GENERAL TERMS AND CONDITIONS (GTC)
International Nursing Placement India → Germany

GWS – The Experts | GWS talent transfer GmbH

§ 1 Scope and Placement Model

GWS – The Experts, operated by GWS talent transfer GmbH (hereinafter “GWS”), recruits and places, within the scope of these GTC, exclusively nursing professionals from India with German hospitals, inpatient and outpatient care facilities and other suitable employers in Germany.

These GTC apply to the recruitment, advisory, preparation, recognition, visa, matching, placement and integration services provided by GWS. For nursing professionals, they are made available in a language that they understand well.

All material agreements are documented in writing or in verifiable text form. Oral side agreements on costs, retention obligations or placement conditions are impermissible.

§ 2 Principles of Fair Recruitment

GWS is committed to written form and verifiability, a placement process that is free of charge for nursing professionals, limitation of their economic risk, transparency of structures, services and costs, sustainability and participation, and overall responsibility for the complete service chain.

These principles also apply to Indian recruiting partners, language schools, document service providers, consultants, freelancers, referral agents, sub-agents and other third parties acting on behalf of GWS.

§ 3 WHO, ILO and Human Rights

GWS observes the WHO Global Code of Practice on the International Recruitment of Health Personnel and reviews the current WHO Health Workforce Support and Safeguards List. The country assessment for India is documented and updated regularly and as circumstances require.

GWS and its partners observe the ILO core labour standards, the ILO General Principles and Operational Guidelines for Fair Recruitment including the Definition of Recruitment Fees and Related Costs, the UN Guiding Principles on Business and Human Rights and relevant human rights standards.

Discrimination, deception, intimidation, the withholding of original documents and any form of impermissible economic dependence are prohibited.

§ 4 Employer Pays Principle

The entire regular recruitment and placement process is free of charge for the nursing professional. GWS charges, neither directly nor indirectly, placement fees or costs directly related to the placement.

The Employer Pays Principle applies to the entire service chain. Costs may not be shifted onto the nursing professional via partners, recruiters, language schools, document service providers or other third parties.

In particular, placement and success fees, registration fees, security deposits, deposits, collateral, recruiter or sub-agent commissions and contractual penalties for rejecting a job or terminating the placement are impermissible.

The German employer bears the agreed recruitment and placement costs. GWS documents the allocation of costs in a cost matrix.

If, contrary to the prohibition on payments, a nursing professional has paid reimbursable costs to a partner engaged by GWS, GWS will investigate the matter without undue delay and ensure reimbursement in accordance with the Employer Pays Principle.

§ 5 No Retention or Repayment Obligations

GWS waives, vis-à-vis nursing professionals, any retention and repayment obligations for placement, recruitment, recognition, visa, translation, certification, document, interview and other costs directly related to the placement. The sole exception is the limited repayment under § 5a.

The rejection of a job offer or the termination of the placement relationship does not trigger any contractual penalty, security deposit, placement fee or repayment of such costs. With regard to the termination of the placement relationship, § 5a remains unaffected.

GWS does not place any nursing professional in an employment contract that contains impermissible placement-related retention, repayment or contractual penalty clauses.

§ 5a Limited Repayment in the Event of Non-Entry and of a Breach of § 2 of the Placement Agreement

(1) Principle. Placement remains free of charge for the nursing professional (§ 4). A repayment may be considered exclusively in the two cases named in paragraph 2 and only within the limits of this section. It is neither a contractual penalty nor a placement fee, but is limited to the reimbursement of costs actually incurred and evidenced.

(2) Repayment cases. The nursing professional reimburses GWS for the costs under paragraph 3 if, for reasons for which he or she is responsible, the placement process cannot be completed as planned because

a) after signing the employment contract with the employer arranged, he or she does not enter Germany and does not take up the position arranged (non-entry), or

b) contrary to § 2 of the Placement Agreement, he or she engages another placement agency for the same activity during the term of the Placement Agreement and, as a result, the placement by GWS does not come about or the position arranged through GWS is not taken up (breach of § 2 of the Placement Agreement).

