

## 1. Validity

**1.1.** These General Terms and Conditions (GTC) apply to all contracts which are concluded by APS Austria Personalservice GmbH & Co KG (hereinafter **APS**) with its customers in connection with its service portfolio (hereinafter **the service contract**).

**1.2.** These GTC form an integral part of the individual service contract. APS declares only to contract on the basis of these GTC. APS hereby expressly rejects any possible (general) terms and conditions of the customer. 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 offers or order confirmations shall take precedence over these GTC insofar as they conflict with the provisions of these GTC; otherwise these GTC shall supplement the offer or order confirmation.

**1.4.** Amendments and supplements to these GTC 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. The parties waive its right to invoke any oral ancillary or supplementary agreements.

## 2. Conclusion of contract, contract period, and termination

**2.1.** The service contract is concluded upon contract conclusion or acceptance of the offer by the customer. The terms stated in the offer remain valid for a period of six months from the date of the offer.

**2.2.** A contract is only concluded upon issue of a signed order confirmation or signed offer by the customer. Only then services may be rendered in the course of an assignment or project.

**2.3.** Both parties are entitled to terminate the service contract for cause without notice. Reasons for termination for cause without notice may include, in particular if (i) the customer fails to meet its payment obligations for more than seven days despite a prior reminder, (ii) a party to the service contract breaches essential legal or contractual obligations and continues to do so despite a written request of the other party, or (iii) insolvency proceedings are initiated.

**2.4.** If the service contract is terminated for reasons attributable to the customer prior to its termination date, the customer may not raise any claims against APS.

## 3. Object of performance

**3.1.** APS procures the recruitment for the customer. The scope of the recruitment is determined by the signed order confirmation/offer as well as written amendments thereto.

**3.2.** APS attaches particular importance to the personal support and individual processing of the orders. The provision of service by APS is carried out according to the principles of proper practice of the profession pursuant to relevant professional education. The professional and personal qualifications of the candidates as well as their needs and preferences are carefully examined. APS will make every effort to ensure that the candidates possess the knowledge and skills that correspond as closely as possible to the requirement profile. If no special agreements have been made regarding the qualification of the candidate, an average qualification shall be deemed to be agreed upon.

**3.3.** The customer has to provide APS the essential information for the selection of the candidate when placing the order. This particularly includes the start, expected duration and place of work, the required qualification of the candidates, the intended remuneration for the open position as well as the corresponding classification in the collective agreement applicable in the customer's company for comparable employees performing comparable activities. If the wage level is agreed upon in works agreements or written agreements with the works council of the customer, the customer must inform APS on this circumstances in writing prior to the conclusion of the service contract. This shall also apply for piecework or premium work.

**3.4.** If the customer fails to comply with a statutory or contractual obligation to inform APS, the customer has to compensate APS for all resulting damages, costs and disadvantages of any kind.

**3.5.** Despite of the application of suitable selection procedures by APS, the customer remains responsible for a detailed examination of the candidate and the final decision prior to the conclusion of an employment agreement with the candidate.

**3.6.** In case of an (early) termination of the employment by the employee, APS shall only provide for a replacement upon a separate order, as APS has no influence on the working environment of the recruited candidate.

**3.7.** It cannot be guaranteed that a proposed candidate will not be placed otherwise or decides differently.

## 4. Fee

**4.1.** APS shall be entitled to a fee for each recruitment of a candidate as listed and agreed upon in the applicable offer. The amount of fee is dependent on the required qualification of the candidate and is stated in the offer. A recruitment shall be regarded as successful if an employment agreement is concluded between the customer and the candidate.

**4.2.** The first yearly gross salary of the recruited candidate including all variable gross remuneration such as bonuses, a share of profits, commissions, overtime arrangements and other allowances shall serve as basis for the calculation of the fee for the recruitment; alternatively, the fee stated in the offer applies.

**4.3.** The entitlement to the fee arises regardless of whether the candidate is to be employed by the customer full-time, part-time, as a freelancer or in any other form permitted by law. In case of part-time and any other form of employment, the annual gross remuneration is to be extrapolated to a full-time employment.

