

## TERMS AND CONDITIONS



**NBBU**



# TERMS AND CONDITIONS



**NBBU**

1st edition: August 2018



# CONTENTS

Standard Terms and Conditions for Temporary Worker Postings and Job Placement Services of the Nederlandse Bond van Bemiddelings- en Uitzendondernemingen (NBBU))

## CHAPTER 1

### GENERAL PROVISIONS

1. Definitions **5**
2. Applicability of these Standard Terms and Conditions **6**
3. Conclusion of the contract of hire **6**
4. Invoicing **7**
5. Terms of payment **8**
6. Cancellation **9**
7. Liability **10**
8. Force majeure **11**
9. Non-disclosure **12**
10. Governing law and competent court **12**
11. Final provisions **12**

## CHAPTER 2

### TERMS AND CONDITIONS FOR THE POSTING OF TEMPORARY WORKERS

12. The hiring of temporary workers **13**
13. Scope and term of the contract of hire and the posting(s) **13**
14. The hirer's fee, (hourly) remuneration, benefits and other allowances **14**
15. Hirer's obligation to provide information **15**
16. Civil-law chain liability for wages **16**
17. (Direct) employment relationship between hirer and temporary worker **16**
18. Selection of temporary workers **17**
19. Hirer's duty of care and indemnity for the temporary employment agency **17**
20. Identification and personal data **18**
21. Company car and business closure **19**

## CHAPTER 3

### TERMS AND CONDITIONS FOR JOB PLACEMENT

22. Applicability of general provisions **20**
23. Fee and content of the placement contract **20**
24. Conclusion of an employment relationship by the client with the jobseeker **20**
25. Selection of jobseeker **21**



# CHAPTER 1

## GENERAL PROVISIONS

### ARTICLE 1 DEFINITIONS

The following definitions apply in these Standard Terms and Conditions:

- 1.1 Temporary employment agency: every natural person or legal entity which, in the course of carrying on an occupation or business, makes temporary workers available to a hirer to perform work for and under the direction and supervision of such hirer.
- 1.2 Temporary worker: every natural person who performs or will perform work for and under the direction and supervision of a hirer through the intermediary of a temporary employment agency.
- 1.3 Hirer: every natural person or legal entity that takes on temporary workers through the intermediary of a temporary employment agency.
- 1.4 Contract of hire: a contract between a temporary employment agency and a hirer which sets forth the specific terms and conditions under which a temporary worker is made available to perform work for and under the direction and supervision of a hirer.
- 1.5 Hirer's fee: the amount per unit of time which a hirer owes the temporary employment agency for the posting of a temporary worker. The hirer's fee covers the costs of labour, including wage costs, wage tax and national insurance contributions, as well as a margin for the services provided by the temporary employment agency.
- 1.6 Temporary employment contract: an employment contract under which a temporary worker is made available by a temporary employment agency to a hirer in order to perform work under the direction and supervision of that hirer pursuant to a contract of hire concluded by the hirer with the temporary employment agency.
- 1.7 Placement agency: every natural person or legal entity that assists an employer, jobseeker or both in their search for staff or for employment, as the case may be, with a view to the conclusion of an employment contract under civil law or an appointment as a civil servant.
- 1.8 Client: every natural person or legal entity that uses the services of a placement agency.
- 1.9 Placement contract: the contract between a placement agency and a client and/or a jobseeker to perform the services referred to in Paragraph 7.

- 1.10 NBBU Collective Agreement: the collective agreement for temporary workers that applies to organizations that are members of the Nederlandse Bond van Bemiddelings- en Uitzendondernemingen (NBBU).
- 1.11 Any reference in these Standard Terms and Conditions to temporary workers must be construed as a reference to both male and female temporary workers and any reference to 'he', 'him' and/or 'his' must be construed as a reference to 'he/she', 'him/her' and/or 'his/her'.

## ARTICLE 2

### **APPLICABILITY OF THESE TERMS AND CONDITIONS**

- 2.1 These terms and conditions are applicable to any offer by a temporary employment agency to a hirer and to any contract of hire between a temporary employment agency and a hirer to which the temporary employment agency has declared these terms and conditions applicable, and to any supplies and services of any nature whatever resulting therefrom between a temporary employment agency and a hirer, except where and to the extent that the parties expressly derogate from these terms and conditions in writing.
- 2.2 A hirer with whom a contract has been concluded on these terms and conditions is deemed to have tacitly agreed that they will also be applicable to any contract of hire subsequently concluded with the temporary employment agency.
- 2.3 All offers are without obligation, regardless of how they have been made.
- 2.4 A temporary employment agency is not bound by the standard terms and conditions of the hirer to the extent that these differ from these terms and conditions.
- 2.5 These standard terms and conditions may be amended or supplemented from time to time. The amended standard terms and conditions will then also apply to contracts of hire already entered into, with effect from one month after written notice of the amendment.

