

TERMS OF BUSINESS – TEMPORARY AGENCY WORKERS

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

“Mainstay”	means Mainstay Recruitment Solutions Ltd. Company Registration number – 9732988. Registered office 31 Allendale Rd, Walmley, Sutton Coldfield, B76 1NL.
“Hirer”	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is introduced or supplied.
“Agency Worker”	means the person, firm or corporate body introduced to the hirer by Mainstay to provide services to the Hirer;
“Assignment”	means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by Mainstay to work temporarily for and under the supervision and direction of the Hirer;
“Charges”	means the hourly charges of Mainstay calculated in accordance with the Confirmation of Rates and as may be varied from time to time in accordance with these terms.
“Engagement”	means the engagement, employment or use of the Agency Worker by the Hirer or by any third party to whom the Agency Worker has been introduced by the Hirer, directly or indirectly on a permanent or temporary basis, whether under a contract of service or for services; and/or through a company of which the Agency worker is an officer, employee or other representative, an agency, license, franchise, or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly.
“Introduction”	means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Hirer’s interview of the Agency Worker (in person or by telephone or by any other means), following the Hirer’s instruction to Mainstay to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and “Introduced” and “Introducing” shall be construed accordingly;
“Losses”	means all losses, liabilities, damages, costs, expenses 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;
“Confirmation of Rates”	means the document that is sent to the hirer by Mainstay via post or electronically, detailing the agreed charge rates, standard weekly hours, minimum charges and any variations that have been agreed including standard overtime charge rates and payment terms.

2. THE CONTRACT

- 2.1 These Terms constitute the contract between Mainstay and the Hirer for the supply of the Agency Worker’s services by Mainstay to the Hirer and are deemed to be accepted by the Hirer by virtue of its request for, interview with or Engagement of the Agency Worker, or the passing of any information by the Hirer about an Agency Worker to any third party following an Introduction.
- 2.2 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed with the issuing of revised Confirmation of Rates by Mainstay to the Hirer and are set out in writing and a copy of the variations is given to the hirer stating the date on or after which such varied terms shall apply.

- 2.3 These Terms contain the entire agreement between Mainstay and the Hirer and unless otherwise agreed in writing by a director Mainstay, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hire.
- 2.4 The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 2.5 If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.
- 2.6 All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, or by email, or by facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent. Unless the context otherwise requires, references to the singular include plural and references to the masculine include the feminine and vice versa. These Terms are governed by the law of England and Wales and are subject to the exclusive jurisdiction of courts of England and Wales.
- 2.7 Mainstay shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Hirer.

3. PAYMENT OF THE AGENCY WORKER

Mainstay is responsible for paying the Agency Worker and if applicable, for the deduction and payment of National Insurance Contributions and PAYE Income Tax.

4. TIMESHEETS

- 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 1 week or less) the Hirer shall agree the hours for each agency worker that is to be charged Mainstay to the hirer.

The hirer will agree the hours using one of the following methods:

- i) The Hirer manually signing a Mainstay timesheet.
- ii) Or another method that has been agreed between Mainstay and the hirer detailing the alternative method of verifying hours including yet not limited to, the Hirer's clocking report, email confirmation, or a spreadsheet attachment.

- 4.2 When signing or when agreeing hours under an agreed alternative method, the Hirer is verifying and confirming that the number of hours worked by the Agency Worker during that week is correct and will therefore accept a charge for those hours.

- 4.3 If the Hirer is unable to sign a timesheet produced for authentication by the Agency Worker or Mainstay is unable to produce the verification of hours worked by other means as they have been agreed because the Hirer disputes the hours claimed. The Hirer shall co-operate fully and in a timely fashion with Mainstay to enable Mainstay to establish what hours, if any, were worked by the Agency Worker. **Failure to sign the timesheet or produce the agreed verification does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.**

- 4.4 The Hirer shall not be entitled to decline to sign a timesheet or produce the verification of hours worked by other means on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clause 8.1 below shall apply.

