

## **General Terms and Conditions Governing Employee Leasing Agreements**

### **Section 1 Applicability**

1. The hiring-out of employees is exclusively governed by these General Terms and Conditions. These are part and parcel of all agreements we conclude with our contract partners (hereinafter: "**Hirers**") on the hiring-out of temporary workers (hereinafter: "**Staff Members**"). They shall also apply to any future hiring-out of employees to the Hirer even if not separately restated.
2. Terms and conditions of the Hirer or third parties shall not apply even if we do not separately object to their applicability in a given case. Such terms and conditions must not be deemed to have been approved by us even if we make reference or point to documents containing terms and conditions of the Hirer or a third party.

### **Section 2 Offer and closing**

Our offers are without obligation and non-binding. Statements of acceptance and orders are subject to our confirmation in writing or by telex.

### **Section 3 Employment relationships, selection**

1. We remain employers of the Staff Members concerned. No employment relationship is established between Hirer and Staff Member. Staff Members are not, therefore, entitled to accept payments from the Hirer (e.g. advance wage payments) with a discharging effect on us.
2. We undertake to provide only qualified Staff Members. We select them on our own responsibility while warranting that they satisfy the formal average technical requirements of the contemplated activity.

3. Where we consider it necessary to replace Staff Members in justified cases, we shall notify the Hirer on time while ensuring a smooth transition.
4. Where a Staff Member proves unsuitable, the Hirer is required to notify us without delay, so as to enable us to find an appropriate replacement. If we are unable to provide an appropriate replacement for a Staff Member found to be unsuitable, either side is entitled to terminate the contract relating to the given Staff Member ("**Partial Termination**") without notice.
5. During a work assignment, the party entitled to give instructions to the Staff Member is the Hirer. The latter may not, however, give such instructions as would interfere with the Staff Member's contractual relationship with us. Our authority to instruct shall remain in effect alongside that of the Hirer. In case of conflicting instructions, our authority to give instructions shall prevail.
6. The Hirer undertakes to comply with the Working Time Act. Pending commencement of the assignment and in case of changes to the field of work, the Hirer is required to advise Staff Members of any safety or health risks to which they might become exposed at work as well as of the precautions taken and facilities provided to avert such risks. In addition, the Hirer shall caution Staff Members about the need to acquire special qualifications or occupational skills and to submit to special medical surveillance as well as about any specific heightened dangers associated with the place of work. The Hirer shall moreover ensure that Staff Members are under constant surveillance by the company physician as provided for by industrial safety law. The pertinent costs shall be borne by the Hirer, who is moreover required to promptly advise us of any industrial accident.
7. Within the framework of the employer's duty of care, the Hirer will take suitable precautions to protect Staff Members during and in the context of their work assignment against disadvantages on grounds of race, ethnic origin, gender, religion, ideology, a disability, age or sexual identity.
8. The Hirer undertakes to meet its information obligations under the Temporary Employment Act and, in particular, to inform Staff Members about job openings in both its own and affiliated companies by appropriate means on the company premises. Moreover, the Hirer shall afford Staff Members access to its collective facilities and services on the same terms that are granted to the Hirer's own comparable employees.

## **Section 4**

### **Remuneration, accounting**

1. Account shall be rendered on the basis of the contractually agreed hourly rates. Agreed rates are denominated in euros plus VAT and contain all ancillary wage costs. Hourly rates do not, however, include additional pay for overtime, night-work, shift-work, work on Saturdays, Sundays and public holidays or any other bonus payments unless otherwise agreed.
  
2. A Staff Member's working week has 40 working hours. Hours worked in excess of that figure as well as night-work, shift-work and work on Saturdays, Sundays and public holidays need to be separately agreed with us in advance and shall be additionally paid for at the following rates:
  - a) Working hours in excess of the weekly forty-hour standard:

- for the first and second hours	+ 25 %
- starting from the third hour	+ 50 %
  - b) Hours worked on Saturdays + 25 %
  - c) Hours worked on Sundays + 70 %
  - d) Hours worked on public holidays + 150 %
  - e) Second shift work + 12 %
  - f) Third shift work + 15 %
  - g) Irregular night-work + 50 %
  - h) Regular night-work + 15 %
  
3. Account is rendered on the basis of the Staff Member time sheets counter-signed and checked by the Hirer at monthly intervals. The Hirer shall ensure that the hourly time sheets submitted by Staff Members are checked and counter-signed. Hourly time sheets shall be deemed to have been approved by the Hirer unless we receive written objections within 14 days of submission. The Hirer's attention shall be drawn on submission of each hourly time sheet to the commencement of the above time limit and the pertinent implications.
  
4. If the Hirer operates a time recording system, it shall use it to report presence. In that case the Hirer is obliged to provide us by email /fax with a time statement for the previous month not later than on the second business day of the following month.
  
5. Short hours shall be accounted for as full hours. Hourly rates are specific to the given agreed place of assignment. Travelling expenses shall be refunded by the Hirer for busi-

ness trips required or approved by it. Travelling expenses shall in particular include fares, accommodation costs and per diem allowances for meals. Times spent travelling shall be refunded at the full hourly rate.

6. We reserve the right to increase our hourly rates if a Staff Member is substituted by a better qualified replacement with the concurrence of the Hirer.

## **Section 5 Payment terms**

1. Our invoices shall fall due without deduction immediately following receipt. The Hirer shall automatically be deemed in default if it fails to pay our invoice within 14 days of the invoice date.
2. Set-off against counter claims that are challenged or not non-appealably established is ruled out just as any right to retention.

