

## **GENERAL TERMS AND CONDITIONS AKOS Professionals B.V.**

Effective date: 1 July 2022

### **A. GENERAL**

#### **1. Definitions**

AKOS:	AKOS Professionals B.V. and/or its legal successors (hereinafter: AKOS).
Client:	The contractual counterparty of AKOS, not being a consumer.
Agreement:	A secondment agreement on the basis of which AKOS deploys Employees to the Client.
Employee:	An Employee of AKOS who is deployed within the framework of the Agreement.
Party:	The Client or AKOS.

#### **2. Applicability**

- 2.1 These General Terms and Conditions apply to all written or verbal secondment quotations and offers of AKOS and to all Agreements concluded between AKOS and the Client, whether written or verbal. They shall also apply to any subsequent Agreements between the Parties relating to an earlier Agreement, and to any future Agreements between the Parties.
- 2.2 Any derogating clauses and the applicability of general purchase conditions of the Client are hereby expressly rejected, unless AKOS has expressly accepted them in writing.

#### **3. Secondment offers**

- 3.1 All secondment offers made by AKOS, in whatever form, are free of obligation and valid for a period of thirty days, unless expressly stated otherwise in the offer. A verbal secondment offer cannot be claimed if it is not confirmed in writing. The provisions of Article 6:223(2) of the Dutch Civil Code (Burgerlijk Wetboek) are explicitly excluded.
- 3.2 All images, drawings and data on weights, dimensions and colours used by AKOS in media statements are only approximate and cannot bind AKOS or give rise to compensation and/or termination.
- 3.3 Obvious mistakes and errors in a secondment offer are not binding on AKOS, including printing or spelling errors and incorrect price quotations that the Client must have realised were a mistake.
- 3.4 The documents that are part of the secondment offer are not binding and remain the intellectual property of AKOS. They may not be used, copied, made available to third parties or made public in any other way without the permission of AKOS. If the Client does not accept the secondment offer, it is obliged to immediately return all documents pertaining to the offer to AKOS and/or to destroy all copies.
- 3.5 Unless stated otherwise, all prices are exclusive of sales tax (VAT).
- 3.6 Provided it has been agreed in writing with the Client, AKOS may recover the costs incurred in making a secondment offer from the Client.

#### **4. Realisation of the secondment order and amendments**

- 4.1 The Agreement is concluded:
  - 4.1.1 by the receipt of a written secondment order confirmation by the Client from the date thereof;
  - 4.1.2 by the receipt of a written secondment order confirmation by AKOS from the date thereof;
  - 4.1.3 at the time the secondment order is given in the case of a verbal order.
- 4.2 Services for which, due to their nature, no secondment offer or secondment order confirmation is sent, the invoice shall be deemed to be the order confirmation. The Client is deemed to have accepted this confirmation in its entirety if no written objections against it are brought to the attention of AKOS within five working days of the date thereof.
- 4.3 The Client is at all times entitled to reasonably amend the nature and scope of the work to be performed by the Employees of AKOS, but not without prior consultation with and the written consent of AKOS. If the amendment is not accepted by AKOS, the Client may still make the amendment, on the understanding that in such case AKOS is entitled to terminate the Agreement before the performance of the amended Agreement commences.
- 4.4 Within ten working days of an amendment, as referred to in Article 4.3, AKOS shall inform the Client in writing of the consequences of the amendment with respect to the Employees to be deployed, the expected increase or decrease in the hours to be worked per Employee and the applicable rates.
- 4.5 The Client is entitled, up to ten working days after receipt of this specification, to withdraw the amended Agreement if it is not accepted or make further changes to the amended secondment order.

#### **5. Termination of the Agreement**

- 5.1 The Agreement ends on the end date as stated in the Agreement.
- 5.2 In the following cases, a Party shall be entitled to terminate this Agreement with immediate effect, without observing a notice period, without this Party being liable to pay any compensation to the other Party and at which time all outstanding claims shall become due and payable by operation of law:
  - 5.2.1 If a Party fails to perform its obligations under this Agreement, even after the terminating Party has given the Party in default written notice of default and the period specified in the notice of default has expired;
  - 5.2.2 If a Party files for bankruptcy or is declared bankrupt;
  - 5.2.3 If a Party is granted temporary suspension of payments or an application for suspension of payments has been made;
  - 5.2.4 If the assets of a Party are seized under execution.
- 5.3 All claims and defences based on the assertion that the work performed or services provided by the Employees of AKOS does not comply with the Agreement or that AKOS has failed to fulfil its obligations under the Agreement, for whatever reason, shall lapse on the grounds of Article 6:89 of the Dutch Civil Code (Burgerlijk Wetboek) by the expiry of three months after completion or termination of the Agreement. AKOS is therefore obliged to check in good time whether there is a defect in the performance provided.

