

General Terms and Conditions

***of Koenen en Co
Executive Search B.V.***

Article 1 General

In these general terms and conditions (the 'general conditions'), the following terms shall have the following meanings:

1. The Supplier: Koenen en Co Executive Search B.V., registered with the Chamber of Commerce Limburg under no. 74132504.
2. The Client: the natural person, legal entity, partnership or enterprise which, whether or not together with others, instructs the Supplier to perform Work.
3. Documents: all information or data made available by the Client to the Supplier, whether contained on physical data carriers or otherwise, including but not limited to paper, CD-ROMs, hard disks, USB sticks, e-mail and digital environments, whether or not held by third parties, and all information or data produced or collected by the Supplier within the scope of the performance of the Contract, whether or not contained on physical data carriers as described above and all other information of any relevance to the performance or completion of the Contract, whether or not contained on physical data carriers.
4. Contract: any contract between the Client and the Supplier to perform Work for the Client by the Supplier in accordance with the terms of the order confirmation, together with any other documents and/or correspondence, or based on a subsequent request made by the Client to the Supplier, which request has also been accepted, or based on any verbal contract between the Supplier and the Client. The Contract is only a best-efforts obligation and not an obligation to achieve a certain result.
5. Candidates: the persons put forward by the Supplier who have been selected by the Supplier on the basis of the Contract.
6. Work: all Work that is part of a Contract or performed by the Supplier on any other basis. The foregoing applies in the broadest sense of the words and, in any event, includes the Work as stated in the order confirmation, as well as the Work that the Client has subsequently instructed.
7. These general conditions shall at all times prevail over any general terms and conditions of the Client.
8. If the Supplier does not demand strict compliance with these general conditions, this shall not mean that the provisions thereunder do not apply, or that the Supplier would lose the right to demand strict compliance with the provisions of these general conditions in other cases.
9. Retainer: an amount of € 1,500 payable by the Client to the Supplier for the start-up of the contract (i.e. the start-up of a search for one or more suitable Candidates).

Article 2 Scope

1. These general conditions apply to all legal relationships between the Supplier and the Client. Deviations from these general conditions are valid when confirmed in writing by the Supplier.
2. The Supplier is entitled to unilaterally change the contents of these general conditions at any time. The change will take effect after Client has been notified.
3. Deviations from and additions to these general conditions are only valid if they have been expressly agreed in writing, for example in a further order confirmation or Contract.
4. In the event that these general conditions and the order confirmation contain mutually contradictory conditions, the conditions contained in the order confirmation shall apply.

Article 3 Creation of a binding contract

1. All Contracts are concluded exclusively with the Supplier and are performed exclusively by the Supplier, whereby the application of the provisions of Book 7 Articles 404 and 407(2) of the Dutch Civil Code in respect of Supplier are explicitly excluded. This applies even if it is the Client's express or implied intent that the Work be performed by a particular person or persons.
2. Each Contract is only concluded and commences at the moment that the Supplier received the returned order confirmation signed by the Client and/or the Supplier confirms the Contract (verbally, in writing, electronically or impliedly) or at the moment that the Work commences. The foregoing is subject to the proviso that if and insofar as a different working method applies by virtue of the professional rules, the working method shall be followed in accordance with the professional rules. The parties are free to prove the existence of the contract by other means.

3. The order confirmation is based on the Documents provided by the Client to the Supplier. The order confirmation shall be deemed to reflect the Contract accurately and completely. The administration the Supplier (including e-mails and digital scans, for example of order letters) will serve as full evidence towards the Client in the absence of evidence to the contrary provided by the Client.
4. The Contract is for an indefinite term unless by its very nature the Contract is for a fixed term.

