

# GENERAL TERMS AND CONDITIONS OF VICOLAND

Last amended: 28/07/2022

## GENERAL

1.1 The Vicoland platform (the **‘Platform’**) is provided and operated by Vicoland GmbH, Neue Mainzer Straße 66-68, 60311 Frankfurt am Main, Germany (**‘Vicoland’**) and is intended for natural persons or legal entities (**‘Freelancers’**) who work in the IT and/or creative industries as well as their potential customers (**‘Clients’**).

1.2 Using the Platform, Freelancers can partner with other Freelancers on a social network (**‘Vico’**). Within the Vico, the Freelancer creating the Vico (the **‘Vico Lead’**) assumes an administrative role and any Freelancers joining a Vico (**‘Vico members’**) assume a participatory role. Vicos are merely social gatherings which serve the exclusive purpose of non-binding introductions to potential Clients, with Vico Leads in the role of potential contractual partners to the Clients and Vico members in the role of potential subcontractors of the Vico Leads. Freelancers can be members of multiple Vicos at the same time and be Vico Leads or Vico members in various Vicos at the same time. Joining a Vico does not give rise to any rights or obligations.

1.3 These General Terms and Conditions (**‘GTC’**) apply to use of the Platform by all Freelancers and Clients (referred to collectively as **‘Users’**). Any terms and conditions of the Users that deviate from or supplement these GTC do not apply to use of the Platform.

## SCOPE OF SERVICES

2.1 The Platform facilitates contact between Clients and Freelancers for the purposes of negotiating and contracting IT and/or creative projects (**‘Projects’**).

2.2 On the Platform, Clients can prepare briefings for projects they are planning (**‘Project Briefings’**). The Project Briefings can then be made available to one or

more Vico Leads in order to invite them to submit binding quotations for the execution of each Project. Project Briefings prepared by Clients are always non-binding and merely represent an invitation to submit a quotation.

2.3 Vico Leads always submit quotations for the execution of a Project solely in their own name. Likewise, contracts concerning the execution of a Project (**‘Project Contracts’**) are only ever concluded between the Client and a Vico Lead. Under no circumstances are Vicos or Vico members party to a Project Contract.

2.4 Through the platform, Vico Leads can contact selected Vico members on a Vico they have created upon receiving a Project Briefing and coordinate their participation in the Project. In this regard, Vico members can only be engaged by the Vico Lead as subcontractors. After successfully coordinating the conditions, the Vico Lead and Vico member can enter into a contract concerning the performance of subcontractor services for the Project in question (a **‘Subcontractor Agreement’**).

2.5 After coordinating with the Clients and successfully concluding any necessary Subcontractor Agreements with Vico members (also referred to as **‘Subcontractors’** upon the conclusion of the Subcontractor Agreement), Vico Leads can send Clients a binding offer to enter into a Project Contract over the Platform. If the Client accepts the quotation – which is also done through the Platform – the Project Contract comes into effect. Only Vico Leads (also referred to as **‘Contractors’** upon the conclusion of the Project Contract) and Clients are parties to a Project Contract.

2.6 By providing the Platform, Vicoland is merely meeting the prerequisites for the conclusion of contracts concerning the execution of Projects between (i) the Client and the Contractor and between (ii) the Contractor and one or more Subcontractors. Vicoland itself does not provide any Project services and does not commission any Projects over the Platform. Additionally, Vicoland does not become party to the contracts concluded exclusively between the Client and the Contractor or between the Contractor and a Subcontractor. The execution of the contracts also takes place exclusively between the parties to each contract; Vicoland is not involved.

2.7 Subcontractor Agreements and Project Contracts are concluded through a dialogue-based process provided by Vicoland through the Platform for that

purpose, i.e.: After the required data and any necessary deviating provisions have been input, the Platform automatically generates a draft contract that factors in the specific details of the Users on the basis of a general template provided by Vicoland (the '**Draft Contract**'). The Draft Contract defines the content of the contractual declaration submitted by each User over the Platform. If each contractual partner declares their approval of the Draft Contract over the Platform, the Subcontractor Agreement and/or Project Contract shall come into existence.

