

# APS

personeelservices



## TERMS AND CONDITIONS

[apspersoneel.nl](https://apspersoneel.nl)

# TABLE OF CONTENTS

Definitions	3
Scope	4
The Assignment and the Placement	4
Entering into an employment relationship with a Temporary agency worker	6
Substitution and availability	7
Suspension right	8
Work procedure	8
Working hours and times	9
Company closures and mandatory days off	9
Position and remuneration	10
Good practice of management and supervision	11
Working conditions	12
Liability of User company	13
Special minimum payment obligations	13
Payment obligations full working period Temporary agency worker	13
User company rate	14
Invoicing	15
Best efforts obligation and liability Private employment agency.	16
Intellectual and industrial property	17
Secrecy	18
Privacy	18
User company's verification and retention obligation	19
Avoidance of inadmissible discrimination	19
Right of Participation in decision making	20
Payment and consequences of non-payment	20
Obligations relating to the Worker Allocation by Intermediaries Act	22
Applicable law and choice of forum	23
Final provision	23

## Article 1 Definitions

### In these General Terms and Conditions the following terms have the meanings as follows:

- 1.1 **Private employment agency:** APS Uitzendburo B.V., also trading under the name APS Personeelservices, has its registered office at Berg 47 in Nuenen, the Netherlands, which makes temporary agency workers available to User companies on the basis of temporary employment contracts.
- 1.2 **APS Personeelservices:** the employment agency and user of these General terms and conditions.
- 1.3 **Temporary agency worker:** any natural person who has entered into a temporary employment contract as referred to in Section 7:690 of the Dutch Civil Code with APS Personeelservices in order to perform work for a third party under the management and supervision of that third party.
- 1.4 **Assignment:** the agreement between a User company and APS Personeelservices pursuant to which a single Temporary agency worker is made available to the User company by APS Personeelservices, as referred to in paragraph 2 of this article, to perform work, against payment of the User company rate.
- 1.5 **User company:** any natural person or legal entity that is party to the Assignment in addition to the Private employment agency.
- 1.6 **Placement:** the employment of a Temporary agency worker in the context of an Assignment.
- 1.7 **Specific flexible agency work contract:** the written provision in the employment contract between APS Personeelservices and the Temporary agency worker and/or in the Collective Labour Agreement (CLA) to the effect that the employment contract end by operation of law if the Temporary agency worker is made available by APS Personeelservices to the User company at the User company's request (Section 7:691 subsection 2 of the Dutch Civil Code).
- 1.8 **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 employees' organisations concerned on the other hand.
- 1.9 **User company rate:** the rate owed by the User company to APS Personeelservices, excluding surcharges, expense allowances and VAT. The rate will be charged on an hourly basis, unless stated otherwise.
- 1.10 **Hirer's remuneration:** the remuneration applicable at the User company in an equal or equivalent position as performed by a Temporary agency worker, consisting of the following six salary elements:
  1. Only the applicable period wage in the scale;
  2. The applicable working time reduction per week/month/year/period. This can be compensated in time and/or money at the discretion of APS Personeelservices;

3. Surcharges for overtime, shifted hours, irregularity (including holiday allowance) and shift bonus;
  4. Initial wage increase, amount and time as determined by the User company;
  5. Reimbursement of expenses (insofar as APS Personeelservices is able to pay them free of payroll tax and contributions: travel expenses, pension costs and other costs necessary on account of performing the job);
  6. Periodicals, height and time as determined by the User company.
- 1.11 **Skilled workers regulation:** the specific provision(s) in the collective agreement applicable at the User company, which relate to the remuneration of skilled workers and which have been notified in writing to and approved by the parties to the Collective Labour Agreement (CLA) and must therefore be applied as from the first day of the Temporary agency worker's length of stay with the User company in question.

## Article 2

### Scope

- 2.1 These General Terms and Conditions apply to all Assignments and other agreements between APS Personeelservices and the User company, as well as to all legal acts aimed at concluding them, including offers, proposals, quotes and price lists.
- 2.2 Any purchasing or other conditions of the User company will not apply and are explicitly rejected by the Private employment agency.
- 2.3 Agreements deviating from these General Terms and Conditions will only apply if agreed on in writing and will apply exclusively to that Assignment.

## Article 3

### The Assignment and the Placement

#### Assignment

- 3.1 The Assignment is entered into for a definite or indefinite period of time.
- 3.2 The Assignment for a definite period is the Assignment that is executed:
  - 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

- 3.3 The Assignment for an indefinite time period ends by written cancellation with due observance of a reasonable notice period.

- 3.4 Premature termination of an Assignment for a definite period of time is not possible, unless otherwise agreed upon in writing. If an interim termination option has been agreed, the termination must be made in writing with due observance of a reasonable notice period.
- 3.5 APS Personeelservices is entitled to suspend the Placement if the agreed payment term is exceeded.
- 3.6 Each Assignment ends immediately on account of cancellation at the moment that either of the parties invokes the termination of the Assignment when/because:
  - the other party is in default;
  - the other party has been liquidated;
  - the other party has been declared bankrupt or has applied for a moratorium on payments.

If APS Personeelservices invokes dissolution on one of these grounds, the User company's conduct, on which the dissolution is based, will be subject to the User company's request to terminate the Placement. This does not give rise to any liability on the part of APS Personeelservices for any damage suffered by the User company as a result. As a result of the dissolution, the claims of APS Personeelservices will be immediately due and payable.

