



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

1. Definitions

In these Terms of Business ('the Temporary Terms'):

- (a) The 'Assignment' means any period during which the Temporary Worker is supplied to the Client by Winchmore Tutors Ltd
- (b) The 'Client' means the person or organisation appointing the services of the Temporary Worker.
- (c) 'Employment Business' means an employment business as defined in the Regulations.
- (d) Reference to the singular include the plural and reference to the masculine includes any gender and vice-versa.
- (e) 'Relevant Period' means the later of (1) 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes) and (2) eight weeks from the day the Temporary Worker last worked on an Assignment.
- (f) 'Temporary Worker' means the individual registered with Winchmore Tutors Ltd providing the services or whom it is intended shall provide the services.
- (g) 'Transfer Fee' means the fee payable in accordance with clause 6 below; The following terms shall apply where Winchmore Tutors Ltd supplies the Temporary Worker to the Client. In these circumstances Winchmore Tutors will be acting as an employment business within the meaning of the Regulations.

2. How a client accepts these terms of business

A Client will accept these Terms of Business by interviewing, appointing or Continuing to appoint a Temporary Worker introduced by Winchmore Tutors or by passing any information about a Temporary Worker to any third party following an introduction.

A Temporary Worker is introduced to the Client when Winchmore Tutors supplies, orally or in writing, any information about a Temporary Worker. These terms shall apply to the exclusion of any conditions of purchase or similar terms of the Client.

3. Temporary worker charges and timesheets

The Client agrees to pay the charge of Winchmore Tutors Ltd as notified to and agreed with the Client.

The charges comprise the Temporary Worker's pay (including holiday pay entitlement) and also Winchmore Tutors commission, employer's national insurance contributions and any expenses agreed with the Client. There are no rebates payable in respect of the charges for the supply of Temporary Workers, save as provided by clause 9 of these Temporary conditions. If requested by Winchmore Tutors, the Client shall sign Winchmore Tutors' time sheet at the end of each Month of an Assignment verifying the number of hours worked by the Temporary Worker during that month. If the Client disputes the days/hours claimed by the Temporary Worker it shall in a timely manner provide Winchmore Tutors with all reasonable assistance to verify the hours worked.

4. Fees and Payment Terms

- (a) The Client shall notify the Winchmore Tutors immediately an offer of employment or other offer of work is accepted by the Applicant, and confirm the date the Applicant will commence work (the "Start Date").
- (b) The Fees will be charged in relation to any Applicant engaged as a consequence of or resulting from an introduction by or through the Company, even though the introduction may be made indirectly by another School, Local Education Authority or other party.
- (c) In respect of the engagement of a candidate. Fees are in accordance with the set rates determined by DFE for tuition taking place as part of the one to one scheme. Fees outside of this scheme are negotiated with your consultant and are confirmed before the start of any assignment.

Winchmore Tutors will submit its invoices for its charges, and any other appropriate costs, on a fortnightly basis. The invoices are payable within 7 days of their date of issue. If the Client does not pay the invoice within 7 days Winchmore



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

Tutors is entitled to charge interest on any accounts which remain outstanding at the rate of 0.5% of the original amounts each full week until the account is settled. VAT will be charged where appropriate at the rate prevailing at the time of work.

5. Winchmore Tutors' responsibility for the temporary worker

- (a) Winchmore Tutors assumes responsibility for payment of remuneration, deduction and payment of, all statutory contributions in respect of Schedule E Incoming Related Insurance and administration of Schedule E Income Tax (PAYE) applicable to the Temporary Worker as required by law.
- (b) All Temporary Workers are engaged by Winchmore Tutors Ltd under contracts for services and not contracts of employment.
- (c) Without prejudice to the provisions of clause 8 below, all Temporary Workers supplied by Winchmore Tutors Ltd will have their own public liability insurance cover against the risk of injury or disease to third parties and damage to their tangible property which in each case results from the negligence of the Temporary Worker. Particulars of the policy (including the sums insured) are available upon request from Winchmore Tutors

