

expertum Group: General Terms and Conditions for Temporary Agency Work

Section 1 General Provisions

- 1.1 All parts of the contract, including any side agreements, must be drawn up in writing to be effective in accordance with Section 12 (1) of the German Act on Temporary Agency Work (AÜG) in conjunction with Section 126 of the German Civil Code (BGB).
- 1.2 The temporary work agency holds a permit for temporary agency work in accordance with Section 1 AÜG. If there are any changes to the permit, the temporary work agency agrees to immediately inform the user undertaking in text form. The user undertaking hereby confirms that it is not part of the construction industry, as outlined in Section 1b AÜG. Furthermore, the temporary work agency hereby declares that its employment relationship with temporary agency workers is subject to the collective agreements on temporary agency work established between Bundesarbeitsgeberverband der Personaldienstleister e.V. (BAP) and the DGB collective bargaining association, as amended.
- 1.3 On the basis of the AÜG, the temporary work agency shall assign temporary agency workers¹ to the user undertaking for a fixed period of time by entering into an employee leasing agreement. All essential features of the work and any new arrangements must be agreed exclusively with the user undertaking. Any changes to the duration of the assignment, working hours and activities may only be agreed between the temporary work agency and the user undertaking. The same applies to any assignments outside of Germany. The temporary work agency shall be the employer of its temporary agency workers. By entering into an employee leasing agreement, the contracting parties shall not establish a contractual relationship between the temporary agency workers and the user undertaking. During the assignment, the temporary agency workers shall be subject to the user undertaking's instructions and shall work under its supervision and guidance.
- 1.4 No temporary agency workers may be transferred to third parties. Please refer to the third sentence of Section 1 (1) AÜG.
- 1.5 No temporary agency workers shall be authorised to collect payments.
- 1.6 Any official or other permits and approvals that may be required at the place of deployment, in particular those required under the German Working Hours Act (ArbZG), must be provided by the user undertaking before the start of work.

Section 2 Duration of Assignment

- 2.1 If the end date for the assignment is not specified in the employee leasing agreement, Section 1 (1b) AÜG shall apply, unless a different maximum assignment period is set out in a collective agreement or, in the case of user undertakings not bound by a collective agreement, in a company-level or public service agreement. The fixed-term employee leasing agreement may be extended or terminated by either party before the end of the fixed term, as agreed in each individual contract.

Section 3 Remuneration, Invoicing and Price Adjustments

- 3.1 All prices shall be quoted without the statutory rate of value added tax.
- 3.2 The temporary work agency shall issue weekly invoices based on the time sheets approved and signed by the user undertaking; they shall be due for payment without deductions within 8 working days.
- 3.3 If the user undertaking defaults on a payment, the statutory provisions of Sections 286 to 288 BGB shall apply.
- 3.4 The user undertaking shall only have the right to withhold payments or offset payments against counterclaims to the extent that its counterclaims are undisputed or legally established or its counterclaims and the main claim to be offset are linked to the same synallagmatic contract.
- 3.5 Any objections to invoices issued by the temporary work agency must be raised with the temporary work agency in text form within one week of receipt; the relevant verifiable reasons must be stated in the objection. Once this deadline has expired, the user undertaking shall explicitly waive any objections regarding the accuracy of the billed hours.
- 3.6 If the user undertaking is in default of payment, the temporary work agency shall be entitled to withhold its contractually agreed services within the scope of the business relationship.
- 3.7 The temporary work agency shall be entitled to assign claims to third parties.
- 3.8 The temporary work agency reserves the right to adjust the amount of remuneration by renegotiating prices with the user undertaking if there are wage increases after the parties enter into the contract, if temporary agency

workers are substituted for other temporary agency workers with higher qualifications, or if an increase in costs is occasioned by circumstances for which the temporary work agency is not responsible. If the increase in prices is based on a decision made by public authorities, the legislature or the EU, or on a change in collective agreements, the temporary work agency shall be entitled to request a price adjustment as soon as the decision or change takes effect. This applies in particular to any changes in the AÜG or the German Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (AEntG).

