguarding the Customer's interests, until such time as the contract is adapted.

(4) Unless explicitly stated within the context of the offer, the Customer's travel and accommodation expenses shall as a rule not be included in the price quoted by baramundi. Drinks and snacks shall be provided during the training event.

(5) Unless otherwise separately stated, the fee for the respective training which has been booked shall include participation in the event and the training documents.

(6) Unless otherwise separately stated, the fee for the respective consulting service which has been booked shall include implementation of the respective service and any necessary documents.

§ 4 Accompanying materials

As a rule, all accompanying materials or other work resources for training or consulting services shall be subject to copyright protection. Where the Customer is provided with written accompanying material for the respective services booked by the Customer, such material may not be duplicated, distributed or made publicly accessible without baramundi's consent.

§ 5 Confirmation of participation

The Customer may be issued with participation certificates confirming participation in training courses. Ultimately, recognition of participation in specialist training courses as compulsory professional training for specific professions remains at the discretion of the competent chambers, authorities or agencies for the respective profession.

§ 6 Consulting services

(1) Unless otherwise agreed in an individual contract, baramundi shall provide consulting services during normal business hours (currently Monday to Friday from 9.00 a.m. to 5.30 p.m.).

(2) As a rule, baramundi employees working on site shall not be subject to the Customer's instructions.

(3) Consulting services shall be billed on the basis of man-day rates, based on an eight-hour day, in accordance with the underlying consulting offer. For services on Saturdays, Sundays or statutory public holidays, a surcharge of 100% shall be applied to the man-day rate.

§ 7 Remuneration

(1) The prices quoted by baramundi shall be binding. In principle, prices are exclusive of the statutory rate of value added tax and any other duties.

(2) Customers may generally pay the remuneration owed on account.

(3) Unless where applicable otherwise separately agreed between the parties, the Customer must pay the total price within 14 days of receiving the order confirmation by e-mail/the invoice. After expiry of this period, the Customer shall be deemed to be in default. The Customer must in principle recognize the agreed payment methods. During the period of default, the Customer shall pay interest of 9 percentage points above the base interest rate on the monetary debt. baramundi reserves the right to claim higher damages for default.

Subject to more far-reaching claims, baramundi shall, in the event of default in payment, be entitled to temporarily block access to all or some of the agreed services. The Customer shall be informed of this by e-mail without delay.

(4) The Customer shall have a right of set-off only if its counterclaims have been established by a court of law, have been acknowledged or have not been contested by baramundi. This shall not affect the Customer's right of set-off against contractual and other claims resulting from the initiation or implementation of this contractual relationship. The Customer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

(5) baramundi shall be entitled to provide partial delivery, where partial delivery is reasonable for the Customer, taking into account baramundi's interests. The Customer shall not incur any additional costs as a result.

§ 8 Withdrawal and right of retention

(1) When booking training and consulting services the Customer shall in principle not have any right of revocation. All orders and bookings are, in principle, binding.

(2) If the Customer is prevented from participating in a training course, it may nevertheless withdraw from the contract free of charge up to 4 weeks before the training is due to start. In the event of withdrawal less than 4 weeks and up to the 14th calendar day before the training is due to start, 25% of the training fee shall be charged as a cancellation fee; the remaining residual amount shall be reimbursed without delay. In the event of withdrawal within a period from less than the 14th calendar day up to 72 hours before the training is due to start, 50% of the training fee shall be charged as a cancellation fee; the remaining residual amount shall be reimbursed without delay. In the event of withdrawal less than 72 hours before the training is due to start or if the participant simply fails to appear, the full training fee shall be payable.

(3) Up to and including the third calendar day prior to the training or the agreed date of the consulting service, the Customer may transfer its entitlement to participate to a suitable replacement participant (who must be named by the Customer in writing), or the Customer may arrange to rebook.

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The Customer may not itself otherwise rebook to a subsequent date of a corresponding training or consulting service.

(4) All cancellations or designations of a replacement participant pursuant to para. 2 or 3 must be made in writing, by post, by fax or by e-mail, and must be addressed to baramundi.

