Skilltree

General terms and conditions of

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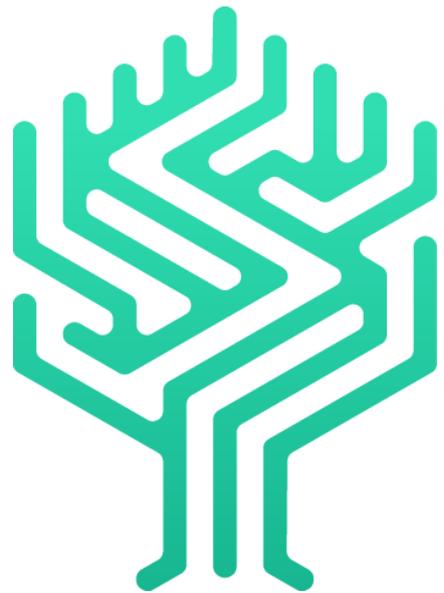
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1 Scope and changes of the GTC

Blueroots Technology GmbH, with their registered office in Graz, Austria (hereinafter referred to as Blueroots), offers a cloud-based software solution for the management of employee skills and related services on their website www.skilltree.at, hereinafter referred to as the "Website".

The following general terms and conditions, hereinafter referred to as "GTC", apply to all usage, license, and consulting agreements as well as similar agreements (hereinafter referred to as "Agreements") concluded between Blueroots and its customers and partners.

This GTC applies in their respective version valid at the time of the execution of the contract. They shall also apply if no reference is made, to them in contracts concluded at a later date.

Any terms and conditions of the customer that are contrary to or deviate from the general terms and conditions of Blueroots shall not apply unless Blueroots has agreed to them in written form in the individual case.

Blueroots will inform the customer of any changes to the GTC. The information regarding any changes will be sent to the customer by e-mail. The updated version of the GTC will automatically become part of the contract and replace the version of the GTC valid at the time of the execution of the contract unless the customer objects in text form within six weeks after receipt of the notification about the update.

Blueroots shall conclude a contract with the customer for the processing of personal data "Order for the processing of personal data", provided that a processing under Art. 28 DSGVO takes place on the side of Blueroots. The provisions of the commissioned processing contract shall apply in addition to the GTC.

2 Services and execution of the contract

The services offered on the website of Blueroots do not constitute a legally binding offer, but merely the request for an offer by the customer. The execution of the contract between the customer and Blueroots takes place by signing an offer made by Blueroots in writing.

The specific content and scope of the services to be rendered by Blueroots as well as the fee to be paid for such services shall be governed by the agreement concluded between Blueroots and the customer, the license agreement including its annexes, as well as the provisions of these GTC.

All agreements made between the parties at the time of the execution of the contract are set out in full in writing in the licence agreement and the offer attached thereto; all previously made verbal agreements and ancillary agreements shall become invalid upon execution of the contract, insofar as they do not correspond to the agreements set out in writing in the contract and offer. The employees of Blueroots are not authorized to make verbal collateral agreements that deviate from or go beyond the written contractual agreement.

Blueroots reserves the right to extend, limit or make other changes of any kind to their products/services at any time, in particular for reasons of technical or legal necessity. Substantial changes will be notified to the customer at least one month before their implementation. In the event of substantial changes that result in a significant reduction in performance, customers may terminate their existing contractual relationship for the use of the software within one month of

receipt of the notification of change with effect from the change coming into force. Such termination must be in text form.

Performance dates and deadlines may be changed for organisational reasons unless they are expressly designated as binding. The customer shall be notified of any changes to dates and deadlines within a reasonable time.

3 Fees and terms of payment

3.1 General

For orders whose prices are not explicitly agreed upon when the contract is concluded, the prices that are current and binding at the time the order is placed shall apply. These prices can be viewed at any time on the Blueroots-Website.

All prices are in Euro exclusive of VAT.

3.2 Terms of payment

These terms of payment apply to all agreements between Blueroots and the customer unless otherwise agreed in writing.

Unless otherwise agreed, the invoicing of license fees (due date) shall be based on the normal business year (first January to 31st of December). Fees to be paid shall be due in advance and payable within 14 days after invoicing by Blueroots.

If a contract is concluded during the year with an annual billing period, the first invoice is issued for the period from the start of the contract to 31st of December of the respective year.

