

General terms and conditions for the provision of temporary workers

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Article 1 Definitions

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

1. **Temporary employment agency:** any natural or legal person who places temporary workers at the disposal of clients on the basis of placement contracts.
2. **Temporary worker:** any natural person who has entered into a temporary employment agency contract as referred to in Section 7:690 of the Civil Code with a temporary employment agency in order to perform work for a third party under the management and supervision of that third party.
3. **Placement contract:** the contract between a client and the temporary employment agency on the basis of which a single temporary worker is placed at the disposal of the client by the temporary employment agency, as referred to in paragraph 2 of this article, to perform work, in exchange for payment of the client fee.
4. **Client:** any natural or legal person who is party to the placement contract together with the temporary employment agency.
5. **Placement:** the deployment of a temporary worker under a placement contract.
6. **Temporary employment agency clause:** the written provision in the employment agency contract between the temporary employment agency and the temporary worker and/or in the CAO, stating that the employment agency contract ends by operation of law when the placement of the temporary worker by the temporary employment agency with the client ends at the client's request (Section 7:691 (2) of the Civil Code).
7. **CAO:** the *Collective Labour Agreement for Temporary workers*, concluded between the ABU (Federation of Private Employment Agencies) on the one hand and the employees' organisations concerned on the other hand.
8. **Client fee:** the rate payable by the client to the temporary employment agency, excluding surcharges, expenses and VAT. The rate is charged per hour, unless otherwise stated.
9. **User company remuneration:** The user company remuneration as defined in the CAO.

Article 2 Applicability

1. These general terms and conditions apply to all placement contracts and other agreements between the temporary employment agency and the client, as well as to all legal acts intended for their conclusion, including offers, proposals, quotations and price quotations.
2. Any purchasing or other conditions of the client are not applicable and are expressly rejected by the temporary employment agency.
3. Any agreements deviating from these general terms and conditions shall only apply if agreed in writing, and shall apply exclusively to the placement contract in question.

Article 3 The placement contract and the placement

Placement contract

1. The placement contract is concluded either for a fixed term or for an indefinite period of time.
2. A fixed-term placement contract is a placement contract that is entered into either:
 - for a fixed period, or;
 - for a determinable period of time, or;
 - for a determinable period not exceeding a fixed period. A fixed-term placement contract shall end by operation of law upon expiry of the agreed period or upon the occurrence of a pre-defined objectively determinable event.

End of placement contract

3. A placement contract for an indefinite period of time ends by written notice with due observance of a reasonable period of notice.
4. Each placement contract shall end immediately upon notice of termination by either party if:
 - the other party is in default;
 - the other party is liquidated;
 - the other party has been declared bankrupt or has applied for suspension of payments.

If the temporary employment agency terminates on one of these grounds, the client's actions, on which the termination is based, shall be deemed to amount to a request of

the client to terminate the placement. This does not lead to any liability of the temporary employment agency for any resulting damage suffered by the client. As a result of the termination, the temporary employment agency's placement contracts shall become immediately due and payable.

End of placement

5. The end of the placement contract means the end of the placement. Termination of the placement contract by the client amounts to the client's request to the temporary employment agency to terminate the current placement(s) on the date upon which the placement contract is lawfully terminated, respectively the date upon which the placement contract is lawfully dissolved.
6. If the temporary employment agency clause applies between the temporary worker and the temporary employment agency, the placement of the temporary worker will end at the request of the client if the temporary worker reports that he is unable to perform the work due to incapacity for work. If necessary, the client is deemed to have made this request. The client will confirm this request to the temporary employment agency in writing, if requested to do so.
7. The placement will end by operation of law if and when the temporary employment agency is no longer able to provide the temporary worker, because the employment agency contract between the temporary employment agency and the temporary worker has ended and this employment agency contract is not subsequently renewed for the benefit of the same client. The client shall inform the temporary employment agency in good time about the termination or renewal of the placement contract, in accordance with article 6.1, so as to enable the temporary employment agency to fulfil its obligations with respect to the statutory period of notice fully and correctly.

Article 4 Replacement and availability

1. The temporary employment agency shall at all times be entitled to replace a placed temporary worker. This does not require the consent of the client.
The client shall only refuse cooperation in replacement on reasonable grounds. If requested, the client will state the reason for any refusal in writing.
2. The temporary employment agency is not liable to the client and is not obliged to compensate any damage or costs to the client, if for any reason whatsoever the temporary employment agency cannot (or can no longer) provide a (replacement) temporary worker to the client, at least not (or not anymore) in the way and to the extent agreed upon in the placement contract or subsequently.

