

Terms and conditions of business for temporary assignments

1. Scope of this Agreement

- 1.1 These Terms and Conditions shall apply to:
 - a. any Business proposed or undertaken by RW for the Client; and
 - b. the Assignment, engagement or employment or other use by the Client of a Temporary Worker Introduced by RW.
- 1.2 In the absence of written confirmation, the use by the Client of any CV (or the details therein) provided by RW or the employment or engagement in any capacity, of any Temporary Worker Introduced by RW will constitute acceptance by the Client of these Terms and Conditions.
- 1.3 These Terms and Conditions together with any documents referred to within them shall constitute the entire agreement between the Parties in relation to the Business, Assignment and/or the employment, engagement or other use by the Client of a Temporary Worker Introduced by RW to the exclusion of all other agreements including any other terms and conditions of business or purchase conditions that the Client may attempt to impose in respect of the provision of the Business.
- 1.4 RW acts as an employment business for the purposes of the Conduct Regulations.

2. The Temporary Worker

- 2.1 RW shall use reasonable skill and care in the sourcing and Introduction of any Temporary Worker to the Client.
- 2.2 The Client shall provide RW with details of the particular Assignment, including the anticipated Pay Rate, Assignment description and any other information reasonably necessary to enable RW to: (a) assess the suitability of a Temporary Worker for that Assignment; and (b) comply with its obligations under the Conduct Regulations to provide the Temporary Worker with a Key Information Document.
- 2.3 RW shall confirm that a Temporary Worker has the right to work in the UK and shall obtain appropriate work references and details of academic and professional qualifications where appropriate and where reasonably possible ("Pre-Employment Screening"). RW makes no warranty and shall not be liable for any loss or expense incurred or suffered by the Client (including direct loss, indirect or consequential loss, loss of profit, loss of anticipated revenue, loss of reputation or regulatory fines) caused by any errors in Pre-Employment Screening arising directly or indirectly from incorrect, misleading or misrepresented information provided by the Temporary Worker or any third parties, including but not limited to, those who verify any element of the Pre-Employment Screening (for example, a referee, a former employer or government agency).
- 2.4 RW shall not be responsible for arranging work permits, insurance or other incidental requirements for the engagement of the Temporary Worker.
- 2.5 RW gives no representation or warranty that any Temporary Worker is or will be willing and/or available to accept any Assignment.
- 2.6 The Client acknowledges that the final decision to engage the Temporary Worker on an Assignment rests with the Client.
- 2.7 The Client acknowledges that each Temporary Worker is entitled to one (1) week contractual notice with RW (the "Assignment Notice Period") prior to any termination of or amendment to an Assignment. The length of the Assignment Notice Period may be varied prior to the commencement of an Assignment and subject to prior written agreement with RW and in consultation with the Temporary Worker.
- 2.8 Where the Parties agree an Assignment Notice Period of two (2) or more weeks, RW may (at its sole discretion) invoice the Client for all Fees which are due to accrue during such Assignment Notice Period (the "Guaranteed Notice Pay").
- 2.9 Where, for any reason, the Client: (a) no longer requires an Assignment to commence; (b) requires an Assignment commencement date be postponed; or (c) following commencement of an Assignment requires termination of the Assignment on a shorter notice period than the agreed Assignment Notice Period, the Client shall in all circumstances be liable for all Fees which would have accrued had the Temporary Worker completed the agreed Assignment Notice Period.

3. The Assignment

- 3.1 Temporary Workers are under the supervision, direction and control of the Client throughout the Assignment. RW will not be liable for any losses, including direct losses, indirect or consequential losses, loss of profit, loss of actual or anticipated savings, loss of anticipated revenue, loss of reputation or regulatory fines, liabilities, costs and expenses (including legal costs and expenses) incurred or suffered by the Client arising from the Temporary Worker's acts or omissions including, but not limited to, their acts or omissions in the performance of the Assignment.
- 3.2 The Client will make RW and the Temporary Worker aware of any security and/or health and safety requirements which RW's staff and/or the Temporary Worker must observe whilst at the Client's premises or whilst working remotely.
- 3.3 The Client shall maintain a written or electronic record of the times worked by each Temporary Worker (a "Timesheet").

