

CARMICHAEL SITE SERVICES LIMITED T/A CARMICHAEL^{UK} – TERMS AND CONDITION OF BUSINESS FOR TEMPORARY WORKERS

Carmichael^{UK} Terms and Conditions will apply in all instances for delivery of our services, unless expressly agreed otherwise in writing.

1. Interpretation

- 1.1. In these terms of business ('the Terms') the following expressions shall be given the following meanings:
- 1.1.1. 'Agreed Purposes' means the performance by each party of its obligations under the Terms.
- 1.1.2. 'Assignment' means the period during which a Temporary performs services or carries out work for or on behalf of the Client or agreed between the Client and the Company, commencing at the time the Temporary first reports to the Client to take up duties (or, if earlier, the commencement by the Temporary of such work or services) and ending upon the cessation by the Temporary of all such work and services.
- 1.1.3. 'Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures' has the same meaning as set out in the Data Protection Legislation.
- 1.1.4. 'The Client' means any person, firm or corporation who approaches the Company with a view to placing an order with the Company for the introduction or supply of a Temporary.
- 1.1.5. 'The Company' means Carmichael Site Services Limited t/a Carmichael UK, a company registered in England and Wales, Reg No 03335763, and whose registered office is at 34 Upper High Street, Thame, Oxon OX9 2DN or any of its subsidiary, associated or holding companies.
- 1.1.6. 'Data Protection Legislation' means:
- a) the Data Protection Act 1998, until the effective date of its repeal;
 - b) the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations and secondary legislation, for so long as the **GDPR** is effective in the UK; and
 - c) any successor legislation to the Data Protection Act 1998 and the **GDPR**, in particular the Data Protection Bill 2017-2019, once it becomes law.
- 1.1.7. 'Month' means a calendar month.
- 1.1.8. 'Permitted Recipients' means the Company and Client, the employees of each party, and third parties engaged to perform obligations in connection with the Terms subject strictly to their prior written approval by the Company.
- 1.1.9. 'The Relevant Period' shall be the later of:
- a) 8 weeks commencing on the day after the day upon which the Temporary last worked for the Client having been supplied by the Company; or
 - b) 14 weeks commencing on the first day upon which the Temporary worked for the Client having been supplied by the Company. In determining the first day, no account will be taken of any supply that occurred before a Break Period. A 'Break Period' is a period, which lasts for more than 42 days, during which that Temporary did not work for the Client pursuant to being supplied by the Company.
- 1.1.10. 'Shared Personal Data' means the personal data to be shared between the parties under these Terms. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: name; contact information; employment details including resume; education and training details; salary and package information; references; interview summary notes and assessments (if required).
- 1.1.11. 'Temporary' means any person, which expression shall include a limited company, who is introduced or supplied by the Company to the Client with a view to

carrying out work for the Client.

- 1.1.12. 'Transfer Fee' means a fee calculated in accordance with the Company's fees for permanent introductions in force at the time of the Engagement together with VAT at the prevailing rate
- 1.1.13. 'The 2010 Regulations' means the Agency Workers Regulations 2010 as amended
- 1.1.14. 'Week' means 7 consecutive days.
- 1.1.15. "The 2015 Act" means the Modern Slavery Act 2015.
- 1.2. In these Terms words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa.
- 1.3. All and any business undertaken by the Company is transacted subject to these Terms, all of which shall be incorporated in any agreement between the Company and the Client. In the event of any conflict between these Terms and any other terms and conditions, these Terms shall prevail unless expressly otherwise agreed in writing by a Director or other authorised officer of the Company. No variation in these Terms shall be valid if made without the written consent of a Director or other authorised officer of the Company.
- 1.4. The interviewing by or on behalf of the Client or the acceptance by or on behalf of the Client or the commencement of work (whichever first occurs) of any Temporary shall be deemed acceptance of and agreement to these Terms.
- 1.5. The complete or partial invalidity or unenforceability of any provision herein for any purpose shall in no way affect the validity or enforceability of such a provision for any other purpose or the remaining provisions. Any such provisions shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
- 1.6. The Company may introduce a Temporary to the Client as the Temporary's agent (in which case all the terms of this agreement save clause 5.2 will apply) or supply a Temporary as principal (in which case all the terms of this agreement save clause 5.1 will apply). The capacity of the Company for any each Assignment will be agreed at the outset and stated on the time sheet and invoice.
- 1.7. These Terms supersede all previous terms of business.