Article 5 Right of suspension

1. The client is not entitled to temporarily suspend the employment of the temporary worker in whole or in part, unless it is a case of force majeure within the meaning of Section 6:75 of the Civil Code.
2. Contrary to paragraph 1 of this article, suspension is possible if:
 - this is agreed in writing and the duration is specified, and;
 - the client demonstrates that there is temporarily no work available or the temporary worker cannot be set to work, and;
 - the temporary employment agency can successfully invoke exclusion of the obligation to continue to pay wages to the temporary worker on the basis of the CAO.

Article 6 Working procedure

1. The client provides the temporary employment agency with the necessary information for the placement, including an accurate description of the function, job requirements, working hours, duties, place of work, working conditions and the intended duration of the placement contract, before the placement contract commences.
2. The temporary employment agency will determine, on the basis of the information provided by the client and the known qualities, knowledge and skills of the (candidate) temporary workers eligible for deployment, which (candidate) temporary workers it will propose to the client for the performance of the placement contract. The client is entitled to reject the proposed (candidate) temporary worker, as a result of which the placement of the proposed (candidate) temporary worker will not take place.

3. The temporary employment agency will not be in default towards the client if the contacts between the client and the temporary employment agency prior to a possible placement contract, including a concrete request from the client to post a temporary worker, for whatever reason, do not lead to the actual placement of a temporary worker or do not lead to such placement within the time frame desired by the client.
4. If the temporary employment agency requires information from the client for the purpose of the fulfilment of its obligations under the law or the CAO, the client will provide such information to the temporary employment agency free of charge upon its first request.

Article 7 Working hours and hours worked

1. The scope of work and the working hours of the temporary worker for the client are laid down in the placement contract or otherwise agreed. The temporary worker's working hours, hours worked, break times and rest times are the same as those customary with the client, unless otherwise agreed. The client guarantees that the hours worked and the break times and working hours of the temporary worker comply with the legal requirements. The client shall ensure that the temporary worker does not exceed the legally permitted working hours and the agreed scope of work.
2. Holidays and leave of the temporary worker are regulated in accordance with the law and the CAO.

Article 8 Company closures and mandatory days off

1. The client must inform the temporary employment agency upon entering into the placement contract about any company closures and collective mandatory days off during the term of the placement contract, so that the temporary employment agency, if possible, can include this circumstance in the employment agency contract with the temporary worker. If an intention to establish a company closure and/or collective mandatory days off becomes known after entering into the placement contract, the client must inform the temporary employment agency immediately after this becomes known.

Article 9 Function and remuneration

1. Before the start of the placement contract, the client provides the temporary employment agency with a description of the job to be performed by the temporary worker, the corresponding salary scale and information about all elements of the user company remuneration (with regard to level and time: only and insofar as known at that time).
2. The remuneration of the temporary worker, including any bonuses and expense allowances, is determined in accordance with the CAO (including the provisions concerning the user company remuneration) and the applicable laws and regulations, based on the job description provided by the client.
3. If, at any time, it appears that the job description and associated grading do not correspond with the function actually performed by the temporary worker, the client will provide the temporary employment agency with the correct job description and associated grading without delay. The remuneration of the temporary worker will be redefined on the basis of the new job description. The job description and/or grading can be adjusted during the placement contract, if the temporary worker reasonably calls for such an adjustment on the basis of legislation and regulations and/or the CAO. If the adjustment results in a higher remuneration, the temporary employment agency shall be entitled to adjust the remuneration of the temporary worker and the client fee accordingly. The client owes this corrected rate to the temporary employment agency from the moment that the temporary worker is entitled to the higher remuneration on the basis of legislation and regulations and/or the CAO.
4. The client shall inform the temporary employment agency in a timely manner, in any case as soon as it becomes known, of any changes in the user company remuneration and of any established initial wage increases. This paragraph does not apply if and as long as the temporary worker is remunerated in accordance with the CAO remuneration for the placement group.
5. If and insofar as remuneration is determined for the temporary worker due to inability to classify, the client shall notify the temporary employment agency in a timely manner, and in any case immediately upon becoming aware of a change in the client's job classification system that has the effect that the job performed by the temporary worker can or should have been classified in the client's job classification system after all. The remuneration and the client fee shall in that case be adjusted in accordance with paragraph 3 of this article.

6. Payments and supplements such as those for overtime, travelling time/travel time, physically demanding conditions, work in shifts or irregular hours, at special times or on special days (including holidays), revised hours and/or on-call or standby shifts are remunerated in accordance with the ABU-CAO and/or other applicable employment conditions regulations, and are passed on to the client.

