



## **Terms & Conditions of Business**

Version 4.0

UPDATED 12<sup>th</sup> November 2018

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# TERMS & CONDITIONS - PERMANENT STAFF

## 1. DEFINITIONS

1.1 - In these Terms of Business, the following definitions apply:

“Assignment” means the person introduced to the Company to the Client for an Engagement including but not limited to any members of the Company’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 whom the Applicant is introduced;

“Company” means Clearfield Recruitment Ltd and/or any subsidiary or associated company;

“Engagement” means the engagement, employment or use of the Applicant by the Client on a permanent or temporary basis, whether under a contract of services or for services; under an agency, license, franchise or partnership agreement, or any other engagement entered into direct between the Client and the Applicant;

“Introduction” means the Client’s interview of an Applicant in person or by telephone following the Client’s instructions to the Company to search for an Applicant or following the passing to the client of a curriculum vitae or other information which identifies the Applicant, and which leads in either case to an Engagement of that Applicant by the Client;

“Remuneration” includes base salary, guaranteed and/or anticipated bonus and commission earning, allowances, inducement payments, the benefits of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payment to or receivable by the Applicant for services rendered to the Client. Where a Company car is provided by the Client, a notional amount of £5,000 will be added to the salary in order to calculate the Company’s fee.

1.2 - Unless the context required otherwise, 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 Company acts as an employment agency for the purpose of this Contract.

1.5 - Unless agreed otherwise in writing the Company does not have authority from the Client to complete any contract for an Engagement between the Client and the Applicant on behalf of the Client.

## 2. THE CONTRACT

2.1 - These Terms of business are deemed to be accepted by the Client by virtue of an Introduction to or the Engagement of an Applicant.

2.2 - 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 that is subsequent to these Terms being brought to the Client’s attention.

2.3 - No variation or alteration to these Terms of Business shall be valid unless approved by a Director of the Company.

2.4 - The Company will decline to accept any instructions or source Applicant where it believes that Instruction’s to constitute unlawful discrimination.

## 3. NOTIFICATION OF FEES

3.1 The fee payable to the Company by the Client for an introduction resulting in an Engagement is calculated in accordance with the following Fee Structure on the

Remuneration applicable during the first 12 months of the Engagement. VAT will be charged on the fee.

Remuneration	Introduction Fee
£0 - £30,000	15%
£30,000 - £50,000	17.5%
£50,000 and over	20%

3.2 In respect of fixed duration of less than 12 months, the fee will be calculated pro-rata to the fee structure above, subject to a minimum fee of £500.

3.3 No fee is incurred by the Client until the Applicant commences the Engagement when the Company will render an invoice to the Client for its fees.

3.4 The Client agrees:

- (a) To notify the Company immediately of any offer of Engagement which it makes to the Applicant;
- (b) To notify the Company immediately that it’s offer of Engagement to the Applicant had been accepted and forthwith to provide details of the Remuneration to the Company; and
- (c) To pay the Company’s fee within 14 days of the date of invoice without set-off or deduction.

3.4 The Company reserves the right to charge interest on invoiced amounts unpaid for more than 14 days at the rate of 4% per annum above the base rate from time to time of National Westminster Bank Plc from the due date until the date of actual payment. The company further reserves the right to recoup any reasonable costs incurred by the Company in pursuing debts owed beyond terms.

## 4. INTRODUCTION

4.1 Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Company which results in an Engagement with that third party within 6 months of the introduction renders the Client liable to payment of the Company’s fees as set out in clause 3.1

4.2 An introduction fee calculated in accordance with clause 3.1 will be charged in relation to any Applicant engaged as a consequence of or resulting from an introduction by or through the company, whether direct or indirect, within 6 months from the date of the Company introduction.

