

**General Terms of Business for the Supply of Temporary Workers****§ 1 Scope of validity**

The Supplier's General Terms and Conditions of Business are part of the contract and apply exclusively. Contradictory conditions of the Hirer, or any conditions of the latter that deviate from these conditions, will not be recognized unless their validity has been agreed explicitly by the Supplier in writing. Verbal agreements are only binding if they have been confirmed in writing.

**§ 2 Employment contract**

(1) The Supplier is the employer of the temporary worker pursuant to the German Law on Temporary Employment [Arbeitnehmerüberlassungsgesetz – AÜG]. During the work assignment, the temporary worker is subject to the Hirer's instructions. The Hirer may only assign the temporary worker such activities that fall under the contractually agreed area of activity. Deviations from this are to be agreed solely with the Supplier in writing.

(2) During the work assignment, the Hirer shall assume an employer's obligations to give social and medical assistance to the temporary worker. The Hirer must ensure that the valid accident prevention and occupational safety regulations and the statutory working time limits are complied with.

(3) If the temporary worker is to be employed at times or on days on which employment is only permissible with a special permit from the authorities, the Hirer is to obtain this permit before employment at these times and/or on these days.

(4) The Hirer is to brief the temporary worker before the start of employment at the workplace and to inform him or her about the special risks of the activity to be carried out and measures to avert such risks. The same applies with any change in the workplace. The instruction given is to be sufficiently documented by the Hirer.

(5) A transfer of the worker to a different place of assignment of the Hirer is not permitted. In particular, the Hirer is not entitled to hire the temporary worker out to third parties either within Germany or abroad. Any arrangements deviating from the above must be agreed separately in writing.

(6) The Supplier will be given a right of access to the temporary workers' places of work at any time during working hours.

(7) The Hirer is obliged to notify the Supplier of any accident at work and to inform the latter of relative details also in writing. The Hirer will also support the Supplier to the best of its capabilities in all other necessary reports and information.

**§ 3 Rejection and replacement**

(1) If the Hirer is not satisfied with the services of the temporary worker, it may reject the latter within 4 hours after the temporary worker has been hired. Rejection at a later point in time is only possible if a reason exists that would entitle the employer to a routine dismissal for reasons related to the person of the worker or in his or her conduct pursuant to the regulations of the Protection Against Dismissal Act (KSchG).

(2) The Hirer may reject the temporary worker with immediate effect if a reason exists that would entitle the employer to exceptional dismissal (dismissal without notice on grounds provided for by statute or agreement) (Section 626 of the German Civil Code (BGB)).

(3) As a basic principle, the rejection must be made by means of written declaration to the Hirer, indicating the reasons. If the rejection is not made in writing within five working days after the Hirer's knowledge of the reasons for the rejection, the Hirer shall lose this right of rejection.

(4) In cases of rejection, the Supplier is entitled to hire out another temporary worker of equivalent qualification without delay. Such an obligation is only applicable for the Supplier if it had not selected the rejected temporary worker properly. If it is not possible to notify another suitable temporary worker or if it is not possible for the Supplier, despite every effort made, to provide a replacement, the individual contract shall end with immediate effect. Claims on the part of the Hirer due to the termination do not exist.

(5) The Supplier is entitled to replace the temporary worker for internal company, organizational or statutory reasons, and to provide a temporary worker of equivalent qualification. In such an event the Supplier shall make every effort to take the specific interests and circumstances in the Hirer's company into consideration.

(6) If the temporary worker does not take up or continue his or her work or if he or she fails to appear for other reasons, the Supplier is to be notified of this immediately. The Supplier is entitled to provide a replacement with immediate effect. If it is not possible to notify another suitable temporary worker or if it is not possible for the Supplier, despite every effort made, to provide a replacement, the individual contract shall end with immediate effect. Claims on the part of the Hirer due to the termination do not exist.