- 3.9 Any additional charges (e.g. for overtime, work on Saturdays, Sundays and public holidays) shall be stipulated in each individual employee leasing agreement.
- 3.10 Additional conditions such as travel allowances, expenses and extra pay may be set out in each individual employee leasing agreement.

Section 4 Time Sheets

- 4.1 The user undertaking shall be obliged to confirm the hours that temporary agency workers have been available by signing time sheets or keeping electronic records and submitting them on a weekly basis and at the end of each month.

Section 5 Obligations of the Temporary Work Agency

- 5.1 The temporary agency workers assigned to the user undertaking shall be carefully selected according to the job profile and the activities described by the user undertaking. If so requested by the user undertaking, the temporary work agency agrees to submit proof of qualifications for the temporary agency workers who have been named. However, the temporary work agency shall not be obliged to check the certificates submitted by its temporary agency workers.
- 5.2 The temporary work agency shall be obliged to fulfil all obligations towards its temporary agency workers in its capacity as their employer, and in particular to comply with all provisions of labour law, social law and income tax law and to make the relevant payments.
- 5.3 Any unforeseeable and unavoidable events that are beyond the temporary work agency's control and for which the temporary work agency is not responsible, such as force majeure, traffic disruptions and labour disputes (strike action or lockouts), shall release the temporary work agency from its scheduled service obligations for the duration of the events. If the event lasts longer than six weeks, or if it becomes impossible for the temporary work agency to provide the service due to the event, both the user undertaking and the temporary work agency shall be entitled to terminate the contract without notice. There shall be no obligation to pay compensation in such cases.
- 5.4 The temporary work agency shall oblige its temporary agency workers to comply with the user undertaking's company rules and to maintain confidentiality as they would with an employer. This applies to any confidential business matters that may come to their attention over the course of their work.

Section 6 Obligations of the User Undertaking

- 6.1 The user undertaking may expel temporary agency workers from the assigned workplace during an assignment if there are compelling reasons that would entitle the employer (temporary work agency) to terminate their contract without notice in accordance with Section 626 (1) BGB. In such cases, the temporary work agency shall be required to propose a suitable replacement to the extent that can be reasonably expected. This need must be immediately communicated to the temporary work agency in text form.
- 6.2 The user undertaking shall immediately check whether each temporary agency worker named by the temporary work agency has been employed by either the user undertaking or any of its "affiliated enterprises", as defined in Section 15 of the German Stock Corporation Act (AktG), in the last 6 months prior to the assignment, as outlined in Section 8 (3) AÜG ("revolving door clause"). If the requirements of Section 8 (3) AÜG are met, the user undertaking shall be obliged to immediately inform the temporary work agency in text form. In such cases, the user undertaking shall provide all relevant written information regarding basic working conditions, including the wages of permanent employees in comparable positions. Section 12 (4) AÜG applies in conjunction with Section 8 AÜG. Based on this written documentation, the rates to be charged shall be adjusted accordingly.

¹ The term "temporary agency worker" is taken from the AÜG. If masculine pronouns have been used in certain parts of this agency contract, this has been done purely to make the document easier to read; however, any such pronouns apply equally to all genders.

