

TERMS OF BUSINESS – TEMPORARY STAFF

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;
- "**The Employment Business**" means Options Employment (Midlands & West) Limited and/or any subsidiary or associated company (as defined by the Companies Act 1985) of Options Employment (Midlands & West) Limited;
- "**Engagement**" means any use of the Temporary Worker on a temporary basis, whether under any contract, agency, license, franchise or partnership arrangement; or any other engagement, but not such use as entails the Temporary Worker becoming an employee of the Client;
- "**Temporary Worker**" means the person (including where appropriate, a body corporate) whose services are supplied by the Employment Business to the Client;
- "**Introduction**" 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 following the passing to the Client of a curriculum vitae or other information which identifies the Temporary Worker, and which leads in either case to an Engagement of that Temporary Worker by the Client.
- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.4. The Employment Business acts as an employment business (as defined by the Conduct of Employment Agencies and Employment Business Regulations 2003) for the purposes of this contract.

2. THE CONTRACT

- 2.1. These Terms govern 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 an Introduction to or the Engagement of the Temporary Worker.
- 2.2. No variation or alteration to these Terms shall be valid unless approved by a Director of the Employment Business in writing. Any such variation or alteration shall refer specifically to this clause.
- 2.3. 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, even if such terms are put forward by the Client subsequent to these Terms being brought to the Client's attention.
- 2.4. The Employment Business will decline to accept any instructions to source Temporary Workers where it believes that instruction to amount to unlawful discrimination.

3. CHARGES

- 3.1. The Client agrees to pay the hourly charges of Employment Business as notified at the commencement of the Assignment and as may be varied from time to time during the Assignment. The charges are calculated according to the number of hours worked by the Temporary Worker (rounded up to the nearest quarter hour). The charges are comprised mainly of the Temporary Worker's remuneration (including Holiday Pay under the Working Time Regulations 1998) but also include the Employment Business' fees, 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 is payable on the entirety of these charges.
- 3.2. The charges are invoiced to the Client on a weekly basis and are payable in full by the Client within 14 days of the date of invoice without abatement, set-off or deduction. The parties further agree that these Terms govern a contract to which the Late Payment of Commercial Debts (Interest) Act 1998 applies and that the Employment Business is entitled to interest thereunder on all sums due from the Client. In the event that the Client fails

to make payment in full in accordance these Terms, the Client acknowledges that the Employment Business will be entitled to treat the failure to make payment as evidence of the Client's insolvency for the purpose of s123 of the Insolvency Act 1986, and/or to withdraw forthwith and without liability the services of any Temporary Workers then being supplied to the Client.

- 3.3. The Client acknowledges the importance to the Employment Business of cash flow considerations and that to ensure its continued operation the Employment Business remunerates its Temporary Workers (including the Temporary Worker engaged by the Client under these Terms) by reference to the time sheets completed by the Temporary Worker. Accordingly, and subject to clause 3.4 below, the following provisions shall apply;
- 3.3.1 Each and every time sheet signed by an employee, officer or representative of the Client shall be conclusive evidence of the number of hours worked by the Temporary Worker and shall be conclusive evidence of the Client's satisfaction with the tasks for which he was engaged during the said number of hours, the standard of his workmanship and his competence.
- 3.3.2 A certificate, signed by a director or company secretary of the Employment Business shall be conclusive evidence of the total sum due from the Client to the Employment Business in respect of the Temporary Worker in relation the Engagement as at the date of the said certificate.
- 3.4. Clause 3.3.1 shall be of no effect if and only if within 7 days of an invoice being rendered by the Employment Business to the Client, the Client makes specific complaint in writing, to the Employment Business' registered office. The said complaint shall be effective only if it;
- 3.4.1 refers to the Client's rights under this clause;
- 3.4.2 cites the name of the Temporary Worker, if possible.
- 3.4.3 Sets out with reasonable and sufficient particularity the nature of the matters complained of, the date and time on which they occurred, and the names of any witnesses or other parties thereto.
- 3.4.4 sets out the amount which is in dispute and which the Client intends to withhold or set off as a result of the complaint particularised in compliance with clause 3.4.3 above, and indicates how that amount is made up.
- 3.4.5 Indicates any further steps which it reasonably requires the Employment Business to take in order to obviate the matters complained of.
- 3.5. Clause 3.3.2 shall be without prejudice to either parties' right to subsequently open up, review, revise or seek redetermination of the sum in fact due from the Client to the Employment Business in respect of the Engagement or Assignment (as the case may be) of the Temporary Worker by way of adjudication, arbitration, litigation or otherwise, save that it shall be a condition precedent to any such a reference or claim as initiated by the Client that it shall pay over in cleared funds the sum stated on the face of any certificate rendered by the Employment Business under clause 3.3.2 prior to such reference or claim.
- 3.6. Time sheets under clause 3.3.1 and certificates under clause 3.3.2 shall be binding (in accordance with these Terms) as to all matters of fact, save insofar as they contain fraud or manifest error.
- ### 4. TIMESHEETS
- 4.1. 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 or is completed before the end of a week) the Client shall sign the Employment Business' time sheet verifying the number of hours worked by the Temporary Worker during that week. The Client acknowledges the importance to the Employment Business of the time sheets and of the contractual nature of the time sheets.
- 4.2. Subject to the terms of clause 3.4 above, signature of a time sheet by the Client shall be conclusive evidence in all proceedings (including but not limited to litigation, adjudication and arbitration) of the Client's satisfaction with the services provided by the Temporary Worker and the number of hours worked. Failure to sign the time sheet does not absolve the

Client's obligation to pay the charges in respect of the hours stated to be worked.