6. Temporary worker appointment and transfer

- (a) Subject to the following paragraphs, if the Client appoints a Temporary Worker or former Temporary Worker (or engages them through another Employment Business) before or during the course of an Assignment, or within the Relevant Period then they must provide Winchmore Tutors with details of the remuneration payable to the Temporary Worker and pay a Transfer Fee which will be calculated and payable in accordance with the provisions of clauses 4 and 5 of the Permanent Terms. Similarly, the Client will be liable to pay the full introduction fee if it, in turn, introduces the temporary Worker to another person firm or company which subsequently appoints them within the Relevant Period. This may include, by way of example only, another Employment Business or where the Client is a Local Education Authority, a school or other establishment with which it deals.
- (b) As an alternative to paying Winchmore Tutors the Transfer Fee stipulated in paragraph (a) above, the Client may elect (upon giving to Winchmore Tutors not less than five business days notice in writing before the engagement is to take effect) for an extended period of hire. Such extended period of hire shall be 20 weeks during which the Client will pay the charges then applicable pursuant to clause 3 above. However, if the Client does not give notice before the Temporary Worker is engaged it agrees that the Transfer Fee shall be due.
- (c) If the Client elects for an extended period of hire, as set out above, but before the end of such period (1) it engages the Temporary Worker either directly or pursuant to being supplied by another employment business or (2) the Temporary Worker chooses not to be supplied for an extended period of hire, the Transfer Fee may be charged (but reduced by such percentage to reflect the period of extended hire already undertaken by the Temporary Worker and paid for by the Client).
- (d) No rebate of the Transfer Fee will be payable should the appointment be subsequently terminated.
- (e) The above provisions apply irrespective of whether or not the Temporary Worker is appointed by the Client in the same position in the organisation.

7. Agency Worker Regulations

- a) The Hirer will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the Agency Workers Regulations.
- b) To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request:



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

- (c) to inform Winchmore Tutors of any Calendar Weeks since 1 October 2011 in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period
- i. if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
 - ii. to inform the Employment Business if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
completed two or more assignments with the Hirer;
completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;
 - iii. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- d) In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Hirer will:
- i. integrate the Agency Worker into its relevant performance appraisal system;
 - ii. assess the Agency Worker's performance;
 - iii. provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - iv. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- e) The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- f) The Hirer warrants that:



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

- i. all information and documentation supplied to the Employment Business is complete, accurate and up-to-date; and
 - ii. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided;
- g) The Hirer shall inform the Employment Business in writing of any:
- i. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the Agency Workers Regulations; and
 - ii. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker

as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Hirer will provide the Employment Business with a copy of any such written statement.

"Comparable Employee" means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

For the purpose of the definition of "Qualifying Period", when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave;
 - ii. ordinary or additional adoption leave;



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

- iii. ordinary or additional paternity leave;
- iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
- v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
- (v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
- (vi) wholly due to a temporary cessation in the Hirer's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
- (vii) wholly due to a strike, lock-out or other industrial action at the Hirer's establishment; or
- (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".

8. Suitability and references

- (a) Winchmore Tutors will inform the Client that Winchmore Tutors will use all reasonable endeavours to check the identity of the Applicant; and that the Applicant has the necessary skills, qualifications and experience specified by the Client; to obtain and offer to provide copies of relevant qualifications and appropriate references; to ascertain the Applicant's willingness to work in the role specified; to ensure that the Applicant has the appropriate level of Disclosure from the Criminal Records Bureau and/or a clearance obtained from an overseas police force and clearance from the DCFS List 99 in accordance with the DCSF guidelines, CRB code of practice and regulations in force from time to time and Part V of the Police Act 1997.
- (b) Winchmore Tutors will provide the Client with the information specified in 7a and will confirm such information in writing by the end of the 3rd business day following an Introduction of an Applicant, save where the Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous 5 working days and such information has already been given to the Client.
- (c) The Client shall satisfy himself as to the suitability of the Applicant, including the checking of any references provided either by the Applicant or Winchmore Tutors before engaging the Applicant.
- (d) The Client shall be responsible for obtaining work or other permits, for the arrangement of any medical examination or screening of the Applicant's medical history and shall ensure that the Applicant has the necessary level of Disclosure in accordance with Part V of the Police Act 1997 from the Criminal Records Bureau (CRB).
- (e) Introductions are confidential.

