

**GENERAL TERMS AND CONDITIONS MCFLY & BROWN NETHERLANDS B.V.****Article 1 Definitions**

In these general terms and conditions, the following definitions shall apply:

1. MCFLY & BROWN NETHERLANDS B.V.: the temporary employment agency that, in the course of its business, supplies labour force to a hirer to perform work for that hirer. MCFLY & BROWN NETHERLANDS B.V. shall be referred to as MB.
2. Labour force: any natural person who performs or will perform work for a hirer through the intermediary of MB a natural person who is recruited and selected by MB and proposed to the hirer.
3. Hirer: any natural or legal person who provides itself with labour through the intermediary of MB;
4. Hiring contract: the agreement between MB and a hirer on the basis of which a labour force will perform work for that hirer through the intermediary of MB;
5. Hirer's rate: the amount per hour that the hirer owes MB for the provision of the labour force;
6. Temporary employment contract: the employment contract whereby the labour force is made available by MB to a hirer in order to perform work under the supervision and management of that Hirer pursuant to a hiring contract concluded by the latter with MB;
7. NBBU collective labour agreement: the collective labour agreement applicable to MB.
8. Where these general terms and conditions refer to labour force, this shall mean: male and female labour force and where reference is made to him and/or he, this shall mean: him/her or he/she.

**Article 2 Applicability of these terms and conditions**

1. These terms and conditions shall apply to any offer made by MB to, and to any hiring agreement between MB and a hirer to which MB has declared these terms and conditions applicable, as well as to the ensuing supplies and services of any nature whatsoever between MB and a hirer, insofar as these terms and conditions have not been expressly deviated from by the parties in writing.
2. The hirer with whom a contract was once concluded on these terms and conditions shall be deemed to tacitly agree to their applicability to a subsequent hiring contract concluded with MB.
3. All offers, regardless of how they are made, shall be without obligation.
4. MB shall not be bound by any general terms and conditions of the hirer insofar as they differ from these terms and conditions.
5. If any provision of these terms and conditions is void or annulled, the other provisions of these terms and conditions shall remain in full force and the parties shall consult in order to agree new provisions to replace the void or annulled provisions, whereby the purpose and meaning of the void or annulled provision shall be taken into account as much as possible.

**Article 3 Method of invoicing**

1. MB is entitled to invoice on a weekly basis or after completion of the work. MB is entitled to demand advance payment of the agreed price.
2. Unless otherwise agreed, MB's invoices are partly based on the time sheets completed by the employee and approved by the hirer.
3. The hirer is responsible for the correct, timely and complete completion and approval of the time registration form. Approval takes place by digitally signing the timesheet. The hirer shall sign the timesheet for approval no later than the end of the week or no later than the next working day.
4. In the event of a discrepancy between a time registration form submitted to MB and the copy retained by the hirer, the copy submitted to MB shall be deemed correct, unless the hirer demonstrates otherwise.
5. If the labour force disputes the details of the time sheet, MB may invoice the number of hours worked and other expenses according to the labour force's statement, unless the hirer demonstrates that the time sheet is correct.
6. If the hirer fails to comply with the provisions of paragraphs 2 and 3 of this Article, MB may decide to invoice the hirer on the basis of the facts and circumstances known to it. MB shall do so after a period of 5 working days counting from the last day worked by the labour force in the relevant period.
7. The hirer shall ensure that MB's invoices are paid without any deduction, discount or setoff within 30 days of the invoice date.
8. If during the term of an assignment the remuneration of a labour force should increase as a result of a change in the law, any government measure or any other body based on any statutory regulation, or if the employer's share of contributions or social security contributions pursuant to social insurance laws and/or tax legislation should be increased, MB shall be free to increase the rate by the full amount thereof and/or proportionally thereto with effect from the time of the increases and, if MB so decides, such increase or increase shall be owed by the hirer accordingly.
9. If price-determining factors undergo an increase (due to whatever cause), MB shall be entitled at

all times (i.e. also when entering into a new assignment) to change previously agreed prices and rates accordingly. MB is also entitled to index its prices in accordance with the CBS price index figure for business services.

