

## 1. Validity

**1.1.** These terms and conditions apply to all legal transactions between lender (APS Austria Personalservice GmbH & Co KG, hereinafter **APS**) and borrower (hereinafter **the Borrower**), particularly also for all future follow-up and additional orders. These GTC and other regulations of the contract remain valid, if APS makes workers available beyond the originally agreed or planned period of assignment or if the request for workers is made verbally.

**1.2.** APS declares only to contract on the basis of these GTC. APS hereby expressly rejects any possible (general) terms and conditions of the Borrower. If the validity of other (general) terms and conditions is agreed upon explicitly and in writing in exceptional circumstances, then their provisions shall only apply as far as they do not conflict with provisions of these GTC. Provisions of these GTC not contradicting such other (general) terms and conditions shall remain in force apart from applicable provisions of such other (general) terms and conditions.

**1.3.** Provisions in framework or individual agreements shall take precedence over these GTC insofar as they conflict with the provisions of these GTC; otherwise these GTC shall supplement the framework or individual agreements.

**1.4.** The version of the GTC applicable at the time of the conclusion of the contract shall apply. Amendments and supplements to these GTC and to the individual contract must be made in writing to be legally effective. Signed declarations sent by fax or as PDF document attached to an e-mail comply with the written form requirement, but not communications that are only sent by e-mail. The requirement of written form may only be waived in writing.

**1.5.** Leased workers are not entitled to make declarations of intent. Any debt collection activities of leased workers require a separate written agreement.

## 2. Conclusion and termination of contract

**2.1.** Offers from APS are not binding. The contract, in addition to framework or individual agreements, is concluded by signing of the offer or the confirmation of the order by the Borrower. If these contract documents are not signed by Borrower, the contract shall become effective upon commencement of the work by the leased workers or use of the leased workers by Borrower after transmission of the offer or an order confirmation.

**2.2.** The contract may be terminated by either party upon a two month's written notice.

## 3. Object of performance

**3.1.** APS declares that it has a valid license to carry on the trade of personnel leasing.

**3.2.** The object of performance is the hiring out of personnel. APS does not owe a specific work performance or work result to the Borrower.

**3.3.** APS shall be entitled to replace workers mentioned in the contractual documents or leased to Borrower with other workers that correspond to the replaced workers.

## 4. Fee

**4.1.** The amount of the fee is calculated according to the signed contract documents, the individual offer, or the confirmation of order from APS. If workers are requested without a previous offer from APS, APS can demand an appropriate fee.

**4.2.** If the basis for the calculation of the fee or the legal contribution or tax obligations for the leased workers should change due to changes in the law, collective agreements, or other binding regulations of a general nature that are applicable in the company of the Borrower or upon request of the Borrower after the conclusion of the contract, APS is entitled to adjust the agreed fee to the same percentage. Any one-time payments to be granted to the leased workers plus incidental wage costs and an appropriate surcharge can be claimed by APS from Borrower. Should the leased workers be employed beyond an agreed or expected final date of the hiring, the fee agreement is also valid beyond this date.

**4.3.** The fee plus the applicable statutory value-added tax at the respective rate shall be paid without any deductions and free of any charges. APS is entitled to weekly billing.

**4.4.** The invoice is due upon its receipt. If the invoice is not objected to in writing within ten days of receipt, the hours charged therein and the amount of the fee are deemed to be approved and accepted.

**4.5.** In the event of late payment, the statutory default interest in accordance with Sec. 456 of the Austrian Commercial Code (*UGB*) as well as the compensation for collection costs in accordance with Sec. 458 UGB will be charged.

**4.6.** The Borrower is not entitled to offset its claims against APS against the fee for the lease of the workers or to withhold this fee, unless such claims of the Borrower have been established by court or accepted by APS in writing.

**4.7.** The basis for the invoicing are the time sheets to be signed by the Borrower or

its assistants on site at least once a week or the evaluations from the electronic time recording systems of the Borrower. If the Borrower or its assistants do not sign the time sheets, APS is entitled, but not obliged, to have the time sheets signed by the customer of the Borrower – if the leased workers have been deployed with a customer of the Borrower. Upon signing of the time sheets by the Borrower, its assistants or the customer of the Borrower the hours worked shall be determined in a legally binding manner. If the Borrower does not sign the time sheets, the records of APS shall serve as basis for the invoicing. The burden of proof that the hours listed in these records were actually not worked is borne by the Borrower.

**4.8.** If the employment of the leased workers is not carried out for reasons which are not the fault of APS, the Borrower remains obliged to pay the full fee. This also applies if the Borrower - for whatever reason - does not use the leased workers for the performance of work.

**4.9.** In the event of the initiation of insolvency proceedings on the Borrower's assets, the payment conditions change to monthly prepayment from that date.

