

EMPLOYMENT BUSINESS TERMS AND CONDITIONS OF BUSINESS FOR THE SUPPLY OF TEMPORARY STAFF SERVICES



1 DEFINITIONS

- 1.1 In these Terms of Business the following definitions apply:-
"Assignment" means the period during which the Temporary Worker is supplied to render services to the Client;
"Client" means 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;
"Engages/Engaged/Engagement" means the engagement, employment or use of the Temporary Worker directly by the Client or any third party to whom the Client introduces him or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, licence, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Temporary Worker is an officer or employee;
"Introduction/Introduced" means the Client's interview of a Temporary Worker in person or by telephone, following the Client's instruction to the Employment Business to search for a Temporary Worker; or the passing to the Client of a curriculum vitae or other information which identifies the Temporary Worker and which leads to an Engagement of that Temporary Worker by the Client;
"Introduction Fee" means the fee payable in accordance with clause 7.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
"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 Client or any third party. Where a company car is provided, a notional amount of £3000 will be added to the salary in order to calculate the Employment Business' fee;
"Temporary Worker" means the individual whose services are supplied by the Employment Business to the Client. For the avoidance of doubt it shall include any individual who is engaged by the Employment Business via a limited company to provide such services;
"The Employment Business" means Central Employment (North East) Agency Limited of 34-36 St Mary's Place, Newcastle upon Tyne NE1 7PG;
"Transfer Fee" means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

2 THE CONTRACT

- 2.1 These Terms constitute the contract between the Employment Business and the Client for the supply of the Temporary Worker's services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or 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 the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.
2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

3 CHARGES

- 3.1 The Client agrees to pay such hourly charges of the Employment Business as shall be notified to and agreed with the Client from time to time. The hourly charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour) and comprise mainly the Temporary Worker's pay but also include the Employment Business' commission calculated as a percentage of the Temporary Worker's pay, National Insurance contributions paid on the Client's behalf and any travel, hotel or other expenses as may have been agreed with the Client 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 Client on a weekly basis and are payable within 14 days. The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 5% above the base rate from time to time of the Bank of England from the due date until the date of payment and/or withdraw the services of the Temporary Worker where invoices are not paid when due.
3.3 There are no rebates payable in respect of the charges of the Employment Business.

4 INFORMATION TO BE PROVIDED

- 4.1 When making an Introduction of a Temporary Worker to the Client the Employment Business shall inform the Client of 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 the Assignment; and that the Temporary Worker is willing to work in the Assignment.
4.2 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following, save where the temporary Worker is being introduced for an Assignment in the same position as one in which the Temporary Worker had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.
4.3 To enable the Employment Business to select a suitable Temporary Worker and comply with the obligations under these Terms, the Client shall provide the following information to the Employment Business prior to any Introduction:-
4.3.1 the identity and nature of the Client's business;
4.3.2 the proposed commencement date of the Assignment;
4.3.3 the duration, or likely duration, of the Assignment;
4.3.4 details of the position, including the type of work, location and the normal working hours;
4.3.5 any risks to health or safety and the steps the Client has taken to prevent or control such risks;
4.3.6 the experience, training, qualification or authorisation which the Client considers necessary, or which are required by law, or by any professional body for the Temporary Worker to work in the position; and
4.3.7 details of any expenses payable to the Temporary Worker.

5 TIME SHEETS

- 5.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Client shall sign the Employment Business time sheet verifying the number of hours worked by the Temporary Worker during that week.
5.2 Signature of the time sheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client of its obligation to pay the charges in respect of the hours worked.
5.3 The Client shall not be entitled to decline to sign a time sheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Client should apply the provisions of clause 10.1 below.

6 PAYMENT OF THE TEMPORARY WORKER

The Employment Business assumes responsibility for paying the Temporary Worker and, where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

