

Terms of business relating to supply of temporary staff by NDT Personnel Limited (employment business)

1 Interpretation

- 1.1 In these terms of business ('the Terms'), the following expressions will be given the following meanings:
- 1.1.1 'Assignment' means the period during which a Temporary performs services or carries out work for or on behalf of the Client or agreed between the Client and the Company, commencing at the time the Temporary first reports to the Client to take up duties (or, if earlier, the commencement by the Temporary of such work or services) and ending upon the cessation by the Temporary of all such work and services.
 - 1.1.2 'The Client' means any person, firm or corporation who approaches the Company with a view to placing an order with the Company for the introduction or supply of a Temporary.
 - 1.1.3 'The Company' means NDT Personnel Limited (a company registered in England and Wales under number 10527207) or any of its subsidiary, associated or holding companies.
 - 1.1.4 'Month' means a calendar month.
 - 1.1.5 'Regulatory Requirement' means all applicable laws, regulations, codes of practice and other similar controls and advice with legal or actual force in any geographical area and/or over any class of persons made or issued by national or local government or by any other regulatory body.
 - 1.1.6 'Temporary' means any person who is introduced or supplied by the Company to the Client with a view to carrying out work for the Client.
 - 1.1.7 'The 2010 Regulations' means the Agency Workers Regulations 2010 as amended.
 - 1.1.8 'Week' means 7 consecutive days.
- 1.2 In these Terms, words importing the singular will include the plural and vice versa and words importing the masculine gender will include the feminine gender and vice versa.
- 1.3 All and any business undertaken by the Company is transacted subject to these Terms, all of which will be incorporated in any agreement between the Company and the Client. In the event of any conflict between these Terms and any other terms and conditions, these Terms will prevail unless expressly otherwise agreed in writing by a director or other authorised officer of the Company. No variation in these Terms will be valid if made without the written consent of a director or other authorised officer of the Company.

- 1.4 The interviewing by or on behalf of the Client or the acceptance by or on behalf of the Client or the commencement of work (whichever first occurs) of any Temporary will be deemed acceptance of and agreement to these Terms.
- 1.5 The complete or partial invalidity or unenforceability of any provision in these Terms for any purpose will in no way affect the validity or enforceability of such a provision for any other purpose or the remaining provisions. Any such provisions will be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
- 1.6 The Company may introduce or supply a Temporary to the Client acting either as:
- 1.6.1 agent, in which case all of these Terms save clauses 5.2 and 6 will apply; or
 - 1.6.2 contractor, in which case:
 - 1.6.2.1 all of these Terms save clause 5.1 will apply; and
 - 1.6.2.2 the Temporary may in some cases be employed under a contract of service with the Company and in others be self-employed.

The capacity of the Company and (if appropriate) the Temporary for each Assignment will be agreed at the outset and stated on the time sheet and invoice.

- 1.7 These Terms supersede all previous terms of business.

2 Obligations of the Company

- 2.1 The Company will use reasonable endeavours to introduce to the Client a suitable Temporary to carry out work for the Client of such nature as the Client notifies to the Company when placing its order for a Temporary. The Client accepts that no warranty as to the suitability of the Temporary can be given by the Company.
- 2.2 Where the Client has required the Company to introduce or supply a Temporary for purposes which include the operation of motor vehicles, machinery or equipment, the Company will take all reasonable steps to enquire whether the Temporary is the holder of a current licence, certification, authorisation or other necessary qualification to drive a vehicle or operate machinery or equipment of the class or description duly notified to the Company by the Client as aforesaid.
- 2.3 Where the Temporary is required by law or any professional body to have any licence, certification, authorisation or other qualifications to work on the Assignment, the Company will take reasonably practicable steps:
- 2.3.1 to obtain and offer to provide to the Client copies of any relevant licence, certification, authorisation or other qualifications of the Temporary; and
 - 2.3.2 to confirm that the Temporary is suitable for the Assignment.
- 2.4 Subject to clause 4.1, the Company will pay each Temporary the fees or hourly charge and other payment and reimbursement of disbursements to which he is entitled by reason of carrying out work for the Client.

