

myconvento – General Terms and Conditions



1. Offer and Supply

These General Terms and Conditions shall apply for all offers, supplies and services relative to the product myconvento of Convento GmbH, called Convento hereinafter. Any regulations deviating from these Conditions must be confirmed by us in writing. Otherwise, these Conditions shall be considered approved upon order placement, or upon ordering and subsequent activation by us. Their current version may be viewed online at any time on our homepage https://myconvento.com/public/pages/terms_conditions

Our offers shall be binding within thirty days after delivery, unless otherwise agreed upon. Oral agreements shall only become valid by written confirmation. The obligation for damages due to non-performance or delay/arrears shall be excluded unless we or our vicarious agents had acted with intent or gross negligence.

myconvento shall be available immediately after ordering and subsequent activation by us. Basis for our invoicing shall be the beginning date of the subscription specified with the order and the ordered scope of services.

In case of ordered services, we agree to offer a fixed date within 45 days after order receipt. In turn, we shall be entitled to invoice the contracted services after 45 days, irrespective of the service rendered until then. We shall reserve the right to partial supplies and partial billings.

2. Contract Beginning of the Subscription and Term

After the initial order (registration), the licensee shall start with a 15-day starting phase. During that time, the use of myconvento will not yet be billed; however, it is also limited in some areas (see description under "Details and Prices" on www.myconvento.com). After expiration of the 15-day period, the contract status shall automatically change to the paid subscription unless the licensee had already effected this change before or had terminated the starting phase without changing to the subscription.

The contractual relationship shall be subsequently automatically extended until the end of the calendar year and thereafter until the end of the calendar year following that, unless it is terminated in writing by one party at least three months before the end of the year. And even in the following years, the termination period shall be in each case three months to the end of the year.

3. Extensions or Reductions of User Licenses

The user companies themselves may make changes to their scope of licensing on the web platform myconvento.com. Reductions of their scope of licensing shall each be possible with a three-month period of termination for the turn of the year, extensions at any time. Basis for the calculation shall be the then valid price list.

4. Support Services

We shall take over the following services during the term of contract:

a. Software Maintenance

Adaptation and expansion of the web platform and the software corresponding therewith, as far as this is required due to legal provisions or technological changes. Remedy of defects as far as they can be remedied with reasonable expenditures. Prerequisite shall be that the complaint is made in writing and immediately after detection of the defect; that the defect is conclusive on our system, and the user supplies us with all requested information as needed, and supports us in troubleshooting.

b. Further Software Development

Permanent expansion of the scope of functions, as well as simplification and improvement of the user interface.

c. User support

Chat support on platform www.myconvento.com, without extra charge as well as optional telephone support and hotline, i.e. consulting the user by phone in terms of program functions, as well as assistance in case of faulty operation. Telephone support shall be customarily billed separately.

Support shall be provided during our usual business hours (workdays from Mondays to Fridays, 08:00 to 18:00 hours, except on holidays in North Rhine-Westphalia). Separate agreements about varying support periods shall be possible. If untrained users use our hotline for simple user questions, we shall be entitled to refuse telephone hotline assistance and offer training.

5. Industrial Property Rights and Copyrights

Convento shall grant the user company a non-transferable, non-exclusive right to use myconvento.

The user may freely use and duplicate at will the work results prepared by myconvento. Irrespective of special provisions, the use shall comprise the duplication by means of loading, display, flow, transfer or storage within the system of myconvento as far as this is required for the use.

The above-mentioned use right shall not transfer any ownership in myconvento. In contrast, the individual customer database shall remain the property of the user company during the entire term of the contract.

6. Use of External Data

a. Limitations of the license for the use of external data

myconvento cooperates with several publishers and data suppliers so that users may access their data from the base of myconvento and use such data for research and mailings. Use of these data shall be limited to the functions within myconvento and serve the exclusive use by the myconvento subscriber. The data may neither be sold to third parties nor passed on – not even in excerpts. Advertising and PR agencies or consultants shall be permitted to grant their clients insight into the data bases for the coordination of advertising and PR measures or campaigns. Any inappropriate use shall be prohibited without the written consent by Convento or by the respective data supplier. The use of addresses and media data shall be governed by German law. With regard to the use of mail addresses, the user explicitly agrees to send exclusively media-relevant information and no advertising material; not to breach any third party rights, in particular copyrights and rights of privacy and not to breach the law on competition.

b. Copyright

The data are the respective supplier's property and shall be protected by copyright laws and other national legal regulations. Convento points out that you as the end user shall be liable for any damages due to copyright infringements.

c. Expiration of the license

After expiration of the subscription, the license for further use of the research data made available in myconvento shall also expire; not, however, of the user's own data. Even after the end of contract due to termination, the limitations of license and copyrights – listed in §§ 5, 6 and § 8 of these General Terms and Conditions – shall remain valid without any restrictions.

