

TERMS AND CONDITIONS

EXECUTIVE SEARCH | MANAGEMENT CONSULTANCY

Heads! International GmbH & Co. KG (“**Heads!**”), together with all its business units, supports its customers (“**Client(s)**”) in the search for and selection of executives and specialists (“**Executive Search**”), as well as in the area of management consulting.

A) GENERAL

- 1) All business relations between Heads! and the client are exclusively subject to the following general terms and conditions of business (“**Terms and Conditions**”). Any deviating, conflicting or supplementary terms and conditions of the Client will not be recognized unless expressly consented to by Heads! in writing. This requirement to obtain consent also applies in particular but not exclusively if Heads! is aware of the Client’s terms and conditions and provides services to the Client without reservation and without specifically objecting their validity.
- 2) The Terms and Conditions will only apply if the Client is a trader (*Unternehmer*) (section 14 of the German Civil Code (*BGB*)), a legal entity governed by public law, or a special public debt fund (*öffentlich-rechtliches Sondervermögen*).
- 3) Heads! will provide consulting and other services to the Client under the terms of the individually drawn up offer or the assignment confirmation.
- 4) Heads! accepts search assignments solely on an exclusive basis. As a prerequisite for Heads! accepting a search assignment, the Client shall for the duration of the assignment abstain from engaging a third party to search for a candidate (m/f/d) (“**Candidate**”) for the advertised position or from undertaking any such search activities itself.
- 5) The confirmation of an assignment by the Client is not restricted to any specific form.
- 6) A contractual relationship between the Client and Heads! is deemed to be established by, but not limited to, the following actions:
 - The signing of a contract by the Client and Heads!
 - The receipt of an assignment confirmation by email, fax or letter by Heads!
 - The receipt of a contract offer by Heads! and its informal confirmation by the Client, e.g., by payment of the first instalment of the fee.
 - The start of activities by Heads! with the positive knowledge of the Client after receiving a contract offer from the Client.

B) CLIENT PROTECTION

- 1) From the time the assignment is commissioned and for a period of six months following the completion of all search assignments, i.e., after the employment contract with the most recently placed Candidate is signed, Heads! will not, in the course of conducting a search assignment on behalf of a third party, approach any employees of the Client who are on the same hierarchical level as the placed Candidate. Within a corporate context, this rule only applies to the company or the division, business unit, department, or segment of the company (“**Business Division**”) for which the assignment was commissioned (e.g., by the parent company), and regardless of whether this Business Division is a stand-alone legal entity. Furthermore, the rule is limited to the country in which the company or Business Division commissioning the assignment is domiciled.
- 2) The above-mentioned obligations do not apply in the following cases:
 - the Client’s business discontinues operations or is in the process of liquidation;

- insolvency, bankruptcy or probate proceedings or similar have been initiated against the Client, or such proceedings have not been initiated due to lack of sufficient assets, or there is some other apparent reason why the Client cannot fulfil its payment obligations;
- there is a change in the ownership structure or controlling majority of the beneficial owners of the Client, leading to the termination of business relations with Heads!;
- the Client is in arrears with its payment obligations.

