

# TERMS AND CONDITIONS OF CONTRACT

KC Temps Ltd ("Company") provides temporary staff ("Temporary" or "Temporaries") to individuals and organisations on temporary assignments ("Assignment" or "Assignments").

The "Client" requires the Company to provide from time to time services of Temporaries on the following terms and conditions ("Terms and Conditions").

## 1. ACCEPTANCE

These Terms and Conditions apply to all Assignments, subject to any variation recorded in writing and agreed to by the parties.

## 2. ADDITIONAL AND IMPLIED TERMS

- 2.1 These Terms and Conditions (subject to variation under clause 1) and the terms agreed to in respect of each Assignment comprise all of the terms, representations and warranties between the parties and supersedes all prior discussions and agreements covering the subject matter of this agreement.  
2.2 All implied terms, conditions and warranties are expressly excluded from this contract to the fullest extent permitted by law.  
2.3 All representations, warranties or commitments made by a Company agent or representative must be first authorised in writing by a manager or person of authority in the Company. The Company shall not be bound by any unauthorised statement.

## 3. RATES

- 3.1 The rate to be charged for a Temporary will be as agreed between the Company and the Client prior to each Assignment, subject to rights of variation provided under this contract.  
3.2 A minimum charge equal to four (4) hours at the hourly charge-out rate agreed for the Temporary is payable for each day of an Assignment where an Assignment is less than four (4) hours long. Otherwise the hourly charge is the rate agreed.  
3.3 The Company may vary the rate to be charged for a Temporary at any time by notifying the Client of the variation.  
3.4 In addition to the charges, the Client will pay GST and any other taxes which relate to an Assignment (except PAYE tax).

## 4. PAYMENTS

- 4.1 The Client will pay all charges invoiced by the Company **within seven days of receipt** of the invoice. The Company may charge interest calculated on a daily basis at 5% above its own bank's base lending rate if payment is not made by the due date.  
4.2 Any payments to be made under this agreement are exclusive of GST (if any) and any GST must be added and paid by the person to whom the goods and services are provided.  
4.3 The Company may vary the interest rate at any time by notifying the Client.  
4.4 A claim or dispute raised by the Client does not entitle the Client to set off against, or withhold payment of, any money owed to the Company.  
4.5 The Company may withdraw any of its Temporary Staff on Assignment with the Client at any time if the Client does not comply with these Terms and Conditions.

## 5. FURTHER ENGAGEMENT

- 5.1 Where, within six months of the termination of an Assignment or the most recent referral of a Temporary to the Client:  
(a) the Client engages the Temporary as an employee or as an independent contractor; or  
(b) the Client introduces the Temporary to another person or organisation and that person or organisation engages the Temporary as an employee or as an independent contractor  
the Client will pay a fee calculated in accordance with the Company's schedule of charges for permanent or temporary staff (as appropriate).

## 6. CANCELLATIONS

- 6.1 Any cancellation of an Assignment by the Client must be advised to the Company at least twenty-four (24) hours before the Assignment is due to commence or, if this is not possible, as soon as practicable.  
6.2 If the Client does not advise the Company of a cancellation within twenty-four (24) hours of the commencement of an Assignment, the Client will be liable to pay to the Company a fee equal to three (3) hours at the hourly charge-out rate of the Temporary.

## 7. LIABILITY

- 7.1 The Company makes every effort to ensure that the Client is satisfied with the provision of services under an Assignment. However, the Client:  
(a) will supervise, direct and control the Temporary while on Assignment; and  
(b) is responsible for all acts and omissions of a Temporary while on Assignment.  
7.2 The Company will not be liable for any loss, damage or expense suffered by the Client resulting from the acts or omissions of a Temporary while on Assignment, or from any delay or failure by the Company to refer a Temporary to the Client.  
7.3 The Client indemnifies the Company against any loss, damage or expense suffered by the Company arising from any act or omission of a Temporary on Assignment to the Client or arising from any act or omission by the Client, or its employees, officers or agents in respect of a Temporary on Assignment to the Client.  
7.4 The provisions of this clause 7 continue to bind the parties after any Assignment has ended.

## 8. INSURANCE

- 8.1 The Temporary is not covered under the Company's insurance policy. The Client undertakes to ensure that the Temporary is adequately insured against any liability to third parties arising out of the Temporary's acts or omissions while in the course of an Assignment.  
8.2 The Temporary shall not be required to use his or her own vehicle for the purposes of an Assignment.  
8.3 However, where the Temporary uses his or her own vehicle for the purposes of an Assignment the Client will be liable for any loss or damage caused or suffered by the Temporary, to the extent that it is not covered by the Temporary's own insurance cover.

