

# General Terms and Conditions



## A) General Provisions

1. Validity of the General Terms and Conditions  
The business relationships between avitea GmbH work and more ("avitea") and Customer (collectively also referred to as "Parties") shall be solely subject to these General Terms and Conditions. The validity of any provisions deviating from this or supplemental to this, particularly General Terms and Conditions of Customer, shall be excluded, even if avitea does not expressly refute such; the only exception is if avitea has expressly agreed to such in writing before conclusion of the contract. These General Terms and Conditions shall apply both to the present business transaction and for all future transactions without any need for a new reference to the validity of the General Terms and Conditions. avitea is a human resource service provider specializing in the field of labor leasing.
2. Quotations  
All quotations from avitea shall be without engagement or obligation.
3. Compensation and Terms of Payment
  - 3.1 The compensation to be paid by Customer for the provision of services by avitea shall be determined in accordance with the rates agreed with Customer for the specific order.
  - 3.2 The prices are specified not including the respective applicable sales tax.
  - 3.3 avitea reserves the right to institute fair increases in prices in the event that factors such as collective bargaining decisions result in increased costs, especially due to increases in salary, after conclusion of the contract. This information shall be provided to Customer on request.
  - 3.4 Invoices issued by avitea are payable 14 days net and in full, i.e. without deductions.
  - 3.5 All receivables of avitea shall be due immediately if Customer does not comply with the payment conditions for reasons for which Customer is responsible or if Customer ceases payment. Moreover, avitea shall be entitled to request advance payments for services that are still outstanding and to withdraw from the contract or to demand compensation for damages due to nonperformance after providing due notice and a reasonable grace period.
  - 3.6 Customer shall have the right of offset and retention only insofar as its claims are undisputed or have been determined to be legally enforceable.
4. Duties of Collaboration of the Customer
  - 4.1 Customer undertakes to furnish avitea in a timely manner with all information and documents required for rendering the service.
  - 4.2 Information, data and documents provided by Customer to avitea are examined by avitea only for obvious errors.
  - 4.3 Customer shall notify avitea immediately if it makes an offer to permanently hire on a person supplied by avitea.
5. Complaints
  - 5.1 avitea shall be notified immediately in writing of any and all complaints immediately after they are identified.
  - 5.2 Any and all claims of Customer shall become null and void 12 months after provision of the respective service.
6. Liability
  - 6.1 With reservation of the provision in Section 6.2, the statutory liability of avitea for compensation for damages shall be limited as follows:
    - (i) avitea shall be liable for an amount limited to the foreseeable damages typical at the time the contract was concluded for minor negligence resulting in infringement of essential obligations from the contractual relationship;
    - (ii) avitea shall not be liable for minor negligence resulting in infringement of non-essential obligations from the contractual relationship.
  - 6.2 The abovementioned limitations on liability shall not apply in cases in which liability is mandated by law and in case of assumption of a warranty or maliciously inflicted bodily harm.
  - 6.3 The legal representatives, agents and employees of avitea are exempt from personal liability for damages caused by slight negligence on their part.
  - 6.4 Information provided by avitea shall be understood as a warranty only if designated as such expressly and in writing.
  - 6.5 avitea shall be liable for loss of data only if such loss would not have been avoidable even if Customer exercised appropriate data backup measures and only insofar as the data can be reconstructed with reasonable effort and expense.
7. Liability with Insurance Payment  
For property and financial damage, avitea shall be liable for negligent infringement of obligations, other than in cases of gross negligence, up to an amount limited by the payment of its insurance company.

