Conditions of use for d.vinci easy

1 . General information

a) The offer d.vinci easy is exclusively directed at entrepreneurs according to § 14 BGB [German Civil Code]. The conclusion of a contract with consumers will be refused.

b) These conditions of use shall apply to the provision of the possibility for use on the software d.vinci easy by us, d.vinci HR-Systems GmbH, which is hereinafter referred to as "Provider".

c) Deviating, contradictory or supplementary General Business Terms of the client, even with our knowledge, will not become a part of the contract unless their validity is explicitly approved by the Provider in writing.

d) Insofar as the client has commissioned an Enterprise licence owing to an individual agreement with us, the Provider, these conditions of use shall be supplemented by the "additional terms and conditions Enterprise to the conditions of use for d.vinci easy, which shall have precedence over these conditions of use.

2. Conclusion of contract / special provisions

a) With its order the client declares binding that it intends to acquire the ordered service. We are entitled to accept the contractual offer represented by the order according to § 147 Par. 2 BGB. The acceptance can also be declared by the start of the processing of the order.

b) The client has to provide truthful information with its registration. Insofar as the data notified by it should change it has to correct these immediately in the software d.vinci easy.

3. Provision of d.vinci easy and of storage space for application data, Hotline

a) The Provider shall make the software d.vinci easy available for the client in the respective version released by the Provider as well as storage space for the filing of the application data of the client for the use according to the following regulations from the start of the contract on a server operated by it. The client is not entitled to any provision of a certain server for its sole use, but the Provider can, with the separation of the data stocks of the clients within the framework of the efficiency of the server, simultaneously provide this to a multitude of clients for use.

b) The Provider shall send the user name and user password to the client for the first user appointed by it with the first order. The code is to be changed immediately by the client into a code that is only known to it. After the first order the client can create further users itself free of charge.

c) The application data will be backed up are calendar day. The client is responsible for the compliance with storage deadlines under commercial and fiscal law.

d) The client requires an Internet connection as well as browser of the types Internet Explorer, Chrome, Safari or Firefox in the most up-to-date or at least in the previous version for the access to d.vinci easy.

e) The Provider shall make an https-encoded connection available for the access to d.vinci easy.

4. Availability of d.vinci easy and access to the application data

a) The Provider owes an availability of d.vinci easy and the application data at the transfer point (interface to the Internet of the computer centre, in which the servers on which d.vinci easy runs, stand) of 98 % per contractual year. Under availability the parties understand the technical usability of the application and the application data at the transfer point for the use by the client.

b) The application and / or the application data are also available in case of

i) interferences to parts of the technical infrastructure or the Internet, which are necessary for the execution of d.vinci easy, which are not to be made available by the Provider or its vicarious agents;

ii) interferences or other events, which have not been (co-)caused by the Provider or one of its vicarious agents;

iii) planned non-availabilities for the purpose of servicing the server and / or the application during periods of low use, Monday to Friday between 8 pm and 6 am as well as on weekends and national public holidays.

5. Non-fulfilment of main service obligations

a) The following regulations shall apply if the Provider does not fully satisfy the obligations for which it is responsible.

b) If the Provider is in default with the operational provision of d.vinci easy for the first time, the client is entitled to cancel the contract if the Provider does not adhere to a reasonable final deadline set by the client, i.e. does not make the full functionality of d.vinci easy available for the first time within the final deadline.

c) The Provider has to present that it is not responsible for the reason for the delayed provision or the failure of the service. If the client has not reported the failure of the service to the Provider then it has to prove in case of dispute that the Provider gains knowledge thereof otherwise.