- 6.3 The user undertaking shall immediately check whether each temporary agency worker named by the temporary work agency has previously been assigned to it by another temporary work agency within the period specified in Section 8 (4) AÜG (3 months and one day). This being the case, the user undertaking shall immediately inform the temporary work agency in text form. If the total duration of the assignment then results in an obligation to ensure equal treatment in accordance with Section 8 (4) AÜG, the user undertaking shall be obliged to immediately inform the temporary work agency in text form. In such cases, the user undertaking shall provide all relevant written information regarding basic working conditions, including the wages of permanent employees in comparable positions. The fourth sentence of Section 12 (1) AÜG applies in conjunction with Section 8 AÜG. Based on this written documentation, the rates to be charged shall be adjusted accordingly.
- 6.4 In order to ensure compliance with the maximum assignment period set out in Section 1 (1b) AÜG, the user undertaking shall immediately check whether each temporary agency worker named by the temporary work agency has previously been assigned to it by another temporary work agency within the period specified in the second sentence of Section 1 (1b) AÜG (3 months and one day). This being the case, the user undertaking shall immediately inform the temporary work agency in text form. Furthermore, the user undertaking shall immediately and completely inform the temporary work agency in text form about any regulations applicable in its company that allow a maximum assignment period of over 18 months and that are relevant to an establishment in which a temporary agency worker may be deployed based on the employee leasing agreement. Both parties shall monitor compliance with the applicable maximum assignment period. If either of the parties has reasonable doubts concerning compliance with the maximum assignment period, it shall be entitled to immediately terminate the deployment of the temporary agency worker(s) in question. If the maximum assignment period is exceeded, the parties shall mutually waive the right to assert any claims for damages that may result from this situation.
- 6.5 The user undertaking shall only deploy temporary agency workers within Germany. Any assignment abroad must be explicitly approved by the temporary work agency and shall be subject to a separate written agreement.
- 6.6 The user undertaking shall be obliged to immediately inform the temporary work agency, if necessary by telephone, about any ongoing or forthcoming industrial action within the company in which temporary agency workers are deployed. The temporary work agency is prohibited by collective agreement from deploying its workers in companies affected by strike action. This also applies to any temporary agency workers who were working in the company before the strike action began. If the user undertaking is affected by strike action, the parties agree that the obligation to assign temporary agency workers and the right to remuneration for the temporary agency workers in question shall be suspended.
- 6.7 The user undertaking shall also be obliged to immediately inform the temporary work agency if it provides temporary agency workers with any benefits that are relevant to income tax or social security law, in particular any fringe benefits. In such cases, the user undertaking shall be obliged to fully disclose the nature and amount of the benefits in relation to each temporary agency worker by the 3rd of the month following the benefit, so that the temporary work agency can take this into account in the payroll.
- 6.8 The user undertaking shall be obliged to make any vacancies in its company accessible to temporary agency workers in an appropriate manner and to make social amenities available to them.
- 6.9 As part of its legal duty of care, the user undertaking shall take suitable measures to prevent temporary agency workers from suffering discrimination on grounds of race, ethnicity, gender, religion, ideology, disability, age or sexual identity with regard to the assignment in accordance with Section 1 of the German General Act on Equal Treatment (AGG).
- 6.10 The user undertaking shall be obliged to confirm the hours that temporary agency workers have been available by signing time sheets or keeping electronic records and submitting them to the temporary work agency on a weekly basis and at the end of each month; this must be done by the second working day of the following month at the latest.
- 6.11 If required for the job in question, the user undertaking shall be obliged to proactively inform the temporary agency workers assigned to its company about all confidentiality obligations applicable in its establishment. This also applies to any "business secrets", as defined in Section 2 No. 1 of the German Act for the Protection of Business Secrets (GeschGehG). If necessary,

the user undertaking shall take the relevant temporary agency workers into account in its formal arrangements for safeguarding business secrets.

Section 7 Substitution

- 7.1 The temporary agency workers assigned by the temporary work agency shall be selected according to the job profile and the activities described by the user undertaking. If, in exceptional cases, a temporary agency worker assigned to the user undertaking turns out to be unsuitable for the intended work, the user undertaking may reject the temporary agency worker within the first four hours of work without being charged for this working time. Any complaints must be made in text form on the day the deficiency is established. The provisions of Section 4.6 above apply accordingly with regard to the provision of a replacement. The user undertaking shall have no claims in the event of a late complaint; in particular, the user undertaking shall waive any claims for damages.
- 7.2 If any temporary agency workers are absent due to illness, annual leave or any other compelling reasons, the reason for the absence shall be communicated to the user undertaking as early as possible and the provisions of Section 4.6 above shall apply accordingly with regard to the provision of a replacement. This shall not result in any claims for damages.
- 7.3 The temporary work agency may recall temporary agency workers without notice, provided that they are simultaneously replaced with other, equally suitable temporary agency workers.
- 7.4 The user undertaking shall allow the temporary work agency to use its company as a customer reference.

