General conditions besox

Article 1   Object

1.1.   On condition of a Registration agreement, legally signed by both Parties, and on condition of full and timely payment of all amounts by Client to BESOX and a timely and complete submittal of all correct data required by BESOX for the implementation of its legal and contractual assignment(s), BESOX commits itself, in name and for the account of the Client and to act under his exclusive responsibility in the capacity of trustee for the employer and to fulfil his legal obligations as an employer vis-à-vis the government office for social security 'rijksdienst voor sociale zekerheid' (in the following: RSZ) and the tax office. All other activities, such as payroll administration and employment administration which Besox conducts on behalf of the client, are governed by the legal provisions concerning the contracting of work and services.

1.2.   At one of the locations of their seats, BESOX will compose and maintain a complete case file regarding the application of social security legislation for the entire staff of the Client, which will allow to check the accuracy of tax declarations and which the authorised civil servants and officials will be able to peruse.

Article 2   (Salary) data and information of the Client

2.1.   The Client is exclusively responsible for the determination, the follow-up, and the timely communication of gross wages, performances, absences, and other elements which are important for the calculation of wages and are applied by BESOX for the implementation of its assignment(s). The implementation of the Registration agreement by BESOX exclusively takes place on the basis of the information and data as they are timely provided by the Client to BESOX.

BESOX is not liable for the possible consequences of erroneous calculations, wrong deductions and/or contributions which are the result of the direct, indirect and/or inaccurate, complete or faulty character of this data, information, or documents provided by the Client.

2.2.   The obligations of BESOX always apply under the suspensory condition of such a timely, complete, and correct submittal of the information, documents, and data which are required for the implementation of their assignment(s). BESOX bears no contractual or other obligation to address the Client in the event of missing information or documents. BESOX is not responsible for the controlling the accuracy of the data, information, and documents forwarded by the Client.

2.3   The Client will communicate all modifications and adjustments regarding his employees to BESOX immediately in writing. Without prejudice to the articles 2.1 and 2.2, the Client authorises BESOX to apply, in name and for the account of the Client, the legal obligations as they have been established by the competent public-private negotiating committee, 'paritair comité', under their responsibility for the implementation of payroll calculations, the calculations of due contributions, and the filling out of the prescribed tax statements. If exception must be made to this authorisation, such will be stated on the salary statements or in a separate writing.

2.4   In case of salary calculation by BESOX, the Client commits himself to control the salary statements which are issued to the Client in the context of this assignment and to inform BESOX without delay in writing in the event the Client believes that (calculation) errors, omissions, or other inaccuracies have occurred. Barring the event that the Client reports such (calculation) errors, omissions, or other inaccuracies in writing within 10 working days after the submittal of such salary statements, the accuracy of these calculations is assumed to have been confirmed by the Client. This assumption both applies with regard to BESOX and vis-a-vis third parties, such as the government inspection agencies, the employees of the client, etc.

2.5   In case of the electronic employment declaration 'Dimona' through BESOX, the client will register the declaration of a new entry into the service at least 24 hours prior to the act of employment in the Besox system.

Article 3   Distribution of contributions and disbursement of wages

3.1.   BESOX is only bound to distribute the contributions and withheld taxes in name and for the account of the Client to third government institutions under the express condition of a timely previous payment by the Client of the amounts thus invoiced by BESOX. The Client is exclusively liable for all (financial) consequences of not, not fully, or not timely redistributing by BESOX of the amounts, contributions, or withheld taxes to the third government institutions (RSZ, FOD Financiën) as a consequence of the Client being negligent in timely transferring these amounts to BESOX and such without requirement falling to BESOX for the sending of a previous default notice or summation. All possible fines or sanctions as a result are exclusively for the account of and borne by the Client.

3.2.   The failure of the Client to timely pay the invoices of BESOX related to these amounts, contributions, or withheld taxes, automatically suspends, legally and without prior default notice, the obligations BESOX is subject to pursuant to this Registration agreement, and such until the moment the Client has transferred these amounts, contributions, or withheld taxes to BESOX.

3.3.   For such social security contributions as may have been distributed in excess to RSZ, Besox can only be addressed during the same term as the limitation term for the claim for the restitution of these social security contributions. After expiry of this term, Besox cannot be held accountable for the social security contributions paid in excess under any circumstance whatsoever.

