

GENERAL TERMS AND CONDITIONS OF ARDEKAY IT RECRUITMENT, A BUSINESS UNIT OF AMBITIOUS PEOPLE AUSTRIA GmbH

As of: 1 January 2021

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Article 1: Definitions and applicable conditions

1.1 These General Terms and Conditions (hereinafter referred to as "T&Cs") apply to all offers/requests for quotations and contracts regarding the performance of services by Ambitious People Austria GmbH (hereinafter referred to as Contractor) to Client or Client's affiliated companies. These T&Cs form an integral part of any contract concluded between Contractor and Client.

1.2 These T&Cs shall also apply for all future contracts between Contractor and Client, even they are not agreed again. The parties' mutual rights and obligations are defined exclusively by the content of an order accepted by Contractor and these T&Cs. This shall apply to the exclusion of all terms and conditions of the Client. Under no circumstances terms and conditions of Client shall have any legal effect, regardless of whether, when and how these were brought to Contractor's attention.

1.3 Any other agreement differing from these T&Cs shall be solely applicable for the specific agreed order and is subject to the express prior written consent of Contractor.

1.4 Even if Contractor accepts an order by commencing the performance of services, it shall not deem that Contractor has accepted Client's business terms and conditions or Client's terms and conditions of purchase which may be mentioned in the respective order.

1.5 In case of contradictions between an order confirmation or contract and these T&Cs, the specific regulation in the order confirmation or contract shall prevail.

1.6 Further the services provided by Contractor are subject to any applicable Austria law, in particular to the relevant provisions of the Arbeitsmarktförderungsgesetz.

1.7 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) including Christmas bonus and vacation payments and any other remunerations in the first year of employment with the Client. Remunerations as stated before may include, but are not limited to, bonuses/commissions (on-target earnings/OTE), travel budget (car/remuneration of travel expenses), reimbursements of relocation expenses, company flat, and any other primary and secondary conditions and benefits that may be agreed between the Candidate and the Client. In this context, a car provided by the Client is equal to the applicable non-monetary valuation according to the Austrian Income Tax (Sachbezug).

- Introduction: presentation of the Candidate's details by the Contractor to the Client. It is irrelevant that the Client already knows the Candidate.

- Agreement: the agreement between the Candidate and the Client or the Candidate and an affiliated company of Client regarding the entering into of a fixed-term or indefinite employment relationship or regarding the conclusion of a contract for the performance of services in the broadest sense of the word for the Client or Client's affiliated company for the advertised or any other position [including but not limited to Freelancer, so called quasi freelancer ("freier Dienstnehmer") or

other independent activity ("Sonstiger Selbstständiger")], irrespective of a probationary period has been agreed .

- Contract: the mediation agreement between the Client and the Contractor.

- "On hold" status of an assignment: the suspension of the mediation agreement or mediation activities with the Contractor in any way by the Client.

- Alle in diesen AGB sowie in Angeboten des Auftragnehmers genannten Beträge verstehen sich zuzüglich gesetzlicher Umsatzsteuer und zuzüglich 1 Prozent Verwaltungskosten auf den Honorar Betrag.

1.8 These T&Cs are made available on the website of 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

1.9 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.

Article 2: Conclusion of the contract

2.1 The way the Client places the order with the Contractor for the performance of services has no prescribed form. The contract enters into effect upon the acceptance of the contract/order by the Contractor. The acceptance by Contractor may take place in writing (e.g. order confirmation by email, letter or fax), by phone or by the actual start of the provision of the service by the Contractor.

2.2 After the contract has been concluded, the Contractor will be entitled to use the Client's name and/or logo in order to support the provision of his services and to promote the Client. The Client acknowledges and agrees that Contractor shall be entitled to disclose Client's personal data to Candidates in order to fulfil the performance of services. Contractor will take into account restrictions and limitation in respect of the processing of personal data, subject to prior written notification by Client.

Contractor is entitled to make available to Candidates information concerning the job vacancy and Client's firm. Client will support Contractor with the relevant information.

2.3 If, after conclusion of the contract with the Contractor, the Client withdraws the assignment provided by the 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 the 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 five of these terms and conditions.