#### End of Placement

- 3.7 The end of the Assignment means the end of the Placement. Termination of the Assignment by the User company implies the request from the User company to APS Personeelservices to terminate the current Placement(s) by the date on which the Assignment has been validly terminated or for which the Assignment has been validly dissolved. In the event of an Assignment for a fixed period of more than six months, the User company will confirm to the Private employment agency no later than six weeks prior to the end of the Assignment whether the User company wishes to extend the Assignment and under what conditions.
- 3.8 If the Temporary employment clause is in force between the Temporary agency worker and APS Personeelservices, the Placement of the Temporary agency worker will terminate at the User company's request at the time at which the Temporary agency worker reports that he or she is unable to perform the work due to an incapacity of work. To the extent necessary, the User company will be deemed to have made such a request. The User company will confirm this request to APS Personeelservices in writing if requested to do so.
- 3.9 The Placement ends by operation of law if and as soon as APS Personeelservices can no longer provide the Temporary agency worker, because the employment contract between APS Personeelservices and the Temporary agency worker is terminated and this employment agreement is not subsequently continued for the benefit of the same User company. APS Personeelservices in this case, is not imputable by default towards the User company nor is APS Personeelservices liable for any damages suffered by the User company as a result.

## Article 4

### Entering into an employment relationship with a Temporary agency worker

- 4.1 For the purposes of this article, entering into an employment relationship with a Temporary agency worker means:
- entering into an employment contract, an agreement to the acceptance of work and/or an agreement of an assignment by the User company with a Temporary agency worker;
  - having the Temporary agency worker in question made available by a third party (e.g. another Temporary agency worker);
  - the Temporary agency worker entering into an employment relationship with a third party, whereby the User company and that third party are affiliated in a group (as referred to in section 2:24b of Book 2 of the Dutch Civil Code) or are a subsidiary of another party (as referred to in section 2:24a of Book 2 of the Dutch Civil Code).
- 4.2 For the purposes of this article the term Temporary agency worker will also mean:
- the (prospective) Temporary agency worker who is registered with APS Personeelservices;
  - the (prospective) Temporary agency worker that has been introduced to the User company;
  - the Temporary agency worker whose Placement ended prior to the commencement of the employment relationship with the User company.
- 4.3 The User company is only entitled to enter into an employment relationship with a Temporary agency worker if and insofar as the provisions of this article are complied with.
- 4.4 APS Personeelservices will never make the Temporary agency worker exclusively available to the User company and is entitled to make the Temporary agency worker available to multiple User companies if the Temporary agency worker so desires.
- 4.5 The User company will not enter into an employment relationship with the Temporary agency worker if and as far as the employment contract between the Temporary agency worker and APS Personeelservices has not been validly terminated and if and to the extent that the User company cannot legally end or have terminated the agreement with APS Personeelservices.
- 4.6 The User company will inform APS Personeelservices of its intention to enter into an employment relationship with the Temporary agency worker in writing before implementing that intention. The agreement will be terminated by the User company with due observance of these General Terms and Conditions.
- 4.7 If a Temporary agency worker is introduced to the potential User company through the intermediation of APS Personeelservices and this potential User company enters into an employment relationship with this Temporary agency worker, either directly or through

third parties, for the same or a different position before the Placement is in effect, this User company will owe APS Personeelservices the agreed remuneration, consisting of a fee and recruitment costs. The User company will always owe this fee if the User company initially came into contact with the Temporary agency worker through APS Personeelservices.

- 4.8 If the User company enters into an employment relationship - either directly or through third parties - with a Temporary agency worker who is made available to the User company, the Temporary agency worker who is made available to the User company on the basis of an agreement for a fixed or indefinite period of time, before the Temporary agency worker has worked 1040 hours (unless otherwise agreed on in writing), the User company will owe APS Personeelservices the percentage of the annual salary minus the applicable User company rate for 1040 hours (unless agreed otherwise) set off against the hours already worked by the Temporary agency worker on the basis of the Assignment.
- 4.9 If the User company enters into an employment relationship with the Temporary agency worker within three (3) months after the Temporary agency worker's Placement (irrespective of whether the Placement was based on a fixed-term or an indefinite agreement) has ended with the User company, the User company will be liable for payment of the percentage of the User company rate set out in the Assignment Confirmation that would have been applicable to the Temporary agency worker concerned over a period of 1040 worked hours (unless agreed on otherwise) minus the hours already worked by the Temporary agency worker on the basis of the terminated agreement. This applies both in the event that the User company has approached the Temporary agency worker for this purpose - either directly or via a third party - and in the event that the Temporary agency worker has applied to the User company - either directly or via third parties.

## Article 5

### Substitution and availability

- 5.1 APS Personeelservices is at all times entitled to provide the User company with a replacement proposal of an already made available Temporary agency worker by another Temporary agency worker to finish the Assignment, in part with regard to APS Personeelservices' corporate or personnel policy - job retention or compliance with applicable legislation and regulations - in particular the Collective Labour Agreement and the dismissal guidelines for the temping industry. The User company will reject such a proposal solely on reasonable grounds. The User company will be liable to provide any rejection in writing, should it be requested.
- 5.2 APS Personeelservices is not in attributable breach of contract to the User company and is not obliged to compensate the User company for any damage or costs, if, for any reason whatsoever, APS Personeelservices is unable to provide the User company with a (replacement) Temporary agency worker at the User company's request in the manner

and to the extent agreed at the time of the Assignment or subsequently.

