

Terms and Conditions of Business – Temporary Staff



These Terms and Conditions of Business (Conditions) apply to any agreement between PK Education Limited and its customers for the supply of Temporary Workers. You are strongly advised to read them and contact us if you have any doubt about what they mean.

1. DEFINITIONS

In these Conditions the following words have the following meanings:

Assignment means the period during which the Temporary Worker is supplied by us to provide services to you;

AWR means the Agency Workers Regulations 2010;

AWR Claim means any complaint or claim to a tribunal or court made by or on behalf of the Temporary Worker against you and/or us for any breach of the AWR;

Charges means the charges as notified to you at the commencement of the Assignment and which may be varied by us from time to time during the Assignment.

Comparable Employee means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

(a) works for you and under your supervision and is engaged in the same or broadly similar work as the Temporary Worker having regard, where relevant, to whether the employee and the Temporary Worker have a similar level of qualification and skill; and

(b) works or is based at the same establishment as the Temporary Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of above, works or is based at a different establishment and satisfies those requirements.

Conditions means the standard terms and conditions of supply set out in this document and shall also include any terms and conditions agreed in writing between you and us and such conditions shall form the contract between you and us;

Data Protection Laws means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

Engage or Engagement means the engagement, employment or use of the Temporary Worker by you or any third party on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement including when that engagement is through a limited company of which the Temporary Worker is an officer or employee;

Introduction means (i) your interview of a Temporary Worker in person or by telephone, following your instruction to us to search for a temporary worker; or (ii) the passing to you of a curriculum vitae or information which identifies the Temporary Worker;

Losses means all losses, liabilities, damages, costs, expenses, fines, penalties or interest whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

Qualifying Period means 12 continuous Weeks during the whole or part of which the Temporary Worker is supplied by one or more temporary work agencies to you to work temporarily for and under your supervision and direction in the same role;

Relevant Period means:

(a) the period of 8 weeks commencing on the day after the last day on which the Temporary Worker worked for you (having been supplied by us); or

(b) the period of 14 weeks commencing on the first day on which the Temporary Worker worked for you having been supplied by us or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

Relevant Terms and Conditions means terms and conditions relating to:

(a) pay;

(b) the duration of working time;

(c) night work;

(d) rest periods;

(e) rest breaks; and

(f) annual leave that are ordinarily included in the contracts of your employees or workers (as appropriate) whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) any terms and conditions that have become contractual by virtue of custom and practice;

Remuneration includes base salary or fees, guaranteed and/or 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 applicant for services rendered to you or on your behalf (or to or on behalf of a third party where applicable). Where you (or a third party) provides a company car, a nominal amount of £2,000 will be added to the salary in order to calculate our fee;

Temporary Worker means the individual supplied by us to provide services to you (whether directly or through an intermediary services company);

Transfer Fee means the fee calculated in accordance with clause 11.5 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

we, us, or our means PK Education Limited, operating as an Employment Business;

Week means a calendar week;

Working Time Regulations means the Working Time Regulations 1998; and you or your means you, our customer.

2. WHAT IS THE PURPOSE OF THIS DOCUMENT

2.1. These Conditions constitute the contract between you and us for the supply of the Temporary Worker's services by us to you and these Conditions are deemed to be accepted by virtue of an Introduction or your request for, interview with, or Engagement of a Temporary Worker or the passing of any information about a Temporary Worker to any third party following an Introduction.

2.2. These Conditions contain the entire agreement between you and us and unless otherwise agreed in writing by one of our directors, these Conditions prevail over any terms of business or purchase conditions (or similar) which may be put forward by you or on your behalf.