8. Force Majeure
  - 8.1 Unforeseeable and/or unavoidable events outside avitea's control, such as force majeure, traffic disturbances, strikes or lockouts, shall relieve avitea of the duty to render service in a timely manner for the duration of the event.
  - 8.2 If the event extends longer than 6 weeks or the service to be provided by avitea becomes impossible as a result of the event, both the ordering party and avitea shall be entitled to withdraw from the contract. In this case, there shall be no obligation to provide compensation for damages.
9. Confidentiality / Protection of Information
  - 9.1 Customer undertakes not to disclose any data shared with Customer by avitea, particularly prices, knowledge or experience ("INFORMATION") in writing, verbally or by other means, either generally or to third parties. The above requirement does not apply to INFORMATION that can be proven to be public knowledge, or which will become public knowledge at a later time. This requirement also does not apply to INFORMATION that the customer is known to be aware of or information that will be made known to the customer at a later date, without breaching this agreement.
  - 9.2 All rights related to the INFORMATION provided are reserved, including commercial protection and patent rights. The INFORMATION provided in this quote shall be used exclusively for the agreed purpose. No other use is permitted.
  - 9.3 The confidentiality also applies to data covered by data protection law. The parties shall use and process personally identifiable information of the other party solely for contractually agreed purposes. In particular, they shall protect personally identifiable information from unauthorized access. Furthermore, they shall not record, store nor make copies of this information, nor use or utilize it in any other form, nor forward it to third parties, without the consent of the respective Party. When processing data, avitea shall comply with the provisions of the current version of the German Federal Data Protection Act.
10. Termination
  - 10.1 Insofar as a contract is concluded for an indefinite period, both Parties shall have a right to ordinary termination with a notice period of 3 months, effective at the end of the month.
  - 10.2 Each Party is entitled to terminate the contract without notice for good cause. Good cause shall, in particular, be deemed to be present if one Party does not fulfill its payment obligations or if a motion is filed for insolvency proceedings regarding its assets or if such filing is imminent.
  - 10.3 In case of termination, avitea shall be entitled to cease performance of the contractual activities and withdraw employees employed at the customer's facility.
  - 10.4 Other rights to which avitea is entitled in the event of termination, particularly claims for compensation for damages, shall remain unaffected.

## B) Special Provisions for Labor Leasing

1. General
  - 1.1 avitea affirms that since June 2, 2005, it has been in possession of a license to engage in labor leasing most recently granted by the German Federal Agency for Labor in Düsseldorf. This license has been neither revoked nor withdrawn in the meantime. avitea undertakes to present the license certificate if requested by the customer.
  - 1.2 avitea shall notify the Customer immediately if the license is revoked or otherwise becomes void in accordance with Section 5 of the German Federal Labor Leasing Act (AÜG). In case that the license is non-renewed, withdrawn or nullified, avitea shall furthermore notify Customer of the anticipated end of the processing and statutory processing period.
  - 1.3 avitea warrants to Customer that only employees in an employment relationship with avitea shall be leased (no re-leasing).
  - 1.4 avitea declares that the employment contracts it has concluded with the employees assigned at the Customer's facility incorporate the collective bargaining agreements of the German Association of Private Employment Agencies (Bundesverband Zeitarbeit, BZA) and the Association of German Temporary Employment Agencies (Interessengemeinschaft Deutscher Zeitarbeitsunternehmen, iGZ) including the supplemental industry collective bargaining agreements in their entirety and in their respective currently valid versions.
  - 1.5 avitea is a member of the Interessenverband Deutscher Zeitarbeitsunternehmen e.V., an industry association of German temporary employment agencies.

