

## **1. General regulations**

### **§ 1 Simba portal and photo press service market place (PPS market place)**

On the Simba portal and the PPS market place Simba members can among other things propose / purchase goods, publish / purchase offers / content and/or book performances of all kinds (in the following mentioned as "supplies", "services" or "offers"). For this their supply, selling or acquisition may not offend valid rights, this TERMS OF USE, the Simba principles or valid laws. Members always remain responsible if they break laws or offend the rights of third and have to defend them selves. Public applying of the offered articles, offers and/or services of its members can Simba handle among other things as follows:

- publish for direct and / or indirect advertisement in the press, TV, radio, Internet, postal service, etc.
- integrate content or offers on third websites
- publish links to Simba content on third websites
- dispatch / send emails, news, SMS, letters / magazines by postal services to other Simba members and persons

The Simba portal and PPS market place are platforms for users and are both following among other things the next principles:

- Simba offers no articles only the members of Simba do so.
- Contracts resulting fom purchase, sales and/or renting of supplies, services or offers come off exclusively between members, not between members and Simba.
- Purchase and/or leases between members are closed with the help of Simba however not with Simba.
- Purchase and/or leases are closed between two contracting parties (members), not with Simba.
- Simba can pursue/monitor the respecting of these TERMS OF USE
- Simba can supervise the respecting of concluded contracts between members and can if offences against these TERMS OF USE have or will happen intervene. Such an intervention would be for example the irrevocable locking of a member account.

Simba offers its members discussion and assistance forums as well as chats. Users may only use those services if they respect this TERMS OF USE (in particular § 6)

### **§ 2 Registration and Log in**

1. To use the functionalities of the Simba portal and PPS market place a log in / registration is required. Simba is not obligated to accept the log in and / or registration of a user. The free registration takes place via initialization of a member account under agreement among other things to this TERMS OF USE. Thus a use contract about exploiting the Simba portal and PPS market place takes place between Simba and the member.

2. Simba can require the payment of fees, if the member books additional services during the log in / membership or setting up of his member account.

3. The commercial utilization of the Simba-portal and / or PPS market place is only juristic persons and unlimited business capable natural persons permitted. A commercial use of the Simba portal and / or PPS market place is strictly forbidden to persons under age. Person under age are not allowed to provide themselves access to youth-endangering content.

Below some examples of what persons under age are not allowed to do on the Simba portal and PPS market place:

- bid on offers
- accept offers of other members
- accept services of other members
- place / publish offers
- access areas which are reserved for adults

Simba declines all responsibilities concerning contents and / or offers generated or published by its members. However Simba strives to protect its under age members or visitors against youth-endangering contents.

4. During the log in / registration procedure queried data must be indicated without exception and correctly. Members must consider among other things following during the log in / registration procedure:

- Data concerning names, given names, date of birth, current address (no p.o. box), telephone numbers, mobile phone numbers, E-Mail address (if necessary name of business) must be filled out truthfully.
- Only persons who are justified to represent a juristic person may assume the registration for that person. All involved persons must be mentioned.
- Only parents or persons entitled to act as substitute may undertake a log in / registration for persons under age. All involved persons must be mentioned.
- Only individual persons may be indicated as owners of a member account (no married couples, no families or associations).

5. The member commits itself to independently and immediately correct all changes of its personal data, which could occur after the last login or first registration. For this the appropriate corrections within the area "My Simba" (member account) are sufficient.

6. The member chooses during the registration a user name and receives a password. The member name must fulfil among other things following conditions:

- may not consist of a E-Mail or an Internet address
- may not violate rights of third
- may not violate trademark or trade name laws
- may not offend society rules or good customs
- may not violate valid rights

The member must keep secret his password. Simba will not pass to third the member's password. Simba will not ask a member for his password, except while login procedures to "My Simba", "My Simbapro", "My Shop" or while general access procedures to enter special Simba sites or Simba services.

7. Basically only one member account is open to each member. Repeated announcing / registering are strictly forbidden. The following actions among others are considered as abuse of member accounts and are therefore strictly forbidden:

- repeated bidding in the context of online auctions thru different member names or accounts
- accepting offers under different member names or accounts
- publishing offers under different member names or accounts

- in the context of the system of evaluation (user profile) repeated deliver of evaluations under different member names or accounts
- in Guestbooks, Chat -, discussion and/or assistance forums publishing comments under different member names or accounts
- acquire (bid) own articles, goods or offers under different member names or accounts
- transfer a member account to a third.