C) CONFIDENTIALITY

- 1) The parties are bound to strictest confidentiality regarding business and trade secrets and shall ensure that these secrets are on no account made accessible to third parties. This obligation equally applies to the conclusion of the contract and its contents. The Client will also impose this obligation on its employees to the extent that they require business and trade secrets in order to perform their duties.
- 2) Candidates, candidate profiles and other information, documents, and annexes regarding the Candidates ("**Candidates' Data**") that are provided or mentioned to the Client by Heads! or of which the Client becomes aware in connection with the client relationship are to be treated by the Client as confidential and will remain the property of Heads!. This Candidates' Data may be used by the Client exclusively and to the required extent for filling the specific vacancy and for the selection process concerned. The Candidates' Data provided is entrusted to the Client to be used for this purpose. If the Candidate concerned is rejected, the Candidates' Data provided is to be deleted or access to it is to be permanently blocked by the Client, in compliance with statutory retention and deletion periods, above all in accordance with the requirements of data protection regulations and the German General Equal Treatment Act ("**German Equal Treatment Act**" (AGG)). The Client will also impose this obligation on its employees to the extent that they require Candidates' Data in order to perform their duties.
- 3) Any unauthorized transmission of Candidates' Data to third parties by the Client – especially to third parties outside the European Union ("**EU**") and the European Economic Area ("**EEA**") – is prohibited and, should the Candidate be employed at the third party or an employment contract be signed between the Candidate and the third party, will lead to a legal claim to compensation against the Client on the part of Heads! if the Client is responsible for the breach of duty. Third parties within the meaning of this subsection include any entities operating in the market, especially those companies (majority shareholding, control, group, reciprocal shareholding) affiliated with the Client according to section 15 and following of the German Stock Corporation Act (AktG).
- 4) Insofar as it is necessary to transfer Candidates' Data (for example when transferring data to countries outside the EU/EEA) for the purpose of filling the specific vacancy and the related selection process, the Client is obligated to comply with the applicable data protection regulations.
- 5) Insofar as Heads! is required by the Candidate to correct, delete or limit processing of Candidates' Data or personal data contained therein, the Client shall react immediately with appropriate measures as soon as it is notified by Heads! of the Candidate's request. Irrespective of any individual request, the Client is obligated to delete all Candidate Data including any related documents after a period of six months after receipt, subject to any overriding retention and deletion obligations.
- 6) The Client agrees to comply with the applicable data protection regulations.

D) SELECTION

- 1) To guarantee optimum candidate selection, all Candidates, whether they have been approached directly by Heads! or based on the Client's recommendations or wishes, or whether they have applied spontaneously, are subjected to a standardized selection procedure or a standardized test and evaluation using standardized criteria in compliance with the German Equal Treatment Act.

- 2) Heads! will carry out the candidate search and selection carefully to the best of its ability as specified in the confirmation of the assignment. The Candidate is assessed for suitability and interest based on verbal and written statements. Heads! is not obligated to run background checks on the authenticity and accuracy of documents (especially certificates) and other details disclosed by the Candidate. Heads! does not carry out investigations or research into a Candidate's prior legal record (e.g., for breaches of criminal, civil, or bankruptcy law) ("**Compliance Check**"). Should the Client request a Compliance Check, the parties will reach a separate agreement regarding the involvement of an expert; if the Client receives a recommendation for such an expert from Heads!, this is solely a non-binding recommendation. Such recommendation does not involve any explicit or implicit commitment regarding warranty and/or liability by Heads!.

E) FEES AND EXPENSES

For the execution of the search assignment and rendering the related services, Heads! is entitled to fees and reimbursement for expenses as stipulated below, irrespective of whether a Candidate was put forward by the Client itself.

1) PROFESSIONAL FEES

a) **Basic Fee**

Heads! is entitled to a basic fee from the Client in the amount agreed in the offer ("**Basic Fee**" or "**Retainer**"). Unless otherwise provided by individual contractual agreement, Heads! will send the Client an invoice for the Basic Fee according to the instalments agreed on in the offer, commencing on the date of the assignment confirmation. The Basic Fee represents Heads!' minimum fee. The entitlement to the Basic Fee arises regardless of whether the position advertised by the Client is filled as a result of activities undertaken by Heads!.

b) **Placement Fee**

Heads! can agree on a fee with the Client on an individual contractual basis for concluding the employment contract with the Candidate ("**Placement Fee**"). The Placement Fee is agreed either as a fixed amount or as the difference between the Basic Fee and the Final Fee (pursuant to item E(1)(c)).