**4.4.** If a candidate is employed for a different position than the one originally notified, APS is also entitled to the fee according to the aforementioned principles. The same applies if the employment relationship is established between an affiliated company of the customer and the candidate proposed by APS.

**4.5.** The fee shall become due in two equal parts, whereby the first part of the fee (50%) shall be due upon signing of the contract by the candidate and the second part (50%) upon start of the work.

**4.6.** In addition to the offer, it is noted that an entitlement to a fee also arises if an employment relationship is established between the candidate and the customer within 12 months upon the presentation of the candidate profile. The customer is obligated to inform APS in writing about any kind of employment within two weeks after the establishment of the employment relationship; the payment conditions of section 5 shall apply.

**4.7.** If the customer does not inform APS in due time, APS is entitled to demand a fee up to double the amount of the fee agreed upon in the offer.

**4.8.** If a candidate proposed by APS has already applied for a job with the customer, the customer is obligated to inform APS immediately after receiving the information on the candidate. In this case, APS will no longer provide any services regarding this candidate. However, the customer may request APS to continue to provide services for this candidate. If in such a case an employment relationship is established between the customer and the candidate, the customer is obliged to pay the agreed fee in full to APS.

**4.9.** Any arising expenses, such as travel expenses (e.g. official mileage allowance, train ticket, flight costs, hotel costs, daily allowance/overnight stay allowance) will be charged according to the actual amount incurred. This applies to both the expenses of APS as well as those of the proposed candidates.

**4.10.** Additional advertisements requested by the customer will be invoiced plus taxes and duties and are to be paid upon receipt of the invoice independently of a recruitment.

**4.11.** Expenditures incurred in connection with the recruitment will be invoiced, as described in the offer or in the order confirmation, according to actual expenses.

**4.12.** The customer acknowledges the adequacy of the agreed fee and thus waives the right to rescission on the grounds of mistake or reduction by more than half (*laesio enormis*).

**4.13.** The customer is not entitled to offset its claims or demands against APS against the fee or to withhold the fee, unless the claims of the customer have been established by court or accepted by APS in writing.

## 5. Terms of payment

**5.1.** The term of payment is agreed to be ten days after receipt of the invoice. If, however, no term of payment has been agreed upon, the invoiced amount becomes due upon receipt of the invoice. The fee plus applicable statutory value added tax in the respective amount is to be paid without any deductions and free of any charges.

**5.2.** 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.

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

## **6. Confidentiality**

**6.1.** APS is obliged to treat information and documents provided by the customer confidentially and to use such only within the scope of the orders placed.

**6.2.** The customer is obliged to maintain confidentiality about the personal and professional circumstances of the candidates presented to him. References from previous employers may only be obtained after prior consultation with APS in order to guarantee the protection of the candidate's privacy rights.

**6.3.** The application documents and other documents provided by APS remain the property of APS, are to be treated strictly confidential and may not be disclosed to third parties. The same applies to information provided by APS. These application documents and any other documents made available are to be returned to APS immediately or destroyed if not used.

**6.4.** The customer commits himself not to keep or copy any application documents or other documents provided by APS.

## **7. Liability**

**7.1.** The recruitment provided by APS does in no way replace a detailed examination by the customer itself. By establishing an employment relationship between the customer and the proposed candidate the customer confirms that the services provided by APS are in accordance with the service contract and also assumes the sole responsibility for the selection made as well as for the future provision of services by the candidate.

**7.2.** APS does not assume any liability for recruited candidates, unless customer has suffered damages as a direct result of intentional misstatements or intentional non-disclosure by APS. In any case, the liability of APS is limited to an amount of EUR 5,000.00.

## **8. General**

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

**8.2.** Place of jurisdiction for all disputes arising from the service contract or these GTC 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 customer.

**8.3.** The contractual relationship between the customer and APS is governed by Austrian law, to the exclusion of its conflict of law rules.

**8.4.** If a provision of these GTC or the service contract is or becomes invalid or unenforceable in part or in whole, the effectiveness of the other provisions shall not be affected. The parties agree to replace the ineffective or unenforceable provision with a provision that corresponds as closely as possible to the economic purpose of the invalid or unenforceable provision.