- 5.3 In case the Temporary agency worker is replaced by another Temporary agency worker, the hourly compensation will be re-established with regard to the replacement Temporary agency worker, on the basis as stated in article 9 of these General terms and conditions and the User company rate will be adjusted accordingly.

## Article 6

### Suspension right

- 6.1 The User company will not be entitled to temporarily suspend the employment of the Temporary agency worker in full or in part, unless there is force majeure within the meaning of Section 6:75 of Book 6 of the Dutch Civil Code.
- 6.2 By way of derogation from paragraph 1 of this article, suspension will be possible if:
- This has been agreed on in writing and the term has been laid down;
  - The User company demonstrates that work is temporarily unavailable or the Temporary agency worker cannot be deployed, and;
  - APS Personeelservices can successfully invoke the exclusion of the obligation to continue to pay wages pursuant to the Collective Labour Agreement in respect of the Temporary agency worker. The User company will not be liable to pay the User company rate for the duration of suspension.
- 6.3 If the User company is not entitled to temporarily suspend employment - due to an agreed fixed scope of work - but the User company temporarily has no work for the Temporary agency worker or is unable to employ the Temporary agency worker, the User company will be obliged to pay the User company rate in full to the Private employment agency for the duration of the Assignment period (week, month, etc.) by virtue of the Assignment last applicable or customary number of hours overtime.

## Article 7

### Work procedure

- 7.1 Prior to the commencement of the Assignment, the User company will provide APS Personeelservices with an accurate description of the position, job requirements, working hours, activities, workplace, working conditions and the intended duration of the Assignment.
- 7.2 APS Personeelservices uses the information provided by the User company and the capacities, knowledge and skills of the (prospective) Temporary agency workers it knows to be available to it to determine which (prospective) Temporary workers it will propose to the User company for the performance of the Assignment. The User company is entitled to reject the proposed (prospective) Temporary agency worker, as a result of which the Placement of the proposed (prospective) Temporary agency worker does not

take place.

- 7.3 APS Personeelservices will not in any way be in default towards the User company if the contacts between the User company and APS Personeelservices prior to a possible Assignment - including a concrete request by the User company to provide a Temporary agency worker for whatever reason - do not at all or not within the term desired by the User company lead to the actual Placement of a Temporary agency worker.
- 7.4 APS Personeelservices is not liable for any damage resulting from the deployment of workers who turn out not to meet the User company's requirements, unless the User company submits a written complaint in this matter to APS Personeelservices within a reasonable period of commencement of the Placement and proves that there was intent or wilful recklessness on the part of APS Personeelservices in the selection.
- 7.5 APS Personeelservices has had the Temporary agency worker sign for the provision of correct and complete information about his/her employment history. APS Personeelservices cannot be held accountable in the event of incorrect statements.

## Article 8

### Working hours and times

- 8.1 The scope of work and the working hours of the Temporary agency worker for the User company will be defined in the temporary employment contract, or agreed otherwise. Unless agreed otherwise, the working hours, working time, break and rest periods of the Temporary agency worker will be equal to the User company's usual times and hours. The User company guarantees that the working hours and the Temporary agency worker's rest and working hours comply with the statutory requirements. The User company will ensure that the Temporary agency worker does not exceed the legally permitted working hours and the agreed scope of work.
- 8.2 Holidays and leave of the Temporary agency worker are arranged in accordance with the law and the Collective Labour Agreement.

## Article 9

### Company closures and mandatory days off

- 9.1 The User company must inform APS Personeelservices, when entering the Assignment, of any company closures and collective mandatory days off during the term of the Assignment, so that APS Personeelservices can, if possible, include this circumstance in the employment contract with the Temporary agency worker. If an intention to establish a company closure and/or collective mandatory days off becomes known after the commencement of the Assignment, the User company must inform APS Personeelservices of this immediately after it becomes known.

## Article 10

### Position and remuneration

- 10.1 Before the commencement of the Assignment, the User company will provide APS Personeelservices with the description of the position to be performed by the Temporary agency worker as well as the associated classification and information about all elements of the Hirer's Remuneration (in terms of amount and time: only and to the extent known at that time).
- 10.2 The remuneration of the Temporary agency worker, including any surcharges and expense allowance, will be determined in accordance with the CLA (including the provisions regarding the Hirer's Remuneration) and the applicable legislation and regulations, on the basis of the job description provided by the User company.
- 10.3 If, at any time, it appears that the job description and the associated scale does not correspond to the actual function to be performed by the Temporary agency, the User company will immediately provide APS Personeelservices with the correct job description and corresponding classification. The remuneration of the Temporary agency worker will be reassessed in accordance with the new job description. The position and/or classification may be adjusted during the Assignment, if the Temporary agency worker reasonably claims to such adjustment on the basis of legislation and regulations, the CLA and/or the Hirer's Remuneration. If the adjustment results in a higher remuneration, APS Personeelservices will correct the remuneration of the Temporary agency worker and the User company accordingly. The User company owes this corrected rate to APS Personeelservices from the moment of the actual execution of the position.
- 10.4 The User company will notify APS Personeelservices of changes in the Hirer's Remuneration and of any initial wage increases in a timely manner and in any event as soon as they become known. This paragraph will not apply if and as long as the Temporary agency worker is remunerated in accordance with the collective wage agreement for the allocation group.
- 10.5 If and to the extent that the Temporary agency worker is remunerated on account of determined non-assignability, the User company will notify the Private employment agency in a timely manner in any event immediately upon becoming aware of a change in the function classification of the User company that results in the Temporary agency worker who performed a job can or should have been classified in the User company's job classification system. In accordance with paragraph 3 of this article, the remuneration and the User company's rate will in that case be adjusted.
- 10.6 Overtime, shift work or irregularity at special times or days (including public holidays), travel hours/travel time, physically demanding circumstances and/or shifted hours will be rewarded in accordance with the relevant regulation in the CLA or - if applicable - the Hirer's Remuneration and will be passed on to the User company.
- 10.7 If the Hirer's Remuneration proves to have been determined incorrectly by APS Personeelservices, due to the incorrect (or incomplete) provision of information by the