2. Obligations of the Company

- 2.1. The Company will use reasonable endeavours to introduce to the Client a suitable Temporary to carry out work for the Client of such nature as the Client shall notify to the Company when placing its order for a Temporary.
- 2.2. Where the Temporary is required to operate motor vehicles, the Client shall take all reasonable steps to enquire whether the Temporary is the holder of a current licence to drive a vehicle of the class or description duly by the Client.
- 2.3. Where the Temporary is required by law or any professional body to have any qualifications or authorisations to work on the Assignment, the Company will take all reasonably practicable steps:
 - 2.3.1. to obtain and offer to provide to the Client: copies of any relevant qualifications or authorisations of the Temporary; and
 - 2.3.2. to confirm that the Temporary is suitable for the Assignment.
- 2.4. Subject to clause 4.1 and clause 5 the Company will pay each Temporary the fees or hourly charge and other payment and reimbursement of disbursements to which he is entitled by reason of carrying out work for the Client.
- 2.5. Where appropriate, the Company will make deductions and account to the Revenue & Customs for income tax under Schedule E in respect of the remuneration of each Temporary.
- 2.6. Where appropriate, the Company will make deductions and account for all necessary national insurance contributions relevant to the remuneration of each Temporary.
- 2.7. The Company shall be responsible for obtaining any work permits.

3. Obligations of the Client

- 3.1. The Client shall specify its exact requirements by providing full details of the work for which the Temporary is required and, in particular, by notifying the Company of any special skills required for such work when placing its order.
- 3.2. At the Company's written request at any time and from time to time, the Client will provide the Company with the information specified in Regulation 14(3)(a) of the 2010 Regulations (principally, the basic working and employment conditions in force in the Client's business); within the period of 7 days beginning with the date of receiving that request.
- 3.3. The Client shall not allow any Temporary to undertake any work other than that which has been notified by the Client in accordance with clause 3.1 to the Company in placing its order for such Temporary.
- 3.4. The Client shall verify at the time that the Temporary begins to render services for or on behalf of the Client that the Temporary is suitable for the purposes for which he is required and that he has the capability to carry out the duties required, including the operation of any machinery or vehicles. The Client must ensure that the Temporary satisfies any medical requirements or other qualifications that may be appropriate or required by law.
- 3.5. The Client will comply with its obligations under the 2010 Regulations and in particular:
 - 3.5.1. So far as it is within the Client's power to do so, ensure that the Temporary receives any rights in relation to basic working and employment conditions to which he is entitled under Regulation 5 of the 2010 Regulations (principally, after 12 weeks continuous service to enjoy similar terms to comparable permanent staff);
 - 3.5.2. in accordance with Regulation 12 of the 2010 Regulations, ensure that, unless less favourable treatment is justified on objective grounds, the Temporary is treated no less favourably than a comparable worker in relation to the collective facilities and amenities provided by the Client (as these terms are defined in that Regulation);
 - 3.5.3. in accordance with Regulation 13 of the 2010 Regulations, ensure that during the assignment the Temporary is informed of any relevant vacant posts with the Client to give the Temporary the same opportunity as a comparable worker to find permanent employment with the Client.
- 3.6. The Client will do nothing to cause the Company to be in breach of its obligations under the 2010 Regulations.
- 3.7. The Client undertakes to comply with all obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the foregoing those relating to the place, nature or system of work) in any way arising from or directly or indirectly connected with the services rendered by a Temporary.
- 3.8. The Client undertakes to exercise all supervision, direction and control over the manner, time and place in which each Temporary carries out his work for the Client throughout the duration of the Assignment (notwithstanding that where the Company is acting as contractor, the Temporary is not in fact the Client's employee).
- 3.9. Without prejudice to the generality of clause 3.7, the Client acknowledges that each Temporary introduced or supplied to the Client for purposes which include the driving of vehicles is introduced or supplied to the Client on the Client's express warranty:
 - 3.9.1. that it is the holder of a valid operator's licence under the Goods Vehicles (Licensing of Operators) Act 1995 where this is required;
 - 3.9.2. that it will take all necessary steps to ensure that any Temporary complies with the provisions of the Goods Vehicles (Licensing of Operators) Act 1995 and all other road transport legislation;
 - 3.9.3. that it will take all steps that may be required by law in relation to the insurance, maintenance and safety of vehicles, and will in particular satisfy itself that such vehicles are roadworthy and properly maintained and will under no circumstances require the Temporary to check such matters; and
 - 3.9.4. that it will control the driving duties of each Temporary, their journeys and hours of work and comply with all relevant statutory duties in regard thereto, and in respect of

