

**General Terms and Conditions for the placement  
of temporary agency workers 2020**

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## Article 1 Definitions

The following definitions apply in these General Terms and Conditions:

1. **Private employment agency:** any natural person or legal entity that makes temporary agency workers available to user companies on assignment basis.
2. **Temporary agency worker:** any natural person who has entered into an agency work employment contract as referred to in Section 7:690 of the Dutch Civil Code with a private employment agency in order to perform work for a third party under the management and supervision of that third party.
3. **Assignment:** the agreement between a user company and the private employment agency on the basis of which a single temporary agency worker is made available to the user company by the private employment agency, as referred to in paragraph 2 of this article, in order to perform work in exchange for payment of the user company rate.
4. **User company:** any natural person or legal entity who is party to the assignment in addition to the private employment agency.
5. **Placement:** the employment of a temporary agency worker in the context of an assignment.
6. **Specific flexible agency work contract:** the written provision in the employment contract between the private employment agency and the temporary agency worker and/or in the CLA (Collective Labour Agreement) stipulating that the employment contract ends by operation of law if the temporary agency worker's placement at the user company by the private employment agency ends at the user company's request (Section 7:691 (2) of the Dutch Civil Code).
7. **CLA:** The *Collective Labour Agreement for Temporary Agency Workers* concluded between the *Algemene Bond Uitzendondernemingen* (ABU - Dutch Association of private employment agencies) on the one hand and the relevant employee organisations on the other.
8. **User company rate:** the rate owed to the private employment agency by the user company, excluding bonuses, allowances and VAT. The rate is calculated per hour, unless stated otherwise.
9. **Hirer's remuneration:** the hirer's remuneration as defined in the CLA.

## Article 2 Scope

1. These General Terms and Conditions apply to all assignments and other agreements between the private employment agency and the user company, as well as to all legal acts aimed at the establishment of such, including offers, proposals, quotations and price lists.
2. Any purchasing or other terms and conditions of the user company do not apply and are explicitly rejected by the private employment agency.
3. Agreements made in deviation from these General Terms and Conditions only apply if agreed upon in writing and apply exclusively for that assignment.

## Article 3 The assignment and the placement

### Assignment

1. The assignment can be entered into for a definite period or indefinitely.
2. The assignment for a definite period is an assignment that has been entered into:
  - either for a fixed period;
  - or for a determinable period;
  - or for a determinable period that does not exceed a fixed period.

The assignment for a definite period ends by operation of law by the expiration of the agreed time period or as the result of the occurrence of a predetermined objectively determinable event.

### End of assignment

3. The assignment for an indefinite period ends by written cancellation with due observance of a reasonable notice period.
4. Every assignment ends immediately on account of cancellation at the moment that either of the parties cancels the assignment because:
  - the other party is in default;
  - the other party has been liquidated;
  - the other party has been declared bankrupt or applied for a moratorium on payments.

If the private employment agency cancels the assignment on one of these grounds, the user company's behaviour on which the cancellation is based implies the user company's request that the placement be terminated. This does not lead to any liability on the part of the private employment agency for the damage or loss suffered by the user company as a consequence. The private employment agency's claims will become immediately payable as a result of the cancellation.

#### End of placement

5. The end of the assignment means the end of the placement. The user company's termination of the assignment implies the user company's request to the private employment agency to terminate the current placement(s) as of the date on which the assignment is validly terminated, or the date as of which the assignment is validly dissolved.
6. If the specific flexible agency work contract is in effect between the temporary agency worker and the private employment agency, the temporary agency worker's placement ends at the user company's request at the moment that the temporary agency worker reports that he is unable to perform the work on account of incapacity for work. The user company will be regarded as having made this request to the extent necessary. If requested to do so, the user company will confirm this request to the private employment agency in writing.
7. The placement ends by operation of law if and as soon as the private employment agency can no longer provide the temporary agency worker because the employment contract between the private employment agency and temporary agency worker has ended and this employment contract is not continued in order to continue work for the same user company. The user company informs the private employment agency on time of the termination or continuation of the assignment with due observance of article 6 paragraph 1, in order to enable the private employment agency to comply correctly and fully with its obligations concerning a statutory notice period.

