

# Terms of Business

## 1. Definitions

### 1.1

In these Terms of Business the following definitions apply:

“Assignment” means the period during which the Temporary Worker is supplied by The Upex Group 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 Temporary Worker is supplied or introduced;

“The Upex Group” means the Employment Business (Upex Group Ltd of 1 Corrie Road, Addlestone, Surrey KT15 2HT), Company Registration Number 10390347)

“Engages/Engaged/Engagement” means the engagement, employment or use of the Temporary Worker directly by the Client or any third party or through any other Employment Business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Temporary Worker is an officer or employee.

“Temporary Worker” means the individual who is introduced by the Employment Business to render services to the Client.

“Transfer Fee” means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

“Introduction Fee” means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

“Introduction” means (i) the Client’s interview of a Temporary Worker in person or by telephone, following the Client’s instructions to the Employment Business to supply a Temporary Worker; or (ii) the passing to the Client of a curriculum Vitae or information which identifies the Temporary Worker; and which leads to an Engagement of that Temporary Worker.

“Shift” means the amount of hours consecutively worked by a Temporary Worker in the period during which the Temporary Worker is supplied by The Upex Group to render services to the Client;

“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 Temporary Worker for services rendered to or on behalf of the Client or any third party. Where a company car is provided, a notional amount will be added to the salary in order to calculate The Upex Group fee.

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“Minimum Hourly Day” means the term within Quotation sent by The Upex Group before the supply of services detailing the minimum amount of hours chargeable per ‘shift’ completed by a Temporary Worker.

## 1.2

Unless the context otherwise requires, references to the singular include the plural.

## 1.3

The headings contained in these Terms are for the convenience only and do not affect their interpretation.

## 2. The Contract

### 2.1

These terms constitute the contract between The Upex Group and the Client for the supply of the Temporary Worker’s Services by The Upex Group to the Client, and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement or the Temporary Worker or the passing of any information about the Temporary Worker to any third party following an introduction.

### 2.2

These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by [a registered director] of The Upex Group, these Terms prevail over any terms of business or purchase conditions put forward by the client.

### 2.3

No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between The Upex Group and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

## 3. Charges

### 3.1

The Client agrees to pay such hourly charges of The Upex Group as shall be notified to and agreed with the Client. The charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour), subject to clause 3.3 below and comprise mainly the Temporary Worker’s hourly rate but also include the commission of The Upex Group calculated as a percentage of the Temporary Worker’s hourly rate, 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, if applicable, is payable on the entirety of these charges.

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### 3.2

The charges are invoiced to the Client on a weekly basis and are payable within 30 days. The Upex Group reserves the right to charge late payment interest and any associated debt recovery costs on any overdue amounts from the due date until the date of payment.

### 3.3

The client agrees to the hourly charge rate displayed on the Quotation generated by The Upex Group, and agrees to the subsequent terms displayed on the Quotation including the “minimum hourly day” term.

### 3.4

As The Upex Group arranges payment for hours completed by Temporary Workers on a weekly basis, the client agrees that any hours invoiced relating to the supply of Temporary Workers will be deemed as accepted should written correspondence not be received within three working days from the start of the following week the Temporary Workers hours were completed. For the avoidance of doubt, a week commences on each Monday and ends on each Sunday at 23:59pm.

### 3.5

There are no rebates payable in respect of the charges of The Upex Group other than those set out in the clause below.

## 4. Information to be provided

### 4.1

When making an introduction of a Temporary Worker to the Client The Upex Group shall inform the Client of the identity of the Temporary Worker; that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Temporary Worker will be engaged by The Upex Group under a contract of service, apprenticeship or other assignment for services; and that the Temporary Worker is willing to work in the Assignment.

### 4.2

Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and public or Bank holiday) following, save where the Temporary Worker is being introduced for an Assignment in the same position as one in which the Temporary Worker had previously five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

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### 5. Time Sheets

#### 5.1

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) the Client shall sign The Upex Group time sheet verifying the number of hours worked by the Temporary Worker during that week.

#### 5.2

Signature of the time sheet by the Client, or written confirmation of hours is confirmation of the number of hours worked. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform The Upex Group as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with The Upex Group to enable The Upex Group to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.

#### 5.3

The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the client should apply the provisions of clause 13.1 below. Should a signed timesheet or confirmation of hours not be confirmed within the time parameters of s.3.4, the standard minimum hourly day displayed within the quotation will be charged.

### 6. Payment of the Temporary Worker

#### 6.1

The Upex Group assumes responsibility for paying the Temporary Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003\*.