10. The hirer may request MB to discuss the possibility of the hirer paying a percentage of the invoiced amount into the g account<sup>i</sup>, as well as the amount of the percentage. Only if agreement is reached can the aforementioned possibility be used.

#### **Article 4 Payment terms**

1. Only direct payments to MB shall work in liberation for the hirer.
2. Direct payments or the provision of advances by the hirer to the labour force shall not be permitted, regardless of the reason or manner in which they are made. Such payments and provisions shall not affect MB and shall not constitute grounds for any debt repayment or set-off.
3. If the hirer disputes an invoice, the hirer shall notify MB in writing within eight days of the date of dispatch of the relevant invoice, on pain of forfeiting the right to dispute. A dispute of the invoice shall not suspend the hirer's payment obligation.
4. In the event of non-payment, late payment or incomplete payment by the hirer of any amount owed by it, it shall be in default by operation of law with effect from the due date of the relevant invoice. From that moment the hirer shall also owe MB default interest of 1% per month, counting part of a month as a whole month, on the gross amount of the invoice.
5. If the hirer fails to fulfil any obligation arising from the agreement, or fails to do so on time or properly, the costs arising from this for MB shall be payable by the hirer. These costs shall include all judicial and extrajudicial costs, such as the costs of summonses, debt collection and lawyers. The extrajudicial costs are set at a maximum of 20% of the amount to be claimed, with a minimum of € 150.

#### **Article 5 Dissolution**

1. If a party fails to comply with its obligations under the hiring contract, the other party shall be entitled - in addition to what is stipulated in the hiring contract - to terminate the hiring contract out of court by registered letter. The dissolution will only take place after the defaulting party has been notified in writing of the notice of default and has been given a reasonable period to remedy the serious breach.
2. Furthermore, the one party is entitled, without any reminder or notice of default being required, to dissolve the hiring agreement extrajudicial with immediate effect in full or in part by registered letter if:
  - a. the other party applies for or is granted (provisional) suspension of payments;
  - b. the other party files for its own bankruptcy or is declared bankrupt;
  - c. the other party's business is liquidated;
  - d. the other party ceases its current business;
  - e. a considerable part of the other party's capital is seized through no fault of the one party, or if the other party must otherwise be considered no longer capable of fulfilling the obligations under the hiring agreement.
3. If at the time of dissolution, the hirer had already received services in performance of the hiring agreement, it may only partially dissolve the hiring agreement and only for that part that has not yet been performed by or on behalf of MB.
4. Amounts that MB has invoiced to the hirer before the dissolution in connection with what it has already performed in the execution of the hiring agreement shall remain payable to it by the hirer in full and shall become immediately due and payable at the moment of dissolution.
5. If the hirer, after having been given notice of default in this respect, fails to fulfil any obligation ensuing from the hiring agreement, or fails to do so in full or in time, MB shall be entitled to suspend its obligations towards the hirer without being liable to pay any damages to the hirer, or the hirer shall provide financial security by means of an advance payment or (bank) guarantee. The size of the advance or (bank) guarantee shall be in proportion to the hirer's obligations under the hiring agreement. The foregoing also applies in the circumstances referred to in paragraph 2 of this Article.
6. If, in the opinion of MB, there are reasonable doubts about the financial position of the hirer, the hirer shall provide MB with the financial security referred to in paragraph 5 at MB's request.

#### **Article 6 Liability**

1. Subject to mandatory provisions of law, as well as with due observance of the general standards of reasonableness and fairness, MB shall not be liable to pay any compensation for damage of any kind whatsoever, direct or indirect, caused to the labour force or to goods or persons at or belonging to the hirer or a third party, which damage is caused as a result of:
  - a. the posting of the labour force by MB to the hirer, even if that labour force turns out not

- to meet the requirements set by the hirer for the labour force;
  - b. unilateral termination of the employment contract by the labour force;
  - c. acts or omissions of the labour force, the hirer itself or a third party, including entering into commitments by the labour force.
2. Any liability of MB for any direct damage shall in any event be limited in the first instance per event to the amount paid out by MB's insurance company, or limited per event to 50% of the relevant amount invoiced or to be invoiced. MB shall never be liable for indirect damages, including consequential damages;
3. The hirer shall be obliged to take out adequate, fully comprehensive liability insurance for all direct and indirect damages as referred to in paragraph 1 of this Article.
4. In any event, the hirer shall indemnify MB against any claims by the labour force or third parties for compensation of damages as referred to in paragraph 1 of this Article suffered by said labour force or third parties.
5. The limitations of liability included in paragraphs 1 and 2 of this Article shall lapse in the event of intent or gross negligence on the part of MB and/or its managerial staff.
6. MB shall at all times be entitled, if and to the extent possible, to undo any damage suffered by the hirer. This also includes MB's right to take measures to prevent or limit any damages.