- 2.5 In cases where the Company is acting as principal, it will:
- 2.5.1 make deductions and account to HM Revenue and Customs for PAYE income tax in respect of the remuneration of each Temporary; and
 - 2.5.2 make deductions and account for all necessary national insurance contributions relevant to the remuneration of each Temporary.

3 Obligations of the Client

- 3.1 The Client will specify its exact requirements by providing full details of the work for which the Temporary is required and, in particular, by notifying the Company of any special skills, licence, certification, authorisation or other necessary qualification required for such work when placing its order.
- 3.2 Where the Temporary requires further training, whether in relation to the Client's policies and procedures, the use and operation of equipment or otherwise in order to fulfil the Assignment or to comply with any Regulatory Requirement, the Client shall provide such training to the Temporary at its own cost and shall pay to the Company the applicable hourly charge in respect of such Temporary during the continuance of such training pursuant to clause 5.2 together with an amount equal to the amount of any national insurance contributions required to be paid by the Company and such travel and other expenses as may be agreed between the Client and the Company.
- 3.3 Before the start of each Assignment or, where that is not reasonably practicable, within 7 days of the start of each Assignment, the Client will confirm to the Company, in writing, the relevant terms and conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave (as defined in Regulation 6 of the 2010 Regulations) of any employees (or workers) working for and under the supervision and direction of the Client and engaged in the same or broadly similar work as that for which the Temporary is required in respect of that Assignment;
- 3.4 At the Company's written request at any time and from time to time, the Client will provide the Company with the information specified in Regulation 14(3)(a) of the 2010 Regulations within the period of 7 days beginning with the date of receiving that request.
- 3.5 The Client will not allow any Temporary to undertake any work other than that which has been notified by the Client in accordance with clause 3.1 to the Company in placing its order for such Temporary.
- 3.6 The Client will verify at the time that the Temporary begins to render services for or on behalf of the Client that the Temporary is suitable for the purposes for which he is required and that he has the capability to carry out the duties required, including the operation of any machinery, equipment or vehicles. The Client will be responsible for obtaining any certificate of sponsorship or permit needed to enable the Temporary to work in any country in which the Temporary is to perform any services or carry out any work in relation to the Assignment and for ensuring that the Temporary satisfies any medical requirements or other qualifications that may be appropriate or required by law.

- 3.7 The Client will comply with its obligations under the 2010 Regulations and in particular:
- 3.7.1 insofar as it lies within the Client's power to do so, ensure that the Temporary receives any rights in relation to basic working and employment conditions to which he is entitled under Regulation 5 of the 2010 Regulations;
 - 3.7.2 in accordance with Regulation 12 of the 2010 Regulations, ensure that, unless less favourable treatment is justified on objective grounds, the Temporary is treated no less favourably than a comparable worker in relation to the collective facilities and amenities provided by the Client (as these terms are defined in that Regulation);
 - 3.7.3 in accordance with Regulation 13 of the 2010 Regulations, ensure that during the assignment the Temporary is informed of any relevant vacant posts with the Client to give the Temporary the same opportunity as a comparable worker to find permanent employment with the Client.
- 3.8 The Client will do nothing to cause the Company to be in breach of its obligations under the 2010 Regulations.
- 3.9 The Client undertakes to comply with all other obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the foregoing those relating to the place, nature or system of work) in any way arising from or directly or indirectly connected with the services rendered by a Temporary.
- 3.10 The Client undertakes to exercise all supervision, direction and control over the manner, time and place in which each Temporary carries out his work for the Client throughout the duration of the Assignment (notwithstanding that where the Company is acting as contractor, the Temporary is not in fact the Client's employee).
- 3.11 Without prejudice to the generality of clause 3.9, the Client acknowledges that each Temporary introduced or supplied to the Client for purposes which include the driving of vehicles or the operation of machinery or equipment is introduced or supplied to the Client on the Client's express warranty:
- 3.11.1 that it is the holder of all necessary licences, certificates, authorisations and other qualifications required to enable such vehicles, machinery or equipment to be lawfully driven or operated by the Temporary under and in accordance with any Regulatory Requirement;
 - 3.11.2 that all such licences, certificates, authorisations and other qualifications are valid and subsisting;
 - 3.11.3 that it will take all necessary steps to ensure that any Temporary complies with the provisions of any Regulatory Requirement in relation to the driving of vehicles or the operation of machinery or equipment;
 - 3.11.4 that it will take all steps that may be required by law in relation to the insurance, maintenance and safety of vehicles, machinery and equipment and will in particular satisfy itself that such vehicles, machinery and

