

## TERMS OF ENGAGEMENT OF TEMPORARY WORKERS THROUGH AN INTERMEDIARY FOR SUPPLY TO CLIENTS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In these terms of business (these "Terms") the following definitions apply:
  - "Agreement" means the agreement between the Company and the Contractor incorporating these Terms;
  - "Assignment" means an assignment during which the Operatives are supplied to the Client to render services for the Client;
  - "Company" means Daniel Owen Limited, company number 2142070 whose registered office is Hadwyn House, Field Road, Reading RG1 6AP;
  - "Client" means the person, firm or corporate body requiring the services of the Operatives and to whom the Contractor and the Operatives are introduced by the Company;
  - "Contractor" means the intermediary (whether a limited company, partnership or sole trader) which is a party to the Agreement and which engages the Operatives to perform Assignments;
  - "Operatives" means the employees, workers or sub-contractors engaged by the Contractor to perform Assignments;
  - "Regulations" – means The Conduct of Employment Agencies and Employment Businesses Regulations 2003, as amended from time to time;
- 1.2. References to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. Unless the context requires otherwise, references to the singular include the plural.
- 1.4. The headings in these Terms are for convenience only and do not affect their interpretation.
- 1.5. Each of the clauses and sub-clauses of these Terms shall be construed as separate and severable. If any clause or sub-clause or parts thereof is or becomes illegal, void or invalid it shall not affect the legality and validity of the other clauses or sub-clauses and parts thereof.

### 2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Company and the Contractor and govern all Assignments undertaken by the Operatives on behalf of the Contractor.
- 2.2. These Terms constitute a contract for services between the Company and the Contractor. The parties accept that no mutuality of obligations exists or is implied by these Terms either in the course of an Assignment, between Assignments or otherwise.
- 2.3. For the avoidance of doubt, these Terms shall not give rise to a contract of employment between the Company and any Operative, or between the Client and any Operative.
- 2.4. No variation or alteration to these Terms shall be valid unless approved by a Director of the Company in writing.
- 2.5. It is acknowledged that these Terms shall supersede all prior representations, arrangements, understandings, terms of engagements and agreements between the parties.
- 2.6. The Contractor irrevocably and unconditionally waives any right that it may have to claim damages for any misrepresentation, arrangement, understanding or agreement not contained in these Terms or for any breach of any representation not contained in these Terms (unless such misrepresentation or representation was made fraudulently).
- 2.7. Nothing in this Agreement shall prohibit the Contractor from providing its services and those of its Operatives to any other person or organisation other than the Client or the Company.
- 2.8. The Company operates as an employment business as defined in sections 13(1) and (3) of the Employment Agencies Act 1973 as amended from time to time.

### 3. ASSIGNMENTS

- 3.1. The Company will endeavour to secure suitable Assignments for the Contractor for its Operatives to work as construction workers. A list of types of construction worker roles is set out in the Appendix to these Terms.
- 3.2. The failure by the Company to obtain suitable Assignments for the Contractor shall not give rise to any liability on the part of the Company.
- 3.3. The Company shall not be obliged to secure Assignments for the Contractor and the Contractor shall not be obliged to accept any Assignment offered it by the Company.
- 3.4. The Contractor undertakes to inform the Company as soon as possible whether it accepts or rejects an offer of an Assignment. The Contractor shall be deemed to have accepted an Assignment if its Operative(s) commence work under it.
- 3.5. Upon the acceptance by the Contractor of an Assignment the Company shall supply the Contractor with a "Contract Confirmation Note" specifying inter alia the duration of the Assignment, the identity of the Client, the fee rates payable by the Company in respect of services to be completed by the Contractor, the intervals at which fees will be paid, and such expenses as may be agreed and any other relevant information.
- 3.6. If requested by the Company, the Contractor will provide to the Company details of the experience, training, qualifications or authorisation of any Operatives which is required by the Client or by law or any professional body for a particular Assignment.
- 3.7. The Company shall not control, nor have any right of control as to how the Contractor or the Operatives perform services for the Client.

### 4. TIMESHEETS

- 4.1. At the end of each week of an Assignment (or at the end of the Assignment where an Assignment is for a period of less than one week or is completed before the end of a week) the Contractor shall deliver to the Company the Company's timesheet duly completed to indicate the number of hours worked by the Operatives during the preceding week and signed by an authorised representative of the Client. Such timesheets must be received by the Company by no later than 10.00 am on Monday following the week to which they relate.
- 4.2. The Contractor shall only be paid for verified hours worked by its Operatives. Where the Contractor fails to submit a properly completed time sheet signed by an authorised representative of the Client, The Company shall, in a timely fashion, conduct further investigations into the hours claimed and the reasons that the Client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Contractor. The Company shall make no payment for hours not worked or for hours for which there is no credible evidence of them being worked.

