

## GENERAL TERMS AND CONDITIONS

of DearEmployee GmbH – Laurinsteig 34, 13465 Berlin

Status October 2019

### 1. Area of validity and subject of the contract

- 1.1. DearEmployee GmbH, Laurinsteig 34, 13465 Berlin (hereinafter referred to as: “DearEmployee” or “we” is the operator of the “DearEmployee” online platform (hereinafter referred to as: “platform”), which is intended exclusively for companies (hereinafter referred to together as: “Customers”). The platform, which is available as a web application, is a software-as-a-service application for the analysis of mental stress at the place of work and to plan health and staff development measures.
- 1.2. These General Terms & Conditions (hereinafter referred to as “GT&C”) and the applicable Annexes (in particular the Additional Conditions on the Processing of Personal Data by Order according to Art. 28 GDPR (hereinafter referred to as: “Data Processing Addendum”)) shall apply to the contractual relationship between DearEmployee and its customers via the services offered by DearEmployee in accordance with Section 1.6. The General Terms & Conditions apply with regard to companies also to all future business relationships, even if they are not expressly agreed again. The incorporation of the General Terms & Conditions of a Customer, which contradict these General Terms & Conditions, is already objected to now. Annexes contain additional conditions. In the event of contradictions, an attachment shall take priority over the General Terms and Conditions.
- 1.3. The services offered by the platform are geared exclusively towards entrepreneurs within the meaning of § 14 German Civil Code (BGB).
- 1.4. The language of the contract is exclusively German.
- 1.5. You can download and print the current valid General Terms & Conditions on the website [www.dearemployee.de/agb](http://www.dearemployee.de/agb).
- 1.6. The service provided by DearEmployee chiefly consists of granting the opportunity to use the platform via the Internet on servers, which are in the provider’s area of influence.

### 2. Conclusion of contract

- 2.1. The presentation of the platform on the Internet, via sales platforms or in other media does not represent a binding service of the provider. It merely offers the opportunity to submit a binding quotation to conclude a contract to use the platform. The provider is not obliged to accept such a quotation.
- 2.2. The customer selects the desired package in the ordering process and fills out the order form provided. By clicking on the "Order Now" button, the customer makes a binding offer to conclude a contract for the use of the platform. After sending the order, the customer receives

an automatically generated order confirmation by e-mail. This does not yet imply acceptance of the offer by DearEmployee.

- 2.3. A contract is only concluded once DearEmployee has declared its acceptance. DearEmployee will send an order confirmation by e-mail. If DearEmployee does not submit such an order confirmation within 10 working days after receipt of the order, the customer's order has not been accepted.
- 2.4. As an alternative to the previously regulated conclusion of a contract, a contract can also be concluded to the extent that the customer sends a non-binding request to DearEmployee via the contact form or by e-mail with the request that an offer should be made. DearEmployee will check this request and, if necessary, send a corresponding offer to the customer. DearEmployee will feel bound to such an offer for 30 days after the receipt of the corresponding offer by the customer. The customer declares acceptance by confirming the order by e-mail or by sending it via post to DearEmployee with a reference to the corresponding offer.

### **3. Services of DearEmployee**

- 3.1. It will be made possible for Customers to use the platform, saved and implemented on the servers of DearEmployee, or a third party via an Internet connection during the term of the contract in the relevant agreed scope for their own purposes.
- 3.2. The software includes an online DearEmployee survey and the DearEmployee Insights analysis platform. The scope of the options for use of the platform is modular. The scope of services in an individual case depends on the package selected (CheckUp, Basis or Premium). The scope of the various options of use for the platform, for some of which a charge will be incurred, is described at [www.dearemployee.de/unternehmen](http://www.dearemployee.de/unternehmen).
- 3.3. The Customer will receive a link to a password entry form sent by email from the provider for access to the platform. After entering a password, the Customer has the opportunity to register and generate a profile. The completion of registration is a condition to be able to use the platform.
- 3.4. The platform, the computer performance required for the use of the platform and the storage and data processing space required to operate the platform and save the data entered by Customers (but see Section 5 for cloud workspace) will be provided by DearEmployee. The production and maintenance of the data connection between the IT systems of the Customer and DearEmployee is not the responsibility of DearEmployee. DearEmployee points out to the Customer that there might be limitations or adverse effects when using the platform, which lie outside the area of influence of DearEmployee. This includes in particular actions by a third party, who are not acting on behalf of DearEmployee, technical breakdowns that cannot be influenced by DearEmployee and force majeure.
- 3.5. The Customer has no entitlement to the issue of a source code for the platform.