Article 3: Scope of Services

3.1. Subject matter of the services under the contract and these T&Cs is the search, pre-selection and introduction of Candidates in accordance with the Candidate profile provided by the Client to Contractor.

3.2. Additional services, which are not covered by subject matter as mentioned under 3.1 are charged separately, for which generally valid rates of Contractor apply.

3.3. Client will support Contractor at all times with information necessary for Contractor's work and will make available such information without delay. In addition, Client shall inform Contractor about any circumstances relevant for Contractor's work. Contractor is entitled to assert any damages against Client resulting from incorrect or incomplete information.

Article 4: Agreement

4.1 If, an Agreement is concluded between the Client and the Candidate proposed by Contractor, as well as between any companies affiliated to the Client, in any manner whatsoever, and the Candidate proposed by Contractor within one year after the initial introduction, the Client will be obliged to provide written notification to Contractor regarding this within five

working days from the coming into effect of the Agreement, enclosing the terms and conditions of the Agreement. If Client does not fulfil this obligation, any right to the ex gratia payment provision, as described in Article 9 of these T&C's, will lapse.

4.2 An agreement also exists if a vacancy is cancelled after an agreement is reached.

4.3 If Client does not inform Contractor in writing within five working days from reaching an Agreement, then Client will owe to Contractor an immediately due and payable financial penalty amounting to €10,000, unless the Client can prove a lesser amount of damages or the Contractor a greater amount of damages, without prejudice to the right of Contractor to invoice the Client a fee in accordance with Article 5.

4.4 If the Client fails to send to the Contractor within 5 working days from the Agreement the employment contract including the salary details namely the gross annual salary in order to give the Contractor the opportunity to (subsequently) charge the Client the fee that the Client owes in accordance with Article 5 of these T&C's, the Client will owe the Contractor a penalty, amounting to €35,000. Any other claims of Contractor against Client from breach of this clause shall remain unaffected.

Article 5: Fee

5.1 At the time of an Agreement between the Client or an affiliated company of Client and a Candidate, the Client will owe to Contractor a fee based on the gross annual salary of the Candidate concerned, in accordance with the rates as described in Article 5.2, to which a minimum fee amounting to €17,500 applies.

5.2

Gross annual salary	Fee
Up to €63,500	€17,500
from €63,500 - €75,000	27.5%
from €75,000 - €100,000	30 %
from €100,000 (executive search)	35%

Article 6: Payment

6.1 The fee as specified in Article 5 of these T&C's will be invoiced by the Contractor to Client with the time that the Client enters into an Agreement with a Candidate as the invoice date.

6.2 Invoices must be paid within 14 calendar days from the invoice date. If this payment period is exceeded, the Client will be in default by operation of law and shall owe interest on arrears amounting to the statutory provisions applicable at the time (§ 456 UGB). The Client has no right of offset or right of retention unless the counterclaims are legally established or recognised by the Contractor.

6.3 The Parties may agree on different payment terms, whereby the Client, in the context of the contract awarded by him, may owe a shortlist fee or retainer fee or a different payment period may apply, both subject to a prior written consent of Contractor.

6.4 If the Client does not object in writing 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.

6.5 If the payment deadline specified in Article 6.2 and/or an order confirmation is exceeded, the Client has no right (any longer) to the ex gratia payment provision as described in Article 10 of these T&C's. 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 5,6 and 10, the Client is only entitled to half of the standard ex gratia payment provision.

6.6 The Client is not entitled to suspend or offset any payment obligations on the basis of the contract. This does not apply if the counterclaim or the right of retention is recognised or legally established. The same applies to the Contractor.

Article 7: Liability

7.1 Contractor will perform his services with due care and diligence of a prudent businessman. Defects in the performance shall be notified by Client to Contractor in writing immediately.

7.2 Unless otherwise agreed, Contractor does not guarantee that a certain search result will be achieved and is not liable for finding a candidate within a specific period.