## **Section 6 Intellectual and related property rights**

Where a Staff Member makes an invention or a suggestion for technological improvement capable of being patented or registered as a utility model within the meaning of the Employee Inventions Act, the ensuing rights shall be transferred to the Hirer concurrently with fulfilment of the pertinent obligations pursuant to section 11(7) Temporary Employment Act in conjunction with the Employee Inventions Act. Any compensation payable under the Employee Inventions Act shall be due to us and shall be passed on by us to the Staff Member concerned in the context of our payroll accounting.

## **Section 7 Strike**

We are not obliged to hire out Staff Members while a strike is in progress at the Hirer's company. In such cases we are obliged to advise our Staff Members that they are entitled to refuse to perform work for the Hirer.

**Section 8**  
**No solicitation, take-over**

1. The Hirer is obliged to refrain from enticing our Staff Members away in an inadmissible manner (Sections 1 UWG [Unfair Competition Act], 826 BGB [German Civil Code]. In case of infringement we are entitled to assert claims for damages.
  
2. If an employment or other employer-employee relationship arises during the agreed period of assignment or up to three months after its termination between a Staff Member and the Hirer or a company affiliated to the latter, the Hirer owes us an adequate intermediation commission which shall fall due upon conclusion of the employment contract and be payable within 14 days of the invoice date. The intermediation commission shall amount to 35 per cent of the gross annual salary agreed between Hirer and Staff Member in case of take-over within twelve months of the start of the assignment. Thereafter the commission shall be reduced to 25 per cent and after a total of 24 months to 10 per cent. Divergent covenants may be made in individual contracts. The intermediation commission shall also fall due if an employment relationship arises without prior leasing or merely on introduction of a candidate within twelve months of such introduction. The Hirer is required to promptly advise us and furnish proof to us of the commencement of such an employment relationship along with the agreed annual gross salary.

**Section 9**  
**Liability**

1. We are only liable for the selection of the Staff Members hired out, not, however, for the completeness or accuracy of statements made by applicants or third parties except if we have deliberately or grossly negligently failed to recognise the incompleteness or falsity of the statements made.
  
2. We shall not be liable for the proper performance of work or for other actions or forms of conduct on the part of Staff Members.
  
3. Staff Members may only be assigned to the agreed activities and may not be required to use and/or operate equipment other than needed in that context. Where a deficient work result is due to any culpable neglect of the duty to take due care in the selection of Staff Members, our liability shall be limited to subsequent improvement. Any further claims of the Hirer are excluded.

4. Our liability pursuant to section 9(1) shall be limited to deliberate and grossly negligent fault in the selection of candidates. We shall not be liable for slight negligence.

## **Section 10 Secrecy**

1. We and our Staff Members undertake to observe secrecy about all such confidential data and information of the Hirer, its suppliers and customers as become known or accessible to us and/or our Staff Members in the context of this leasing agreement.
2. The duty to observe secrecy shall not apply to data or information which –
  - a) is already known to the recipient at the point in time of disclosure
  - b) was independently generated by the recipient
  - c) was made available to the recipient by a third party without breach of a secrecy agreement or which –
  - d) is already generally known at the time of disclosure or becomes generally known thereafter.

## **Section 11 Termination**

1. Employee leasing agreements may be terminated by either contracting party in writing during the initial six-month period subject to two weeks' notice to the end of a month. Thereafter, the applicable notice period shall be four weeks to the end of a month. Notice by the Hirer is effective only if addressed to us. Staff Members are not entitled to receive any notice of termination.
2. The right to termination for cause remains unaffected. We are entitled to invoke cause e.g. if the Hirer gets into arrears, if we become aware of circumstances which suggest a substantial deterioration of the Hirer's state of affairs, if the Hirer ceases to make payment (including temporarily) or if a petition to open insolvency proceedings against the Hirer has been filed.
3. In cases covered by section 11(2) second sentence we are moreover and at our complete discretion entitled to refuse further services or to make our continued readiness to do so contingent on an appropriate advance payment.

## **Section 12**

### **Data protection**

1. The contracting parties undertake to comply with applicable data protection law, in particular the pertinent law of the Federal Republic of Germany.
2. Each contracting party is not allowed to store, process or use personal data made available to it by the other contracting party except for the contractually agreed purpose. Likewise prohibited is any transfer of such data to third parties except on the instructions of the contracting party concerned.
3. This obligation shall remain in force beyond the end of the contractual relationship.

## **Section 13**

### **Code of Conduct**

1. We set great store by entering into business relations only with such contract partners whose conduct conforms to the ethical and moral principles of our company and the UN Commission on Human Rights.
2. The Hirer therefore undertakes to comply with all laws applicable to its activities, to refrain from promoting or tolerating any form of corruption, in particular from any unlawful support of public or private economic decision makers, to adhere to human rights and accepted environmental protection standards, facilitate healthy and safe working conditions and not to permit child labour.

## **Section 14**

### **Final provisions**

1. This agreement is exclusively governed by the laws of the Federal Republic of Germany to the exclusion of UN sales law.
2. Modifications of, amendments to or any notice to terminate employee leasing agreements require the written form. The same shall apply to this requirement of writing.
3. All disputes arising from or in the context of this agreement shall be non-appealably settled, to the exclusion of ordinary legal proceedings, pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC). Venue of the arbitration proceedings shall

be Berlin, Germany. The panel shall have three arbitrators. Arbitration proceedings shall be conducted in English.

4. Lacunae, if any, contained in this agreement shall be deemed to have been filled by such legally effective provisions as the contracting parties would have agreed in view of the economic objectives of this agreement and the purpose of these general terms and conditions if they had been aware of the omission.