Costs for services and consulting are charged separately and are therefore not included in the agreed prices unless explicitly included in the license package selected by the customer. These are due 14 days after the provision of the service and invoicing. This also applies to special services such as contract development and technical consulting.

3.3 Acceptance

If Blueroots provides software to the customer, a written confirmation will be sent to the customer.

The customer is obliged to accept all services provided by Blueroots, in particular individual software adaptations, immediately after receipt of the notification of provision and to check them for defects. All obvious defects are to be reported in writing immediately, all hidden defects immediately after their discovery. Blueroots is entitled to a written declaration of acceptance.

The service shall be deemed to have been accepted without further ado as soon as the customer uses the software operationally or commercially or allows it to be used. Commissioning shall be deemed to have taken place if no material defects have been notified in writing within 15 days of notification of provision of the respective services for acceptance.

3.4 Price increase

The prices, in particular, license prices, maintenance fees, as well as prices for consulting services are automatically adjusted annually.

This is based on the 2015 monthly consumer price index (CPI) published by Statistics Austria.

The starting point for the value protection calculation is the index figure announced at the time of the execution of the contract (for this month). An increase takes place annually on 01.01.

If this index is no longer published, the value protection agreement will be replaced by a corresponding successor index, which most closely corresponds to the contractual intention, which is to preserve the purchasing power of the originally agreed price.

If no adjustment is made based on value retention, this shall not constitute a conclusive waiver of the adjustment. A waiver of the application of the value adjustment requires an agreement.

3.5 Late payment

All invoiced amounts must be credited to the Blueroots account specified in the invoice, without deductions and free of charges, no later than the fourteenth day after receipt of the invoice. A longer period may be specified in the license agreement with the customer.

The customer shall only be entitled to withhold or offset counterclaims if their claims have been legally established or acknowledged by Blueroots. This restriction does not apply to claims due to partial non-performance or due to defects that are based on the same contractual relationship as the claims of Blueroots.

If there is a defect, the client may withhold payments only to a proportionate extent taking into account the defect and only if the defect exists beyond doubt.

In the event of a delay in payment by the contractual partner, Blueroots shall be entitled to charge interest on arrears under § 456 of the Austrian Commercial Code (UGB) and to make the provision of further services dependent on payment.

If the customer is more than one month in arrears with their payments, Blueroots is entitled to block access to the use of the software after prior written notice. The notice may also be included in a reminder.

4 Cooperation; responsibility of the client

The following cooperation services are primary obligations of the customer and are not to be classified solely as secondary obligations or duties.

The customer shall support Blueroots in the performance of the services contractually owed by Blueroots. For this purpose, the customer shall provide Blueroots with information, data and other material required for the performance of the agreed services on time.

Any time limits at the expense of Blueroots shall only start to run when the customer has fulfilled their obligations.

The customer is obliged to provide and maintain the contact details of a qualified contact person and a deputy. This person is entitled to make or promptly bring about all necessary decisions that are required for the provision of the contractually agreed service.

If tasks have to be carried out twice due to the client's non-cooperation or late cooperation, Blueroots is entitled to charge for this work in addition after prior notification with an indication of the additional costs to be expected.

Insofar as the services of Blueroots are provided in whole or in part via an Internet connection, Blueroots shall provide the services on computers (servers) within the scope of their technical and operational possibilities. The customer will establish the connection to the computers via the Internet himself at his own expense and under his responsibility.

5 Rights to use the software; requirements

With the acquisition of the user license, the customer receives a simple (non-exclusive), non-transferable right of use limited to the agreed number of employees and temporally limited to the term of the contract. With the acquisition of the right of use, the Customer is entitled in terms of content to process and store their data of the employees working in their business operations (hereinafter referred to as: "User Data") for their purposes within the scope of the account set up for it or their employees and the functionalities of the software.

Which system landscapes, browsers and operating systems are supported by the software in detail is determined by Blueroots. Blueroots will inform the customer about the supported browser versions before the execution of the contract. There is no entitlement to the support of certain system landscapes, operating systems or browser versions.

