

**Sample Contract for the Temporary Assignment of Employees
(DGB / BAP)**

Explanations are in *italics* (last updated: 22.05.2014)

between

Company _____

Branch _____

Street _____

Town/City _____

Telephone number _____

- hereinafter referred to as "Temporary Work Agency"-

and

Company _____

Street _____

Town/City _____

Telephone number _____

- hereinafter referred to as 'Client'.

The Temporary Employment Agency and the Client agree as follows:

1. Subject matter of the contract, scope and term

Within the scope of the temporary assignment of employees the Temporary Work Agency shall assign to the plant _____ of the Client employees to perform work regarding the following functions:

_____ employees for work as _____ with the following qualification:

Note: *It goes without saying that the employee may also be mentioned by his name here. To this end, the following clause is recommended:*

"Within the scope of the temporary assignment of employees the Temporary Work Agency shall assign to the plant _____ of the Client the following employee(s) to perform work regarding the following functions:

_____ (surname / first name)

_____ (if applicable, surname / first name of further employees)

The employee(s) shall be deployed for work as a _____ with the following qualification: _____."

1.1

A weekly/monthly working time ofhours is deemed to have been agreed.

1.2

The contract for the temporary assignment of employees shall begin on _____ and

- end on _____;
- run until further notice.

2. Licence for temporary agency work

The Temporary Work Agency declares that it has a valid licence for temporary agency work pursuant to Section 1 of the German Temporary Employment Act (Arbeitnehmerüberlassungsgesetz, abbr. AÜG) issued by the _____ regional directorate of the Federal Employment Agency (Bundesagentur für Arbeit) on _____.

Note: In the case of licences granted after 1 July 2012 the authority is to be named which is relevant following the reorganisation of the Federal Employment Agency.

3. Declaration by the Temporary Work Agency

The Temporary Work Agency declares that it has agreed, in the individual employment contracts with its employees, to apply:

- a) the collective labour agreements of 22 July 2003 (as amended from time to time) between the Federal Employers' Association of Staffing Services (Bundesarbeitgeberverband der Personaldienstleister e.V., abbr. BAP) and the Negotiation Body of the German Confederation of Trade Unions for Temporary Agency Work (DGB Tarifgemeinschaft Zeitarbeit), as well as
- b) Collective labour Agreements on Sector-specific Supplemental Payments concluded between the BAP and the individual members of the DGB Tarifgemeinschaft Zeitarbeit.

4. Declaration by the Client

The Client is aware that the Temporary Work Agency is obliged to pay the sector-specific supplemental payments to its employees insofar as the prerequisites for these pursuant to the collective labour agreements referred to in 3 b) supra are fulfilled. To this end, the Client warrants that its declarations provided in the **Annex** to this contract, in particular regarding the

- a) sector which the establishment is assigned to,
- b) current hourly pay regularly paid to a comparable employee at the establishment of the Client
- c) assignment or non-assignment of the employee at the Client's establishment in the three months prior to the temporary assignment

are correct.

5. Health and Safety at Work

5.1

The Client shall assume the duties of care of an employer for the employee during his assignment. It shall ensure that the applicable accident prevention and safety at work regulations as well as the statutory limits on working hours are complied with at the place of work and the 'First Aid' facilities and measures are provided. Insofar as the work of the employee presupposes a work-related medical examination, the Client shall carry out such an examination before beginning of work.

Note: *The minimum prerequisites of the duties of safety and work and health safety incumbent upon the Temporary Work Agency and the Client arise from VBG's guidance on work organisation of Temporary Work Agency Companies („VBG-Leitfaden für die Gestaltung von Arbeitsorganisation in Zeitarbeitsunternehmen“; reference BAP: VBG is a German insurance association that sets accident prevention regulations.*

5.2

The Client is obliged to monitor compliance with the regulations regarding the health and safety protection of employees. The duties set out supra exist irrespective of the duties of the Temporary Work Agency. In order to exercise its duties as an employer, the Temporary Work Agency is granted the right of access to the places of work of the employees assigned at any time during the hours of work.

5.3

The Client is obliged to report any accident at work to the Temporary Work Agency without delay and furnish it with all information for the accident report pursuant to Section 193 (para. 1) Social Security Code VII (German Social Security Code, abbr. SGB VII). The Client shall send a copy of the accident report to the Employers' Liability Insurance Association responsible for its establishment.

5.4

In the event that the employee justifiably refuses to take up or continue work due to faulty or non-existent safety measures, equipment or protective clothing, the Client shall be liable for the ensuing loss of pay.

