

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF ARDEKAY DEUTSCHLAND A BUSINESS UNIT OF AMBITIOUS PEOPLE GERMANY GmbH

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### Article 1: Definitions and applicable conditions

1.1 These General Terms and Conditions ('T&Cs') apply to all offers/requests for quotations and contracts regarding the performance of services by Ambitious People Germany GmbH and by all its affiliated companies (§§ 15 et seqq. German Stock Corporation Act - Aktiengesetz) (hereinafter referred to as: the 'Contractor') on the basis of the order-confirmation, in particular a Placement Contract with its counterparty to the contract (hereinafter referred to as: the 'Client') and also to all legal relationships arising from these contracts and to all non-contractual relationships between the Contractor and the Client, in particular torts.

1.2 In these T&Cs, the following terms have the following meanings:

- **Candidate:** the natural person who has been recruited and selected by the Contractor to fill a vacancy at the Client's firm.
- **Gross Annual Salary:** the salary paid on the basis of a full year and full-time employment (forty hours) in the first year of employment with the Client. This gross annual salary may also include a (possible) thirteenth month's salary, holiday pay, holiday allowances, bonuses/commissions (on-target earnings/OTE), travel budget (car/remuneration of travel expenses), reimbursements of relocation expenses, and any other primary and secondary conditions and benefits that may be agreed between a Candidate and the Client. In this context, a car provided by the Client is equal to a gross annual salary of nine thousand euros.
- **Introduction:** presentation of a Candidate's details by the Agency to the Client. It is irrelevant whether a third party has ever before introduced the candidate, or the Client already knows the Candidate.
- **Agreement:** the conclusion of an agreement between the Candidate and the Client regarding a fixed-term or indefinite employment relationship or the conclusion of an agreement regarding the performance of services in the broadest sense of the word for the Client. As regards whether or not an agreement exists, it is not of relevance if the conclusion of a (employment) contract between Client and the Candidate includes a provision regarding the proper completion of a probationary period, or that the proposed Candidate fills a different role than the one for which he or she was introduced to Client. An agreement also exists if a vacancy is cancelled after an agreement is reached.
- **Placement Contract:** the contract between the Client and the Contractor.
- **"On hold" status of an assignment:** the suspension of the Placement Contractor the placement activities of the Contractor in any way by the Client.
- All amounts stated in these T&Cs as well as in offers of the Contractor are exclusive of VAT and plus 1 percent administration costs on the minimum fee amount (without VAT).

1.3 Provisions that deviate from these T&Cs – including possibly also the general and specific (shipping) terms and conditions of the Client – apply only if and insofar as they have been expressly accepted in writing (email sufficient) by the Contractor.

1.4 These T&Cs have been filed by Contractor at the Chamber of Commerce and Industry in Amsterdam under the Chamber of Commerce number of the Contractor, they are made available on the website of the Contractor and will, insofar as not yet handed over, be sent on first request to Client. The version most recently filed, or as this applied at the time of the formation of the Agreement, is always applicable.

1.5 The Contractor reserves the right to amend these T&Cs unilaterally. An amendment will also apply to contracts that were concluded prior to the amendment. An amendment will enter into force, at the earliest, fourteen days after the Client has been notified of this amendment. Notification of any amendment has no prescribed form. If the Client does not agree to the amendment, the previously applicable regulations shall continue to apply.

1.6 The Placement Contract is not concluded under the condition of exclusivity, unless the Contractor and the Client agree otherwise in writing (email sufficient). If the Contractor and the Client agree on exclusivity and the Client acts contrary to the agreed exclusivity, the Client will owe a flat rate sum of compensation that becomes due and payable immediately and which amounts to the minimum fee according to Article 4 of these T&Cs, unless the Client can prove a lesser amount of damages or the Contractor a greater amount of damages.

### Article 2: Conclusion of the Placement Contract

2.1 The way the Client places the order with the Contractor for the performance of services has no prescribed form. The Placement Contract enters into effect upon the acceptance of the order of the Client by the Contractor to provide his services (order confirmation) by the actual start of the provision of the service by the Contractor.

2.2 After the Placement Contract has been concluded, the Contractor will be entitled to use the Client's firm name and/or logo in order to support the provision of the services and to promote the Contractor.

2.3 If, after conclusion of the Placement Contract, the Client withdraws the assignment, or withdraws a vacancy still to be filled, or wishes to put the assignment or the filling of a vacancy 'on hold' for a period longer than four weeks, fundamentally changes the job profile or fills a vacancy with an internal candidate who is already employed by the Client, then the Client will owe to the Contractor for each withdrawn assignment or vacancy a cancellation fee of an amount equal to half of the minimum fee as referred in Article 4 of these T&Cs.

