

## 1. DEFINITIONS

**Middle Point:** Middle Point BV acting under the name Middle Point.

**Client:** the natural person or legal entity entering into a Project Agreement with Middle Point and / or the natural person or legal entity to whom/which Middle Point introduces Candidates.

**Candidate:** the natural person or legal entity who is introduced to Client by Middle Point and / or the natural person who based on an employment contract with Middle Point under management and supervision of Client performs activities for Client.

**Project Agreement:** the written record reflecting the agreements between Middle Point and Client with regard to an Assignment.

**Introduction:** the provision of verbal or written information by Middle Point to Client regarding a Candidate, irrespective of whether based on a (Reference) CV.

**CV:** curriculum vitae of a Candidate, including name and domicile of the Candidate.

**Reference CV:** curriculum vitae referring to a Candidate by reference number and, at the discretion of Middle Point, first name and/or domicile.

**Parties:** Middle Point and Client.

## 2. APPLICABILITY

- 2.1 These general terms and conditions shall apply to all offers, tenders, introductions of Candidates by Middle Point and Project Agreements.
- 2.2 The applicability of general terms and conditions of Client is explicitly excluded.
- 2.3 The Project Agreement, including the general terms and conditions, and including documents and annex(es) referred to in the Project Agreement, replace any previous (written and verbal) agreements. An amendment of the Project Agreement is solely valid when agreed in writing between Middle Point and Client.
- 2.4 Derogations from these general terms and conditions shall exclusively be agreed by Parties in writing included in the Project Agreement.
- 2.5 If one or more stipulations of these general terms and conditions or the Project Agreement is declared invalid, unlawful or unfeasible, such shall not – in any way – impair or diminish the validity, legality and feasibility of the remaining stipulations. If and to the extent that the general terms and conditions and/or the Project Agreement do not provide an arrangement or provision regarding a particular situation of material importance, Parties shall as soon as possible consult and to the best of their abilities attempt to come to an agreement regarding an addition or amendment of these general terms and conditions and/or the Project Agreement which shall largely correspond with the stipulations of the general terms and conditions and/or as set out in the Project Agreement.

**3. INTRODUCTION/NOMINATION OF CANDIDATES**

- 3.1 The Introduction of a Candidate by Middle Point shall include the offer to enter into an agreement. The offer shall further include the declaration of applicability of the general terms and conditions. This offer is deemed accepted if and when further information regarding a Candidate is requested, or Middle Point is requested to set up an interview, or as the case may be an Introduction of the Candidate.
- 3.2 Middle Point using own initiative may introduce Candidates to Client, among others, but not exclusively because of a vacancy at the Client or at the request of the Client.
- 3.3 Candidates can at the discretion of Middle Point be introduced by means of their CV or based on a reference CV.
- 3.4 All offers, tenders and proposals by Middle Point are without obligation.
- 3.5 Client – under the express exclusion of Middle Point – is responsible for the verification of qualifications, skills, personality, experience and any references of Candidates. To all intents and purposes, Middle Point shall not vouch, be held liable or responsible for the suitability of Candidates.
- 3.6 Client is not allowed to disclose any information of Candidates introduced by Middle Point to third parties without a prior written consent by Middle Point. In the event of a breach of this clause, Middle Point may claim an immediate penalty of € 25,000.00 plus a claim for damages against Client.

**4. EXECUTION, SUPERVISION AND WORKING CONDITIONS**

- 4.1 The Candidate shall perform the activities as described in the Project Agreement to the best of his/her abilities and in accordance with the applicable rules, standards and specifications. When applicable and possible, the Candidate shall conform to the rules of conduct and professional rules as applied in the relevant profession and sector.
- 4.2 The Candidate shall perform the activities under the responsibility, management and supervision of Client, unless otherwise agreed in the Project Agreement.
- 4.3 Client must ensure a safe work area for the Candidate and shall take such measures and provide Candidate such instructions as reasonable to prevent any damage to the employee in the performance of his activities.
- 4.4 Client is liable and indemnifies Middle Point against any claim of the Candidate or third parties caused by a breach of clauses 4.1 and/or 4.2 or noncompliance with the legal obligations of Client as stipulated in – among others, but not exclusively – Section 658, Book 7 of the Dutch Civil Code and the Working Conditions Act.

**5. PROHIBITION ON ONWARD SECONDMENT AND EMPLOYMENT ABROAD**

- 5.1 Client is not allowed to make the Candidate available to a third party in order to perform activities, unless otherwise agreed in the Project Agreement.
- 5.2 Client is not allowed to have the Candidate perform activities outside of The Netherlands without prior consultation and consent by Middle Point, unless otherwise agreed in the Project Agreement.

