

## GENERAL TERMS AND CONDITIONS OF PERFORMANCE AND DELIVERY GOVERNING SAM RECRUITMENT NETHERLANDS B.V.

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### Article 1: Definition of terms and applicable conditions

1.1 These General Terms and Conditions govern all offers, requests for offers, quotations and agreements with respect to the provision of services by SAM Recruitment Netherlands, as well as all its affiliated companies (hereinafter referred to as the 'Agency') pursuant to a commission contract, more specifically an intermediary agreement, with its contracting party (hereinafter referred to as the 'Client'). These General Terms and Conditions furthermore govern all legal relationships ensuing from these agreements as well as all non-contractual relationships between the parties, in particular unlawful acts.

1.2 In these General Terms and Conditions the terms listed below have the following meaning:

- Candidate: the natural person recruited and selected by the Agency to fill the vacancy at the Client's company.
- Confirmation of assignment: a written confirmation from the Agency to the Client stating that the assignment has been granted, in which context these Terms and Conditions of Delivery will be sent to the Client.
- Gross Annual Salary: the salary on a full year and full-time basis employment (forty hours) during the first year in the employment of the Client. The gross annual salary is also understood to mean a thirteenth month, where applicable, holiday pay, holiday allowance, bonuses/commission-based pay (on-target earnings, OTE), mobility budget (travel allowance/car expense allowance, relocation allowance) and all other associated primary and secondary conditions and benefits to be granted to the Candidate by the Client. A car made available by the client in this respect equal to nine thousand euros gross salary.
- Introduction: presentation of the Candidate's details by the Agency to the Client. It is irrelevant whether a third party has ever before introduced the candidate, or the Client already knows the Candidate.
- Concurrence: oral and/or written Concurrence between the Candidate and the Client about filling in a temporary or permanent employment contract, or about concluding an agreement for the provision of services in the broadest sense of the word for the Client. It is therefore sufficient for Agreement that the Client has notified the Candidate orally and/or in writing that it will offer him/her an employment contract or any other agreement pursuant to which the Candidate performs or will perform services for the Client. Concurrence does not require that the Candidate has actually entered the employment of the Client or has started to perform services.
- Appointment: an agreement between the Candidate and the Client regarding temporary or permanent employment or the provision of services for the Client, in the broadest sense.
- Agreement: the intermediary agreement between the Client and the Agency.
- Placement 'On Hold': suspension of the intermediary agreement or intermediary activities by the Client with the Agency in any manner.
- All amounts stated in these general terms and conditions as well as in quotations and offers from the Agency are exclusive of VAT and exclusive of 1 percent administration costs on the minimum fee amount.

1.3 Any provisions that deviate from these General Terms and Conditions – including any general terms and conditions and special terms and conditions of delivery or otherwise applied by the Client – will apply only if and insofar as they have been expressly agreed in writing between the Client and the Agency and the Agency has explicitly accepted them in writing. In the event that the Client believes that deviating agreements have been agreed, the burden of proof is on the Client of the existence of those deviating agreements, as well as that the Agency has approved them

1.4 These general terms and conditions have been filed by Contractor at the Chamber of Commerce and Industry in Amsterdam under Chamber of Commerce number of Contractor and are made available on the website of Contractor and will, insofar as not yet handed over, be sent on first request to Client. The version most recently filed, or as this applied at the time of the formation of the Agreement, is always applicable

1.5 The Agency reserves the right to unilaterally amend these General Terms and Conditions. An amendment will also apply in respect of agreements that were concluded prior to the amendment. An amendment will not enter into force until 14 days after the Client or the Candidate has been notified of the amendment. The notification has no prescribed form. If the Client or the Candidate does not accept the amendment they will be entitled to terminate the Agreement effective from the date on which the amendment enters into force.

1.6 If one or more of the provisions contained in these General Terms and Conditions are null and void or nullified, the remaining provisions contained in these General Terms and Conditions will continue to apply in full. In such cases the Agency and the Client will consult in order to agree on new provisions to replace the provisions that are null and void or that have been nullified, in which context the intention and purport of the original provision will be taken into consideration to every extent possible.

1.7 The Agreement is not entered into under the condition of exclusivity, unless the parties agree otherwise, which must be confirmed in the Confirmation of Assignment. If the parties agree on exclusivity and the Client acts contrary to the agreed exclusivity the Client will owe a penalty that is due on call equal to the minimum fee referred to in Article 4 of these Terms and Conditions, without prejudice to the Agency's right to recover the actual damage sustained if it exceeds the amount of that penalty.

