

# GTC: Companies/Recruiters

Users

BirdieMatch GmbH, Mittelweg 14, 20148 Hamburg (“**BirdieMatch**”)

## **Preamble**

BirdieMatch operates an online portal – including under the URLs birdiematch.de and birdiematch.com – with a candidate database for the initiation of service or employment relationships, with a focus on the logistics, freight forwarding, shipping and transport sectors (the “**Portal**”). Companies and personnel consultancies (“**Customers**”) can publish job advertisements directly via the Portal, receive contact enquiries from candidates, and communicate directly with them as well as compare (match) industry-specific skills. These GTC govern the contractual relationship between BirdieMatch and the Customer.

## **1. Scope of these Terms and Conditions**

1.1. The use of the Portal, including the publication of job advertisements, is based on these Terms and Conditions (“**GTC**”).

1.2. These GTC shall apply exclusively. Terms and conditions of Customers or third parties shall not become part of the contract. By using the Portal, the Customer acknowledges these GTC.

## **2. Registration and customer account**

2.1. Customers may use the basic version of the Portal free of charge. Registration is subject to the following rules:

2.2. The Customer must register on the Portal in order to use its features. All mandatory fields in our registration form must be completed. Once the Customer has entered all the mandatory master data and submitted it to BirdieMatch, their registration can be activated. After registration by the Customer, BirdieMatch sends a confirmation email to the email address provided. This contains an activation link for the Customer’s profile. In order to complete the registration process and enable use of the customer profile (initially anonymised), the profile must be activated via the activation link. The optional non-anonymised use of the customer profile, and the ability to contact candidates, requires the activation of additional paid features.

2.3. All master data requested by BirdieMatch upon registration must be provided in full and correctly by the Customer. To register, the Customer must provide at least a company name, a short description of the company, an address, the first and last name of the contact person, and an email address, and also select a personal password. The Customer must keep their BirdieMatch login data – in particular their personal password – secret and may not pass it on to third parties.

2.4. No legal right to registration exists. BirdieMatch is entitled at any time to reject a registration request or to erase the master data of registered Customers without giving reasons, if there is a violation of [Section 5] of these GTC or of essential principles of these GTC.

2.5. The Customer can delete their profile on BirdieMatch at any time. BirdieMatch reserves the right to delete customer profiles that have not been fully activated or, after prior notice, those that have been inactive for a period of more than 12 months.

2.6. BirdieMatch is not able to verify the correctness of the master data provided by a Customer. BirdieMatch is therefore unable to assume any responsibility for the accuracy and/or completeness of Customer data. BirdieMatch will investigate justified complaints without delay and, if necessary, take appropriate action to remedy them.

### **3. Scope of service**

3.1. The Portal offers the Customer an internet-based service which, among other things, allows them to search for and communicate with candidates.

3.2. The Customer may use the Portal with its basic features free of charge after registration.

3.3. With the use of the Portal, the Customer receives the simple, non-transferable right to use the free basic features. As far as the Customer makes use of paid features, BirdieMatch also transfers to the Customer, after payment, the simple, non-transferable usage rights for the booked additional features. The latter usage rights are limited to the term of the contract for the booked additional features.

3.4. BirdieMatch may adjust and change the Portal features at any time without this giving rise to any claims on the part of the Customer.

3.5. The Portal is run on servers of BirdieMatch and its service providers. From the agreed time of provision, BirdieMatch shall provide reasonable storage space on these servers for the data generated by the Customer through their use of the Portal (hereinafter referred to as "**usage data**"). This usage data is regularly backed up on the servers, at least every calendar day. The Customer shall be responsible for compliance with retention periods under commercial and tax laws. The Customer shall also be obliged to back up their posted usage data at regular intervals on their own hardware.

3.6. The handover point for the use of the Portal is the router exit of the BirdieMatch data centre or that of its service providers. BirdieMatch is not responsible for the quality of the required hardware and software on the part of the Customer or for the telecommunications connection between the Customer and BirdieMatch up to the handover point.