c) **Final Fee**

- (1) The agreed final fee is calculated based on the Candidate's gross annual compensation in the first year of employment as contractually agreed in the employment contract (i.e., fixed and variable cash salary components including vacation pay, sign-on bonus, as well as short-, mid- and long-term incentives such as management incentives at nominal value or stock option programs, and taxable benefits in kind, such as company cars and housing allowances), even if these are made payable at a later date ("**Final Fee**"). The Client is entitled to prove to Heads! that the non-cash benefits amount to less. In the case of variable remuneration, a target achievement of 100% is assumed. Payments by the Client in connection with pension plans and other forms of social security contributions, are excluded.
- (2) The amount of the Final Fee is determined in a separate contract. Unless otherwise stipulated in a contractual provision, the Final Fee will be one third (1/3) of the Candidate's gross annual compensation according to item E(1)(a)(c)(1).
- (3) The Final Fee will be due upon conclusion of an employment contract between the Client (or any entity affiliated with the Client pursuant to section 15 of the German Stock Corporation Act (majority shareholding, control, group, reciprocal shareholding)) and the proposed Candidate. The Client shall inform Heads! in writing whether and when an employment contract was entered into and what compensation was agreed. The Final Fee will also become due if the proposed Candidate is initially rejected by the Client, but an employment contract is subsequently entered into between the Client (or any entity affiliated with the Client pursuant to section 15 of the German Stock Corporation Act (majority shareholding, control, group, reciprocal shareholding)) and the proposed Candidate within 12 months after presentation by Heads!.

- (4) Upon completion of the assignment, Heads! will invoice the Client for the difference between the already invoiced basic fee and the Final Fee as payable based on the effectively determined gross annual compensation according to item E(1)(c). Heads! is entitled to require the Client to submit any relevant receipts relating to the remuneration.

d) **Fee for project work**

Heads! may enter into individual contractual agreements with the Client regarding further fee instalments for specific project targets (e.g., candidate presentation/interviewing). Heads! is entitled to charge reasonable progress payments for project services already provided to the Client, and to issue partial invoices according to the progress of the project to this end.

e) **Fee for additional placement**

Should the Client hire one or more Candidates presented by Heads! within the scope of a single search assignment, or if a Candidate presented by Heads! is hired by the Client (or any entity affiliated with the Client pursuant to section 15 and following of the German Stock Corporation Act (e.g., majority shareholding, control, group, reciprocal shareholding)) for a different position than originally stated in the original search assignment, Heads! is entitled to an extra fee according to item E(1)(c)(1) and (2) ("**Second Placement**").

f) **Claims to fees**

The claims to fees will also arise if the Candidate was proposed by the Client itself, i.e., also where a Candidate named by the Client is placed and/or if the Client fills the advertised position with one of its employees or with an employee of a company affiliated with the Client in accordance with section 15 and following of the German Stock Corporation Act.

g) **Value added tax**

All fees are subject to the applicable value added tax.

2) EXPENSES

Any expenses incurred by Candidates and Heads! in connection with the execution of the assignment will be invoiced in the amount ("**Flat-Rate Expense Allowance**") and on the due date agreed in the contract, plus the applicable statutory value added tax.

Any costs incurred by consultants of Heads! and Candidates for travel outside Germany are not included in the Flat-Rate Expense Allowance and will be invoiced to the Client separately.

Heads! is entitled to the payment of expenses regardless of whether or not the position offered by the Client is filled as a result of activities undertaken by Heads!.

3) PAYMENT OF FEES AND EXPENSES

Unless otherwise agreed by the parties, all Heads! invoices are payable within 10 days from the invoice date. Should fees and expenses not yet have been invoiced fully or in part at the time the search assignment is completed, the outstanding amounts payable will be due within 10 days of completion of the search assignment and the invoice date.

If fee and/or expense invoices are not paid within the period of 10 days from the invoice date, Heads! will be entitled to suspend the search assignment until all fees and expenses due at the time have been paid in full, and to only resume it after all invoices have been paid. As a result, the duration of the assignment in question may be extended accordingly.

F) TERMINATION, SUSPENSION OR MODIFICATION OF THE ASSIGNMENT

- 1) The parties may terminate a search assignment at any time. Notice of termination must be given in writing and signed. The Client is aware that, to carry out an assignment, Heads! needs to ensure the provision of services over a longer period of time. As a result, they may not be terminable immediately after notice is given (or not without incurring additional costs). If notice is given before all fees and expenses have been settled, Heads! is therefore entitled to invoice the Client for the fees and expenses for all services incurred and/or rendered until receipt of the written notice of termination to the amount of the next payable instalment fees and expenses not

yet invoiced according to the above items E(1) and (2), plus the applicable statutory value added tax. These fees and expenses will be due for payment within 10 days of the invoice date. If the search assignment is terminated by the Client after all fees and expenses have been invoiced, the total amount of the fees and expenses invoiced will be due for payment without deductions.