**6. DURATION AND TERMINATION OF THE PROJECT AGREEMENT**

- 6.1 The Project Agreement is entered into for a period as stated and terminates by operation of law after the agreed period expires. During the agreed period, Client is not entitled to terminate the Project Agreement early unless urgent causes cannot reasonably require the Client to continue the Project Agreement. In the latter case, Client shall comply with a reasonable notice period that in any case is one full month. Notice of termination shall take place by the end of the calendar month.
- 6.2 When the Project Agreement is entered into for an indefinite period, Parties shall be required in the event the intention exists to terminate, to first mutually and reasonably consult regarding settlement of the Project Agreement. If such consultation has nil results, a notice period of one full month by the end of the calendar month applies to each Party.
- 6.3 Middle Point shall always be able to terminate the Project Agreement with immediate effect, i.e. without considering a notice period, on the day the employment agreement regarding a definite period with the Candidate terminates, provided Client be informed in advance.
- 6.4 If during the duration of the project shall proceed past the originally agreed time for the project, Client shall have the right to extend the Project Agreement. In such case, Client shall inform Middle Point in writing ultimately one period (four weeks) prior to the originally agreed end date. If the project is extended, Middle Point retains the right to adjust the hourly rate with regard to a further to be determined extension period.

**7. REPLACEMENT AND FORCE MAJEURE**

- 7.1 In the unlikely event of a failure by the Candidate, Middle Point shall have the right to replace him with an equally qualified employee.
- 7.2 If Middle Point is unable to fulfil an obligation timely or not (sufficiently) caused by an accountable breach including but not limited to a discontinuation of regular business operations (including illness) of Middle Point, or within the business operations of Client or the Candidate, the performance of the obligation is suspended until the moment that Middle Point is able to fulfil it in a correct manner without Middle Point being obliged to a claim of damages. If a case of force majeure is longer than twelve (12) week, each of the Parties may terminate the Project Agreement in writing excluding any further liability or claim for damages.

**8. INVOICING**

- 8.1 Invoicing takes place in arrears based on the term of one month, with due regard to the Fee per time unit and currency stated in the Project Agreement.
- 8.2 Payment must take place within 30 days from the invoice date, unless the Project Agreement explicitly states a different payment term.
- 8.3 All the hours worked and / or parts of the day that have been spent by the Candidate on activities of the Client shall be recorded by the Candidates on timesheets and after the month has ended (any earlier time as agreed or serviceable) be signed by an official of the Client thereto authorized. By signing, the Client shall declare to approve invoicing by Middle Point of the signed-off hours. Signing shall further imply that the relevant hours performed by the Candidate were performed to the satisfaction of the Client.

- 8.4 Overtime shall only be performed by Candidates after consent of the official of the Client thereto authorized and be charged against the overtime percentage as applied by the Client and calculated over the hourly rate as stated in the Project Agreement.
- 8.5 The amount owed by the Client shall not depend on the outcome or results of the provided Assignment.
- 8.6 Complaints regarding invoices should be submitted to Middle Point in writing within eight (8) days stating the reasons. Client shall derive no rights from complaints submitted past the aforementioned period. Any complaints with regard to invoices do not suspend the payment obligations of Client.
- 8.7 If Client fails to pay within the term referred to in paragraph 2 or the explicitly agreed payment term, the Client is in default by operation of law and owes the statutory commercial interest pursuant to Section 119a, Book 6 of the Dutch Civil Code up to the moment of settlement of the invoice amount in full.
- 8.8 All costs, including costs for judicial proceedings and costs of extrajudicial claims that Middle Point incurs within the scope of the agreed Assignment or claimed against Middle Point, are for the account of Client. Extrajudicial costs are determined to be at least 15% of the amount owed with a minimum of € 450.00, unless the extrajudicial costs are more, in which case the actual extrajudicial costs are paid by the Client in full.
- 8.9 Payment by or on behalf of Client are used to compensate for the (extra)judicial costs owed, the interests owed and subsequently in chronological order the outstanding main sums, without prejudice to different directions by Client. Middle Point is entitled to refuse full settlement of the main sum if it excludes the interest and costs owed.
- 8.10 In case of a joint Assignment, Clients are separately and jointly associated towards Middle Point.
- 8.11 In the event, Client owes an advance payment or must provide Middle Point with information, the time and date that the Candidate commences his activities shall not occur prior to payment having been received, respectively the information referred to has been made available to Middle Point completely. Furthermore, Middle Point is justified to suspend its obligations pursuant to the Project Agreement if and as long as Client has not fulfilled its payment obligations, such including interest and costs.
- 8.12 Client relinquishes any right towards settlement of reciprocal amounts.

