

General Terms and Conditions for the Placement of Personnel

Clause 1 General - Applicability

1. Our general terms and conditions (GTC) are part of this contract and have exclusive applicability. Contrary conditions or such terms and conditions of the client differing from ours will not be accepted by us, unless we have consented to their applicability in writing. We will not accept differing terms, even if we implement the contract without reservations in awareness of conflicting terms or terms of the client that differ from ours.
2. Our GTC apply, insofar as a commercial transaction is involved on both sides, and they also apply for all future transactions with the client. Decisive is the version respectively valid at the time of the close of contract.
3. Agreements we have made with the client in deviation from or supplement to the GTC, take precedence over these GTC, insofar as such agreements were concluded by the parties in writing. Verbal agreements shall only be binding, if we have confirmed these in writing.
4. Regarding our information obligations according to the EU GDPR we refer to our Data privacy statement which can be found at <https://www.bertrandt.com/en/privacy-note.html>.

Clause 2 Confidentiality

1. We will make confidential information on the candidate available to the client, which is exclusively intended for its receipt. The client shall observe the confidentiality and non-disclosure flags of this information. It undertakes to not use this data of the job applicant in harmful way or to forward it to third parties. The client is obligated to treat the personnel documents that are provided by us confidentially.
2. Insofar as the client stores any of the personal data provided by us, the client is responsible for ensuring that the storage and/or the other processing of the data provided comply with any data protection requirements.
3. Personnel documents that are provided to the client are our property and shall be immediately returned to us or destroyed at our request. In case of destruction, the client shall provide us with a written and binding confirmation of the destruction.

Clause 3 Close of contract, cooperation obligations

1. The contract with the client will materialize when we have confirmed the acceptance of the contract in writing or by email. Changes to the contract as well as declarations and individual directives generally require the written form for their validity. E-Mails with electronic signature pursuant to the signature law or faxes fulfill this requirement for the written form.
2. The client shall ensure that we will receive all required documents and information for the fulfillment of the contract. Should expenses be caused by incomplete or incorrect documents or information, these shall be reimbursed to us separately by the client against verification.
3. We are entitled to engage third parties in the performance of service and to partially or fully subcontract the contract, insofar as protected interests of the client will not be affected thereby.

Clause 4 Remuneration

1. The remuneration is dependent on the position to be staffed and will become due upon successful placement. Our flat fee for successful placement amounts 35% of the annual salary of the placed candidate plus the legal sales tax. The annual salary includes the annual gross salary of the candidate in addition to the flexible share and all salary components as applicable.
2. We are entitled to invoice the candidate's as well as own travel expenses separately against submission of corresponding vouchers to the client. Insofar as no express agreement on the amount of the costs for settlement was made, we may invoice the costs in the amount of the standard tax rates.
3. The remuneration pursuant to paragraph 1 as well as the invoices pursuant to paragraph 2 will become due for payment upon signature of the corresponding employment contract within fourteen (14) days after receipt of the invoice without deduction. Our remuneration accrues separately for each placement of a candidate presented by us, regardless of what the client's original order was.
4. If an employment contract between the candidate and the client or an affiliated company as per sections 15 et seq. AktG (German Stock Corporation Act) materializes within twelve (12) months after appointment of the candidate, it will be presumed that the candidate was placed by us. Any sending of a simple candidate profile to the client is deemed a presentation, even if in the provided profile the name of the candidate is not completely specified or other decisive characteristics are missing. The aforementioned applies accordingly if an affiliated company of the client concludes an employment contract with a nominated candidate. The client reserves the right to proof to the contrary for the aforementioned presumption, by proving that the employment contract would also have been concluded without our placement.
5. Insofar as more than the position to be staffed according to the contract will be filled, we will also invoice 35% of the annual gross salary of the additionally placed candidate(s). The annual gross salary is also calculated according to paragraph 1 of this number.
6. The client is obligated to provide us with all required documents and information for the calculation of the remuneration. If the client fails to meet this obligation, we will be entitled to perform the invoicing on basis of an estimate of the candidate's salary. The obligation for the provision of documents remains unaffected thereby.
7. If we learn of facts after the conclusion of contract, which cast doubt on the client's payment ability, we are entitled to demand at our discretion the complete payment of the service or an equivalent provision of security prior to additional services, or to withdraw from the contract after setting an appropriate period for the complete payment or provision of security. Facts casting doubts on the client's payment ability are, in particular, any lasting attachments or other enforcement measures, application for or opening of bankruptcy proceedings or reasons that would mandate the application for bankruptcy proceedings.
8. The client may only offset our claims with undisputed or legally established claims.