2.3. We shall act as an Employment Business when Introducing a Temporary Worker for Assignments with you.

3. WHAT YOU HAVE TO DO

- 3.1. Before we introduce to you a Temporary Worker you must give us accurate and complete details of the position that requires filling, including:
- 3.1.1. the type of work, the workplace location or locations and the hours to be worked;
 - 3.1.2. the minimum academic or professional qualifications required;
 - 3.1.3. the minimum experience required;
 - 3.1.4. the training undertaken;
 - 3.1.5. the necessary authorisation as required by law or by any professional body;
 - 3.1.6. the date you require the Temporary Worker to begin the Assignment;
 - 3.1.7. the likely duration of the Assignment; and
 - 3.1.8. any risks to Health and Safety and what steps you have taken to prevent or control such risks and by instructing us to provide the Temporary Worker you confirm that you have carried out a thorough risk assessment of the place(s) of work relating to the Assignment unless you have otherwise notified us.
- If the information you provide to us in accordance with clause 3.1 above changes during the course of an assignment you agree to provide to us your up to date requirements as soon as reasonably practicable.
- 3.2. You will assist us in complying with our duties under the Working Time Regulations by supplying any relevant information about the Assignment which we may reasonably request. You will not knowingly do anything to cause us to be in breach of our obligations under the Working Time Regulations. If you require the services of a Temporary Worker for more than 48 hours in any week during the course of an Assignment, you must notify us of this requirement before the Assignment begins or, if this is not possible, at the very latest before the commencement of the week in which you require the Temporary Worker to work in excess of 48 hours.
- 3.3. You will comply with your obligations under Regulations 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.
- 3.4. To enable us to comply with our obligations under the AWR, you will provide to us as soon as possible at any time we may reasonably request, information relating to the following:
- 3.4.1. any Calendar Weeks since 1 October 2011 in which the relevant Temporary Worker has worked in the same or a similar role with you via any third party (such as another employment agency) prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
 - 3.4.2. if, since 1 October 2011, the Temporary Worker has worked in the same or a similar role with you via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with you via any third party during the relevant Assignment, to provide to us all the details of such work;
 - 3.4.3. to inform us if, since 1 October 2011, the Temporary Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 3.4.3.1. completed two or more assignments with you;
 - 3.4.3.2. completed at least one assignment with you and one or more earlier assignments with any member of your group (whether this is a local authority or otherwise); and/or
 - 3.4.3.3. worked in more than two roles during an assignment with you and on at least two occasions worked in a role that was not the same role as the previous role;
 - 3.4.3.4. if, since 1 October 2011, the Temporary Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment completed two or more assignments with you.
 - 3.4.4. save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 3.4.4.1. provide us with written details of the basic working and employment conditions the Temporary Worker would be entitled to for doing the same job if the Temporary Worker had been recruited directly by you as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - 3.4.4.2. inform us in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
 - 3.4.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide us with a written explanation of the basis on which you consider that the relevant individual is a Comparable Employee; and
 - 3.4.4.4. inform us in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
 - 3.4.4.5. provide us with written details of your pay and benefits structures and appraisal processes and any variations of the same.
- 3.5. You will comply with all of our requests for information and any other requirements to enable us to comply with the AWR.
- 3.6. You warrant that:
- 3.6.1. all information and documentation supplied to us in accordance with clauses 3.2, 3.5 and 3.6 is complete, accurate and up-to-date; and
 - 3.6.2. you will, during the term of the relevant Assignment, immediately inform us in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.2, 3.5 and 3.6.
- 3.7. Without prejudice to clauses 14.5 and 14.6, you shall inform us in writing of any:
- 3.7.1. oral or written complaint the Temporary Worker makes to you which is or may be a complaint connected with rights under the AWR; and
 - 3.7.2. written request for information relating to the Relevant Terms and Conditions that you receive from the Temporary Worker, as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by you and you undertake to take such action and give such information and assistance as we may request, and within any timeframe requested by us, in order to resolve any such complaint or to provide any such information in a written statement to the Temporary Worker within 28 days of your receipt of such a request in accordance with Regulation 16 of the AWR and you will provide us with a copy of any such written statement.

4. WHAT WE HAVE TO DO

- 4.1. We will take reasonable steps to:
 - 4.1.1. Introduce and supply to you a Temporary worker as named in an engagement letter from us to you to provide you with the services specified in that letter; and
 - 4.1.2. Ensure that the Temporary Worker is aware of your requirements for the Assignment including any changes you make.
- 4.2. We will make all reasonable efforts to supply you with a Temporary Worker possessing reasonable standards of skill and experience for the Assignment.
- 4.3. It is our responsibility to:
 - 4.3.1. Check any reference supplied by the Temporary Worker;
 - 4.3.2. Check that any academic or professional qualification claimed by the Temporary Worker is valid;
 - 4.3.3. Check that the Temporary Worker is authorised by law to validly accept the Assignment;
 - 4.3.4. Obtain and check work and other permits claimed by the Temporary Worker; and
 - 4.3.5. Arrange any medical examinations and/or investigations into the medical history of a Temporary Worker to satisfy any medical or other legal requirements.