## ARTICLE 3

### **CONCLUSION OF THE CONTRACT OF HIRE**

- 3.1 A contract of hire is concluded when it is accepted in writing by the hirer or when the temporary employment agency effectively makes temporary workers available to the hirer.
- 3.2 The specific terms and conditions under which a temporary worker is made available to the hirer by the temporary employment agency are set forth in the contract of hire.
- 3.3 Any amendment or addition to the contract of hire will not become effective until it has been confirmed in writing by the temporary employment agency.



## ARTICLE 4 INVOICING

- 4.1 Except as otherwise agreed, the invoices of the temporary employment agency will be based on the completed time sheets approved by the hirer, and on the hirer's fee plus any surcharges and costs and expenses.
- 4.2 The hirer is responsible for completing the time sheets correctly, fully and in a timely manner, and for approving them. The approval will be given by (digital) signature of the time sheets, except as otherwise agreed.
- 4.3 In the event of a discrepancy between the time sheets submitted to the temporary employment agency and the data kept by the hirer, the time sheets submitted to the temporary employment agency will be deemed to be correct unless the hirer provides proof to the contrary.
- 4.4 If the temporary worker disputes the time sheet data, the temporary employment agency may invoice the number of hours worked and other costs in accordance with the statement of the temporary worker, unless the hirer proves that the aforesaid time sheets are correct.
- 4.5 If the hirer does not comply with the provisions of Paragraph 2 of this Article, the temporary employment agency may decide to invoice the hirer on the basis of the facts and circumstances known to it. The temporary employment agency will not do this as long as no reasonable consultation has taken place with the hirer regarding this matter.
- 4.6 If, after the temporary worker reports at the workplace, the hirer makes less than three hours' use of his services, the hirer will be required to pay the hirer's fee for a minimum of three hours per call-out if:
  - a. the agreed number of working hours per week is less than 15 and the times at which the work must be performed have not been fixed; or
  - b. the hirer has provided no or no clear definition of the scope of the work.
- 4.7 The hirer will ensure that the invoices of the temporary employment agency are paid within 14 days of the date of the invoice, without any deduction, withholding or set-off.
- 4.8 Only if the temporary employment agency has a blocked 'G' account may the hirer request the temporary employment agency to consult with it about the possibility of the hirer paying a percentage of the invoiced amount into the relevant account and about the amount of such percentage. Only if agreement is reached on this may use be made of the above-mentioned possibility.
- 4.9 The hirer will provide a written direct debit mandate to the temporary employment agency at the latter's request, allowing the amounts of the invoices to be collected automatically from the hirer's bank account within the agreed period. The parties will use a SEPA mandate form for this.

## ARTICLE 5

### TERMS OF PAYMENT

- 5.1 Only payments made directly to the temporary employment agency will discharge the hirer from liability.
- 5.2 Direct payment or the provision of advances by the hirer to the temporary worker is not permitted, regardless of why or how this occurs. Any such payments and advances do not affect the position of the temporary employment agency and do not constitute a debt repayment or a ground for set-off.
- 5.3 If the hirer disputes an invoice, the hirer must give written notice of this to the temporary employment agency within eight days of the date of dispatch of the invoice concerned, failing which the right to dispute the invoice will be lost. Disputing the invoice does not suspend the hirer's payment obligation.
- 5.4 If the hirer fails to pay any amount owed by it or fails to do so in time or in full, the hirer will be deemed to be in default by operation of law with effect from the due date of the relevant invoice. From that time the hirer will also be liable to pay default interest to the temporary employment agency at the rate of 1% a month (for which purpose part of a month is treated as full month) on the amount of the invoice.
- 5.5 All legal and other costs, including the costs of legal assistance incurred by the temporary employment agency as a consequence of the hirer's failure to meet its payment obligations, will be borne by the hirer. The extrajudicial collection costs of the temporary employment agency, calculated on the amount to be collected, will amount to at least 15% of the principal sum, subject to a minimum of € 500.
- 5.6 If the contract of hire is entered into with more than one hirer and the hirers are members of the same group of companies, all hirers will be jointly and severally liable for the obligations under this Article, regardless of the name in which the invoice is made out.
- 5.7 If the temporary employment agency deems such to be necessary in view of the hirer's financial position and/or payment performance, the hirer is obliged, at the request of the temporary employment agency:
  - a. to provide a direct debit mandate as referred to in Paragraph 9 of Article 4 of these terms and conditions; and/or
  - b. to provide an advance; and/or
  - c. to provide adequate security for the performance of its obligations to the temporary employment agency, for example by means of a bank guarantee or pledge.The size of the requested security and/or the requested advance must be in proportion to the scope of the hirer's obligations in question.
- 5.8 If the hirer fails to comply with a request by the temporary employment agency as referred to in the preceding Paragraph, or if a direct debit cannot be collected, the hirer will be in

