

# General Terms and Conditions for the Temporary and Permanent Placement of Employees by ProServ Produktionservice und Personaldienste GmbH ("GTC") (Date 08/2023)

## **A. Preliminary remarks**

These GTC govern the temporary and permanent placement of employees by ProServ Personaldienstleistungen GmbH (hereinafter "ProServ") for its customers. They apply exclusively unless otherwise is agreed in writing.

## **B. Temporary employment**

### **Section 1 Services of ProServ**

- (1) ProServ will provide the Customer with the employee defined in the Temporary Employment Contract ("TEC"). The conclusion of this TEC does not establish any relationship under employment law between the employee and the Customer.
- (2) The TEC has to be concluded in writing. Pursuant to Section 126a of the German Civil Code (BGB), the written form can be replaced by the electronic form with a qualified electronic signature.
- (3) The employee has the occupational aptitude and is able to perform the tasks specified in the customer order. He may therefore only perform tasks which are appropriate for his occupational profile. In the event of a change to the order (e.g. transfer of the employee, change in the work to be performed etc.), the Customer has to inform ProServ immediately, so that any necessary protective measures (e.g. additional personal protective equipment, medical check-up etc.) can be clarified and implemented. ProServ is to be granted access to the temporary employee's place of work at all times.
- (4) ProServ is entitled within the scope of its right to issue instructions to assign the execution of the order to another equally-qualified employee.

### **Section 2 Health and safety**

- (1) The Customer will ensure and has to satisfy itself continuously that all of the accident prevention and health and safety regulations applicable at the employee's place of work are complied with and that the risk assessment within the meaning of the Health and Safety at Work Act (ArbSchG) is conducted and documented. The Customer will make this available to ProServ upon request. First aid facilities and measures have to be ensured.
- (2) The Customer has to instruct the employee about the workplace-specific risks associated with the work to be performed and about the measures to avoid these before commencement of employment. The medical check-up that needs to take place for the work to be performed is defined in the Temporary Employment Contract.
- (3) In the event of an accident at work, ProServ is to be informed immediately. A reportable accident at work will be investigated jointly and reported immediately by ProServ to the Verwaltungs-Berufsgenossenschaft (accident insurance association for the administrative sector) by means of a written accident report. A copy of the accident report is to be sent by the Customer to the accident insurance association responsible for the Customer.

### **Section 3 Termination of the Temporary Employment Contract**

In the first week the Temporary Employment Contract may be terminated with one working day's notice, until the end of the 5th month of the assignment with 5 working days' notice to the end of the calendar week and from the 6th month of the assignment with 14 working days' notice to the end of the calendar week. Saturdays, Sundays and public holidays do not count as working days.

### **Section 4 Transfer of temporary employees**

- (1) If the Customer, or an affiliated company of the Customer within the meaning of Section 15 of the German Stock Corporation Act (AktG) establishes an employment relationship with the temporary employee during or following the assignment, ProServ will be entitled to a placement fee. The same will apply if the Customer concludes a work, service or temporary employment contract with the employee or a third party. Free placement shall be possible 18 months after employment commences.
- (2) The placement fee shall amount to 30% of the annual gross target salary for commercial, industrial and technical positions and 35% for IT positions. It is reduced by 2 percentage points from the 4th month of employment.
- (3) The calculation basis shall be the customer's future annual gross target salary pursuant to § 14 SGB IV (German Social Security Code). The annual gross target salary is calculated including all supplements and additional benefits such as special annual bonuses, Christmas

and holiday bonuses, commissions, company car, etc. Variable remuneration is based on a achieving a target of 100% A company car is set at a flat rate of €8,000.

- (4) The entitlement to the placement fee will be established when a contract of employment is concluded between the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG and the employee. The Customer has to inform ProServ immediately of the conclusion of the contract and the remuneration components.
- (5) If the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG takes on the employee of ProServ within six months of the end of the assignment, the Customer may prove that there is no causal connection between the initial assignment of the employee at the Customer and the subsequent transfer of the employee to the Customer. If the Customer is able to prove this, it will not have to pay a placement fee.
- (6) If the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG directly recruits an employee proposed by ProServ for an assignment without a previous assignment, a placement fee of 30% of the gross annual salary will be due.
- (7) If the employee is hired within 6 months of the end of the assignment via another recruitment agency, ProServ will be entitled to a one-time fee of 200 times the last hourly rate paid by the Customer to ProServ.

