

## Facilities, Building Services and Maintenance Recruitment Specialists

### Terms and Conditions for Contract/Temporary Staff Services

#### 1 DEFINITIONS

1.1 In these terms of business the following definitions apply:

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

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

“Employment Business” means Blade Industries Ltd and/or any subsidiary or associated company (as defined by the Companies Act 1985) of Blade Industries Ltd;

“Engagement” means any use of the Contractor on a temporary basis, whether under any contract, agency, license, franchise or partnership agreement, or any other engagement, but not such use as entails the Contractor becoming an employee of the Client;

“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;

“Contractor” means the person (including where appropriate, a body corporate) whose services are supplied the Employment Business to the Client.

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 Employment Business acts as an employment business for the purposes of this contract.

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

#### 2 THE CONTRACT

2.1 These Terms and the provisions of the letter from the Employment Business confirming the details of the Engagement constitute the contract between the Employment Business and the Client for the supply of the Contractor’s services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of the Contractor.

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 of these Terms of Business shall be valid unless approved in writing by a Director of the Employment Business. Any such variation or alteration shall refer specifically to this clause.

2.4 The Employment Business will decline to accept any instructions to source 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 Contractor (rounded up to the nearest quarter hour). The charges comprised mainly of the Contractor’s remuneration (including holiday pay under the Working Time Regulations Act 1998) but also include the Employment Business’s fees, Employers 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 7 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 with 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 Contractors then being supplied to the Client.

3.3 The Client acknowledges the importance of the Employment Business of cash flow considerations and that to ensure its continued operation the Employment Business remunerates its Contractors (including the Contractor engaged by the Client under these Terms) by reference to the time sheets completed by the Contractor. Accordingly, and subject to clause 3.4 below, the following provisions shall apply:

(a) Each and every timesheet signed by an employee, officer or representative of the Client shall be conclusive evidence of the number of hours worked by the Contractor and shall be conclusive evidence of the Client’s satisfaction with the tasks for which he/she was Engaged during the said number of hours, the standard of his/her workmanship and his competence.

(b) 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 Contractor in relation to the Engagement as at the date of the said certificate.

3.4 Clause 3.3b shall be of no effect if and only within 7 days of invoice being rendered by the Employment Business to the Client, the Client makes a specific complaint in writing to the Employment Business’s registered office. The said complaint shall be effective only if it:

(a) Refers to the Client’s rights under this clause;

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- (b) Cites the name of the Contractor if possible;
  - (c) 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.
  - (d) 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.c above, and indicates how that amount is made up.
  - (e) 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.b shall be without prejudice to either party's right to subsequently open up, review 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 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.b prior to such reference or claim.
- 3.6 Timesheets under clause 3.3.a and certificates under clause 3.3.b shall be binding (in accordance with these Terms) as to all matters of fact, save insofar as they contain fraud or manifest error.

### 4 TIMESHEETS

- 4.1 At the end of each week (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 a week) the Client shall sign the Employment Business's timesheet verifying the number of hours worked by the Contractor during that week. The Client acknowledges the importance to the Employment Business of the timesheets and of the contractual nature of the timesheets.
- 4.2 Subject to the Terms of clause 3.4 above, signature of a timesheet 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 Contractor and the number of hours worked. Failure to sign the timesheet does not absolve the Client's obligation to pay the charges in respect of the hours stated to be worked.

### 5 REMUNERATION

- 5.1 The Employment Business assumes responsibility for payment of the Contractor's remuneration (including holiday pay under the Working Time Regulations Act 1998) and where appropriate, for the deduction of National Insurance Contributions and PAYE Income Tax applicable to the Contractor. However, nothing in these Terms shall make the Contractor an employee of either the Client or the Employment Business.

