

# GENERAL TERMS AND CONDITIONS OF HIGHTOUCH EXECUTIVE SEARCH BV

Aalten, The Netherlands, January 2020

## 1. ASSIGNMENT

- 1.1 These Terms and Conditions form part of every assignment to, every offer from and every agreement with HighTouch Executive Search BV regarding the recruitment and selection of personnel by HighTouch Executive Search BV on behalf of and for the benefit of the client.
- 1.2 All work to be carried out by HighTouch Executive Search BV is based on a contract of assignment, also referred to as recruitment. The assignment can be carried out by all persons affiliated with HighTouch Executive Search BV or to be appointed by HighTouch Executive Search BV. A written recruitment assignment will be drawn up for each assignment. Only after signing this agreement will HighTouch Executive Search BV start its activities.
- 1.3 Any conditions applied by the client do not apply to assignments to or agreements with HighTouch Executive Search BV.
- 1.4 Deviating terms and conditions will only apply to the contract of assignment if and insofar as they have been explicitly accepted in writing by both HighTouch Executive Search BV and the client.
- 1.5 In the case of agreements not confirmed in writing or which have been orally agreed or in the case of agreements which were based on a previously confirmed agreement in writing, unless agreed upon otherwise, the standard rate of 25% on gross annual income including holiday allowance, end-of-year bonus and/or other variable remuneration applies.
- 1.6 To avoid any doubt, the following words used in these general terms and conditions and in the recruitment agreement shall have the following meanings:
  - Recruitment: the conclusion of an agreement with a candidate, either as an employee or as a self-employed person, either in his own name or under a company form.
  - Introduction: any communication of the data regarding the candidate by HighTouch Executive Search BV to the client or presentation of the candidate by HighTouch Executive Search BV to the client with a view to and/or resulting in recruitment, regardless of whether the client knew the candidate before or vice versa.
  - Candidate: any person proposed to the client with a view to and/or resulting in recruitment by the client
  - Fee: the total amount of fees payable by the client to HighTouch Executive Search BV

## 2. CONCLUSION AND MODIFICATION OF THE ASSIGNMENT

- 2.1 The contract of assignment shall be concluded if HighTouch Executive Search BV has confirmed the client's order in writing or if the client has accepted the quotation made by HighTouch Executive Search BV in its entirety within the period specified therein.
- 2.2 The method of execution of the assignment is described in the assignment confirmation.
- 2.3 Changes to the assignment can only be agreed in writing in mutual consultation.
- 2.4 All offers, quotations and prices of HighTouch Executive Search BV are always without obligation, unless explicitly agreed otherwise in writing.

## 3. END OF THE CONTRACT OF ASSIGNMENT

- 3.1 The assignment for recruitment and selection shall end on the day and at the time the vacancy indicated by the client is to be considered filled or by the expiry of the maximum duration of the assignment agreed between the parties. The vacancy will in any case be considered filled if a candidate nominated by HighTouch Executive Search BV enters the service of the client within 12 months of the introduction of the candidate, or at the actual commencement of the work of that candidate for the client. Entry into service is understood to refer to any agreement on the basis of which the candidate carries out work for the client or its affiliated businesses/companies, regardless of the name of the position, or whether it is a different position than that for which the assignment was given.
- 3.2 Without prejudice to the provisions of Article 3.1, both HighTouch Executive Search BV and the client have the right to terminate the contract with due observance of a notice period of one month. Notice of termination must be given in writing. HighTouch Executive Search BV is entitled to terminate the contract unilaterally if it believes that it is unable to meet the client's requirements, which is at the sole discretion of HighTouch Executive Search BV.
- 3.3 Without prejudice to the provisions of Articles 3.1 and 3.2, HighTouch Executive Search BV and the client are entitled to regard the agreement as dissolved with immediate effect:
  - a. If the other party, after a written notice of default with a reasonable period for remedying the shortcoming, remains in default;
  - b. If the other party has been granted (provisional) suspension of payments, or if it has been declared bankrupt.
- 3.4 Termination of the agreement does not release HighTouch Executive Search BV or the client from their current obligations under the agreement.

#### **4. OBLIGATIONS OF HIGHTOUCH EXECUTIVE SEARCH BV**

- 4.1 HighTouch Executive Search BV is obliged to make every effort to acquire and select suitable candidates for employment with the client. HighTouch Executive Search BV will perform the services to be provided to the best of its knowledge and ability and in accordance with the requirements of good professional practice.
- 4.2 HighTouch Executive Search BV is bound to observe strict confidentiality with regard to all information that comes to its knowledge in connection with the agreement with the client.