#### **Article 7 Force majeure**

1. In the event of force majeure on the part of MB, its obligations under the hiring agreement shall be suspended for as long as the force majeure situation continues. Force majeure means any circumstance beyond the control of MB that permanently or temporarily prevents the fulfilment of the hiring agreement and which should not be at its risk by virtue of the law or according to standards of reasonableness and fairness.
2. As soon as MB experiences a force majeure situation as referred to in paragraph 1 of this Article, it shall notify the hirer.
3. Insofar as not already included therein, force majeure shall also include: strikes, sit-down strikes, blockades, government measures, war, terrorism, revolution and/or any situation similar to this, power failures, failures in electronic communication lines, fire, explosions and other calamities, water damage, floods, earthquakes and other natural disasters, as well as major illnesses of an epidemiological nature affecting personnel.
4. As long as the force majeure situation continues, MB's obligations shall be suspended. However, this suspension will not apply to obligations to which the force majeure does not apply and which have already arisen before the force majeure state occurred.
5. If the state of force majeure has lasted three months, or as soon as it is established that the state of force majeure will last longer than three months, each of the parties shall be entitled to terminate the hiring agreement prematurely without observing any notice period. Even after such termination of the hiring agreement, the hirer shall be obliged to pay MB the fees it owes MB that relate to the period prior to the force majeure situation.
6. MB shall not be obliged to compensate any damages suffered by or at the hirer during the period of force majeure, nor shall it be obliged to do so after termination of the hiring agreement as referred to in paragraph 5 of this Article.

#### **Article 8 Hiring labour**

1. The employment contract is entered into between the labour force and MB. The NBBU Collective Labour Agreement for Temporary Agency Workers shall apply to the employment contract. No employment contract exists between the hirer and the labour force.
2. When the labour force is made available by MB to the hirer, the labour force shall actually work under the management and supervision of the hirer. In doing so, the hirer shall exercise the same due care as towards its own employees. As the formal employer, MB has no insight into the workplace and the work to be performed.
3. The work shall be performed as agreed in the hiring contract. If the hirer wishes to deviate from this during the term of the hiring agreement, this shall only take place in consultation with MB.

#### **Article 9 (Hourly) remuneration and other allowances of the labour force**

1. The wages and allowances of the labour force shall be determined prior to the posting and if necessary during the posting - and shall be equal to the wages and allowances granted to comparable employees, working in equivalent positions, employed by the hirer.
2. Wages and other allowances shall include the following components:
  - a. only the applicable period wage in the scale;
  - b. the applicable working time reduction. This can - at MB's discretion - be compensated in time and/or money;

- c. bonuses for overtime, any bonuses, shifted hours, irregular hours (including public holiday bonus) and shift work;
  - d. initial wage increase;
  - e. untaxed expense allowances: travel expenses, boarding house costs and other costs necessary on account of performing the job;
  - f. period-linked salary amounts.
3. The hirer shall promptly inform MB of the components referred to in paragraph 2. If the hirer provides MB with incorrect information about these components, MB shall be entitled, from the moment of commencement of the position in question, to correct and charge to the hirer, with retroactive effect, the wages and other allowances of the labour force as well as the hirer's rate accordingly.
4. If the labour force's wages and allowances cannot be determined in accordance with the pay ratio rule, they shall be determined in consultation between MB, labour force and Hirer. The educational level and experience of the labour force, as well as the responsibilities and required capacities that fulfilment of the position entails, shall be the guiding principle in this respect.
5. If the hirer's business obliges the labour force to have certain requirements, such as a certificate of good conduct or personal protection equipment, these will be provided by the hirer insofar as possible. If the supplies are provided by MB, MB shall be entitled to charge the costs involved to the hirer.