### **4. Software updates**

- 4.1. DearEmployee is entitled, but not obliged, to change the software during the term of the contract, in particular to adjust it to technological progress. This also includes the addition of new features, the amendment of the user surface and adjustments to the backend. The nature of the adjustment of the software is at the discretion of DearEmployee.

- 4.2. Major changes, which alter the overall functionality of the software, will be notified by DearEmployee with a period of notice of at least two weeks in text form (§ 126b BGB) to customers.
- 4.3. Software updates can result in changes to the user surface or other visible components of the software.

## **5. Cloud workspace**

- 5.1. DearEmployee will make storage space available to the Customer. The storage space is on third-party servers in Germany. Hosting will be assumed by Hetzner Online GmbH.
- 5.2. The scope of the storage space depends on the package booked.

## **6. Support**

- 6.1. DearEmployee offers the Customer support depending on the package booked. This will be provided by telephone or by email via the channels and contact data made available by DearEmployee for this purpose.
- 6.2. As part of the support, questions from the Customer about the use of the software and reports of any disruptions to the functions will be received and answered as far as possible.
- 6.3. If the Customer wishes to notify defects, he must provide a detailed description of the relevant disruption to functionality in text form (§ 126b BGB) to enable the error to be rectified as efficiently as possible.
- 6.4. The software is available seven days per week, for 24 hours in each case (“business hours”). The average availability (“average availability”) during business hours is at least an annual average of 98 %. Availability is the opportunity for the user to use the main functionalities of the software. Waiting times and limitations or downtime of the software owing to circumstances, which are not in the area of responsibility of Dear Employee (culpability of a third party, disruption to telecommunications cables, force majeure, etc.) are not counted as non-availability. DearEmployee will limit the waiting window to the minimum and above all use it to import and test updates and ensure the security of the systems.

## **7. Other services**

Services provided by DearEmployee that exceed the services for which it is responsible will be charged for separately. The decisive factor is a quotation from DearEmployee in each case.

## **8. Rights to data processing, data security**

- 8.1. The Customer grants DearEmployee the right for the purposes of implementing the contract to copy the data stored for the Customer by DearEmployee, insofar as this is required to provide the services owed in accordance with the contract. DearEmployee is also entitled, but not obliged, to hold the data in a backup system or separate backup computer centre. Furthermore, in order to rectify breakdowns, DearEmployee is entitled to undertake changes to the structure of the data or the data format.

- 8.2. Because it cannot be ruled out that DearEmployee will have access to personal data of the Customer or receive it from a third party, the Data Processing Addendum attached as Annex A as well as the respective Annexes to the Data Processing Addendum ("Data Processing Addendum") shall apply and supplement this Agreement between the parties. With regard to personal data, the Customer is the responsible party and guarantees that the statutory provisions regarding data protection law will be complied with.
- 8.3. The Customer is responsible himself for the security of the information and data saved in cloud workspace.