5. REMUNERATION

The Employment Business assumes responsibility for payment of the Temporary Worker's remuneration (including Holiday Pay under the Working Time Regulations 1998) and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker. However, nothing in these Terms shall make the Temporary Worker an employee of either the Client or the Employment Business.

6. INTRODUCTION FEES

- 6.1 This clause applies to the direct engagement by the Client of a Temporary Worker introduced by the Employment Business where such engagement takes place within 8 months of the end of the Assignment or 14 months after its commencement, whichever is the later. It also applies to the introduction by the Client of a Temporary Worker to any third party resulting in the engagement (or, where applicable, if the Temporary Worker has become incorporated under a limited company, the engagement of that limited company) by that third party, and to the Temporary Worker being supplied to the Client via another employment business in either case within the 4 weeks after the end of the Assignment.
- 6.2 In the circumstances described in clause 6.1 above, the Client may at its election either pay the Employment Business an introduction fee in accordance with clause 6.3 below or commit to engage the Temporary Worker as such for a further period in accordance with clause 6.4 below. Where following written notice by the Employment Business, the Client fails to make such election within 7 days following service of the said notice, the right of such election shall pass irrevocably to the Employment Business who may make such election by written notice.
- 6.3 The introduction fee will be calculated based on the remuneration then paid to the Temporary Worker, in accordance with the accompanying scale of fees for permanent engagements. Where the Client fails to inform the Employment Business of the remuneration, the introduction fee will be calculated by multiplying the hourly charge of the Employment Business for the Temporary Worker's services by 300. No rebate of the introduction fee will be paid in the event that the engagement subsequently terminates. VAT is payable in addition to any fee due.
- 6.4 Alternatively the Client may continue to use the services of the Temporary Worker on these Terms for the period of 26 months after which time the Client is entitled to engage the Temporary Worker directly and free of charge.
- 6.5 In circumstance where the Client has introduced a Temporary Worker to any third party resulting in the engagement of the Temporary Worker by that Third Party (either within 14 months of the start of the first assignment or within 8 months of the end of any assignment, whichever period ends later) the Employment Business is not obliged to offer the Client a choice between the transfer fee and an extended period of hire and can, at its absolute discretion, charge a transfer fee [in accordance with clause 6.3 above].
- 6.6 Such sums as become due under clause 6 may be the subject of a certificate issued by the Employment Business under clause 3.3.2 above. Such sums as become due under clause 6 may be the subject of a certificate issued by the Employment Business under clause 3.3.2 above.

7. SUITABILITY OF THE TEMPORARY WORKER AND THE LIABILITY OF THE EMPLOYMENT BUSINESS

- 7.1 The Client must supply to the Employment Business before any Introduction the following information in writing:-
- 7.1.1 the Client's identity and the nature of its business;
- 7.1.2 the date on which the Client requires a Temporary Worker to commence work, the duration or likely duration of the work and the length of any notice periods;
- 7.1.3 the position for which a Temporary Worker is sought, including the type of work the Temporary Worker would be required to do, the location at which and the hours during which he would be required to do it, and any risks to the health or safety of the Temporary Worker known to the Client and the steps which the Client has taken to prevent or control such risks;

- 7.1.4 the experience, training, qualifications and any authorisations which the Client considers are necessary or required by law or any professional body for a Temporary Worker to possess in order to work in the relevant position, and the ability which the Client considers is necessary for a Temporary Worker to possess in order to do so successfully;
- 7.1.5 any expenses payable by or to the successful Temporary Worker;
- 7.2 Whilst reasonable effort is made by the Employment Business to ensure appropriate standards of skill, 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, delay or disruption arising from any of the following; of the following;
- 7.2.1 provision of a Temporary Worker;
- 7.2.2 the failure to provide (or replace) any Temporary Worker for all or part of the period of booking;
- 7.2.3 the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker in the course of the Assignment;
- 7.2.4 any negligence or breach of duty on the part of the Employment Business in the selection of the Temporary Worker
- 7.2.5 the failure to provide (or replace) any Temporary Worker for all or part of the period of the booking;
- 7.2.6 the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker in the course of the Assignment;
- 7.3 Nothing in clause .2 shall exclude the Employment Business' liability for death or personal injury arising from its own negligence. Nothing in clause 7.2 shall exclude the Employment business' liability for death or personal injury arising from its own negligence.
- 7.4 The Client confirms that it is aware of any requirements imposed by law or any professional body which must be satisfied by it and/or the Temporary Worker to enable the Temporary Worker to supply services to the Client in the capacity requested.
- 7.5 Temporary Workers are engaged by the Employment Business under contracts for services and are not employees of the Employment Business. They are under the sole 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 wilful, negligent or otherwise as though he were employed by the Client. The Client will also comply in all respects with all statutes including for the avoidance of doubt, the Health and Safety at Work Act 1974, the Working Time Regulations 1998, the Data Protection Act 1998 and all other by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff, including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments. The Client will assist the Employment Business to comply with its duties under the Working Time Regulations by supplying any relevant information about the Assignment which may reasonably be requested by it 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.
- 7.6 The Client will take all practicable steps to ensure that no Temporary Worker is treated unfavourably by any person under its control on the grounds of the Temporary Worker's race, sex, disability, religion/belief or sexual orientation.
- 7.7 In respect of all claims by any third party caused by, or resulting from, or arising in connection with, the act, omission, default or negligence of the Temporary Worker, and shall further indemnify the Employment Business in respect of charges or damages in connection therewith, howsoever arising (including but not limited to such as arise under statute, common law, court order or notice by a government department or local authority or officer).The Client shall indemnify and keep indemnified the Employment Business in respect of all claims by any third party caused by, or resulting from, or arising in connection with, the act, omission, default or negligence of the Temporary Worker, and shall further

