Terms of use for d.vinci systems

General

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

- d.vinci Applicant Tracking
- d.vinci Onboarding

These software products are hereinafter referred to as "d.vincisystem", "system", "software" or "application". Unless explicitly described otherwise, these terms of use shall equally apply to all d.vinci systems mentioned above, irrespective of whether the customer uses one or several of these systems. The d.vinci systems are exclusively intended for entrepreneurs within the meaning of Article 14 of the German Civil Code (BGB) and we, therefore, do not accept orders from consumers.

b) The individual agreements concluded with the customer shall take precedence over these terms of use.

c) Even if d.vinci is aware of conflicting, supplementary or differing standard terms and conditions of the customer, such terms will not form an integral part of the agreement, unless d.vinci has expressly agreed to their validity in writing.

1. Information obligations of the customer

The customer shall promptly notify d.vinci of any changes to his contract or invoice-related data.

2. Provision of the d.vinci system and storage space for application data, hotline

a) d.vinci shall make the software in the respective version released by d.vinci as well as storage space for the filing of application data of the customer available for use from the commencement date of the agreement on the server operated by d.vinci in accordance with the following provisions. Application data includes the documents submitted by applicants and new employees as well as the data that is generated in the systems during the application and recruitment processes.

b) The customer is not entitled to a specific server for its sole use, but d.vinci may, taking into account the capacity of the server, make it available for use to a large number of customers at the same time, provided that the personal data of the customers are stored in independent databases.

c) The application data shall be backed up every calendar day. The customer shall be responsible for compliance with statutory retention periods.

d) To access the d.vinci system, the customer will require an internet connection and the latest or at least the previous version of a browser such as Internet Explorer, Chrome, Safari or Firefox.

e) d.vinci provides access to the d.vinci system via an https-encrypted connection.

f) To solve user problems in connection with the software, d.vinci offers a hotline at +49 40 37 47 99 10 as well as by email at service-desk@dvinci.de between 08:00 and 18:00 CET, from Monday to Friday, except on German national public holidays.

3. Availability of the d.vinci system and access to application data

a) d.vinci shall ensure that every d.vinci system and the application data at the transfer point (interface to the internet of the computer centre is located in which the servers on which the d.vinci system is installed for the customer) are available 99% of the contract year. By availability, the parties understand the technical usability of the application and the application data at the transfer point.

b) The application and / or the application data shall also be considered to be available during
   a. malfunctions in parts of the technical infrastructure or the Internet required for the execution of the d.vinci system that are not provided by d.vinci or its vicarious agents;
   b. disruptions or other events not caused by d.vinci or any of its vicarious agents;
   c. Planned unavailability for maintenance of the server and/or software at off-peak times, Monday to Friday between 18:30 and 06:00 CET as well as at weekends and German national public holidays.

4. Service level agreement

a) The parties agree on the following error classes for any defects in the services of d.vinci:
   a. Class 1 error: Defects that render any use of the software impossible. The software is either not running at all or aborts its function arbitrarily.
   b. Class 2 error: Defects that make it much more difficult to use the software without making it impossible.
   c. Class 3 error: Defects that do not significantly impede the use of the software.

b) As soon as d.vinci becomes aware of a defect, it shall, at its reasonable discretion, classify it into one of the above error classes. d.vinci shall then take the following measures depending on the error class in question:
   a. Class 1 error: Immediate commencement of work to remedy the defect during working hours using all resources available to d.vinci, as far as this is economically reasonable;
   b. Class 2 error: Immediate commencement of work to remedy the defect during working hours;
   c. Class 3 error: Remedy of the defect in the ordinary course of business within a reasonable period of time;

5. Customer's rights to use the d.vinci system, d.vinci's rights if the customer exceeds the rights of use granted to him

a) d.vinci shall grant the customer the non-exclusive (non-sublicensable and non-transferable) right to use the d.vinci system limited in duration to the term of this agreement.

b) The customer shall take the necessary precautions to prevent the use of the d.vinci system by unauthorised persons using his user IDs and passwords. For this purpose, the customer shall implement suitable and customary measures to protect the data against unauthorised access. The customer shall inform d.vinci immediately if there is any suspicion that the access data and/or passwords may have become known to unauthorised persons.

c) In the event of misuse of the user IDs and/or passwords provided to him, the customer shall bear the burden of proof that he is not responsible for this misuse.