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- 1.6 Customer warrants that it will not re-lease the leased employee, either openly (open temporary work) nor in concealed form (concealed temporary work, e.g. fake contracts for work and labor).
- 1.7 In light of minimum wage requirements arising from the German Posting of Workers Act, the Customer shall notify avitea immediately of any change of the activity of the leased employees. The Parties agree that the agreed hourly rate is to be adjusted if the exercised activity becomes subject to minimum wage requirements or if there is an increase in the minimum wage.
- 1.8 Insofar as avitea leases employees as defined by Section 1b Para. 1 of the AÜG (Prohibition on Employee Leasing in the Main Construction Trade), Customer affirms that the respective company does not primarily carry out trades as defined by Section 1 of the German Ordinance on Construction Management. The Customer is obligated to notify avitea immediately of any change.
2. Principle of Equal Status and Maximum Duration of Temporary Work
  - 2.1 For each leased employee specified by name, Customer shall immediately check whether this person was employed by Customer or an affiliated company in the six-month period before the start of temporary work as defined by Section 8 Para. 3 AÜG ("revolving door clause"). If the requirements of Section 8 Para. 3 AÜG are in place, Customer is obligated to notify avitea of this immediately. In these cases, Customer shall provide in written form all relevant information with regard to the most important aspects of the working conditions of comparable permanent employees, including their compensation. Section 12, Para. 1 Sentence 4 AÜG shall apply in conjunction with Section 8 AÜG. Based on this written documentation, the respective hourly billing rate is adapted accordingly.
  - 2.2 For each temporary employee specified by name, Customer shall check immediately whether this employee has been leased to Customer by another agency within the last four months before the beginning of the leasing arrangement. If such a case is present, Customer shall notify avitea of this immediately. Previous assignments shall be taken into account when agreeing on the assignment duration in the employee leasing contract. If the determined leasing period results in the obligation for equal status in accordance with Section 8 Para. 4 AÜG, Customer shall be obligated to notify the professional employer organization immediately. In these cases, Customer shall provide in written form all relevant information with regard to the most important aspects of the working conditions of comparable permanent employees, including their compensation. Section 12, Para. 1 Sentence 4 AÜG shall apply in conjunction with Section 8 AÜG. Based on this written documentation, the respective hourly billing rate shall be adapted accordingly.
  - 2.3 If the employee leasing contract does not specify a certain date for the end of the temporary work, the contract shall be deemed to be concluded for an indefinite period. To ensure compliance with the maximum duration of temporary work in accordance with Section 1 Para. 1 AÜG, Customer shall check for each named temporary employee whether this employee has been leased to Customer by another agency within the last 4 months. If such a case is present, Customer shall notify avitea of this immediately. Furthermore, Customer shall notify avitea immediately and completely of all regulations valid within Customer's company that permit a maximum duration of temporary work longer or shorter than 18 months and are relevant for an operation in which a leased employee can be used based on the leasing agreement. Both sides shall monitor compliance with the respective maximum duration of temporary work. If any party has good reason to doubt that the maximum duration of temporary work is being complied with, it is entitled to terminate the assignment of the respective leased employee immediately. In case the maximum duration of temporary work is exceeded, the Parties shall mutually waive the assertion of claims for damages resulting from exceeding the duration.
3. Deployment of Temporary Employees
  - 3.1 The conclusion of the employee leasing agreement shall not result in any contractual relationships between the temporary employee and Customer. avitea shall have the authority to issue instructions on the basis of the employment contract. However, Customer shall have the right and the obligation to issue work instructions, check the performance of the work and monitor compliance with accident prevention and other safety regulations. Customer undertakes to assign the temporary employee only as provided by valid statutes and laws on work.