- 2) In the event of a subsequent modification of the assignment, a new fee arrangement will be agreed that takes into account the changed circumstances and interests of both parties.
- 3) Existing search assignments may be suspended by the Client once for a maximum of 90 calendar days by notifying Heads! In writing. During this period, all activities in connection with the assignment shall be suspended. Settlement deadlines and any other relevant due dates shall also be suspended and only resumed once the suspension period has ended. This does not apply to any invoices that already have been issued, which are to be settled by the agreed payment deadline.
- 4) If the search assignment is suspended by the Client after all fees and expenses have been invoiced, the total amount of the fees and expenses invoiced is due for payment without deductions.

G) WITHDRAWAL OF A CANDIDATE

Should a Candidate recommended by Heads! leave the company within the first six months of the employment contract being entered into with the Client due to a verifiable lack of professional qualifications, Heads! will search for a suitable replacement ("**Replacement Search**").

The Client will only be invoiced for expenses and travel costs incurred by Candidates and consultants of Heads! for the Replacement Search. Otherwise, the Replacement Search will be free of charge. This does not apply if a Candidate recommended by Heads! leaves the company due to a change of supervisor or a change of ownership/control at the Client's company.

H) DISCLAIMER

Unless otherwise indicated in this contract or the following provisions, Heads! will be liable in accordance with the statutory provisions in the event of a breach of contractual or non-contractual duties.

Heads! will only be liable for damage arising from culpable injury to life, body or health or other damage arising from willful or grossly negligent breach of duty by Heads!, its statutory representatives, and/or agents acting on its behalf. Heads! will also be liable for culpable breach of material contractual duties. However, in the event of slight negligence and provided that culpable injury to life, body or health is not involved, liability is limited to compensation for foreseeable, typically occurring damage. Material contractual duties are duties that specifically have to be granted under the contract based on its contents and purpose, and duties whose performance makes the proper performance of the contract possible in the first place and on whose performance the contractual partner normally relies and may rely, such as the obligation to provide the service commissioned.

The above limitations of liability also apply to breaches of duty by the statutory representatives of Heads! and agents acting on its behalf.

I) OFFSETTING, RETENTION

- 1) The Client is only entitled to setting-off and retention rights to the extent that its counterclaims have been legally established or are undisputed. If performance is deficient, the Client's counterclaims will remain unaffected.

J) FINAL PROVISIONS

- 1) To be legally effective, any changes to the assignment and ancillary agreements must be made in writing and signed; the same applies to any revocation of the written form requirement.

- 2) Should one or more of the clauses contained in these Terms and Conditions be or become wholly or partially invalid or unenforceable, this does not otherwise affect the validity of these Terms and Conditions. If dispositive law is not available, the parties shall replace the invalid or unenforceable clause with a provision that, in economic and legal terms, comes as close as possible to the meaning and purpose of the invalid clause from in a legally permissible manner. The same applies to any lacunas found in these Terms and Conditions.
- 3) The place of performance for all obligations arising from the contractual relationship is the location of the registered office of Heads! in Munich, unless otherwise agreed (for example in the confirmation of the assignment).
- 4) Legal relations between the parties are subject exclusively to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does not apply. The language of the contract is German. If the Client is a merchant (*Kaufmann*), a legal entity under public law, or a special debt fund under public law, the exclusive place of jurisdiction for all direct or indirect disputes arising from the contractual relationship will be at the location of the registered office of Heads! in Munich. The same will apply if the Client is a trader within the meaning of section 14 of the German Civil Code. However, in all cases Heads! is also entitled to bring a legal action at the place of performance of the obligations according to these Terms and Conditions or at the general place of jurisdiction of the Client. This is subject to any overriding statutory provisions, including but not limited to exclusive jurisdiction.