(5) baramundi shall reserve a right of retention with regard to the provision of its performance if the agreed remuneration has not been paid by the start of the training course or the consulting service. In such cases the services may not be used initially.

(6) baramundi shall provide the services on the dates agreed with the Customer in each individual case. Any entitlement to implementation of the training or consulting service shall cease if it cannot take place due to obstacles to performance for which baramundi is not responsible. Obstacles to performance for which baramundi is not responsible shall include cases of force majeure. In the event of impossibility, baramundi shall also be exempt from its contractual obligation. In such cases the Customer shall be informed immediately and any fee which has already been paid shall be reimbursed.

baramundi shall be liable for claims for damages or for compensation for unnecessary expenditure incurred by the Customer as a result of the cancellation only within the framework of the limitation of liability pursuant to § 9 of these General Terms and Conditions of Business.

(7) Individual training courses may be canceled if there are too few participants or for other important reasons (e.g. if a trainer is unavailable). The participation fee shall be refunded in such cases. Any more far-reaching claims shall be excluded, except in cases of intentional or grossly negligent conduct on the part of employees or other vicarious agents of baramundi software GmbH.

§ 9 Limitations of liability

(1) In the event of slightly negligent breaches of duty, liability shall be limited to the average foreseeable, direct damage typical for the contract. This shall also apply in the event of slightly negligent breaches of duty on the part of baramundi's statutory representatives or vicarious agents or persons employed by baramundi in the performance of its obligations. baramundi shall not be liable for slightly negligent breaches of minor contractual obligations. In contrast, baramundi shall be liable for a breach of legal positions of the Customer which are material to the contract. Legal positions which are material to the contract are legal positions which the contract must guarantee to the Customer according to the content and purpose of the contract. baramundi shall also be liable for a breach of obligations the fulfillment of which makes due performance of the contract possible in the first place and on the fulfillment of which the customer may rely.

(2) The above limitations of liability shall not affect claims of the Customer involving warranties and/or product liability. Furthermore, the limitations of liability shall not apply in the event of malicious intent, in the event of a breach of essential contractual obligations or in the event of physical injury to, damage to the health of or death of the Customer which is attributable to baramundi.

§ 10 Confidentiality

baramundi and its employees undertake to maintain strict confidentiality in respect of all information or personal secrets of the Customer which become known to it in connection with the order. Within the context of order processing (e.g. payment processing), it may become necessary to forward certain customer data to third parties who are not involved in implementation of the order. Such third parties shall be obligated to treat the data received in confidence and to use said data only for the purpose of the service and the business transaction.

§ 11 Data privacy

(1) The contracting parties shall observe the applicable data protection regulations, in particular those valid in Germany, and shall bind separately their employees employed in connection with the contractual relationship and its performance to data secrecy – unless they are already generally obliged in this regard.

(2) If the Customer collects, processes or uses personal data, it shall be responsible for ensuring that it is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify baramundi from claims by third parties in the event of an infringement.

(3) Personal data which baramundi collects in the course of performing its contractual obligations shall be dealt with in confidence and shall be collected, processed and used only to the extent that this is permitted by reason of provisions of data protection law or that the Customer consents thereto.

§ 12 Amendment of these General Terms and Conditions of Business

(1) baramundi reserves the right to amend these General Terms and Conditions of Business at any time while observing an appropriate period of notice of at least six weeks. baramundi shall inform the Customer of a corresponding amendment in text form.

(2) If the Customer does not object, the amended Terms and Conditions of Business shall be deemed to have been accepted. If an objection is made, the contract shall continue to apply unchanged, with the existing terms and conditions of business; baramundi shall, however, be entitled to pronounce ordinary termination in accordance with the contract.

§ 13 Final provisions

(1) The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on the International Sale of Goods shall not apply.

(2) Where the Customer is a merchant, a legal entity under public law or a special fund under public law, the legal venue for all disputes arising under the present contract shall be the court with jurisdiction for baramundi's registered office, unless an exclusive legal venue applies. baramundi shall, however, also be entitled to bring an action against the merchant at his place of residence or place of business. This shall not affect jurisdiction based on an exclusive legal venue.