

## **Terms and Conditions**

*Belonging to Smeets Recruitment*

*These Terms and Conditions comprise Clause 1 to 18.*

### **Clause 1 - Definitions**

In the terms and conditions, the following terms shall have the meanings given below:

1.1 Under "Smeets" in these conditions we understand: Smeets Recruitment.

1.2 Under "client" in these conditions we understand: the natural person or the legal person regarding the delivery of services by Smeets as well other performances, connected to Smeets directly or work in progress, to mention client or buyer.

1.3 Under "parties" in these conditions we understand: Smeets and client.

### **Clause 2 – Applicability**

2.1 All offers, services, agreements etc. by Smeets will only be operated under these terms and conditions.

2.2 Announcement of these conditions can be done by paper, quotations, confirmations, invoice, email or via the internet.

2.3 Other incidents deviating or adding to these conditions are valid only when agreed by written documents or by email, and are valid per incident only.

2.4 Applicability of client conditions will not be valid.

2.5 If these conditions are translated in other languages, the English text will be regarded as superior in case of differences between versions.

2.6 When (a part of) the contract and/or these terms is/are pronounced invalid, this will not have any influence on the rest of the contract. Instead of the nullification, the part of the contract which is closest to the agreement of both parties will be pronounced valid, in case they should have known the nullification.

2.7 In case Smeets does not desire the observance of all the conditions, this does not imply that these conditions are not valid or that Smeets would lose the right to persist on these conditions now or in the future.

In case of a no cure no pay business model there will be no other payments as only afterwards as agreed.

### **Clause 3 - Offers**

3.1 Each offer made by Smeets can be revoked, even if there is a term of notice for acceptance.

3.2 All offers, quotations, calculations etc. by Smeets, both incidental and individually or mentioned in price listings, orally, written, by telephone, by fax or done otherwise, remain completely free and thus can be revoked by Smeets, even just after acceptance by the client.

3.3 All supplied information and/or specifications are approximations and they are for Smeets only binding when confirmed explicitly and by exactly those words via writing or email.

3.4 In case an offer done by Smeets is not agreed with an assignment through either writing or email, within 2 weeks or in the time period mentioned and confirmed by Smeets, the offer is considered cancelled and not valid.

### **Clause 4 - Agreements**

4.1 An agreement arises when Smeets confirms an assignment done by the client, written and/or oral or confirmed by email, or the moment that Smeets begins working on the assignment.

4.2 Other further appointments, changes or adaptations will bind Smeets only when confirmed written or by email.

4.3 Confirmation by Smeets is considered to be complete and correct, unless otherwise immediately noted in a fax or email.

4.4 For misunderstanding, delay or not correctly given information or announcements via the internet or any other communication tool between Smeets and the client, or between Smeets and third parties, as far as this communication concerns the relation between Smeets and client, Smeets cannot be held responsible, except in the case of deliberate or severe negligence on Smeets' behalf.

4.5 In case Smeets makes an agreement with two or more (legal) persons, all of these (legal) persons are each considered responsible for the observance of undertakings resulting from the agreement with Smeets.

4.6 Smeets reserves all rights to involve third parties in regard to the execution of the agreement made with the client.

4.7 Agreements will not take place based on exclusiveness. The client has given the same assignment to other parties, and has informed Smeets about it, prior to the agreement.

4.8 Smeets reserves all rights to partially or completely disband the agreement without any legal interference, or to postpone the duties – as to determine by Smeets – in the following cases: in case of extension of payment, in case the client is pronounced bankrupt, in case of applicability of debts, measures of sanitations, in case the client deceases, in case the client is negligent in supplying documents which client ought to know are necessary for the execution of the agreement with Smeets or of which Smeets wants to be informed.

4.9 In case the agreement by Smeets is disbanded on account of one or more of the aforementioned reasons, client has to pay Smeets 20% of the value of the services so far, to compensate internal costs and loss of profit. Furthermore, all other cost made by Smeets when preparing for performing the services, as well as all other damage or loss suffered by Smeets have to be paid by the client. As far as Smeets (based on one or more reasons mentioned before) disbands an agreement between parties, Smeets is not responsible for any damage or loss suffered by the client.