**§ 4 Remuneration**

(1) Unless otherwise explicitly agreed, the prices given are non-binding and without supplements. The calculation of the following supplements is based on the weekly working hours in force in the Hirer's company. Overtime and work at night, on Sundays and on public holidays is therefore to be remunerated with the following supplements:

a)	from the 1st hour of overtime during the week	25 %
b)	work hours on Sunday	70 %
c)	work hours on public holidays	100 %
d)	work hours at night (10.00 pm–6.00 am)	25 %

Further supplements must be agreed separately. If nighttime, Sunday and public holiday supplements coincide, only the higher supplement is to be remunerated.

(2) If the remuneration payable by the Supplier to the temporary worker increases due to statutory regulations, the Supplier will be entitled to a commensurate increase of the agreed remuneration payable to the Supplier for hiring out the temporary worker, taking into account the basis for the calculation agreed upon by the parties and/or the remuneration agreement. The same shall apply in the event of an increase in the hourly rate specified by the Hirer as the regular rate paid to its comparable workers and in the event that the remuneration payable by the Supplier to the temporary worker increases as a result of provisions under collective bargaining agreements after the conclusion of the Agreement regarding the Supply of Temporary Workers. The Supplier shall notify the Hirer about any planned increases. The increase will become effective two weeks after receipt of the notification; the Hirer, however, is entitled to terminate the agreement within one week after receipt of the increase request with effect from the date when the increase becomes effective. If the Hirer makes use of this special right of termination, the increase shall not become effective and the agreement shall be terminated on the effective date of the increase. If the agreement is not terminated by the Hirer or if notice of termination is not given in due time, the agreement shall continue to apply at the new rate from the date specified in the notification.

(3) Costs incurred for travel on behalf of the Hirer shall be settled on an actual-cost basis plus a surcharge of 5 % to cover administrative costs. Where there is an entitlement to reimbursement of per-diem rates, per-km rates or similar expenses, these shall be reimbursed to the temporary worker at the maximum rates permissible under tax law and shall be billed to the Hirer as set out above, with any travel time being deemed to be working time.

**§ 5 Payment**

(1) Invoices will be based on individual contracts. If no arrangement is made in individual contracts, invoices will be issued at the end of a calendar month.

(2) Invoices will be calculated on the basis of the time sheets of the temporary worker that are to be signed by the Hirer. The time sheets will be submitted to the Hirer on a weekly basis or directly after completion of the contract. By signing a time sheet, the Hirer recognizes the contents thereof to be correct.

(3) The invoices issued by the Supplier are due ten days after the invoice date, net only. The temporary worker is not authorized to receive payments.

(4) All amounts quoted by the Supplier are understood plus statutory VAT, unless there is no other explicit quotation.

(5) If the Hirer falls into arrears or if a significant deterioration occurs in its financial circumstances, the Supplier is authorized to accelerate all outstanding and deferred invoices immediately.

(6) If the temporary worker is granted bonuses, irrespective of the legal basis for these, at the Hirer's request, the Supplier is entitled to invoice the premium paid to the employee with a factor of 1.5 to the Hirer. The supplement includes social insurance contributions and similar levies.

(7) The Hirer is not entitled to offset such costs or to assert a right of retention against the Supplier unless the counter-claim against the Supplier is undisputed or has become final and absolute.

**§ 6 Liability**

(1) The Supplier's liability is fundamentally restricted to willful or grossly negligent conduct. Damage arising from injury to life, limb and health and in the event of a breach of fundamental contractual obligations are excluded from the liability restriction. In the event of a slightly negligent breach of fundamental contractual obligations, however, the Supplier is only liable for typical damage that is foreseeable on conclusion of the contract.

(2) The Hirer is obliged to exempt the Supplier from all claims that are incurred by third parties in connection with the activities assigned to the temporary worker hired out and that are raised against the Supplier. This does not apply insofar as the Supplier is liable itself pursuant to Para. 1

**§ 7 Confidentiality and Data Protection**

The parties to the agreement undertake to keep any and all business secrets and trade secrets which become known to them during their cooperation confidential. This shall apply in particular to all business matters that become known to them during the performance of their activities which, by their very nature, are confidential or which require to be kept secret, as well as to those that are labelled in writing as confidential. The confidentiality obligation shall remain in force for three more years after the contractual relationship has ended.