Article 4 Performance of a Contract

1. Under the Contract the Supplier performs recruitment and selection for direct employment whereby the Supplier selects one or more suitable candidates for employment with the Client and introduces them to the Client verbally and in writing (profile). Such a Contract will be successfully performed if and when a candidate proposed by the Supplier starts work for the Client.
2. Recruitment also includes every comparable form of actual (indirect) employment of a Candidate introduced by the Supplier (e.g. as a supplier, as a partner, as a freelancer, etc.), whether or not via a third party and whether or not at another branch of the Client and/or at a company affiliated with its organisation.
3. The Supplier determines the manner in which, and by which person(s), the Contract will be performed. The Supplier will as far as possible take into account reasonable instructions from the Client, given in time, concerning the performance of a Contract.
4. The Supplier is entitled to change the method of performance of the Contract if there is a situation in which it is unreasonable to expect that the Contract be performed without change, such as in the event of the introduction of government measures, for example during a pandemic. This is at the discretion of the Supplier.
5. The Supplier will perform the Work to the best of its ability and as a professional acting with due care. However, the Supplier cannot guarantee the achievement of any intended result.
6. The Supplier is entitled to have certain Work performed by a person or third party designated by the Supplier, without notification to and explicit consent from the Client, if the Supplier considers this to be desirable. The costs of this person or third party to be appointed shall be charged to the Client.
7. The Supplier will perform the Contract in accordance with the applicable code of conduct and professional rules, which form part of the Contract, and what is required by law. The Client shall respect the obligations arising from the code of conduct and professional rules and from the law for the Supplier and for those working for or on behalf of the Supplier.
8. If, during the Contract, Work is performed for the profession or business of the Client other than Work to which the Contract relates, this Work will be deemed to have been performed on the basis of a separate Contract. The provisions of these general conditions shall also apply to these Contracts in full.
9. Any time limits set out in the Contract within which the Work must be carried out are only approximate and are not strict deadlines. Exceeding such a term therefore does not constitute an attributable breach on the part of the Supplier and consequently does not constitute grounds for termination of the Contract. Dates by which the Work must be completed are only to be regarded as deadlines if this has been explicitly agreed between the Client and the Supplier in as many words.

Article 5 Exclusivity

The Work will be exclusively awarded to the Supplier for a certain period of time after receipt of the written acceptance of the order confirmation, to the exclusion of other suppliers, unless explicitly agreed otherwise.

Article 6 Retainer

After written approval of the order confirmation, the Client will pay the Supplier a retainer for starting a search for one or more suitable candidates. This retainer will be deducted from the fee after successful mediation.

Article 7 Fee

1. If the recruitment and selection contract is successfully completed, the Supplier will pay the Client a percentage (of at least 17.5%) of the gross annual salary (plus the payable VAT) of the chosen Candidate or, if the position cannot be filled, the gross annual salary estimated by the Supplier (plus the payable VAT), based on the (quality) requirements set by the Client for filling the position for which the Client has commissioned the Supplier. The Parties may agree in the order confirmation on differing terms regarding the fee for the performance of the Contract, such as hours x hourly rate or a deviating percentage of the gross annual salary (to be increased with the VAT due thereon).
2. The calculation of the final fee is always based on full-time employment (40-hour working week), even if a Candidate is to hold the position part-time. In the case of a part-time position, the full-time salary is taken as the starting point. The final fee will be charged immediately after signing the employment contract.
3. A Contract is also deemed to be successfully performed if a Candidate introduced to the Client by the Supplier, within twelve months after that introduction - whether or not after termination of the Contract - enters into employment or is otherwise employed by the Client or an affiliated company in any way, shape or form, whether or not through third parties.

Article 8 Other expenses

Apart from the fee owed in the event of successful performance, the Client does not owe the Supplier any costs related to the performance of the Contract, unless explicit terms have been agreed between the Supplier and the Client in this respect.

Article 9 Obligation to provide information

1. The Client shall provide all information and documents that the Supplier indicates it needs for the correct performance of the contract, in a timely manner.
2. The Client guarantees the correctness, completeness and reliability of the information and documents made available to the Supplier.
3. Within 14 (fourteen) days after a request to that end, the Client must provide the Supplier with the details concerning the financial arrangements between the Client and the Candidate, as well as the employment starting date of the Candidate selected by the Supplier. If the Client fails to provide timely, sufficient or correct information, the Supplier is entitled to estimate the amount of the gross annual salary and the starting date and to invoice this estimate in accordance with the stipulations of Article 6.

Article 10 Liability

1. Within the framework of a Contract, the Supplier must make every effort to recruit and select suitable candidates for employment with the Client in every possible way. The Client is responsible for the decision to enter into an (employment) contract with a Candidate selected by the Supplier, as well as for the content of this (employment) contract, the remuneration and the (employment) conditions. The Supplier accepts no liability for any deficiencies of, and/or loss caused by, a Candidate introduced by the Supplier.

2. This liability shall at all times be limited to the amount paid out under the Supplier's liability insurance in the relevant case, plus, where relevant, the Supplier's excess. If the liability insurer declines to pay out and the Supplier's liability is nevertheless established, the Supplier's liability shall in any event be limited to the amount of the fee charged for the performance of the Contract. If the Contract involves a continuing performance contract with a term of more than one year, the amount referred to above shall be set at three times the amount of the fee charged to the Client in the twelve months preceding the date when the loss occurs.
3. The Supplier shall not be liable for loss arising from or in connection with the non-compliance with these general conditions (Processing Contract) or actions in breach of the General Data Protection Regulation (GDPR).
4. The Client is liable to pay the Supplier an administrative fine imposed by the Dutch Data Protection Authority.
5. The Client is liable to the Supplier and shall indemnify the Supplier against any claims from Third Parties and/or Data Subjects and/or for an administrative fine imposed by the Dutch Data Protection Authority in the event of a breach of the GDPR and shall reimburse the Supplier for all costs (including the costs of legal assistance) and loss suffered in this regard.