3.7. BirdieMatch shall perform its contractual services with an availability of 97%. This availability is calculated on the basis of the time allocated to each calendar month in the contract period minus the maintenance work defined below. The service may be interrupted for a maximum of 30 minutes per day during business hours. Business hours are all working days from 8.30am until 5pm CET. BirdieMatch shall be entitled to temporarily suspend or restrict the availability of the contractual services outside business hours ("**downtime**") in order to carry out system maintenance work or improvements. BirdieMatch shall inform the Customer of the start and duration of such maintenance work in writing and in good time. However, periods of downtime within the maintenance window must not exceed 10 hours per month. Every quarter of an hour or part thereof shall be counted as a whole quarter.

Downtime also includes times when the system is not available in the agreed access times.

### **4. Conclusion of the contract**

After completing the registration process, the Customer can activate various additional features on the Portal which are subject to a fee, and enter into a corresponding usage agreement. The Customer may select different contract packages in the Portal under the menu item "Become a Premium Member". They are then redirected to an order page with a summary of the selected contract contents. At the bottom of the order page, the Customer can submit their offer to conclude a contract by clicking on "Commit to purchase". The Customer can change and view the data at any time before submitting their order.

BirdieMatch then sends the Customer an automatic confirmation of receipt by email, which details the Customer's order and which the Customer can print using the "Print" function. This automatic confirmation of receipt merely documents the fact that the Customer's order has been received by BirdieMatch, and does not constitute acceptance of the request. The contract is not concluded until BirdieMatch submits its declaration of acceptance, which is sent in a separate email (order confirmation). In this email, the text of the contract is sent to the Customer by BirdieMatch using a durable medium (email or paper printout) (contract confirmation). The text of the contract is stored in compliance with data protection regulations.

### **5. Obligations of the Customer**

5.1. The posting of profile information, job advertisements and other content ("**Content**") shall be subject to the following conditions:

- Content must not violate any laws or essential principles of these GTC with respect to prohibited Content.
- Job advertisements must not contain any links to offers from third parties.
- Content must not violate the rights of third parties.
- It is forbidden to send or offer spam, chain letters or pyramid schemes.
- The posting of job advertisements is prohibited if the intention is merely to exploit the users' answers for one's own commercial purposes.
- The Customer may not copy, change or disseminate Content of other job advertisements without the express consent of the respective authors.
- Any Content or correspondence with candidates must comply with the principle of fairness and be objective in nature. In particular, it may not include any illegal, offensive, abusive or criminal Content. Such Content always constitutes statements by the Customer and does not reflect the opinion of BirdieMatch.
- No chargeable telephone numbers may be used in job advertisements.

5.2. By using the Portal, the Customer undertakes, in particular, to ensure that any Content posted by them does not infringe the rights of third parties, in particular copyright, personal rights, patent and trademark rights, and other rights. They also undertake to observe the applicable criminal laws as well as regulations for the protection of minors when using the Portal and when creating Content. In particular, the Customer shall not use the Portal to disseminate any Content which is racist, denies the Holocaust, is grossly offensive, pornographic or sexual, harmful to young people, or extremist, glorifies or trivialises violence, glorifies war, promotes a terrorist or extremist political organisation, incites criminal behaviour, is defamatory, insulting, or unsuitable for minors, or is otherwise criminal.

5.3. The Customer is prohibited from using Content from the Portal outside their own company, in particular from passing on individual candidate profiles to third parties without the consent of the respective candidates.

## **6. Content review, blocking**

6.1. Although it is not obliged by law to do so, BirdieMatch is entitled to check the admissibility of job advertisements and other Content provided by the Customer before or after publication, and to delete or not activate such Content in the event of a violation of these GTC. BirdieMatch also has the right to edit, move or close a Customer's job advertisements and other Content.