7 TRANSFER AND INTRODUCTION FEES

- 7.1 Where there has been a supply
7.1.1 In the event of the Engagement by the Client of a Temporary Worker supplied by the Employment Business either (1) directly or (2) by another employment business, during the Assignment or within whichever is the longer of either:-
(a) 14 weeks from the start of the first Assignment (the first Assignment being each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment); or
(b) 8 weeks from the day after the last day the Temporary Worker worked on the Assignment;
the Client shall be liable, to either an extended period of hire or a Transfer Fee the length or amount of which is to be agreed between the Employment Business and the Client.
7.1.2 The Client must give the Employment Business 5 days' written notice in advance of the Engagement of whether it has elected to take the period of extended hire or to pay the Transfer Fee.
7.1.3 If the Client does not give such notice before the Temporary Worker is Engaged the parties agree that the Transfer Fee shall be due.
7.1.4 If the parties do not agree a period of extended hire or a Transfer Fee in accordance with 7.1.1 then the following shall be deemed to have been agreed:-
(a) the length of the extended period of hire shall be 13 weeks during which the Client shall pay the current hourly charge for each hour the Temporary Worker is supplied; or
(b) the amount of the Transfer Fee shall be in accordance with the permanent fee structure as attached.
7.2 Where there has been an Introduction but no supply
7.2.1 In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Employment Business to the Client, but which leads to an Engagement by the Client of the Temporary Worker by the Client either (1) directly or (2) being supplied by another employment business within 6 months of the date of the Introduction the Client shall be liable to either an extended period of hire or an Introduction Fee the length or amount of which is to be agreed between the Employment Business and the Client.
7.2.2 The Client must give the Employment Business 5 days' written notice in advance of the Engagement of whether it has elected to take the period of extended hire or to pay the Introduction Fee.
7.2.3 If the Client does not give such notice before the Temporary Worker is Engaged the parties agree that the Introduction Fee shall be due.
7.2.4 If the parties do not agree a period of extended hire or an Introduction Fee in accordance with 7.2.1 then the following shall be deemed to have been agreed:-
(a) the length of the extended period of hire shall be 13 weeks during which the Client shall pay the current hourly charge for each hour the Temporary Worker is supplied; or
(b) the amount of the Introduction Fee shall be in accordance with the permanent fee structure as attached.
7.3 Inability to supply during the extended period of hire
7.3.1 If the Client 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 Employment Business either directly or pursuant to being supplied by another employment business or the Temporary Worker chooses not to be supplied for an extended period of hire, the Transfer or Introduction Fee 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 Client.
7.3.2 Where period(s) of absence due to illness or injury prevent the Temporary Worker from being supplied for 3 or more days, [such days being qualifying days for the purposes of Statutory Sick Pay (SSP)], during the period of hire as set out above, the period of hire shall be extended by a period equivalent to the total period of absence. Where the Employment Business pays the Temporary Worker SSP during the period of hire an equivalent amount shall be charged to and be payable by the Client in addition to the charges agreed pursuant to clause 3.1.
7.4 Where there has been a supply resulting in an Engagement by a third party
7.4.1 In the event that the Temporary Worker supplied to the Client is introduced by the Client to a third party which results in the Engagement of the Temporary Worker by the third party during the Assignment or within whichever is the longer of either:-
(a) 14 weeks from the start of the first Assignment (the first Assignment being each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment); or

(b) 8 weeks from the day after the last day the Temporary Worker worked on the Assignment;

the Client shall be liable to pay a Transfer Fee the amount of which is to be agreed between the Employment Business and the Client.

7.4.2 If the parties do not agree a Transfer Fee in accordance with 7.4.1 then the Client will be liable to pay a Transfer Fee calculated in accordance with the permanent fee structure attached.

7.4.3 No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.

7.4.4 VAT is payable in addition to any fee due.

7.5 Where there has been an Introduction but no supply resulting in an Engagement by a third party

In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Employment Business to the Client, but the Temporary Worker is introduced by the Client 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 Client shall be liable to an Introduction Fee calculated in accordance with the permanent fee structure as attached. 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.

7.6 Introduction by more than one employment business/agency. For the avoidance of doubt, in the event of an introduction of a Temporary Worker by more than one employment business or employment agency, the Introduction Fee shall remain payable by the Client, unless the Client can provide written evidence that the Temporary Worker's details were received in writing from another employment business or employment agency before those from the Employment Business.

8 LIABILITY

8.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Client's booking details, the Employment Business does not make any warranties in this regard and 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 Employment Business does not exclude liability for death or personal injury arising from its own negligence or for fraud.

8.2 Temporary Workers supplied by the Employment Business are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether willful, negligent or otherwise as though the Temporary Worker was on the payroll of the Client. The Client 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 Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 6 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.

8.3 The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business 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 the Assignment. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.

8.4 The Client 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 the Assignment and shall notify the Employment Business immediately if the position changes.

8.5 The Client shall indemnify and keep indemnified the Employment Business in full against any and all costs, claims damages, fines, penalties or liabilities incurred by the Employment Business as a result of any act, error or omission of the Client or Temporary Worker throughout the duration of the Assignment or arising out of any non-compliance with clauses 8.2 and 8.3 and/or as a result of any breach of these Terms by the Client.

9 SPECIAL SITUATIONS

9.1 Where the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the 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 Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client:-

9.1.1 Copies of any relevant qualifications or authorisations of the Temporary Worker; and

9.1.2 two references from persons not related to the Temporary Worker who have agreed that the references they provide may be disclosed to the Client;

9.1.3 and has taken all reasonably practicable steps to confirm that the Temporary Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

10 TERMINATION

10.1 The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates:-

10.1.1 within four hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours; or

10.1.2 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 Employment Business within 48 hours of the termination of the Assignment.