**4.10.** The Borrower commits himself to reimburse APS for the costs of the recruitment if Borrower employs the respective leased worker in order to appropriately compensate APS. Furthermore, the Borrower commits himself to immediately inform APS thereof. The costs depend on the recruitment expenditure and are reduced by 1/6 for each month of the assignment of the worker to the Borrower so that no such costs are payable after six months.

**4.11.** If the payroll method is agreed upon, the Borrower has to pay a weekly/monthly lump sum fee for the leased worker in advance. This lump sum fee covers wages/salary, special payments and the related ancillary wage costs. The lump sum fee does not cover such costs which are also to be paid to the leased worker such as travel and expense allowances, travel time, continued remuneration for absences under labour law after the end of the hire and the notice period under labour law, annual leave payments and any compensation for termination under the collective agreement for the trade of personnel leasing or the collective agreement for employees in trade and commerce, in information and consulting services and the relevant statutory provisions, the average of non-performance, overtime and extra work of leased workers including all surcharges as well as related incidental wage costs, unless otherwise agreed in writing. The Borrower undertakes to make payment within 14 days of invoicing.

## 5. Rights and obligations of the Borrower

**5.1.** The Borrower is obligated to observe all statutory provisions, such as the Temporary Employment Act (*Arbeitskräfteüberlassungsgesetz, the AUG*), Employee Protection Act (*ArbeitnehmerInnenschutzgesetz, the ASchG*), the Federal Act on Equal Treatment (*Bundes-Gleichbehandlungsgesetz, the GIBG*) and the Working Hours Act (*Arbeitszeitgesetz, the AZG*).

**5.2.** The Borrower has to provide APS the essential information for the assignment in advance. This particularly includes the start, expected duration and place of work, the required qualification of the leased workers, the corresponding classification in the collective agreement applicable in the Borrower's company for comparable employees performing comparable activities as well as the essential working and employment conditions valid in the Borrower's company which are fixed in binding regulations of general nature regarding working hours and vacation. With regard to Sec. 10 para 1, last sentence, AUG, this also applies to binding provisions of a general nature concerning remuneration. If the wage level is agreed upon in works agreements or written agreements with the works council of the Borrower, the Borrower must inform APS on this circumstances in writing prior to the conclusion of the contract. This shall also apply for piecework or premium work.

**5.3.** The Borrower must inform APS about the performance of nightshift labour according to Art. VII. of the Nightshift Labour Act (*Nachtschwerarbeitsgesetz, the NSchG*) and heavy labour according to Sec. 1 to 3 of the Heavy Labour Ordinance (*the Schwerarbeitsverordnung*) prior to start of the assignment.

**5.4.** The leased workers perform work according to the instructions and under the guidance and supervision of the Borrower. For the duration of the assignment, the Borrower shall also be responsible for the Borrower's duty of care.

**5.5.** The Borrower will train and instruct the leased workers in the handling of the equipment and machines and shall take all necessary measures of instruction, education and prevention of danger. The Borrower shall transmit to APS written evidence of required trainings or instructions undertaken, as well as health and safety documents without prior request. The Borrower shall provide work equipment and industrial safety equipment in accordance with legal regulations to the leased workers at its own expense. The Borrower shall bear the costs of any medical examinations required by law or for operational reasons. The same shall apply with regard to the bearing of costs for all documents requested by the Borrower, e.g. extracts from the judicial record.

**5.6.** The Borrower shall use the leased workers only in accordance with the contractually agreed use and qualifications. The Borrower shall not issue instructions to the leased workers for activities for which they are not assigned.

**5.7.** Further training measures ordered by the Borrower are to be entirely borne by the Borrower, including all hours of work incurred for this purpose. Should the Borrower implement further training measures that lead to higher qualifications of the leased workers, or should circumstances change, which the Borrower has communicated to APS, the Borrower shall immediately inform APS thereof. If the Borrower fails to make such notification, the Borrower shall compensate APS for all disadvantages arising therefrom. Should further training result in a different classification in the collective agreement of the Borrower or APS, APS is entitled to charge the fee according to the classification obtained plus an appropriate premium as of the date of obtaining the higher qualification. The same shall apply if the Borrower uses the leased worker in a higher employment group than agreed upon.

**5.8.** The Borrower shall grant access to welfare facilities and measures in its company to the leased workers under the same conditions as its own workers and inform the leased workers about vacant positions in the company by way of a general announcement.

**5.9.** The Borrower shall adhere to all provisions on equal treatment and non-discrimination particularly when selecting the workers, during the assignment, and in the event of termination of such.

**5.10.** The Borrower must inform APS about the termination of each assignment in respect of a blue-collar worker (*Arbeiter*) at least two weeks, and in respect of a white-collar worker (*Angestellter*) at least two months prior to its termination in writing.