6.2. As far as BirdieMatch provides the Customer with the use of the Portal free of charge, i.e. where no paid services are booked, the offered services are provided by BirdieMatch on a voluntary basis. In such cases, the Customer shall not have any legal claim to use the Portal, to the fulfilment of certain requirements, or to the constant and uninterrupted availability of the Portal. In particular, BirdieMatch may at any time temporarily or permanently suspend its services without prior, express and individual notification of the Customer.

6.3. BirdieMatch is entitled to adjust, improve and further develop the Portal, as well as to completely discontinue the services provided, at any time after prior notice.

6.4. BirdieMatch is entitled, at its own discretion and without prior warning, to warn and/or temporarily or permanently block a Customer for objective reasons, in particular if there are specific indications that the Customer has violated these GTC, statutory provisions or the rights of third parties. In cases where the Customer uses paid services, such blocking shall only be permissible after prior termination of the contract without notice. Blocked customers are prohibited from registering a new customer profile.

## **7. Usage rights**

7.1. The Customer is expressly prohibited from using, changing and/or modifying the Portal in any way which exceeds the rights granted under Section 3.3. In particular, the Customer is not permitted to rent, sell, license, assign or otherwise transfer the rights granted to use the Portal. The Customer is expressly forbidden from determining and disclosing the source

code of the Portal software. If the Customer violates the agreed scope of use, they shall be obliged to compensate BirdieMatch for the resulting damage.

7.2. The Portal exclusively provides information, job advertisements and other Customer Content. This Content is protected by provisions under copyright and trademark laws or other intellectual property rights of BirdieMatch and/or its Customers. Any duplication, processing, dissemination or exploitation beyond the limits permitted by copyright is prohibited.

7.3. If a Customer posts and/or publishes any Content on the Portal (in particular texts and images), then to the extent that this Content includes works protected by copyright or other legal protection, the Customer shall grant BirdieMatch, and all companies affiliated with BirdieMatch, a free, non-exclusive, irrevocable, transferable and sublicensable right of use, without any restriction to time or territory, for all known and not yet known types of use, in particular on the Portal and all mobile services. The foregoing granting of rights shall include all copyrights, database rights, and commercial, immaterial or other industrial property rights.

7.4. The Customer also grants BirdieMatch a perpetual right to use the name and logo of the Customer's company as a reference in BirdieMatch's company brochures and websites.

## **8. Protection of intellectual property**

8.1. All works, trademarks and other industrial property rights of third parties used and mentioned on the Portal are subject without restriction to the provisions of the applicable copyright, trademark right or other industrial property right, and exclusively to the property rights of the respective owner, and are used by BirdieMatch only with their consent.

8.2. Should entitled parties, in particular owners of copyrights, trademark rights or other property rights, believe their rights have been violated in exceptional cases by individual job advertisements or other Content on the Portal, then these suspected violations can be reported and their removal requested. If the notification is made by the right holder or a legal representative by means of a specific reference to the offending Content, then in the event of a violation of the law we will remove it without delay. In such cases, we request that you provide us with all necessary information, including proof that you are the right holder and, if applicable, power of representation, by emailing [info@birdiematch.de](mailto:info@birdiematch.de).

## **9. Remuneration**

9.1. The basic features of the Portal can be used free of charge. No payments are due in this case.

9.2. The use of additional features is subject to a fee and requires prior registration in accordance with Section 2 of these GTC.

9.3. If the Customer makes use of paid services, these are due for payment immediately upon booking. BirdieMatch is entitled to demand advance payment at its own discretion. If the Customer makes use of paid services and no payment settlement is made despite a reminder, BirdieMatch may block the paid services or the Customer's profile as a whole.

9.4. BirdieMatch accepts the following payment methods: a) bank transfer; b) PayPal; and c) credit card.

9.5. Advertisements by companies are only permitted after express written agreement with BirdieMatch.

9.6. The period for the SEPA Direct Debit pre-notification is reduced to one day.

## **10. Term in the case of paid services**

If, after registration, the Customer makes use of paid features, an independent contract shall be concluded between the parties in this regard using these GTC. The term of this contract shall be governed by the contract package selected by the Customer in the individual case, an overview of which can be viewed after registering for free under "Become a Premium Member" in the menu. Unless otherwise agreed, the contract shall be automatically extended by the last selected term if the parties do not terminate the contract in text form or in writing with a notice period of 3 months to the end of the contract. This does not affect the right of extraordinary termination.

