

General Terms and Conditions (T&C) Recruitment Services (As at 19/10/2021)

1. Scope of application

1.1.

These General Terms and Conditions (T&C) shall apply to all agreements entered into by APS Austria Personalservice GmbH & Co KG (hereinafter referred to as APS) with its Clients in respect of its service portfolio, including, without limitation, any and all follow-up and additional agreements entered into in the future. This shall apply in particular to services in respect of HR consultancy, search for personnel, recruiting, personnel procurement, permanent placement and similar services (agreements for such services being hereinafter referred to as "Service Agreement").

1.2.

The contents of these T&C shall form an integral part of any Service Agreement. APS states that it is unwilling to enter into any contracts unless they are based on these T&C and explicitly objects to any (general) terms and conditions of contract of any Client. Where, by way of exception, the applicability of other (general) terms and conditions of contract is explicitly agreed upon in writing, the provisions thereof shall apply only in so far as they do not conflict with provisions in these T&C. Non-conflicting provisions in these T&C shall remain applicable along with such other terms and conditions.

1.3.

Provisions set out in offers or order confirmations shall take precedence over these T&C insofar as they conflict with the provisions of these T&C; in all other respects these T&C shall complement such offers or order confirmations.

1.4.

Any modification of, or amendment to, these T&C shall have to be made in writing to have legal effect. Signed notices sent by fax or in PDF format by e-mail shall be deemed to meet the written form requirement, however, this shall not apply to notices merely received by e-mail. A waiver of the written form requirement shall likewise have to be made in writing.

2. Formation of contract, term of validity, termination

2.1.

Offers submitted by APS shall be binding on APS for 7 days unless designated as not binding or subject to alteration. The Service Agreement shall come into being either upon the signing of the offer by APS or upon order confirmation by Client. Non-binding offers by APS or offers by Client shall not be deemed to have come into effect until APS has accepted such offer in writing (order confirmation).

2.2.

Where Client fails to sign such contractual documents, the Service Agreement, as based on the offers made by APS, shall come into effect upon APS commencing the personnel search or selection process based on the information provided by Client (including, without limitation, qualification profile and job posting).

2.3.

The parties shall have the right to terminate the Agreement for cause without complying with any notice periods or deadlines. Cause shall be deemed to exist in particular if Client, being under the obligation to make a payment to APS, is in delay of such payment for more than seven days, in spite of having been reminded thereof, or if one of the parties continues to breach material statutory or contractual provisions in spite of having been requested to desist from doing so by the other party.

2.4.

If the Agreement is terminated early for reasons attributable to Client's sphere or if the order does not come to a successful completion (for instance, the conclusion of a Service Agreement) for such reasons, Client shall have no right to assert claims against APS, and APS shall be entitled to 80 percent of its fee unless otherwise agreed upon in writing.

3. Scope of services

3.1.

APS shall provide the service agreed upon in the Agreement for Client (see Clause 1.1). The scope of services shall be based on the signed order confirmation/offer as well as on any supplements thereto made in writing.

3.2.

APS attaches great importance to providing personalised services and bespoke support in handling orders. APS provides its services in compliance with professional standards based on the relevant professional education and training of its staff. The skills and personal characteristics of candidates as well as their needs and preferences are carefully examined and reviewed. While APS makes all reasonable efforts to ensure that candidates have the knowledge and skills that fit the qualification profile as closely as possible, APS shall assume no warranty or liability for candidates having specific knowledge, skills or qualifications. Where no specifics have been agreed upon in respect of a candidate's qualifications, average qualifications shall be deemed to have been agreed.

3.3.

Upon placing an order, Client shall supply to APS all the material information needed for selecting candidates. This shall include, without limitation, work start date, expected duration and location of work, the required qualifications, the remuneration contemplated for the position to be filled as well as the corresponding classification under the collective bargaining agreement applicable to similar workers in Client's business. Where the amount of remuneration is governed by in-house agreements (*Betriebsvereinbarungen*) or written agreements with Client's works council, Client shall inform APS thereof in writing prior to concluding the Service Agreement. The same shall apply to piecework or time rate plus premium work. Client shall warrant for such information being accurate and complete.

3.4.

Where Client fails to meet a statutory or contractual (information) duty, Client shall fully indemnify APS for any loss, damage, cost or other disadvantage of any kind whatsoever resulting therefrom.