Section 8 Occupational Health and Safety

- 8.1 The user undertaking shall be obliged to comply with general occupational health and safety regulations in its dealings with temporary agency workers (in particular with regard to working hours and workplace safety). Before temporary agency workers start their work, the user undertaking shall familiarise them with the relevant accident prevention regulations for the workplace in question and shall provide them with the necessary protective equipment. The user undertaking agrees to immediately notify the temporary work agency of any workplace accidents involving temporary agency workers. Any reportable accidents must be investigated jointly by the parties.
- 8.2 In order for the temporary work agency to fulfil its obligations as an employer, it shall be granted access to workstations used by its temporary agency workers during their working hours in consultation with the user undertaking.

Section 9 Liability

- 9.1 The temporary work agency shall be solely liable for the proper selection of temporary agency workers who are suitable and qualified for the specific activities and for their availability during the agreed assignment period.
- 9.2 As temporary agency workers are to be instructed and supervised by the user undertaking, the temporary work agency shall not be held liable for their actions, behaviour or performance. In particular, the temporary work agency shall not be liable for any poor performance or damage caused by the temporary agency workers assigned to the user undertaking. Temporary agency workers shall not be regarded as the vicarious agents or authorised representatives of the temporary work agency.
- 9.3 In the event of culpable injury to life, limb or health, the temporary work agency shall be liable in accordance with the statutory provisions.
- 9.4 Similarly, in cases of intent or gross negligence, including any intent or gross negligence on the part of its representatives or vicarious agents, the temporary work agency shall be liable in accordance with the statutory provisions. In cases of gross negligence, its liability shall be limited to the typical, reasonably foreseeable degree of damage for the type of contract in question.
- 9.5 The temporary work agency shall not be held liable in any other cases, regardless of the legal basis. This applies in particular to any claims for damages arising from fault when entering into the contract, from breaches of secondary contractual duties or other breaches of duty, and from tortious or other criminal acts, as well as to any claims resulting from damage that falls beyond the subject matter of the contract, to indirect and consequential damage, in particular loss of production, to the loss of data affecting the user undertaking, and to claims for compensation for lost profits.
- 9.6 Where the temporary work agency's liability is limited in accordance with the above provisions, this also applies to the personal liability of its legal representatives, employees and vicarious agents.