default by operation of law without any notice of default being required. If the hirer is in default, the temporary employment agency has the right to suspend performance of its obligations under the contract of hire or to terminate the contract of hire with immediate effect in whole or in part, without the temporary employment agency being liable to pay any compensation for this to the hirer. All claims of the temporary employment agency will become due and payable on demand as a result of the termination.

## ARTICLE 6

### **CANCELLATION**

- 6.1 If a party fails to meet its obligations under the contract of hire, the other party will be entitled – in addition to the provisions of the contract of hire – to cancel the contract of hire in whole or in part, without court intervention, by giving notice by registered letter. The contract of hire may be cancelled only after the party in default has been given written notice of the default and allowed a reasonable grace period to remedy such default, but has failed to do so.
- 6.2 In addition, a party is entitled to cancel the contract of hire in whole or in part with immediate effect by giving notice by registered letter, without any reminder or notice of default being required and without court intervention, if:
- a. the other party applies for or obtains (preliminary) court protection from creditors (moratorium);
  - b. the other party files for bankruptcy or is declared bankrupt or petitions for its liquidation or is placed into liquidation;
  - c. the other party's business is liquidated;
  - d. the other party ceases its current business;
  - e. a substantial part of the assets of the other party is seized or attached through no fault of the first party, or if the other party must be deemed unable to meet its obligations under the contract of hire for any other reason.
- 6.3 If parts of the contract of hire have already been performed for the hirer at the time of cancellation, the hirer may cancel the contract of hire only partly, namely in respect of the part which has not yet been performed by or on behalf of the temporary employment agency.
- 6.4 Amounts invoiced by the temporary employment agency to the hirer before the cancellation in respect of parts of the contract of hire already performed by the temporary employment agency will remain payable in full by the hirer to the temporary employment agency and will become immediately due and payable at the time of cancellation.

## ARTICLE 7 LIABILITY

- 7.1 Subject to provisions of mandatory law and subject to the general requirements of reasonableness and fairness, the temporary employment agency is not obliged to pay any compensation for direct or indirect loss or damage of any kind caused to the temporary worker, to the hirer or to property or persons with or of the hirer or a third party, related to a contract of hire, including loss or damage arising as a consequence of:
- a. the posting of the temporary worker by the temporary employment agency to the hirer, even if it transpires that the temporary worker does not meet the requirements made of him by the hirer;
  - b. unilateral termination of the temporary employment contract by the temporary worker;
  - c. acts or omissions of the temporary worker, the hirer itself or a third party, including the assumption of obligations by the temporary worker;
  - d. the hiring out by the hirer of a temporary worker whom the hirer has hired itself without the written permission of the temporary employment agency.
- 7.2 Any liability of the temporary employment agency for direct loss or damage will in any event be limited, per occurrence, to:
- a. the amount paid under the insurance policy taken out by the temporary employment agency, or
  - b. the amount invoiced by the temporary employment agency if the temporary employment agency is not insured for the loss or damage in question, or if the insurance does not pay out (the full amount). If the amount invoiced depends on a time factor, the liability will be limited to the amount invoiced by the temporary employment agency to the hirer in the month prior to the date of the notification of the loss or damage. In the absence of a prior month, the amount that has been or would have been invoiced by the temporary employment agency to the hirer under the contract of hire in the month in which the event that caused the loss or damage occurred will be decisive.
- 7.3 The temporary employment agency will never be liable for consequential loss or damage, such as loss of profits and unrealized savings, or for indirect loss or damage.
- 7.4 The hirer is obliged to take out adequate liability insurance providing full cover for any direct and indirect loss or damage as referred to in Paragraphs 1 to 3 of this Article.
- 7.5 The hirer must in any event indemnify the temporary employment agency against any claims of the temporary worker or third parties for compensation for loss or damage as referred to in Paragraph 1 of this Article suffered by such temporary worker or third parties.
- 7.6 The limitations on liability referred to in Paragraphs 1 and 2 of this Article will cease to apply if there has been intent or gross negligence on the part of the temporary employment agency and/or its management.

