

## TERMS AND CONDITIONS

### SDH EXECUTIVE SEARCH B.V. & SDH INTERIM EXECUTIVES B.V.

*Version August 2024*

#### **Artikel 1. Definitions**

In these General Terms and Conditions and the Agreements to which they are declared applicable, the terms below have the following meanings (where the use of the singular includes the plural of the term):

- 1.1 Offer: any offer made by or on behalf of SDH in any form, including in any case, but not limited to, offers, quotations and proposals.
- 1.2 Appointment: the agreement offered by Client to the selected Candidate, which is accepted as such by such Candidate.
- 1.3 General Terms and Conditions: this set of general terms and conditions.
- 1.4 Gross annual salary: salary on full-time basis and 8% vacation allowance, commissions (if any), guarantee commissions, committed profit distributions, bonuses and sign-on bonus. In the case of target income, the target income is considered the gross annual salary.
- 1.5 Participant: a natural person who participates in Leadership Coaching on their own initiative, or on the initiative of their employer or principal.
- 1.6 Exclusive Assignment: an Agreement in which the Client has engaged SDH as the sole party for the purposes of the (Interim) Search.
- 1.7 File and Network Search: the search of SDH's files and network for the purpose of identifying and selecting suitable Candidates for the purposes of the Assignment.
- 1.8 Fee: the amount payable by the Client to SDH under the Agreement concluded between the Parties.
- 1.9 Interim Search: search initiated by SDH for suitable Candidates for interim positions with Client.
- 1.10 Candidate: a natural person approached or nominated by SDH on the basis of the Agreement for the purpose of filling a position within the organization of the Client.
- 1.11 Leadership Coaching: the course, workshop, training or coaching provided by SDH. For example, consisting of humanity centered leadership, mentoring, executive coaching, assessments and sustainable onboarding.
- 1.12 Longlist: the selection of potential Candidates compiled as a result of a market analysis based on the criteria set by the Client.
- 1.13 Off limits: the condition in which SDH is not free to contact, approach or hire employees of any specific business unit of Client.
- 1.14 Assignment: the work described in the Agreement to be performed by SDH on behalf of the Client.
- 1.15 Principal: any natural or legal person who has entered into an Agreement with SDH.
- 1.16 Agreement: the agreement concluded between SDH and the Client regarding the provision of services, to which these General Terms and Conditions apply.
- 1.17 Parties: SDH and Client jointly.

- 1.18 SDH: the users of these General Terms and Conditions, SDH Executive Search B.V. and SDH Interim Executives B.V., established in (6523 MB) Nijmegen, at Pajensweg 1, registered with the Chamber of Commerce under number 56938675 and 92145426 respectively, as well as its legal successors under general or special title.
- 1.19 Search: search initiated by SDH for suitable Candidates for permanent employment with Client.
- 1.20 Second Placement Fee: the amount payable by Client to SDH for each additional Candidate resulting from an Agreement entered into with SDH who receives an Appointment.

## **Artikel 2. Applicability**

- 2.1 These General Terms and Conditions are applicable to all Offers, Assignments and Agreements (to be concluded), or to all invitations to do so, between SDH and the Client, as well as to all (legal) relationships between the Parties arising therefrom or related thereto, both of a preparatory and executory nature.
- 2.2 If the Agreement or order confirmation contains contradictions with these General Terms and Conditions, the relevant provision of the Agreement, the order confirmation and, finally, the provision of these General Terms and Conditions shall prevail. The other (non-contradictory) provisions shall remain in full force between the parties. If the English translation of these General Terms and Conditions, or any other translation, contains any conflict with the Dutch General Terms and Conditions, the Dutch General Terms and Conditions shall prevail at all times.
- 2.3 The applicability of any general terms and conditions of the Client is excluded, unless the Parties expressly agree otherwise. In any case, these General Terms and Conditions shall always prevail.
- 2.4 If one or more provisions of the Agreement or these General Terms and Conditions are null or annulled, the other provisions will remain in full force. In that case the parties will consult to replace the null or annulled provisions with provisions that are as close as possible to the purpose and meaning of the null or annulled provisions.
- 2.5 SDH reserves the right to modify these Terms and Conditions. The amendments will become effective at the time announced. SDH will provide the amended Terms and Conditions to the Client in a timely manner. If no effective date is specified for the amendments, the amendments will take effect as soon as the Client is notified thereof.

