Conditions of use d.vinci systems

1. General information

a) The object of these Conditions of Use is the granting of rights of use to one of the following software products of d.vinci HR-Systems GmbH (hereinafter "d.vinci"):

- d.vinci Applicant Management
- d.vinci Onboarding

These software products are hereinafter described as the "d.vinc System", "System", "Software" or "Application". Provided nothing to the contrary is explicitly specified, these Conditions of Use apply equally to all the aforementioned d.vinci Systems regardless of whether one or more of these Systems are used by clients. The d.vinci Systems are aimed exclusively at businesses as per section 14 BGB. Therefore, agreements with consumers will be rejected.

b) These Conditions of Use are deemed to take precedence over any agreements made individually with clients.

c) Any differing, contradictory or supplementary General Terms and Conditions of the client shall not become constituents of agreements, even in the event of any awareness of d.vinci thereof, unless their applicability is explicitly agreed in writing by d.vinci.

2. Information duties of the client

The client must report any amendment to their contract-related or invoice-relevant data within four weeks.

3. Provision of d.vinci Systems and storage space for Application data, hotline

a) d.vinci shall from the commencement of the agreement provide the Software on a server it operates for clients in the relevant version approved by d.vinci, as well as storage space to deposit the Application data of the client for use pursuant to the following regulations. Application data is deemed to be documents submitted by applicants and new employees, as well as the data generated within the scope of processing job applications and recruitment processes in the Systems.

b) The client shall not have any entitlement to the assignment of a particular server for their sole use. Instead d.vinci can, within the scope of the performance of the server, assign servers for the simultaneous use by a number of clients, provided the personal data of clients is stored in independent databases.

c) The Application data shall be backed-up on each calendar day. The client is responsible for compliance with statutory retention periods.

d) The client requires an internet connection to access the d.vinci System as well as a browser of the types Microsoft Edge, Internet Explorer, Chrome, Safari or Firefox in the latest or at least the previous version, provided these continue to be supported by the manufacturer.

e) d.vinci provides access to the d.vinci System by means of an https-encrypted connection.

f) In order to solve user problems in connection with the Software d.vinci provides a hotline on telephone number +49 40 37 47 99 10 as well as by email to service-desk@dvinci.de in the period 8 am to 6 pm CET, from Monday to Friday, with the exception of nationwide public holidays in Germany.

4. Availability of the d.vinci System and access to Application data

a) d.vinci owes an availability of the d.vinci System and the Application data at the handover point (interface to the Internet of the computer centre in which the server on which the d.vinci System for the client is installed) of 99% per system and contractual year. The Parties understand availability to mean the technical usability of the Application and the Application data at the handover point.

b) The Application and/or the Application data shall also be deemed to be available in the event of

   a. malfunctions to the parts of the technical infrastructure or the Internet that are not provided by d.vinci or its vicarious agents that are required for the implementation of the d.vinci System;

   b. malfunctions or other incidents that are not (partially) caused by d.vinci or one of its vicarious agents;

   c. planned non-availabilities for the purpose of maintenance of the server and/or the Software at low-use times, from Monday to Friday between 6 pm and 6 am CET, as well as at weekends and nationwide public holidays in Germany.

5. Service Level Agreement

a) The Parties agree the following error classes for any faults to the performance of d.vinci:

   a. Error class 1: Faults that make any use of the Software impossible. The Software either cannot run at all or aborts its function arbitrarily.

   b. Error class 2: Faults that make use of the Software significantly more difficult, without making use impossible.

   c. Error class 3: Faults that do not make use of the Software significantly difficult.

b) As soon as d.vinci becomes aware of a fault, it shall classify the fault into one of the preceding error classes at its discretion. d.vinci shall then take the following actions, depending on which error class applies:

   a. Error class 1: Immediate commencement of the work to rectify the fault during working time, using all the resources available to d.vinci, insofar as is financially reasonable.

   b. Error class 2: Immediate commencement of the work to rectify the fault during working time.

   c. Error class 3: Rectification of the fault during the normal course of business within an appropriate deadline.

