

General Terms and Conditions for Recruitment Agency Contracts

1. Basis and priority of Recruitment Agency Contract

1.1 Tempton Personaldienstleistungen GmbH, which holds a permit under Section 1 of the Act on Temporary Agency Work [Arbeitnehmerüberlassungsgesetz], and other enterprises affiliated with Tempton Personaldienstleistungen GmbH within the meaning of Section 15 et seq. AktG [German Stock Corporation Act] (hereinafter generally referred to as “**Tempton**”) mediate in employment contracts between the Client and staff (“**Recruitment Agency Contract**”).

1.2 Where the terms of the Recruitment Agency Contract conflict with these General Terms and Conditions for Recruitment Agency Contracts (“**GTC**”) the provisions of the Recruitment Agency Contract have priority.

2. Conclusion of contract and subject matter

2.1 A Recruitment Agency Contract is concluded as soon as the Client and Tempton agree the terms of the Recruitment Agency Contract.

2.2 Tempton provides the services stipulated in the Recruitment Agency Contract; Tempton will, in particular, present candidates to the Client in accordance with the Recruitment Agency Contract (“**Presented Candidates**”). Tempton is not liable for the success of its mediation. Characteristics, the qualifications of Presented Candidates, the standard of their work and verbal or written statements by Presented Candidates do not constitute any warranty by Tempton.

2.3 The contractual relationship formed by the Recruitment Agency Contract is not exclusive. The Client is entitled to commission third-party service providers to look for suitable candidates whilst Tempton is also entitled to look for suitable personnel for other clients.

2.4 Tempton does not provide and is not responsible for providing legal advice. Tempton will recommend a lawyer specialising in employment law at the Client’s request.

3. Entitlement to and amount of commission

3.1 Entitlement to commission arises on the conclusion of an employment contract between the Client or one of its affiliated enterprises within the meaning of Section 15 et seq. AktG and a Presented Candidate. Should the Client or one of its affiliated enterprises within the meaning of Section 15 et seq. AktG employ a Presented Candidate in another job – e.g. one which differs from the original job profile or specification – or on terms other than those originally proposed this will not generally have any effect on entitlement to commission.

3.2 In order for entitlement to commission to arise it will generally suffice if Tempton’s services contribute towards formation of an employment contract between the Client or one of its affiliated enterprises within the meaning of Section 15 et seq. AktG and a Presented Candidate. The date on which the employment contract is concluded or commences is immaterial.

3.3 Notwithstanding any prior ending of the Recruitment Agency Contract Tempton’s entitlement to commission from the Client arises in any event if the Client or one of its affiliated enterprises within the meaning of Section 15 et seq. AktG concludes an employment contract with a Presented Candidate provided by Tempton within 12 months of presentation of the candidate.

3.4 The amount of Tempton’s entitlement to commission after providing a Presented Candidate within the meaning of the Recruitment Agency Contract will generally be based on gross monthly salary or gross annual salary.

- Gross monthly salary for the purposes of the Recruitment Agency Contract is defined as 1/12th of total gross annual pay (assuming that the Presented Candidate concerned is continuously employed for at least 12 months) of the Presented Candidate concerned from his employment relationship with the Client (including pro rata holiday pay and/or Christmas bonus, pro rata bonuses, commission or other special payments and pecuniary benefits, such as a company car, when a 100% degree of target achievement and level of payment will be assumed for variable elements of remuneration).
- Gross annual salary for the purposes of the Recruitment Agency Contract is defined as total gross annual pay (assuming that the Presented Candidate concerned is continuously employed for at least 12 months) of the Presented Candidate concerned from his employment relationship with the Client (including pro rata holiday pay and/or Christmas bonus, pro rata bonuses, commission or other special payments and pecuniary benefits, such as a company car, when a 100% degree of target achievement and level of payment will be assumed for variable elements of remuneration).

3.5 Should the Client refuse a request by Tempton to disclose the amount of gross monthly salary or gross annual salary of a Presented

Candidate employed Tempton will have the right to charge commission on the basis of the gross monthly salary or gross annual salary normal in the market for someone with the qualifications of the Presented Candidate concerned and to then assert a claim to commission against the Client in that amount.

3.6 Entitlement to commission will not be affected by any later cancellation or termination of the employment contract initially concluded.

4. Invoicing, payment, default and set-off

4.1 Tempton will invoice the Client the amount of its entitlement to commission owed as well as other payments owed under the Recruitment Agency Contract as agreed, plus statutory VAT.