Article 10 Proper exercise of management and supervision

1. In respect of the temporary worker, the client shall act with the same care in exercising management and supervision, as he/she is bound to do in respect of his/her own employees.
2. The client is not permitted to 'lend' the temporary worker on to a third party, i.e. to make him available to a third party for the performance of work under the management and supervision of that third party, without permission. Third party is also understood to mean a (legal) person with whom the client is affiliated in a group.
3. The client may only employ the temporary worker otherwise than in accordance with the provisions of the placement contract and the general conditions, if the temporary employment agency and the temporary worker have agreed to this in writing in advance.
4. Employment of the temporary worker abroad by a client established in the Netherlands is only possible for a limited period of time under the conditions that the client has organised management and supervision and that the employment has been agreed in writing with the temporary employment agency and with the temporary worker.
5. The client shall compensate the temporary worker for any damage he suffers due to the fact that an item belonging to him, which is used within the scope of the assigned activities, is damaged or destroyed.
6. The client shall, as far as possible, obtain adequate insurance against liability on the grounds of the provisions of this article. At the request of the temporary employment agency, the client shall provide proof of insurance.

Article 11 Working conditions

1. The client declares that he is familiar with the fact that he is considered an employer in the Working Conditions Act.
The client is responsible towards the temporary worker and the temporary employment agency for fulfilling the obligations arising from section 7:658 of the Civil Code, the Working Conditions Act and related regulations in the area of safety in the workplace, health, welfare and good working conditions in general.
2. The client is obliged to provide the temporary worker and the temporary employment agency with written information about the required professional qualifications and the specific characteristics of the job to be filled in good time, in any case one working day before commencement of the work. The client actively informs the temporary worker about the Risk Inventory and Evaluation (RIE) used within his company.
3. Should the temporary worker suffer an accident at work or an occupational illness, the client shall, if required by law, notify the competent authorities without delay and ensure that a written report is drawn up without delay. The report shall record the circumstances of the occupational accident or illness in such a way that it can be determined with a reasonable degree of certainty whether and to what extent the occupational accident or illness was caused by the fact that insufficient measures were taken to prevent the occupational accident or illness. The client shall inform the temporary employment agency as soon as possible about the industrial accident or occupational illness and submit a copy of the report drawn up.
4. The client will compensate the temporary worker for all damage suffered by the temporary worker in the performance of his work, if and insofar as the client is liable for this on the grounds of section 7:658 and/or section 7:611 and/or section 6:162 of the Civil Code.
5. The client shall take out adequate insurance against liability on the grounds of the provisions of this article. At the request of the temporary employment agency, the client shall provide proof of insurance.

Article 12 Liability of client

1. The client who has not fulfilled the obligations arising from these general conditions, placement contracts and/or other agreements, shall be obliged to pay compensation for all damage suffered by the temporary employment agency. The provisions of this article are of general applicability, both - if necessary additionally - with regard to matters for which the obligation to pay compensation has already been regulated separately in these general terms and conditions, placement contracts and/or other placement contracts and with regard to subjects for which this is not the case.

Article 13 Client fee

1. The client fee payable by the client to the temporary employment agency is calculated on the basis of the hours worked by the temporary worker and/or (if this number is higher) on the basis of the hours to which the temporary employment agency is entitled on the basis of the general terms and conditions, placement contracts and/or other agreements and/or the surcharges payable by the temporary employment agency to the temporary worker. The client fee is increased by the expense allowances payable by the temporary employment agency to the temporary worker. VAT is charged on the client fee and expense allowances.
2. The temporary employment agency is entitled to adjust the client fee during the term of the placement contract, if the costs of the temporary work increase:
 - as a result of amendments to the CAO or to the wages regulated by it or amendments to the CAO and/or the employment conditions regulations applicable to the client or to the wages regulated by it;
 - as a result of changes in or arising from legislation and regulations, including changes in or arising from the social and fiscal legislation and regulations, the CAO or any binding regulation;
 - as a result of a (periodic) wage increase and/or a (non-recurring) mandatory payment, arising from the CAO, the collective labour agreement in force within the Client and/or the employment conditions regulation and/or legislation and regulations applicable within the client.
3. If the client does not agree to pay the adjusted client fee pursuant to paragraph 2 and/or Article 9, this shall constitute the client's request to terminate the placement.
4. Any adjustment to the client fee will be announced by the temporary employment agency to the client as soon as possible and confirmed to the client in writing.
5. If for any reason attributable to the client the remuneration has been set too low, the temporary employment agency shall be entitled to set the remuneration retrospectively and to adjust the client fee accordingly with retrospective effect and charge the client accordingly. The temporary employment agency may also charge the client for any resulting underpayment and any costs incurred by the temporary employment agency as a result.

