

General Terms and conditions for the provision of employees in accordance with the Temporary Employment Act

1. Fundamentals and priority of the Contract for the Hire of Agency Staff

1.1 As the holder of a temporary staff agency permit under § 1(1) of the German Act Governing the Hire of Agency Staff [*Arbeitnehmerüberlassungsgesetz* 'AÜG'] Tempton Personaldienstleistungen GmbH, Tempton Next Level Experts GmbH, Tempton Personalservice GmbH or another company associated with Tempton Personaldienstleistungen GmbH within the meaning of §§ 15 et seq. of the German Companies Act [*Aktiengesetz*, 'AktG'] (hereinafter generally referred to as "**Tempton**") provide the hirer (hereinafter called the "**Client**") with its temporary staff (hereinafter called "**Agency Staff**") pursuant to the AÜG, the following General Terms and Conditions (hereinafter called "**GTC**") and the terms of the Contract for the Hire of Agency Staff (hereinafter called "**Agency Contract**"); the term "Agency Staff" shall apply to members of all sexes.

1.2 Where the Agency Contract runs contrary to these GTC the Agency Contract shall have priority.

2. Contracting parties, conclusion of contract, written form and liability on the part of the Client

2.1 The sole contracting parties to the Agency Contract concluded shall be Tempton and the Client.

2.2 The amendment and termination of the Agency Contract, changes to the length of deployment, the nature of the work or working hours (this list being merely illustrative and not exhaustive) shall therefore be agreed solely between Tempton and the Client, not between the Client and Agency Staff. Agency Staff shall not have authority to enter into legally binding transactions on behalf of Tempton.

2.3 Two identical copies of the Agency Contract shall be drawn up. The Client shall receive one copy of the Agency Contract signed by Tempton and Tempton shall receive one copy signed by the Client.

2.4 The Agency Contract shall be termed as such before commencement of the hire of agency staff pursuant to the first sentence of § 12(1) AÜG in conjunction with the fifth sentence of § 1(1) AÜG and shall be concluded in written form pursuant to § 126 of the German Civil Code. Under § 16(1)(1c) AÜG breaches constitute an administrative offence. The Client shall be liable for all loss or damage sustained by Tempton due to non-compliance with the aforementioned statutory provisions unless the Client should not be responsible for the breach of duty.

3. Amendments and ancillary agreements

Amendments and additions to and the cancellation of all or part of the Agency Contract or the GTC must be made in text form in order to be valid. No verbal agreements have been entered into.

4. Collective bargaining agreements and retroactive application

4.1 The collective bargaining agreements concluded between BAP e.V. and DGB member trade unions shall apply to the employment relationship between Tempton and Agency Staff.

4.2 Where following the conclusion of an Agency Contract for Agency Staff hired out to the Client

4.2.1 an increase in the collectively agreed remuneration and/or other benefits payable to the employee in accordance with the applicable collective agreements (e.g.: Christmas or holiday bonuses, non-remunerative bonuses, other special remuneration and benefits, regardless of their legal nature) or from reimbursement of expenses in accordance with collective agreements, or

4.2.2 an increase in the collective agreement remuneration and/or other benefits (e.g.: Christmas or holiday bonuses, non-remunerative bonuses, other special remuneration and benefits, regardless of their legal nature) or collectively agreed expense reimbursement benefits due to a change in the applicable collective agreement by Tempton, or

4.2.3 industry supplements become payable to Agency Staff for the first time or at a higher rate than calculated by Tempton when the respective Agency Contract was concluded and liability for their payment (i) was unforeseeable by Tempton according to the information supplied by the Client or (ii) is due to the fact that circumstances within the Client's business operation of deployment notified by the Client have undergone a change, or

4.2.4. the statutory principle of "equal treatment" pursuant to § 9(1)(2) AÜG applies and Agency Staff are consequently owed higher pay or remuneration than agreed with Tempton in their contracts of employment Tempton shall have the right to increase remuneration, including retrospectively for the period from when the aforementioned increases took effect or liability for the (higher) industry supplements arose. The increase shall be effected by way of an increase in the agreed hourly rate in accordance with Tempton's original calculation. Tempton shall provide the Client with justifiable grounds for the increase.

