

## General Terms and Conditions

### 1. General provisions

The following General Terms and Conditions (GTC) apply to all services rendered or to be rendered by Ulmer Zeitarbeit Verwaltungsgesellschaft mbH and its subsidiaries (hereinafter: agent) due to or in connection with the temporary employment contract. Any deviating GTC of the customer (hereinafter: principal) do not apply, even if the agent does not explicitly contradict them or the contractor states that contracts will only be concluded in accordance with their conditions.

### 2. Contract conclusion

- 2.1 Upon signing the temporary employment contract, the contractual relationship is established through the offer of the agent in accordance with the temporary employment contract as well as these General Terms and Conditions and the principal's written declaration of acceptance. The principal is aware that the agent has no duty to perform if the signed contractual document is not returned by the principal (§ 12 para. 1 German law on labour leasing (hereinafter: AÜG)).
- 2.2 If the principal intends to assign the dealing with money and/or valuables to the temporary employee, a separate agreement will be made with the agent in advance.
- 2.3 The agent declares that the iGZ-DGB collective wage agreements as amended will be fully incorporated in the employment contracts, which he has concluded with the temporary employers assigned to the principal's company. In this way, the principal ensures that the standardised principle of equality in § 9 no. 2 AÜG is averted. The agent is a member of the *Interessenverband Deutscher Zeitarbeitsunternehmen e.V.* (affiliation of German temporary work agencies).
- 2.4 Before each assignment, the principal undertakes to check whether the temporary employee has resigned from an employment relationship with the principal himself or with an affiliated company within the group in terms of § 18 German Stock Corporation Act in a period of six months prior to the assignment. If this is the case, the principal will immediately inform the agent. In view of the resulting legal consequences (equal treatment), the contractual parties then have the opportunity to decide whether the employee is to be assigned as planned and to adapt the temporary employment contracts accordingly.

### 3. Employment law-related relationships

- 3.1. The conclusion of this contract does not establish an employment law-related relationship between the temporary employee and the principal. The agent is the temporary worker's employer.
- 3.2. For the assignment period at the principal's company, he is authorised to give work-related instructions. The principal shall only assign the temporary employee to such activities which are subject to the area of activity contractually agreed upon with the principal and which match the educational level of the respective temporary employee. As for the rest, the right to issue instructions remains with the agent.

### 4. Principal's duty of care and duty to cooperate / Health and safety measures

- 4.1 The principal fulfils the duty of care in connection with the health and safety measures at the temporary employee's place of work (§ 616 German Civil Code [BGB], § 11 para. 6 AÜG). He shall indemnify the agent against all claims of the temporary employee and of other third parties resulting from a failure to perform these duties or an insufficient performance of these duties.
- 4.2 The principal will ensure that the accident prevention and health and safety provisions (i.a. §§ 5, 6 German Health and Safety Act (ArbSchG) as well as the legally permitted limits on working hours and breaks are complied with. Before the temporary employee commences work, the principal shall in particular instruct him and inform him about possible existing dangers relating to the activities to be performed and about measures to avoid these. Insofar as the agent's temporary employee refuses to perform the work due to lacking or poor safety facilities or measures at the principal's company, the principal is liable for any arising downtime.
- 4.3 The principal grants the agent a right to access the temporary employees' workplaces within the usual working hours in order to fulfil the monitoring and control duty incumbent on the agent.
- 4.4 Should regulatory approvals be or become necessary for employing temporary employees, the principal undertakes to obtain these approvals before the temporary employee commences work and to submit the approval to the agent at the agent's request.
- 4.5 The principal shall immediately inform the agent in writing of a possible work accident of the leased temporary employee, i.e. on the date of the accident. Subsequently, the principal will provide the agent with a written accident report within 5 working days after the accident occurred or investigate the circumstances of the accident with the agent.

## **5. Rejection / Exchanging temporary employees**

- 5.1 The principal is authorised to reject a temporary employee by sending a written statement to the agent if there is a reason which would authorise the agent to issue an extraordinary termination of the employment relationship with the temporary employee (§ 626 German Civil Code [BGB]). The principal is obliged to provide detailed reasons for the rejection. In the event of a rejection, the agent is authorised to assign other equally qualified temporary employees to the principal.
- 5.2 Should the principal determine within the first four hours that a temporary employee of the agent is not suitable for the intended job and if he insists on an exchange, upon prior consultation, up to four hours will not be charged.
- 5.3 Furthermore, the agent is authorised to exchange temporary employees assigned to the principal at any time for organisational or legal reasons and to assign equally qualified temporary employees.

