

General terms and conditions of My Flexwork B.V.

As of 1 January 2019

In these General Terms and Conditions, we explain what you can expect from us in the collaboration with My Flexwork and what we expect from you. Your possible purchase conditions or other conditions do not apply. If we make other agreements together, they are only valid if we both agree. These will then be recorded in writing and will only apply to that specific Assignment.

1 Definitions

We do not use obtuse words. In these General Terms and Conditions, the following terms shall have the following meanings:

1. My Flexwork: that is us, the private limited company My Flexwork B.V.
2. Flexworker: our flexworker who is employed by us or by a third party based on an agency work employment contract (as referred to in Section 7:690 of the Dutch Civil Code). The Flexworker is made available to you to carry out work under your guidance and supervision.
3. Assignment: any agreement, in whatever form, between you and us.
4. Client: that is you. Any natural person or legal entity that is a party to the assignment in addition to My Flexwork.
5. Rate: the Rate you owe us for the provision of the Flexworker. The Rate is charged per hour and is exclusive of VAT and exclusive of travel expenses, unless stated otherwise.

2 The assignment

1. The Assignment is entered into for a fixed or indefinite period.
2. The Assignment for an indefinite period shall end by giving three months' written notice, unless otherwise agreed.
3. The Assignment for a definite period shall end by operation of law. The Assignment may not be terminated prematurely for a definite period, unless otherwise agreed in writing.
4. Each Assignment ends immediately at the time we cancel the Assignment because:
 - a. You cease your business operations, make an arrangement with your creditors, are dissolved, are in liquidation and/or cease your activities;
 - b. You have been declared bankrupt or have applied for a moratorium.
5. The end of the Assignment means the end of the provision of the Flexworker. Termination of the Assignment by you implies your request to us to terminate the current placement(s) by the first date on which this is legally possible.
6. The provision shall end by operation of law if and as soon as we are no longer able to provide the Flexworker.
7. If we are temporarily unable to fulfil our obligations due to circumstances beyond our control or risk sphere, we may suspend the execution of the Assignment.
8. We can always make a proposal to you to replace a Flexworker made available by another Flexworker under continuation of the Assignment. You are always free to agree to this or not.

3 Collaboration

1. To be able to employ the right Flexworker, we need information from you. This information consists of an accurate description of the activities, job requirements, desired working times and working hours, workplace, working conditions and the intended duration of the posting.
2. We will both designate a contact person in charge of maintaining communications. The contact persons are authorised to act on behalf of the parties and will regularly discuss the progress of the work.

4 Function and (hirer's) remuneration

1. Under the ABU Collective Labour Agreement for Temporary Agency Workers, we are obliged to apply the hirer's remuneration for each Flexworker. This means that the Flexworker is entitled to the same wages as your own employees in the same position. Unless — and then for as long as — the Flexworker belongs to an exceptional group or the position cannot be divided into the function chart of your organisation and we apply the ABU remuneration for this Flexworker.

2. Before commencement of the Assignment, you shall provide the description of the position to be performed by the Flexworker, the associated classification and information about all elements of the hirer's remuneration in accordance with the form for hirer's remuneration that you receive from us. You guarantee the accuracy and completeness.
3. If at any time it appears that the job description and the corresponding classification do not correspond to the job performed by the Flexworker, you must immediately send us the correct job description and the corresponding classification and hirer's remuneration.
4. If the adjustment of job description and/or grading results in a higher remuneration, we will correct the remuneration of the Flexworker and the Rate accordingly. You will owe us this corrected Rate (with retroactive effect) from the moment you perform the actual function.
5. You ensure that we are informed in good time and in any event immediately upon becoming aware of any changes in the hirer's remuneration and of any initial wage increases that have been determined.

5 Rate

1. We determine the Rate based on the information you provide about the job classification and hirer's remuneration. If this is found to be incorrect, you must pay the correct Rate retroactively.
2. We will adjust the Rate during the term of the Assignment if the costs of the temporary work increase:
 - as a result of changes to the applicable Collective Labour Agreement and/or employment conditions scheme or to the wages regulated thereon;
 - as a result of changes in or as a result of (social and fiscal) laws and regulations;
 - as a result of a (periodic) wage increase.
3. If you do not agree with the (adjusted) Rate, this will include the decision to terminate your request for the posting. However, the posting shall only end when the Flexworker's employment agreement can be validly terminated. Until the date of termination of the employment contract, you will owe the Client Rate.