## **Clause 5 - Prices**

5.1 The fee to be paid to Smeets is the fee mentioned in the agreement or deal.

5.2 The recruitment services/executive search can (when agreed) be supported by placing an advertisement in newspapers, in magazines, on the internet etc. etc. as well as other actions. To precise, the client has to send a written agreement for advertising.

5.3 All costs of adaptations and/or changes of the assignment or agreement will be accounted for and paid by the client.

5.4 All prices are excluding purchase tax (VAT) and other taxes by the government. The client will not be automatically invoiced for expenses, only when agreed.

5.5 In case a candidate presented by Smeets has not been accepted, but later, within one year after completing the assignment, is hired by the client directly or indirectly, then the client still has to pay the full amount of fee to Smeets, as mentioned in clause 5.1.

5.6 In case after completion of the assignment within one year, more than one by Smeets presented candidates are hired by the client, the client has to pay another 20% of the gross year salary earned by that candidate as a fee to Smeets, because that candidate is to be considered as delivered successfully by Smeets.

5.7 In case a candidate presented by Smeets is hired by the client directly or indirectly, but in a different position or job as agreed before with Smeets, the client has to pay 20% of the gross year salary earned by the candidate to Smeets, because the candidate then is to be considered as delivered by Smeets.

## **Clause 6 – Travel costs and expenses**

6.1 Travel costs and expenses for a candidate, in case made and declared by Smeets, will be accountable for the client when agreed between Smeets and the client.

## **Clause 7 - Payment**

7.1 For each agreement: payment online or in cash. In case an invoice is sent, the payment has to be fulfilled within fourteen (14) days from date of invoice. Other payment agreements are only valid when confirmed by letter or by email.

7.2 The client will not postpone payment or make combinations with other payments.

7.3 All payments will occur on bank account of Smeets or an assigned location.

7.4 Payment will only be done in the currency in which prices are mentioned by Smeets in written documents or email. Unless determined otherwise, this means payment always takes place in euros.

7.5 Payment by the client involves delay interest and other legal costs and will be calculated with previous accounts, even if the client informs Smeets that the payment concerns a later claim or another account.

7.6 The client is negligent when exceeding the time period for paying. In case Smeets is in doubt about the observation of the appointments, payments to be collected by Smeets are directly claimable, regardless of other time periods, agreed in an earlier stage of the assignment.

7.7 During the time period of omission, client has to pay an interest of 2% per month (each part of a month counted for a whole month) for delay. After each year, the interest to be paid will be cumulated with the annual interest.

7.8 Copies the invoice in the possession of Smeets are full evidence of the interest involved and the day when the interest starts to count.

7.9 In case of collections and claims by Smeets, the client is responsible for the sum total and delay interest, as well as the collection costs made by Smeets.

Collection costs by Smeets are at least, excl. VAT:

- 15% over the first € 3,000.00

- 10% over more € 6,000.00

- 8% over more until € 15,000.00

- 5% over more until € 60,000.00

- 3% over more than € 60,000.00

of the open sum total minimum of € 100.00 all excl. VAT.

7.10 In case the client makes an omission with any payment, Smeets is allowed to postpone service performance, while Smeets can disband the agreement without any legal interference. In case of the latter, the client will pay Smeets 20% of the value of the services so far, to compensate internal costs and loss of profit, as well as all other costs made by Smeets when preparing for performing the services, as well as all other damage or loss suffered by Smeets. As far as Smeets (based on one or more reasons mentioned before) disbands an agreement between parties, Smeets is not responsible for any damage or loss suffered by the client.

## **Clause 8 – Initial payment and security**

8.1 In case the agreement is a retained fee, Smeets is allowed to ask an upfront fee as an initial payment when starting the agreement, as well as prior to the fulfilment of the assignment or during the fulfilment of the assignment, to be agreed before processing the services.

In case the agreement is a success fee of 20% base on a no cure no pay model, there will be no retained payment before starting the recruitment process for the client.