#### **Article 4 Replacement and availability**

1. The private employment agency has the right at all times to replace a temporary agency worker who has been made available. This does not require the user company's consent. The user company will only refuse to cooperate in replacement on reasonable grounds. The user company will provide written justification for any such refusal if requested to do so.
2. The private employment agency does not fail culpably in respect of the user company and is not required to compensate any damage or costs to the user company if the private employment agency for whatever reason cannot provide or can no longer provide the user company with a (replacement) temporary agency worker in the manner and for the hours agreed on in the assignment or subsequently.

#### **Article 5 Right of suspension**

1. The user company does not have the right to temporarily suspend the employment of the temporary agency worker in full or in part unless there is a situation of *force majeure* in the sense of Section 6:75 of the Dutch Civil Code.
2. In deviation from paragraph 1 of this article, suspension is possible if: - this has been agreed in writing and the term for such suspension has been set down and;
  - the user company demonstrates that there is temporarily no work to be performed or that the temporary agency worker cannot be put to work and;
  - the private employment agency can successfully invoke against the temporary agency worker exclusion of the obligation to continue paying wages on grounds of the CLA.

#### **Article 6 Work procedure**

1. Before the start of the assignment, the user company will provide the private employment agency with the information necessary for the placement, including an accurate description of the position, job requirements, work times, number of working hours, activities, workplace, working conditions and envisioned term of the assignment.
2. With reference to the information provided to it by the user company and its awareness of the capacities, knowledge and skills of the (candidate) temporary agency workers eligible for placement, the private employment agency will decide which (candidate) temporary agency workers it will propose to the user company for performance of the assignment. The user company has the right to reject the proposed (candidate) temporary agency worker, which means the placement of the proposed (candidate) temporary agency worker will not go ahead.

3. The private employment agency does not fail culpably in respect of the user company if the contacts between the user company and private employment agency prior to a potential assignment, including a concrete request from the user company for placement of a temporary agency worker, for whatever reason do not result in the actual placement of a temporary agency worker or do not result in this within the period desired by the user company.
4. In the event the private employment agency requires information from the user company within the context of compliance with its obligations under the law or the CLA, the user company will provide this information to the private employment agency free of charge upon first request.

#### **Article 7 Number of working hours and work times**

1. The number of working hours and the actual work times of the temporary agency worker at the user company are set down in the assignment or agreed on otherwise. The number of working hours, the breaks and the work and rest times of the temporary agency worker will be the same as the usual hours and times at the user company, unless agreed otherwise. The user company guarantees that the number of working hours and the work and rest times of the temporary agency worker satisfy the legal requirements. The user company ensures that the temporary agency worker does not exceed the work times permitted by law and the agreed number of working hours.
2. The temporary agency worker's vacation time and leave will be arranged in accordance with the law and the CLA.

#### **Article 8 Business closures and mandatory days off**

1. When the assignment is entered into, the user company must inform the private employment agency about any business closures and mandatory collective days off during the course of the assignment, so that, if possible, the private employment agency can have this included in the employment contract with the temporary agency worker. If a plan to schedule a business closure and/or mandatory collective days off becomes known after the assignment has been entered into, the user company must inform the private employment agency about this as soon as it is known.