  - 3.2 The consent of avitea must be obtained for assignment in any facility of the company other than that specified in the employee leasing agreement, switching out employees within the facility, or assigning activities other than those specified in the respective employee leasing agreement. Customer is obligated to provide timely advance notification to avitea if the temporary employee is to be assigned internationally.
  - 3.3 Customer warrants that the provisions of the German Federal Working Time Act are implemented for the corresponding assignment at the customer's facility. Assigning the temporary employee over 10 hours per workday shall require the permission of avitea. Work may exceed 10 hours on a workday if permitted by a collective bargaining agreement or company agreement based on a collective bargaining agreement of Customer in accordance with Section 7 of the German Working Time Act or a permit issued by a government agency or if an exceptional case exists as defined by Section 14 of the German Working Time Act.
  - 3.4 In the case of Sunday or holiday work, Customer shall provide avitea with proof establishing the necessity of requiring Sunday or holiday work.
  - 3.5 Customer shall notify avitea whether and to what extent it grants the temporary employees access to its shared facilities. Customer shall notify avitea immediately of any changes in this regard.
  - 3.6 Assigning the temporary employee in a position of trust, particularly being assigned handling money and/or valuables, shall require a separate advance agreement with avitea. Without such an arrangement, the professional employer organization shall assume no liability if temporary employees are entrusted with valuables.
  - 3.7 If the employees of Customer's operations go on strike, Customer shall not employ any temporary employees in the operation contrary to Section 11 Para. 5 AÜG. Furthermore, the prohibition on assignment shall also apply for employees assigned before the beginning of the labor dispute for strikes initiated by member unions of the German Trade Union Confederation (DGB). Accordingly, within the initiated strike, the temporary employee shall not be assigned to work in facilities or parts of facilities that are the subject of a strike that is compliant with the law. Customer shall ensure that no temporary employees are assigned within the area of application of the prohibition on assignment. To this extent, avitea shall have no obligation to furnish temporary employees. The parties of the labor dispute can deviate from the above provisions on a case-by-case basis and agree on the use of temporary employees (e.g. in emergency service agreements). To this extent, Section 11 Para. 5 Sentence 2 AÜG shall apply. Customer shall notify avitea immediately of any strike that is planned or underway.
4. Personnel Selection / Conditions of Leasing
  - 4.1 Personnel are selected by avitea based on the requirement profiles specified in the requisition. The requisition of the customer can be placed by phone or in text form.
  - 4.2 avitea undertakes to select suitable personnel for the planned work. When qualifications are required for which a recognized training vocation exists, avitea undertakes to select and lease to the customer only those employees who have successfully completed this vocational training. Any other arrangement must be made in writing.
  - 4.3 avitea shall ensure that the assigned employees, insofar as they are not citizens of an EEA country or Switzerland, are entitled to do the work based on the provisions of immigration law. avitea shall provide corresponding evidence upon request by the customer.
  - 4.4 Switching out temporary employees during an ongoing assignment shall be permitted by mutual agreement only.
  - 4.5 If the temporary employee does not start work at the customer's facility or does not continue it, avitea shall be entitled to provide a replacement employee. In case of absence of a temporary employee caused by vacation or illness, avitea can provide a replacement employee by mutual agreement. When selecting a replacement employee, the same requirements shall apply as for selecting the absent temporary employee.
  - 4.6 Customer shall be entitled to have the temporary employee replaced if, in an exceptional case, the employee is not suitable for the intended task. Corresponding documentation of the lack of suitability must be provided. If Customer determines the lack of suitability within the first four hours of a temporary assignment, Customer shall not be billed for up to four labor hours and avitea shall endeavor to switch out the temporary employee for a suitable employee. Customer shall also be entitled to have the employee replaced if cause exists that would entitle it to extraordinary termination if Customer itself were the employer (Section of 626 of the German Code of Civil Code) If Customer believes that it is entitled to have the employee replaced under the provisions of this paragraph and intends to terminate the assignment of the respective employee, it shall notify avitea of this immediately, providing reasons for the change of employees.