4.2 The amount invoiced must be paid within ten days of receipt. In the event of default in making payment statutory default interest will be charged.

4.3 Receivables or counterclaims on the part of the Client will only entitle it to make a set-off or assert a right of retention in so far as the Client’s rights or counterclaims are undisputed or established by way of a final court order.

5. Tempton’s limited liability in damages

5.1 Where Tempton, its statutory representatives, employees or agents are in breach of duty, whether deliberate or due to gross negligence and especially under the contractual relationship, or where they commit a tortious act, whether deliberate or due to gross negligence, Tempton will be liable for the resultant loss or damage to the Client in accordance with statutory regulations.

5.2 Where Tempton, its statutory representatives, employees or agents are in breach of duty due to just simple negligence the Client’s claims in damages against Tempton of any kind and on any grounds whatsoever, especially for breach of duty under the contractual relationship or in tort, will be excluded unless it should be a case of simple negligence in the breach of an essential contractual obligation. In that eventuality its liability will be limited to foreseeable loss or damage typical of such a contract. An essential contractual obligation for this purpose is one the proper fulfilment of which constitutes a condition sine qua non and on the observance of which the Client regularly relies and is entitled to rely.

5.3 The above exclusion of and limit on liability does not apply to instances of culpable loss of life, personal injury or damage to health.

5.4 The statutory rules on burden of proof are not affected by the above provisions.

5.5 Tempton’s liability for any losses caused by a Presented Candidate, including any loss of confidence and liability for a candidate’s suitability or performance, is excluded in the absence of breach of duty on Tempton’s part.

6. Confidentiality, data protection

6.1 Tempton shall use the confidential information related to the Client which it received within the framework of fulfilling the Recruitment Agency Contract exclusively for the purpose of the Recruitment Agency Contract and shall treat such information confidentially, and shall in particular not use it outside the purpose of the Recruitment Agency Contract by passing it on to third parties without the prior written approval of the Client (including approval given by email).

6.2 The parties hereby undertake to treat personal data in accordance with data protection regulations.

6.3 The Client shall be obligated to treat confidentially any candidate data and profiles it received and all other information it receives within the framework of the Recruitment Agency Contract, in particular information related to the personal, professional and economic conditions of the candidate, and it must not pass on such information to third parties or make it available to third parties. If the Client violates this regulation and the third party then concludes an employment contract with the candidate presented by Tempton, the Client shall be liable to pay the commission in the same way as the Client would be obliged to pay if it had itself concluded this employment contract.

6.4 The Client shall release Tempton from all claims and receivables, which candidates/applicants or other third parties enforce in connection with the violation of data protection regulations by the Client.

6.5 The obligation to maintain confidentiality and comply with data protection regulations shall also continue to apply even after the

General Terms and Conditions for Recruitment Agency Contracts

termination of the Recruitment Agency Contract.

7. Scope of application

7.1 These GTC form the basis of all contracts between the Client and Tempton and apply, in particular, to all rights and obligations of both Contracting Parties, including all future contracts between the Client and Tempton, even if the Contracting Parties should not expressly agree in future that these GTC should apply.

7.2 These GTC have exclusive application. Tempton does not acknowledge any of the Client's contrary or supplementary contractual conditions or references to such contractual conditions even if Tempton does not expressly refute them. Unreserved performance by Tempton or the acceptance of payments by Tempton shall not signify acknowledgement of the Client's own general terms and conditions.

8. Place of performance, place of jurisdiction, applicable law and severability clause

8.1 The place of performance for all reciprocal obligations under the Recruitment Agency Contract is the contractually agreed place of performance; in the absence thereof the place of performance will be Tempton's main office.

8.2 The Federal Republic of Germany is the place of international jurisdiction for all disputes arising out of or in connection with the Recruitment Agency Contract. Tempton's main office is the exclusive place of local jurisdiction where the Client is a trader, a legal entity under public law or a special fund governed by public law. However, Tempton has the right to sue the Client in another court having competence under the provisions of the German Code of Civil Procedure.

8.3 The law of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG) and private international law, exclusively applies to all legal connections between the Client and Tempton.

8.4 If a provision in these GTC should be or become invalid or incapable of implementation or should contain an omission this shall not affect the validity of the remaining provisions. The provision that is invalid, incapable of implementation, or omitted will be replaced by such a provision that the Parties would reasonably have agreed if they had been aware that the former provision was invalid, incapable of implementation or contained an omission.