d) The customer is liable for not using the d.vinci system for unlawful purposes.

e) If the customer breaches the above provisions for reasons for which he is responsible, d.vinci will be entitled to block the customer's access to the application or the application data if this action can demonstrably remedy the breach. In so far as is reasonable and practicable for

d.vinci to do so, it shall ask the customer to remedy the breach within a reasonable period of time.

    f) If the customer is in breach of paragraph e) above, d.vinci will be entitled to delete the data or application data affected thereby with immediate effect.

    g) If the customer, despite receiving a written warning from d.vinci, continues to breach the above provisions or breaches them repeatedly for reasons within his control, d.vinci will be entitled to terminate the agreement for good cause.

    h) If the customer is responsible for the breach of contractual obligations, d.vinci will be entitled to seek damages.

6. Remuneration

    a) The customer shall pay the agreed fee for the package ordered by him monthly in advance. The agreed remuneration shall be payable for each commenced month of the contract term from the date of provision (the respective day of the calendar month of provision). If the customer has legitimately terminated the agreement for good cause, the fee paid for future periods shall be repaid on a pro rata basis.

    b) d.vinci is entitled to send digital invoices to the email provided to d.vinci by the customer.

    c) d.vinci is entitled to increase the agreed fees at any time by giving a notice of two calendar months. In this case, the customer will be entitled to terminate the agreement for cause within four weeks of receipt of the information about the price increase with effect from the date the price increase takes effect. D.vinci shall inform the customer of his right to terminate the agreement in every notification.

7. Cooperation of the parties, obligation to provide assistance

    a) The parties hereby agree that good cooperation between the parties involved is crucial for the success of the project and one party alone cannot bring the project to a successful outcome without the assistance of the other party. Both parties, therefore, agree to promote to the best of their ability the achievement of the objectives pursued by this project with the due care and responsibility of a prudent businessman. For this purpose, they shall, in particular, fulfil their duties to cooperate and provide assistance in a timely manner and in the required quality and shall coordinate the execution of the respective tasks with each other.

    b) For work performed on the customer's premises, the customer shall make suitable workplaces available free of charge for our employees and grant them access to the facilities required for the provision of the service.

    c) The customer shall allocate sufficient time for his IT department and the test users to communicate with d.vinci, participate in workshops, coordinate and release project documents, tests as well as to provide system setup and other assistance services.

    d) d.vinci is entitled to use the customer's logo as a reference to promote its business and the relationship with the customer on its website www.dvinci.de.

8. Project management - responsibility sharing and cooperation

    a) For joint project management, the parties are each entitled to appoint a contact person as project manager to coordinate the tasks.

    b) The contact persons specified or their deputies in their absence are not authorised to represent d.vinci in legal transactions.

9. Obligations of the customer

The customer shall

a) not interfere with the software and other systems operated by d.vinci outside regular use or to allow such interferences to occur;

b) indemnify d.vinci against all third-party claims which are based on unlawful use of d.vinci systems by him or arising from disputes under data protection law, copyright law or other legal disputes caused by the customer, which are associated with the use of d.vinci systems;

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

d) ensure that the personal data processed by the software are processed lawfully in accordance with the applicable laws and regulations;

e) promptly notify d.vinci of any contractual service defects, in particular, defects in the d.vinci system. If the customer fails to notify d.vinci in a timely manner for reasons within his control, this shall be construed as contributory fault or negligence. If d.vinci is unable to remedy the situation due to the failure or delay in notification, the customer will not be entitled to reduce the agreed fee in whole or in part, demand compensation for the damage caused by the defect or to terminate the agreement for good cause without notice. The customer shall demonstrate that he is not responsible for the failure to notify d.vinci;

10. Data protection

In addition, the parties conclude an agreement for the processing of personal data.

11. Change request / change management

a) The customer can contribute to the further development and improvement of the software, extending beyond the configuration of the software, by directing his suggestions for improvement to the service desk.

b) d.vinci shall check the suggestions for improvement for the entire system, the result of which will be communicated to the customer.

c) The customer is not entitled to software changes at his request.

d) d.vinci continues to develop the software. New versions are announced and installed automatically for all customers.

e) d.vinci shall provide an information area (service centre) for innovations.