indemnity the Employment Business in respect of all costs, charges or damages in connection therewith, howsoever arising (including but not limited to such as arise under statute, common law, court order or notice by a government department or local authority or officer).

8. ADVERTISING

In order to source suitable Temporary Workers the Employment Business may advertise the positions the Client has instructed the Employment Business to fill.

9. TERMINATION

9.1 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:-

- (a) within four hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours; or
- (b) within two hours for bookings of seven hours or less and also provided that notification of the unsuitability of the Temporary Worker and of the requirement to remove him is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

9.2 Any of the Client, the Employment Business or the Temporary Worker may terminate an Assignment at any time without prior notice and without liability save for sums accrued up to the point of such termination.

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

10. LAW

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.

11. VARIATION OF TERMS

In the event that the Employment Business and the Client agree to a variation of the terms herein the Employment Business shall, as soon as is reasonably practicable, provide the Client with a document detailing the variation and stating the date on or after which it is agreed that the reviewed terms are to take effect.

12. DATA PROTECTION ACT

The client agrees that the Employment Business may make such enquiries and searches and obtain such references as it considers necessary from any person, firm or company including any credit reference agency (which will keep a record of any search made and will share that information with other businesses). The Employment Business may also make enquiries about the principal directors with a credit reference agency.

13. ADJUDICATION

13.1 In relation to all such references to adjudication (whether under the Housing Grants, Construction and Regeneration Act 1998 or otherwise), this clause 13 shall apply.

13.2 These Terms specifically incorporate by reference the "TEC BAR Adjudication Rules 2001" applicable to Notices of Adjudication issued after 18 November 2001 ("the adjudication rules").

13.3 13.3.1 The adjudication rules shall govern the adjudication of disputes under or relating to these Terms in all respects, subject to the following amendments; Clause 15 of the adjudication rules shall be struck out and replaced with the following words;

"15.1 The costs of the adjudication (including the costs of the parties from the date of the notice to refer up to and including the date of the Adjudicator's Decision) shall be borne by the Client (as defined in the Terms).

15.2 The adjudicator shall summarily assess the said costs at the end of the hearing of the adjudication or the close of written submissions. Unless the adjudicator orders otherwise, the said summary assessment shall be on the standard basis (as defined

in Part 44 of the Civil Procedure Rules). The assessed amount and a brief statement of the reasons for the amount assessed shall be set out in the Adjudicator's Decision.

15.3 Unless the adjudicator states otherwise in his Decision, the said assessed costs shall be paid by the Client to the Employment Business within 14 days of the publication of the Decision. Without prejudice to its rights at common law, the Employment Business may set-off or deduct the said assessed costs from any sum awarded to the Client by the adjudicator."

13.3.2 Clause 16.1 of the adjudication rules shall be struck out in its entirety and shall be replaced with the following words;

"The parties shall be during the course of the reference to the adjudicator (commencing with the Notice to Refer and ending with the Adjudicator's Decision) be jointly and severally liable to the Adjudicator for his fees and expenses but, as between themselves the Client shall be liable for the said fees and expenses in the manner set out at clause 15 above."

13.3.3 The reference to "connected litigation" in clause 19.4 of the adjudication rules shall be construed as including any proceedings under the Insolvency Act 1986 or any statutory amendment or re-enactment thereof in force at the relevant time (including but not limited to any petition for an order for compulsory liquidation or any step related thereto).

THE FOLLOWING ADDITIONAL TERMS RELATE TO THE SUPPLY OF TEMPORARY WORKERS AS DRIVERS OF "O" LICENSED VEHICLES

(Hereinafter called "the drivers")

- 1 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.
- 2 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 and Safety Regulations, and Road Traffic and liability insurances including but not limited to fully comprehensive insurance for the vehicle to be driven and it's contents. 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 Temporary worker.
- 3 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.
- 4 Drivers are excluded from the scope of the Working Time Regulations 1998.