

**GENERAL PERFORMANCE AND DELIVERY TERMS AND CONDITIONS OF LMH ENGINEERING BELGIUM, A COMMERCIAL DIVISION OF AMBITIOUS PEOPLE BELGIUM BVBA**

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**Article 1: Definitions of terms and applicable conditions**

1.1 The general terms and conditions shall apply to all quotes and requests for quotes, offers and contracts for the performance of services by LMH Engineering Belgium, a commercial division of Ambitious People Belgium BVBA, as well as all its affiliated companies (hereinafter referred to as: Contractor) under the contract for services, more specifically an intermediary contract, with its co-contracting party (hereinafter referred to as: Client), and furthermore to all legal relationships arising from the contracts, as well as to all extra-contractual relations between the parties, particularly unlawful acts.

1.2 In these general terms and conditions, the following terms have the following meanings:

- Candidate: the natural person recruited and selected by the Contractor to fill a vacancy at the Client.
- Gross Annual Salary: the salary of a Candidate based on a full year and fulltime employment (thirty eight hours) in the first year of employment at the Client. Gross annual salary also means a (possible) thirteenth month, holiday pay, holiday allowances, bonuses/commissions (on-target earnings/OTE), mobility budget (car/travel allowances), reimbursements of removal expenses, all other corresponding pay, hours and employee benefits agreed between the Candidate and the Client. The mobility budget from and car made available by the Client will be equated in this context with nine thousand euros.
- Fee for Services: the fee of a Candidate based on a full year of services provided to the Client, on the basis of the amounts already invoiced by the Candidate to the Client, possibly extrapolated to twelve months, exclusive of VAT.
- Affiliated Enterprise: a legal person or natural person affiliated with the Client in any way, for example but not limited to legal persons and natural persons within the meaning of Article 11 of the Belgian Companies Code. Section 1:20 of the Companies and Societies Code.
- Introduction: the presentation of the Candidate's details by the Contractor to the Client. In this regard, it does not matter if the Candidate was ever introduced before to this effect by a different party or that the Client already knows the Candidate.
- Agreement: agreement between the Candidate or an Affiliate Enterprise and the Client on filling a temporary or permanent job, or on concluding a contract for the performance of services for the Client in the broadest sense.
- Contract: the (intermediary) contract between the Client and Contractor for recruitment and selection activities, with application of and in accordance with the regional Belgian laws on intermediary services in private job placement.
- putting an order 'on hold': suspension in any way by the Client of performance of the (intermediary) contract with the Contractor.
- 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 fee amount.

1.3 Stipulations departing from these general terms and conditions – also including any general and special terms and conditions (of delivery) of the Client – will apply only and in so far as the Contractor has explicitly accepted them in writing.

1.4 The Contractor reserves the right to amend these general terms and conditions unilaterally, in so far as such amendment does not prejudice the validity thereof under Belgian regional legislation on private job placement intermediary services. An amendment will also apply to contracts that were concluded prior to the amendment. An amendment will not take effect earlier than fourteen days after notification of that amendment to the Client or Candidate. The notification will have no prescribed form. If the Client does not consent to the amendment, each of the parties will be entitled to terminate the Contract as from the effective date of the amendment.

1.5. Should one or more of the provisions of these general terms and conditions be null and void or be nullified, the other provisions of these general terms and conditions will remain fully applicable. In that case, the Contractor and Client will consult in order to agree new provisions to replace the null and void or nullified provisions, whereby, if and in so far as possible, the purpose and tenor of the original provision will be taken into consideration.

1.6 The Contract will not be entered into under the conditions of exclusivity, unless the parties agree otherwise, which must be confirmed by the Contractor in writing. If the parties agree on exclusivity and the Client acts in contravention of the agreed exclusivity, the Client shall be liable for an immediately due and payable sum equal to the minimum fee as referred to in article four of these terms and conditions, without prejudice to the Contractor's right to claim compensation of the actual loss it has incurred and will incur.

**Article 2: Conclusion of the Contract**

2.1 The contract for the performances of services awarded by the Client to the Contractor must be in writing or oral. The Contract will be concluded by acceptance of the order from the Client for the provision of services by the Contractor, or by acceptance by the Client of the Contractor's offer to provide services.

2.2 After conclusion of the Contract, the Contractor will be entitled to use the name and/or logo of the Client to support the performance of the services and promotion of the Contractor.

2.3 If after conclusion of the Contract with the Contractor, the Client still withdraws the order placed by it or a vacancy to be filled, or puts the order or filling of a vacancy on hold for a period of more than four weeks, fundamentally changes the job profile or fills a vacancy with an internal Candidate already employed by the Client, the Client shall then owe the Contractor a cancellation fee per withdrawn order or vacancy in the amount of half of the minimum fee as referred to in article four of these terms and conditions.