6. Confidentiality

The Temporary Work Agency as well as the employees assigned are obliged to keep confidential any and all secret and confidential business matters of the Client.

7. Rejection

7.1

In the event that the Client is not satisfied with the performance of the employee, it can reject his services within 4 hours of the beginning of assignment.

7.2

The Client may reject the employee with immediate effect if there is a cause which would justify an extraordinary notice of termination by the employer (Section 626 German Civil Code (Bürgerliches Gesetzbuch, abbr. BGB).

7.3

Rejection shall be in the form of a written declaration to the Temporary Work Agency and shall also state the grounds.

8. Substitution of the employee

8.1

In the event of rejection pursuant to 7.1 the Temporary Work Agency is obliged to assign another employee with equivalent qualifications at the request of the Client. However, such an obligation only exists for the Temporary Work Agency if it did not select the rejected employee with due diligence.

8.2

In the event of any unforeseen inability of an employee to work, e.g. as the result of sickness, the Temporary Work Agency has the right to assign an equivalent substitution within 24 hours.

8.3

Apart from this, the Temporary Work Agency has the right to substitute the employee assigned at any time and to assign an employee with equivalent qualifications for internal, organisational or legal reasons.

9. Remuneration / Additional Payments

9.1

The Client undertakes to pay the Temporary Work Agency for each hour of work effectively worked by the employee assigned for services as

_____ euros.

The statutory value-added tax shall be added to prices.

On the basis of information provided by the Client pursuant to the **Annex** hereto the Temporary Work Agency is

not obliged

obliged subject to the collective labour agreement on sector-specific supplemental payments regarding employees in the

Accordingly, the cost rate as set out supra shall be increased after an uninterrupted period of assignment

- a) of six full weeks to euros,
- b) after the third full month toeuros,

- c) after the fifth full month to ... euros,
- d) after the seventh full month to ... euros
- e) after the ninth full month to ... euros.

Interruptions that occur during the period of assignment due to sickness up to a period of six weeks, holiday or public holidays during the period of assignment and which do not exceed a total period of three months shall not be taken into consideration when the period is calculated and correspondingly lead to an increase in the cost rate. In contrast, all other periods of interruption of less than three months, e.g. relocation to another plant of the Client lead to suspension of the period. The price schedule set out supra shall be adjusted automatically in favour of the Client if the collective contractual provisions of the relevant collective labour agreement on sector-specific supplemental payments result in the sector-specific supplemental payment not having effect until a later time than originally calculated and correspondingly later results in a higher collectively agreed pay for the employee. In this event, the higher cost rate will be invoiced only at a later date when the employee shall also receive the corresponding higher sector-specific supplemental payment.

9.2

The Client is obliged to notify the Temporary Work Agency of any changes in the hourly pay paid regularly for a comparable employee without undue delay.

9.3

The Temporary Work Agency has the right to demand adequate adjustment of the cost rates insofar as calculation of a new comparable pay requires this as a result of a pay adjustment of a comparable employee at the establishment of the Client or a change in the job requirements of the employee.

9.4

In the event that the Client requests overtime, night work, Sunday or public holiday work, this shall require a special prior agreement with the Temporary Work Agency. In such cases the following additional payments will be charged:

- a) overtime%
- b) night work%
- c) work on Sunday%
- d) work on public holidays and on Christmas and New Year's Eve after 2 pm%

9.5

In the event that night, Sunday and public holiday additional payments coincide, the higher pay only is to be paid in each case. Travel expenses and daily allowances will only be paid by separate agreement.

10. Billing / terms of payment

10.1

Invoices shall be sent to the Client weekly or at least once a month. The basis of the invoices are the time records of the employee which are to be signed by the Client. The time records shall be submitted to the Client weekly, at the end of a calendar month or immediately after the contract has ended. The invoices of the Temporary Work Agency are due immediately and payable without deductions. The employee is not authorised to receive any payments as advance or other forms of payment.

10.2

In the event that the Client defaults on payment, the Temporary Work Agency is entitled to demand immediate payment of all outstanding - including deferred - invoices and to

demand that the Client settles them immediately or provides collateral security. At the same time the Temporary Work Agency is entitled to withhold the employees assigned until payment is made.