### Article 3: Obligations of the Client / Penalty / Non-solicitation

3.1 If within one year after the initial introduction, an agreement is concluded between the Client, or between any company affiliated with the Client (§§ 15 et seqq. German Stock Corporation Act – Aktiengesetz), and a Candidate who was introduced to the Client by the Contractor, the Client is obliged to notify the Contractor within five calendar days from the coming into effect of the agreement, enclosing the terms and conditions of the agreement, in writing (email sufficient) in order to enable the Contractor to calculate the fee to which he is entitled and to invoice it to the Client, as well as to terminate other placement efforts concerning the Candidate. If the Client does not fulfil this obligation, any right to the ex gratia payment provision, as described in Article 8 of these T&Cs will lapse.

3.2 If the Client fails to comply with its obligation under Article 3.1 of these T&Cs, the Client shall owe the Contractor an immediately due penalty of € 10,000. This is without prejudice to the Contractor's right to charge the Client its fee in accordance with Article 4 of the T&Cs or, respectively Article 3.4 of the T&Cs. .

3.3 If the Client fails to comply with its obligation under Article 3.1 of these T&Cs, the Contractor shall be entitled to calculate his fee on the basis of the information and experience available to the Contractor and shall be entitled to invoice the respective amount to the Client. The Client is entitled to prove to the Contractor within 5 calendar days after receipt of the invoice by submitting contractual documents that a fee in a different amount is owed.

3.4 Up to two (2) years after the end of the Placement Contract, the Client is not permitted to offer an employment contract to the Contractor's employees and/or to make the Contractor's employees an offer regarding the conclusion of an agreement regarding the performance of services in the broadest sense of the word for the Client without the explicit written consent (email sufficient) of the Contractor. Upon an infringement of this prohibition or the provisions in this Article, the Client will owe a penalty payable on demand amounting to € 50,000 unless the Client can prove a lower amount of damages or the Contractor a higher amount of damages. This shall apply regardless of the right of the Contractor to demand the fulfilment of the provisions in this Article.

#### **Article 4: Fee**

4.1 At the time of an Agreement between the Client and a Candidate, the Client owes to Contractor a fee based on the gross annual salary of the Candidate, in accordance with the rates described in Article 4.2 below, whereas a minimum fee amounting to €18.500 applies.

4.2

Gross annual salary	Fee
Up to € 62,000	€ 18.500
from € 62.001 - € 75.000	30 %
from € 75.001 - € 100.000	32,5 %
from € 100.001 (executive search)	35 %

#### **Article 5: Payment / Excess of the payment term**

5.1 The fee as specified in Article 4 of these T&Cs will be invoiced by the Contractor to Client after the Client concluded an agreement with a Candidate.

5.2 Invoices must be paid within 14 calendar days from the invoice date. If this payment period is exceeded, the Client shall be in default by operation of law and shall owe interest on arrears in accordance with the statutory provisions applicable at the time.

5.3 The Contractor and the Client may agree different payment terms, whereby the Client, in the context of his order for services by the Contractor, may owe a shortlist fee or retainer fee and the payment terms are confirmed in writing (email sufficient) and a different payment period may apply.

5.4 If the Client does not object in writing (email sufficient) to the contents of the invoice within five calendar days after the invoice was sent, it is assumed that the Client agrees to the invoice.

5.5 Payment can be effected only with a legal means of payment in cash or by bank transfer to the bank account of the Contractor as indicated on the invoice.

5.6 If the payment deadline specified in Article 5.2 and/or an order confirmation is exceeded, the Client has no right (any longer) to the ex gratia payment provision as described in Article 8 of these T&Cs. Also in the event of the payment period being exceeded, all (if any) remaining outstanding invoices/receivables and invoices yet to be sent become immediately due and payable in full. If the standard fee, payment and/or ex gratia payment provision as described in respect to Article 4 (Fee), Article 5 (Payment/ Excess of the payment term) and Article 8 (End of the employment relationship within the first eight weeks/ex gratia payment provision), the Client is only entitled to 50% of the standard ex gratia payment provision.

5.7 The Client is not entitled to suspend or offset any payment obligations on the basis of the Placement Contract. This does not apply if the counterclaim or the right of retention is recognised or legally established.

#### **Article 6: Liability**

6.1 The Contractor is on no account liable for damage that has been or will be caused by a Candidate. The Client himself must check whether the Candidate is suitable for the position, has the required experience and has any necessary (work) permits, worker or self-employed status and/or other required documents. The Contractor is by no means a party in the contract between the Client and a Candidate. The Candidate is not a vicarious agent of the Contractor.

6.2 Unless otherwise stipulated in these T&Cs including the following provisions, the Contractor shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions. The Contractor shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, the Contractor shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only a) for damages arising from injury to life, body or health and b) for damages arising from the breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, the liability of the Contractor shall be limited to compensation for the foreseeable, typically occurring damage. The limitations of liability resulting from sentence 2 shall also apply vis-à-vis third parties as well as in the event of breaches of duty by persons (also in their favour) whose fault the Contractor is responsible for according to statutory provisions.