5. WHEN DO YOU ACCEPT A TEMPORARY WORKER

You accept a Temporary Worker on the date we tell you their name.

6. WHEN THE ASSIGNMENT STARTS

Subject to clause 11 Below, the Assignment starts on the first day the Temporary Worker is supplied by us to you for the purpose of commencing an Assignment.

7. SUITABILITY OF A TEMPORARY WORKER

- 7.1. If you reasonably consider that the services of the Temporary Worker are unsatisfactory then you must notify us within 2 hours of the commencement of the Assignment and give us the opportunity to investigate the reason for your dissatisfaction.
- 7.2. If we agree that you have good cause to be dissatisfied then, at our discretion, we may charge all or part of the fee for the services of that Temporary Worker. In such circumstances we may at our discretion replace that Temporary Worker with another individual that we deem to be suitable and competent to continue the Assignment.
- 7.3. Any replacement Temporary Worker supplied by us in accordance with clause 7.2 above is deemed to be on the same contractual terms as the original Temporary Worker.

8. WHAT YOU HAVE TO PAY US

- 8.1. You will have to pay us:
 - 8.1.1. the daily charge stated in the engagement letter for each day or part day worked by the Temporary Worker on the Assignment;
 - 8.1.2. travelling, hotel, or other expenses stated in the engagement letter and as itemised on our invoice.
- 8.2. We reserve the right to vary the Charges agreed with you, by giving written notice to you:
 - 8.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR; and/or
 - 8.2.2. if there is any variation in the relevant terms and conditions.
- 8.3. VAT is payable at the applicable rate on the all fees and all sums payable under this clause 8.

9. WHEN YOU HAVE TO PAY US

- 9.1. Every 7 days during the Assignment we will send to you an invoice detailing the daily charges.
- 9.2. Our invoices are payable in accordance with the payment terms shown on the invoice.
- 9.3. When you pay us, you accept the Charges and the accuracy of any copy timesheet(s) for that Assignment.
- 9.4. The daily charges detailed in the invoice, described in clause 9.1 are not refundable if the Assignment comes to an end for any reason.
- 9.5. If you do not pay your invoice on time we may:
 - 9.5.1. charge you interest on all overdue debts at the rate of 8% per annum above the base rate of the Bank of England from time to time from the due date until the date of payment;
 - 9.5.2. charge you all our costs of recovering what you owe us including our administration costs, legal costs and any debt collection agency costs; and
 - 9.5.3. suspend any further services until such time as the outstanding amounts have been paid.
- 9.6. No refunds are payable in respect of the Charges.
- 9.7. Your obligations under this clause 9 shall be performed without any right you may have to invoke setoff, deductions, withholdings or other similar rights.

10. WHO DEDUCTS INCOME TAX AND NATIONAL INSURANCE

- 10.1. We will pay the Temporary Worker (or any intermediary through which the Temporary Worker is engaged) for the work completed during an Assignment and where necessary we will deduct all applicable taxes (including any National Insurance contributions) and any other deductions as required by law.