Article 14 Invoicing

1. Invoicing takes place on the basis of the method of accounting for time agreed with the client and in compliance with these general terms and conditions, placement contracts and/or other agreements.
2. If no method of accounting for time has been agreed, the time shall be accounted for by means of time sheets approved in writing by the client. The client and temporary employment agency may agree that the time accounting is carried out by means of a time accounting system, an electronic and/or automated system or by means of summaries drawn up by or for the client.
3. The client is responsible for correct and complete time accounting and is obliged to ensure that the information contained therein regarding the temporary worker is correct and truthful, such as: the name of the temporary worker, the number of hours worked, overtime hours, irregular hours and shift hours, the other hours for which, in accordance with these general terms and conditions, placement contracts and/or other agreements the client fee is payable, any surcharges and any costs actually incurred.

4. If the client supplies the time sheets, he shall ensure that the temporary employment agency has them in its possession immediately after the week worked by the temporary worker. The client is responsible for the way in which the time sheets are supplied to the temporary employment agency.
5. Before submitting the time sheets, the client shall give the temporary worker the opportunity to check the time sheets. If and insofar as the temporary worker disputes the information contained in the timesheet, the temporary employment agency is entitled to determine the hours and costs in accordance with the temporary worker's statement, unless the client can demonstrate that the information he has provided is correct. At the request of the temporary employment agency, the client will allow inspection of the original time keeping records of the client and will provide a copy thereof.
6. If the time is accounted for by means of time sheets to be submitted by the temporary worker, the client shall retain a copy of the time sheet. In the event of any discrepancy between the time sheet submitted by the temporary worker to the temporary employment agency and the copy retained by the client, the time sheet submitted by the temporary worker to the temporary employment agency shall count as full proof for the purposes of settlement, unless the client provides evidence to the contrary.

Article 15 Obligation to use best endeavours and liability temporary employment agency

1. The temporary employment agency is obliged to use its best endeavours to perform the placement contract properly. If and in so far as the temporary employment agency fails to comply with this obligation, the temporary employment agency shall be liable for any damage suffered by the client as a result, provided that the client files a written complaint with the temporary employment agency as soon as possible, but no later than three months after the occurrence or discovery of the damage, demonstrating that the damage is the direct result of an attributable shortcoming on the part of the temporary employment agency.

Article 16 Intellectual and industrial property rights

1. At the client's request, the temporary employment agency will ensure that the temporary worker signs a written statement in order to ensure - insofar as necessary and possible - that all intellectual and industrial property rights to the results of the activities of the temporary worker accrue or will be transferred to the client. If the temporary employment agency is liable to pay the temporary worker compensation in connection with this or otherwise incurs costs, the client shall be liable to pay the temporary employment agency an equal amount of compensation or costs.
2. The client is at liberty to enter into an agreement directly with the temporary worker or to submit a statement for his signature regarding the intellectual and industrial property rights referred to in paragraph 1 of this article. The client shall inform the temporary employment agency of his/her intention to do so and provide a copy of the agreement/statement drawn up in this regard to the temporary employment agency.
3. The temporary employment agency is not liable towards the client for any fine or penalty which the temporary worker forfeits or any damage suffered by the client as a result of the fact that the temporary worker invokes any right of intellectual and/or industrial property.

Article 17 Confidentiality

1. The temporary employment agency and the client will not disclose any confidential information to third parties, belonging to or about the other party, its activities and relations, which has come to their knowledge pursuant to the placement contract, unless - and then only to the extent that - the disclosure of such information is necessary for the proper performance of the placement contract or they are under a legal obligation to disclose.
2. At the client's request, the temporary employment agency will oblige the temporary worker to observe a duty of confidentiality concerning everything that becomes known or has become known to him during the performance of the work, unless the temporary worker is under a statutory obligation to disclose this information.
3. The client is free to directly oblige the temporary worker to maintain confidentiality. The client shall inform the temporary employment agency of his/her intention to do so and shall provide a copy of the statement/agreement drawn up in this regard to the temporary employment agency.

4. The temporary employment agency is not liable for any fines, penalties or any damage suffered by the client as a result of any breach of confidentiality by the temporary worker.