## 5. SUITABILITY

5.1 The Company endeavours to ensure the suitability of any applicant introduced to the Client, as set out below. Notwithstanding this the Client shall satisfy itself and be the sole arbiter as to the suitability of the Applicant and is encouraged to take up any references provided by the Applicant and/or the Company before Engagement of such Applicant. The Client shall be responsible for obtaining work and other permits if required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant and for ensuring that the Applicant satisfies any medical and other requirements or qualifications required by law of the country or trade in which the Applicant is engaged to work.

6.2 The Client must supply to the Company before any introduction the following information in writing: -

- (a) The Client's identity and the nature of its business
- (b) The date on which the Client requires an Applicant to commence work, and the duration of the work;
- (c) The position for which an Applicant is sought, including the type of work the Applicant would be required to do, the location at which and the hours during which they would be required to do it, and any risk to health or safety of the Applicant known to the client and the steps which the Client has taken to prevent or control such risks;
- (d) The experience, training, qualifications and any authorisation which the Client considers are necessary or required by law or any professional body for an applicant to possess in order to work in the relevant position, and the ability which the Client considers is necessary for an Applicant to possess in order to do so successfully;
- (e) Any expenses payable by or to the successful Applicant;
- (f) The minimum rate of remuneration and any other benefits which the Client would offer to a person in the position which it seeks to fill, and the intervals at which such remuneration or other benefits would be paid; and
- (g) The length of notice which the successful Applicant in such a position would be required to give and entitled to receive to terminate the Engagement with the Client.

## 6. LIABILITY

6.1 The Company shall not be liable under any circumstances for any loss, expense, damage, delay, cost 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 Company seeking an Applicant for the Client or from the introduction to or Engagement of any Applicant by the Client (including any Act or omission on the part of the Applicant) or from the failure of the Company to introduce any Applicant. For the avoidance of doubt, the Company does not exclude liability for death or personal injury arising from its own negligence.

## 7. LAW

8.1 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.

## 8. COMPLAINTS

9.1 Any complaints must be addressed to a Director of the Employment Business in writing.

# TERMS & CONDITIONS - TEMPORARY CONTRACTORS

## 1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

“Assignment” means the period during which the Temporary Contractor 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 Temporary Contractor is supplied;

“The Employment Business” means Clearfield Recruitment Ltd or any subsidiary or associated company (as defined by the Companies Act 1985).

“Engagement” Any use 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 Contractor becoming an employee of the Client.

“Temporary Contractor” or “TC” means the limited company whose services are supplied by the Employment Business to the Client.

“Introduction” means the Client’s interview of a Temporary Contractor in person or by telephone following the Client’s instructions to the Employment Business to search for a Temporary Contractor or following the passing to the client of a curriculum vitae or other information which identifies the Temporary Contractor, and which leads in either case to an Engagement of that Temporary Contractor by the Client.

1.2 Unless the context otherwise required, 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 purpose of this contract.

1.5 These Terms shall apply as between the Client and Employment Business in relation to each and every Temporary Contractor engaged by the Client. In the event that the Terms set out here at are in conflict with other terms upon which the Client and the Employment Business have agreed for the engagement of a Temporary Contractor, these Terms shall prevail.

## 2. THE CONTRACT

2.1 These Terms govern the supply of the Temporary Contractor 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 Employment of the Temporary Contractor.

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 agree 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 Contractors 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 Contractor (rounded up to the nearest quarter hour). The charges are comprised mainly of the Temporary Contractors remuneration 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 30 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 Contractors than being supplied to the Client. The company further reserves the right to recoup any reasonable costs incurred by the Company in pursuing debts owed beyond terms.

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 Contractors (including the Temporary Contractor engaged by the Client under these Terms) by reference to the time sheets completed by the Temporary Contractor. 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 Contractor and shall be conclusive evidence of the Client’s satisfaction with the services provided during the said number of hours, standard of his workmanship and all other aspects related to the engagement.

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 Contractor in relation the Engagement as at the date of the said certificate.