2.8 The contractual templates available on the Platform merely provide Users with a template on the basis of which Subcontractor Agreements and Project Contracts can be concluded. As such, they merely serve to simplify the conclusion of a contract; the use of the templates unchanged is purely optional. The contractual templates and the Draft Contracts derived from them are not claimed to be complete or accurate in terms of their content. Therefore, before using a Draft Contract, every User is obliged to check it carefully, especially with regard to its suitability, completeness and accuracy, and, where necessary, define deviating provisions. To clarify, Vicoland does not provide any legal advice over the Platform or in any other way in this context.

2.9 Furthermore, the Platform provides the Users with supporting features for executing Projects. In particular, these features include project management tools and means of billing and paying the contractually agreed remuneration. The Platform also makes it possible to define specific roles (e.g. internal privacy settings) for members of the Project team who have varying degrees of authorisation.

2.10 The services of third-party providers might also be provided over the Platform. In this regard, please note by way of clarification that the Platform of Vicoland merely creates the conditions for making use of the third-party provider's services. Vicoland itself does not provide these services and does not become party to any contracts concluded exclusively between Users and the third-party providers. Vicoland is not liable for services offered by third-party providers via the Platform.

2.11 Furthermore, Vicoland also provides some additional features over the Platform. The content of these features as well as the terms and conditions of their use are set out on the Platform.

2.12 The right to use the Platform only exists as part of the proven state of the art, in which regard Vicoland counts as fulfilling its duty to provide the service if it achieves an average availability rate of 97.5% for the year. Vicoland reserves the right to temporarily restrict access to the Platform or individual features if necessary with regard to capacity limits, the security or integrity of the servers or in order to implement technical measures, and the restriction serves the due or improved performance of the services (maintenance work). In doing so, Vicoland shall take the legitimate interests of the Users into consideration, especially by notifying them in advance.

## REGISTRATION AND USER ACCOUNTS

3.1 Use of the Platform requires each User to register as a Client or Freelancer in advance. Registration requires all mandatory fields in the registration form to be completed correctly and in full. Registration must be confirmed by Vicoland before it comes into effect; confirmation takes the form of the provision and activation of a personal User account.

3.2 Only legal entities and natural persons and partnerships of unlimited legal capacity who are performing their commercial or independent professional activities can register as Users.

3.3 Users are obliged to provide complete, truthful information at all times. If the data provided by a User should change after registration, the User is obliged to notify Vicoland of the change without undue delay by changing his or her personal data in the user account.

3.4 Users must keep their login details (especially passwords) secret and treat them with care. Additionally, they are obliged to notify Vicoland by email immediately if there are indications that their login details have been and/or are being misused by third parties. Vicoland shall not disclose the password of a User to third parties and shall never ask Users for their passwords by phone or email. As a rule, Users are liable for all activities performed using their login details if they are responsible for the misuse of their login details.

3.5 User accounts cannot be transferred.

## **REQUIREMENTS PERTAINING TO USER CONTENT**

4.1 Clients may only prepare Project Briefings with a view to concluding a Project Contract with a Contractor. They are obliged to only provide complete, truthful information with regard to themselves, the Project in question and the other content.

4.2 As a rule, it is not permitted to add links to external websites to a Project Briefing unless the links are absolutely necessary by law. This does not apply to links in the Project Briefing to PDF files and multimedia presentations belonging to the User if they contain additional information relating to the Project in question (e.g. specifications).

4.3 It is not permitted to negotiate with more than three Contractors about a Project Briefing at one time. Negotiation in the sense of this item 4.3 starts when the Project Briefing is sent to a Vico Lead as an invitation to submit a binding quotation for the execution of the Project and only ends (i) after the negotiations have been broken off by one of the parties or (ii) – if no response is given – upon the expiry of the confirmation deadline set out in the Project Briefing.

4.4 The content of the Project Briefing, of offers to enter into a Subcontractor Agreement or Project Contract and of other information provided by the users is the sole responsibility of the users who provided them. Vicoland shall not verify the accuracy or completeness of the Project Briefings, quotations or other content and therefore makes no guarantee as to their accuracy or completeness.