## **6. Execution of the Agreement**

- 6.1 The Client and AKOS shall consult each other about whether the work shall be performed in whole or in part at the business of the Client or at AKOS.
- 6.2 The Client undertakes vis-à-vis AKOS to give the Employees full opportunity to continue and complete the agreed work on a regular basis.
- 6.3 The Client undertakes vis-à-vis AKOS to provide all the information that AKOS deems necessary to execute the Agreement.
- 6.4 The Client shall make the necessary hardware and software, office space and associated facilities available to AKOS for the execution of the Agreement, unless otherwise agreed in writing.
- 6.5 AKOS undertakes vis-à-vis the Client to agree a confidentiality clause with its Employees, which states that during and after the execution of this Agreement the Employees shall observe strict confidentiality vis-à-vis third parties in respect of everything that comes to their attention during the performance of their duties in the context of this Agreement in relation to the affairs and interests of the Client.

## **7. Chain of command**

The Employees shall perform the agreed work under the management and supervision of the Client.

## **8. Force majeure**

- 8.1 In the event of a situation of force majeure of AKOS, its obligations under the Agreement shall be suspended for as long as the situation of force majeure continues. Force majeure is understood to mean any circumstance beyond the control of AKOS that permanently or temporarily prevents the execution of the Agreement and which should not be a risk of AKOS, either under the law or according to standards of reasonableness and fairness.
- 8.2 At such time as AKOS is faced with a situation of force majeure, as referred to in Article 8.1, it shall notify the Client.
- 8.3 Insofar as not already included, force majeure is also understood to mean strikes, sit-ins, blockades, embargoes, government measures, war, revolution and/or any equivalent situation, disruption of energy supplies, breakdowns in electrical communication lines, fire, explosion and other calamities, water damage, flooding, earthquakes and other natural disasters, traffic disturbances, very bad weather, extensive illness of an epidemiological nature of Employees, as well as unforeseen circumstances with regard to Employees and/or equipment that AKOS uses or tends to use in the execution of the Agreement, which are of such a nature that the execution of the Agreement becomes impossible or disproportionately difficult and/or expensive for AKOS.
- 8.4 The obligations of AKOS are suspended for the duration of the situation of force majeure. However, this suspension shall not apply to obligations to which the force majeure does not relate and which arose prior to the occurrence of the force majeure.
- 8.5 If the force majeure situation has lasted for three months, or as soon as it is established that the force majeure situation will last longer than three months, each of the Parties is entitled to terminate the Agreement early without observing any notice period.
- 8.6 AKOS shall not be obliged to compensate any damage of the Client or at the business of the Client during the situation of force majeure, nor shall it be obliged to do so after termination of the Agreement due to force majeure, as referred to in Article 8.5.

## **9. Payment conditions**

- 9.1 The Client shall pay the invoices submitted by AKOS within fourteen days after submission of the invoices to AKOS, with the exclusion of the right of set-off.
- 9.2 In the event of late payment, the Client shall owe statutory commercial interest within the meaning of Article 6:119a of the Dutch Civil Code (Burgerlijk Wetboek) from the due date of the invoices until the day of payment in full: part of a month shall be counted as a full month. In the event of late payment, in addition to any costs relating to the legal proceedings, the Client shall also owe AKOS an amount for the extrajudicial collection costs of 15% of the outstanding invoice amounts, including statutory commercial interest up to the date of payment in full.
- 9.3 In the event of late payment, AKOS is also authorised to suspend the performance of its obligations under the Agreement until the Client has fulfilled its obligations in full or has provided adequate security therefore. In the event of late payment, AKOS is also authorised to terminate the Agreement after it has given the Client notice of default in writing and the period mentioned in the notice of default has expired, by means of a written statement to the Client, even if AKOS has previously suspended the performance of its obligations. This does not affect the right of AKOS to full compensation of all damage.
- 9.4 The Client shall never be entitled to any set-off, discount or suspension.
- 9.5 Upon payment, the amount paid shall first serve to settle any interest and collection charges due. AKOS is always entitled to set off outstanding claims against payment to be made for whatever reason.
- 9.6 Complaints regarding invoices must be submitted in writing to AKOS within 14 days of the invoice date. The Client shall not be able to derive any rights from complaints submitted after the aforementioned period of 14 days. Payment of invoices shall be regarded as acceptance thereof.
- 9.7 Any complaints shall not suspend the payment obligations of the Client.
- 9.8 If the situation mentioned in Article 5.2 or Article 8.5 arises, the Client is obliged to pay AKOS the amounts it owes relating to the period before the situation mentioned in Article 5.2 or Article 8.5 arose.