Article 18 Special obligations in respect of identity and processing of personal data

1. The client, with whom the temporary employment agency places a temporary worker, shall verify and establish the identity of the temporary worker in accordance with the applicable laws and regulations, including but not limited to the Foreign Nationals (Employment) Act (WAV), the Wage Tax Act and the Compulsory Identification Act. The client shall also comply with the administrative and retention obligations incumbent upon him in this respect.
2. With regard to foreign nationals, the client explicitly declares that he is familiar with the WAV, which includes the fact that, upon commencement of the work by a foreign national, the client must obtain a copy of the document referred to in Section 1 subsections 1 to 3 of the Compulsory Identification Act from the foreign national. The client is responsible for checking this document carefully, establishing the identity of the foreign national on the basis thereof and including a copy of the document in his records. The temporary employment agency is not responsible or liable for any fines imposed on the client in the context of the WAV.
3. The client explicitly declares that he is familiar with the applicable laws and regulations concerning the processing of personal data. The temporary employment agency and the client will enable each other to comply with the aforementioned legislation. The client will in any case only use the personal data obtained through the temporary employment agency for the purpose for which it was obtained, will not retain it any longer than permitted by law and will ensure adequate security of this personal data.

Article 19 Treatment of temporary worker

1. The Client and the Temporary employment agency shall not make any prohibited distinctions based on religion, belief, political opinion, gender, race, nationality, heterosexual or homosexual orientation, marital status, disability, chronic illness, age or any other grounds whatsoever.
Client and temporary employment agency shall only set requirements relevant to the position or take them into consideration when providing or executing the placement contract, and in the selection and treatment of temporary workers.
2. Client is familiar with the Whistleblowers Act and ensures that the temporary worker has access to the whistleblowing procedure in the same way as his own staff, if such a procedure is known or applicable to him.
3. If the client has a complaints procedure concerning the treatment of employees, he shall ensure that the temporary worker has access to this complaints procedure in the same way as his own staff. These are only complaints that do not relate to the employment by the temporary employment agency. This provision applies insofar as there are no legal obligations to the contrary.

Article 20 Co-determination

1. The client is obliged to give the temporary worker who is a member of the works council of the temporary employment agency or of the client's works council the opportunity to exercise these co-determination rights in accordance with legislation and regulations.
2. If the temporary worker exercises co-determination in the business of the client, the client shall also be liable to pay the client fee for the hours during which the temporary worker performs work or follows training in connection with the exercise of co-determination during working hours.
3. The Client declares that it is aware of its information obligations under the Works Councils Act (WOR) concerning the (expected) deployment of temporary workers in his company. If and insofar as the client wishes to rely on information provided or to be provided by the temporary employment agency in the fulfilment of these information obligations, such provision of information will not exceed that which is required by the WOR.

Article 21 Obligations relating to the Placement of Personnel by Intermediaries Act

1. The client expressly declares that he is aware of Section 8b of the Placement of Personnel by Intermediaries Act) and ensures that temporary workers have equal access to the facilities or services in his company, in particular canteens, childcare and transport facilities, as the personnel employed by his company in equal or similar positions, unless the difference in treatment is justified on objective grounds.
2. The Client expressly declares that he is aware of Section 8c of the Placement of Personnel by Intermediaries Act and ensures that any vacancies arising within his company are clearly and promptly brought to the attention of the temporary worker, so that he/she has the same opportunity to obtain a permanent employment contract as the employees of that company.
3. The client explicitly declares the he is familiar with article 10 of the Placement of Personnel by Intermediaries Act. The temporary employment agency is not permitted to assign employees to the client or to the part of the client's company where there is a strike, lockout or occupation. The client will inform the temporary employment agency in a timely manner and in full about the intention, commencement, continuation or termination of trade union-organised or unorganised collective actions, including but not limited to a strike, lockout or occupation.
The client shall, in the performance of its supervision and management of the temporary worker, expressly not provide the temporary worker with any assignments, thereby violating Section 10 of the Placement of Personnel by Intermediaries Act. Such as, but not limited to, having temporary workers perform tasks normally performed by employees currently participating in collective actions.
4. The client explicitly declares that he is familiar with article 12a of the Placement of Personnel by Intermediaries Act. The client shall, prior to the commencement of the placement and thereafter as required, provide the temporary employment agency with complete and timely written or electronic information on the terms and conditions of employment.

Article 22 Applicable law and choice of forum

1. These general terms and conditions, placement contracts and/or other agreements are governed by Dutch law.
2. All disputes arising from or in connection with a legal relationship between the parties shall in the first instance be settled exclusively by the competent court of the district in which the head office of the temporary employment agency is located.

Article 23 Final provision

1. If one or more provisions of these general terms and conditions prove to be void or are annulled, the remaining provisions of the general terms and conditions, placement contracts and/or other agreements shall otherwise remain in force. The provisions that are not legally valid or cannot be legally applied shall be replaced by provisions that are as close as possible to the purport of the provisions to be replaced.