## **6. Hindrances to performance / Rescission**

- 6.1 The agent shall be fully or partially exempted from his obligation if and in as far as the assignment of temporary employees is permanently or occasionally impossible or unreasonably difficult owing to exceptional circumstances which were not culpably caused through the agent's fault. Such exceptional circumstances especially include but are not limited to labour disputes, irrespective of whether at the principal's or agent's company, official acts, natural disasters and the like. Beyond the mentioned events, the agent is authorised to rescind the temporary employment contract.
- 6.2 Notwithstanding the preceding provision, the principal is aware that the temporary employees assigned by the agent are not obliged to perform their work if there is a boycott of the principal's company.
- 6.3 If the temporary employee does not take up work or does not commence work on time contrary to the agreement, the principal will immediately notify the agent. The agent shall make all reasonable efforts to provide a substitute in the short term. Should this not be possible, the agent will be released from the contract. If the principal fails to notify the agent immediately, the principal will not be entitled to claims against the agent arising from and in connection with the temporary employee not taking up work or not commencing work on time.

## **7. Billing**

- 7.1 All charge rates stated by the agent are net prices. Unless the parties have agreed upon a different method of settlement, the agent will issue an invoice indicating the value-added tax after completing the order or, in the case of continuous assignments, every week.
- 7.2 The agent is entitled to change the hourly charge rate if the place of assignment and the work area change.
- 7.3 The agent will perform billing in accordance with the work performance records of the assigned temporary employee signed by the principal every week. If the daily or weekly working time of the temporary employee exceeds the regular daily or weekly working hours applicable at the principal's company, the agent will bill an overtime surcharge in accordance with the agreements made in the temporary employment contract. The same applies for the calculation of surcharges for work on public holidays, shift work, night work and other surcharges provided for in the collective wage agreements. If no work performance records are submitted to the agent for billing and if such behaviour is attributable to the principal, the agent is authorised – in the event of a dispute - to bill a daily working time for the temporary employee which corresponds to the maximum daily working time of employees according to the Working Hours Act in the currently valid version (§ 3ArbZG). In such cases the principal retains the right to furnish proof that the temporary employee has worked for a shorter period.
- 7.4 The billing amounts are due and payable – without deductions – on receipt of the bill of the agent by the principal.
- 7.5 The temporary employees assigned by the agent are not authorised to accept down payments or payments of the bills submitted by the agent.
- 7.6 If the principal is in arrears with payments, the agent is entitled to charge the statutory default interest, at least however 5 % p. a. above the base rate of the Deutsche Bundesbank or of the financial instrument of the European Central Bank replacing it.

## **8. Offsetting / Right of retention / Transfer**

- 8.1 The principal is not entitled to offset claims of the agent or to assert a right of retention, unless the counterclaim asserted by the principal is undisputed and legally established.
- 8.2 The principal is only entitled to transfer rights and duties from this contract to third parties with the prior written approval of the agent.

## **9. Warranty / Liability**

- 9.1 The agent guarantees that the assigned temporary employees are generally qualified for the intended job; however, he is not obliged to check employment documents, in particular the temporary employee's certificates, for correctness and to obtain a judicial certificate of good conduct.
- 9.2 The agent, his legal representatives as well as vicarious agents are not liable for damages caused by temporary employees during their job activity, unless the agent, his legal representatives and vicarious agents can be blamed for wilful intent or gross negligence during the selection procedure. Otherwise, the liability of the agent as well as his legal representatives and vicarious agents is limited to intent and gross negligence. This applies both to statutory and contractual prerequisites for liability, especially in the event of default, impossibility, inability, breach of duty or in the event of unlawful acts. In the event of intent or gross negligence on the part of simple vicarious agents, the agent is otherwise only liable for foreseeable events.
- 9.3 The principal is obliged to indemnify the agent against all third-party claims asserted in connection with the performance and execution of the work the principal assigned to the temporary worker. The agent will inform the principal in writing about all claims asserted by third parties.
- 9.4 Should the principal breach his reporting and inspection duty as defined in 2.4, he will indemnify the agent against all equal treatment claims of the temporary employee that have arisen so far and will arise in the future and against all damages arising from the breach of duty. The agent is obliged to refer to relevant limitation periods towards any claimants.