#### **5. OBLIGATIONS OF THE CLIENT**

- 5.1 Unless agreed otherwise in writing, the agreement of assignment is exclusive. During the term of the agreement, the client is obliged to have all activities relating to the recruitment and selection of candidates, as further described in the assignment confirmation, carried out by HighTouch Executive Search BV.
- 5.2 The client shall always provide HighTouch Executive Search BV in a timely manner with all data or information that is useful and necessary for the proper execution of the agreement and shall provide HighTouch Executive Search BV with all cooperation to ensure the best possible execution.
- 5.3 The client is not permitted to transfer all or part of the rights and obligations arising from the assignment agreement to third parties.
- 5.4 The client is obliged to observe strict confidentiality with regard to all information that comes to its knowledge under the agreement with HighTouch Executive Search BV.
- 5.5 Candidate data must be treated confidentially by the client and may not be passed on to third parties. All written information provided to the client concerning candidates (whether or not employed) must be returned to HighTouch Executive Search BV or destroyed at the end of the assignment.
- 5.6 The client agrees to provide HighTouch Executive Search BV with all copies of all correspondence with the candidates proposed by HighTouch Executive Search BV and to inform HighTouch Executive Search immediately (within 3 working days) when a candidate is accepted or rejected, or when his name is passed on to a third party.
- 5.7 After HighTouch Executive Search BV has introduced the client to candidates and/or when the client has had a (follow-up) interview with candidates, the client will inform HighTouch Executive Search BV of this within 5 working days. If the client does not do so, HighTouch Executive Search BV waives its further obligations to provide services; in that case the cancellation clause will be applied. HighTouch Executive Search BV retains the right to the agreed upon fee.
- 5.8 If someone connected to HighTouch Executive Search BV, its branches, affiliated or associated companies is recruited by the client based on a contract, permanently or on an independent basis, the general terms and conditions and recruitment agreement apply. The client shall owe HighTouch Executive Search BV its rightful fee.
- 5.9 If the client, or someone associated with the client, passes on the name of a candidate proposed by HighTouch Executive Search BV to another person and/or other organisation, and that person and/or organisation appoints this person in whatever form within 12 months after the introduction of the candidate to the client, the client will owe HighTouch Executive Search BV its rightful fee.
- 5.10 The client is responsible for including references regarding the candidate's integrity and medical history. It is also the client's responsibility to obtain a work permit for the candidate and to check that the permit complies with the applicable laws and regulations.
- 5.11 The client shall inform HighTouch Executive Search BV whether there are individuals and/or organisations outside the boundaries of the assignment. The client shall inform HighTouch Executive Search BV whether there are individuals and/or organisations that the client does not want HighTouch Executive Search BV to approach.
- 5.12 If a candidate introduced by HighTouch Executive Search BV enters into the client's employment, the client must send a copy of the (employment) contract to HighTouch Executive Search BV within 3 working days after it has been signed.

#### **6. FORCE MAJEURE**

- 6.1 HighTouch Executive Search BV is not obliged to fulfil any obligation arising from the contract of engagement if it is prevented from doing so as a result of force majeure, i.e. a circumstance that is not attributable to HighTouch Executive Search BV's fault, nor for the account of HighTouch Executive Search BV by virtue of law, legal act or generally accepted practice.
- 6.2 The client shall not be entitled to termination of the contract or to compensation for damages if HighTouch Executive Search BV is unable to carry out the assignment temporarily or permanently due to force majeure.
- 6.3 The parties have the right to dissolve the agreement if the force majeure situation persists for more than 60 days.

#### **7. FEE AND PAYMENT FOR EXECUTIVE SEARCH**

- 7.1 The fee payable by the client to HighTouch Executive Search BV will be determined in the agreement. The fee is either a percentage of the expected gross annual income of the candidate proposed by HighTouch Executive Search BV, or an agreed fixed fee. The determined fee is exclusive of VAT.
- 7.2 The gross income also includes: holiday allowance, 13<sup>th</sup> month and bonuses and/or other (gross) variable benefits that are target-related and can be counted as a real component of income. The fee of HighTouch Executive Search BV is always calculated on a full-time (100%) basis.
- 7.3 The minimum fee of HighTouch Executive Search BV is EURO 20,000 per assignment.
- 7.3 The costs to be paid by HighTouch Executive Search BV to third parties in connection with the assignment will be charged to the client separately.

- 7.4 The client shall pay an invoice from HighTouch Executive Search BV within eight (8) working days of the date thereof. Set-off against an (alleged) counterclaim, on any account whatsoever, is not permitted. In the event of non-compliance with the term of payment, any guarantee will lapse and HighTouch Executive Search BV is free to suspend its services until the client has fulfilled its payment obligation.
- 7.5 If the client is of the opinion that it is not obliged to pay an invoice, it shall notify HighTouch Executive Search BV of this in writing, stating reasons, within five (5) working days of the invoice date in question, failing which the client will be deemed to have agreed to the entire invoice. Complaints do not suspend the client's payment obligation.
- 7.6 If the client fails to pay within the period stated under point 7.4, he shall be in default without notice of default being required. From that moment on, the client shall owe interest of 3% per month on the outstanding amount, whereby part of a month shall be counted as a whole month.
- 7.7 Both the judicial and extrajudicial costs relating to the recovery and collection of invoices not paid on time shall be borne by the client. The compensation in respect of extrajudicial collection costs is set at a minimum of 15% of the total amount due, with a minimum of €350.
- 7.8 If the client fails to pay within the period referred to under 7.4, HighTouch Executive Search BV may, after informing the client thereof, suspend all its work for the client until the client has paid all that is due to HighTouch Executive Search BV.
- 7.9 If, during the process, the client terminates or fundamentally changes the assignment, the customer is legally and without prior notice of default liable to pay a fixed compensation of EUR 5,000. Fees already paid are definitive and will not be refunded.