### 5. FEES AND PAYMENT

- 5.1. The Contractor will receive payment from the Company for an Assignment at the fee rate specified in the Contract Confirmation Note for each hour worked by the Operatives, plus VAT where appropriate. The minimum rate of pay payable in respect of the Operatives shall be such that the Operative receives a minimum of the current National Minimum Wage / National Living Wage as adjusted from time to time.
- 5.2. Fees shall be payable weekly in arrears and the Contractor shall provide appropriate invoices to the Company on request.
- 5.3. The Contractor shall be responsible for any PAYE, Income Tax, National Insurance contributions and any other taxes and deductions properly payable in respect of its Operatives.
- 5.4. Where necessary the Company will verify the Contractor with HMRC under CIS.
- 5.5. Neither the Company nor the Client will pay an sick pay, whether statutory or otherwise, any holiday pay or any statutory parental leave pay (maternity, paternity, adoption or shared) or any other benefit to the Contractor or the Operatives. It is acknowledged that these payments will be the sole responsibility of the Contractor.
- 5.6. Subject to these Terms, and provided the Contractor and relevant Operative(s) have not opted out of the Regulations, the Company undertakes to pay the Contractor in respect of work done by the Contractor whether or not it is paid by the Client in respect of that work.

### 6. LIABILITY

- 6.1. The Contractor shall indemnify and keep indemnified the Company against all actions, claims and demands whatsoever arising out of any negligent act or omission of the Contractor or the Operatives, or arising out of any breach of these Terms. The Contractor undertakes to ensure that it has employers/public liability and professional indemnity insurance cover in place to cover its liabilities under this provision.
- 6.2. The Contractor shall ensure the provision of adequate Employer's Liability Insurance, Public Liability Insurance and any other suitable policies of insurance in respect of the Contractor and its officers, and the Operatives and shall make a copy of the policy available to the Company upon request.
- 6.3. The Contractor warrants that it is not, nor will it prior to the cessation of this Agreement become, a Managed Service Company (MSC) within the meaning of the Income Tax (Earnings & Pensions) Act 2003. The Contractor acknowledges that the Company and its Clients do not wish to engage the services of any Operatives, or workers via an MSC.
- 6.4. In the event that the Contractor is held by a relevant statutory authority to be an MSC and as a result the Company or its Client or any of officers of the Company or its Client, suffer any loss, claim, costs (including legal), expenses, liability, fines penalties or demands, the Contractor shall indemnify the Company and the Client against such loss, claim, costs (including legal), expenses, liability, fines penalties or demands.
- 6.5. Unless expressly authorised in writing by a director the Company, or where the Operative is self-employed and such deductions are not required by law, the Contractor will make deductions of tax and National Insurance under PAYE from all payments made to Operatives in accordance with the Income Tax (Earnings and Pensions) Act 2003. The Contractor hereby indemnifies the Company against liability to tax or National Insurance and any interest and penalties thereon in respect of any Operatives. The Contractor further indemnifies the Company against any costs incurred as a result of any investigation, enquiry or proceedings relating to such potential liabilities.

### 7. CONTRACTOR'S OBLIGATIONS

- 7.1. The Contractor shall, and shall procure that the Operatives shall:
  - 7.1.1. not engage in any conduct detrimental to the interests of the Company or the Client;
  - 7.1.2. not do anything that may be construed or perceived as inducement or bribery;
  - 7.1.3. take all reasonable steps to safeguard its own safety and the safety of any other person who may be affected by its actions on an Assignment;
  - 7.1.4. comply with statutory requirements in force at the premises where the works are executed or services are performed during an Assignment to the extent that they are applicable;
  - 7.1.5. comply with reasonable regulatory requirements of the Client whilst on the Client's premises, such as health and safety, and comply with site-specific rules including but not limited to health & safety, working hours and site security;
  - 7.1.6. furnish the Company with any progress reports as may be requested from time to time;
  - 7.1.7. operate within the Working Time Directive including (but not limited to) the provision of paid leave for the Operatives;
- 7.2. The Contractor undertakes to ensure that all Operatives are entitled to work in the United Kingdom, and shall notify the Company immediately if any Operative ceases to be so entitled.
- 7.3. The Contractor may use a suitably qualified and experienced substitute or delegate to perform services. The agreement of the Company is not required in any circumstances, nor does notice of using a substitute or delegate need to be given to the Client.
- 7.4. Where a substitute or delegate is used by the Contractor, the Company shall have no contractual, financial or legal relationship with the substitute or delegate. The Contractor is solely responsible for arranging payments to the substitute or delegate and the substitute or delegate is answerable only to the Contractor.
- 7.5. The Contractor shall be liable for any defects arising in relation to the Contractor's services and the services performed by the Operatives and will rectify at its own cost such defects as may be capable of remedy within a reasonable period of time following notification of such defects by either the Client or the Company.