A breach of § 2 of the Placement Agreement that does not prevent GWS from completing the placement process does not trigger any payment obligation.

(3) Reimbursable costs. Only costs that GWS has actually advanced for the nursing professional, itself or through a commissioned partner, that were incurred in the country of origin up to the time of withdrawal and that GWS evidences by receipts are reimbursable, namely:

a) costs of the language courses completed and certified abroad/in the country of origin, of the language course for nursing and medicine, of the preliminary course for the knowledge examination and of the B2 examination.

b) administrative fees for translations, certifications, the visa and the determination of equivalence (deficit notice).

Not reimbursable are, in particular, placement fees and commissions, personnel, administrative and overhead costs of GWS or its partners, flight and travel costs, costs of the employer, lost profit, liquidated damages, and interest and handling fees. Refunds from authorities, language schools or other service providers as well as expenses saved reduce the amount.

(4) Maximum amount. The repayment is in every case limited to the costs actually incurred and evidenced. It may not exceed the maximum amount that is stated in the Placement Agreement in highlighted form as a total amount and per type of cost in euros. Without a maximum amount stated there, there is no repayment obligation. The amounts for the language course do not exceed the maximum sums applicable under the quality criteria.

(5) No repayment. Irrespective of any fault on the part of the nursing professional, there is no repayment obligation

a) if he or she rejects a job offer before signing the employment contract (§ 9),

b) if he or she withdraws during the first 50 teaching units of the language course,

c) in the event of illness or other health reasons and in the event of pregnancy,

d) in the event of force majeure or of the death or serious illness of a close family member,

e) if the visa, recognition or another official decision is refused or delayed for reasons for which the nursing professional is not responsible,

f) if GWS, a partner engaged by GWS or the employer has breached the Placement Agreement, these provisions, the Employer Pays Principle or the requirements of the quality seal “Faire Anwerbung Pflege Deutschland” (Fair Recruitment Healthcare Germany), the employer withdraws its offer or the job deviates materially from the job information (§ 10),

g) if the nursing professional terminates the Placement Agreement for good cause, or

h) if he or she takes up another position in Germany through GWS.

The nursing professional informs GWS of the reasons; evidence is requested only to the extent that this is reasonable.

(6) Procedure. Before GWS demands a repayment, the nursing professional is given the opportunity to comment on the reasons within four weeks. GWS then sends a written statement of account with copies of the receipts. The amount falls due no earlier than 30 days after receipt of the statement. At the request of the nursing professional, interest-free payment in monthly instalments is agreed, the amount of which takes his or her financial capacity into account. The nursing professional remains free to prove that lower costs were incurred. GWS does not withhold any documents for the purpose of enforcement, does not demand any security and does not set the claim off against wages. The complaints procedure (§ 15) is open to the nursing professional.

(7) Conclusive provision and precedence of the quality criteria. GWS has no further payment claims on account of non-entry or of a breach of § 2 of the Placement Agreement. If the applicable quality and audit provisions of the quality seal “Faire Anwerbung Pflege Deutschland” provide for narrower limits, these apply.

(8) Express consent. The repayment clause applies only if it was explained to the nursing professional, including the maximum amount, before conclusion of the Placement Agreement in a language that he or she understands well and the nursing professional has expressly consented to it in the Placement Agreement.

§ 6 Language Training

Language training and placement are transparently separated from each other. A fee-charging language school may not be used as a means of shifting placement costs onto the nursing professional.

Where GWS stipulates a certain language level as a requirement for admission to the placement programme, a documented procedure is established for reviewing and reimbursing language course costs that were verifiably incurred and are reimbursable under the applicable quality criteria.

Language training organised by GWS or on behalf of GWS that forms part of the placement programme is not charged to the nursing professional as a placement fee.

§ 7 Information Brochure and Advance Information

GWS publishes the current official KDA information brochure on labour migration into nursing in Germany in German and in the officially provided language versions relevant to the India programme.

Every nursing professional receives the brochure free of charge and verifiably before the Placement Agreement is concluded. The date of dispatch, version, language and receipt are documented.

The Placement Agreement is concluded only after the prescribed advance information has been provided and the period applicable under the quality criteria has been observed.