## **10. Liability**

- 10.1 If the work takes place at the premises of the Client, the Client shall ensure a safe working environment for the Employees: the Client shall be obliged to furnish and maintain the rooms, equipment and tools in which or with which the work is performed, and to take such measures and give such instructions as are reasonably necessary to ensure that the Employees will not suffer injury in the performance of their work.
- 10.2 If the work takes place at the premises of the Client, the Client shall be liable towards the Employees for any damage suffered by the Employees in the performance of their work unless the Client proves that it has complied with the obligations referred to in paragraph 1 or that the damage is to a significant extent the result of intent or deliberate recklessness on the part of the Employees.
- 10.3 If AKOS is held liable by the Employees for damage as referred to in paragraph 2, the Client shall indemnify AKOS.
- 10.4 The Client undertakes to guarantee the privacy of the Employees at AKOS, in accordance with relevant legislation such as the General Data Protection Regulation (Algemene verordening gegevensbescherming).
- 10.5 AKOS is not liable for any loss, of whatever nature, incurred because AKOS assumed incorrect and/or incomplete information provided by or on behalf of the Client.

- 10.6 AKOS is not liable for any damage of the Client or third parties due to or as a result of the Agreement or the execution thereof, with the exception of direct damage – that must be proven by the Client
- in the case of intent or wilful recklessness on the part of AKOS or errors that AKOS should reasonably have prevented with due observance of normal professional knowledge and care. The Client indemnifies AKOS against any claims by third parties that are related to the execution of the Agreement. This exclusion of liability and indemnity also applies to subordinates and/or auxiliary persons engaged by AKOS for the execution of this Agreement.
- 10.7 With due observance of the other provisions of this article, AKOS is only responsible for deploying to the Client only those Employees who meet the criteria set by the Client for the agreed period. AKOS is therefore not liable for compensation of damage on the part of the Client or third parties caused or partly caused by the Employees. The Client indemnifies AKOS against all claims relating to damage caused by the seconded Employees.
- 10.8 The Client shall ensure that it has adequate liability insurance for the benefit of the Employees seconded to it by AKOS. The costs of this insurance shall be borne by the Client.
- 10.9 By signing the Agreement, the Client accepts all liabilities that arise on the basis of Article 6:170 of the Dutch Civil Code (Burgerlijk Wetboek), as if the Employee were actually employed by the Client. This liability shall also apply after the Agreement has come to an end.
- 10.10 The Client indemnifies AKOS against any claims by the Employee in connection with (i) an industrial accident that occurred to the Employee during the performance of his/her work at the business of the Client, and/or
- 10.11 (ii) an occupational illness of the Employee resulting from the secondment to the Client.
- 10.12 If AKOS is held liable by third parties for damage in connection with the Agreement or the execution of the Agreement, the Client is obliged to assist AKOS both judicially and extrajudicially and immediately do everything that may be expected of it in such case. If the Client fails to take adequate measures, AKOS is entitled to do so itself without prior notice of default. All costs and damages incurred by AKOS and third parties as a result are payable in full by the Client.
- 10.13 In the case of liability of AKOS:
- 10.14 its liability shall in any event be limited to a maximum of the invoices sent to the Client in that regard. If the secondment order has lasted longer than six months, the previous sentence shall apply provided that no higher compensation shall be due than that charged by AKOS to the Client over the last six months of the order.
- 10.14.1 AKOS is only liable for direct damage and not for indirect damage, trading loss such as business interruption loss or loss of profit, or damage to property that is in one's care, custody or control. The term 'damage to property that is in one's care, custody or control' means: damage caused by or during the term of the Agreement to objects on which work is being carried out or to objects which are in the vicinity of the place where work is being carried out.
- 10.15 AKOS is entitled, at its discretion, to remedy the shortcoming or to credit the invoices sent in this respect.
- 10.16 The extent of the liability of AKOS for damage arising from or in connection with any shortcomings in the execution of the Agreement or damage arising in any other way, is limited to the amount paid by the liability insurance of AKOS in the relevant cases, with a maximum of EUR 1,000,000.
- 10.17 If the Client wishes to invoke the liability of AKOS, it must inform AKOS in writing as soon as possible, but no later than thirty days after completion of the activities in question or after the Client discovered or reasonably should have discovered the direct damage. If the aforementioned period is exceeded, all claims for fulfilment or compensation of direct damage shall lapse.