6. Client rights of use to the d.vinci System, rights of d.vinci in the event usage authorisation is exceeded

a)   The client shall receive a simple right of use for the d.vinci System that is restricted to the term of this Agreement. The client may use the preceding rights of use within its group of companies (group, consolidated companies, subsidiaries etc.). This is conditional on that d.vinci is first informed about the expanded use. Payment will subsequently be adjusted accordingly. The total number of employees shall be authoritative for calculating the payment.

b)   The client shall take the necessary precautions to prevent unauthorised use of the d.vinci System by utilising its user names and passwords. For this purpose, the client shall protect the data by taking suitable and usual actions against unauthorised access. The client shall inform d.vinci without delay if there is any suspicion that the access data and/or passwords could have become known to unauthorised persons.

c)   In the event of misuse of the user names and/or passwords assigned to the client, the client shall bear the burden of proof that they were not responsible for this misuse.

d)   The client shall be liable in that they do not use the d.vinci System for illegal purposes.

e)   If the client breaches the preceding regulations for reasons for which the client is responsible, d.vinci can block the access of the client to the Application or the Application data, if such a block can provably discontinue the breach. Provided it is reasonable for d.vinci, d.vinci may demand that the client remedies the breach within an appropriate deadline.

f)   If the client breaches the preceding paragraph e) d.vinci shall be entitled to erase the data or Application data thus affected without delay.

g)   If despite an appropriate written warning issued by d.vinci the client continues to or repeatedly breaches the preceding regulations and the client is responsible for such breaches d.vinci may terminate the Agreement immediately without compliance with any notice period.

h)   If the client is responsible for the breach of duty d.vinci may demand compensation.

7. Payment

a)   The client shall pay the contractual remuneration agreed for the package it has commissioned each calendar year. The agreed payment shall be due for each commenced month of the term of the Agreement from the time of provision (each day of the calendar month of provision). If the client has legitimately terminated the Agreement without notice the payment made for the upcoming periods of time shall be reimbursed pro rata.

b)   d.vinci is entitled to send invoices in digital form to an email address of the client that has been notified to d.vinci.

c)   d.vinci is entitled to increase the agreed payment once a year at the end of the calendar year with a term of notice of three calendar months. In this case the client shall have a special termination right at the point in time of the price increase, which must be exercised within four weeks of receipt of the information about the price increase. d.vinci shall indicate this right of termination to the client together with every announcement.

8. Cooperation with contractual partners, general obligations to cooperate

a) The Parties agree that the success of the project depends largely on good cooperation between those involved and that one contracting Party alone cannot reach the success of the project without the cooperation of the other Party. Therefore, both Parties agree to encourage the achievement of the targets pursued with this project with the care required in the course of prudent business and with their best efforts. For this purpose, they shall in particular punctually meet the obligations to cooperate incumbent on them and in the required quality and shall consult on and coordinate the conduct of the relevant tasks with each other.

b) The client shall provide suitable workplaces for our employees free of charge for work that is carried out on the premises of the client and shall grant these employees access to the equipment necessary for them to carry out their work.

c) The client shall guarantee for its IT department and test users sufficient time reserves for communication with d.vinci, to attend workshops, to coordinate and approve project documents, to conduct tests as well as to set up the System and the remaining cooperation work.

d) d.vinci is entitled to name the client's logo on the website www.dvinci.de as a reference in order to refer to the common business relationship.

9. Project management - division of tasks and cooperation

a) The Parties can each specify to each other a contact as the project manager to coordinate tasks for joint project management.

b) The contact specified and - in the event of their absence - their deputy is/are not authorised to represent the relevant Party in the conclusion of legal transactions.

10. Client obligations

The client is obliged,

a) not to interfere or allow interference in the Software and other Systems operated by d.vinci outside usual use;

b) to indemnify d.vinci from third-party claims that relate to illegal use of the d.vinci System by the client or that result from disputes under data protection law, copyright law or any other legal disputes that are associated with use of the d.vinci System;

c) to oblige its authorised users to comply with the applicable provisions of this Agreement;

d) to ensure that personal data processed by means of the Software is and may be processed in accordance with statutory requirements;

e) to report to d.vinci any defects to contractual performances, in particular defects to the d.vinci System, without delay. If the client fails to provide punctual notification for reasons for which it is responsible this shall be deemed to be contributory cause or contributory negligence. Insofar as d.vinci was not able to provide assistance as a result of the omission of or delay to the notification, the client shall not be entitled to reduce the agreed payment in full or in part, to demand compensation for any loss incurred as a result of the defect or to terminate the Agreement without compliance with a notice period. The client must demonstrate that it was not responsible for the omission of the notification.

11. Data protection

The Parties shall conclude a supplementary agreement with regard to the processing of personal data.

12. Change requests / Change management

a) The client may contribute to expansions of and improvements to the Software that go beyond the configuration of the Software by directing its wishes for improvements to the Service Desk.

b) d.vinci shall review whether the suggestions will provide benefits for / improvements to the entire System and shall report the result of the review to the client.

c) The client shall not have any entitlement to change the Software at its request.

d) d.vinci shall continuously develop the Software further. New versions shall be announced and automatically installed for all clients.

e) d.vinci provides an information service (Service Desk) with new features.