- driving licences, tachographs and logbooks.
- 3.10. If within the Relevant Period, the Client wishes to receive services from the Temporary other than through the Company, whether on a fixed term, temporary or permanent basis and whether under a contract of employment, contract for services or pursuant to an agreement with another Employment Business or any other business of which the Temporary is a director, partner, officer, employee or subcontractor:
- 3.10.1. where the Temporary has given proper notice, in accordance with Regulation 32(9) of the Regulations, to opt-out of the Regulations, the Client shall pay the Transfer Fee to the Company; or
- 3.10.2. where no notice of opt-out pursuant to Regulation 32(9) of the Regulations has been given by the Temporary, the Client shall elect, giving no more than 7 days written notice to the Company:
- 3.10.2.1. to instruct the Company to arrange for the Temporary to provide services to the Client for an Extended Hire Period of 26 weeks from the date of receipt of the notice on terms similar to those already contained in the Contract and being no less favourable to the Client than those which applied immediately before the Client served such notice, after which the Client may receive services directly from the Temporary or through another agency without paying a Transfer Fee; or
- 3.10.2.2. to pay to the Company the Transfer Fee; and if the Client fails to serve a written notice on the Company pursuant to Clause 3.10.2.1 within 7 days of engaging, appointing or receiving services from the Temporary, the Transfer Fee shall immediately become due and payable by the Client.
- 3.11. If within the Relevant Period the Client shall have introduced the Temporary to any person, firm or company, including, without limitation, any subsidiary or holding company of the Client (as defined in the Companies Act 1985) which subsequently employs, engages, appoints or receives services directly from the Temporary, whether on a fixed term, temporary or permanent basis and whether under a contract of employment or contract for services then the Client shall forthwith be obliged to pay the Transfer Fee to the Company.
- 3.12. If, following the Introduction of a Temporary by the Company, the Assignment does not commence but the Client receives services from the Temporary other than through the Company, whether on a fixed term, temporary or permanent basis and whether under a contract of employment, contract for services or pursuant to an agreement with another Employment Business or any other business of which the Temporary is a director, partner, officer, employee or subcontractor the Client shall pay the Transfer Fee to the Company unless the Client was already in direct contact with the Temporary or had already been Introduced to the Temporary in respect of the same temporary role and can provide reasonable evidence of this to the Company.
- 3.13. For the avoidance of doubt, the Transfer Fee shall not be refundable under any circumstances whatsoever, including, without limitation, in the event that the engagement or appointment of the Temporary terminates after payment. The provisions of Clause 5.4 below shall apply to the payment of the Transfer Fee.
- 3.14. Where no other period of notice is specified by these Terms or otherwise agreed by the Company in writing, the Client must give one week's notice of the cancellation of an assignment unless otherwise agreed in writing by the Company.
- 3.15. The Company complies with the 2015 Act and expects its trading partners to do the same. The Client will do nothing to cause the Company to be in breach of its obligations under the 2015 Act. The Client agrees to adhere to the statutory requirements of the 2015 Act (where applicable). Should the Client fail to do so, the Company shall be entitled to immediately terminate the Assignment with the Client and without liability to the Client for any compensation, damages, expenses or other losses incurred or suffered by the Client directly or indirectly as a result of termination.