6 Invoicing and Payment

1. Invoicing takes place based on the time registration entered and approved by you. The time registration must be delivered to My Flexwork by no later than noon on a weekly basis or before noon on Tuesday. An hour specification from this system is added to the invoice.
2. In principle, invoicing takes place on a weekly basis and afterwards.
3. We expect payment from you within 14 calendar days after invoice date. If you fail to do this, we can charge you 10% administration costs.
4. If you have any objections to the received invoice, please let us know within 10 calendar days of the invoice date. After that, the correctness of the invoice is established.
5. We expect you to pay our invoices without any deduction, discount or offset.
6. If you fail to meet your payment obligation or other obligations, or if we have good reason to suspect that you will not meet your obligation (on time), we may suspend our obligations to you in whole or in part. In this case we are not obliged to pay any form of compensation to you.

7 Exercise of management and supervision

1. We believe it is important that you behave with the same care as your own employees with regard to the Flexworker in the exercise of management and supervision, as well as with regard to the execution of the work.
2. You may only employ the Flexworker in deviation from the provisions of the Commission and General Terms and Conditions if we and the Flexworker have given our prior written consent.
3. You may not 'lend' the Flexworker to a third party without our permission. A third party also includes a (legal) person with whom you are affiliated in a group (company).
4. Employment by you of the Flexworker abroad is only possible for a limited period of time, under the conditions that you have organised management and supervision and the employment has been agreed with us in writing.
5. The Flexworker's working times, working hours and rest times shall be equal to your usual times and hours, unless agreed otherwise. Ensure that working hours and rest and working times are monitored as required by law.

8 No or less work

1. If you temporarily have no or less work for the Flexworker or you cannot employ the Flexworker, our Flexworker will still be available for you.
2. Suspension is only possible with the written consent of My Flexwork and subject to the following conditions:
 - a. You demonstrate that there is temporarily no work available or that the Flexworker cannot be put to work, and;
 - b. During the period of suspension, we can employ the Flexworker elsewhere or we can successfully invoke the exclusion of the continued obligation of payment of wages under the Collective Labour Agreement for the Flexworker.
3. If you temporarily have no or less work for the Flexworker or if you are unable to employ the Flexworker, you will continue to owe the Rate for the remaining term of the Assignment for the agreed working hours or – in the absence of a clear agreement – the usual working hours.
4. You are at least obliged to pay to us the Rate calculated over three hours worked if:
 - a. The Flexworker reports at the agreed time and place for performing the temporary work, but you do not guarantee that you will commence the temporary work, or;
 - b. You enable the Flexworker to perform the temporary work for less than three hours.

9 Company closure and mandatory days off

1. When entering into the Assignment, please inform us of any company closures and collective compulsory days off during the term of the Assignment. If possible, we can make this part of the employment relationship with our Flexworker or inform him/her immediately.
2. Holidays and leave of the Flexworker are arranged in accordance with the law and the Collective Labour Agreement. An application for holiday and/or leaves by the Flexworker will be determined by us in consultation with you.

10 Working conditions

1. We believe it is important that our Flexworkers have a safe working environment. You are responsible for this.
2. Please ensure that we and our Flexworker receive written information about safety regulations and any risks at the workplace in good time, at least one working day before commencement of the work. If you have not documented this, we can provide you with a form.
3. If our Flexworker unexpectedly suffers an occupational accident or illness, you must comply with your legal obligations. This includes informing the competent authorities and making a written report. We value our Flexworker, and we would appreciate it if you were to inform us immediately about the industrial accident and send us your report.
4. If you are liable, you shall compensate the Flexworker, or the heirs in the event of death, for all damage suffered by him in the performance of his work.