§ 8 Placement Agreement and Individual Process

Every nursing professional receives the Placement Agreement and the GTC in a language that he or she understands well. For India, at least German and English versions are provided; additional Hindi comprehension aids may be offered as a supplement.

Before the agreement is concluded, GWS explains the individual recruitment and recognition process, including language training, recognition, matching, job interview, employment contract, visa, entry, compensatory measure, professional recognition and integration.

For every nursing professional, a process plan with contact persons, status and next steps is maintained. Placement services and voluntary additional services are clearly separated.

§ 9 Matching and Free Choice of Job

GWS takes into account qualifications, professional experience, personal wishes, field of work, location preferences and integration conditions.

The nursing professional is not obliged to accept a proposed employer or job and may reject an offer without giving reasons.

A rejection does not lead to any sanctions, penalty payments, repayment claims, placement fees or other disadvantages. If a match does not come about, GWS may present further suitable employers.

§ 10 Job Information and § 299 SGB III

Before the employment contract is concluded, the nursing professional receives, in writing and in an understandable form, information on the employer and facility, place of work, start and duration, activity before and after recognition, working hours, gross remuneration and intended deductions, leave, probationary period, notice periods, collective agreement, relevant works or service agreements, integration measures, language support and contact persons.

The statutory information duties for cross-border private job placement, in particular under § 299 of the German Social Code Book III (SGB III) as amended from time to time, are complied with.

The information is provided in such good time that the decision period provided for under the quality criteria is observed before the employment contract is signed. Dispatch and receipt are documented. Current independent advice centres are named.

§ 11 Job Interview

Before the employment contract is concluded, a personal or virtual interview takes place between the nursing professional and the employer. The nursing professional may ask questions about the activity, remuneration, working hours, recognition, housing situation, integration and induction.

GWS documents the date, the participants and the fact that the interview took place.

§ 12 Recognition Procedure

GWS accompanies the nursing professional transparently through the recognition procedure under the Nursing Professions Act (Pflegeberufegesetz – PflBG) and provides information on the competent authority, documents, findings of deficits and the compensatory measures generally available.

For third countries, these include in particular the knowledge examination and the adaptation course. Where the law provides for a choice, the applicant nursing professional decides freely; impermissible pressure in favour of a particular compensatory measure is excluded.

The costs of the recognition process and the parties bearing them are shown transparently and treated in accordance with the Employer Pays Principle.

§ 13 Duties of German Employers and Integration

The employer provides suitable measures for workplace and social integration, language support and induction and informs GWS of these in writing.

These include in particular contact persons before and after entry, an induction plan, a mentor or buddy, support with accommodation and orientation, registration of residence, health insurance, bank account and dealings with authorities, language support, recognition support and conflict prevention.

The employer employs and remunerates the nursing professional in accordance with the applicable statutory provisions, collective agreements and the employment contract.

The employer may not pass on any placement-related costs to the nursing professional and may not circumvent the Employer Pays Principle by means of side agreements.

§ 14 Customers, Business Partners, Service Chain and Audit Right

GWS subjects relevant customers, business partners and other service providers along the service chain to a risk-based review before and during the cooperation. The review covers in particular compliance with these

GTC, the GWS Policy Statement and the contractually passed-on requirements of the quality seal “Faire Anwerbung Pflege Deutschland”.

Vis-à-vis customers, business partners and other third parties involved in the service chain, GWS has general and event-related rights of audit, information, inspection and evidence. These serve in particular to identify and assess potential and actual human rights risks and breaches of Employer Pays, the prohibition of candidate fees, the rules on retention and repayment, and the duties of transparency, information, integration, data protection and documentation.

The contracting partners provide GWS with the information and evidence required for the review and cooperate in appropriate preventive and remedial measures. Further sub-agents, referral agents, recruiters or other subcontractors may be used within the service chain only in accordance with the contractual structures approved by GWS and, where so provided, with the prior written consent of GWS.