- 7.7 The temporary employment agency has the right at any time, if and in so far as possible, to make good any loss or damage suffered by the hirer. This includes the right of the temporary employment agency to take measures that may prevent or mitigate any such loss or damage.

## ARTICLE 8

### **FORCE MAJEURE**

- 8.1 In the event of force majeure affecting the temporary employment agency, its obligations under the contract of hire will be suspended for as long as the force majeure event continues. Force majeure means any circumstance beyond the control of the temporary employment agency which permanently or temporarily prevents performance of the contract of hire and for which the temporary employment agency cannot reasonably be held liable either in law or according to the principles of reasonableness and fairness.
- 8.2 As soon as a force majeure event as referred to in Paragraph 1 of this Article affects the temporary employment agency, it will give notice of this to the hirer.
- 8.3 In so far as not already included under the term, force majeure will also be deemed to mean strikes, sit-in strikes, blockades, embargos, government measures, war, revolution and/or any equivalent situation, power failures, faults in electronic communication lines, fire, explosions and other disasters, water damage, flooding, earthquakes and other acts of God, as well as epidemics that affect staff.
- 8.4 As long as the force majeure event continues, the obligations of the temporary employment agency will be suspended. This suspension will not, however, apply to obligations that are not affected by the force majeure event and that arose prior to the start of the force majeure event.
- 8.5 If the force majeure event has lasted for three months or once it is established that it will last for longer than three months, each of the parties is entitled to terminate the contract of hire early without observing any period of notice. Even after such a termination of the contract of hire the hirer is obliged to pay to the temporary employment agency the charges payable by the hirer to the temporary employment agency in respect of the period before the force majeure event.
- 8.6 During the continuance of the force majeure event, the temporary employment agency is not obliged to pay compensation for any loss or damage suffered by or affecting the hirer, nor is it obliged to do so after termination of the contract of hire as referred to in Paragraph 5 of this Article.

## ARTICLE 9

### NON-DISCLOSURE

- 9.1 The temporary employment agency and the hirer will not disclose any confidential information from or about the other party, its activities and relationships that has come to their knowledge in connection with an offer or contract of hire to third parties, except if and to the extent that disclosure of such information is necessary to properly perform the contract of hire or they have a legal or statutory duty to disclose such information.
- 9.2 At the hirer's request, the temporary employment agency will impose a non-disclosure obligation on the temporary worker with respect to everything that comes to his knowledge or attention in the performance of his work, except if the temporary worker has a legal or statutory duty to disclose such information.
- 9.3 The hirer may impose a non-disclosure obligation on the temporary worker directly. The hirer must inform the temporary employment agency of its intention to do so and must provide the temporary employment agency with a copy of the relevant non-disclosure agreement.
- 9.4 The temporary employment agency will not be liable for any (incremental) penalty or fine, or any loss or damage suffered by the hirer as a consequence of any violation of the non-disclosure obligation by the temporary worker.

## ARTICLE 10

### GOVERNING LAW AND COMPETENT COURT

- 10.1 These standard terms and conditions, assignments, contracts of hire and/or other contracts and agreements are governed by the laws of the Netherlands.
- 10.2 Any disputes arising out of or relating to a legal relationship between the parties will in the first instance be submitted to the exclusive jurisdiction of the District Court in the court district where the temporary employment agency is located, except as otherwise provided by mandatory law.

## ARTICLE 11

### FINAL PROVISIONS

- 11.1 If any provision of these terms and conditions is void or voided, the remaining provisions of these terms and conditions will remain in full force and effect and the parties will consult together in order to agree new provisions to replace those that are void or voided, the purpose and intent of the void or voided provision being taken into account as much as possible.
- 11.2 The temporary employment agency is entitled to assign its rights and obligations under a contract of hire to a third party. Except as otherwise agreed in writing, the hirer is not permitted to assign its rights and obligations under a contract of hire to a third party.