## **11. Liability and warranty**

11.1. Any liability of BirdieMatch is excluded to the extent permitted by law, whatever the legal grounds. BirdieMatch shall only be liable in cases of intentional or negligently caused damage or in cases of violation of essential contractual obligations (“cardinal obligations”). Cardinal obligations are those whose fulfilment make possible the correct execution of the contract in the first place and on compliance with which the contractual partner may regularly rely. In the latter case, liability shall be limited to damage typical of this type of contract foreseeable at the time of contract conclusion.

11.2. The foregoing limitations of liability shall not apply in the event of mandatory statutory provisions (e.g. the German Product Liability Act), in the event of BirdieMatch assuming an express guarantee, or for damages resulting from injury to life, body or health of a person.

11.3. BirdieMatch shall not be liable in cases of force majeure.

11.4. Unless otherwise indicated, all job advertisements or other Content on the Portal originate from Customers. BirdieMatch is not liable, and assumes no guarantees or warranties, for the accuracy of the Content posted by Customers. The respective Customer or author shall be exclusively liable for all information contained therein as well as any legal consequences arising therefrom. For BirdieMatch, such information is external Content. For third-party claims, the Customer shall be personally liable and undertakes to indemnify BirdieMatch, upon first request, against claims, costs and claims for damages by third parties, including necessary legal costs.

## **12. Protecting your data**

12.1. BirdieMatch points out that creating a profile results in personal data of Customers being stored in electronic form. In connection with the use of all services offered by BirdieMatch, we are entitled to collect, process and use the data provided by the Customer to the extent necessary for the provision of our services. In this regard, we observe the regulations of the Federal Data Protection Act and all other statutory provisions on data protection.

12.2. The Customer may, at any time, ask BirdieMatch for information about their stored data and to have this data changed or erased, insofar as this would not render performance of the contractual service impossible.

12.3. Disclosure or any other transmission of a Customer’s personal data to third parties takes place only in line with statutory data protection provisions, in accordance with the BirdieMatch Privacy Policy, or with the express consent of the Customer.

12.4. Our Privacy Policy also applies. It can be viewed at any time on the Portal, where it is clearly highlighted.

## **13. Final provisions**

13.1. These GTC are governed by the law of the Federal Republic of Germany for domestic contractual parties, excluding the UN Convention on the Sale of Goods (CISG). These GTC only regulate contracts with companies and, therefore, regulations on distance selling do not apply. The conclusion of contracts with consumers for paid services is technically excluded.

13.2. The place of jurisdiction shall be Hamburg if the Customer has no registered office in Germany or if the parties are both merchants. Notwithstanding this, BirdieMatch shall also be able to assert claims at the Customer’s general place of jurisdiction. This shall not affect any exclusive place of jurisdiction.

13.3. Should any provision of these GTC be invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall endeavour to replace the invalid provision with another provision which comes as close as possible to the ineffective provision with regard to its meaning as well as technical, economic and financial aspects.

13.4. BirdieMatch is entitled to change these GTC at any time without giving reasons. If BirdieMatch makes changes to these GTC, the Customer will be notified of such changes by email. A change of these GTC can be objected to within a period of four (4) weeks after receipt of the notification by the Customer. If the Customer objects to a change of the GTC,

BirdieMatch can either choose to continue the validity of the previous GTC or terminate the user relationship with a notice period of four (4) weeks. BirdieMatch shall inform the Customer of the consequences of any change to these GTC and of any rights arising therefrom. If the Customer does not object within the stipulated period, the changes to the GTC shall be deemed to have been agreed from the beginning.

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