#### **Article 7: Confidentiality clause**

The Client is subject to a confidentiality obligation regarding the information about Candidates. All information (in the broadest sense of the word) about Candidates is strictly confidential. If confidential information regarding a Candidate is divulged by the Client to a third party, the Client shall owe to the Contractor a flat-rate sum of damages that falls due immediately and which amounts to € 25,000 per violation, unless the Client can prove a lesser amount of damages or the Contractor a higher amount of damages.

#### **Article 8: End of the employment relationship within the first eight weeks/ex gratia payment provision**

8.1 If an employment contract ends within eight weeks from its beginning, because (a) the Candidate terminates the employment contract himself or (b) the Client terminates the employment contract or (c) the Client and the Candidate sign a termination agreement in case of (b) and (c) with the reason that the Candidate is not working properly, which needs to be underpinned by the Client with relevant documents, the Contractor will repay the Client 50% of the fee already received by the Contractor. within 30 days in the case of termination in the first 4 weeks, and after receipt of all relevant documents and approval by the management of the contractor. If the employment contract is terminated in the last 4 weeks, the repayment corresponds to 12.5% of the fee

already received by the contractor for each calendar week that the candidate was not employed by the client during the period of eight weeks from the start of the employment contract of the candidate. Repayment shall be made in each case within 30 calendar days of receipt of all relevant documents and approval of repayment by the Contractor's management. This ex gratia provision does not apply if the inadequate work of the Candidate or the reason for the termination of the Candidate is attributable to the Client.

8.2 The Client shall notify the Contractor in writing (email sufficient) within five calendar days from the date of termination or from the date on which a termination agreement is signed by the Client and the Candidate, stating the reason for the termination or the deficient work of the Candidate in line with the provisions of Article 8.1.

8.3 After the period referred to in Article 8.2 has expired, the Client's right to invoke the ex gratia payment provision referred to in Article 8.1 will lapse. The Client will bear the burden of proof with regard to the Contractor being informed in writing (email sufficient) within the term stipulated.

#### **Article 9: Personal data / Data protection**

9.1 For the purpose of this article, the capitalized terms shall have the meaning set out in applicable data protection legislation, in particular the General Data Protection Regulation ("GDPR").

9.2 The Contractor Processes Personal Data of Candidates in the manner as set out in the Contractor's privacy statement. As the Contractor may share such Personal Data with the Client in the performance of services, the Contractor and the Client agree that the Client shall comply with the relevant data protection legislation, in particular the GDPR, and the conditions as set forth in this Article 9.

9.3 The Client acknowledges that, upon receipt of Personal Data, the Client becomes (joint) Data Controller of that Personal Data, as the Client shall, from that point on, (jointly) determine the purpose and means of Processing that Personal Data.

9.4 The Client ensures that the persons authorized by the Client to Process the Personal Data have committed themselves to confidentiality.

9.5 The Client shall arrange for all appropriate technical and organizational measures, to the extent such measures may be reasonably expected of the Client, to protect the Personal Data from loss, loss of integrity or from any form of unlawful Processing; and shall ensure that these measures meet all requirements under the data protection legislation, including but not limited Clause 32 of the GDPR.

9.6 If the Client commissions subcontractors, the Client must impose the data protection obligations contained in this Article 9 on the subcontractors. Upon request, the Contractor will receive a list of the Client's subcontractors.

9.7 The Client shall provide all reasonable assistance to the Contractor in order for the Contractor to fulfil its obligations to respond to requests by Data Subjects exercising their rights under applicable data protection legislation.

9.8 The Client shall provide all reasonable assistance to the Contractor in order for the Client to comply with its obligations pursuant to Clause 32 through 36 of the GDPR, taking into account the nature of the Processing and the information available to the Client.

9.9 In case the Client discovers a security breach that may adversely affect the protection of Personal Data received by the Client from the Contractor and Processed by the Client, the Client will notify the Contractor, to the extent permitted by law, as soon as reasonably possible. The Contractor and the Client will cooperate regarding the investigation of the Personal Data Breach. In case of a Personal Data Breach within its organization, the Client shall -to the extent necessary- be responsible for notifying the relevant authorities and the Data Subjects concerned.

9.10 The Client shall make available to the Contractor all information necessary, to the extent this is possible and reasonable, to demonstrate compliance with the conditions laid down in this Article 9. The Client shall cooperate, to the extent this is possible and reasonable, with any audits conducted by the Contractor or another auditor mandated by the Contractor.

#### **Article 10: Applicable law and disputes**

10.1 All agreements between the Contractor and the Client are governed by German law, even if the contract has an international character.

10.2 The court of jurisdiction for all disputes – including disputes that only one of the parties deems to be such – arising between the Client and the Contractor in connection with the Placement Contract or the agreements ensuing therefrom is Frankfurt/Main, Germany (place of the registered office of the Contractor's legal representative).