7.3 Client shall be solely and exclusively responsible for the selection of a Candidate. Additionally Client acknowledges that he shall have no right to claim any damages from such selection of Candidate by himself. The Client himself must check whether the Candidate is suitable for the position and has the required experience

7.4 The Contractor shall not be liable for any information or documents provided by Candidate, in particular no liability of Contractor is accepted for the validity, correctness or completeness of information or documents offered by Candidates. Contractor shall also not be responsible or liable for Candidate's quality of work or willingness to work. Thus the Client shall be solely responsible for the verification of any information provided by the Candidate, in particular but not limited to Candidate's qualifications, working permit, skills, documents etc.

7.5 No liability shall be assumed for slight negligence, except in case of personal injury. Contractor's liability is limited to the damage that can typically be expected; the liability for unforeseeable, consequential and indirect damages and loss of profit or loss of data shall be excluded.

7.6 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 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.

7.7. Claims for damages become time-barred within 6 month from knowledge of the damage and damaging party, in any case after 12 month from providing the service.

Article 8: Confidentiality clause

The Client is subject to a confidentiality agreement regarding the information about Candidates. All information (in the broadest sense of the word) about Candidates is strictly confidential. If confidential information is divulged by the Client to a third party, the Client shall owe the Contractor a penalty immediately due in the amount of €25,000 per violation. Any other claims of Contractor against Client from the breach of this clause 8 shall remain unaffected.

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: The end of the employment relationship of the Candidate/ex gratia payment provision

10.1 If an employment contract with a candidate ends within eight weeks from the beginning of the employment relationship because the candidate dissolves or terminates it during the probationary period, or the client dissolves or terminates the contract with the candidate during this period during the probationary period or cancels it by mutual agreement the reason that the candidate is not working properly, which must be supported by the client with relevant documents, the contractor will repay the client based on this goodwill scheme in the first 4 weeks, 50% of the fee already received, within 30 days Receipt of all relevant documents and approval from the contractor's management. If the employment relationship ends in the last 4 weeks, the repayment corresponds to 12.5% of the fee invoiced by the contractor for each calendar week that the candidate was not employed during the period of eight weeks from the candidate's commencement of employment (e.g. if the termination occurs in the middle of the 6th week during the trial period, the client receives a refund of 25% of the agreed fee). This goodwill scheme does not apply if the inadequate work of the candidate or the reason for the termination of the candidate is attributable to the client. Any further claims on the part of the client against the contractor are excluded.

10.2 The Client shall notify the Contractor in writing within five calendar days from the date of termination or from the date of signing an annulment or settlement contract by mutual agreement, stating the reason for the termination or the deficient work of the Candidate in line with the provisions of paragraph

10.3 After the period referred to in Article 10.2 has expired, the Client's right to invoke the ex gratia payment provision referred to in Article 2.1 will lapse. The Client will bear the burden of proof with regard to the Contractor being informed in writing within the term stipulated.

Article 11: Miscellaneous

11.1 All agreements between the Contractor and the Client are governed by Austrian law under exclusion of the UN-sales law and exclusion of the international conflict law rules.

The court of jurisdiction for all disputes is the Handelsgericht Wien.

11.2. Neither party may assign or otherwise transfer any or all of its rights or obligation hereunder to a third party without the consent of the other party.

11.3 Unless otherwise agreed, any agreements between the parties must be made in writing and require the signature of the parties. This shall also apply on modifications and supplementations of a contract, even on changing of the form.

11.4. If an individual clause of the contract is or becomes ineffective or inadmissible, such clause shall be replaced by an effective or admissible provision that comes so close to the ineffective or inadmissible provision in its economic effect that it is to assume that parties would have concluded the contract with this clause as well. In case a clause is ineffective or

inadmissible this shall not change the validity of the other clauses. The same shall be applicable to any gaps in the contract.

11.5 Up to two (2) years after the end of the contractual relationship between Contractor and Client, the Client and its affiliated companies are not permitted (i) to offer an employment contract to the Contractor's employees and/or (ii) to make an offer for the conclusion of a contract with the Client or an affiliated company of Client in any form whatsoever or (iii) to cooperate in any other way directly or indirectly with the Candidate without the explicit written consent 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 Client accepts and acknowledges the appropriateness of the amount of the penalty. Any other claims of Contractor against Client from the breach of this clause 10.5. shall remain unaffected.