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- 4.7 In all other respects, avitea shall take measures to provide a replacement if a temporary employee does not show up or refuses to do the work. Until a replacement is found, Customer shall release avitea from the duty to provide temporary employees and avitea shall release Customer from the duty to provide compensation.
5. Duty of Temporary Employees to Maintain Confidentiality
- 5.1 avitea undertakes to ensure compliance with data protection standards. avitea does this by prohibiting the temporary employee from processing personally identifiable data in a legally compliant manner, disclosing it, making it accessible or otherwise using it for purposes other than carrying out the work. Employee is, in particular, obligated to maintain absolute secrecy with regard to data about participants in the work to be carried out and to protect all documents from access by third parties.
- 5.2 Furthermore, employees are obligated to keep all matters and processes confidential that are brought to their attention in the course of contract-related activities, especially those related to business and company secrets, insofar as these must be kept confidential by their very nature.
- 5.3 avitea undertakes to conclude corresponding written agreements with the temporary employees.
- 5.4 This provision shall also apply after the end of the duration contract, assuming these processes have not become common knowledge in the meantime.
- 5.5 If the temporary employee is tasked with processing personal data at the Customer's facilities, it is the Customer's obligation to obligate the temporary employee to maintain data secrecy when he begins his work and to ensure that all provisions required by data protection law are observed.
6. Billing
- 6.1 The billing shall take place on a monthly basis based on the effective work hours rendered, where at least the company-specific work time agreed in the respective labor leasing agreements shall be billed.
- 6.2 If the temporary employee's work time extends beyond the regular working time, avitea shall bill additional amounts for overtime in accordance with the labor leasing agreement. The same shall apply for invoicing holiday work, shift work, nighttime work and other surcharges and bonuses provided for by collective bargaining.
- 6.3 The labor hours for each leased employee must be documented by time sheets detailing the work carried out. These must be filled out for each temporary employee on a weekly basis and signed by an officer of Customer after a review of the facts. Customer shall not incur any costs for the temporary employee for participating in employee meetings, company parties or other company-specific events that are not working time.
- 6.4 Customer is obligated to provide the opportunity for the time sheets to be filled out in a timely manner.
- 6.5 The time sheets must list the beginning and end of the daily working time with breaks. Overtime hours must be listed separately.
- 6.6 In detail, the Parties shall be entitled to reach special arrangements regarding the modalities for determining hours worked. The temporary employees can use the tools in place at the customer's facility (tie sheet/electronic time clock) if these are present. Customer shall grant avitea the ability to install avitea's own time clock terminals at its facilities.
- 6.7 The temporary employee is not entitled to accept payments from Customer. Payments to the temporary employee shall not be counted towards fulfillment of the contract.
7. Hiring on of Employees / Placement / Fees
- 7.1 The following configurations shall be deemed placement within the first 12 months after the beginning of the first temporary employment at the customer's facility:
- An employment relationship comes into being between the temporary employee and Customer or a company affiliated with Customer as defined by Section 18 of the German Stock Corporation Act.
  - Customer leases the temporary employee after the end of his or her employment at avitea through another professional employment organization.
- 7.2 In both cases, avitea shall be entitled to invoice the following placement fee:
- Within one month of the beginning of the first time the employee was leased, the commission shall amount to 16 %. The basis for calculating the commission is the taxable gross annual salary agreed on between the customer and the temporary employee, but at minimum the gross annual salary plus value-added tax agreed on between avitea and the temporary employee. The customer shall submit to avitea a copy of the signed employment agreement.
- For each full month that the temporary employee is employed on the basis of temporary employment, the commission fee shall be reduced by 1/12. After the 12 full months of temporary employment has expired, the commission is reduced to zero.
- 7.3 Customer shall notify avitea immediately of any hiring-on or change of temporary agency.
- 7.4 The customer reserves the right to provide evidence that the conclusion of the employment relationship or the leasing through a different employment agency did not occur based on the preceding temporary employment through avitea.
8. Liability / Assignment
- 8.1 avitea shall be liable for properly selecting a temporary employee who is suitable and qualified for the specific task as well as providing him or her for the agreed duration of the lease. The liability for faulty selection shall be limited to damages resulting from intentional violations of the duty of selection or violations caused by gross negligence.
- 8.2 With regard to the fact that the temporary employee carries out his or duties under the direction and supervision of Customer, avitea shall not be liable for damages caused by the temporary employee while carrying out his or her duties or as part thereof. A leased temporary employee is not a contractual agent, vicarious agent or authorized agent of avitea. Customer hereby indemnifies and releases avitea from any and all claims asserted by third parties in conjunction with carrying out and performing the task given to the temporary employee.
- 8.3 In all other respects, the liability of avitea and its statutory representatives and agents shall be limited to intentional damages and gross negligence. This limitation of liability does not apply to damages resulting from injury to life, limb or health. This pertains to both statutory and contractual prerequisites for liability, specifically cases of delay, impossibility, incapacity, breach of contractual duties or impermissible action. Specifically, avitea shall not be liable for work results of the temporary employees or damages caused by temporary employees in carrying out their work or associated therewith, nor for damages incurred by Customer due to tardiness or absence of the temporary employees. In case of malice or gross negligence of ordinary agents, avitea shall furthermore be liable only for foreseeable damages.
- 8.4 avitea expressly disclaims any and all further liability – regardless of legal basis.
- 8.5 Customer hereby indemnifies avitea from any and all claims of avitea arising from any infringement by Customer of the assurances and obligations arising from this contract (including the duties of inspection and notification).
- 8.6 Due to statutory provisions or the provisions of collective bargaining agreements, in certain cases, avitea shall be obligated to grant the temporary employee equal status in full or in part to a comparable employee of Customer with regard to essential working conditions of Customer. In these cases, avitea shall rely on information from Customer for adequately providing these working conditions or compensation. If Customer provides incomplete or incorrect information in this respect or provides incomplete, incorrect or untimely notification of changes and this results in financial harm to temporary employees of avitea, avitea shall correct this by means of corresponding subsequent billing and subsequent payments to the affected temporary employees. avitea may, at its discretion, decide whether to invoke cutoff periods; to this extent, it is not subject to the duty to minimize damages. The sum of the resulting gross amounts shall be deemed agreed by Parties as the damages to be paid by Customer to avitea. In addition, Customer shall be liable to avitea for claims asserted by social insurance agencies and fiscal authorities due to the actions incurring liability listed above, independent of payment of gross wages.
- 8.7 The same shall apply accordingly if Customer assigns the temporary employee tasks that construe grounds for an industry-specific minimum wage in accordance with Section 8, Para. 3 of the German Law on Posting Employees despite the fact that this is expressly prohibited in the employee leasing agreement.