## **9. Obligations of the Customer**

- 9.1. The user gives assurances that the information provided during registration and in his user account is relevant and complete. In particular, no data from a third party must be entered.
- 9.2. The user is not entitled to pass on access data to a third party. He undertakes to handle his access data carefully and to prevent misuse of the access data by a third party. Should the user be aware of indications of misuse of his user account by a third party, he must inform the provider of this immediately.
- 9.3. The user is entitled to invite staff and external advisors to use the platform. He is responsible for ensuring that the invited users have the corresponding entitlement to inspect the data and are qualified to handle the content. DearEmployee is entitled to approve external advisors, insofar as they have been instructed to assess the risk of mental stress or similar services with DearEmployee by the Customer.
- 9.4. The user must refrain from any activity, which is intended to have an adverse effect on the operation of the platform, the services offered and/or the technical infrastructure on which they are based and/or excessively overload the latter. This includes in particular
  - the use of software, scripts or databases in conjunction with the use of the platform;
  - the automated reading out, blocking, overwriting, modifying, copying of data, insofar as this is not required for appropriate use of the platform.

## **10. Remuneration; settlement**

- 10.1. The Customer owes remuneration in accordance with the relevant package booked (Basic-Fee), which will be invoiced in the month following the first activation for the relevant agreed settlement period.
- 10.2. Additional services that go beyond the inclusive services of the relevant package (e.g. advice, training courses) and other services in accordance with Section 6.4 will be invoiced additionally in the following month.
- 10.3. All the prices shown in price lists and elsewhere are net prices and are understood to be plus the relevant valid value added tax (currently 19 %).
- 10.4. All invoices are due for payment within two weeks after the invoice date. A digital invoice is also regarded as effective, if it is sent to the Customer.
- 10.5. If the Customer delays the payment of the remuneration that falls due by more than two weeks, DearEmployee is entitled to block access to the software after a prior warning setting a deadline

and expiry of this deadline without success. The entitlement to remuneration of DearEmployee remains unaffected by the blocking. Access to the software will be approved again immediately after the arrears have been settled. The right to block access also exists as a milder method if DearEmployee has a right to extraordinary termination in accordance with Section 14.3.

- 10.6. DearEmployee is entitled to adjust prices at its discretion (§ 315 BGB) and to increase the agreed prices if a continued provision of the services without a price adjustment is unreasonable for DearEmployee on consideration of the interests of both sides. DearEmployee is entitled to increase prices further if at least six months has expired since the last price increase. DearEmployee will notify the Customer of the price increases one month in advance by email. If the Customer does not object to the price increase within two weeks after notification of the planned price increase in writing or by email, this is regarded as agreement to the price increase notified. DearEmployee will point out the latter separately in the notification.
- 10.7. The provider will send an electronic invoice by email for every payment procedure. There is no cost for the email.
  - (1) Payments by the Customer will be made by bank transfer or direct debit. With a direct debit, the Customer authorises the provider to collect the charges incurred as part of the contractual relationship.
  - (2) If the Customer falls into arrears with a payment, the Customer is obliged to pay the statutory interest on arrears of nine percentage points above the base interest rate.
  - (3) Offsetting of liabilities of the Customer from this contract is permitted only with claims, which have already been determined as lawful or are recognised by us or have not been disputed.

## **11. Other obligations of the Customer**

- 11.1. The Customer is obliged to support DearEmployee as much as possible and comprehensively when it provides the contractual services. This obligation includes in particular the prompt provision of the information, documentation and content required or requested by DearEmployee, in particular for the adjustment of the software.
- 11.2. The Customer is responsible for ensuring that the technical requirements for access to the service of DearEmployee are given, in particular with regard to the hardware used, the operating system, the connection to the Internet and the browser software while observing any technical requirements issued by DearEmployee. In the event of the further development or alteration of the technical components by DearEmployee or a third party (e.g. operating system, browser software), it is the responsibility of the Customer to undertake the necessary adjustments of the software and hardware used.
- 11.3. The Customer will name at least one contact partner for DearEmployee, who is entitled and in a position to take all the decisions arising as part of the implementation of the contract and to communicate this to DearEmployee. It is the responsibility of the Customer to ensure continuous security for the data used when using the software on its own hardware.
- 11.4. The user gives assurances that the details provided during registration and in his user account are relevant and complete. In particular no data must be entered by a third party.