- 9.7 If any claims are asserted by third parties as a result of or in connection with the work of temporary agency workers, the user undertaking agrees to indemnify the temporary work agency against the claims to the extent that it cannot be held liable in accordance with the above provisions.
- 9.8 Due to the provisions of certain collective agreements (e.g. on supplemental pay), or in accordance with Section 8 (1) to (4) AÜG, the temporary work agency shall be obliged, in some cases, to ensure that its temporary agency workers are treated equally to the user undertaking's employees in comparable positions, in whole or in part, with regard to their basic working conditions or wages. In such cases, the temporary work agency shall be dependent on the information to be provided by the user undertaking to ensure the relevant working conditions or wages (see Sections 6.2 and 6.4 above and any annexes to the employee leasing agreement). If the user undertaking provides incomplete or incorrect information in this regard or fails to report any changes completely, correctly and immediately, and if this results in temporary agency workers being economically disadvantaged, the temporary work agency shall rectify this through subsequent billing and additional payments to the temporary agency workers concerned. The temporary work agency shall be free to decide whether to invoke limitation periods against its temporary agency workers; in this respect, the temporary work agency shall not be obliged to mitigate damages. The sum of the gross amounts to be paid (gross wages without the employer's social security contribution) shall be regarded as damages for which the user undertaking is to compensate the temporary work agency. In addition, the user undertaking must reimburse the temporary work agency for the lost profits on the non-calculated costs by way of compensation. These lost profits shall be set by mutual agreement at 120% of the above gross wages (margin). The user undertaking shall be entitled to prove that the margin was lower based on the employee leasing agreement and that this should be applied to the lost profits instead of the 120%. In addition, the user undertaking shall be liable to the temporary work agency for any claims that the social security or tax authorities may assert against the temporary work agency based on the above liability, regardless of gross wage payments.
- 9.9 Section 9.8 of these general terms and conditions shall apply accordingly if the user undertaking instructs a temporary agency worker to perform any activities that give rise to claims to a minimum industry wage in accordance with Section 8 (3) AEntG, even though this is explicitly excluded in the employee leasing agreement.
- 9.10 Section 9.8 of these general terms and conditions shall apply accordingly if the information provided by the user undertaking in the employee leasing agreement with regard to the relevant statutory instrument or the generally binding collective agreement, as referred to in Section 8 (3) AEntG, proves to be incorrect due to the activities actually performed by a temporary agency worker.
- 9.11 If the transaction is a commercial transaction for either party, the relevant provisions on liability shall be those set out in Section 347 of the German Commercial Code (HGB) in conjunction with Section 276 BGB.
- 9.12 If the principle of equal treatment applies in accordance with Section 8 (1) and the first sentence of Section 8 (4) AÜG, and if components of equal pay (e.g. special annual payments) to be offered after 9 months are to be calculated based on the period of comparable employment, this period shall be determined according to the actual start date of the relevant temporary agency worker's deployment and not the point in time at which the entitlement to equal pay arises after 9 months. This applies accordingly in the case of equal treatment in connection with a collective agreement on supplemental pay after no more than 15 months, as referred to in Section 8 (4) No. 1 AÜG.
- 9.13 Temporary agency workers shall not be entitled to collect payments for the user undertaking; the temporary work agency shall therefore not be liable for any damages caused by temporary agency workers being entrusted with financial matters (e.g. cash management, safekeeping of money and securities or similar transactions). This shall not apply if such activities are explicitly included in the employee leasing agreement for the temporary agency workers in question.
- 9.14 The temporary work agency shall also be liable in accordance with the statutory provisions if it culpably breaches an essential contractual duty; this is an obligation that enables the contract to be properly executed in the first place and that the user undertaking may expect to be observed. In such cases, the temporary work agency's liability shall be limited to the typical, reasonably foreseeable degree of damage for the type of contract in question.

Section 10 Permanent Recruitment of Temporary Agency Workers

- 10.1 If an employment relationship is established between the user undertaking and a temporary agency worker or candidate presented by the temporary work agency as an applicant, the temporary work agency shall be entitled to charge the user undertaking a recruitment fee (see Section 10.3 below).
- 10.2 The user undertaking shall also owe a recruitment fee pursuant to Section 10.3 below if the contractual relationship referred to in Section 10.1 above is established with the temporary agency worker as a result of the ongoing assignment or within 6 months after the end of the assignment. This shall not apply if the user undertaking can prove that the recruitment is independent of the assignment.
- 10.3 The recruitment fee (plus VAT) shall amount to:

Month of Assignment	Recruitment Fee	Free Recruitment
1-3	2 gross monthly salaries	after 12 months
4-6	1.5 gross monthly salaries	after 12 months
7-9	1 gross monthly salary	after 12 months
10-12	0.5 gross monthly salary	after 12 months

- 10.4 The recruitment fee shall be due for payment in full when the temporary agency worker or proposed candidate enters into the contract with the user undertaking, but at the latest when they actually start working at the user undertaking.
- 10.5 Sections 10.1 to 10.4 above shall apply accordingly if a temporary agency worker or proposed candidate is recruited by any of the user undertaking's "affiliated enterprises", as defined in Section 15 *et seq.* AktG. This shall not apply if the user undertaking can prove that the recruitment is independent of the assignment. The evidence to prove that the temporary agency worker or candidate was already known to the user undertaking or to its "affiliated enterprise", as defined in Section 15 *et seq.* AktG, must be presented to the temporary work agency in text form as soon as the temporary agency worker or candidate is proposed.
- 10.6 The recruitment fee shall be due for payment upon receipt of the relevant invoice and must be paid without deductions. If the user undertaking does not pay the invoice in full, it shall be in default of payment seven days after receiving the invoice, without the need for a reminder from the temporary work agency.

