

## GENERAL PERFORMANCE AND DELIVERY TERMS AND CONDITIONS OF ARDEKAY GERMANY, A COMMERCIAL DIVISION OF AMBITIOUS PEOPLE GERMANY GMBH

### Article 1: Definition of terms and applicable conditions

1.1 These General Terms and Conditions govern all offers, requests for offers, quotations and agreements with respect to the provision of services by Ambitious People Germany GmbH, as well as all its affiliated companies (hereinafter referred to as the 'Agency') pursuant to a commission contract, more specifically an intermediary agreement, with its contracting party (hereinafter referred to as the 'Client'). These General Terms and Conditions furthermore govern all legal relationships ensuing from these agreements as well as all non-contractual relationships between the parties, in particular unlawful acts.

1.2 In these General Terms and Conditions the terms listed below have the following meaning:

- Candidate: the natural person recruited and selected by the Agency to fill the vacancy at the Client's company.
- Confirmation of assignment: a written confirmation from the Agency to the Client stating that the assignment has been granted, in which context these Terms and Conditions of Delivery will be sent to the Client.
- Gross Annual Salary: the salary on a full year and full-time basis employment (40 hours) during the first year in the employment of the Client. The gross annual salary is also understood to mean a thirteenth month, where applicable, holiday pay, holiday allowance, bonuses/commission-based pay (on-target earnings, OTE), mobility budget (travel allowance/car expense allowance, relocation allowance) and all other associated primary and secondary conditions and benefits to be granted to the Candidate by the Client. A car made available by the client in this respect equal to nine thousand euros gross salary.
- Introduction: presentation of the 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.
- Concurrence: oral and/or written Concurrence between the Candidate and the Client about filling in a temporary or permanent employment contract, or about concluding an agreement for the provision of services in the broadest sense of the word for the Client. It is therefore sufficient for Agreement that the Client has notified the Candidate orally and/or in writing that it will offer him/her an employment contract or any other agreement pursuant to which the Candidate performs or will perform services for the Client. Concurrence does not require that the Candidate has actually entered the employment of the Client or has started to perform services.
- Appointment: an agreement between the Candidate and the Client regarding temporary or permanent employment or the provision of services for the Client, in the broadest sense.
- Agreement: the intermediary agreement between the Client and the Agency.
- Placement 'On Hold': suspension of the intermediary agreement or intermediary activities by the Client with the Agency in any manner.
- All amounts stated in these general terms and conditions as well as in quotations and offers from the Agency are exclusive of VAT and exclusive of 1 percent administration costs on the minimum fee amount.

### Article 2: Conclusion of the Agreement

2.1 After the Client has granted the assignment, the Agency will be entitled to use the Client's name and/or logo in order to support the provision of the services and promotion of the Agency.

2.2 If Client after the conclusion of the Agreement with Agency withdraws the assignment provided by Client, 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 in the employment of Client, then Client will owe to Contractor for each withdrawn assignment or vacancy a cancellation fee to the amount equal to half of the minimum fee as referred to in article four of these terms and conditions.

2.3 The Agreement is performed by the Agency on a "no cure, no pay" basis. This means that the Client only owes the Contractor a fee as referred to in Article 4 if Agreement as referred to in Articles 3.1 and 3.2 has been reached between the Client and a Candidate proposed by the Agency.

### Article 3: Agreement

3.1 If, between Client, as well as any companies affiliated to it in any manner whatsoever, and the Candidate proposed by Agency, Concurrence exists within one year after the first Introduction, the Client will be obliged to provide notification in writing to Agency regarding this within five working days from the coming into effect of the Concurrence, enclosing the terms and conditions of the agreement. If Client does not fulfil this obligation, any right to the goodwill gesture arrangement, as described in article 6 of these general terms and conditions of supply, will lapse. It is not of relevance to the question of whether Concurrence exists 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 vacancy than the one for which he or she was introduced to Client. Furthermore, it is immaterial on whose initiative the Candidate enters into the employment of the Client or performs work under an agreement.

3.2 There is also Concurrence if a vacancy is still cancelled after Concurrence is reached.

3.3 If Client does not inform Agency in writing within five working days from reaching Concurrence about the implementation of the Concurrence, then Client will owe to Agency an immediately due and payable financial penalty of the amount of € 10,000 without prejudice to the right of Contractor to invoice Client a fee in conformity with article four, or as the case may be article 3.4.

