

GENERAL TERMS AND CONDITIONS OF PERFORMANCE AND DELIVERY GOVERNING VAN MARLE CONNECTS

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Clause 1: Definition of terms and applicable conditions

1.1 These General Terms and Conditions govern all offers, requests for offers, quotations and agreements with respect to the provision of services by Van Marle Connects, a trade name of vanmarleconnects B.V. (Dutch Chamber of Commerce number: 76253902), as well as all its affiliated companies (hereinafter referred to as the 'Agency') pursuant to a commission contract, more specifically an intermediary agreement, with its contracting party (hereinafter referred to as the 'Client'). These General Terms and Conditions furthermore govern all legal relationships ensuing from these agreements as well as all non-contractual relationships between the parties, in particular unlawful acts.

1.2 In these General Terms and Conditions the terms listed below have the following meaning:

- Candidate: the natural person recruited and selected by the Agency to fill the vacancy at the Client's company.
- Gross Annual Salary: the salary on a full year and full-time basis employment (forty hours) during the first year in the employment of the Client. The gross annual salary is understood to mean the gross annual salary + where applicable, a thirteenth month, holiday pay or holiday allowance as agreed between the Candidate and the Client.
- Introduction: presentation of the Candidate's details by the Agency to the Client. It is irrelevant whether a third party has ever before introduced the candidate, or the Client already knows the Candidate.
- Concurrence: concurrence between Candidate and Client regarding the implementation of temporary or permanent employment, or as the case may be the conclusion of an agreement for the provision of services in the broadest sense of the word for the benefit of Client.
- Agreement: the intermediary agreement between the Client and the Agency.
- Placement 'On Hold': suspension of the intermediary agreement or intermediary activities by the Client with the Agency in any manner.
- All amounts stated in these general terms and conditions as well as in quotations and offers from the Agency are exclusive of VAT.

1.3 Any provisions that deviate from these General Terms and Conditions – including any general terms and conditions and special terms and conditions of delivery or otherwise applied by the Client – will apply only if and insofar as the Agency has explicitly accepted them in writing.

1.4 These general terms and conditions have been made available by the Agency on the Agency's website and will, insofar as not yet handed over, be sent on first request to Client.

1.5 The Agency reserves the right to unilaterally amend these General Terms and Conditions. An amendment will also apply in respect of agreements that were concluded prior to the amendment. An amendment will not enter into force until 14 days after the Client or the Candidate has been notified of the amendment. The notification has no prescribed form. If the Client or the Candidate does not accept the amendment they will be entitled to terminate the Agreement effective from the date on which the amendment enters into force.

1.6 If one or more of the provisions contained in these General Terms and Conditions are null and void or nullified, the remaining provisions contained in these General Terms and Conditions will continue to apply in full. In such cases the Agency and the Client will consult in order to agree on new provisions to replace the provisions that are null and void or that have been nullified, in which context the intention and purport of the original provision will be taken into consideration to every extent possible.

1.7 The Agreement is not entered into under the condition of exclusivity, unless the parties agree otherwise, which must be confirmed in writing by the Agency. If the parties agree on exclusivity and the Client acts contrary to the agreed exclusivity the Client will owe a penalty that is due on call equal to the minimum fee referred to in Clause 4 of these Terms and Conditions, without prejudice to the Agency's right to recover the actual damage sustained by it.

Clause 2: Conclusion of the Agreement

2.1 The manner in which the Client grants the assignment for the provision of services has no prescribed form. The Agreement is established by acceptance of the Client's order for services by the Agency, or acceptance of the Agency's offer of services by the Client.

2.2 Once the Agreement has been concluded, the Agency will be entitled to use the Client's name and/or logo in order to support the provision of the services and promotion of the Agency.