4.3 Tempton shall inform the Client as soon as it is made aware of increases under paragraphs 4.2.1 to 4.2.4.

4.4 Notwithstanding the provisions of paragraph 4.2. an increase in remuneration in the event of otherwise fundamentally unchanged contractual terms shall take effect if Tempton informs the Client of the amount and timing of the new remuneration in text form (email or fax will suffice) and the Client does not object thereto in text form (email or fax will suffice) within two weeks of receiving such information about the increase.

5. Supplements, equipment and travel

5.1 Unless otherwise agreed Tempton shall levy the following supplements based on agreed hourly rates:

Overtime after a 40-hour week or after 8.00 to 10.00 hours a day	25%
Overtime after a 50-hour week or after 10.00 hours a day	50%
Saturdays	50%
Sundays and public holidays	100%
High holidays	150%
(1 January, Easter Sunday and Monday, Christmas Day and Boxing Day)	
Late shifts (14.00 to 22.00)	15%
Night shifts (22.00 to 06.00)	25%

5.2 The hourly rates charged do not include the supply of tools, gear and other equipment, nor travelling time. Details of hourly rates charged and of payment for tools, gear and other equipment plus travelling time are set out in the Agency Contract.

6. Termination

The customer can terminate the AÜV with a notice period of 5 working days, in relation to commercial specialists and executives, engineers, medical and educational staff and IT specialists with a notice period of 14 days, insofar as the AÜV does not contain any conflicting provisions. Any termination must be in writing.

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7. Right and duty to issue instructions and safety rules

7.1 The Client shall have the right to issue all instructions to Agency Staff that by their very nature fall within the scope of activities for which Tempton has hired out the Agency Staff. The Client may also similarly assign tasks to Agency Staff and supervise same.

7.2 During the hire period the Client shall assume all duties of care towards Agency Staff that correspond to those of an employer; hence, it shall be obliged to observe all relevant statutory rules concerning the safety and protection of Agency Staff, especially accident prevention regulations, and shall ensure that they are conversant with its company protection rules.

7.3 Agency Staff shall be informed of the health and safety regulations applicable at their place of deployment such as, for example, rules on industrial safety, hazard protection and occupational safety. All work processes must be regulated in such a way that Agency Staff are protected against damage to health and danger. The Client must ensure that first aid facilities and measures are available.

7.4 The Client shall permit Tempton access to its Agency Staff and their places of work at any time to enable it to fulfil its duties as an employer.

7.5 The Client shall ensure, in particular, that it trains Agency Staff at their place of work with regard to all devices, equipment, machinery and tools that they are to use and are well briefed about the specific risks associated with the activities to be carried out and about the measures regarding their application.

7.6 The Client shall provide Agency Staff with an intrinsically safe work environment at its own expense (this does not apply to standard equipment such as safety helmets, goggles, S3 protective footwear, head mirrors for welders etc.).

7.7 The Client shall be required to promptly report any accidents at work to the relevant trade association pursuant to § 193 SGB VII [Social Security Code VII] and to notify Tempton of such accidents at the same time.

8. Invoicing, terms of payment, assignment of debts and set-off

8.1 Invoices shall be drawn up on the basis of the activity reports to be approved by the Client. The Client can approve the activity reports electronically via the Tempton client portal, the Tempton app on the employee's smartphone or by signing the activity reports carried by the employee. The Client must ensure that the person approving and belonging to the Client's legal sphere is also authorised to do so.

8.2 The Client undertakes to approve activity reports either weekly or immediately following the end of deployment. Should this not be done the statements made by Agency Staff in the activity report shall constitute the relevant basis of computation.

8.3 The calculation of invoice figures shall be based, in principle, on the agreed hourly rate multiplied by the number of hours worked plus any appropriate supplements and computations for equipment and travel under paragraph 5, plus statutory VAT.

8.4 Invoices shall be due and payable net immediately upon receipt. The legislation on default shall apply.

8.5 Agency Staff are expressly forbidden to collect payments. Hence, any payments that are made to Agency Staff shall not be acknowledged nor will the Client be released from commitments towards Tempton as a result of such payment.