In case the agreement is a success fee based on a no cure less pay model, there will be a rest payment of 3% to cover internal cost of Smeets so far when reasonable no candidate could be delivered.

8.2 Client has to pay the retained fee within the time period agreed. When exceeding the time period, the client makes an omission. Before confirmation is achieved, Smeets can postpone all activities, while Smeets can also disband the agreement. In case of the latter, the client has to pay Smeets 20% of the value of the services so far, to compensate internal costs and loss of profit, as well as all other costs made by Smeets when preparing for performing the services, as well as all other damage or loss suffered by Smeets. As far as Smeets (based on one or more reasons mentioned before) disbands an agreement between parties, Smeets is not responsible for any damage or loss suffered by the client.

## **Clause 9 – Job description**

9.1 The client will supply Smeets with accurate information on the position or vacancy, business hours, business period, tasks, activities, location(s), circumstances and environments concerning recruitment of candidate(s) by Smeets (hereafter: "job description").

9.2 Smeets relates the details, circumstances, capacities and availability to the recruitment of candidates. On this base Smeets determines to the best of knowledge, which candidate(s) can be searched for and presented. Within this context, Smeets has a free choice on the candidate(s) to be presented.

9.3 As far as the client changes and/or adapts the job description involved after the agreement with Smeets, clause 5.5 of these terms and conditions is valid.

#### **Clause 10 – Avoidance and prevention of discrimination**

10.1 On doing recruitment and executive search for suitable candidates, Smeets will follow general rules, and will make selections based only on functional requirements.

10.2 To avoid making unlawful distinctions, particularly on religion, attitude, political vision, gender, race or whatever reason, the client may not include any of the items mentioned here and it will not be on any influence of the selections by Smeets.

#### **Clause 11 - Proprietary**

11.1 Unless otherwise determined and agreed, Smeets maintains all the rights on information concerning the candidate presented. This information is the property of Smeets and may not be copied, shown to third parties or used otherwise without permission. The client will return this kind of information to Smeets on request.

#### **Clause 12 – Time fences**

12.1 Time fences used by Smeets are based on conditions at the time of agreement, as far as possible.

12.2 As a result of the type of business and the services to be delivered, the performance of Smeets depends on the performances of third parties, and Smeets can not guarantee that all assignments will be done in time and be completed.

12.3 Time fences and lead times used by Smeets are not fixed. Exceeding these time fences does not entitle the client to the right to disband the agreement, unless Smeets has not performed a period of time exceeding 45 days after omission. Smeets is never obliged to pay for damage or losses suffered.

12.4 As long as Smeets is performing an assignment in "stages" using time fences, Smeets is free to postpone the operation on a stage until the client has evaluated and agreed with the preceding stage.

12.5 The right of execution after an agreement, resulting from a deal with a client, cannot be transferred to others without written permission of Smeets.

12.6 Client will use the services presented by Smeets as soon as the contract or agreement is signed. In case the client does not perform following this agreement, Smeets can cancel the order, and client has to pay Smeets 20% of the value of the services so far, to compensate internal costs and loss of profit, as well as all other costs made by Smeets when preparing for performing the services, as well as all other damage or loss suffered by Smeets. As far as Smeets (based on one or more reasons mentioned before) disbands an agreement between parties, Smeets is not responsible for any damage or loss suffered by the client.

#### **Clause 13 - Complaints**

13.1 The client will check the services presented by Smeets for discrepancies with the agreement immediately after delivery.

13.2 Possible complaints, with an accurate specification of the facts, are to be reported in writing to Smeets within 3 weeks after the service is presented by Smeets. If these specifications are not met, the service is supposed to have been accepted and appreciated by the client. Legal affairs are to be effectuated with a maximum one year after delivery of the service.

13.3 Complaints concerning changes in the recruitment sector or executive search business can not be reported.

13.4 Smeets is only obliged to take note of complaints if the client has complied to all contract duties to Smeets to date. The client will not postpone the services against Smeets due to one or more complaints.