8. If a dispatched email containing an acknowledgement link which is sent while registration procedure has not been confirmed after a month, Simba reserves itself the right to abolish that member account.

### **§ 3 Subject and range of this use contract**

9. The in § 1 described online marketplace is at the disposal of Simba members. However Simba can set conditions regulating the range of use of its online marketplace. Such conditions are for example the examination of personal data (defined in the user accounts), membership duration, number of positive evaluations, purchase and payment proof, date of birth, address, telephone number, mobile phone number, personal preferences, etc..

10. Members or users can not claim the use of or access to Simba services or websites. Members can not claim the use of or access to the PPS market place. Members have only the right to use or access the Simba portal or PPS market place in accordance to the current state of the technology and the discretion of Simba. Functions or performances of the Simba portal can be limited and/or stopped temporarily if among other things following should produce:

- the capacity boundaries are going to be achieved
- the security or integrity of the servers and its storage is no longer given
- the execution of technical measures is necessary
- while maintenance work at the technique
- while maintenance work at the software
- when software updates to the server or the Simba portal have to be made
- whenever Simba considers this measures necessary

However Simba will always try to defend and protect the entitled interests of its members. Simba will do its best to inform its members prior such events.

These aforementioned regulations do not have an effect on the following § 19.

11. If an unexpected system crash obstructs the bidding, purchasing, selling or other functionalities of the Simba portal, Simba will than strive to publish or dispatch the appropriate information.

The credit notes / fees which members could claim are only accorded or returned to members if Simba decides to do so and/or according to the valid principles for system crashes.

Simba will usually request the members to publish their offers again.

If on the Simba portal and /or PPS market place offers end during maintenance work, these will not be extended. Even not if offering, assuming respectively purchasing during this time has not been possible.

Members can not claim for refunds or credit notes.

#### **§ 4 Sanctions, revocation and resign**

12. If a member violates laws, rights of third, this TERMS OF USE or the Simba principles, then Simba will / could initiate among other things following:

- delete offers or other contents and articles, which were published on the Simba portal
- warn all users or concerned members of the situation
- temporary block and/or restrict the range of use for this member This can refer to particular or all members
- irrevocable blocking of certain members.

The aforementioned measures serve to protect Simba and generally the visitors / members of the Simba portal and PPS market place. In particular fraudulent, law-adverse and/or youth-endangering activities are not under any circumstances tolerated. However Simba defends the entitled interest of the concerned member and whether he knowingly made himself guilty.

13. A member can be irrevocably excluded for the use of the Simba portal or PPS market place among other things in the following cases:

- to preserve the interests of the other Simba members and/or visitors
- if the log in / registration data was intentionally entered with false data
- if the member does not update his user account data independently
- if the member transfers his member account to a third
- if the member shares his member account with other users
- if the member publishes his account password
- if the member excessively damages other Simba members
- if the members performances abuse the Simba portal
- if Simba judges the irrevocable blocking of the member as necessary

After an irrevocable blocking no claim on re-creation of the closed member account and/or a new log in / registration exists for the concerned member. Same applies to its evaluation profile on the PPS market place and the entire Simba portal.

14. After an irrevocable blocking the former member is not permitted to use any services of the Simba portal by means of renewed registration or by using other member accounts. The resign of the use contract is at any time possible.

For this a written message to following address is enough:

SimbaPro sàrl  
1, route de Trèves  
L-2632 Findel  
Luxembourg

or an email to Simba. Select as concern: Resign + your username. The email must be sent from the email account mentioned in the user account.

15. Simba can monitor the activities of some members on the Simba portal and the PPS market place. On demand of the responsible court the collected information can be passed to the authorities if a major right violation has occurred.

16. Simba can resign the use contract at any time. In this case Simba will strive to keep a fourteen day period before the end of the use contract. The right to irrevocable block, temporary block and restrict the use of services remains unaffected from this.

## § 5 Supply fees, extra charges and commissions

17. The registration and setting up of a basic user account on the Simba portal and PPS market place is free of charges. When purchasing, placing a bid or publishing an offer Simba normally don't charge any fees to use this service as long as the member doesn't require or book extra services or functions for which Simba judges the payment of fees or commissions is required.

