

## TERMS 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 or introduced;
- 'The Employment Business'** means Kelburn Recruitment Ltd (a P.E.S. Associates/Annabelle Staff Bureau/Metro Technical Services/LSS Industrial/East European Personnel/Kelburn Finance of Kelburn House, 7-19 Mosley Street, Newcastle-upon-Tyne, NE1 1YE;
- 'Engagement'** means the engagement, employment or use of the Temporary Worker directly by the Client 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, 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;
- 'Temporary Worker'** means the individual who is introduced by the Employment Business to render services to the Client;
- 'Transfer Fee'** means the fee payable in accordance with clause 7.1(b) below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- 'Relevant Period'** means the longer period of either 14 weeks from the first day on which the Temporary Worker worked for the Client, or 8 weeks from the day after the Temporary Worker was last supplied by the Employment Business to the Client
- The 'first day' will be the first occasion on which a Temporary Worker is supplied to work for the Client or the first day of an Assignment where there has been more than 42 days since the end of any previous Assignment means the fee payable in accordance with clause 7.2(b) below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- 'Introduction'** means
- (i) the Client's interview of a Temporary Worker in person or by telephone, following the Client's instruction to the Employment Business to supply a Temporary Worker; or
- (ii) the passing to the Client of a curriculum vitae or information which identifies the Temporary Worker, and which leads to an 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 Client or any third party but excludes the monetary benefits of a company car when calculating the Employment Business' fee.

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 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, 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 a Director of 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 the hourly charges of the Employment Business. The charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour). The charges comprise mainly the Temporary Worker's pay, including holiday pay, but also include the Employment Business' commission, employer's National Insurance contributions 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 Refunds are payable in respect of the charges of the Employment Business in accordance with clause 10.1 of these terms.
- 3.3 The charges are invoiced to the Client on a weekly basis and are payable within 7 days. The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 3% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

### 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; whether the Temporary Worker will be employed by the Employment Business under a contract of service or apprenticeship or a contract for services; 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.

### 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 reasonable 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's obligation to pay the charges in respect of the hours worked.
- 5.3 The Client 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 Client should apply the provisions of 10.1 below.

### 6. PAYMENT OF THE TEMPORARY WORKER

- 6.1 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 In the event of the Engagement of a Temporary Worker supplied by the Employment Business either (1) directly by the Client or (2) by the Client pursuant to being supplied by another employment business, within the Relevant Period the Client shall be liable to either:
- a Subject to electing, upon giving 7 days' notice, an extended period of hire of the Temporary Worker being 16 weeks during which the Employment Business shall be entitled to the charges set out in clause 3.1 above for each hour the Temporary Worker is so employed or supplied; or
- b A Transfer Fee calculated as follows: 15% of the Remuneration applicable during the first 12 months of the Engagement of Applicants. If the actual level of earnings is not known, the Fee will be based on a reasonable estimate of the earnings. 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.
- 7.2 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 of the Temporary Worker by the Client either directly or pursuant to being supplied by another employment business the Client shall be liable to either:
- a Subject to electing upon giving 7 days' notice, a period of hire of the Temporary Worker being 16 weeks during which the Employment Business shall be entitled to the charges set out in clause 3.1 above for each hour the Temporary Worker is so employed or supplied; or
- b An Introduction Fee calculated as for the Transfer Fee in clause 7.1(b). 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.
- 7.3 In the event that the Engagement of the Temporary Worker is for a fixed term of less than 12 months, the fee in clause 7.1(b) or 7.2(b), calculated as a percentage of the Remuneration, will apply pro-rata subject to minimum fees of 50 per cent of the fee calculated in accordance with 7.1(b) or 7.2(b). If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Temporary Worker within 3 months of the termination of the first Engagement the Client 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. No refund of the Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 7.4 In the event that 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 the Relevant Period the Client shall be liable to pay a Transfer Fee calculated as in clause 7.1(b). 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.

### 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 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.
- 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 Employers' 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.
- 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.
- 8.5 The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any 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 Applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill, or the work 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 reasonable practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If the Agency 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. The Employment Business will not charge for the time worked by the Temporary Worker up to a maximum of four hours from the commencement of the Engagement provided that notification is confirmed in writing within 48 hours of the commencement of the Engagement.
- 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.
- 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. LAW

- 11.1 These Terms are governed by the law of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.

## TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR CONTRACT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT

### 1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

- 'Applicant'** means the person introduced by the Agency to the Client for an Engagement, including any officer or employee of the Applicant if the Applicant is a limited company, and members of the Agency's own staff;
- 'Client'** means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to which the Applicant is introduced;
- 'Agency'** means Kelburn Recruitment Ltd (a P.E.S. Associates/Annabelle Staff Bureau/Metro Technical Services/LSS Industrial/East European Personnel/Kelburn Finance of Kelburn House, 7-19 Mosley Street, Newcastle-upon-Tyne, NE1 1YE;
- 'Engagement'** means the engagement, employment or use of the Applicant by the Client or any third party on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement, directly or through a limited company of which the Applicant is an officer or employee;
- 'Introduction'** means
- (i) the Client's interview of an Applicant in person or by telephone, following the Client's instruction to the Agency to search for an Applicant; or
- (ii) the passing to the Client of a curriculum vitae or information which identifies the Applicant and which leads to an Engagement of that Applicant;
- '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 Applicant for services rendered to or on behalf of the Client but excludes monetary benefits of a company car provided by the client when calculating the Agency's fee. Where an Applicant is engaged on a part-time basis, the base salary will be calculated on a full-time basis.