## **Artikel 3. Offers and quotations**

- 3.1 Any Offer made by SDH is without obligation and may be revoked by SDH at any time, unless expressly stated otherwise.
- 3.2 Any Offer of SDH is subject to printing and/or writing errors. Any errors and (general) information addressed to the Client in an Offer is not binding on SDH and cannot lead to SDH's liability.
- 3.3 If a non-binding Offer is accepted by the Client, SDH has the right to revoke the Offer within two business days of receiving the acceptance.
- 3.4 If an acceptance of an Offer deviates (whether or not on minor points), SDH is not bound by it.
- 3.5 If SDH has performed any performance at the request of the Client before full agreement has been reached on the rates or payment terms for that performance, the Client shall pay SDH for it, subject to Article 11, in accordance with the rates then in force at SDH.
- 3.6 Offers and quotations are exclusive of VAT and other government levies and may be subject to change, for example due to (unforeseen) circumstances or change in laws and regulations. SDH will inform the Client as soon as possible.

#### **Artikel 4. Formation of Agreement**

- 4.1 The Agreement is concluded by written acceptance by means of an engagement letter from SDH. In the absence of an order confirmation by SDH, the Agreement is also deemed to have been concluded by the actual commencement of the work for the Agreement.
- 4.2 Additional arrangements and/or amendments to the Agreement shall be binding only if agreed in writing between the Parties or if the Agreement is performed by SDH in accordance with the additions and/or amendments.

#### **Artikel 5. Client Obligations**

- 5.1 The Client is obliged to provide the data and information requested by SDH, or data which the Client could reasonably assume to be relevant for the performance of the Assignment by SDH, in a timely manner.
- 5.2 The Client guarantees the accuracy and completeness of the relevant information provided to SDH under the Agreement.
- 5.3 Prior to and during the performance of the Assignment, Client shall be available and accessible to SDH at all times.
- 5.4 In the event of a reorganization, merger or other unforeseen circumstances affecting the profile or filling of the (Interim) Search or Leadership Coaching, the Client shall inform SDH in writing as soon as possible.

#### **Artikel 6. Execution of the Agreement**

- 6.1 SDH has only an obligation of effort and explicitly no obligation of result.
- 6.2 Client is responsible for the final selection of a Candidate.
- 6.3 SDH in no way guarantees the suitability and competence of the Candidate. Client is at all times obliged to check the accuracy of the information provided by the Candidate, including in any case diplomas, qualifications and if possible references.
- 6.4 SDH shall not be liable if the Candidate is found not to meet the requirements or expectations of the Client or for any damage caused by the Candidate.

#### **Artikel 7. No legal relationship Candidate and SDH**

- 7.1 A separate legal relationship arises between Client and Candidate, pursuant to which Client owes wages - in whatever form - directly to Candidate. SDH can in no way be regarded as an employer or client of Candidate, nor is SDH in any way indebted to Candidate.

#### **Artikel 8. (Interim) Search**

- 8.1 Unless expressly agreed otherwise in writing, SDH will introduce one or more Candidates to the Client per Agreement, based on the requirements described by the Client on the one hand and the information and data provided by the Candidate on the other hand.

- 8.2 After the introduction, as described in the preceding paragraph, the Client is free to proceed with the Appointment of the Candidate.
- 8.3 If the job profile for the purposes of the (Interim) Search changes at the time of execution of the Agreement, the Client must inform SDH as soon as possible in writing. It is in that case at SDH's discretion whether the already made Agreement can be continued or whether there is a new Agreement.
- 8.4 Client will forward Candidates from other channels to SDH in case of an Exclusive assignment. SDH will include these Candidates in the (Interim) Search.
- 8.5 Client is responsible for the final selection of the Candidate. Client undertakes to check the data provided by the Candidate for accuracy.
- 8.6 Client undertakes to notify SDH in writing within 10 calendar days of the Candidate's appointment. Client shall include all data necessary to determine the Fee.
- 8.7 For 1 year after the formation of an agreement between Client and Candidate, in any form, the specific business unit for whose benefit the Assignment was performed Off limits.