#### **8. FEE, COSTS AND PAYMENT FOR CONSULTANCY SERVICES**

- 8.1 Unless agreed upon otherwise, the work will be charged on the basis of the time spent, multiplied by the contractor's current hourly rate. To the fee based on the hourly rate are added the travel costs, costs of third parties and the VAT owed. The costs of third parties include court fees, bailiff's fees, and costs of extracts.
- 8.2 Unless and insofar as the nature of the work dictates otherwise and unless further agreements have been made, invoices will be made after each period of one calendar month.
- 8.3 The payment term is eight (8) working days. Objections to the amount of the invoices do not suspend the payment obligation.
- 8.4 If an invoice is not paid within the payment period, the statutory interest shall be due on the invoice amount.
- 8.5 If payment is not made even after a reminder has been sent, extrajudicial collection costs amounting to 15% of the invoice amount with a minimum of €250 will be due.
- 8.6 If an invoice is not paid within the payment term, the contractor can, after informing the client, suspend its work for the client concerned.
- 8.7 The contractor is entitled to adjust the hourly rate at which it carries out the work with effect from 1 January of each year on the basis of the normal price increases. The contractor shall in no way be obliged to inform the employer in advance of any proposed rate change.

#### **9. COMPETITION AND COMPENSATION**

- 9.1 Without the consent of HighTouch Executive Search BV, the client is not permitted, for a period of one year after the completion of an assignment, to enter into an employment relationship, directly or through third parties, with a candidate proposed by HighTouch Executive Search BV and initially rejected by the client, or to work with such a candidate directly or indirectly.
- 9.2 If the client violates the prohibition referred to in paragraph 1, he shall immediately owe HighTouch Executive Search BV compensation equal to the fee as stipulated in the agreement, with a minimum of €20,000.

#### **10. LIMITATION OF LIABILITY**

- 10.1 HighTouch Executive Search BV can never, under any circumstances, be held liable for (indirect) damage and/or losses – including consequential damage – as a result of acts and/or omissions of candidates introduced by HighTouch Executive Search BV with whom the client is in an employment relationship of any nature whatsoever, directly and for himself and/or through third parties or for third parties, (partly) as a result of the execution of the assignment by HighTouch Executive Search BV.
- 10.2 Nor is HighTouch Executive Search BV liable if the candidates it recruits and selects for the client do not appear to meet the client's requirements or expectations. The client is responsible for its final choice of the person to be appointed. HighTouch Executive Search BV excludes any liability for the consequences of incorrect information provided by candidates.
- 10.3 Without prejudice to the provisions of Articles 10.1 and 10.2, HighTouch Executive Search BV's liability for damage is limited to the amount paid out under HighTouch Executive Search BV's company liability insurance and/or professional liability insurance, plus the amount of HighTouch Executive Search BV's deductible. The client shall at all times be entitled to inspect the insurance policy.
- 10.4 If, for whatever reason, no payment is made under HighTouch Executive Search BV's company liability insurance and/or professional liability insurance, HighTouch Executive Search BV's liability shall be limited to the amount of the work charged by HighTouch Executive Search BV to the client in connection with the relevant assignment.
- 10.5 The limitation of HighTouch Executive Search BV's liability is only valid if there is no question of damage as a direct result of intent or gross negligence on the part of HighTouch Executive Search BV, one of its subsidiaries or hired third parties.

## **11. GUARANTEE SCHEME**

11.1 If the employment of the appointed candidate is terminated within one year, the following discount rates will be applied in the recruitment and selection procedure to replace the appointed candidate:

- In the first two months after entry into service 80%
- In the third and fourth months after entry into service 60%
- In the fifth and sixth months after entry into service 40%
- In the seventh and eighth months after entry into service 30%
- In the ninth to twelfth months after entry into service 20%

The discount does not apply if the candidate becomes incapacitated for work as a result of illness, accident or death.

## **12. APPLICABLE LAW AND DISPUTES**

12.1 All offers and agreements with HighTouch Executive Search BV are governed by Dutch law.

12.2 Disputes between the client and HighTouch Executive Search BV will be settled by the court in Zwolle, the Netherlands, or by the competent court according to the law.

## **13. AMENDMENT, EXPLANATION AND LOCATION OF THE TERMS AND CONDITIONS**

13.1. These Terms and Conditions have been filed at the office of the Chamber of Commerce in Zwolle. In the event of an interpretation of the content and purport of these General Terms and Conditions, the Dutch text thereof shall always be decisive.

13.2. The most recently filed version, or the version as it was at the time the agreement was concluded, shall always apply.