## **10. Takeover of temporary employees / Agency commission**

- 10.1 It is indisputably a placement if the principal or a legally or economically affiliated company of the principal enters into an employment relationship with the agent's temporary employee during the term of the temporary employment contract. It is also considered a placement if the principal or a legally or economically affiliated company of the principal enters into an employment relationship with the temporary employee within a period of six months after termination of the assignment. In such a case the principal retains the right to prove the employment relationship was not established on the basis of the preceding assignment.
- 10.2 It is also indisputably regarded as a placement if the principal or a legally or economically affiliated company of the principal enters into an employment relationship directly after contact with the applicant has been established by the agent and without prior assignment.
- 10.3 Not the time when work commences but the time when the employment contract is concluded shall be decisive for the point in time the employment relationship is established.
- 10.4 The principal is obliged to inform the agent whether and when an employment contract has been concluded. If, in the event of a dispute, the agent furnishes credible evidence indicating an employment relationship between the principal and the temporary employee, it is incumbent on the principal to prove that no employment relationship has been established.
- 10.5 In the cases mentioned in 10.1 to 10.3, the principal has to pay an agency commission to the agent. Fixed-term employment relationships are subject to a commission in the same way as unlimited employment relationships.
- 10.6 In the case of a direct takeover of the temporary worker without prior assignment, the agency commission amounts to 2.5 gross monthly salaries. In the case of a takeover within the first three months of the assignment, 2 gross monthly salaries, in the case of a takeover within nine months, 1 gross monthly salary and in the case of a takeover within twelve months, 0.5 gross monthly salaries.
- 10.7 The agency commission is calculated on the basis of the gross monthly salary agreed upon between the principal and the temporary employee, at least however the gross monthly salary agreed upon between the agent and the temporary employee. The principal will provide the agent with a copy of the signed employment contract. In the event of interruptions of the assignment, the beginning of the last assignment prior to the establishment of the employment relationship shall be decisive. The agency commission is payable plus the statutory value-added tax. The commission is payable within 14 days of receipt of invoice.
- 10.8 If the employee works for the principal on the basis of a freelance contract or a self-employed contract, the provisions apply accordingly, subject to the proviso that the monthly fee agreed between the principal and the employee forms the calculation basis instead of the gross monthly salary.

## **11. Contract term / Termination**

- 11.1 Unless the temporary employment contract was concluded for a limited period, the contract is for an indefinite period. In the first week of the temporary employee's assignment, the principal is authorised to

terminate the contractual relationship with a notice period of one work day. Otherwise, both parties have the right to terminate the contract with a notice period of three working days to the end of the calendar week, unless the parties agree other terms.

11.2 The right to termination without notice remains unaffected. The principal is especially authorised to terminate this contract without notice, if a) the opening of insolvency proceedings has been initiated on the principal's assets or is imminent or has been rejected due to lack of assets or b) the principal fails to settle a due invoice, even after a dunning letter and the setting of a deadline.

11.3 A termination of this contract by the principal is only valid if issued to the agent. The temporary employees assigned by the agent are not authorised to accept termination notices.

## **12. Final provisions – severability clause**

12.1 Amendments and supplements to the contract between the parties have to be made in writing in order to be effective. This also applies to a change of the requirement for written form. The temporary employees assigned by the agent are not authorised to agree upon amendments, supplements or additional agreements to the temporary employment contract with the principal.

12.2 The place of jurisdiction for all disputes arising from and in connection with the contractual relationship between the agent and the principal is the place of business of the agent's respective branch office that concluded the present temporary employment contract, insofar as the principal is a merchant. Beyond that, the agent can assert his claims with the courts of general jurisdiction of the principal.

12.3 Exclusively the law of the Federal Republic of Germany applies for all legal relationships between the agent and the principal.

12.4 Supplements and amendments to these General Terms and Conditions need to be made in writing in order for them to become effective. This also applies to the waiver of the requirement for written form. Should a provision or part of a provision be or become invalid in full or in part, the validity of the other provisions remains unaffected. The invalid provision is to be replaced by a provision that comes closest to the economic purpose.