Following are some examples among others for which Simba judges the payment of fees or commissions is justified:

- requiring more storage space on the server
- storing data
- protecting and storing data
- upload additional photos, pictures, sounds and /or videos
- upload photos, pictures, sounds and /or videos
- bid, purchase, publish, read or use any services proposed by Simba thru the mobile short-messaging-system (SMS) or WAP. The use of the mentioned services may not offended these TERMS OF USE
- get notifications by SMS
- displaying / downloading of the web tv content in higher resolution
- downloading data of any type
- emphasizing offers
- grant the access to certain areas on the Simba sites and services
- if offers should be additionally displayed on other web pages
- if offers and/or content of any kind should be included in commercial campaigns (advertisement)
- if offers should appear in the "Simba magazine"
- if offers should be passed on to third people / companies

18. If the provider/ member insists on additional performances when publishing offers or content on Simba websites, then Simba can charge him with fees or provisions. Simba can among other things require from members, providers and/or buyers in the following cases fees, provisions and extra charges:

- When emphasizing individual articles on the Simba portal and/or PPS market place.
- When publishing link references (to other web pages) on the Simba portal and /or PPS market place.
- When advertising for services on the Simba portal and/or PPS market place.
- If a member wants to use his contact information commercially or privately on the Simba portal and/or PPS market place.
- When it comes to the termination of a contract between members (providers and buyers) with the help of Simba.
- If a member/a provider needs, requires or books more storage space on the server.
- If the Simba account is used by members as a result of a contract conclusion between them.
- When the Simba banc account is used for money transactions by the members.
- When members request for services, functions or tools, for which Simba judges the paying of fees or commissions is required.

19. The height of the fees depends on the regulation of charges fixed by Simba.

20. The height of the individual commissions is fixed by Simba and the actually valid regulation of charges fixed by Simba. These prices or percentages are displayed to members when requesting / booking services or publishing offers or contents.

21. The payment of the individual fees and/or commissions is to be made immediately after the member agreed to the prices and / or percentages requested by Simba. The payment can be settled by credit card, transfer or direct debit authorization.

If a member does not agree to the prices and / or percentages requested by Simba, then the member can not claim for the desired services, performances, functions and / or tools to be activated.

The agreement in connection with the respective fees as well as commissions occurs during the publishing buying, bidding or booking procedure of content, offers and additionally services.

Postnegotiations are not possible. The use of permanent performances, which justifies the demand of fees and/or commissions, must be paid in advance for the indicated period. As reference for this, the valid and current regulation of charges fixed by Simba will be followed as long as there is no extra regulation concluded by Simba for the concerned member or selected performance.

If an automated debit or request for payment fails the concerned member, if he has to represent the miss, must refund Simba for all extra costs that may result because of that. Bills are sent to the member by email. Simba will therefore use the email address figuring in the members user account. The invoice amount can besides be displayed by Simba in the member user account "My Simba".

After 30 days Simba can give a first reminder to the member. After further 30 days and altogether 60 days the second reminder will be sent to the member and Simba can charge the member with extra costs as well as interests. Besides Simba can proceed among other things as follows:

- Temporary freeze, lock or hide offers, content, services of the concerned member.
- Temporary freeze, lock or hide all offers, content, services of the concerned member.
- Warn the concerned member
- Restrict the range of the use, functions or access to the concerned member.

After further 30 days and altogether 90 days (after the first invoice was sent) Simba can charge the member with extra costs as well as interests. Besides Simba can proceed among other things as follows:

- Delete offers and content of the concerned member.
- Temporary or definitely freeze, lock, delete or hide all offers, content, services of the concerned member.
- Warn the concerned member
- Warn other members about the actual status of the concerned member however without publishing critical data. To this count: Complete address, E-Mail address, telephone numbers and height of the indebtedness.
- Temporary blocking and/or restriction of the use of the market place.
- Irrevocable blocking and deleting of the user account.
- Initiate court procedures.

22. When a contract out of an auction, purchase or service request between contracting members was incorrectly fulfilled, then Simba can make a credit note, cancel fees and/or commissions if Simba judges this action necessary.

When it comes to complications with a service-request-contract between two members (this is mainly for the categories "Freelancers" on the PPS market place and "Quote a Job" on the Simba portal) then Simba can proceed as follows:

- Determine a cancellation fee, which however will not exceed 25% of the total sum minus possible material costs and other expenses. This applies only if 50 % of the total sum concluded in the contract was prior transferred to a Simba banc account. Both parties receive the cash, which is entitled to them less possible fees that Simba charges for this service.