3.4.   By order of the client, BESOX can pay out the salaries calculated by them to the employees of the client, on condition the client timely provides the necessary financial means for that purpose. BESOX is not liable if the wages by fault of the client can only be effectively paid out outside the period which is stipulated in the labour regulation of the client or in the legal provisions concerning.

Article 4   Duration

4.1.   The Registration agreement is concluded for the duration which is established in the Agreement. Each unilateral violation of the Registration agreement by the Client will constitute legal entitlement, without requirement of a prior default notice, to a compensation for breach of contract which is equal to the Management and Administration Remunerations during the remaining effective time of the initially established duration of the Registration agreement, with a minimum of €1,000.

4.2.   BESOX has the right to terminate the Registration agreement pursuant to a serious and material shortcoming on the part of the Client, and such without owing any compensation for damages or breach of contract to the Client. If BESOX wishes to eliminate the Client due to non-compliance with his obligations, this elimination can only become effective on the first day of the quarter following the one in which the Client has submitted information, be it incomplete. And this under the emphatic condition that BESOX has declared the default of the Client by registered mail on account of the submittal of his performance.

4.3   The Registration agreement is also automatically and legally terminated in the case of failure, apparent incapacity, the discontinuation of payment or settlements on the part of the Client. The same applies in case the authorisation(s) which were granted upon implementation of this Registration agreement are withdrawn or suspended, for whatever reason.

4.4.   In accordance with the collaboration agreement concluded on 31 January 2011 within the payroll administration organisations, 'Unie van erkende Sociale Secretariaten', BESOX commits itself, to still effectively effectuate, after termination of this Registration agreement, the necessary technical transactions for the quarters and for the obligations which fell under his mandate.

This barring the event that the Client arranges with another mandatary that this mandatary will effectively effectuate the necessary technical transactions for the quarters and for the social security obligations which fell under the mandate of the payroll administrator. The Parties agree and establish, as required by article 31quater, §5 of the Law of 29 June 1981 regarding the general principles of social security for employees, that the previous mandatary, in case it regards a non-certified payroll administrator, retains the assignment of still effectively effectuating the technical transactions for the quarters and the social security obligations which fell under his mandate.

4.5.   BESOX reserves itself the right to modify the present General Conditions by way of exclusively written notification, in the form and in the manner established exclusively by BESOX.

Article 5   Management and Administration Remunerations

5.1.   The management and administration Remunerations owed by the Client will be invoiced in accordance with the periodicities as established in the Agreement. In case the invoices regarding the management and administration remunerations are not or not fully settled no later than the expiry date, the Client will legally owe default interest, without any default notice, in conformity with the law on late payments in commercial transactions, with a minimum, however, of 12%.

In addition, the Client will in such case also legally owe, without requirement of a default notice, compensation of damage amounting to 10 % over the (unpaid) invoice amount.

5.2.   The management and administration Remunerations are furthermore increased by the costs of the sending of notifications on account of the Client by way of registered mail. BESOX reserves itself the right to separately bill additional administrative actions which are not a part of the regular payroll administration.

5.3.   In case the Client persists to fail to pay an invoice or a part of it after having received a formal default notice concerning from BESOX, BESOX will have the right to rescind the Registration agreement in disfavour of the Client and without owing any compensation for breach of contract or damages with regard to it. All consequences concerning in such case are borne exclusively by the Client.

5.4.   The management and administration remunerations are annually adjusted, on 1 January each time, to the operational costs. The increase will not exceed, however, the adjustment of the consumer price index by more than + 1%.

Article 6   Liability

6.1.   Notwithstanding any other provision in this Registration agreement, the obligations of BESOX pursuant to this Registration agreement exclusively constitute a best-effort contract.

6.2.   Barring the event of a demonstrable, serious and grave professional error on the part of BESOX, the client remains responsible and liable at all times for all actions and performances which BESOX carries out in the context of the Registration agreement pursuant to its mandate, in name and for the account of the Client, towards third parties. All actions and performances of BESOX vis-a-vis third parties upon implementation of the Registration agreement are always considered to have been conducted in name and for the account of the Client.