The parties mutually undertake to comply with the statutory provisions pertaining to data protection, in particular, the data secrecy, and bear the responsibility to comply with these provisions. The abovementioned obligation shall remain in force even after the cooperation has ended.

With regard to our information obligations under the EU GDPR, we refer to our data privacy statement available at [www.bertrandt.com/datenschutzhinweis.html](http://www.bertrandt.com/datenschutzhinweis.html).

#### **§ 8 Termination, term of contract, information obligation**

(1) The agreement may be terminated by each party subject to a period of four weeks' written notice to the end of the month. The right to exceptional termination for good cause remains unaffected. A good cause exists for the Supplier in particular if the occupational safety and security conditions are not complied with, if the Hirer disregards another mandatory legal standard, in the event of a substantial deterioration in the assets at the Hirer's company, in the event of force majeure, if the Hirer falls into arrears with a payment, in the event of a shortage of labor, or in the event of a strike. Any other claims of the Supplier remain unaffected by the termination.

(2) The agreement will automatically end – without requiring termination – at the end of the last day of the applicable maximum transfer period.

(3) The Hirer is obliged to notify the Supplier in good time of any deviation from the maximum transfer period stated in sentence 1 of Section 1 of the German Law on Temporary Employment [Arbeitnehmerüberlassungsgesetz – AÜG] based on provisions under collective bargaining agreements or works agreements.

(4) The Hirer and the Supplier undertake to provide each other with the information required in order to meet their statutory obligations. In particular, the Hirer shall, at the Supplier's request, answer within two weeks the necessary questions to establish any potential entitlements under Section 8 (1) AÜG. Should the Hirer fail to meet this obligation, then the Supplier shall have the right to terminate the Agreement regarding the Supply of Temporary Workers in writing within one week after expiry of the two-week period referred to above without complying with the period of notice.

#### **§ 9 Placement**

The Hirer undertakes not to improperly lure away any of the Supplier's temporary workers. If the Hirer concludes an employment contract with a potential temporary worker whose candidate's profile has been provided to him by the Supplier, or with an employee transferred during an existing transfer contract or in direct connection with a terminated transfer contract, this shall be regarded as an agency procurement. For such a procurement, a procurement fee shall be regarded as being agreed upon as follows:

In the event of the transfer of a candidate's profile and/or a conclusion of an employment contract within the first three transfer months, a fee of 15 % of the employee's gross annual income shall fall due, after three transfer months a fee of 12 % of the employee's gross annual income, after six transfer months a fee of 9 % of the employee's gross annual income and after nine transfer months a fee of 5 % of the employee's gross annual income. On the expiry of twelve completed transfer months, no further fee shall be charged. Each fee is payable plus the legal rate of VAT in one amount due on conclusion of the employment contract between the employee and the Hirer. The Hirer bears the burden of proof of the non-causality of the employee transfer contract or the transfer of the candidate's profile for employment.

#### **§ 10 Hirer's obligation of assessment**

Insofar as the temporary worker can demand an assessment from the Supplier pursuant to the collective labor agreements named in the Agreement regarding the Supply of Temporary Workers, the Hirer is obliged to provide the Supplier with the necessary information. At the Supplier's request, the Hirer is also obliged to make an assessment of the temporary worker in accordance with an assessment scheme made by the Supplier.

#### **§ 11 Final provisions**

(1) The place of jurisdiction for all disputes is the Supplier's registered office if no other place of jurisdiction is mandatory. However, the Supplier can also bring the legal dispute to any other permissible court.

(2) If parts of these terms are or become ineffective, this will not affect the validity of the other terms. An invalid provision is to be replaced by a legally permissible provision that comes closest to the purpose of the ineffective provisions according to the intention of the contractual parties at the time the contract was concluded.