The Timesheet shall be provided to RW periodically (which shall be weekly unless otherwise agreed). The approval of a Timesheet by the Client is irrevocable and shall entitle RW to the appropriate Fees. Any Timesheet which is undisputed yet unapproved for a period of seven (7) or more days shall be deemed approved.

- 3.4 RW shall be responsible for the payment of the contracted fees to the Temporary Worker pursuant to applicable contractual arrangements between RW and the Temporary Worker and RW will be responsible for making all appropriate deductions for income tax and employer's national insurance in respect of such fees. It is acknowledged that the Client shall have no direct liability to the Temporary Worker in such regard.
- 3.5 Effective 6 April 2021, the Client shall be responsible for determining whether an Assignment falls inside or outside of IR35. Where the Client has determined an Assignment to fall outside of IR35, RW will only engage the Temporary Worker through a personal services company without deducting tax and NICs (with the personal services company being responsible for making the appropriate deductions) if the Client has confirmed that the Assignment and the Temporary Worker are determined to fall outside of IR35. The Client must promptly notify RW if an Assignment changes to the extent that there is a risk that its status may change.
- 3.6 The Client will indemnify RW against any and all claims, demands, damages, fines, interest, charges, costs (including legal costs) and losses arising in connection with (i) the Client's assessment of the Temporary Worker's Assignment status; (ii) the Client's failure to assess a Temporary Worker's Assignment status; or (iii) the Client failing to notify RW of any changes to the role that impact the Temporary Worker's Assignment.

4. Fees

- 4.1 The Client shall pay to RW both the Assignment Fees (which are RW's fees for the provision of its services) and the Pay Rate (which are the sums attributable to the Temporary Workers' Pay, national insurance, apprenticeship levy and auto-enrolment pensions, where applicable). Where any Temporary Worker engaged on a PAYE basis qualifies for statutory sick pay or any other applicable statutory pay, RW will pay such amounts to the Temporary Worker and is entitled to charge the Client for such payments.
- 4.2 The amount of fees due under clause 4.1 shall be calculated as either: (i) the Assignment Fees based on the Calculation applying the applicable percentage and the Pay Rate; or (ii) the combined Assignment Fees and Pay Rate expressed as an overall daily or hourly rate, as agreed and confirmed by RW in writing (which may include email). In the absence of express agreement on fees, where a placement for an Assignment is made, RW shall be entitled to charge fees calculated in accordance with clause 4.2 (i) above applying RW's standard percentage as set out in the Fee Schedule.
- 4.3 Assignment Fees and Pay Rate are exclusive of any Value Added Tax which shall be charged by RW at the prevailing rate.
- 4.4 Where there is any increase in the Pay Rate which is agreed between the Client and RW or the Client and the Temporary Worker, RW shall receive the corresponding increase in Assignment Fees from when the increase applies. Where RW requests an increase in the Pay Rate on behalf of the Temporary Worker and the Client does not agree to such increase, then notwithstanding anything else which is agreed between the Parties, RW may provide notice in writing to terminate the affected Assignment(s) in accordance with the agreed Assignment Notice Period.

5. Direct Engagement of Temporary Workers by the Client

- 5.1 If the Client Directly Engages any Temporary Worker during the Relevant Period, the Client shall pay RW the Transfer Fee. However, the Transfer Fee will not be payable if, as an alternative, the Client gives advance written notice to RW that it intends to extend the Temporary Worker's existing Assignment on the same terms and at the same Pay Rate for a further period of twelve (12) months (the "Extended Assignment") before it Directly Engages the Temporary Worker. The option of the Extended Assignment shall not be available to the Client where the Temporary Worker operates as a limited liability company that has opted out of the Conduct Regulations.
- 5.2 If the Client elects for an Extended Assignment, but Directly Engages the Temporary Worker before the end of the Extended Assignment, the Transfer Fee will be charged by RW, reduced proportionately to reflect the amount of the Extended Assignment paid for by the Client, and will be payable by the Client to RW.
- 5.3 The provisions of clause 5.1 shall also apply where the Temporary Worker is originally engaged on Assignment on a PAYE worker basis but is Directly Engaged through a limited liability company which has not opted out of the Conduct Regulations or vice versa.
- 5.4 If, after a Temporary Worker is Directly Engaged by the Client on a fixed term employment basis (other than following an Extended Assignment), and the fixed term (or any subsequent fixed term) is extended, or the Temporary Worker accepts permanent employment with the Client, the Client shall pay a further Transfer Fee (or Transfer Fees in the case of multiple extensions) to RW. The Client must notify RW immediately of any extension to fixed term employment and/or offer of permanent employment.