5. CHARGES

- 5.1 The Hirer agrees to pay the Charges as notified to and agreed with the Hirer as defined within the confirmation of rates. The Charges are calculated according to the number of hours worked by the Agency Worker (to the nearest quarter hour) unless otherwise detailed within the relevant

Confirmation of Rates. Unless otherwise stated within the relevant Confirmation of rates document, the minimum charge period for each worker that is supplied by Mainstay will be eight hours per day. Mainstay will invoice the Charges to the Hirer on a weekly basis. The Hirer will pay the Charges within 7 days of the date of the invoice unless otherwise agreed in the relevant Confirmation of Rates. VAT is payable at the applicable rate on the entirety of the Charges

- 5.2 Mainstay reserves the right to vary the charges agreed with the Hirer in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, and/or if there is any variation in the relevant terms and conditions. The revised charges will be confirmed in to the Hirer within a revised Confirmation of Rates document that will state the effective from date.
- 5.4 The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment. Any losses that Mainstay incurs in collection of overdue/late payments will also be charged and will be payable by the Hirer.
- 5.5 No refunds are payable by Mainstay in respect of the Charges.
- 5.6 The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.

6. TRANSFER FEES

- 6.1 The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages an Agency Worker Introduced by Mainstay other than via Mainstay or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via Mainstay and:
- i) Where the Agency Worker has been supplied by Mainstay, such Engagement takes place during the Assignment or within 8 weeks after the person last rendered services to or on behalf of the Hirer. This shall not be dependent upon proof of introduction to a third party.
- 6.2 "Engagement" shall include employment or use whether under a contract of employment, contract of services or a contract for services, whether directly or via an employment business, agency, master/neutral vendor, third party intermediary, partnership or any other form of association and will survive any loss or transfer of contract to another supplier.
- 6.3 The fee will be payable whether or not the position for which the Agency Worker is engaged is the same for which they originally supplied or introduced for and will be calculated by multiplying the last hourly charge rate agreed between the Hirer and Mainstay within the relevant Confirmation of Rates by 400 (plus VAT). The fee will be payable immediately to Mainstay and no refund will be paid in the event that Engagement of the Agency Worker terminates. Alternatively the Hirer has the option to choose an extended period of hire of 26 weeks in lieu of the fee. The hourly charge rate and weekly hours will be in accordance with the relevant Confirmation of Rates.
- 6.4 If the Hirer wishes to engage the Agency Worker other than via Mainstay without liability to pay a Transfer Fee, the Hirer may, on giving one week's written notice to Mainstay, engage the Agency Worker for the Period of Extended Hire. The period of Extended Hire will be agreed by the Hirer and Mainstay and added to the relevant Confirmation of Rates.

7. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 7.1 The Hirer will advise Mainstay at the time of instructing Mainstay to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 where applicable.

- 7.2 The Hirer shall assist Mainstay by providing any information required to allow Mainstay to comply with its statutory obligations under the safeguarding vulnerable Groups act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 and to allow Mainstay to select a suitable Agency Worker for the Assignment.

8. UNSUITABILITY OF THE AGENCY WORKER

- 8.1 The Hirer undertakes to supervise the Agency Worker sufficiently to ensure the Hirer's satisfaction with the Agency Worker's standards of work. If the Hirer reasonably considers that the services of the Agency Worker are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing Mainstay to remove the Agency Worker. Mainstay may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker, provided that the Hirer has notified Mainstay immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:

- i) within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
- ii) within 2 hours for Assignments of 7 hours or less;

and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to Mainstay within 48 hours of the termination of the Assignment.

9. TERMINATION OF THE ASSIGNMENT

The Hirer, Mainstay or the Agency Worker may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 5 above).

10. CONFIDENTIALITY AND DATA PROTECTION

- 10.1 Both the Hirer and Mainstay agree to comply with the relevant sections of the Data Protection Act 1998. Information relating to Mainstay's 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.