- Simba can select twelve candidates among its members according to the coincidence principle. These candidates will then form a decision committee. Both contracting parties will have to provide a text of maximum 500 characters explaining why it came to the resign. This text is then sent to the active member of the committee, which will decide over the height of a cancellation fee (between 0% and 25% of the total sum less possible material costs and other expenses. This applies only if 50 % of the total sum was prior transferred to a Simba account). For this procedure the participation of at least two members of the decision committee and a representative of Simba is sufficient. Both parties will then receive after the determination the cash to which they were entitled less possible fees that Simba requests for that service.

A credit note for fees and/or commissions that members could claim after the breach of a contract, can only be requested if the designated procedure is respected. The member may only count on credit notes, if Simba assured these to him. Members forgo to solve these kinds of problems with the help of a court if Simba asks for it.

23. Simba forbids cheating in the context of fees and commissions.

## **§ 6 System of evaluation, Confidence symbols, Guestbooks, Chat and/or discussion forums**

24. Although different security measures are taken to protect users, the trading and surfing in the internet remains risky. Since the unambiguous identification of members is very difficult in the Internet, not every member of the Simba portal and/or PPS market place will be a natural, legal entity or a truly honest user. Simba cannot guarantee the conscientious login / registration of its members.

Furthermore Simba cannot guarantee the conscientious publishing of offers and/or contents of its members. However Simba strives to track members who login / registered with false data. Those candidates can be treated in accordance to §2, §3, and §4 by Simba.

Simba strives also to track members who publish doubtful, immoral and / or illegal offers and / or contents on the Simba portal and / or PPS market place. The concerned members can then be treated in accordance to §2, §3, and §4 by Simba.

Simba constantly improves the mode of operation and structure of the Simba portal and PPS market place to track members with fraudulent intends and stop their plans as early as possible.

Basically the member has to proof the identity (and honesty) of his contract partner and has to inform Simba about possible offences against this TERMS OF USE and valid laws.

25. Beside the above mentioned, members are advised to consult the public evaluation service of Simba to better protect themselves from fraudulent actions on the Simba portal and / or PPS market place. Here, members can evaluate themselves mutually after the execution of a transaction or fulfilling of a contract. This system is to help members to get to know the contracting partner before the development and affecting of a contract. However the evaluations are not checked by Simba and can therefore be misleading.

26. Simba obligates the contracting parties in the context of the evaluations and evaluation comments to the following:

- Evaluations and evaluation comments must be filled out truthfully.
- The contracting parties must respect the legal regulations with the delivery of their evaluations and evaluation comments.
- The delivered evaluations must be as far as possible objective and be based on true facts.
- The delivered evaluations may not contain a defamation criticism.

27. The abuse of the Simba system of evaluation is strictest forbidden. For this some examples:

- if members deliver unfounded evaluations
- when members evaluate themselves
- when members evaluate themselves by means of third
- if members insert (Contact information, and other critical data) personal data into evaluations
- if members use the system of evaluation differently than Simba intended it to be used.

28. The abuse of Guestbooks, Chat- and/or Discussion-forums are strictest forbidden. For this some examples:

- if members publish unfounded contents
- if members publish illegal contents
- if members do defamation criticism on the Simba portal and/or the PPS market place
- if members publish critical/personal data over themselves or third
- if members publish youth-endangering contents on pages which are freely accessible (without age check up) for underage members
- if members use the publishing of contents differently than of Simba intended

29. Should Simba find unmistakable and concrete reference points proving an abuse of the evaluation system (Confidence Symbols, Guestbooks, Chat and/or Discussion-forums), then these individual evaluations or contents can be deleted by Simba. A right on erasure or republishing of an evaluation or contents does not exist and cannot be claimed by members.

30. If different parts of the member account data were checked by Simba, an assignment and / or displaying of symbols can be carried out by Simba. This measure is to facilitate and an attempt to make surfing and trading on the Simba portal more secure. However as these data is not continually checked, following always applies:

Basically the member itself has to make sure about the identity of his contracting party. The members are in addition obligated to let Simba immediately know about offences to this TERMS OF USE, to valid right and/or Simba principles. For this an email to Simba with the concern and a short description is sufficient.

31. Simba forbids the use of evaluation symbols, warranty characters and/or other symbols of third on the Simba portal and/or PPS market place. This particular applies when members want to obtain the confidence of possible contracting parties by this way.