10.18 If requested, the Client must immediately provide AKOS with all information that may reasonably be of importance for the determination of the liability and the extent of the direct damage, and must also allow any inspection that AKOS may wish to perform, at the risk of forfeiting any claim for compensation for direct damage.

## **11. Secondment offer and Agreement**

- 11.1 Before the commencement of every secondment order, all the arrangements agreed between AKOS and the Client shall be recorded in writing in an Agreement drawn up by AKOS and signed by employees authorised to represent both Parties. This Agreement will contain the following information at a minimum: name and position of the Employees to be deployed, commencement and duration of the secondment order, the fee and the notice period for any interim termination. In all other respects, the General Terms and Conditions of AKOS apply.
- 11.2 Every Agreement shall terminate by operation of law at the moment that AKOS can no longer deploy an Employee to the Client due to the termination of the employment contract between AKOS and the Employee in question. The termination of this Agreement shall not take effect if AKOS can provide a suitable replacement Employee within four weeks of the departure of the Employee in question.

## **12. Fee**

- 12.1 The invoices of AKOS are partly based on the timesheets completed and approved by the Client, which are binding on the Client.
- 12.2 In the event of a discrepancy between a timesheet submitted to AKOS and the copy retained by the Client, the copy submitted to AKOS shall be deemed to be correct, unless the Client is able to demonstrate the contrary.
- 12.3 If the Client does not comply with the provisions of Article 12.1, AKOS may decide to invoice the Client on the basis of the facts and circumstances known to it. AKOS shall not proceed to do so until reasonable consultation has taken place with the Client.
- 12.4 The Client shall be entitled to change the place where the work is performed. If changing the location of the work leads to demonstrably higher costs for AKOS, AKOS is entitled to request reimbursement of these costs or a change in the time schedule.
- 12.5 The Client is entitled to demand that Employees of AKOS undertake business trips. The costs of these business trips shall be charged to the Client by AKOS.
- 12.6 AKOS shall ensure payment of social insurance contributions, income tax and turnover tax relating to the work in question.
- 12.7 In this connection AKOS indemnifies the Client against possible claims by the Dutch Tax and Customs Administration (Belastingdienst) and/or the Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen, UWV) for the withholding and/or payment of wage taxes and/or social security contributions (both the employer's and employee's share), including any interest due in this respect, enforcement and collection costs and administrative penalties.
- 12.8 Rate changes as a result of annual wage rounds, increases resulting from collective bargaining and legally determined increases in charges such as social security premiums, shall be passed on to the Client from the time of these changes and shall be owed by the Client accordingly, even if these changes occur during the term of the Agreement.

**13. Deployment of Employees without the involvement of AKOS**

During the term of an Agreement, the Client undertakes vis-à-vis AKOS not to employ any of the candidates and Employees made available by AKOS or to have them work for it in any other way without the involvement of AKOS, subject to the forfeiture of an immediately payable penalty to AKOS of 50% of the gross annual salary of the Employees in question.

**14. Final provisions**

- 14.1 These General Terms and Conditions, secondment offers, Agreements and all legal relationships between AKOS and the Client are exclusively governed by Dutch law, including the provision relating to international private law.
- 14.2 All disputes arising in connection with these General Terms and Conditions or the execution of the Agreement will be settled by the competent court of the District Court of Oost-Nederland, Zutphen location.
- 14.3 If one or more of the provisions of this Agreement are invalid, the Agreement shall otherwise remain in force. In that case, the Parties are obliged vis-à-vis each other to amend the Agreement in such a way that the invalid provisions are replaced by valid provisions that most closely resemble the invalid provisions.
- 14.4 Neither Party shall be entitled to assign the rights and/or obligations under this Agreement without the prior consent of the other Party.
- 14.5 The applicability of the Vienna Convention on Contracts for the International Sale of Goods (Weens Koopverdrag, CISG 11 April 1980) is expressly excluded.