

EA ASSOCIATES CLIENT TERMS OF BUSINESS

Version: 2.0

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TERMS OF BUSINESS FOR THE SUPPLY OF TEMPORARY WORKERS

1. DEFINITIONS & INTERPRETATION

1.1 – In these Terms of Business (**Terms**) the following definitions apply:

- 1.1.1 –** “**Agency**” means Infinity Skills LLP (registered in England and Wales No. OC416534) of The Aspen Building, Vantage Point Business Village, Mitcheldean, Gloucestershire, GL17 0DD;
- 1.1.2 –** “**Agency Worker**” means a Temporary Worker who is an agency worker within the meaning of the AWR including, where applicable, a worker directly engaged by Agency under a contract for services 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 –** “**AWR**” means the Agency Workers Regulations 2010;
- 1.1.5 –** “**Charges**” means the charges made by Agency for the supply of the Temporary Worker including the Temporary Worker’s hourly or daily rate, Agency’s commission and, in respect of a Temporary Worker who is an Agency Worker, any Employer’s National Insurance contributions, pension contributions, holiday pay and additional monies due pursuant to the AWR;
- 1.1.6 –** “**Client**” means the business to which the Temporary Worker is Introduced by Agency including, where the Client is a corporate entity, any holding, subsidiary or associated company;
- 1.1.7 –** “**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);
- 1.1.8 –** “**Contractor**” means a limited company Temporary Worker which provides the Services through its directors, employees or Subcontractors;
- 1.1.9 –** “**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 Agency. Engage, Engages and Engaged shall be interpreted accordingly;
- 1.1.10 –** “**Introduction**” means (i) the provision by Agency 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;

- 1.1.11 – **“Payment Terms”** means those shown on the Agency’s invoice;
 - 1.1.12 – **“Period of Extended Hire”** means an extension of the Assignment for 26 weeks;
 - 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, 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 provided to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £5,000 will be added to the salary in order to calculate the Transfer Fee;
 - 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 Agency Worker; and
 - 1.1.20 – **“Transfer Fee”** means the fee payable pursuant to clause 8.1 below in accordance with Regulation 10 of the Conduct Regulations.
- 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 works.
 - 1.5 – A reference to a statute or statutory provision is reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that 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. BASIS OF CONTRACT

- 2.1 – These Terms comprise the entire agreement between Agency 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 – The Client shall not rely on any statement, promise or representation made or given by or on behalf of Agency 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 a variation are agreed between a director of Agency 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.
- 2.5 – For the purposes of the Conduct Regulations, Agency shall be acting as an employment business when introducing or supplying a Temporary Workers for an Assignment with the Client.
- 2.6 – Unless Agency 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 Agency all such information regarding the Assignment which is specified in Regulation 18 of the Conduct Regulations.
- 3.2 – The Client will assist Agency in complying with Agency's duties under the Working Time Regulations 1998 (WTR) by supplying any relevant information about the Assignment requested by Agency and the Client will not do anything to cause Agency to breach its obligations under the WTR.
- 3.3 – In respect of a Temporary Worker who is an Agency Worker, the Client will comply and will assist Agency 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 Agency 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 Agency in responding to or assisting Agency with responding to any question 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 charges for the Agency Worker where necessary, together with any other emoluments to which the Agency Worker is entitled.
- 3.4 – The Client shall advise Agency of any special health and safety matters about which Agency 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.
- 3.5 – The Client must:
- 3.5.1 – Provide a safe working environment for the Temporary Worker;
 - 3.5.2 – Ensure that, where applicable, the Temporary Worker uses all necessary safety and personal protective equipment during the Assignment;
 - 3.5.3 – 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
 - 3.5.4 – Maintain records of any accident or injury affecting the Temporary Worker and provide copies of such records to Agency upon demand; and
 - 3.5.5 – Unless otherwise agreed with Agency in writing, ensure that the Temporary Worker is insured under the Client's insurance policies for the duration of the Assignment.
- 3.6 – 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.
- 3.7 – The Client must notify Agency 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.
- 3.8 – The Client must notify Agency 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, Agency shall provide to the Client all such information as is specified in Regulation 21 of the Conduct Regulations.