**Article 10 Content of the hiring contract and notice periods**

1. The hiring agreement shall state the duration of the supply of the labour force and, if this is not clear in advance, as precise an estimate as possible. Insofar as possible and desirable, it shall further specify the starting and ending dates of the placement, the number of hours to be worked, the notice period and the employment conditions of the labour force.
2. If the temporary employment agency clause applies to the temporary employment contract, MB or the hirer need not observe a notice period if they wish to terminate the posting prematurely, unless otherwise agreed in writing.
3. If the temporary employment agency clause does not apply to the temporary employment contract, it is a temporary employment contract for a definite or indefinite period. In this case the temporary employment contract shall end only when the agreed duration of the posting expires, unless otherwise agreed in writing.
4. If the hirer wishes to prematurely terminate the posting of the labour force working on the basis of a temporary employment contract for a definite or indefinite period, the hirer shall owe MB an immediately payable fee. This fee amounts to 100% of the most recently applicable hirer's rate for the labour force in question, multiplied by the number of hours agreed in the temporary employment contract, situated in the period from the time of premature termination to the time of expiry of the temporary employment contract as initially agreed.
5. If the hirer wishes to terminate the posting while nothing has been agreed regarding the duration of the posting and the labour force is working on the basis of the temporary employment contract for a fixed or indefinite period, a notice period of 3 months applies, unless otherwise agreed in writing. A notice period of 6 months applies to candidates outside the EU.

**Article 11 Establishment of direct employment relationship by hirer with the labour force**

1. If the hirer wishes to enter into an employment contract or into another type of employment relationship directly with a labour force provided or to be provided to it by MB, it shall immediately notify MB in writing. The parties shall then consult to discuss the hirer's wish.
2. Other type of employment relationship as referred to in this Article includes, inter alia:
  - a. the appointment as an official;
  - b. the contract of employment;
  - c. the employment contract;
  - d. having the labour force made available to the hirer by a third party (e.g. another temporary employment agency) for the same or different work.
  - e. The hirer shall not directly enter into an employment contract with the labour force if the labour force has not validly terminated the employment contract with MB, without prejudice to the hirer's other obligations as referred to in Article 1 paragraph 4.
3. If, following the posting, the hirer enters into an employment contract or another type of employment relationship with the relevant labour force within a period of 1 year of the commencement of the hiring contract, it shall owe MB an immediately payable payment that is not subject to mitigation. This fee amounts to 35% of the most recently applicable hiring rate for the labour force concerned, multiplied by the number of hours to be worked in the period agreed in the hiring agreement, situated in the period from the start of the aforementioned employment relationship until the end of the period of 1 year of full-time work referred to in the previous sentence.

4. If the hirer enters into an employment contract or any other type of employment/work relationship with the relevant labour force:
  - a. within twenty-four months after his posting with the hirer has ended while a period of 1 year has not yet been worked, or
  - b. within twenty-four months after nomination of the labour force recruited and selected by MB without having been made available (for whatever reason).

The hirer shall owe MB the remuneration referred to in paragraph 3. This applies in the situation that the hirer approached the labour force directly or via a third party as well as in the situation that the relevant labour force approached the hirer directly or via third parties. If no user rate had yet been agreed, the compensation as referred to in paragraph 3 shall amount to 75% of the gross hourly wage (including any shift work allowance) that the labour force would have earned according to Article 10 multiplied by the number of hours as referred to in paragraph 3;

5. A hirer (intermediate recipient) that does not lend its own personnel, but in turn lends the labour force it hires to another, the ultimate hirer, shall owe MB (employer) the remuneration referred to in paragraph 3
  - a. of this Article, if a direct employment relationship is established between the ultimate hirer and the labour force within a period of 1 year's workable hours after the commencement of the hiring contract.

#### **Article 12 Workforce selection**

1. The employee is selected by MB on the basis of the skills and abilities of the employees available for deployment known to MB and on the basis of the information provided by the hirer to MB regarding the work to be assigned.
2. Non-functional requirements when providing information on the work to be assigned, as referred to in paragraph 1 of this Article, may not be imposed by the hirer. In any event, these will not be honoured by MB.
3. During the term of the hiring agreement MB is entitled to make a proposal to replace the labour force, for example if the labour force is no longer capable of performing the work. The hiring rate will then be re-determined.

