

General Terms and Conditions applicable to Retainer Agreements at FHNW ^{*}

1. Scope and validity

These General Terms and Conditions for Retainer Agreements at the University of Applied Sciences Northwestern Switzerland (hereafter referred to as the „FHNW“) apply to all work-related contracts between FHNW and third parties in cases where the collective bargaining agreement of the FHNW is not applicable. They apply to lecturers, assessors, assistants, interns and teacher trainers (hereafter referred to generally as „Contractor“). By signing the Retainer Agreement, the Contractor accepts these General Terms and Conditions in addition to the specific agreements (such as contents, time periods and fee for the agreed upon services).

2. Effective date of agreement

The Retainer Agreement shall become effective upon signing by both contractual parties. Commencement date of the Agreement is in accordance with the Retainer Agreement.

3. Obligations of the contractor

The Contractor is obliged to carry out the agreed upon services pursuant to the standards of FHNW and at the times agreed upon and in a timely manner to fulfil all ancillary obligations relating thereto (such as making documentation available, etc.). The Contractor shall follow the instructions of the FHNW in regard to acquisitions for its own business.

4. Inability of fee recipient to fulfil the service

If the fee recipient is prevented from fulfilling the agreed service at the agreed point in time for reasons associated with his/her person (such as illness, accident, etc.), the contracting parties shall, as far as is possible, agree a new point in time for fulfilling the service.

If exact dates (course days, timetable) have been agreed for the fulfilment of services and a medical certificate of incapacity for work is presented, the agreed hours lost will be reimbursed.

5. Liability of the contractor

The Contractor is liable for the conscientious and careful performance of the services and must provide the services personally (private individual) or via the designated person (legal entity).

6. Intangible property rights

Inventions and designs which are made or created by the Contractor within the scope of his or her contractual activities and in fulfilment of his or her contractual obligations shall belong entirely to the FHNW regardless of their protectability.

The exploitation rights to computer programs as well as the documents and information belonging thereto which are created under these conditions belong to the FHNW exclusively. Excluded are programs which represent art works or tools for art works (computer art) for which the regulations in the next paragraph are applicable.

Works protected by copyright law (with the exception of computer programs as referred to in the above paragraph) which the Contractor created while carrying out his or her contractual activities and in fulfilment of contractual obligations belong to the Contractor, provided an agreement has not been concluded which transfers them to the FHNW.

7. Data protection

Personal information (such as information regarding the Contractor or participants' lists) may only be used within the scope of the Retainer Agreement and may not be disclosed to third parties.

8. Non-disclosure

The Contractor may not disclose any matters in which the FHNW has an interest in confidentiality (such as business secrets of the FHNW or business partners, research results not designated for the public, personnel information, etc.) or which must be kept confidential according to special regulations. This obligation shall remain in force after the termination or expiring of this Retainer Agreement.

^{*}) The German version of this Agreement shall be authoritative.

9. Fees, social security, and taxes

The FHNW undertakes to transfer to the Contractor the agreed fee and the agreed costs on completion to the agreed account. Fee invoices that are received by the school's HR department by the fifth working day of the month shall be paid with the next salary payment of the FHNW (on the 25th of the month). Payroll documents (pay slips and salary statements) shall be transmitted electronically to your personal, private email address via IncaMail, an encryption service of Schweizer Post.

In the event that this Retainer Agreement is categorised as an individual contract of employment by the social security authorities, the fee agreed upon also includes the statutory pro rata entitlement to vacation and holidays as well as any 13th month salary. Retainer Agreements are subject to The Code of Obligations (OR – Obligationenrecht) and do not generate any entitlement to loyalty premium under the FHNW Collective Employment contract (GAV Gesamtarbeitsvertrag). In addition, the FHNW shall deduct the statutory Social Security premiums (employee contributions) from the fee agreed upon;

- This also applies to the contribution for non-occupational accident insurance in the event that the Contractor has not expressly confirmed on the statement that during the invoice period the Contractor did not work more than 8 hours per week.
- The premiums for the insurance according to the pension plan FHNW if sum of entry exceeds (CHF 21,510; for music teachers CHF 10,755, as of 01.01.2022).
- If social security liability lies outside of Switzerland in the EU/EFTA area, the statutory social security contributions of the country for which a valid secondment agreement exists shall apply (Form A1).
- For fee recipients whose social security status is outside Switzerland or Germany, a valid agreement in accordance with Art. 21 of Regulation (EC) No. 987/2009 EU is an integral part of the fee agreement.

As a result, the FHNW and the Contractor hereby agree that the reporting and contributions obligations relating to the responsible provider stated on the secondment form (Form A1) shall be borne by the Contractor alone. In addition to the fee, the FHNW shall transfer to the Contractor the employer contributions owed under the relevant social security law.

If this agreement does not exist, the Retainer Agreement shall not come into effect.

- Outside of the EU/EFTA area, the respective social security agreement shall apply.
- FHNW fees are subject to taxable earned income.
- Persons residing outside of Switzerland are subject to Swiss withholding tax for assignments in Switzerland.
- Persons who are subject to withholding tax are obliged to notify tax-relevant changes in their personal situation in a timely manner.

10. Termination

This fee agreement shall be terminated at the agreed deadline by withdrawal of the fee recipient, or termination by FHNW, or by complete fulfilment of the contractual obligations.

The FHNW can withdraw from this Retainer Agreement without incurring costs up to 3 weeks prior to the beginning of a course if this is due to the cancellation of the FHNW course.

Otherwise both contractual parties are liable for the damages incurred by the other due to termination at an inappropriate time.

11. Applicable law and jurisdiction

The legal relationship between the FHNW and the Contractor is subject to the Swiss Code of Obligations (CO, SR 220). For all disputes the Commission for Grievances FHNW in Windisch has jurisdiction. The Commission for Grievances of the FHNW can be invoked relating to a decision of the Director of the respective school.

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