6. Additional Costs

RW shall be entitled to payment of any Additional Costs. Unless stated otherwise, Additional Costs will only be incurred by or with the Client's approval and will be charged at rates agreed between the Parties in writing. Such Additional Costs will be payable by the Client, even if the Assignment to which such Additional Costs are attributable is not secured.

7. Time For Payment

- 7.1 The Client shall pay all RW invoices (including those for Additional Costs and any Guaranteed Notice Pay) in full, within seven (7) days of the date of an RW invoice, without any right of set off.
- 7.2 Except as otherwise agreed in writing between the Parties, all Fees shall be invoiced following the approval of the applicable Timesheet. RW shall be entitled to invoice any and all Additional Costs immediately after they have been

incurred by RW.

- 7.3 The Client is deemed to have accepted an RW invoice if no dispute is raised in respect of the same, within seven (7) days of the date of such invoice. All disputes shall be dealt with promptly, in good faith and escalated to the appropriate levels within RW. For the avoidance of doubt, no disputed payment shall permit the Client any right of set off against future invoices or permit the Client to fail to discharge any other RW invoice issued pursuant to these Terms and Conditions.

- 7.4 Any third party costs and/or expenses (including legal fees and other professional fees) incurred by RW in recovering amounts overdue pursuant to these Terms and Conditions shall be payable by the Client.

8. Confidentiality and Data Protection

- 8.1 Each Party will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing Party, in confidence and will not disclose such information without the consent of the other Party unless required by law or a court of competent jurisdiction, or it has already been made available to the public other than through a breach of this clause. Any CVs or details of the Temporary Worker provided to the Client by RW shall remain the confidential information of RW.

- 8.2 Each Party shall comply with the data protection obligations as more particularly set out in the Data Protection Legislation that apply to that Party. The Parties agree that they will be classified under the Data Protection Legislation as 'Data Controllers in Common' and have agreed to both comply with the Data Sharing Protocol relating to the data sharing referred to in these Terms and Conditions, which is accessible here: <https://www.robertwalters.co.uk/about-us/gdpr.html>. The Client shall indemnify RW against all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal and professional costs and expenses suffered or incurred by RW arising out of or in connection with any third party claims (including those of Temporary Workers) caused by the misuse of a Temporary Worker's personal data by the Client, its Subsidiaries, any company within its group of companies or the employees, directors, agents or contractors of each.

9. Agency Workers Regulations

Each Party agrees to comply with its statutory obligations under AWR. The Client shall promptly provide RW with such information as RW may reasonably require for the purposes of RW's compliance with its obligations under AWR.

10. Auto-Enrolment and other statutory payments

Under auto-enrolment pension regulations, RW is obliged to automatically enrol eligible Temporary Workers who are engaged on a PAYE basis into a qualifying pension scheme and make contributions to that pension. RW is entitled to charge the Client for RW's "employment costs" associated with the engagement of the Temporary Worker, including but not limited to, 'employer' pension contributions, employer's national insurance, apprenticeship levy, statutory sick pay and any other applicable statutory pay (including any increase to any such costs) and any associated administration costs as may be varied from time to time.

11. Anti-bribery

Neither Party shall make or receive any bribe or other improper payment. Each Party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and each shall ensure that all of that Party's personnel so comply.

12. Tax Evasion

The Client shall not engage in any activity which would constitute either a UK tax evasion facilitation offence under section 45(1) of the UK Criminal Finances Act 2017 (the "Act"), or a foreign tax evasion facilitation offence under section 46(1) of the Act. The Client shall promptly report to RW any request or demand from a third party to facilitate the evasion of tax in connection with the performance of these Terms and Conditions.