#### **Article 9 Position and remuneration**

1. Before the start of the assignment, the user company will provide the description of the position to be performed by the temporary agency worker, the corresponding scale and information on all elements of the hirer's remuneration (in terms of amount and time: only if and to the extent known at that point) to the private employment agency.
2. The remuneration of the temporary agency worker, including any bonuses and allowances, will be determined in accordance with the CLA (including the provisions on the hirer's remuneration) and the applicable legislation and regulations, with reference to the job description provided by the user company.
3. If it emerges at any time that this job description and the corresponding scale do not match the actual position performed by the temporary agency worker, the user company will immediately provide the private employment agency with the correct job description and corresponding scale. The temporary agency worker's remuneration will be redetermined with reference to the new job description. The job description and/or scale may be adjusted during the assignment, if the temporary agency worker has a claim to this adjustment within reason by invoking legislation or regulations and/or the CLA. If the adjustment results in a higher remuneration, the private employment agency is entitled to correct the temporary agency worker's remuneration and the user company rate accordingly. The user company owes this corrected rate to the private employment agency as from the moment the temporary agency worker is entitled to the higher remuneration on the basis of legislation and regulations and/or the CLA.
4. The user company will notify the private employment agency about any changes to the hirer's remuneration and about any initial wage increases determined in good time and in any event immediately when these become known. This paragraph does not apply if and for as long as the temporary agency worker is paid in accordance with the CLA remuneration for the allocation group.
5. If and insofar as a remuneration is determined for the temporary agency worker due to the fact that he cannot be classified, the user company will inform the private employment agency on time and in any event immediately when a change to the user company's job classification system becomes known, when this change means that the position held by the temporary agency worker could or should have been classified in the user company's job classification

system as yet. The remuneration and the user company rate are adjusted in accordance with paragraph 3 of this article if this is the case.

6. Allowances and additional payments for overtime, travel hours/travel time, physically strenuous circumstances, shift work, irregular hours, at special times or on special days (including public holidays), shifted hours and/or stand-by duty or on-call duty, are paid in accordance with the ABU CLA and/or other applicable terms and conditions of employment and are charged to the user company.

#### **Article 10 Good practice of management and supervision**

1. When managing and supervising the temporary agency worker, as well as in relation to the performance of the work, the user company will treat the temporary agency worker in the same careful manner as it is required to treat its own employees.
2. If it has not obtained permission to do so, the user company is not permitted to in turn 'loan' the temporary agency worker to a third party for the performance of work under the management and supervision of that third party. Third party is also defined as a natural person or legal entity with which the user company is affiliated in a group.
3. The user company may only put the temporary agency worker to work in deviation from the provisions stipulated in the assignment and terms and conditions if the private employment agency and temporary agency worker have agreed to this in writing in advance.
4. A Netherlands-based user company may only put the temporary agency worker to work abroad for a definite period on condition that the user company has organised the management and supervision and this employment has been agreed on in writing with the private employment agency and with the temporary agency worker.
5. The user company will compensate the temporary agency worker the loss he has suffered as a result of the fact that an item belonging to him and used in the context of the assigned work has become damaged or destroyed.
6. To the extent possible, the user company will insure itself adequately against liability on grounds of the provisions in this article. At the private employment agency's request, the user company will submit proof of insurance.

#### **Article 11 Working conditions**

1. The user company declares it is aware of the fact that it is regarded as the employer under the Working Conditions Act.  
The user company is responsible to the temporary agency worker and the private employment agency for compliance with the obligations arising from Section 7:658 of the Dutch Civil Code, the Working Conditions Act and the related regulations in the area of workplace safety, health, wellbeing and good working conditions in general.
2. The user company is required to provide the temporary agency worker and the private employment agency in good time, at the latest one working day before the start of the work, with written information on the professional qualifications required and the specific characteristics of the job to be performed. The user company will actively provide the temporary agency worker with information on the Risk Inventory and Evaluation (RIE) used at the company.
3. If the temporary agency worker suffers an industrial accident or work-related illness, the user company will, if required by law, notify the competent authorities about this immediately and ensure that a written report is drawn up without delay. The report must document the details of the industrial accident or work-related illness such that it can be gathered with a reasonable degree of certainty whether and to what extent the industrial accident or work-related illness is the result of the fact that insufficient measures had been taken to prevent the industrial accident or work-related illness. The user company will inform the private employment agency as soon as possible about the industrial accident or work-related illness and provide a copy of the report it has prepared.
4. The user company will compensate the temporary agency worker all damage or loss that the temporary agency worker suffers in the performance of his work, if and insofar as the user company is liable for that on grounds of Section 7:658 and/or Section 7:611 and/or Section 6:162 of the Dutch Civil Code.
5. The user company will insure itself adequately against liability on grounds of the provisions in this article. At the private employment agency's request, the user company will submit proof of insurance.