11. Agency commission

11.1

The Temporary Work Agency shall be entitled to an agency commission arising from the assignment of the employee if the employee is hired in connection with the assignment. The amount of the commission is scheduled according to the gross monthly salary that the employee earns after having been taken on as follows:

- in the case of hiring within the first three months of assignment the commission amounts to 2 months' salary (this corresponds to x % of the gross annual salary),
- in the case of hiring within the fourth to sixth month of assignment the commission amounts to 1.5 months' salary (this corresponds to x % of the gross annual salary),
- in the case of hiring within the seventh to the ninth month of assignment the commission amounts to 1 month's salary (this corresponds to x % of the gross annual salary),
- in the case of hiring within the tenth to twelfth month of assignment the commission amounts to 0.5 month's salary (this corresponds to x % of the gross annual salary),
- in the case of hiring after the twelfth month, no commission claims exist.

11.2

In the event that there is no direct link between the time of hiring of the employee by the Client and the preceding time of assignment, the Temporary Work Agency nevertheless has the right to demand an agency commission if the employment is attributable to the preceding assignment of the employee. If employment is agreed between the Client and the employee within six months of the last assignment of the employee, such a direct link between the hiring and the preceding assignment is deemed to exist. The Client has the right to show proof to the contrary, thereby exempting itself from a payment obligation.

12. Offsetting / right of retention

The client does not have the right to offset claims against the Temporary Work Agency or to claim a right of retention unless the counter-claim is undisputed or has been established in a legally binding manner.

13. Liability / indemnification / damages

13.1

The Temporary Work Agency is only liable for faultless selecting the employees for the agreed work. It is not liable for the execution of the work by the employee or for damage that he causes in carrying out his work. The Client is obliged to indemnify the Temporary Work Agency from all claims that third parties assert in connection with execution and carrying out of work by the employees.

13.2

The Temporary Work Agency shall be liable pursuant to statutory law for damages arising from loss of life, physical injury and damage to health caused by its own fault.

13.3

The Temporary Work Agency shall only be liable for damages caused by its own fault due to intent and gross negligence. Liability for slight / normal negligence is excluded. This shall apply to both, the liability for the diligent selection of the employee as well as to all other cases of liability (default, impossibility, default in performance of the contract, culpability upon conclusion of the contract, etc.).

13.4

In the event that the declarations provided in the **Annex** to this contract by the Client are not correct, incomplete or defective or the Client notifies the Temporary Work Agency of amendments that were incomplete, defective or not without undue delay and if, therefore, the Temporary Work Agency is obliged to pay supplemental payments to its employees retroactively, the Client is obliged to reimburse the Temporary Work Agency for all damages arising therefrom. The Temporary Work Agency may decide at its discretion whether it invokes exclusion periods vis-à-vis its employees, insofar it is not subject to the duty to mitigate damages. Damages to be replaced are deemed to be the gross amounts payable by the Temporary Work Agency less the employer contribution to social security insurance. In addition, the Client is obliged to indemnify the Temporary Work Agency from claims of social security institutions and the fiscal administration that are asserted on the basis of the liability set out supra, irrespective of gross earnings payments.

13.5

In the event that the daily, weekly or monthly number of hours agreed in No. 1.1 is not achieved, the Temporary Work Agency has the right to invoice the agreed hours to the Client insofar as the Client is accountable for the undercutting of hours (e.g. in the case of delayed beginning of deployment / project, lack of orders, etc.).

14. Termination

14.1

Insofar as the Contract is not concluded for a fixed term, it may be terminated by either party with a notice period of five working days to the weekend.

14.2

In the event that the Temporary Work Agency does not exercise its right to substitute or replace the employee in the cases of No. 8.1. nor 8.2, the Contract may be terminated by either party without notice.

14.3

The Temporary Work Agency also has the right to terminate the Contract without notice if the Client does not discharge its obligations pursuant to No. 10.2 in the case of default on payment or a significant deterioration in its assets. The rights of the Temporary

Temporary Work Agency to damages shall remain unaffected.

14.4

Each notice of termination shall require the written form. A notice of termination by the Client only has legal effect if it is given to the Temporary Work Agency. A notice of termination communicated to an employee only shall be without legal effect.

15. Final provisions

15.1

Side agreements and amendments to the Contract require the written form.

15.2

Insofar as the Client is a registered merchant, the sole place of jurisdiction for any and all disputes arising indirectly or directly from the Contract is the seat of the Temporary Work Agency.

15.3

In the event that any individual provisions of this Contract are without legal effect at any time, this shall not affect the validity of the remaining provisions. For such a case the parties to the Contract undertake to replace the provision without legal force by an agreement that most closely reflects the intention of the Contract in economic and legal terms.

The place of jurisdiction is_____

Place/date

Place/date

Signature / company stamp
Temporary Work Agency

Signature / company stamp
Client