**Article 3: Agreement**

3.1 If Agreement has been reached between the Client, as well as all companies affiliated with it in any way, and the Candidate proposed by the Contractor within one year of the first Introduction, the Client must notify the Contractor to this effect in writing within five days after Agreement has been reached, enclosing the terms and conditions of the contract. If the Client does not comply with this obligation, any right to the guarantee scheme will lapse as referred to in article eight of these general delivery terms and conditions. It is not relevant to

the question whether Agreement exists whether the conclusion of a contract (of employment) between the Client and the Candidate has been made dependent on the proper completion of a trial period, or that the Candidate introduced fills a vacancy other than that for which he or she was introduced by the Contractor.

3.2. Agreement will exist as well if a vacancy is still cancelled after Agreement has been reached.

3.3 If the Client does not notify the Contractor in writing of the contents of the Agreement within five days after Agreement is reached, the Client shall owe the Contractor an immediately due and payable sum of €10,000, without prejudice to the Contractor's right to invoice the Client for a fee in accordance with article four or paragraph 3.4.

3.4 If the Client does not proceed to send the employment contract and the salary details or details of the fee for services within five days of the date of a written request to that effect to the Client on the part of the Contractor, containing the Gross Annual Salary or Fee for Services of the Candidate in question, in order to give the Contractor the opportunity to (still) charge the fee payable by the Client – in accordance with Article 4 of these general delivery terms and conditions – the Contractor will be entitled to charge a fee on the basis of the information known to it, or the Client will owe the Contractor a fixed fee in the amount of €35,000.

3.5. The Client or an Affiliate Enterprise is not allowed for a period up to two (2) years after the end of the Contract to offer an employment contract with the Client to employees of the Contractor and/or to make an offer to enter into a contract with the Client in any form whatsoever, without explicit, prior written permission from the Contractor. Should this prohibition or the provisions of this article be contravened, the Client will owe the Contractor an immediately due and payable sum of €50,000 – regardless of the Contractor's right to claim compensation by the Client of the loss incurred or to be incurred by it and regardless of the Contractor's right to claim compliance with the provisions of this article.

#### Article 4: Fee

4.1 At the time Agreement is reached between the Client and a Candidate, the Client will owe the Contractor a fee on the Gross Annual Salary / Fee for Services of the Candidate in question, in accordance with the rates as specified in paragraph 4.2, whereby a minimum fee will apply of €15,000.

Gross annual salary / Fee for services	Fee
€ 0 to €55,000	€15,000
from €55.000 to €75,000	27.5%
from €75,000 to €100,000	30%
from €100,000 (executive search)	35%

#### Article 5: Payment

5.1 The Contractor shall charge the Client the fee as specified in Article 4 of these general terms and conditions with the time of Agreement between the Client and a Candidate as the invoice date.

5.2 If the Client has stated in writing prior to Agreement that it wants to use purchase orders, the Client undertakes within 14 days from the day of the time that the Client and Candidate reached Agreement to provide the Contractor with a purchase order. Should the Client fail to provide the Contractor with a purchase order within the aforementioned period, the Contractor will be at liberty to charge the fee without an accompanying purchase order.

5.3 Payment of the invoices must be made within 14 calendar days of the invoice date. If this payment period is exceeded, the Client will be in default by operation of law and the default interest will be equal to the then applicable statutory commercial interest as provided in the Belgian Act of 2 August 2002 on the combating of arrears of payment in commercial transactions. The Client will not have a right of setoff or suspension.

5.4 The Parties can make different payment arrangements, in the sense that in the context of the order it has placed, the Client will owe a Shortlist Fee or Retainer Fee, which payment arrangements must be confirmed in writing and to which a different payment period can apply.

5.5 If the Client does not protest in writing against the contents of an invoice within five calendar days after an invoice has been sent, the Client will be deemed to have agreed to (the contents of) the invoice.

5.6 Payment can be made only by transfer to the bank or account number of the Contractor, as stated on the invoice.

5.7 If a payment period referred to in paragraph 5.3 above and/or confirmed in an order confirmation is exceeded, the Client will no longer be entitled to the guarantee scheme described in article eight of these general terms and conditions. In case the payment period is exceeded, any and all other outstanding invoices/credits and invoices yet to be sent shall be immediately due and payable in their entirety. If the standard Fee, Payment and/or Goodwill Scheme as described in respect to article 4,5 and 8, the Client is the client only entitled to half of the standard Goodwill Scheme.

