

# BDO GENERAL TERMS AND CONDITIONS OF THE BORROWING OF INTERIM WORKERS

## Article 1 - Definitions

- 1.1 In these general terms and conditions, the following terms have the following meanings:
- (a) BDO Group: the group of related legal entities operating in the Netherlands and trading under the 'BDO' brand name.
  - (b) Client: the private limited liability company that is a member of the BDO Group and a party to the Engagement/Agreement.
  - (c) Engagement/Agreement: all arrangements in place between the Client and the Service Provider under which the Service Provider has undertaken towards the Client to perform Services subject to the General Terms and Conditions.
  - (d) General Terms and Conditions: the provisions contained in this document.
  - (e) Interim Worker: a natural person whom the Service Provider supplies to the Client for the temporary performance of work under the Client's or a third party's direction and supervision.
  - (f) Service Provider: the Client's contracting party under the Agreement.
  - (g) Services: the Service Provider's supply of one or more Interim Workers to the Client for the performance of work under the Client's direction and supervision.

## Article 2 - Applicability

- 2.1 These General Terms and Conditions are an integral part of the Agreement, except if and insofar as derogated from in the Agreement.
- 2.2 Any derogations from these General Terms and Conditions will only be valid if and insofar as expressly agreed between the parties in writing.
- 2.3 Notwithstanding the provisions of Article 2.2, the Client will be authorised to unilaterally amend the Agreement as a result of laws and regulations.

## Article 3 - Conclusion of the Agreement

- 3.1 The Agreement will have been concluded when the Service Provider is in possession of the engagement letter sent to the Client and signed for approval by the latter.
- 3.2 The Agreement will apply for the term agreed between the parties. The Agreement will end in any case upon termination and/or completion of the Services.
- 3.3 The parties will be permitted to sign the Agreement and any and all adjustments to it electronically. In addition, each party will be permitted to sign a different copy of the same document. Any amendments to the Agreement must be agreed by both parties in writing.

## Article 4 - Supply of Interim Workers to third parties

- 4.1 The Client will be authorised to supply Interim Workers to a third party for the performance of work under that third party's direction and supervision.

## Article 5 - Fees

- 5.1 The fees owed by the Client to the Service Provider will be calculated based on the hours spent by the relevant Interim Worker for the Client multiplied by the hourly rate agreed by the parties, plus turnover tax. The hours spent are calculated based on the weekly statements to be completed by the relevant Interim Worker and to be signed by the Client.
- 5.2 Unless the parties have expressly agreed otherwise, the costs incurred in the context of the Engagement – including travel and accommodation expenses as well as any other out of pocket expenses – will be included in the fees and will not be charged separately to the Client.
- 5.3 In the event of early termination of the Agreement, the Client will be required to pay the fees owed until termination of the Services in full.

## Article 6 - Invoicing and payment

- 6.1 The fees owed by the Client to the Service Provider will be charged by the Service Provider to the Client at regular intervals.
- 6.2 Payment of the fees referred to in Article 6.1 must be effected in Dutch currency within fourteen (14) days of the invoice date by means of transfer to a bank account to be specified by the Service Provider.
- 6.3 If the Client fails to pay within the period stated in Article 6.2 and still fails to pay after having been given notice of default by the Service Provider, the Service Provider will be authorised to charge the Client the statutory interest for the period from the payment deadline stated in the notice of default until the date on which payment is made in full.

## Article 7 - Holidays and replacement of Interim Workers

- 7.1 The Client will be authorised to determine when Interim Workers can take their holidays, with due observance of the provisions of Articles 7:634 through 7:645 of the Dutch Civil Code (on holidays and leave).
- 7.2 The parties will notify each other of any facts and/or circumstances – including incapacity for work, accidents or illness – preventing one or more Interim Workers from performing their duties under the Engagement. If any such facts and/or circumstances occur, the Service Provider will be required to arrange immediate replacement of the relevant Interim Workers. As a principle, any replacement Interim Workers to be supplied must have similar expertise, education background and experience (in accordance with the requirements set out in the Agreement).
- 7.3 If and insofar as one or more Interim Workers are unable or no longer able to perform their duties under the Engagement for whatever reason and no suitable replacement within the meaning of Article 7.2 has been or is offered by the Service Provider, no fees as referred to in Article 5.1 will be owed by the Client in respect of the relevant Interim Workers.