### 7. Transfer and Introduction Fees

#### Notification and Fees

#### 7.1

The Client agrees:

- (a) to notify The Upex Group immediately of any offer of an Engagement which it makes to the Applicant;

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(b) to notify The Upex Group immediately that it's offer of and Engagement to the Applicant has been accepted and to provide details of the Remuneration to The Upex Group; and

(c) to pay the Upex Group fee within 7 days of the date of invoice.

### 7.2

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

### 7.3

The Upex Group reserves the right to charge interest on invoiced amounts unpaid for more than 30 days at the rate of standard late payment interest above the base rate from time to time of Barclays bank from the due date until the date of actual payment.

### 7.4

The fee payable to The Upex Group 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 if applicable.

## 8. Refund Guarantees

### 8.1

In order to qualify for the following guarantees, the Client must pay the Upex Group fee within 7 days of the date of the invoice and must notify The Upex Group in writing of the termination of the Engagement within 7 days of its termination.

### 8.2

If the Engagement terminates before the expiry of 10 weeks from the commencement of the Engagement (except where the Application is made redundant), the fee will be rebated in accordance with the following Scale of Rebates:

#### Scale of Rebates

For engagements Refund during terminating: or at the end of; %

Weeks 1 & 2	90%
Weeks 3 & 4	80%
Week 5	70%
Week 6	60%
Week 7	50%
Week 8	40%
Week 9	30%
Week 10	20%

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### 8.3

Should the Client or any subsidiary or associated company of the Client subsequently re-engage the Applicant within the period of 6 calendar months from the date of termination of the Engagement a full fee calculated in accordance with clause 7.4 above becomes payable, with no entitlement to the refund.

## 9. Introductions

### 9.1

Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by The Upex Group which results in an Engagement with that third party within 6 months of the introduction renders the Client liable to payment of the Upex Group fee as set out in clause 7.4 with no entitlement to any refund.

### 9.2

An introduction fee calculated in accordance with clause 7.4 will be charged in relation to any Applicant engaged as a consequence of or resulting from an introduction by or through The Upex Group, whether direct or indirect, within 6 months from the date of the Upex Group introduction.

### 9.3

Should the client directly or indirectly engage an introduced candidate outside of these terms, for the avoidance of doubt The Upex Group reserve the right to charge a placement fee of a minimum £2000 (exclusive of VAT).

## 10. Suitability

### 10.1

The Upex Group endeavours to ensure the suitability of any Applicant introduced to the Client. Not with standing this the Client shall satisfy itself as to the suitability of the Applicant and shall take up any references provided by the Applicant and/or The Upex Group before engaging 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 satisfying and medical and other requirements or qualifications required by law of the country in which the Applicant is engaged to work.

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### 11. Liability

#### 11.1

Whilst every effort is made by The Upex Group to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further provide them in accordance with the Client's booking details, The Upex Group is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker. For the avoidance of doubt, The Upex Group does not exclude liability for death or personal injury arising from its own negligence.

#### 11.2

Temporary Workers supplied by The Upex Group are engaged under contracts for services\*. They are not the employees of The Upex Group but are deemed to be under the 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 act, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though the Temporary Worker was on the payroll of the Client. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work etc, 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 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.

#### 11.3

The Client shall advise The Upex Group on any special health and safety matters. The Upex Group is 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 is to fill the Assignment. The Client will assist The Upex Group in its duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by The Upex Group and the Client will not do anything to cause The Upex Group to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must inform The Upex Group of this requirement before the commencement of that week.

#### 11.4

The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker for the Temporary Worker to fill the Assignment.

#### 11.5

The Client undertakes 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 someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.



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### 11.6

The Client shall indemnify and keep indemnified The Upex Group against any costs, claims or liabilities incurred by The Upex Group arising out of any Assignment or arising out of any non-compliance with clauses 11.2, 11.3 and 11.5 and/or as a result of any breach of these Terms by the Client.

## 12. Special Situations

### 12.1

Where the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, The Upex Group will take all reasonably practicable steps to obtain and offer to provide to the Clients:

- Copies of any relevant qualifications or authorisations of the Temporary Worker, and
- Two references from persons not related to the Temporary Worker who have agreed that the references they provide may be disclosed to the Client and has taken all reasonable practicable steps to confirm that the Temporary Worker is suitable for the Assignment.

If The Upex Group is unable to do any of the above, it shall inform the Client of the steps it has taken to obtain this information in any event.

## 13. Termination

### 13.1

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

- a) Within three hours of the Temporary Worker 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 provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to The Upex Group within 48 hours of the termination of the Assignment.



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### **13.2**

Any of the Client, The Upex Group or the Temporary Worker may terminate an Assignment at any time without the prior notice and without liability.

### **13.3**

The Client shall notify The Upex Group immediately and without delay and in any event within [24] hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.

### **13.4**

The Upex Group shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith by notice in writing without prior notice and without liability.

## **14. Law**

### **14.1**

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