### **Section 5 Reporting obligations of the Customer**

- (1) Prior to commencement of the assignment, the Customer must provide ProServ in each case in writing with all information required by statutory regulations and collective agreements for the employment and remuneration of the temporary employees, such as for the determination of the maximum permissible assignment period pursuant to Section 1b AÜG and the application of the equality principle pursuant to Section 8 AÜG. Prior to commencement of the assignment, ProServ is to be provided truthfully and fully with information in particular about all collective agreements, company agreements, its industry affiliation and all past employment of the employee at the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG. With regard to any past employment, the Customer must state in particular whether the employee to be assigned has left the employment relationship with the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG in the six months prior to the assignment and/or if he has already been assigned to the Customer as a temporary employee in the three months prior the start of the assignment. If the Customer has a collective agreement or a company agreement based on a collective agreement, which provides for a different maximum assignment period with a different past-employment check, the Customer is obliged to provide information in accordance with these periods. The Customer has to provide proof of different provisions by presenting the collective agreements/company agreements.
- (2) If an obligation for the equal treatment of the employee arises pursuant to Section 8 (4) sentence 1 AÜG, the Customer is obligated to provide immediately all information regarding the remuneration of comparable employees of the Customer in writing. In the case of Section 8 (3) AÜG, the obligation of the Customer extends to the essential working conditions including remuneration.
- (3) If and to the extent which the Customer does not provide the above information prior to commencement of the assignment, or provides it in an incomplete and/or untruthful manner, and if, as a result, the hourly rate is based on an incorrect assumption concerning the salary to be paid to the employee, ProServ will have the right to recalculate the hourly rate on the basis of the actual facts and adjust it retroactively. The adjustment is always made in the percentage ratio of the hourly rate actually payable to the employee to the hourly rate originally used. ProServ's right to extraordinary termination of the contracts concluded without notice and to claim compensation remains unaffected by this.
- (4) The same applies if, after commencement of the assignment, there are changes to the statutory or collective agreements, relevant sectoral collective agreements, regulations on minimum wage levels or other salary-relevant regulations and agreements and/or other salary-relevant changes occur, such as that the employee to be treated equally with comparable employees of the Customer in accordance with the law or at the request of the Customer within the meaning of Section 8 AÜG. The Customer has to advise of such changes immediately.

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## **Section 6 Remuneration**

- (1) The Customer will pay ProServ the fee agreed in the TEC for the placement of the employee.
- (2) ProServ also has the right to charge € 49.95 for the drafting or amendment of a TEC.
- (3) If, after commencement of the assignment, changes in the statutory regulations or collective agreements, relevant sectoral collective agreements, regulations on minimum wage levels or other salary-relevant regulations and agreements occur which result in a change in the salary costs and/or incidental salary costs, ProServ will have the right to re-calculate and adjust the remuneration accordingly. ProServ is entitled to invoice the Customer for special benefits in the form of one-time payments resulting from collective bargaining and mandatory bonuses which ProServ is required to pay to its employees based on the Customer's industrial affiliation. These are passed on to the Customer after prior information, in the case of a net payment for the employee with a reduced administration factor of 1.3.
- (4) Invoices will be issued monthly in digital form based on the work records sent by the customer in machine-readable form by no later than the third working day of the following month.
- (5) For the issue of a paper invoice, ProServ will charge € 2.50 per month and € 5.29 for the processing of work records sent in a form other than defined in paragraph 4.

## **Section 7 Liability**

- (1) ProServ is only responsible for the proper selection of the temporary employees it provides.
- (2) In the event of damages caused by slight negligence, ProServ will be liable to the typical damage foreseeable at the time of conclusion of the contract, however, not exceeding EUR 3,000,000.00 for damage to property per damage event.
- (3) ProServ is neither liable for any particular success of the work of the employees nor for any damage they cause to the working tools or to the work entrusted to them. It is also not liable for any damage caused by employees only in the performance of their work. ProServ is also not liable if the employee is placed in charge of money, securities or other valuables.
- (4) Insofar as this Section 7 contains limitations of the legal liability, these restrictions do not apply in case of injury to life, limb or health.