Serious or repeated breaches of these GTC, the GWS Policy Statement or the requirements of the quality seal “Faire Anwerbung Pflege Deutschland” that have been bindingly agreed for the cooperation entitle GWS to extraordinary termination or ending of the cooperation. This applies in particular if a contracting partner, despite being requested to do so, fails to remedy identified breaches within a reasonable period or refuses a required audit or the submission of suitable evidence.

In the event of serious breaches, in particular the charging of impermissible candidate fees, deception, coercion, discrimination, withholding of original documents or any other significant threat to the rights of a nursing professional, GWS is entitled to end the cooperation with immediate effect without a prior period for remedy.

§ 15 Complaints Management

GWS maintains a free, confidential and easily accessible complaints channel with direct access to GWS in Germany. The nursing professional does not have to contact an Indian recruiter first.

The procedure governs receipt, acknowledgement of receipt, responsibility, review, remedy, escalation and closure. Complaints are handled within the periods provided for under the quality criteria; the maximum processing time is, as a rule, three weeks.

All complaints are documented in a complaints register. Disadvantaging a person because of a complaint is prohibited. The complaints procedure is made publicly available at least in German and English.

§ 16 Data Protection, Audit Access and Candidate Surveys

GWS processes personal data in accordance with the applicable data protection provisions. Data flows between India and Germany, responsibilities and legal bases are documented.

The contractual documents allow the independent auditor in the RAL audit procedure to inspect actually concluded contracts and placement files in compliance with data protection law.

Nursing professionals are transparently informed that, in the audit procedure, random written surveys and, in the event of irregularities, personal interviews may take place.

Data are transmitted only to the extent necessary to employers, authorities, recognition bodies, service providers and audit bodies.

§ 17 Documentation and Evidence

For each placement case, GWS documents in particular the first contact, information brochure, Placement Agreement, language training and costs, recognition, matching, job information, job interview, employment contract, visa and entry, integration and cost control.

Specific evidence is kept for every audit-relevant indicator. A mere declaration that a process is complied with does not replace the evidence.

GWS keeps a current list of the nursing professionals who are in the programme and who have been placed, and keeps the files required for random samples available for audit.

§ 18 Termination and Ending

The nursing professional may end the placement relationship by observing the reasonable notice period laid down in the Placement Agreement. The right to extraordinary termination for good cause remains unaffected.

Ending the relationship does not lead to the repayment of placement, recognition, visa, translation, certification or other costs directly related to the placement, nor to a contractual penalty. § 5a remains unaffected.

GWS may terminate for good cause, in particular in the event of wilful deception about essential qualifications. The Employer Pays Principle remains unaffected.

§ 19 Remuneration

The remuneration of GWS is agreed exclusively with the German client or employer. For the nursing professional, the placement service is free of charge.

The payment schedule, due dates and service components are set out transparently in the employer contract. The remuneration may not be passed on indirectly to the nursing professional.

§ 20 Quality Assurance and Version Management

GWS reviews the Policy Statement, GTC, contract templates, cost matrix, partner contracts, complaints procedure, information materials and operational processes regularly and whenever the quality criteria or the legal situation change.

Changes are versioned, approved and given an effective date. For the RAL process, GWS specifies a cut-off date from which only the approved contract versions aligned with the quality seal are used.

At the time the quality seal is awarded, all current audit-relevant contracts must be available in the required compliant version.

§ 21 Liability

The liability of GWS is governed by the statutory provisions. Mandatory liability, in particular for damage arising from injury to life, body or health, and claims under data protection law remain unaffected.

GWS owes a diligent placement and support service, unless expressly agreed otherwise. The success of official recognition, visa or residence decisions cannot be guaranteed.

§ 22 Final Provisions, Governing Law and Place of Jurisdiction

The law of the Federal Republic of Germany applies, unless mandatory provisions conflict with this.

For reasons of verifiability, amendments and supplements are documented in writing or in suitable text form.

To the extent that an agreement on the place of jurisdiction is legally permissible, the place of jurisdiction is Freising. Mandatory statutory places of jurisdiction, in particular in favour of consumers or employees, remain unaffected.

Should individual provisions be or become invalid, the validity of the remaining provisions remains unaffected. The invalid provision is replaced by the statutory provisions.