5.8 If the Client does not pay promptly and in full, the Client must reimburse the Contractor for all judicial and extrajudicial costs to be incurred in collecting the claim. The extrajudicial costs will be fixed at a sum at least equal to 10% of the overdue amount.

5.9 Payments made by the Client shall first of all serve to pay all interest and costs due and then the longest outstanding due and payable invoices, even if the Client explicitly states in making the payment that the payment relates to a later invoice.

#### Article 6: Liability

6.1 The Contractor shall never be liable for damage and/or loss that has been or will be caused by a Candidate. The Client itself must check if the Candidate is suitable for the position, has the required experience and check whether the Candidate possesses any required (work) permits and/or any other required documents. Copy diploma and reference check can be made on request under the conditions as stated in article 1.3. The Contractor shall never be a party to the contract between the Client and a Candidate.

6.2 The Agency shall never be liable for any damage, loss or delay arising from an attributable failure, unlawful act or on any basis whatsoever, unless there has been a wilful act or omission or wilful recklessness on the part of the Contractor.

6.3 Nor shall the following be eligible for compensation: losses due to delay, consequential loss, loss of profits and loss of income.

6.4 In case the Client, despite the provisions above in paragraphs 6.1 – 6.3, is of the opinion that it has a proper ground for a claim against the Contractor, the former must make this alleged claim known to the Contractor immediately in writing, substantiated and soundly supported, subject to lapse of the right.

6.5 Subject to lapse of the right to do so, the Client can no longer rely on a defect in performance if it did not submit a protest against this to the Contractor in writing within 8 days after it discovered or reasonably should have discovered the defect.

6.6 Without prejudice to paragraph 6.5 of these terms and conditions, the right to damages from the Contractor shall lapse in any case one year from the event that gave rise to the damages, and for which the Contractor is allegedly liable.

6.7 Without prejudice to the provisions above in paragraphs 6.1 – 6.3, any liability of the Contractor shall be limited to the amount paid in the particular case on the basis of the professional/business liability insurance policy/policies it has taken out, plus the amount of the excess that, according to the policy conditions, cannot be charged to the insurers. Information about the (cover under the) professional/business liability policy/policies taken out by the Contractor will be provided on request.

6.8 If, for whatever reason, the insurer referred to in paragraph 6.7 does not pay, any liability of the Contractor shall be limited to the amounts paid by the Client to the Contractor in the calendar year concerned for the work it has performed, subject to a maximum of €10,000.

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

7.1 The Client shall be subject to a duty of confidentiality concerning the information about Candidates. All information (in the broadest sense of the word) about Candidates is strictly confidential, and the Client may not disclose it to third parties. If the Contractor incurs damage and/or loss as a result of contravention of the duty of confidentiality by the Client, the Client will owe an immediately due and payable sum of €25,000 per contravention, without prejudice to the Contractor's right to recover the actual losses it has incurred and will incur.

7.2 In the event that the Client discloses confidential information about a Candidate to a third party and this results in a contract (of employment) between that third party and the Candidate, the Client will owe the Contractor a sum of 35% of the Gross Annual Salary / Fee for Services of the Candidate in his or her first year of employment at his/her new employer/Client.

#### **Article 8: End of the Candidate's (employment) contract / Guarantee 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 inform the Contractor in writing of the provisions in paragraph 8.1 within five calendar days, counting from the date of notice of termination or termination of the Candidate's employment or the date of signing a termination agreement by mutual consent, stating the cause of the stop or improper performance of the Candidate.

8.3 After the end of the period set in paragraph 8.2, the Client's right to the guarantee scheme referred to in paragraph 8.1 will lapse. The burden of proof of informing the Contractor within the period set is on the Client.

8.4 If the situation referred to in paragraph 8.1 occurs, this will not give the Client any right to suspend any payment obligation under the Contract. Nor will the Client be entitled to rely on setoff in that case.

#### **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: Applicable law and disputes**

10.1 All Contracts between the Contractor and Client shall be governed by Belgian law, even if the Contract is international in nature.

10.2 All disputes – including those which are considered to be such by only one of the parties – that arise on the basis of this Contract or of contracts ensuing therefrom, that might arise between the Client and Contractor, shall be settled by the competent judge of the District Courts in the District of Antwerp and, where applicable, the Justice of the Peace Court (*Vrederecht*) 2<sup>nd</sup> Canton in Antwerp.

10.3 Notwithstanding the provisions in paragraphs 1 and 2 of Article 9 of these general delivery terms and conditions, the Contractor will retain the right to summon the Client (or the Candidate) before the judicial authority with jurisdiction in the place of residence or establishment of the Client (or the Candidate).