3.5.

Client shall be obligated to verify the suitability and qualification of the candidates proposed or designated by APS. Client shall have sole responsibility for making its choice of candidate.

3.6.

Should an employment relationship be terminated (early), proposing candidates to fill in shall be possible only after a new (payable) order has been placed, as APS has no influence whatsoever on the working environment of the candidates it proposes.

3.7.

There shall be no guarantee that a proposed candidate will not also be placed for other jobs and/or decide to take on another job. Any claims on the part of Client against APS shall be excluded in such cases.

4. Fee

4.1.

APS shall receive a fee for each candidate, such fee being described in more detail, and agreed upon, in the Service Agreement/offer applicable in each case. The fee shall depend on the qualification to be met and shall be disclosed in the offer. Successful recruitment shall be deemed to be the entry into an employment relationship by Client and the candidate.

4.2.

The calculation basis for APS' fee shall be the first gross annual remuneration (wage or salary) of the successfully proposed candidate, inclusive of all variable gross remuneration elements, such as bonuses, profit sharing, commissions, all-in overtime arrangements and other allowances or, alternatively, the fee stated in the offer. Unless otherwise agreed upon the fee shall be one fourth of the gross annual remuneration. If no gross remuneration is indicated, the fee shall be calculated based on a reasonable gross annual remuneration for comparable workers at the scheduled place of work. Client shall be under the obligation to provide APS as promptly as possible with the data required to calculate the accurate fee.

4.3.

APS' entitlement to the fee shall arise no matter whether a candidate is to be employed, by Client, or a third party pursuant to Clause 4.4, full-time, part-time, on a free-lance basis or in any other form permitted by law. For part-time employment and any other type of employment, the respective gross annual remuneration shall be extrapolated to full-time remuneration.

4.4.

Where a candidate is hired for a position other than the one initially identified, APS shall likewise be entitled to the fee based on the principles set out above. The same shall apply in cases where a candidate proposed by APS is employed by a company either legally or economically affiliated with Client or by a third party designated by Client.

4.5.

The fee entitlement shall arise in two equal parts, the first partial amount (50%) becoming due and payable upon the candidate signing the contract, and the second partial amount (50%) upon the candidate taking up work.

4.6.

The fee shall also be payable if the candidate is employed by Client or a third party pursuant to Clause 4.4. within 12 months from presentation of the candidate's profile. Client shall notify APS in writing of any kind of employment within 2 weeks after the employment relationship has come about; the same terms of payment shall apply as set out in Clause 5.

4.7.

Where Client fails to notify APS in due time, APS shall have the right to claim twice the fee due to it.

4.8.

Where APS, under a Service Agreement, designates a candidate to Client who already applied for a job with Client independently of any activity by APS, Client shall notify APS thereof without delay. Where such information is not provided and a (free-lance) employment relationship is entered into with such candidate, the candidate shall be deemed to have been designated by APS.

4.9.

All expenses, including, without limitation, travel expenses (such as mileage allowance as officially decreed, train tickets, airfare, hotel costs, per diems, overnight stay allowances), shall be charged as incurred. This shall apply both to expenses on the part of APS and on the part of proposed candidates.

4.10.

Any advertisements placed upon Client's additional request or considered useful by APS and any similar services shall be charged exclusive of any charges and taxes and shall be paid upon receipt of invoice regardless of whether or not the service comes to a successful conclusion.

4.11.

The cost of personnel search and recruitment shall be invoiced as set out in the offer or order confirmation based on expenses actually incurred.

4.12.

Client acknowledges that the fee agreed upon is adequate and reasonable and thus waives voiding the agreement for mistake or *laesio enormis* (reduction of the true value by more than half).

4.13.

Client shall not have the right to offset any receivables due from, or claims against, APS with the fee, or retain the fee, unless Client's receivables or claims have been found to be valid by a court or have been recognised by APS in writing.

5. Terms of payment

5.1.

In general, the payment due date shall be 10 days from receipt of invoice. Where no payment due date has been agreed upon, such payment due date shall be receipt of invoice. The fee shall be payable plus VAT as stipulated by law without any deductions and free of charge.

Where an invoice is not objected to in writing within 7 days of receipt, detailing the items giving rise to objection, the services invoiced therein, and the amount of the fee charged shall be deemed approved and acknowledged.

5.2.