No responsibility shall be accepted for the accuracy and completeness of the database. Rights reserved regarding changes in program and data structure.

7. Warranty for Our Software Services

We explicitly point that it is technically impossible to prepare absolutely error-free software services. Accordingly, we shall only assume warranty for the technical usability of programs and Internet services made available by us for the specified purpose. Furthermore, we shall warrant that they have the properties respectively determined in the product description and that they are not fraught with defects which cancel or reduce the value or suitability for the contractual purpose.

The information or data in the product description shall not be understood as a guarantee commitment as far as this is not explicitly designated as a guarantee.

myconvento shall cover all essential and typical IT-related functions in public relations work as well as in financial and corporate communications. However, we assume no guarantee that it corresponds with the special operating characteristics of the user company, unless otherwise agreed upon in writing. We shall not accept any warranty for computing times of individual program parts, as far as the capacity of the user's Internet access or the data processing system are decisive for it, as well as its rate of utilization.

In case of defects found, the user company shall be obligated to immediately inform us in writing of these defects and document the error. If the user company fails to make this notification, our service shall be considered approved even with regard to the defect.

In case of justified complaints lodged, we agree to remedy defects of the respectively last program status by fixing them up within four weeks. If there was no fixing up or if an attempt at fixing up had not been successful, the user may reduce the subscription fee by up to 50% if the user can prove that the defect causes a correspondingly reduced value. In case of unauthorized interventions in the system on the part of the user or third parties, respectively, any further warranty by us for any resulting defects shall be inapplicable.

If services on location are desired (e.g. training courses), billing shall usually be made according to expenditures corresponding to our offer on the basis of flat daily rates. In this respect, it does not matter in detail how many hours we had been actually on location.

8. Scope of License and Flat User Fee

The flat user fee to be paid by the user company shall be a fixed monthly amount which results especially from the number of registered and thus licensed users (Named User Licencing). Additionally, there shall be further services, such as dispatch service or storage volume (Hosted Volume) for the data of the user company.

All users of a licensee may work spatially separated, even across national borders, or they may use their access from different workstations; however, in each case, only one at a time.

Companies may jointly use one subscription either if a service contract exists between them (example: press office and agency are working jointly on one system), or if one of the companies holds at least 50% of the shares of the other company. In that case, all users shall use a joint database. The leading company shall assume the role of licensee and recipient of invoices.

We shall reserve the right to change the flat user fee for the beginning of a calendar year. In this case, we shall notify our user companies in writing of the change until 30 June of the previous year. The user companies shall subsequently have the opportunity to react to the price changes within three months; thus, as usual with a period of three months to the end of the year.

9. Additional Services against Separate Remuneration

The following services shall be billed by us (if required) against separate remuneration according to the offer:

- Individual extension of the application according to user request.
- User workshops and consulting services
- Qualified integration of existing, external contacts into the myconvento database
- Distribution update

Our additional services shall be remunerated as follows: Expenditures according to our respectively applicable daily rates which we will advise in the order confirmation to the user company. Travel costs and expenses upon rendering services at the customer's business operation.

10. Application Agreement, Performance Promise, Liability

a. Scope of Performance

myconvento is a SAAS (software as a service). In this case, the required software as well as the essential computer service shall be made available on Convento servers. Internet access shall either be via one of our activated browsers or also directly via Microsoft Silverlight (available in the Silverlight-version, expected until the end of 2017).

We shall make available to the users the computer power foreseeably required for a typical application (server). The operation of the necessary client computer or the mobile terminal device shall be in the user's responsibility, as well as the organization of the online connection to the myconvento Internet platform.

The users can process not only contact data but also create documents, edit or upload them to their own system or download them from it.

Prerequisite for the interaction of myconvento with local applications (especially MS Outlook, MS Excel and MS Word) shall be their correct installation at the workstation in a current version.

We shall reserve the right to change the scope of services at any time in a reasonable manner and to discontinue services which no longer comply with current standards.

b. Data Protection and Data Security

Our separate “Data Protection Policy of Convento GmbH” is available under https://myconvento.com/public/pages/privacy_policy . The conclusion of a contract for order data processing (Auftragsdatenverarbeitung = ADV) according to paragraph 11 BDSG (Bundesdatenschutzgesetz) is possible.

c. E-Mail Dispatch and Design

As a CSA-certified sender, Convento complies with the legal requirements of clauses 2 b)-i) of the acceptance criteria of the Certified Senders Alliance (CSA), to be found under the following link: https://certified-senders.eu/wpcontent/uploads/2014/03/CSA_Conditions_of_Participation.pdf.

