

General Business Terms and Conditions: Business & Service Brigitte Schmedding GmbH (Field of personnel leasing)

1. General information

1.1 These terms and conditions apply between Business & Service Brigitte Schmedding GmbH (hereinafter referred to as: Leasing Company) and the Customer (hereinafter referred to as: Hirer). The following terms and conditions are part of all contracts between the Leasing Company and the Hirer, without the need for the Leasing Company to object to any restrictions made by the Hirer. General Business Terms and Conditions of the Hirer and further agreements or changes and collateral agreements are only valid insofar as the Leasing Company has explicitly agreed to them and declares them in writing. Individual agreements shall in any case have precedence. Incidentally the statutory provisions shall apply.

1.2 Only written contractual declarations of the Leasing Company, in particular service offers and acceptances of offers, shall obligate the Leasing Company. Oral agreements shall require a written confirmation by the Leasing Company in order to be binding. A conclusion of a contract will only be materialised if this is recorded in writing and the contract has been signed legally effective. Contractual amendments and new offers must be drawn up in writing and/or confirmed.

1.3 The Hirer has to provide the official and other permits that may be required at the place of assignment as well as consents, in particular according to the German Working Hours Act [*Arbeitszeitgesetz*], before commencement of the work.

1.4 The Hirer shall assure compliance with the restrictions to the leasing in the main building trade pursuant to Section 1b German Personnel Leasing Act [*Arbeitnehmerüberlassungsgesetz - AÜG*]. In addition, reference is made to the provisions of the Building Company Ordinance [*Baubetriebsverordnung*].

1.5 Any leasing of the employees to third parties is excluded. Reference is made to Section 1 Para. 1 Sentence 3 AÜG.

2. Principle of equal treatment and maximum leasing duration

2.1 The Hirer will examine for each named temporary worker without delay whether he was employed in its company or at a group company affiliated with it within the meaning of Section 8 Para. 3 AÜG in the last 6 months before the start of the leasing (so-called revolving door clause). If the prerequisites of Section 8 Para. 3 AÜG exist, the Hirer is obliged to immediately inform the Leasing Company in text form (e.g. email). In these cases, the Leasing Company shall make all relevant information such as special features of the activity, qualifications required of the employee and with regard to the essential working conditions, including the wages of comparable permanently employed workers, available in a text form. Section 12 Para. 1 Sentence 4 AÜG shall apply in conjunction with Section 8 AÜG. Based on this written documentation a reasonable adjustment will be made to the respective hourly settlement rate.

2.2 The Hirer will examine for each named temporary worker without delay whether he or she was previously leased to it by another leasing company within the deadline of Section 8 Para. 4 Sentence 4 AÜG (3 months and one day). If there is such a case, the Hirer will inform the Leasing Company hereof without delay. Insofar as on the whole the obligation for equal treatment is derived pursuant to Section 8 Para. 4 AÜG from the then determined leasing duration, the Hirer is obliged to inform the Leasing Company without delay. In these cases, the Leasing Company will make all relevant information available to the Hirer such as special features of the activity, qualifications required of the employee and with regard to the essential working conditions, including the wages of comparable permanently employed workers, in a text form. Section 12 Para. 1 Sentence 4 AÜG shall apply in conjunction with Section 8 AÜG. Based on this textual documentation, a reasonable adjustment will be made to the respective hourly settlement rate.

2.3 In order to ensure compliance with the maximum leasing period pursuant to Section 1 Para. 1b AÜG, the Hirer will examine for each named temporary worker without delay whether he was previously leased to it by another leasing company within the deadline of Section 1 Para. 1b Sentence 2 AÜG (3 months and one day). If this is the case, the Hirer will inform the Leasing Company hereof without delay. Furthermore, the Hirer will inform the Leasing Company in text form without delay and in full about all regulations applicable in its company which allow a maximum leasing duration of longer than 18 months and which are relevant for a company in which a temporary worker can be assigned based on the leasing contract. Both parties shall monitor the adherence to the respectively applicable maximum leasing duration. If one of the parties has justified doubts that the maximum leasing duration will be adhered to, it is entitled to end the assignment of the relevant temporary worker immediately. In the event that the maximum leasing duration is exceeded, the parties shall reciprocally waive the assertion of claims for damages which arise from this exceeding of the deadline.

3. Duration of the personnel leasing

The leasing duration per temporary worker is at least 5 hours; incidentally the provisions of the leasing contract shall apply.

4. Settlement and surcharges

4.1 The settlement shall be carried out based on activity reports, which the employees submit to an authorised agent of the Hirer weekly or at the end of the assignment for signing.

4.2 The Hirer undertakes to confirm by signature the hours of attendance – including waiting and on-call times – for which the employees of the Leasing Company were available to it. Break times are to be shown separately. If hourly time sheets cannot be submitted to any authorised agent for signing by the Hirer at the place of assignment, then the employees are entitled to confirmation instead. (The attention of the Hirer is drawn to Section 17c Para. 1 AÜG, Record-keeping and Safekeeping Obligation.)