## Article 8 - Non-competition clause

- 8.1 In the event that one or more Interim Workers are supplied to one or more third parties as referred to in Article 4, the Service Provider will not be authorised to contact the relevant third party or third parties during the performance of the Engagement or within two (2) years of its completion with a view to concluding an agreement – by whatever name – with that third party or those third parties based on which one or more Interim Workers will perform work for that third party or those third parties (temporarily or otherwise). The above does not apply if this is done following mutual consultations between the parties and with the Client's

prior written consent, which may be subject to a fee in accordance with Article 8.3.

- 8.2 The Service Provider will be required to provide the Client with all information necessary for the calculation of the fee owed by the Service Provider to the Client in accordance with Article 8.3 within ten (10) working days of the conclusion of the agreement referred to in Article 8.1.
- 8.3 Unless the parties have expressly agreed otherwise, the fee per Interim Worker is fifty percent (50%) of the gross annual salary on a full-time basis agreed between the Service Provider and the relevant third party or third parties, plus VAT. The gross annual salary referred to above also includes holiday allowance, guarantee commissions and other commissions, committed profit distributions and bonuses. Unless the parties have expressly agreed otherwise, the fee will be charged to the Service Provider as a one-off payment.

## Article 9 - Confidentiality

- 9.1 The parties are not permitted to disclose the substance and existence of the Agreement to any third parties. The parties are obliged to observe confidentiality in respect of all data obtained in connection with the performance of the Services which they know or should reasonably know to be confidential.
- 9.2 Notwithstanding Article 9.1, however, each party will be permitted to disclose such information if this information:
  - (i) Is or becomes generally known due to causes other than non-performance of the Agreement.
  - (ii) Is subsequently received by one of the parties from a third party which, insofar as the recipient is aware, does not have a duty of confidentiality towards the disclosing party in respect of that information.
  - (iii) Was already known to the recipient at the time of its disclosure or was subsequently created independently.
  - (iv) Is disclosed to enforce the recipient's rights ensuing from the Agreement, insofar as necessary.
  - (v) Must be disclosed pursuant to applicable legislation, the rule of law or professional regulations.
  - (vi) Is relevant in legal or other proceedings in which one of the parties acts on its own behalf.
- 9.3 The Service Provider will be required to impose its obligations ensuing from Articles 9.1 and 9.2 on the Interim Workers as well.
- 9.4 The Client will be permitted, with due observance of applicable legislation, to provide information from or about the Service Provider to, obtain such information from, and share such information with, the BDO Group, which may subsequently, like the Client, collect, use, transfer, store or otherwise process this information for purposes relating to:
  - (i) Performance of the Engagement.
  - (ii) Compliance with the regulatory requirements and statutory obligations applicable to the Client.

- (iii) Prevention of conflicts of interest.
  - (iv) Risk management and quality assessments of and by the Client.
  - (v) Internal accounting and administrative purposes of the Client.
  - (vi) Improvement of existing services and development of new services by the Client.
  - (vii) IT purposes, including untraceable and anonymised use in the context of the preparation, pursuit or maintenance of best practices, statistics, research and/or benchmark studies.
- 9.5 The Client will be required to impose its obligations ensuing from Articles 9.1 and 9.2 on the BDO Group as well if and insofar as it obtains any information based on Article 9.4.

## Article 10 - Intellectual property

- 10.1 The copyright and all other intellectual or industrial property rights ensuing from work performed by the Service Provider and the Interim Workers under the Agreement accrue to the Client. Insofar as required, the Service Provider and the Interim Workers will be obliged to immediately cooperate in any transfer of the rights referred to above.

## Article 11 - Liability and insurance

- 11.1 The Service Provider will only be liable for any damage incurred by the Client that is the direct result of a failure attributable to the Service Provider to perform its obligations ensuing from the Agreement. The Service Provider's liability will be limited to a maximum of four (4) times the amount of the fee charged by the Service Provider to the Client for the supply of one or more Interim Workers, in which respect only the fee relating to the last twelve (12) months that those Interim Workers have been supplied will be taken into account. The above does not apply if and insofar as the damage was caused by the Service Provider's intent or gross negligence.
- 11.2 The Service Provider undertakes to take out adequate insurance against the usual risks in connection with the performance of the agreement, including in any event liability insurance.
- 11.3 The Service Provider declares that it will perform, and continue to perform, its obligations to the Tax and Customs Administration and indemnifies the Client against all claims and obligations – including additional tax assessments – for the payment of taxes and/or contributions owed by the Service Provider in connection with the Agreement. Insofar as applicable, the Service Provider will impose these obligations on the Interim Workers.