13. Modern Slavery

Each Party undertakes that neither it nor any of its officers, employees, agents or subcontractors has committed an offence under the Modern Slavery Act (a "MSA Offence") or is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act. Each Party shall notify the other immediately in writing if it becomes aware or has reason to believe that it has potentially breached its obligations under this clause

14. Law and Jurisdiction

- 14.1 Any These Terms and Conditions shall be governed by and construed in accordance with the laws of England.

- 14.2 Any dispute arising out of or in connection with these Terms and Conditions, including any question regarding their existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

15. General

- 15.1 RW shall not use the Client's name, logo and trademarks within advertising for the Assignment without the Client's prior written consent. Nothing in this provision shall create any rights of ownership (whether registrable or not) in favour of RW over the intellectual property of the Client.

- 15.2 Neither Party shall be liable to the other under or in connection with these Terms and Conditions or any contract made upon them for any indirect or consequential loss, loss of profits, loss of business, loss of revenue, loss of anticipated savings, loss of reputation or regulatory fines. Nothing in these Terms and Conditions limits any warranty, exclusion or limitation of liability or right imposed by statute or regulation to the extent that it cannot lawfully be excluded or limited.

- 15.3 Subject to the extent that a liability cannot be lawfully excluded or limited, the maximum liability of each Party to the other in respect of any Assignment shall be limited to one hundred and twenty percent (120%) of the Assignment Fees

which are payable.

- 15.4 Nothing in these Terms and Conditions shall exclude or limit either Party's liability for: (i) death or personal injury arising from either Party's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be excluded or limited under applicable law.
- 15.5 The Client will not during the course of RW's engagement under these Terms and Conditions and for a period of twelve (12) months thereafter (either on its own account or for any other individual or organisation), directly or indirectly induce, entice or solicit away or try to induce, entice or solicit away from RW any individual who is an employee, director or consultant of RW and who has worked in respect of the Business at any time during the period of RW's engagement. If the Client employs or engages any person in breach of this provision, the Client shall pay to RW on demand the sum equivalent to fifty percent (50%) of the Salary Package of such person. The Parties agree that this is a genuine pre-estimate of loss.
- 15.6 If any clause is held by a court of competent jurisdiction to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other provisions of these Terms and Conditions.
- 15.7 If a Party is prevented in the performance of its obligations under these Terms and Conditions by circumstances that are beyond the control of that Party (acting reasonably) such as acts of God, fire, flood, lightning, war, revolutions, acts of terrorism, laws or actions taken by governmental or public authorities and riot or civil commotion then that Party will not be liable for what would otherwise have been a breach of its obligations under these Terms and Conditions.
- 15.8 No failure or delay by either Party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of any clause will be effective unless confirmed in writing to the other Party and in the case of RW, by a director of RW.
- 15.9 Those clauses which, by their nature, are intended to continue to have effect following termination or expiry of these Terms and Conditions shall survive and continue to bind the Parties.
- 15.10 A person who is not a Party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit from or enforce any term of these Terms and Conditions.
- 15.11 Any variation to these Terms and Conditions, including the attempted introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of RW (unless these Terms and Conditions expressly provide to the contrary).

Definitions and Interpretation

In these Terms and Conditions the following words shall have the following meanings unless the context dictates otherwise.

"Additional Costs" means, for example, any advertising campaign, additional pre-employment screening requirements or the like for a specific Assignment, Payroll Fees or any other agreed supplementary charges.

"Assignment" means the temporary role performed (or to be performed) by a Temporary Worker for the Client.

"Assignment Fees" means the fees due to RW in relation to a specific Assignment calculated in accordance with clause 4.2.

"AWR" means the Agency Workers Regulations 2010 as amended from time to time.

"Bribery Laws" means the Bribery Act 2010 as amended from time to time and any similar or equivalent legislation in any other relevant jurisdiction.

"Business" means work performed by RW in relation to the sourcing of Temporary Workers including, RW providing CVs (solicited or unsolicited), RW receiving instructions from the Client for an Assignment, long/short listing of Temporary Workers, introducing a Temporary Worker, RW's arrangement of or conducting interviews with Temporary Workers or any other act either directly or indirectly relating to the sourcing or supply of a Temporary Worker.

