



General Terms and Conditions for Personnel Leasing

§ 1 General

- (1) ARRK Engineering GmbH, hereinafter referred to as ARRK or Lessor, is an engineering service provider operating at international level in the principal areas of electrics/electronics, development, design, simulation and testing, and also project and quality management. ARRK operates inter alia in the field of personnel leasing. The GTC of the Lessor are an integral part of the Contract and apply exclusively. Conditions of the Lessee which conflict with or differ from these conditions will not be recognised unless ARRK has expressly approved their validity in writing. Verbal agreements require written confirmation for their validity.
- (2) Munich shall be the exclusive place of jurisdiction for any disputes. The Lessor may, however, also bring the case before any other competent court.
- (3) Should any of the terms of these conditions be or become invalid, the validity of the remainder of the Contract shall not be affected. The Contracting Parties must replace the invalid provision with another provision which is equivalent with respect to the commercial effect, in so far as this is possible.

§ 2 Employment Relationship

- (1) ARRK holds the permit from the competent Landesarbeitsamt (federal state employment office) required under section 1 subsection 1 AÜG (Arbeitnehmerüberlassungsgesetz: German Temporary Employment Act) for the leasing of personnel.
- (2) ARRK, as Lessor, is the employer of the leased employees. The leased employees are not entitled to accept advances against salary or other payments of any kind from the Lessee with the effect of discharging ARRK from its payment obligation. The Lessee has the right to give instructions to the leased employees during the deployment.
- (3) ARRK shall not be under any obligation to lease personnel if there is a strike at the Lessee's premises. The Lessee shall be made aware that the Lessor is under a legal obligation to advise the leased employees of their right to refuse to provide labour in the event of a strike at the Lessee's premises.
- (4) During the period of deployment, the Lessee shall assume the duty of care of an employer vis-à-vis the leased employee. It shall ensure that the applicable accident prevention and health and safety regulations and also the statutory limits on working hours are observed. In so doing, the Lessee must brief the leased employee in the workplace prior to commencing the activity and also in the event of any change in the sphere of activity; the Lessee shall point out any particular risks to health and safety to which the leased employee may be exposed in performing the activity as well as inform the latter of the measures and facilities in place to avoid such risks. The instruction given must be adequately documented by the Lessee.
- (5) The Lessee undertakes to notify the Lessor immediately of any accident sustained at work and to provide the respective details in writing. The cost of treatment by the company medical officer is to be borne by the Lessee.
- (6) The Lessor shall be granted right of access to the workplaces of the leased employees at any time during working hours.

§ 3 Selection and Replacement of Personnel

- (1) ARRK agrees to provide only qualified employees. The leased employees will be selected by the Lessor on its own responsibility. The Lessor gives assurance that they satisfy the professional formal requirements for the envisaged activity.
- (2) Should ARRK consider replacement of employees to be necessary in justified cases, it will inform the Lessee of this in good time and ensure a smooth transition.
- (3) If the Lessee is not satisfied with the services of the leased employee, it may dismiss him/her within eight (8) hours from commencement of the transfer. Dismissal at a later juncture is only possible if there are any grounds which, pursuant to the provisions of the German Employment Protection Act (Kündigungsschutzgesetz), would entitle the employer to termination with notice based on personal incapability or misconduct. Dismissal with immediate effect is only possible if there are any grounds which, pursuant to section 626 BGB (German Civil Code), would entitle the employer to termination without notice.
- (4) The Lessor must be informed of any dismissal in writing, giving reasons, within five (5) working days of the Lessee being made aware of the grounds for dismissal.
- (5) In the event of dismissal, ARRK is entitled to lease out another professionally equivalent employee immediately. If no suitable replacement can be found, the individual contract shall terminate with immediate effect. The Lessee has no entitlement to claims arising from termination.
- (6) The Lessor may also replace the leased employee for internal, organisational or legal reasons. ARRK shall inform the Lessee of this in good time and ensure a smooth transition.