In the event of a delay in payment, statutory default interest as set out in section 456 of the Austrian Business Code (*Unternehmensgesetzbuch, UGB*) as well as compensation for the cost of recovery pursuant to section 458 *UGB* shall be charged to Client.

5.3.

If insolvency proceedings are initiated over the assets of Client, the terms of payment shall, as of such time, change to monthly payment in advance.

6. Confidentiality

6.1.

APS undertakes to treat information disclosed, and documents made available, by Client confidentially and to use such information only within the scope of the orders placed. APS and Client undertake to keep mutually confidential any and all information and circumstances disclosed to them in connection with the performance of the order or contract, including, without limitation, trade and business secrets of the contract partner.

6.2.

Client undertakes to keep secret the personal and professional details of the candidates presented to Client. Employer's references shall be subject to prior written approval by APS so as not to infringe the candidates' protected personality rights.

6.3.

Client undertakes to treat all personal data of designated or recruited candidates with strict confidentiality. In particular, Client undertakes not to disclose, under any circumstances, such data to third parties or indicate candidate names to third parties. Where Client fails to comply with this obligation, a contractual penalty, not contingent on fault, in the amount of twice the fee due to APS shall be deemed agreed upon and shall become due and payable as soon as so claimed by APS. Any further claims on the part of APS, such as for cease and desist or compensation for any loss or damage in excess thereof, shall remain unaffected thereby.

6.4.

APS shall provide personal data to Client in line with Client's requests and requirements in fulfilling the services contracted. Client undertakes in this context to comply with the provisions of the Austrian Data Protection Act (*Datenschutzgesetz, DSG*) and the GDPR, specifically Article 32, and to cooperate with a view to protecting the rights of data subjects. Client shall erase any personal data of candidates who failed to enter into an employment relationship with Client upon completion of the Service Agreement and/or expiry of the statutory retention and storage periods. Client shall hold APS harmless should third parties assert claims against APS for breach of data protection provisions.

7. Liability

7.1.

The recruitment services provided by APS shall under no circumstances replace an in-depth screening by Client. By entering into an employment relationship with the proposed candidate, Client confirms that APS has duly provided the services under the Agreement and also assumes sole responsibility both for the choice made and the future performance of work/services by such candidate.

7.2.

APS shall assume no liability whatsoever for loss or damage caused by proposed candidates, unless such loss or damage was verifiably and directly caused by intentional misinformation or intentional failure to provide information on the part of APS. In any event, liability on the part of APS shall be limited to EUR 5,000 and to gross negligence, except in cases of personal injury.

7.3.

APS shall not be liable for the choice of candidate made by Client, or the availability of permits and approvals as may be required under labour and residency law for such candidate to be permitted to work in Client's business. APS shall neither warrant, nor be liable for, the accuracy and correctness of any information given, or documents provided, by candidates, including, without limitation, in respect of their qualifications.

7.4.

Client must assert warranty claims or claims for damages, if any, before a court within six months failing which such claims shall become forfeited.

8. Miscellaneous

8.1.

Client shall notify APS in writing of any change in its name or designation as well as any change in address, bank details, VAT registration number, legal form or company register number without delay, but in any event within one month from any such change. Where Client fails to notify such changes and where, for such reason, legally relevant notices from APS, including, without limitation, invoices, reminders, termination notices or contractual amendments, cannot be served upon Client at the address last made known by Client, such notices by APS shall nevertheless be deemed to have been served. APS shall have the right to send all notices via e-mail to the e-mail address last made known by Client.

8.2.

Jurisdiction for disputes arising out of or in connection with the Service Agreement and/or the T&C shall be agreed to lie with the court in Linz (Austria) competent for the subject matter. APS shall also have the right to bring proceedings at Client's general place of jurisdiction.

8.3.

All relationships between Client and APS shall be governed by the laws of Austria without reference to the conflict of law rules of international private law and the UN Convention on Contracts for the International Sale of Goods.

8.4.

Should any provisions of these T&C and/or the Service Agreement be or become ineffective or unenforceable in whole or in part, this shall not affect the effectiveness of the remaining provisions hereof and thereof. The parties undertake to replace the ineffective or unenforceable provision with one that comes as close as possible to achieving the economic purpose intended by the ineffective provision.

8.5.

APS shall not need Client's consent to assign the rights and obligations under agreements with Client to third parties or to rely on third parties to provide services.