Article 11 Indemnification

1. The Client indemnifies the Supplier against all claims from third parties, including shareholders, directors, supervisory directors and employees of the Client, as well as affiliated legal entities and enterprises and others involved in the Client's organisation that are directly or indirectly related to the performance of the Contract. The Client shall indemnify the Supplier in particular against claims from third parties for loss caused by the Client having provided the Supplier with incorrect or incomplete information, data or Documents, unless the Client demonstrates that the loss is not related to culpable acts or omissions on its part or is caused by intent or gross negligence on the part of the Supplier.
2. The Client shall indemnify the Supplier against any third-party claim in the event that the Supplier is compelled by law and/or professional rules to relinquish the Contract and/or is compelled to cooperate with government agencies that are entitled to receive information, whether solicited or unsolicited, that the Supplier has received from the Client or third parties in the context of the performance of the Contract.
3. The Client shall indemnify the Supplier against claims from third parties and/or data subjects in connection with the attributable failure of the Supplier as Processor in the performance of the Processing Contract as referred to in Article 16 or breach by Processor of the applicable privacy laws and regulations, and shall reimburse all related and consequential costs (including costs of legal assistance) and loss of the Supplier.

Article 12 Non-solicitation clause

The Supplier undertakes to the Client not to actively approach employees who were previously employed by the Client through the Supplier, in order to conduct subsequent searches on behalf of third parties.

Article 13 Duty of Confidentiality

1. The Client is not permitted to disclose details of a Candidate proposed by the Supplier to a third party without the prior written consent of the Supplier.
2. Unless prior written consent has been granted by the Supplier, the Client shall not disclose any information to the Candidates concerning the Supplier's approach and working method.
3. The Supplier reserves the right to use the Client's name for advertising and reference purposes, to indicate the type of Work it has performed for the Client and to mention all those details that have already been made generally known through the media.

4. If the event of any breach of the terms of this article, the Client will owe the Supplier an immediately claimable penalty of €25,000 (twenty-five thousand euros) per breach, without prejudice to the Supplier's right to claim full compensation for the full amount of its loss.

Article 14 Invoicing and payment

1. The fee will be invoiced directly to the Client after signing the (employment) contract by the Candidate selected by the Supplier.
2. Payment by the Client must be made, without discount, suspension or settlement, within the term of payment stated on the invoice. In the event of failure to pay in full within the specified term, the Client shall be in default, without further notice of default being required.
3. If the Client is in default, it will owe the Supplier an immediately due and payable default interest of 2% of the principal sum due per month, whereby part of a month will be considered as a full month. In addition, the Client owes extra-judicial collection costs amounting to at least 15% of the principal sum, plus statutory commercial interest, without prejudice to the Client's obligation to reimburse the Supplier for the actual (extra-) judicial collection costs, insofar as these exceed this amount.

Article 15 Guarantees

1. If a Candidate arranged through by the Supplier, for reasons of his own, is no longer employed by the Client within an agreed upon period after commencement of employment, then provided that the Client has fulfilled all its payment obligations towards the Supplier, the Supplier will make one effort, to the best of its ability, try to recruit and select a new Candidate for the same position, free of charge and with a success fee only. The procedure in accordance with the original order confirmation and in accordance with the originally agreed conditions - particularly with regard to exclusivity - will be restarted for this purpose.
2. If the Client wishes to make use of the guarantee, it must inform the Supplier in writing within 30 (thirty) days after the termination of the employment contract with the first Candidate, in default of which the Client can no longer invoke the provisions of this article.
3. If a Candidate proposed by the Supplier under this guarantee enters into the employment of the Client, or if the Supplier has paid back a previously agreed percentage of the fee, or if the Client has filled the position itself (whether or not via third parties) during the guarantee period, the Supplier is released from its obligations under this guarantee article.