10.2 Any of the Client, the Employment Business or the Temporary Worker may terminate an Assignment at any time without prior notice and without liability. In particular, the Employment Business may terminate any Assignment if the Client commits a material breach of any of its obligations under these Terms.

10.3 The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.

10.4 The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and shall terminate the Assignment under the provisions of clause 10.2.

11 STRIKES

11.1 The Employment Business will not knowingly provide a Temporary Worker to perform:-

11.1.1 the duties normally performed by a worker who is taking part in a strike or other industrial action ("the First Worker"); or

11.1.2 the duties performed by any other worker employed by the Client and who is assigned by the Client to perform the duties normally performed by the First Worker.

11.2 The Client will not request the Employment Business to provide a Temporary Worker(s) in the circumstances described in clause 11.1 above.

11.3 The Client shall indemnify and keep indemnified the Employment Business in full against any and all costs, claims or liabilities incurred by the Employment Business arising out of any breach of this clause 11.

12 RELATIONSHIP BETWEEN THE PARTIES

12.1 Nothing herein shall constitute the relationship of employer/employee or any partnership between the Client and the Employment Business, the Client and the Temporary Worker(s) or the Employment Business and the Temporary Worker(s). Any Temporary Worker(s) supplied by the Employment Business under these Terms shall be engaged under a contract for services.

12.2 Where the Employment Business has given notice to the Client that these Terms apply, the Employment Business will operate as an employment business in relation to the Client and the Temporary Worker.

12.3 Nothing contained in these Terms or any other contract between the Employment Business and the Client for the supply of a Temporary Worker(s) to the Client is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party.

13 WAIVER

13.1 Failure or delay by the Employment Business in enforcing or partially enforcing any provision of these Terms is not a waiver by the Employment Business of any of its rights.

13.2 Any waiver by the Employment Business of any breach by the Client is not a waiver of any subsequent breach.

14 LEGISLATION

14.1 The Employment Business is an equal opportunities organisation and is committed to providing equal opportunities to its Temporary Workers. This means that all Temporary Workers and other individuals dealing with the Employment Business will receive equal treatment regardless of race, colour, ethnic or national origins, religion or belief, sex, marital status, age, sexual orientation or disability. The Client acknowledges this policy and agrees to operate its business in accordance with equal opportunities.

14.2 The Employment Business recognises its obligations under the Data Protection Act 1998 ("DPA") in relation to processing personal data and complies with the requirements of the DPA in the operation of its business. The Client acknowledges it has responsibilities under the DPA and undertakes to comply with the DPA in relation to any data concerning a Temporary Worker, howsoever such data comes into the possession of the Client. The Client shall indemnify and keep the Employment Business indemnified in full against any and all costs, claims, damages, fines, penalties or liabilities incurred as a result of a breach of this clause by the Client.

14.3 These Terms and any other contract between the Employment Business and the Client are subject to English Law and the exclusive jurisdiction of the English Courts.

14.4 The various provisions and sub-provisions of these Terms are severable and if any provision or identifiable part of it is held to be unenforceable by any Court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remainder of these Terms.

15 ADVERTISING

15.1 The Client authorises the Employment Business to advertise, as may be necessary, to find Temporary Worker(s) for any position, details of which the Client has provided to the Employment Business.

15.2 The cost of advertising in the national or local press, or any other media, shall be payable by the Client in full within fourteen days of the date of any invoice raised by the Employment Business, providing the Client has agreed to the advertising.

15.3 The authority granted by the Client in 15.1 may be withdrawn at any time by giving 3 months' notice in writing to the Employment Business.

THE FOLLOWING ADDITIONAL TERMS RELATE TO THE SUPPLY OF TEMPORARY WORKERS AS DRIVERS OF "O" LICENSED VEHICLES (hereinafter called "the Drivers")

16 Temporary Drivers are supplied by the Employment Business on the sole understanding that the Client holds an Operator's Licence under the Transport Act 1968 when required.

17 As far as is possible, the Employment Business will check references of Drivers and will examine driving licences and permits. Notwithstanding this, the Client agrees to take direct responsibility for all statutory duties where applicable in respect of driving licences and permits, Drivers' hours and records, the issue and collection of tachograph cards, maintenance and safety of vehicles, Health & Safety Regulations and Road Traffic and liability insurances, including but not limited to fully comprehensive insurance for the vehicle to be driven and its contents.

18 The Client shall on request permit the Employment Business to inspect its operator's licence and policies of insurance for the vehicles to be driven by the Drivers.

19 To assist Clients in complying with the relevant provisions of the Transport Act, the Employment Business agrees to provide the Client upon request with such information as is available to the Employment Business about any driving assignments carried out by the Driver in the seven days immediately preceding the commencement of an Assignment with the Client, provided the Driver shall have worked for a client of the Employment Business during those seven days.

Company Name

Client Name

Signed for and on behalf of the Client Date.....