## CHAPTER 2

# TERMS AND CONDITIONS FOR THE POSTING OF TEMPORARY WORKERS

### ARTICLE 12

#### THE HIRING OF TEMPORARY WORKERS

- 12.1 A temporary employment contract is entered into between a temporary worker and a temporary employment agency. The temporary employment contract is subject to the NBBU Collective Agreement for Temporary Workers (NBBU-cao voor Uitzendkrachten). No employment contract exists between the hirer and the temporary worker.
- 12.2 When a temporary worker is provided by a temporary employment agency to the hirer, the temporary worker works under the actual direction and supervision of the hirer. The hirer will observe the same degree of care in respect of the temporary worker as it does in respect of its own employees. As the temporary employment agency, as the formal employer, has no control or influence over the workplace and the activities to be performed, the hirer is obliged to provide a safe place of work and is responsible for the provision of direction to and the supervision of the temporary worker.
- 12.3 The hirer may not, without the temporary employment agency's written consent, hire out a temporary worker whom it has hired itself to a third party to perform work under the direction and supervision of such third party. If this Paragraph is violated, the temporary employment agency will have the right to terminate the posting of the temporary worker and/or the contract of hire with immediate effect, and to charge the hirer for the costs of any loss or damage arising out of or relating to such violation. The hirer will then be required to compensate the temporary employment agency in full.

### ARTICLE 13

#### SCOPE AND TERM OF THE CONTRACT OF HIRE AND THE POSTING(S)

- 13.1 The contract of hire sets out the specific terms and conditions under which a temporary worker is made available to the hirer. The contract of hire may not be terminated as long as temporary workers are made available to the hirer.
- 13.2 The hirer must notify the temporary employment agency of the envisaged term of the posting, on the basis of which the temporary employment agency can determine the nature and term of the temporary employment contract with the temporary worker.

- 13.3 If the temporary employment contract includes the temporary employment clause, no period of notice need be observed by the temporary employment agency, the temporary worker and/or the hirer if they wish to terminate the posting early, unless otherwise agreed in writing.
- 13.4 If the temporary employment contract does not include the temporary employment clause, the temporary employment contract is deemed to be a fixed-term or an open-ended contract. In that case the hirer may terminate the posting early only on condition that the payment obligations in connection with the posting remain in effect until the expiry of the agreed term of posting. The temporary employment agency will then be entitled to (continue to) charge the hirer's fee to the hirer for the agreed term of posting in accordance with the usual or anticipated work pattern of the temporary worker, except as otherwise agreed in writing by the temporary employment agency and the hirer.
- 13.5 If the hirer wishes to terminate a posting when nothing has been agreed about the term of posting and the temporary worker works under a fixed-term or an open-ended temporary employment contract, a period of notice of one month applies.
- 13.6 If the reason for termination is a dispute with the temporary worker or a conflict, the hirer must notify the temporary employment agency accordingly in a timely manner. The temporary employment agency will then investigate whether the dispute or the conflict can be resolved.
- 13.7 In connection with its notice obligation to the temporary worker, the temporary employment agency may request the hirer at least five weeks before the end of a fixed-term temporary employment contract to state whether it intends to continue the posting. The hirer will then be obliged to state within three days whether it wishes to continue the posting. Any failure to provide timely or correct information to the temporary employment agency will render the hirer liable to compensate the temporary employment agency in full for the costs associated with the payment to be made under Section 668 in Book 7 of the Dutch Civil Code.

## ARTICLE 14

### **THE HIRER'S FEE, (HOURLY) REMUNERATION, BENEFITS AND OTHER ALLOWANCES**

- 14.1 The hirer is required to pay the hirer's fee to the temporary employment agency for the posting of the temporary worker, except as otherwise agreed.
- 14.2 The hirer's fee is directly proportional to the wages payable to the temporary worker. The wages, benefits and other allowances payable to the temporary worker are always determined before the start of the posting or, where necessary, during the posting, and will be equal to the wages, benefits and other allowances paid to comparable employees working in equal or equivalent jobs in the service of the hirer (known as the 'pay equivalence rule').