- 11.5. The Customer must keep the access data made available to him confidential and ensure that any staff, to whom access data are provided, also do this. Use of access data by persons (also other employees of the Customer), to whom access data are not made available, is not permitted.
- 11.6. The Customer is responsible for any actions, which the employees carry out when using the access data. The Customer will familiarise his staff with the use of the relevant software, explain the importance of the actions to be taken, oblige them to save the access data carefully and protect this from unauthorised access by a third party and expressly forbid the transmission of the access data to other persons.
- 11.7. The service of DearEmployee must not be made available to a third party, insofar as this has not been expressly agreed by the Parties. This also applies to companies affiliated to the Customer. Renting out the software is expressly not permitted for the Customer.
- 11.8. The Customer undertakes not set up with regard to DearEmployee, during the use of the software, any content and/or data that are liable for prosecution or otherwise unlawful or which infringe the rights of a third party and not use any programs containing viruses or other malware in connecting with the software.
- 11.9. The Customer is responsible for the careful and correct use of the software and for the appropriate and complete satisfaction of the statutory requirements with regard to the risk assessment for mental stress in accordance with §5, §6 and §7 Occupational Health and Safety Act (ArbSchG).

## **12. Rights of use**

- 12.1. The software is provided as a service. The options for use for the Customer are therefore limited to use of the platform. More extensive use or usage rights under copyright are not granted. The Customer is therefore not entitled to copy or amend the software and the survey instrument of DearEmployee it contains outside the scope required to run the program or grant access to a third party to the software outside the agreed contractual purpose.
- 12.2. More extensive copying, which also includes in particular the printout of the program code, must not be undertaken by the Customer. The authority of the Customer to copy the program code under the conditions of § 69 e Para. 1 Copyright Act (UrhG) remains unaffected.
- 12.3. The Customer is not permitted to undertake any amendments to the software. This does not apply to amendments, which are required for rectifying errors, insofar as the provider has delayed the rectification of the error, refuses to correct the error or – in particular owing to the application for or initiation of insolvency proceedings – is not in a position to rectify errors.
- 12.4. The de-compilation of the software is not permitted. Exceptions to this are copying of the code or translations of the code form, which are absolutely necessary to obtain the required information to produce the interoperability of an independently created computer program with the software provided or with other computer programs, insofar as the conditions indicated in § 69 e Para. 1 No. 1 to 3 Copyright Act are satisfied.

## **13. Warranty**

- 13.1. With regard to granting the option to use the software, the statutory regulations of leasing contract law apply to the warranty rights of the Customer.

- 13.2. In particular §§ 536b (Awareness of the lessee of the defect when the contract was concluded or accepted), 536c (defects occurring during the term of the lease; notification of defects by the lessee) BGB are to be applied. However, the application of § 536a Para. 2 (self-rectification right of the lessee) is ruled out. The application of § 536a Para. 1 BGB (obligation of the lessor to provide compensation) is also ruled out insofar as the standard envisages liability regardless of fault.
- 13.3. Insofar as the warranty is required for granting a notice of defects of the Customer, this is considered to be given only if the conditions of Section 6.3 are complied with.
- 13.4. As for the rest, the provisions of employment contract law (§§ 611 ff. BGB) apply.

## **14. Liability**

- 14.1. Unlimited liability: DearEmployee is liable without limitation for intent and gross negligence, if a guarantee granted by the contract is breached and in accordance with the Product Liability Act. DearEmployee is liable for slight negligence with regard to losses resulting from the injury to life, limb and health of persons.
- 14.2. As for the rest, the following limited liability applies: in the event of slight negligence, DearEmployee is liable only in the event of a breach of a major contractual obligation, whose satisfaction actually enables the contract to be implemented correctly in the first place and on whose satisfaction the Customer can rely on a regular basis (material contractual obligation). Liability for slight negligence is limited to the losses that were foreseeable when the contract was concluded, which can typically be expected to arise.
- 14.3. In cases of a slightly negligent breach of a material contractual obligation, liability is limited to the losses that were foreseeable and typical for the contract when the contract was concluded. With regard to the amount, the liability of DearEmployee is limited to the simple annual package price. This limitation of liability also applies in favour of the vicarious agents of DearEmployee.
- 14.4. DearEmployee is not liable for the accuracy of the data stored by the software users. DearEmployee will not carry out a check of this data.