Clause 5 Warranty, liability

1. We will perform the placement service to our best knowledge and according to the client's requirements; the decision in favor of a candidate is in the exclusive responsibility of the client. Any guarantee in excess thereof does not exist; specifically we do not assume any guarantee neither for the suitability of the candidate in regards to the client's purposes, nor for the success of a search for a suitable candidate. Any confidence of whichever form in the meaning of Section 311 Civil Code is not established between the parties.
2. Our liability regardless of the legal reason is excluded. The liability limitation shall not apply to our intended or gross negligent action, or in case of damages to life, person and health or violation of significant contractual obligations. Significant contractual obligations are such duties that protect the legal positions of the client as are relevant to the contract, and which shall be precisely granted to it by the contract according to its content and purpose, and also such duties whose fulfillment is decisive for the proper implementation of the contract in the first place and adherence to which may be regularly relied on by the client. In case of negligent violation of significant contractual obligations, our liability is however limited to compensation for damage that is typical for the contract and predictable at the time of the close of contract.
3. The liability limitation also applies to the benefit of our employees and staff as well as their fulfillment and service assistance and subcontractors.
4. A reversal of the burden of proof is not entailed by the aforementioned provisions.

Clause 6 Termination of contract

1. The placement contract can be canceled by either of the contractual parties in writing at any time in observation of a cancellation period of four (4) weeks. The costs incurred until the cancellation notice taking effect shall – insofar as they were ordered prior to the receipt of the cancellation notice – be paid or payments already made shall remain with us.
2. Even after the termination of the placement contract regardless of the legal reason, these GTC (in particular article 4) continue to apply to all candidates presented by us for an indefinite period.
3. We may fully or partially withdraw from this contract, if and insofar as our service performance will become permanently or temporarily difficult on basis of extraordinary circumstances. Among such extraordinary circumstances are in particular strikes, measures of public administration, pandemics, etc. If these hindrances according to paragraph 1 persist for more than four (4) months, we are entitled to withdraw from the contract, if the place of fulfillment ceases to be interesting for us in consequence of the hindrance and if we have not assumed the procurement or production risk. At the client's request we will declare after expiration of the period, whether we will withdraw from our service obligations or if we will fulfill them within appropriate period.

Clause 7 Final provisions

1. Place of fulfillment is the seat of our company.
2. Exclusive place of jurisdiction for all present day and future claims from the business relationship with merchants is the place of our company's registration. The place of jurisdiction is the same in case the client does not have its general place of jurisdiction in the domestic territory, or if it relocates its residence or main residence to a place abroad, or if its residence or main residence is not known at the time when the legal action is filed. We are however entitled to file legal action against the client also at the place of its registration or at any other competent legal venue.
3. All legal relations are exclusively subject to German law. The UN Convention on Contracts for the International Sale of Goods of 1980 and other conflict rules do not apply.
4. If any aspect of the contractual relationship with the supplier should be fully or partially invalid on other grounds than Sections 305-310 Civil Code, or if any aspect should become invalid at a later time, the validity of the remaining provisions will not be affected thereby, insofar as the implementation of the contract does not present unreasonable hardship for one of the parties in consideration of the following provision. The parties are aware of the jurisprudence of the Federal Court according to which a severability clause merely reverses the burden of proof. It is the express intent of the parties to maintain the validity of the other contractual clauses under all circumstances and thereby to waive Section 139 Civil Code in its entirety. The same applies in case of omissions in the contractual relationship. The invalid or impracticable provision shall be replaced by an appropriate provision, which comes closest to what the parties intended or had intended, if they had considered the aspect at the conclusion of the contract or in a later inclusion of a provision.