#### **Artikel 9. Honorarium Search**

- 9.1 Payment of the Fee by Client shall be made in three payment instalments, unless otherwise agreed upon.
- 9.2 The first payment is due at the time the Agreement is established between the parties, for the purposes of the File and network search. The second payment is due upon presentation of the Longlist to the Client. The third payment is due upon Appointment of the Candidate.
- 9.3 Unless otherwise agreed, the Fee is 30% of the Gross Annual Salary agreed upon between Client and Candidate on a full-time basis, plus VAT.
- 9.4 To calculate the Fee due, Client is required to submit the final agreement with Candidate to SDH.
- 9.5 If the Client appoints a second Candidate from an Assignment, an additional Second Placement Fee of 50% of the Fee with respect to the first Candidate will apply. The foregoing does not apply if the Agreement originally related to the Search for more than one Candidate. If that is the case, the Fee as agreed in the Agreement or these General Terms and Conditions will apply to all Candidates.
- 9.6 A Second Placement Fee is also due if the Client proceeds to Appoint a Candidate within two years after the introduction thereof by SDH, regardless of the position for which the Candidate is ultimately Appointed. If a Candidate is still Appointed more than two years after the end of the introduction with the Client, no Fee is due from the Client.

#### **Artikel 10. Fee Interim Search**

- 10.1** If Client appoints a Candidate as a result of the Interim Search, Client is required to enter into an agreement (in whatever form) with such Candidate for a period of at least three months.
- 10.2** During the period that the Candidate is working for the Client, the Client owes SDH an Honorarium of 20% of the fee that the Candidate invoices to the Client. Invoicing by SDH will take place each month.
- 10.3** The Client is required to provide SDH with all relevant documents in a timely manner so that the Fee to be paid can be determined.
- 10.4** If a Candidate is appointed on an interim basis, but subsequently becomes a permanent employee of the Client, unless otherwise agreed in writing, the Client will owe SDH an Honorarium of 30% of the Gross Annual Salary that the Candidate earns in permanent employment with the Client. Half of the Fee already paid (up to a maximum of 75% of the Fee due) as mentioned in paragraph 2 of this article will be deducted once from the Fee due.
- 10.5** If Client considers the Candidate's work no longer necessary, Client is required to terminate the agreement with the Candidate on one month's notice, with the notice period commencing on the first day of the next month after the day on which the termination took place.
- 10.6** If the Client terminates the Candidate's work in accordance with the preceding paragraph, the Client is required to notify SDH in writing as soon as possible.

#### **Artikel 11. Payment and billing**

- 11.1** All prices charged by SDH are in euros and are exclusive of tax or other governmental levies.
- 11.2** If a price has already been agreed upon at the conclusion of the Agreement and subsequently one or more cost factors undergo an increase, SDH is permitted to increase the agreed price accordingly and charge it to the Client.
- 11.3** SDH reserves the right to charge the Client for additional costs that were not foreseen at the time the Agreement was established.
- 11.4** Unless otherwise agreed, the Client is obliged to pay the agreed price within 30 days from the date of invoice to SDH's bank account as listed on the invoice. The time of payment is the date the funds are credited to the specified bank account.
- 11.5** International travel and accommodation expenses for both SDH and Candidates and Participants in connection with the performance of the Agreement will be charged separately, subject to Client approval.
- 11.6** All payment obligations of Client are indivisible and must be paid without suspension and/or set-off.
- 11.7** If Client fails to pay (on time), then Client is legally in default. All claims of SDH against the Client will become immediately due and payable. SDH is then entitled to suspend its work for the performance of the Agreement or to terminate the Agreement immediately. SDH cannot be held liable to the Client in the event of such suspension and/or termination.