- 8.8 If the information provided by Customer in the labor leasing agreement with regard to the relevant statutory provision or the collective bargaining agreement declared to have general binding status as defined by Section 8 Para. 3 of the German Posted Workers Act shall prove inaccurate based on the activity actually assigned to the temporary employee, the above provisions shall apply accordingly.
- 8.9 Customer shall not be entitled to assign receivables of avitea to a third party.

## C) Final Provisions

18. Written form  
Any amendments and supplements to these Terms and Conditions and any other contract concluded between Parties have to be made in writing. This shall also apply to any amendment or cancellation of the provision requiring the written form.
19. Severability Clause  
Should any of the provisions of these Terms and Conditions or any other contract concluded between Parties be or become invalid, this shall not affect the validity of the remaining parts of the Terms and Conditions or affected contract. Parties undertake to replace the invalid provision with a valid provision coming as close as possible to the intended economic effect of the invalid provision. The same shall apply for filling any gaps in the contract.
20. Place of Jurisdiction / Applicable Law
- 20.1 The place of jurisdiction for any and all disputes arising from or in conjunction with the contractual relationship is Lippstadt. However, avitea shall be entitled to file suit against Customer in any other jurisdiction.
- 20.2 The laws of the Federal Republic of Germany shall apply.

### **Information regarding feminine / masculine / gender-neutral forms in documents**

For reasons of more fluent readability, it is normally the masculine form that is used on these pages and in our publications. However, we wish to expressly point out here that the masculine, feminine and also the gender-neutral forms are meant for the appropriate articles and for all our publications.

Status as of: December 2018