

## TERMS OF BUSINESS TO SUPPLY TEMPORARY STAFF SERVICES

(pursuant to the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

**THIS AGREEMENT** is made on the date duly recorded **BETWEEN**

(1) [INSERT NAME] (“the Agency”)

and

(2) [INSERT NAME] (“the Hirer”)

**IT IS AGREED** as follows:

- **1 Definitions**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**‘Hirer’** the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to whom the Temporary Worker is supplied or introduced

**‘The Employment Business’** the Agency, who are an employment business as defined in the Employment Agencies Act 1973 as amended by the Employment Relations Act 1999

**‘Engages/Engaged/Engagement’** the engagement, employment or use of the Temporary Worker directly by the Hirer or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Temporary Worker is an officer or employee

**‘Temporary Worker’** an individual (Work-Seeker) who is registered with an Agency to render SoT services to the Hirer

**‘SoT’** the system by which the Temporary Worker has control over when and the amount of time the Temporary Worker is placed with a Hirer, the rate of pay charged for the work done and the location of an Assignment with the Hirer and displayed via the Agency’s website for the Hirer to view

**‘Assignment’** the period during which the Temporary Worker is engaged via SoT to provide services to the Hirer

**‘Transfer Fee’** the fee payable in accordance with clause 7.1 below and regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003

**'Introduction Fee'** the fee payable in accordance with clause 7.2 below and regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003

**'Introduction'** the display to the Hirer of Temporary Workers' curriculum vitae or information which identifies the Temporary Worker; and which leads to Engagement of that Temporary Worker

**'Remuneration'** includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Worker for services rendered to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount of [*specify*] will be added to the salary in order to calculate the Employment Business' fee.

**'Relevant period'** means the later of either 14 weeks from the first day on which the Temporary Worker was supplied by the Employment Business to work for the Client, or 8 weeks from the day after the Temporary Worker was last supplied by the Employment Business to the Client.

- 1.2 Unless the context otherwise requires, references to the singular include the plural.
- 1.3 The headings contained in these terms are for convenience only and do not affect their interpretation.

- **2 The Contract**

- 2.1 These terms constitute the contract between the Agency and the Hirer for the supply of the Temporary Worker's services by the Agency to the Hirer on a Slivers of Time basis using SoT and are deemed to be accepted by the Hirer by virtue of its viewing of and Engagement of the Temporary Worker or the passing of any information about the Temporary Worker to any third party following an Introduction.
- 2.2 These terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these terms prevail over any terms of business or purchase conditions put forward by the Hirer.
- 2.3 No variation or alteration to these terms shall be valid unless the details of such variation are agreed between the Agency and the Hirer and are set out in writing and a copy of the varied terms is given to the Hirer stating the date on or after which such varied terms shall apply.

- **3 Charges**

- 3.1 The Hirer agrees to pay such charges\* of the Agency as shall be notified to and agreed with the Hirer. The charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour) and comprise mainly of the Temporary Worker's pay plus the Agency' commission calculated as a percentage of the Temporary Worker's pay, employer's National Insurance contributions and any travel, hotel or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges.
- 3.2 The charges are invoiced to the Hirer on a weekly basis and are payable within [14] days. The Agency reserves the right to charge interest on any overdue amounts at the rate of [\*8% or *specify a different rate*]% per annum [*above the base rate from time to time of the Bank of England or specify your own Bank*] from the due date until the date of payment.
- 3.3 \*There are no rebates payable in respect of the charges of the Agency.
  
- **4 Information provided**
  - 4.1 When making an Introduction of a Temporary Worker to the Hirer via SoT the Agency is deemed to have confirmed to the Hirer the identity of the Temporary Worker; that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in an Assignment.
  - 4.2 The Agency confirms that the Temporary Worker will be employed by the Agency under a contract for services.
  - 4.3 The Agency confirms that the Temporary Worker is willing to work on an Assignment by virtue of the Temporary Worker's details being displayed on SoT.
  
- **5 Process**
  - 5.1 The Hirer selects a Temporary Worker for an Assignment by viewing SoT via the Agency's website.
  - 5.2 The Temporary Worker will not be Engaged on an Assignment until the Hirer has received confirmation from the SoT system to that effect. On receiving such confirmation there will be a legally binding contract between the Hirer and the Agency.
  - 5.3 Should the Hirer, provide incorrect information when selecting a Temporary Worker on the SoT system, which results in the Temporary Worker failing to attend an Assignment, the Hirer will be responsible for the Agency's charges as set out in clause 3.1.
  