- 4.2 –** 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 Agency shall place full reliance upon such information. The Client undertakes to notify Agency 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 Agency 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 Agency as soon as is reasonably practicable and shall co-operate fully and in a timely manner with Agency to enable Agency 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 Agency 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 –** Agency shall issue an invoice to the Client for the Charges each week 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 –** Agency 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.
- 6.4 –** There are no refunds or rebates payable in respect of the Charges and the Client shall pay the Charges without deduction or set off [including, without limitation, any deduction in respect of the CITB levy].

6.5 – If an invoice is not paid within the Payment Terms, Agency may:

- 6.5.1 –** terminate the supply of Temporary Workers to the Client without notice;
- 6.5.2 –** 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
- 6.5.3 –** refer the collection of such payment to a 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 Agency in recovering payment from the Client.

7. RESPONSIBILITY FOR PAYMENTS

7.1 – The Agency 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 – Subject to clause 8.4, the Client shall pay a Transfer Fee (“Transfer Fee”) if (i) the Client Engages a Temporary Worker Introduced by Agency 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 25% of the Remuneration payable to the Temporary Worker in the first calendar year of the Engagement. If the actual Remuneration is not disclosed to Agency, the Transfer Fee shall be the hourly Charge at which the Temporary Worker was (or would have been) supplied to the Client multiplied by 300.

8.3 – No refund of the Transfer Fee will be due to the Client if the Engagement subsequently terminates.

8.4 – Unless the Temporary Worker has opted out of the Conduct Regulations, the Client may, instead of paying the Transfer Fee, on giving one week’s written notice to Agency, request that the Temporary Worker continues to provide the Services for the Period of Extended Hire.

8.5 – During a Period of Extended Hire, Agency shall supply the Temporary Worker on the same terms as which they were supplied during the Assignment and, in any case, on terms no less favourable than those terms which applied immediately before Agency received the notice pursuant to clause 8.3 –.

- 8.6 –** If Agency is unable to supply the Temporary Worker for any reason outside its control for the whole or any part of the Period of Extended Hire or the Client does not wish to hire the Temporary Worker on the same terms as the Assignment but the Temporary Worker is Engaged by the Client, the Client shall pay the Transfer Fee, reduced in proportion to any part of the Period of Extended Hire for which the Temporary Worker was supplied.

9. TERMINATION OF ASSIGNMENT

- 9.1 –** Subject to clauses 9.2, 9.3 and 9.5, either party may terminate an Assignment at any time by giving no less than 7 days' notice.
- 9.2 –** Irrespective of Clause 9.1, 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 –** Agency 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 –** Agency 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 & 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 Agency is required to disclose such information to the Temporary Worker, Agency 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 Agency that SDC shall not apply to the Assignment pursuant to clause 4.2 –.
- 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 3.5; or
- 11.3.3** – render Agency liable for the performance of the Services.
- 11.4** – Agency 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 Agency 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 Agency's contract with the Contractor. Agency shall provide details of any such third party right to the Client upon request.
- 11.6** – Agency 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 11.7 –, the aggregate liability of Agency 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 £5,000.
- 11.8** – Agency 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 Agency 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 Agency against all losses, damages or claims suffered or incurred by Agency 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 Agency against any demand or assessment for PAYE income tax or National Insurance contributions (including any penalties) suffered or incurred by Agency where the Client has incorrectly notified the Agency that a Temporary Worker is not subject to SDC.

12. BRIBERY & ANTI-CORRUPTION

12.1 – The Client and Agency 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 Agency. Agency may assign any monies owing from the Client to a third party including, without limitation, a 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 company

Signed on behalf
of the Client

Print Name

Position in Client
Company

Date of signature



E: info@ea-associates.co.uk
www.ea-associates.co.uk

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.