8.6 Tempton may at any time pledge or assign its claims deriving from the Agency Contract to a third party.

8.7 The Client's claims or counterclaims shall only permit it to effect a set-off or assert a right of retention to the extent that they are claims or counterclaims on the part of the Client that are either uncontested or established as final and absolute.

9. Overtime

The Client may only cause overtime to be worked in so far as permissible for its business operation of deployment under the German Working Time Act [Arbeitszeitgesetz] or where permission has been obtained from the relevant trade supervisory board or other competent authority; the Client shall submit such permission to Tempton unprompted before or as soon as the overtime begins to be worked.

10. Liability in damages

10.1 Under the Agency Contract Tempton is responsible for hiring out Agency Staff to the Client. Hence, Tempton shall basically only be liable in the event of an erroneous choice of Agency Staff and not, in principle, for poor workmanship or any other impropriety on the part of Agency Staff. Nor shall Tempton be liable, in principle, for objects, money or securities entrusted to Agency Staff by the Client.

10.2 In the event of Tempton being in breach of duty towards the Client under the Agency Contract, especially if the choice of Agency Staff should be erroneous, or in the event of Tempton being in breach of any other duty towards the Client Tempton shall be liable to the Client for loss or damage sustained thereby as follows:

10.2.1 In the event of deliberate or grossly negligent breach of duty on the part of Tempton, its statutory representatives or agents Tempton's liability shall be governed by statute.

10.2.2 In the event of careless breach of duty on the part of Tempton, its statutory representatives or agents Tempton's liability shall be excluded unless it should be a careless breach of a fundamental contractual obligation. In that case liability shall be limited to foreseeable loss typical of such a contract. A fundamental contractual obligation for this purpose means one that is a condition sine qua non and on the fulfilment of which the Client may regularly rely.

10.2.3 The aforementioned exclusion from liability and/or limit on liability shall not apply in the event of culpable injury to life or limb or damage to health.

10.2.4 The statutory rules on burden of proof shall not be prejudiced by the above provisions.

10.3 Where there is no liability on Tempton towards the Client then the Client shall indemnify Tempton from any third-party claims asserted against Tempton.

11. Trial period, rejection, notification and exchange

11.1 A 4-hour trial period is agreed. If Agency Staff should not meet the Client's requirements and Tempton consequently be notified within the above period that their labour has been rejected the Client shall be released from its duty to make payment for that period in relation to that Agency Staff provided that rejection is promptly notified direct to Tempton in accordance with the provisions of paragraph 2.

11.2 In such an eventuality Tempton shall be entitled to supply a replacement and shall endeavour to do so, although it shall not be under any obligation in that respect. The same shall apply if Agency Staff appear late or do not turn up at all at their workplace; in that eventuality as well notice must promptly be given direct to Tempton in accordance with the provisions of paragraph 2. In the latter case Tempton shall also endeavour to find a replacement, although it shall not be under any obligation in that respect.

12. Permanent employment and personnel placement

12.1 It is the intention of both contracting parties that alongside the commercial hire of temporary Agency Staff the purpose of the

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contractual relationship between Tempton and the Client is to arrange the placement of suggested or hired Agency Staff with the Client.

12.2 If the Client or one of its associated companies within the meaning of §§ 15 et seq. AktG should give employment to a person supplied or introduced as a candidate to it as Agency Staff by Tempton during the continuance of the Agency Contract or within 6 months of the end of the hire period or of the candidate being introduced to it this shall constitute a job placement for which a fee is payable unless the Client can adduce evidence to show that employment by it was not caused either by the hire of the Agency Staff or by the candidate's introduction. The decisive date when determining the above period shall be the date on which the contract for the new employment relationship is concluded.