9. Client's responsibility for the temporary worker

- (a) Every Winchmore Tutors Temporary Worker provided to the Client is under the exclusive direction and control of the Client from the time the Temporary Worker reports to take up duties and throughout the Assignment. The Client undertakes to instruct and supervise the Temporary Worker and to provide him with the same facilities and assistance as if he were a member of the Client's own staff. The Client further undertakes to take all reasonable care to prevent injury or disease to the Temporary Worker and to prevent damage to the Temporary Worker's property. Furthermore, the Client undertakes that it shall comply with all statutes, bylaws and legal



Terms of Business

Conditions for the hire of temporary staff between Winchmore Tutors (acting as an employment Business) and the Client, for the introduction of temporary Candidates.

requirements affecting the Temporary Worker to which it is subject in respect of its own staff apart from those specified in condition 5. The Client will be responsible for all acts, errors or omissions on the part of the Temporary Worker during an Assignment, whether wilful, negligence or otherwise, as though they were directly employed by the Client and the Client shall indemnify Winchmore Tutors and keep it indemnified against all claims, costs and liabilities incurred by Winchmore Tutors as a result of the act or omissions of the Temporary Worker during an Assignment save for any claim which arises as a result of Winchmore Tutors own negligence or breach of contract.

- (b) In respect of each Temporary Worker, the Client undertakes to comply with all applicable laws, regulations relating to health and safety at work and the Working Time Regulations 1998 (excluding the paid annual leave and health assessment requirements under those Regulations) as though the Temporary Worker was directly employed by the Client. (The Client will assist Winchmore Tutors in complying with its duties under the Working Times Regulations 1998 by supplying any relevant information requested by Winchmore Tutors and the Client will not do anything to cause Winchmore Tutors to be in breach of its obligations under those Regulations).
- (c) The Client shall indemnify and keep Winchmore Tutors indemnified against any costs, claims and liabilities incurred by Winchmore Tutors as a result of the Client's negligence or breach of statutory duty or any breach by the client of its obligations pursuant to these Terms of Business.

10. Cancelling the temporary worker booking

- (a) The Client undertakes to supervise the Temporary Worker assigned to it sufficiently to ensure the Client's satisfaction with reasonable standards of workmanship. If, however, the services of the Temporary Worker prove to be unsatisfactory the Client may terminate the assignment and shall inform Winchmore Tutors immediately.
- (b) In the event that the assignment is terminated by the Client pursuant to paragraph 9 a) above, the Client shall pay Winchmore Tutors for hours worked by the Temporary Worker up to the time of termination if it was agreed at the beginning of the Assignment that the Assignment would be for a fixed period of two days or less. In any other case, Winchmore Tutors may reduce or cancel the charge for the time worked by the Temporary Worker, provided that the Temporary Worker leaves the Assignment immediately and that the Client gives Winchmore Tutors notice by telephone (followed by written confirmation sent the same day) before 5pm on the day the Assignment is terminated, or if termination occurs after 2pm, before noon on the next working day.
- (c) The Client must notify Winchmore Tutors of any cancellation of any booking by 4pm on the previous day. Failure to do so will incur a day's booking charge.
- (d) Winchmore Tutors shall notify the Client immediately if it receives or otherwise claims information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and shall terminate the Assignment forthwith.

11. Appointment of Winchmore Tutors employees

The Client will not employ or seek to employ any employees of Winchmore Tutors within 6 months of termination of employment. In the event that the Client does employ, either directly or indirectly, an employee of Winchmore Tutors within 6 months of the employee's termination of employment with Winchmore Tutors then the Client will be liable to pay an introduction fee.

12. Data protection

The Client and Winchmore Tutors will use and process personal data for recruitment purposes only and in accordance with UK Data Protection Legislation. To improve Winchmore Tutors service to the Client through training, communications with Winchmore Tutors may be monitored or recorded.

If the Client would prefer not to be contacted or receive further information from Winchmore Tutors, it must contact the Winchmore Tutors office.

13. Copyright



Terms of Business

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Winchmore Tutors retains copyright in all advertising and other material produced by it which may not be copied or otherwise reproduced by Client, whether in whole or in part, without the prior written consent of Winchmore Tutors.

14. Alterations

No alterations can be made to these Terms of Business without consent of Winchmore Tutors Ltd.

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Signed on behalf of the client