



## Terms of Business for the Supply of Temporary Workers (July 2018)

### 1. DEFINITIONS & INTERPRETATION

- 1.1. In these Terms of Business (**Terms**), the following definitions apply:
  - 1.1.1. **The Company** means, Paramount Construction Recruitment Ltd (registered in England No. 10155169) of Postmill House, Windmill Lane, Wheatley, Oxfordshire, England, OX33 1TA.
  - 1.1.2. **Temporary Worker** means a Temporary Worker who is engaged by the Client under a temporary employment contract or an employee of an umbrella company;
  - 1.1.3. **Assignment** means the temporary role which the Temporary Worker shall undertake for the Client;
  - 1.1.4. **Assignment Schedule** means the document, email or text message confirming details of the Assignment and Temporary Worker which is issued to the Client by The Company;
  - 1.1.5. **AWR** means The Company Workers Regulations 2010;
  - 1.1.6. **Client** means the business to which the Temporary Worker is Introduced by The Company including, where the Client is a corporate entity, any holding, subsidiary or associated company;
  - 1.1.7. **Commission** means the charges made by The Company for the supply of the Temporary Worker.
  - 1.1.8. **Conduct Regulations** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);
  - 1.1.9. **Contractor** means a limited company Temporary Worker which provides the Services through its directors, employees or Subcontractors;
  - 1.1.10. **Engagement** means the engagement, employment or use of the Temporary Worker by the Client on any basis whatsoever directly or through any party other than The Company. Engage, Engages and Engagement shall be interpreted accordingly;
  - 1.1.11. **Introduction** means (i) the provision by The Company to the Client of a CV or other information which expressly or impliedly identifies a Temporary Worker; (ii) the arrangement of an interview or meeting between the Client and a Temporary whether face to face, by telephone or by web/video conference; or (iii) the supply of a Temporary Worker; and "Introduces" and "Introduced" shall be interpreted accordingly;
  - 1.1.12. **Payment Terms** means those shown on The Company's invoice;
  - 1.1.13. **Relevant Period** means the period defined in regulation 10(5) of the Conduct Regulations;
  - 1.1.14. **Restricted Period** means the later of (i) six months from the end of the Assignment or (ii) twelve months from the most recent Introduction of the Temporary Worker to the Client;
  - 1.1.15. **Remuneration** includes gross basic salary or fees, anticipated bonus and commission earnings, allowances, inducement payments, and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Worker for services provided to or on behalf of the Client or any third party.
  - 1.1.16. **SDC** means supervision, direction or control as to the manner in which the Temporary Worker provides the Services;
  - 1.1.17. **Services** means the work to be carried out by the Temporary Worker during the course of the Assignment;
  - 1.1.18. **Subcontractor** means a self-employed individual, engaged by a Contractor to carry out the Services;
  - 1.1.19. **Temporary Worker** means the individual or limited company

Introduced or supplied to the Client, including any Contractor, Subcontractor or the Company Worker;

1.1.20. **Transfer Fee** means the fee payable pursuant to clause 8.1 below in accordance with Regulation 10 of the Conduct Regulations.

### 2. BASIS OF CONTRACT

- 2.1. These Terms, incorporating the Assignment Schedule, comprise the entire agreement between The Company and the Client for the supply of a Temporary Worker to the Client and shall prevail over any alternative terms which are proposed by the Client.
- 2.2. These Terms shall be deemed to have been accepted by the Client upon signing the Terms to confirm acceptance, the Client acting upon an Introduction, Engaging the Temporary Worker or otherwise utilising the Temporary Worker's services, whichever occurs first.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such a variation are agreed between a director of The Company and the Client, 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.
- 2.4. For the purposes of the Conduct Regulations, The Company shall be acting as an employment agency introducing Temporary Workers to the Client for a directly employed Assignment with the Client.
- 2.5. Unless The Company notifies the Client that a Temporary Worker has opted-out of the Conduct Regulations, the Conduct Regulations shall be deemed to apply to any Assignment carried out by a Temporary Worker.

### 3. CLIENT OBLIGATIONS

- 3.1. Where the Conduct Regulations apply to an Assignment, the Client shall provide to The Company all such information regarding the Assignment which is specified in Regulation 18 of the Conduct Regulations.
- 3.2. The Client will assist The Company in complying with The Company's duties under the Working Time Regulations 1998 (WTR) by supplying any relevant information about the Assignment requested by The Company and the Client will not do anything to cause The Company to breach its obligations under the WTR.
- 3.3. The Client shall advise The Company of any special health and safety matters about which The Company 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 also comply in all respects with all statutory provisions as are in force from time to time including, without limitation, the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other relevant by-laws, codes of practice and legal requirements.
- 3.4. The Client must:
  - 3.4.1. Provide a safe working environment for the Temporary Worker;
  - 3.4.2. Ensure that, where applicable, the Temporary Worker uses all necessary safety and personal protective equipment during the Assignment;
  - 3.4.3. Comply with all statutory provisions, by-laws, codes of practice and other legal obligations in respect of the Temporary Worker's health and safety whilst carrying out an Assignment; and
  - 3.4.4. Maintain records of any accident or injury affecting the Temporary Worker and provide copies of such records to The Company upon demand; and
  - 3.4.5. Unless otherwise agreed with The Company in writing, ensure that the Temporary Worker is insured under the Client's insurance policies for the duration of the Assignment.
- 3.5. The Client must not request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 3.6. The Client must notify The Company without delay if it is aware of any reason why it would be detrimental to the interests of the Temporary Worker to carry out the Assignment.
- 3.7. The Client must notify The Company immediately if it intends to Engage a