## § 7 Forbidden articles, Services, Offers and Contents

32. Simba forbids the publishing / offering of articles, offers, contents and/or services, if their offering, publishing, sale and/or acquisition are against laws and/or against the good customs. Following articles, offers, contents and/or services may neither be described nor published:

- Articles, supplies, contents and /or services, whose application, offering or selling hurt author and performance patent rights.
- Articles, supplies, contents and /or services, whose application, offering or selling hurt commercial patent rights (labels, patents, custom and design patents).
- Articles, supplies, contents and /or services, whose application, supply or selling hurt other rights (the right on own pictures, name and personal rights).

Owners of private or commercial patent rights or copyrights, which were by the offers or publications of a Simba member hurt, can announce this to Simba. If valid rights are hurt the mentioned content published on the Simba portal and/or PPS market place will be deleted. Simba can arrange an irrevocable blocking of the member in cases of particularly bad offences. Below are some forbidden articles, services, supplies and/or contents listed:

- Propaganda articles and/or articles with flags of unconstitutional organizations
- Power-glorifying contents, offers or articles
- unconstitutional contents, offers or articles
- unconstitutional services
- Publishing of pornographical and youth-endangering articles, contents and/or supplies outside of areas designated for it (which are secured by an access barrier for persons under age).
- Firearms, cutting weapons, thrust weapons and generally all weapons of every kind which are regulated by the valid weapon laws of Luxembourg
- Ammunition of any type
- tobacco goods (e.g cigarettes, cigars, fine cut)
- radioactive substances, poison and explosives
- health-endangering chemicals
- living persons likewise as dead animals and organisms of all kinds
- products and preparations of organisms of all kinds (Exceptions only for members who maintain the valid right to trade or sell such products)
- products and preparations of protected animal species
- protected plants and their preparations
- human organs
- services and/or supplies which hurt human rights
- securities (shares, stocks)
- monetary market or financial instruments
- credits, loans and financial aids (except these proposed by credit institutes with seat and address in Luxembourg)
- certificates of indebtedness
- judicial titles and/or other demands from legal transactions
- coupons or goods which were not designed to be sold, but are free of charge available for everyone
- articles, whose possession is legal, whose use however is forbidden
- drugs and/or other substances provoking a psychological or physical dependency
- prescription-requiring medicaments
- medicine products and/or medical services, whose offering is forbidden thru legal regulations
- properties and property-same rights

33. Beyond the listed articles, supplies, contents and services described §7 clause 28, Simba can delete offers and/or contents on its websites, if the circumstances suggest the suspicion that this offering and/or publishing is against valid right, this TERMS OF USE or the Simba principles.

34. Simba makes efforts in seeking for contents and/or supplies, whose publishing is against valid right, this TERMS OF USE or the Simba principles. However the members of the Simba portal and the PPS market place commit themselves to seek independently for abuses and to inform Simba if necessary about it.

## **§ 8 General Principles**

35. The member is obligated to obey the valid laws of the Simba portal to use its services. The member is obligated to obey the valid laws of the Simba portal to use the PPS marketplace.

36. Contents, supplies as well as services published / offered by the member may not offend valid laws, this TERMS OF USE or the Simba principles.

37. When it comes to a contract conclusion between members, Simba provides the concerned members the necessary data to establish a mutual contact between both contracting members.

With mutual agreement (members and Simba), Simba provides the concerned member the necessary data to establish a mutual contact between him and another member. Simba can exchange data with governmental and legal institutions to improve investigations concerning certain members.

38. The member must consider when publishing contents on the Simba portal the Simba principles, valid right and this TERMS OF USE. Among other things, following has to be respected:

- The member must insert / publish his contents, offers and/or articles in the appropriate categories / areas.
- The member may need to describe his contents, offers and/or articles when publishing with words, glossary words and/or pictures correctly and completely.
- The member must truthfully indicate all characteristics, features and/or errors concerning his offers, contents and/or articles, which are relevant to estimate the value of the offered commodities or services.
- The member must truthfully indicate all those for the job substantial data, which are relevant for to estimate the value of the job and /or service (Job space and PPS market place mainly).
- The member must collect in advance all relevant data / information concerning the fulfilment and/or transfer of articles, offers and/or services like payment, dispatching costs, additional expenses etc.
- For the execution of a job and/or service, the member must collect in advance all relevant data/information concerning details such as payment, distance to drive, all kind of costs, additional expenses, necessary material, etc.
- The member must be able to launch/begin the offered commodity immediately after contract conclusion.
- The member must be able to supply and/or fulfil his offer in accordance with the service specification he published.
- Enterprises / Entrepreneurs, who offer goods or services to consumers, are obligated, to indicate their customers the legally prescribed consumer protection information.