equipment are free from defects and properly maintained and will under no circumstances require the Temporary to check such matters; and

3.11.5 that it will control the duties of each Temporary, the duration of their use and operation of vehicles, machinery and equipment and hours of work and comply with all Regulatory Requirements in regard thereto.

3.12 The Client undertakes that in the event of the Client employing or engaging any Temporary directly or indirectly (other than through the Company), whether under a contract of service or contract for services, and whether on a permanent or temporary basis ('the Engagement'), the Client will:

3.12.1 immediately notify the Engagement to the Company; and

3.12.2 pay to the Company an introduction fee calculated in accordance with the Company's fees for permanent introductions in force at the time of the Engagement together with VAT at the prevailing rate

3.13 The Client undertakes that in the event of the Client effectively introducing (whether directly or indirectly) any Temporary to another person, firm or corporation, including any subsidiary, associated or holding company of the Client, resulting in the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of the Temporary by that person, firm or corporation ('the Engagement'), the Client will:

3.13.1 immediately notify the Engagement to the Company; and

3.13.2 pay to the Company an introduction fee calculated in accordance with the Company's fees for permanent introductions in force at the time of the Engagement together with VAT at the prevailing rate.

4 Time sheets

4.1 The Temporary will be paid under the terms of clause 5 as appropriate by the Company.

4.2 In order to facilitate payment, the Temporary will provide to the Company a time sheet signed by the Client which will be deemed conclusive evidence:

4.2.1 that the Client is satisfied with the work carried out by the Temporary;

4.2.2 that the Client agrees to and accepts these Terms; and

4.2.3 that the Client will pay the charges in accordance with clause 5 of these Terms in full and without dispute or deduction.

4.3 The failure by the Client to sign any time sheet will not, however, preclude the Company charging the Client in full for all time actually worked by any Temporary in accordance with these Terms.

5 Fees

5.1 The Client will pay to the Company for the introduction of the Temporary:

5.1.1 on behalf of the Temporary, the fees, payments and other reimbursements of disbursements to which he is entitled for carrying out work for the Client together with an amount equal to the amount of any national insurance contributions required to be paid by the Company;

5.1.2 the Company's commission for introducing the Temporary to the Client and for arranging the payments falling within clause 5.1.1;

this will be a recurring charge for the duration of the Assignment. VAT will be paid in addition at the prevailing rate where and to the extent applicable.

5.2 The Client will pay to the Company for the supply of a Temporary the hourly charge in respect of each Temporary notified to the Client at the time of booking together with an amount equal to the amount of any national insurance contributions required to be paid by the Company and such travel and other expenses as may be agreed between the Client and the Company. The Company may at any time increase the hourly charge by an appropriate amount if the payments that it must make to the Temporary under clause 2.4 have to be increased to comply with Regulation 5 of the 2010 Regulations. VAT will be paid in addition at the prevailing rate where and to the extent applicable.

5.3 Unless otherwise agreed in writing between the Company and the Client:

5.3.1 the Client shall be responsible for all airfares and other costs and expenses of travel paid or incurred by the Company or any Temporary in or in relation to the Assignment; and,

5.3.2 each Temporary shall be responsible for all costs and expenses of accommodation and subsistence paid or incurred by such Temporary in or in relation to the Assignment.

5.4 All moneys due under these Terms will be paid by the Client within 30 days of the date of invoice by the Company. Any breach of this clause 5.4 will entitle the Company to terminate without prior notice each and every Assignment concluded under these Terms between the Company and the Client.