Temporary Worker, extend an Assignment or otherwise vary the Assignment in any way.

#### **4. PROVISION OF INFORMATION**

- 4.1. Where the Conduct Regulations apply to an Assignment, The Company shall provide to the Client all such information as is specified in Regulation 21 of the Conduct Regulations.
- 4.2. The Company shall provide an Assignment Schedule to the Client on commencement of the Assignment or as soon as possible thereafter.
- 4.3. Subject to clause 5.2, the Client shall be deemed to have provided SDC during the Assignment except where it provides written information to the contrary. The Client warrants that all such information shall be accurate in all respects and acknowledges that The Company shall place full reliance upon such information. The Client undertakes to notify The Company without delay if such information becomes inaccurate or out of date.

#### **5. TIMESHEETS**

- 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 a timesheet in a format specified by The Company verifying the time worked by the Temporary Worker during that week.
- 5.2. The Client is responsible for ensuring that the time shown on the Temporary Worker's timesheet is correct and that only duly authorised employees sign the timesheet and positively annotate it if the Client did not provide SDC for the work performed during the time signed for.
- 5.3. If the Client is unable to sign the Temporary Worker's timesheet because the Client disputes the time claimed, the Client shall inform The Company as soon as is reasonably practicable and shall co-operate fully and in a timely manner with The Company to enable The Company to establish what time, if any, was worked by the Temporary Worker.
- 5.4. Failure to sign the timesheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.
- 5.5. The Client acknowledges that The Company shall rely upon the Client's confirmation of the time worked by the Temporary Worker and the Client must not retrospectively adjust the time duly confirmed as having been worked by the Temporary Worker.
- 5.6. The Client shall not refuse to sign a timesheet on the basis that the Client is dissatisfied with the Services but may be entitled to terminate the Assignment in accordance with clause 9 below.

#### **6. CHARGES**

- 6.1. Subject to clause 11, except in the presence of manifest error, the Client shall make payment for the charges for the time worked as shown on the invoice within the Payment Terms shown on the invoice, without any right of set off, irrespective of whether it has provided SDC or otherwise.
- 6.2. The Company shall issue an invoice to the Client for the Charges each month and such invoice shall be payable within the Payment Terms. VAT shall be charged at the standard rate on all sums invoiced under these Terms.
- 6.3. The Company may increase the charges shown in Schedule One by giving 30 days written notice to The Client.
- 6.4. The Company may vary the Charges, by giving written notice to the Client, to reflect any additional cost in supplying the Temporary Worker as a result of the AWR or any statutory change.
- 6.5. There are no refunds or rebates payable in respect of the Charges and the Client shall pay the Charges without deduction or set off.
- 6.6. If an invoice is not paid within the Payment Terms, The Company may:
  - 6.6.1. terminate the supply of Temporary Workers to the Client without notice;
  - 6.6.2. pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation and interest on such invoiced amounts at the rate of 8% per annum above the base rate of the Bank of England from the due date until the date of payment; and
  - 6.6.3. refer the collection of such payment to a collection the Company or legal representatives and, if so referred, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges

and disbursements incurred by The Company in recovering payment from the Client.

#### **7. RESPONSIBILITY FOR PAYMENTS**

The Client is responsible for making payments to the Temporary Worker and, where applicable, shall ensure that PAYE Income Tax and National Insurance Contributions are deducted from such payments pursuant to sections 44-47 of ITEPA 2003.

#### **8. TRANSFER FEES**

- 8.1. The Client shall pay a Transfer Fee ("Transfer Fee") if (i) the Client Engages a Temporary Worker Introduced by The Company or (ii) introduces the Temporary Worker to a third party and such introduction results in an engagement of the Temporary Worker by the third party and:
  - 8.1.1. Where the Temporary Worker has commenced an Assignment and has not opted out of the Conduct Regulations, such Engagement takes place within the Relevant Period; or
  - 8.1.2. Where the Temporary Worker has commenced an Assignment and has opted out of the Conduct Regulations or where the Temporary Worker has not commenced an Assignment, such Engagement takes place within the Restricted Period.
- 8.2. The Transfer Fee shall be a sum equivalent to 50% of the annual Commission payable to The Company for the supply of the Temporary Worker.
- 8.3. No refund of the Transfer Fee will be due to the Client if the Engagement subsequently terminates.