These criteria were established for senders of bulk or advertising e-mails. They usually do not apply for customers sending press releases. Nonetheless, by means of the certification, the users enjoy its benefits – particularly the automatic white listing and the higher technical acceptance (DKIM method).

d. Service Level Agreement/Availability

Convento's Internet platform has a mean availability of 99.5%, averaged over a period of 365 days. The scheduled service windows which are setup shall be excluded in the calculation of availability.

In case of a fault report, Convento shall endeavor to remedy the defect within a period of 24 hours (troubleshooting time). In the individual case, Convento shall reserve a reasonable extension of the troubleshooting time. If troubleshooting is not possible within an additional grace period of 24 hours set by the user, the user shall have the right of extraordinary termination or damages according to the provisions of this contract. Any further rights shall be excluded.

For Fridays from 18:00 to 22:00 hours, Convento shall set up service windows for maintenance of the service or for making corresponding updates. During that time, access might be possible only to a limited extent. The user companies shall be informed in writing at the latest 12 hours prior to the beginning of the work.

e. Our Liability under the Operation of myconvento

Unless essential contract obligations (cardinal obligations) are affected, we shall only be liable for intentional or grossly negligent conduct of our employees or vicarious agents. This shall not apply for damages due to the injury of life and limb, and health. We shall exclude liability for the services by third parties on the services of whom we have no influence and who do not represent any vicarious agents.

Our liability shall be limited in amount to the cost of an annual subscription by the customer. The customer shall prove its damage. As far as there is a plurality of actions or, respectively, related action complexes within a period of twelve calendar months, the limitation to an annual subscription shall apply here as well.

Should Convento be prevented from rendering performance due to the onset of unforeseeable and – even with the application of great care – inevitable events such as force majeure, the period of rendering performance shall be extended by the duration of the impairment or obstacle plus a reasonable starting-up time. The a.m. force majeure shall include, in particular, war, internal unrest, labor dispute measures, fire, flooding, and other natural disasters, as well as the interruption of power or data connections, traffic hold-ups, etc.

Should Convento be responsible for the disorder or should it take more than 24 hours, the customer shall be entitled to a prorated reduction of the monthly basic price. Should the customer be responsible for the disorder or should there be no disorder reported by the customer, Convento shall be entitled to bill the customer for the costs incurred due to the measures taken.

Unaffected by the above regulations shall be Convento's liability for warranty commitments as well as that according to the provisions of the Produkthaftungsgesetz (Product Liability Law). As far as the liability of Convento is effectively excluded or limited, this shall also apply for the personal liability of the Convento staff, the other employees, organs, representatives and vicarious agents.

Within myconvento, we shall endeavor to provide prompt and correct propagation of the submitted materials. Unintentional processing errors shall be corrected as fast as possible as soon as they are discovered or reported. The users shall not incur any additional costs for this. Convento shall not be responsible for third-party contents on the platform or on other websites. Inclusion in the service shall not imply any approval, warranty, guarantee or representation by Convento GmbH.

We may remove news and data only from our servers and websites. We shall not assume any guarantee with regard to the removal of submitted contents from sites outside of our network. Likewise, we shall not guarantee any specific placement of a press release or a specific scope of propagation.

f. Obligations and Liability of the User Company

The user company shall inform us immediately of any change in the conditions which are essential for the contractual relationship.

Prerequisite for the utilization of myconvento shall be a technically adequate computer system or a mobile terminal device with a functioning Internet access. As far as the user desires the printout of work results or documents, respectively, the user shall operate the printer required for it.

Users shall be aware that they must keep secret their personal user ID and their password, and that this information must not be made accessible to third parties. We also point out that every user shall require its own access (account) and be obligated to pay all costs incurred via its account – also those due to any third party use. Co-users shall be informed about the payability of the service as well as about the other contractual agreements.

Users shall declare that they agree to exclusively use either for their own personal use or as agreed all of the data which had been made accessible to them via the service by Convento.

The user company shall take care not to use or otherwise apply any equipment, software or other data which might result in changes to the physical or logical structure of the network, the software or, respectively, the operating system or which might impair the availability of the service. Moreover, the user company shall refrain from any attempts of gaining unauthorized access to third party data. Should the user company breach these obligations, it shall be obligated to pay a contract penalty in the amount of € 2,500 for every unlawful act. Convento shall reserve the right to lodge further claims.

In case of the unlawful propagation of contents, the user company shall be responsible and liable versus the third party lodging the claim. The company's users shall agree to release Convento to the full extent with regard to any third party demands or claims which are brought versus Convento due to their unlawful use. They shall also reimburse Convento for any demonstrably culpably incurred costs of legal defense as well as any damage payments to be made for whatever legal reason.

The user company shall be obligated to immediately report to the Convento hotline any defects or damages having become known to it which might impair the security or operation of the service.

Within the scope of reasonableness, the user company shall take all measures which render the determination of defects or damages and their causes possible or which facilitate and accelerate their elimination.