§ 4 Billing and Time Sheets

- (1) Invoices are based on the time sheets submitted by the ARRK leased employees which are countersigned and checked by the Lessee on a monthly basis. Billing is based on the contractually agreed hourly rates. The Lessee must ensure that the time sheets submitted by the leased employees are checked and countersigned. Objections must be made and addressed to ARRK in writing within 14 days of the time sheets being submitted, otherwise the time logs shall be regarded as approved by the Lessee. When the time sheets are submitted, the Lessee shall be informed in each case of when this period commences and the effect of its expiry.
- (2) ARRK reserves the right to increase the hourly rates if employees are replaced by mutual agreement by more highly qualified employees or if other circumstances cause an increase in costs.
- (3) The respective hourly rates only apply at the site of deployment. Travel expenses shall be reimbursed by the Lessee at any time when business trips are required or authorised by the Lessee. Travel expenses include in particular travel and accommodation costs and subsistence. Time expended in travelling shall be remunerated at the agreed hourly rate.
- (4) Instructed overtime and additional hours shall be charged in accordance with the principles applicable at the respective Lessee establishment, however at least with a surcharge of 25% of the respective agreed hourly rate.

§ 5 Payment

- (1) The invoices issued by the Lessor are payable 30 days from the invoice date. The statutory provisions (sections 352, 353 HGB [German Commercial Code]) shall apply as regards the payment of interest on the receivable after the due date. Further claims for default shall remain unaffected. The leased employee is not entitled to take receipt of payments.
- (2) If the Lessee is in default or if there is a substantial deterioration in its financial circumstances, ARRK shall be entitled to demand immediate payment of all outstanding as well as deferred invoices. ARRK also reserves the right in this event to suspend deployment of the leased employees concerned in the Lessee establishment until such time as the overdue receivables are settled.
- (3) Offsetting is only permitted with counter-claims that are undisputed or have become final and non-appealable. The Lessee is only authorised to exercise a right of retention to the extent that its counter-claim is undisputed or has become final and non-appealable.

§ 6 Liability

- (1) ARRK is only responsible for the selection of the leased employees; not for the completeness and accuracy of the statements made by the applicants or third parties unless ARRK has failed to identify the incompleteness or untruthfulness of these statements intentionally or through gross negligence. Liability shall be excluded in the event of simple negligence.
- (2) ARRK shall not be held responsible for the proper performance of the work or other conduct on the part of the leased employees. They are not agents.
- (3) The leased employees may only be deployed for the agreed activity and may use and/or operate exclusively the equipment required as part of this activity. Should a defective work result be attributable to a negligent breach of the duty of care in selecting the employee, the liability of ARRK shall be limited to remedying the defect. Any further claims by the Client shall be excluded.
- (4) The Lessee undertakes to indemnify the Lessor against any such third-party claims which may arise in connection with the activity assigned to the leased employee and which have been made against the Lessor. This does not apply to the extent that ARRK is liable pursuant to Clause 1.

§ 7 Termination

- (1) Unless the Contract is concluded for a limited term, it may be terminated by either contracting party in the first six (6) months in writing with a period of notice of two (2) weeks. Thereafter a period of notice of four (4) weeks at the end of the month applies. The leased employee is not entitled to take receipt of the notice of termination or other declarations.
- (2) The right to termination without notice for good cause remains unaffected. Good cause is constituted for the Lessor in particular if the Lessee disregards a mandatory legal norm, in the event of a strike or in the event of a substantial deterioration of the Lessee's assets.

§ 8 Property Rights

- (1) If the activity of a leased employee results in a patentable invention or invention that is eligible for utility model protection as defined in the German Employee Inventions Act (Arbeitnehmererfindungsgesetz), the Lessee shall obtain the rights as provided by section 11 subsection 7 AÜG (Arbeitnehmerüberlassungsgesetz: German Temporary Employment Act) in conjunction with the German Employee Inventions Act as and when the obligations are performed. The remuneration within the meaning of the German Employee Inventions Act payable for proposals for technical improvements which the Lessee exploits shall be paid to ARRK.

§ 9 Agency

- (1) The Lessee agrees not to improperly entice away ARRK employees (sections 1 UWG [German Act on Unfair Competition], 826 BGB [German Civil Code]). ARRK is entitled to claim damages in the event of infringement.
- (2) Should an employment relationship be established between an employee engaged by ARRK and the Lessee, or a company affiliated with the latter, whilst deployed on the project or within twelve (12) months after the employee's first deployment with the Lessee, the Lessee shall be obliged to pay an agent's fee totalling three months' gross wages. The amount of the agent's fee shall be based on the gross monthly wage agreed upon between the employee and the Lessee and shall decrease in accordance with the personnel leasing period for each full month of leasing by 1/12 of the total sum due. The fee plus the applicable statutory value added tax shall become payable upon conclusion of an agreement between the Lessee and the employee.
- (3) The burden of proof lies with the Lessee that the employment did not result from the leased assignment.