- 14.3 The following components are covered by the pay equivalence rule:
- a. only the applicable pay determined by unit of time ('pay period wages') in the applicable salary scale;
  - b. the applicable shorter working hours; compensation for this may be paid in time and/or money, at the discretion of the temporary employment agency;
  - c. allowances for overtime, non-standard working hours, irregular hours (including public holidays allowance) and shift work;
  - d. initial pay increase;
  - e. tax-free allowances: travelling/commuting expenses, lodging expenses and other costs necessarily incurred in performing the job;
  - f. incremental pay rises.
- 14.4 Changes in rates and charges as a consequence of obligations under collective agreements and changes to or as a consequence of laws and regulations, such as tax and social security legislation and regulations, will be passed on to the hirer with effect from the date of the changes in question, and will accordingly be payable by the hirer even where such changes occur during the term of a contract of hire.

## Article 15

### **HIRER'S OBLIGATION TO PROVIDE INFORMATION**

- 15.1 The hirer must inform the temporary employment agency correctly, fully and in a timely manner of the pay components covered by the pay equivalence rule referred to in Article 14, in order to enable the temporary employment agency to determine the temporary worker's pay.
- 15.2 If the pay and other benefits and allowances of the temporary worker cannot be determined in accordance with the pay equivalence rule, they must be determined on the basis of talks held by the temporary employment agency with the hirer and the temporary worker. The pay is to be determined by reference to the educational qualifications and experience of the temporary worker and the competences needed to perform the job.
- 15.3 The temporary employment agency may adjust the hirer's fee with retroactive effect and charge the adjusted fee to the hirer if it is established that (one of) the components referred to in Paragraph 3 of Article 14 has/have been determined incorrectly.

## ARTICLE 16

### **CIVIL-LAW CHAIN LIABILITY FOR WAGES**

- 16.1 Like the temporary employment agency, the hirer is jointly and severally liable to the temporary worker for the payment of the temporary worker's wages, unless the hirer is not at fault for any underpayment.

- 16.2 For the purpose of proving that the hirer is not at fault, the hirer must in any case inform the temporary employment agency correctly, fully and in a timely manner of the pay components covered by the pay equivalence rule in accordance with Paragraph 1 of Article 15.
- 16.3 The temporary employment agency is under an obligation to the hirer to remunerate the temporary worker in accordance with the applicable rules and legislation, including the NBBU Collective Agreement for Temporary Workers (NBBU-cao voor Uitzendkrachten).
- 16.4 If the hirer wishes to obtain more detailed information about the terms and conditions of employment of the temporary worker with a view to the chain liability for wages, the hirer will consult about this with the temporary employment agency.
- 16.5 The hirer undertakes not to request any information that is not relevant or related to the temporary worker's wages. The temporary employment agency reserves the right to provide information to the hirer in anonymous form. The hirer is obliged to maintain the confidentiality of the information obtained with respect to the temporary worker.

## ARTICLE 17

### **(DIRECT) EMPLOYMENT RELATIONSHIP BETWEEN HIRER AND TEMPORARY WORKER**

- 17.1 If the hirer wishes to enter into a direct employment contract with a temporary worker posted or yet to be posted to it by the temporary employment agency or to enter into a different type of employment relationship with such a temporary worker, it must immediately give written notice of this to the temporary employment agency. The parties will then consult together in order to discuss the wishes of the hirer. The basic principle is that the hirer is required to pay reasonable compensation to the temporary employment agency for the services performed by the temporary employment agency in connection with the posting, recruitment and/or training of the temporary worker, in accordance with the provisions of Section 9a(2) of the Dutch Posting of Workers by Intermediaries Act (Wet allocatie arbeidskrachten door intermediairs).
- 17.2 The following are examples of a different type of employment relationship as referred to in this Article:
- a. appointment as a civil servant;
  - b. a professional services contract;
  - c. contracting work;
  - d. the posting of the temporary worker to the hirer by a third party (for example, another temporary employment agency) for the same or different work.
- 17.3 The hirer will not enter into any employment contract directly with a temporary worker if the temporary worker has not validly terminated the temporary employment contract with the temporary employment agency.

- 17.4 The hirer is not permitted to induce temporary workers to enter into an employment contract or a different type of employment relationship with another company or business with the intention of hiring the temporary workers from such other company or business.