4.3 Invoicing shall be carried out weekly or after the end of the assignment based on the confirmed hours of attendance – without breaks. The basis for the calculation is the agreed hourly rate. The price does not include the surcharges and the applicable rate of value added tax. If fixed in the contract, the agreed daily allowance as well as the transport costs will be added for each workday.

4.4 The following surcharges will be charged on the hourly rates:

Night work (11.00 p.m. to 6.00 a.m.) 25% Sunday work 50% Public holiday work 100%

4.5 If the hourly rates are increased, in particular owing to industry surcharges, the increased hourly rates are the basis for the aforementioned surcharges. The same shall apply with the reduction in hourly rates. If the principle of equal treatment is applicable to the leased temporary worker pursuant to Section 8 AÜG, the surcharges that are actually to be paid to the temporary worker are to be applied mutatis mutandis to the settlement rate to be paid by the Hirer.

4.6 The settlements are due and payable without deduction within 10 workdays after receipt of the invoice. In the event of a default of payment, the statutory regulations of Sections 286 to 288 German Civil Code [*Bürgerliches Gesetzbuch - BGB*] shall apply.

4.7 If the Hirer is in default of payment, the Leasing Company is entitled to withhold contractual services from the business relationship.

4.8 Objections against the invoices issued by the Leasing Company are to be asserted in a text form towards the Leasing Company by stating verifiable reasons within one week after service of the relevant invoice has been executed. After expiry of this deadline the Hirer will explicitly waive all objections with regard to the accuracy of the settled hours.

5. Authorisation of the Hirer to issue instructions

The Hirer is entitled to issue all instructions to the employee which, according to type and scope, fall in the defined area of activity.

6. Obligations of the Hirer

6.1 Within the scope of its statutory welfare obligation, the Hirer will take suitable preventive measures which protect the employee with regard to his assignment against disadvantages for reasons of race or owing to ethnic origin, sex, religion or ideology, disability, age or sexual identity.

6.2 The Leasing Company is to be permitted access at all times to the area of activity of its employees.

6.3 With the assignment of the leased employee in a position of trust as well as with access to personal data, money and valuables, a separate written agreement is to be reached in advance. Without this explicit written agreement, the employee may neither be commissioned with data processing, transport nor with the handling or collection of money and other means of payment. Payments which the Hirer makes to the leased employee shall take place at its risk and cannot be held against the Leasing Company.

6.4 The Hirer undertakes to inform the Leasing Company without delay – if applicable also by telephone – about industrial dispute measures taking place or impending in the assignment company. The Leasing Company is forbidden according to the collective agreement to assign its employees in a company in which a strike is taking place. This shall also apply for temporary workers who were working in the company before the start of the strike/lockout. In the event of a strike/lockout in the assignment company, the parties therefore agree that the obligation for leasing and the right to remuneration with regard to the affected temporary worker will be suspended.

6.5 The Hirer undertakes to inform the Leasing Company without delay if it makes payments to the temporary workers which are relevant under income tax law or social insurance law, in particular if it grants benefits in kind. In this case, the Hirer is further obliged to state the type and amount of the payments, with reference to the respective temporary worker, by the 5th workday of the month following the payment in full so that the Leasing Company can take this into consideration with the remuneration settlement.

6.6 The Hirer has to give the employee a justified reply in a text form within one month of receipt of a report from the employee in which the wish is expressed to conclude an employment contract with him.

The employee shall not have this right if he expressed this wish once before already within the last twelve months. The Hirer will notify the Leasing Company of the employee's wish without delay. It will also notify the Leasing Company without delay with regard to how it replied to the employee.

7. Obligations of the Leasing Company

7.1 The Leasing Company undertakes, upon request, to submit proof of qualifications with regard to the named employee (e.g. journeyman's certificate, skilled worker's certificate, driving licence, health certificate).

7.2 The employees made available to the Hirer will be selected in line with the requirements profile and the activity described by the Hirer.

7.3 Should it be determined in an exceptional case that a leased employee is not suitable for the envisaged work, then the Hirer can request within the first four hours after commencement of the work that the unsuitable employee be replaced by a suitable one.

7.4 The service obligation of the Leasing Company is limited to an employee named in the leasing contract. If this employee is prevented from performing his work, without the Leasing Company being responsible for this (e.g. due to illness or accident), then the Leasing Company will be released from its service obligation for the duration of the hindrance. It is entitled to provide a substitute person.

7.5 Unforeseeable, unavoidable events that are beyond the scope of control of the Leasing Company and for which it is not responsible, such as force majeure, interferences to transport, industrial disputes (strike or lock-out), shall release the Leasing Company from its time-bound service obligations for the duration of the event.

7.6 If the event lasts for longer than six weeks or if the service to be provided by the Leasing Company becomes impossible as a result of the event, both the Hirer as well as the Leasing Company are entitled to terminate the contract without notice. In these cases, there is no obligation to pay damages.

7.7 The Hirer can expel the employee from the allocated workplace during the work assignment and request a suitable substitute in case of a reason which, pursuant to Section 626 Para. 1 BGB, would entitle the employer to an extraordinary termination.