## Article 12 - Term and termination of the Agreement

- 12.1 Either party will be authorised at all times to terminate the Agreement, in whole or in part, by giving notice, subject to a reasonable notice period, unless the parties have agreed otherwise.
- In addition, the Client will be permitted to terminate the Agreement, in whole or in part, in writing with immediate effect if, after acceptance or continuation of the Agreement, any information comes to light that, had this information been known to the Client at the time of acceptance or continuation of the Agreement, would have led the Client not to accept or continue the Agreement, or to accept or continue it in amended form.
- 12.2 Notice must be given in writing.
- 12.3 Any provisions of the Agreement and these General Terms and Conditions that are expressly or inherently intended to remain in force even after the Agreement has ended or has been terminated will remain in full force after the Agreement has ended or has been terminated.
- 12.4 Termination of the Agreement based on Article 12.1 will never constitute ground for any claim for compensation for costs or damage, unless expressly provided otherwise in the Agreement.

## Article 13 - Protection of personal data

- 13.1 Insofar as the Client processes personal data within the meaning of the General Data Protection Regulation ('GDPR') in the context of the Engagement ('Personal Data'), the Client will determine the purpose and means of processing, thus acting as the controller within the meaning of the GDPR.
- 13.2 The Client may process Personal Data relating to and/or provided by the Service Provider, for example, (i) in the context of the Engagement, (ii) in the performance of the Client's statutory obligations, (iii) in order to support the Service Provider's provision of services to the Client as well as (iv) in relation to the establishment of or defence against legal claims.
- 13.3 Personal Data processing by the Client in the context of activities as stated in Article 13.2 above will take place in accordance with the applicable laws and regulations on personal data protection ('Privacy Legislation'), such as the GDPR and the General Data Protection Regulation (Implementation) Act (*Uitvoeringswet Algemene verordening gegevensbescherming* ('UAVG')). The Service Provider may share Personal Data with the Client's BDO Member Firms. The transfer of Personal Data among BDO Member Firms is subject to BDO Binding Corporate Rules. Personal Data will only be shared insofar as this is necessary in the context of the aforementioned activities and insofar as this is in accordance with Privacy Legislation. The Client has appointed a Privacy Officer ([privacy@bdo.nl](mailto:privacy@bdo.nl)).

- 13.4 The Service Provider has an independent duty to comply with Privacy Legislation. The Service Provider guarantees the lawfulness of the provision of the Personal Data to the Client and will in that regard observe all statutory obligations applicable to the Service Provider under Privacy Legislation, including the obligation to inform data subjects of the provision of their Personal Data to the Client and the processing of this data by the Client in the performance of the Engagement. Information on BDO's processing of Personal Data is available in the privacy statement (<https://www.bdo.nl/en-gb/about/quality/privacy-statement>).
- 13.5 The Client will take appropriate technical and organisational measures to protect the Personal Data from destruction, loss, alteration, unauthorised disclosure and unauthorised access, taking into account the risks attached to the processing of the Personal Data, also in view of the nature of this data.
- 13.6 With regard to Personal Data provided by the Service Provider, the Client will inform the Service Provider if (i) a request is received from a data subject seeking to exercise his or her rights, (ii) a complaint or claim is received in relation to the processing of the Personal Data, and (iii) the Client makes a notification pursuant to Article 33 or 34 of the GDPR.
- 13.7 If the Client so requests, the Service Provider will, without unreasonable delay, lend all cooperation and provide all information required to comply with Privacy Legislation, including but not limited to information and cooperation in relation to the exercise of a data subject's rights and any Personal Data breaches.

## Article 14 - Applicable law and disputes

- 14.1 All legal relationships between the Service Provider and the Client to which these General Terms and Conditions apply are governed by Dutch law.
- 14.2 All disputes relating to the legal relationship between the Service Provider and the Client to which these General Terms and Conditions apply will be referred exclusively to the competent court in the District of Oost-Brabant, unless provisions of mandatory law dictate otherwise.

## Article 15 - Other provisions

- 15.1 The article headings used in these General Terms and Conditions are provided for ease of reference only. No rights can be derived from these headings.
- 15.2 If any provision of the Agreement turns out to be wholly or partly unlawful, invalid or otherwise unenforceable, the other provisions will remain in full force.
- 15.3 Neither party will be permitted to use or refer to the other party's name, logos or trade mark in public without the other party's prior consent, it being understood that the Client will be permitted to use the Service Provider's name in order to identify it as one of its suppliers.