## 9. GUARANTEE

- 9.1 Should a Temporary be found unsatisfactory by the Client on reasonable grounds, and after giving the Temporary a reasonable opportunity to explain:  
(a) within three (3) hours of the start of an Assignment and the Company is informed within that time, no charges will be incurred by the Client in respect of that Temporary;  
(b) after the first three (3) hours of an Assignment, the Company will use its best endeavours to replace the Temporary, but normal rates will be charged.  
9.2 The guarantee in this clause 9 applies where all money owing under these Terms and Conditions has been paid.

## 10. SUBSTITUTION OF TEMPORARY EMPLOYEE

- 10.1 The Company, in its sole discretion, may substitute one Temporary for another on any Assignment.

## 11. COMPLIANCE WITH LEGISLATION

- 11.1 The Client agrees to provide a safe workplace for the Temporary and will comply with all legislative and regulatory requirements relating to employees, including but not limited to Health and Safety, Human Rights Act and the Employment Relations Act 2000.  
11.2 If the Temporary is injured, or subjected to any breach of any statute or common law while on Assignment with the Client, the Client will indemnify the Company in respect of any liability resulting from the injury, or breach including (but not limited to) any:  
(a) claims brought by the Temporary against the Company arising out of their assignment with the Company;  
(b) damages or penalties imposed on the Company under any Act or Regulations;  
(c) payments to be made by the Company under the Injury Prevention and Rehabilitation and Compensation Act 2001 (and amending or substituting legislation), including indemnifying the Company for any increases in levies paid by the Company under the Act as a result of an injury or the accident causing the injury.

## 12. NATURE OF RELATIONSHIP BETWEEN TEMPORARY AND COMPANY

- 12.1 The parties agree that the Company employs the Temporary and that the Temporary while on Assignment does not become an employee of the Client.

## 13. DETAILS OF ASSIGNMENT

- 13.1 The Client agrees to provide the Company, the following details relating to the Assignment before the Temporary starts work on the Assignment:  
(a) a description of the work to be performed; and  
(b) an indication of where the Temporary is to perform the work; and  
(c) an indication of the hours to be worked by the Temporary and the expected duration of each Assignment; and  
(d) the Client's Health and Safety policies and/or procedures.  
13.2 The Client understands that the above details in clause 13.1(a)-(d) are required by the Company in order to comply with the requirements of the Employment Relations Act 2000, and its obligation under the Health and Safety in Employment Act 1992. If the Client fails to provide this information before the commencement of the Assignment, the Company may not be able to provide the temporary in which case, the Company will not have breached this agreement.  
13.3 The provisions of this clause 13 continue to bind the parties after an Assignment has ended.

## 14. HEALTH AND SAFETY

- 14.1 The Parties recognise that both obligations to the Temporary under the Health and Safety in Employment Act 1992. As the Temporary will be on the Client's premises in order to complete the Assignment, the Client will ensure that the Temporary receives appropriate training and induction in the safe operation of any equipment needed to perform the Assignment, emergency procedures, and the safe performance of the Temporary's duties. The records of such training and induction shall be made available to the Company on request.  
14.2 The Client shall take all practicable steps to ensure that no hazard that is or arises in the Temporary's place of work causes harm to the Temporary.  
14.3 The Client shall ensure that the Temporary wears and/or uses any protective clothing and/or equipment required in performing the Assignment.  
14.4 The Client shall nominate a contact person with whom the Temporary may confer in the event of any health and safety issues or concerns.  
14.5 The Client shall immediately inform the Company in the event of any incident, accident or near-miss involving the Temporary.  
14.6 In the event that the Company (in its sole discretion) believes that a hazard in or arising in the Client's premises or operation poses a unacceptable risk to the health and/or safety of the Temporary, the Company shall be entitled, without penalty to withdraw the Temporary (but without releasing the Client from liability to pay the agreed rates as set out in this agreement). If within a reasonable time the hazard is not eliminated, isolated or minimised to the Company's satisfaction, the Company shall be entitled to terminate the Assignment, and the Client shall pay the late cancellation fee set out in Clause 6.2 of this Agreement.

## 15. GOVERNING LAW

- 15.1 These Terms and Conditions are governed by New Zealand law.  
15.2 These Terms and Conditions are binding on, and for the benefit of, the successors of the Client and the successors and assigns of the Company.  
15.3 The Client may not assign this agreement without the prior written consent of the Company.