User company regarding the elements of the Hirer's Remuneration, the User company will compensate APS Personeelservices for all damages (including costs which include the actual costs of legal assistance) suffered by APS Personeelservices as a result.

## Article 11

### Good practice of management and supervision

- 11.1 The User company will behave with the same care towards the Temporary agency worker in the practice of supervision or management as it is required to behave towards its own employees in relation to the performance of the work.
- 11.2 The User company is not permitted to 'loan' the Temporary agency worker to a third party, i.e. to make the Temporary agency worker available to a third party for the performance of work under the management and supervision of such third party, unless permission has been granted. A third party is also understood to mean a person or legal entity which the User company is affiliated with in a group.
- 11.3 The User company may only employ the Temporary agency worker contrary to the provisions of the Assignment and Conditions if APS Personeelservices and the Temporary agency worker have given their prior written consent. This consent may be subject to conditions.
- 11.4 Employment of the Temporary agency worker abroad by a User company established in the Netherlands is only possible for a limited period of time under the conditions that the User company has organised management and supervision and the employment has been agreed on in writing with APS Personeelservices and with the Temporary agency worker.
- 11.5 The User company will reimburse the Temporary agency worker for any damage that the Temporary agency worker suffers as a result of any property belonging to him, that has been used in the context of the assigned work being damaged or destroyed.
- 11.6 APS Personeelservices is not liable toward the User company for any damage or loss to the User company, third parties or the Temporary agency worker itself arising from the acts or omissions of the Temporary agency worker.
- 11.7 APS Personeelservices is not liable toward the User company for obligations entered into by the Temporary agency worker with or arising for them against the User company or third parties, whether or not with the consent of the User company or those third parties.
- 11.8 The User company indemnifies APS Personeelservices against any liability (including costs which include the actual costs of legal assistance) of APS Personeelservices as employer of the Temporary agency worker - directly or indirectly - in respect of the damage, losses and obligations as referred to in paragraphs 5, 6 and 7 of this article.
- 11.9 To the extent possible, the User company will take out adequate insurance against liability on the grounds of the provisions of this article. At the request of APS Personeelservices, the User company will provide proof of insurance.



## Article 12

### Working conditions

#### **The User company declares to be familiar with the fact that it is designated as an employer in the Netherlands Working Conditions Act (Arbeidsomstandighedenwet).**

- 12.1 The User company declares to be familiar with the fact that it is designated as an employer in the Netherlands Working Conditions Act (Arbeidsomstandighedenwet).
- 12.2 The User company is responsible towards the Temporary agency worker and APS Personeelservices for compliance with the obligations arising from Section 7:658 of the Dutch Civil Code, the Dutch Working Conditions Act and the related regulations in the field of safety in the workplace, health, welfare and good working conditions in general.
- 12.3 The User company is obliged to provide the Temporary agency worker and APS Personeelservices with written information on the required professional qualifications and the specific characteristics of the job to be taken up in good time, at least one working day prior to commencement of the work. The User company will actively inform the Temporary agency worker about the Risk, Inventory and Evaluation (RI&E) used within its company.
- 12.4 If the Temporary agency worker suffers an industrial accident or occupational illness, the User company will, if required by law, inform the competent authorities thereof inform without delay and ensure that a written report is drawn up without delay. In the report, the cause of the industrial accident or occupational illness will be determined in such a way that it can be established with a reasonable degree of certainty that assessed whether and to what extent the industrial accident or occupational illness resulted in is of the fact that insufficient measures had been taken to prevent the industrial accident or occupational illness. The User company will inform APS Personeelservices as soon as possible about the industrial accident or the occupational illness and provide a copy of the report drawn up.
- 12.5 The User company will compensate - and indemnify APS Personeelservices against - all damages (including costs that include the actual costs of legal assistance) suffered by the Temporary agency worker in connection with the performance of his work if and insofar as the User company and/or APS Personeelservices is liable for such damage pursuant to section 7:658 and/or section 7:611 and/or section 6:162 of the Dutch Civil Code.
- 12.6 If the industrial accident leads to the death of the Temporary agency worker, the User company is obliged to compensate damages (including costs that include the actual costs of legal assistance) in accordance with Section 6:108 of the Dutch Civil Code to the persons referred to in that Section and to indemnify APS Personeelservices against all damages (including costs that include the actual costs of legal assistance) for which it is held liable.
- 12.7 The User company will take out adequate insurance against liability on the basis of the provisions of this article. At the request of APS Personeelservices, the User company will provide proof of insurance.