- Enterprises / Entrepreneurs, who offer goods or services to consumers, are obligated, to instruct their customers about the legal right of revocation if such exists.
- The content and description of the supply / offer may not hurt the rights of others and must exclusively refer to the supply / offer.
- The uploaded photos must exclusively refer to the published supplies / offers and may not hurt the rights of others.
- The supply, offer or content may not hurt the rights of others.
- It is not allowed to publish advertisement for articles and/or services on the Simba portal and/or the PPS market place, which offend valid right, this TERMS OF USE or the Simba principles.

39. The price of the respective supplies, offers and/or services are end prices including possible taxes, fees, commissions and/or further prize components. Shipping and delivery expenses are to be paid by the buyer. Seller, Salesmen, providers and /or property-owners may not charge their contracting partners with the Simba fees and/or commissions.

40. Members must store the critical data of their activities on the Simba portal independently on a storage medium different to the Simba servers. Such data are among other things following:

- Proof data for the preservation of evidence concerning the contracts with other members
- Data for record keeping
- Access data to the member account
- Contact data of the contracting members

41. Simba is not responsible for the loss of data and/or contents of any type (on the PPS market place, as well as the entire Simba portal) caused by system errors or due to other circumstances that can occur.

42. The members are committing themselves to independently make backup copies of their data. The following data are among other things concerned:

- pictures and graphics
- sounds and videos
- text contents of any type
- the configuration of different functions
- contact data
- contract data
- access data

43. The use of addresses, contact data and email addresses for other purposes than for contractual and before-contractual communication is strictly forbidden on the Simba portal and the PPS market place by the mean of commercial use. This associated abuse of collected data is forbidden to all visitors and members of the Simba portal.

44. Simba is not responsible for the loss of data or other damages of all kinds provoked by the use of the Simba portal and/or PPS market place that happened or could happen to members and/or third.

45. Simba can modify this TERMS OF USE and will however try to consider the interests of its members. In this case Simba will inform its members at least 30 days before the effectiveness of the modifications by email.

## **2. Online auctions on the Simba portal**

### **§ 9 Contract Conclusion**

1. When a member (in the following: Provider) publishes in the context of an online auction a supply, offer or content on the Simba portal, then this is binding. At the end of a successful auction it should come to a contract conclusion over this supply, offer or content. While the publishing procedure (online-auction) the provider will set up a run time for his offer within other members can place a bid or buy the supply, offer or content. One differentiate between two auction types:

Type 1: online auction with the target: Highest bid (the supply, offer or content addresses itself to max. five Buyer, which delivered the highest bid during the run time of the online auction).

Typ2: online auction with the target: Deepest bid (the supply, offer or content addresses itself to max. five Buyer, which delivered the deepest bid during the run time of the online auction) (also Dutch-auction).

2. The buyer accepts the purchase of the offer by bidding. (If more than four other buyers placed during the run time of the online auction a higher (type 1) or deeper (type 2) bid, then the bid of the first Buyer is not relevant anymore). The measurement of the run time of the online auction depends of the official Simba time. Simba does not assume bids from members. Simba places no bids. Contract conclusions are exclusively done between members.

3. (At the end of the online auction the provider receives a list of the five highest (type 1) or to deepest (type 2) bids / buyer. From this list the provider can select himself max. three buyers. The selected buyer will then receive an email containing an acknowledgement link.) The first buyer, who hits that acknowledgement link, is then concluding a binding contract over the acquisition of the supply, offer or content proposed by the provider. The highest bid determines the selling price (type 1). The deepest bid determines the selling price (type 2).

4. On the Simba portal offers, contents supplies and/or services can also be offered and / or sold at a fix price. The fix price is determined by the provider. By purchasing the concerned buyer commits to agree to a buying contract. The provider is responsible himself for his supply, offer and content. He must always respect this TERMS OF USE, the Simba principles and valid laws.

5. If the conclusion of the contract between the provider and the buyer should not succeed, Simba does not forbid the provider to publish again its supply, offer or content. However Simba can prevent the renewed, publishing, adjusting or deleting of supplies, offers or contents.

Here Simba handles with best intentions to protect its members / users and itself. Simba refers itself to the own TERMS OF USE, the Simba principles and valid laws.

### **§ 10 Principles for online auctions**

6. Providers and members may not among other things do following on the Simba portal and the PPS market place:

- Apply members (in particular bidder) in the context of a contract termination outside of the Simba portal. Exception applies only if the mentioned was expressly permitted by Simba. Simba does not take any responsibility for contract termination concluded inside or outside the online trading system.