- 11.8** In case of failure to pay (on time), the Client will then owe the statutory commercial interest or an interest of 1.5% on the invoice amount on a monthly basis, whichever is higher at the time of default (whereby a part of a month will be considered a whole month). Without prejudice to SDH's right to claim actual damages, in case of default, the Client is further required to reimburse SDH for the extrajudicial costs associated with collection. The extrajudicial costs are set at least 15% of the amounts owed in principal, with a minimum of € 750.00.
- 11.9** Each payment by the Client shall first serve to pay the interest due and then to pay the costs associated with collecting the claim. Thereafter, each payment shall serve to settle the claim in principal.
- 11.10** SDH is at all times entitled to demand from the Client advance payment, immediate payment or security for the fulfilment of all the Client's payment obligations to SDH. This request must be complied with immediately by the Client. Failure to do so will cause the Client to be in default immediately without notice of default being required.
- 11.11** If the Client does not pay the advance payment, immediate payment or security referred to in the preceding paragraph within the period requested by SDH, SDH is entitled to suspend its work in performance of the Agreement or to terminate the Agreement immediately. In connection with such suspension and/or termination SDH shall not be liable to the Client for damages. All claims of SDH shall become immediately due and payable as a result of such termination.
- 11.12** All actual costs for collection of the amount owed by the Client, both judicial and extrajudicial, must be reimbursed by the Client to SDH. These include the costs of lawyers and process agents as well as the fees due to arbitrators or binding advisors. But also collection costs, seizure costs, bailiff costs. The provisions of this Article shall remain applicable even if the aforesaid costs exceed any order to pay the costs of the proceedings pursuant to Article 237 et seq. of the Code of Civil Procedure.
- 11.13** Client should check the invoices for accuracy. If Client has not filed a written objection to the invoice with substantiation of its objection within ten calendar days of the invoice date, Client shall be deemed to have agreed to the content and amount of the invoice. The burden of proof regarding timely submission of the objection rests with Client.

## **Artikel 12. Force majeure**

- 12.1** Force Majeure means all causes which prevent the (further) performance of SDH's or Client's obligations under the Agreement, whether foreseen or unforeseen, and which cannot be attributed to SDH. Such causes include, but are not limited to, illness and/or strikes of SDH's and/or Client's and/or third parties' personnel involved in the performance of the Agreement, pandemics, disease outbreaks, governmental measures or regulations, war or danger of war, terrorism or threat of terrorism, sanctions legislation preventing performance, riots, acts of war, fire, floods, earthquakes, computer, telephone and internet failures and failure of third parties to perform their obligations.

- 12.2 The parties will inform each other in writing as soon as possible if they face or expect to face a force majeure condition.
- 12.3 In the event of force majeure, regardless of when it occurs, SDH is authorized to suspend and/or (immediately) terminate the performance of the Agreement. SDH cannot be held liable in any way for compensation of the damage suffered as a result.
- 12.4 If as a result of the force majeure the suspension lasts longer than six months, then Client is entitled to choose SDH to still proceed with the performance of the Agreement or to dissolve the Agreement. If the force majeure only partially prevents performance of the Agreement, the Client is only authorized to dissolve the Agreement for that part. In the event of (partial) dissolution, no undoing obligations or obligations to pay damages arise for SDH.
- 12.5 If SDH suspends the performance of its obligations, it retains its claims that follow from the law and/or the Agreement.
- 12.6 If SDH dissolves the Agreement due to force majeure, SDH is entitled to invoice to the extent that at the time of the occurrence of the force majeure the Agreement had already been performed. This includes in any case all costs already incurred in the performance of the Agreement at that time. The Client is obliged to pay this invoice as if it were a separate Agreement.

### **Artikel 13. Notice and Termination of (Interim) Search**

- 13.1 The Agreement between SDH and Client shall terminate (subject to interim termination) if Client appoints a Candidate.
- 13.2 SDH is at all times entitled to terminate the Agreement with the Client without cause by immediate termination. If SDH cancels or otherwise terminates the Agreement, SDH is entitled to charge the Client for the hours spent up to that point.
- 13.3 Client is authorized to terminate the Agreement early if the vacancy for which the (Interim) Search is targeted is no longer available.
- 13.4 If the Client terminates the Agreement, or otherwise terminates the Agreement, the Client shall owe compensation based on the hours spent by SDH.
- 13.5 If the Client terminates the Agreement, but subsequently proceeds to hire a Candidate proposed by SDH - regardless of the position - the Client shall be required to notify SDH and pay the entire Fee to SDH.
- 13.6 If the Client wishes to resume the Agreement after the cancellation or termination of the Agreement, it shall be deemed a new Agreement.
- 13.7 If the Agreement is to be resumed within a period of three months after cancellation or termination, what was paid to SDH by the Client on the basis of the aforementioned paragraph will be deducted from what the Client will owe after the completion of the new Agreement.
- 13.8 The Client is entitled to temporarily suspend the Agreement in the interim by giving SDH written notice to that effect. If the Client does not resume the Assignment within three months, the Agreement will be deemed terminated. The Client will then owe SDH compensation in accordance with paragraph 4 of this Article.