3.4 Clause 3.31 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 Contractor, 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 Contractor 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. TIME SHEETS

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 the week) the Client shall sign the Employment Business' time sheet verifying the number of hours worked by the Temporary Contractor 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 Contractor 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 Contractors fees and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Contractor. However, nothing in these Terms shall

make the Temporary Contractor or any individual's utilised by the Temporary Contractor 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 Contractor introduced by the Employment Business where such engagement takes place within 26 weeks of the end of the Assignment. It also applies to the introduction by the Client of a Temporary Contractor to any third party resulting in the engagement (or where applicable, if the Temporary Contractor has become incorporated under a limited company, the engagement of that limited company) by that third party, and to the Temporary Contractor 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 Contractor 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 with 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 Contractor, 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 Contractors 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 Contractor on these terms for the period of 26 weeks after which time the Client is entitled to engage the Temporary Contractor directly and free of charge.

6.5 In circumstance where the Client has introduced a Temporary Contractor to any Third Party (either within 14 weeks of the start of the first assignment or within 8 weeks 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.

#### 7. SUITABILITY OF THE TEMPORARY CONTRACTOR 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 require a Temporary Contractor 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 Contractor is sought, including the type of work the Temporary Contractor would be required to do, the location at which and the hours during which the TC would be required to do, the location at which and the hours during which the TC would be required to do it, and any risks to the health or safety of the Temporary Contractor 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 Contractor to possess in order to work in the relevant position, and the ability which the Client considers is necessary for a Temporary Contractor to possess in order to do so successfully;

7.1.5 Any expenses payable by or to the successful Temporary Contractor.

7.2 Whilst reasonable effort is made by the Employment Business to ensure appropriate standards of skill, integrity and reliability from Temporary Contractor 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;

7.2.1 Provision of a Temporary Contractor;

7.2.2 The failure to provide (or replace) any Temporary Contractor for all or part of the period of the booking;

7.2.3 The negligence, dishonesty, misconduct or lack of skill of the Temporary Contractor 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 Contractor.

7.3 Nothing in clause 6.2 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 Contractor to enable the Temporary Contractor to supply services to the Client in the capacity requested.

7.5 Temporary Contractors are engaged by the Employment Business under contracts for services and are not employees of the Employment Business. Neither the Client nor the Employment Business shall exercise, or have the right to exercise, any supervision, direction or control over the manner in which the Temporary Contractor, or any individuals they utilize, provide the services. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Contractor, whether wilful, negligent or otherwise for the purpose of liability. 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 (excluding the matters specifically mentioned in clause 5 above), including in particular the provision of adequate Employer's and public Liability insurance cover for the Temporary Contractor 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 Contractor 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 Contractor is treated unfavourably by any person under its control on the grounds of the Temporary Contractors' race, sex, disability, religion/belief or sexual orientation.

7.7 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 indemnify 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).

7.8 The temporary Contractor is engaged under a contract for services and may utilise such persons as is necessary in the performance of the services and make substitutions thereof, provided always such persons are suitably qualified and experience to provide the services to the correct standards.

## 8. TERMINATION

8.1 The Client undertakes to monitor the services provided by the Temporary Contractor sufficiently to ensure the Client's satisfaction with the Temporary Contractors standard of workmanship. If the Client reasonably considers that the services of the Temporary Contractor are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Contractor to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Contractor. The Employment Business may in such circumstances reduce or cancel the charges for the time worked by that Temporary Contractor, provided that the Assignment terminates:

(a) Within four hours of the Temporary Contractor 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 provide that notification of the unsuitability of the Temporary Contractor and of the requirement to remove him is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

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

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

## 9. LAW

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

## 10. 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 it 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.

## 11. 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 and 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.

## 12. ADJUDICATION

12.1 In relation to all such references to adjudication (whether under the Housing Grants, Construction and Regeneration Act 1998 or otherwise), this clause 11 shall apply.

12.2 These terms specifically incorporate by reference the "TECBAR" Adjudication Rules 2001" applicable to Notices of Adjudication issued after 18 November 2001 ("the adjudication rules").

12.3.1 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 heading 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".

12.3.2 Clause 16.1 of the adjudicator 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".

12.3.3 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).