3.4 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.

3.5 Up to a year after the end of the agreement between the Client and the Agency, the Client is not permitted to offer an employment agreement to the Agency's employees in every form whatsoever without the explicit written consent of the Agency. Employees means employees that are currently employed at the Agency or were employed at the Agency less than twelve months before. If this prohibition and/or that which is determined in this article is violated the Client will owe a penalty payable on demand in the amount of EUR 50,000 for each violation, without prejudice to the Agency's right to recover the damage actually sustained and regardless of the Agency's right to claim that which is determined in this article.

**Article 4: Fee**

4.1 At the time of Concurrence between Client and a Candidate Client will owe to Agency a fee over the Gross Annual Salary of the Candidate concerned, in conformity with the rates as described in article 4.2, in which a minimum fee applies of the amount of €19.500 Excl.VAT.

4.2	Gross Annual Salary	Fee
	€ 0 tot € 65.000	€19.500,-
	€ 65,001 - to € 75,000	30%
	€ 75,001 – to € 85,000	32.5%
	From € 85,001 (executive search)	35%

**Article 5: Payment**

5.1 The fee as recorded in article 4 of these terms and conditions, will be charged by Agency to Client with as invoice date the time of Concurrence between Client and a Candidate.

5.2 Invoices must be paid within 14 calendar days of the invoice date. If that payment term is exceeded the Client will be in default by operation of law and will owe default interest at the statutory commercial interest rate that applies. The Client is not entitled to any set-off or suspension.

5.3 If the Client does not protest against the content of the invoice in writing within five calendar days after having been sent the Client will be deemed to have accepted the invoice and its contents.

5.4 If the payment term referred to in Article 5.2 and/or confirmed in the Confirmation of Assignment is exceeded the Client will not be entitled to invoke the goodwill scheme described in Article 6 of this Agreement. Also, in the case of exceeding the payment term all other outstanding invoices immediately due and payable. If the standard Fee, Payment and/or Goodwill Arrangement as described herein in article 4, 5 and 6 respectively is deviated from in writing, the Client is only entitled to a refund of half of the standard goodwill Scheme.

5.5 If the Client fails to make payment promptly and in full the Client will be obliged to reimburse the Agency for any and all judicial and extrajudicial costs related to collecting the claim, in which context extrajudicial costs will be equal to at least 10% of the amount overdue.

5.6 Payments made by the Client will always be applied first in respect of any and all interest and costs payable, and subsequently in respect of the invoices that have been outstanding the longest, even if when making payment the Client explicitly states that the payment relates to a later invoice.

**Article 6: End of Candidate's employment/goodwill scheme**

6.1 If an employment contract with a Candidate ends within eight weeks of commencement, because the Candidate himself stops or the Client cancels or has dissolved the agreement with the Candidate during this period, with the reason that the Candidate does not function properly, which must be substantiated by the Client with relevant documents, the Agency will repay 50% of the already received fee to the Client under the goodwill Scheme within 30 days upon termination in the first four weeks, after receipt of all relevant documents and approval by the Agencies management. If the employment contract ends in the last 4 weeks, the Agency will repay a part of the fee already received, corresponding to 12.5% of the fee charged by the Agency, for each calendar week that the Candidate has not been employed during the period of eight. weeks after the start of the employment of the Candidate. This goodwill scheme does not apply if the failure of the Candidate to function properly or the reason for stopping the Candidate is attributable to the Client.

6.2 The Client must notify the Agency in writing in respect of the provisions contained in Article 6.1 within five calendar days as from the date of the termination or submission of the request for dissolution of the Candidate's employment contract to the Cantonal Division of the District Court, or the date on which a termination agreement is signed by mutual consent, stating the cause of the Candidate's stopping or the Candidate's unsatisfactory performance.

6.3 After the term referred to in Article 6.2 has expired the Client's right to invoke the goodwill scheme referred to in Article 6.1 will lapse. The Client will bear burden of proof in respect of the Agency's being informed in writing within the term stipulated.

6.4 If the situation referred to in Article 6.1 arises, this will not entitle the Client to suspend any payment obligation under the Agreement, nor will the Client be entitled to set off any amount.