8. Personnel placement // placement fee also after prior leasing

8.1 If a service or employment relationship is already concluded before the agreed start of leasing between the temporary worker or candidate presented by the Leasing Company, who has the status of an applicant, and the Hirer, the Leasing Company has a claim against the Hirer for payment of the placement fee, which shall amount to twice the monthly salary (full-time) of the agreed respectively offered hourly settlement rate plus the respectively applicable value added tax.

8.2 A placement fee is also to be paid if the contractual relationship within the meaning of Subclause 8.1 with the temporary worker is established from the ongoing leasing or within 6 months after termination of the leasing of the temporary worker to the Hirer. In this case, the placement fee shall amount to twice the monthly salary (full-time) of the agreed or offered net hourly settlement rate plus the respectively applicable value added tax. The entitlement shall be excluded if the Leasing Company initiated the termination of the employment relationship with the temporary worker before conclusion of the contractual relationship within the meaning of Subclause 8.1.

8.3 Decisive is the agreed hourly settlement rate without consideration of industry surcharges according to the collective agreement.

8.4 For each full month of assignment of the temporary worker on the basis of the leasing, the placement fee shall respectively be reduced by a twelfth of the calculable product under Subclause 8.1.

8.5 After the expiry of twelve full months of leasing, the placement fee will thus be reduced to zero.

8.6 The entitlement shall be due upon conclusion of the contract between the Hirer and the temporary worker who is taken over respectively the placed candidate, no later, however, than with the actual commencement of his/her activity in the Hirer's company.

9. Confidentiality

9.1 The Hirer undertakes neither generally, nor towards a third party to forward any data transmitted by the Leasing Company, in particular prices, knowledge or experience ("hereinafter referred to as information") in writing, orally or in any other manner. This information shall be deemed to be business secrets within the meaning of Section 2 Subclause 1 German Act on the Protection of Business Secrets [*Gesetz zum Schutz von Geschäftsgeheimnissen - GeschGehG*]. The said obligation shall not apply to information which as proven is of general knowledge or becomes general knowledge at a later time without breaching this obligation, or which was known to the Hirer as proven already at a later time, before receipt of the information without breaching this agreement.

9.2 All rights (including industrial property rights, copyrights and rights of use) with regard to announced information shall remain reserved. The announcement shall not authorise the Hirer to use the information for purposes other than those agreed.

10. Data protection

10.1 The Hirer and the Leasing Company will only collect, process and use personal data of the respective other party and its employees and in particular the temporary workers if and insofar as this is necessary within the scope of this contract according to the statutory provisions. Any collection, processing and use of data beyond this will only be carried out by the Hirer and the Leasing Company with consent of the data subject.

10.2 The Hirer and the Leasing Company shall comply with the respectively valid version of the German Federal Data Protection Act [*Bundesdatenschutzgesetz - BDSG*] as well as the data protection laws of the countries, insofar as applicable in terms of location. The parties furthermore undertake to comply with the EU General Data Protection Regulation. It is pointed out to the Hirer that the temporary workers are employees within the meaning of the BDSG in terms of their relationship with it pursuant to Section 26 Para. 8 No. 1 BDSG.

11. Liability of Leasing Company and Hirer

11.1 The Leasing Company shall be liable for the proper selection of a temporary worker who is suitable and qualified for the specific activity as well as for making him available during the agreed leasing duration.

11.2 The Leasing Company shall not be liable for work carried out by the temporary worker, as the leased temporary workers shall exclusively perform their activity according to the instructions of the Hirer. The Leasing Company shall in particular not be liable for poor performance or damages caused by the leased temporary worker. A leased temporary worker is not a vicarious agent, assistant or authorised agent of the Leasing Company.

11.3 Leased temporary workers are not entitled to collection of payments for the Hirer; the Leasing Company will therefore not be liable for damages which are caused by the fact that a temporary worker is entrusted with monetary matters, such as cash management, administration and management of money as well as securities and similar business transactions. This shall not apply if the aforementioned activities are the explicit object of the leasing contract of the leased temporary worker.

11.4 The Leasing Company shall be liable in case of culpable injury to life, body or health according to the statutory regulations.

11.5 The Leasing Company shall furthermore be liable in cases of wilful intent or gross negligence, including the wilful intent or gross negligence of its representatives or vicarious agents, according to the statutory provisions. The liability of the Leasing Company is limited in cases of gross negligence to foreseeable, typically occurring damage.

12. Offsetting

The Hirer can only assert an offsetting or right of retention against claims of the Leasing Company if the claims concern undisputed claims or claims that have been declared final and binding.

13. Final provision, place of jurisdiction

Should individual provisions of this contract be invalid, this shall nevertheless have no effect on the contract on the whole. The parties undertake to replace the invalid provision by a valid one, which shall as far as possible correspond with the invalid provision from a commercial and legal point of view. The place of jurisdiction for all lawsuits arising from this contractual relationship is Nuremberg.

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Nuremberg Register Court HRB 29 462