4.5 The Users affirm that they will only use content for Project Briefings, quotations and other content and posts they provide that they are permitted to use for such purposes and that is not encumbered by conflicting third-party rights. Furthermore, the Users affirm that the content and posts they provide in each case do not infringe statutory regulations.

4.6 If claims are asserted against Vicoland due to an infringement of individual rights, statutory provisions or these GTC by a User, that User shall indemnify Vicoland as soon as they are called on to do so. In this context, the Users shall also cover the costs of necessary legal defence incurred by Vicoland, including judicial and legal

fees to the statutory amount. This does not apply if and in so far as the User is not responsible for the infringement.

4.7 Vicoland can advertise the Platform and the content and posts of the Users (in anonymised or pseudonymised form) itself and through third parties, e.g. by placing them on other websites, in software applications, in emails and in other media.

## **GENERAL DUTIES OF THE USERS**

5.1 Use of the Platform – especially for the purposes of initiating contact and/or communicating with other Users – in order to enter into contracts concerning the performance of services outside of the platform and circumvent the fees payable under item 0 of these GTC is prohibited.

5.2 Users are obliged to back up the data they store on the Platform, including the data in the Project Briefings and quotations, in order that the data can be recovered quickly in the event of a data loss.

5.3 Users are responsible for meeting the system requirements for using the Platform, especially with regard to operating system and browser. Additionally, certain features might require Users to accept cookies and activate Javascript.

5.4 Users are obliged to take the necessary precautions to secure their systems, especially by using the conventional security settings in their browsers and using up-to-date measures designed to protect against malware.

5.5 Users must be polite when communicating with other Users. The communication tools may not be used for general promotional purposes.

## **CONFIDENTIALITY**

6.1 Users might exchange Confidential Information (as defined below) while initiating, negotiating and concluding Project Contracts or Subcontractor Agreements. Users are obliged to maintain strict silence with regard to confidential information pertaining to other Users and, where applicable, their affiliates as defined by

Article 15 of the German Stock Corporation Act (AktG), treat it as strictly confidential, not utilise it or allow third parties to utilise it, not to allow third parties access to it and to take reasonable steps, at least as if it were their own affairs, to prevent third parties from gaining knowledge of and/or utilising confidential information.

6.2 ‘**Confidential information**’ refers to all information, documents (including electronic files) and matters that are designated accordingly or are to be considered confidential given the circumstances, e.g. all information about hardware, databases, used or developed software, source codes, algorithms, product plans, product specifications, product development, product design, operating processes and production methods, application technology, Project Briefings, contractual offers, price calculations, business plans, guidelines, marketing strategies, development plans, customer data, business relationships, transactions, operating requirements and know-how.

6.3 The obligation set out in item 6.1 does not apply to Confidential Information pertaining to a User or affiliates of the User if the other User is able to produce evidence:

- 6.3.1 that the Confidential Information was already known to them when the Project Contract or Subcontractor Agreement was being initiated or was made known to them thereafter by a third party without this disclosure representing a breach of a non-disclosure agreement, statutory regulation or official order;
- 6.3.2 that the Confidential Information was already public knowledge or publicly accessible when the Project Contract or Subcontractor Agreement began to be initiated or later became public knowledge or publicly accessible, without this disclosure representing a breach of a non-disclosure agreement;
- 6.3.3 that the Confidential Information has to be disclosed due to statutory obligations or on the orders of a court or authority. Where admissible and possible, the Users shall notify one another immediately of their duty of disclosure and provide

one another with the opportunity to take steps to prevent it.

6.4 If and in so far as necessary in order to coordinate or negotiate on a Project and/or for the conclusion of a Subcontractor Agreement and/or for the execution of a Project, Vico Leads are entitled to disclose Confidential Information transmitted to them by Clients to Vico members.

6.5 If and in so far as necessary in order to coordinate or negotiate on a Project and/or for the conclusion of a Project Contract and/or for the execution of a Project, Vico Leads are entitled to disclose Confidential Information transmitted to them by Vico members to Clients.