Article 16 The GDPR and the processing agreement

1. The Supplier shall process the Personal Data in accordance with the requirements for the protection of Personal Data and the applicable laws and regulations: the GDPR.
2. Subject to compliance with the relevant laws, the Supplier is permitted to provide and share Client Information with the Supplier's employees and external service providers of the Supplier ('Service Providers'), who may then collect, use, transfer, store or otherwise process (collectively Process) this Client Information in the various countries in which they operate for purposes related to the following Work:
 - i. complying with supervisory requirements and legal obligations to which the Supplier is subject;
 - ii. prevention of conflicts of interest; risk management and quality reviews;
 - iii. internal financial-administrative purposes, IT purposes and other supporting services of an administrative nature of Provider;((i) to (iii) together referred to as 'the Processing Purposes').
3. For the Processing Purposes referred to in the previous section, the Supplier and Service Providers may Process information containing Personal Data in the various countries where the Supplier is active. The transfer of Personal Data within the network of the Supplier is subject to the Privacy Statement (available to read on koenenenco.nl).

4. With the exception of the provisions in the previous section, the Supplier shall not process any Personal Data outside a country of the European Union/European Economic Area, without the Client's express consent in writing.
5. The Supplier shall require any Service Provider that processes Personal Data on behalf of the Supplier to meet these requirements. For Work in which the Supplier acts as Processor of Personal Data on behalf of the Client, the processing conditions as referred to in this article will apply or will be agreed in writing by the Parties in a supplementary processing contract.
6. The Client guarantees that it is authorised to provide Personal Data to the Supplier in connection with the performance of the Work, and that any Personal Data provided to the Supplier has been Processed in accordance with the applicable legislation.

Processing conditions

7. For the purpose of performing the Contract, the Client may contract with the Supplier for the processing of Personal Data. In the context of the GDPR, the Supplier can be regarded as a Processor for certain Work and as a Controller for others. The following distinction applies as a starting point. The Supplier is the Controller when performing the following work:

- i. giving business advice;
- ii. performing the recruitment and selection contract;
- iii. The Supplier is the Processor when performing the following work:
- iv. the processing of personal data on behalf of the Client.

This division is only a guideline. If and insofar as another distribution is applicable on the basis of legislation, regulations or case law, the distribution based on legislation, regulations or case law will be leading. Moreover, this may depend on the specific circumstances of the case and the content of the Contract.

8. If the Supplier acts as Processor of Personal Data for the Client, the Parties agree on the following conditions, where the Client is the 'Controller' and the Supplier is the 'Processor'.
9. The Supplier/Processor:
 - a. processes Personal Data only on the basis of written instructions from the Client, concerning, for example, the forwarding of Personal Data to a third country or an entity of the Supplier or an international organisation, unless applicable privacy laws and regulations oblige the Supplier to Process; in that case, the Supplier will notify the Client of that statutory regulation prior to Processing, unless that legislation prohibits such notification for compelling reasons of general interest;
 - b. ensures that the persons authorised to process the Personal Data have committed themselves to confidentiality or are bound by an appropriate legal obligation to confidentiality;
 - c. takes appropriate technical and organisational measures to ensure a risk-adjusted level of security;
 - d. assists the Client, taking into account the nature of the Processing, by means of appropriate technical and organisational measures, as far as possible, in fulfilling its duty to respond to requests for the exercise of the rights of the Data Subject as set out in applicable privacy laws and regulations;
 - e. assists the Client, taking into account the nature of the Processing and the information available to it, in complying with the obligations under applicable privacy laws and regulations;
 - f. erases all Personal Data or returns it to the Client upon completion of the processing service, at the Client's option, and removes existing copies, unless storage of the Personal Data is required pursuant to applicable laws and regulations;
 - g. makes all information available to the Client that is necessary to demonstrate compliance with the obligations laid down in the applicable privacy laws and regulations and enable and contribute to audits, including inspections, by the Client or an auditor authorised by the Client.
10. The Supplier will notify Client immediately, or in any case within 48 hours, if in its opinion an instruction breaches relevant laws and regulations.
11. The Supplier and anyone acting under the authority of the Client or Supplier and who has access to Personal Data, shall only process these on the instructions of the Client, unless they are obliged to process these in accordance with applicable laws and regulations.
12. The Client and, where relevant, the Client's representative, shall keep a register of the processing work carried out under their responsibility.