## **C. Permanent placement**

### **Section 1 Services of ProServ**

- (1) ProServ looks for suitable personnel for the Customer and places the personnel with the Customer for permanent employment. ProServ looks for and contacts the candidate adjudged to be suitable based on the requirement profile communicated by the Customer.
- (2) ProServ presents the Customer proposals for pre-selected candidates and arranges meetings between the Customer and the candidate. If expressly requested by the Customer, ProServ will also attend these meetings.
- (3) The information provided by ProServ about a candidate is based on information provided by the candidate or a third party. ProServ is therefore unable to guarantee the accuracy and completeness of the information.

### **Section 2 Fee**

- (1) The placement fee shall amount to 30% of the annual gross target salary for commercial, industrial and technical positions and 35% for IT positions. With regard to the annual gross target salary, the regulation set forth in B. Section 4 Para.3. shall apply accordingly.
- (2) In the case of part-time employment, the calculation basis corresponds to Placement fees the gross annual salary based on a degree of employment of 100%. If the level of employment is 70% or less, the calculation is based on an employment level of 70%.
- (3) The entitlement to the placement fee will be established when a contract of employment is concluded between the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG and the proposed candidate. The Customer has to inform ProServ immediately of the conclusion of the contract and the remuneration components.
- (4) ProServ will also be entitled to the placement fee if the candidate is initially rejected by the customer, but is recruited by the Customer or an affiliated company of the Customer within the meaning of Section 15 AktG within 24 month of presentation by ProServ.

- (5) A candidate shall be deemed to be recommended by ProServ as soon as information has been provided that enables the Customer to

identify the candidate, irrespective of whether the Customer already knew the candidate. This regulation does not apply in the event that a candidate has applied to the Customer for one of their current vacancies or has been introduced by another company within the last six months prior to the date of introduction, irrespective of this recommendation. However, the Customer shall be obliged to inform ProServ of this at the earliest possible time, but no later than when the interview process commences. The provisions set forth above shall also apply if the Customer or a company affiliated with the Customer pursuant to Section 15 AktG concludes a contract for work or services with the candidate. In this case the fee will be calculated based on the remuneration due according to the contract for the first of work.

- (6) Unless otherwise agreed, the Customer will pay the candidate's proven travel expenses.

### **D. Payment terms and invoicing**

- (1) Unless otherwise is agreed, invoice amounts are payable within 7 days upon receipt of invoice without deduction. In addition, Section 286 (3) sentence 2 BGB applies.
- (2) Employees of ProServ are not authorised to receive payments.
- (3) The fees are net and subject to statutory VAT.
- (4) ProServ reserves the right in the event of default of payment to stop the services until full payment and make claims pursuant to Section 288 BGB.

### **E. Data protection and confidentiality**

- (1) In the case of temporary employment, ProServ will provide the Customer with the last name, first name and date of birth of the temporary employee so that the Customer can carry out the checks required according to AÜG. If the temporary employee is not hired, the Customer assures that it will delete this data immediately. Otherwise, the data has to be deleted four months after termination of the temporary employment, unless a longer retention period is justified by other legal bases. If a collective agreement exists with a different maximum assignment period and a different past-employment check, the Customer may store the data during this period plus 1 month after termination of the assignment, unless a longer storage period is justified by other legal bases.
- (2) In the case of temporary employment, the Customer and ProServ are independent controllers for the processing of personal data within the meaning of data protection laws. Personal data is processed exclusively for the purposes agreed in the Temporary Employment Contract. The Customer and ProServ inform each other and without delay about any complaints, damage or loss of personal data in connection with the processing. The Customer and ProServ are not jointly responsible within the meaning of Article 26 of the European General Data Protection Regulation.
- (3) The information on candidates which ProServ provides the Customer in the placement of personnel is strictly confidential and must not be disclosed by the Customer to third parties.
- (4) In the context of the business relations the data necessary for the electronic data processing is stored by ProServ. In addition, for the purpose of credit checks and credit monitoring, data is exchanged with credit bureaus such as EULER HERMES, Bisnode Germany, Creditreform and Bürgel Wirtschaftsauskunfteien in accordance with applicable laws. The Customer hereby agrees to this.

### **F. Final provisions**

- (1) German law applies.
- (2) The place of fulfilment and jurisdiction is the respective location of the instructed branch of ProServ.