

TERMS OF BUSINESS – SUPPLY OF TEMPORARY WORKERS

1. DEFINITIONS

1.1 In these Terms of Business (“Terms”), the following definitions apply:

“Agency Worker” means a Temporary Worker who is an agency worker within the meaning of the AWR and, if the Temporary Worker is an umbrella company, is an employee of such umbrella company;

“Appointment” means the engagement, employment or use of the Temporary Worker by the Client (or any third party to whom the Applicant has been introduced by the Client) on any basis whatsoever and whether directly or indirectly. Appoint, Appoints and Appointed shall be construed accordingly;

“Assignment” means the temporary position in which the Temporary Worker shall provide Services to the Client for a period of time;

“Assignment Schedule” means the document confirming details of the Assignment which is issued to the Client by the Employment Business;

“AWR” means the Agency Workers Regulations 2010;

“Charges” means the charges of the Employment Business for the supply of the Temporary Worker including the Temporary Worker’s hourly rate, the Employment Business’s margin and, in respect of an Agency Worker, any Employer’s National Insurance contributions, pension contributions, holiday pay and additional monies due pursuant to the AWR;

“Client” means the business to which the Temporary Worker is Introduced or supplied by the Employment Business and, where relevant, includes (i) any holding company or subsidiary of the Client (as defined in Section 1159 of the Companies Act 2006) or any associated company of the Client (as defined in Section 416 of the Income and Corporation Taxes Act 1988 (“ICTA”));

“Conduct Regulations” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

“Consultancy” means a limited company Temporary Worker, engaged by the Employment Business to provide Services to the Client and through which the Services will be provided by a self-employed Contractor or by a director of the Consultancy;

“Contractor” means a self-employed contractor, engaged by a Consultancy to provide Services to the Client on behalf of the Consultancy;

“Employment Business” means All Class Solutions Ltd, a company incorporated in England and Wales under company number 12009587 whose registered office is at The Courtyard, Parc Busnes Edwards, Llantrisant, Pontyclun, CF72 8QZ;

“Extended Hire Period” means an additional period of 13 weeks for which the Client wishes the Temporary Worker to be supplied for beyond the duration of the original Assignment or series of Assignments;

“Introduction” means (i) the provision by the Employment Business to the Client of any information which expressly or impliedly identifies a Temporary Worker with a view to arranging an Appointment (ii) the arrangement of an interview or meeting between the Client and a Temporary Worker, whether in person or by telephone or web-conference; Introduce, Introduces and Introduced shall be construed accordingly;

“Relevant Period” means the period defined in regulation 10(5) of the Conduct Regulations;

“Restricted Period” means whichever period ends the latest 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;

“Remuneration” means (i) the gross annual remuneration package payable to the Temporary by the Client including, without limitation, basic salary, guaranteed and estimated bonuses and commission, allowances and all other taxable and non-taxable emoluments. £5,000 shall be added in respect of any company vehicle provided to the Temporary Worker or (ii) if the Temporary Worker is Appointed on a self-employed basis or via a personal services company or any other corporate entity, the total estimated annual charges payable to the Temporary Worker by the Client;

“Services” means the work to be carried out by the Temporary Worker during the course of the Assignment; and

“Temporary Worker” means the person, firm or corporate body (including an umbrella company) Introduced or supplied to the Client by the Employment Business and, save where otherwise indicated, includes a Consultancy or Agency Worker;

“Transfer Fee” means the fee payable pursuant to clause 8.1;

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

1.3 A person includes a natural person, firm, corporate or unincorporated body (whether or not having a separate legal personality).

1.4 Any phrase introduced by the words including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those words.

1.5 A reference to a statute or statutory provision is reference to such statute or statutory provision as amended or re-enacted.

1.6 The headings in these Terms are for convenience only and do not affect their interpretation.

2. THE CONTRACT

2.1 These Terms of Business and, where applicable, the Assignment Schedule constitute the contract (“Terms”) between the Employment Business and the Client for the supply of a Temporary Worker to the Client and are effective from the Introduction of a Temporary Worker by the Employment Business.

2.2 These Terms contain the entire agreement between the parties and shall prevail over any alternative terms which are proposed by the Client.

2.3 The Client shall not rely on any statement, promise or representation made or given by or on behalf of the Employment Business which is not set out

in these Terms.