## Article 13

### Liability of User company

- 13.1 The User company who does not fulfil or improperly complies with the obligations arising for it from these General terms and conditions, Assignments and/or other agreement, will be liable to pay compensation for ensuing damage to APS Personeelservices. The provisions of this article are of general application, both - when necessary - in respect of subjects for which the obligation to pay compensation has already been laid down separately in these General terms and conditions, Assignments and/or other agreements as well as with regard to matters where that is not the case.

## Article 14

### Special minimum payment obligations

- 14.1 The User company is - without prejudice to the other obligations of the User company towards APS Personeelservices - at least obliged to the User company rate calculated over three hours worked at APS Personeelservices to be paid provided that:
  - the Temporary agency worker reports for the performance of the temporary work at the agreed upon time and place, but is not enabled by the User company to commence the temporary work, or;
  - the User company enables the Temporary agency worker to perform the temporary work for a period of three hours or less, or;
  - pursuant to the Assignment, the scope of the temporary work is less than fifteen hours per week and the times at which the temporary work must be carried out have been laid down, or if the scope of the temporary work has not been laid down or has not been unambiguously laid down.

## Article 15

### Payment obligations full working period Temporary agency worker

- 15.1 If APS Personeelservices and the Temporary agency worker in Phase A have agreed on a fixed number of working hours, APS Personeelservices will invoice all hours actually worked by the Temporary agency worker with a minimum of the agreed working time. If the Temporary agency worker cannot be deployed by the User company for the full agreed scope of work for any reason for which the User company must bear the risk and expense, including but not limited to: (i) lack of work; (ii) an adjustment/withdrawal of the schedule; (iii) sending the Temporary agency worker away on improper grounds before the end of a shift, without consultation with APS Personeelservices; (iv)

sending the Temporary agency worker away before the end of a shift in connection with a malfunction that causes the work of the Temporary agency worker to come to a standstill, APS Personeelservices will charge the full agreed scope of work to the User company.

- 15.2 If the Temporary agency worker works on the basis of a call agreement and the User company withdraws the request to perform work in whole or in part within four days prior to the commencement of the time of work or changes the times, the User company will owe the User company rate for the hours to which the Temporary agency worker would be entitled if he had performed the work in accordance with the call.

## Article 16

### User company rate

- 16.1 The User company rate payable by the User company to APS Personeelservices will be calculated over the hours worked by the Temporary agency worker and/or (if this number is higher) over the hours to which APS Personeelservices is entitled to on the grounds of the General terms and conditions, Assignments and/or other agreements. The User company rate will be multiplied by the surcharges and increased by the expense allowances payable by APS Personeelservices to the Temporary agency worker. VAT will be charged on the User company rate, surcharges and expense allowances.
- 16.2 The User company rate will also include the transition fee, unless otherwise agreed on in writing. If the User company has agreed on a rate with APS Personeelservices excluding transition fee, no fee will be reserved for the Temporary agency worker in question. In the event that the Temporary agency worker claims his right to transition payments, these costs will be charged on to the User company on a one-on-one basis.
- 16.3 If at any time, in accordance with article 10 of these General terms and conditions, the Hirer's Remuneration must be applied, APS Personeelservices will (re)determine the remuneration of the Temporary agency worker and the User company rate on the basis of the information provided by the User company regarding the job classification and the Hirer's Remuneration. The remuneration and the User company rate will include all elements of the Hirer's Remuneration applicable to the User company.
- 16.4 In addition to the case referred to in paragraph 2, APS Personeelservices will in any event also be entitled to the adjustment of the User company rate during the term of the Temporary agency worker increase:
- as a result of a change in the CLA or in the wages regulated in that respect, or a change in the CLA and/or terms and conditions of employment scheme in force at the User company;
  - as a result of changes in or as a result of legislation and regulations, including changes in or as a result of social and fiscal legislation and regulations, the Collective Labour Agreement for Temporary agency workers or any binding regulations;

- as a result of a (periodic) wage increase and/or a (one-time) mandatory payment arising from the CLA, the CLA and/or employment conditions scheme applicable at the User company and/or legislation and regulations;
- as a result of a change in the percentage reserved for the transition fee (Article 7:673 of the Dutch Civil Code).

- 16.5 If - contrary to paragraph 2 and 3 of this article - the User company does not agree to payment of the adjusted User company rate, this will include the User company's request to terminate the Placement. However, the Placement will only end at the moment that the Temporary agency worker's employment contract can be lawfully terminated. Until the date of termination of the employment agreement, the User company will owe the User company rate.
- 16.6 If during the term of an Assignment, with the Private employment agency's express prior written consent, the position of the Temporary agency worker changes in the sense that the position corresponds to work that is classified lower, the hourly remuneration and the User company rate will remain unchanged.
- 16.7 Any adjustment to the User company rate will be communicated to the User company by APS Personeelservices as soon as possible and confirmed in writing.
- 16.8 If, due to any cause attributable to the User company, the remuneration has been set too low, APS Personeelservices will be entitled to set the remuneration retrospectively and to adjust and charge the User company rate accordingly with retrospective effect. APS Personeelservices will also charge the User company for any underpayment by the User company as a result and any costs incurred by APS Personeelservices as a result.