2.3 If Client after the conclusion of the Agreement with the Agency withdraws the assignment provided by Client, or withdraws a vacancy still to be filled, or wishes to put the assignment or the filling of a vacancy 'on hold' for a period longer than four weeks, fundamentally changes the job profile or fills a vacancy with an internal candidate who is already in the employment of Client, then Client will owe to Agency for each withdrawn assignment or vacancy a cancellation fee to the amount of € 3,000.

Clause 3: Agreement

3.1 If there is an Agreement between Client, as well as any companies affiliated to it in any manner whatsoever, and the Candidate proposed by the Agency within one year after the first Introduction, the Client will be obliged to provide notification in writing to the Agency regarding this within five working days from the coming into effect of the Agreement, enclosing the terms and conditions of the Agreement. If Client does not fulfil this obligation, any right to the goodwill gesture arrangement, as described in Clause 8 of these general terms and conditions, will lapse. For the question whether the Agreement exists, it is not of relevance if the conclusion of a (employment) contract between Client and the Candidate includes a provision regarding the proper completion of a probationary period, or that the proposed Candidate fills a different vacancy than the one for which he or she was introduced to Client by the Agency.

3.2 Agreement shall also be deemed to have been reached if a vacancy, after Agreement has been reached, is still cancelled.

3.3 If Client does not inform the Agency in writing within five (5) working days of the Agreement being reached, then Client will owe to the Agency an immediately due and payable financial penalty of the amount of € 10,000 without prejudice to the Agency's right to invoice Client a fee in conformity with Clause 4, or as the case may be Clause 3.4. of these terms and conditions.

3.4 If the Client fails to send salary details, within five (5) working days after being requested to do so in writing, in respect of the employment contract, including the gross annual salary, with regard to the relevant Candidate so that the Agency has an opportunity to charge the Client the fee that the Client owes in accordance with Clause 4 of these terms and conditions, the Agency is entitled to charge a fee based on information known to the Agency, or the Client will owe the Agency a fixed fee of € 15.000,-.

Clause 4: Fee

4.1 At the time of an Agreement between Client and a Candidate Client will owe to Agency a fee over the Gross Annual Salary of the Candidate concerned, in conformity with the rates as described in Clause 4.2, in which a minimum fee applies of the amount of €15,000.

4.2	Gross annual salary	Fee
	€0 to €50,000	€13.500,--
	from €50,000 to €75,000	27,5%
	from €75,000 to €100,000	30%
	from €100,000 (executive search)	35%

Clause 5: Payment

5.1 The fee as recorded in Clause 4 of these terms and conditions, will be charged by Agency to Client with as invoice date the time of the Agreement between Client and a Candidate.

5.2 If the Client has indicated in writing prior to Agreement that it wishes to work with a purchase order, the Client undertakes to issue a purchase order to the Contractor within 14 (fourteen) days counting from the day of the moment when the Client and Candidate agree. If Client fails to provide the purchase order within the aforementioned period, the Agency is free to charge the fee without an accompanying purchase order.

5.3 Invoices must be paid within 14 (fourteen) calendar days of the invoice date. If that payment term is exceeded the Client will be in default by operation of law and will owe default interest at the statutory commercial interest rate that applies at that time pursuant to Book 6, Section 119a of the Dutch Civil Code (*Burgerlijk Wetboek*). The Client is not entitled to any set-off or suspension.

5.4 The parties may make divergent payment agreements, in the sense that the Client will owe a Shortlist fee or Retainer fee in the context of the assignment it grants. Such payment agreements will be confirmed in writing and a divergent payment term can or will apply in that respect.

5.5 If the Client does not protest against the content of the invoice in writing within five (5) calendar days after the invoice having been sent the Client will be deemed to have accepted the invoice and its contents.

5.6 Payment may be made only in legal tender in cash or by giro-based transfer to the Agency's bank or postal giro account number as stated on the invoice.