## **Article 12 Liability of user company**

1. Any user company that fails to comply or fails to properly comply with the obligations arising for it under these General Terms and Conditions, the assignments and/or other agreements is required to compensate all damage or loss this gives rise to for the private employment agency. The provisions in this article apply generally, both (if necessary additionally) with regard to matters in which the compensation obligation has already been arranged for separately in these General Terms and Conditions, the assignments and/or other agreements as well as with regard to matters where that is not the case.

## **Article 13 User company rate**

1. The user company rate owed by the user company to the private employment agency is charged for the hours worked by the temporary agency worker and/or (if this number is higher) the hours to which the private employment agency is entitled based on the General Terms and Conditions, assignments and/or other agreements and/or additional payments owed by the private employment agency to the temporary agency worker. The user company rate is multiplied by the expense allowances the private employment agency owes the temporary agency worker. VAT is charged on the user company rate or the allowances.
2. The private employment agency has the right to adjust the user company rate during the term of the assignment if the costs of the temporary agency work increase:
  - as a result of an amendment of the CLA or the wages regulated therein or a change to the CLA and/or employment conditions scheme or wages regulated therein applicable at the user company;
  - as a result of amendments in or prompted by legislation and regulations, including amendments in or prompted by the social and tax legislation and regulations, the CLA or any binding regulation;
  - as a result of a (periodic) wage increase and/or a (one-off) mandatory payment arising from the CLA, the collective labour agreement and/or working conditions scheme in effect at the user company and/or legislation and regulations.
3. If the user company does not consent to payment of the adjusted user company rate pursuant to paragraph 2 and/or article 9, this implies the user company's request to terminate the placement.
4. The private employment agency will notify the user company of any adjustment of the user company rate as soon as possible and confirm this change in writing to the user company.
5. If the remuneration has been set too low for any reason that can be attributed to the user company, the private employment agency has the right, even after the fact and with retrospective effect, to determine the remuneration and to adjust and charge the user company rate accordingly with retrospective effect. The private employment agency may also charge the user company the amount underpaid by the user company as a result and the costs incurred by the private employment agency as a consequence.

## **Article 14 Invoicing**

1. Invoicing takes place based on the time registration method agreed on with the user company, with due observance of these General Terms and Conditions, the assignments and/or other agreements.
2. If no method for time registration has been agreed on, hours will be recorded using billing forms approved in writing by the user company. The user company and private employment agency may agree that the hours will be recorded using a time registration system, an electronic and/or computerised system or by means of overviews prepared by or for the user company.
3. The user company will ensure correct and full time registration and is required to supervise or have it supervised that the data contained therein in relation to the temporary agency worker is correct and truthfully reported, such as: the temporary agency worker's name, the number of hours worked, overtime, irregular hours and shift hours worked, the other hours for which the user company rate is owed pursuant to these General Terms and Conditions, the assignments and/or other agreements, any bonuses and any actual costs incurred.
4. If the user company provides the time records, it must ensure that the private employment agency has access to these time records immediately after the temporary agency worker has completed a working week. The user company is responsible for the way in which the time records are provided to the private employment agency.
5. Before the user company delivers the time records, it must give the temporary agency worker the opportunity to check them. If and insofar as the temporary agency worker disputes the data contained in the time records, the private employment agency has the right to determine the

hours and costs in accordance with the temporary agency worker's report, unless the user company can demonstrate that the data it has recorded is correct. At the private employment agency's request, the user company provides insight into the user company's original time records and the user company provides a copy thereof.