### Article 2: Conclusion of the Agreement

2.1 The manner in which the Client grants the assignment for the provision of services has no prescribed form. The Agreement is concluded by the Agency's acceptance of the Client's service order, or the Client's acceptance of the Agency's offer of services. 'Offer for services' is understood to mean the Introduction of a Candidate by the Agency to the Client, or the request from the Client to the Agency to introduce a Candidate.

2.2 After the Client has granted the assignment, the Agency will be entitled to use the Client's name and/or logo in order to support the provision of the services and promotion of the Agency.

2.3 If Client after the conclusion of the Agreement with Contractor withdraws the assignment provided by Client, or withdraws a vacancy still to be filled, or wishes to put the assignment or the filling of a vacancy 'on hold' for a period longer than four weeks, fundamentally changes the job profile or fills a vacancy with an internal candidate who is already in the employment of Client, then Client will owe to Contractor for each withdrawn assignment or vacancy a cancellation fee to the amount equal to half of the minimum fee as referred to in article four of these terms and conditions.

2.4 The Agreement is performed by the Agency on a "no cure, no pay" basis. This means that the Client only owes the Contractor a fee as referred to in Article 4 if Agreement as referred to in Articles 3.1 and 3.2 has been reached between the Client and a Candidate proposed by the Agency.

### Article 3: Agreement

3.1 If, between Client, as well as any companies affiliated to it in any manner whatsoever, and the Candidate proposed by Contractor, Concurrence exists within one year after the first Introduction, the Client will be obliged to provide notification in writing to Contractor regarding this within five working days from the coming into effect of the Concurrence, enclosing the terms and conditions of the agreement. If Client does not fulfil this obligation, any right to the goodwill gesture arrangement, as described in article eight of these general terms and conditions of supply, will lapse. It is not of relevance to the question of whether Concurrence exists if the conclusion of a (employment) contract between Client and the Candidate includes a provision regarding the proper completion of a probationary period, or that the proposed Candidate fills a different vacancy than the one for which he or she was introduced to Client. Furthermore, it is immaterial on whose initiative the Candidate enters into the employment of the Client or performs work under an agreement.

3.2 There is also Concurrence if a vacancy is still cancelled after Concurrence is reached.

3.3 If Client does not inform Contractor in writing within five working days from reaching Concurrence about the implementation of the Concurrence, then Client will owe to Contractor an immediately due and payable financial penalty of the amount of € 10,000 without prejudice to the right of Contractor to invoice Client a fee in conformity with article four, or as the case may be article 3.4.

3.4 If the Client fails to send salary details, within five working days after being requested to do so in writing, in respect of the employment contract and the gross annual salary, including all fringe benefits, with regard to the relevant Candidate so that the Agency has an opportunity to charge the Client the fee that the Client owes in accordance with Article 4 of these General Terms and Conditions of Delivery, because of that lack of information the Client will owe the Agency a fixed fee in the amount of EUR 35,000.

3.5 Up to a year after the end of the agreement between the Client and the Agency, the Client is not permitted to offer an employment agreement to the Agency's employees in every form whatsoever without the explicit written consent of the Agency. Employees means employees that are currently employed at the Agency or were employed at the Agency less than twelve months before. If this prohibition and/or that which is determined in this article is violated the Client will owe a penalty payable on demand in the amount of EUR 50,000 for each violation, without prejudice to the Agency's right to recover the damage actually sustained and regardless of the Agency's right to claim that which is determined in this article.

### Article 4: Fee

4.1 At the time of Concurrence between Client and a Candidate Client will owe to Contractor a fee over the Gross Annual Salary of the Candidate concerned, in conformity with the rates as described in article 4.2, in which a minimum fee applies of the amount of €16.500.

4.2	Gross Annual Salary	Fee
	€ 0 tot € 60.000	€16.500,-
	€ 60,000 - to € 75,000	27.5 %
	€ 75,000 – to € 100,000	30 %
	from € 100,000 (executive search)	35 %

### Article 5: Payment

5.1 The fee as recorded in article 4 of these terms and conditions, will be charged by Contractor to Client with as invoice date the time of Concurrence between Client and a Candidate.

5.2 When an Appointment has been filled, the Client will owe the fee referred to in Article 4 of these General Terms and Conditions of Delivery. If prior to an agreement the Client has given notice in writing that it wishes to work with a purchase order, the Client will undertake to provide the Agency with a purchase order within 14 days of the date on which the Client and the Candidate have reached agreement. If the Client fails to provide the purchase order within that term the Agency will be free to charge the fee without a cover purchase order.