6.3.   Every contractual and extra-contractual liability of BESOX in the context of the Registration agreement is always limited to direct damage and in any case limited to a maximum accumulated amount which is equal to the management and administration remunerations which are payable by the Client during a 6-month term. Every liability of BESOX for indirect or consequential damage such as, without being exhaustive, loss of turnover or margin, inactivity, discontinuation of production or provision of services, etc. is emphatically excluded. To be eligible, and on pain of the right to claim damages lapsing, a claim for compensation of damages must be submitted by the client to BESOX in writing no later than within a 6-month term after the Client learned about the facts on the basis of which the Client lodges his claim or alternatively within a 6-month term after the Client should reasonably have been aware of the damage-causing facts.

6.4 The Client will safeguard BESOX and its staff against and indemnify them for all (financial) consequences resulting from claims or requisitions by third parties (including the employees, managers, and appointees of the Client) based on or in connection with, whether directly or indirectly, the underlying Registration agreement.

Article 7   Confidentiality

BESOX commits itself to treat with strict confidentiality all information it is provided with by the Client upon the implementation of this agreement.

Article 8   Processing of data

8.1   Purpose:
For the implementation of the services pursuant to the agreement, the client transfers personal data to Besox and authorises Besox process personal data in accordance with the provisions of this agreement, the general data protection regulation or 'Algemene Verordening Gegevensbescherming' 2016/679 and the Law regarding the protection of natural persons with regard to personal data. The processing by Besox will take place during the effective time of the agreement between parties. The personal data is processed with the purpose of being able to provide the following services under the agreement, specifying that the list below contains core tasks and is not exhaustive:

- Personnel administration
- Management labour conditions
- Compliance with social and fiscal legislation and regulations
- Management competencies and training
- Management of personal development and assessment of staff
- Providing access to information systems or buildings
- Constant improvement of the services
- Benchmarking activities

8.2   Instructions of the client
For the implementation of the services, Besox is a processor, acting on behalf of the data controller, being the client. BESOX will exclusively act upon instruction of the client, for example with regard to the transfer of personal data to a third country or an international organisation, unless a requirement of Union or Union-member-legislation applicable to the processor obliges him to carry out the processing; in that case, the processor informs the data controller, prior to the processing, of that legal requirement, unless that legislation prohibits such notification on grounds of weighty reasons of public interest. The underlying agreement constitutes the entire instruction of the client for Besox. All additional instructions must be established by the parties in writing.

BESOX commits itself to immediately inform the client if it believes that an instruction of the Client constitutes a violation of the 'Algemene Verordening Gegevensbescherming' or of other provisions regarding the protection of data in Union or Union-member-legislation. Besox is never liable for instructions given by the customer that contradict the General Condictions.

8.3   Data subjects and type of personal data
It regards the following personal data of the employees of the client:
Name, first name, address, telephone, gender, nationality, national registration number, date of birth, place of birth, family situation, identity card number, education, bank account, salary information, attachment on wages, position, performances/absences, for the purposes listed in article 8.1.

8.4 Rights of data subjects

If possible, BESOX will give full cooperation to the client and assist the client in such a manner that the client can comply with his obligation to respond to requests of data subjects exercising their rights.

The Processor does not answer direct requests of data subjects but will always refer data subjects to the Data Controller. These rights can consist of, e.g., a request for perusal, correction, addition, removal, or shielding of personal data. The data subject can also file objection against the processing of personal data and file a request for the transferability of the personal data.

8.5 Non-disclosure

BESOX will maintain the secrecy of the personal data provided, unless this is not possible pursuant to a legal obligation. BESOX commits itself to guarantee that the persons authorised to process personal data have committed themselves to observe confidentiality or that they are bound by an appropriate legal obligation of confidentiality.

8.6 Returning personal data and retention term

The Processor will keep the personal data for the duration of the agreement, and after termination of the agreement Besox will delete the personal data from its active systems. If the client so requests, BESOX will return after termination of the agreement, to the extent possible, the personal data to the client.

After termination of the agreement, BESOX will be able – no longer in the capacity of processor but as data controller – to keep the data for itself in a back-up archive for the duration of a term which is equal to the statutory retention period or the limitation period within which a legal claim can be constituted. A statutory retention period pertains, for example, in case the Processor must keep the personal data on grounds of social or fiscal legislation. After expiry of such terms, the data will be deleted in a thorough and secure manner from the back-up archive.