6. If the time registration takes place by billing forms submitted by the temporary agency worker, the user company retains a copy of the billing form. In the event of any discrepancy between the billing form that the temporary agency worker submits to the private employment agency and the copy kept by the user company, the billing form that the temporary agency worker has submitted to the private employment agency serves as full evidence for the invoicing, unless the user company produces evidence to the contrary.

#### **Article 15 Best-efforts obligation and liability of private employment agency**

1. The private employment agency is required to endeavour to perform the assignment properly. If and insofar as the private employment agency fails to satisfy this obligation, the private employment agency is required to compensate the damage or loss arising for the user company as a consequence, provided the user company submits a written complaint on the matter to the private employment agency as soon as possible, though no later than three months after this damage or loss occurred or became known, and demonstrates that the damage or loss was the direct result of a culpable failure on the part of the private employment agency.

#### **Article 16 Intellectual and industrial property**

1. At the user company's request, the private employment agency will have the temporary agency worker sign a written statement to ensure or promote - to the extent necessary and possible - that all intellectual and industrial property rights to the results of the temporary agency worker's work belong or will be transferred to the user company. If the private employment agency owes the temporary agency worker compensation in connection with this or must incur other costs, the user company owes the private employment agency the same compensation or the same costs.
2. The user company is free to directly enter into an agreement with the temporary agency worker or present him with a statement to sign in relation to the intellectual and industrial property rights referred to in paragraph 1 of this article. The user company will notify the private employment agency of its intention to do this and provide the private employment agency with a copy of the relevant agreement/statement it has drawn up.
3. The private employment agency is not liable to the user company for any fine or penalty incurred by the temporary agency worker or any damage or loss suffered by the user company as a result of the fact that the temporary agency worker invokes any right of intellectual and/or industrial property.

#### **Article 17 Secrecy**

1. The private employment agency and user company will not disclose to third parties any confidential information from or about the other party, about its activities or about its business relations which has come to its attention pursuant to the assignment, unless and in that case only to the extent disclosure of this information is necessary in order to properly perform the assignment or if required to do so on grounds of a legal requirement.
2. At the user company's request, the private employment agency will require the temporary agency worker to observe secrecy concerning everything he becomes aware of in performing the work, unless the temporary agency worker is subject to a legal requirement to disclose the information.
3. The user company is free to directly require the temporary agency worker to observe secrecy. The user company will notify the private employment agency of its intention to do this and provide the private employment agency with a copy of the relevant statement/agreement it has drawn up.
4. The private employment agency is not liable for any fine, penalty or any damage on the part of the user company resulting from the temporary agency worker's breach of a duty of secrecy.

#### **Article 18 Special obligations concerning identity and processing of personal data**

1. The user company to which the private employment agency makes a temporary agency worker available verifies and determines the identity of the temporary agency worker in accordance with the applicable legislation and regulations, including but not limited to the Foreign Nationals (Employment) Act (Wav), Salaries Tax Act and the Compulsory Identification Act. The user company will also comply with its administration and retention obligations in this connection.

2. The user company declares expressly with respect to foreign nationals that it is familiar with the Wav, comprising among other things that the user company must receive from the foreigner a copy of the document referred to in Section 1 (1) to (3) of the Compulsory Identification Act before such a foreign national commences working. The user company is responsible for carefully checking this document and uses it to ascertain the foreigner's identity and will keep a copy of the document in its records. The private employment agency is not responsible or liable for any penalty imposed on the user company in the context of the Wav.
3. The user company declares expressly that it is familiar with the applicable legislation and regulations concerning the processing of personal data. The private employment agency and the user company will enable each other to comply with the abovementioned legislation. In any event, the user company will only use personal data obtained via the private employment agency for the purpose for which they were obtained, it will not store these for longer than allowed under legislation and regulations and will arrange for adequate security of these personal data.