5.3 Invoices must be paid within 14 calendar days of the invoice date. If that payment term is exceeded the Client will be in default by operation of law and will owe default interest at the statutory commercial interest rate that applies at that time pursuant to Book 6, Section 119a of the Dutch Civil Code (*Burgerlijk Wetboek*). The Client is not entitled to any set-off or suspension.

5.4 The parties may make divergent payment agreements, in the sense that the Client will owe a Shortlist Fee or Retainer Fee in the context of the assignment it grants. Such payment agreements will be confirmed in the Confirmation of Assignment and a divergent payment term can or will apply in that respect.

5.5 If the Client does not protest against the content of the invoice in writing within five calendar days after having been sent the Client will be deemed to have accepted the invoice and its contents.

5.6 Payment may be made only in legal tender in cash or by giro-based transfer to the Agency's bank or postal giro account listed in the invoice.

5.7 If the payment term referred to in Article 5.2 and/or confirmed in the Confirmation of Assignment is exceeded the Client will not be entitled to invoke the goodwill scheme described in Article 8 of this Agreement. Also, in the case of exceeding the payment term all other outstanding invoices immediately due and payable. If the standard Fee, Payment and/or Goodwill Arrangement as described herein in article 4, 5 and 8 respectively is deviated from in writing, the Client is only entitled to a refund of half of the standard goodwill Scheme.

5.8 If the Client fails to make payment promptly and in full the Client will be obliged to reimburse the Agency for any and all judicial and extrajudicial costs related to collecting the claim, in which context extrajudicial costs will be equal to at least 15% of the amount overdue.

5.9 Payments made by the Client will always be applied first in respect of any and all interest and costs payable, and subsequently in respect of the invoices that have been outstanding the longest, even if when making payment the Client explicitly states that the payment relates to a later invoice.

### **Article 6: Liability**

6.1 Contractor will never be liable for damage which is or will be caused by a Candidate. Client must personally check if the Candidate is suitable for the position, has the required experience and has the possibly required (work) permits, Declarations of Independent Contractor Status and/or other requested documents in his or her possession. Contractor will never be party in the agreement between Client and a Candidate.

6.2 The Agency is not liable for any damage, loss or delay ensuing from an attributable breach, wrongful act or on any other ground unless there has been an intentional act or omission or wilful recklessness on the part of the Agency. The Agency also is not liable for any damage, loss or delay caused by the Candidate.

6.3 Losses due to delays, consequential damage, loss of profit and loss of income also are not eligible for reimbursement.

6.4 In the event that in spite of the provisions contained in Articles 6.1 to 6.3 above the Client believes that it has a well-founded ground to hold the Agency liable, the Client must immediately notify the Agency of that alleged claim in writing, supported by documents and properly substantiated, on penalty of its rights lapsing. Without prejudice to the provisions contained in Book 6, Section 89 of the Dutch Civil Code, the right to compensation from the Agency will in any event lapse one year after the incident from which the damage ensued and for which the Agency is allegedly liable.

6.5 Without prejudice to the provisions contained in Articles 6.1 to 6.3 above, any liability on the part of the Agency will be limited to the amount paid out on the basis of its professional/business liability insurance policy in respect of the relevant case plus the amount of the excess that pursuant to the policy conditions is not for the insurers' account. Information regarding the professional/business liability insurance policy/policies taken out by the Agency and the related coverage will be provided upon request.

6.6 If for any reason whatsoever the insurer referred to in Article 6.5 does not pay any benefits, any liability on the part of the Agency will be limited to the amounts paid to the Agency in the relevant calendar year for the work that it has performed, subject to a maximum of EUR 10,000.

### **Article 7: Duty of confidentiality**

7.1 The Client has a duty of confidentiality in respect of the information regarding the Candidates. Any and all information (in the broadest sense of the word) regarding Candidates is strictly confidential. If the Agency sustains damage in any manner whatsoever as a result of the Client violating its duty of confidentiality, the Client will owe a penalty payable on demand in the amount of EUR 25,000 for each violation, without prejudice to the Agency's right to recover the damage actually sustained if it exceeds the amount of that penalty.

7.2 In the event that the Client communicates confidential information regarding a Candidate to a third party and that results in an employment contract or other agreement between that third party and the Candidate, the Client will owe a fee equal to 35% of the gross annual salary of the Candidate during his or her first year of service at his new employer, inclusive of all fringe benefits.