5.5 The Company reserves the right to charge the Client interest in respect of any amount outstanding after the period for payment set out in clause 5.4 (both before and after any judgment) from the date of invoice up to and including the day of payment at the rate of 5% a year above the base rate from time to time of Barclays Bank Plc subject to a minimum rate of 8% a year.

6 Unsatisfactory Temporary procedure

6.1 If the Client, acting reasonably, decides that a Temporary is unsatisfactory to do the work required by the Client (subject at all times to the Client complying with its obligations set out in clauses 3.1 to 3.10) (an 'Unsuitable Temporary'), the Client will notify the Company in writing of that fact giving the full grounds for its dissatisfaction with the Unsuitable Temporary (a 'Dissatisfaction Notice').

6.2 Within 5 working days of receipt by the Company of a Dissatisfaction Notice, the Company will:

- 6.2.1 provide a suitable replacement for the Unsuitable Temporary, in which case clause 5 will continue to apply without interruption; or
 - 6.2.2 if no such suitable replacement is available, inform the Client in writing of that fact, in which case clause 5 will cease to apply in respect of the Unsuitable Temporary with effect from the date on which the Company receives the Dissatisfaction Notice; or
 - 6.2.3 if the Company disagrees with the grounds as set out in the Dissatisfaction Notice, inform the Client, in which case the Assignment will be terminated.
- 6.3 The Client will give the Company such co-operation as the Company may reasonably request (including but not limited to the production of relevant documents and the attendance of witnesses) at the Client's expense in any internal disciplinary proceedings, employment tribunal proceedings or other legal proceedings in relation to any Unsuitable Temporary's performance or conduct.

7 Liability and indemnity

- 7.1 Neither the Company nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the introduction or supply of a Temporary to the Client or with any failure by the Company to introduce or supply a Temporary for all or part of the period booked (except that in the latter case, the Client may be entitled to a reduction or cancellation of the charge payable under clause 5 in accordance with clause 6) and, in particular, but without limitation, any such loss, injury, damage, expense or delay arising from or in any way connected with:
- 7.1.1 failure of the Temporary to meet the requirements of the Client for all or any of the purposes for which he is required by the Client (subject to clause 6);
 - 7.1.2 any act or omission of a Temporary, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;
 - 7.1.3 any loss, injury, damage, expense or delay incurred or suffered by a Temporary;
 - 7.1.4 the kidnapping and/or ransom of any Temporary;
 - 7.1.5 any claim by or on behalf of any individual that there existed during the term of these Terms a contract of employment between the Client and such Temporary; or
 - 7.1.6 any income tax, national insurance contributions, interest and/or penalties arising in respect of the Temporary for which the Client may be called upon to account to HM Revenue and Customs and the disallowance of any VAT charged in respect of the services as allowable input tax for the Client;

PROVIDED THAT nothing in this clause 7 will be construed as purporting to exclude or restrict any liability of the Company to the Client for personal injury or death resulting

from negligence (as defined in the Unfair Contract Terms Act 1977) nor any statutory liability or any exclusion or limitation which is prohibited by law.

7.2 In consideration of the Company entering into an agreement with the Client into which these Terms are incorporated, the Client undertakes to indemnify the Company in respect of any and all liability of the Company for:

- 7.2.1 any loss, injury, expense or delay suffered or incurred by a Temporary, howsoever caused;
- 7.2.2 the kidnapping and/or ransom of any Temporary;
- 7.2.3 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Temporary, whether wilful, reckless, fraudulent, negligent, dishonest or otherwise; and
- 7.2.4 any loss, injury or delay suffered or incurred by the Company as a result of any act or omission of the Client;

PROVIDED THAT this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly or indirectly out of or in any way connected with the relevant Assignment, any information supplied by the Client to the Company or the Client's breach of these Terms.

7.3 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Company set out in these Terms are reasonable and reflected in the charges payable to the Company under these Terms and will accept risk and/or insure accordingly.

8 Miscellaneous

8.1 The Company reserves the right to review and to revise these Terms without prior notice.

8.2 These Terms are governed by and construed in accordance with the laws of England and Wales.