4. Time sheets

- 4.1. The Temporary will be expected to complete time sheets, normally weekly, detailing the hours they have worked. These may be submitted to the Client's appropriate representative either on paper or by email for approval.
- 4.2. The Temporary shall be paid under the terms of clause 5 as appropriate by the Company immediately upon receipt of a time sheet approved by the Client which shall be deemed conclusive evidence:
 - 4.2.1. that the Client is satisfied with the work carried out by the Temporary;
 - 4.2.2. that the Client agrees to and accepts these Terms;
 - 4.2.3. that the Client will pay the charges in accordance with clause 5 in full and without dispute, set off or deduction; and
 - 4.2.4. that the Client has recorded all unpaid breaks on the time sheet
- 4.3. The failure by the Client to sign any time sheet shall not however preclude the Company charging the Client in full for all time actually worked by any Temporary in accordance with these Terms.
- 4.4. The absence of recorded breaks on any time sheet shall be deemed conclusive evidence that there were no such breaks.

5. Fees

- 5.1. The Client shall pay to the Company for the introduction of the Temporary:
 - 5.1.1. on behalf of the Temporary, the fees, payments and other reimbursements of disbursements to which he is entitled for carrying out work for the Client together with the amount of any national insurance contributions required to be paid by the Company
 - 5.1.2. the Company's commission for introducing the Temporary to the Client and for arranging the payments falling within clause 5.1.1; this will be a recurring charge for the duration of the Assignment. VAT shall be paid in addition at the prevailing rate where and to the extent applicable.
- 5.2. The Client shall pay to the Company for the supply of a Temporary the hourly charge in respect of each Temporary notified to the Client at the time of booking together with the amount of any national insurance contributions required to be paid by the Company and such travel and other expenses as may be agreed between the Client and the Company. The Company may at any time increase the hourly charge by an appropriate amount if the payments that it must make to the Temporary under clause 2.4 have to be increased to comply with Regulation 5 of the 2010 Regulations (principally, after 12 weeks continuous service to enjoy similar terms to comparable permanent staff). VAT shall be paid in addition at the prevailing rate where and to the extent applicable.
- 5.3. Unless otherwise stated the hourly charge referred to in this clause 5 shall only apply to work carried out between the hours of 7am and 7pm, Monday to Friday. The minimum charge for shifts worked in this period will be 9.5 hours per day and all hours worked outside this period must be agreed separately with the Company.
- 5.4. All monies due hereunder shall be paid by the Client within 30 days of the date of invoice by the Company. Any breach of this clause 5.4 shall entitle the Company to terminate without prior notice each and every Assignment concluded under these Terms between the Company and the Client.
- 5.5. The Company reserves the right to charge the Client interest in respect of any amount outstanding after the period for payment set out in clause 5.4 (both before and after any judgment) from the date of invoice up to and including the day of payment at the rate of 4% a year above the base rate from time to time of National Westminster Bank plc.

6. Unsatisfactory Temporary procedure

- 6.1. If the Client, acting reasonably, decides that a Temporary is unsatisfactory to do the work required by the Client (subject at all times to the Client complying with its obligations set out in clauses 3.1 to 3.5) ('an unsuitable Temporary'), then the Client shall notify the Company in writing of that fact giving the full grounds for dissatisfaction with the Unsuitable Temporary (a 'Dissatisfaction Notice').
- 6.2. Within five working days of receipt by the Company of a Dissatisfaction Notice, the

Company shall either:

- 6.2.1. Provide a suitable replacement for the Unsuitable Temporary, in which case clause 5 shall continue to apply without interruption;
 - 6.2.2. If no such suitable replacement is available, inform the Client in writing of that fact, in which case clause 5 shall cease to apply in respect of the Unsuitable Temporary with effect from the date on which the Company receives the Dissatisfaction Notice; or
 - 6.2.3. If the Company disagrees with the grounds as set out in the Dissatisfaction Notice, inform the Client, in which case the Assignment shall be terminated.
- 6.3. The Client shall give the Company such cooperation as the Company may reasonably request (including but not limited to the production of relevant documents and the attendance of witnesses) at the Client's expense in any internal disciplinary proceedings, employment tribunal proceedings or other legal proceedings in relation to any Unsuitable Temporary's performance or conduct.

7. Data Protection

- 7.1 This Clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 7.2 Each party shall comply with all the obligations imposed on a data controller under the Data Protection Legislation.
- 7.3 Each party shall:
- (a) ensure that it has all necessary consents and notices in place to enable the lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under the Terms of the nature such processing. This includes giving notice that, on the termination of the Terms or Assignment, as applicable, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes. The Shared Personal Data will not be used for any other purpose or in a way that does not comply with the Terms or the Data Protection Legislation;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by the Terms;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - (g) not transfer any personal data outside of the European Economic Area unless the transferor:
 - (i) complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
 - (iii) ensures that the other party is informed in advance of the intended transfer of any Shared Personal Data and that any applicable privacy notices/fair processing policies issued in accordance with Data Protection Legislation are updated accordingly and Data Subjects notified as necessary.
- 7.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

- (b) promptly inform the other party about the receipt of any data subject access request;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party promptly and without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of these Terms unless required by law to retain the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this Clause 7 and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

7.5 The Client shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any breach of the Data Protection Legislation by the Client, its employees or agents.

8 Liability and indemnity

- 8.1 Neither the Company nor any of its staff shall be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the introduction or supply of a Temporary to the Client or with any failure by the Company to introduce or supply a Temporary for all or part of the period booked (save that in the latter case the Client may be entitled to a reduction or cancellation of the charge payable under clause 5) and, in particular, but without limitation to the foregoing, any such loss, injury, damage, expense or delay arising from or in any way connected with:
- 8.1.1 failure of the Temporary to meet the requirements of the Client for all or any of the purposes for which he is required by the Client;
 - 8.1.2 any act or omission of a Temporary, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and
 - 8.1.3 any loss, injury, damage, expense or delay incurred or suffered by a Temporary; PROVIDED THAT nothing in this clause 7 shall be construed as purporting to exclude or restrict any liability of the Company to the Client for personal injury or death resulting from negligence (as defined in the Unfair Contract Terms Act 1977) nor any statutory liability or any exclusion or limitation which is prohibited by law.
- 8.2 In consideration of the Company entering into an agreement with the Client into which these Terms are incorporated, the Client hereby undertakes to indemnify the Company in respect of any and all liability of the Company for:
- 8.2.1 any loss, injury, expense or delay suffered or incurred by a Temporary, howsoever caused;
 - 8.2.2 any loss, injury, damage, expense or delay suffered or incurred by anyone arising

directly or indirectly from or in any way connected with the acts and omissions of a Temporary, whether wilful, reckless, fraudulent, negligent, dishonest or otherwise; and

8.2.3 any loss, injury or delay suffered or incurred by the Company as a result of any act or omission of the Client, and

8.2.4 any loss, injury or damage suffered or incurred by the Company as a result of the Client failing to comply with and/or causing the Company to be in breach of the 2015 Act.

8.3 PROVIDED THAT this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly out of or in any way connected with the relevant Assignment.

8.4 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Company set out herein are reasonable and reflected in the charges payable to the Company hereunder and shall accept risk and/or insure accordingly.

9 Miscellaneous

9.1 The Company reserves the right to review and to revise these Terms without prior notice.

9.2 These Terms shall be governed by and construed in accordance with the laws of England and Wales.