## **15. Release**

- 15.1. The Customer releases DearEmployee in the event that a claim is made against it for a presumed or actual breach of rights and/or breaches of the rights of a third party, in particular employees of the Customer, in the use of the software from all claims of a third party arising from the latter and undertakes to reimburse any costs, which arise for the provider as a result of the claims by a third party. The reimbursable costs include in particular the costs of appropriate legal action and legal defence, which are incurred by the provider.
- 15.2. More extensive claims for compensation of the provider arising from this remain unaffected.

## **16. Term, termination**

- 16.1. The contract between the Parties is concluded for a term of 12 months, unless the customer and DearEmployee have expressly agreed otherwise.

- 16.2. If the Customer falls into arrears with the payment of a not inconsiderable part of the remuneration for two consecutive months, the provider can terminate the contractual relationship without notice for a compelling reason. A compelling reason for termination without notice exists if insolvency proceedings are applied for or initiated on the Customer's assets or the initiation is refused owing to a lack of assets. Rights of termination for a compelling reason (§ 314 BGB) also remain unaffected additionally.
- 16.3. Declarations of termination require the written form to be effective. Compliance with this form is a condition for the effectiveness of the termination. Fax and email are sufficient to satisfy the requirement for the written form.
- 16.4. The provider will maintain the Customer's account for the purpose of data security for twelve months after the end of the contract. When these twelve months have expired, the Customer's account will be deleted permanently.

## **17. Confidentiality**

- 17.1. The Parties are obliged to maintain permanent confidentiality regarding all the information they are or become aware of in connection with this contract about the other party, that is marked as confidential or on the basis of other circumstances is identifiable as business and company secrets (hereinafter referred to as "Confidential information"), not to pass the latter on to a third party or use it in another manner, insofar as the relevant other party has not given its express and written consent or the information must be disclosed on the basis of the law, a court decision or an administrative decision.
- 17.2. Information is not confidential information within the meaning of this Section 17 if it
  - was already previously known to the other party, without the information having been subject to an obligation to maintain confidentiality,
  - is known in general or becomes known without breaching the confidentiality obligations assumedor
  - is disclosed to the other party by a third party without breaching the obligation to maintain confidentiality.
- 17.3. The obligations of this Section 17 outlast the end of the contract.

## **18. Final provisions**

- 18.1. The law of the Federal Republic of Germany applies exclusively to any disputes between the Parties, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction for any disputes arising from and in connection with these General Terms & Conditions, regardless of the legal basis, is Berlin.
- 18.2. Any amendments or supplements to these GT&C or the contract on which they are based require text form (§ 126b BGB). General Terms & Conditions of the Customer will become a component of the contract, only insofar as the provider has expressly agreed this in text form.
- 18.3. The Customer is not entitled to transfer this agreement as a whole or individual rights and obligations of the latter to a third party or allow a third party to exercise the latter.

- 18.4. The provider is entitled to transfer this agreement with all the rights and obligations to another company. The transfer will take effect 28 days after it was notified to the Customer. When transferring this contract to another company, the Customer has a special right of termination, which must be exercised within a period of two weeks after notification.
- 18.5. The provider is entitled to amend or supplement these General Terms & Conditions at any time. The amendments or supplements will be notified to the Customer by email no later than within six weeks before they become effective. If the Customer is not in agreement with the amendments, then he can object in writing to the amendments within a period of one week from the intended time the amendments or supplements become effective. If the Customer does not submit an objection, the amendments or supplements to the General Terms & Conditions will be considered to have been approved by the Customer. The provider will point out the envisaged significance of his conduct separately to the Customer with the notification of the amendment or supplement to the General Terms & Conditions.
- 18.6. Should individual provisions of these General Terms & Conditions be or become ineffective, this will not affect the effectiveness of the other provisions overall.