#### **Article 19 Treatment temporary agency worker**

1. The user company and private employment agency will not make any prohibited distinction on grounds of religion, personal convictions, political opinion, gender, race, nationality, sexual orientation, civil status, disability, chronic illness, age or any other grounds.  
The user company and private employment agency will exclusively stipulate or take into account requirements that are relevant for the position when awarding or performing the assignment and in the selection and treatment of temporary agency workers.
2. The user company is familiar with the legislation pertaining to whistle-blowers and guarantees that the temporary agency worker will have access to the whistle-blowers' scheme in the same way as its own employees provided the user company has such a scheme or such a scheme applies to it.
3. If the user company has a complaints procedure concerning the treatment of employees it will guarantee that the temporary agency worker will have access to this complaints procedure in the same way as its own employees. This only concerns complaints that do not concern good employment practices on the part of the private employment agency. All of the above insofar as there are no other statutory obligations.

#### **Article 20 Participation in decision making**

1. The user company is required to give the temporary agency worker who is a member of the private employment agency's works council or of the user company's works council the opportunity to exercise these participation rights in accordance with legislation and regulations.
2. If the temporary agency worker exercises employee participation in the user company's organisation, the user company also owes the user company rate for the hours during which the temporary agency worker performs or receives employee participation-related activities or training during working hours.
3. The user company declares it is aware of its duty of disclosure on grounds of the Works Councils Act (hereinafter: WOR - Wet op de Ondernemingsraden) concerning the (expected) use of temporary agency workers in its organisation. If and to the extent that the user company wishes to use information provided or to be provided by the private employment agency for the purposes of fulfilling this duty of disclosure, this provision of information will not go beyond what is required by the WOR.

#### **Article 21 Requirements relating to the Placement of Personnel by Intermediaries Act**

1. The user company declares it is explicitly aware of Section 8b of the Placement of Personnel by Intermediaries Act and ensures that temporary agency workers have the same access to the company facilities or services in its organisation, in particular canteens, childcare and transport facilities, as the employees who are employed by its organisation in the same or similar positions, unless the different treatment is justified for objective reasons.
2. The user company declares that it is explicitly aware of Section 8c of the Placement of Personnel by Intermediaries Act and ensures that vacancies at its organisation are clearly brought to the attention of the temporary agency worker in good time, so that he has the same chances of a permanent employment contract as the employees of that organisation.
3. The user company declares expressly that it is familiar with Section 10 of the Placement of Personnel by Intermediaries Act. The private employment agency is not allowed to place employees with the user company or in that section of the user company's business in which a

strike, lock-out or factory occupation exists. The user company will inform the private employment agency on time and in full concerning the intention, commencement, continuation or ending of organised or unorganised industrial actions on the part of the trade unions, including but not limited to strikes, lock-outs or factory occupation.

When supervising and managing the temporary agency worker, the user company will expressly not issue instructions to the temporary agency worker that would violate Section 10 of the Placement of Personnel by Intermediaries Act. Such as, but not limited to having the temporary agency worker carry out activities that are usually performed by employees who are participating in industrial action at that time.

4. The user company declares expressly that it is familiar with Section 12a of the Placement of Personnel by Intermediaries Act. Prior to the placement and thereafter when necessary, the user company will provide the private employment agency on time and in full with written or electronic information concerning the employment conditions.

**Article 22      Applicable law and choice of forum**

1. Dutch law applies to these General Terms and Conditions, assignments and/or other agreements.
2. All disputes arising from or related to a legal relationship between the parties will in first instance exclusively be heard by the competent court of the district where the private employment agency has its head office.

**Article 23      Final provision**

1. If one or more provisions of these General Terms and Conditions are void or are declared void, the other provisions in these General Terms and Conditions, assignments and/or other agreements will remain in force. The provisions that are not legally valid or cannot be legally enforced will be replaced with provisions that are as consistent as possible with the purport of the provisions to be replaced.