**5.11.** If the Borrower fails to comply with a statutory or contractual obligation to inform APS in due time, he has to compensate APS for all resulting damages, costs and disadvantages of any kind. The same applies if the Borrower has explicitly requested an employee of a particular classification in the collective agreement which is, however, inappropriate for its use.

**5.12.** The Borrower acknowledges that he is considered as employer within the meaning of the Company Pension Act (*the Betriebspensionsgesetz*) after the expiry of the fourth year of assignment, and therefore such leased worker is to be included in existing occupational pension schemes.

## **6. Rights and obligations of lender**

**6.1.** For the purpose of verification of compliance with the obligations of the Borrower, APS is entitled to access the place of work and to request information.

**6.2.** If, for whatever reason, a leased worker does not appear on the agreed place of work or workplace, the Borrower shall immediately inform APS thereof. In such cases, APS will endeavour to provide a replacement for such worker.

**6.3.** APS is entitled to assign its duty to lease workers to another company within the APS group, or to make use of such company for the performance of the contract, or to transfer the contractual relationship to one of these companies. The term "company within the APS group" has a broad meaning and shall not be interpreted in a formalistic manner.

## **7. Premature termination of the contract**

**7.1.** Both parties are entitled to terminate the contract for cause without notice. Reasons for termination for cause without notice may include, in particular if

- a) the Borrower fails to meet its payment obligations for more than seven days despite a prior reminder;
- b) a party to this contract breaches essential legal or contractual obligations and continues to do so despite a written request of the other party;
- c) the Borrower fails to comply with its obligations to protect or care for the leased workers despite such a request. APS may also terminate the contract for cause without notice, if APS is not able to provide the workers because of force majeure, illness or an accident of one or more leased workers and is unable to provide a suitable replacement.

**7.2.** In case of an important reason, APS is furthermore relieved from its duty to perform its duties and may immediately recall the leased workers. If the Borrower is at fault, the Borrower shall reimburse APS for all resulting damages, costs or disadvantages in full, and is obligated to pay the fee up to the originally envisaged or agreed upon end of the lease.

**7.3.** If the contract is terminated for reasons attributable to the Borrower prior to its termination date or APS recalls its leased workers for cause according to this section 7, the Borrower may not raise any claims against APS.

## **8. Warranty**

**8.1.** APS warrants that the leased workers possess the expressly agreed upon qualifications; a particular qualification is only owed, if such a qualification was explicitly requested in the contractual documents and confirmed by APS in writing. In any other case, an average qualification shall be deemed to be agreed upon.

**8.2.** Borrower shall be obliged to check whether the leased workers meet the professional and personal qualifications requested immediately upon start of the lease. If a leased worker does not correspond to the agreed qualification, Borrower shall notify APS without delay, however not later than two business days, in writing, indicating the deficiencies in detail otherwise any claims for warranty and damages are excluded.

**8.3.** If such deficiencies are attributable to APS and the Borrower requests to remedy such in due time, APS shall be entitled to replace such worker with another worker within reasonable time.

**8.4.** The Borrower shall also be obliged to provide proof for any deficiencies within the first six months of the lease.

**8.5.** Warranty claims and claims for damages shall forfeit if not asserted before courts within three months.

## **9. Liability**

**9.1.** APS shall not be liable for any damages caused by a leased worker. APS is not liable for loss, theft or damage of supplied tools, drawings, samples, and other goods.

**9.2.** The Borrower shall verify any required licenses of the leased workers prior to the use of vehicles or machines that require a permit or a license. The Borrower may not raise any claims against APS if the Borrower omitted such inspection.

**9.3.** APS shall not be liable for damages caused by force majeure, non-appearance at the place of work, illness or accident of the leased worker. Furthermore, APS shall not be liable for consequential damages and financial losses, for damages caused by leased workers, loss of production, and for penalties imposed on the Borrower.

**9.4.** In any case, the liability of APS is limited to gross negligence and intent and limited to an amount of EUR 5,000.00.

## **10. General**

**10.1.** Place of jurisdiction for all disputes between APS and the Borrower is the competent court in the first district of Vienna. APS is also entitled to file a claim at the place of general jurisdiction of the Borrower.

**10.2.** The place of performance for the lease of workers and payment by the Borrower is the corporate seat of APS.

**10.3.** Austrian law applies, to the exclusion of its conflict of law rules.

**10.4.** If a provision of these GTC, a framework or individual agreement is or becomes invalid or unenforceable, the effectiveness of the other provisions shall not be affected. Instead of the ineffective or unenforceable provision, the parties agree on the application of an effective provision that corresponds as closely as possible to the economic purpose of the original provision.

**10.5.** The Borrower shall notify APS of changes in the company name, the address, the legal form or any other information relevant for the lease in writing without delay.