## ARTICLE 18

### **SELECTION OF TEMPORARY WORKERS**

- 18.1 The temporary worker is selected by the temporary employment agency on the basis, on the one hand, of his qualities and skills and, on the other hand, of the job requirements set by the hirer.
- 18.2 The hirer may not set any requirements that are not relevant to the job and that (could) give rise to direct or indirect discrimination, including requirements relating to race, creed, sex and/or disability. Such requirements will in any event not be taken into account by the temporary employment agency, except where they are set in the context of a legally permitted target group policy in order to promote equal labour participation.
- 18.3 If a temporary worker does not meet the job requirements set by the hirer, the hirer has the right to inform the temporary employment agency accordingly within 4 hours of the start of the work. In that case the hirer will be obliged to pay the temporary employment agency at least the pay owed to the temporary worker, plus the employer-paid social security and national insurance contributions and the amounts payable under the NBBU Collective Agreement.
- 18.4 During the term of the contract of hire, the temporary employment agency has the right to present a proposal for the replacement of the temporary worker, for example if the temporary worker is no longer able to perform the work, or in connection with a reorganization or a reassignment obligation. In that case, the hirer's fee will be recalculated.

## ARTICLE 19

### **HIRER'S DUTY OF CARE AND INDEMNITY FOR THE TEMPORARY EMPLOYMENT AGENCY**

- 19.1 The hirer is aware that under Section 658 in Book 7 of the Dutch Civil Code and the applicable working conditions legislation it is under an obligation to provide a safe place of work for the temporary worker. The hirer will give the temporary worker specific instructions in order to prevent the temporary worker from suffering loss, damage or injury when carrying out his duties. The hirer will also provide the temporary worker with personal protective equipment, in so far as necessary. If the temporary employment agency makes the necessary items available, it will have the right to charge the associated costs to the hirer.
- 19.2 The hirer will provide the temporary worker and the temporary employment agency before the start of the posting with the necessary information about the professional skills and qualifications required of the temporary worker, as well as the workplace risk assessment

and evaluation setting out the specific characteristics of the temporary worker's workplace. The temporary worker must be given adequate opportunity to take note of the content of those documents before the work can start.

- 19.3 The hirer is liable to the temporary worker and the temporary employment agency and therefore required to pay compensation for any loss, damage or injury which the temporary worker suffers in the course of carrying out his duties, unless such loss, damage or injury is largely a consequence of intent or deliberate recklessness on the part of the temporary worker, subject to the provisions of Article 7.
- 19.4 If the temporary worker is injured in the performance of his duties and dies as a result of his injuries, the hirer is under an obligation, pursuant to Section 108 in Book 6 of the Dutch Civil Code, (i) to the persons referred to in the said Section and (ii) to the temporary employment agency, to pay compensation to the persons concerned, unless the injury is largely a consequence of intent or deliberate recklessness on the part of the temporary worker, subject to the provisions of Article 7.
- 19.5 The hirer fully indemnifies, defends and holds the temporary employment agency harmless from and against all claims made against the temporary employment agency on account of non-performance by the hirer of the obligations referred to in this Article, and will fully compensate the temporary employment agency for the associated costs of legal assistance. The hirer authorizes the temporary employment agency to assign its claims referred to in this Article to the party or parties directly concerned.
- 19.6 The hirer is obliged to take out adequate and comprehensive liability insurance covering all direct and indirect loss, damage and injury as referred to in this Article.

## ARTICLE 20

### **IDENTIFICATION AND PERSONAL DATA**

- 20.1 The hirer will check the identity of a temporary worker at the start of the posting by reference to an original identity document. The hirer must organize its accounting system in such a way that the temporary worker's identity can be verified.
- 20.2 The temporary employment agency and the hirer will treat all personal data of temporary workers that are provided to them in the context of the posting in confidence and will process such data in accordance with the provisions of the General Data Protection Regulation (GDPR) and other relevant privacy legislation.

- 20.3 Depending on the responsibilities and working practices, the parties will make agreements in accordance with the GDPR and related privacy legislation about, inter alia, data breaches, rights of data subjects and retention periods. In the event of a joint processing responsibility, the temporary employment agency and the hirer will make further agreements about, inter alia, the exercise of the rights of data subjects and the obligation to provide information. Such agreements will be set forth in an arrangement between them.
- 20.4 It is the hirer's responsibility to ensure that it discloses personal data to or requests personal data from the temporary employment agency only if and to the extent that the hirer is entitled under the GDPR to disclose or request personal data.
- 20.5 The hirer indemnifies, defends and holds the temporary employment agency harmless from and against any claims by job applicants, staff members, employees of the hirer or other third parties in connection with non-compliance by the hirer with the GDPR or other privacy legislation and will compensate the temporary employment agency for any associated costs and expenses incurred by the temporary employment agency.