12. Liability, limitation of liability, limitation periods

a) In the case of intent, gross negligence or injury to life, body or health, the parties shall be liable to one another without limitation for any damage caused by them, their legal representatives or vicarious agents.

b) In all other respects, the parties shall only be liable for a breach of their material contractual obligations. These are obligations, which are essential for the achievement of the purpose of the agreement, the fulfilment of which the other party may routinely rely upon. In this respect, the liability is limited compensation for the foreseeable, typical damage, but not exceeding EUR 10,000 per claim and EUR 50,000 per contract year.

c) The strict liability of d.vinci for damages (Article 536a BGB) for defects that existed at the time of the conclusion of the contract is excluded. This does not apply to liability

for damage resulting from a grossly negligent or intentional breach of contractual obligations by d.vinci.

d) This is without prejudice to d.vinci's liability under the Product Liability Act.

e) Liability claims and claims for defects lapse after one year. This does not apply to claims arising from injury to life, body or health, fraudulent representations or guarantees or claims under the Product Liability Act.

13. Duration of the agreement, termination

a) The agreement shall commence on the date it is signed, and it is concluded for an indefinite period.

b) The agreement can be terminated by either party by giving six months' notice in writing or electronic form with effect from the end of the calendar month.

c) Notwithstanding the above provision, d.vinci is entitled to terminate the agreement without notice if the customer is arrears with payment of the fees for two consecutive months or the amount equal to or exceeding the agreed fee for two months for a period of more than two months.

14. Erasure of data upon termination of the agreement

d.vinci shall erase the customer's data at the end of the contract if they are not part of the data backup. Backed up data shall be erased with the data backup. If the customer wishes the data to be exported, he can do this himself before the end of the contract using the API provided by the software or contract d.vinci to do this for a fee.

15. Non-disclosure obligation

a) The parties undertake to keep secret all information about the other party arising from this contractual relationship. This applies not only to operational organisational processes, but in particular, to all information which is expressly designated or marked as confidential or which clearly constitutes trade and business secrets. Unless required to fulfil the purposes of this agreement, the parties shall not disclose records or communications to third parties. Any further disclosure to third parties or any other type of transfer requires the prior written consent of the other party.

b) The respective other party is prohibited from directly or indirectly using the trade secrets received for purposes other than those of the contract for its own or third-party purposes or for commercial purposes or from applying for industrial property rights in connection therewith.

c) The non-disclosure agreement does not apply to information,
   a. which was publicly known at the time of communication or became publicly known thereafter other than by the breach of this non-disclosure obligation,
   b. of which the other party was already lawfully aware at the time of disclosure,
   c. which is disclosed by third parties not bound by the non-disclosure obligations after the disclosure,
   d. which has been developed independently of the disclosed information by the other party or one of its affiliates, as evidenced by access to written documentation or unreservedly and lawfully obtained from another source having the right to provide such information, or

e. which must be disclosed by law and/or in accordance with regulatory or judicial requirements. In the latter case, however, the other party shall be informed thereof in writing in advance, to the extent permissible by law.

d) Business and operating documents received shall be stored in such a way that third parties cannot gain access to them. They shall be returned to the other party after termination of this agreement, provided this does not conflict with statutory retention requirements.

e) This non-disclosure agreement shall not be affected by a termination of the contract. The obligations arising therefrom shall expire five years after the end or termination of the agreement.

16. Final provisions

a) The contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the Sale of Goods (CISG).

b) There are no side agreements outside these terms of use and their annexes. To be effective, any changes and/or additions to this agreement must be made in writing.

c) In the event of contradictory or differing provisions set out in the approved quote, the data processing agreement and these terms of use, the following order of precedence shall apply:
   a. Approved d.vinci quote
   b. Data processing agreement
   c. Terms of use of d.vinci

d) If any provision of this agreement is held to be invalid, the validity and enforceability of this agreement will not be affected or impaired thereby.

e) The parties undertake, in the event of a dispute arising out of or relating to this contract, before legal action is brought before a court of law, to mediate in accordance with the provisions of the Hamburg Conciliation Board for IT-Disputes in the version in force at the time. The purpose of the conciliation procedure shall be to resolve the dispute either in whole or in part, provisionally or definitively.

f) Where the customer is a business, a public legal entity or a public-law special fund, the place of jurisdiction for any disputes arising from this agreement will be the court with jurisdiction over the registered office of d.vinci, unless the parties agree on a sole place of jurisdiction. The same applies if the customer's general place of jurisdiction is not in Germany or if the domicile or habitual residence is unknown at the time of institution of legal proceedings.