## Article 17

### Invoicing

- 17.1 Invoicing will take place based on the method of time registration agreed on with the User company with due observance of these General Terms and Conditions, Assignments and/or other agreements.
- 17.2 If no other method of time registration has been agreed on, the time registration will take place by means of timesheets provided by APS Personeelservices via the online portal. With due observance of the provisions of paragraphs 3 and 4, the User company is obliged to check the timesheets for correctness and completeness before 5 p.m. on the Monday following the end of the working week to which the time sheets relate, in order to subsequently approve them.
- 17.3 The User company and the Temporary Agency worker will jointly ensure correct and complete justification of time. The User company is obliged to ensure (or arrange for the verification of) that the information provided by the Temporary agency worker is stated correctly and truthfully, such as: the name of the Temporary agency worker, the number of worked hours, overtime, irregular hours for which the User company rate is due pursuant to the Assignment and the conditions, any surcharges and any expenses



actually incurred.

- 17.4 After implementation of the time registration by the Temporary agency worker, the User company is given the opportunity to check the time registration. After the approval of the time registration, APS Personeelservices will ensure correct processing of the time registration. If the User company disputes the information stated in the timesheet, the User company is authorised to reject the statement of the Temporary agency worker. After the Temporary agency worker has been notified of this, the Temporary agency worker will be given the opportunity to change the data. At the request of the Private employment agency, the User company will allow the Private employment agency to inspect the User company's original time registration and the User company will provide a copy thereof.

## Article 18

### Best efforts obligation and liability Private employment agency.

- 18.1 APS Personeelservices will make every effort to perform the Assignment as a reasonably competent Contractor.
- 18.2 If it is established at law or otherwise that APS Personeelservices may be liable towards the User company for damages suffered in connection with the Assignment, or on account of a wrongful act, or on any other account, such liability, including any payment obligation pursuant to Section 6:230 of Book 6 of the Dutch Civil Code and/or Section 6:271 of Book 6 of the Dutch Civil Code, will at all times be limited in its entirety to the provision of stipulations of this provision:
- APS Personeelservices can never be held liable for damages resulting from the use of incorrect data/files/resources and information provided by or on behalf of the User company;
  - APS Personeelservices is never liable for any consequential loss, loss of profit, loss of income, loss of turnover, loss of savings, damage due to business stagnation or any other type of stagnation suffered by the User company;
  - the liability of APS Personeelservices, including any payment obligation pursuant to an obligation to cancel and any payment obligation pursuant to Section 6:230 of the Dutch Civil Code, towards the User company is at all times limited to the amount paid out by APS Personeelservices' liability insurance policy where applicable;
  - in the event that the liability insurance of APS Personeelservices - for whatever reason - fails to pay out, the liability of APS Personeelservices, including any payment obligation on the basis of Section 6:230 of the Dutch Civil Code and/or Section 6:271 of the Dutch Civil Code, will be limited to the User company rate to be charged by APS Personeelservices to the User company for the performance of the Assignment, for the agreed number of working hours and the agreed duration of

the Assignment up to a maximum of three months; whereby the total liability of APS Personeelservices and its affiliate companies is at all times limited to a maximum amount of €75.000,- per year, regardless of the basis for liability and the number of events causing damage.

- 18.3 These restrictions do not apply in the event of intent or wilful recklessness on the part of APS Personeelservices and/or Temporary agency workers.
- 18.4 All subordinates of APS Personeelservices may invoke the above provisions toward the User company and, if necessary, toward third parties on an equal footing with APS Personeelservices.
- 18.5 Damage for which APS Personeelservices can be held liable must be reported in writing to APS Personeelservices as soon as possible but no later than eight calendar days after it occurs, on penalty of forfeiture of the right to compensate for this damage. This period does not apply if the User company can demonstrate that the damage could not have been reported earlier for legitimate reasons. Regardless of the time at which the damage was reported, the related liability claim will lapse within twelve months after the User company has become aware of the harmful event or could reasonably have been aware of this.

## Article 19

### Intellectual and industrial property

- 19.1 At the User company's request, APS Personeelservices will have the Temporary agency worker sign a written statement in order to ensure or promote - to the extent necessary and possible - that all intellectual and industrial property rights in respect of the results of the Temporary agency worker's work will accrue to or be transferred to the User company. If APS Personeelservices is required to pay a fee to the Temporary agency worker in connection therewith or is otherwise required to incur costs, the User company will pay the same fee or incur the same costs to APS Personeelservices.
- 19.2 The User company is free to enter into an agreement directly with the Temporary agency worker or to submit to him a declaration for signature with regard to the intellectual and industrial property rights referred to in paragraph 1 of this article. The User company will inform APS Personeelservices of its intention to do so and provide APS Personeelservices with a copy of the relevant agreement/statement.
- 19.3 The Private employment agency will not be liable towards the User company for any fine or penalty that the Temporary agency worker forfeits or any damage that the User company may sustain as a result of the fact that the Temporary agency worker invokes any intellectual and/or industrial property right.

## Article 20

### Secrecy

- 20.1 APS Personeelservices and the User company will not disclose any confidential information of or about the other party, its activities and business relations, that has come to their knowledge pursuant to the Assignment, to third parties, unless - and to the extent that - the provision of such information is necessary for the proper performance of the Assignment or they are under a statutory obligation to disclose such information.
- 20.2 At the User company's request, APS Personeelservices will oblige the Temporary agency worker to exercise confidentiality with respect to everything known or authenticated to him in the performance of the work, unless the Temporary agency worker is under a statutory obligation to disclose.
- 20.3 The User company is free to directly oblige to the Temporary agency worker to maintain confidentiality. The User company will inform APS Personeelservices of its intention to do so and will provide APS Personeelservices with a copy of the statement/agreement.
- 20.4 APS Personeelservices is not liable for any fine, penalty payment or any damage suffered by the User company as a result of breach of confidentiality by the Temporary agency worker.