It is expressly pointed out that the customer himself is responsible for compliance with data protection law and other legal provisions. The customer shall take appropriate precautions to protect the software from unauthorized access by third parties. The customer shall be obliged to bear the costs caused by a breach of this obligation and shall indemnify and hold Blueroots harmless from and against any costs and claims of third parties arising from the breach of this obligation. Third parties in the sense of this paragraph are not affiliated companies in the sense of § 189a Z 8 UGB.

The customer is responsible for the technical setup and administration of all accounts. This applies regardless of whether Blueroots supports the customer in setting up the accounts, in whatever form.

The customer is exclusively responsible for the contents and data processed with the software. The customer hereby undertakes to use the software only under the contract and within the scope of the applicable statutory provisions and not to infringe any third-party rights during use.

If the customer or a user endangers the security of the software through his behaviour, Blueroots is entitled to block access to the software application after prior written notice until the security risk has been eliminated. If the security of other customers of Blueroots is endangered, the blocking may take place without notice and with immediate effect until the security risk has been remedied. In this case, Blueroots will inform the customer immediately and in writing about the blocking and its expected duration.

6 Security, data protection, backups

6.1   Security measures on the provider's side

Unless otherwise agreed, Blueroots provides their software only on servers located in certified high-security data centres within the European Union. Data transfer between customer devices and servers is done via SSL encryption. Each customer receives a server instance, which is logically isolated from other customer servers. All customer data and backups are stored under strict encryption.

Data on Blueroots servers are carefully backed up at intelligent intervals (both hourly, daily, and weekly). In the unexpected case of a total failure of the Skilltree application, the data of one or more days can be lost under unfavourable circumstances. In this case, Blueroots will restore the last available backup.

6.2   Security measures on the client-side

The Customer is responsible for taking state-of-the-art IT security measures within their organization and for their employees. These include, but are not limited to, the installation and regular updating of common antivirus software on the laptops, computers or other mobile end devices of the Customer's employees, ensuring the assignment and regular updating of secure passwords, in particular under the "BSI IT-Grundschutz" or other equivalents, recognised security standards for the Skilltree Account as well as for the laptops, computers or other mobile end devices of the employees, and the use of corresponding mechanisms such as 2-factor authentication, automatic inactivity blocking, firewall, etc.

Furthermore, the Customer is obligated to ensure the confidentiality of the identification and authentication data assigned to their Users, i.e., also, for example, the organizational and, if applicable, technical prohibition of the disclosure of passwords as well as the prohibition of the use of so-called "shared accounts". The prohibition of the use of "shared accounts" refers to the Skilltree Account.

In addition, the customer must ensure the security of the Internet connection used, i.e., in particular the use of company-owned rather than public Virtual Private Networks (VPN) as well as ensuring the use of VPN connections in public networks.

If Blueroots software is operated on customer servers at the customer's request, the security of the server, the surrounding network, as well as the data storage and backup locations shall be the sole and exclusive responsibility of the customer.

6.3   Data protection and data collection

Blueroots collects and uses the personal data of the customer only within the framework of the respectively applicable legal provisions. The contractual partners shall conclude an agreement to this effect to the extent required by the respectively applicable provisions.

Blueroots anonymously analyses usage data, statistics, and uploaded documents to ensure the security of the customer servers operated by Blueroots, to prevent system failures, and to improve their products.

7 Liability and warranty

There are no warranty claims against Blueroots for only insignificant deviations of the services from the contractual quality or usability.

The liability for claims for damages against Blueroots is limited as follows: In the event of simple negligence Blueroots shall only be liable for

- for damages resulting from injury to life, body, or health,
- for damages resulting from the not insignificant breach of an essential contractual obligation (i.e. obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies on and may rely on); in this case, however, liability shall be limited to compensation for the foreseeable, typically occurring damage and shall in any case not exceed the annual fee payable by the user for the use of the licence, without adding any additionally charged services.

Otherwise, Blueroots shall only be liable for damages - regardless of the legal grounds - in the event of intent and gross negligence. In the case of gross negligence, however, the liability is limited to the compensation of the foreseeable, typically occurring damage and in any case does not exceed the annual fee to be paid by the user from the license use, without adding additionally charged services.

The exclusions or limitations of liability do not apply if Blueroots has fraudulently concealed a defect or for claims of the customer under the Product Liability Act.