- 2.4 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business (acting by its Managing Director) 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.
- 2.5 For the purposes of the Conduct Regulations, the Employment Business shall act as an employment business when Introducing or supplying a Temporary Worker to the Client.
- 2.6 Unless the Employment Business notifies the Client that a Temporary Worker has opted-out of the Conduct Regulations, the Conduct Regulations shall 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 Employment Business all such information regarding the Assignment as is specified in Regulation 18 of the Conduct Regulations.
- 3.2 The Client will assist the Employment Business in complying with the Employment Business's duties under the Working Time Regulations 1998 (as amended) 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.
- 3.3 The Client will comply and will assist the Employment Business with complying with its obligations under the AWR by, without limitation:
 - 3.3.1 providing the Agency Worker with access to collective facilities and amenities and information about permanent employment opportunities with the Client;
 - 3.3.2 providing information to the Employment Business about any previous assignment for which the Agency Worker has been supplied by any other employment business;
 - 3.3.3 where relevant, providing written details of the relevant terms and conditions which apply to any actual or hypothetical comparator to the Agency Worker together with any amendments to such terms and conditions where appropriate;
 - 3.3.4 co-operating with the Employment Business in responding to or assisting the Employment Business with responding to any query or complaint made under the AWR in a timely manner; and
 - 3.3.5 after the 12 week qualifying period under the AWR, paying a proportional increase in the hourly charges for the Agency Worker where necessary, together with any other emoluments to which the Agency Worker is entitled.
- 3.4 The Client warrants that s44(2)(a) of Income Tax (Earnings and Pensions) Act 2003 (ITEPA) shall apply to any Assignment carried out by a self-employed Contractor through a Consultancy and the Client must notify the Employment Business without delay it believes that s44(2)(a) ITEPA 2003 is not or is no longer applicable to an Assignment.
- 3.5 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 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.
- 3.6 If the Temporary Worker is injured while on Assignment, the Client shall keep a record of such injury and, where appropriate, shall notify the HSE under RIDDOR. In either case, the Client shall provide copies of any relevant documents relating to such injury to the Employment Business.
- 3.7 Unless otherwise agreed by the Employment Business in writing, the Client must ensure that the Temporary Worker is covered by the Client's insurance policies for the duration of the Assignment.
- 3.8 Where the Employment Business supplies a Temporary Worker to the Client who will be required to drive a vehicle during the course of their Assignment, the Client must check the Temporary Worker's driving licence and permits to ensure that the Client is satisfied that the Temporary Worker is qualified to drive the relevant vehicle. The Client shall be entirely responsible for the maintenance and safety of any vehicle to be driven by the Temporary Worker and shall ensure that the Temporary Worker is covered by comprehensive vehicle insurance at all times.
- 3.9 The Client shall not instruct any Temporary Worker to carry out any duties which are outside the scope of the agreed Assignment without the consent of the Employment Business.
- 3.10 The Client must not provide any client property to the Temporary Worker without the express written consent of the Employment Business. The Employment Business shall not be liable for any losses suffered or incurred by the Client as a result of the Client providing any client property.
- 3.11 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.
- 3.12 The Client must notify the Employment Business forthwith if it is aware of any reason why it would be detrimental to the interests of the Temporary Worker to carry out the Assignment.

4. PROVISION OF INFORMATION

- 4.1 Where the Conduct Regulations apply to an Assignment, the Employment Business shall provide to the Client all such information as is specified in Regulation 21 of the Conduct Regulations.
- 4.2 The Employment Business shall use reasonable endeavours to provide an Assignment Schedule to the Client on commencement of the Assignment or as soon as possible thereafter.

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 Employment Business verifying the number of hours worked by the Temporary Worker during that week.
- 5.2 The Client is responsible for ensuring that the hours shown on the Temporary Worker's timesheet are correct and that only duly authorised employees sign the timesheet.
- 5.3 If the Client is unwilling to sign a timesheet because the Client disputes the hours claimed, the Client shall inform the Employment Business within 48 hours and shall co-operate fully and in a timely manner 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 timesheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.
- 5.4 The Client acknowledges that the Employment Business shall rely upon the Client's confirmation of the number of hours worked by the Temporary Worker. Accordingly, the Client shall not retrospectively adjust the number of hours which the Client has confirmed as having been worked by the Temporary Worker.
- 5.5 The Client shall not be entitled to decline to sign a timesheet on the basis that the Client is dissatisfied with the Services carried out by the Temporary Worker but may be entitled to terminate the Assignment in accordance with clause 9 below.

6. CHARGES

- 6.1 The Client shall pay the Charges as agreed between the Client and the Employment Business and confirmed in the Assignment Schedule. The charges are calculated according to the number of hours worked by the Agency Worker (to the nearest quarter hour).
 - 6.1.1 if the Client decides not to proceed with the assignment on day the worker is due to start an assignment, the Client shall be liable to pay the Employment Business a sum equivalent to one day's payment in accordance with 6.1 above.
- 6.2 The Employment Business shall issue an invoice to the Client for the Charges each week and such invoice shall be payable within 30 days by electronic funds transfer. VAT shall be charged at the applicable rate on all charges and fees invoiced under these Terms.
- 6.3 the Employment Business may vary the Charges, by giving written notice to the Client, in order to comply with the AWR or where a statutory amendment results in an increase in the cost to the Employment Business of supplying the Temporary Worker to the Client.
- 6.4 There are no refunds or rebates payable in respect of the Charges and the Client shall pay the Charges without deduction or set off.
- 6.5 If an invoice remains unpaid after 30 days from the date of invoice, the Employment Business may:
 - 6.5.1 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
 - 6.5.2 refer the collection of such payment to a debt collection agency 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 Employment Business in recovering payment from the Client.