## FEES AND BILLING

7.1 Vicoland shall charge fees as set out in the “Price list to the General Terms and Conditions Vicoland” for the conclusion of Project Contracts and Subcontractor Agreements as well as any additional services. All fees are net and are subject to VAT at the statutory rate.

7.2 The Vicoland fees are added to the offers created via the platform. The amount of the fees is based on a percentage of the amount of the offer created by Vico and will be calculated dynamically as part of optional and alternative milestones and phases of the offer based on the current price list when the client accepts the offer.

7.3 The fees payable under item 7.1. are payable even if the Project Contract or Subcontractor Agreement or a contract concerning the performance of similar services is concluded outside the platform in violation of the prohibition on circumventing the Platform set out in item 5.1.

7.4 Users may only offset claims with regard to Vicoland if their claims are undisputed or have been established by final judgement.

7.5 Vicoland partners with 3<sup>rd</sup> party providers to offer a variety of payment methods on the platform. The payment system accepts payments from clients via wire transfer, credit card and other methods. The funds are received on an independent escrow account held by a 3<sup>rd</sup> party holding the required licenses to provide such an account. Upon correct receipt, the Vicoland payment

system informs the 3<sup>rd</sup> party escrow & payment service providers to distribute the funds from the escrow account respectively to each party that receives funds for services delivered via Vicoland.

## **MANIPULATION AND COMPROMISED SYSTEM INTEGRITY**

8.1 Presentations of Vicos and other content and posts published on the Platform may only be searched for using the search tools provided by Vicoland. Search software that directly accesses the databases of Vicoland may not be used. Infringements shall be prosecuted under civil law in terms of the infringement of the rights of Vicoland with regard to its established and exercised business interests and, from the perspective of the unauthorised invasion of related property rights, might also have consequences under criminal law in accordance with Article 108 et seq. of the German Copyright Act (UrhG).

8.2 Activities intended to impair the functionality of the Platform or render it more difficult to use are prohibited. Users may not carry out any actions that might result in an unreasonable or excessive strain on the infrastructure of the Platform. Users are also not permitted to block or modify content of the Platform other than for the intended purposes of the Platform, or to interfere with the functionality of the Platform in any other way.

8.3 Users are not permitted to falsify or manipulate the results of search tools of the Platform by providing false or erroneous information, categorising incorrectly, implementing technical measures or committing any other type of misuse.

## **DELETION OF CONTENT AND OTHER MEASURES**

9.1 Vicoland can implement the following measures if there are specific indications that a User is infringing the statutory regulations, these GTC or third-party rights, or if Vicoland has any other legitimate interest in doing so (especially in cases of default):

- Deletion of content;

- Delaying the publication of content;
- Warning the User;
- Restricting the use of the Platform by the User;
- Temporary blocking of Users, especially with the result that Users can no longer log in and profiles can no longer be accessed.

9.2 When selecting measures, Vicoland shall take the legitimate interests of the affected User into consideration, especially whether or not there are indications that the User was not responsible for the infringement.

## **LIABILITY**

10.1 Vicoland cannot be held liable for slightly negligent breaches of duty unless they concern damages arising from an injury to life, limb or health or warranties, or claims under the German Product Liability Act (ProdHaftG) are affected. Furthermore, this does not affect the liability of Vicoland for breaches of duties which must be fulfilled before the contract can be duly executed and on the fulfilment of which the other party can typically rely (in this case, however, the liability of Vicoland is limited to compensation of the typical foreseeable damage for the type of contract in question). The same applies to breaches of duty on the part of vicarious agents.

10.2 Vicoland is in no way liable for services, that users or third-parties provide to each other via the platform.

10.3 Vicoland is not liable for damages arising from errors arising from third party payment providers

## **DATA PROTECTION**

11.1 The Users undertake to process and use the personal data belonging to the other Users exclusively for the purposes for which they received the data. The data may only be used for other purposes, especially promotional purposes, if consent is obtained from the data subjects.