11. TRANSFER FEE

- 11.1. You shall be liable to pay a Transfer Fee if the you Engage a Temporary Worker Introduced by us or if you introduce the Temporary Worker to a third party and such introduction results in an Engagement of the Temporary Worker by the third party and:
 - 11.1.1. where the Temporary Worker has been supplied by us, such Engagement takes place during the Assignment or within the Relevant Period; or
 - 11.1.2. where the Temporary Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to you.
- 11.2. If you wish to Engage the Temporary Worker other than via us and do not wish to incur liability to pay a Transfer Fee, you may, by giving 3 days' written notice to us, engage the Temporary Worker through us for an extended period of 18 weeks ("Extended Period"). During the Extended Period you shall pay the current daily charge set out in the Engagement letter for each day the Temporary Worker is employed or supplied.
- 11.3. If for any reason:
 - 11.3.1. we are unable to supply the Temporary Worker for any reason outside our control for the whole or any part of the Extended Period; or
 - 11.3.2. you do not wish to hire the Temporary Worker on the same terms as have previously applied to the Assignment, and you Engage the Temporary Worker, you shall pay the Transfer Fee, which shall be reduced pro-rata to reflect any fees paid by you to us during any part of the Extended Period worked by the Temporary Worker before the commencement of their engagement with you.
- 11.4. If you fail to give notice to us of your intention to Engage the Temporary Worker before such Engagement commences, you agree that the Transfer Fee shall be payable in full.
- 11.5. The Transfer Fee is calculated as follows: 25% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the daily charges agreed pursuant to the offer of Engagement multiplied by 35. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.
- 11.6. VAT is payable in addition to any Transfer Fee due. The Transfer Fee is payable in accordance with the terms of the invoice.

12. FIXED TERM ENGAGEMENTS

- 12.1. In the event that the Engagement of the Temporary Worker is for a fixed term of less than 12 months, the Transfer Fee, will apply pro-rata.
- 12.2. If the Engagement is extended beyond the initial fixed term or the Temporary Worker is re-engaged within 3 months of the termination of the first Engagement you shall be liable to pay a further fee based on the additional remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is the sooner.

13. CONFIDENTIALITY AND DATA PROTECTION

- 13.1. All information relating to a Temporary Worker is confidential, is subject to the Data Protection Laws and is provided solely for the purpose of providing services to you. Such information must not be used for any other purpose nor divulged to any third party and you undertake to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 13.2. We undertake to keep confidential all Relevant Terms and Conditions that you disclose to us and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 13.3. Information relating to our business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

14. LIABILITY

- 14.1. Whilst we make reasonable efforts to give satisfaction to you by ensuring reasonable standards of skills, integrity and reliability from the Temporary Worker and to provide the same in accordance with the Assignment details as provided by you no liability is accepted by us for any Losses arising from the failure to provide a Temporary Worker for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker or if the Temporary Worker terminates the Assignment for any reason. For the avoidance of doubt, we do not exclude liability for death or personal injury arising from our own negligence or for any other loss which we are not permitted to exclude under law.
- 14.2. You shall advise us of any special health and safety matters about which we are 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 to fill the Assignment. You will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Temporary Worker.
- 14.3. You undertake not to 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 you to perform the duties of a person on strike or taking official industrial action.
- 14.4. If the Temporary Worker brings, or threatens to bring, any AWR Claim, you undertake to take such action and to give such information and assistance as we may request, and within any timeframe requested by us and at your own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 14.5. You shall inform us in writing of any AWR Claim which comes to your attention as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to your attention.
- 14.6. You shall indemnify us and keep us indemnified against any Losses incurred by us by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by you.

15. NO EMPLOYMENT

The Assignment shall not give rise to an employment relationship between the Temporary Worker and either us or you.

16. VARIATION

These Conditions cannot be altered or added to unless one of our Directors agrees to such a variation in writing.

17. WAIVER

If at any time we do not enforce any one or more of our rights under these Conditions that lack of enforcement shall not be deemed as a waiver of such rights or prevent or limit us from subsequently enforcing our rights under these Conditions.

18. HEADINGS

The headings and clause numbers in these Conditions are there for reference purposes only and do not affect the intended meanings of the clauses to which they relate.

19. FORCE MAJEURE

We are not liable to you for any delay or lack of performance on our part caused or contributed to by circumstances beyond our control.

20. SEVERANCE

- 20.1. If any part of these Conditions is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that part shall, to the extent required, be deemed not to form part of the Conditions, and the validity and enforceability of the other parts of the agreement shall not be affected.
- 20.2. If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

21. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. THIRD PARTIES

Nothing in these Conditions is intended to give any person who is not a party to any contract between us any rights to enforce it pursuant to the Contract (Rights of Third Parties) Act 1999.

23. GOVERNING LAW

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