13.5 In case complaints by the client are justified, after consultation Smeets will carry out new similar recruitment services within an acceptable time fence, or at an acceptable reduction of price. A partial or complete disbanding of the deal is only possible in cooperation with Smeets.

13.6 In case complaints by the client are justified, and in accordance with the above, but it is not possible to repeat the service within an acceptable time fence, Smeets will refund the retained fee, if already paid by the client, as far as applicable and reasonable. The agreement between parties will then be disbanded (partially or completely, depending on the refunded order). Except in case of severe negligence or intent, Smeets is not responsible for any damage or loss that arises at the side of the client or other parties as a result of not being able to follow up the services.

#### **Clause 14 - Responsibility**

14.1 Smeets assumes that information given by candidates is correct. Smeets is not responsible for any company damage, business damage, personal damage or whatever what kind of damage or loss, occurred at the side of the client or other parties, caused by false, incorrect or incomplete information given by candidates.

14.2 Smeets is not responsible for any company damage, business damage, personal damage or whatever kind of damage or loss, caused by candidates delivered by Smeets and occurred at the location of clients or third parties.

14.3 Regardless of the aforementioned and barring the sum Smeets' liability insurance might pay out, Smeets' liability is confined to damage that could be anticipated as a possible result of the dealings that require payment, with a maximum sum of the net invoice worth of the performance/delivery that caused the concerned claim by the client and/or third parties.

14.4 Smeets is responsible for products/business/services obtained from third parties, as far as these other parties are responsible towards Smeets.

14.5 Smeets is not responsible in any case when damage has not been reported in writing to Smeets within 14 days after damage has been or could have been determined by the client.

14.6 Smeets can call for all legal and contractual tools available to Smeets' defence against clients if necessary, also for contractors and subcontractors for whom Smeets carries responsibility.

#### **Clause 15 – Safeguarding and protection**

15.1 The client will safeguard and protect Smeets for any responsibility against claims from third parties to Smeets regarding all services delivered by Smeets, as far as this responsibility is not accountable for by Smeets in these conditions.

15.2 The client will safeguard and protect Smeets against claims from third parties concerning business by Smeets, current or in the past, while operating and carrying out the services as far as this responsibility is not accountable for by Smeets in these conditions.

#### **Clause 16 – Force majeure**

16.1 Force majeure ("unaccountable defects") is to be understood as follows: each from the will of independent parties, possibly unforeseen circumstances, resulting in the fact that the agreement cannot or can no longer be carried out by Smeets.

16.2 Force majeure on the side of Smeets means: personnel strike, excessive sickness absence amongst the Smeets employees, transport problems, fire, government measures, failure in Smeets' company, problems at the suppliers' side, failure or obstructions making the operation of the service more expensive or taking more time, such as storm damage and/or other nature disasters, and non-performance or defects ("unaccountable defects") by Smeets' suppliers, causing Smeets not to be able to comply the service to the client in the usual manner.

16.3 In case a situation of force majeure occurs, Smeets can postpone the operation of the service or disband the agreement with the client; client can do so as well, but only when Smeets did not perform within a time fence of 30 days after omission. In case of disbanding by force majeure, Smeets is not obliged to pay for any damage or loss..

16.4 Smeets can ask for (a part of the) payment for the operation and delivery of services carried out without any defects prior to the situation of force majeure.

16.5 Smeets can appeal on force majeure when the circumstances caused by this force majeure occur after the service had to be delivered.

**Clause 17 – Applicative rights and differences**

17.1 All rights between parties are strictly under Dutch law. All differences and disputes arisen, occurred and existing between parties and belonging to the competence of a county court or a district will initially be judged by a summary judgement in the county court or district of the defendant. The language of the legal process is Dutch.

**Clause 18 - Designation**

18.1 The designation by any clause from these terms and conditions will not limit the contents or size of the rights and duties of the parties, and always remains free.

As signed on 10<sup>th</sup> January 2004, Amsterdam.

Last revised:

7<sup>th</sup> January 2008;

9<sup>th</sup> January 2012;

10<sup>th</sup> January 2015.