## **9. PROHIBITION ON EMPLOYMENT OF CANDIDATES**

- 9.1 After the Introduction of a Candidate by Middle Point, Client, operating company, affiliate or subsidiary company, at least a (legal) entity liaised in any way or a customer of the Client is not allowed to hire or employ such Candidate – either directly or indirectly – or at least use his services within a period of 12 (twelve) months after the Introduction, unless through Middle Point.
- 9.2 Client, operating company, affiliate or subsidiary company, at least a (legal) entity liaised in any way or customer of Client is not allowed – without prior written consent of Middle Point – to hire or employ a Candidate – either directly or indirectly – or at least use his services within a period of 12 (twelve) months after the relevant project has been completed or after Middle Point's Candidate for whatever reason has ended his activities for Client, unless through Middle Point.

9.3 With the breach of each prohibition referred to in the previous paragraphs, Client shall incur an immediately payable penalty of €25,000.00, which is not subject to mitigation. The right of Middle Point shall remain unimpaired with respect to this penalty to claim for damages.

9.4 The contents of the clause further apply if Client prior to the Introduction of the Candidate by Middle Point in any way had known the identity of the Candidate, unless Client informed Middle Point immediately at the time Middle Point disclosed the identity of the Candidate to Client. If and as soon as Client requests Middle Point to set up an interview with the Candidate, the previous paragraphs of the clause apply.

## **10. PROHIBITION ON EMPLOYMENT OF STAFF OF MIDDLE POINT**

10.1 Client is not allowed to employ (former) employees of Middle Point during the formation and / or execution of the Project Agreement or any other agreement between Parties, as well as during a period of 12 (twelve) months after its termination or hire their services in any other way, or use or hire the services of an enterprise where the relevant employee of Middle Point has become director, manager, mandatory or authorized representative, all under an immediately payable penalty of €25,000.00 which is not subject to mitigation.

## **11. CONFIDENTIALITY**

11.1 Parties shall not disclose any confidential information acquired in the course of the formation and execution of the Project Agreement.

## **12. EFFECT**

12.1 Any Candidate can contest a claim against him by applying to these general terms and conditions and the Project Agreement.

## **13. SOCIAL INSURANCES, TAXATION**

13.1 In case the wages of Candidate have risen sharply due to amended legislation and/or amendments of social insurance laws, Middle Point has the right to accordingly raise the Fee owed by the Client effective from the date of the rise.

## **14. BREACH AND LIABILITY**

14.1 Middle Point is initially liable for damages suffered by the Client due to accountable breach of the performance of obligations pursuant to the Project Agreement if and as soon as Middle Point fails because it has not remedied the breach within a term determined by the Client.

14.2 Middle Point is not liable for damages suffered by third parties within the scope of the execution of the Project Agreement. In this respect, Client indemnifies Middle Point for potential claims by third parties.

14.3 Middle Point is not liable and Client has no right to a claim for damages if Client does not notify Middle Point in writing within one month of the damages incurred or becoming known and providing evidence thereto showing that the alleged damages suffered are a direct consequence of an accountable breach of Middle Point. Aforementioned period is considered an expiry term.

- 14.4 Middle Point is not liable and Client has no right to a claim for damages with respect to damage caused by actions of a Candidate deployed by Middle Point performed under the express Assignment and after instructions by Client.
- 14.5 Middle Point is not liable and Client has no right to a claim for damages with respect to damage caused by mistakes and/or a lack of supervision by Client regarding the services performed by Middle Point.
- 14.6 Middle Point is not (no longer) liable and Client has no right to a claim for damages (no more) as soon as the services specified in the Project Agreement have ended.
- 14.7 Middle Point is solely liable for direct damage that Client suffers caused by an accountable breach of Middle Point. Liability by Middle Point for indirect or consequential damage including but not limited to loss of profit, lost savings, or income and loss due to business interruption is in all cases excluded.
- 14.8 Any liability and/or obligation to compensation of damage by Middle Point pursuant to the Project Agreement, the general terms and conditions or based on any other ground is limited to the amount excluding VAT that Middle Point has charged, such to a maximum of € 25.000,00.
- 14.9 Liability of the person as referred to in Section 404, Book 7 of the Dutch Civil Code is excluded.

## **15. DISPUTES**

- 15.1 Netherlands jurisdiction, excluding any other jurisdiction, applies to the general terms and conditions and its interpretation, as well as to all offers, tenders and nominations by Middle Point, the agreement with Client and any consecutive agreements.
- 15.2 All disputes arising from these general terms and conditions, its interpretation and execution, as well as related to all offers, tenders and introductions by Middle Point, the agreement with Client and any consecutive agreements, are in first instance submitted to the competent Court of Amsterdam, without prejudice to the right of Middle Point to institute legal proceedings against the Client before any other competent Court.

Amsterdam, 17 September 2018

Maarten van Haren  
On behalf of the management board of Middle Point BV