11.2 Vicoland undertakes to comply with the relevant data protection regulations, especially the General Data Protection Regulation (GDPR) and the German Federal

Data Protection Act (BDSG) as amended. For more specific information, please refer to the privacy policy.

## NON-CIRCUMVENTION

12.1 You acknowledge and agree that a substantial portion of the compensation Vicoland receives for making the Site available to you is collected through the Service Fee described in Section 7.1 and that in exchange a substantial value to you is the relationships you make with other Users identified through the Services (the “**Vicoland Relationship**”). Vicoland only receives the Fee when a Client and a Freelancer pay and receive payment through the Site. Therefore, except as set out in Section 12.2, for 24 months from the start of a Vicoland Relationship (the “**Non-Circumvention Period**”), you agree to use the Site as your exclusive method to request, make, and receive all payments for work directly or indirectly with that person or arising from that relationship and not to circumvent the Payment Methods offered on the Site unless you pay a fee to take the relationship off of the Site (the “**Conversion Fee**”). If you use the Site as an employee, agent, or representative of another business, then the Non-Circumvention Period applies to you and other employees, agents, or representatives of the business or its successor when acting in that capacity with respect to the other User. If you, or the business you represent, did not identify and were not identified by another person through the Site, such as if you and another User worked together before meeting on the Site, then the Non-Circumvention Period does not apply. By way of example only, you agree that during the Non-Circumvention period you will not:

- Offer or solicit or accept any offer or solicitation from parties identified through the Site to contract, hire, invoice, pay, or receive payment in any manner other than through the Site.
- Invoice or report on the Site or in a Conversion Fee request an invoice or payment amount lower than that actually agreed, made, or received between Users.
- Refer a User you identified on the Site to a third party who is not a User of the Site for purposes of

making or receiving payments other than through the Site.

You agree to notify Vicoland immediately if a person suggests making or receiving payments other than through the Site in violation of this Section 12 or if you receive unsolicited contact outside of the Site.

You acknowledge and agree that a violation of this Section 12.1 is a material breach of the Terms of Service, and may result in your Account being permanently suspended and charged the Conversion Fee (defined above). This Section still applies if you choose to cease using the Site, and you must pay the Conversion Fee for each other User you wish to continue working with after you cease using the Site.

12.2 You may opt out of the obligations in Section 12.1 with respect to each Vicoland Relationship only if the Client or Freelancer pays Vicoland a Conversion Fee which is a minimum of €1,000 EUR and up to €50,000 EUR for each Vicoland Relationship, unless Client and Freelancer have had an Vicoland Relationship for at least two (2) years.

The Conversion Fee may be calculated differently for Vicoland Relationships when the Client is an Enterprise Client if the Enterprise Client contract with Vicoland provides for different terms.

You understand and agree that if Vicoland determines that you have violated Section 12.1, it may (a) charge your Payment Method the Conversion Fee (including interest) if permitted by law or send you an invoice for the Conversion Fee (including interest), which you agree to pay within 30 days, (b) close your Account and revoke your authorization to use the Services, and (c) charge you for all losses and costs (including any and all time of Vicoland’s internal workforce) and reasonable expenses (including attorneys’ fees) related to investigating such breach and collecting such fees.

You agree that the Conversion Fee is 13.5% of the estimated earnings over a twelve (12) month period, which is calculated by taking the Hourly Rate (defined below) and multiplying it by 2,080. “**Hourly Rate**” means (a) the highest hourly rate charged by the Freelancer on any Service Contract with the Client, if any; or (b) if there is no hourly rate on a Service contract, the hourly rate in the Freelancer’s profile when the conversion is requested; or c) if none of the above apply,

€100 EUR are assumed as the Hourly Rate. The Conversion Fee includes all applicable taxes and is not subject to the Vicoland Fee.

## **AMENDMENTS TO THESE GTC**

Vicoland reserves the right to amend these GTC at any time and without giving reason with future effect. The amended provisions shall be sent to the email address associated with the account of each User no later than two weeks before they are due to come into effect. The amendments shall be deemed accepted if no objections are raised to them in writing within two weeks of notification thereof. The Users shall be expressly notified of this consequence when they are notified of the amendments.