13. The Supplier keeps a register of all categories of processing work it has performed for the Client. This register shall contain at least the following information:
 - a. the name and contact details of the Client on whose behalf the Supplier is acting and, if applicable, of the Client's or Supplier's representative and of the Data Protection Officer;
 - b. the categories of Processing carried out on behalf of Client;
 - c. where applicable, the forwarding of Personal Data to a third country or an international organisation, specifying that third country or international organisation and, where applicable, the documentation of appropriate safeguards;
 - d. if possible, a general description of the technical and organisational security measures.
14. The Supplier may employ a Sub-Processor to carry out specific processing work on behalf of the Client, provided that the Client has given its prior specific or general permission in writing. In the event of general permission in writing, the Supplier shall inform the Client about intended changes regarding the addition or replacement of Sub-Processors, offering the Client the opportunity to object to these changes.
15. The Supplier shall ensure that the Sub-Processor it engages has the same data protection obligations as are set out in these general conditions. If the Sub-Processor fails to fulfil its data protection obligations, the Supplier remains fully liable towards the Client for the performance of those obligations by that Sub-Processor.
16. Having regard to the state of the art, the implementation costs, as well as the nature, scope, context and processing purposes, and the risks for the rights and freedoms of persons that vary in terms of probability and seriousness, the Client and the Supplier will take appropriate technical and organisational measures to guarantee a security level appropriate to the risk. The assessment of the appropriate level of security shall take into account in particular the processing risks, especially those related to the destruction, loss, alteration or unauthorised disclosure of or access to data transmitted, stored or otherwise processed, whether accidental or unlawful.
17. Adherence to an approved code of conduct or an approved certification mechanism as referred to in applicable privacy laws and regulations may be used as an element to demonstrate compliance with the requirements referred to in applicable privacy laws and regulations.
18. The Supplier shall inform the Client without unreasonable delay, but no later than 48 hours, as soon as it has become aware of a personal data breach.

Article 17 End of Contract

A Contract ends in any case upon successful completion of the Contract, by termination of the Contract by the Supplier or by the Client, and - if a term has been agreed upon - by the expiry of the fixed term. Termination of a Contract does not affect the Client's obligations to the Supplier with regard to Candidates introduced by the Supplier to the Client.

Article 18 Force majeure

1. In the event that the Supplier is unable to fulfil its obligations under the Contract or is unable to do so properly or in good time for a reason that cannot be attributed to it, including but not limited to, long-term failures in the computer network, cable break, strikes, employee sickness and other stagnation in the normal course of business within the Supplier's (office) organisation, those obligations will be suspended until such time as the Supplier is able to fulfil them in the agreed manner.
2. If a situation as referred to in the first section arises, both the Client and the Supplier have the right to terminate all or part of the Contract in writing with immediate effect, without any right of the other Party to compensation.

Article 19 Repair clause

1. If any provision of these general conditions or of the underlying Contract is wholly or partially void and/or invalid and/or unenforceable as a result of any statutory regulation, judicial decision or otherwise, this will not affect the validity of all the other provisions of these general conditions or the underlying Contract.
2. If a provision of these general conditions or the underlying Contract is invalid for a reason referred to in the previous section, but would be valid if it had a more limited scope or purport, this provision shall - for the time being - automatically apply with the most far-reaching or extensive more limited scope or purport with which or within which it is valid.
3. Without prejudice to the provisions of section 2, the Parties may consult with each other to agree on new provisions to replace the void or avoided provisions. In doing so, the objective and purport of the void or avoided provisions will be followed as closely as possible.
4. If there is a lack of clarity regarding the interpretation of any provision of these general conditions, the interpretation must be in accordance with the spirit of these provisions.
5. If a situation arises that is not provided for in these general conditions, this situation should be assessed in the spirit of these general conditions.
6. If the Client is a natural person who does not act, or no longer acts, in the course of a profession or business and one or more provisions from these general conditions would be wholly or partially void and/or invalid and/or unenforceable as a result of a statutory provision protecting that natural person, the provisions concerned will be deemed not to apply to the Client and will be replaced by provisions that comply with the (consumer) protection laws to which the Client is entitled.

Article 20 WWFT

Under the Prevention of Money Laundering and Financing of Terrorism Act (WWFT), the Supplier must report any performed or intended unusual transaction, insofar as this is detected in the context of our normal Work, to the Office for the Disclosure of Unusual Transactions. In addition, pursuant to the WWFT, the Supplier must conduct an investigation into a potential Client. This includes identification of the potential Client and verification of their identity prior to the Work. The Supplier may request the Client to cooperate with the Supplier's investigation. The Client must cooperate fully in this regard.

Article 21 Continued enforcement

All rights and obligations arising from the Contract which, according to their purport, are intended to continue in force after termination of the Contract, will remain in full force between the Supplier and the Client after the Contract has been terminated.

Article 22 Choice of law and disputes

1. The legal relationship between the Supplier and the Client is governed by Dutch law.
2. The Court of Limburg, sitting in Maastricht, is solely authorised to hear any dispute between the Supplier and the Client, unless another court is authorised by mandatory law. If the Supplier is the claimant, it has the right, in deviation from this, to submit the dispute to the competent court in the Client's place of residence.