12.3 The placement fee is payable as soon as the employment contract is concluded between the Client and the person concerned. It is plus VAT at the statutory rate, shall be 2 months' gross pay/training pay in the case of a placement without a prior hire process having taking place and where there has been a prior hire process it shall be contingent upon the length of the hire period (HP):

On conclusion before 3 months (HP)	2.0 x
gross monthly pay	
On conclusion after 3 months (HP)	1.5 x
gross monthly pay	
On conclusion after 6 months (HP)	1.0 x
gross monthly pay	
On conclusion after 9 months (HP)	0.5 x
gross monthly pay	
On conclusion after 12 months (HP)	0.0 x
gross monthly pay	

Note: If the Agency contract was concluded between TEMPTON Next Level GmbH and the customer, the amount of the placement fee is based exclusively on the individually agreed provisions in the Agency contract.

12.4 Gross monthly pay is defined as 1/12 of total gross annual remuneration (based on assumed continuous employment of the person concerned for a minimum of 12 months) for the person concerned under his employment contract with the Client (including pro rata Christmas bonuses and/or holiday pay, pro rata premiums, commission or other special payments and fringe benefits, such as a company car; in the case of variable elements of remuneration a target achievement and payment level of 100% shall be assumed).

12.5 Interim employment of the person concerned with the Client – through another employment agency, for example – shall not prejudice entitlement to the job placement fee. Fixed-term employment contracts shall incur a job placement fee to the same extent as open-ended employment contracts.

12.6 Any interim employment of the person concerned with the Client or a company affiliated with the Client within the meaning of §§ 15 et seq. AktG, for example via another personnel services company, does not affect the entitlement to the placement fee. Temporary employment relationships are subject to the same fee as permanent employment relationships.

12.7 The Client shall be obliged to provide Tempton with information concerning the initiation and date of a contract with Agency Staff. The Client shall provide Tempton with a copy of the signed employment contract. If in a disputed case Tempton should be able to adduce evidence or proof indicating that there is an employment contract in existence between the Client and Agency Staff the burden of proof that there is no employment contract shall lie with the Client.

12.8 If the Client should take on Agency Staff as a freelance consultant or in some other freelance capacity the above provisions shall apply *mutatis mutandis*.

13. Duty of confidentiality and data protection

13.1 Both the Client and Tempton mutually undertake to keep confidential all information relating to the place of deployment and its processes that is exchanged before and during the course of the Agency Contract.

13.2 Tempton shall similarly require Agency Staff to undertake in writing that they will not disclose any business matters relating to the Client's operation concerned.

13.3 The Client expressly gives its consent to personal data in the Agency Contract being processed and saved by Tempton in accordance with data protection legislation.

14. Observance of general principle of equality

The Client undertakes to comply with the German General Equality Act [*Allgemeines Gleichbehandlungsgesetz, 'AGG'*] vis-à-vis Tempton Agency Staff and acknowledges liability in respect thereof.

15. Scope of application

15.1 These GTC form the basis of all contracts between the Client and Tempton and particularly apply to all rights and obligations of both contracting parties, including all future contracts between the Client and Tempton even if the contracting parties should fail to expressly agree in future that these GTC will apply.

15.2 These GTC shall have exclusive application. Tempton does not acknowledge any of the Client's conflicting or supplementary contract terms or references to such contract terms even if Tempton should fail to expressly refute same. Tempton's unconditional performance or acceptance of payments shall not imply acknowledgement of the Client's own terms and conditions.

16. Place of performance, forum, law applicable and safeguard clause

16.1 The place of performance shall be the seat of the Client's branch responsible for the contract.

16.2 The Federal Republic of Germany shall be the place of international jurisdiction over all disputes arising out of or in connection with the legal relationship between Tempton and the Client. The exclusive place of local jurisdiction shall be Tempton's registered office if the Client is a trader, legal person governed by public law or a special fund governed by public law. However, Tempton shall have the right to sue the Client in another court having jurisdiction under the German Code of Civil Procedure.

16.3 The law of the Federal Republic of Germany shall have exclusive application over all legal relations between Tempton and the Client, except for the UN Convention on the International Sale of Goods and private international law.

16.4 If a provision of these GTC should be or become invalid, incapable of implementation or incomplete the validity of the remaining provisions shall not be affected thereby. It is agreed that the provision that is invalid, incapable of implementation or incomplete shall be replaced by such provision as the parties would reasonably have agreed if they had been aware of its invalidity, non-implementation or incompleteness.