5.7 If the payment term referred to in Clause 5.3 and/or confirmed in an order confirmation is exceeded, the Client will is not (or no longer) entitled to invoke the goodwill scheme as described in Clause 8 of these terms and conditions. Also, in the case of exceeding the payment term all other outstanding invoices immediately due and payable. Also, in the event the term of payment is exceeded, all other outstanding invoices/credits (if any) and invoices yet to be sent shall be immediately due and payable in full.

5.8 If the Client fails to make payment promptly and in full the Client will be obliged to reimburse the Agency for any and all judicial and extrajudicial costs related to collecting the claim, in which context extrajudicial costs will be equal to at least 15% of the amount overdue.

5.9 Payments made by the Client will always be applied first in respect of any and all interest and costs payable, and subsequently in respect of the invoices that have been outstanding the longest, even if when making payment the Client explicitly states that the payment relates to a later invoice.

Clause 6: Liability

6.1 Agency will never be liable for damage which is or will be caused by a Candidate. Client is responsible for checking if the Candidate has the required (work) permits diplomas and/or other requested documents. Agency will never be party in the agreement between Client and a Candidate.

6.2 The Agency is not liable for any damage, loss or delay ensuing from an attributable breach, wrongful act or on any other ground unless there has been an intentional act or willful recklessness on the part of the Agency.

6.3 Furthermore, the Agency is also not liable for: any damage caused by delay, consequential damage, loss of profit and loss of income.

6.4 In the event that in spite of the provisions contained in Articles 6.1 to 6.3 above the Client believes that it has a well-founded ground to hold the Agency liable, the Client must immediately notify the Agency of that alleged claim in writing, supported by documents and properly substantiated, on penalty of its rights lapsing. Without prejudice to the provisions contained in Book 6, Section 89 of the Dutch Civil Code, the right to compensation from the Agency will in any event lapse one year after the incident from which the damage ensued and for which the Agency is allegedly liable.

6.5 Without prejudice to the provisions contained in Clauses 6.1 to 6.3 above, any liability on the part of the Agency will be limited to the amount paid out on the basis of its professional/business liability insurance policy in respect of the relevant case plus the amount of the excess that pursuant to the policy conditions is not for the insurers' account.

6.6 If for any reason whatsoever the insurer referred to in Clause 6.5 does not pay any benefits, any liability on the part of the Agency will be limited to the amounts paid to the Agency in the relevant calendar year for the work that it has performed, subject to a maximum of € 10,000.

Clause 7: Duty of confidentiality

7.1 The Client has a duty of confidentiality in respect of the information regarding the Candidates. Any and all information (in the broadest sense of the word) regarding Candidates is strictly confidential and may not be disclosed by Client to third parties. If the Agency sustains damage in any manner whatsoever as a result of the Client violating its duty of confidentiality, the Client will owe a penalty payable on demand in the amount of € 25,000 for each violation, without prejudice to the Agency's right to recover the damage actually suffered by it.

7.2 In the event that the Client communicates confidential information regarding a Candidate to a third party and that results in an (employment) contract or other agreement between that third party and the Candidate, the Client will owe a fee equal to 25% of the gross annual salary of the Candidate during his or her first year of service at his new employer.

Clause 8: End of Candidate's employment/goodwill scheme

8.1 If an employment contract with a Candidate ends within six (6) weeks of its commencement, because the Candidate himself discontinues or the Client terminates or has dissolved the agreement with the Candidate during this period, on the grounds that the Candidate does not function properly, which must be substantiated by the Client with relevant documents, the Agency will make every effort to find a replacement Candidate free of charge on behalf of the client under the goodwill scheme. This goodwill scheme is an obligation of effort and not an obligation to achieve a result. This goodwill scheme does not apply if the Candidate's unsatisfactory performance or the reason for the Candidate's discontinuation is the fault of the Client or if the Client has not paid the agreed fee or the fee as set out in clause 4 on time.