## ARTICLE 21

### **COMPANY CAR AND BUSINESS CLOSURE**

- 21.1 If the hirer intends to make a car available to the temporary worker, the hirer must inform the temporary employment agency accordingly without delay. The hirer may permit the temporary worker to use the car for private purposes only in consultation with the temporary employment agency, so as to allow the temporary employment agency to take such private use into account for payroll tax purposes. If the hirer fails to do so, the hirer is obliged to compensate the temporary employment agency for any resulting loss, damage, costs and (tax) implications suffered or incurred by the temporary employment agency.
- 21.2 The hirer must inform the temporary employment agency, on conclusion of the contract of hire, of any business closure days and mandatory days off during the posting in order to enable the temporary employment agency to take account of this when determining the terms and conditions of employment. If the hirer fails to do so, the hirer will owe the temporary employment agency an amount for all such business closure days and mandatory days off, calculated by multiplying the number of hours agreed in the contract of hire by the hirer's fee most recently applicable.

# CHAPTER 3

## TERMS AND CONDITIONS FOR JOB PLACEMENT

### ARTICLE 22

#### **APPLICABILITY OF GENERAL PROVISIONS**

The provisions of Chapter 1 of these standard terms and conditions, and specifically Articles 2, 3, 4.7, 5 to 11 and 20, apply mutatis mutandis to the placement contract between the placement organization and the client.

### ARTICLE 23

#### **FEE AND CONTENT OF THE PLACEMENT CONTRACT**

- 23.1 The fee payable by the client to the placement agency may consist of either a pre-agreed fixed amount or a pre-agreed percentage of the full-time gross annual salary offered to the jobseeker, plus holiday pay.
- 23.2 Except as otherwise agreed in writing, the fee referred to in Paragraph 1 of this Article will be payable only if the placement services have resulted in an employment contract or a different type of employment relationship as referred to in Paragraph 2 of Article 17 with a jobseeker selected by the placement agency. The fee will also be payable if the jobseeker selected by the placement agency performs work for the client in any other way, for example by means of a posting.
- 23.3 The specific terms and conditions under which the placement agency provides the placement services are set forth in the placement contract.
- 23.4 Any memorandum items are to be charged on the basis of the actual costs.

### ARTICLE 24

#### **CONCLUSION OF AN EMPLOYMENT RELATIONSHIP BY THE CLIENT WITH THE JOBSEEKER**

If, during the term of the job placement contract or within six months of its termination, the client itself enters into a collaborative relationship as referred to in Paragraph 2 of Article 23 (and/or Paragraph 2 of Article 17) with a jobseeker selected by the placement agency, the client will be immediately required to pay the agreed fee to the placement agency.

## ARTICLE 25

### SELECTION OF JOBSEEKER

- 25.1 A jobseeker will be selected by the placement agency first by reference to the wishes made known by the client to the placement agency concerning the qualities and skills needed for the job and information provided about the nature of the job, and second by reference to the qualities and skills of the jobseeker known to the placement agency.
- 25.2 In stating wishes and providing information regarding the desired candidate and the nature of the job as referred to in the preceding Paragraph of this Article, the client may not set any requirements that are not relevant to the job. Such requirements will in any event not be taken into account by the placement agency, except where they are set in the context of a legally permitted target group policy in order to promote equal labour participation.

### AMSTERDAM, 1 NOVEMBER 1994

Amended version: Wanneperveen, 12 March 1996

Amended version: Bilthoven, 01 January 1999

Amended version: Bilthoven, 25 January 2000

Amended version: Bilthoven, January 2002

Amended version: Bilthoven, 05 July 2004

Amended version: Bilthoven, September 2006

Amended version: Amersfoort, January 2010

Amended version: Amersfoort, March 2011

Amended version: Amersfoort, May 2016

Amended version: Amersfoort, July 2018

These Standard Terms and Conditions have been filed with the Chamber of Commerce in Amsterdam under no. DS 40538398



**NBBU**

Stadsring 171  
3817 BA Amersfoort  
T 033 476 02 00  
F 033 476 02 19  
info@nbbu.nl  
www.nbbu.nl