



General Terms and Conditions (GTC)
Servithink Unternehmensberatung GmbH

October 2014

1. General

This English translation is for information purposes only. The original German text is the legally binding version.

The following provisions are constituent elements of all contracts with SERVITHINK, unless otherwise agreed upon in writing.

In the case that individual provisions of the General Terms and Conditions (GTC) should become invalid, the validity of the remaining provisions shall not be affected.

SERVITHINK is entitled to partly or entirely outsource the contract to expert staff or commercial / freelance partners.

The client shall ensure that the organisational framework is in place at his seat of business to permit the uninterrupted and timely fulfilment of the contract.

The client shall ensure that SERVITHINK receives all necessary documentation required for the fulfilment and execution of the contract in a timely manner and without any undue effort, and shall notify SERVITHINK of all events and circumstances which are of significance to the execution of the contract. This applies in addition for all documentation, processes and circumstances first made known during the activity of SERVITHINK.

The client shall ensure that its employees and its mandatory employee's representative (works council), where appropriate, is informed prior to the order processing.

The contractual partners commit themselves to mutual loyalty. The relationship of trust between the client and SERVITHINK requires that SERVITHINK shall be informed about previous and/or current consultations, even those in other business areas.

2. Special provisions for recruitment consultancy

The fee is based on the type and scope of the contract, whereby the specific costs and/or the fee shall be confirmed in writing in the contract. The commitment period of the contract is 30 days after signing.

The fee is due and payable to SERVITHINK when a contract (either oral or written) is concluded between the candidate and the client, irrespective of the starting date or type of employment contract.

Travel costs incurred by the applicant and the SERVITHINK advisor, as well as other expenses (hospitality costs, etc.) and advertising costs, where applicable, shall be additionally included in the invoice.

Should a candidate presented by SERVITHINK resign from the post in the clients company within a guarantee period of 3 months following employment, SERVITHINK shall continue the search following the full payment of the agreed fee. Further fees shall however not be due, except costs for additional Direct Contact or costs for advertising, travel or other purposes, where applicable. This guarantee is valid once per contract and position.

The basis for calculating the fee is the yearly wage agreed with the candidate, unless a lump sum fee has been agreed upon in writing.

The candidate profiles and documentation provided by SERVITHINK remain the property of SERVITHINK, and are to be treated confidentially. In the case of non-usage, candidate profiles and documentation are to be returned to SERVITHINK and may not be forwarded on to third parties.

Should a company either directly under control or within the sphere of influence of the client sign a contract of similar nature (employment contract, service contract, freelance contract, contract for work, or similar) with a candidate recommended by SERVITHINK within 18 months after presentation, SERVITHINK has right to the agreed fee.

Should a search request be cancelled by the client after placement of the order, regardless of the reason (for example because the client has filled the position him/herself, the client no longer wants to or can fill the position, the client has retained the services of another recruitment consultant, or other reasons), a cancellation fee shall be due, deducting the previously deposited commitment fee, and shall be calculated as follows:

- before presentation of the first candidate: 33% of the agreed fee
- thereafter 66% of the agreed fee.



Should none of the candidates presented by SERVITHINK be employed by the client within one year of placement of order, a fee in the amount of 66% of the agreed fee, deducting the previously deposited commitment fee shall be due and payable.

The services provided by SERVITHINK do not replace the detailed examination of candidates by the client in any way. After signing an employment contract with a candidate recommended by SERVITHINK, the client accepts full responsibility for his choice. SERVITHINK accepts no liability for any statements made by the candidate and for the execution of work of the candidate to which he/she will be entrusted in the new employment.

Opinions and information about candidates are intended exclusively for the client, of which the forwarding on to third parties is forbidden.

3. Protection of intellectual property

The client is obliged to ensure that all offers, messages, analysis, opinions, organisational charts, programmes, performance descriptions, drafts, calculations, drawings, data carriers, and the like produced by SERVITHINK, her employees and partners during the advisory process shall be used only for purposes of the contract. The forwarding of such professional expressions from SERVITHINK to third parties either free of charge or in return for consideration requires the written consent of the client. A liability on the part of SERVITHINK against third parties shall for this reason not be established.

The use of professional expressions from SERVITHINK for advertising purposes by the client is forbidden. A breach shall allow SERVITHINK to immediately terminate all remaining incomplete contracts.

SERVITHINK retains copyright on all of its services.

In respect that all advisory services provided remain the intellectual property of SERVITHINK, their right of use remains exclusively for the client's personal purposes and only to the extent specified in the contract, even after payment of the fee. Further transfers of this right, even in the case of dissolution or insolvency of the company, or the in the short term transfer for reproduction purposes, shall lead to claims for damages. In such a case, SERVITHINK is entitled to full satisfaction.