- 10.2 The Hirer accepts that by placing a booking with Mainstay, Mainstay may advertise to recruit suitable people

11. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Hirer. Accordingly Mainstay shall use its reasonable endeavours to ensure that the Agency Worker shall execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

12. LIABILITY

- 12.1 Whilst reasonable efforts are made by Mainstay to give satisfaction to the Hirer by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker. Mainstay shall not be liable under any circumstances for any loss, damage, or expense, suffered or incurred by the Hirer or any third party arising from or any way connected with the supply by Mainstay to the Hirer of any Agency Worker or the use by the Hirer of the services of any Agency worker supplied by Mainstay or any failure by Mainstay to provide any Agency Worker for all or part of the Assignment or from any incompetence, negligence, error, omission, fraud, dishonesty, misconduct or lack of skill or incapability of the Agency Worker or if the Agency Worker terminates the Assignment for any reason.
- 12.2 The Hirer is strongly advised to insure that their insurances are adequate to cover these risks for which Mainstay are not liable. In engaging an Agency Worker from Mainstay the Hirer agrees that Mainstay shall not be or become liable for any loss or damage suffered by a third party or third parties as a result of any matter referred to herein.

- 12.3 Agency Workers supplied by Mainstay pursuant to these Terms are deemed to be under the supervision and direction of the Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Hirer.
- 12.4 The Hirer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the WTR, Health and Safety by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 3 above, including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.
- 12.5 In addition and without prejudice to the forgoing conditions the Hirer undertakes to indemnify and at all times to keep indemnified Mainstay against all liabilities whatsoever suffered or incurred by Mainstay arising out of or in connection with matters raised in condition 12 or arising out of any non-compliance with, and/or as a result of any breach of these terms by the Hirer. For the avoidance of doubt this includes all matters relating to the driving, carrying involvement or use of vehicles, whether owned or under the direction of the Hirer or otherwise.
- 12.6 The Hirer shall advise Mainstay of any special health and safety matters about which Mainstay is required to inform the Agency Worker.
- 12.7 Mainstay do not complete inductions unless specifically agreed in writing by a Director of Mainstay. Mainstay accepts no liability arising from the delivery or issue of induction documents or material on behalf of the Hirer.
- 12.8 The Hirer will assist Mainstay in complying with duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by Mainstay. If the Hirer requires the services of the Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer must notify Mainstay of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Hirer requires the Agency Worker to work in excess 48 hours.
- 12.9 With respect to the Agency Worker Regulations 2010:
- i) The Hirer accepts liability should the Hirer fail to provide information, or provides inaccurate information to enable Mainstay to provide equal treatment to Agency Workers.
OR
 - ii) The Hirer accepts the supply of temporary workers under Regulation 10 (Swedish Derogation) contract.
- 12.10 Agency Workers carrying out driving work are supplied by Mainstay on the understanding that where applicable the Hirer has an operator's licence as required by law.
- 12.11 The Hirer shall not allow any Agency Worker to drive any motorised or other vehicle on behalf of the Hirer whether or not in the course of the Hirers business without ensuring first that the Agency Worker is properly licensed by the appropriate statutory authority and fully insured to driver such vehicle. The Hirer will ensure that the vehicle driven by the Agency Worker is properly maintained, safe and insured under the Road Traffic Acts and that proper records and tachographs and vehicle licences are kept.
- 12.12 As far as possible, Mainstay will check references of any drivers and will examine driving licenses and permits: not withstanding this the Hirer agrees to take responsibility for all statutory duties where applicable in respect of driving licenses and permits, drivers hours and records, the issue and collection of tachograph cards, maintenance and safety of vehicles, Health and Safety regulations and Road Traffic and liability insurances including but not limited to fully comprehensive insurance for the vehicle to be driven and its contents
- 12.13 To assist the Hirer in complying with the relevant provision of the Transport Act, Mainstay agrees to provide the Hirer upon request with such information as is available to Mainstay about driving assignments carried out by the Agency Worker in the Seven days immediately preceding the



commencement of an assignment with the Hirer, providing the driver has worked with a client of Mainstay during those Seven days.

13. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.