**Article 7: Liability**

7.1 Agency will never be liable for damage which is or will be caused by a Candidate. Client must personally check if the Candidate is suitable for the position, has the required experience and has the possibly required (work) permits, Declarations of Independent Contractor Status and/or other requested documents in his or her possession. Copy of diploma and reference check can be made after written request. Agency will never be party in the agreement between Client and a Candidate.

7.2 The Agency is not liable for any damage, loss or delay ensuing from an attributable breach, wrongful act or on any other ground unless there has been an intentional act or omission or wilful recklessness on the part of the Agency. The Agency also is not liable for any damage, loss or delay caused by the Candidate.

7.3 Losses due to delays, consequential damage, loss of profit and loss of income also are not eligible for reimbursement.

7.4 In the event that in spite of the provisions contained in Articles 7.1 to 7.3 above the Client believes that it has a well-founded ground to hold the Agency liable, the Client must immediately notify the Agency of that alleged claim in writing, supported by documents and properly substantiated, on penalty of its rights lapsing. The right to compensation from the Agency will in any event lapse one year after the incident from which the damage ensued and for which the Agency is allegedly liable.

7.5 Without prejudice to the provisions contained in Articles 7.1 to 7.3 above, any liability on the part of the Agency will be limited to the amount paid out on the basis of its professional/business liability insurance policy in respect of the relevant case plus the amount of the excess that pursuant to the policy conditions is not for the insurers' account. Information regarding the professional/business liability insurance policy/policies taken out by the Agency and the related coverage will be provided upon request.

7.6 If for any reason whatsoever the insurer referred to in Article 7.5 does not pay any benefits, any liability on the part of the Agency will be limited to the amounts paid to the Agency in the relevant calendar year for the work that it has performed, subject to a maximum of EUR 10,000.

#### **Article 8: Duty of confidentiality**

8.1 The Client has a duty of confidentiality in respect of the information regarding the Candidates. Any and all information (in the broadest sense of the word) regarding Candidates is strictly confidential. If the Agency sustains damage in any manner whatsoever as a result of the Client violating its duty of confidentiality, the Client will owe a penalty payable on demand in the amount of EUR 25,000 for each violation, without prejudice to the Agency's right to recover the damage actually sustained if it exceeds the amount of that penalty.

8.2 In the event that the Client communicates confidential information regarding a Candidate to a third party and that results in an employment contract or other agreement between that third party and the Candidate, the Client will owe a fee equal to 35% of the gross annual salary of the Candidate during his or her first year of service at his new employer, inclusive of all fringe benefits.

#### **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 Agency Processes Personal Data of Candidates in the manner as set out in the Agency's privacy statement. As the Agency may share such Personal Data with the Client in the performance of services, the parties agree that the Client shall comply with the relevant data protection legislation, in particular the GDPR, and the conditions as set forth in this Clause 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 In case the Client engages sub-contractors in the performance of the Agreement, the Client shall impose the data protection obligations as set forth in this Clause 9 on those sub-contractors. A list of the Client sub-contractors can be obtained by the Agency, at its request.

9.7 The Client shall provide all reasonable assistance to the Agency in order for the Agency 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 Agency 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 Agency and Processed by the Client, the Client will notify the Agency, to the extent permitted by law, as soon as reasonably possible. The parties will cooperate with each other on 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 Agency all information necessary, to the extent this is possible and reasonable, to demonstrate compliance with the conditions laid down in this Clause 9. The Client shall cooperate, to the extent this is possible and reasonable, with any audits conducted by the Agency or another auditor mandated by the Agency.

#### **Article 10: Continuous obligations**

Obligations, which by their nature are intended to continue also after the expiry of the Agreement, retain their effect thereafter. These obligations include inter alia: provisions with regard to liability duty of confidentiality and the non-compete and non-solicitation clause.

#### **Article 11: Applicable law and disputes**

11.1 All Agreements between the Agency and the Client are governed by German law, even if the Agreement has an international character.

11.2 Any disputes – including disputes that only one of the parties deems to be such – arising between the Client and the Agency in connection with this Agreement or the agreements ensuing from it will be resolved by the competent judge of the District Court of Frankfurt/Main, Germany.

11.3 Apart from the provisions of article 11, paragraphs 1 and 2 of these general terms and conditions of delivery, the Agency reserves the right to challenge the Client (or the Candidate) before the competent court of the place of residence or place of business of the Client (or the Candidate).