- 7.6. The Contractor shall ensure that the skills of its Operatives required for the continued provision of the services under Assignments are maintained at its own expense. This shall include, but may not be limited to, training, study and the provision of suitable equipment for the practice of such training and study.
- 7.7. The Contractor (if it is a company) undertakes to advise the Company, in accordance with regulation 32(9) of the Regulations, if it and any of its Operatives have opted out of the Regulations and to keep the Company advised of any changes in this regard notwithstanding the relevance of such legislation to this Agreement.
- 7.8. The Contractor shall ensure that all Operatives are properly equipped with tools and personal protective equipment commensurate with their profession and which are necessary or appropriate for an Assignment.
- 7.9. The Contractor shall not, shall procure that its Operatives shall not and shall contract with each Operative to oblige them not to, represent or hold themselves out to be a servant or employee of the Client or the Company at any time.

## 8. CONFIDENTIALITY

- 8.1. In order to protect the confidentiality and trade secrets of any Client and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Contractor shall, and shall procure that the Operatives shall:
  - 8.1.1. not at any time whether during or after an Assignment (unless expressly so authorised by the Client or the Company as a necessary part of the performance of an Assignment) to disclose to any person or to make use of any of the trade secrets or confidential information of the Client;
  - 8.1.2. deliver up to the Client or the Company on request by the Company, and in any event at the end of an Assignment all documents and other materials belonging to the Client (and all copies thereof) which are in its possession including documents and other materials created during the course of the Assignment;
  - 8.1.3. not at any time make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of an Assignment in which event any such item shall belong to the Client or the Company as appropriate.

## 9. TERMINATION

- 9.1. The Company or the Contractor may terminate an Assignment at any time without prior notice and without liability.
- 9.2. If the Operatives are unable for any reason to work on an Assignment the Contractor shall inform the Company immediately and in any event by no later than 10.00 am on the first day of absence to enable alternative arrangements to be made.
- 9.3. The Contractor acknowledges that the continuation of an Assignment is subject to and conditional upon the continuation of the contract entered in to between the Company and the Client. In the event that the contract between the Company and the Client is terminated or suspended for any reason, all relevant Assignments shall cease with immediate effect and the Company shall have no liability to the Contractor except in respect of services provided by its Operatives prior to such cessation.

## 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. CESSATION OF BUSINESS

- 11.1. Notwithstanding any other provision of this Agreement, if the Contractor should become insolvent, be put into administration or be liquidated, makes any voluntary arrangement with its creditors or a winding-up order is made, ceases to trade or threatens to cease to trade, or any other similar event occurs or similar action is taken (an "Event"), or it transfers all or part of its business at the time of, in advance of, in anticipation of, or after an Event to a third party (a "Transfer") or in the Company's sole discretion it appears that an Event or Transfer is likely, the Company shall be entitled to make arrangements directly or indirectly, with any Operatives of the Contractor who are on, are due to go on or have been on, an Assignment to a Client under this Agreement ("Workers") in order to ensure continued provision of services to the Client and in order to preserve the relationship between the Company and the Client.
- 11.2. In addition, on the occurrence of an Event or a Transfer, the Contractor shall become liable to the Company for an administrative charge of £500 plus VAT (which sum the Contractor agrees is reasonable) in respect of each Worker:
  - 11.2.1. whose contract with the Contractor terminates because of the Transfer or whose contract transfers to the third party because of the Transfer; and/or
  - 11.2.2. with which the Company makes or has made such arrangements (whether after the Event or in anticipation of the Event).
- 11.3. In addition the Contractor shall indemnify the Company for any loss, damage, claims and costs it incurs as a direct or indirect result of the Event and/or the Transfer and of making such arrangements, including but not limited to, costs associated with re-training, loss of business, loss of goodwill with the Client, loss of contracts with the Client, claims against the Company by the Client or the Workers or any third party.
- 11.4. The Company will have the right to set off any amount due under this clause against any amount that may be owed by the Company to the Contractor, and may withhold any balance of such amount owed until the risk of all such loss, damage, claims and costs has passed. Such set off shall not in any way limit the amount recoverable under the indemnity set out in this clause.
- 11.5. The Company's determination of which Workers this clause applies to shall be final except in the case of manifest error.
- 11.6. This clause shall survive termination of this Agreement for any reason.