"Calculation" means $\text{Pay Rate} \times (1 \div (1 - \text{the applicable \% expressed as a decimal}))$.

"Client" means you or your ultimate holding company and all of its Subsidiaries.

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended from time to time.

"Data Protection Legislation" means the General Data Protection Regulation (2016/679) (GDPR) (or any successor legislation applicable in the UK), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), the Data Protection Act 2018 and all applicable laws and regulations relating to the processing of personal data and privacy as amended, re-enacted, replaced or superseded from time to time, including any guidance and codes of practice issued by the applicable supervisory authority.

"Directly Engages" means where any Temporary Worker Introduced to the Client is: (i) employed directly by the Client (either on a fixed term basis or on a contract of indefinite duration); (ii) engaged by a third party for the benefit of the Client or as a result of an introduction by the Client; or (iii) engaged directly by the Client on a temporary contract for services. The terms "Direct Engagement" and "Directly Engaged" shall have the corresponding meanings.

"Fees" means Assignment Fees and Pay Rate.

"Fee Schedule" means the document which can be found at <https://www.robertwalters.co.uk/content/dam/robert-walters-redesign/country/united-kingdom/files/policies/rw-uk-temp-terms-conditions-fees.pdf> or any other document or written (including electronic) confirmation of the fees as agreed between the Parties.

“Introduced” means the communicating (through whatever medium) of a Temporary Worker’s CV, a long or short list of Temporary Workers and/or details of a Temporary Worker by RW to the Client or any other verbal or written communication between RW and the Client that enables the Temporary Worker to be identified and “Introduction” and “Introduce” shall be construed accordingly.

“IR35” means the off-payroll working rules as set out in the Income Tax (Earnings and Pensions) Act 2003 as amended, most recently by the Finance Act 2020.

“Key Information Document” has the meaning set out in regulation 13A of the Conduct Regulations.

“Modern Slavery Act” means the Modern Slavery Act 2015 as amended from time to time.

“Parties” means collectively RW and the Client and each individually shall be referred to as a **“Party”**.

“Pay Rate” means the hourly or daily rate of gross pay agreed between the Parties for any Assignment and any other applicable benefits for which there is a cash equivalent paid to the Temporary Worker, profit share, commission, bonus, living allowances, car allowance, travel allowances, overseas allowances and joining inducements (“Pay”); together with, for all PAYE Temporary Workers, a charge in respect of: (i) Employer’s National Insurance contributions at 13.8% of Pay (“ENI”); (ii) pension contribution costs under clause 10 at 3% of Pay; (iii) apprenticeship levy at 0.5% of Pay; and (iv) any other applicable statutory levy or duty, such percentages to be applied as updated by statute from time to time. The Pay Rate is inclusive of any holiday pay to which the PAYE Temporary Worker is entitled. ENI, the apprenticeship levy and any other statutory levy or duty will be payable for limited company contractors on Assignment at a public sector or publicly funded client who are in-scope of the IR35 rules.

“Payroll Fees” means the charge of 1% of the Pay Rate.

“Relevant Period” has the meaning set out in regulation 10 of the Conduct Regulations.

“RW” means Robert Walters Operations Limited, a company incorporated in England and Wales whose principal place of business is 11 Slingsby Place, St Martin’s Courtyard, London WC2E 9AB.

“Salary Package” means the annual anticipated gross remuneration package which includes gross annual salary, applicable benefits for which there is a cash equivalent, profit share, commission, bonus, living allowances, overseas allowances and joining inducements.

“Subsidiary” shall have the meaning more particularly given in section 1159 of the Companies Act 2006 and the term “Subsidiaries” shall be construed accordingly.

“Temporary Worker” means an individual Introduced by RW to the Client who may be engaged by RW for an Assignment on a contract for services as either: (i) a PAYE worker; or (ii) a limited liability contractor (either through a personal services company or an umbrella company).

“Transfer Fee” means 35% of the Salary Package paid to the Directly Engaged Temporary Worker. Where the Directly Engaged Temporary Worker is employed or engaged on a fixed term basis, this Transfer Fee shall be calculated against the Salary Package as pro-rated to the length of the fixed term employment.

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