In case of a breach of these obligations, Convento shall be entitled to the immediate termination of the contractual relationship and may claim the resulting damages versus the user.

g. Obligations of the User Company Concerning the Propagation of News

User companies submitting contents for propagation via myconvento shall thereby grant Convento the right to their distribution, display, reproduction, reformatting and archiving. The users shall be responsible for these contents and their accuracy.

Our users shall guarantee that posted and propagated contents are free of third-party rights. In particular, no license rights, copying rights, copyrights, trademarks or other intellectual property shall be infringed. Personal

rights or the privacy of persons shall not be breached. Propagated contents may not include any defamatory matter and shall be free of viruses, scripts, macros or other executable programs. Also, they shall not include any links to scripts, macros or programs. They shall generally not breach any applicable laws and regulations.

All submitted news and information shall be in compliance with the guidelines established by DPRG and DRPR ("Code of Conduct, Code of Lisbon"). Any posted news shall include a contact person with e-mail address who has been indicated by the user and who is addressable for the recipients. If news do not comply with this standard, Convento shall reserve the right to reject such news. In this case, Convento may also remove any press release from the website and reject its propagation. The user company shall not be entitled to any conversion right or reduction right in this case.

h. Cancellation/Blocking

We shall reserve the right to block the account of a user company either temporarily, in parts or entirely for the following reasons:

- If the user company does not meet essential contract obligations despite two written reminders.
- If it culpably breaches essential regulations, in particular if it spreads unlawful contents via the service or breaches the law while using it.
- If, due to a culpable act or omission, a user impairs the quality of the service or interferes with the function of the service.
- If there is a network or server failure due to force majeure.

In these cases, the user company cannot claim any damages versus Convento. Convento shall also reserve the right of temporary cancellation of the service if technical modifications of the networks are necessary. Damage claims by the user shall then be excluded insofar as the user can be expected to accept a temporary impairment in providing the service.

11. Invoicing

The flat user fee for myconvento subscriptions shall be billed for the first time after expiration of the free 15-day starting phase and thereafter each for the beginning of a calendar quarter.

As soon as the user company supplementarily orders additional licenses for its users their flat user fee shall also be first invoiced on a prorated basis until the end of the quarter and subsequently for the beginning of the quarter as well.

We shall reserve the right to also bill in exceptional cases at shorter or longer time intervals.

User-specific services (e.g. for hotline, data volumes, mailings) shall each be billed for the past month as of the end of the month. We shall bill trainings and other services after they have been rendered.

12. Payment Modalities

Our invoices shall be due and payable immediately and without deduction. They shall be considered approved by the user company if it had not objected in writing within two weeks after their receipt. Any offsetting with either contested claims or those without final force and effect shall not be allowed. In case of any default on payments, we shall be entitled to charge the statutorily standardized late interest.

13. Ordinary Termination

Both parties may terminate the contractual relationship at any time within the 15-day starting phase and thereafter with a period of notice of three months for the end of the calendar year. It shall be extended again thereafter each until the end of the next calendar year.

Termination shall be in writing. Applicable shall be the date of receipt of the notice of termination.

14. Extraordinary Termination by Convento

We shall be entitled to terminate the contractual relationship without any notice and to stop our services if the user company does not comply with major contract obligations or if it uses our services either abusively or unlawfully.

15. Assignment of Rights and Obligations under This Contract

Convento shall be entitled to assign the rights and obligations under this contract to another company. Any assignment of claims on the part of the user shall require the prior consent by Convento.

16. Amendment of the General Terms and Conditions

We shall be entitled to amend or supplement the General Terms and Conditions with a period of one month. We shall inform our user companies in writing of our amendments and supplements. They shall have the right to object to such an amendment within one month after their receipt. If they do not object to the amended conditions in due time, they shall become effective according to the notification. Otherwise, the formerly valid General Terms and Conditions shall continue to apply for these user companies. The Terms and Conditions shall also apply for all future business relationship even if they are not once more explicitly agreed upon.

17. Final Provisions

Oral side arrangements shall be considered not made. Any amendments or supplements of the contract shall require the written form. This shall also apply for a waiver of written form. The invalidity of individual contract terms shall not affect the validity of the other provisions or the effectiveness of the contractual relationship. The contracting parties shall replace the invalid provision by a valid provision which corresponds with the economic meaning and purpose of the contract.

This agreement as well as the entire legal relationship between the contracting parties shall be subject to the law of the Federal Republic of Germany.

In case of dispute, the user company shall principally consent to a mediator being called in who shall be appointed by the Chamber of Commerce and Industry, Central Lower Rhine (IHK Mittlerer Niederrhein). Each of the parties shall bear half of the mediator's costs. Should his/her mediation not bring about any solution within one week, both sides may seek legal remedy. Düsseldorf shall be the legal venue for all claims under the use relationship.

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