## 12. AGENCY WORKERS REGULATIONS

- 12.1. Self employed – any Operatives that the Contractor considers to be genuinely self employed and therefore considered to be outside of the AWR (Agency Workers Regulations) must be engaged under a contract for self-employed services. The Contractor further undertakes that such Operatives:
  - 12.1.1. Is in business providing a business service to the Client
  - 12.1.2. has the contractual right to send a substitute to carry out the work
  - 12.1.3. has control over the manner in which they perform an Assignment,
  - 12.1.4. has no mutuality of obligation with the Contractor or the Client or the Company
  - 12.1.5. Is a verified sub-contractor under the Construction Industry Scheme (CIS)
  - 12.1.6. submits invoices to the Contractor for payments made under the CIS
  - 12.1.7. provides their own tools and plant commensurate with their profession.
- 12.2. The Contractor will be solely responsible for establishing the nature of an Assignment and for establishing whether the engagement of Operatives is considered to be that of a genuinely self-employed person for the purposes of the AWR and for applying the correct method of engagement and employment status.
- 12.3. Employed or agency workers – The Contractor will be solely responsible for establishing whether any of the Operatives fall within the AWR (Agency Workers Regulations) and for applying comparative rates of pay and conditions where applicable to ensure compliance with the AWR. The Company will endeavour to cooperate with any information requests as may be applicable insofar as it is possible to obtain such information from the Client.
- 12.4. The Contractor undertakes to fully indemnify the Company and its Client against all costs incurred (including legal) as a result of any claim, demand or allegation made by its Operatives under the AWR or any other employment related claim brought about, whether the claim be genuine or unfounded, except to the extent such claim arises from any act or omission of the Company or a Client. The indemnity shall extend to any sums that the Company may pay to settle a demand, claim or allegation, whether for commercial reasons or otherwise, in order to satisfy any loss or cost that the Company or Client may incur as a result of a claim, demand or allegation.

We confirm our agreement to the foregoing terms of engagement.

Signed .....

Print Name .....

Position .....

For and on behalf of .....

Date...../...../.....

*(Note the above must be signed on behalf of the contractor by a Director or the Company Secretary of the Limited Company, or a partner of the partnership or the Sole Trader himself).*

**APPENDIX LIST OF CONSTRUCTION WORKERS ROLES (this list is not exhaustive)**

<u>Construction</u>	<u>Property Services</u>	<u>Professional &amp; Technical</u>	<u>Rail</u>
Building Labourer	Labourer	Site Engineer	PTS Cleaner
Trade Labourer	Cleaner	Site Supervisor	PTS Trackman
Cleaner	Caretaker	Site Manager	PTS Groundworker
Gateperson	Handyman	Project Manager	PTS De Veg Operatives
Traffic Marshall	Driver	Contracts Manager	PTS Electrician
Storeperson	Multi Trader	Quantity Surveyor	LU Labourer
Ganger	Kitchen/Bathroom Fitter	Foreman	LU Cleaner
Handyperson	Carpenter	Finishing Foreman	Controller of Site Safety
Carpenter	Plumber		Lookout
Shopfitter	Plasterer		Machine Controller
Bench Joiner	Painter		Crane Controller
Painter	Decorator		Level Crossing Attendant
Decorator	Electrician	<u>Support Staff</u>	MEWP Operators
Bricklayer	Electrical Tester	Administrator	Engineering Supervisor
Plasterer	Groundworker	Document Controller	Earthing Assistant (OLEC1)
Dry Liner	Fencer	Customer Services Officer	Linesman (OLEC2)
Forklift/Telehandler	Gardener	Call Handler	ALO Coordinator
Hoist Operations	Tiler	Office Manager	Confined Space Operatives (LU/PTS)
Groundworker	Roofer		
Shuttering Carpenter	Drainage Engineer		
Steelfixer	Gas Engineer		
360 Machine Operators	Supervisor		
180 Machine Operators	Operations Manager		
Dumper Driver	Resident Liaison Officer		
Slinger Signaller	Planner		
Banksman	Scheduler		
Crane Operations	Estate Manager		
Crane Supervisor			
Appointed Person			