- 13.9 If a warranty arrangement has been offered to Client in the Agreement and Client invokes this warranty arrangement, all work shall be performed under the original Agreement.
- 13.10 If a cancellation or termination of the Agreement by the Client results in damage - in whatever form - on the part of SDH, the Client is obliged to compensate the entire damage suffered by SDH.

#### **Artikel 14. Cancellation, relocation and early termination Leadership Coaching**

- 14.1 Cancellation of the Leadership Coaching by the Client must be communicated in writing to SDH at least 48 hours prior to the start of the meeting.
- 14.2 If Client is a private client, not acting in the execution of profession or business, Client has 14 calendar days from the time of entering into the Agreement to dissolve the Agreement without charge. The aforementioned right expires the moment Leadership Coaching has been performed for the benefit of the Client.
- 14.3 If the Client cancels the work 7 calendar days prior to the start of the Leadership Coaching, an amount of 25% of the total amount stated in the Agreement will be charged to the Client. If the cancellation occurs between 7 calendar days and 3 calendar days before the start of the Leadership Coaching an amount of 50% of the total amount will be charged to Client. If Client cancels (less than) 24 hours before the start of the Leadership Coaching, 100% of the total amount will be charged to Client. Once the Leadership Coaching has commenced, the entire total amount is also payable by the Client, even if the Client terminates the Leadership Coaching prematurely.
- 14.4 SDH reserves the right to cancel the Leadership Coaching agreed upon with the Client without giving any reason. If SDH wishes to reschedule the Leadership Coaching, the Parties will agree on a new date.
- 14.5 If Client wishes to reschedule the meeting 14 calendar days prior to the start of the Leadership Coaching, no fee will be charged. If a request by Client for rescheduling occurs 7 calendar days prior to the meeting, an additional Fee will be charged at 5% of the total amount stated in the Agreement. If a relocation request is made by the Client 3 calendar days prior to the meeting, an additional fee of 10% of the total amount stated in the Agreement will be charged. If Client requests relocation (less than) 24 hours prior to the meeting, an additional fee of 15% of the total amount will be charged.

#### **Artikel 15. Suspension, dissolution and set-off**

- 15.1 SDH is authorized, without prejudice to its right to compensation, to terminate the Agreement without notice of default with immediate effect by written notice to the Client if any of the following circumstances occur:
- Client has failed to fulfil its obligations under the concluded Agreement and, to the extent required, Client has failed to remedy such failure within fourteen (14) days after being given notice to do so;
  - Bankruptcy or suspension of payments has been filed with respect to Client;
  - The Client's business is dissolved, liquidated or shut down;

- d) A request for the seizure of property or property rights of Client is filed, or such seizure is actually made;
- e) SDH has good reason to fear that the Client is not or will not be able to fulfill its obligations under the Agreement and the Client does not or will not adequately provide security for the fulfilment of its obligations at SDH's request.

**15.2** Dissolution of the Agreement shall result in:

- a) All claims of SDH shall be immediately due and payable;
- b) All SDH property must be returned immediately;
- c) Client is obliged to carefully destroy all (personal) data received under the Agreement.

**15.3** SDH reserves the right to claim additional compensation at any time.

**15.4** SDH shall at all times be entitled to set off its obligations to the Client in whole or in part against any claim which SDH has or shall at any time acquire against the Client.

**15.5** The Client is not entitled to invoke any right of suspension or setoff against SDH.

#### **Artikel 16. Liability and indemnity**

**16.1** SDH shall not be liable for any direct or indirect damages of Client, expressly including, but not limited to, loss of business, lost profits, consequential damages and all other forms of property damage as well as all possible claims of third parties, except in the case of intentional or deliberate recklessness of SDH.