- **6 Time Sheets**
  - 6.1 At the end of each Assignment the Hirer shall sign the Agency' time sheet verifying the number of hours worked by the Temporary Worker during that week.

- 6.2 Signature of the time sheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to sign a time sheet produced for authentication by the Temporary Worker because the Hirer disputes the hours claimed, the Hirer shall inform the Agency as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Agency to enable the Agency to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Hirer's obligation to pay the charges in respect of the hours worked.
  
- 6.3 The Hirer shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Hirer should apply the provisions of clause 12.1 below.
  
- **7 Payment of the Temporary Worker**
  - 7.1 The Agency assumes responsibility for paying the Temporary Worker and where appropriate, for the deduction and payment of National Insurance contributions and PAYE Income Tax applicable pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003\*.
  
- **8 Warranties**
  - 8.1 The Hirer warrants to the Agency that it will not directly or indirectly pressurise the Temporary Worker to be available at times when s/he would rather not be.
  
  - 8.2 The Agency warrants to Hirer that it will not directly or indirectly persuade to increase the Temporary Worker's pricing rate beyond that which the Temporary Worker has fixed.
  
- **9 Transfer and Introduction Fees**
  - 9.1 In the event of the Engagement by the Hirer of a Temporary Worker supplied by the Agency for an Assignment either: (1) directly or (2) pursuant to being supplied by another Agency, within either:
    - 9.1.1 the duration of an Assignment; or

- 9.1.2 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
- 9.1.3 8 weeks from the day after the last day the Temporary Worker worked on an Assignment the Hirer shall be liable, to either:
  - 9.1.3.1 Subject to electing upon giving [\*7] days notice, an extended period of hire of the Temporary Worker being [26] weeks during which the Hirer shall pay [\*\*£8.50 per hour]; or
  - 9.1.3.2 **A Transfer Fee** calculated as follows: \*.....% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Hirer does not give such notice before the Temporary Worker is Engaged the parties agree that the Transfer Fee shall be due.
- 9.2 In the event that there is an Introduction of a Temporary Worker to the Hirer which does not result in the supply of that Temporary Worker by the Agency to the Hirer, but which leads to an Engagement of the Temporary Worker by the Hirer either directly or pursuant to being supplied by another Agency within 6 months from the date of Introduction the Hirer shall be liable, to either:
  - 9.2.1 Subject to electing upon giving [\*7] days notice, a period of hire of the Temporary Worker being [26] weeks during which the Hirer shall pay the hourly charges agreed pursuant to clause 3.1 above for each hour the Temporary Worker is so employed or supplied; or
  - 9.2.2 **An Introduction Fee** calculated as follows: \*20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Hirer does not give such notice before the Temporary Worker is Engaged, the parties agree that the Transfer Fee shall be due.

- 9.3 In the event that the Engagement of the Temporary Worker is for a fixed term of less than 12 months, the fee in clauses 8.1(b) or 8.2(b), calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Hirer re-engages the Temporary Worker within 3 months of the termination of the first Engagement the Hirer shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.
  
- 9.4 If the Hirer elects for an extended period of hire, as set out above, but before the end of such period Engages the Temporary Worker supplied by the Agency either directly or pursuant to being supplied by another Agency or the Temporary Worker chooses not to be supplied for an extended period of hire, the Introduction Fee calculated in accordance with either clauses 8.1(b) or 8.2(b) may be charged, reduced by such percentage to reflect the period of extended hire already undertaken by the Temporary Worker and paid for by the Hirer.
  