### **Article 8: End of Candidate's employment/goodwill scheme**

8.1 If an employment contract with a Candidate ends within eight weeks of commencement, because the Candidate himself stops or the Client cancels or has dissolved the agreement with the Candidate during this period, with the reason that the Candidate does not function properly, which must be substantiated by the Client with relevant documents, the Agency will repay 50% of the already received fee to the Client under the goodwill Scheme within 30 days upon termination in the first four weeks, after receipt of all relevant documents and approval by the Agencies management. If the employment contract ends in the last 4 weeks, the Agency will repay a part of the fee already received, corresponding to 12.5% of the fee charged by the Agency, for each calendar week that the Candidate has not been employed during the period of eight weeks after the start of the employment of the Candidate. This goodwill scheme does not apply if the failure of the Candidate to function properly or the reason for stopping the Candidate is attributable to the Client.

8.2 The Client must notify the Agency in writing in respect of the provisions contained in Article 8.1 within five calendar days as from the date of the termination or submission of the request for dissolution of the Candidate's employment contract to the Cantonal Division of the District Court, or the date on which a termination agreement is signed by mutual consent, stating the cause of the Candidate's stopping or the Candidate's unsatisfactory performance.

8.3 After the term referred to in Article 8.2 has expired the Client's right to invoke the goodwill scheme referred to in Article 8.1 will lapse. The Client will bear burden of proof in respect of the Agency's being informed in writing within the term stipulated.

8.4 If the situation referred to in Article 8.1 arises, this will not entitle the Client to suspend any payment obligation under the Agreement, nor will the Client be entitled to set off any amount.

### **Article 9: Personal data / Data protection**

9.1 For the purpose of this article, the capitalized terms shall have the meaning set out in applicable data protection legislation, in particular the General Data Protection Regulation ("GDPR").

9.2 The Agency Processes Personal Data of Candidates in the manner as set out in the Agency's privacy statement. As the Agency may share such Personal Data with the Client in the performance of services, the parties agree that the Client shall comply with the relevant data protection legislation, in particular the GDPR, and the conditions as set forth in this Clause 9.

9.3 The Client acknowledges that, upon receipt of Personal Data, the Client becomes (joint) Data Controller of that Personal Data, as the Client shall, from that point on, (jointly) determine the purpose and means of Processing that Personal Data.

9.4 The Client ensures that the persons authorized by the Client to Process the Personal Data have committed themselves to confidentiality.

9.5 The Client shall arrange for all appropriate technical and organizational measures, to the extent such measures may be reasonably expected of the Client, to protect the Personal Data from loss, loss of integrity or from any form of unlawful Processing; and shall ensure that these measures meet all requirements under the data protection legislation, including but not limited Clause 32 of the GDPR.

9.6 In case the Client engages sub-contractors in the performance of the Agreement, the Client shall impose the data protection obligations as set forth in this Clause 9 on those sub-contractors. A list of the Client sub-contractors can be obtained by the Agency, at its request.

9.7 The Client shall provide all reasonable assistance to the Agency in order for the Agency to fulfil its obligations to respond to requests by Data Subjects exercising their rights under applicable data protection legislation.

9.8 The Client shall provide all reasonable assistance to the Agency in order for the Client to comply with its obligations pursuant to Clause 32 through 36 of the GDPR, taking into account the nature of the Processing and the information available to the Client.

9.9 In case the Client discovers a security breach that may adversely affect the protection of Personal Data received by the Client from the Agency and Processed by the Client, the Client will notify the Agency, to the extent permitted by law, as soon as reasonably possible. The parties will cooperate with each other on the investigation of the Personal Data Breach. In case of a Personal Data Breach within its organization, the Client shall -to the extent necessary- be responsible for notifying the relevant authorities and the Data Subjects concerned.

9.10 The Client shall make available to the Agency all information necessary, to the extent this is possible and reasonable, to demonstrate compliance with the conditions laid down in this Clause 9. The Client shall cooperate, to the extent this is possible and reasonable, with any audits conducted by the Agency or another auditor mandated by the Agency.

#### **Article 10: Continuous obligations**

Obligations, which by their nature are intended to continue also after the expiry of the Agreement, retain their effect thereafter. These obligations include inter alia: provisions with regard to liability duty of confidentiality and the non-compete and non-solicitation clause.

#### **Article 11: Applicable law and disputes**

11.1 All Agreements between the Agency and the Client are governed by Dutch law, even if the Agreement has an international character.

11.2 Any disputes – including disputes that only one of the parties deems to be such – arising between the Client and the Agency in connection with this Agreement or the agreements ensuing from it will be resolved by the competent judge of the District Court of Amsterdam, the Netherlands.

11.3 Apart from the provisions of article 11, paragraphs 1 and 2 of these general terms and conditions of delivery, the Contractor reserves the right to challenge the Client (or the Candidate) before the competent court of the place of residence or place of business of the Client (or the Candidate).