- Influence the interest of buyers in other supplies and offers (auctions, etc..).
- Discredit other buyers or members publicly or by mail.
- Discredit the supplies and /or services of other providers publicly or by mail.
- Members and/providers may not influence the process of online auctions by the delivery of bids using different member accounts.
- Members and/providers may not influence the process of online auctions by the delivery of bids by the help of third.
- Members and/providers may not influence the process of the online auctions by the delivery of bids on own auctions or sales.
- Members may only buy (bid on) supplies, offers or content if they really want to purchase them and when they are able to pay them.
- Members and/providers may not influence the process of online auctions by repeated / multiple publishing of the same supply, offer or content. In particular not if these supplies, offers or contents are to appear simultaneous on the Simba portal. This does not apply, as far as the member/the provider can offer several supplies and/or articles of same type and quality at a time. For this the member / provider needs the agreement of Simba.

7. The use of Sniper programs, which automates data processing such as the delivery of bids, is forbidden.

All in § 10 mentioned principles for online auctions and this TERMS OF USE apply forwards, during and beyond the run time of the own auctions.

All in § 10 mentioned principles for online auctions and this TERMS OF USE apply for the entire duration of the membership and beyond it.

### **3. PPS market place, Shop and Sales-System**

#### **§ 11 Offers and supplies for immediate purchases**

1. Apart from the auction sales Simba offers its members further possibilities to sell / promote their supplies, offers, services and/or goods:

- (type 1): Members can under certain conditions sell and promote supplies or services at a fixed price that they determine while the publishing procedure on the Simba portal and the PPS market place.
- (type 2): Members can sell and promote own supplies, services or using rights under certain conditions at a fixed price determined by Simba. (f. ex. Pictures: only if they own the copyrights and detain the exclusive using permission. Furthermore the publishing and selling may not offend this TERMS OF USE, the Simba principles and valid laws)
- (type 1): Members can acquire these supplies, using rights and/or content at the price indicated by the provider.
- (type 2): Members can acquire these supplies, using rights and/or articles at the price indicated by Simba.

This type of selling, offering or promoting services and/or supplies differs substantially from the Simba auctions. By the purchase it comes directly to a contract end between supplier and buyer. By publishing content or a supply (to sell it) the member, owner and/or author delivers a binding offer for the sale of this content or supply at a fixed price to possible prospective customers. It comes to a contract conclusion between providers and buyers when the buyer successfully finished the purchase procedure (of the Simba portal).

During this purchase procedure the buyer must identify himself as a registered member and for this, his access password or login will be asked. Simba keeps itself the right to do

modification to the purchase procedure to improve the buying and trading (safety) for its members on the Simba portal and PPS marketplace.

## **§ 12 Announcement format**

2. The announcement format of contents or supplies belonging to providers will be displayed like advertisements in weekly papers for classifieds. Buyers, sellers and members can contact mutually via the Simba mailing system before contract termination.

3. No contracts can be terminated in the announcement format on the Simba portal and/or PPS marketplace.

4. If a member should have booked additional services for which Simba charges fees or commissions, the member will not be able to claim for a credit note if he renounces on the taken services before the end of the booked runtime.

## **4. Simba Shops**

### **§ 13 General description of an online shop on the Simba portal**

1. Members can operate, if they fulfil certain conditions, an own online shop on the Simba portal and PPS market place.

2. The members are responsible for the offers, contents and/or supplies published in their shops and commit themselves beside all legal specifications to use their shops according to this TERMS OF USE.

3. For the set up and/or use of a shop on the Simba portal, Simba can ask fees and/or commissions. The height of these fees and commissions are generally determined or individually adapted by Simba.

### **§ 14 Principles for online shops on the Simba portal**

4. The rules for shop are the principles for online shops on the Simba portal and this TERMS OF USE.

5. During the set up of an online shop on the Simba portal the member selects a shop name and must thereby among other things consider following:

- The shop name may not hurt rights of third.
- The shop name may not offend good customs.
- The shop name may not offend valid laws.

6. Simba can delete the shop if any violation of rights or offences against the good customs can be proved. Simba can enable the member to modify the shop name.

7. The queried data during the set up procedure of a shop must be returned completely correctly and truthfully by the member. If a modification of these data should occur during the membership, the member commits himself to correct the specifications immediately.

8. Simba is not responsible for the loss of data, for warranty claims and/or for other damages that can, could or will occur to members and/or third due to the use of the Simba portal and/or PPS market place.