#### **Article 13 Hirer's duty of care and indemnity towards MB**

1. The hirer is aware that under the Working Conditions Act and Article 7: 658 of the Dutch Civil Code, it has the obligation to ensure a safe workplace for the labour force. The hirer shall provide the labour force with concrete instructions to prevent the labour force from suffering damage in the performance of his work. The hirer shall also provide the labour force with personal protective equipment to the extent necessary.
2. In good time before the commencement of the posting, the hirer shall provide the labour force and MB with the necessary information on the labour force's required professional qualifications, as well as the Risk Inventory and Evaluation (RI&E), containing the specific features of the workplace to be filled.
3. The hirer shall involve deployed labour forces in safety instructions held by the hirer, whether or not organised periodically by the hirer, without the labour hours or costs required for this purpose being recovered from the labour forces deployed by MB.
4. If an industrial accident or occupational disease befalls the labour forces deployed by MB, the hirer shall notify the competent authorities and shall ensure that a report is drawn up without delay, in which the circumstances of the accident are recorded in such a way that it can be ascertained with a reasonable degree of certainty whether and to what extent the accident was the result of the fact that insufficient measures had been taken to prevent such an industrial accident or occupational disease.
5. The hirer shall compensate the labour force deployed by MB for all damage (including costs including the actual costs of legal assistance) that the labour force suffers in the performance of his work, unless the hirer proves that it has fully complied with the obligations referred to above in paragraphs (a), (b) and (c) or that the damage is to a significant extent the result of intention or conscious recklessness on the part of the labour force. If the industrial accident results in death, the hirer is obliged to compensate damage (including costs including the actual costs of legal assistance) under the aforementioned conditions in accordance with Article 6:108 of the Dutch Civil Code to the persons named in that Article.
6. The hirer shall compensate the labour force for all damage (including costs including the actual costs of legal assistance) that belongs to the labour force and is damaged or destroyed by him in the context of the assigned work. The hirer shall indemnify MB against all such agreements.
7. The hirer shall not on-lend the labour force hired by it to a third party to work under its supervision and management without MB's consent.
8. The hirer is obliged to ensure adequate, comprehensive liability insurance for all direct and indirect damages as referred to in this Article.



**Article 14 Identification and personal data**

1. The hirer shall establish a labour force's identity on the basis of an original identity document at the commencement of the posting of a labour force and shall keep a copy of this document in its records.
2. The hirer shall treat the personal data of labour forces supplied to it in the context of the posting as confidential and process them in accordance with the provisions of the Personal Data Protection Act.
3. MB shall not be liable for fines or claims imposed on the hirer for failure to fulfil its obligations as referred to in the previous paragraphs.

**Article 15 Company car and company closure**

1. If the hirer intends to provide the labour force with a car, the hirer shall notify MB immediately. Only in consultation with MB shall the hirer agree with the labour force that the car may be driven privately, so that MB can take this into account when calculating payroll tax. If the hirer fails to do so, it shall be liable to compensate MB for any ensuing damages, costs and (tax) consequences suffered by MB.
2. If a company closure or mandatory day off occurs during the deployment, the hirer shall inform MB of this when entering into the hiring contract, so that MB can take it into account when determining the terms and conditions of employment. If the hirer fails to do so, it shall owe MB the number of hours as agreed in the hiring agreement, multiplied by the most recently applicable user fee, for the duration of the company closure or mandatory day off.

**Article 16 Confidentiality**

MB undertakes to keep confidential all information received in the context of the agreement concerning the business of the hirer, unless a statutory provision provides otherwise.

**Article 17 Disputes**

1. The hiring agreement shall be governed by Dutch law.
2. With regard to disputes between the parties relating to the hiring agreement, the Dutch courts shall have exclusive jurisdiction.
3. Insofar as the adjudication of such disputes falls within the competence of the court, they shall be adjudicated exclusively by the court within the district in which MB has its registered office.

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<sup>1</sup> A g account is a frozen account that you can use solely to make payroll taxes or VAT payments to the Dutch Tax and Customs Administration.