## Article 21

### Privacy

- 21.1 In the context of the Assignment or other agreement, the exchange of personal data of candidates and employees takes place. The User company as well as APS Personeelservices process this data with confidentiality and in compliance with the General Data Protection Regulation (hereinafter: GDPR) and related laws and regulations. The User company does not get/receive any data from APS Personeelservices that APS Personeelservices is not permitted to provide on the basis of applicable legislation and regulations. The User company is responsible for the further processing of the data provided to them by APS Personeelservices.
- 21.2 The User company is responsible for ensuring that APS Personeelservices is only provided with personal data if and insofar as the User company is entitled to do so and has obtained any and all necessary permission to do so from the persons concerned.
- 21.3 The User company indemnifies APS Personeelservices against any claims by candidates, employees, employees of the User company or other third parties against APS Personeelservices in connection to a breach of the provisions in this article decided by the User company and reimburses the related costs incurred by APS Personeelservices.

## Article 22

### User company's verification and retention obligation

- 22.1 The User company will be obliged to establish the Temporary agency worker's identity on the basis of the original identity document stating the Temporary agency worker's nationality upon commencement of the Placement. This identity document must be carefully checked for authenticity and validity.
- 22.2 The User company to whom APS Personeelservices provides a foreign national within the meaning of the Dutch Foreign Nationals (Employment) Act (Wet arbeid vreemdelingen) declares explicitly that it is familiar with Section 15 of this Act, including the fact that the User company must receive a copy of the document referred to in Section 1 of the Dutch Compulsory Identification Act (Wet op de identificatieplicht) from the foreign national upon commencement of employment by a foreign national. The User company is responsible for carefully checking the aforementioned document and, based on this, establishes the identity of the foreign national and includes a copy of the document in its records. APS Personeelservices is not responsible or liable for any fine imposed on the User company under the Dutch Foreign Nationals Employment Act (Wet arbeid vreemdelingen) or the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens).
- 22.3 APS Personeelservices is not liable for any fines or claims imposed on the User company for failure to fulfil its obligations as referred to in this article.
- 22.4 The User company will at all times indemnify APS Personeelservices against fines imposed on and claims against APS Personeelservices on account of the User company's failure to fulfil obligations referred to in this article.

## Article 23

### Avoidance of inadmissible discrimination

- 23.1 User company and APS Personeelservices will not make prohibited distinction, not to religion, philosophy of life, political affiliation, gender, race, nationality, heterosexual or homosexual orientation, marital status, disability, chronic illness, age nor any other grounds. User company and APS Personeelservices will only have job-relevant requirements set or taken into account when providing or executing the Assignment, and in the selection and treatment of Temporary agency workers.
- 23.2 The User company will indemnify the Private employment agency against the possible consequences of any unauthorised distinctions made by the User company.

## Article 24

### Right of Participation in decision making

- 24.1 The User company is obliged to give the Temporary agency worker who is a member of APS Personeelservices' work council or of the User company's work council the opportunity to exercise these participation rights in accordance with legislation and regulations.
- 24.2 If the Temporary agency worker exercises participation in the User company's organisation, the User company will also owe the User company rate in respect of the hours during which the Temporary agency worker performs work during hours or attend a training course in connection with the exercise of participation.
- 24.3 The User company declares that it is familiar with its information obligations pursuant to the Work Councils Act (Wet op de ondernemingsraad - hereinafter referred to as: WOR) concerning the (expected) deployment of Temporary agency workers in its company. If and to the extent that the User company wishes to base its fulfilment of these information obligations on information provided or to be provided by APS Personeelservices, such provision of information will not go beyond what the WOR requires.

## Article 25

### Payment and consequences of non-payment

- 25.1 Unless agreed on otherwise in writing, payment of all amounts owed by the User company to APS Personeelservices must be made within fourteen days of receipt of the (partial) invoice in a manner to be indicated by APS Personeelservices and in the currency invoiced by the User company. The value date on the bank statement will be decisive and will be deemed to be the payment date.
- 25.2 Only payment to APS Personeelservices or to a third party explicitly designated in writing by APS Personeelservices is liberating to work. Payments made by the User company to Temporary agency workers - under any title whatsoever - or the provision of advances to Temporary agency workers are non-binding toward APS Personeelservices and can under no circumstances constitute grounds for offset or payment in instalments for any reason whatsoever.
- 25.3 APS Personeelservices is entitled to invoices periodically.
- 25.4 If the User company has any objections to the invoice received, the User company must notify APS Personeelservices of these objections in writing within ten calendar days of the date of the invoice, failing this, the accuracy of the invoice will be established.
- 25.5 The User company is under no circumstances entitled to suspend and/or offset its obligations towards APS Personeelservices against its own claim against APS Personeelservices. Objections to the amount of an invoice or in respect of the services provided will never entitle the User company to suspend or deduct payment.
- 25.6 If the User company fails to pay the invoice within the term of payment, the User company will be in breach of contract by operation of law, without prior notice of default being

required. The User company will owe a contractual interest of 1% per month or part of a month on what it owes from the date of default, unless the statutory (commercial) interest is higher, in which case the statutory (commercial) interest will apply. The interest in the amount due and payable will be calculated from the moment the User company is in default until the moment of payment of the amount due in full.