7. RESPONSIBILITY FOR PAYMENTS

The Employment Business is responsible for making payments to the Temporary Worker and, in respect of an Agency Worker, shall ensure that PAYE Income Tax and National Insurance Contributions are deducted pursuant to sections 44-47 of ITEPA 2003.

8. TRANSFER FEES

- 8.1 Subject to clause 8.4, the Client shall pay a Transfer Fee ("Transfer Fee") if the Client Appoints a Temporary Worker Introduced by the Employment Business (whether or not the Temporary Worker is Appointed by the Client to work at the same location as the original Assignment) or introduces the Temporary Worker to a third party and such introduction results in an Appointment 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 Appointment 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 Appointment takes place within the Restricted Period.
- 8.2 The Transfer Fee shall be a sum equal to 25% of the annual Remuneration for the Appointment, subject to a minimum fee of £2,000. If the actual Remuneration is not known to the Employment Business, the Transfer Fee shall be 300 times the hourly charge rate at which the Temporary Worker

was last supplied to the Client by the Employment Business or which the Employment Business reasonably considers to be the market rate for the role in which the Temporary Worker has been Appointed.

- 8.3 No refund of the Transfer Fee will be due if the Appointment subsequently terminates.
- 8.4 If the Temporary Worker has not opted out of the Conduct Regulations and has commenced the Assignment, the Client may, instead of paying the Transfer Fee, on giving one week's written notice to the Employment Business, request that the Temporary Worker continues to provide the Services for the Extended Hire Period.
- 8.5 If the Client Appoints a Temporary Worker, the Client shall be entirely responsible for carrying out all necessary checks to ensure that they are satisfied with the suitability of the Temporary Worker including, without limitation, reference checks, verification of the Temporary Worker's qualifications and ensuring that the Temporary Worker has the right to work in the UK or such other jurisdiction in which the Temporary Worker is Appointed.

9. TERMINATION OF AN ASSIGNMENT

Subject to any notice period specified within the Assignment Schedule, either party may terminate an Assignment at any time and without notice.

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 Employment Business is required to disclose such information to the Temporary Worker, the Employment Business 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. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Employment Business and the Client intend for all copyright, trade marks, patents, design rights and other intellectual property rights deriving from the Assignment to belong to the Client.
- 11.2 The Employment Business shall therefore use reasonable endeavours to ensure that the Temporary Worker executes such documents and takes such action as is necessary to transfer any such intellectual property rights to the Client.

12. LIABILITY

- 12.1 Subject to clause 12.2, the Client shall be responsible for the supervision, direction and control of the Temporary Worker during the course of an Assignment and shall be responsible for any acts, errors or omissions of the Temporary Worker as if the Temporary Worker is an employee of the Client.
- 12.2 The Client shall not, nor shall it permit any other person to, supervise, direct or control a Contractor as to the manner in which they provide the Services.
- 12.3 The Client acknowledges that, where relevant, the Consultancy is responsible for the satisfactory delivery of Services and accordingly the Consultancy is responsible for rectifying any errors or deficiencies in the Services in their own time and at their own expense. Nothing in this clause 12.3 shall permit the Client to withhold or set off any monies owing to the Employment Business in relation to the services provided by a Consultancy.
- 12.4 The Employment Business does not exercise supervision, direction or control over a Temporary Worker at any time and shall therefore not be liable for the acts or omissions of any Temporary Worker.
- 12.5 The Employment Business 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 defect or deficiency in the Services, for any claim for loss of profit or business, or for any indirect or consequential loss arising out of or in connection with the provision of services to the Client pursuant to these Terms.
- 12.6 Subject to clause 12.7, the aggregate liability of the Employment Business 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 10% 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 £1,000.
- 12.7 The Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other claim which may not be limited or excluded by law.
- 12.8 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.
- 12.9 Any claim which the Client may bring against the Employment Business in relation 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.
- 12.10 The Client shall indemnify and keep indemnified the Employment Business against all losses, damages or claims suffered or incurred by the Employment Business as a result of any breach of contract, negligence (or any other tortious act) or breach of statutory duty by the Client.
- 12.11 The Client shall indemnify and keep indemnified the Employment Business against any demand or assessment for PAYE income tax or National Insurance contributions (including any penalties) suffered or incurred by the Employment Business where the Client has failed to ensure that s44(2)(a)

ITEPA 2003 applies to an Assignment carried out by a self-employed Contractor through a Consultancy.

13. BRIBERY & ANTI-CORRUPTION

13.1 The Client and the Employment Business warrant that they shall:

13.1.1 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

13.1.2 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.

14. GENERAL

14.1 If any part of these Terms is determined to be unenforceable to any extent, such part shall, to that extent, be severed from these Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

14.2 The Client shall not assign any of its rights or obligations under these Terms without the written consent of the Employment Business.

14.3 The Client shall not deduct or set off any sum due to the Employment Business under these Terms or any other contract entered into with the Employment Business against any sum which is owed or which the Client alleges or claims is owed by the Employment Business to the Client.

14.4 No failure or delay by a party in exercising any right or remedy under these 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.

14.5 The Employment Business and the Client do not intend these Terms to be enforceable by any third party.

14.6 These 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 construction, interpretation or performance of these Terms.