11 Complying

1. It goes without saying that we and you will comply with the obligations arising from these General Terms and Conditions or Assignment(s). We will make every effort to perform the Assignment as a reasonably competent My Flexwork. We cannot guarantee that we will always be able to provide a Flexworker within the period requested by you.
2. Do you have a complaint? We are very sorry. Please let us know as soon as possible, but in any case within 10 days. This complaint does not suspend your payment obligation.
3. If we do not comply with the agreements we have made together, our liability is limited as we indicate in this article.
 - a. We will not be liable for any damage that has arisen because we have assumed incorrect information provided by or on behalf of you, nor for any penalties, or if we are no longer able to make our Flexworker available;
 - b. We are not liable for indirect damage suffered by you such as consequential damage, loss of profit, lost income, lost turnover, lost savings, or damage due to business stagnation or other stagnation;
 - c. Our liability is always limited to the amount that My Flexwork's liability insurance will pay out as the case may be;
 - d. If My Flexwork's liability insurance does not – for whatever reason – proceed to payment, our liability shall be limited to the amount of the last three invoices paid by you in connection with the Assignment added together. For the determination of the amount of the invoices, the gross wage costs of the Flexworker(s) made available – which gross wage costs we continue to pay one-on-one – are not considered;
 - e. Our liability is always limited to a maximum of EUR 25.000 per year, regardless of the basis for liability and the number of events causing damage.

4. If we have deliberately caused the damage or have deliberately been careless, we are of course liable for the damage.
5. On the other hand, you will be liable for any damage suffered by us, the Flexworker and/or third parties as a result of the acts and/or omissions of the Flexworker. We will not be liable for any damage or loss suffered by you as a result of the acts and/or omissions of the Flexworker.
6. You protect us against fines and damages of our Flexworkers and/or others.

12 Confidentiality

1. We will not reciprocally provide any information of or about the other party, its activities and relationships, which we know or suspect to be confidential, to third parties, unless such information is necessary for the proper performance of the Assignment or there is a legal obligation.
2. Our Flexworkers are also bound to secrecy. If necessary, you can conclude a confidentiality agreement with our Flexworker. If so, please send us a copy of this declaration/agreement in advance.

13 Personal data

1. In order to safeguard the privacy of our Flexworkers, we will not provide you with more personal data of the Flexworkers than is reasonably necessary for the performance of the Assignment(s).
2. We expect you to handle your personal data properly and carefully and to process them in accordance with the relevant (privacy) legislation.
3. Before our Flexworker starts working for you, you must establish the identity of the Flexworker and make a copy of it and – if applicable – of the work permit and send it to us.

14 Would you like to employ our Flexworker?

1. Do you want to (in)directly enter into an employment relationship with the Flexworker? Please let us know. We will give you permission if this is appropriate and possible. If the temporary placement has not yet ended, this is not yet possible.
2. Employment relationship with the Flexworker is understood to mean:
 - Entering into an employment agreement, an assignment agreement or an agreement to contract work with the Flexworker for the same or different work;
 - The provision of the Flexworker in question to you by a third party (for example another company) for the same or different work;
 - The Flexworker entering into an employment relationship with a third party for the same or different work for which you and that third party are affiliated in a group (as referred to in Section 2:24b of the Dutch Civil Code) or if one is a subsidiary of the other (as referred to in Section 2:24b of the Dutch Civil Code).
3. If a direct employment relationship is established between you (for yourself, through and/or for third parties) and the Flexworker, you will owe compensation to us. This allowance is determined as follows: 1040 hours – the number of hours worked by the Flexworker in the context of the posting x Rate x 25%. In this context, hours worked shall be understood to mean the time during which the Flexworker actually worked in the context of the Assignment or the provision of services.
4. The allowance in paragraph 3 is also due if you enter an employment relationship with the Flexworker within six months after a prospective Flexworker has been proposed to you. The payment referred to in paragraph 3 shall also be due if the Flexworker enters an employment relationship with you within six months after the posting to you has ended.

14 Other provisions

1. We never waive our rights. Not even if we do not exercise or delay our rights.
2. Do you wish to transfer your rights and obligations under the Assignment and/or these General Terms and Conditions to others? Then you need written permission from us for this. We may transfer all rights and obligations arising from the Assignment(s) and these General Terms and Conditions to others. Of course, we will let you know.
3. These General Terms and Conditions and the Assignment(s) shall be governed exclusively by Dutch law.

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These conditions have been submitted to the Rotterdam Chamber of Commerce under number 64474941