#### **9. TERMINATION OF THE ASSIGNMENT**

- 9.1. Subject to clauses 9.2, 9.3 and 9.5, either party may terminate an Assignment at any time by giving the notice specified in the Assignment Schedule or, if no period of notice is specified, at any time without notice.
- 9.2. Irrespective of any notice period specified in the Assignment Schedule, either party may terminate an Assignment without notice if the other party has committed a serious or persistent breach of its obligations under this Agreement, if the other party undergoes a change of control or becomes insolvent.
- 9.3. The Company shall have no liability to the Client if the Temporary Worker fails to give the agreed notice, if any, upon terminating the Assignment.
- 9.4. The Company may terminate an Assignment without notice if it becomes aware of any reason why the Temporary Worker is unsuitable to work in the Assignment.
- 9.5. If the Client, acting reasonably, is dissatisfied with the Services, the Client may on the first day terminate an Assignment within the first 4 hours if the booking was for more than 7 hours (or within the first 2 hours if the booking was for 7 hours or less) and, provided that such termination is confirmed by the Client in writing within 48 hours, the Employment Business shall cancel the Charges for such period.

#### **10. CONFIDENTIALITY AND DATA PROTECTION**

- 10.1. All information relating to a Temporary Worker is confidential and provided solely for the purpose of arranging an Assignment. Such information must not be used for any other purpose nor divulged to any third party and the Client shall comply with the Data Protection Act 1998 when receiving and processing such data.
- 10.2. Save to the extent that The Company is required to disclose such information to the Temporary Worker, The Company shall keep confidential any information provided by the Client for the purpose of complying with the AWR and shall not use it for any other purpose.

#### **11. LIABILITY**

- 11.1. Subject to clause 11.2, the Client shall be responsible for the supervision, direction and control of a Temporary Worker during the course of their Assignment.
- 11.2. The Client shall not, nor shall it permit any other person to, exercise SDC or assert the right thereof in respect of:
  - 11.2.1. A Subcontractor at any time; or
  - 11.2.2. Any other Temporary Worker where the Client has notified The

Company that SDC shall not apply to the Assignment pursuant to clause 4.3.

11.3. Nothing in clause 11.2 shall:

11.3.1.prevent the Client from periodically checking that the Services have been performed to the required standard;

11.3.2.negate the Client’s obligations pursuant to clause 3.4; or

11.3.3.render The Company liable for the performance of the Services.

11.4. The Company does not supervise, direct or control any Temporary Worker at any time and therefore shall not be liable for any defect in the Services or for any act or omission of a Temporary Worker.

11.5. Although The Company shall not be liable to the Client or any third party for any defect in the Services, the Client may have direct recourse against a Contractor pursuant to a third party right in The Company’s contract with the Contractor. The Company shall provide details of any such third party right to the Client upon request.

11.6. The Company shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise for failing to supply a Temporary Worker, for terminating an Assignment, for any claim for loss of profit or business, or for any indirect or consequential loss arising out of or in connection with these Terms.

11.7. Subject to clause 11.8, the aggregate liability of The Company to the Client in respect of any claim or series of claims arising out of or in connection with these Terms shall be limited to 15% of the Charges paid by the Client in relation to the relevant Temporary Worker in the three month period immediately prior to such claim arising or, if there was no supply of a Temporary Worker, the sum of £500.

11.8. The Company does not exclude liability for death or personal injury arising from its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.

11.9. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.

11.10. Any claim which the Client may bring against The Company pursuant to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.

11.11. The Client shall indemnify and keep indemnified The Company against all losses, damages or claims suffered or incurred by The Company as a result of the Client’s breach of contract, negligence (or any other tortious act), breach of statutory duty or otherwise.

11.12. The Client shall indemnify and keep indemnified The Company against any demand or assessment for PAYE income tax or National Insurance contributions (including any penalties) suffered or incurred by The Company where the Client has incorrectly notified the The Company that a Temporary Worker is not subject to SDC.

**12. BRIBERY & ANTI-CORRUPTION**

12.1. The Client and The Company each warrant that they shall:

12.1.1.Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

12.1.2.Promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms.

**13. GENERAL PROVISIONS**

13.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of The Company. The Company may assign any monies owing from the Client to a third party including, without limitation, recruitment finance or factoring company.

13.2. If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the Terms, which shall continue to be valid to the fullest extent permitted by law.

13.3. No failure or delay by a party in exercising any right or remedy under the

Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.4. The Terms shall be interpreted in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the interpretation or performance of these Terms.

Name of Client .....

Signed on behalf of the Client.....

Please print name.....

Position in Client company.....

Date of signature...../...../20.....

NB. Please note that in the absence of these terms being signed and returned, the signing of a timesheet or an electronic record or time stamp system in respect of Temporary Workers attendance will constitute acceptance of the terms above.

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.