Events of force majeure as well as other circumstances unforeseeable for Blueroots, in particular delivery disruptions, pandemics, epidemics, catastrophes, strikes, lockouts, shall release Blueroots from their performance obligations for the duration of the disruption as well as a reasonable start-up period - also during an already existing delay. If the performance of the service becomes impossible or economically unreasonable due to the aforementioned circumstances, Blueroots shall be released from their contractual obligations; and claims for damages by the customer shall then be excluded.

8 Contract period, termination

Unless otherwise agreed (e.g. in the case of fixed-term contracts), contractual relationships may be terminated by either contracting party without stating reasons in text form and with a notice period of one month to the end of the calendar month. The customer must give notice of termination in text form and is responsible for providing proof of receipt.

Blueroots may terminate the contract extraordinarily with immediate effect if the client violates essential contractual obligations and continues the violation despite a warning by Blueroots or fails to remedy the violation. The same applies if the contractual partner is in default with a due payment for more than 30 days despite a reminder.

In the event of termination by the customer, Blueroots shall make available to the customer all data stored by him within the software in a common format. The data shall be made available within 30 calendar days from the end of the contractual relationship.

9 Confidentiality, copyright, trademark protection

The software provided by Blueroots to the customer is protected by copyright. Blueroots remains the owner of the software and the underlying source code. The provision of the source code is not part of the contractual relationship, and the customer has no right to their provision. Modifications or tampering with the Software by the Customer, unless authorized in writing by Blueroots, shall constitute a material breach of the Customer's obligations under the Contract.

Neither of the contractual partners is entitled to transmit confidential information of the respective other contractual partners to third parties without express consent (at least in text form). All information, whether fixed in writing or transmitted orally, which (i) by its nature is considered confidential or in need of secrecy or (ii) which the contractual partner to whom the information is transmitted must already recognize as confidential or in need of secrecy due to the external circumstances of the transmission. Confidential information includes, in particular, product descriptions and specifications, contractual terms and conditions, as well as prices deviating from those on the Blueroots website. Both contracting parties undertake to use confidential information only for contractually agreed purposes. Both parties shall take at least the same precautions as they take concerning their own confidential information. Such precautions must at least be adequate to prevent disclosure to unauthorized third parties. Both contracting parties are furthermore obliged to prevent the unauthorised disclosure or use of confidential information by their customers, employees, subcontractors or legal representatives. The contracting parties will inform each other in writing in the event of any misuse of confidential information.

The obligation to maintain confidentiality does not apply insofar as information:

- were demonstrably known to the contractual partner before the notification,
- were known or generally available to the public before the notification,
- become known or generally accessible to the public after notification without the participation or fault of the informed contracting party,
- substantially correspond to information disclosed or made available to the informed party at any time by an authorised third party.

The Client further undertakes to treat all business, technical and scientific know-how obtained in connection with the performance of the contract by Blueroots as confidential and to make it available to third parties only with the express consent of Blueroots. Furthermore, the Client undertakes not to apply for any intellectual property rights on the know-how obtained by Blueroots in connection with the performance of the contract.

The obligation to maintain confidentiality shall end seven years after termination of the contract unless statutory or contractual provisions provide for a longer confidentiality obligation.

Both parties shall comply with the applicable data protection provisions, in particular those valid in Austria, and shall oblige their employees deployed in connection with the contract to maintain data secrecy within the meaning of the Data Protection Act and the Data Protection Regulation, insofar as they are not already generally obliged to do so.

10 Final provisions

Amendments and supplements to contracts must be made in text form to be valid. This also applies in particular to the amendment of the text form itself.

Should an individual or several provisions of the respective agreements (incl. these GTC) be or become invalid or ineffective, or have a loophole, the validity of the remaining provisions shall remain unaffected thereby. The invalid or ineffective provisions shall be interpreted or replaced in such a way that they correspond as closely as possible to the intended purpose of the agreement. The same shall apply in the event of a gap in the contract.

For all disputes arising directly or indirectly from the contract, it is agreed that Blueroots (registered office in 8020 Graz) shall be subject to the exclusive jurisdiction of the competent Austrian court. If Blueroots should actively file a lawsuit, this can take place at any other admissible place of jurisdiction in addition to the place of jurisdiction described above (agreement on the place of jurisdiction).

Austrian law shall apply to the legal relationship between Blueroots and the contractual partner. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Nor shall the reference or conflict of laws rules of private international law apply (choice of law).