Section 11 Data Protection

- 11.1 The temporary work agency and the user undertaking shall comply with the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG), as amended.
- 11.2 Taking into account its reporting obligations, the temporary work agency shall be entitled to process personal data from the user undertaking as intended to perform its obligations in business transactions. The data shall be stored by the temporary work agency. The temporary work agency shall ensure that the data is always protected against unauthorised third-party access, preventing such third parties from viewing the data. The temporary work agency shall ensure this by taking appropriate technical and organisational measures. The temporary work agency shall also ensure that its employees entrusted with the relevant processing activities are bound to confidentiality in writing. If the temporary work agency uses external processors for this purpose, it must ensure that they meet the requirements for the security of data processing activities in the EEA or that they provide appropriate safeguards (European standard contractual clauses). The user undertaking is hereby informed of this. The user undertaking shall have the right to access its personal data at any time, as well as the right to request the rectification or erasure of its personal data. These and other rights are set out in the privacy policy underlying these general terms and conditions: www.exper-tum.de/datenschutzhinweise.

Section 12 Applicable Law, Place of Jurisdiction, Final Provisions

- 12.1 All legal relationships between the temporary work agency and the user undertaking shall be subject exclusively to the law of the Federal Republic of Germany applicable to legal relationships between domestic parties to the exclusion of any references to international legal provisions.
- 12.2 All parts of the contract, as well as any side agreements, amendments and additions to contracts established on the basis of these general terms and conditions, must be drawn up in the legally prescribed written form to be effective in accordance with the first sentence of Section 12 (1) AÜG in conjunction with the first sentence of Section 126 (2) BGB. Any amendments or additions to these general terms and conditions must be made in writing. If

- the parties wish to cancel the written form requirement stipulated in the first and second sentences above, this must also be done in writing.
- 12.3 If individual provisions of these general terms and conditions prove to be ineffective or unenforceable, or if these general terms and conditions contain a loophole, this shall have no bearing on the effectiveness of the remaining provisions. In such cases, the contracting parties must replace the ineffective or unenforceable provision with a clause that comes as close as possible to the economic purpose of the original provision. The parties shall fill any loopholes with a supplementary provision that comes as close as possible to the economic purpose of these general terms and conditions, the general agreement or the individual employee leasing agreement.
- 12.4 Hamburg shall be the place of jurisdiction for any legal disputes arising from the contractual relationship.
- 12.5 The provisions of Section 12.3 above apply accordingly to any ineffective provisions or loopholes found in a contract established on the basis of these general terms and conditions.
- 12.6 If the user undertaking is a merchant, as referred to in Section 38 (1) of the German Code of Civil Procedure (ZPO), the local or regional court that has jurisdiction over expertum's registered office shall be the exclusive place of jurisdiction for any disputes arising from or in connection with the ongoing business relationship, including any claims involving cheques or bills of exchange. However, expertum shall also be entitled to take legal action against the user undertaking at the latter's general place of jurisdiction.
- 12.7 These general terms and conditions apply to temporary work throughout the entire expertum Group. A separate set of general terms and conditions applies to pure recruitment / consulting.

Section 13 Confidentiality

- 13.1 The user undertaking agrees to refrain from passing on any data provided by the temporary work agency, in particular prices, expertise or experience (hereinafter referred to collectively as "information"), in writing, verbally or in any other manner, either generally or to a third party. This confidentiality obligation does not apply to any information that is demonstrably generally known or that subsequently becomes generally known through no breach of the confidentiality obligation, or that is demonstrably already known to the user undertaking prior to disclosure or that subsequently becomes known to the user undertaking through no breach of the confidentiality obligation.
- 13.2 The temporary work agency shall reserve all rights (including industrial property rights and copyrights) related to any disclosed information. The disclosure shall not authorise the user undertaking to use the information for any purposes other than those agreed.

expertum GmbH

info@expertum.de | www.expertum.de