8.2 The Client must notify the Agency in writing in respect of the provisions contained in Clause 8.1 within five (5) calendar days as from the date of the termination or submission of the request for dissolution of the Candidate's employment contract to the Cantonal Division of the District Court, or the date on which a termination agreement is signed by mutual consent, stating the cause of the Candidate's discontinuation or the Candidate's unsatisfactory performance.

8.3 After the term referred to in Clause 8.2 has expired the Client's right to invoke the goodwill scheme referred to in Clause 8.1 will lapse. The Client will bear burden of proof in respect of the Agency's being informed in writing within the term stipulated.

8.4 If the situation referred to in Clause 8.1 arises, this will not entitle the Client to suspend any payment obligation under the Agreement, nor will the Client be entitled to set off any amount.

Clause 9: Personal data / Data protection

9.1 For the purpose of this Clause, the capitalized terms shall have the meaning set out in applicable data protection legislation, in particular the General Data Protection Regulation ("GDPR").

9.2 The Agency processes Personal Data of Candidates in the manner as set out in the Agency's privacy statement. As the Agency may share such Personal Data with the Client in the performance of services, the parties agree that the Client shall comply with the relevant data protection legislation, in particular the GDPR, and the conditions as set forth in this Clause 9.

9.3 The Client acknowledges that, upon receipt of Personal Data, the Client becomes (joint) Data Controller of that Personal Data, as the Client shall, from that point on, (jointly) determine the purpose and means of Processing that Personal Data.

9.4 The Client ensures that the persons it authorizes to Process the Personal Data have committed themselves to confidentiality.

9.5 The Client shall take all appropriate technical and organizational measures, to the extent such measures may be reasonably expected of the Client, to protect the Personal Data from loss, loss of integrity or from any form of unlawful Processing; and shall ensure that these measures meet all requirements under the data protection legislation, including but not limited clause 32 of the GDPR.

9.6 In case the Client engages sub-contractors in the performance of the Agreement, the Client shall impose the data protection obligations as set forth in this Clause 9 on those sub-contractors. A list of the Client sub-contractors can be obtained by the Agency, at its request.

9.7 The Client shall provide all reasonable assistance to the Agency in order for the Agency to fulfil its obligations to respond to requests by Data Subjects exercising their rights under applicable data protection legislation.

9.8 The Client shall provide all reasonable assistance to the Agency in order for the Client to comply with its obligations pursuant to clause 32 through 36 of the GDPR, taking into account the nature of the Processing and the information available to the Client.

9.9 In case the Client discovers a security breach that may adversely affect the protection of Personal Data received by the Client from the Agency and Processed by the Client, the Client will notify the Agency, to the extent permitted by law, as soon as reasonably possible. The parties will cooperate with each other on the investigation of the Personal Data Breach. In case of a Personal Data Breach within its organization, the Client shall -to the extent necessary- be responsible for notifying the relevant authorities and the Data Subjects concerned.

9.10 The Client shall - to the extent this is possible and reasonable - make available to the Agency all information necessary to demonstrate compliance with the audits laid down in this Clause 9. The Client shall - to the extent this is possible and reasonable - cooperate with any audits conducted by the Agency or another auditor mandated by the Agency.

Clause 10: Continuous obligations

Obligations, which by their nature are intended to continue also after the expiry of the Agreement, retain their effect thereafter. These obligations include, inter alia: provisions with regard to liability duty, confidentiality obligations and non-competition and non-solicitation clauses.

Clause 11: Applicable law and disputes

11.1 All Agreements between the Agency and the Client are governed by Dutch law, even if the Agreement has an international character.

11.2 Any disputes – including disputes that only one of the parties deems to be such – arising between the Client and the Agency in connection with this Agreement or the agreements ensuing from it will be resolved by the competent judge of the District Court of Amsterdam, the Netherlands.

11.3 Apart from the provisions of Clause 11, paragraphs 1 and 2 of these terms and conditions, the Agency reserves the right to challenge the Client (or the Candidate) before the competent court of the place of residence or domicile of the Client (or the Candidate).