6. Rights of use of the client to d.vinci easy, rights of the Provider with the exceeding of the use authorizations

a) The client shall receive simple rights of use (which cannot be sub-licensed and are non-transferrable) to d.vinci easy limited to the term of this contract.

b) The client shall make the necessary precautionary measures to prevent the use of d.vinci easy by unauthorized persons by using its user codes and passwords. These data are to be protected by it against unauthorized access by taking suitable and customary measures. The client shall inform the Provider immediately if there is a suspicion that the access data and / or codes could have become known to unauthorized persons.

c) In the event of abuse of the user codes and / or passwords handed over to it the client shall bear the burden of proof that it is not responsible for this abuse.

d) The client shall be liable for the fact that it does not use d.vinci easy for unlawful purposes.

e) If the client breaches the afore-mentioned regulations for reasons for which it is responsible, the Provider can block the client's access to the application or the application data if the breach can as proven be remedied hereby. Insofar as it is deemed reasonable for the Provider it has to request the client to remedy the breach by setting a reasonable deadline.

f) If the client breaches the afore-mentioned paragraph e) the Provider is entitled to delete the data or application data affected hereby immediately.

g) If the client continues to breach or repeatedly breaches the afore-mentioned regulations despite a corresponding written warning of the Provider and if it is responsible for this then the Provider can terminate the contract extraordinarily without observing a period of notice.

h) If the client is responsible for the breach of obligation then the Provider can assert damages according to the provisions of this contract.

7. Design and publication of job advertisements

a) The client has the possibility to commission the design and publication of job advertisements via the software d.vinci easy. The contractual partner of the client that is integrated into the system for corresponding orders is solely d.vinci Personalmarketing GmbH, Am Schulland 2, 21224 Rosengarten, Hamburg County Court, HRB 110834. The sending of a corresponding order by the client is an offer for conclusion of a contract, which d.vinci Personalmarketing GmbH can explicitly accept or accept by starting the processing of the order.

b) The contract is concluded subject to the reservation of the correct and timely self-delivery by the respective providers of the advertising media. This shall only apply to the event that the non-delivery was not caused by d.vinci Personalmarketing GmbH, in particular with the conclusion of a congruent hedging transaction with its component suppliers. In this case d.vinci Personalmarketing GmbH is entitled to cancel the contract with the customer. In the event of the cancellation this shall inform the client about the non-availability immediately and reimburse the consideration immediately.

c) The selection of the media, in which the advertisement is to be published, shall be carried out within the framework of the commission by the client. Insofar as the client commissions the publication of an online advertisement, only one job can be put out to tender in such an advertisement.

d) The remuneration respectively owed from the commission can be derived from the price details within the framework of the placement of the order. The prices are deemed net.

e) The appropriate sorting by key words, choice of the categorisation, sectional entry or placement of the job advertisement lie exclusively at the discretion of the provider of the advertising medium so that there is no entitlement to certain designs.

f) d.vinci Personalmarketing GmbH is entitled, however not obliged, at its own account and own risk to also distribute the job advertisement commissioned by the client otherwise, in particular through printed material at trade fairs, in the d.vinci career market, by fax upon call or by telephone. It hereby concerns additional and voluntary services of d.vinci Personalmarketing GmbH, which are not to be remunerated separately by the client.

g) If the client requests the use of another or own agency for the publication of job advertisements then this must be agreed in an individual case.

8. Remuneration

a) The client shall pay the remuneration agreed for the package commissioned by it monthly prior to the contract (see Annex Remuneration). The agreed remuneration shall be due for each started month of the contractual term from the operational provision (respective day of the calendar month of the provision). It shall be due and payable in advance with the provision of the application and subsequently on the third but last workdays of the respective preceding contractual month. If the client has justifiably terminated the contract extraordinarily then the remuneration paid for upcoming periods of time is to be repaid pro rata temporis.

b) The Provider is entitled to send invoices in a digital form to the e-mail address of the client notified to it.

c) The Provider is entitled to increase the agreed remuneration at all times with a period of announcement of two calendar months. In this case the client shall be entitled to a special right of termination at the time when the price increase becomes effective, which is to be exercised within four weeks after the receipt of the information about the price increase. The Provider shall point out this right to termination to the client together with each announcement.