8.7 Sub-processors

The Data Controller is aware that the Processor, in the context of his implementation of the provision of his services, makes use of or can make use of sub-processors. The Data Controller acknowledges that this deployment of sub-processors by the Processor is necessary for his compliance with his contractual obligations and therefore consents to it.

The Data Controller grants general permission to the Processor to deploy other sub-processors and/or to replace existing sub-processors. If the Processor will make use of a new sub-processor, he will inform the Data Controller beforehand accordingly to the extent possible. The Data Controller has the right on grounds of substantiated and justified reasons to file an objection to this. In case the Processor deploys a sub-processor, the Processor will make sure that he will at least be compliant with the requirements which are stipulated in this processor agreement. The Processor remains liable in the event the sub-processor does not comply with his obligations with regard to the security of data as stipulated in the present agreement.

8.8 Technical and organisational security measures

BESOX has implemented appropriate technical and organisational security measures to protect personal data. During the effective time of this agreement, BESOX will, upon request of the client, provide the client within a reasonable term with a current description of the implemented technical and organisational security measures.

8.9 Breaches in connection with personal data

In case of a breach in connection with personal data, such as a data leak, and regardless of the cause, BESOX will forthwith upon taking cognisance of such a breach in connection with personal data, inform the client accordingly by mail to the regular contact person. Both parties agree to fully cooperate with such an investigation and to render each other assistance for compliance with the applicable requirements and procedures in case of a breach in connection with personal data.

8.10   Data protection impact evaluation

This regards the implementation of an assessment, prior to the processing, of the impact of the intended processing activities on the protection of the personal data. In case the Data Controller requests the Processor to provide information for the implementation of a Data protection impact evaluation, then the Processor will provide the information and give assistance.

8.11

BESOX will help the client to demonstrate compliance with the general data protection regulation and commits itself to provide the client to that effect with all information which is required to prove compliance with all obligations stipulated in this article and to make possible audits, including inspections, by the client or by a controller authorised by the client and to contribute to it. If the client were to conduct an audit, Besox will be able to invoice all the time it has invested in it to the client, on the basis of the rate applicable at the moment of the audit. The costs associated with an audit will be borne by the client.

8.12   Disputes arrangement

This agreement will be complied with by both parties in good faith. All disputes in connection with the implementation of this agreement will be resolved by the parties through an amicable settlement. If they do not reach an agreement, the court of law of Bruges is exclusively competent, even in the event of third-party proceedings and in case of multiple defendants. Belgian legislation is applicable.

Article 9   On-line services

In case BESOX offers specific services on-line to the Client, the access thereto is exclusively offered on as is basis, without any guarantee as to availability, uninterrupted functioning, or response times. BESOX does not accept any liability concerning.

Article 10   Miscellaneous

10.1.   The Registration agreement constitutes the full agreement entered into by Parties with regard to its object. It replaces all previous arrangements with regard to its object and all prior consultations and arrangements which Parties have made regarding the object which are not reflected in this Registration agreement, will not bind parties. The General conditions or purchase conditions of the Client are not applicable.

10.2.   The Registration agreement is divisible and if one or more of the provisions of the Registration agreement are declared invalid, this will not impair the validity of the other provisions. If any part of the Registration agreement is declared exceedingly general or void, the provision will, despite this fact, be implementable to the maximum extent permitted by Law. If any part of the Registration agreement is considered wholly invalid, Parties will negotiate new provisions which will approximate as closely as possible the economic effect of the provision declared invalid.

10.3   A Party is not liable for non-compliance with their obligations under this Registration agreement if such is due to reasons which are not under their reasonable control such as, though not limited to, fire, flooding, strikes, labour unrest or other disturbances in economic affairs, inevitable accidents, embargos, blockades, legal restrictions, riots, government measures, or unavailability of means of transport, etc.

10.4   The Registration agreement is governed by Belgian Law. Exclusively competent to hear disputes resulting from the implementation or termination of the Registration agreement will be the Courts and Courts of Appeal of the legal district of Bruges.