- 9.5 In the event that a Temporary Worker supplied to a Hirer is **introduced by the Hirer to a third party** which results in the Engagement of the Temporary Worker by the third party within either:
  - 9.5.1 the duration of an Assignment;
  
  - 9.5.2 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
  
  - 9.5.3 8 weeks from the day after the last day the Temporary Worker worked on an Assignment the Hirer shall be liable to pay a Transfer Fee calculated as follows: \*20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
  
- 9.6 In the event that there is an Introduction of a Temporary Worker to the Hirer which does not result in the supply of that Temporary Worker by the Agency to the Hirer, but **the Temporary Worker is introduced by the Hirer to a third party** which results in the Engagement of the Temporary Worker by the third party within 6 months from the date of Introduction the Hirer shall be liable, to **an Introduction Fee** calculated as follows: \*.....% of the Remuneration applicable during the first 12 months of the Engagement or, if

the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by [insert amount]. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

- **10 Liability**

- 10.1 Whilst every effort is made by the Agency to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Hirer's booking details, the Agency is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence.
- 10.2 Temporary Workers supplied by the Agency are engaged under contracts for services. They are not the employees of the Agency but are deemed to be under the supervision, direction and control of the Hirer from the time they report to take up duties and for the duration of an Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though the Temporary Worker was on the payroll of the Hirer. The Hirer will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.
- 10.3 The Hirer shall advise the Agency of any special health and safety matters about which the Agency is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill an Assignment. The Hirer will assist the Agency in complying with the Agency's duties under the Working Time Regulations 1998 by supplying any relevant information about an Assignment requested by the Agency and the Hirer will not do anything to cause the Agency to be in breach of its obligations under these Regulations. Where the Hirer requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Hirer must notify the Agency of this requirement before the commencement of that week.
- 10.4 The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker for the Temporary Worker to fill an Assignment.

- 10.5 The Hirer shall indemnify and keep indemnified the Agency against any costs, claims or liabilities incurred by the Agency arising out of any Assignment or arising out of any non-compliance with clauses 10.2 and 10.3 and/or as a result of any breach of these Terms of Business by the Hirer.
  
- **11 Special Situations**
  - 11.1 Where the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on an Assignment or an Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will take all reasonably practicable steps to obtain and offer to provide to the Hirer:
    - 11.2
    - 11.2.1 copies of any relevant qualifications or authorisations of the Temporary Worker; and
  
    - 11.2.2 two references from persons not related to the Temporary Worker who have agreed that the references they provide may be disclosed to the Hirer and has taken all reasonably practicable steps to confirm that the Temporary Worker is suitable for an Assignment. If the Agency is unable to do any of the above it shall inform the Hirer of the steps it has taken to obtain this information in any event.
  
- **12 Termination**
  - 12.1 The Hirer undertakes to supervise the Temporary Worker sufficiently to ensure the Hirer's satisfaction with the Temporary Worker's standards of workmanship. If the Hirer reasonably considers that the services of the Temporary Worker are unsatisfactory, the Hirer may terminate an Assignment either by instructing the Temporary Worker to leave an Assignment immediately, or by directing the Agency to remove the Temporary Worker. The Agency may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that an Assignment terminates:
    - 12.1.1 within four hours of the Temporary Worker commencing an Assignment where the booking is for more than seven hours; or
  
    - 12.1.2 within two hours for bookings of seven hours or less;

and also provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Agency as soon as it is reasonably practicable of the termination of an Assignment.

- 12.2 The Hirer shall notify the Agency immediately and without delay and in any event within 24 hours if the Temporary Worker fails to attend work or notifies the Hirer that the Temporary Worker is unable to attend work for any reason.
  
- 12.3 The Agency shall notify the Hirer immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Hirer is unsuitable for an Assignment and shall terminate an Assignment under the provisions of clause 12.2.
  
- **13 Invoicing**
  - 13.1 **Payment and rendering of invoices.** The Agency shall invoice the Hirer upon completion of each of the Temporary Worker's Engagement.
  
  - 13.2 **Disputed bills.** In the event that the Hirer disputes any portion of an invoice, the Hirer must pay the undisputed portion of an invoice in full, and within 14 days of receipt of that invoice, submit to the Agency in writing of the nature of the dispute with as much detail as possible relating to the disputed amount.
  
  - 13.3 **Resolution of disputed bills.** A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.
  
  - 13.4 If the parties cannot resolve a dispute in accordance with the procedure in clause 11.3 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within [90]

days after it has arisen, the matter shall be settled in accordance with the procedure below.

- 13.5 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England and Wales.
  
- 13.6 While the dispute resolution procedure above is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.
  
- **14 Law**
  - 14.1 These Terms and Conditions are governed by the law of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.