### 6 INTRODUCTION FEES

- 6.1 The direct Engagement by a Client of a Contractor introduced by the Employment Business, or the introduction by the Client of a Contractor to any third party resulting in an Engagement (or, where applicable, if the Contractor has become incorporated under a limited company, the Engagement of that limited company) renders the Client subject to the payment of an introduction fee calculated in accordance with the accompanying scale of fees for permanent introductions ("the Introduction Fee") provided that the Engagement takes place within the Relevant Period. No refunds will be made payable for such placements as the ability of the worker is deemed proven. Or,
- 6.2 the purposes of this clause 6 the Relevant Period shall mean if there was no Assignment, within 6 months of the Introduction of the Contractor by the Employment Business or if there was an Assignment the Relevant Period shall be the later of:
- (a) 8 weeks commencing on the day that the Contractor last performed services for the Client pursuant to the Assignment; and
  - (b) 14 weeks commencing on the first day that the Contractor first provided services to the Client pursuant to an Assignment with the Client (provided that if there is a period of more than 42 days between assignments this period shall commence on the first day of the assignment following such period between Assignments).
- 6.3 In the case of the direct Engagement by the Client the Client can, instead of paying the Introduction Fee, elect to extend the period of hire by the Extended Period after which time the Contractor shall be able to be engaged directly by the Client, or through another agency, without payment of the Introduction Fee.
- 6.4 Where the Client elects to extend the period of hire in accordance with clause 6.3 above, the Client must give the Employment Business 7 days' prior notice in writing of its intention to do so. Where the Client fails to give such notice and directly engages the Contractor, the Transfer Fee will automatically become payable in accordance with clause 6.1.
- 6.5 For the purposes of this clause 6 the Extended Period shall mean 26 weeks or such other period as is specified in the letter referred to in clause 2.1
- 6.6 Where the Client fails to inform the Employment Business of the annual remuneration of the Contractor, the Introduction Fee will be calculated by multiplying the hourly charge of the Employment Business for the Contractor's services by 300. No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fees due.
- 6.7 (FOR LIMITED COMPANY CONTRACTORS WHO HAVE CONTRACTED OUT OF AGENCY REGULATIONS ONLY)
- (a) The direct Engagement by a Client of a Contractor introduced by the Employment Business, or the introduction by the Client of a Contractor to any third party resulting in an Engagement renders the Client subject to the payment of an introduction fee calculated in accordance with the accompanying

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scale of fees for permanent introductions ("the Introduction Fee") provided that the Engagement takes place within a period of 6 months from the termination of the Assignment under which the Contractor was last supplied or if there was no Assignment within 6 months of the introduction of the Contractor by the Employment Business. No Refunds will be made payable for such placements as the ability of the worker is deemed proven.

(b) Where the Client fails to inform the Employment Business of the annual remuneration of the Contractor, the Introduction Fee will be calculated by multiplying the hourly charge of the Employment Business for the Contractor's services by 300. No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fees due.

### 7 SUITABILITY OF THE 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;

- (a) The Client's identity and the nature of its business;
- (b) The date on which the Client requires a contractor to commence work, and the duration or likely duration of the work;
- (c) The position for which a Contractor is sought, including the type of work the Contractor would be required to do, the location at which and the hours during which he/she would be required to do it, and any risks to the health or safety of the Contractor 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 authorisations which the Client considers are necessary or required by law or any professional body for an application 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;

7.2 Whilst reasonable effort is made by the Employment Business to ensure appropriate standards of skill, integrity and reliability from Contractors and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expenses, damage, delay or disruption arising from any of the following;

- (a) Provision of a Contractor;
- (b) The failure to provide (or replace) any Contractor for all or part of the period booking;
- (c) The negligence, dishonesty, misconduct or lack of skill of the Contractor in the course of the Assignment;
- (d) Any negligence or breach of duty on the part of the Employment Business in the selection of the Contractor.

7.3 Nothing in clause 6.2 shall exclude the Employment Business's 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 Contractor to enable the Contractor to supply services to the Client in the capacity requested.

7.5 Contractors are engaged by the Employment Business under contracts for services and are not employees of the Employment Business. They are under the sole supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Contractor whether wilful, neglect or otherwise as though he/she were employed by the Client. 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, 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 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 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 practical steps to ensure that no Contractor is treated unfavourably by any person under its control, on the grounds of the Contractor's 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 Contractor, 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 officer).

### 8 ADVERTISING

8.1 In order to source suitable Contractors the Employment Business may advertise the positions the Client has instructed the Employment Business to fill.

### 9 TERMINATION

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

- (a) Within 4 hours of the Contractor commencing the Assignment where the booking is for more than 7 hours or;

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(b) Within 2 hours for bookings of 7 hours or less

And also provided that notification of the unsuitability of the Contractor and of the requirement to remove him/her is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

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

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

### 10 LAW

10.1 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.

### 11 VARIATION OF TERMS

11.1 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 is 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.

### 12 DATA PROTECTION ACT

12.1 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 any 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 principle directors with a credit reference agency.

### 13 ADJUDICATION

13.1 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.

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

13.3 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:

(a) *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).*

(b) *The adjudicator shall summarily assess the said costs at the end of the hearing 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 4 of the Civil Procedures Rules). The assessed amount and a brief statement of the reasons for the amount assessed shall be set out in the Adjudicator's Decision.*

(c) *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 costs from any sum awarded to the Client by the adjudicator.*

13.4 Clause 16.1 of the adjudication 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."*

13.5 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).