1.2 Unless the context requires otherwise, references to the singular include the plural.

1.3 The headings contained in these Terms of Business 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 Client and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of, an Applicant, or the passing of any information about the Applicant 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 other 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 Agency 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. NOTIFICATION AND FEES

- 3.1 The Client agrees:
- a To notify the Agency immediately of any offer of an Engagement which it makes to the Applicant;
- b To notify the Agency immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the Remuneration to the Agency; and
- c To pay the Agency's fee within 7 days of the date of invoice.
- 3.2 Except in the circumstances set out in clauses 3.3 and 5.1 below, no fee is incurred by the Client unless and until the Applicant accepts the offer of the Engagement, whether such an offer shall be conditional or not, when the Agency will render an invoice to the Client for its fees.
- 3.3 The fee payable to the Agency by the Client for 'Register Search/ Selection Project Service' for an Introduction resulting in an Engagement is the amount equal to (rate to be agreed) of the Remuneration applicable during the first 12 months of the Engagement of an Applicant. 'Executive Search Service' for an Introduction resulting in an Engagement is the amount equal to (rate to be agreed) of the Remuneration applicable during the first 12 months of the Engagement of an Applicant but excludes the monetary benefits of a company car provided by the client when calculating the Agency's fee. VAT will be charged on the fee if applicable.
- 3.4 In the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.3 will apply pro-rata subject to a minimum of 50% of the fees set out in 3.3 above. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Applicant within 6 calendar months from the date of termination of the first Engagement the Client 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 the sooner.
- 3.5 If the Client subsequently engages or re-engages the Applicant within the period of 6 calendar months from the date of termination of the Engagement or withdrawal of the offer, a full fee calculated in accordance with clause 3.3 above becomes payable.
- 3.6 The Agency reserves the right to charge interest on invoiced amounts unpaid for more than 28 days at the rate of 3% above the base rate from time to time of the Bank of England from the date date until the date of payment.

### 4. REFUNDS

- 4.1 If the Engagement terminates before the expiry of (period to be agreed) from the commencement of the Engagement (except where the Applicant is made redundant) and the fee has been paid within (period to be agreed) of the date of invoice, then the Agency will endeavour to provide a replacement Applicant. The fee for the replacement Applicant will be levied in accordance with clause 3.3 above except the original fee will be deducted in full. Otherwise no refunds are payable.

### 5. CANCELLATION FEE

- 5.1 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency a minimum fee of 75% of the fees payable under clause 3.3 above.

### 6. INTRODUCTIONS

- 6.1 Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Agency which results in an Engagement with that third party within 6 months of the Introduction renders the Client liable to payment of the Agency's fee as set out in clause 3.3 with no entitlement to any refund.
- 6.2 An introduction fee calculated in accordance with clause 3.3 will be charged in relation to any Applicant engaged as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 6 months from the date of the Agency's Introduction.
- 6.3 Where the amount of the actual Remuneration is not known the Agency will charge a fee calculated in accordance with clause 3.3 on the minimum level of remuneration applicable for the position in which the Applicant has been engaged with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally for such positions.
- 6.4 In the event that any employee of the Agency with whom the Client has had personal dealings accepts an Engagement with the Client within 3 months of leaving the Agency's employment, the Client shall be liable to pay an introduction fee to the Agency in accordance with clause 3.3.

### 7. SUITABILITY AND REFERENCES

- 7.1 The Agency endeavours to verify the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant has the experience, training, or qualifications which the Client considers necessary as well as any authorisation which the Client considers may be required by law or by any professional body; and that the Applicant is willing to work in the position which the Client seeks to fill.
- 7.2 At the same time as proposing an Applicant to the Client the Agency shall inform the Client of such matters in clause 7.1 as they have obtained confirmation of. 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 Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the Client.
- 7.3 The Agency endeavours to take all such steps as are reasonable practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 7.4 The Agency endeavours to take all such steps as are reasonable practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.
- 7.5 Notwithstanding clauses 7.1, 7.2, 7.3 and 7.4 above the Client shall satisfy itself as to the suitability of the Applicant and the Client shall take up any references provided by the Applicant to it or the Agency before engaging such Applicant. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.

- 7.6 To enable the Agency to comply with its obligations under clauses 7.1, 7.2, 7.3 and 7.4 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do, the location and hours of work, the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position, and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered, the intervals of payment of remuneration and the length of notice that the Applicant would be entitled to give and receive to terminate the employment with the Client.

### 8. SPECIAL SITUATIONS

- 8.1 Where the Applicant is required by law, or any professional body, to have any qualifications or authorisations to work in the position which the Client seeks to fill, or the work 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 reasonable practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonable practicable steps to confirm that the Applicant is suitable for the position. If the Agency 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.

### 9. LIABILITY

- 9.1 The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of the Agency to introduce any Applicant.

### 10. LAW

- 10.1 These Terms are governed by the law of England and Wales and are subject to the exclusive jurisdiction of the Court of England and Wales.