## **TERM AND TERMINATION**

14.1 When a User account is successfully activated and provided by Vicoland in accordance with the detailed provisions of item 3.1 of these GTC, an indefinitely applicable contract concerning use of the Platform in accordance with these GTC shall come into effect (the '**Licence Agreement**').

14.2 Vicoland can terminate the Licence Agreement at any time with a notice period of one (1) month by sending an email to the email address stored in the account of the User. Users can terminate the Licence Agreement at any time by deactivating their account.

14.3 This does not affect the right of both parties to terminate this Agreement without notice for good cause. In particular, Vicoland has good cause if the User

infringes at least one of the provisions of item 4.5, 5.1, 5.5 or item 0 of these GTC.

## **MISCELLANEOUS**

15.1 The application and interpretation of these GTC are subject exclusively to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1998.

15.2 The place of fulfilment is Frankfurt am Main. The exclusive place of jurisdiction for disputes with businesspeople, corporate bodies under public law and special funds under public law is also Frankfurt am Main.

15.3 These GTC represent the entire agreement and arrangement between the parties with regard to the subject matter of the contract and replace all verbal or written agreements or arrangements between the parties with regard to the subject matter of the contract.

15.4 Amendments and supplements to these GTC, including this written form requirement, must be made in writing in order to be effective. All other notifications in connection with this contract can, unless expressly agreed otherwise, be sent by email to the email addresses specified by the parties. However, notifications provided verbally and by phone are not sufficient.

15.5 If any provision of these GTC should be or become ineffective or null and void, either fully or in part, this shall not affect the effectiveness of the remaining provisions.

## **Price list to the General Terms and Conditions Vicoland**

Last amended: 02/08/2021

### **A. TURNOVER DEPENDENT FEE**

Vicoland is entitled to add fees to the offer of the Vico Lead before submitting an offer or change offer to a client. For this purpose, a percentage and, if applicable, a variable fee (together also called "Vicoland fee") will be added to the prices of all offer items (including VAT) of the offer as follows

- 9.4% (in words: nine point four) percent if the Vico Lead won a project via the Vicoland market-place
- 4.9% (in words: four point nine) percent if the Vico Lead brought his client to the Vicoland market-place and only uses the Vicoland toolset
- Variable Vicoland fee if applicable

The Vicoland fees are shown separately to the Vico Lead and to the Client as part of the respective offer milestone on the platform and are due upon acceptance of the respective offer milestone by the Client. If the services are paid for by the client, Vicoland is entitled to retain the amount corresponding to the surcharge in favour of Vicoland.

The variable fee serves to remunerate pioneers. These are Vicoland users who have provided special services during the construction phase of the platform, for which they are entitled to a commission. The amount of the variable fee is determined according to the following conditions:

- In the amount of 1.5% of the respective amount, which is attributable to the share of the revenue of a freelancer recruited by the pioneer in an offer milestone, provided that the pioneer is not employed in the revenue-generating offer milestone as a Vico Lead, Vico member or in any other role (for example as "Co-lead") is involved.
- In the amount of 2.5% of the revenue of an offer milestone generated by a Vico Lead with a client recruited by a pioneer via the Platform, provided that the pioneer is not involved in the revenue-generating offer milestone either as a Vico Lead or as a Vico member or in any other role (for example as "Co-lead") is involved.
- 1.5% of the revenue of an offer milestone generated by a Vico Lead with a Vico created by a pioneer via the Platform, provided that the pioneer is no longer a member of the respective Vico (neither as Vico Lead nor as Vico member nor in any other role) at the time of the effective agreement on the Platform of the revenue-generating offer milestone. A revenue is deemed to be generated with a Vico created by the pioneer, if it operates under the same name as the name created by the pioneer when it was created or by changing it



afterwards, and if the social association of the Vico is traceable in the technical system of the platform to the creation by the pioneer since the creation of the Vico.

## **B. OTHER FEES**

The use of Vicoland is otherwise free of charge until further notice. Vicoland reserves the right to charge other or additional fees for the provision of individual services on the platform at a later date after prior notice.