9. Obligations of the client

The client is obliged

a) not to intervene or have interventions carried out in programmes, which are operated by the Provider, outside of the customary use or to penetrate data networks of the Provider or to request such a penetration without authorization;

b) to indemnify the Provider from claims of third parties, which are due to an unlawful use of d.vinci easy by it or which ensue from legal disputes caused by the client under data protection law, copyright law or other legal disputes, which are associated with the use of d.vinci easy;

c) to obligate its authorized users on their part to comply with the provisions of which contract that are applicable to them;

d) to obtain the necessary consent of the respective person concerned insofar as it collects, processes or uses personal data when using d.vinci easy and no statutory fact for permission is applicable;

e) to report defects to contractual services, in particular defects to d.vinci easy, to the Provider immediately. If the client fails to make the timely report for reasons, for which it is responsible, this shall represent a co-cause or a co-fault. Insofar as the Provider could not remedy the situation as a result of the omission of or delay in the report, the client is not entitled to reduce the agreed remuneration in full or in part, to request compensation of the damages caused by the defect or to terminate the contract extraordinarily without observing a period of notice owing to the defect. The client has to present that it is not responsible for the failure to make the report;

10. Data protection

The Provider will operate within the framework of an order data processing for the client. Insofar the d.vinci order data processing contract shall apply in addition.

11. Liability, limitations to liability, statute-of-limitations of claims

a) The parties shall be liable towards each other in case of wilful intent, gross negligence or with the injury to life, the body or the health for all damages caused by them as well as their legal representatives or vicarious agents to an unlimited extent.

b) Incidentally, a party shall only be liable insofar as it has breached an essential contractual obligations. Deemed as essential are such obligations for which the other party can as a rule rely on their fulfilment and which particularly serve the achievement of the aims of this contract. Insofar the liability is limited to the compensation for the foreseeable typically occurring damages, a maximum however limited to EUR 10,000 per damaging event and EUR 50,000 per contractual year.

c) The liability of the Provider for damages irrespective of fault (§ 536a BGB) for defects existing upon conclusion of the contract is incidentally excluded.

d) The liability according to the Product Liability Act remains unaffected.

e) Claims for liability and defects shall become statute-barred with the expiry of one year. This does not apply to claims arising from injury to body, health, life or fraudulent activity upon acceptance of the warranty and for claims under the Product Liability Act.

12. Term, termination

a) The contractual relationship shall begin with the conclusion of the contract and is concluded for an indefinite period of time.

b) The contractual relationship can be terminated ordinarily by both parties in a written or text form with a period of notice of one month to the end of a calendar month.

c) Irrespective of the afore-mentioned regulation the Provider can terminate the contract without observing a period of notice if the client is in default with the payment of the remuneration for two consecutive months or in a period of time, which extends over more than two months, with the payment of the remuneration in an amount, which reaches the remuneration for two months.

13. Obligations with and after termination of the contract

With the termination of the contractual relationship the Provider shall, at the client's request, make the application data stored by it available in a digital form in the data format of d.vinci easy. It is entitled to a work-based remuneration for this work according to the respective actual hourly rates of the Provider. The Provider shall hand over a corresponding offer and a data record description to the client at its request.

14. Final provisions

a) German law shall apply to the contractual relationship under the exclusion of the UN Convention on Contracts concerning the International Sale of Goods.

b) There are no secondary provisions outside of this contract and its annexes. Amendments or addendums to this contract and the annexes require a written form in order to be valid. This shall also apply to the exclusion of the written form requirement.

c) The possible invalidity of individual provisions of this contract shall not impair the validity of the other contractual contents.

d) If the Client is a merchant, legal entity under public law or special assets under public law, the place of jurisdiction for all disputes from this contract is the court of jurisdiction at the registered seat of the Provider, insofar as no exclusively place of jurisdiction exists. The same shall apply if the client has no general place of jurisdiction in Germany or the place of residence or customary place of abode are not known at the time when the action is filed.