4. Removal of defects and warranty

SERVITHINK is entitled and obliged to resolve any inaccuracies and failures made during its service which become known subsequently. SERVITHINK is obliged to immediately notify the client of this. The warranty obligation period is three months.

The client has a right to the free rectification of failures, provided that these are the responsibility of SERVITHINK. This claim expires six months after the completion of the service by SERVITHINK.

Should the subsequent improvement of the failure fail, the client has the right to reduce payment or – in case the delivered service is in consequence of the failure of the subsequent improvement of no interest for the client – the right of rescission. In the case of warranty, subsequent improvement has precedence over reduction of payment or rescission. In so far as any claims for damages arise, the provisions of point 5 (liability) apply.

The reversal of the burden of proof, i.e. the obligation of SERVITHINK to prove its innocence in the mistake, is precluded.

5. Liability

SERVITHINK and its employees and project partners shall follow the generally acknowledged principles of professionalism during the execution of the service. SERVITHINK shall be liable for damages only in cases where intention or gross negligence has been ascertained, and only in accordance with the law. This applies as well for the breach of undertakings through a project partner.

Claims for damages can only be made only within a period of six months after the claimant has become aware of the damage, latest however within three years after the event giving rise to the claim.

Should the activity be performed by calling in a third party, e.g. a data processing company, a trustee, or a lawyer, and the client is informed thereof, then the rights to any warranty and liability claims against the third party are transferred to the client, in conformity with the law and the third party's terms and conditions of doing business.

6. Confidentiality agreement

SERVITHINK, its employees and project partners are obliged to maintain confidentiality about all matters regarding their activity on behalf of the client. This obligation to confidentiality applies to the client as well as its business relationships.

Only the client him/herself, and not his/her agents, can discharge SERVITHINK from this obligation to confidentiality in writing.

SERVITHINK may provide reports, opinions and other written expressions about the results of its activity only with the consent of the client.

The obligation to confidentiality of SERVITHINK, its employees and consulted colleagues also applies to the period following conclusion of the contract. Only cases where the legal obligation to disclose information exists are excluded.



SERVITHINK is authorised to process or allow a third party to process any personal data entrusted to it in the course of the fulfilment of the contract. SERVITHINK guarantees the obligation to maintain data confidentiality in accordance with the provisions of data protection law.

7. Consideration

For the fulfilment of its services, SERVITHINK has the right to payment of an appropriate consideration by the client. Should the execution of the contract following the signing of the contract be impeded (for example due to cancellation), SERVITHINK has the right to claim the agreed consideration.

Should the execution of the contract be ceased through circumstances which SERVITHINK considers an important reason, SERVITHINK has claim to consideration only in the amount respective to services provided up until that point. This applies in particular when despite cancellation, the services already provided are utilisable.

SERVITHINK is entitled to make the fulfilment of its services conditional upon the complete satisfaction of its claims. Any work suspension by SERVITHINK, except for evident failures, does not entitle it to retention of commissions.

The amount of consideration is determined by the written agreement of the client with SERVITHINK. All prices are exclusive of statutory VAT.

After contract length of six months, SERVITHINK has the right to match the consideration to changes in purchasing power or by new introductions or changes to legal or other binding cost factors.

8. Payment conditions

Invoices from SERVITHINK are principally due and payable within 7 days of billing without deduction. The consideration is due and payable within 7 days of billing without discount, and must reflect in the account balance before this time.

In case of late payment, SERVITHINK shall include default charges in the amount of 12% p.a. All expenses for reminders and collection are chargeable to the client.

Until full payment of the purchasing price, the goods will remain property of SERVITHINK.

9. Non-solicitation agreement

During the execution and for the period of 6 months after completion of the contract, the client is obliged not to solicit any employees or partners of SERVITHINK, or to let third parties solicit them, or offer them employment, as long as no explicit acquisition agreement in writing has been made. Breach of this provision shall result in the client due a contractual penalty of € 25,000 to SERVITHINK. This amount is applicable regardless of culpability. The right of reduction by a court is precluded. This contractual penalty is due and payable immediately from the commencement of activities of this person with the client.

10. Applicable law, place of fulfilment, jurisdiction

Unless otherwise agreed upon, Austrian law shall apply for the contract, its fulfilment and any consequential arising claims.

The place of fulfilment is the business premises of SERVITHINK.

The jurisdiction for any disputes either directly from or in relation to the business relationship is exclusively Vienna.