13. Liability, limitations of liability, limitation periods for claims

a) The Parties shall be liable to each other without limitations in the event of intent and gross negligence, or in the event of death, personal injury or injury to health for all damage caused by them or their legal representatives or vicarious agents.

b) Otherwise one Party shall only be liable insofar as it has breached a material contractual obligation. Material contractual obligations are those on whose fulfilment the other Party may regularly rely and which serve particularly to reach the targets of this Agreement. In this regard liability is limited to compensation of the foreseeable typically occurring losses, however, up to a maximum of the annual fee for use per contract year.

c) Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) remains unaffected.

d) Claims due to liability and defects are subject to a limitation period of three years. This does not apply to claims resulting from death, personal injury or injury to health, in the event of malicious acts, in the event of the assumption of a warranty, as well as to claims pursuant to the German Product Liability Act.

14. Term, termination

a) The contractual relationship commences when the Agreement takes effect and is concluded indefinitely.

b) Ordinary notice of termination of the contractual relationship may be given by both Parties with a notice period of six months to the end of a calendar month in writing or text form.

c) Notwithstanding the preceding regulation d.vinci may terminate the Agreement after issuing a warning if the client is two months in arrears with the payment of the amount of the payment owed.

15. Erasure of data on the termination of the Agreement

d.vinci shall erase the client's data insofar as it is no longer part of data backups. Backed-up data will be erased with the backup. If the client wishes to export data, it can carry this out itself before the end of the Agreement by means of the API software provided or commission d.vinci to do so with costs.

16. Secrecy

a) The Contracting Parties are obliged to retain secrecy over all the information received from this contractual relationship about the other contractual partner. In addition to operational organisation procedures this applies in particular to all information that is explicitly described or labelled as confidential or that obviously involves operational and business secrets. Insofar as this is not required for the purpose of the Agreement no records may be made nor notifications provided to third parties. Any further transfer of information to third parties or any other form of disclosure requires the prior written consent of the other Party.

b) It is prohibited for the other Party to use business secrets it has received for purposes other than those of the Agreement, directly or indirectly, for its own or third-party purposes, or commercially, or to apply for any property rights in this connection.

c) Such information is excluded from secrecy that

a. at the time of transmission was generally known or became generally known afterwards, without any culpability of the other Party,

b. was already legally known by the other Party at the time of disclosure,

c. was made known by a third party that was not subject to a secrecy obligation after the time of transmission without the third party being subject to any secrecy obligation,

d. was developed independently of the disclosed information by the other Party or one of its affiliated companies, which is provable by viewing written documents, or was legally acquired without restrictions from another source that has the right to provide this information, or

e. must be disclosed due to mandatory legal, official or judicial regulations or orders. In the latter case, however, the other Party must be informed in writing in advance, insofar as is permissible.

d) Business and operating documents shall be stored so that third parties cannot view these. These documents shall be returned to the counterparty after the end of the Agreement provided there is no statutory retention obligation.

e) The secrecy agreement shall not be affected by any termination of the Agreement. The obligations that result from the secrecy agreement shall expire five years after the end of or notice of termination of the Agreement.

17. Final provisions

a) German law shall apply to this contractual relationship under the exclusion of UN sales law.

b) There shall be no collateral agreements outside these Conditions of Use and its annexes. Any amendments to or supplements of these Conditions of Use and its annexes shall only be effective in writing.

c) In the event of any contradictory regulations or regulations that differ from each other between the tender commissioned, the agreement for processing, and these Conditions of Use, the following precedence applies:

   a. Commissioned tender d.vinci
   b. Agreement for processing
   c. Conditions of use d.vinci

d) Any ineffectiveness of individual provisions of this Agreement shall not impair the validity of the remaining contents of the Agreement.

e) In the event of a dispute arising from this Agreement, the Parties shall before conducting contentious proceedings (lawsuit) be obliged to conduct arbitration proceedings as per the arbitration regulations of the Hamburger Schlichtungsstelle für IT-Streitigkeiten (Hamburg Arbitration Centre for IT Disputes) in the version applicable at the point in time arbitration proceedings are initiated. The arbitration proceedings are intended to settle the dispute in full or in part, provisionally or conclusively.

f) If the Customer is a business person, legal entity under public law, or a special public body, the court of jurisdiction for all disputes arising from this agreement is the court with competence at the business address of d.vinci, provided there is no exclusive court of jurisdiction. The same applies if the client has no general court of jurisdiction in Germany, or if its place of residence or domicile is unknown at the time a suit is filed.