- 25.7 The copy of the invoice sent by APS Personeelservices via e-mail will serve as full proof of the interest due and the day on which the interest calculation commences.
- 25.8 All costs, both judicial and extrajudicial, which APS Personeelservices should make to enforce its rights, come entirely at the expense of the User company. The compensation for extrajudicial costs will be fixed at 15% of the outstanding principal amount, including VAT and interest - with a minimum of €230,- per claim. This fee will at all times, as soon as the User company is in default, be due by the User company and will be charged without any further proof.
- 25.9 Payments made by the User company first serve to reduce the costs and interest owed (in this order) and then to reduce the principal sum and accrued interest, with the old claims taking precedence over the new ones. APS Personeelservices may, without being in default as a result, refuse an offer of payment if the User company designates a different order for the allocation of the payment. APS Personeelservices may refuse full payment of the principal sum, if this does not also include payment of the outstanding amounts and accrued interest and collection costs.
- 25.10 If it deems desirable to APS Personeelservices, and in any event if the User company is in default of any payment obligations for whatever reason, APS Personeelservices is entitled - after the conclusion of the Assignment - to demand a deviation from the agreed payment arrangement, payment in advance or security for the User company's payment obligations. The User company must comply with this at the first request of APS Personeelservices.
- 25.11 If the Assignment has been concluded with more than one User company, all User companies are jointly and severally liable for the payment obligations arising from the Assignment (regardless of the ascription of the invoice).
- 25.12 If the User company does not comply with article 25.1 or does not comply with a request from APS Personeelservices as referred to in article 25.9, APS Personeelservices is authorised to:
- entirely or partially, disband the Assignment with the User company without a notice of default being required. In that case, if APS Personeelservices incurs costs or suffers damages by any means as a result of non-payment by the User company, the User company will be liable for the damages and costs and must compensate them, or;
  - suspend, entirely or partially, its obligations towards the User company in regard to the Assignment.
- 25.13 In the event of dissolution, termination or suspension of the Assignment, APS Personeelservices will in no event be liable to pay any form of compensation to the User company, unless there are facts and circumstances underlying the dissolution, termination or suspension attributable to APS Personeelservices.

## Article 26

### Obligations relating to the Worker Allocation by Intermediaries Act

- 26.1 The User company explicitly declares that it is familiar with Section 8b of the Worker Allocation by Intermediaries Act and will ensure that Temporary agency workers have equal access to the business facilities or services in its company, in particular canteens, childcare and transport facilities, as the employees employed by its company in equal or equivalent positions, unless the difference in treatment is justified for objective reasons.
- 26.2 The User company explicitly declares that it is familiar with Section 8c of the Worker Allocation by Intermediaries Act and will ensure that any vacancies that arise within its company are brought to the attention of the Temporary agency worker in a timely and clear manner, so that the Temporary agency worker has the same opportunities for an employment contract for an indefinite period as the employees of the company.
- 26.3 The User company explicitly declares that it is familiar with Section 10 of the Worker Allocation by Intermediaries Act. APS Personeelservices is not permitted to make employees available to the User company or in the part of the User company's organisation where a strike, lockout or a business occupation of the company exists. The User company will inform APS Personeelservices in a timely and complete manner of the intention, commencement, continuation or termination of any work carried out by the trade unions organised or unorganised collective actions, including but not limited to a strike, lockout or business occupation.
- In the performance of its supervision and management of the Temporary agency worker, the User company will explicitly not issue any Assignment to the Temporary agency worker as a result of which Section 10 of the Worker Allocation by Intermediaries Act will be violated. This includes, but is not limited to, the performance by the Temporary agency worker of work that is typically performed by employees participating in the collective actions at the time.
- 26.4 The User company explicitly declares that it is familiar with Section 12a of the Worker Allocation by Intermediaries Act. the User company will provide APS Personeelservices with timely and complete information on the terms and conditions of employment in writing or electronically before the commencement of the Placement and thereafter where necessary.

## Article 27

### Applicable law and choice of forum

- 27.1 Dutch law is applicable to these General terms and conditions, Assignments and/or other agreements.
- 27.2 All disputes arising from or relating to a legal relationship between parties to whom these General Term and Conditions apply will in first instance be settled exclusively by the competent court of the district of East Brabant.

## Article 28

### Final provision

- 28.1 If one or more provisions of these General Terms and Conditions are null and void or destroyed, the Assignment and the General Terms and Conditions for other requirements will remain in force. The provisions that are not legally valid or which cannot be legally enforced will be replaced by the following provisions which are as close as possible to the purport of the provisions to be replaced.



personeelservices



## APS Personeelservices

Vestiging Nuenen  
Berg 47  
5671 CB Nuenen  
(040) 283 69 90  
nuenen@apspersoneel.nl

[apspersoneel.nl](https://www.apspersoneel.nl)

Vestiging Son  
Heistraat 16  
5691 CA Son  
(0499) 46 01 30  
son@apspersoneel.nl

Vestiging Schijndel  
Hoofdstraat 62  
5481 AH Schijndel  
(073) 720 09 07  
schijndel@apspersoneel.nl



## TERMS AND CONDITIONS

[apspersoneel.nl](https://www.apspersoneel.nl)