**16.2** If the position for which SDH is seeking a Candidate in accordance with the Agreement is still occupied during the (Interim) Search and the person performing that position at that time becomes aware, pursuant to the (Interim) Search, that a Candidate is being sought for the position performed by him/her, SDH shall not be liable for the consequences thereof.

**16.3** SDH will not be liable in any way for damages of any kind resulting from any incorrect or incomplete information/recommendations/advice provided in connection with Coaching. This includes the information/recommendations/advice provided by the coach or through the training materials, brochure or any other work resulting from or related to Coaching.

**16.4** The Client warrants that Participants for whose benefit the Coaching has been taken have accepted the foregoing limitations of liability and indemnifies SDH against all claims by such Participants.

**16.5** In all cases, SDH's liability shall be limited to the amount actually paid by SDH's insurer, or, if no payment is made under any insurance, the invoice value (excluding VAT) in respect of the work that caused the alleged damage.

**16.6** SDH is in no way liable for the consequences of all acts/omissions or damages resulting from introduction and/or Appointment of a Candidate introduced by SDH.

**16.7** Client shall indemnify SDH and compensate SDH for all claims of the Candidate, Participant and other third parties directly or indirectly related to the performance of the Agreement and all related financial consequences.

16.8 All legal claims against SDH shall lapse one year after the relevant claim or demand has arisen.

#### **Artikel 17. Secrecy**

- 17.1 The Client shall not provide to any third party any confidential information from or about SDH, its operations, employees, clients and other or related parties, unless and to the extent that the provision of such information is required by law or is necessary for the proper performance of the Agreement.
- 17.2 SDH does not guarantee compliance with any duty of confidentiality by the Candidate and is not liable for any fine, penalty and/or damages from the Client due to the breach of any duty of confidentiality by the Candidate. Client shall indemnify SDH against any third party claim relating to the Candidate's defective or non-compliance with a duty of confidentiality.
- 17.3 Client undertakes to agree this obligation of confidentiality, as included in paragraph 1 of this article, with the persons working for or on its behalf or the third parties it engages.
- 17.4 SDH is entitled, in case of violation of the preceding paragraphs by the Client and/or the persons working for it and/or third parties it has engaged, to suspend the performance of the Agreement or to terminate it with immediate effect by written notice.

#### **Artikel 18. Privacy and personal data**

- 18.1 Client shall treat exchange of Personal Data confidentially in accordance with applicable laws and regulations. Client is a data controller with respect to the further processing of personal data provided to it by SDH.
- 18.2 Client shall ensure that personal data is provided to SDH only to the extent Client is entitled to do so and has obtained any necessary consent to do so from the persons to whom the personal data relates.
- 18.3 Client shall indemnify SDH against all claims and hold SDH harmless in the event of a claim by Candidate or Participant or any other third party due to a violation of the provisions of this Article.

#### **Artikel 19. Intellectual property**

- 19.1 All items created by SDH, including information, data, proposals, plans, methods, teaching materials, assessments, texts, photographs, videos and (digital) files remain the property of SDH.
- 19.2 All (claims to) intellectual property rights with respect to any result arising from the Agreement shall be vested in SDH, unless expressly agreed otherwise in writing. The Client assigns such (claims to) IP rights - to the extent necessary - to SDH free of charge. Insofar as such transfer is not affected by these General Terms and Conditions, the Client shall at first request cooperate in effecting such transfer free of charge.

- 19.3 Without SDH's prior written permission, the Client is not permitted to use the information referred to in paragraph 1 of this Article for any purpose other than that required in the context of the performance of the Agreement. Thus, in any event, the Client is not permitted to publish or reproduce the information. Use by third parties is therefore not permitted, except after written permission from SDH.
- 19.4 SDH reserves the right to use the works created by Client or Participant in other (Interim) Searches or Leadership Coaching programs. To the extent necessary, Client warrants the permission of the creator of the work created.

**Artikel 20. Applicable law and competent court**

- 20.1 The Agreement and the resulting and related legal relations between the Parties shall be governed by Dutch law.
- 20.2 All disputes between the Parties shall be submitted to the competent court of the District Court of Gelderland, location Arnhem.