## **5. Final clauses**

### **§ 16 Contract transfer to third**

Simba can transfer its rights and obligations from this contractual relation completely or partly to third. Simba will than acknowledge its members 30 days prior the change to be active. After this notification members are authorized to quit this contractual relation. For this an email to Simba with the following concern is sufficient: Resign, member name. This email must have been sent from the email address figuring in the member account.

### **§ 17 Exemption**

Members release Simba from all claims that other members could ask from Simba because of a possible violation of their rights or damages of any type, which resulted from the member's publishing of supplies, services, contents or other use / abuse of the Simba portal and/or PPS market place. This also concerns contents like text, sounds, pictures and/or videos of any kind which were published by members on the Simba portal and/or PPS market place and provoke / provoked a violation of rights or caused other damages. The member commits himself to take charge of all necessary costs to defend Simba including all court and lawyer costs, if it should come to an accusation. This applies only, if the law breaking was partly or entirely caused by the member.

### **§ 18 System integrity and disturbance of the Simba portal and the PPS market place**

1. Members may not among other things act as follows:

- Use special mechanism, software or scripts to influence or disturb the function of the Simba portal and/or PPS market place.
- Members may not load the Simba portal or PPS market place excessively.
- Members may not block overwrite, modify or in influence contents generated by Simba.

2. Contents of / on the Simba portal or PPS market place may not be handled as follows without the previous agreement of the owner of the copyrights:

- copied
- spread
- be used or multiplied

Copying with "Robot/Crawler" by the mean of search-engine-technologies is forbidden. The layout as well as contents, functions, scripts, logos on / of the Simba portal and the PPS market place may only be multiplied with the previous written and certified agreement of Simba and/or the owner of the copyrights.

### **§ 19 Restriction of liability**

3. In relation with entrepreneurs (societies, enterprises, etc) Simba is only responsible if fraudulent intentions or rough carelessness of Simba can be proven. Simba will judge about its guiltiness itself. Simba is basically responsible for nothing. There is among other things no adhesion for:

- The substitute of indirect damages
- The loss of data

- The loss of the protection of data
- The loss of contracts
- The loss of articles
- The loss of contents
- The loss of rights
- Escaped sums of money or the lost of money because of third

4. In relation with consumers Simba is only responsible if fraudulent intentions or rough carelessness of Simba can be proven. Simba will judge about its guiltiness itself. Simba is basically responsible for nothing. There is among other things no adhesion for:

- The substitute of indirect damages
- The loss of data
- The loss of the protection of data
- The loss of contracts
- The loss of articles
- The loss of contents
- The loss of rights
- Escaped sums of money or the lost of money because of third

In the context of violation of substantial contract obligations, like the debtor's default or the impossibility to perform, Simba will adhere for its culpable behaviour and will estimate its own guiltiness.

5. The aforementioned adhesion exclusions in relation with entrepreneurs, consumers, visitors and/or members do not apply to cases in which Simba clearly expressed warranties. Same applies to cases in which legal regulations apply.

## **§ 20 Writings, applicable right and area of jurisdiction**

6. Messages concerning the use contract can be sent by email or letter post to Simba at:

Simba Pro sàrl.  
1, route de Trèves  
L-2632 Findel  
Luxembourg

Simba reserves itself the right to modify the above mentioned address. Simba will inform its members about this modification.

7. If the user is an entrepreneur, then the use contract including these TERMS OF USE is subject to the material right of the Grand Duchy of Luxembourg under exclusion of the UN purchase right. If the user is a regular consumer, then the use contract including these TERMS OF USE is subject to the material right of the Grand Duchy of Luxembourg, so far no mandatory laws, as for example consumer protection regulations oppose to it.

8. If the member is a businessman in the sense of the commercial law, a public special estate or a juridical person of the public right, then Luxembourg is exclusive area of jurisdiction for all developing disputes in connection with this use contract and its TERMS OF USE.

## **§ 21 Modification of these TERMS OF USE, Salvatori clause**

9. Simba can modify this TERMS OF USE at any time and without giving reasons. In that case members will be informed of the modifications by email at the latest 14 days before the changes will be active. If the member does not protest against the new TERMS OF USE within 14 days after the email was sent, the modifications will then be considered as accepted.

10. If a regulation of these TERMS OF USE is ineffective, the remaining regulations remain unaffected. The ineffective regulation will be replaced by one which comes the sense and purpose of the ineffective regulation in legally effective way economically next. Same applies to possible regulation gaps.